

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

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
11/16/2017 at 02:19:00 PM
Clerk of the Superior Court
By Katelin O'Keefe, Deputy Clerk

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

CLASS ACTION

**PLAINTIFF'S MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF
MOTION PURSUANT TO CALIFORNIA
CORPORATIONS CODE §§ 12603-12607
FOR:**

- (1) PRODUCTION OF RECORDS;**
- (2) APPOINTMENT OF INDEPENDENT
ACCOUNTANT; and**
- (3) AWARD OF ATTORNEY FEES AND
COSTS**

Date: January 5, 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”) is a member of defendant Point Loma Patients Consumer
3 Cooperative Corporation (the “PLPCCC”), San Diego’s largest medical marijuana dispensary.
4 Plaintiff estimates the cooperative has at least one thousand member patrons daily, and generates
5 millions of dollars in monthly revenue through a single storefront (and delivery service) located at
6 3452 Hancock Street, San Diego, CA 92110. Complaint (“Compl.”), ¶¶ 1, 21.

7 Plaintiff became (and remains) concerned with the immense volume of marijuana business
8 being transacted through the PLPCCC. After all, under California’s medical marijuana laws,
9 dispensaries are required to be non-profit. *People v. Jackson*, 210 Cal.App.4th 525 (2012).¹ As a
10 California cooperative corporation, the PLPCCC’s profits must be paid out as “patronage
11 distributions” to cooperative members. *See* Declaration of William R. Restis in support of Motion
12 Pursuant to California Corporations Code §§ 12603-12607 (“Restis Decl.”), Ex. 1; CAL. CORP.
13 CODE §§ 12201, 12201.5, 12451. But despite its huge revenues relative to such a small operation,
14 the PLPCCC has never made a “patronage distribution” to Plaintiff or any member of the putative
15 Class. Compl., ¶ 38.²

16 Plaintiff investigated publicly available sources, and learned that the PLPCCC is owned and
17 controlled by defendants Adam Knopf and Justus H. Henkes IV (“Knopf” and “Henkes,”
18 collectively the “Individual Defendants”) Restis Decl., Ex. 2. For unexplained reasons, the
19 Individual Defendants also own and control *five* (known) shell companies: defendants 419
20 Consulting Inc., Golden State Greens LLC, Far West Management, LLC, Far West Operating, LLC,
21 and Far West Staffing, LLC, (the “Shell Companies”). None of the Shell Companies have any

22
23 ¹ On November 9, 2016, California passed Proposition 64, making it legal for adults over the
24 age of 21 to possess marijuana for recreational use. However, the sale of marijuana for profit is not
permitted until the California Bureau of Marijuana Control issues the necessary licenses, which
will be issued no sooner than January 1, 2018.

25 ² The Class pled in the Complaint is defined as “All California residents, who from December
26 3, 2014 through the present, purchased any product from the Point Loma Patients Consumer
Cooperative Corporation.”

1 public or visible business presence, except at the PLPCCC’s storefront location and the mailing
2 address listed at Defendant Henkes’ accountancy office in La Jolla, California. Restis Decl., ¶ 9;
3 Exs. 3-7.

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

9 Before filing his Complaint, Plaintiff made a demand on Defendants pursuant to the
10 California Corporations Code (“CAL. CORP. CODE”) to inspect the accounting books and records of
11 the PLPCCC. See CAL. CORP. CODE §§ 12340, 12581-82, 12603; Restis Decl., ¶¶ 11-13; Exs. 9, 11.
12 Defendants concocted multiple, suspicious excuses to refuse Plaintiff’s lawful demand, including
13 *falsely* representing that the PLPCCC bylaws prevent cooperative members from inspecting the
14 books. *Id.*, ¶¶ 14-15; Ex. 12. In fact the opposite is true. *Id.*, Ex. 14 at pp. 15-16.

