

1 THE RESTIS LAW FIRM, P.C.  
2 William R. Restis, Esq. (SBN 246823)  
3 550 West C Street, Suite 1760  
4 San Diego, California 92101  
5 +1.619.270.8383  
6 +1.619.752.1552  
7 william@restislaw.com

8 *Attorneys for Plaintiff*

9 [Additional Counsel Listed On Signature Page]

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 09:44:00 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  
REQUEST FOR PRODUCTION (SET  
ONE)**

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 and Production to Plaintiff’s Request for Production (Set One) (the  
4 “Motion” and the “Requests”).

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

### 10 INTRODUCTION

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

22 Plaintiff’s Complaint alleges the Individual Defendants use the Shell Companies to  
23 unlawfully divert funds out of the PLPCC. This allows the Individual Defendants to hide substantial  
24 revenues from the (illegal for-profit) sale of medical marijuana in the Shell Companies, avoid

---

25 <sup>1</sup> 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 showing a profit in the cooperative itself, and avoid paying out patronage distributions to Plaintiff  
2 and the Class. Compl., ¶ 39.

3 Defendants demurred to Plaintiff’s class action Complaint (RoA # 23), and all Plaintiff’s  
4 causes of action for “unlawful” business practices in violation of California’s medical marijuana  
5 laws and Corporations Code, violations of the CLRA, and conversion were sustained by this Court.  
6 RoA # 46. Plaintiff pleads direct liability against all Defendants, and on theories of conspiracy and  
7 alter ego. These theories of liability were sustained when the Court denied Defendants’ demurrer.  
8 *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 As to the first, the legal and contractual relationships between Defendants are unquestionably  
15 relevant. In denying Plaintiff’s earlier motion to appoint an independent accountant, the Court stated:

16 [S]uch a ruling is dependent on factual issues that cannot be adjudicated at this time.  
17 Such issues include the nature of the applicable corporate governance documents,  
18 Defendants' relationship to each other, Plaintiff's status as a "member" of the  
19 cooperative, etc... This denial is without prejudice of Plaintiff's ability to adjudicate  
20 this important issue via any available future proceeding (e.g., Motion for summary  
21 adjudication or trial).

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

23 As stated above, Plaintiff previously sought discovery of Defendants’ financial data in the  
24 least intrusive manner available: by asking the Court to “appoint one or more competent inspectors  
25 or independent accountants to audit the financial statements kept in this state and investigate the  
26 property, funds and affairs of any [cooperative] corporation.” CAL. CORP. CODE § 12606. In denying

1 Plaintiff's motion on that issue, the "Court further note[d] that this denial is without prejudice of  
2 Plaintiff's potential ability to obtain some or all of these records *via* normal discovery procedures, to  
3 the extent the documents are 'relevant'(as broadly defined for purposes of discovery) to the claims  
4 asserted in the other causes of action." January 19, 2018 Minute Order. RoA # 46.

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

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

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

#### 12 **RELEVANT TIME PERIOD**

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

#### 16 **SPECIFIC DEMANDS**

##### 17 **1. Request No. 2 to PLPCC**

18 All DOCUMENTS and DATA (including electronic mail and other COMMUNICATIONS)  
19 that REFER or RELATE to Sinner Brothers, Inc. and/or Justus H Henkes IV, Inc.

##### 20 **a. Response**

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

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



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

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

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

7 **b. Meet and Confer**

8 Through meet and confer, Plaintiff agreed to limit this Request “to DOCUMENTS and  
9 DATA reflecting all agreements with Sinner Brothers, Inc., and amendments and attachments  
10 thereto, as well as all payments to Sinner Brothers, Inc. DOCUMENTS reflecting payments should  
11 be produced in native format.”

12 Defendants did not respond.

13 **c. Reason Why Further Response and Production Should Be Compelled**

14 Sinner Brothers, Inc. owns the property out of which the PLPCC dispensary is operated out  
15 of at 3452 Hancock Street, San Diego, CA 92110. Knopf Decl., RoA # 27, at Ex. 5.

16 Plaintiff has limited this Request to DOCUMENTS reflecting agreements with Sinner  
17 Brothers (and amendments / attachments), and payments, the latter of which should be produced in  
18 native format if available.

