

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 01/19/2018

TIME: 09:00:00 AM

DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil

CLERK: Juanita Cerda

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: R. Camberos

CASE NO: **37-2017-00037524-CU-BT-CTL** CASE INIT.DATE: 10/06/2017

CASE TITLE: **Beck vs Point Loma Patients Consumer Cooperative Corporation [E-File]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Business Tort

EVENT TYPE: Motion Hearing (Civil)

MOVING PARTY: Karl Beck

CAUSAL DOCUMENT/DATE FILED: Motion - Other Notice of Motion pursuant to Cal. Corp. Code sections 12603-12607, 11/16/2017

EVENT TYPE: Demurrer / Motion to Strike

MOVING PARTY: Far West Management LLC, Adam Knopf, Justus H Henkes, IV, Far West Staffing LLC, Point Loma Patients Consumer Cooperative Corporation, 419 Consulting Inc, Far West Operating LLC, Golden State Greens LLC

CAUSAL DOCUMENT/DATE FILED: Demurrer, 12/08/2017

APPEARANCES

No Appearance by all parties

All parties submit(s) on the Court's tentative ruling.

The Court confirms the tentative ruling as follows:

The special and general Demurrer (ROA # 20) of Defendants Point Loma Patients Consumer Cooperative Corporation, Adam Knopf, Justus H. Henkes IV, 419 Consulting, Inc., Golden State Greens LLC, Far West Management LLC, Far West Operating LLC, and Far West Staffing LLC ("Defendants") to the Complaint of Plaintiff Karl Beck's ("Plaintiff"), is **OVERRULED IN PART AND SUSTAINED IN PART**.

The special Demurrer for uncertainty to causes of action 2 - 5 in the Complaint is **OVERRULED**. The causes of action are not ambiguous or unintelligible. Code Civ. Proc. 430.10(f).

The general Demurrer to causes of action 2, 3 and 4 in the Complaint are **OVERRULED**. The general Demurrer to cause of action 5 is **SUSTAINED** without leave to amend.

Defendants are ordered to file and serve their Answers to the surviving causes of action within 20 days of this hearing.

The ruling on the general demurrer is premised on the analysis set forth below.

2nd COA: VIOLATION OF THE UCL

Defendants argue that the civil conspiracy and alter ego allegations are not sufficient to support this cause of action. In fact, this cause of action sufficiently alleges that all Defendants worked in concert to illegally operate the business as a for profit dispensary, and illegally failed to pay dividends to member-patrons. Also, the allegations setting forth a civil conspiracy and alter ego (¶¶ 43 - 49) are sufficient when read in context with other allegations within the Complaint. Even assuming the preliminary allegations of a civil conspiracy and alter ego are insufficient, this cause of action alleges active, joint conduct on the part of all Defendants. Also, whether Defendants' did, in fact, illegally operate the dispensary constitutes a question of fact that cannot be determined via this Demurrer.

3rd COA: VIOLATION OF THE CLRA

Defendants argue that the civil conspiracy and alter ego allegations are not sufficient to support this cause of action. In fact, this cause of action sufficiently alleges that all Defendants acted in concert to commit the CLRA violations. Also, the allegations setting forth a civil conspiracy and alter ego (¶¶ 43 - 49) are sufficient when read in context with other allegations within the Complaint. Even assuming the preliminary allegations of a civil conspiracy and alter ego are insufficient, this cause of action alleges active, joint conduct on the part of all Defendants.

Civil Code section 1770(a) proscribes "unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or that results in the sale or lease of goods or services to any consumer." A "transaction" is defined as "an agreement between a consumer and another person, whether or not the agreement is a contract enforceable by action, and includes the making of, and the performance pursuant to, that agreement." Civ. Code 1761(e). The Complaint sufficiently alleges that all Defendants were actively involved in the "agreement" by which medical marijuana was sold to Plaintiff and other consumers via the Point Loma Patients Consumer Cooperative storefront.

4th COA: CONVERSION

Defendants argue that the civil conspiracy and alter ego allegations are not sufficient to support this cause of action. In fact, this cause of action sufficiently alleges that all Defendants acted in concert to commit the tort of conversion. Also, the allegations setting forth a civil conspiracy and alter ego (¶¶ 43 - 49) are sufficient when read in context with other allegations within the Complaint. Even assuming the preliminary allegations of a civil conspiracy and alter ego are insufficient, this cause of action alleges active, joint conduct on the part of all Defendants.

Conversion is the wrongful exercise of dominion over the property of another. Lee v. Hanley (2015) 61 Cal. 4th 1225, 1240. The elements of a conversion claim are: (1) Plaintiff's ownership or right to possession of the property; (2) Defendant's conversion by a wrongful act or disposition of property rights; and (3) damages. Id. The Complaint sufficiently alleges that the medical marijuana cooperative earnings were not used for the general welfare of Defendants' members, such that Defendants were required to equitably distribute these earnings to their members. As a result, the class members had a legal right to possession of these distributions, as alleged. Defendants failed to make these distributions and instead wrongfully converted these earnings, as alleged.

5th COA: UNJUST ENRICHMENT

The Demurrer to this cause of action is unopposed, and on this basis is sustained without leave to amend.

Defendants' Request (ROA # 21) for judicial notice is GRANTED IN PART AND DENIED IN PART. The Court takes judicial notice of Exh's "A and C," and declines to take judicial notice of Exh's "B and D - F."

Defendants' request (ROA # 38) for judicial notice is DENIED.

Plaintiff's objections (ROA # 43) are OVERRULED.

