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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By Jessica Pascual, Deputy Clerk

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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.

Case No: 37-2017-00037524-CU-BT-CTL

CLASS ACTION

**DECLARATION OF WILLIAM R. RESTIS
IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANTS' JOINT
MOTION FOR PROTECTIVE ORDER**

Date: May 24, 2018

Time: 9:00 a.m.

Judge: Hon. Joel R. Wohlfeil

Ctrm: C-73

1 I, William R. Restis, hereby declare as follows:

2 1. I am over the age of eighteen (18) and the managing member of The Restis Law Firm,
3 P.C. I have personal knowledge of the matters set forth herein, based on my active participation in
4 all material aspects of this litigation. If called upon, I could and would testify competently to the
5 facts herein based upon my personal involvement in this case. I submit this declaration in support
6 of Plaintiff Karl Beck's ("Plaintiff") Opposition to Defendants' Joint Motion for Protective Order
7 (the "Opposition" to the "Motion").

8 2. The only discovery to which Defendants have provided substantive responses are
9 Form Interrogatories 1, 3 and 4 with their names, contact information, corporate status and insurance
10 coverage.

11 3. In preparing Plaintiff's Requests for Production (Set Two) to all Defendants, RLF
12 consulted with a (non-testifying) forensic accounting expert to identify gaps in Plaintiff's Requests
13 for Production (Set One), and to identify further categories of documentation that would be
14 necessary to audit Defendants and identify assets.

15 4. On March 23, 2018, I conducted an in-person meet and confer session with Tamara
16 Leetham and Matthew Dart at my office. At that meet and confer, Defendants' counsel expressed
17 concern that the Requests were overbroad in that they demanded production of *everything* related to
18 Defendants' medical marijuana business. I clarified that Plaintiff's outstanding discovery requests
19 should be construed as follows: (1) Not requesting any medical information related to any class
20 member; (2) Unless clear from the context of the Request, they should be construed as asking for
21 documentation that supports the flow of every dollar to and through Defendants, to allow Plaintiff
22 to conduct a forensic audit of Defendants' medical marijuana business; (3) Plaintiff will accept any
23 tax related documentation as *attorneys eyes only*, and will agree to an amendment of the stipulated
24 protective order to include a confidentiality designation for *attorneys eyes only*; (4) Plaintiff is not
25 seeking any employee files, and (5) Plaintiff is not seeking attorney client communications or
26

1 attorney work product, and attorney billing records need only reflect gross billing amounts. Mr. Dart
2 agreed to draft an amendment to the stipulated protective order, but failed to do so.

3 5. Attached hereto as Exhibit A is a true and correct copy of my March 9, 2018 meet
4 and confer letter to Tamara Leetham in which I clarified that “Plaintiff of course does not expect
5 Defendants to produce [attorney client / work product] privileged materials.”

6 6. Attached hereto as Exhibit B is a true and correct copy of an email exchange between
7 myself and counsel for Defendants Matthew Dart dated December 20, 26 and 29, 2017. In that email
8 exchange, Mr. Dart stated that “We will also need an appropriate protective in place order prior to
9 production of documents.” I objected, noting that “pursuant to San Diego Sup. Ct. L.R. 2-5.5, ‘It is
10 the policy of the court that confidentiality agreements and protective orders are disfavored and
11 should be recognized and approved by the court only where there is a genuine trade secret or
12 privilege to be protected. ...’” Mr. Dart responded that “We can proceed without a stipulated
13 protective order, but we will be taking discovery positions consistent with the above, and litigating
14 those issues will be costly and time consuming for all. A stipulated protective order is the better
15 approach, in our view.”

16 7. The information in this declaration regarding The Restis Law Firm P.C.’s (“RLF”) time
17 and expenses is taken from contemporaneous electronic time and expense records prepared
18 and/or maintained by RLF in the ordinary course of business. I reviewed these records to confirm
19 both the accuracy of the entries as well as the necessity for, and reasonableness of, the time
20 committed to the litigation.

