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

15  
16 KARL BECK, individually and on behalf  
17 of all other similarly situated California  
residents,

18 Plaintiff,

19 vs.

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

27 Defendants.  
28

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

**CLASS ACTION**

**DEFENDANTS' MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF JOINT MOTION FOR  
PROTECTIVE ORDER**

Judge: Hon. Joel Wohlfeil  
Dept.: 73  
Date: May 24, 2018  
Time: 9:00 a.m.

Complaint Filed: October 6, 2017  
Trial Date: March 1, 2019

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I. INTRODUCTION ..... 3

II. STATEMENT OF FACTS ..... 4

III. THE COURT SHOULD GRANT A PROTECTIVE ORDER ..... 6

    A. Plaintiff Seeks Disclosure Of Documents And Information Protected By  
    The Right To Privacy In California’s Constitution..... 7

        1. All Defendants And Third Parties Have A Financial Right To  
        Privacy..... 9

        2. Defendants And Third Parties Have A Right To Privacy In Their  
        Employment Information Including Employee Personnel Files ..... 9

        3. PLPCC’s Third-Party Qualified Patients And Caregivers Have A  
        Right To Privacy ..... 10

    B. Plaintiff Seeks Disclosure Of Privileged Documents And Information ..... 11

        1. Attorney Client Privilege As To All Defendants ..... 11

        2. Privilege Against Self-Incrimination As To Individual Defendants..... 12

        3. Tax Return Privilege As To All Defendants ..... 13

    C. Plaintiff’s Requests Are Oppressive, Burdensome, Duplicative,  
    Cumbersome, And Unreasonable..... 14

IV. MEET AND CONFER EFFORTS AND CONTINUED DISPUTES..... 15

V. CONCLUSION ..... 16

1 TABLE OF AUTHORITIES

2 **CASES**

3 *Cobb v. Superior Court* (1979) 99 Cal.App.3d 543 ..... 10  
4 *Crest Catering Co. v. Superior Court* (1965) 62 Cal.2d 274..... 15  
5 *DP Pham LLC v Cheadle* (2016) 246 Cal.App.4th 653..... 13  
6 *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1..... 9, 10  
7 *Hudec v Superior Court* (2015) 60 Cal.4th 815..... 13  
8 *Ibarra v. Superior Court* (2013) 217 Cal.App.4th 695 ..... 9  
9 *Miller v. Superior Court* (1977) 71 Cal.App.3d 145..... 15  
10 *Nativi v. Deutsche Bank Nat’l Trust Co.* (2014) 223 Cal.App.4th 261..... 10  
11 *Oiye v. Fox* (2012) 211 Cal.App.4th 1036 ..... 14  
12 *People v Trujeque* (2015) 61 Cal.4th 227..... 13  
13 *People v. Sarpas* (2014) 225 Cal.App.4th 1539..... 16  
14 *Pioneer Electronics (USA) v. Superior Court* (2007) 40 Cal.4th 360 ..... 9, 10  
15 *Planned Parenthood Golden State v. Superior Court* (2000) 83 Cal.App.4th 347..... 11  
16 *Sammut v. Sammut* (1980) 103 Cal.App.3d 557, 560 ..... 15  
17 *Sav-On Drugs, Inc. v Superior Ct. (Botney)* (1975) 15 Cal.3d..... 14, 15  
18 *Schnabel v. Superior Court* (1993) 5 Cal.App.4th 704..... 9  
19 *Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.3d 652 ..... 8, 10  
20 *Webb v Standard Oil Co.* (1957) 49 Cal.2d 509; *Gonzalez v Superior Court* (1995)  
21 33 Cal.App.4th 1539 ..... 13  
22 *Webb v Standard Oil Co. of Calif.* (1957) 499 Cal.2d 509..... 14  
23 *West Pico Furniture Corp. v. Superior Court* (1961) 56 Cal.2d 413 ..... 16  
24 *Wilson v. Superior Court* (1976) 63 Cal. App. 3d 829..... 15

