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10 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN DIEGO**

12 **KARL BECK**, individually and on behalf of all
13 other similarly situated California residents,

14 Plaintiff,

15 v.

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

27 Defendants.

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

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES AND SEPARATE
STATEMENT IN SUPPORT OF
PLAINTIFF'S MOTION TO COMPEL
PRODUCTION OF PUTATIVE CLASS
MEMBER LIST AND APPROVE OPT-
OUT NOTICE**

Date: March 23, 2018

Time: 9:00 a.m.

Judge: Hon. Joel R. Wohlfeil

Ctrm: C-73

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1 **I. INTRODUCTION**

2 Plaintiff Karl Beck (“Plaintiff” or “Beck”) hereby respectfully submits this Memorandum of
3 Points and Authorities and Separate Statement in support of his Motion to Compel Plaintiff’s
4 Request for Production No. 1 to defendant Point Loma Patients Consumer Cooperative Corporation
5 (the “PLPCC”).

6 By this Motion, Plaintiff seeks to compel the PLPCC to produce “[a]n export list [from the
7 PLPCC’s customer database] containing the names and addresses of all [associate] members of the
8 PLPCC since January 1, 2015” for the purpose of identifying and contacting absent class members.
9 Declaration of William R. Restis in Support of Plaintiff’s Motion to Compel (“Restis Decl.”), Exs.
10 A and B (request and response), and Ex. C (clarifying meet and confer); *see Pioneer Electronics*
11 *(USA), Inc. v. Sup. Ct.*, 40 Cal.4th 360, 365-66, 374-75 (2007) (describing procedure for
12 precertification discovery of class member names and addresses); *Williams v. Sup. Ct.*, 3 Cal.5th
13 531, 538 (2017) (“Our prior decisions and those of the Courts of Appeal firmly establish that ... the
14 contact information of those a plaintiff purports to represent is routinely discoverable, as an essential
15 prerequisite to effectively seeking group relief, without any requirement that the plaintiff first show
16 good cause.”); *Id.*, at 547 (“In a class action, fellow class members are potential percipient witnesses
17 to alleged illegalities, and it is on that basis their contact information becomes relevant.”).

18 In addition, Plaintiff respectfully requests that this Court approve of the proposed Notice and
19 Opt-out to putative class members required by case law. *See Restis Decl.*, Ex. D; *Best Buy Stores,*
20 *L.P. v. Sup. Ct.*, 137 Cal.App.4th 772, 775 (2006) (approving procedure for third party notice to
21 absent class members).

22 In addition to Plaintiff’s general entitlement to class member contact information, it is
23 additionally warranted because the PLPCC has objected to Plaintiff’s adequacy and standing.
24 According to PLPCC counsel, Plaintiff was purportedly “banned from the facility due to his
25 inappropriate and harassing behavior towards other members within 30 days of becoming a
26

1 member.” Restis Decl., Ex. E.

2 Plaintiff maintains that he is a valid representative for the purposes of class certification.
3 However, in an abundance of caution, Plaintiff seeks information on potential class members should
4 a replacement be necessary. *See Best Buy Stores*, 137 Cal.App.4th at 774-775, 779 (granting a
5 motion to compel the contact information of absent class members to identify substitute class
6 representative).

7 **II. BACKGROUND**

8 This putative class action asserts that defendant PLPCC, and its owners Adam Knopf and
9 Justus H. Henkes (the “Individual Defendants”) ran a for-profit medical marijuana business in
10 violation of California law. The Complaint (which has been sustained) alleges that the Individual
11 Defendants funneled large sums of money to five “Shell Companies” wholly owned and controlled
12 by the Individual Defendants to avoid showing a profit in the PLPCC and avoid paying profits to
13 putative class members as “patronage distributions.” The Shell Companies are defendants 419
14 Consulting Inc., Golden State Greens LLC, Far West Management, LLC, Far West Operating, LLC,
15 and Far West Staffing, LLC.

