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Superior Court of California,  
County of San Diego  
**03/23/2018** at 01:57:00 PM  
Clerk of the Superior Court  
By Katelin O'Keefe, Deputy Clerk

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 IN SUPPORT OF  
PLAINTIFF'S MOTION FOR JUDGMENT  
ON THE PLEADINGS TO DEFENDANTS'  
JOINT ANSWER**

Date: May 4, 2018

Time: 9:00 a.m.

Judge: Hon. Joel R. Wohlfeil

Ctrm: C-73

1 **I. INTRODUCTION**

2 Plaintiff Karl Beck (“Plaintiff”) brings this motion for judgment on the pleadings to  
3 streamline this litigation<sup>1</sup> and discovery related to affirmative defenses that should be dismissed.  
4 Pursuant to Code of Civil Procedure Sections 430.20 and 438(c)(1)(A), Plaintiff hereby moves for  
5 judgment on the pleadings to Defendants’<sup>2</sup> First, Second, Third, Fourth, Fifth, Sixth, Seventh,  
6 Eighth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, and Sixteenth Affirmative  
7 Defenses pled in Defendants’ Joint Answer to Plaintiff’s Complaint (the “Affirmative Defenses” in  
8 the “Answer”). RoA # 47.

9 Many of the Affirmative Defenses are not really defenses at all, because they are not “new  
10 matter.” Thus they should be dismissed without leave to amend. Several others are legally  
11 unavailable to Plaintiff’s UCL cause of action. Those too should be dismissed without leave to  
12 amend. And the remaining Defenses (except one) are “uncertain, ambiguous, and unintelligible”  
13 because they do not “state *facts* sufficient to constitute a defense.” CAL. CIV. PROC. CODE § 430.20  
14 (emphasis added). They are boilerplate legal conclusions of issues such as “laches” “waiver” and  
15 “consent” that do not put Plaintiff on notice of Defendants’ case in chief. The Court should dismiss  
16 these Defenses with leave to amend.

17 This motion is necessary to frame this issue for Plaintiff’s forthcoming motion for class  
18 certification. In deciding whether to certify a class, the Court is direct to consider “whether  
19 substantially similar questions are common to the class and predominate over individual questions  
20 or whether *the claims or defenses of the representative plaintiffs are typical of class claims or*

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21 <sup>1</sup>See e.g., *FPI Dev., Inc. v. Nakashima*, 231 Cal. App. 3d 367, 382 (1991) (In seeking summary  
22 judgment of affirmative defenses “the moving party need not address a missing element or,  
23 obviously, respond to assertions which are unintelligible or make out no recognizable legal claim.”  
24 This is because “a pleading may be defective in failing to allege an element of a cause of action or in  
failing to intelligibly identify a defense thereto.”).

25 <sup>2</sup> Point Loma Patients Consumer Cooperative Corporation, Adam Knopf, Justus H. Henkes IV, 419  
26 Consulting Inc., Golden State Greens LLC, Far West Management, LLC, Far West Operating, LLC,  
and Far West Staffing, LLC (collectively “Defendants”).

1 *defenses.” Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 443 (2000) (emphasis added); *Brinker Rest.*  
2 *Corp. v. Sup. Ct.*, 53 Cal. 4th 1004, 1024 (2012) (“The rule is that a court may ‘consider how  
3 various claims and defenses relate and may affect the course of the litigation.’”); *see also Erica P.*  
4 *John Fund, Inc. v. Halliburton Co.*, 131 S.Ct. 2179, 2181 (2011) (The issue of whether common  
5 questions of law or fact predominate “begins, of course, with the elements of the underlying cause  
6 of action.”) Thus, the pleadings must be set for the parties and the Court to adequately determine  
7 the certifiability of the proposed class.

8 On February 22, 2018, Plaintiff met and conferred with Defendants, asking that they amend  
9 their answer to avoid motion practice. Declaration of William R. Restis ISO Motion for Judgment  
10 on the Pleadings, Ex. 1. Defendants ignored Plaintiff’s request.

## 11 **II. LEGAL STANDARDS FOR PLAINTIFF’S MOTION**

12 A motion for judgment on the pleadings will lie where the complaint states facts sufficient  
13 to establish cause(s) of action against the defendant but the answer does not state facts sufficient to  
14 bar liability. *See* CIV. PROC. CODE § 438(c)(1)(A). Judgment is appropriate as to “the entire  
15 answer or one or more of the affirmative defenses.” *Id.*, § 438(c)(2)(B). The grounds for judgment  
16 on the pleadings must “appear on the face of the challenged pleading.” *Id.*, § 438(d). As such, a  
17 motion for judgment on the pleadings serves as the functional equivalent of a demurrer.  
18 *Kapsimallis v. Allstate Ins. Co.*, 104 Cal. App. 4th 667, 670 n.1 (2002).

