

1 ALEXIS S. GUTIERREZ, ESQ. (Bar No. 190487)
agutierrez@higglaw.com
2 EDWIN M. BONISKE, ESQ. (Bar No. 265701)
boniske@higglaw.com
3 GEOFFREY M. THORNE, ESQ. (Bar No. 284740)
thorneg@higglaw.com
4 HIGGS FLETCHER & MACK LLP
401 West "A" Street, Suite 2600
5 San Diego, CA 92101-7913
TEL: 619.236.1551
6 FAX: 619.696.1410

7 PETER K. SOLECKI, ESQ. (Bar No. 159742)
psolecki@larsonsolecki.com
8 LARSON & SOLECKI LLP
2366 Front Street, San Diego, CA 92101
9 TEL: 619.231.8300, ext. 227
FAX: 619.231.8320

10 Attorneys for Plaintiff
11 GREATER SAN DIEGO COUNTY
ASSOCIATION OF REALTORS®, INC.
12

13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 GREATER SAN DIEGO COUNTY
16 ASSOCIATION OF REALTORS®,
INC. a California Corporation,
17 Plaintiff,

18 v.
19 SANDICOR, INC., a California
20 Corporation; NORTH SAN DIEGO
COUNTY ASSOCIATION OF
REALTORS®, a California
Corporation, PACIFIC SOUTHWEST
21 ASSOCIATION OF REALTORS®, a
California Corporation, and DOES 1
through 20, inclusive,

22 Defendants.

23 CASE NO. '16CV0096 MMAKSC

24 **COMPLAINT FOR:**

1. **Violation of the Sherman Act;**
2. **Violation of the Cartwright Act;**
3. **Direct Claim for Breach of Fiduciary Duty by Controlling Shareholders;**
4. **Derivative Claim for Breach of Fiduciary Duty;**
5. **Derivative Claim for Waste of Corporate Assets;**
6. **Direct Claim for Violation of Corporations Code section 1702;**
7. **Violation of Unfair Competition / Business Practices;**
8. **Breach of Written Contract;**
9. **Breach of the Implied Covenant of Good Faith and Fair Dealing;**
10. **Intentional Interference with Contractual Relations; and,**
11. **Declaratory Judgment**

25 [DEMAND FOR JURY TRIAL]

26
27
28

5502607.1

1 Plaintiff GREATER SAN DIEGO COUNTY ASSOCIATION OF
 2 REALTORS®, INC. (“Plaintiff”) hereby alleges and states as follows:

3 **I.**

4 **NATURE OF THE CASE**

5 1. Defendant PACIFIC SOUTHWEST ASSOCIATION OF REALTORS
 6 (“PSAR”) and Defendant NORTH SAN DIEGO COUNTY ASSOCIATION OF
 7 REALTORS (“NSDCAR”) dominate the board of a multiple listing service and
 8 have exercised that dominance to exclude their association competitor, Plaintiff,
 9 from the market by, among other things, cutting off access to listing data which is
 10 necessary for Plaintiff to effectively compete and to which it is contractually
 11 entitled.

12 2. Plaintiff, NSDCAR and PSAR are the sole shareholders of
 13 SANDICOR, INC. (“SANDICOR”), San Diego County’s multiple listing service
 14 (“MLS”). Although Plaintiff owns a supermajority of SANDICOR’s outstanding
 15 shares and contributes most of SANDICOR’s funding, SANDICOR’s board is
 16 controlled by PSAR and NSDCAR. They have used this position of power to wield
 17 SANDICOR as an anticompetitive weapon, milked its resources for their own
 18 enrichment, and frustrated its purpose, all while actively preventing Plaintiff from
 19 participating in corporate decisions.

20 3. The defendants, as minority members but controlling shareholders of
 21 SANDICOR, have also breached their fiduciary duties to Plaintiff by acting in their
 22 own interest and operating SANDICOR for their sole benefit, to the detriment of
 23 Plaintiff and SANDICOR. Defendants’ conduct has also significantly devalued
 24 SANDICOR’s assets and given rise to other waste. In addition, they have caused
 25 SANDICOR to breach its contractual duties to Plaintiff by unjustifiably refusing to
 26 provide Plaintiff access to its *own* data. By this action, and as a result of the
 27 defendants’ wrongful, anticompetitive, and unlawful conduct, Plaintiff seeks
 28 monetary damages and declaratory relief.