19 The production of agreements should be simple and non-burdensome as agreements are  
20 likely few in number, and subject to a comprehensive protective order.

21 In order to conduct a forensic audit of Defendants’ medical marijuana business to determine  
22 whether they were making an illegal profit and therefore depriving Plaintiff and the Class of  
23 patronage distributions, Plaintiff must be able to reconstruct Defendants’ books and records from  
24 the actual receipts and invoices. Plaintiff must have documentation reflecting payments to Sinner  
25 Brothers to conduct such a forensic audit.

1 Plaintiff's expert will then compare the re-created books with Defendants' consolidated  
2 financial statements to determine their accuracy, whether any financial impropriety has occurred,  
3 and whether profit was generated.

4 Because information responsive to this Request is *directly* relevant to central issues in the  
5 litigation, Plaintiff has sufficiently demonstrated "good cause." *See Kirkland v. Sup. Ct.*, 95  
6 Cal.App.4th 92, 98 (2002) (party who seeks to compel production has met his burden of showing  
7 good cause simply by a fact specific showing of relevance).

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

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

17 Defendants had a duty to conduct a full investigation into the subject matters at issue. *See*  
18 CODE OF CIVIL PROC. § 2031.010; *Regency Health Services, Inc. v. Sup. Ct.*, 64 Cal.App.4th 1496,  
19 1504 (1998). Based on their investigation, Defendants were required to respond to the Request as  
20 completely as reasonably possible. If Defendants were unable to obtain the information sought, they  
21 should have specified why the information is unavailable and what efforts were made to obtain it.  
22 *Deyo v. Kilbourne*, 84 Cal.App.3d 771, 782 (1978); CODE OF CIVIL PROC. §§ 2031.010, 2031.230.  
23 Defendants ignored Plaintiff's request to either produce the requested documents or confirm that  
24 Defendants have conducted a good faith investigation. Accordingly, Defendants should be  
25 compelled to provide a supplemental response and documents.

1           Moreover, to object to a Request on grounds of privilege, a party must respond with  
2 “sufficient factual information for other parties to evaluate the merits of that claim, including, if  
3 necessary, a privilege log.” CODE OF CIVIL PROC. § 2031.240. Plaintiff requested a privilege log,  
4 both in the instructions to this Request and in meet and confer correspondence.

5           **2. Request No. 3 to PLPCC and No. 11 to Shell Companies**

6           All DOCUMENTS and DATA (including electronic mail and other COMMUNICATIONS)  
7 that REFER or RELATE to YOUR articles of incorporation and any amendments thereto, all  
8 bylaws and amendments thereto, and all meeting minutes.

9           **a. Response**

10           Each Defendant responded with the same verbatim boilerplate objections for each of  
11 Plaintiff’s Requests as quoted in response to Request No. 2 to the PLPCC above: tax return privilege,  
12 “to the extent” oppressive / intended to harass, not relevant, “to the extent” outside Defendants’  
13 custody or control, vague and ambiguous, trade secrets / confidential information, “to the extent”  
14 not relevant, overbroad / unduly burdensome, “to the extent” attorney-client or attorney work  
15 product, “to the extent” oppressive / intended to harass, previously propounded, assumes facts,  
16 impacts third party privacy, and violates medical privacy laws.

17           **b. Meet and Confer**

18           Defendants ignored Plaintiff’s meet and confer.

19           **c. Reason Why Further Response and Production Should Be Compelled**

20           *Plaintiff’s response to Defendants’ boilerplate and unsupported objections, which are the*  
21 *same for all Requests, are discussed above regarding Request Number 2 to the PLPCC. Accordingly,*  
22 *for the Court’s convenience, they are incorporated by reference herein.*

23           In denying Plaintiff’s motion to appoint an independent accountant, 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.

5 The requested documents are not privileged, and necessary to establish Plaintiff's entitlement  
6 to patronage distributions, a right to inspect corporate records, and whether Defendants disregarded  
7 the corporate form for alter ego liability.

8 **3. Request No. 4 to PLPCC and No. 1 to the Individual Defendants and Shell Companies**

9 All DOCUMENTS and DATA (including electronic mail and other COMMUNICATIONS)  
10 that REFER or RELATE to any contracts or agreements, formal or informal, between or among  
11 YOU and any defendant in this ACTION.

