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

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

18 Plaintiff,

19 vs.

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

26 Defendants.
27
28

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County of San Diego
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CASE NO. 37-2017-00037524-CU-BT-CTL

**DEFENDANTS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF JOINT DEMURRER TO
COMPLAINT**

Judge: Hon. Joel Wohlfeil
Dept.: C-73
Date: January 19, 2018
Time: 9:00 a.m.

Complaint Filed: October 6, 2017
Trial Date: Not Set

1 Defendants Point Loma Patients Consumer Cooperative Corporation (“PLPCC”), Adam
2 Knopf, Justus H. Henkes IV (Knopf and Henkes the “Individual Defendants”), 419 Consulting,
3 Inc., Golden State Greens, LLC., and Far West Management, LLC, Far West Operating, LLC,
4 and Far West Staffing, LLC (the “Far West Entities”) (collectively “Defendants”) respectfully
5 submit this memorandum of points and authorities in support of their demurrer to plaintiff Karl
6 Beck's Complaint.

7 **I. STATEMENT OF FACTS**

8 **A. PLPCC is a Properly Permitted Medical Marijuana Dispensary**

9 PLPCC is the "permittee" for a properly permitted medical marijuana dispensary
10 ("MMCC"), as evidenced by Conditional Use Permit 1377388 ("CUP"), approved by the City of
11 San Diego's ("City") Planning Commission on March 19, 2015 and recorded in San Diego County
12 on April 3, 2015. (*See* Request for Judicial Notice ("RJN"), Exhibit 1; Complaint ¶¶ 21, 22.)

13 On September 14, 2016, the City's Development Services Department recommended
14 approval of a CUP amendment that expanded the existing MMCC. As part of its
15 recommendation, the City's project manager noted "[s]ince opening one year ago, Code
16 Enforcement Division has had no active enforcement cases for 3452 Hancock Street." (RJN,
17 Exhibit 2.) 3452 Hancock Street is PLPCC's dispensary address. (Complaint, ¶ 21.)

18 On September 16, 2016, the City approved a CUP amendment that allowed the MMCC to
19 expand from 832 square feet to 1,503 square feet. (RJN, Exhibit 3.) PLPCC remained the
20 "permittee." (*Id.*)

21 The Complaint admits that PLPCC is properly permitted and received approval from the
22 City of San Diego to operate. (Complaint, at ¶¶ 22, 35.)

23 **B. Plaintiff's History with PLPCC**

24 On or around March 1, 2016, Plaintiff alleges he became a “patron” of PLPCC, which
25 Plaintiff claims, without explanation, is the largest and most successful medical marijuana
26 dispensary in San Diego County. (Complaint ¶¶ 1, 13.) Plaintiff vaguely estimates purchasing
27 medical cannabis approximately six times over a six month span. (Complaint ¶ 14.) According
28 to Plaintiff, PLPCC banned him “due to inappropriate and harassing behavior towards other

1 members." (Complaint, ¶ 19.)

2 At some unidentified point in time, Plaintiff claims that he became concerned with the
3 "sheer volume" of business PLPCC was transacting. (Complaint ¶ 2.) At some unidentified date,
4 Plaintiff purports to have discerned (through some unidentified mechanism, and admittedly
5 without any insight into PLPCC's books and records), that PLPCC had earnings above expenses
6 and thus, in Plaintiff's view, was operating a for-profit medical marijuana dispensary.

7 (Complaint ¶¶ 38-40.) Plaintiff also wildly (and falsely) speculates, without explanation, that
8 PLPCC has approximately 1,000 patrons daily and generates millions in monthly revenue,
9 apparently basing his estimates on his own purchases of medical cannabis at PLPCC six times.
10 (Complaint ¶¶ 1, 14.) Plaintiff did not bring any of these concerns to PLPCC or its management.
11 Plaintiff did not attempt to understand the true facts related to the operation of PLPCC's business.
12 Instead, Plaintiff and his lawyers attempted a shake-down to secure a quick settlement.