19 As such, Code of Civil Procedure Section 430.20 provides that “[a] party against whom an  
20 answer has been filed may object, by demurrer ....to the answer upon any one or more of the  
21 following grounds: (a) The answer does not state facts sufficient to constitute a defense. (b) The  
22 answer is uncertain. As used in this subdivision, ‘uncertain’ includes ambiguous and  
23 unintelligible.”

## 24 **III. THE 1<sup>ST</sup>, 6<sup>TH</sup>, 7<sup>TH</sup>, 8<sup>TH</sup>, 12<sup>TH</sup> AND 16<sup>TH</sup> DEFENSES ARE NOT “NEW MATTER”**

25 An affirmative defense must be “new matter” that, assuming the complaint proves true,  
26 provides an independent basis to bar recovery. CIV. PROC. CODE § 431.30(b)(2); *FPI Dev.*, 231

1 Cal.App.3d at 384 (an affirmative defense is “in the nature of ‘yes, the allegations are true,  
2 but...’”); *Id.*, at n. 4 (an affirmative defense “admits that all the material allegations of the  
3 complaint or petition are true, and consists of *facts* not alleged therein which destroy the right of  
4 action, and defeat a recovery”) (emphasis added). Affirmative defenses thus constitute a  
5 defendant’s case in chief, because it “bears the burden of proof on new matter.” *Sargent Fletcher,*  
6 *Inc. v. Able Corp.*, 110 Cal. App. 4th 1658, 1668 (2003).<sup>3</sup>

7 In this case, the majority of Defendants’ Defenses do not constitute “new matter,” merely  
8 denials of the elements of Plaintiff’s claims. The following Defenses thus fail to constitute new  
9 matter, and should be dismissed.

10 • First Defense: “the Complaint, and each and every alleged cause of action therein, fails to  
11 state facts sufficient to constitute a cause of action...”

12 • Sixth Defense: “Plaintiff lacks standing to bring his claims as to all or a portion of the  
13 claims alleged in the Complaint.”

14 • Seventh Defense: Defendants’ “business actions or practices were not unfair, unlawful,  
15 fraudulent or deceptive within the meaning of California Business and Professions Code section  
16 17200.”

17 • Eighth Defense: “Defendants oppose class certification and dispute the propriety of class  
18 treatment.” *See also Hernandez v. Balakian*, 2007 WL 1649911, at \*9 (E.D. Cal. June 1, 2007)  
19 (issues regarding Rule 23 are addressed during class certification proceedings, not as an  
20 affirmative defense).

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24 <sup>3</sup> There is a “critical distinction” between an affirmative defense, which raises new matter, and a  
25 denial, which simply denies the allegations of the complaint. *Alpha Mech., Heating & Air*  
26 *Conditioning, Inc. v. Travelers Cas. & Sur. Co. of Am.*, 133 Cal. App. 4th 1319, 1330 (2005).  
Where “the answer sets forth facts showing some essential allegation of the complaint is not true,  
such facts are not ‘new matter,’ but only a [denial].” *Id.*

1 • Twelfth Defense: “Defendants’ compliance or substantial compliance with all applicable  
2 laws underlying Plaintiff’s claims of violation of the Corporations Code, violation of the UCL,  
3 violation of the CLRA and conversion.”

4 • Fifteenth Defense: “Plaintiff is estopped from making a demand for business records  
5 *because Plaintiff is not a member of PLPCC.*” (emphasis added).

6 • Sixteenth Defense: “Plaintiff cannot recover on a conversion claim because the alleged  
7 converted property is unidentifiable and Plaintiff cannot claim a specific, identifiable sum.”

8 As none of these constitute “affirmative defenses,” they should be dismissed with  
9 prejudice.

10 **IV. EQUITABLE DEFENSES ARE NOT AVAILABLE TO PLAINTIFF’S UCL CLAIMS**

11 The Court should grant judgment on the pleadings to Defendants’ Third (Laches), Fourth  
12 (Waiver), Fifth (Consent), Tenth (Estoppel), Eleventh (Failure to Mitigate), and Fifteenth  
13 (Estoppel) Defenses *as to* Plaintiff’s claim for “unlawful” business practices in violation of  
14 California Business & Professions Code § 17200 (the “UCL”). This is because such equitable  
15 defenses are not available for UCL claims.

16 In *Cortez v. Purolator Air Filtration Products Co.*, the California Supreme Court pointed  
17 out that “[t]he UCL imposes strict liability when property or monetary losses are occasioned by  
18 conduct that constitutes an unfair business practice.” 23 Cal. 4th 163, 181 (2000). For this reason,  
19 the Court held that “equitable defenses may not be asserted to wholly defeat a UCL claim since  
20 such claims arise out of unlawful conduct.” *Id.* at 179; *also Ticconi v. Blue Shield of Cal. Life &*  
21 *Health Ins. Co.*, 160 Cal. App. 4th 528, 543-44 (2008) (equitable defenses may not be used to  
22 defeat a cause of action under the UCL because it would “potentially sanction [the defendant’s]  
23 unlawful and unfair conduct”); *Page v. Bakersfield Uniform & Towel Supply Co.*, 239 Cal. App.  
24 2d 762, 770 (1966) (It has long been the law that “[t]he equitable doctrine of the refusal of aid to  
25 anyone with ‘unclean hands,’ does not, as such, apply to actions under [the Unfair Practices]

1 Act.”).<sup>4</sup>

2 Since laches, waiver, consent, estoppel and failure to mitigate are equitable defenses to  
3 Plaintiff’s claim that Defendants violated California medical marijuana laws and the California  
4 Corporations Code, they cannot withstand judgment on the pleadings.

