Gina M. Austin (SBN 246833)
E-mail: gaustin@austinlegalgroup.com
Tamara M. Leetham (SBN 234419)
E-mail: tamara@austinlegalgroup.com
AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Ste A-112
San Diego, CA 92110
Phone: (619) 924-9600
Facsimile: (619) 881-0045

Attorneys for Defendants Point Loma Patients Consumer Cooperative, Golden State Greens, LLC, Far West Management, LLC, Far West Operating, LLC and Far West Staffing, LLC

MATTHEW B. DART (Bar No. 216429)
DART LAW
12526 High Bluff Dr., Suite 300
San Diego, CA 92101
Tel: 858.792.3616
Fax: 858.408.2900

Attorneys for Defendants Adam Knopf, Justus Henkes IV, and 419 Consulting, Inc.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

KARL BECK, individually and on behalf of all other similarly situated California residents,

Plaintiff,

v.

POINT LOMA PATIENTS CONSUMER COOPERATIVE CORPORATION, a California corporation; ADAM KNOPF, an individual; JUSTUS H. HENKES, IV, an individual; 419 CONSTULTING INC., a California Corporation; GOLDEN STATE GREENS, LLC, a California LLC; FAR WEST MANAGEMENT, LLC, a California LLC; FAR WEST OPERATING, LLC, a California LLC; FAR WEST STAFFING, LLC, a California LLC; and DOES 1 through 50, inclusive.

Defendants.

Case No: 30-2017-00037524-CU-BT-CTL

DECLARATION OF MATTHEW B. DART IN SUPPORT OF DEFENDANTS' JOINT OPPOSITION TO PLAINTIFF'S MOTION PURSUANT TO CORPORATIONS CODE §§ 12603-12607

[Imaged File]

Judge: Hon. Joel R. Wohlfeil
Dept: C-73
Date: January 5, 2017
Time: 9:00 a.m.

Complaint Filed: October 6, 2017
Trial Date: Not Set

I, MATTHEW B. DART, declare as follows:

1. I am an attorney duly licensed to practice before the courts of the State of California and am the principal of Dart Law, co-counsel of record for Defendants in this matter. I have personal knowledge of the following facts, and if called upon, I could and would competently testify hereto.

2. I have been a practicing attorney in San Diego since 2001. For sixteen of those years, I was an associate and then partner at DLA Piper LLP (formerly Gray Cary Ware & Freidenrich), a firm with over 4000 lawyers worldwide. During my time at DLA, I was intimately familiar with the billing rates of all lawyers in San Diego, from senior partners down to junior associates.

3. This past year I have been the Principal of Dart Law. Prior to forming Dart Law, and as part of my ongoing practice, I evaluated and monitored the prevailing billing rates of local community attorneys to ensure that I remain competitive in the marketplace. I personally interviewed and spoke with dozens of smaller firm and solo practitioners regarding rates.

4. In my seventeen years of practice in San Diego, I have handled hundreds of state court matters. I have been involved with dozens of fee applications in the context of discovery sanctions, prevailing party contract clauses, and fee shifting statutes.

5. In my opinion, based on the length and breadth of my experience in the relevant community, the hourly billable rates sought by Plaintiff's counsel in their motion are patently unreasonable. The preparation of a letter to a corporation requesting inspection of records, followed by the filing a simple complaint to enforce that demand, does not require any heightened or special legal skill not found in the average state court litigation practitioner. It would be unreasonable, and not in line with community practices for similar services, to charge $675/hour, or $600/hour, and even more unreasonable to charge nearly $500/hour for a fourth-year associate in a four-attorney firm. A reasonable hourly fee for such services, in the relevant community, is approximately $250 - $300 per hour.

6. On November 3, 2017, I sent a letter to Mr. Restis, lead counsel on this matter and a related matter pending before Honorable Judge Trapp, regarding his violations of Rule 5-100 of the California Rules of Professional Conduct, specifically threatening criminal and administrative charges to gain an advantage in a civil dispute. A true and correct copy of my letter is attached hereto as **Exhibit 1**.