12 **a. Response**

13 Each Defendant responded with the same verbatim boilerplate objections for each of  
14 Plaintiff's Requests as quoted in response to Request No. 2 to the PLPCC above: tax return privilege,  
15 "to the extent" oppressive / intended to harass, not relevant, "to the extent" outside Defendants'  
16 custody or control, vague and ambiguous, trade secrets / confidential information, "to the extent"  
17 not relevant, overbroad / unduly burdensome, "to the extent" attorney-client or attorney work  
18 product, "to the extent" oppressive / intended to harass, previously propounded, assumes facts,  
19 impacts third party privacy, and violates medical privacy laws.

20 **b. Meet and Confer**

21 Defendants ignored Plaintiff's meet and confer.

22 **c. Reason Why Further Response and Production Should Be Compelled**

23 *Plaintiff's response to Defendants' boilerplate and unsupported objections, which are the*  
24 *same for all Requests, are discussed above regarding Request Number 2 to the PLPCC. Accordingly,*  
25 *for the Court's convenience, they are incorporated by reference herein.*

26 Plaintiff's Complaint alleges that all Defendants have joint liability under theories of

1 conspiracy and alter ego. As long as “two or more persons agree to perform a wrongful act, the law  
2 places civil liability for the resulting damage on all of them, regardless of whether they actually  
3 commit the tort themselves.” *Wyatt v. Union Mortg. Co.*, 24 Cal. 3d 773, 784 (1979) (citing cases).  
4 This can include officers and directors of a corporation (*id.*, at 785), as long as they step outside their  
5 official positions and act “as individuals for their individual advantage.” *Black v. Bank of Am.*, 30  
6 Cal.App.4th 1, 4 (1994). Concurrence and knowledge “may be inferred from the nature of the acts  
7 done, the relation of the parties, the interests of the alleged conspirators, and other circumstances.”  
8 *Wyatt*, 24 Cal.3d at 785 (citing cases). Similarly, “when the corporate form is used to perpetrate a  
9 fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose, the courts  
10 will ... deem the corporation's acts to be those of the persons or organizations actually controlling  
11 [it].” *Sonora Diamond Corp. v. Sup. Ct.*, 83 Cal.App.4th 523, 538 (2000).

12 In considering whether to pierce the PLPCC’s corporate veil between it, the Individual  
13 Defendants and the Shell Companies, this Court will have to consider:

14 inadequate capitalization, commingling of funds and other assets of the two entities,  
15 the holding out by one entity that it is liable for the debts of the other, identical equitable  
16 ownership in the two entities, use of the same offices and employees, use of one as a  
17 mere conduit for the affairs of the other, disregard of corporate formalities, lack of  
18 segregation of corporate records, and identical directors and officers.

19 *VirtualMagic Asia, Inc. v. Fil-Cartoons, Inc.*, 99 Cal.App.4th 228, 245 (2002) (emphasis added to  
20 factors satisfied in this case).

21 The requested documents are not privileged, and are necessary to establish Defendants’ joint  
22 liability under conspiracy or alter ego theories.

23 **4. Request No. 5 to PLPCC and No. 9 to the Individual Defendants and Shell Companies**

24 All COMMUNICATIONS with, including, by or between, any defendant in this ACTION.

25 **a. Response**

26 Each Defendant responded with the same verbatim boilerplate objections for each of  
27 Plaintiff’s Requests as quoted in response to Request No. 2 to the PLPCC above: tax return privilege,

1 “to the extent” oppressive / intended to harass, not relevant, “to the extent” outside Defendants’  
2 custody or control, vague and ambiguous, trade secrets / confidential information, “to the extent”  
3 not relevant, overbroad / unduly burdensome, “to the extent” attorney-client or attorney work  
4 product, “to the extent” oppressive / intended to harass, previously propounded, assumes facts,  
5 impacts third party privacy, and violates medical privacy laws.

6 **b. Meet and Confer**

7 In meet and confer, Plaintiff stated that “Responsive information can be produced in TIFF,  
8 text readable format, provided that any attachments are produced in native format. [¶] To save on  
9 electronic discovery costs, all non-privileged COMMUNICATIONS should be produced, regardless  
10 of relevancy. Since the parties have agreed to a Claw-back provision, pre-production review need  
11 not be burdensome.”