13 **C. This Shakedown Lawsuit**

14 On or around July 25, 2017 and August 30, 2017, Plaintiff, through counsel, made a
15 demand for records on Defendants on the allegation that Defendants were operating an illegal for-
16 profit medical marijuana business. (Complaint ¶ 14.) Although Plaintiff purportedly believed
17 that PLPCC was operating in violation of local and state law, Plaintiff did not report PLPCC to
18 the City or other authorities; instead, Plaintiff demanded personal pecuniary gain including
19 disgorgement of revenues, distributions to "member patrons" of earnings, and threatened a class
20 action suit for damages. (Complaint, Ex. A.) Plaintiff's lawyers demanded their attorneys' fees
21 as well. (*Id.*) Defendants appropriately declined Plaintiff's pre-litigation extortion demands.
22 (Complaint, ¶¶ 17-19, Ex. A.) This lawsuit followed.

23 According to the Complaint, California law provides that a medical marijuana cooperative
24 may have earnings, but these earnings must be used for the general welfare of its members or
25 equitably distributed to members in the form of cash, property, credits, or services. (Complaint ¶
26 32.) Notably, Karl Beck does not allege that he was denied medical cannabis. He also does not
27 allege that he was overcharged for his medical cannabis. He does not allege that the facility, the
28 product, the staff, or the security was inadequate. He does not allege that he is required to share in

1 PLPCC's operating expenses nor does he allege any facts related to PLPCC's operating expenses.
2 In sum, he does not allege that PLPCC failed to use earnings for the "general welfare of its
3 members." The Complaint alleges only that PLPCC did not pay out monetary "patronage
4 distributions" which, according to the law cited in the Complaint, assuming there are earnings, are
5 optional. (Complaint, ¶ 32.)

6 **II. LEGAL STANDARD FOR DEMURRERS**

7 Code of Civil Procedure section 430.10 provides in relevant part that a party against
8 whom a complaint has been filed may object by demurrer on any one or more of the following
9 grounds: (b) the person who filed the pleading does not have the legal capacity to sue; (d) there is
10 a defect or misjoinder of parties; (e) the pleading does not state facts sufficient to constitute a
11 cause of action; and (f) the pleading is uncertain. (Code Civ. Proc. §§ 430.10(b)(d)(e) and (f).)
12 As used in this subdivision the term "uncertain" includes a pleading which is ambiguous and
13 unintelligible. (*Id.*) A demurrer is used to challenge defects that appear on the face of the
14 pleading and can be used where the complaint itself is incomplete or discloses some defense that
15 would bar recovery. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Donabedian v. Mercury*
16 *Insurance Co.* (2004) 116 Cal.App.4th 968, 994.) Leave to amend should be denied when there is
17 no possibility the plaintiff can state a cause of action. (*Lawrence v. Bank of America* (1985) 163
18 Cal.App.3d 431, 436 ("leave to amend denied where the facts are not in dispute and the nature of
19 the claim is clear but no liability exists."))

20 In addition to the complaint's allegations and exhibits, the Court can consider matters that
21 must or may be judicially noticed. (*Blank v. Kirwan, supra*, 39 Cal.3d at 318; *Angelucci v.*
22 *Century Supper Club* (2007) 41 Cal.4th 160, 166; *Hoffman v. Smithwoods RV Park, LLC* (2009)
23 179 Cal.App.4th 390, 400.) If such judicially noticeable facts render an otherwise facially valid
24 complaint defective, judgment on the pleadings is proper. (See *Evans v. City of Berkeley* (2006)
25 38 Cal.4th 1, 6.) This rule discourages plaintiffs from filing sham pleadings: "Under the doctrine
26 of truthful pleading, the courts 'will not close their eyes to situations where a complaint contains
27 allegations of fact inconsistent with attached documents, or allegations contrary to facts that are
28 judicially noticed.'" (*Hoffman v. Smithwoods, supra*, 179 Cal.App.4th at 400; accord, *C.R. v.*

1 *Tenet Healthcare Corp.* (2009) 169 Cal.App.4th 1094, 1102 (allegations contrary to the law or to
2 a fact of which judicial notice may be taken will be treated as a nullity.)