19 **STATUTES**

20 *Civ. Code* § 2030.090(b)..... 9  
21 *Civ. Code* § 2033.080(b)..... 9  
22 *Cal. Const. Art. 1* § 1 ..... 9  
23 *Civ. Code* § 56.05(j)..... 12  
24 *Civ. Code* § 56.06..... 12  
25 *Civ. Code* § 56.10(a)..... 12  
26 *Civ. Code* § 56.35-37 ..... 12  
27 *Code Civ. Proc.* § 2017(a) ..... 8  
28 *Code Civ. Proc.* § 2019.030(b) ..... 8  
*Code Civ. Proc.* § 2030.090(b) ..... 8  
*Code Civ. Proc.* § 2031.060(b) ..... 8, 16  
*Code Civ. Proc.* § 3295(c)..... 10

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

*Code Civ. Proc. §§ 2023.010(i)* ..... 16  
*Code Civ. Proc. §§ 2025.420(b)* ..... 9  
*Evid. Code §§ 952, 954*..... 13  
*Evidence Code § 1060 et seq* ..... 13  
*Evidence Code § 940*..... 13  
*Evidence Code § 950 et seq* ..... 13

1 Defendants Point Loma Patients Consumer Cooperative Corporation (“PLPCC”), Adam  
2 Knopf, Justus Henkes, 419 Consulting Inc., Golden State Greens, Far West Management, Far  
3 West Operating, and Far West Staffing (collectively “Defendants”) respectfully submit the  
4 following memorandum of points and authorities in support of Joint Motion for Protective Order  
5 (“Motion”).  
6

## 7 **I. INTRODUCTION**

8 PLPCC was a properly licensed medical marijuana dispensary in the City of San Diego  
9 (“City”) and is currently, since state law changed, a properly licensed marijuana dispensary  
10 allowed to sell medical and adult use retail marijuana. Plaintiff Karl Beck (“Plaintiff”) somehow  
11 surmised in less than half a dozen visits that PLPCC was making millions of dollars in profit  
12 thereby entitling him to dividends. This is the sole basis of Plaintiff’s lawsuit – approximately 3  
13 visits to PLPCC. Based on these 3 or so visits, Plaintiff filed this lawsuit on the supposition that  
14 PLPCC was, prior to the law change, illegally operating under state and local law for earning  
15 unspecified revenue in excess of costs and not paying the same as dividends.  
16

17 Plaintiff has propounded **47 sets** of discovery containing more than **400 requests** on  
18 Defendants, demanding production of corporate and individuals’ tax returns, billing statements  
19 from attorneys, mirror images of individuals’ personal Quickbooks, and a host of privileged,  
20 private, and confidential documents and information. It is no stretch to describe Plaintiff’s  
21 demands as encompassing every document, statement, conversation, and interaction ever engaged  
22 in that in any way relates to the cannabis business. It also demands a mountain of non-cannabis  
23 related documents and information. The scope and number of requests is oppressive,  
24 burdensome, unreasonable and cumulative. Plaintiff is on a fishing expedition to find some shred  
25 of evidence that supports his claims because he does not have it. After failed meet and confer  
26 efforts in which Plaintiff refused to withdraw or narrow a single request, Defendants are forced to  
27 seek this Court’s protection and assistance. Defendants should not be forced to disclose this  
28 extremely invasive information and therefore seek an order clarifying and restricting the scope of

1 discovery.

2  
3 **II. STATEMENT OF FACTS**

4 In or around August 2017, Plaintiff began making extortion demands on PLPCC, accusing  
5 Defendants of committing crimes and engaging in money laundering and demanding money to  
6 refrain from filing this lawsuit. (Leetham Decl. ¶ 2.) Defendants refused to be extorted and this  
7 lawsuit ensued. (Leetham Decl. ¶ 3.) Plaintiff has since propounded discovery that is so intrusive  
8 it demands access to every detail about the entity and individual defendants lives and businesses.  
9 (Leetham Decl. ¶ 4.) Below is a detailed explanation of the dates the discovery was propounded  
10 and meet and confer efforts with Plaintiff’s counsel. (Leetham Decl. ¶ 5.)

11 On November 29, 2017, Plaintiff propounded Special Interrogatories, Set One on all  
12 Defendants. (Leetham Decl. ¶ 6.) The scope was overbroad and intrusive, and asks Defendants  
13 to identify every computer ever owned, every person who used every computer, and all software  
14 programs. (*Id.*) These discovery requests are not part of this Motion but are illustrative of  
15 Plaintiff’s overreach.