II.

THE PARTIES

4. Plaintiff GREATER SAN DIEGO COUNTY ASSOCIATION OF REALTORS®, INC. (“Plaintiff” or “GSDAR”) is a California corporation with its principal place of business in San Diego, California. Plaintiff was one of the founding shareholders of SANDICOR, and currently owns more than two-thirds of SANDICOR’S shares.

5. Defendant SANDICOR, INC. (“SANDICOR”) is a California corporation with its principal place of business in San Diego, California. SANDICOR was formed for the sole purpose of consolidating several different multiple listing services into one consolidated database.

6. Defendant NORTH SAN DIEGO COUNTY ASSOCIATION OF REALTORS® (“NSDCAR”) is a California corporation with its principal place of business in Vista, California. At all times relevant hereto, NSDCAR has been a minority shareholder of SANDICOR, holding approximately 22% of its outstanding shares.

7. Defendant PACIFIC SOUTHWEST ASSOCIATION OF REALTORS® (“PSAR”) is a California corporation with its principal place of business in Chula Vista, California. At all times relevant hereto, PSAR has been a minority shareholder of SANDICOR, holding approximately 10% of its outstanding shares.

8. The true names and capacities of defendants DOES 1 through 20, inclusive, whether individual, corporate, associate or otherwise, are unknown to Plaintiff, who therefore sues said defendants by such fictitious names and will amend to allege their true names and capacities when ascertained. Plaintiff is informed and believes that each of the DOE defendants is responsible for the acts or omissions alleged in this complaint, and that Plaintiff's injuries and damages were proximately caused by the acts or omissions of these unnamed defendants.

9. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants herein was at all relevant times the principal, agent, alter-ego, joint-venturer, partner, affiliate, manager, subsidiary, servant, employee and/or co-conspirator of each other defendant, and in performing the acts described in this complaint, was acting in the scope of his, her or its authority with the consent of each other defendant. Each defendant ratified and/or authorized the wrongful acts, conduct, omissions, or commissions of each of the other defendants. At all relevant times, each defendant acted with full knowledge of the conduct of each of the other Defendants, with the intention to cooperate therewith.

10. Collectively, the above-described defendants are referred to herein as “Defendants.” Defendants NSDCAR and PSAR are also referred to collectively herein as the “Association Defendants.”

III.

JURISDICTION AND VENUE

11. This Court has primary subject-matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1337(a) and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15, 26, because this action arises under the antitrust laws of the United States.

12. This Court has supplemental jurisdiction over the state law claims of this complaint under 28 U.S.C. § 1337 because they arise from the same nucleus of operative facts as the federal claim such that they form part of the same case or controversy.

13. All relevant acts constituting the antitrust violation alleged in this action occurred within the judicial district of this Court. Venue is proper in the Southern District of California under 28 U.S.C. § 1391(b) and 15 U.S.C. §§ 15, 22.

111

111

111

1 IV.

2 SUBSTANTIVE ALLEGATIONS

3 14. GSDAR is an association of real-estate brokers. Its innovations in the
 4 services and products it offers to its members are directly correlated with its success
 5 in the fiercely competitive market for real-estate broker and salesperson members in
 6 San Diego County.

7 15. That success has, over time, allowed GSDAR to boast the highest
 8 membership numbers amongst any of the associations in the relevant market.
 9 PSAR and NSDCAR, which are also fierce competitors in a market that once
 10 included eleven associations, have banded together to use their control of the
 11 SANDICOR board and its assets to cut off GSDAR's access to the MLS data feeds
 12 that are fundamental to the products and services to which all three associations
 13 owe their success.

14 16. SANDICOR was formed in 1991 by eleven broker associations in San
 15 Diego County for the express purpose of aggregating the previous associations'
 16 separate MLSs to one centralized MLS with an online database accessible to all
 17 local brokers. The centralized database was designed with multiple access points
 18 and association uses in mind—all to serve the associations, brokers, and consumers
 19 of San Diego County. It was created for and exists for the sole purpose of
 20 aggregating MLS data.

