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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.

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Superior Court of California,
County of San Diego

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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
REQUEST FOR PRODUCTION (SET
ONE)**

Date: May 18, 2018

Time: 9:00 a.m.

Judge: Hon. Joel R. Wohlfeil

Ctrm: C-73

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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 Plaintiff’s Request for Production (Set
4 One) No. 1 to defendants: Point Loma Patients Consumer Cooperative Corporation (the “PLPCC”),
5 Adam Knopf and Justus H. Henkes IV (the “Individual Defendants”) and 419 Consulting Inc.,
6 Golden State Greens LLC, Far West Management, LLC, Far West Operating, LLC, and Far West
7 Staffing, LLC (collectively, the “Shell Companies,” all defendants together as “Defendants”).

8 By this Motion, Plaintiff seeks to compel further responses and production to the Requests,
9 which are all directly relevant to establishing Plaintiff’s case in chief. The Court should order
10 Defendants to serve further responses within 14 days, with production to occur within 14 days
11 thereafter.

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

23 Plaintiff’s Complaint alleges the Individual Defendants use the Shell Companies to
24 unlawfully divert funds out of the PLPCC. This allows the Individual Defendants to hide substantial

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 revenues from the (illegal for-profit) sale of medical marijuana in the Shell Companies, avoid
2 showing a profit in the cooperative itself, and avoid paying out patronage distributions to Plaintiff
3 and the Class. Compl., ¶ 39.

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

9 Plaintiff requires further responses to the Requests to prove Plaintiff’s case in chief: (1) to
10 determine the legal, contractual and practical relationships between the various Defendants to
11 establish Class members’ right to patronage distributions, and (2) to assemble the documentation
12 necessary to conduct a forensic audit of Defendants’ cash flows to determine whether Defendants
13 were wrongfully profiting off the sale of medical marijuana.

14 Even so, Defendants have not agreed to produce a single document, despite insisting that
15 Plaintiff agree to a comprehensive stipulated protective order in this case. *See* RoA # 59 (Protective
16 Order). Instead, they have proffered the same *verbatim* boilerplate objections for every single
17 Request, on behalf of every single Defendant.

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

19 The Court should order that Defendants will serve further responses within 14 days, with
20 production to occur within 14 days thereafter.

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

22 **A. The Requests**

23 As more fully described in Plaintiff’s Separate Statement, Plaintiff is seeking to compel
24 responses to eleven (11) requests propounded on the nine Defendants on December 1, 2017. The
25 eleven requests as narrowed through meet and confer are summarized as follows:

- 1 • Documents reflecting agreements and payments to the PLPCC’s landlord Sinner Brothers,
2 Inc. (Request No. 2 to PLPCC).
- 3 • Documents and communications that refer to the PLPCC and Shell Companies’ articles of
4 incorporation and amendments, bylaws and amendments, and meeting minutes. (No. 3 to
5 PLPCC and No. 11 to Shell Companies).
- 6 • Documents and communications that refer to contracts or agreements, formal or informal
7 among or between any of the Defendants. (No. 4 to PLPCC and No. 1 to the Individual
8 Defendants and Shell Companies).
- 9 • Communications with, including, by or between, any Defendant. (No. 5 to PLPCC and No.
10 9 to the Individual Defendants and Shell Companies).
- 11 • Communications between Defendants and any third party related to the sale, purchase, and/or
12 financing of medical marijuana. (No. 6 to PLPCC and No. 10 to the Individual Defendants
13 and Shell Companies).
- 14 • Documents and communications that refer to payment in, payment to, handling of, and
15 accounting for cash. (No. 7 to all Defendants).
- 16 • Documents and communications that relate to the Individual Defendants and Shell
17 Companies’ tax returns. (No. 2 to the Individual Defendants and Shell Companies).
- 18 • Individual Defendants’ and Shell Companies’ bank statements. (No. 3 to the Individual
19 Defendants and Shell Companies).
- 20 • Documents and communications related to Shell Company expenses, and specifically
21 expenses related to medical marijuana for the Individual Defendants. (No. 4 to the Individual
22 Defendants and Shell Companies).
- 23 • Documents and communications that relate to any financial benefit transferred by or between
24 the Defendants. (No. 5 to the Individual Defendants and Shell Companies).
- 25 • Documents and communications that relate to any financial benefit transferred by or between
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1 the Defendants and any third party. (No. 6 to the Individual Defendants and Shell
2 Companies).
3 Declaration of William R. Restis in Support of Plaintiff's Motion to Compel RFP (Set One) ("Restis
4 Decl."), Exs. A-H.