15 Additional suspicious circumstances abound as described below. Therefore, on behalf of all
16 PLPCCC member patrons, Plaintiff respectfully requests this Court to order the production of all
17 “accounting books and records and minutes of proceedings” of the PLPCCC pursuant to California
18 Corporations Code § 12603 and § 12606.

19 And for good cause shown, Plaintiff further respectfully requests the Court to “appoint one
20 or more ... independent accountants to audit the financial statements ... and investigate the
21 property, funds *and affairs*” of the Defendants related to the PLPCCC’s medical marijuana business
22 “and to report thereon” to the Court and the parties. CAL. CORP. CODE § 12606(a). The PLPCCC
23 should bear the costs of this investigation. *Id.*, § 12606(c).

24 And because Defendants’ failure to comply with Plaintiff’s lawful demand was without
25 justification, Plaintiff respectfully requests an order of reasonable attorney fees and costs as
26 provided by California Corporations Code § 12607 relating to Plaintiff’s initial records demand,

1 subsequent negotiation for production of records, drafting and filing of the Complaint, and
2 preparation of this Motion. *See* Restis Decl., ¶¶ 19-22; Krinsk Decl., ¶¶ 1-6.

3 **II. LEGAL STANDARD**

4 The California Corporations Code provides that a cooperative corporation:

5 shall conduct its business primarily for the mutual benefit of its members as patrons
6 of the corporation. The earnings, savings, or benefits of the corporation shall be used
7 for the general welfare of the members or shall be proportionately and equitably
8 distributed to some or all of its members or its patrons, based upon their patronage
(Section 12243) of the corporation, in the form of cash, property, evidences of
indebtedness, capital credits, memberships, or services.

9 Such corporations are democratically controlled and are not organized to make a
10 profit for themselves, as such, or for their members, as such, but primarily for their
11 members as patrons (Section 12243).

CAL. CORP. CODE § 12201 (emphasis added). These patronage distributions “shall be apportioned
12 among the members in accordance with the ratio that each member’s patronage during the period
13 bears to total patronage by all members during the period.” *Id.*, § 12201.5(b).

14 Because a cooperative corporation is required to be democratically controlled, members are
15 entitled to inspect and copy the “accounting books and records and minutes of proceedings of the
16 members and the board ... for a purpose reasonably related to such person’s interests as a member.”

CAL. CORP. CODE § 12603 (emphasis added). Pursuant to § 12582, “[a]ny right of inspection
17 created by this chapter extends to the records of each subsidiary of a corporation.” The rights of
18 cooperative members to inspect corporate records “may not be limited by contract or the articles or
19 bylaws.” *Id.*, § 12583.

20 “Upon refusal of a lawful demand” to inspect cooperative records, “the superior court of the
21 proper county ... may enforce the demand or right of inspection with just and proper conditions.”
22 *Id.*, § 12606(a).

23 In addition, “for good cause shown” the Court may “appoint one or more competent
24 inspectors or independent accountants to audit the financial statements kept in this state and
25 investigate the property, funds and affairs of any corporation and of any subsidiary corporation.” *Id.*

1 (emphasis added). The California Corporations Code further provides that “[a]ll officers and agents
2 of the corporation shall produce to the inspectors or accountants so appointed all books and
3 documents in their custody or power, under penalty of punishment for contempt of court.” *Id.*, §
4 12606(b) (emphasis added). While the California Corporations Code provides that costs of the
5 investigation or audit should be paid by the applicant, the Court may “order[] them to be paid or
6 shared by the [cooperative] corporation.” *Id.*, § 12606(c).

7 “In any action or proceeding” to enforce a records request, “if the court finds the failure of
8 the corporation to comply with a proper demand thereunder was without justification, the court may
9 award the member reasonable costs and expenses, including reasonable attorneys’ fees, in
10 connection with such action or proceeding.” *Id.*, § 12607.