16 **III. PLAINTIFF’S REQUEST AND RESPONSE IN DISPUTE**

17 As modified through meet and confer, Plaintiff’s RFP asks the PLPCC to produce: “[a]n
18 **export list [from the PLPCC’s customer database] containing the names and addresses of all**
19 **[associate] members of the PLPCCC since January 1, 2015.**” Restis Decl., Exs. A and C.¹

22 ¹ Restis Decl., Ex. C (“For the purpose of meet and confer, ‘member’ in Request No. 1 should be
23 read to include associate members. The Request is intended to obtain identity and contact
24 information for the proposed class, and should be construed accordingly.... We are aware that the
25 PLPCC collects name, address and telephone information from patrons upon their first visit to the
26 PLPCC, and enters this information into a database. Thus, when Request 1 asks for an ‘export list’
of name and address information, it is asking the PLPCC to export this list for use by a notice
administrator.”)

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Defendant's response is:

Responding Party objects to this request on the grounds it requests Responding Party's trade secret or other confidential and proprietary commercial information.

Responding Party objects to this request on the grounds it calls for the production of documents that are protected by a right of privacy under the United States Constitution, Article I of the Constitution of California or any other applicable law.

Responding Party objects to this request on the grounds it violates California state law governing health information privacy including the Confidentiality of Medical Information Act, California Patient Access to Health Records Act and the Lanterman-Patris-Short Act.

Restis Decl., Ex. B.

Plaintiff's proposed Notice to the Class is as follows:

ATTENTION CUSTOMERS OF POINT LOMA PATIENTS CONSUMER COOPERATIVE BETWEEN JANUARY 1, 2015 AND DECEMBER 31, 2017
This Court ordered notice is to inform you that your name and address may be disclosed to plaintiff's counsel in a class action lawsuit

You received this Notice because you may have been a customer of the Point Loma Patients Consumer Cooperative Corporation (the "PLPCC"). The San Diego Superior Court has ordered this notice to inform you of your right to object to disclosure of your name and address to plaintiff's counsel in the class action lawsuit Beck v. PLPCCC et al., No. 37-2017-00037524-CU-BT-CTL.

The lawsuit alleges that as a cooperative corporation, the PLPCC was required to distribute all profits to its patrons. Instead, the lawsuit alleges the PLPCC's owners wrongfully paid out revenues to themselves and several shell companies to avoid showing a profit. The lawsuit seeks to recover these profits for PLPCC patrons. The PLPCC and the other defendants vehemently deny they have done anything wrong, and believe Plaintiff's counsel should not have the right to contact you.

The defendants have argued that current plaintiff Karl Beck may not be a suitable person to represent the class and that customers are not entitled to share in the PLPCC's profits. Accordingly, plaintiff's counsel wish to contact potential plaintiffs to investigate the case and ensure it can proceed for the benefit of the class. This notice is being sent at the Court's direction before the PLPCC provides plaintiff's counsel with your name and address. Unless you respond that you do not want to be contacted, plaintiff's counsel will be given your contact information for the sole purpose of discussing the case.

To allow the disclosure of your name and address to plaintiff's counsel for use in this lawsuit, simply do nothing. If you do not respond to this letter, plaintiff's counsel is

1 permitted to contact you. If you do not want to be contacted, please sign your name on the
2 back of this card and mail it to [NOTICE ADMINISTRATOR] by [30 days from mailing].
Thank you.

3 Restis Decl., Ex. D.

4 **IV. MEET AND CONFER**

5 Plaintiff has repeatedly attempted to resolve this issue through meet and confer sessions. The
6 day after Plaintiff served his discovery, Plaintiff notified the PLPCC that a class action plaintiff is
7 entitled to discover the identity and contact information of absent class members. Restis Decl., Ex.
8 F, citing *CashCall, Inc. v. Sup. Ct.*, 159 Cal.App.4th 273, 278 (2008); *Best Buy Stores*, 137
9 Cal.App.4th 772; *Belaire-West Landscape, Inc. v. Sup. Ct.*, 149 Cal.App.4th 554 (2007); *Lee v.*
10 *Dynamex, Inc.*, 166 Cal.App.4th 1325 (2008); *Puerto v. Sup. Ct.*, 158 Cal.App.4th 1242 (2008).

