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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

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

12/22/2017 at 08:00:00 AM

Clerk of the Superior Court
By Lee McAlister, Deputy Clerk

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

**DEFENDANTS' JOINT MEMORANDUM
OF POINTS AND AUTHORITIES IN
OPPOSITION TO PLAINTIFF'S MOTION
PURSUANT TO CALIFORNIA
CORPORATIONS CODE §§ 12603-12607
FOR PRODUCTION OF RECORDS,
APPOINTMENT OF INDEPENDENT
ACCOUNTANT AND AWARD OF
ATTORNEYS FEES AND COSTS**

[Imaged File]

Judge: Hon. Joel Wohlfeil
Dept.: 73
Date: January 5, 2018
Time: 9:00 a.m.

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

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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 joint opposition to plaintiff
6 Karl Beck's Motion Pursuant To Corporations Code section 12603-12607.

7 8 **I. INTRODUCTION**

9 According to the Complaint and this motion, California law provides that a medical
10 marijuana cooperative may have earnings, but these earnings must be used for the general welfare
11 of its members or equitably distributed to members in the form of cash, property, credits, or
12 services. Plaintiff does not allege he was denied medical cannabis. He also does not allege that he
13 was overcharged for his medical cannabis. He does not allege that he is required to share in
14 PLPCC's operating expenses nor does he allege any facts related to PLPCC’s operating expenses.
15 Plaintiff has submitted no evidence that PLPCC faced, or is currently facing, any regulatory or
16 compliance issues with any state or local agency. Instead, Plaintiff, or his attorney, determined
17 PLPCC was a cash cow and has used the Corporations Code and this Court in an attempt to extort
18 money. When PLPCC denied Plaintiff's inspection request, Plaintiff's attorney threw the
19 equivalent of a legal temper tantrum and threatened defendants. (Dart Declaration, Exs. 1, 2.)
20 Mr. Restis made criminal and administrative threats including: (1) "I know that if I go to a bully
21 politely asking for my money back, he will tell me to shove it. But if I ask for my money back
22 with a baseball bat, or a gun, the bully is likely to oblige;" (2) "I am concerned that filing the
23 attached complaints will unleash a chain of events outside of your control;" (3) "I am not sure you
24 realize that the (apparent) structure of their marijuana business falls squarely within the ambit of
25 criminal cases finding defendants guilty. So instead of filing the attached complaints this
26 morning, I am sending them for review in hope you won't walk your clients off a cliff." (*Id.*)

27 Mr. Restis also states, among other things, that he also knows the "Honorable Judge
28 Trapp" (the judge in Mr. Restis' related case with PLPCC) is a former District Attorney, and that

1 her husband is a County Sheriff, implying that a judicial officer cannot remain unbiased as to
2 PLPCC's civil liability. (Dart Decl., Ex. 2.) This lawsuit is nothing more than Plaintiff's attempt to
3 extort money from the defendants.

4 The crux of Plaintiff's claim to money hinges on his attorney's allegation, with no
5 evidentiary support other than the unverified Complaint, that PLPCC is operating a for profit
6 medical marijuana dispensary by not paying "patronage" dividends. As outlined below, Plaintiff's
7 motion is procedurally and substantively defective and should be denied in its entirety.

8 **II. STATEMENT OF FACTS**

9 Defendants Adam Knopf and Justus Henkes have known each other for years and are
10 involved in several separate businesses in the medical marijuana industry. (Knopf Decl. ¶¶ 2-6.)
11 Mr. Henkes is the account for PLPCC and the Far West Entity Defendants. (Knopf Decl. ¶ 15

12 Mr. Knopf has been PLPCC's CEO since formation and was responsible for submitting
13 PLPCC's application to operate as a medical marijuana dispensary and its subsequent approval by
14 the City of San Diego ("City"). (Knopf Decl. ¶¶ 7-10, ¶¶ 13-14, ¶¶ 16-21.) PLPCC opened in
15 August 2015 and adopted bylaws ("Bylaws") that create "Associate Members" that are excluded
16 from a variety of corporate functions including the right to inspect and share dividends. (Knopf
17 Decl. ¶¶ 11-12, 17.)

18 It cost PLPCC hundreds of thousands of dollars to open as it was non-operational for
19 almost a year and a half but required significant capital to make it to opening day. (Knopf Decl. ¶
20 25.) PLPCC has been open for just over two years and has significant operating costs and other
21 debt and expenses and has not declared "patronage distributions." (Knopf Decl. ¶¶ 24.) It has not
22 had any code enforcement or law enforcement issues and it has no subsidiaries or ownership
23 interests in other corporations. (Knopf Decl. ¶¶ 26-28.)