11 **III. ARGUMENT**

12 **A. PLAINTIFF MADE A PROPER RECORDS REQUEST REASONABLY** 13 **RELATED TO HIS INTERESTS AS A MEMBER OF THE PLPCCC**

14 On July 25, 2017, Plaintiff made a demand for inspection of records of the PLPCCC, the
15 Shell Companies, and the Individual Defendants pursuant to California Corporations Code §§
16 12340, 12581, 12582, and 12603. Restis Decl., Exs. 9, 11.

17 Plaintiff’s July 25, 2017 demand asked Defendants to produce, *inter alia*:

- 18 (1) All meeting minutes for the PLPCCC and Shell Companies since January 1, 2015;
- 19 (2) All “Financial Statements” of the PLPCCC and Shell Companies since January 1,
20 2015. *See* CAL. CORP. CODE § 12217;
- 21 (3) All evidence of any “distribution” or “patronage distribution” made by the PLPCCC
22 and Shell Companies since January 1, 2015.

23 *Id.*

24 These accounting books and records are clearly “for a purpose reasonably related to
25 [Plaintiff’s] interests as a member.” CAL. CORP. CODE § 12603. Plaintiff has a very strong interest
26 in ensuring he and other PLPCCC members are not violating California’s medical marijuana laws

1 by engaging in transactions with an illegally operating dispensary. And all PLPCCC members are
2 entitled to the proper payment of patronage distributions to ensure the dispensary is non-profit.

3 **B. DEFENDANTS REFUSED PLAINTIFF’S LAWFUL INSPECTION DEMAND**

4 Despite Plaintiff explaining his interest in the PLPCCC’s books, Defendants’ counsel
5 responded that Plaintiff “appears to be an associate member” and as such “would not be entitled to
6 the documents ... requested.” Restis Decl., Ex. 12. Defendants stated “Article X, section 10.01 of
7 PLPCCC’s bylaws” provide that “associate members” (*i.e.*, each of the thousands of patrons of the
8 PLPCCC) “shall not be considered ‘members’ and shall have no rights to which a member would
9 be entitled under [Corporations Code] § 12238.” *Id.* According to Defendants, Plaintiff “does not
10 have standing to demand any of the documentation requested... as each request requires as a
11 condition that the requestor be a member of the PLPCCC.” *Id.*

12 Defendants had – and have - no reasonable justification to deny Plaintiff’s request for a
13 records review. Even if the bylaws *did* purport to prevent disclosure, the Corporations Code
14 provides that a member’s right to inspection “may not be limited by contract or the articles or
15 bylaws.” CORP. CODE § 12583. And when Plaintiff actually reviewed the PLPCCC bylaws, he
16 discovered that Defendants had misrepresented their contents. Instead, the bylaws state that:

17 The accounting books and records and minutes of proceedings of the members, the
18 Board of Directors, and committees of the Board shall be open to inspection on the
19 written demand of any member at any reasonable time, for a purpose reasonably
20 related to that person’s interests as a member.

20 Restis Decl., Ex. 14, at pp. 15-16 (emphasis added).³

21 Moreover, Defendants’ reference to California Corporations Code § 12238 is nowhere to be
22 found in the bylaws. Defendant appears to have made reference to this code section merely to
23 frustrate Plaintiff’s disclosure rights. The bylaws instead provide that “[a]ssociate members shall

24 ³ Plaintiff qualifies all allegations related to the PLPCCC bylaws because he cannot verify that
25 the PLPCCC bylaws he received from Defendants’ counsel was not drafted in response to his July
26 25, 2017 demand letter. The meta-data on the file indicates that it was created on September 19,
2017. Restis Decl., ¶ 16.

1 *not be considered members within the meaning of Corporations Code Section 5056 and shall have*
2 *no rights to which a member would be entitled under Section 5056.” Restis Decl., Ex. 14, at p. 18.*
3 But Section 5056 merely provides that a “member” is “any person who, pursuant to a specific
4 provision of a corporation’s articles or bylaws, has the right to vote” on articles, bylaws, election of
5 directors and the like. CAL. CORP. CODE § 5056(a) (emphasis added).