16 On December 1, 2017, Plaintiff propounded Request for Production of Documents, Set  
17 One on all Defendants. (Leetham Decl. ¶ 7.) The scope was overbroad and intrusive, and  
18 demands Defendants tax returns and all related documents, all documents related to salary or  
19 wages, all communications with employees and personnel, and all communications relating to  
20 cannabis. (*Id.*) As with Special Interrogatories, Set One, these discovery requests are not part of  
21 this Motion but are illustrative of Plaintiff’s overreach.

22 On January 19, 2018, Plaintiff propounded Special Interrogatories, Set Two on the entity  
23 defendants (PLPCC, Far West Operating, Far West Management, Far West Staffing, Golden State  
24 Greens, and 419 Consulting). (Leetham Decl. ¶ 8; Notice of Lodgment (“NOL”) Exhibits A-F.)  
25 The scope is overbroad and intrusive, and these requests are included in this Motion. For  
26 example, Plaintiff asks Defendants to identify all past and current employees and past and current  
27 independent contractors. (*Id.*)

28 On January 22, 2018, Plaintiff propounded Request for Production of Documents, Set

1 Two on the entity defendants (PLPCC, Far West Operating, Far West Management, Far West  
2 Staffing, Golden State Greens, and 419 Consulting). (Leetham Decl. ¶ 9; NOL Exs. G-L.) The  
3 scope is overbroad and intrusive, and these requests are included in this Motion. For example,  
4 Plaintiff is demanding tax information, employment information, and intrusive financial  
5 information. (*Id.*)

6 On January 31, 2018, Plaintiff propounded Request for Production of Documents, Set  
7 Two on Adam Knopf and Justus Henkes and Request for Production of Documents, Set Three on  
8 PLPCC. (Leetham Decl. ¶ 11; NOL Exs. N-P.) The scope is overbroad and intrusive, and these  
9 requests are included in this Motion. For example, Plaintiff's demand all documents and data  
10 (including communications) related to federal, state and local tax returns and amended returns, all  
11 K-1s, 1099s, and W-2s, a mirror image copy of individual's personal bookkeeping software, such  
12 as Quicken or QuickBooks, and all reports generated therefrom, all documents and data that refer  
13 or relate to your accounts at any financial institution, including but not limited to statements,  
14 cancelled checks, and deposit receipts, all documents and data that refer or relate to any  
15 retirement account(s) such as IRA, 401(k), pension, and profit-sharing, including but not limited  
16 to benefits summaries and statements, and all of Defendants' credit card statements (business and  
17 personal). (*Id.*)

18 On February 21, 2018, Ms. Leetham e-mailed Mr. Restis a meet and confer letter on  
19 behalf of all Defendants with respect to Special Interrogatories, Set Two. (Leetham Decl. ¶ 15;  
20 NOL Ex. T)

21 On February 22, 2018, Ms. Leetham participated in the case management conference meet  
22 and confer phone call with Mr. Restis and co-defense counsel, Matthew Dart, and Ms. Leetham's  
23 associate attorney Richard Andrews. (Leetham Decl. ¶ 16.) The parties discussed multiple case  
24 related issues primarily focused on discovery including disagreement over what Defendants  
25 would respond to and what documents they would produce, Plaintiff's access to the patient list,  
26 and the scope of ESI. (Leetham Decl. ¶ 16.) Counsel for defendants express continued concern  
27 that Plaintiff has repeatedly accused Defendants of committing crimes, has referred to them as  
28 criminals, has accused them of engaging in a criminal enterprise (RICO) including money

1 laundering and tax fraud. (Leetham Decl. ¶ 16.) At the end of the phone call, Plaintiff continued  
2 to assert entitlement to every document requested and a response to every special interrogatory  
3 and stated that the parties would litigate the issues. (Leetham Decl. ¶ 16.)

4 On February 28, 2018, Plaintiff propounded Special Interrogatories, Set Three on PLPCC.  
5 (Leetham Decl. ¶ 19; NOL Ex. V). This set is included in this Motion and contains a single  
6 request, requesting PLPCC to identify the total number of unique patrons who purchased any  
7 product since 2014. (Leetham Decl. ¶ 19.)

8 On March 6, 2018, Plaintiff agreed to extend Defendants time to respond to all discovery  
9 to March 30, 2018. (Leetham Decl. ¶ 20.)

10 On March 14, 2018, Ms. Leetham e-mailed Mr. Restis a meet and confer letter that  
11 identified general categories of objectionable information with specific examples, related to this  
12 Motion. (Leetham Decl. ¶ 24; NOL Ex. W.)

