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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

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**01/12/2018** at 03:01:00 PM

Clerk of the Superior Court  
By E- Filing, Deputy Clerk

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

**DEFENDANTS' REPLY IN SUPPORT OF  
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 respectfully submit this Reply brief in support of their demurrer to plaintiff  
2 Karl Beck's Complaint.

3 **I. PRELIMINARY ISSUES**

4 **A. Plaintiff Must Amend The Complaint Because He Concedes The Unjust**  
5 **Enrichment Claim Should Be Dismissed**

6 Plaintiff's Fifth cause of action is for "Unjust Enrichment." In response to Defendants'  
7 demurrer, "Plaintiff concedes however that unjust enrichment is not an independent claim under  
8 California law. Accordingly, Plaintiff withdraws the *cause of action* but retains the attendant  
9 allegations as they are relevant to the remedy Plaintiff seeks for the class." (Opp. at 3:6-8)  
10 (emphasis in original).

11 The Court should therefore sustain the demurrer to the Fifth cause of action without leave  
12 to amend. It is unclear what Plaintiff means by "retain[ing] the attendant allegations" of an  
13 admittedly non-existent cause of action, but an amended complaint is now required removing the  
14 "Unjust Enrichment" cause of action as well as any allegations of which it is comprised. If  
15 Plaintiff believes certain allegations are relevant to other causes of action, the amended complaint  
16 may reflect the same and Defendants will then have an opportunity to evaluate the revised causes  
17 of action.

18 **B. Plaintiff Failed To Plead He Is A "Qualified Patient," "Person With An**  
19 **Identification Card," Or That He Had A Physician's Recommendation**

20 State compliance guidelines require an individual to be a "qualified patient" or "person  
21 with an identification card," and have a "physician's recommendation" in order to "associate" to  
22 collectively or cooperatively cultivate marijuana for medical purposes. (Health & Saf. Code §§  
23 11362.5, 11362.712, 11362.775; Leetham Decl., Ex. "A" (Guidelines For The Security And Non-  
24 diversion Of Marijuana Grown For Medical Use ("Guidelines") pgs. 5, 8).) "Qualified patient"  
25 means a person who is entitled to the protections of Section 11362.5, but who does not have an  
26 identification card issued pursuant to this article." (Health & Saf. Code § 11362.7(f).) "Person  
27 with an identification card" means an individual who is a qualified patient who has applied for  
28 and received a valid identification card..." (Health & Saf. Code § 11362.7(c).) "Physician's

1 recommendation” means a patient must have a written or verbal recommendation for medical  
2 marijuana from a licensed physician. (Health & Saf. Code § 11362.5(d).)

3 The Complaint alleges Plaintiff was a “member,” but fails to allege that Plaintiff was a  
4 “qualified patient” or “person with an identification card” and further fails to allege Plaintiff had a  
5 “physician recommendation.” Absent these allegations, Plaintiff has failed to allege he was  
6 entitled to lawfully acquire medical marijuana, he has no standing to pursue this action, and the  
7 demurrer should be sustained.

### 8 **C. Plaintiffs’ Brief Exceeds The 15 Page Limit**

9 The page limit for an opposition brief to a demurrer is 15. (Cal. Rules of Court, Rule  
10 3.113(d).) Exhibits, declarations and attachments are excluded from the page limit. (*Id.*) Here,  
11 Plaintiff filed an opposition brief a full 15 pages in length and then attempted an end-run around  
12 the page limit by attaching an “Exhibit A” which purely contains argument in support of the brief.  
13 (*See Opp.*, at fn. 2, Ex. A.) Plaintiff did not request or obtain leave of Court to file a longer brief  
14 as required by Rule 3.113(e). The Court should therefore disregard “Exhibit A.”

## 15 **II. THE DEMURRER SHOULD BE SUSTAINED**

### 16 **A. Plaintiff Has Failed To Allege Civil Conspiracy Or Alter Ego**

17 Plaintiff’s allegations related to civil conspiracy and alter ego are predicated on the same  
18 conclusory facts shrouded in inane rhetoric intended to mask a lawsuit devoid of merit. In a mere  
19 6 visits over a 6-month period, Plaintiff became concerned about the volume of business PLPCC  
20 was transacting (Complaint ¶¶ 2, 13) and, in conjunction, learned that Adam Knopf and Justus  
21 Henkes owned and operated 5 other companies (Complaint ¶ 3). Based on his 6 visits to PLPCC  
22 and his conclusion that similar ownership and lack of advertising are indicative of nefarious  
23 business operations, Plaintiff demanded to inspect PLPCC’s records as well as the records for the  
24 2 individual defendants and additional entity defendants, in complete derogation of their privacy  
25 rights. Plaintiff’s allegations that it “appears” Defendants are operating an “illegal for-profit  
26 medical marijuana business (Complaint ¶ 14), that he is “suspicious” of Defendants activities, and  
27 other allegations on information and belief” (meaning no personal knowledge), are insufficient to  
28 support alter ego or civil conspiracy allegations. Accordingly, the demurrer should be sustained

1 with respect to civil conspiracy and alter ego allegations that are intended to impute liability to  
2 Adam Knopf, Justus Henkes, and the entity defendants other than PLPCC.

