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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF SAN DIEGO**

15
16 KARL BECK, individually and on behalf
17 of all other similarly situated California
residents,

18 Plaintiff,

19 vs.

20 POINT LOMA PATIENTS CONSUMER
21 COOPERATIVE CORPORATION, a
California corporation, ADAM KNOPF, an
22 individual, JUSTUS H. HENKES IV, an
individual, 419 CONSULTING INC, a
23 California corporation, GOLDEN STATE
GREENS LLC, a California LLC, FAR
24 WEST MANAGEMENT LLC, a
California LLC, FAR WEST
25 OPERATING, LLC, a California LLC,
FAR WEST STAFFING LLC, a California
26 LLC, and DOES 1-50;

27 Defendants.
28

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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Richard Day, Deputy Clerk

CASE NO. 37-2017-00037524-CU-BT-CTL

**DEFENDANTS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF JOINT MOTION FOR
JUDGMENT ON THE PLEADINGS**

Judge: Hon. Joel Wohlfeil
Dept.: 73
Date: September 14, 2018
Time: 9:00 a.m.

Complaint Filed: October 6, 2017
Trial Date: March 1, 2019

1 Defendants Point Loma Patients Consumer Cooperative Corporation (“PLPCC”), Adam
2 Knopf, Justus Henkes, 419 Consulting Inc., Golden State Greens, Far West Management, Far
3 West Operating, and Far West Staffing (collectively “Defendants”) respectfully submit the
4 following memorandum of points and authorities in support of their Joint Motion for Judgment on
5 the Pleadings (“Motion”).

6 I. INTRODUCTION

7 PLPCC was a properly licensed medical marijuana dispensary in the City of San Diego
8 (“City”) and is currently, since state law changed, a properly licensed marijuana dispensary
9 allowed to sell medical and adult use retail marijuana.

10 Plaintiff sued Defendants alleging that, prior to passage and implementation of Prop 64,
11 they were illegally operating “for profit” under state law. To resolve and rectify Defendants’
12 allegedly illegal operations, Plaintiff’s Complaint demands that, as “members” of the cooperative
13 corporation, **Plaintiff and the proposed class should be entitled to distributions of the alleged**
14 **profits**. However, under the theory of Plaintiff’s own Complaint, Plaintiff and the proposed class
15 are precluded as a matter of law from “profiting” by the Medical Marijuana Program Act (Health
16 & Saf. Code § 11362.7 (“MMPA”)) which codifies Proposition 215. In other words, the MMPA
17 treats Plaintiff and the proposed class equally with Defendants. If Defendants were precluded
18 from “profiting” then likewise Plaintiff and the proposed class are prohibited from receiving
19 distributions of those “profits” which is precisely what the Complaint seeks. For that reason,
20 Plaintiff’s claims fail, and this Motion should be granted without leave to amend.

21 II. STATEMENT OF FACTS

22 PLPCC operates a medical marijuana storefront dispensary with a conditional use permit
23 from the City of San Diego. (Complaint ¶¶ 21-22.) The Complaint alleges that PLPCC is the
24 largest and most successful medical marijuana dispensary in San Diego County, serving
25 thousands daily and generating millions of dollars in monthly revenue. (Complaint ¶ 36.) It is
26 also alleges that despite its huge revenues, PLPCC has never made a “patronage distribution” to
27 Plaintiff or any Class member (Complaint ¶ 37) and that the Individual Defendants used all entity
28 defendants other than PLPCC to unlawfully divert funds, to hide substantial revenues from the

1 **illegal for-profit** sale of medical marijuana, to avoid showing a **profit**, and to avoid paying
2 patronage distributions to Plaintiff and the Class. (Complaint ¶¶ 14, 38-39, 71.) (emphasis
3 added.) Plaintiff alleges that funds distributed by PLPCC to the other Defendants are far in
4 excess of any reasonable compensation for services provided and out-of-pocket expenses. (Id.)