13 On March 23, 2018, Mr. Dart and Ms. Leetham met in person with Mr. Restis to discuss  
14 outstanding discovery. (Leetham Decl. ¶ 25) In part, the parties used Ms. Leetham's March 14,  
15 2018 letter as an agenda to guide the discussion and failed to come to any agreement. (Leetham  
16 Decl. ¶ 25(a)-(e).) Plaintiff agreed to an April 4, 2018 extension for responding to the  
17 outstanding discovery requests included in this Motion. (Leetham Decl. ¶ 26.)

18 Accordingly, Defendants seek a protective order as to the following discovery: PLPCC: (i)  
19 Special Interrogatories, Set Two; (ii) Request for Production of Documents, Set Two; (iii)  
20 Request for Production of Documents, Set Three; (iv) Special Interrogatories, Set Three. Far  
21 West Operating/Management/Staffing, Golden State Greens, and 419 Consulting: (i) Special  
22 Interrogatories, Set Two; (ii) Request for Production of Documents, Set Two. Adam Knopf and  
23 Justus Henkes: (i) Request for Production of Documents, Set Two.

### 24 **III. THE COURT SHOULD GRANT A PROTECTIVE ORDER**

25 "Under the discovery statutes, information is discoverable if it is unprivileged and is either  
26 relevant to the subject matter of the action or reasonably calculated to reveal admissible  
27 evidence." (Code Civ. Proc. § 2017(a); *Valley Bank of Nevada v. Superior Court* (1975) 15  
28



1 Cal.3d 652, 655-656 [Valley Bank].) A court’s authority to control discovery, including its right  
2 to issue, modify, or vacate protective orders, derives from the Civil Discovery Act, Code of Civil  
3 Procedure section 2016.010 et seq. The Civil Discovery Act authorizes the courts to grant “any  
4 order that justice requires” to protect a party, deponent or person from “unwarranted annoyance,  
5 embarrassment, or oppression, or undue burden and expense” in the course of discovery,  
6 regardless of the particular discovery method at issue. (Code Civ. Proc. § 2019.030(b) (court’s  
7 power to restrict and manage methods of discovery); Code Civ. Proc. § 2031.060(b) (inspection  
8 demands); Code Civ. Proc. § 2030.090(b) (interrogatories).)

9 A protective order is necessary to protect Defendants from “unwarranted annoyance,  
10 embarrassment, or oppression or undue burden and expense” because the discovery is  
11 unreasonably cumulative, duplicative and the selected method of discovery is unduly burdensome  
12 or expensive, taking into account the needs of the case, the amount in controversy, and the  
13 importance of the issues at stake. (Code Civ. Proc. §§ 2025.420(b), 2030.090(b), 2031.060(b),  
14 and 2033.080(b).)

15 Here, due to the complex and extremely intrusive nature of Plaintiff’s discovery, threats of  
16 crime, and numerous objections privacy rights, and privileges, a protective order both preventing  
17 and limiting discovery is necessary to prevent unfocused, overbroad, and intrusive discovery.

18 **A. Plaintiff Seeks Disclosure Of Documents And Information Protected By The**  
19 **Right To Privacy In California’s Constitution**

20 Plaintiff has propounded discovery that, if permitted, steamrolls confidentiality and  
21 privacy which Defendants and third parties have not abrogated by this litigation. California’s state  
22 constitution affirms that all people have an “inalienable” right to pursue and obtain privacy. (Cal.  
23 Const. Art. 1 § 1.) For matters falling within the right to privacy, a court must grant a protective  
24 order unless disclosure is found to further a compelling state purpose and that the purpose could  
25 not be achieved through less intrusive means. (*Ibarra v. Superior Court* (2013) 217 Cal.App.4th  
26 695, 706.) As with other privacy considerations, the Court balances the need to obtain the  
27 discovery with the party’s privacy rights. (*Schnabel v. Superior Court* (1993) 5 Cal.App.4th 704,  
28 712.) Discovery orders implicating privacy rights are evaluated under the framework established

1 in *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1 and reiterated in *Pioneer*  
2 *Electronics (USA) v. Superior Court* (2007) 40 Cal.4th 360.