12 Defendants ignored Plaintiff’s meet and confer.

13 **c. Reason Why Further Response and Production Should Be Compelled**

14 *Plaintiff’s response to Defendants’ boilerplate and unsupported objections, which are the*  
15 *same for all Requests, are discussed above regarding Request Number 2 to the PLPCC. Accordingly,*  
16 *for the Court’s convenience, they are incorporated by reference herein.*

17 There are two Individual Defendants who control the PLPCC and each of the Shell  
18 Companies as their officers and directors.

19 Non-privileged communications between the Individual Defendants, in their individual  
20 capacity, and as officers and directors of the PLPCC and Shell Companies, is relevant *inter alia* to:  
21 (1) the relationships between the Defendants for conspiracy and alter ego purposes, (2) whether the  
22 Individual Defendants were conducting the business of the PLPCC through the Shell Companies,  
23 and/or (3) whether the Individual Defendants acted with fraudulent intent.

24 Privileged communications should be identified on a privilege log with sufficient specificity  
25 for Plaintiff to challenge the existence of the privilege. CODE OF CIVIL PROC. § 2031.240; *see also*,

1 *Bank of Am., N.A.*, 212 Cal.App.4th at 1098.

2 Defendants have failed to offer any evidence of burden, and thus have waived this objection.  
3 *Columbia Broadcasting System, Inc.*, 263 Cal.App.2d at 18.

4 **5. Request No. 6 to PLPCC, No. 10 to the Individual Defendants and Shell Companies**

5 All COMMUNICATIONS with, including, by or between, any natural or legal person  
6 RELATED to the cultivation, growth, production, refinement, transfer, carry, transport, distribution,  
7 sale, purchase, and/or financing of MEDICAL MARIJUANA.

8 **a. Response**

9 Each Defendant responded with the same verbatim boilerplate objections for each of  
10 Plaintiff's Requests as quoted in response to Request No. 2 to the PLPCC above: tax return privilege,  
11 "to the extent" oppressive / intended to harass, not relevant, "to the extent" outside Defendants'  
12 custody or control, vague and ambiguous, trade secrets / confidential information, "to the extent"  
13 not relevant, overbroad / unduly burdensome, "to the extent" attorney-client or attorney work  
14 product, "to the extent" oppressive / intended to harass, previously propounded, assumes facts,  
15 impacts third party privacy, and violates medical privacy laws.

16 **b. Meet and Confer**

17 During meet and confer "Plaintiff agree[d] to limit responsive information to related to the  
18 'sale, purchase, and/or financing of MEDICAL MARIJUANA.'"

19 Defendants ignored Plaintiff's meet and confer.

20 **c. Reason Why Further Response and Production Should Be Compelled**

21 *Plaintiff's response to Defendants' boilerplate and unsupported objections, which are the*  
22 *same for all Requests, are discussed above regarding Request Number 2 to the PLPCC. Accordingly,*  
23 *for the Court's convenience, they are incorporated by reference herein.*

24 Non-privileged communications of the Individual Defendants, in their individual capacity,  
25 and as officers and directors of the PLPCC and Shell Companies with third parties related to the

1 “sale, purchase, and/or financing of MEDICAL MARIJUANA” is relevant *inter alia* to: (1) whether  
2 the Individual Defendants were conducting the business of the PLPCC through the Shell Companies  
3 for conspiracy or alter ego purposes, and/or (2) whether the Individual Defendants attempted to  
4 manipulate the flow of funds related to the purchase or sale of medical marijuana out of the PLPCC  
5 and into the Shell Companies.

6 Privileged communications should be identified on a privilege log with sufficient specificity  
7 for Plaintiff to challenge the existence of the privilege. CODE OF CIVIL PROC. § 2031.240; *see also,*  
8 *Bank of Am., N.A.*, 212 Cal.App.4th at 1098.

9 Defendants have failed to offer any evidence of burden, and thus have waived this objection.  
10 *Columbia Broadcasting System, Inc.*, 263 Cal.App.2d at 18.

11 **6. Request No. 7 to All Defendants**

12 All DOCUMENTS and DATA (including electronic mail and other COMMUNICATIONS)  
13 that REFER or RELATE to YOUR payment in, payment to, handling of, and accounting for, cash.

