

William L. Miltner, Esq. SBN 139097
(bill@miltnerlaw.com)
Robert C. Harvey, Esq. SBN 159224
(robert@miltnerlaw.com)
MILTNER & MENCK, APC
Emerald Plaza
402 West Broadway, Suite 800
San Diego, California 92101
Telephone (619) 615-5333
Facsimile: (619) 615-5334

Attorneys for Plaintiff.

**THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF CALIFORNIA**

Outliers Collective., a Nonprofit Mutual
Benefit Corporation,

Plaintiff,

v.

The Santa Ysabel Tribal Development
Corporation, a Tribally chartered
corporation;
GardenPharma, LLC, a limited liability
Company;
David Chelette, an individual; and
DOES 1 through 50, Inclusive,

Defendants.

Case No. **'18CV0834 JAH KSC**

COMPLAINT FOR:

- 1. BREACH OF CONTRACT**
- 2. BREACH OF COVENANT
OF QUIET ENJOYMENT**
- 3. CONVERSION**
- 4. UNJUST ENRICHMENT &
DISGORGEMENT OF
PROFITS & FOR
IMPOSITION OF
CONSTRUCTIVE TRUST**
- 5. DECLARATORY RELIEF**

DEMAND FOR JURY TRIAL

Plaintiff Outliers Collective ("Outco" or "Plaintiff") complains and alleges as follows:

PARTIES

1. Plaintiff is, and at all relevant times was, a nonprofit mutual benefit corporation organized and existing under laws of the State of California.

2. Plaintiff is informed and believes, and based thereon alleges, that Defendant Santa Ysabel Tribal Development Corporation ("TDC") is a Tribally chartered corporation wholly owned by the Iipay Nation of Santa Ysabel, a federally recognized

1 Indian Tribe (the "Tribe").

2 3. Plaintiff is informed and believes, and based thereon alleges, that Defendant
3 GARDENPHARMA, LLC is a California limited liability company doing business in San
4 Diego County, California.

5 4. Defendant David Chelette ("Chelette") is an individual and employee of the
6 TDC and the Tribe. In doing the acts complained of herein, Mr. Chelette was acting
7 outside the scope of his authority and position with the TDC and the Tribe.

8 5. The true names and capacities, whether individual, corporate, associate or
9 otherwise, of Defendants, DOES 1 through 50, inclusive, are unknown to Plaintiff who
10 therefore, sues said Defendants by such fictitious names. Plaintiff is informed and
11 believes and thereon alleges that each of the Defendants herein designated as a DOE is
12 responsible in some manner for the events and happenings herein referred to and caused
13 injuries and damages proximately thereby as hereinafter alleged. Defendant TDC,
14 Chelette and DOES 1 through 50, inclusive, are hereinafter collectively referred to as
15 "Defendants."

16 **JURISDICTION AND VENUE**

17 6. This action is founded on 28 U.S.C. §1331 and jurisdiction of the federal
18 courts over civil suits by non-Indians against Indians when the cause of action arises on
19 an Indian reservation. *Williams v. Lee*, 358 U.S. 217, 79 S. Ct. 269, 3 L. Ed. 2d 251
20 (1959). Further, pursuant to section 17.2(a) of the Land Use Agreement on which this
21 action is based TDC, as Landlord, agreed to waive its sovereign immunity from suit in
22 favor of Outco as Tenant. Section 17.2 (b) the Land Use Agreement provides that for
23 purposes of the waiver of sovereign immunity, the Parties agree that an action may be
24 submitted to any federal court of competent jurisdiction within the United States District
25 Court of the Southern District of California (and all federal courts to which decisions of
26 the United States District Court of the Southern District may be appealed.)

27 7. Venue is proper in this district because the Tribe's reservation is located
28 within this district, the Defendants reside and conduct business in this district, the

1 contract that is the subject of this action was made, to be performed and was breached in
2 this district, and that contract specifically provides that jurisdiction in any dispute related
3 thereto shall be brought in this district.