11 Plaintiff also attempted to address the PLPCC's concerns regarding privacy by suggesting
12 the appointment of a disinterested third-party administrator to send opt-out notices to putative class
13 members, before Defendant was required to disclose any responsive information to Plaintiff. *Id.*

14 Defendant responded with objections on January 5, 2018. Restis Decl., Ex. B. So on January
15 9, 2018, Mr. Restis noted that the PLPCC's "objections appear to be addressed by my December 6th
16 letter. Please provide the PLPCC's response to my meet and confer so we can frame the issues for
17 the Court if necessary." *Id.* Ex. G.

18 On January 30th, Plaintiff sent the PLPCC a proposed draft of the Notice to absent class
19 members describing the right to opt-out of disclosure tracking the form approved by *Best Buy Stores*,
20 137 Cal.App.4th at 775. Restis Decl., Ex. H.

21 The PLPCC responded on February 1:

22 As an initial matter, PLPCC has a "member" class and "associate members." Plaintiff is an
23 "associate member" with ne "member" (*sic.*) and therefore only one name to disclose.
24 However, assuming arguendo that "associate members" are "members" for purposes of this
correspondence, PLPCC's response to RPD No. 1 is precluded by California law.

25 **RPD No. 1 Violates California's Confidentiality of Medical Information Act**

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California’s Confidentiality of Medical Information Act (“CMIA”) is codified in Civil Code section 56 et seq. The CMIA is intended to protect the confidentiality of individually identifiable medical information obtained from a patient by a health care provider. As you know, California voters passed Proposition 64 (“Prop 64”) which, among other things, legalized recreational marijuana use. Prop 64 also extends privacy protection to patients who hold a Medical Marijuana Identification Card (MMIC) card issued under the Medical Marijuana Program Act (MMPA) and precludes the Department of Public Health or any county public health department from disclosing individually identifiable information under the Confidentiality of Medical Information Act.

PLPCC’s patrons are medical marijuana users – each member has a medical condition and a physician’s recommendation which qualifies them to patronize PLPCC. The information RPD No. 1 requests requires PLPCC to disclose individually identifiable information for each medical marijuana user. Put another way, an “associate member” must be a “qualified patient.” The two cannot be separated. RPD No. 1 accordingly requests a list of names of people that all have a medical condition that allows them to purchase and use medical marijuana. PLPCC cannot, and will not, disclose this information.

Restis Decl., Ex. I (emphasis added).

Plaintiff responded on February 1, 2018 that:

Concerning your objection under the CMIA, Section 56.10 of the Civil Code governs the “disclosure” of medical information by a health care provider. Civil Code § 56.10(a) provides that “[a] provider of health care, health care service plan, or contractor shall not disclose medical information regarding a patient ... without first obtaining an authorization, except as provided in subdivision (b) or (c).” The CMIA defines “Medical information” to mean “any individually identifiable information ... regarding a patient’s medical history, mental or physical condition, or treatment.” Civ Code § 56.05.

Since Request No. 1 does not require disclosure of “medical information,” just name and address, the CMIA is not implicated. And even if Plaintiff did seek disclosure of “medical information” – he does not – it can still be produced “by a court pursuant to an order of that court.” CIV. CODE § 56.10(b)(1).

Id. Ex. C; *see also Eisenhower Med. Ctr. v. Sup. Ct.*, 226 Cal.App.4th 430, 435 (2014) (“It is clear from the plain meaning of the [CMIA] that medical information cannot mean just any patient-related information held by a health care provider, but must be “individually identifiable information” and also include “a patient's medical history, mental or physical condition, or treatment.”).

On February 8, 2018, the PLPCC responded that

Although contact information is “private,” it is not particularly sensitive, unlike personal medical or financial information. (Pioneer, *supra*, 40 Cal.4th at 372.) As you know, in our discovery responses, we objected to disclosing identifying information of PLPCC’s patients and qualified caregivers on the grounds it is protected medical information.

