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

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

14 Plaintiff,

15 v.

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

27 Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
04/18/2018 at 09:35:00 AM
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
PLAINTIFF'S MOTION TO COMPEL
SPECIAL INTERROGATORIES (SET
ONE) TO ALL DEFENDANTS**

Date: May 18, 2018

Time: 9:00 a.m.

Judge: Hon. Joel R. Wohlfeil

Ctrm: C-73

1 **I. INTRODUCTION**

2 Plaintiff Karl Beck (“Plaintiff” or “Beck”) hereby respectfully submits this Memorandum of
3 Points and Authorities in support of his Motion to Compel further responses to Special
4 Interrogatories Numbers one (1), four (4) and six (6) from Set One to defendants Point Loma Patients
5 Consumer Cooperative Corporation, Adam Knopf, Justus H. Henkes IV, 419 Consulting Inc.,
6 Golden State Greens LLC, Far West Management, LLC, Far West Operating, LLC, and Far West
7 Staffing, LLC (collectively “Defendants”).

8 By this Motion, Plaintiff seeks to compel full and complete verified responses to the Special
9 Interrogatories, which are intended to identify all repositories of Electronically Stored Information
10 (“ESI”) in Defendants’ possession, custody or control. To ensure that all responsive ESI is identified,
11 searched, and produced, Defendants must be required to identify all sources. In addition, Plaintiff
12 must identify whether any relevant ESI is being held by third party software or “cloud” services so
13 that Plaintiff can issue subpoenas if necessary. Finally, none of the deficient responses to the
14 Interrogatories are verified, so they are non-responsive.

15 Plaintiff is a member patron of the PLPCC, which was at all relevant times,¹ San Diego’s
16 largest medical marijuana dispensary. Plaintiff’s Complaint estimates the cooperative had at least
17 one thousand member patrons daily, and generated millions of dollars in monthly revenue through
18 a single storefront (and delivery service). Complaint (“Compl.”), ¶¶ 1, 21. Plaintiff became (and
19 remains) concerned with the immense volume of marijuana business that was transacted through the
20 PLPCC. Under California’s medical marijuana laws, all marijuana businesses were required to be
21 non-profit. *People v. Jackson*, 210 Cal.App.4th 525 (2012). As part of this non-profit objective as a
22 medical marijuana cooperative, the PLPCC’s profits were required to be paid out as “patronage
23 distributions” to cooperative patrons. CAL. CORP. CODE §§ 12201, 12201.5, 12451. But despite its
24 huge revenues relative to such a small operation, the PLPCC has never made a “patronage

25 ¹ This case only pertains to the sale of medical marijuana prior to January 1, 2018, when
26 marijuana became legal in California for recreational use.

1 distribution” to Plaintiff or any member of the putative Class.

2 Plaintiff’s Complaint alleges the Individual Defendants use the Shell Companies to
3 unlawfully divert funds out of the PLPCC. This allows the Individual Defendants to hide substantial
4 revenues from the (illegal for-profit) sale of medical marijuana in the Shell Companies, avoid
5 showing a profit in the cooperative itself, and avoid paying out patronage distributions to Plaintiff
6 and the Class. Compl., ¶ 39.

7 Defendants demurred to Plaintiff’s class action Complaint (RoA # 23), and all Plaintiff’s
8 causes of action for “unlawful” business practices in violation of California’s medical marijuana
9 laws and Corporations Code, violations of the CLRA, and conversion were sustained by this Court.
10 RoA # 46. Plaintiff pleads direct liability against all Defendants, and on theories of conspiracy and
11 alter ego. These theories were sustained when the Court denied Defendants’ demurrer. *Id.*

12 Plaintiff has met and conferred, but that has fallen upon deaf ears.

13 The Court should order that Defendants will serve further responses within 14 days.

14 **II. PLAINTIFF’S REQUESTS AND RESPONSES IN DISPUTE**

15 **A. The Special Interrogatories**

16 As more fully described in Plaintiff’s Separate Statement, Plaintiff is seeking to compel
17 further responses to three (3) specially prepared interrogatories propounded on the nine Defendants
18 on November 29, 2017. The three Interrogatories are summarized as follows:

- 19 • Identification of all COMPUTERS² by brand, model and serial number, that each of the
20 Defendants have (or had) in their possession, custody or control since June 2014. (Srog No.
21 1 to all Defendants). Defendants only identified desktop and laptop computers, but not smart
22 phones, tablets or others. And more egregiously, Defendants have failed and refused to

23 ² “COMPUTER” means all devices utilizing microchips to facilitate processing, analysis, or
24 storage of electronic information, including but not limited to desktop computers, laptop computers,
25 tablet computers, smartphones, notebook computers, smart watches, and palmtop computers (also
known as personal digital assistants or PDA’s).

1 catalogue all their computers by stating their serial numbers, which is the only way Plaintiff
2 can ensure all relevant, responsive ESI has been preserved, searched and produced.

- 3 • Identification of all software used on Defendants' Computers that may contain ESI. (Srog
4 No. 4 to all Defendants). Defendants have identified a few specific software programs, along
5 with "standard software that came with the computer." But they have not identified that
6 standard software, or any email systems such as Outlook or others that are likely to be key
7 repositories of ESI. Furthermore, Defendants reserve the right to identify additional software
8 at a later date and ambush Plaintiff with surprise evidence.
- 9 • Identification of all CLOUD³ repositories of ESI. (Srog No. 6 to all Defendants). Each of the
10 Defendants stated there are "none." But in response to Srog No. 4, Defendants identified
11 several software platforms that allow users to store ESI, such as Dropbox. If Defendants are
12 storing ESI remotely, they should be required to state so that Plaintiff may issue the proper
13 subpoenas. In addition, Defendants have failed to identify cloud services like Gmail or other
14 electronic mail services that are likely key repositories of ESI. Defendants accomplish this
15 by reserving the right to identify additional software at a later date and secrete key evidence.
16 Such reservations should be overruled.

17 Declaration of William R. Restis in Support of Plaintiff's Motion to Compel Srog (Set One) ("Restis
18 Decl."), Exs. A-H.

19 **B. Defendants' Objections**

20 Defendants requested, and Plaintiff granted, Defendants additional time until February 5,
21 2018 to respond. Restis Decl., ¶ 5. Each Defendant responded with the same verbatim boilerplate
22 objections for each of Plaintiff's Srogs as follows:

23 ³ "CLOUD" refers to any remotely hosted or stored electronic information, DATABASE or
24 SOFTWARE that can be accessed through a network connection, wide area networking (WAN), or
25 internet connection. CLOUD includes Software-as-a-Service (SaaS), Platform-as-a-Service (Paas)
and/or Infrastructure-as-a-service (IaaS).

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Objection. This interrogatory is not full and complete in and of itself. It includes capitalized terms without definitions within the interrogatory. Cal. Code Civ. Proc. § 2030.060(d). This set also improperly includes a preface and instructions. *Id.* this interrogatory also calls for information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. This interrogatory is also unduly burdensome and oppressive. Subject to and without waiving said objections, responding Party response as follows: [*Deficient Response*].

Discovery is ongoing and incomplete and Responding Party’s responses are based on his current knowledge and belief. Responding party reserves the right to update this response as it acquires additional information through this litigation and the discovery process.

Restis Decl., Exs. I-P.

III. MEET AND CONFER

Plaintiff has repeatedly attempted to resolve this issue through meet and confer sessions.

Plaintiff sent a first meet and confer letter to Defendants on March 12, 2018, outlining in detail the deficiency of Defendants’ objections, and requesting that they be withdrawn or substantiated so that Plaintiff could consider them. Restis Decl., Ex. Q. Defendants never responded to Plaintiff’s meet and confer. *Id.*, ¶ 10.