5 **V. DEFENDANTS’ BOILERPLATE DEFENSES FAIL TO PLEAD ULTIMATE FACTS**

6 Defendant’s Joint Answer is required to plead “general allegations of ultimate fact” that  
7 apprises Plaintiff of the “factual basis” for Defendants’ Affirmative Defenses. *McKell v. Wash.*  
8 *Mut., Inc.*, 142 Cal. App. 4th 1457, 1469-70 (2006); *see also Vilardo v. Cty. of Sacramento*, 54  
9 Cal. App. 2d 413, 418-19 (1942) (“It is elementary that a pleading must allege facts and not  
10 conclusions.”).

11 For the Defenses that are not subject to dismissal as stated above, all but one are deficient  
12 because they do not “*state facts* sufficient to constitute a defense.” CIV. PROC. CODE § 430.20  
13 (emphasis added). Consequently, these Defenses are “uncertain, ambiguous, and unintelligible.”  
14 *Id.* Here, the following Defenses fail to plead ultimate facts and should be dismissed with leave to  
15 amend so Plaintiff can intelligently frame this case for class certification, discovery and trial:

- 16 • Second Defense: “Defendants allege that each cause of action in the Complaint is barred, in  
17 whole or in part, by the applicable statutes of limitations, including without limitation, California  
18 Civil Procedure Code section(s) 338(a), 340(a), and/or 343, California Civil Code section 1783,  
19 and California Business and Professions Code section 17208.”
- 20 • Third Defense: “the Complaint, and each and every alleged cause of action therein are  
21 barred, in whole or in part, by the equitable doctrine of laches.”
- 22 • Fourth Defense: “the Complaint, and each and every alleged cause of action therein are  
23 barred by the doctrine of waiver.”

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24 <sup>4</sup> In *Hobby Industry Assn. of America, Inc. v. Younger*, 101 Cal.App.3d 358 (1980), the court held  
25 that defenses for “unlawful” business practices are limited to those available to the underlying  
26 predicate act. *Id.*, at 371-372. In this case, the underlying legal violations arise under California’s  
27 medical marijuana laws and the Cooperative Corporations Code. *See* Complaint, RoA # 1.

1 • Fifth Defense: “the Complaint, and each and every alleged cause of action therein are  
2 barred, in whole or in part, because Plaintiff consented to the conduct about which he now  
3 complains.”

4 • Tenth Defense: “Plaintiff is estopped by his conduct from recovering any relief under his  
5 Complaint, or any purported cause of action alleged therein.”

6 • Eleventh Defense: “Any recovery on Plaintiff’s Complaint, or any purported cause of  
7 action alleged therein, is barred in whole or in part by Plaintiff’s failure to mitigate his damages.”

8 • Thirteenth Defense: “Plaintiff’s Complaint, or any cause of action contained therein, may  
9 be barred by the Business Judgment Rule applicable to claims of unlawful business practices  
10 under Business & Professions Code section 17200.”

11 • Fourteenth Defense: “Plaintiff’s Complaint, or any cause of action contained therein, may  
12 be barred by the business justification defense to any alleged unfair business practices under  
13 Business & Professions Code section 17200.”

14 Because Plaintiff is left scratching his head as to the basis for the above Affirmative  
15 Defenses, the Court should dismiss them. Defendants can then plead the factual elements of each  
16 Defense, or abandon them if there are no supporting facts.

17 **V. CONCLUSION**

18 For the reasons stated above, the Court should dismiss without leave to amend the  
19 following Affirmative Defenses as failing to constitute new matter: First, Sixth, Seventh, Eighth,  
20 Twelfth, Fifteenth, and Sixteenth.

21 The Court should dismiss without leave to amend the following Affirmative Defenses *to*  
22 *Plaintiff’s UCL cause of action* because equitable defenses are not available to that claim: Third,  
23 Fourth, Fifth, Tenth, Eleventh, and Fifteenth.

24 ///

25 ///

1           The Court should dismiss *with leave to amend* the following Defenses because they fail to  
2 plead ultimate facts constituting the elements thereof: Second, Third, Fourth, Fifth, Tenth,  
3 Eleventh, Thirteenth, and Fourteenth.

4  
5 DATED: \_\_\_\_\_  
6

Respectfully submitted,

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