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This is a serious, invasive, and unique request. Your discovery requests are not simply asking for identifying information of “members” of a regular business entity, like a corporation or limited liability company. Your discovery requests for pre-certification information demand identifying information of individuals who are patronizing PLPCC because of an underlying medical need. You cannot divorce the “associate member” from his/her status as a patient using medical marijuana or a qualified caregiver who is procuring medical marijuana for another individual. In addition, and as you know, medical marijuana was, and remains, permissible in San Diego and California. As you also know, marijuana remains illegal as a schedule 1 drug under the federal Controlled Substances Act. PLPCC’s patients and qualified caregivers cannot divorce themselves from the reality that their patronage to PLPCC inherently violates federal law.

Thus each factor on its own, revealing medical information or the names of individuals who could be accused of violating federal law, is sufficient to justify non-disclosure of PLPCC’s qualified patients and caregivers; when coupled together, it is evident that the balance weighs in favor of PLPCC’s qualified patients and caregivers and compels non-disclosure of their identifying information.

Restis Decl., Ex. J. The PLPCC also objected that the “*Cashcall* procedure” is not available to Plaintiff because

To date, Defendants have not asserted in this litigation that Beck is an improper or unsuitable class representative on the basis cited in your letter (inappropriate and harassing conduct towards other members). You appear to be referring to pre-litigation settlement discussions with Gina Austin. The Complaint was not filed until several weeks later, and to date in this action Defendants have not taken a position as to whether Mr. Beck is a proper class representative on the basis of the conduct you describe. Therefore, the stated basis for your request for PLPCC’s private names and contact information is wholly inapplicable.

Id. Plaintiff responded by modifying the proposed postcard Notice so that it does not contain any reference to marijuana. *Id.*, Ex. K (redline of proposed notice above).

The PLPCC ignored Plaintiff’s request for comment on the revised Notice. *Id.*, ¶ 13. This Motion follows.

1 **IV. ARGUMENT**

2 **A. PRE-CERTIFICATION DISCOVERY OF CLASS MEMBER NAMES AND**
3 **ADDRESSES IS APPROPRIATE**

4 In *Pioneer Electronics (USA), supra*, the California Supreme Court held that pre-certification
5 discovery of the identity and contact information of potential class members in a putative class action
6 was appropriate. *Pioneer*, 40 Cal.4th at 365-66, 374-75. The court held that notice to the putative
7 class members and an ability to opt-out of the disclosure to plaintiff’s counsel was sufficient to
8 protect their privacy interests. *Id.* at 373-375.

9 In *Best Buy Stores*, the court of appeal approved of the following order by the superior court:

10 1. Defendant was to provide a third party notice administrator with the names and
addresses of customers that may have been class members.

11 2. After receiving the class member list, the administrator had 10 days to mail the subject
12 notice to absent class members.

13 3. The putative class members had 35 days to respond to the notice by contacting the
administrator to opt out.

14 137 Cal.App.4th at 775. The court stated that such discovery to identify a suitable class
15 representative was proper. *Id.* at 779.

16 Citing *Pioneer*, the court of appeal in *Belaire-West Landscape, Inc., v. Sup. Ct.*, 149
17 Cal.App.4th at 561, found that employees who repositied their contact information with an employer
18 can “reasonably be expected to want their information disclosed to a class action plaintiff who may
19 ultimately recover for them unpaid wages that they are owed.” In *Puerto*, the court held that it was
20 abuse of discretion to require opt-in notice to putative class members for disclosure to plaintiff’s
21 counsel of contact information because “inaction is construed as consent in the context of attempts
22 to discover far more sensitive information than addresses and phone numbers – consumer records (§
23 1985.3), employment records (§ 1985.6) even ... bank records.” *Puerto*, 158 Cal.App.4th at 1259.