3 **III. PLAINTIFF’S COMPLAINT IS DEFICIENT BECAUSE IT FAILS TO**
4 **ADEQUATELY PLEAD CIVIL CONSPIRACY AND ALTER EGO**

5 **A. All Claims Based On A Civil Conspiracy Theory Fail**

6 The Complaint contains a “Civil Conspiracy Allegations” section with four conclusory,
7 non-specific allegation paragraphs. (Complaint ¶¶ 43-46.) The Complaint fails to allege,
8 however, which causes of action are stated against which defendants *based on civil conspiracy*.
9 To the extent any of the five claims are alleged on that basis, however, they fail to allege facts
10 sufficient to constitute a cause of action.

11 Conspiracy itself is not a cause of action in California, nor is it an independent tort. It is a
12 mechanism to impose vicarious liability. Defendants who did not commit the tort may be jointly
13 liable with the tortfeasors if they share a common plan or design in its perpetration. (*Berg & Berg*
14 *Enterprises, LLC v. Sherwood Partners, Inc.* (2005) 131 Cal.App.4th 802, 823. To plead a
15 conspiracy-based claim, the complaint must allege acts that would have given rise to a tort
16 without the conspiracy. A bare conspiracy itself is not actionable. (*Kenne v. Stennis* (2014) 230
17 Cal.App.4th 953, 968-969.) Mere conclusory allegations of a conspiracy will not withstand
18 demurrer. The complaint must allege: (1) defendant had knowledge of and agreed to both the
19 objective and course of action to injure plaintiff; (2) the wrongful act pursuant to such agreement,
20 and (3) resulting damage to plaintiff. (See *Quelimane Co., Inc. v. Stewart Title Guar. Co.* (1998)
21 19 Cal.4th 26, 47.)

22 Here, the Complaint alleges, in bare and conclusory fashion, that the “Individual
23 Defendants and Shell Companies” are responsible for harm to Plaintiff for concealing an alleged
24 for-profit marijuana business. (Complaint ¶¶ 43-46.) Such bare legal conclusions of a conspiracy
25 are insufficient. (*State of Calif. Ex rel. Metz. v. CCC Information Systems, Inc.* (2007) 149 Cal.
26 App.4th 402, 419.) The Complaint fails to allege which named defendant had what knowledge,
27 fails to allege the specifics of any agreement or wrongful act pursuant to an agreement, and does
28 not allege damages other than "nominal" out of pocket costs that Plaintiff paid to purchase his

1 medical cannabis.

2 Accordingly, the Court should sustain the demurrer to all causes of action against the any
3 Defendant that rely on a civil conspiracy theory on the basis of failure to state facts sufficient to
4 constitute a cause of action. (Code Civ. Proc. § 430.10(e).)

5 **B. All Claims Based On An Alter Ego Theory Fail**

6 The Complaint contains an “Alter Ego/Corporate Piercing Allegation” section with three
7 conclusory, non-specific allegation paragraphs. (Complaint, ¶¶ 47-49.) Plaintiff’s entire premise
8 for an alter ego theory of liability relies on conclusory allegations that Adam Knopf and Justus
9 Henkes IV governed the Far West Entities. That is insufficient for an alter ego theory and the
10 causes of action relying on alter ego should be dismissed.

11 Pleading alter ego requires (1) “that there be such unity of interest and ownership that the
12 separate personalities of the corporation and the individual no longer exist, and (2) that, if the acts
13 are treated as those of the corporation alone, an inequitable result will follow.” (*Associated*
14 *Vendors, Inc. v. Oakland Meat Co.* (1962) 210 Cal.App.2d 825, 837.) Cases which have
15 considered the alter ego doctrine find that both of the above requirements must be found to exist
16 before the corporate existence will be disregarded. (*Id.*)