24 PLPCC pays defendant Far West Operating, LLC ("FWO") (and its wholly owned
25 subsidiaries defendants Far West Management and Far West Staffing) a fair value to handle
26 management and staffing services. (Knopf Decl. ¶¶ 32-38.) FWO has its own corporate books
27 and records, does not have an exclusivity agreement with PLPCC, and has no ownership interest
28

1 in PLPCC. (Knopf Decl. ¶¶ 39-41.)

2 Golden State Greens licenses its name and brand to cannabis business and in 2017,
3 PLPCC began licensing use of the name "Golden State Greens" from defendant Golden State
4 Greens. (Knopf Decl. ¶¶ 42-44.) Golden State Greens has no ownership interest in PLPCC, has
5 its own books and records, and does not have an exclusivity agreement with PLPCC. (Knopf
6 Decl. ¶¶ 45-46.)

7 Defendant 419 Consulting is Mr. Knopf's personal business and its does not own and is
8 not owned by any of the other entity defendants. (Knopf Decl. ¶ 47.)

9 **III. PLAINTIFF'S COMPLAINT AND THIS MOTION ARE PROCEDURALLY**
10 **IMPROPER**

11 Plaintiff should have filed the first cause of action as a writ of mandamus. Plaintiff
12 however filed this Complaint and now seeks to adjudicate the first cause of action by this motion.
13 This motion is procedurally improper as it should be a motion for summary adjudication as to the
14 first cause of action.

15 **A. Plaintiff's Demand To Enforce His Inspection Request Should Have Been**
16 **Filed As A Writ Of Mandamus**

17 "It is one of the well-recognized offices of the remedy by mandamus to enforce the plain
18 rights of stockholders or members of *corporations* in the absence of any other adequate
19 remedy..." (*Miller v. Imperial Water Co.* (1909) 156 Cal. 27, 29-30.) (emphasis added.) Code of
20 Civil Procedure section 1085(a) provides in relevant part "[a] writ of mandate may be issued by
21 any court to any inferior tribunal, *corporation*... to compel the performance of an act which the
22 law specially enjoins...." (emphasis added.)

23 Corporations Code section 12606(a) states "[u]pon refusal of a lawful demand for
24 inspection under this chapter, or a lawful demand pursuant to Section 12600 or Section 12603, the
25 superior court of the proper county....may enforce the demand or right of inspection..."
26 Corporations Code section 12606 does not specifically enumerate "petition." However, on
27 reading the statute as a whole, it can be inferred that the procedurally appropriate enforcement
28 mechanism to enforce shareholder rights is a petition for writ of mandamus. For example,

1 Corporations Code section 12601 states that the remedy for a corporation's refusal to disclose
2 member lists is by a "petition" to the superior court and references filing a "writ of mandamus."
3 Corporations Code section 8331(a) states that a member of a nonprofit mutual benefit
4 corporation's right to enforce membership list inspection rights is to "petition" the superior court.
5 Corporations Code section 1601 also references a "petition."

6 Plaintiff's remedy to this Court should have been a petition for a writ of mandamus
7 pursuant to Code of Civil Procedure Section 1085, rather than filing a Complaint and this motion.

8 **B. This Motion Improperly Seeks Summary Adjudication Of The First Cause Of**
9 **Action**

10 Plaintiff's Complaint contains five causes of action. The first is for "Production of
11 Records Pursuant to Corporations Code §§ 12603-12607" and "requests that this Court enforce
12 Plaintiff's demand and right of inspection, with or without just and proper conditions."
13 (Complaint, ¶ 63) and that pursuant to Corporations Code § 12606 the Court appoint one or more
14 competent inspectors or independent accountants. (Complaint, ¶ 64.) Lastly, "Plaintiff requests
15 an award of reasonable costs and expenses, including reasonable attorneys' fees, in connection
16 with this enforcement action." (Complaint, ¶ 65.)