7. On or about November 3, 2017, Mr. Restis responded to my letter, denying the Rule 5-100 violations, and stating, *inter alia,* that Honorable Judge Trapp will be biased against Defendants in the *Bobo v. PLPCC et al* action because the case will draw "attention from law enforcement" and she "is a former District Attorney, and that her husband is a County Sherriff." A true and correct copy of that letter is attached hereto as **Exhibit 2.**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 21st day of December, 2017.

By _____
MATTHEW B. DART

EXHIBIT 1

Dart Law
12526 High Bluff Drive, Suite 300
San Diego, California 92130
www.dartlawfirm.com

Matthew B. Dart
matt@dartlawfirm.com
T 858.792.3616
F 858.408.2900

November 3, 2017
VIA E-MAIL

Our File No. 17-05

William Restis
Restis Law / Firm
550 West C Street, Ste 1760
San Diego, CA 92101

Re: ***Beck v. PLPCC et al.*** **(**S.D. Sup. Ct. Case No.: 37-2017-37524-CU-BC-CTL)
Bobo v. PLPCC et al. (S.D. Sup. Ct. Case No.: 37-2017-37348-CU-PO-CTL)

Dear Mr. Restis,

As you know, this office represents Mssrs. Knopf and Henkes in the *Bobo v. PLPCC et al* case, and Mssrs. Knopf and Henkes, and 419 Consulting, Inc., in the *Beck v. PLPCC et al* case.

As members of the California State Bar, we are bound by the California Rules of Professional Conduct. The Rules are intended "to protect the public and to promote respect and confidence in the legal profession." (Rule 1-100(A).) The State Bar's Board of Governors has the power to discipline members for willful violation of the Rules. (*Id.*)

Regrettably, I write with respect to your violations of Rule 5-100 of the California Rules of Professional Conduct. That Rule provides:

> **Rule 5-100 Threatening Criminal, Administrative, or Disciplinary Charges**
>
> (A) A member shall not threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute.
>
> (B) As used in paragraph (A) of this rule, the term "administrative charges" means the filing or lodging of a complaint with a federal, state, or local governmental entity which may order or recommend the loss or suspension of a license, or may impose or recommend the imposition of a fine, pecuniary sanction, or other sanction of a quasi-criminal nature but does not include filing charges with an

> administrative entity required by law as a condition precedent to maintaining a civil action.
>
> (C) As used in paragraph (A) of this rule, the term "civil dispute" means a controversy or potential controversy over the rights and duties of two or more parties under civil law, whether or not an action has been commenced, and includes an administrative proceeding of a quasi-civil nature pending before a federal, state, or local governmental entity.

"For purposes of paragraph (C), the definition of "civil dispute" makes clear that the rule is applicable *prior to the formal filing of a civil action*." (Rule 5-100, Discussion) (emphasis added.)

"The purpose of Rule 5-100 is to prohibit an attorney from using the threat of ancillary proceedings to gain an advantage in a civil dispute." Los Angeles County Bar Assn Formal Opn. No. 469, p. 2 (1992). The threat need not be expressly stated in words of a threatening nature, but may be inferred from the circumstances. *Crane v. State Bar*, 30 Cal. 3d 118, 123 (1981).[1] The test is from the perspective of the recipient, and the claimed innocent subject intent of the maker of the statement is not relevant. Los Angeles County Bar Assn Formal Opn. No. 469, pp. 2-3 (1992), citing *Crane, supra.* "If the statement can be reasonably interpreted as a threat to present criminal, administrative or disciplinary charges, in the context of a civil dispute, that is sufficient to constitute a violation of Rule 5-100(A)." *Id.* at p. 3.

Here, on behalf of Mssrs. Bobo and Beck, and the putative class, your office initiated two "civil disputes" via demand letters to Attorney Gina Austin of the Austin Legal Group, counsel for the putatively-named defendants. Particularly relevant to this Rule 5-100 issue is your letter of October 2, 2017, to Ms. Austin (the "Settlement Demand" letter).

At the outset your correspondence makes clear that it is a "**SETTLEMENT DEMAND**" (capitalization and bold in original) regarding the two civil disputes referenced above. At the time, formal complaints had not yet been filed. Fully-drafted civil complaints, however, were attached to the Settlement Demand letter. Your letter then sets the stage for the threats to come by making a disturbing analogy:

- "I know that if I go to a bully politely asking for my money back, he will tell me to shove it. But if I ask for my money back with a baseball bat, or a gun, the bully is likely to oblige."