17 Plaintiff’s Complaint is devoid of any specific allegations supporting the material factors
18 California courts have used to determine that alter ego is present, such as: (i) commingling of
19 funds and other assets, failure to segregate funds of the separate entities, and the unauthorized
20 diversion of corporate funds or assets to other than corporate uses (*Riddle v. Leuschner* (1959) 51
21 Cal.2d 574; *Talbot v. Fresno-Pacific Corp.* (1960) 181 Cal.App.2d 425, 431); (ii) the treatment
22 by an individual of the assets of the corporation as his own (*Riddle v. Leuschner, supra*, 51 Cal.2d
23 574; *Minton v. Cavaney* (1961) 56 Cal.2d 576); (iii) the failure to obtain authority to issue stock
24 or to subscribe to or issue the same (*Automotriz etc. De California v. Resnick* (1957) 47 Cal.2d
25 792, 796; *Wheeler v. Superior Mortgage Co.* (1961) 196 Cal.App.2d 822); (iv) the holding out by
26 an individual that he is personally liable for the debts of the corporation (*Stark v. Coker* (1942) 20
27 Cal.2d 839, 846); or (v) the failure to maintain minutes or adequate corporate records, and the
28 confusion of the records of the separate entities (*Stark v. Coker, supra*, 20 Cal.2d 839; *Riddle v.*

1 *Leuschner, supra*, 51 Cal.2d 574).

2 Plaintiff's alter ego allegations do not extend past his supposition that his attorney's public
3 records search sufficiently links Defendants to impose alter ego liability. These allegations are
4 insufficient and accordingly the demurrer should be sustained to the extent Plaintiff's claims arise
5 from alter ego. (Code Civ. Proc. § 430.10(e).)

6 **IV. PLAINTIFF'S COMPLAINT FAILS TO STATE FACTS SUFFICIENT TO**
7 **CONSTITUTE A CAUSE OF ACTION AGAINST DEFENDANTS**

8 **A. The Second Cause of Action For Violation Of The UCL Fails to State a Claim**

9 Business and Professions Code section 17200 ("Section 17200") proscribes "unlawful,
10 unfair, or fraudulent business acts." California courts apply different meanings to each of the
11 three prongs and Plaintiff must allege Defendants participated in one of these acts or practices to
12 bring a Section 17200 claim. (*See Emry v. Visa International Service Ass'n.* (2002) 95
13 Cal.App.4th 952, 960.) The Complaint alleges Defendants are operating an "illegal" for-profit
14 dispensary and thus appear to be alleging a Section 17200 based on an "unlawful" act or practice.

15 A claim that a defendant has violated Section 17200 by "unlawful" activity is only as good
16 as the underlying claims of "unlawfulness" on which it rests. Where the underlying claims fail,
17 the Section 17200 claim must also fail. (*Khoury v. Maly's of Cal., Inc.* (1993) 14 Cal.App.4th
18 612, 619.) Moreover, any defense to the "borrowed" claim is a defense to the Section 17200
19 claim. (*People v. Duz-Mor Diagnostic Laboratory, Inc.* (1998) 68 Cal.App.4th 654, 673.)
20 Plaintiff's "borrowed" claims, for violating the CLRA and California's medical marijuana laws,
21 fail as a predicate act to his Section 17200 claim.

22 Plaintiff alleges Defendants violated the *Guidelines for the Security and Non-Diversion of*
23 *Marijuana Grown for Medical Use* (the "Guidelines"). Specifically, Plaintiff cites to language
24 that earnings "must be used for the general welfare of its members or equitably distributed to
25 members in the form of cash, property, credits or services." (Complaint ¶ 32.) Plaintiff also
26 alleges he is entitled to "patronage distributions" against all Defendants pursuant to Corporations
27 Code section 12200 et seq., which governs consumer cooperation corporations. (Complaint ¶ 70.)
28 This is not the case.

1 First, the Guidelines do not unequivocally state that earnings must only be distributed in
2 the form of cash nor do the Guidelines state that medical marijuana cooperative members are
3 legally entitled to money or property. Moreover, Corporations Code section 12420 provides that
4 “a corporation may issue memberships having different rights, privileges, preferences,
5 restrictions, or conditions, as provided in its articles or bylaws.” Corporations Code section 12454
6 states that “nothing prohibits additional restrictions ... upon distributions, or upon patronage
7 distributions, by provision in a corporation’s articles or bylaws or agreement entered into by the
8 corporation.”