5 **B. Defendants' Objections**

6 Defendants requested, and Plaintiff granted, Defendants additional time until February 5,
7 2018 to respond. Restis Decl., ¶ 5. Each Defendant responded with the same verbatim boilerplate
8 objections for each of Plaintiff's Requests as follows:

9 Responding Party objects to this request on the grounds that information regarding tax
10 returns, W-2, and/or 1099 forms, is privileged under federal and state law. (*See Webb*
11 *v. Standard Oil Co.*, 49 Cal.2d 509 (1957); *Brown v. Superior Court*, 71 Cal.App.3d
12 141 (1977)).

12 Responding Party objects to this request to the extent the request is oppressive and/or
13 merely intended to harass.

14 Responding Party objects to this request on the ground that it is not relevant to the
15 subject matter of this action nor is it reasonably calculated to lead to the discovery of
16 admissible evidence.

16 Responding Party objects to this request to the extent it requires it to obtain and produce
17 documents from persons over whom it has no control.

18 Responding Party objects to this request on the grounds it is vague, ambiguous, or
19 otherwise lacks sufficient precision to permit a response.

20 Responding Party objects to this request to the extent it calls for the production of
21 documents that would reveal its trade secrets or other confidential research,
22 development, commercial or proprietary information, or information that may be
23 protected by a right of privacy under either the United States Constitution, Article 1 of
24 the Constitution of the State of California or any other applicable law.

23 Responding Party objects to this request to the extent it seeks production of documents
24 that are neither relevant to the subject matter of this action, nor reasonably calculated
25 to lead to the discovery of admissible evidence.

25 Responding Party objects to this request on the grounds it is overbroad and unduly
26

1 burdensome.

2 Responding Party objects to this request to the extent it may be construed to request
3 the production of documents prepared in anticipation of litigation; that constitute or
4 reflect attorney work product; that disclose the mental impressions, conclusions,
5 opinions or legal theories of any attorneys for responding party; that contain privileged
6 attorney-client communications; or that are otherwise protected from production.

7 Responding party objects to this request to the extent the request is oppressive and/or
8 merely intended to harass.

9 This discovery request, has in substance been previously propounded. Continuous
10 discovery into the same matter constitutes oppression and Responding Party further
11 objects on the ground.

12 Responding Party objects to this request as it assumes facts that have not been
13 established.

14 Responding Party objects to this request to the extent the demand adversely affects
15 third persons whose privacy would be infringed by disclosure of the documents.

16 Responding party objects to this request on the grounds it violates California state law
17 governing health information privacy including the Confidentiality of Medical
18 Information Act, California Patient Access to Health Records Act and the Lanterman-
19 Patris-Short Act.

20 Restis Decl., Exs. I-P.

21 **III. MEET AND CONFER**

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

23 Plaintiff sent a first meet and confer letter to Defendants on February 22, 2018, and a second
24 meet and confer letter on March 9th, outlining in detail the deficiency of Defendants' objections,
25 and requesting that they be withdrawn or substantiated so that Plaintiff could consider them. Restis
26 Decl., Exs. Q-R. Defendants never responded to Plaintiff's meet and confer letters. *Id.*, ¶¶ 10, 12.

27 In addition, on March 23, 2018, counsel for Plaintiff and Defendants held an in-person meet
28 and confer session at the office of Plaintiff's counsel. *Id.*, ¶ 13. At that meet and confer, Defendants
expressed concern that the Requests were demanding production of *everything* related to
Defendants' medical marijuana business. *Id.*

1 Plaintiff clarified that his outstanding discovery Requests should be construed as follows:

2 (1) Not requesting any medical information related to any Class member.