17 One month into the case, before any defendant had filed a responsive pleading, Plaintiff
18 filed this regularly-noticed "Motion Pursuant to California Corporations Code §§ 12603-12607"
19 seeking the exact same relief outlined above in the Complaint's first cause of action. In other
20 words, Plaintiff seeks summary adjudication of this cause of action without providing the 75 day
21 notice required under Section 437c of the Code of Civil Procedure, and without adhering to *any*
22 of the procedural or evidentiary requirements of a summary adjudication motion. To add insult to
23 injury, he also seeks this summary adjudication on a class-wide basis. For example, the instant
24 Motion lacks a "separate statement setting forth plainly and concisely all material facts that the
25 moving party contends are undisputed." Code Civ. Proc. § 437c(b)(1). That failure alone is
26 sufficient grounds for a Court to deny an otherwise-appropriate motion. (*Id.*) Defendants also
27 emphasize that there are numerous disputed issues of material fact, including, fundamentally,
28 whether Plaintiff Beck was or is a Member of PLPCC (he was, at most, an 'associate member').

1 In sum, Plaintiff's Complaint and Motion cite no law, procedure or rule of court that
2 allows a plaintiff to proceed in this manner and Plaintiff's Motion should be rejected out of hand.

3 **IV. THE MOTION IS IMPROPER AS TO ALL DEFENDANTS EXCEPT PLPCC**

4 Plaintiff, with no evidentiary support, alleges undisclosed financial interests between
5 PLPCC, the Individual Defendants, the Far West Entities, Golden State Greens, and 419
6 Consulting. Interestingly, Plaintiff's attorney declares that he has "personally investigated" the
7 entity defendants and has deducted that they are "Shell Companies." Plaintiff, and his attorney's,
8 deductions are speculative, self-serving, wholly unsupported, and meritless and the requested
9 relief *can* only be sought against PLPCC, the corporation to which Plaintiff claims membership.

10 **A. Plaintiff Improperly Seeks Relief Against Adam Knopf And Justus Henkes**

11 A motion to enforce under Corporations Code sections 12603-12607 requires membership
12 in an entity. (Corp. Code §§ 12603-12607.) Plaintiff does not, and logically cannot, allege that he
13 was a "member" of individual defendants Adam Knopf or Justus Henkes or that Messrs. Knopf
14 and Henkes are "corporations." Accordingly, Plaintiff cannot properly make a records
15 enforcement demand against the Individual Defendants under code sections 12603-12607.

16 Plaintiff does allege that the Individual Defendants are PLPCC's officers or directors and
17 it is true that in connection with a lawful and proper request to a corporation for inspection of
18 company records, "all officers and agents of the corporation shall produce to the inspectors or
19 accountants so appointed all of the books and documents in their custody or power, under penalty
20 of punishment for contempt of court." (Corp. Code § 12106(b.)) However, Section 12106(b)
21 simply ensures compliance *by the corporation* of a lawful records request by requiring its officers
22 to produce *the corporations'* records that may be in their possession. Plaintiff's motion perverts
23 this statutory scheme into something that it is not: a proposed unlimited investigation into the
24 *personal* "financial statements, property, funds and affairs" of the *officers themselves*. (Motion,
25 at 6:20-23.) Plaintiff's unconstitutional request to invade the personal and financial privacy of
26 Messrs. Henkes and Knopf is not authorized by any provision of the Corporations Code, least of
27 all the provisions enforcement provisions. It would be an improper and illegal fishing expedition
28 by Plaintiff's counsel to further their tort-based consumer class action claims.

1 By way of analogy, according to Plaintiff's interpretation, a Tesla shareholder could make
2 a lawful inspection demand. If Tesla denies the request without justification, the shareholder
3 would then be entitled to an independent investigation of the personal "financial statements,
4 property, funds and affairs" of Tesla CEO Elon Musk by virtue of his position as an officer of the
5 company. Clearly this is not the law, and if it were, no rational individual would serve as an
6 officer or director of a corporation.

7 **B. Plaintiff Improperly Seeks Relief Against Non-PLPCC Entity Defendants**

8 Plaintiff alleges membership in PLPCC but does *not* allege membership in any of the
9 other entity defendants. He therefore has no standing to request, or file, an action to enforce a
10 records request with respect to the non-PLPCC entity defendants. Plaintiff attempts to sidestep
11 the direct membership requirement by suggesting that the non-PLPCC entity defendants may be
12 "subsidiaries" of PLPCC and thus fall within the "subsidiary" provision of section 12603-12607.
13 (Motion, at 6:15.) This assertion lacks *any evidentiary support* because it is false. It is
14 uncontroverted that PLPCC has no subsidiaries and the non-PLPCC defendants have no
15 ownership interest in PLPCC. (See Knopf Decl. ¶¶ 28, 41, 45, 47) Because the statute extends
16 only to the corporation to which the inspection demand was made, and "any subsidiary thereof,"
17 and because the non-PLPCC entity defendants are not subsidiaries of PLPCC, the relief sought
18 cannot be applied to them. (Corp. Code § 12606(a).)