3 First, the privacy claimant must possess a legally protected privacy interest, of which there  
4 are two general types, autonomy privacy (the interest in making intimate personal decisions or  
5 conducting personal activities without observation, intrusion or interference) and informational  
6 privacy. (*Hill, supra*, 7 Cal.4th at 35.) Informational privacy is the interest “in precluding the  
7 dissemination or misuse of sensitive and confidential information.” (*Id.*) Information in this class  
8 is deemed private “when well-established social norms recognize the need to maximize individual  
9 control over its dissemination and use to prevent unjustified embarrassment or indignity.” (*Id.*)

10 Second, the privacy claimant must have a reasonable expectation of privacy under the specific  
11 circumstances, including “customs, practices, and physical settings surrounding particular  
12 activities [which] may create or inhibit reasonable expectations of privacy. (*Hill, supra*, 7 Cal.4th  
13 at 36.) Third, actionable invasions of privacy “must be sufficiently serious in their nature, scope  
14 and actual or potential impact to constitute an egregious breach of the social norms underlying the  
15 privacy right.” (*Hill, supra*, 7 Cal.4th at 37.) Finally, if the three criteria for invasion of a privacy  
16 interest exist, then the privacy interest “must be measured against other competing or  
17 countervailing interests in a ‘balancing test.’ ” (*Pioneer, supra*, 40 Cal.4th at 371.) In  
18 evaluating claims, “considerations which, among others, will affect the exercise of the trial  
19 court’s discretion” include “ ‘the purpose of the information sought, the effect that disclosure, and  
20 ability of the court to make an alternative order which may grant partial disclosure, disclosure in  
21 another form, or disclosure only in the event that the party seeking the information undertakes  
22 certain specified burdens which appear just under the circumstances.’ ” (*Valley Bank, supra*, 15  
23 Cal.3d at 658.) The balancing test applies to records sought from third parties as well. Any  
24 discovery order should be carefully tailored to protect the interests of the requesting party in  
25 obtaining a fair resolution of the issues while not unnecessarily invading the privacy of the third  
26 party. (*Nativi v. Deutsche Bank Nat’l Trust Co.* (2014) 223 Cal.App.4th 261, 318.)

27 In this case, Defendants and third parties have legally protected interests in their  
28 information privacy. The facts preclude the unwarranted dissemination of a potentially

1 significant amount of this private information, including financial, employment, and medical  
2 information related to Defendants and third parties and a protective order is warranted given  
3 Plaintiff's attempt to intrude on this information.

4 1. All Defendants And Third Parties Have A Financial Right To Privacy

5 Even when the information sought is relevant, an individual who is a party to litigation  
6 maintains the fundamental right of privacy regarding their confidential financial affairs under  
7 California Constitution, Article 1, Section 1. (Code Civ. Proc. § 3295(c); *Cobb v. Superior Court*  
8 (1979) 99 Cal.App.3d 543, 550.) In addition, the confidential affairs of third persons (nonparties)  
9 are also entitled to privacy. (*Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.3d 652,658.)

10 Here, Defendants and third parties have a legally protected privacy interest. They also  
11 have a reasonable expectation of privacy under the circumstances. Defendants, *particularly the*  
12 *individual defendants*, and third parties in these circumstances would not expect to have details  
13 related to their finances disclosed to a man who purchased cannabis a handful of times at a  
14 dispensary. Plaintiff's attempted invasion is serious in scope because it is tantamount to Plaintiff  
15 stepping in the shoes of every Defendant and peering into their lives as if he was the Defendant.  
16 It is serious to third parties who have no control over how and the extent to which their  
17 information is disclosed. Plaintiff's discovery, if allowed, requires Defendants to disclose every  
18 aspect of their financial lives. For example, a mirror image of personal quick books, all banking  
19 information, all payments to vendors, all purchases by qualified patients. Plaintiff should not be  
20 allowed such an invasion and Defendants respectfully request the Court preclude this invasion.

21 2. Defendants And Third Parties Have A Right To Privacy In Their Employment  
22 Information Including Employee Personnel Files

23 Plaintiff's discovery that demands employment information and employee records is not  
24 relevant to the Complaint and is a protected privacy right. Employers have a duty to protect  
25 nonparty employee information (addresses, telephone numbers, etc.) from disclosure. (*Planned*  
26 *Parenthood Golden State v. Superior Court* (2000) 83 Cal.App.4th 347, 359.) In order to invade  
27 the privacy rights of the employee in his or her employment records and/or personnel file, the  
28 party seeking the records must demonstrate that the information sought is "directly relevant to a

1 claim or defense" in the pending action -- a much more stringent standard than the usual standard  
2 for discoverability -- and that all other less intrusive ways of accessing the information have been  
3 exhausted without success, at which point the court will balance the "compelling need" of the  
4 party seeking the records against the interest of the employee in keeping them private. Even then,  
5 certain documents, such as letters of reference from third parties, are not discoverable, due to the  
6 privacy interest of those third parties.

