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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**03/28/2018** at 08:43:00 AM

Clerk of the Superior Court  
By E- Filing, Deputy Clerk

9 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
10 **COUNTY OF SAN DIEGO**

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

13 Plaintiff,

14 v.

15 **POINT LOMA PATIENTS CONSUMER**  
16 **COOPERATIVE CORPORATION**, A  
17 California Corporation, **ADAM KNOPF**, an  
18 Individual, **JUSTUS H. HENKES IV**, an  
19 Individual, **419 CONSULTING INC.**, a  
20 California Corporation, **GOLDEN STATE**  
21 **GREENS LLC**, a California LLC, **FAR WEST**  
22 **MANAGEMENT, LLC**, a California LLC,  
23 **FAR WEST OPERATING, LLC**, a California  
24 LLC, **FAR WEST STAFFING, LLC**, a  
25 California LLC, and **DOES 1-50**,

26 Defendants.

Case No: 37-2017-00037524-CU-BT-CTL

**CLASS ACTION**

**DECLARATION OF WILLIAM R. RESTIS  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR JUDGMENT ON THE PLEADINGS TO  
DEFENDANTS' JOINT ANSWER**

Date: May 4, 2018

Time: 9:00 a.m.

Judge: Hon. Joel R. Wohlfeil

Ctrl: C-73

1 I, William R. Restis, hereby declare as follows:

2 1. I am the managing member of The Restis Law Firm, P.C. I have personal  
3 knowledge of the matters set forth herein, based on my active participation in all material aspects  
4 of this litigation. If called upon, I could and would testify competently to the facts herein based  
5 upon my personal involvement in this case. I submit this declaration in support of Plaintiff Karl  
6 Beck's ("Plaintiff") Motion for Judgment on the Pleadings to Defendants' Joint Answer (the  
7 "Motion").

8 2. Attached hereto as Exhibit 1 is a true and correct copy of my February 22, 2018  
9 meet and confer letter to counsel for Defendants herein Tamara Leetham, requesting that  
10 Defendants amend their Joint Answer to avoid the necessity of motion practice. Defendants never  
11 responded to Plaintiff's meet and confer.

12 I declare under penalty of perjury, under the laws of the State of California, that the forgoing  
13 is true and correct to the best of my knowledge, information and belief.

14 Executed on March 23, 2018 at San Diego, California.

15   
16 \_\_\_\_\_  
17 William R. Restis, Esq.

# **EXHIBIT 1**



February 22, 2018

*Via Electronic Mail*

Tamara Leetham  
AUSTIN LEGAL GROUP, APC  
3990 Old Town Ave, Suite A112  
San Diego, 92110  
tamara@austinlegalgroup.com

Re: *Meet and Confer – Defendants’ Defective Answer*

Dear Tammy,

This letter constitutes Plaintiff’s meet and confer pursuant to CCP § 430.41 in advance of Plaintiff’s motion for judgment on the pleadings to Defendants’ Joint Answer. To avoid motion practice, and narrow the issues in this case, we ask that that Defendants file an amended answer addressing the following:

- (1) Several of Defendants’ Affirmative Defenses do not constitute “new matter,” and thus as a matter of law, do not constitute an affirmative defense. See CCP § 431.30(b)(2). There is a “critical distinction” between an affirmative defense, which raises new matter, and a denial, which simply denies the allegations of the complaint. *Alpha Mech., Heating & Air Conditioning, Inc. v. Travelers Cas. & Sur. Co. of Am.*, 133 Cal. App. 4th 1319, 1330 (2005) The phrase “new matter” refers to something relied on by a defendant “which is not put in issue by the plaintiff.” *Id.* Where “the answer sets forth facts showing some essential allegation of the complaint is not true, such facts are not ‘new matter,’ but only a [denial].” *Id.*; see also *Sargent Fletcher, Inc. v. Able Corp.*, 110 Cal. App. 4th 1658, 1668, 3 Cal. Rptr. 3d 279, 286 (2003) (“the defendant bears the burden of proof on new matter and affirmative defenses.”)

An amended answer should withdraw purported defenses that are not new matter. Specifically, I referred to the First, Fifth, Sixth, Seventh, Eighth, Twelfth, Thirteenth, Fourteenth, and Sixteenth “Defenses.”

- (2) All of Defendants’ Defenses are deficient pursuant to CCP § 430.20 because they do not “state facts sufficient to constitute a defense.” Consequently, these Defenses are “uncertain, ambiguous, and unintelligible.” *Id.* Please amend the remaining valid defenses to provide sufficient factual detail sufficiently put Plaintiff on notice of the basis of Defendants’ claims.
- (3) Several of Defendants’ Defenses are not available to the causes of action pled. The claims in the case are violations of Bus. & Prof. Code § 17200, Civ. Code § 1770, and conversion. Please clarify which causes to which the individual Defenses are directed. CCP 431.30(g) (“defenses shall be separately stated[] and [they] shall refer to the causes of action which they are intended to answer.”)

For example, several of Defendants’ Defenses are not defenses to the UCL claims as a matter of law: Laches (Fourth), Waiver (Fourth), Consent (Fifth), Estoppel (Tenth), Failure to Mitigate (Eleventh), and Estoppel (Fifteenth). Such equitable defenses cannot act to defeat a UCL claim predicated on unlawful conduct. In

A handwritten signature in black ink, appearing to read 'The Restis Law Firm, P.C.', is written over a horizontal line.

*Cortez v. Purolator Air Filtration Products Co.*, the California Supreme Court pointed out that “[t]he UCL imposes strict liability when property or monetary losses are occasioned by conduct that constitutes an unfair business practice.” 23 Cal. 4th 163, 181 (2000). For this reason, the California Supreme Court held that “equitable defenses may not be asserted to wholly defeat a UCL claim since such claims arise out of unlawful conduct.” *Id.*; also *Ticconi v. Blue Shield of Cal. Life & Health Ins. Co.* 160 Cal.App.4th 528, 543-44 (2008) (equitable defenses may not be used to defeat a cause of action under the UCL because it would “potentially sanction the [defendant’s] unlawful and unfair conduct.”); *Page v. Bakersfield Uniform & Towel Supply Co.*, 239 Cal. App. 2d 762, 770 (1966) (It has long been the law that “[t]he equitable doctrine of the refusal of aid to anyone with ‘unclean hands,’ does not, as such, apply to actions under [the Unfair Practices] Act.”)

In addition, Defendants’ Defense alleging the unconstitutionality of the class action procedure (Ninth), is also deficient as a matter of law. Courts have repeatedly upheld the Constitutionality of the UCL and any awards made thereunder. *E.g.*, *People v. Fremont Life Ins. Co.* (2002) 104 Cal.App.4th 508 (2002). Finally, Defendant’s Eighth defense challenging class certification, is also not an affirmative defense, and should be withdrawn. *E.g.* *Hernandez v. Balakian*, 2007 WL 1649911 at \*9 (E.D. Cal. June 1, 2007) (issues regarding Rule 23 are addressed during class certification proceedings, not as an affirmative defense).

Please let me know whether Defendant is willing to amend its answer consistent with the above or whether motion practice is necessary to narrow the issues in dispute.

Sincerely,



William R. Restis, Esq.

THE RESTIS LAW FIRM, P.C.  
william@restislaw.com

Cc: Jeffrey R. Krinsk, Esq.  
Matthew Dart, Esq.