19 **V. PLAINTIFF FAILS TO SHOW HE IS ENTITLED TO INSPECT RECORDS,**

20 Plaintiff alleges he is a "member" of PLPCC and as a "member," he is entitled inspection
21 rights under Corporations Code section 12603. Plaintiff further argues that he made a proper
22 inspection demand on PLPCC, which PLPCC improperly denied, resulting in this lawsuit and
23 motion. Plaintiff is not a "member" entitled inspect PLPCC's records and, if he was, his demand
24 was not reasonably related to his interests as "member," and he fails to show good cause.

25 **A. Plaintiff Is Not A "Member"**

26 PLPCC's Bylaws define "members" and "associate members." Article X of the Bylaws
27 create a category called "Associate" members and define "Associate" members as "qualified
28 patients, primary care givers or a person(s) with an identification card as defined by Health and

1 Safety Code sections 11362.5 and 11362.7 et seq. who purchase or acquire medical marijuana.
2 Associate members are not personally liable under any judgment of a court, or in any other
3 manner, for any debt obligation, or liability of the Corporation.

4 Plaintiff alleges in his unverified Complaint that he is a "member patron" of PLPCC.
5 (Complaint ¶ 2.) Plaintiff has submitted no evidentiary support that he is a qualified patient,
6 primary care giver or a person with an identification card as defined by Health and Safety Code
7 sections 11362.5 and 11362.7 et seq. who purchased or acquired medical marijuana from PLPCC.
8 He has failed to submit a copy of his identification card or any other record demonstrating he is a
9 "qualified patient." He has also failed to submit any evidence that he purchased or acquired
10 medical marijuana from PLPCC. Assuming arguendo Plaintiff is a "qualified patient" that
11 purchased or acquired medical marijuana from PLPCC, according to PLPCC's Bylaws, Plaintiff is
12 an Associate Member.

13 The Bylaws exclude Associate members from Article I (membership), Article II (shares),
14 Article III (termination of membership), Article IV (membership meetings and members), Article
15 V (directors), Article VI (officers), Article VIII (inspection rights), Articles IX (surplus
16 allocations and distributions), being issued shares, at Article I, Section 1.01 state that PLPCC
17 shall have one (1) class of members but that an "Associate" member as defined in Article X is
18 excluded from the Article I's provisions. (See Ex. 2, pg. 2.) The Bylaws also exclude
19 "Associate" members from Article II, related to share issuance and ownership including the right
20 to dividends or patronage distributions, if made.

21 In sum, as an Associate member, Plaintiff can acquire or purchase medical marijuana from
22 PLPCC but he is not entitled to inspection rights or the right to patronage distributions, if
23 patronage distributions are made. Because he is not entitled to inspection rights, this motion is
24 improper and should be denied.

25 **B. PLPCC Was Justified In Refusing Plaintiff's Inspection Demand**

26 Plaintiff argues he has shown good cause and reasonable justification for his demand to
27 inspect by alleging PLPCC is operating illegally as a for-profit corporation. Plaintiff does this by
28 linking public records and attorney suppositions and by using the Health and Safety code and

1 reference to a California case where the facts here unsurprisingly mirror a dispensary found to be
2 illegally operating. This does not amount to good cause and is also patently untrue.

3 Plaintiff asks the Court to open up the books and records of eight (8) defendants by an
4 improper motion that is devoid of evidentiary support. Plaintiff has failed to substantiate his
5 claims that PLPCC services 1,000s of patrons daily, that the Entity Defendants have no
6 discernible presence or business purpose, and that the Individual Defendants created this whole
7 plan to make money.

8 PLPCC's refusal to allow inspection was justified because Plaintiff is not allowed to
9 inspect its books, it is not operating illegal and it is not engaged in a scheme with the Entity
10 Defendants. To the contrary, PLPCC incurred significant debt to open and provide services for
11 the general welfare of its members and Plaintiff has not alleged that as an Associate Member, he
12 has been precluded from acquiring or purchasing medical cannabis. Plaintiff's claims are
13 exclusively focused on getting money, not medical marijuana.