3 **B. Plaintiff Has Failed To Allege A Viable UCL Claim**

4 Plaintiff has not alleged a UCL violation. Plaintiff claims UCL violations because  
5 PLPCC has not made “patronage distributions” and because PLPCC is allegedly operating as a  
6 for-profit medical marijuana dispensary. The law does not support his claims. First, “patronage  
7 distributions” are not mandated by the Corporations Code. (Corp. Code § 12201.) Second,  
8 Plaintiff’s claim that PLPCC is operating for-profit is predicated on a statutory framework  
9 intended to guide law enforcement, patients, and caregivers with respect to medical marijuana and  
10 not intended to provide a private right of action. Plaintiff’s prosecution of this action usurps the  
11 function of law enforcement.

12 “In 2008, the California Attorney General and Department of Justice issued their  
13 *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use* (the  
14 “Guidelines”)...” (Complaint ¶ 31.) The Guidelines were promulgated to “(1) ensure that  
15 marijuana grown for medical purposes remains secure and does not find its way to non-patients or  
16 illicit markets, (2) to help *law enforcement agencies* perform their duties effectively and in  
17 accordance with California law, and (3) help patients and primary caregivers understand how they  
18 may cultivate, transport, possess, and use medical marijuana under California law.” Thus  
19 Plaintiff’s claims must not only be considered under the Corporations Code, but under  
20 California’s broader framework for medical marijuana.

21 Under this framework, not only is there no mandate that PLPCC make “patronage  
22 distributions” pursuant to the Corporations Code, Plaintiff’s UCL claim that PLPCC is operating  
23 as a for-profit entity, and that he has potentially discovered a violation of the Guidelines, usurps  
24 law enforcements’ function. Plaintiff has entitled himself to step into the shoes of law  
25 enforcement by pursuing PLPCC for violations that are appropriately determined and pursued by  
26 law enforcement. Accordingly, the Guidelines coupled with the Health & Safety Code are  
27 insufficient to allow Plaintiff to allege an underlying violation of the law which is required by the  
28 UCL.

1           **C.     CLRA Claims Should Not Be Extended to Defendants on Novel Indirect**  
2                           **Liability Theories**

3           The Complaint specifically alleges that *only PLPCC* sold “goods” and that *only PLPCC*  
4 “transacted” with Plaintiff. Without the required elements of “goods” sold and “transactions”  
5 with a consumer, the CLRA claim fails with respect to defendants Far West Management, LLC,  
6 Far West Operating, LLC, Far West Staffing, LLC, 419 Consulting Inc., Golden State Greens,  
7 LLC, Adam Knopf and Justus H. Henkes IV. Civ. Code §§ 1761(a),(e).

8           Plaintiff’s Opposition brief relies solely on reference to alter ego and conspiracy  
9 allegations to assert CLRA claims against all of the aforementioned defendants. As legal support,  
10 Plaintiff cites a single case – *Newton v. Am. Debt Servs., Inc.*, 213 U.S. Dist. LEXIS 147152  
11 (N.D. Cal. Oct. 10, 2013) for the proposition that “the Court nevertheless interprets the CLRA as  
12 permitting indirect liability.” But *Newton* is not controlling or binding on this Court. It is a  
13 federal district court’s order on motion for summary judgment where that court noted “at least  
14 one federal court has expressed doubt the CLRA is amenable to indirect liability.” (*Id.* \*8, *citing*  
15 *In re Jamster Mktg. Litig.*, MDL1751, No. 05-CV-0819 (JM-CAB), 2009 WL 1456632, at \*9  
16 (S.D. Cal. May 22, 2009)<sup>1</sup>.) The *Newton* court, like the *In re Jamster Mktg.* court, emphasized  
17 that the plaintiff in that case “has identified no authority (or otherwise analyzed the statute) to  
18 show that the CLRA permits indirect liability.” The *Newton* court, however, “assumes for  
19 purposes of this motion that the CLRA allows for indirect liability” and then proceeds to find that  
20 neither defendant is liable on such a theory. (*Id.*) (emphasis added.) This is not authority for the  
21 proposition Plaintiff Beck presses, but rather is a trial court’s stated assumption on a specific  
22 motion to show that *even if true*, the CLRA claims against those defendants still fail.