6 Why did Defendants misrepresent the contents of the PLPCCC bylaws? Why did they rely
7 on a provision referencing voting to argue that Plaintiff doesn’t have “standing” to see the books? Is
8 it because Defendants are diverting millions of dollars out of the PLPCCC to avoid paying
9 patronage distributions? Plaintiff is entitled to find out why *via* an order from this Court. *Id.*, §
10 12606.

11 **C. THE COURT SHOULD APPOINT AN INDEPENDENT ACCOUNTANT**

12 As described above, California Corporations Code § 12606 provides that for good cause
13 shown, the Court has the authority to “appoint one or more competent inspectors or independent
14 accountants to audit the financial statements kept in this state and investigate the property, funds
15 and affairs of any corporation and of any subsidiary corporation thereof ... and to report thereon in
16 such manner as the court may direct.” CAL. CORP. CODE § 12606(a). To ensure compliance, “[a]ll
17 officers and agents of the corporation shall produce to the inspectors or accountants so appointed all
18 books and documents in their custody or power, under penalty of punishment for contempt of
19 court.” *Id.*, § 12606(b).

20 In other words, Section 12606 authorizes the Court to deputize the independent
21 accountant(s) with plenary authority to review every aspect of the PLPCCC’s business. This
22 includes financials statements, property, funds, and *affairs* of the PLPCCC, and its “officers and
23 agents.” *Id.*, § 12606(b).

24 **1. Plaintiff Demonstrates Good Cause**

25 California Health and Safety Code § 11362.765(a) provides that none of California’s
26 medical marijuana laws “authorize any individual or group to cultivate or distribute cannabis for

1 profit.” That is why Plaintiff’s allegation that Defendants may be operating a for-profit medical
2 marijuana dispensary is so serious. California’s medical marijuana laws actually *prohibit*
3 individuals from buying and selling marijuana. But they also allow legitimate medical marijuana
4 purchases and sales to be pled and proved as *a defense* to a drug conviction. *See Jackson*, 210
5 Cal.App.4th at 530). Thus, Defendants’ conduct has created – at least – a cloud of legal uncertainty
6 over all PLPCCC members, who are “*members*” of the same cooperative corporation with
7 Defendants.⁴

8 Plaintiff’s Complaint identifies cogent facts suggesting a scheme by the Individual
9 Defendants to covertly profit off the sale of medical marijuana. *See* RoA No. 1. The Complaint
10 explains how the PLPCCC services approximately 1,000 patrons daily, amounting to millions of
11 dollars in monthly revenue, but pays no dividends. Compl., ¶ 1. It describes how the Individual
12 Defendants set up at least five Shell Companies, that they solely own and control. The Complaint
13 also describes how none of the Shell Companies have any discernable business presence, products
14 or services for sale to the general public, any marketing materials or website, or business office
15 other than the PLPCCC’s office and/or Defendant Henkes’ CPA office. *Id.*, ¶¶ 3-4, 21-27.

16 Plaintiff’s Complaint further describes the extremely suspicious excuses concocted by
17 Defendants to refuse access to cooperative records. As described above, Defendants
18 misrepresented PLPCCC bylaws when they clearly allowed inspection. When confronted about
19 this, Defendants fabricated a story that *the real reason* Plaintiff is not entitled to records is because
20 he was “banned from the facility due to his inappropriate and harassing behavior towards other
21 members.” Restis Decl., Ex. 13; Compl., ¶¶ 19-20.

22
23 ⁴ Under California case law, relevant considerations to determine whether a medical marijuana
24 business is illegally operating for profit include, *inter alia*, a high volume of customers and
25 transactions, the absence of participation by customers in the operation or governance of the
26 cooperative, information reflected in financial records, and lack of processes or procedures to
27 make the cooperative accountable to member patrons. *E.g. Jackson*, 210 Cal.App.4th at 530-539;
28 *People v. Solis*, 217 Cal.App.4th 51, 58-60 (2013). All these factors seem to be present in this case.
See Compl., ¶¶ 37-42.