24 In *CashCall*, the court held that the trial court did not err by “ordering precertification
25 discovery in a class action for the purpose of identifying class members who may become substitute
26

1 plaintiffs in place of named plaintiffs who were not members of the class they purported to
2 represent.” 159 Cal.App.4th at 278. In *CashCall*, the plaintiffs sued defendant CashCall alleging
3 violations of their privacy rights by nonconsensual monitoring of debt collection telephone calls. *Id.*
4 Subsequent to filing an amended complaint, the plaintiffs learned that although monitoring had taken
5 place, the named plaintiffs were never members of the putative class. *Id.* at 279. The court of appeal
6 held that this type of discovery should be granted if the “rights of the class members outweighed the
7 potential for abuse of the class action procedure.” *Id.* at 292 citing *Parris v. Sup. Ct.*, 109 Cal.App.4th
8 285 (2003).

9 **B. GOOD CAUSE EXISTS TO COMPEL PRODUCTION OF NAMES AND**
10 **CONTACT INFORMATION**

11 The California Supreme Court has said that “the contact information of those a plaintiff
12 purports to represent is routinely discoverable, as an essential prerequisite to effectively seeking
13 group relief, without any requirement that the plaintiff first show good cause.” *Williams*, 3 Cal.5th
14 at 538. However, to the extent the Court believes Plaintiff must demonstrate good cause, it exists in
15 this case.

16 “Good cause” in the privacy context requires the need for the discovery to outweigh the
17 privacy interest involved. *Tien v. Sup. Ct.*, 139 Cal.App.4th 528, 541 (2006). The Supreme Court in
18 *Pioneer* required the court to determine: 1) whether there is a legally protected privacy interest, 2)
19 whether there is a reasonable expectation of privacy in the circumstances, and 3) whether any
20 invasion is sufficiently serious. *Pioneer Electronics (USA)*, 40 Cal.4th at 370-75, citing *Hill v.*
21 *National Collegiate Athletic Ass’n*, 7 Cal.4th 1, 36**Error! Bookmark not defined.**-37 (1994).

22 Assuming that a claimant has met the foregoing criteria to justify invasion of a privacy
23 interest, that interest must be measured against other competing or countervailing interests in a
24 “balancing test.” *Hill*, 7 Cal.4th at 37. Protective measures, safeguards and other alternatives may
25 minimize the privacy intrusion. “For example, if intrusion is limited and confidential information is

1 carefully shielded from disclosure except to those who have a legitimate need to know, privacy
2 concerns are assuaged.” *Id.* at 38.

3 **1. The Requested Names and Addresses Of Persons Are Necessary To The**
4 **Prosecution Of Plaintiff’s Claims**

5 The identity of those California consumers who were patrons of the PLPCC is highly relevant
6 for, at least, the following reasons:

7 1) To provide a substitute plaintiff if Defendants successfully attack Plaintiff Beck as a
8 class representative. *CashCall*, 159 Cal.App.4th at 278; *Best Buy Stores*, 137 Cal.App.4th at 779.

9 2) To determine whether there is an ascertainable class and a well defined community
10 of interest. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1347 (1987).

11 3) To identify percipient witnesses to Defendants’ alleged misconduct. *Puerto*, 158
12 Cal.App.4th at 1249-50; *Williams*, 3 Cal.5th at 543 (citing cases).

13 **2. The Need For Discovery Outweighs PLPCC Patrons’ Interest In Their Names**
14 **And Addresses**

15 **a. There Is No Reasonable Expectation Of Privacy In The Requested**
16 **Information In The Context Of Judicial Proceedings**

17 Plaintiff is only seeking discovery of class members’ identity and addresses, not their medical
18 history or purchasing history from the PLPCC. While it is indisputable that putative class members
19 have a legally protected privacy interest in their name and address (*City of San Jose v. Sup. Ct.*, 74
20 Cal.App.4th 1008, 1019 (1999)), the California Supreme Court has affirmatively held that the
21 “[c]ontact information regarding the identity of potential class members is generally discoverable,
22 so that the lead plaintiff may learn the names of other persons who might assist in prosecuting the
23 case.” *Pioneer*, 40 Cal. 4th at 373 (ruling on a pre-certification motion to compel); *Williams*, 3
24 Cal.5th at 538 (same).