4 **STATEMENT OF FACTS**

5 8. On August 29, 2013, the U.S. Department of Justice (“DOJ”) issued a
6 guidance memorandum known as the “Cole Memorandum,” which establishes federal
7 priorities for the enforcement of cannabis related offenses under the Controlled
8 Substances Act. On October 28, 2014, the DOJ issued a guidance memorandum
9 known as the “Wilkinson Memorandum,” which recognizes the right of Indian tribes
10 to regulate cannabis in accordance with the federal enforcement priorities set forth in
11 the Cole Memorandum.

12 9. In July 2015, Plaintiff and Defendants had a meeting with law
13 enforcement officials concerning the growing of medicinal cannabis on the Tribe’s
14 property. At this meeting were representatives from the District Attorney’s office, the
15 United States Attorney’s office, the Federal Drug Enforcement Administration, and
16 the San Diego County Sheriff’s Department, and others. As a result of this meeting,
17 and consistent with the Cole Memorandum and the Wilkinson Memorandum, Plaintiff
18 entered into an agreement with Defendants to use the Tribe’s land to grow medical
19 cannabis.

20 10. On or about July 28, 2015, as part of their agreement to grow medical
21 cannabis on the Tribe’s land, Outco and Defendants entered into a Land Use
22 Agreement under which Defendants, as Landlord, agreed to allow Plaintiff, as Tenant,
23 use of the premises located on the Tribe’s reservation for permitted wholesale
24 cannabis operations. The premises consisted of both an indoor facility and a parcel of
25 land on the Tribe’s reservation. Such permitted wholesale cannabis operations on the
26 premises include, but are not limited to, permitted indoor cannabis grows, permitted
27 greenhouse cannabis grows, and the construction, operation, repair and maintenance
28 of permitted cannabis greenhouse facilities.

1 11. Shortly thereafter, pursuant to the Land Use Agreement, Outco made its
2 initial payment to Defendants, and initial site preparation work commenced on the
3 parcel of land at Premises.

4 12. By January 2016, Outco had begun using the indoor space for growing its
5 first crop of medicinal cannabis. Plaintiff and Defendants had agreed that Plaintiff
6 would initially perform a test grow. As part of this test grow, Plaintiff grew a
7 relatively small amount of medical cannabis to see how law enforcement would
8 address the harvest upon moving the harvested medical cannabis off the Tribe's
9 reservation property.

10 13. While the initial test crop was growing, in or about March of 2016, the
11 design for the outdoor greenhouses was approved by the parties. Construction grading
12 of the land started in or about May/June of 2016 and posts were placed in the ground
13 to begin actual construction of the greenhouses on or about August/September 2016.
14 Outco initially invested approximately \$1.3 million in building greenhouses at the
15 premises and has subsequently expended and incurred additional debt of
16 approximately \$5.7 million on construction, equipment, material and related supplies
17 for the greenhouses on the premises.

18 14. On or about April 20, 2016, Plaintiff successfully transported its first
19 harvest of medicinal cannabis off of the reservation without any adverse consequences
20 from law enforcement.

21 15. From in or about January 2016 through March 2017, Defendants would
22 send Outco monthly billing statements for the amounts due under the Land Use
23 Agreement. Plaintiff paid these amounts due as billed. In none of the approximately
24 14 monthly invoices provided by Defendants did Defendants ever bill for or otherwise
25 address any tax payments purportedly due by Plaintiff to Defendants.

26 16. In or about late March 2017, an issue arose between the parties
27 concerning the date certain tax payments were due under their agreement. Pursuant to
28 the agreement between the parties, including the Land Use Agreement, Plaintiff was to

1 engage in two phases of growing operations, the indoor test grow, which if successful,
2 would lead to the second phase, a scaled up grow in the outdoor greenhouses.
3 Pursuant to their agreement, the tax payments would not start to accrue until after
4 Plaintiff had successfully completed phase one, its initial test grow, and was underway
5 in Phase 2 to allow for a ramp up of operations in Phase 2. Thus, no taxes would start
6 to accrue until Plaintiff had completed the construction of the greenhouses and had
7 crops growing therein, as the tax was to be a tax on the goods produced, i.e, the
8 harvested medical cannabis.