7 Here, Plaintiff has not identified or plead a specific employment claim or an employment  
8 practice that is challenged. Accordingly, discovery related to employment should be precluded  
9 because it is irrelevant and there is no demonstrable need for Plaintiff to access employment files.  
10 Defendants and third-party employees have a reasonable expectation of privacy in their  
11 employment information under any circumstance. Plaintiff's request for this information is an  
12 egregious breach as it will divulge contact information, rates of pay, tax information, and so on.  
13 There is no countervailing interest to Plaintiff in such disclosure and the balance weighs in favor  
14 of precluding any discovery related to Defendants employment information and third-parties  
15 employment information.

16 3. PLPCC's Third-Party Qualified Patients And Caregivers Have A Right To  
17 Privacy

18 California's primary safeguard against the disclosure of confidential medical information  
19 is the Confidentiality of Medical Information Act ("CMIA"). It provides *stronger* privacy  
20 protections than the federal Health Insurance Portability and Accountability Act, or HIPAA.  
21 CMIA's primary purpose is to protect an individual's medical information from unauthorized  
22 disclosure. The CMIA provides:

- 23 (a) A provider of health care, health care service plan, or contractor  
24 shall not disclose medical information regarding a patient of the  
25 provider of health care or an enrollee or subscriber of a health  
26 care service plan without first obtaining an authorization, except  
27 as provided in subdivision (b) or (c).

28 (Civ. Code § 56.10(a).)

1 The CMIA defines “medical information” as individually identifiable health information  
2 about a patient’s medical history, mental or physical condition, or treatment. (Civ. Code §  
3 56.05(j).) To be individually identifiable, information must include a data element that identifies  
4 a person such as a name, address or contact information. (*Id.*)

5 CMIA applies to health care providers as well as individuals and businesses they contract  
6 with that have access to medical information. The definition of “healthcare provider” under  
7 CMIA is much broader than HIPAA. (Civ. Code § 56.06.) CMIA provides a private right of  
8 action against those that unlawfully disclose a patient’s confidential medical information, and  
9 liability can include compensatory and punitive damages to the patient, administrative fines, civil  
10 penalties, attorneys’ fees and costs, and even criminal liability. (Civ. Code § 56.35-37.)

11 PLPCC’s patrons purchased medical cannabis from PLPCC pursuant to a doctors’ medical  
12 recommendation. Any information Plaintiff seeks that divulges or discloses information related  
13 to PLPCC’s is protected under the CMIA and such discovery should be precluded.

#### 14 **B. Plaintiff Seeks Disclosure Of Privileged Documents And Information**

15 As used in the rules governing discovery, “privileged” means the constitutional and  
16 statutory privileges including self-incrimination (Evidence Code § 940), attorney-client (Evidence  
17 Code § 950 et seq.) and the “qualified privileges” for such things as trade secrets (Evidence Code  
18 § 1060 et seq.) and tax returns (*Webb v Standard Oil Co.* (1957) 49 Cal.2d 509; *Gonzalez v*  
19 *Superior Court* (1995) 33 Cal.App.4th 1539, 1547.)

20 Plaintiff’s discovery implicates these privileges, as discussed below.

##### 21 1. Attorney Client Privilege As To All Defendants

22 Communications between an attorney and a client (or potential client) are presumed to  
23 have been made in confidence. A client has a privilege to refuse to disclose a confidential  
24 communication between the client and the client’s attorney made in the course of their attorney-  
25 client relationship. (Evid. Code §§ 952, 954; *DP Pham LLC v Cheadle* (2016) 246 Cal.App.4th  
26 653, 663.)

27 Here, Plaintiff specifically seeks documents reflecting attorney-client privileged  
28 communications. For example, Request No. 20 to each entity Defendant demands: “All

1 DOCUMENTS that REFER or RELATE to **billing** from your certified public accountant, **and/or**  
2 **business attorney.**” (emphasis added.) Such documents are privileged and not discoverable in  
3 this action.