5 Plaintiff alleges that the MMPA “bars **individuals** and any collective, cooperative, or
6 other group from transforming medical marijuana projects authorized under the MMPA into for-
7 profit enterprises (prior to January 1, 2018). (Complaint ¶ 29.) Plaintiff specifically cites to
8 Health and Safety Code section 11362.765(a) which provides that neither the CUA or MMPA
9 “authorize any individual or group to cultivate or distribute cannabis for profit.” (Complaint ¶
10 31.) Plaintiff and the Class are member patrons of PLPCC that would be entitled to patronage
11 distributions (a kind of dividend for cooperative members) but for individual defendants Adam
12 Knopf and Justus Henkes’ diversion of the revenue to themselves and other defendants.
13 (Complaint ¶ 9.)

14 Plaintiff further alleges that the 2008 California Attorney General and Department of
15 Justice *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use* have
16 the stated purpose of helping patients and law enforcement understand their rights and duties for
17 the cultivation, sale and use of medical marijuana under California law (Complaint ¶ 30) and that
18 he and the [proposed] Class have a strong interest in ensuring that PLPCC is operating in
19 conformity with California’s medical marijuana laws. (Complaint ¶¶ 5, 18.)

20 **III. PROCEDURAL HISTORY**

21 On October 6, 2017, plaintiff Karl Beck (“Plaintiff”) filed the Complaint alleging 5 causes
22 of action: (1) Production or records pursuant to Corporations Code sections 12603-12607; (2)
23 Violation of the UCL; (3) Violation of the CLRA; (4) Conversion; and (5) Unjust Enrichment.
24 Plaintiff seeks damages, restitution, and disgorgement from Defendants. (Complaint ¶ 10.) The
25 parties have engaged in significant law and motion work since the case was filed primarily related
26 to discovery. By this Motion, Defendants request judgment on the pleadings as to all causes of
27 action ((1)-(4)) on the grounds that California law does not permit Plaintiff and the proposed class
28 to “profit” from the medical marijuana. Plaintiff’s requested relief is his share of the “profits.”

1 Because this is impermissible under California’s medical marijuana law, the claims fail as a
2 matter of law.

3 **IV. STANDARD OF REVIEW**

4 A motion for judgment on the pleadings is decided on the same basis as a general
5 demurrer and should be granted where the Court lacks jurisdiction or where the complaint on its
6 face fails to state a cause of action. (Code Civ. Proc. §438; *Bach v. McNelis* (1989) 207
7 Cal.App.3d 852, 865; see also *People v. \$20,000 Currency* (1991) 235 Cal.App.3d 682, 691 [JOP
8 is functional equivalent of demurrer, and same rules apply].) As with a demurrer, a motion for
9 judgment on the pleadings is confined to the face of the pleading or upon facts which are subject
10 to judicial notice, and all facts alleged in the complaint must be accepted as true. (Code Civ. Proc.
11 § 438(d); *Rangel v. Interinsurance Exchange* (1992) 4 Cal.4th 1, 7.)

12 Where pleadings raise only questions of law and no issue of material fact, the court may
13 render a judgment on the pleadings. (*DiPirro v. Am. Isuzu Motors, Inc.* (2004) 119 Cal.App.4th
14 966, 972 [noting that, in deciding a motion for judgment on the pleadings, a court admits all
15 material facts, but does not accept as true “contentions, deductions, or conclusions of fact or
16 law”].) If, as here, a plaintiff’s factual allegations could not constitute a meritorious claim as a
17 matter of law, the Court should rule in favor of the defendants. (*Fire Ins. Exchange v. Superior*
18 *Court* (2004) 116 Cal.App.4th 446, 452-53.)

19 Plaintiff alleged four causes of action against Defendants: (1) Production of Records
20 pursuant to Corporations Code sections 12603-12607; (2) Violation of the UCL; (3) Violation of
21 the CLRA; and (4) Conversion. Each cause of action is predicated on Defendants making a
22 “profit” and retaining that “profit” rather than distributing the “profit” to PLPCC members, which
23 is an issue of law that should be resolved in Defendants favor.