21 17. Using SANDICOR's consolidated MLS, members of the various
 22 shareholder associations can create MLS listings by inputting the required
 23 information directly into SANDICOR's database. Once that is done, the listing will
 24 be included in the MLS database that can then be reviewed by other real estate
 25 brokers (*i.e.*, members of the Associations and other subscribers). SANDICOR's
 26 MLS database is not limited to current listings, but also contains historical
 27 information regarding sold properties that is critical to analyzing property values
 28 and market comparables.

1 18. The MLS data is of fundamental value to SANDICOR's shareholder
 2 associations; so fundamental that they created SANDICOR as a vehicle to
 3 consolidate and share it. Indeed, the sole purpose of creating SANDICOR was to
 4 aggregate this data.

5 19. This aggregated data feed has turned out to be more crucial than could
 6 have been imagined at the time of SANDICOR's incorporation in 1991. As with
 7 many industries, the real-estate industry's drive to create online, technology-driven
 8 products and services for brokers and consumers exploded exponentially. The
 9 products and services of associations and third-party vendors rely on the integration
 10 of MLS data feeds and other aspects of the MLS platform for nearly all their utility.
 11 The innovation of these products and services is a primary area in which GSDAR,
 12 PSAR, and NSDCAR effectively compete. Indeed, an April 15, 2015 California
 13 Association of Realtors publication led with "Since Board of Choice was
 14 implemented many years ago, Associations have competed for membership based
 15 on price, quality and service to increase their membership numbers without regard
 16 to where members' offices are located."

17 20. Buying a home is the largest financial transaction most Americans will
 18 ever undertake—and the internet has changed the real-estate industry. According to
 19 a 2011 National Association of Realtors study, as many as 88% of home buyers use
 20 the internet as a resource in buying a home. Specifically, "they generally start their
 21 search process online and then contact an agent." That search process utilizes
 22 products that necessarily relies upon and incorporate MLS data.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 21. Recognizing this, GSDAR develops and offers innovative products
 2 and services for its members to ensure that all the information they need is in one
 3 place. On the other hand, instead of competing by creating their own innovative
 4 products and services, PSAR and NSDCAR have instead opted to eliminate and
 5 restrict competition: by joining forces and using their combined domination of the
 6 SANDICOR board of directors to prevent GSDAR from accessing the crucial
 7 resource it needs for those innovative products and services to function: MLS data.

8 22. GSDAR spent significant resources creating these innovative products.
 9 For example, GSDAR began developing Just Knock, a web portal for its members
 10 to provide their clients with access to a hyper-local community resource to assist in
 11 the home-buying process. They began developing this service in 2009, and
 12 anticipated a public roll-out in 2015. Just Knock requires a current and historical
 13 MLS data feed to function.

14 23. MLSs routinely provide data feeds to their members and shareholders
 15 for their own use, and also provide this information to multiple third-party vendors
 16 for syndication. In that regard, SANDICOR is no exception. Each of
 17 SANDICOR's shareholder associations are entitled to use the consolidated MLS
 18 data pursuant to its governing documents and the shareholder agreement.
 19 Recognizing the value of this data, SANDICOR derives substantial income from
 20 syndication of that data to third parties.

21 24. The fact that Plaintiff is utilizing the MLS data to create innovative
 22 programs and services for its members has been seen as a direct competitive threat
 23 by PSAR and NSDCAR. In response, and to frustrate and prevent competition,
 24 PSAR and NSDCAR conspired to cut off GSDAR's access to the MLS data in its
 25 entirety.

26 ///

27 ///

28 ///

1 25. More specifically, since 2010, PSAR and NSDCAR have (a) prevented
 2 GSDAR from obtaining data from the MLS database directly from SANDICOR,
 3 (b) coerced third-party syndicators of that data to likewise refuse GSDAR access to
 4 the data, and (c) conspired to persuade their broker-members to individually opt out
 5 of providing their data to GSDAR. Defendants utilized their control of
 6 SANDICOR's board of directors, and other means, to accomplish these exclusions.