23           Similarly, Plaintiff Beck has cited no other authorities for his novel extension of CLRA  
24 claims to individual persons and corporations, none of whom sold goods or engaged in  
25 transactions with consumers, based solely on indirect liability theories. Not a single case is cited  
26 by Plaintiff upholding a CLRA claim on indirect liability, either on a pleading challenge, a  
27 dispositive motion or otherwise. This Court should therefore decline to extend CLRA in that

28 <sup>1</sup> “Plaintiffs fail to identify any authority permitting a CLRA claim to be maintained under a secondary liability theory. Consequently the court grants the motion to dismiss the CLRA and FAL claims.”

1 regard, and grant the demurrer on this claim as to all Defendants other than PLPCC. Plaintiff will  
2 then maintain its CLRA claim against the proper defendant who allegedly sold “goods” and  
3 “transacted” with plaintiff from a storefront dispensary – PLPCC.

4 To the extent the Court is inclined to extend CLRA claims on an indirect liability basis,  
5 Defendants contend the civil conspiracy and alter ego allegations are insufficient to state such  
6 claims, as discussed in section II-A *infra*.

7 **D. Plaintiff’s Conversion Claim Fails Because He Admittedly is Not Entitled to**  
8 **“Patronage Distributions”**

9 The demurrer succinctly stated how the Complaint’s allegations themselves, assuming  
10 they all are true, show that any alleged “revenues in excess” of costs may be spent by PLPCC on  
11 *either* the general welfare of the members *or* paid out in patronage distributions. The conversion  
12 claim (and the complaint as a whole) center entirely on the latter alternative, patronage  
13 distributions, while entirely ignoring the former alternative, general welfare. Therefore, Plaintiff  
14 does not have a legal right to “patronage distributions” because it is alleged, by Plaintiff, to be  
15 optional.

16 In opposition, Plaintiff attempts to address that glaring hole by citing to and quoting  
17 Paragraph 87 of the Complaint referring to “members’ **right** to PLPCC revenues in excess of  
18 (legitimate) costs...” (emphasis added.) That paragraph omits the phrase ‘patronage  
19 distributions’ and Plaintiff now points to it as somehow addressing the ‘general welfare’ clause.  
20 But the Opposition misleads the Court by omitting Paragraph 86, where that alleged **right** is  
21 defined by Plaintiff as a “legal right to distributions of PLPCC revenues in excess of (legitimate)  
22 costs, *i.e.* ‘**patronage distributions**’ as defined by, and as calculated by, the Corporations code.”  
23 (Complaint, ¶ 86) (emphasis added.) In other words, the Complaint still fails to allege a legal  
24 right to possession of the subject property - earnings above costs in the form of patronage  
25 distributions. *See Moore v. Regents of the Univ. of Cal.* (1990), 51 Cal. 3d 120, 136 (“Where  
26 plaintiff neither has title to the property alleged to have been converted, nor possession thereof, he  
27 cannot maintain an action for conversion.”)  
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**III. CONCLUSION**

For all the reasons set forth above, Defendants respectfully request that the Court sustain the instant Demurrer to the Plaintiff's Complaint, on all causes of action, without leave to amend.

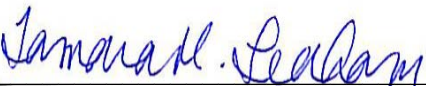
Dated: January 12, 2018

DART LAW

By   
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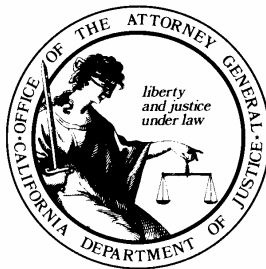
Dated: January 12, 2018

AUSTIN LEGAL GROUP, APC

By:   
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LLC, and Far West Staffing, LLC

**EXHIBIT A**





**GUIDELINES FOR THE SECURITY AND NON-DIVERSION  
OF MARIJUANA GROWN FOR MEDICAL USE**

*August 2008*

In 1996, California voters approved an initiative that exempted certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana. In 2003, the Legislature enacted additional legislation relating to medical marijuana. One of those statutes requires the Attorney General to adopt “guidelines to ensure the security and nondiversion of marijuana grown for medical use.” (Health & Saf. Code, § 11362.81(d).<sup>1</sup>) To fulfill this mandate, this Office is issuing the following guidelines to (1) ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets, (2) help law enforcement agencies perform their duties effectively and in accordance with California law, and (3) help patients and primary caregivers understand how they may cultivate, transport, possess, and use medical marijuana under California law.

**I. SUMMARY OF APPLICABLE LAW**

**A. California Penal Provisions Relating to Marijuana.**

The possession, sale, cultivation, or transportation of marijuana is ordinarily a crime under California law. (See, e.g., § 11357 [possession of marijuana is a misdemeanor]; § 11358 [cultivation of marijuana is a felony]; Veh. Code, § 23222 [possession of less than 1 oz. of marijuana while driving is a misdemeanor]; § 11359 [possession with intent to sell any amount of marijuana is a felony]; § 11360 [transporting, selling, or giving away marijuana in California is a felony; under 28.5 grams is a misdemeanor]; § 11361 [selling or distributing marijuana to minors, or using a minor to transport, sell, or give away marijuana, is a felony].)