24 **V. PLAINTIFF’S REQUESTED RELIEF VIOLATES THE LAW**

25 The Court should enter judgment on the pleadings because Plaintiff’s requested relief, for
26 his share of PLPCC’s purported profits, and damages relating to Defendants’ purported retention
27 of those profits, violates California law. Plaintiff’s Complaint demands monetary distributions to
28 himself and PLPCC’s “members” pursuant to the Corporations Code. However, Plaintiff’s

1 receipt of profits is predicated on PLPCC’s violation of the MMPA and the non-binding AG
2 Guidelines. Specifically, for PLPCC members to receive profits, PLPCC must directly violate the
3 MMPA by allowing individuals to profit from the sale and distribution of medical marijuana.

4 As outlined below, the Corporations Code may allow some form of distribution to
5 members or patrons of a statutory consumer cooperative. This case is not illustrative of such a
6 circumstance. The facts of this case, as plead in the Complaint, demonstrate Plaintiff is not
7 permitted to receive any distributions from any profits from a statutory cooperative corporation
8 operating pursuant to the MMPA as it would be a violation of Health and Safety Code section
9 11326.765 and relevant case law. Because California law precludes Plaintiff and Defendants
10 from legally earning a profit, then it logically follows that Plaintiff has no legal entitlement to any
11 distributions that PLPCC might authorize or legal entitlement to forced distributions.

12 **A. California Cooperative Corporation Law Allows, But Does Not Mandate,**
13 **Patronage Distributions**

14 PLPCC was formed as a statutory cooperative corporation, one of the corporate forms
15 mentioned in the AG Guidelines. (See AG Guidelines IV A1.) Statutory cooperative
16 corporations are governed by Corporations Code section 12200 et seq. Of relevance here,
17 Corporations Code section 12201 states that “[t]he earnings, savings, or benefits of the
18 corporation shall be used for the general welfare of the members or shall be proportionately and
19 equitably distributed to some or all of its members or its patrons, based upon their patronage
20 (section 12243) of the corporation, in the form of cash, property, evidences of indebtedness,
21 capital credits, memberships, or services.” This section does not mandate payment of
22 distributions and Plaintiff has no legal basis to compel payment of distributions pursuant to the
23 Cooperative Corporation law. As discussed below, no statutory cooperative corporation
24 operating pursuant to the MMPA could follow Corporations Code section 12201 by issuing
25 “earning, savings or benefits in the form of cash without violating Health and Safety Code section
26 11362.75.

27 **B. The MMPA Precludes Profits From Medical Marijuana**

28 In 2003 the California Legislature enacted the MMPA, effective January 1, 2004, adding

1 sections 11362.5 through 11362.83 to the Health and Safety Code. (*People v. Wright* (2006) 40
2 Cal.4th 81, 93.) The Legislature’s express intent was to (1) Clarify the scope of the application
3 of the Compassionate Use Act (“CUA”) and facilitate the prompt identification of qualified
4 patients and their designated primary caregivers in order to avoid unnecessary arrest and
5 prosecution of these individuals and provide needed guidance to law enforcement officers; (2)
6 Promote uniform and consistent application of the CUA among the counties within the state; (3)
7 Enhance the access of patients and caregivers to medical marijuana through collective,
8 cooperative cultivation projects. It was also the Legislature’s intent to address additional issues
9 that were not included within the CUA and that required resolution to promote the fair and
10 orderly implementation of the CUA. (Stats.2003, ch. 875, § 1, subd. (b)(1)-(3), (c), italics added.)