14 **C. Plaintiff's Case Law Cite Is Inapposite**

15 Plaintiff's Complaint states "[u]nder California case law, relevant considerations to
16 determine whether a medical marijuana business is illegally operating for profit include, inter alia,
17 a high volume of customers and transactions, the absence of participation by customers in the
18 operation or governance of the cooperative, information reflected in financial records, and any
19 process or procedures by which the cooperative makes itself accountable to its member patrons."
20 (Complaint ¶ 34.) Plaintiff's motion references *People v. Solis* (2013) 217 Cal.App.4th 51, 58-60
21 and *People v. Jackson* (2012) 210 Cal.App.4th 525 to offer guidance on when a medical
22 marijuana dispensary is operating for profit and includes factors such as high volume of
23 customers and transactions, the absence of participation by customers. (Points and Authorities,
24 page 7, fn. 4.) Plaintiff goes on to state that "all these factors seem to be present in this case. See
25 Compl. ¶¶ 37-42." (Id.) Plaintiff's motion is premised on the followed paragraphs from the
26 unverified Complaint:

27 Paragraph 37 alleges that PLPCC is "the largest and most successful medical marijuana
28 dispensary in San Diego County." PLPCC averages "over a thousand patrons daily, generating

1 millions of dollars in monthly revenue through a single store-front and delivery service with a
2 dozen employees. Plaintiff fails to submit evidence that shows how many medical marijuana
3 dispensaries are in San Diego County, how he has determined PLPCC is the largest and most
4 successful, or how he deduced that PLPCC averages over a thousand patrons daily.

5 Paragraph 38 states that "[d]espite its huge revenues relative to such a small operation, the
6 PLPCCC has never made a 'patronage distribution' to Plaintiff or any member of the Class. Nor
7 does the PLPCCC seek or allow participation by Plaintiff and the Class in the operation or
8 governance of the cooperative." For this motion, Plaintiff fails to submit evidence in support of
9 these allegations. Plaintiff does not offer a declaration that says he never received distributions or
10 that he was not allowed to participate.

11 Paragraphs 39-42 make speculative and conclusory statement which should not be
12 considered in ruling on this motion. In sum, the Complaint is not evidence and its allegations do
13 not offer evidentiary support of this motion. Notably, there is a complete absence of evidence
14 from Plaintiff. Plaintiff does not say when he was a member, how long he was a member, or how
15 many times he purchased or acquired medical marijuana. He does not say how he came to
16 conclude PLPCC had over 1,000 daily patrons or the methodology he used. He does not say he
17 was refused services, refused the ability to purchase or acquire medical marijuana, that the
18 facilities were substandard, or that he was charged or overcharged for medical cannabis. Thus,
19 Plaintiff's motion should be denied for failing to provide factual support for his request.

20 **D. PLPCC Is Not Statutorily Required To Pay Dividends**

21 The Complaint alleges that medical marijuana cooperative corporations, such as PLPCC,
22 are governed by Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical
23 Use ("Guidelines"). (Complaint ¶ 31.) Importantly, the Complaint admits that the "Guidelines
24 note that a medical marijuana cooperative may have earnings, but these 'must be used for the
25 general welfare of its members or equitably distributed to members in the form of cash, property,
26 credits or services.'" (Complaint ¶ 32) (bold emphasis added.) The Complaint, and this motion,
27 entirely ignore the first clause regarding earnings used for the general welfare of its members.
28 Instead, Plaintiff argues he has a legal right to distributions of revenues in excess of (legitimate)

1 costs, i.e. ‘patronage distributions’ according to Corporations Code sections. Corporations Code
2 section 12201 states that the earnings savings or benefits shall be used for the general welfare **or**
3 shall be proportionately and equitably distribute to some or all of its members or its patrons. As
4 discussed above, Plaintiff has not alleged he has been denied the benefits of members, or medical
5 cannabis. Plaintiff is dissatisfied that he has not received money. Plaintiff’s dissatisfaction
6 cannot, and should not, be accommodated by the Court as it is unsupported by fact or law.

7 Corporations Codes sections 12202.15 and 122451 are irrelevant to this motion as both
8 relate to when a corporation *elects* to make a distribution, which is not the case here.

9 **V. THERE IS NO GOOD CAUSE TO APPOINT AN OUTSIDE AUDITOR**

10 Plaintiff’s request for appointment of an accountant or inspector to audit the financial
11 records, property, funds and affairs of *not just PLPCC*, but the Far West Entities, Golden State
12 Greens, 419 Consulting, and even the individual defendants themselves. (Motion, at 6.) The
13 Court should reject Plaintiff’s request on a variety of procedural and substantive grounds.