**B. Proposition 215 - The Compassionate Use Act of 1996.**

On November 5, 1996, California voters passed Proposition 215, which decriminalized the cultivation and use of marijuana by seriously ill individuals upon a physician’s recommendation. (§ 11362.5.) Proposition 215 was enacted to “ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person’s health would benefit from the use of marijuana,” and to “ensure that patients and their primary caregivers who obtain and use marijuana for

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<sup>1</sup> Unless otherwise noted, all statutory references are to the Health & Safety Code.

medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.” (§ 11362.5(b)(1)(A)-(B).)

The Act further states that “Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient’s primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or verbal recommendation or approval of a physician.” (§ 11362.5(d).) Courts have found an implied defense to the transportation of medical marijuana when the “quantity transported and the method, timing and distance of the transportation are reasonably related to the patient’s current medical needs.” (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1551.)

### **C. Senate Bill 420 - The Medical Marijuana Program Act.**

On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (MMP), became law. (§§ 11362.7-11362.83.) The MMP, among other things, requires the California Department of Public Health (DPH) to establish and maintain a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system. Medical marijuana identification cards are intended to help law enforcement officers identify and verify that cardholders are able to cultivate, possess, and transport certain amounts of marijuana without being subject to arrest under specific conditions. (§§ 11362.71(e), 11362.78.)

It is mandatory that all counties participate in the identification card program by (a) providing applications upon request to individuals seeking to join the identification card program; (b) processing completed applications; (c) maintaining certain records; (d) following state implementation protocols; and (e) issuing DPH identification cards to approved applicants and designated primary caregivers. (§ 11362.71(b).)

Participation by patients and primary caregivers in the identification card program is voluntary. However, because identification cards offer the holder protection from arrest, are issued only after verification of the cardholder’s status as a qualified patient or primary caregiver, and are immediately verifiable online or via telephone, they represent one of the best ways to ensure the security and non-diversion of marijuana grown for medical use.

In addition to establishing the identification card program, the MMP also defines certain terms, sets possession guidelines for cardholders, and recognizes a qualified right to collective and cooperative cultivation of medical marijuana. (§§ 11362.7, 11362.77, 11362.775.)

### **D. Taxability of Medical Marijuana Transactions.**

In February 2007, the California State Board of Equalization (BOE) issued a Special Notice confirming its policy of taxing medical marijuana transactions, as well as its requirement that businesses engaging in such transactions hold a Seller’s Permit. (<http://www.boe.ca.gov/news/pdf/medseller2007.pdf>.) According to the Notice, having a Seller’s Permit does not allow individuals to make unlawful sales, but instead merely provides a way to remit any sales and use taxes due. BOE further clarified its policy in a

June 2007 Special Notice that addressed several frequently asked questions concerning taxation of medical marijuana transactions. (<http://www.boe.ca.gov/news/pdf/173.pdf>.)

#### **E. Medical Board of California.**

The Medical Board of California licenses, investigates, and disciplines California physicians. (Bus. & Prof. Code, § 2000, et seq.) Although state law prohibits punishing a physician simply for recommending marijuana for treatment of a serious medical condition (§ 11362.5(c)), the Medical Board can and does take disciplinary action against physicians who fail to comply with accepted medical standards when recommending marijuana. In a May 13, 2004 press release, the Medical Board clarified that these accepted standards are the same ones that a reasonable and prudent physician would follow when recommending or approving any medication. They include the following:

1. Taking a history and conducting a good faith examination of the patient;
2. Developing a treatment plan with objectives;
3. Providing informed consent, including discussion of side effects;
4. Periodically reviewing the treatment's efficacy;
5. Consultations, as necessary; and
6. Keeping proper records supporting the decision to recommend the use of medical marijuana.

([http://www.mbc.ca.gov/board/media/releases\\_2004\\_05-13\\_marijuana.html](http://www.mbc.ca.gov/board/media/releases_2004_05-13_marijuana.html).)

Complaints about physicians should be addressed to the Medical Board (1-800-633-2322 or [www.mbc.ca.gov](http://www.mbc.ca.gov)), which investigates and prosecutes alleged licensing violations in conjunction with the Attorney General's Office.

#### **F. The Federal Controlled Substances Act.**

Adopted in 1970, the Controlled Substances Act (CSA) established a federal regulatory system designed to combat recreational drug abuse by making it unlawful to manufacture, distribute, dispense, or possess any controlled substance. (21 U.S.C. § 801, et seq.; *Gonzales v. Oregon* (2006) 546 U.S. 243, 271-273.) The CSA reflects the federal government's view that marijuana is a drug with "no currently accepted medical use." (21 U.S.C. § 812(b)(1).) Accordingly, the manufacture, distribution, or possession of marijuana is a federal criminal offense. (*Id.* at §§ 841(a)(1), 844(a).)