3 (2) Unless clear from the context of the Request, they should be construed as asking for
4 documentation that supports the flow of every dollar to and through the Defendants, to
5 allow Plaintiff to conduct a forensic audit of Defendants' medical marijuana business.

6 (3) Plaintiff will accept any tax related documentation as *attorneys eyes only*, and will agree
7 to an amendment of the stipulated protective order to include a confidentiality
8 designation for *attorneys eyes only*.

9 *Id.* Defendants did not state whether they would agree to produce any responsive documents. *Id.*

10 At the March 23rd in-person meet and confer Plaintiff again requested that Defendants
11 respond in writing to Plaintiff's February 22 and March 9 meet and confer letters to frame issues in
12 dispute for the Court. *Id.*, ¶ 14. Defendants stated they would provide such written response, but
13 have not done so. *Id.*

14 **IV. ARGUMENT**

15 **A. Plaintiff's Requests Are Relevant**

16 As more fully explained in Plaintiff's Separate Statement, Plaintiff requires further responses
17 to the Requests primarily for two reasons: (1) to determine the *legal, contractual, and practical*
18 relationships between the various Defendants, and (2) to assemble the documentation necessary to
19 conduct a forensic audit of Defendants' cash flows to determine whether Defendants were
20 wrongfully profiting off the sale of medical marijuana.

21 As to the first, the legal, contractual and practical relationships between Defendants are
22 unquestionably relevant. In denying Plaintiff's earlier motion to appoint an independent accountant,
23 the Court stated:

24 [S]uch a ruling is dependent on factual issues that cannot be adjudicated at this time.
25 Such issues include the nature of the applicable corporate governance documents,
26 Defendants' relationship to each other, Plaintiff's status as a "member" of the

1 cooperative, etc... This denial is without prejudice of Plaintiff's ability to adjudicate
2 this important issue via any available future proceeding (e.g., Motion for summary
3 adjudication or trial).

4 January 19, 2018 Minute Order, RoA # 46 (emphasis added).

5 Plaintiff has accordingly asked for articles, bylaws, and meeting minutes for the PLPCC and
6 the Shell Companies (No. 3 to PLPCC and No. 11 to Shell Companies), documents and
7 communications that refer to contracts or agreements, formal or informal among or between any of
8 Defendants (No. 4 to PLPCC and No. 1 to the Individual Defendants and Shell Companies),
9 communications between Defendants (No. 4 to PLPCC and No. 1 to the Individual Defendants and
10 Shell Companies), and communications between Defendants and any third party related to the sale,
11 purchase, and/or financing of medical marijuana. (No. 6 to PLPCC and No. 10 to the Individual
12 Defendants and Shell Companies).

13 As to the second topic, Plaintiff previously sought discovery of Defendants' financial data in
14 the least intrusive manner available: by asking the Court to "appoint one or more competent
15 inspectors or independent accountants to audit the financial statements kept in this state and
16 investigate the property, funds and affairs of any [cooperative] corporation." CAL. CORP. CODE §
17 12606. In denying Plaintiff's motion on that issue, the "Court further note[d] that this denial is
18 without prejudice of Plaintiff's potential ability to obtain some or all of these records *via* normal
19 discovery procedures, to the extent the documents are 'relevant'(as broadly defined for purposes of
20 discovery) to the claims asserted in the other causes of action." January 19, 2018 Minute Order, RoA
21 # 46.

22 To gather (some of) the records necessary to conduct a forensic audit, Plaintiff requested:
23 Documents reflecting agreements and payments to the PLPCC's landlord Sinner Brothers, Inc.
24 (Request No. 2 to PLPCC), communications between Defendants and any third party related to the
25 sale, purchase, and/or financing of medical marijuana. (No. 6 to PLPCC and No. 10 to the Individual
26 Defendants and Shell Companies), documents and communications that refer to payment in,

1 payment to, handling of, and accounting for cash. (No. 7 to all Defendants), documents and
2 communications that relate to the Individual Defendants and Shell Companies' tax returns (No. 2 to
3 the Individual Defendants and Shell Companies), the Individual Defendants' and Shell Companies'
4 bank statements (No. 3 to the Individual Defendants and Shell Companies), documents and
5 communications related to Shell Company expenses, and specifically expenses related to medical
6 marijuana for the Individual Defendants (No. 4 to the Individual Defendants and Shell Companies),
7 documents and communications that relate to any financial benefit transferred by or between the
8 Defendants (No. 5 to the Individual Defendants and Shell Companies), and documents and
9 communications that relate to any financial benefit transferred by or between Defendants and any
10 third party. (No. 6 to the Individual Defendants and Shell Companies).