14 First, in an action under section 12606, such relief can only be ordered following a
15 corporation’s refusal of a “lawful demand.” (Corp. Code § 12606(a). For the reasons discussed
16 above, Beck’s demand was not lawful.

17 Second, section 12606 authorizes the Court to enforce the actual records demand itself,
18 “**or** may, with good cause shown, appoint” an inspector or accountant to audit the corporation’s
19 financials. (Corp. Code § 12606(a) (emphasis added.)) Should the Court find merit in Beck’s
20 records demand, then PLPCC is prepared to produce the records ordered by the Court, and
21 enforcement of that demand is sufficient. Further appointment of an outside inspector or
22 accountant would be unnecessary and entail significant costs.

23 Third, Plaintiff has failed to demonstrate “good cause” for such an appointment. Plaintiff
24 repeatedly refers to his own unverified complaint as constituting the required “good cause.”
25 Plaintiff also cites to and attaches unverified allegations from an unrelated employment complaint
26 in separate matter.^[1] Clearly none of those allegations (which are meritless and false) are
27 evidence. Plaintiff’s conjecture and false factual conclusions, based on misapplication of the law,

28 ^[1] Defendants object to the entirety of this document as inadmissible hearsay. The Motion’s
references to and quotations from this document should be disregarded.

1 do not constitute “good cause.” Defendants, on the other hand, have submitted uncontroverted
2 evidence *negating* the assertion of good cause. Defendants have not run afoul of any law, and
3 therefore no good cause exists.

4 Fourth, Plaintiff’s “good cause” argument is tantamount to a finding that Defendants
5 violated criminal laws and are liable to Plaintiff, and the class, for damages, restitution, punitive
6 damages and other relief. The allegation that PLPCC is operating as a for-profit dispensary is the
7 core of the class action complaint. It is also the alleged “good cause.” It is a meritless
8 contention, as Defendants will eventually demonstrate at trial or by dispositive motion. But on
9 both procedural and substantive grounds, Plaintiff cannot substantiate that contention here by
10 reference to conjecture in his own unverified complaint, and then claim it is sufficient “good
11 cause” to order an audit of corporate records. That attempt should be soundly rejected.

12 Fifth, if the court finds good cause for an inspection/accountant, it should be as to PLPCC
13 and no other defendant. For all of the reasons set forth above, there is no basis in law or fact to
14 order an investigation into the personal finances of the Individual Defendants or third party
15 corporations with no ownership interest in PLPCC.

16 Lastly, “[a]ll expenses of the investigation or audit shall be *defrayed by the applicant*
17 unless the Court orders them to be paid or shared by the corporation.” (Corp. Code § 12606(c).)
18 (emphasis added.) In other words, the default position is payment of expenses by Plaintiff Beck.
19 Plaintiff’s proposed fishing expedition (attempting to support his meritless consumer class
20 action), if it is allowed, should be funded entirely by Plaintiff and his counsel, not PLPCC or any
21 other defendant.

22 **VI. THE COURT SHOULD REJECT PLAINTIFF’S IMPROPER AND GROSSLY**
23 **INFLATED FEE REQUEST**

24 Plaintiff’s counsel egregiously seek attorneys’ fees and costs of nearly \$67,000 for
25 Corporations Code records request made by a single individual. Plaintiff’s counsel reach that
26 astronomical figure by wrongfully including any and all time incurred in this matter to date, when
27 the overwhelming majority of the action is unrelated to the narrow statutory basis of the Motion.
28 Plaintiff’s counsel then doubles down on that overreach by multiplying all time by patently

1 unreasonable billing rates. For all of the reasons set forth below, the fee request should be denied
2 entirely, or at a minimum, reduced to a small fraction of the total requested.

3 **A. The Fee Request Should Be Denied Because The Records Request Was
4 Improper And PLPCC Justifiably Denied The Request.**

5 A Corporations Code section 12607 fee award is discretionary. The Court *may* award
6 reasonable costs and expenses, but only if (1) the records demand was proper, and (2) the
7 corporation refused “without justification.” (Corp. Code § 12607.) For the reasons set forth
8 above, Plaintiff Beck’s records request was improper and accordingly the fee request should be
9 denied. Assuming *arguendo* the Court finds for the moving party and orders production of
10 records under section 12607, the fee request should *still* be denied because PLPCC had
11 justification for its position. However, if the court is inclined to grant the records request, and if
12 the court finds the denial was without justification, then any fee award should be a small fraction
13 of the nearly \$67,000 amount requested because (1) Plaintiff seeks fees for non-recoverable work,
14 and (2) the proposed rates are patently unreasonable.