The incongruity between federal and state law has given rise to understandable confusion, but no legal conflict exists merely because state law and federal law treat marijuana differently. Indeed, California's medical marijuana laws have been challenged unsuccessfully in court on the ground that they are preempted by the CSA. (*County of San Diego v. San Diego NORML* (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2930117.) Congress has provided that states are free to regulate in the area of controlled substances, including marijuana, provided that state law does not positively conflict with the CSA. (21 U.S.C. § 903.) Neither Proposition 215, nor the MMP, conflict with the CSA because, in adopting these laws, California did not "legalize" medical marijuana, but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law when a physician has recommended its use to treat a serious medical condition. (See *City of Garden Grove v. Superior Court (Kha)* (2007) 157 Cal.App.4th 355, 371-373, 381-382.)

In light of California's decision to remove the use and cultivation of physician-recommended marijuana from the scope of the state's drug laws, this Office recommends that state and local law enforcement officers not arrest individuals or seize marijuana under federal law when the officer determines from the facts available that the cultivation, possession, or transportation is permitted under California's medical marijuana laws.

## II. DEFINITIONS

A. **Physician's Recommendation:** Physicians may not prescribe marijuana because the federal Food and Drug Administration regulates prescription drugs and, under the CSA, marijuana is a Schedule I drug, meaning that it has no recognized medical use. Physicians may, however, lawfully issue a verbal or written recommendation under California law indicating that marijuana would be a beneficial treatment for a serious medical condition. (§ 11362.5(d); *Conant v. Walters* (9th Cir. 2002) 309 F.3d 629, 632.)

B. **Primary Caregiver:** A primary caregiver is a person who is designated by a qualified patient and "has consistently assumed responsibility for the housing, health, or safety" of the patient. (§ 11362.5(e).) California courts have emphasized the consistency element of the patient-caregiver relationship. Although a "primary caregiver who consistently grows and supplies . . . medicinal marijuana for a section 11362.5 patient is serving a health need of the patient," someone who merely maintains a source of marijuana does not automatically become the party "who has consistently assumed responsibility for the housing, health, or safety" of that purchaser. (*People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1390, 1400.) A person may serve as primary caregiver to "more than one" patient, provided that the patients and caregiver all reside in the same city or county. (§ 11362.7(d)(2).) Primary caregivers also may receive certain compensation for their services. (§ 11362.765(c) ["A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided . . . to enable [a patient] to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, . . . shall not, on the sole basis of that fact, be subject to prosecution" for possessing or transporting marijuana].)

C. **Qualified Patient:** A qualified patient is a person whose physician has recommended the use of marijuana to treat a serious illness, including cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief. (§ 11362.5(b)(1)(A).)

D. **Recommending Physician:** A recommending physician is a person who (1) possesses a license in good standing to practice medicine in California; (2) has taken responsibility for some aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient; and (3) has complied with accepted medical standards (as described by the Medical Board of California in its May 13, 2004 press release) that a reasonable and prudent physician would follow when recommending or approving medical marijuana for the treatment of his or her patient.

### III. GUIDELINES REGARDING INDIVIDUAL QUALIFIED PATIENTS AND PRIMARY CAREGIVERS

#### A. State Law Compliance Guidelines.

1. **Physician Recommendation:** Patients must have a written or verbal recommendation for medical marijuana from a licensed physician. (§ 11362.5(d).)

2. **State of California Medical Marijuana Identification Card:** Under the MMP, qualified patients and their primary caregivers may voluntarily apply for a card issued by DPH identifying them as a person who is authorized to use, possess, or transport marijuana grown for medical purposes. To help law enforcement officers verify the cardholder's identity, each card bears a unique identification number, and a verification database is available online ([www.calmmp.ca.gov](http://www.calmmp.ca.gov)). In addition, the cards contain the name of the county health department that approved the application, a 24-hour verification telephone number, and an expiration date. (§§ 11362.71(a); 11362.735(a)(3)-(4); 11362.745.)

3. **Proof of Qualified Patient Status:** Although verbal recommendations are technically permitted under Proposition 215, patients should obtain and carry written proof of their physician recommendations to help them avoid arrest. A state identification card is the best form of proof, because it is easily verifiable and provides immunity from arrest if certain conditions are met (see section III.B.4, below). The next best forms of proof are a city- or county-issued patient identification card, or a written recommendation from a physician.

