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Justus Henkes IV, and 419 Consulting, Inc.

13  
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **COUNTY OF SAN DIEGO**

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

18 Plaintiff,

19 vs.

20 POINT LOMA PATIENTS CONSUMER  
COOPERATIVE CORPORATION, a  
21 California corporation, ADAM KNOPF, an  
individual, JUSTUS H. HENKES IV, an  
22 individual, 419 CONSULTING INC, a  
California corporation, GOLDEN STATE  
23 GREENS LLC, a California LLC, FAR  
WEST MANAGEMENT LLC, a  
24 California LLC, FAR WEST  
OPERATING, LLC, a California LLC,  
25 FAR WEST STAFFING LLC, a California  
LLC, and DOES 1-50;

26 Defendants.  
27  
28

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**04/16/2018** at 12:09:00 PM  
Clerk of the Superior Court  
By Katelin O'Keefe, Deputy Clerk

**CASE NO. 37-2017-00037524-CU-BT-CTL**

**CLASS ACTION**

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
DEFENDANT'S EX PARTE  
APPLICATION TO STAY THE COURT'S  
MARCH 23, 2018 DISCOVERY ORDER**

Judge: Hon. Joel Wohlfeil  
Dept.: C-73  
Date: April 17, 2018  
Time: 8:30 a.m.

Complaint Filed: October 6, 2017

Trial Date: March 1, 2019

1 **I. INTRODUCTION**

2 Defendant Point Loma Patients Consumer Cooperative Corporation (“Defendant” or  
3 “PLPCC”) respectfully move pursuant to Code of Civil Procedure section 918 for a temporary  
4 stay of the enforcement of this Court’s March 23, 2018 Discovery Order compelling Defendant to  
5 “produce an export list of names and addresses” of Defendant’s medical patient patrons within 14  
6 days of the order (ROA #83) (the “Discovery Order”). Defendant requests an additional ninety  
7 days to comply so Defendant can hire appellate counsel and seek a writ from the Court of  
8 Appeals.

9 **II. FACTUAL BACKGROUND**

10 On or around February 15, 2018, Plaintiff Karl Beck (“Plaintiff” or “Beck”) filed a  
11 Motion to Compel Plaintiff’s Request for Production No. 1 to defendant Point Loma Patients  
12 Consumer Cooperative Corporation (“Motion to Compel”). (Declaration Of Tamara Leetham In  
13 Support Of Ex Parte Application to Stay the Court’s March 23, 2018 Discovery Order (“Leetham  
14 Decl.”) ¶ 2.) Plaintiff sought “[a]n export list [from the PLPCC’s customer database] containing  
15 the names and addresses of all [associate] members of the PLPCCC since January 1, 2015.”  
16 (Leetham Decl. ¶ 3.)

17 On or around March 12, 2018, Defendant opposed the Motion to Compel on the grounds  
18 that medical privacy under California’s Confidentiality of Medical Information (“CMIA”) and  
19 risk of criminal exposure outweighed the necessity for precertification discovery of class  
20 members’ personal information. (Leetham Decl. ¶ 4.)

21 On or around March 23, 2018, this Court ruled that despite Plaintiff’s Motion to Compel  
22 being procedurally defective, it would grant the Motion to Compel.

23 Notice of Ruling was served by mail by Plaintiff’s counsel on April 3, 2018.

24 On or around April 10, 2018, PLPCC hired appellate counsel for the purpose of filing a  
25 writ of mandate to prevent the disclosure of PLPCC’s patients’ medical records. (Leetham Decl.  
26 ¶5.) Appellate counsel has informed PLPCC that it needs time to get up to speed and to prepare  
27 the necessary briefing. (Leetham Decl. ¶ 6.)

28 On or around April 13, 2018, Plaintiff was notified via email of Defendant’s intent to file

1 this ex parte application. (Leetham Decl. ¶ 7.) Plaintiff’s counsel has notified Defendant that he  
2 will be appearing and opposing Defendant’s ex parte application.. (Leetham Decl. ¶ 8.)

3 **III. A STAY IS APPROPRIATE TO PROTECT IRREPREABLE HARM DUE TO**  
4 **THE DISCLOSURE OF PRIVILEGED INFORMATION AND IS WITHIN**  
5 **THIS COURT’S RIGHTS**

6 Code of Civil Procedure section 918 permits the trial court “to stay enforcement of any  
7 judgment or order.” Civ. Proc. Code section 918(a); *see also City of Hollister v. Monterey Ins.*  
8 *Co.* (2008) 165 Cal.App.4th 455, 482 (trial court has authority to stay execution of its own order).