4 2. Privilege Against Self-Incrimination As To Individual Defendants

5 Witnesses may not be compelled to incriminate themselves. (*People v Trujeque* (2015) 61  
6 Cal.4th 227, 267.) Under both the Fifth Amendment and California Constitution Article I, § 15, a  
7 person has the right to refuse to answer potentially incriminating questions posed in any  
8 proceeding. (*Hudec v Superior Court* (2015) 60 Cal.4th 815, 819.) This privilege is personal for  
9 an individual and does not extend to a business entity. The privilege not only protects an  
10 individual from being forced to testify against oneself in a pending criminal proceeding, but also  
11 protects an individual from being compelled to answer questions in any civil proceeding when the  
12 individual reasonably believes the answers might incriminate him or her in a criminal case. (*Oiye*  
13 *v. Fox* (2012) 211 Cal.App.4th 1036, 1052.)

14 Plaintiff’s counsel has warned that this litigation will make its way into the public record  
15 and “unleash” a chain of events outside of your control.” Plaintiff and his shake-down class  
16 action counsel have repeatedly alleged and argued, in pleadings, in demand/threat letters, in  
17 public blog posts and in meet and confer discussions, that members of PLPCC who purchased  
18 any products from PLPCC have committed criminal offenses. For example in the Complaint:

- 19
- 20 • “And would it be illegal to buy medical marijuana through a for-profit  
dispensary?” (Complaint, ¶ 3.)
  - 21 • “Plaintiff has a very strong interest in ensuring he and other PLPCCC members  
22 are not violating California’s medical marijuana laws by engaging in transactions  
with an illegally operating dispensary...” (Complaint, ¶ 18.)

23 Moreover, irrespective of Plaintiff’s allegations regarding alleged illegality at the *state*  
24 level, it is indisputable that marijuana remains illegal at the *federal* level. It remains a schedule 1  
25 drug under the federal Controlled Substances Act. PLPCC’s member patrons inherently violate  
26 federal law when patronizing PLPCC.

27 With this backdrop of *alleged* state criminality, and *actual* federal criminality, and with  
28 assertions by Plaintiff’s counsel that evidence will find its way into the public record and unleash

1 a chain of events out of the parties' control, Plaintiff demands the very information that will  
2 unleash this information. Thus, the individual defendants request that the Court enter a protective  
3 order that protects them from making any disclosures in this litigation as it seems everything they  
4 say and do, according to Plaintiff, could subject them to criminal charges.

### 5 3. Tax Return Privilege As To All Defendants

6 Taxpayers are privileged to withhold disclosure of copies of both their federal and state  
7 tax returns and the information contained therein. (*Webb v Standard Oil Co. of Calif.* (1957) 499  
8 Cal.2d 509, 513-514.) The purpose of the privilege is to facilitate tax enforcement by  
9 encouraging a taxpayer to make full and truthful declarations in their tax return, without fear that  
10 such statements will be revealed or used against the taxpayer for other purposes. (*Sav-On Drugs,*  
11 *Inc. v Superior Ct. (Botney)* (1975) 15 Cal.3d 1, 6.)

12 The tax return privilege is not absolute. In *Sav-On Drugs, Inc. v. Superior Court, supra*,  
13 15 Cal.3d at 8, information related to sales tax returns was found to be privileged, but also  
14 cautioned that "no attempt has been made herein to define the full ambit of the privilege  
15 considered above, nor are we called upon to determine whether under other circumstances  
16 discovery of tax returns and records would be permissible. Our decision is a narrow one, limited  
17 to the record before us."

18 As explained in *Sammut v. Sammut* (1980) 103 Cal.App.3d 557, 560, the privilege is  
19 waived or does not apply in three situations: "(1) there is an intentional relinquishment (*Crest*  
20 *Catering Co. v. Superior Court* (1965) 62 Cal.2d 274, 278), (2) the 'gravamen of [the] lawsuit is  
21 so inconsistent with the continued assertion of the taxpayer's privilege as to compel the  
22 conclusion that the privilege has in fact been waived' (*Wilson v. Superior Court* (1976) 63  
23 Cal.App.3d 829, 830), or (3) a public policy greater than that of confidentiality of tax returns is  
24 involved (*Miller v. Superior Court* (1977) 71 Cal.App.3d 145, 149)." Only one case has found  
25 that public policy mandated an exception to the privilege. In *Miller v. Superior Court*, contempt  
26 proceedings were instigated against the petitioner for failure to pay child support. The petitioner  
27 claimed he was unable to pay the support but asserted the privilege against forced disclosure of  
28 his tax returns. Relying on specific statutes that allowed public agencies access to certain tax