11 Because information responsive to Plaintiff's Requests are *directly* relevant to central issues
12 in the litigation, Plaintiff has sufficiently demonstrated "good cause." *See Kirkland v. Sup. Ct.*, 95
13 Cal.App.4th 92, 98 (2002) (party who seeks to compel production has met his burden of showing
14 good cause simply by a fact specific showing of relevance).

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

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

20 And to establish an objection based on oppression or undue burden, Defendants must show
21 the amount of work required to respond is excessive when compared to the utility of the information
22 sought. *Columbia Broadcasting System, Inc. v. Sup Ct.*, 263 Cal.App.2d 12, 18 (1961). As
23 Defendants have not provided any analysis, or weighed the cost and benefits of obtaining the
24 information sought, their objections must fail.

25 Defendants had a duty to conduct a full investigation into the subject matters at issue before
26

1 responding. *See* CODE OF CIVIL PROC. § 2031.010; *Regency Health Services, Inc. v. Sup. Ct.*, 64
2 Cal.App.4th 1496, 1504 (1998). Based on their investigation, Defendants were required to respond
3 to the Requests as completely as reasonably possible. If Defendants were unable to obtain the
4 information sought, they should have specified why the information is unavailable and what efforts
5 were made to obtain it. *Deyo v. Kilbourne*, 84 Cal.App.3d 771, 782 (1978); CODE OF CIVIL PROC.
6 §§ 2031.010, 2031.230. Defendants ignored Plaintiff’s request to either produce the requested
7 documents or confirm that Defendants have conducted a good faith investigation. Accordingly,
8 Defendants should be compelled to provide a supplemental response and documents.

9 Moreover, to object on grounds of privilege, Defendants were required to support their
10 objections with “sufficient factual information for other parties to evaluate the merits of that claim,
11 including, if necessary, a privilege log.” CODE OF CIVIL PROC. § 2031.240. Plaintiff requested a
12 privilege log, both in the instructions to this Request and in meet and confer correspondence.

13 Defendants should be required to produce a privilege log with their responses to the Requests
14 to substantiate any claims of privilege.

15 **C. The Court Should Overrule Defendants’ Objections To Production of Tax Return**
16 **Documentation**

17 Although Defendants are correct that there is a tax return privilege, that privilege is
18 disregarded *inter alia* when a legislatively declared public policy outweighs the interests underlying
19 the privilege, and where the gravamen of the complaint is inconsistent with assertion of the privilege.
20 Both conditions are met in this case.

21 As noted previously, the PLPCC is not merely a cooperative corporation, it is a cooperative
22 whose sole purpose is to sell medical marijuana. Compl., ¶¶ 21-22. The Individual Defendants’ sole
23 business is medical marijuana. *Id.*, ¶ 23-24; [Defendant] Knopf Decl., RoA # 27, ¶ 2 (“I am involved
24 with several separate businesses in the medical marijuana industry. My colleague, and co-defendant,
25

1 Justus Henkes, is involved in certain aspects of certain of these businesses, in varying capacities,
2 which include Point Loma Patients Consumer Cooperative Corporation, Golden State Greens, Far
3 West Operating, LLC, Far West Management, LLC, and Far West Staffing, LLC”)

4 Accordingly, Defendants were required to comply with medical marijuana laws explicitly
5 prohibiting for-profit marijuana sales. *See* CORP. CODE § 12201 (a cooperative corporation may
6 operate only “[s]ubject to any other provision of law of this state applying to the particular ... line
7 of activity...”); HEALTH AND SAF. CODE § 11362.765(a); CAL. ATTY GEN. & DEPT. OF JUSTICE
8 *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use* § IV.A.1&B.1
9 (emphasizing the non-profit requirement for medical marijuana cooperatives and that they must
10 “follow strict rules on ... distribution of earnings”).