21 8. As a result of this review, I believe that the time reflected in the firm’s lodestar
22 calculation as set forth in this declaration is reasonable in amount and was necessary to oppose
23 Defendants’ Joint Motion for Protective Order.

24 9. My hourly rate is \$650 per hour. I spent 22.4 hours opposing Defendants’ Motion,
25 comprised of: 3.3 hours researching the law applicable to the Motion, 5.6 hours reviewing and citing
26

1 the discovery requests and the record in this case, and 13.5 hours drafting and editing the Opposition.
2 The lodestar for my time is \$14,560.

3 I declare under penalty of perjury, under the laws of the State of California, that the foregoing
4 is true and correct to the best of my knowledge, information, and belief.

5 Executed on May 11, 2018, at San Diego, California.

6
7 /s/ William R. Restis
8 William R. Restis, Esq.
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EXHIBIT A



March 9, 2018

Via Electronic Mail

Tamara Leetham
AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Suite A112
San Diego, 92110
tamara@austinlegalgroup.com

Re: Meet and Confer – Plaintiff's Request for Production to all Defendants (Set One)

Dear Tammy and Matt,

This constitutes Plaintiff's meet and confer on the above discovery in advance of filing a motion to compel. After you have an opportunity to consider Plaintiff's position, I propose a call to see if we can come to an accord, or whether motion practice is the only way forward.

I. REQUESTS FOR PRODUCTION

a. GENERAL OBJECTIONS

i. Oppression / Overbroad / Unduly Burdensome

While Plaintiff is understanding of these objections, Defendants have failed to provide any factual basis to support them. Objections should be made with specificity and provide the basis to allow an intelligent response. *See Korea Data Systems Co. Ltd. v. Sup. Ct.* (1997) 51 Cal.App.4th 1513, 1516 ("boiler plate" objections are improper because the CODE OF CIVIL PROC. requires specificity); *W. Pico Furniture Co. v. Sup. Ct.* 56 Cal. 2d 407, 417 (1961) ("The objection based upon burden must be sustained by evidence showing the quantum of work required, while to support an objection of oppression there must be some showing either of an intent to create an unreasonable burden or that the ultimate effect of the burden is incommensurate with the result sought.")

In addition, Defendants were required to conduct a good faith investigation to obtain the responsive information at the time of responding to the request. *See* CODE OF CIVIL PROC. § 2031.010; *Regency Health Services, Inc. v. Sup. Ct.* (1998) 64 Cal. App. 4th 1496, 1504.

Accordingly, Please provide a factual basis for these objections so Plaintiff can consider them, or move to compel if Defendants have no justifiable basis.

A handwritten signature in black ink, appearing to read 'The Restis Law Firm, P.C.', is written over a horizontal line.

ii. Attorney Client / Work Product

Plaintiff of course does not expect Defendants to produce privileged materials. However, Plaintiff will require the production of a privilege log for responsive materials that are withheld.

Please be sure to provide sufficient factual support for Plaintiff to evaluate the *bona fides* of Defendants' claims of privilege. See CODE OF CIVIL PROC. § 2031.240; also, *Bank of Am., N.A. v. Superior Court of Orange Cnty.* (2013) 212 Cal. App. 4th 1076, 1098 ("Recent legislation amended subdivision (c)(1) of Code of Civil Procedure section 2031.240 to require the preparation of a privilege log "if necessary" to "provide sufficient factual information for other parties to evaluate the merits" of a claim of privilege or protected work product.")

iii. Assumes Facts

Defendants objected that the Requests "assumes facts that have not been established." This is not a valid objection to production requests. Please confirm in writing that Defendants are not withholding responsive information on the basis of this "objection."

iv. Health Information Privacy

While it is theoretically possible that some yet to be propounded requests could implicate HIPAA or the CMIA, Plaintiff has not requested that Defendants produce any such information.