[1] Rule 5-100 replaced former Rule 7-104.

In your analogy, the "bullies" are, of course, the defendants, who had thus far declined your written demands. Accordingly, with the proverbial baseball bat or gun in hand, your letter proceeds to "ask for my money" by make multiple statements that together, in context of these ongoing and unfruitful (from your perspective) settlement discussions, threaten criminal and administrative proceedings in order to gain an advantage in these civil disputes. Your Settlement Demand, with emphasis added, includes the following:

Criminal:

- "Frankly, I feel sorry for your clients. I am afraid your posturing is putting them precariously on the edge of some potentially very serious criminal exposure."

- "I am concerned that filing the attached complaints will unleash a chain of events outside of your control."

- "I am not sure you realize that the (apparent) structure of their marijuana business falls squarely within the ambit of criminal cases finding defendants guilty. So instead of filing the attached complaints this morning, I am sending them for your review in hopes you won't walk your clients off a cliff."

Administrative:

- "I'm sure your clients are poised to apply for the new recreational marijuana licenses set to be issued by the Bureau of Cannabis Control early next year. One of the requirements for operating medical marijuana dispensary is to demonstrate compliance with prior medical cannabis law. It appears likely that evidence uncovered in litigation could also make its way into the public record and impact issuance of the new license, and the golden ticket that comes with it."

Following these threats, your Settlement Demand letter states: "I propose the following as part of a full and complete settlement of Mrrs Beck and Bobo's individual claims" and proceeds to list your demands, including damages and payment of your attorneys' fees and costs. Your letter provided just four (4) days for my clients to accept your Settlement Demand, or face the possible criminal and administrative consequences you specified.

Viewed from the perspectives of Mssrs. Knopf and Henkes, as well as the entity defendants, your Settlement Demand letter is an egregious violation of Rule 5-100. You specifically identified criminal and administrative threats, and then conditioned the non-filing of two civil complaints that would trigger those threats, on defendants' acceptance of your settlement demands. Moreover, your actions had precisely your intended effect. One of the individual defendants, in particular, was greatly concerned with your assertions of criminality, and was motivated to explore settlement scenarios solely to mitigate the possible criminal consequences you raised. This is precisely why Rule 5-100 prohibits such conduct.

Unfortunately, one day after defendants did not act on your Settlement Demand within the time provided, you filed the two complaints, and then wrote and publicly posted to your firm website a blog article that emphasized and exacerbated the existing violations of Rule 5-100.[2]

That blog post, dated October 7, 2017, with William Restis as the listed author, is titled "The Wrong Business Plan for a Medical Marijuana Dispensary", and discusses the specifics of the *Beck* lawsuit referenced herein and cited in your Settlement Demand letter. Your blog post states (emphasis added):

- "I filed a class action today against a San Diego medical marijuana dispensary…I felt bad for the defendants. Why did I feel bad? Because out of all of the cases I've filed, this is the only one where the defendants had a real possibility of going to prison."

- "But even if the defendants walk free, their entire life has been turned upside down. I'll admit that I've never represented any criminal defendants. But I read a lot of cases detailing their arrests, convictions, and multi-year appears trying to get the benefit of the medical marijuana defense."

- "And one of the biggest recurring issues for law enforcement were large scale marijuana businesses. People selling weed for profit seems to be a very big dividing line. It's a big no-no that turns a dispensary from a respectable member of the community to a large scale drug dealer."

- "In sum, a dispensary should only charge what it believes will cover its costs, including reasonable compensation for employees. Any left over should be either spent for the benefit of the members and/or returned as dividends. *Voila*, a non-profit medical marijuana dispensary. Everybody stays out of prison."

- "If profit is being siphoned off to shell corporations owned by the same people, it is a lot like embezzlement. It's like Bernie Madoff…"

- "If the dispensary is operating as a for-profit enterprise, we know it's illegal for the dispensary to be *selling* medical marijuana….If the defendant cannot establish the elements of the defense, they could face prison."