11 Under the Corporations Code, a cooperative must be “democratically controlled” and “not
12 organized to make a profit for themselves, as such, or for their members, as such, but primarily for
13 their members as patrons.” CAL. CORP. CODE § 12201 (emphasis added). To accomplish this
14 statutory objective, “[t]he earnings and savings of the business must be used for the general welfare
15 of its members or equitably distributed to members in the form of cash, property, credits, or
16 services.” *Id.*

17 The important non-profit, and member participation policies found in the Cooperative
18 Corporations Code and medical marijuana laws are exactly the type of overriding policy concerns
19 that courts have held trump the tax return privilege. *See Schnabel v. Sup. Ct.*, 5 Cal. 4th 704, 722
20 (1993) (ordering disclosure of tax returns because “legislatively declared public policy in favor of
21 full disclosure in a marital dissolution proceeding, warrant an exception to the privilege in this case
22 limited to those tax returns that are reasonably related to the purpose for which they are sought”); *Li*
23 *v. Yan*, 247 Cal.App.4th 56, 66-68 (2016) (ordering production of tax returns where necessary to
24 effect public policy of “prevent[ing] fraud against creditors. And against lenders. And perhaps
25 against the court.”); *Slojewski v. Allstate Ins. Co.*, 2013 U.S. Dist. LEXIS 37266, at *9 (N.D. Cal.

1 Mar. 18, 2013) (in insurance fraud case, ordering production of tax returns subject to protective order
2 because “the disclosure of the tax returns at issue here is supported by the public policy in
3 uncovering, preventing and punishing insurance fraud in California”); *Garcia v. Progressive Choice*
4 *Ins. Co.*, 2011 WL 4356209, at * 4 (S.D. Cal. Sept. 16, 2011) (“The Court finds that this public
5 policy in uncovering, preventing and punishing insurance fraud is significant enough to warrant
6 application of the public policy exception to California's privilege regarding tax returns.”).

7 In addition, the gravamen of Plaintiff’s lawsuit is that the Individual Defendants were
8 fraudulently transferring funds out of (or around) the PLPCC through the Shell Companies to avoid
9 the non-profit requirements of the Corporations Code and medical marijuana laws. These allegations
10 are inconsistent with the privilege because tax returns, and the profits they show, are directly relevant
11 to Plaintiff’s allegations, are already subject to a comprehensive stipulated protective order, and
12 Plaintiff has stipulated to have the documents produced as attorneys eyes only. Restis Decl., ¶ 13;
13 *See Small v. Travelers Prop. Cas. Co. of Am.*, 2010 U.S. Dist. LEXIS 61308, at *3-8 (S.D. Cal. June
14 2, 2010) (ordering production of tax return documents pursuant to protective order *attorneys eyes*
15 *only* where the gravamen of the lawsuit “directly implicate” financial information contained returns
16 and because the privilege is “qualified not absolute”);

17 Finally, Defendants have completely stonewalled Plaintiff’s efforts to obtain documentation
18 that would allow an audit of their finances. Defendants have not answered a single item of discovery.
19 In this situation, where Defendants are hiding behind the privilege, it is overruled. *Weingarten v Sup.*
20 *Ct.*, 102 Cal.App.4th 268, 275 (2002) (“[Defendant] Weingarten intentionally interfered with
21 plaintiffs' ability to obtain relevant information through legitimate means, and then sought to hide
22 behind the tax return privilege to ensure no relevant information would be revealed to plaintiffs.”)

23 ///

24 ///

1 **VI. CONCLUSION**

2 For the reasons stated above, good cause exists to order Defendants to serve further responses
3 within 14 days, with production to occur within 14 days thereafter.

4 Respectfully submitted,

5 DATED: April 18, 2018

6 THE RESTIS LAW FIRM, P.C.

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