14 **a. Response**

15 Each Defendant responded with the same verbatim boilerplate objections for each of  
16 Plaintiff’s Requests as quoted in response to Request No. 2 to the PLPCC above: tax return privilege,  
17 “to the extent” oppressive / intended to harass, not relevant, “to the extent” outside Defendants’  
18 custody or control, vague and ambiguous, trade secrets / confidential information, “to the extent”  
19 not relevant, overbroad / unduly burdensome, “to the extent” attorney-client or attorney work  
20 product, “to the extent” oppressive / intended to harass, previously propounded, assumes facts,  
21 impacts third party privacy, and violates medical privacy laws.

22 **b. Meet and Confer**

23 Defendants ignored Plaintiff’s meet and confer.

24 **c. Reason Why Further Response and Production Should Be Compelled**

25 *Plaintiff’s response to Defendants’ boilerplate and unsupported objections, which are the*

1 same for all Requests, are discussed above regarding Request Number 2 to the PLPCC. Accordingly,  
2 for the Court's convenience, they are incorporated by reference herein.

3 Plaintiff's Complaint alleges that Defendants' medical marijuana business is all cash. How  
4 each of the Defendants "payment in, payment to, handling of, and accounting for, cash" is highly  
5 relevant to whether Defendants were accurately accounting for PLPCC revenues and expenses. It is  
6 also relevant to Plaintiff's forensic audit.

7 **7. Request No. 2 to the Individual Defendants and Shell Companies**

8 All DOCUMENTS and DATA (including electronic mail and other COMMUNICATIONS)  
9 that REFER or RELATE to YOUR tax returns.

10 **a. Response**

11 Each Defendant responded with the same verbatim boilerplate objections for each of  
12 Plaintiff's Requests as quoted in response to Request No. 2 to the PLPCC above: tax return  
13 privilege, "to the extent" oppressive / intended to harass, not relevant, "to the extent" outside  
14 Defendants' custody or control, vague and ambiguous, trade secrets / confidential information, "to  
15 the extent" not relevant, overbroad / unduly burdensome, "to the extent" attorney-client or attorney  
16 work product, "to the extent" oppressive / intended to harass, previously propounded, assumes facts,  
17 impacts third party privacy, and violates medical privacy laws.

18 **b. Meet and Confer**

19 In the parties' March 23, 2018 in-person meet and confer, Plaintiff clarified that any Requests  
20 related to Defendants' tax returns may be produced as *attorneys eyes only*, and that Plaintiff will  
21 agree to an amendment of the stipulated protective to include a confidentiality designation for  
22 *attorneys eyes only*.

23 Defendants ignored Plaintiff's meet and confer.

24 **c. Reason Why Further Response and Production Should Be Compelled**

25 *Plaintiff's response to Defendants' boilerplate and unsupported objections, which are the*

1 same for all Requests, are discussed above regarding Request Number 2 to the PLPCC. Accordingly,  
2 for the Court's convenience, they are incorporated by reference herein.

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

7 As noted previously, the PLPCC is not merely a cooperative corporation, it is a cooperative  
8 whose sole purpose is to sell medical marijuana. Compl., ¶¶ 21-22. The Individual Defendants' sole  
9 business is medical marijuana. *Id.*, ¶ 23-24; [Defendant] Knopf Decl., RoA # 27, ¶ 2 ("I am involved  
10 with several separate businesses in the medical marijuana industry. My colleague, and co-defendant,  
11 Justus Henkes, is involved in certain aspects of certain of these businesses, in varying capacities,  
12 which include Point Loma Patients Consumer Cooperative Corporation, Golden State Greens, Far  
13 West Operating, LLC, Far West Management, LLC, and Far West Staffing, LLC")

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

21 Under the Corporations Code, a cooperative must be "democratically controlled" and "not  
22 organized to make a profit for themselves, as such, or for their members, as such, but primarily for  
23 their members as patrons." CAL. CORP. CODE § 12201 (emphasis added). To accomplish this  
24 statutory objective, "[t]he earnings and savings of the business must be used for the general welfare  
25

1 of its members or equitably distributed to members in the form of cash, property, credits, or  
2 services.” *Id.*