1 information, the court concluded that the "policy favoring the confidentiality of tax returns must  
2 give way to the greater public policy of enforcing child support obligations." (*Id.* at 149.) The  
3 court stressed that its "decision is limited to the narrow issue of the assertion of the privilege of  
4 nondisclosure of income tax returns in the context of proceedings to enforce child support  
5 obligations. In that context, we hold that the privilege does not apply." (*Ibid.*) The *Miller* holding  
6 was expressly limited to its facts.

7 Here, Plaintiff specifically and directly demands production of *all Defendants'* tax returns  
8 and all associated information used to complete their tax returns. Request No. 8 to each entity  
9 Defendant, and Request No. 11 to each individual Defendant, demands production of "All  
10 DOCUMENTS and DATA that REFER or RELATE to YOUR federal, state and local tax returns  
11 and amended returns, including all supporting schedules, attachments, notes, work sheets, and  
12 work papers." Although the tax return privilege is not absolute, none of the exceptions, as  
13 discussed above, apply in this case. Accordingly, Defendants' tax returns and related documents  
14 are privileged and not discoverable in this action.

15 **C. Plaintiff's Requests Are Oppressive, Burdensome, Duplicative, Cumbersome,  
16 And Unreasonable**

17 Good cause exists to continue discovery responses in order to avoid oppression and undue  
18 burden. As noted above, Plaintiff's requests are tantamount to stepping into the shoes of each  
19 Defendant, as if Plaintiff was the Defendant, and peering into every aspect of their businesses and  
20 personal lives. This is a fishing expedition that is oppressive, burdensome, cumbersome, and  
21 unreasonable. "Oppression" means the ultimate effect of the burden of responding to the  
22 discovery is "incommensurate with the result sought. (*West Pico Furniture Corp. v. Superior  
23 Court* (1961) 56 Cal.2d 413.) In considering whether the discovery is unduly burdensome or  
24 expensive, the court takes into account "the needs of the case, the amount in controversy, and the  
25 importance of the issues at stake in the litigation." (*People v. Sarpas* (2014) 225 Cal.App.4th  
26 1539, 1552.)

27 Here, Defendants have good cause for an extension based on the volume of information  
28 requested, Defendants have been unable to complete their collection and review of potentially



1 responsive documents and information necessary to respond to discovery, and Plaintiff's  
2 discovery requests essentially amount to a request that Defendants turn over and communicate  
3 every single detail about their lives and businesses. Defendants are not seeking to avoid any  
4 discovery or to gain any tactical advantage. Defendants seek to curtail "oppression" and "undue  
5 burden" by appropriately limiting the scope of what they must respond to and by gaining the time  
6 to respond to the discovery once the scope of what they will be required to produce is determined.

7 Plaintiff has been unwilling to voluntarily limit the scope of discovery which has  
8 necessitated this motion.

9 **IV. MEET AND CONFER EFFORTS AND CONTINUED DISPUTES**

10 A party seeking a protective order must make a reasonable and good faith attempt at an  
11 informal resolution of each issue presented by the motion for protective order in person, by  
12 telephone, or by letter. (Code Civ. Proc. §§ 2023.010(i), 2031.060(a).)

13 The parties have engaged in an ongoing meet and confer process regarding the scope of  
14 confidential information that should be produced in this litigation as detailed in the Declaration of  
15 Tamara Leetham filed herewith. The parties have exchanged letters, have spoken on the  
16 telephone, and have met in person. The parties have been unable to agree on the impact of the  
17 privacy rights and privileges and narrowing the scope of the requests.

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**V. CONCLUSION**

For the foregoing reasons, Defendants respectfully request the Court grant their Motion and preclude discovery on privacy rights and privileged information and limit the scope of allowable discovery.

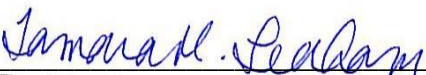
Dated: April 4, 2018

DART LAW

By   
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Dated: April 4, 2018

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