9 The Complaint acknowledges that PLPCC's bylaws create two types of member classes
10 and place restrictions on distributions and patronage distributions by member class. The
11 Complaint recognizes this by alleging that Plaintiff and the Class are “associate members” of the
12 medical marijuana cooperative. (Complaint ¶¶ 17-18). The Complaint also recognizes that the
13 Bylaws exclude Associate Members from surplus distributions. PLPCC's decision to create
14 different member classes does not violate California law nor does Plaintiff's non-receipt of
15 patronage dividends. Because Plaintiff has failed to plead an underlying violation of a law or
16 statute, the Section 17200 claim fails.

17 **B. The Third Cause Of Action For CLRA Fails As To All Defendants Other**
18 **Than PLPCC**

19 The CLRA claim alleges “Defendants sell ‘goods’ from the PLPCC storefront” and
20 Plaintiff’s “purchases from the PLPCCC are ‘transactions’ within the meaning of CLRA.”
21 (Complaint, ¶ 76-79.) However, the Complaint also clearly alleges that *only defendant PLPCC* is
22 operating a dispensary storefront where “goods” are “transacted:”

- 23 • “The PLPCC is the largest and most successful medical marijuana dispensary in
24 San Diego County” (Complaint ¶ 1.)
- 25 • “The PLPCCC operates a medical marijuana storefront dispensary...” (Complaint
26 ¶ 22.)
- 27 • “Plaintiff is a member patron of PLPCC...” (Complaint, ¶ 2.)
- 28 • “The Class pled herein is defined as ‘All California residents, who from December

1 3, 2014 through the present, purchased any product *from the Point Loma Patients*
2 *Consumer Cooperative Corporation.*” (Complaint, fn 1) (emphasis added.)

3 The CLRA claim does not specify the defendants against which it is asserted. To the
4 extent this claim is alleged against defendants the Far West Entities, 419 Consulting Inc., Golden
5 State Greens, LLC, Adam Knopf or Justus H. Henkes IV, the Complaint fails to allege facts
6 sufficient constitute a cause of action against those parties. None of these Defendants are alleged
7 to have sold “‘goods’ from the PLPCC storefront,” nor are they parties to the alleged
8 “transactions” with PLPCC. Instead, the Complaint makes clear that these defendants are *not* in
9 the storefront transaction of goods business, but rather are engaged in:

- 10 • “real estate development” - Golden State Greens, LLC;
- 11 • “business to business management services” - all three Far West entities;
- 12 • “consulting – marketing, [management]” – 419 Consulting, Inc.;
- 13 • Officers and/or directors – Adam Knopf and Justus Henkes IV.

14 (Complaint ¶¶ 24-27.)

15 The Complaint specifically alleges that only PLPCC sold such “goods” and that only
16 PLPCC “transacted” with Plaintiff. Without the required elements of “goods” sold and
17 “transactions” with plaintiff, the CLRA claim fails with respect to defendants Far West
18 Management, LLC, Far West Operating, LLC, Far West Staffing, LLC, 419 Consulting Inc.,
19 Golden State Greens, LLC, Adam Knopf and Justus H. Henkes IV. (Civ. Code §§ 1761(a), (e).)

20 To the extent this claim is alleged against the aforementioned Defendants on either a civil
21 conspiracy or alter ego theory, the claim fails for the reasons set forth in sections III-A, B, *infra*.

22 **C. The Fourth Cause Of Action For Conversion Fails To Allege Facts Sufficient**
23 **To State A Claim**

24 “Conversion is the wrongful exercise of dominion over the property of another. The
25 elements of a conversion claim are: (1) the plaintiff’s ownership or right to possession of the
26 property; (2) the defendant’s conversion by a wrongful act or disposition of property rights; and
27 (3) damages.” (*Lee v. Hanley* (2015) 61 Cal.4th 1225, 1240.)