The Patient Access to Health Records Act establishes a patient's right to see and receive copies of his or her medical records. The Lanterman-Petris-Short (LPS) Act provides guidelines for handling involuntary civil commitment of individuals to mental health institutions in the State of California. Thus, these statutes are inapplicable, and Defendants' objection thereon is frivolous. Please confirm in writing that Defendants are not withholding any responsive materials on the basis of this objection.

b. SPECIFIC RESPONSES

i. PLPCC No. 2

Plaintiff agrees to limit Request No 2 to the PLPCC to DOCUMENTS and DATA reflecting all agreements with Sinner Brothers, Inc., and amendments and attachments thereto, as well as all payments to Sinner Brothers, Inc.

DOCUMENTS reflecting payments should be produced in native format.

ii. PLPCC No 5, Individual Defendants No. 9, Shell Companies No. 9

COMMUNICATIONS between all Defendants in this Action, both individually and in their capacity as officers and directors entities, are routine.

Accordingly, all COMMUNICATIONS (as defined) must be produced. Responsive information can be produced in TIFF, text readable format, provided that any attachments are produced in native format.



To save on electronic discovery costs, all non-privileged COMMUNICATIONS should be produced, regardless of relevancy. Since the parties have agreed to a Claw-back provision, pre-production review need not be burdensome.

iii. PLPCC No. 6, Individual Defendants No. 8 and 10, and Shell Companies No. 8 and 10

Plaintiff agrees to limit responsive information to related to the “sale, purchase, and/or financing of MEDICAL MARIJUANA.”

iv. PLPCC No. 7, Individual Defendants No. 7, Shell Companies No. 7

Plaintiff’s Complaint alleges that Defendants’ medical marijuana business is all cash. How each of the Defendants transact in cash is highly relevant to the merits of Plaintiff’s case. All responsive information must be produced.

v. Individual Defendants No. 2, Shell Companies No. 2

Although Defendants are correct that there is a tax return privilege, that privilege is disregarded *inter alia* when the gravamen of the complaint is inconsistent with assertion of the privilege, or where a legislatively declared public policy outweighs the interests underlying the privilege. *See Schnabel v. Superior Court*, 5 Cal. 4th 704, 722 (1993) (ordering disclosure of tax returns because “legislatively declared public policy in favor of full disclosure in a marital dissolution proceeding, warrant an exception to the privilege in this case limited to those tax returns that are reasonably related to the purpose for which they are sought”) *Weingarten, supra*, 102 Cal.App.4th at p. 275 (“Weingarten intentionally interfered with plaintiffs' ability to obtain relevant information through legitimate means, and then sought to hide behind the tax return privilege to ensure no relevant information would be revealed to plaintiffs.”); *Li v. Yan*, 247 Cal. App. 4th 56, 66-68 (2016) (ordering production of tax returns where necessary to effect public policy of “prevent[ing] fraud against creditors. And against lenders. And perhaps against the court.”); *Slojewski v. Allstate Ins. Co.*, 2013 U.S. Dist. LEXIS 37266, at *9 (N.D. Cal. Mar. 18, 2013) (in insurance fraud case, ordering production of tax returns subject to protective order because “the disclosure of the tax returns at issue here is supported by the public policy in uncovering, preventing and punishing insurance fraud in California”); *Garcia v. Progressive Choice Ins. Co.*, 2011 U.S. Dist. LEXIS 105543, 2011 WL 4356209, at *4 (S.D. Cal. Sept. 16, 2011) (“The Court finds that this public policy in uncovering, preventing and punishing insurance fraud is significant enough to warrant application of the public policy exception to California's privilege regarding tax returns.); *Small v. Travelers Prop. Cas. Co. of Am.*, 2010 U.S. Dist. LEXIS 61308, at *3-8 (S.D. Cal. June 2, 2010) (ordering production of tax return documents pursuant to protective order *attorneys eyes only* where the gravamen of the lawsuit “directly implicate” financial information contained returns and because the privilege is “qualified not absolute”)

Here, the gravamen of Plaintiff’s complaint is inconsistent with Defendant’s assertion of the privilege. And the important non-profit policies found in the Cooperative Corporations Code and medical marijuana laws also counsel against the privilege. Accordingly, if Defendants refuse to produce requested tax return documentation, Plaintiff will move to compel.



vi. Individual Defendants No. 3, Shell Companies No. 3

The relevancy of bank statements can hardly be questioned, as such all responsive information must be produced.

vii. Individual Defendants No. 4, Shell Companies No. 4

Expenses incurred by the Individual Defendants and Shell Companies related to medical marijuana are clearly germane to this litigation, and must be produced.

viii. Individual Defendants No. 5 and 6, Shell Companies No. 5 and 6

Income or any benefit to the Individual Defendants from any other Defendant is clearly relevant, and must be produced.