9 Denial of a stay from an order that would cause “irreparable injury” is an abuse of a trial  
10 court’s discretion. *Mehr v. Superior Court* (1983) 139 Cal.App.3d 1044, 1050 (trial court abused  
11 its discretion when it denied a stay where the lack of a stay would cause the petitioners  
12 “irreparable injury” while the respondent would not be “sorely prejudiced.”); *Britts v. Superior*  
13 *Court* (2006) 145 Cal.App.4th 1112 (trial court erred when it denied a party’s ex parte application  
14 for a stay of an order granting discovery).

15 California courts have repeatedly recognized the importance of a stay where a privilege is  
16 implicated. *County of Los Angeles v. Superior Court* (1990) 224 Cal.App.3d 1446, 1451 (trial  
17 court stayed order compelling deposition testimony that would invade the patient-physician  
18 privilege); *Venture Law Group v. Superior Court* (2004) 118 Cal.App.4th 96, 101 (stay granted  
19 where trial court’s order forced the disclosure of the attorney-client privileged information).

20 In *Roberts v. Superior Court* (1973) 9 Cal.3d 330, 335, the Supreme Court ordered a stay  
21 of a trial court’s order requiring petitioner to produce records implicating the psychotherapist-  
22 patient privilege. The Court held:

23 The need for the availability of the prerogative writs in discovery cases where an order of  
24 the trial court granting discovery allegedly violates a privilege of the party against whom  
25 discovery is granted, is obvious. The person seeking to exercise the privilege must either  
26 succumb to the court's order and disclose the privileged information, or subject himself to  
27 a charge of contempt for his refusal to obey the court's order pending appeal. The first of  
28 these alternatives is hardly an adequate remedy and could lead to disruption of a  
confidential relationship. The second is clearly inadequate as it would involve the  
possibility of a jail sentence and additional delay in the principal litigation during review  
of the contempt order.

1 Id. at 336.

2  
3 In this case, denying Defendant’s request for a stay will cause irreparable harm because it  
4 compels the disclosure of privileged and protected information in violation of California law and  
5 cannot be subsequently cured. Specifically, PLPCC contends that the Discovery Order requires  
6 PLPCC to violate state medical privacy law (the CMIA) by disclosing the names and addresses of  
7 non-party medical patients. Moreover, Plaintiff has contended since his first communication that  
8 PLPCC patrons have committed criminal offenses and “could face prison.” Disclosure of the  
9 names and addresses of persons that Plaintiff contends have committed state and federal crimes  
10 cannot be undone. Therefore, a stay should be granted.

11 Medial patients patronize PLPCC exclusively for medical cannabis, which is a single  
12 medical treatment for different ailments that range in severity. The patients were required to  
13 provide a doctor’s recommendation because medical cannabis [at the time] was unavailable to the  
14 general public. Each doctor’s recommendation was pursuant to a health problem faced by that  
15 patient. Revealing the names and addresses of each patient of PLPCC would violate their right to  
16 privacy that is protected under the CMIA.

17 Counsel for Plaintiff has repeatedly alleged and argued, in pleadings, in demand/threat  
18 letters, in his public blog postings, and in meet and confer discussions, that members of PLPCC  
19 who purchased any products from PLPCC have committed criminal offenses and thus subject to  
20 criminal charges. Now, Plaintiff seeks the names and addresses of the very people that he has  
21 alleged are subject to criminal charges.

22 Defendant requests a stay of the Discovery Order until the Appellate Court can undertake  
23 a review.

24 **IV. THE PREJUDICE TO DEFENDANT IS GREATER THAN THE PREJUDICE TO**  
25 **PLAINTIFF**

26 Once the production of the names and addresses of Defendant’s medical patients has been  
27 provided, the proverbial bell has been rung – and cannot be un-rung. Defendant’s patrons are  
28 medical patients that have been diagnosed with any number of conditions, where the treatment is

1 cannabis. To obtain the name and address of a patron of PLPCC is to implicitly and irrevocably  
2 know the individually identifiable information regarding that patient’s medical history, mental, or  
3 physical condition (a “serious illness”), or treatment (medical cannabis).

4 The CMIA exists to safeguard against the disclosure of medical information. Here,  
5 Plaintiff seeks to uncover the medical information of Defendant’s patrons. There is no pressing  
6 need for that disclosure and a stay of the discovery order would cause minimal prejudice in light  
7 of the egregious violation of privacy that would result in granting it.

8 **V. CONCLUSION**

9 Defendant respectfully requests a 90 day stay of this Court’s Discovery Order pursuant to  
10 Code of Civil Procedure section 918 so that it may engage appropriate appellate counsel to  
11 prepare and file a writ.

12  
13 Dated: April 16, 2018

Respectfully Submitted,

AUSTIN LEGAL GROUP, APC

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16 By: Gina M. Austin/Tamara M. Leatham  
17 Attorneys For Defendants