28 The Complaint alleges that medical marijuana cooperative corporations, such as PLPCC,

1 are governed by Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical
2 Use (“Guidelines”). (Complaint ¶ 31.) Importantly, the Complaint admits that the “Guidelines
3 note that a medical marijuana cooperative may have earnings, but these ‘must be used for the
4 general welfare of its members or equitably distributed to members in the form of cash, property,
5 credits or services.” (Complaint ¶ 32) (bold emphasis added.)

6 The Complaint entirely ignores the first clause regarding earnings used for the general
7 welfare of its members. Instead, the conversion claim rests on the allegation that Plaintiff and the
8 Class “had a legal right to distributions of revenues in excess of (legitimate) costs, i.e. ‘patronage
9 distributions’ as defined by, and as calculated by, the Corporations code.” (Complaint ¶ 85.)

10 Plaintiff and the Class cannot have a legal right to ‘patronage distributions’ when,
11 according to the law cited and quoted by the Complaint, Defendants may alternatively use such
12 earnings “for the general welfare of its members.” (Guidelines, at 8; Complaint ¶ 31.)

13 Without a legal right to possession of the subject property (earnings), the conversion claim
14 necessarily fails. *See Moore v. Regents of the Univ. of Cal.* (1990), 51 Cal. 3d 120, 136 (“Where
15 plaintiff neither has title to the property alleged to have been converted, nor possession thereof, he
16 cannot maintain an action for conversion.”)

17 **D. The Fifth Cause Of Action For Unjust Enrichment Fails To State A Claim**

18 “[T]here is no cause of action in California for unjust enrichment.” (*Melchior v. New Line*
19 *Productions, Inc.* (2003) 106 Cal.App.4th 779, 793.) The phrase “unjust enrichment” does not
20 describe a theory of recovery, but an effect: the result of a failure to make restitution under
21 circumstances where it is equitable to do so. In order to determine whether this claim is properly
22 pleaded, the Court must examine the allegations and determine whether, notwithstanding the title,
23 it gives rise to a valid claim for restitution. (*Id.* at 387-88.) Here, Defendants' claim for unjust
24 enrichment pleads no cognizable legal claim.

25 Restitution is generally available in two circumstances: (1) when a contract is rendered
26 voidable or unenforceable by fraud or other misconduct; or (2) when an obligation to repay
27 consideration received will be implied by law (quasi-contract). (*McBride v. Boughton* (2004) 123
28 Cal.App.4th 379, 388.) Plaintiff has failed to plead either of these circumstances to give rise to a

1 claim for restitution.

2 Plaintiff's "unjust enrichment" claim is based on the erroneous conclusion he was entitled
3 to patronage distributions from PLPCC. However, does not, and cannot, demonstrate that
4 patronage distributions are required or necessary to ensure a cooperative corporation's non-profit
5 status. Plaintiff's Complaint contains this contradiction. Despite Plaintiff's claim that patronage
6 distributions are required, Plaintiff quotes the Guidelines which expressly provide a medical
7 marijuana cooperative with several discretionary methods to deal with earnings. Furthermore, the
8 Complaint does not alleged that Plaintiff's fees were paid to the cooperative in excess of what is
9 "reasonably calculated" to cover overhead costs and operating expenses. Without more,
10 Plaintiff's claim to restitution, styled as a cause of action for unjust enrichment, should be
11 dismissed without leave to amend.

12 **V. CONCLUSION**

13 For all the foregoing reasons, Defendants respectfully request that the Court sustain the
14 Demurrer to the Plaintiff's Complaint, on all causes of action, without leave to amend.

15 Dated: December 7, 2017

DART LAW

17
18 By 

19 MATTHEW B. DART
Attorney for Defendants Adam Knopf and
Justus Henkes

20 Dated: December 7, 2017

AUSTIN LEGAL GROUP, APC

21
22 By: 

23 Gina M. Austin/Tamara Leetham,
24 Attorneys for Point Loma Patients
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