1 In addition, a related labor lawsuit against Defendants similarly suggests creative
2 accounting in Defendants' medical marijuana business. Employees are allegedly paid in cash *by*
3 *the Shell Companies, without accurate wage statements, and are fired for speaking out.* Restis
4 Decl., Ex. 8, at p. 7, 11 (First Amended Complaint, *Brown v. PLPCCC et al.*, No. 37-2017-
5 00025128-CU-OE-CT).

6 Given all these facts, it is negligent not to investigate Defendants' books and affairs. This is
7 particularly true because purchases from a for-profit dispensary can potentially impact the *bona*
8 *fides* of a member's medical marijuana defense in any criminal case. For the benefit of all
9 PLPCCC members, good cause exists for the Court to appoint an independent accountant pursuant
10 to California Corporations Code § 12606.

11 **2. The PLPCCC Should Bear the Costs of Inspection**

12 While the Corporations Code provides that "expenses of the investigation or audit shall be
13 defrayed by the applicant," it also authorizes the Court to order costs to "to be paid or shared by the
14 corporation." CAL. CORP. CODE § 12606(c). Under the facts of this case, the Court should order the
15 PLPCCC to bear such costs.

16 Plaintiff's request is for the benefit of all PLPCCC member patrons. The PLPCCC bearing
17 these costs fulfills the mandate provided by the California Corporations Code that cooperative
18 business shall be conducted "primarily for the mutual benefit of its members as patrons" and that
19 revenues "shall be used for the general welfare of the members." CAL. CORP. CODE § 12201.
20 Plaintiff should not have to bear the costs of ensuring Defendants comply with their legal
21 obligations.⁵

22 ///

23 ///

25 ⁵ If the Court subsequently determines that the Individual Defendants have been utilizing the
26 Shell Companies to improperly divert funds out of the PLPCCC, Plaintiff reserves the right to
request the Court to order the Individual Defendants to bear the costs of investigation and/or audit.

1 **D. THE COURT SHOULD AWARD PLAINTIFF REASONABLE ATTORNEY**
2 **FEES AND COSTS**

3 **1. Legal Standards for Attorney Fee Awards**

4 California Corporations Code § 12607 states that “[i]n any action or proceeding under this
5 article ... if the court finds the failure of the [cooperative] corporation to comply with a proper
6 [records] demand thereunder was *without justification*, the court may award the member reasonable
7 costs and expenses, including reasonable attorneys’ fees, in connection with such action or
8 proceeding.” *Id.* (emphasis added).

9 In *Serrano v. Priest*, 20 Cal. 3d 25 (1977) (“*Serrano III*”), the California Supreme Court
10 determined the proper formula for assessing an award of attorneys fees in fee shifting statutes such
11 as Section 12607. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1131-34 (2001). “Under *Serrano III*, a court
12 assessing attorney fees begins with . . . a lodestar figure, based on the careful compilation of the
13 time spent and reasonable hourly compensation of each attorney . . . involved in the presentation of
14 the case.” *Ketchum*, at 1131-32. The lodestar is the basic fee for comparable legal services in the
15 community. *Id.* at 1132. “Affidavits of the plaintiffs’ attorney and other attorneys regarding
16 prevailing fees in the community, and rate determinations in other cases, particularly those setting a
17 rate for the plaintiffs’ attorney, are satisfactory evidence of the prevailing market rate.” *United*
18 *Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990).

19 The California Supreme Court “expressly approved the use of prevailing hourly rates as a
20 basis for the lodestar,” and directed trial courts to “carefully review attorney documentation of
21 hours expended.” *Ketchum*, 24 Cal.4th at 1132. In a related case, the Court held that, “absent
22 circumstances rendering the award unjust, an attorney fee award should ordinarily include
23 compensation for *all* the hours *reasonably spent*, including those relating solely to the fee.” *Id.* at
24 1133, citing *Serrano v. Unruh*, 32 Cal.3d 621, 624, 639 (1982) (“*Serrano IV*”).