11 Nothing in the MMPA authorizes any group or individual to cultivate or distribute
12 marijuana for profit. (Health & Saf. Code § 11362.765(a) (“nothing in this section shall authorize
13 . . . any individual or group to cultivate or distribute marijuana for profit”).) The MMPA’s plain
14 language explicitly prevents what Plaintiff requests – disbursement of profits from PLPCC’s sale
15 of medical marijuana. Because the MMPA precludes profit from the cultivation or distribution of
16 marijuana, should any profit result from the cultivation or distribution of marijuana, it would
17 violate Health and Safety Code section 11362.765(a) for any person to receive such profits or any
18 portion thereof. Plaintiff, a person, says he is entitled to profit from PLPCC’s sale of medical
19 marijuana and by this Complaint, seeks the Court to compel PLPCC to pay him alleged profits.
20 Plaintiff’s request is precluded by law and, therefore, Plaintiff and the proposed class are not, and
21 cannot be, entitled to profits and this Motion should be sustained without leave to amend.

22 **C. Any Conflict Between California’s Consumer Cooperative Law And The**
23 **Health And Safety Code Should Be Resolved In Favor Of The Health And**
24 **Safety Code**

25 Statutes must be given reasonable interpretation, one which will carry out intent of
26 legislatures and render them valid and operative rather than defeat them. It is well settled, also,
27 that a general provision is controlled by one that is special, the latter being treated as an exception
28 to the former. A specific provision relating to a particular subject will govern in respect to that

1 subject, as against a general provision, although the latter, standing alone, would be broad enough
2 to include the subject to which the more particular provision relates. (*Rose v. State* (1942) 19
3 Cal.2d 713, 723-24.) A statute must be reasonably and fairly interpreted so as to give it efficient
4 operation and so as to give effect, if possible, to express legislative intent. (*American Industrial*
5 *Sales Corp. v. Airscope, Inc.* (1955) 44 Cal.2d 393; *H.S. Mann Corp. v. Moody* (1956) 144
6 Cal.App.2d 310.)

7 In the event Plaintiff argues the general Cooperative Corporation law controls over the
8 Health and Safety Code, e.g. that profits from medical marijuana are not precluded by law, or
9 there is a conflict between the two, the Health and Safety Code should control. The more general
10 cooperative corporation law is intended to guide all types of business that take on the corporate
11 form, regardless of business type. Health and Safety Code section 11362.765 specifically
12 regulates medical marijuana and expressly prevents profiting from the same. The Health and
13 Safety Code expresses a clear legislative intent related to medical cannabis, an intent not present
14 in the general Cooperative Corporation law. Because the Health and Safety Code is a specific
15 provision relating to a specific subject, the Health and Safety Code should control in this case.
16 Pursuant to Health and Safety Code section 11362.765, Plaintiff is not entitled to profit from the
17 sale or distribution of medical cannabis. This issue is irreconcilable as a matter of law and
18 therefore a motion for judgment on the pleadings should be sustained without leave to amend.

19 **D. The AG Guidelines Are Not Binding Law, Do Not Create A Private Right Of**
20 **Action, And Plaintiff's Reliance On Them As A Basis For Relief Is Improper**

21 The MMPA at Health and Safety Code section 11362.81(d) requires the Attorney General
22 to develop and adopt appropriate guidelines to ensure the security and non-diversion of marijuana
23 grown for medical use by patients qualified under the CUA. In 2008, as required by the MMPA,
24 California Attorney General Edmund G. Brown Jr. released guidelines that clarified California's
25 Proposition 215 for the first time since it was passed in 1996. Although the Attorney General's
26 views are entitled to considerable weight, they are not binding. (*Freedom Newspapers, Inc. v.*
27 *Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 829; *Unger v. Superior*
28 *Court* (1980) 102 Cal.App.3d 681, 688; *Meyer v. Board of Trustees* (1961) 195 Cal.App.2d 420,

1 431.)