#### 4. Possession Guidelines:

a) **MMP:**<sup>2</sup> Qualified patients and primary caregivers who possess a state-issued identification card may possess 8 oz. of dried marijuana, and may maintain no more than 6 mature or 12 immature plants per qualified patient. (§ 11362.77(a).) But, if “a qualified patient or primary caregiver has a doctor’s recommendation that this quantity does not meet the qualified patient’s medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient’s needs.” (§ 11362.77(b).) Only the dried mature processed flowers or buds of the female cannabis plant should be considered when determining allowable quantities of medical marijuana for purposes of the MMP. (§ 11362.77(d).)

b) **Local Possession Guidelines:** Counties and cities may adopt regulations that allow qualified patients or primary caregivers to possess

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<sup>2</sup> On May 22, 2008, California’s Second District Court of Appeal severed Health & Safety Code § 11362.77 from the MMP on the ground that the statute’s possession guidelines were an unconstitutional amendment of Proposition 215, which does not quantify the marijuana a patient may possess. (See *People v. Kelly* (2008) 163 Cal.App.4th 124, 77 Cal.Rptr.3d 390.) The Third District Court of Appeal recently reached a similar conclusion in *People v. Phomphakdy* (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2931369. The California Supreme Court has granted review in *Kelly* and the Attorney General intends to seek review in *Phomphakdy*.

medical marijuana in amounts that exceed the MMP's possession guidelines. (§ 11362.77(c).)

c) **Proposition 215:** Qualified patients claiming protection under Proposition 215 may possess an amount of marijuana that is “reasonably related to [their] current medical needs.” (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1549.)

## B. Enforcement Guidelines.

1. **Location of Use:** Medical marijuana may not be smoked (a) where smoking is prohibited by law, (b) at or within 1000 feet of a school, recreation center, or youth center (unless the medical use occurs within a residence), (c) on a school bus, or (d) in a moving motor vehicle or boat. (§ 11362.79.)

2. **Use of Medical Marijuana in the Workplace or at Correctional Facilities:** The medical use of marijuana need not be accommodated in the workplace, during work hours, or at any jail, correctional facility, or other penal institution. (§ 11362.785(a); *Ross v. RagingWire Telecomms., Inc.* (2008) 42 Cal.4th 920, 933 [under the Fair Employment and Housing Act, an employer may terminate an employee who tests positive for marijuana use].)

3. **Criminal Defendants, Probationers, and Parolees:** Criminal defendants and probationers may request court approval to use medical marijuana while they are released on bail or probation. The court's decision and reasoning must be stated on the record and in the minutes of the court. Likewise, parolees who are eligible to use medical marijuana may request that they be allowed to continue such use during the period of parole. The written conditions of parole must reflect whether the request was granted or denied. (§ 11362.795.)

4. **State of California Medical Marijuana Identification Cardholders:** When a person invokes the protections of Proposition 215 or the MMP and he or she possesses a state medical marijuana identification card, officers should:

a) Review the identification card and verify its validity either by calling the telephone number printed on the card, or by accessing DPH's card verification website (<http://www.calmmp.ca.gov>); and

b) If the card is valid and not being used fraudulently, there are no other indicia of illegal activity (weapons, illicit drugs, or excessive amounts of cash), and the person is within the state or local possession guidelines, the individual should be released and the marijuana should not be seized. Under the MMP, “no person or designated primary caregiver in possession of a valid state medical marijuana identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana.” (§ 11362.71(e).) Further, a “state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law enforcement agency or officer

has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently.” (§ 11362.78.)

5. **Non-Cardholders:** When a person claims protection under Proposition 215 or the MMP and only has a locally-issued (i.e., non-state) patient identification card, or a written (or verbal) recommendation from a licensed physician, officers should use their sound professional judgment to assess the validity of the person’s medical-use claim:

a) Officers need not abandon their search or investigation. The standard search and seizure rules apply to the enforcement of marijuana-related violations. Reasonable suspicion is required for detention, while probable cause is required for search, seizure, and arrest.

b) Officers should review any written documentation for validity. It may contain the physician’s name, telephone number, address, and license number.

c) If the officer reasonably believes that the medical-use claim is valid based upon the totality of the circumstances (including the quantity of marijuana, packaging for sale, the presence of weapons, illicit drugs, or large amounts of cash), and the person is within the state or local possession guidelines or has an amount consistent with their current medical needs, the person should be released and the marijuana should not be seized.

d) Alternatively, if the officer has probable cause to doubt the validity of a person’s medical marijuana claim based upon the facts and circumstances, the person may be arrested and the marijuana may be seized. It will then be up to the person to establish his or her medical marijuana defense in court.

e) Officers are not obligated to accept a person’s claim of having a verbal physician’s recommendation that cannot be readily verified with the physician at the time of detention.

6. **Exceeding Possession Guidelines:** If a person has what appears to be valid medical marijuana documentation, but exceeds the applicable possession guidelines identified above, all marijuana may be seized.

