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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

**SEPARATE STATEMENT 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

Ctrl: C-73

1 Plaintiff Karl Beck (“Plaintiff” or “Beck”) respectfully submits this Separate Statement of
2 items in dispute, pursuant to CALIFORNIA RULES OF COURT RULE 3.1345, in support of his Motion
3 to Compel Further Responses to Plaintiff’s Special Interrogatories (Set One) (the “Motion” and the
4 “Interrogatories”).

5 This Separate Statement references Interrogatories that were propounded on all defendants:
6 Point Loma Patients Consumer Cooperative Corporation (the “PLPCC”), Adam Knopf (“Knopf”),
7 Justus H. Henkes IV (“Henkes,” collectively the “Individual Defendants”) and 419 Consulting, Inc.
8 (“419 Consulting”), Golden State Greens LLC (“Golden State Greens”), Far West Management,
9 LLC (“FW Management”), Far West Operating, LLC (“FW Operating”), and Far West Staffing,
10 LLC (“FW Staffing,” collectively the “Shell Companies,” all defendants together as “Defendants”).

11 INTRODUCTION

12 Plaintiff’s Special Interrogatories (Set One) are intended to identify all repositories of
13 Electronically Stored Information (“ESI”) in Defendants’ possession, custody or control. To ensure
14 that all responsive ESI is identified, searched, and produced, Defendants must be required to identify
15 all sources. In addition, Defendants must identify whether any relevant ESI is being held by third
16 party software or “cloud” services so that Plaintiff can issue subpoenas if necessary. Finally, none
17 of the deficient responses to the Interrogatories are verified, so they are non-responsive.

18 Plaintiff is a member patron of the PLPCC, which was at all relevant times,¹ San Diego’s
19 largest medical marijuana dispensary. Plaintiff’s Complaint estimates the cooperative had at least
20 one thousand member patrons daily, and generated millions of dollars in monthly revenue through
21 a single storefront (and delivery service). Complaint (“Compl.”), ¶¶ 1, 21. Plaintiff became (and
22 remains) concerned with the immense volume of marijuana business that was transacted through the
23 PLPCC. Under California’s medical marijuana laws, all marijuana businesses were required to be
24 non-profit. *People v. Jackson*, 210 Cal.App.4th 525 (2012). As part of this non-profit objective as a

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 medical marijuana cooperative, the PLPCC’s profits were required to be paid out as “patronage
2 distributions” to cooperative patrons. CAL. CORP. CODE §§ 12201, 12201.5, 12451. But despite
3 its huge revenues relative to such a small operation, the PLPCC has never made a “patronage
4 distribution” to Plaintiff or any member of the putative Class.

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

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

16 Plaintiff has met and conferred, but Defendants have ignored Plaintiff’s meet and confer.

17 The Court should order Defendants to serve further responses within 14 days.

18 **RELEVANT TIME PERIOD**

19 The Relevant Time Period is the period June 2014 to [January 1, 2018], unless otherwise
20 specifically indicated, and shall include all information that relate to such period even though
21 prepared, published or disseminated outside of such time period.

22 **SPECIFIC DEMANDS**

23 **1. Special Interrogatory No. 1**

24 Please identify all COMPUTERS used, at any time, by YOU [*i.e.*, each Defendant]. Identify, for
25 purposes of this Interrogatory, means to provide the following information:

- 1 (a) Brand;
2 (b) Model; and
3 (c) Serial or other identification number.

4 **a. Relevant Definitions**

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

9 **b. Defendants’ Responses**

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

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

19 **i. PLPCC**

20 Subject to and without waiving said objections, Responding Party responds as follows:
21 Approximately twenty HP desktops, two HP Pavilion laptops.

22 **ii. Knopf**

23 Subject to and without waiving said objections, Responding Party responds as follows:
24 Macbook laptop; HP desktop.

25 **iii. Henkes**

1 Subject to and without waiving said objections, Responding Party responds as follows: two
2 Macbook Pro laptops; two HP Pavilion laptops.

3 **iv. 419 Consulting**

4 Subject to and without waiving said objections, Responding Party responds as follows:
5 Macbook laptop.

6 **v. Golden State Greens**

7 Subject to and without waiving said objections, Responding Party responds as follows: two
8 HP Pavilion laptops.

9 **vi. FW Management**

10 Subject to and without waiving said objections, Responding Party responds as follows: two
11 HP Pavilion laptops.

12 **vii. FW Operating**

13 Subject to and without waiving said objections, Responding Party responds as follows: two
14 HP Pavilion laptops.

15 **viii. FW Staffing**

16 Subject to and without waiving said objections, Responding Party responds as follows: two
17 HP Pavilion laptops.

18 **c. Meet and Confer**

19 On March 12, 2018, Plaintiff notified Defendants in writing that their responses are deficient
20 and their objections frivolous. Plaintiff's counsel met Defendants' counsel in person on March 23,
21 2018, and asked for responses to Plaintiff's meet and confer. Defendants ignored Plaintiff's requests.

22 **d. Reason Why Further Response Should Be Compelled**

23 **i. Defendants' Responses Are Evasive**

24 Defendants' responses frustrate Plaintiff's ability to verify that all ESI is accounted for and
25 preserved. For example, the PLPCC's response that it has "[a]pproximately twenty HP desktops,

1 [and] two HP Pavilion laptops” is not a response at all, and does not permit Plaintiff to ensure that
2 all ESI repositories are identified.