9 17. As part of the agreement between the parties, Defendant Chelette had
10 made specific oral representations to Plaintiff that Plaintiff would be given a
11 reasonable timing structure for the tax payment as a result of the unique nature of
12 Plaintiff's situation given Plaintiff's inability to start from day one on a greenhouse
13 build along with the unique aspects of the operational ramp up period to grow
14 cannabis at the Property. Plaintiff relied on these representations, and a reasonable
15 timing structure for the tax payments is a term of their agreement.

16 18. As a result of the tax payment issue, the parties scheduled and conducted
17 a meet and confer meeting on April 13, 2017 at the premises to address the issue.

18 19. On or about April 18, 2017, Defendant GardenPharma, LLC,
19 ("GardenPharma") sought permission from the Santa Ysabel Tribal Cannabis
20 Regulatory Agency ("TCRA") to enter the premises in order to take possession of the
21 greenhouses and related equipment by falsely stating to the TCRA that Outco was in
22 breach of it's obligations owed to GardenPharma and that, as a result, GardenPharma
23 had the right to take possession of the greenhouses and equipment then located on the
24 premises. As a result of that correspondence, on that same day, Outco contacted the
25 TCRA to refute those claims as Outco was not in default under their agreements with
26 GardenPharma and GardenPharma had no right to take possession of the greenhouses
27 and equipment.

28 20. By letter dated April 18, 2017, the TCRA sent correspondence to Outco

1 and GardenPharma informing them that as a result of their dispute and associated
2 safety concerns at the premises arising from that dispute, the TCRA was issuing a
3 directive temporarily suspending access to the premises to both GardenPharma and
4 Outco representatives and personnel.

5 21. On April 21, 2017, the TCRA held a hearing on appeal related to the
6 April 18, 2017 directive pursuant to TCRA Regulation 3.18. The TCRA made a
7 ruling that allowed Outco representatives and personnel to continue to cultivate in the
8 indoor portion of the premises as that area was unaffected by the dispute between
9 GardenPharma and Outco. The ruling also allowed Outco representatives and
10 personnel access to the outdoor premises greenhouses in order to transfer plants to the
11 indoor premises so long as Outco incurred the cost of security at the outdoor premises
12 greenhouses. Thereafter, Outco paid the cost of security at the outdoor premises as
13 sought by the TCRA.

14 22. At or about this time, Outco also made an additional payment to the TDC
15 in the amount of \$146,457.93 for land use payments under the Land Use Agreement.

16 23. On or about May 9, 2017, in violation of the Land Use Agreement and
17 the TCRA appeal decision, TDC and Chelette provided notice to Outco to remove
18 their property from the premises and rejected Outco's payment of their May invoice.

19 24. On or about May 17, 2017 Outco sent correspondence to TDC and
20 Defendant Chelette seeking to meet and confer with Defendants pursuant to paragraph
21 17.3(a) of the Land Use Agreement. TDC and Chelette failed to respond to that
22 correspondence or any further correspondence from Outco in breach of their meet and
23 confer obligations set forth in the Land Use Agreement.

24 25. Outco is informed and believes and on that basis alleges that TDC,
25 Chelette, GardenPharma and DOES 1-50 entered into a conspiracy by which Plaintiff
26 was induced to enter into the Land Use Agreement, purchase and construct
27 greenhouses on the premises, and begin a large medical cannabis growing operation
28 on the premises. Plaintiff took the risk of the initial test grow and successfully

1 transported medical cannabis off of the reservation. Once Plaintiff had accomplished
 2 everything necessary to have a working medical cannabis grow operation at the
 3 premises, Defendants kicked Plaintiff off the premises and denied Plaintiff any further
 4 access thereto in order to allow Defendants, including DOES 1 - 50, to take possession
 5 and control of Outco's greenhouses and the indoor space and the then growing
 6 medical cannabis and all the growing equipment and supplies related thereto. Plaintiff
 7 is informed and believes that Defendants, including DOES 1 - 50, took possession and
 8 control of Outco's greenhouses and the indoor space and the then growing medical
 9 cannabis and all the growing equipment related thereto. Defendants then harvested
 10 Outco's then growing medical cannabis and financially benefitted from the sale of that
 11 medical cannabis and have been continuing to cultivate medical marijuana on the
 12 premises, both indoor and outdoor, using the equipment and greenhouses paid for and
 13 owned by Outco.