2 The AG Guidelines stated purpose is to “(1) ensure that marijuana grown for medical
3 purposes remains secure and does not find its way to non-patients or illicit markets, (2) help law
4 enforcement agencies perform their duties effectively and in accordance with California law, and
5 (3) help patients and primary caregivers understand how they may cultivate, transport, possess,
6 and use medical marijuana under California law.” (AG. Guidelines, p. 1.) Among other things,
7 the AG Guidelines articulate requirements for the lawful operation of nonprofit cooperatives and
8 collectives for the collective cultivation of medical marijuana by qualified patients. (AG
9 Guidelines, p. 8.)

10 The AG Guidelines also address the issue of "dispensaries." The Attorney General stated
11 that "while dispensaries, as such, are not recognized under the law, a properly organized and
12 operated collective or cooperative that dispenses medical marijuana through a storefront may be
13 lawful under California law, but dispensaries that do not substantially comply with the guidelines
14 [covering collectives and cooperatives] are likely operating outside the protections of the CUA
15 and the MMPA”

16 In Court pleadings, Plaintiff cited caselaw to enforce the AG Guidelines as an appropriate
17 consideration for his claims. Plaintiff’s reliance is misplaced. First, as cited above, the AG
18 Guidelines are non-binding.

19 Second, the AG Guidelines are internally inconsistent. While Section VI(B)(1) states
20 “[n]othing in Proposition 215 or the MMP authorizes collectives, cooperatives, or **individuals** to
21 profit from the sale or distribution of marijuana” (see e.g. Health § Saf. Code 11362.765(a),
22 Section VI(A)(1) speaks to Statutory Cooperatives in that they are “not organized to make a profit
23 for themselves, as such, or for their members, as such, but primarily for their members as
24 patrons.” These two sections are inconsistent and cannot be reconciled. Thus, even if the AG
25 Guidelines support Plaintiff’s claims, their internal inconsistency should encourage the Court to
26 analyze the claims under the Health and Safety Code (the MMPA), which is not internally
27 inconsistent and is binding law. Nothing in the MMPA allows anyone to receive profits from the
28 distribution of marijuana, and that would include any distribution of profits from a Statutory

1 Cooperative to its members and “patrons” as identified in the AG Guidelines. Therefore, Health
2 and Safety Code section 11362.765 trumps Plaintiff’s assertion he, or any proposed class
3 member, are entitled to any patronage distribution in the form of profits made by any statutory
4 cooperative operating pursuant to the MMPA.

5 Third, Plaintiff’s legal theory is predicated on the unsupportable position that the AG
6 Guidelines create a private right of action and that the AG Guidelines somehow supersede the
7 Health and Safety Code. Because this legal theory cannot be reconciled with legal authority that
8 Plaintiff is entitled to profits, the claims fail as a matter of law.

9 **E. Plaintiff Admits He Is Not Entitled To Profits**

10 The Complaint states that the MMPA “bars **individuals** and any collective, cooperative,
11 or other group from transforming medical marijuana projects authorized under the MMPA into
12 for-profit enterprises (prior to January 1, 2018).” (Complaint ¶ 29.) Plaintiff specifically cites to
13 Health and Safety Code section 11362.765(a) which provides that neither the CUA or MMPA
14 “authorize any individual or group to cultivate or distribute cannabis for profit.” Complaint ¶ 31.)
15 Plaintiff’s own Complaint pleads him out of the very relief he seeks- receipt of profits. Because
16 Plaintiff admits he is not entitled to profits, the Motion should be granted without leave to amend.

17 **VI. MEET AND CONFER EFFORTS**

18 Counsel for Defendants attempted to meet and confer with counsel for Plaintiff. The
19 discussion was not meaningful as Plaintiff indicated Defendants were “wrong” but refused to
20 elaborate, explaining that we would understand his argument when we read his opposition.

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VII. CONCLUSION

For the foregoing reasons, Defendants respectfully request the Court grant their Motion for Judgment on the Pleadings without leave to amend.


Dated: July 27, 2018

DART LAW

By 
MATTHEW B. DART
Attorney for Defendants 419 Consulting,
Inc., Adam Knopf and Justus Henkes

Dated: July 27, 2018

AUSTIN LEGAL GROUP, APC

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