In the same manner, income or benefits to the Individual Defendants from any third party related to medical marijuana is also relevant.

Sincerely,



William R. Restis, Esq.

THE RESTIS LAW FIRM, P.C.
william@restislaw.com

Cc: Jeffrey R. Krinsk, Esq.
Matthew Dart, Esq.



EXHIBIT B

Regards, and I hope you have a happy new year.

Matt

From: William Restis [mailto:william@restislaw.com]
Sent: Wednesday, December 27, 2017 4:30 PM
To: Matthew Dart <matt@dartlawfirm.com>; Jeffrey Krinsk <jrk@classactionlaw.com>
Cc: Leetham, Tamara <tamara@austinlegalgroup.com>
Subject: Re: Beck: Discovery

Dear Matt,

I am at a loss to understand why we should grant you any professional courtesies. Since before this litigation began, Defendants' counsel have had a policy of completely stonewalling every effort to establish a working professional relationship for the benefit of PLPCC members. Ms. Austin first informed me in August that she would not take my phone calls and that all communications must be in writing. Since then, at least half a dozen phone calls to Austin Legal Group have gone unanswered. At least half a dozen phone calls to your office from myself or Mr. Krinsk have gone unanswered. On December 6th I sent a letter meeting and conferring on an issue of discovery. That letter has gone unanswered. On that same day, I made a proposal for sharing discovery between this case and *Bobo*. That letter has gone unanswered. And this is in addition to your threats to report me to the State Bar and making patently false accusations of professional improprieties in Court filings. As it stands, we are not amenable to extending Defendants' response deadlines.

That being said, our professional relationship does not need to be so untenable. Since this case began, I have been an advocate of an open and cooperative relationship. Simply because we are adversaries, does not mean we must pursue scorched-earth litigation tactics. The ball is in your court.

As to your proposed protective order, we note that pursuant to San Diego Sup. Ct. L.R. 2.5.5, "It is the policy of the court that confidentiality agreements and protective orders are disfavored and should be recognized and approved by the court only when there is a genuine trade secret or privilege to be protected." In addition, we believe that the affairs of the PLPCC are a matter of public importance, and are not inclined to agree to a protective order for PLPCC documents or those of the Shell Companies. However, we are amenable to a protective order that covers "personal records" as that is defined in Code of Civil Procedure Sec. 1985.3.

Best,

Bill

William R. Restis

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Fax: +1.619.752.1552



restislaw.com

On Tue, Dec 26, 2017 at 7:10 AM, Matthew Dart <matt@dartlawfirm.com> wrote:

Bill,

Following up on our request below. Please advise if you will extend these discovery response deadlines.

We will also need an appropriate protective in place order prior to production of documents. If you are amenable in concept, we will provide a proposed form.

Regards,

Matt

From: Matthew Dart
Sent: Wednesday, December 20, 2017 8:02 AM
To: 'william@restislaw.com' <william@restislaw.com>
Cc: 'Leetham, Tamara' <tamara@austinlegalgroup.com>
Subject: Beck: Discovery

Dear Bill,

With respect to the Special Interrogatories (Set One), and Requests for Production of Documents (Set One), propounded to all named Defendants, we write to request an extension of time to respond given our clients' year-end work schedules and the holidays.

We currently have January 3rd (Special Interrogatories) and January 5th (Documents) as the last days to respond. Please advise if you are amenable to a 30 day extension on both, making **February 5th** the last day to respond to both the special interrogatories and requests for documents.

Regards, and happy holidays.

Matt

Matthew B. Dart

Principal



12526 High Bluff Drive, Suite 300

San Diego, CA 92130

T: 858.792.3616

www.dartlawfirm.com