3 The important non-profit, and member participation policies found in the Cooperative  
4 Corporations Code and medical marijuana laws are exactly the type of overriding policy concerns  
5 that courts have held trump the tax return privilege. *See Schnabel v. Sup. Ct.*, 5 Cal. 4th 704, 722  
6 (1993) (ordering disclosure of tax returns because “legislatively declared public policy in favor of  
7 full disclosure in a marital dissolution proceeding, warrant an exception to the privilege in this case  
8 limited to those tax returns that are reasonably related to the purpose for which they are sought”); *Li*  
9 *v. Yan*, 247 Cal.App.4th 56, 66-68 (2016) (ordering production of tax returns where necessary to  
10 effect public policy of “prevent[ing] fraud against creditors. And against lenders. And perhaps  
11 against the court.”); *Slojewski v. Allstate Ins. Co.*, 2013 U.S. Dist. LEXIS 37266, at \*9 (N.D. Cal.  
12 Mar. 18, 2013) (in insurance fraud case, ordering production of tax returns subject to protective order  
13 because “the disclosure of the tax returns at issue here is supported by the public policy in  
14 uncovering, preventing and punishing insurance fraud in California”); *Garcia v. Progressive Choice*  
15 *Ins. Co.*, 2011 WL 4356209, at \* 4 (S.D. Cal. Sept. 16, 2011) (“The Court finds that this public  
16 policy in uncovering, preventing and punishing insurance fraud is significant enough to warrant  
17 application of the public policy exception to California's privilege regarding tax returns.”).

18 In addition, the gravamen of Plaintiff’s lawsuit is that the Individual Defendants were  
19 fraudulently transferring funds out of (or around) the PLPCC through the Shell Companies to avoid  
20 the non-profit requirements of the Corporations Code and medical marijuana laws. These allegations  
21 are inconsistent with the privilege because tax returns, and the profits they show, are directly relevant  
22 to Plaintiff’s allegations, are already subject to a comprehensive stipulated protective order, and  
23 Plaintiff has stipulated to have the documents produced as attorneys eyes only. *See Small v.*  
24 *Travelers Prop. Cas. Co. of Am.*, 2010 U.S. Dist. LEXIS 61308, at \*3-8 (S.D. Cal. June 2, 2010)  
25 (ordering production of tax return documents pursuant to protective order *attorneys eyes only* where  
26



1 the gravamen of the lawsuit “directly implicate” financial information contained returns and because  
2 the privilege is “qualified not absolute”);

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

9 **8. Request No. 3 to the Individual Defendants and Shell Companies**

10 All of YOUR bank statements.

11 **a. Response**

12 Each Defendant responded with the same verbatim boilerplate objections for each of  
13 Plaintiff’s Requests as quoted in response to Request No. 2 to the PLPCC above: tax return privilege,  
14 “to the extent” oppressive / intended to harass, not relevant, “to the extent” outside Defendants’  
15 custody or control, vague and ambiguous, trade secrets / confidential information, “to the extent”  
16 not relevant, overbroad / unduly burdensome, “to the extent” attorney-client or attorney work  
17 product, “to the extent” oppressive / intended to harass, previously propounded, assumes facts,  
18 impacts third party privacy, and violates medical privacy laws.

19 **b. Meet and Confer**

20 Defendants ignored Plaintiff’s meet and confer.

21 **c. Reason Why Further Response and Production Should Be Compelled**

22 *Plaintiff’s response to Defendants’ boilerplate and unsupported objections, which are the*  
23 *same for all Requests, are discussed above regarding Request Number 2 to the PLPCC. Accordingly,*  
24 *for the Court’s convenience, they are incorporated by reference herein.*

25 Defendants’ bank statements are relevant to Plaintiff’s forensic audit to determine whether

1 they generated any profit from the sale of medical marijuana.

2  
3 **9. Request No. 4 to the Individual Defendants and Shell Companies**

4 All DOCUMENTS and DATA (including electronic mail and other COMMUNICATIONS)  
5 that REFER or RELATE to YOUR expenses [*“RELATING to MEDICAL MARIJUANA” in Requests*  
6 *to Individual Defendants*], including but not limited to rent, utilities, insurance, fees, wages, taxes,  
7 interest, supplies, maintenance, travel, meals and entertainment, and training.