- "Like I said, I don't want to ruin anyone's life. But if the allegations in the complaint are correct, these defendants made terrible judgments that could cost them everything."

- "If you are making money hand over fist from your medical marijuana business, better to pay it out as dividends than risk prison time."

[2] https://restislaw.com/wrong-business-plan-medical-marijuana-dispensary/

The statements in your blog post themselves are independent violations of Rule 5-100 in that criminal and administrative charges and expressly or impliedly threatened in order to gain an advantage in the now-pending civil disputes.

These are serious matters that we do not take lightly. My clients ultimately will decide whether these issues will be referred to the State Bar. They are reviewing their rights and options in that regard, as well as other potential courses of action. In the interim, we demand the following within five (5) business days from the date of this letter:

- Removal of the blog post from your website, and anywhere else it may be publicly posted;
- Removal of any similar comments on social media or elsewhere;
- Written assurances that you intend to abide by the Rules of Professional Conduct in your representation of plaintiffs in the two pending civil disputes, *Bobo* and *Beck*.

Should you wish to respond or discuss these matters, please do so in writing addressed to my attention.

My clients reserve all rights.

Very truly yours,

Dart Law

Matthew B. Dart, Esq.

Admitted to practice in California

cc Gina Austin, Esq. (via email)
Tamara Leetham, Esq. (via email)
Jeffrey Krinsk, Esq. (via email)

EXHIBIT 2

RESTIS
LAW / FIRM

November 3, 2017

Via Electronic Mail

Matthew B Dart
12526 High Bluff Drive, Suite 300
San Diego, 92130
matt@dartlawfirm.com

Re: Your Threat to Present Administrative or Disciplinary Charges to the State Bar

Dear Mr. Dart,

I received your letter accusing me of violating State Bar Rule 5-100. But the entire premise of your letter is ridiculous. I never made any threat "to present criminal, administrative, or disciplinary charges."

Our (factually supported) view that your clients appear to be operating a criminal enterprise, and that incriminating facts will necessarily come to light in civil litigation is not a threat, but a statement of fact. Simply stating the obvious – that your clients appear to be violating very serious criminal laws – does not violate Rule 5-100. I have carefully reviewed the case law surrounding the Rule, and suggest you take a closer look.

I never stated, nor inferred, an intent to refer this matter to criminal authorities. Nor do I ever intend to do so. Every word in my October 2nd letter indicates that the last thing my clients (and myself) want is to file a criminal complaint. To put it plainly, we are concerned that your clients will be arrested and their assets seized under civil forfeiture laws so as to render them judgment-proof.

I remain concerned that this litigation "will unleash a chain of events outside of [our] control." To again state the obvious, how long before this case draws attention from law enforcement? To emphasize my point, a prominent local attorney approached me in the gym stating that our complaint was picked up by a legal reporting service. I also know that the Honorable Judge Trapp is a former District Attorney, and that her husband is a County Sherriff. And what happens when your clients have to "plead the fifth" in their depositions? If your clients "are greatly concerned with [my] assertions of criminality," it is the fruit of their own misconduct.

And instead of trying to "gain an advantage in civil litigation," I laid out a roadmap for your clients to submit their books and records to an independent accountant, disgorge any excess amounts back to the cooperative, and pay those monies back out to class members in accordance with the Corporation Code. I stated that it would appear to "right[] all wrongs, both against PLPCCC members, and against the State." I threw your clients a softball because we wanted to give them an opportunity to *privately* make things right. As I said in my blog - which did not mention your clients and will not be taken down – we never wanted anyone to go to prison.

But no one representing Defendants wanted to talk. So we litigate.

Irrespective of the above, your threat to report me to the State Bar is clearly for the purpose of gaining advantage in this civil litigation. Thus, it is you Mr. Dart, who has violated Rule 5-100.

Whether you chose to report me is up to you, but I am very comfortable defending my conduct in front of any review committee. Please include a copy of your November 3rd letter, and this letter in response, with any complaint to the State Bar.

Sincerely,

William R. Restis, Esq.
THE RESTIS LAW FIRM, P.C.
william@restislaw.com

Cc: Jeffrey R. Krinsk, Esq.