FIRST CAUSE OF ACTION

BREACH OF CONTRACT

(AGAINST TDC and Does 1 - 50)

17 26. Plaintiff incorporates by reference each and every allegation contained in
 18 paragraphs 1 through 25, inclusive as though fully set forth herein.

19 27. On or about July 28, 2015 Outco and TDC entered into an agreement that
 20 was both written and oral, including the Land Use Agreement, by which Outco as
 21 Tenant obtained from TDC, as Landlord, the rights for use of the premises located on
 22 the Tribe's reservation for permitted wholesale cannabis operations.

23 28. Thereafter, Outco made payments pursuant to the Land Use Agreement,
 24 began using the indoor premises for medical cannabis cultivation as part of phase 1 of
 25 the agreement. Further, Outco constructed greenhouses for cannabis cultivation on the
 26 outdoor premises pursuant to phase 2 of the Land Use Agreement, all at a cost in
 27 excess of \$7,000,000.00. Outco then began cultivating medical cannabis in the
 28 greenhouses.

1 29. Plaintiff has performed all conditions, covenants and promises required
2 on its part to be performed under their agreement, including the payment of hundreds
3 of thousands of dollars in land use payments called for under the agreement, except
4 those obligations it was prevented or excused from performing. Further, the Plaintiff
5 has exhausted all their remedies provided in their agreement.

6 30. Defendants breached their agreement, including the Land Use Agreement,
7 by kicking Plaintiff's personnel and representatives off the reservation and barring
8 Plaintiff from any further access to the premises, and unilaterally terminating the Land
9 Use Agreement. Defendants then retained possession and control over Plaintiff's then
10 growing medical cannabis and Plaintiff's greenhouses and equipment and supplies
11 used therefor.

12 31. As a direct and proximate cause of TDC's and Defendants' breach of
13 their agreement, including the Land Use Agreement, Plaintiff has suffered damages,
14 including without limitation, loss of use of the premises, loss of medical cannabis then
15 growing on the premises and the revenue provided from the sale thereof, loss of use
16 and ownership of the greenhouses, equipment and supplies located on the premises,
17 lost profits, lost business opportunities, attorneys fees, costs and rental payments, all
18 in an amount to be proven at trial, such amount being in excess of \$25,000,000.00.

19 **SECOND CAUSE OF ACTION**

20 **BREACH OF THE COVENANT OF QUIET ENJOYMENT**

21 **(AGAINST TDC, Chelette, GardenPharma and Does 1 - 50)**

22 32. Plaintiff incorporates by reference each and every allegation contained in
23 paragraphs 1 through 31, inclusive as though fully set forth herein.

24 33. Pursuant to paragraph 9 of the Land Use Agreement, "Quiet Enjoyment,"
25 TDC promised that Outco shall have and enjoy during the term of the agreement the
26 quiet and undisturbed use and enjoyment of the premises, together with all
27 appurtenances thereto.

28 34. Furthermore, implied in their agreement is the covenant of "quiet

1 enjoyment” whereby TDC, as Landlord, impliedly promised to allow Outco, as tenant,
 2 possession and “quiet enjoyment” of the premises during the contract term and not to,
 3 through act or omission, disturb Outco’s possession and beneficial enjoyment of the
 4 premises for the purposes contemplated by their agreement. The covenant of quiet
 5 enjoyment is inherent in the tenant's “exclusive right to possession” granted by their
 6 agreement. It means Defendants will not wrongfully interfere with the Outco’s
 7 possession and that no third person (claiming through Defendants or by paramount
 8 title) will lawfully assert possessory rights to the premises during the term of their
 9 agreement.

10 35. Defendants breached the agreement and the covenant by conspiring to
 11 gain and gaining the benefit of Outco’s expenditures related to the medical cannabis
 12 plants and the greenhouses and equipment established at the premises and thereafter
 13 wrongfully evicting of Outco from the premises while wrongfully and illegally taking
 14 possession and control of Outco’s property located on the premises.