3 Without serial numbers, Plaintiff cannot identify evidence. Plaintiff cannot determine
4 whether the “two HP Pavilion laptops” identified by the PLPCC, 419 Consulting, Golden State
5 Greens, FW Management, *etc.* are the same two computers or different computers. The deficient
6 responses also do not permit Plaintiff to determine whether they are the same laptops over the entire
7 class period, or whether laptops with relevant ESI were destroyed and replaced with new ones.

8 Defendants also did not identify all “COMPUTERS” as defined. For example, smart phones
9 and tablets often contain ESI, but none were identified by Defendants. Defendants should be required
10 to identify all such repositories.

11 And the Court should overrule Defendants’ reservation of rights to “update this response as
12 [Defendants] acquire[] additional information through this litigation and the discovery process.”
13 Under CODE OF CIVIL PROC. § 2030.220(a), “[e]ach answer in a response to interrogatories shall be
14 as complete and straightforward as the information reasonably available to the responding party
15 permits...” Here, all of the information requested about Defendants’ computers currently exists. As
16 such, Defendants should not be permitted to disclose additional ESI repositories at a later date. This
17 would prejudice Plaintiff through the introduction ‘surprise’ evidence, and cause unfair burden and
18 delay. *See R&B Auto Ctr., Inc. v. Farmers Group, Inc.* (2006) 140 Cal.App.4th 327, 357. If
19 additional COMPUTERS exist, they should be identified so discovery can proceed efficiently and
20 effectively.

21 **ii. Defendants’ Objections Are Without Merit**

22 Plaintiff is permitted to obtain discovery of “the existence, description, nature, custody,
23 condition, and location of any document [or] electronically stored information ...” CIV. PROC. CODE
24 § 2017.010. Since these Interrogatories seek to identify custodians and repositories of ESI, they are
25 relevant and necessary to the preparation of Plaintiff’s case.

1 Defendants' objections that the Interrogatories are "compound" and contain definitions, are
2 without merit. Definitions to interrogatories are specifically authorized by the Discovery Act. CIV.
3 PROC. CODE § 2030.060(e) ("Any term specially defined in a set of interrogatories shall be typed
4 with all letters capitalized wherever that term appears.") According to the Rutter Group, "[w]hether
5 definitions may be placed at the *beginning* of specially prepared interrogatories is unclear..." CAL.
6 PRAC. GUIDE: CIV. PRO. BEFORE TRIAL (the Rutter Group 2018) (the "RUTTER GROUP") §
7 8:972, p. 8F-18.

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

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

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

1 same for all Interrogatories, are discussed above regarding Interrogatory Number 1. Accordingly,
2 for the Court’s convenience, they are incorporated by reference herein.

3 **3. Special Interrogatory No. 6**

4 Please identify all CLOUD repositories of data used by YOU, at any time, continuously or
5 temporarily.

6 **e. Relevant Definitions**

7 “CLOUD” refers to any remotely hosted or stored electronic information, DATABASE or
8 SOFTWARE that can be accessed through a network connection, wide area networking (WAN), or
9 internet connection. CLOUD includes Software-as-a-Service (SaaS), Platform-as-a-Service (Paas)
10 and/or Infrastructure-as-a-service (IaaS).

11 **f. Defendants’ Responses**

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

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

21 **i. PLPCC**

22 Subject to and without waiving said objections, Responding Party responds as follows: none.

23 **ii. Knopf**

24 Subject to and without waiving said objections, Responding Party responds as follows: none.

25 **iii. Henkes**

1 Subject to and without waiving said objections, Responding Party responds as follows: none.

2 **iv. 419 Consulting**

3 Subject to and without waiving said objections, Responding Party responds as follows: none.

4 **v. Golden State Greens**

5 Subject to and without waiving said objections, Responding Party responds as follows: none.

6 **vi. FW Management**

7 Subject to and without waiving said objections, Responding Party responds as follows: none.

8 **vii. FW Operating**

9 Subject to and without waiving said objections, Responding Party responds as follows: none.

10 **viii. FW Staffing**

11 Subject to and without waiving said objections, Responding Party responds as follows: none.

12 **g. Meet and Confer**

13 On March 12, 2018, Plaintiff notified Defendants in writing that their responses are deficient
14 and their objections frivolous. Plaintiff's counsel met Defendants' counsel in person on March 23,
15 2018, and asked for responses to Plaintiff's meet and confer. Defendants ignored Plaintiff's requests.

16 **h. Reason Why Further Response and Production Should Be Compelled**

17 Defendants' responses frustrate Plaintiff's ability to verify that all ESI is accounted for and
18 preserved. For example, in response to Interrogatory Number 4, *supra*, Defendants identified "420
19 Soft," "Sales Force," "Quickbooks Enterprise Solutions" "Google Docs" and "Dropbox." Some or
20 all of this software includes features that allow Defendants to store their ESI on third party servers.

21 And some cloud services like Gmail or other electronic mail services are likely key
22 repositories of ESI. None were identified.

23 This Interrogatory is intended to provide good cause for Plaintiff to subpoena such third
24 parties if Defendants state they are storing ESI there. Defendants should thus be required to provide
25 verified responses stating whether they host any of their ESI in the above identified, or other,

1 CLOUD databases.

2 Plaintiff's response to Defendants' boilerplate and unsupported objections, which are the
3 same for all Interrogatories, are discussed above regarding Interrogatory Number 1. Accordingly,
4 for the Court's convenience, they are incorporated by reference herein.

5
6
7 DATED: April 18, 2018

Respectfully submitted,

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8
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