8 **a. Response**

9 Each Defendant responded with the same verbatim boilerplate objections for each of  
10 Plaintiff’s Requests as quoted in response to Request No. 2 to the PLPCC above: tax return privilege,  
11 “to the extent” oppressive / intended to harass, not relevant, “to the extent” outside Defendants’  
12 custody or control, vague and ambiguous, trade secrets / confidential information, “to the extent”  
13 not relevant, overbroad / unduly burdensome, “to the extent” attorney-client or attorney work  
14 product, “to the extent” oppressive / intended to harass, previously propounded, assumes facts,  
15 impacts third party privacy, and violates medical privacy laws.

16 **b. Meet and Confer**

17 Defendants ignored Plaintiff’s meet and confer.

18 **c. Reason Why Further Response and Production Should Be Compelled**

19 *Plaintiff’s response to Defendants’ boilerplate and unsupported objections, which are the*  
20 *same for all Requests, are discussed above regarding Request Number 2 to the PLPCC. Accordingly,*  
21 *for the Court’s convenience, they are incorporated by reference herein.*

22 The PLPCC’s sole business during the Relevant Time Period was the sale of medical  
23 marijuana. Similarly, Plaintiff’s Complaint alleges, and a declaration by defendant Knopf confirms  
24 that the Shell Companies were used exclusively in relation to Defendants’ medical marijuana  
25 business.





1 Each Defendant responded with the same verbatim boilerplate objections for each of  
2 Plaintiff's Requests as quoted in response to Request No. 2 to the PLPCC above: tax return privilege,  
3 "to the extent" oppressive / intended to harass, not relevant, "to the extent" outside Defendants'  
4 custody or control, vague and ambiguous, trade secrets / confidential information, "to the extent"  
5 not relevant, overbroad / unduly burdensome, "to the extent" attorney-client or attorney work  
6 product, "to the extent" oppressive / intended to harass, previously propounded, assumes facts,  
7 impacts third party privacy, and violates medical privacy laws.

8 **b. Meet and Confer**

9 Defendants ignored Plaintiff's meet and confer.

10 **c. Reason Why Further Response and Production Should Be Compelled**

11 *Plaintiff's response to Defendants' boilerplate and unsupported objections, which are the*  
12 *same for all Requests, are discussed above regarding Request Number 2 to the PLPCC. Accordingly,*  
13 *for the Court's convenience, they are incorporated by reference herein.*

14 Income or any benefit to the Individual Defendants and Shell Companies from any third  
15 parties (e.g., medical marijuana suppliers) is relevant to Plaintiff's reconstruction of the cash flows  
16 and finances of Defendants' medical marijuana business. Plaintiff will provide such documentation  
17 to Plaintiff's expert as part of the forensic audit of Defendants' finances to determine whether any  
18 profit was generated from the sale of medical marijuana.

19 Non-privileged communications of the Individual Defendants, in their individual capacity,  
20 and as officers and directors of the PLPCC and Shell Companies on this topic are relevant *inter alia*  
21 to: (1) whether the Individual Defendants were conducting the business of the PLPCC through the  
22 Shell Companies for conspiracy or alter ego purposes, (2) whether the Individual Defendants  
23 attempted to manipulate the flow of funds related to the purchase or sale of medical marijuana out  
24 of the PLPCC and into the Shell Companies, and/or (3) whether the Individual Defendants were  
25 acting with fraudulent intent.

1  
2  
3  
4 DATED: April 18, 2018  
5

Respectfully submitted,

THE RESTIS LAW FIRM, P.C.

6 /s/ William R. Restis  
7 William R. Restis, Esq.  
8 550 West C Street, Suite 1760  
9 San Diego, CA 92101  
10 Tel: +1.619.270.8383  
11 Email: william@restislaw.com

12 **FINKELSTEIN & KRINSK LLP**  
13 Jeffrey R. Krinsk (SBN 109234)  
14 jrk@classactionlaw.com  
15 550 West C Street, Suite 1760  
16 San Diego, CA 92101  
17 Telephone: (619) 238-1333  
18 Facsimile: (619) 238-5425

19 *Attorneys for Plaintiff*  
20  
21  
22  
23  
24  
25  
26