15 **B. The Motion Seeks Fees For Non-Recoverable Work.**

16 The Motion for an award of fees and costs is brought solely and specifically under
17 Corporations Code § 12607 relating to PLPCC’s denial of Plaintiff’s records request. (Motion, at
18 9:4-8) Fees under that section are limited to “reasonable attorneys’ fees, in connection with such
19 an action.” (Corp. Code § 12607). Instead of limiting its fees request to those incurred “in
20 connection” with the action *for enforcement of its records demand*, Plaintiff’s counsel seeks fees
21 for *all* time incurred from the outset of this consumer class action, through the current date. (*See*
22 Motion at 10:12-13[“total hours *devoted to this case*”]; Krinsk Decl., ¶ 5 “total lodestar
23 *associated with the litigation.*”)

24 The fee request should be curtailed by the Court to a small fraction of the request total
25 given that: (1) the pre-suit letters and communications with Defendants were for three distinct
26 purposes, only one of which was a records demand under the Corporations Code, and (2) the
27 Complaint is a class action asserting five separate causes of action, only one of which is a records
28 demand under the Corporations Code.

1 1. Pre-Suit Letters and Communications

2 The Motion seeks recovery of significant fees for “researching the facts of the case” and
3 “drafting the records demand that is the subject of this Motion and meeting and conferring with
4 Defendants thereon.” (Restis Decl., ¶ 21; Krinsk Decl. ¶ 4.) The “records demand” is the July
5 25, 2017 letter from Attorney Krinsk. (Motion, at 4:13-15.) That letter, however, did not simply
6 contain a records demand. Rather, it served three distinct purposes:

7 “This letter serves as our request for inspection or records from
8 PLPCC and related Entities and Individuals pursuant to
Corporations Code §§ 12581, 12852, 12603.”

9 “This letter also provides Plaintiff’s explanation of grievances prior
10 to filing a derivative action on behalf of PLPCC member patrons
pursuant to Corporations Code § 12490(b).”

11 “Finally, this letter constitutes the required notice to PLPCC, the
12 Entities, and the Individuals under the California Consumer Legal
Remedies Act (the ‘CLRA’), describing violations of the CLRA
13 and our client’s demand to remedy such violations within thirty
(30) days from receipt of this letter. Civ. Code § 1782(a).”

14 The second and third subjects of the Krinsk letter are unrelated to the records demand
15 under Section 12607. The second and third subjects also occupy the majority of the content of
16 the letter. Likewise, the subsequent “meet and confer” letters and communications focus
17 primarily on whether sufficient notice was provided under “California Corporations Code §
18 12490 [derivative actions] and Civil Code §1782 [CLRA].” (*See, e.g.*, Restis Decl., Ex. 11.)
19 None of the time incurred in pursuit of the second and third subjects of the Krinsk letter are
20 recoverable via the instant Motion brought under Corporations Code sections 12603-12607.

21 2. The Class Action Complaint Against Numerous Defendants

22 The July 25, 2017, Krinsk letter served as a records request for a single individual
23 John [sic] Beck. (Restis Decl., Ex. 9.) The records demand was properly denied, as discussed
24 *infra*. Plaintiff Beck then filed an action to enforce the demand. But the filing of an action to
25 enforce the individual Plaintiff Beck’s inspection demand did not require:

- 26 • A class action;
27 • Claims against individual persons;
28 • Claims against unrelated corporate entities that are not subsidiaries of PLPCC;
 • An Unfair Competition (§17200) claim;

- A Consumer Legal Remedies Act (§1770) claim;
- A Conversion claim;
- An Unjust Enrichment claim;

Indeed, Plaintiff’s counsel candidly admits that “**an action to enforce Plaintiff’s right of inspection did not require the filing of a class action.**” (Motion, at 12:14-15.) And yet the Motion’s fee request seeks compensation for just that, including every minute spent by three lawyers and two paralegals researching, investigating, preparing and filing the class action complaint on behalf of not just Karl Beck, but all putative class members, against not just PLPCC, but also against alleged individual officers or directors of PLPCC, and a host of unrelated, non-subsidiary corporate defendants. That complaint asserts various claims unrelated to enforcement of a records demand, including UCL, CLRA, conversion and unjust enrichment.