In addition, on March 23, 2018, counsel for Plaintiff and Defendants held an in-person meet and confer session at the office of Plaintiff’s counsel. *Id.*, ¶ 11. Plaintiff again requested that Defendants respond in writing to Plaintiff’s March 23rd meet and confer letter to frame issues in dispute for the Court. *Id.*. Defendants stated they would provide such written response, but have not done so. *Id.*

IV. ARGUMENT

A. Plaintiff’s Requests Are Relevant

As more fully explained in Plaintiff’s Separate Statement, Plaintiff is permitted to obtain discovery of “the existence, description, nature, custody, condition, and location of any document [or] electronically stored information . . .” CIV. PROC. CODE § 2017.010. Since these Interrogatories

1 seek to identify custodians and repositories of ESI, they are relevant and necessary to the preparation
2 of Plaintiff's case.

3 Because information responsive to Plaintiff's Interrogatories are *directly* relevant to the
4 identification, preservation, and production of relevant and responsive ESI, Plaintiff has sufficiently
5 demonstrated "good cause." *See Kirkland v. Sup. Ct.*, 95 Cal.App.4th 92, 98 (2002) (party who seeks
6 to compel production has met his burden of showing good cause simply by a fact specific showing
7 of relevance).

8 **B. Defendants' Boilerplate Objections Are Unsupported And Without Merit**

9 Defendants' boilerplate objections are insufficient to rebut this showing of relevancy.
10 Boilerplate objections are improper, therefore further response should be compelled. *See Korea Data*
11 *Systems Co. Ltd. v. Sup. Ct.*, 51 Cal.App.4th 1513, 1516 (1997) ("boilerplate" objections are
12 improper because the CODE OF CIVIL PROC. requires specificity).

13 Defendants' objections that the Interrogatories are "compound" and contain definitions, are
14 without merit. Definitions to interrogatories are specifically authorized by the Discovery Act. CIV.
15 PROC. CODE § 2030.060(e) ("Any term specially defined in a set of interrogatories shall be typed
16 with all letters capitalized wherever that term appears.") According to the Rutter Group, "[w]hether
17 definitions may be placed at the *beginning* of specially prepared interrogatories is unclear..." CAL.
18 PRAC. GUIDE: CIV. PRO. BEFORE TRIAL (the Rutter Group 2018) (the "RUTTER GROUP") §
19 8:972, p. 8F-18.

20 And in *Clement v. Alegre* (2009) 177 Cal.App.4th 1277, the Court of Appeal urged parties
21 to take a practical construction to the prohibition on compound interrogatories. The court held that
22 generally interrogatories should not be objectionable unless they contain more than one subject
23 matter. *Id.* at 1291-92. The definitions in this case clarify and do not compound. The same is true
24 for the specific items of information called for by each interrogatory such as brand, model and serial
25 numbers for computers. Therefore, these objections should be overruled.

1 The Court should also overrule Defendants’ objections concerning “burden” and
2 “oppression.” Objections must be made with specificity and provide the basis to allow an intelligent
3 response. *See Korea Data Systems Co. Ltd. v. Sup. Ct.* (1997) 51 Cal.App.4th 1513, 1516 (“boiler
4 plate” objections are improper because the Discovery Act requires specificity). Moreover, California
5 Courts generally do not sustain such objections to interrogatories. RUTTER GROUP § 8:1077. Undue
6 burden objections are only sustained upon a showing of oppression that would result in injustice.
7 *West Pico Furniture Co. of L.A. v. Sup. Ct.* (1961) 56 C2d 407, 418.

8 Finally, **Defendants’ failure to verify their responses renders those responses untimely**
9 **and establishes Plaintiff’s right to move for to compel and for sanctions.** *Food 4 Less*
10 *Supermarkets, Inc. v. Superior Court* (1995) 40 Cal.App.4th 651, 657-58; *Deyo v. Kilbourne* (1979)
11 84 Cal.3d 771, 783 (“verification of the answers is in effect a declaration that the party has disclosed
12 all information which is available to him”).

13 **VI. CONCLUSION**

14 For the reasons stated above, good cause exists to order Defendants to serve full and complete
15 verified responses within 14 days.

16
17 DATED: April 18, 2018

Respectfully submitted,

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