The Motion (ROA # 13, 34) of Plaintiff Karl Beck ("Plaintiff") for an Order (1) enforcing Plaintiff's records demand on Defendant Point Loma Patients Consumer Cooperative Corporation ("PLPCCC") and / or enforcing Plaintiff's right of inspection of PLPCCC records with or without just and proper conditions as determined by this Court; (2) appointing one or more competent inspectors and / or independent accountants to audit the financial statements kept in this state and investigate the property, funds, and affairs of the PLPCCC and Defendants Adam Knopf and Justus H. Henkes IV ("Individual Defendants"), and Defendants 419 Consulting Inc., Golden State Greens LLC, Far West Management, LLC, Far West Operating, LLC and Far West Staffing, LLC ("Shell Companies"), and report thereon to the Court and the parties; (3) ordering Defendant PLPCCC and / or Individual Defendants to bear the costs of the investigation and / or audit; and (4) awarding Plaintiff his reasonable costs and attorney fees, is DENIED.

This ruling is premised on the analysis set forth below.

Procedural Issue: Writ of Mandate

The first cause of action seeks the "enforcement of Plaintiff's right to cooperative records." Specifically, paragraph 63 alleges: "Accordingly, pursuant to Corporations Code § 12606, Plaintiff respectfully requests this Court to enforce Plaintiff's demand and right of inspection, with or without just and proper conditions." The prayer for relief seeks (in part) "an Order enforcing Plaintiff's records demand pursuant to Corporations Code 12206, ordering the appointment of one or more independent accountants to audit Defendants' books and records, and order a report thereon, at Defendants' expense"

Defendant Point Loma Patients Consumer Cooperative Corporation is a California corporation organized under the Cooperative Corporation Law. See Corp. Code 12200, et seq. Section 12603 provides: "The accounting books and records and minutes of proceedings of the members and the board and committees of the board shall be open to inspection upon the written demand on the corporation of any member at any reasonable time, for a purpose reasonably related to such person's interests as a member." Section 12582 provides: "Any right of inspection created by this chapter extends to the records of each subsidiary of a corporation." Section 12583 provides: "The rights of members provided in this chapter may not be limited by contract or the articles or bylaws."

"Upon refusal of a lawful demand for inspection under this chapter ... the superior court of the proper county, or the county where the books or records in question are kept, may enforce the demand or right

of inspection with just and proper conditions or may, for good cause shown, appoint one or more competent inspectors or independent accountants to audit the financial statements kept in this state and investigate the property, funds and affairs of any corporation and of any subsidiary corporation thereof" Corp. Code 12606(a). "A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled" Code Civ. Proc. 1085(a). "... [N]othing is more thoroughly established than the rule that mandamus will lie to restore to his corporate rights a member of a corporation who has been improperly disfranchised or irregularly removed from his connection with the corporation, and yet his right in this regard generally rests wholly on his contract of membership. The same rule appears to us to be applicable where the member is being excluded from participation in the benefits afforded by the corporation to its members, and there is no other adequate remedy. In the case at bar, the stockholder's right to have water furnished on his land is not based on any special contract entered into by him with the corporation, but is an inseparable adjunct of his membership, and it is a plain duty resting on the corporation in the exercise of its corporate functions to furnish him such water." Miller v. Imperial Water Co., No. 8 (1909) 156 Cal. 27, 29, 30.

Section 12606 does not specify whether such an action may (or must) proceed by way of a writ of mandate. However, the section also does not expressly create a cause of action premised on a violation of a member's inspection rights. Thus, the only apparent means by which a member can seek to compel the right to inspection would be via a cause of action for declaratory relief (seeking a declaration of this right), a cause of action seeking an injunction compelling such an inspection, or (similarly) a cause of action seeking a writ of mandate compelling the inspection right. This discussion is largely academic, however, because the allegations forming this cause of action (and the relief it seeks) are sufficient to encompass any of these causes of action. Quelimane Co. v. Stewart Title Guaranty Co. (1998) 19 Cal. 4th 26, 38 (in the context of a Demurrer, the Court must determine if the factual allegations of the Complaint are adequate to state a cause of action under any legal theory). Defendants do not seek to challenge this cause of action via a Demurrer. Therefore, the cause of action is procedurally proper as currently alleged.

Procedural Issue: Improper Evidentiary Based Motion

As set forth above, section 12606 does not provide a specific mechanism for enforcement of a member's right to inspection. Thus, the ordinary rules of civil procedure apply. Plaintiff essentially seeks a final ruling from this Court finding that section 12606 applies to each Defendant entity, and that Plaintiff has standing to pursue section 12606 inspection rights. However, such a ruling is dependent on factual issues that cannot be adjudicated at this time. Such issues include the nature of the applicable corporate governance documents, Defendants' relationship to each other, Plaintiff's status as a "member" of the cooperative, etc. In short, this Motion is procedurally improper, and is denied on this basis. This denial is without prejudice of Plaintiff's ability to adjudicate this important issue via any available future proceeding (e.g., Motion for summary adjudication or trial). The Court further notes that this denial is without prejudice of Plaintiff's potential ability to obtain some or all of these records via normal discovery procedures, to the extent the documents are "relevant" (as broadly defined for purposes of discovery) to the claims asserted in the other causes of action.

Substantive Issue: Whether the Applicable Law and the Corporate Bylaws Support the Right Plaintiff Now Asserts

Given the procedural impropriety of this Motion, the Court does not address the substantive issues

presented via this Motion.

Joel R. Wohlfeil

Judge Joel R. Wohlfeil