1 The CMIA is also no barrier. Defendants’ exact objection was rejected in *Eisenhower Med.*
2 *Ctr.*, 226 Cal. App. 4th 430. In that case, the court of appeal held that:

3 [T]he mere fact that a person may have been a patient at the hospital at some time is
4 not sufficient. If interpreted as Plaintiffs wish, then release by a health care provider
5 of personal identification would be sufficient whether or not there was a release of
6 substantive information regarding that person's medical condition, history, or
7 treatment. Under that construction, the fact that an individual's name is on a list
8 released by doctor X or clinic Y is sufficient to violate the law because then it is
9 assumed that the individual was a patient of the latter at some point. Such a
10 construction does not comport with the plain and reasonable meaning of the statute
11 and would render meaningless the clause “regarding a patient's medical history,
12 mental or physical condition, or treatment.”

13 *Id.* at 435. The gap between “identifiable information” and “medical information” is even more
14 attenuated in this case. Plaintiff is just asking for a list of names and addresses to be produced to a
15 third party notice administrator who will be bound by the stipulated protective order in this case. That
16 list will come from Dart Law or Austin Legal Group, without the necessity of revealing its origin.

17 Even the Notice is agnostic as it doesn’t mention the words cannabis or marijuana. It merely
18 mentions there is a lawsuit against the PLPCC related to cooperative patronage distributions. *See*
19 *Restis Decl.*, Ex. D. And the Notice only states that the recipient “may have been” a customer of the
20 PLPCC. *Id.*

21 **b. Appropriate Safeguards Render The Invasion De Minimus**

22 The Supreme Court in *Hill*, asked whether an intrusion into privacy is sufficiently “serious”
23 to warrant protection. *Hill*, 7 Cal.4th at 36-37. The pre-certification disclosure of names and
24 addresses of putative class members is commonplace and raises no “serious” threat to privacy.
25 *Pioneer*, 40 Cal.4th at 373; *Budget Finance Plan v. Sup. Ct.*, 34 Cal.App.3d 794, 799-800 (1973).
26 The *Pioneer* court found that revealing names and addresses to class counsel “threatens no undue
27 intrusion into one’s personal life such as mass-marketing efforts or unsolicited sales pitches.”
28 *Pioneer*, 40 Cal.4th at 373.

1 Perhaps more importantly, notice to the putative class members and opportunity to opt-out
2 of disclosure is sufficient to protect their privacy interests. *Valley Bank of Nevada v. Sup. Ct.*, 15
3 Cal.3d 652, 653 (1975); *Pioneer*, 40 Cal.4th at 370; *Puerto*, 158 Cal.App.4th at 1259. Plaintiff’s
4 counsel has proposed that the parties adopted the same opt-out process approved by the court in
5 *Pioneer*. See Restis Decl., Ex. D (proposed notice). Such protections are legally sufficient to ensure
6 the privacy of putative class members. *Pioneer*, 40 Cal.4th at 373.

7 **c. Competing Interests Weigh In Favor Of Production**

8 The Supreme Court found that “[a]ssuming that a claimant has met the [] *Hill* criteria for
9 invasion of a privacy interest, that interest must be measured against other competing or
10 countervailing interests in a ‘balancing test.’” *Pioneer*, 40 Cal.4th at 371. The Supreme Court in
11 *Pioneer* balanced opposing interests and found that California’s discovery statute weighs in favor of
12 disclosure because it permits discovery of “the identity and location of persons having
13 [discoverable] knowledge” (CODE CIV. PROC. § 2017.010) thereby making “many of Pioneer’s
14 complaining customers ... *percipient witnesses*.” *Id.* at 373-74 (emphasis in original). This is
15 important because “the state has an interest in seeking the truth in court proceedings” and “a
16 compelling interest in ensuring that those injured by the actionable conduct of others receive full
17 redress of those injuries.” *Johnson v. Sup. Ct.*, 80 Cal.App.4th 1050, 1071 (2000).

18 And when important information is in the exclusive control of the party from which
19 disclosure is sought, as is the case here, the balance weighs in favor of disclosure. See *Tien*, 139
20 Cal.App.4th at 540. When evidence sought is “crucial” to the case, the need for discovery will
21 usually overcome even a “strong” privacy interest. See *Save Open Space Santa Monica Mountains*
22 *v. Sup. Ct.*, 84 Cal.App.4th 235, 254 (2000).