25 The lodestar amount may be adjusted by the court based on factors including: “(1) the
26 novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the

1 extent to which the nature of the litigation precluded other employment by the attorneys, [and] (4)
2 the contingent nature of the fee award.” *Ketchum*, 24 Cal.4th at 1132, citing *Serrano III*, 20 Cal. 3d
3 at 49. The Supreme Court noted that “a contingent fee contract, since it involves a gamble on the
4 result, may properly provide for a larger compensation than would otherwise be reasonable.” *Id.*,
5 citing *Rader v. Thrasher*, 57 Cal. 2d 244, 253 (1962). The purpose of a fee enhancement, or so-
6 called multiplier, for contingent risk is to bring the financial incentives for attorneys enforcing
7 important rights, into line with incentives they have to undertake claims for which they are paid on
8 a fee-for-services basis. *Id.*⁶

9 **2. Counsel’s Lodestar Is Reasonable**

10 a. *Counsel’s Hourly Rate Is Reasonable*

11 Plaintiff has submitted sworn declarations by William R. Restis and Jeffrey R. Krinsk, the
12 partners in charge of this litigation. These declarations attest to counsel’s hourly rates, total hours
13 devoted to the case, and experience. *See* Restis Decl., ¶¶ 17-21; Krinsk Decl., ¶¶ 1-6. The hourly
14 rates submitted by counsel reflect their actual (and discounted) billing rates, which are
15 presumptively appropriate. Counsel are highly-respected members of the bar with extensive
16 experience in prosecuting high-stakes complex litigation, including consumer class actions. Restis
17 Decl., Ex. 15; Krinsk Decl., Ex. A. Counsel’s rates are appropriate for complex litigation and reflect
18 a high level of experience and skill necessary for success in this action.

19 Counsel’s hourly rates are comparable to those approved in the Southern District of
20 California, which includes San Diego County. *See Makaeff v. Trump Univ., LLC*, 2015 U.S. Dist.
21 LEXIS 46749, at *12, 15 (S.D. Cal. Apr. 9, 2015) (approving partner rates of \$600 to \$825 per hour
22 for anti-SLAPP motion in class action case); *Flowrider Surf, Ltd. v. Pac. Surf Designs, Inc.*, 2017
23 U.S. Dist. LEXIS 76757, at *6 (S.D. Cal. May 18, 2017) (approving partner rates of \$995/hr and
24 associate rates of \$645/hr on motion for discovery sanctions); *Chaikin v. Lululemon USA Inc.*, 2014

25 ⁶ The Supreme Court noted approvingly that the *Serrano III* methodology is the standard for
26 determining fees under a fee shifting statute, *unless* the statute provides another formula. *Ketchum*,
at 1134-36 (citing cases).

1 WL 1245461, at *6 (S.D. Cal. Mar. 17, 2014) (awarding partner admitted 2000, \$650/hr; partner
 2 admitted 2007, \$500/hr; partner admitted 2000, \$675/hr; partner admitted 2002, \$500/hr); *Morey v.*
 3 *Louis Vuitton N. Am., Inc.*, 2014 WL 109194, at *10-11 (S.D. Cal. Jan. 9, 2014) (awarding partner
 4 admitted 2000, \$650; associate admitted 2007, \$500; partners admitted 2000, \$675); *Grant v.*
 5 *Capital Mgmt. Servs., L.P.*, 2014 WL 888665, at *6 (S.D. Cal. Mar. 5, 2014) (approving as
 6 reasonable rates between \$525 and \$875 for partners, \$245-\$395 for associates, and \$150 for
 7 paralegals); *Iorio v. Allianz Life Ins. Co. of N. Am., Inc.*, 2011 U.S. Dist. LEXIS 21824, at *31-32
 8 (S.D. Cal. Mar. 3, 2011) (approving rates between \$595-\$750 for partners, \$410-\$575 for
 9 associates, and \$195 for paralegals).