7. **Return of Seized Medical Marijuana:** If a person whose marijuana is seized by law enforcement successfully establishes a medical marijuana defense in court, or the case is not prosecuted, he or she may file a motion for return of the marijuana. If a court grants the motion and orders the return of marijuana seized incident to an arrest, the individual or entity subject to the order must return the property. State law enforcement officers who handle controlled substances in the course of their official duties are immune from liability under the CSA. (21 U.S.C. § 885(d).) Once the marijuana is returned, federal authorities are free to exercise jurisdiction over it. (21 U.S.C. §§ 812(c)(10), 844(a); *City of Garden Grove v. Superior Court (Kha)* (2007) 157 Cal.App.4th 355, 369, 386, 391.)

#### IV. GUIDELINES REGARDING COLLECTIVES AND COOPERATIVES

Under California law, medical marijuana patients and primary caregivers may “associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes.” (§ 11362.775.) The following guidelines are meant to apply to qualified patients and primary caregivers who come together to collectively or cooperatively cultivate physician-recommended marijuana.

**A. Business Forms:** Any group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes should be organized and operated in a manner that ensures the security of the crop and safeguards against diversion for non-medical purposes. The following are guidelines to help cooperatives and collectives operate within the law, and to help law enforcement determine whether they are doing so.

1. **Statutory Cooperatives:** A cooperative must file articles of incorporation with the state and conduct its business for the mutual benefit of its members. (Corp. Code, § 12201, 12300.) No business may call itself a “cooperative” (or “co-op”) unless it is properly organized and registered as such a corporation under the Corporations or Food and Agricultural Code. (*Id.* at § 12311(b).) Cooperative corporations are “democratically controlled and are not organized to make a profit for themselves, as such, or for their members, as such, but primarily for their members as patrons.” (*Id.* at § 12201.) The earnings and savings of the business must be used for the general welfare of its members or equitably distributed to members in the form of cash, property, credits, or services. (*Ibid.*) Cooperatives must follow strict rules on organization, articles, elections, and distribution of earnings, and must report individual transactions from individual members each year. (See *id.* at § 12200, et seq.) Agricultural cooperatives are likewise nonprofit corporate entities “since they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers.” (Food & Agric. Code, § 54033.) Agricultural cooperatives share many characteristics with consumer cooperatives. (See, e.g., *id.* at § 54002, et seq.) Cooperatives should not purchase marijuana from, or sell to, non-members; instead, they should only provide a means for facilitating or coordinating transactions between members.

2. **Collectives:** California law does not define collectives, but the dictionary defines them as “a business, farm, etc., jointly owned and operated by the members of a group.” (*Random House Unabridged Dictionary*; Random House, Inc. © 2006.) Applying this definition, a collective should be an organization that merely facilitates the collaborative efforts of patient and caregiver members – including the allocation of costs and revenues. As such, a collective is not a statutory entity, but as a practical matter it might have to organize as some form of business to carry out its activities. The collective should not purchase marijuana from, or sell to, non-members; instead, it should only provide a means for facilitating or coordinating transactions between members.



**B. Guidelines for the Lawful Operation of a Cooperative or Collective:**

Collectives and cooperatives should be organized with sufficient structure to ensure security, non-diversion of marijuana to illicit markets, and compliance with all state and local laws. The following are some suggested guidelines and practices for operating collective growing operations to help ensure lawful operation.

1. **Non-Profit Operation:** Nothing in Proposition 215 or the MMP authorizes collectives, cooperatives, or individuals to profit from the sale or distribution of marijuana. (See, e.g., § 11362.765(a) [“nothing in this section shall authorize . . . any individual or group to cultivate or distribute marijuana for profit”].)

2. **Business Licenses, Sales Tax, and Seller’s Permits:** The State Board of Equalization has determined that medical marijuana transactions are subject to sales tax, regardless of whether the individual or group makes a profit, and those engaging in transactions involving medical marijuana must obtain a Seller’s Permit. Some cities and counties also require dispensing collectives and cooperatives to obtain business licenses.

3. **Membership Application and Verification:** When a patient or primary caregiver wishes to join a collective or cooperative, the group can help prevent the diversion of marijuana for non-medical use by having potential members complete a written membership application. The following application guidelines should be followed to help ensure that marijuana grown for medical use is not diverted to illicit markets:

- a) Verify the individual’s status as a qualified patient or primary caregiver. Unless he or she has a valid state medical marijuana identification card, this should involve personal contact with the recommending physician (or his or her agent), verification of the physician’s identity, as well as his or her state licensing status. Verification of primary caregiver status should include contact with the qualified patient, as well as validation of the patient’s recommendation. Copies should be made of the physician’s recommendation or identification card, if any;
- b) Have the individual agree not to distribute marijuana to non-members;
- c) Have the individual agree not to use the marijuana for other than medical purposes;
- d) Maintain membership records on-site or have them reasonably available;
- e) Track when members’ medical marijuana recommendation and/or identification cards expire; and
- f) Enforce conditions of membership by excluding members whose identification card or physician recommendation are invalid or have expired, or who are caught diverting marijuana for non-medical use.