C. The Proposed Hourly Billing Rates Are Patently Unreasonable.

“The lodestar is the basic fee for *comparable legal services* in the community.” (Motion, at 9:14, *citing Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1131-34.) Here, the “legal services” were a simple demand for inspection of corporate records, followed by the filing of a complaint seeking to enforce that demand. There is no special skill or expertise required for those basic legal functions. Plaintiff’s counsel admits that “an action to enforce Plaintiff’s right of inspection did not require the filing of a class action.” (Motion, at 12:14-15.)

Nonetheless, Plaintiff’s counsel seeks billable rates as high as \$675/hour, with even a fourth-year associate attorney seeking nearly \$500/hour. These rates are patently unreasonable for “comparable legal services in the community.”

1. Class Action And Complex Litigation Experience Is Irrelevant

Plaintiff’s counsel frames the reasonable fee analysis around, and then relies heavily on, their asserted class action and complex litigation experience. (Motion, at 10:16-18.) While this experience may or may not benefit Plaintiff in the pending class action litigation with respect to the UCL, CLRA, and other tort claims, it is irrelevant to the instant fee request. The potential fees recoverable through the instant Motion are limited to those reasonable fees incurred *in making a records demand and an enforcement action* under section Corporations Code section 12607. Fees for other efforts, or rates based on other experience or skill, are not recoverable here.

1 2. Reasonable Rates in San Diego For Enforcing A Records Request

2 The Motion cites numerous cases approving very high rates allegedly “comparable” to
3 those sought by Plaintiff’s counsel here. (Motion, at 10:19-11:9.) Notably, however, not one of
4 those cases is a records demand enforcement action under Corporations Code sections 126003-
5 12607. Instead, the subject matters of those cases are inapposite, and include attorneys’ fees
6 awarded in patent litigation in federal court (*Flowrider*), and fees awarded as part of settlement of
7 various consumer class actions (all other cited cases). Again, Plaintiff’s counsel admits that a
8 class action is not required for a records demand enforcement action.

9 The actual relevant “community” consists of San Diego state court business litigation
10 practitioners in a non-class action setting. In this community, for “comparable legal services” a
11 reasonable hourly fee is approximately \$250 - \$300 per hour. (*See* Dart Decl.)

12 **D. Fees And Costs Cannot Be Awarded Against The Individual Defendants Or**
13 **Other Corporate Defendants**

14 For all of the reasons set forth above, should the Court be inclined to award any fees and
15 costs to Plaintiff via the Motion, such award should only be made as to defendant PLPCC, the
16 corporate entity to which Mr. Beck claims to have been a member. Section 12607 provides only
17 a discretionary basis to award fees and costs stemming from “the failure of *the corporation* to
18 comply with proper records demand” without justification. Here, PLPCC is “the corporation”
19 that denied the record request. There is no basis to award fees or costs against individual persons,
20 regardless of whether they are alleged to officers or directors of PLPCC. Similarly, because none
21 of the other named corporate entity defendants are subsidiaries of PLPCC, there is no basis under
22 section 12607 *et seq.* to award fees against them.

23 **E. Any Fees Should Be Reduced to A Fraction Of The Amount Requested**

24 The Motion seeks \$67,469.74 in attorneys’ fees, based on a claimed 115.6 hours
25 incurred. That equates to a blended rate of \$583.64/hour. The overwhelming majority of that
26 time is nonrecoverable, as discussed above. Should the Court be inclined to award Plaintiff any
27 fees on this motion, Defendants propose the fee calculation be rationally-related to the proportion
28 of recoverable fees, and utilize a reasonable rate. Here, just one of five causes of action in the

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Complaint (20%) potentially carries recoverable fees on this Motion. Therefore, Defendants propose the following *alternative* methodologies:

- 1. Multiply the total fee request by 20%, resulting in \$14,494. Reduce that figure further by one half reflecting a more accurate reasonable rate in the relevant community for comparable legal services, resulting in a fee award of \$7,247; or
- 2. Multiply the total 115.6 hours by 20%, resulting in 23.12 hours. Multiple that time by a reasonable rate of \$275/hour, resulting in a fee award of \$6,358.


If any fees are to be awarded by the Court, then regardless of the methodology chosen, the result should be a dramatic reduction in the fees requested by Plaintiff's counsel

VII. CONCLUSION

For the foregoing reasons, Defendants respectfully request the Court deny Plaintiff's motion in its entirety.

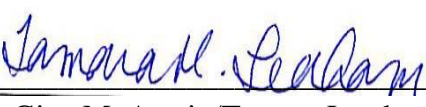
Dated: December 21, 2017

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