Individual	Rate	Hours	Fee
William R. Restis (P)	\$ 600.00	89.1	\$53,460
Jeffrey R. Krinsk (P)	\$ 675.00	17.1	\$11,542.5
Trenton R. Kashima (A)	\$ 485.00	1.4	\$679
Rebecka A. Garcia (PL)	\$ 150.00	.8	\$120
Shelby Ramsey (PL)	\$ 150.00	7.2	\$1080
TOTAL		115.6	\$66,881.5

16 Counsel's rates are within approved ranges. Thus they are presumptively reasonable.

17 b. *The Number of Hours Devoted By Counsel Are Reasonable*

18 The Restis Law Firm, P.C. expended 9.8 hours of attorney time researching the facts of this
 19 case, 15.8 hours drafting the records demand that is the subject of this Motion and meeting and
 20 conferring with Defendants thereon, 41.3 hours preparing the Complaint, and 22.2 hours preparing
 21 this Motion. Restis Decl., ¶ 21. The lodestar amount for The Restis Law Firm, P.C, which does not
 22 include the time necessary to reply to this Motion or prepare and appear for oral argument, is
 23 \$53,460. *Id.*, at 22.

24 Finkelstein & Krinsk LLP expended 2.4 hours of attorney time drafting the records demand
 25 that is the subject of this Motion, 6.7 hours of attorney and paralegal time preparing the Complaint,
 26

1 and 17.4 hours of attorney and paralegal time preparing this Motion. Krinsk Decl., ¶ 4. The lodestar
2 amount for Finkelstein & Krinsk LLP is \$13,421.50. *Id.*, at 5.

3 Multiplying the hours spent by Counsel and their litigation support staff by their respective
4 hourly rates yields a **lodestar calculation of \$66,881.50.**

5 **3. Fee Enhancement Is Warranted But Not Requested**

6 The two law firms representing Plaintiff (and the putative Class he seeks to represent) have
7 taken this case on a contingency basis with absolutely no guarantee of being compensated. Restis
8 Decl., ¶ 18. Under *Ketchum* and *Serrano III*, this warrants an upward multiplier. The fact that
9 Plaintiff is not requesting a multiplier further emphasizes the reasonableness of his request.

10 **4. Costs Incurred In Enforcing Plaintiff's Right Of Inspection Are**
11 **Reasonable and Necessary**

12 Plaintiff is seeking reimbursement of his counsel's **actual expenses, which amount to**
13 **\$588.24.** Krinsk Decl., at ¶ 6. Counsel's costs include \$563.72 for Court filing fees, and \$24.52
14 for postage and copying costs. *Id.* Excluded from Plaintiff's request is the \$1,000 surcharge for
15 class action complaints, because an action to enforce Plaintiff's right of inspection did not require
16 the filing of a class action. *Id.*, ¶ 6, n. 1. Costs associated with the class action nature of this
17 litigation will be addressed in future.

18 **IV. CONCLUSION**

19 For the forgoing reasons, the Court should enter an Order:

20 (1) Enforcing Plaintiff's records demand on defendant Point Loma Patients Consumer
21 Cooperative Corporation (the "PLPCCC") and/or enforcing Plaintiff's right of inspection of
22 PLPCCC records with or without just and proper conditions as determined by this Court;

23 (2) Appointing one or more independent accountants to audit the financial statements
24 kept in this state and investigate the property, funds, and affairs of the PLPCCC, the Individual
25 Defendants" and the Shell Companies, and report thereon to the Court and the parties;

26 (3) Ordering Defendant PLPCCC and/or the Individual Defendants to bear the costs of

1 the investigation and/or audit; and

2 (4) Awarding Plaintiff his reasonable costs and attorney fees.

3 Respectfully submitted,

4 DATED: November 16, 2017

5 THE RESTIS LAW FIRM, P.C.

6 
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*