23 The Supreme Court was also rightfully concerned that preventing disclosure of class
24 members’ identity would give one side an improper tactical advantage, “could have potentially
25 adverse effects in ... consumer rights litigation” and “could make it more difficult to obtain class

1 certification.” *Pioneer*, 40 Cal.4th at 374.

2 In this case, the putative class members are a unique source of discoverable information to
3 which the PLPCC has access, but Plaintiff does not. *Tien*, 139 Cal.App.4th at 540; *Save Open Space*
4 *Santa Monica Mountains*, 84 Cal.App.4th at 254; *Pioneer*, 40 Cal.4th at 374. Further, Plaintiff
5 cannot and will not disclose the identities sought, and is seeking to vindicate the rights of the persons
6 whose contact information he seeks. Permitting disclosure of putative class members’ contact
7 information – after an opportunity to object – furthers “truth in court proceedings” and helps ensure
8 “full redress of [] injuries.” *Johnson*, 80 Cal.App.4th at 1071.

9 **C. THE RIGHTS OF CLASS MEMBERS OUTWEIGH THE NON-EXISTENT**
10 **POTENTIAL FOR ABUSE**

11 Defendants object to Plaintiff as a class representative, which necessitated the discovery at
12 issue. According to Defendants, Plaintiff is entitled to no relief, and has no “standing” because he
13 was purportedly “banned from the facility due to his inappropriate and harassing behavior towards
14 other members within 30 days of becoming a member.” Restis Decl., Ex. E (9/20/17 Email from
15 Defendants’ counsel Gina Austin to Restis.). Plaintiff disputes that he was banned, and instead
16 asserts Defendants fabricated this charge as an excuse to deny Plaintiff access to the PLPCC’s books.
17 *See* RoA # 1, Compl., ¶ 19.

18 Nevertheless, Defendants’ attack on Plaintiff Beck strengthens his request for pre-
19 certification discovery to locate a substitute class representative. The Court in *CashCall* stated that
20 when issues concerning the suitability of a putative class plaintiff arise, and discovery is sought to
21 locate a substitute, the trial court should use the “*Parris* [109 Cal.App.4th 285] balancing test
22 [concerning whether] the rights of the class members outweigh[] the potential for abuse of
23 [discretion].” *CashCall*, 159 Cal.App.4th at 291.

24 In *Safeco Ins. Co. of America v. Sup. Ct.*, the court found that even where “the potential for
25 abuse of the class action procedure is apparent, the trial court’s conclusion that the rights of the class

1 members in these circumstances outweigh the potential for abuse of the class action procedure is
2 entitled to considerable deference.” 173 Cal.App.4th 814, 835 (2009). In this case, Plaintiff is
3 indisputably a member of the class he seeks to represent. Thus, this is not a “headless” class action
4 filed with a straw plaintiff that has never been damaged. And the interests of absent class members
5 are significant.

6 *CashCall* found that the trial court properly weighed the competing *Parris* factors in allowing
7 the requested identity and contact information of putative class members because “there was no other
8 action or enforcement pending to provide class members with relief for the alleged violations of their
9 ... rights.” 159 Cal.App.4th at 293. Additionally *CashCall* involved a plaintiff that never had
10 standing because the conduct at issue never *remotely* applied to him, thus the potential for abuse was
11 substantially higher.

12 Similar to *CashCall*, there is currently no other action to enforce the class members’ rights,
13 therefore to deny Plaintiff’s discovery motion may result in a denial of justice for the absent class
14 members. Accordingly, per *CashCall*, the benefit of discovery outweighs the risk of abuse of the
15 class action procedure.

16 **VI. CONCLUSION**

17 For the reasons stated above, good cause exists for the PLPCC to provide the names and
18 addresses of absent class members to a third party administrator for disclosure to Plaintiff after an
19 opt-out period, and for the Court to approve the form of notice.

20 Respectfully submitted,

21 DATED: February 15, 2018

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