4. **Collectives Should Acquire, Possess, and Distribute Only Lawfully Cultivated Marijuana:** Collectives and cooperatives should acquire marijuana only from their constituent members, because only marijuana grown by a qualified patient or his or her primary caregiver may lawfully be transported by, or distributed to, other members of a collective or cooperative. (§§ 11362.765, 11362.775.) The collective or cooperative may then allocate it to other members of the group. Nothing allows marijuana to be purchased from outside the collective or cooperative for distribution to its members. Instead, the cycle should be a closed-circuit of marijuana cultivation and consumption with no purchases or sales to or from non-members. To help prevent diversion of medical marijuana to non-medical markets, collectives and cooperatives should document each member's contribution of labor, resources, or money to the enterprise. They also should track and record the source of their marijuana.

5. **Distribution and Sales to Non-Members are Prohibited:** State law allows primary caregivers to be reimbursed for certain services (including marijuana cultivation), but nothing allows individuals or groups to sell or distribute marijuana to non-members. Accordingly, a collective or cooperative may not distribute medical marijuana to any person who is not a member in good standing of the organization. A dispensing collective or cooperative may credit its members for marijuana they provide to the collective, which it may then allocate to other members. (§ 11362.765(c).) Members also may reimburse the collective or cooperative for marijuana that has been allocated to them. Any monetary reimbursement that members provide to the collective or cooperative should only be an amount necessary to cover overhead costs and operating expenses.

6. **Permissible Reimbursements and Allocations:** Marijuana grown at a collective or cooperative for medical purposes may be:

- a) Provided free to qualified patients and primary caregivers who are members of the collective or cooperative;
- b) Provided in exchange for services rendered to the entity;
- c) Allocated based on fees that are reasonably calculated to cover overhead costs and operating expenses; or
- d) Any combination of the above.

7. **Possession and Cultivation Guidelines:** If a person is acting as primary caregiver to more than one patient under section 11362.7(d)(2), he or she may aggregate the possession and cultivation limits for each patient. For example, applying the MMP's basic possession guidelines, if a caregiver is responsible for three patients, he or she may possess up to 24 oz. of marijuana (8 oz. per patient) and may grow 18 mature or 36 immature plants. Similarly, collectives and cooperatives may cultivate and transport marijuana in aggregate amounts tied to its membership numbers. Any patient or primary caregiver exceeding individual possession guidelines should have supporting records readily available when:

- a) Operating a location for cultivation;
- b) Transporting the group's medical marijuana; and
- c) Operating a location for distribution to members of the collective or cooperative.

8. **Security:** Collectives and cooperatives should provide adequate security to ensure that patients are safe and that the surrounding homes or businesses are not negatively impacted by nuisance activity such as loitering or crime. Further, to maintain security, prevent fraud, and deter robberies, collectives and cooperatives should keep accurate records and follow accepted cash handling practices, including regular bank runs and cash drops, and maintain a general ledger of cash transactions.

C. **Enforcement Guidelines:** Depending upon the facts and circumstances, deviations from the guidelines outlined above, or other indicia that marijuana is not for medical use, may give rise to probable cause for arrest and seizure. The following are additional guidelines to help identify medical marijuana collectives and cooperatives that are operating outside of state law.

1. **Storefront Dispensaries:** Although medical marijuana “dispensaries” have been operating in California for years, dispensaries, as such, are not recognized under the law. As noted above, the only recognized group entities are cooperatives and collectives. (§ 11362.775.) It is the opinion of this Office that a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law, but that dispensaries that do not substantially comply with the guidelines set forth in sections IV(A) and (B), above, are likely operating outside the protections of Proposition 215 and the MMP, and that the individuals operating such entities may be subject to arrest and criminal prosecution under California law. For example, dispensaries that merely require patients to complete a form summarily designating the business owner as their primary caregiver – and then offering marijuana in exchange for cash “donations” – are likely unlawful. (*Peron, supra*, 59 Cal.App.4th at p. 1400 [cannabis club owner was not the primary caregiver to thousands of patients where he did not consistently assume responsibility for their housing, health, or safety].)

2. **Indicia of Unlawful Operation:** When investigating collectives or cooperatives, law enforcement officers should be alert for signs of mass production or illegal sales, including (a) excessive amounts of marijuana, (b) excessive amounts of cash, (c) failure to follow local and state laws applicable to similar businesses, such as maintenance of any required licenses and payment of any required taxes, including sales taxes, (d) weapons, (e) illicit drugs, (f) purchases from, or sales or distribution to, non-members, or (g) distribution outside of California.