15 36. As a direct and proximate result of Defendants’ breach of the covenant of
 16 quiet enjoyment, Plaintiff has been wrongfully evicted from the premises, lost
 17 possession and use of the then growing medical cannabis plants, and the greenhouses,
 18 equipment, supplies and then growing medical cannabis at the premises, has lost
 19 profits, and incurred attorneys fees and costs.

20 37. As a result of the egregious conduct by Defendants, essentially stealing
 21 Plaintiff’s personal property for their own financial benefit as set forth herein above,
 22 Plaintiff is entitled to punitive damages in an amount to be proven at trial.

23 **THIRD CAUSE OF ACTION**

24 **CONVERSION**

25 **(AGAINST ALL DEFENDANTS)**

26 38. Plaintiff incorporates by reference each and every allegation contained in
 27 paragraphs 1 through 37, inclusive as though fully set forth herein.

28 39. Pursuant to Outco’s rights under their agreement, including the Land Use

1 Agreement, between approximately August of 2015 and May of 2017, Outco
2 established an indoor medical cannabis grow facility at the premises. In so doing,
3 Outco caused its medical cannabis plants and related equipment and supplies to grow
4 those plants to be located at the indoor grow facility on the premises. Furthermore,
5 Outco incurred expenses to improve the outdoor premises and caused greenhouses to
6 be constructed on the premises containing the necessary equipment and supplies to
7 grow medical cannabis and thereafter filled those greenhouses with medical cannabis
8 plants for growing, harvesting and sale to medical cannabis collective dispensaries in
9 California.

10 40. As set forth herein above, Defendants wrongfully denied Outco
11 representatives and personnel access to the reservation, wrongfully evicting them from
12 the premises and took possession, control and ownership over Outco's personal
13 property, equipment, plants and greenhouses located on the premises.

14 41. Plaintiff at all times has had the right to possession of its personal
15 property, equipment, supplies, plants and greenhouses located on the premises.

16 42. As a direct and proximate result of Defendants conversion of Plaintiff's
17 property described herein above, Plaintiff has suffered damages including, but not
18 limited to the lost value of the personal property, equipment, supplies, plants and
19 greenhouses wrongfully taken by Defendants, the costs of constructing the
20 greenhouses, and the lost profits on the medical cannabis then growing at the premises
21 and that would have grown on the premises, all in an amount to be determined at trial.

22 43. Such conduct in conspiring to gain the benefits of Plaintiff in undertaking
23 the risk of growing and harvesting medical cannabis and thereafter kicking Plaintiff
24 off the reservation and taking possession and control of Plaintiff's then growing
25 medical cannabis, equipment, supplies and greenhouses is despicable conduct and
26 tantamount to criminal activity. As such, Plaintiff is entitled to an award of punitive
27 damages in an amount to be determined at trial.

28 ///

1 **FOURTH CAUSE OF ACTION**

2 **UNJUST ENRICHMENT & DISGORGEMENT OF PROFITS & FOR**
3 **IMPOSITION OF CONSTRUCTIVE TRUST**
4 **(AGAINST ALL DEFENDANTS)**

5 44. Plaintiff incorporates by reference each and every allegation contained in
6 paragraphs 1 through 43, inclusive as though fully set forth herein.

7 45. As set forth in the preceding paragraphs, Defendants have taken control
8 and exercised their dominion over Plaintiff's personal property, equipment, supplies
9 greenhouses and then growing cannabis plants at the premises, all at Plaintiff's
10 expense. As such, Defendants have wrongfully benefitted at Plaintiff's expense and
11 have unjustly retained those benefits.

12 46. As a result of Defendants' unjust enrichment at Plaintiff's expense,
13 Plaintiff seeks to have a constructive trust imposed upon all of Plaintiff's personal
14 property, equipment, supplies, greenhouses and profits resulting there from. Plaintiff
15 further seeks restitution in an amount to be determined at trial and the disgorgement of
16 profits made by Defendants at Plaintiff's expense.

17 **FIFTH CAUSE OF ACTION**

18 **DECLARATORY RELIEF**
19 **(AGAINST ALL DEFENDANTS)**

20 47. Plaintiff incorporates by reference each and every allegation contained in
21 paragraphs 1 through 46, inclusive as though fully set forth herein.

22 48. An actual controversy has arisen between Plaintiff and Defendants
23 relating to their respective rights and duties under their agreement, including the Land
24 Use Agreement, and their respective rights to possession, control and ownership over
25 the medical cannabis then growing at the premise, the greenhouses, supplies and
26 equipment for use in growing that medical cannabis, and the right to the profits arising
27 therefrom. Plaintiff contends that they have fully performed, and/or have tendered
28 performance of all conditions, covenants and promises required on their part to be

1 performed under their agreement with Defendants, except those obligations it was
2 prevented or excused from performing, and are not in breach of their agreement,
3 including the Land Use Agreement and are entitled to access and use of the premises
4 and ownership, access, use and control of their greenhouses and equipment. Plaintiff
5 further contends that it is entitled to the profits it would have received from the
6 medical cannabis then growing on the premises that Plaintiff is informed and believes
7 Defendants harvested and sold for profit. Alternatively, Plaintiff further contends that
8 it is entitled to be compensated for the costs it incurred in constructing the
9 greenhouses on the premises and for the costs of the all greenhouses, supplies and
10 equipment purchased in its creation of an indoor and outdoor grow facility at the
11 premises. Defendants have been unjustly enriched by Plaintiff's incurring the costs to
12 purchase and construct the greenhouses and equipment necessary to grow the medical
13 cannabis and fill the premises with growing cannabis plants. Plaintiff contends that it
14 is entitled to damages, including without limitation, loss of use of the premises, loss of
15 medical cannabis then growing on the premises and the revenue provided from the
16 sale thereof, loss of use and ownership of the greenhouses located on the premises,
17 lost profits, lost business opportunities, attorneys fees, costs and rental payments, all
18 in an amount to be proven at trial, such amount being in excess of \$25,000,000.00

19 49. Plaintiff is informed and believes that Defendants contend that Plaintiff is
20 in breach of their agreement, including the Land Use Agreement and is not entitled to
21 access or use of the premises and that Plaintiff has forfeited its rights or otherwise has
22 no rights to possession of its personal property, equipment or greenhouses at the
23 premises, no right to the profits that Defendants received from the sale of the medical
24 cannabis then growing at the premises and no right to recover the costs incurred for
25 purchasing and constructing greenhouses at the premise.

26 50. Plaintiff desires a judicial determination of their rights and duties under
27 their agreement, including the Land Use Agreement, and a declaration as to the
28 propriety of Defendants' failure to act in accordance with their agreement, including

1 the Land Use Agreement, failure to allow Plaintiff access to the premises and
2 conversion of Plaintiff's personal property, equipment, supplies and greenhouses
3 located at the premises.

4 51. A judicial determination of Plaintiff's and Defendant's rights relating to
5 their agreement, including the Land Use Agreement, is necessary and appropriate at
6 this time to resolve the current dispute between the parties.

7 WHEREFORE, Plaintiff prays for judgment against each of the Defendants as follows:

8 **PRAYER FOR RELIEF**

- 9 1. For compensatory damages in the amount of \$25,000,000.00;
10 2. For punitive damages in an amount to be determined at trial;
11 3. For the imposition of a constructive trust upon all of Plaintiff's personal
12 property, equipment, supplies, greenhouses and profits resulting from
13 Defendants' wrongful exercise of control and dominion over the same;
14 4. For restitution and disgorgement of Defendants' unjust enrichment in an
15 amount to be determined at trial or otherwise by the Court;
16 5. For reasonable attorney's fees against DEFENDANTS in an amount
17 according to proof;
18 6. For costs of suit;
19 7. For such other and further relief as the Court may be just and proper.

20 Respectfully submitted,

21 Dated: April 30, 2018

22
23 By:

MILTNER & MENCK, APC

24 William L. Miltner, Esq.
25 Robert C. Harvey, Esq.
26 Attorneys for Plaintiff
27
28