7 26. By 2013, after several unsuccessful attempts to secure the MLS data
 8 feed from SANDICOR for its Just Knock initiative, GSDAR contracted with a
 9 third-party syndicator, Point2, to receive the syndicated SANDICOR MLS feed.
 10 Using the syndicated data feed from SANDICOR, Just Knock launched in early
 11 2015 and was a demonstrable success.

12 27. PSAR and NSDCAR quickly took note, and instructed Point2 (through
 13 SANDICOR) to eliminate any data originating from PSAR and NSDCAR members
 14 from the Just Knock feed. Ray Ewing, CEO of SANDICOR, wrote to Point2 on
 15 February 13, 2015:

16 “Please understand that from our view, SDAR is not
 17 entitled to any data from us ... unless our BoD authorizes
 18 it. . . . The only path has been as a syndication site, which
 means that brokers have control (advertising) of whether
 their listings appear or don't appear on the site.”

19 28. Following Ray Ewing's efforts to prevent GSDAR's access to the data,
 20 Rich D'Ascoli of PSAR and Dianne McMillan of NSDCAR each contacted Point2
 21 and insisted that Point2 “temporarily (and manually) block[] any listings from
 22 going to JustKnock.” Even further, the Association Defendants implemented steps
 23 to ensure that members of PSAR and NSDCAR would not even have the option to
 24 opt-in to JustKnock syndication. That is, the block made it so the data feed flowing
 25 to JustKnock was limited to only those listings that were created by GSDAR.

26 ///

27 ///

28 ///

1 29. Another GSDAR product, Showing Suite, also requires the MLS data
 2 feed. Leveraging their control of the SANDICOR board, PSAR and NSDCAR
 3 denied that feed unless GSDAR agreed to make Showing Suite also available for
 4 use by the other competing associations, PSAR and NSDCAR, so GSDAR could
 5 not use it to compete for members against them.

6 30. MLS data is a fundamental prerequisite to effective competition in
 7 real-estate markets in the digital era. To that end, the Department of Justice and the
 8 Federal Trade Commission jointly reported in 2007 that “MLSs are so important to
 9 the operation of real estate markets that, as a practical matter, any broker who
 10 wishes to compete effectively in a market must participate in a local MLS
 11 Because brokers usually set rules for each other’s participation in the MLS, it is
 12 possible for one dominant group of brokers to establish rules that disfavor other
 13 brokers who compete in a manner they dislike.”

14 31. The same holds true when those brokers band together in competing
 15 associations. When pressed at a board meeting as to why the PSAR and NSDCAR-
 16 controlled board prevented GSDAR’s access to the MLS data feed from a third-
 17 party syndicator but had no qualms with that third-party syndicator providing the
 18 same data to a third party, Union Transcript, Aaron Kerper of PSAR (and chair of
 19 SANDICOR’s board of directors) stated that it’s “because they aren’t competing
 20 with us.”

21 32. GSDAR’s products and services allow for more informed purchasing
 22 decisions, reduce transaction costs and other inefficiencies among buyers, sellers,
 23 and brokers, and above all, connect prospective clients with its member-brokers.
 24 GSDAR’s Just Knock, for example, makes the residential real-estate market more
 25 transparent by giving realtors, buyers, and sellers the information they need to make
 26 informed real-estate decisions. Consumers and brokers alike can use Just Knock
 27 not only to search for individual homes from MLS listings, but to learn more about
 28 San Diego neighborhoods, including schools, services, and events. Just Knock

1 provides an interactive home buying experience that incorporates information about
 2 all of the elements of a buyer's decision.

3 33. These products and services are a competitive threat to PSAR and
 4 NSDCAR because GSDAR's products and services are a primary reason that
 5 brokers choose to join GSDAR over PSAR and NSDCAR. GSDAR gives the
 6 brokers themselves the tools to find potential clients and to more efficiently and
 7 effectively serve them. Further, GSDAR conducts annual surveys and strategic
 8 planning sessions to ensure that it continually offers the products and services that
 9 its member-brokers desire. GSDAR's products and membership benefits are a
 10 direct result from the feedback received from its members.

11 34. PSAR and NSDCAR have wielded SANDICOR as an anticompetitive
 12 weapon in other ways, as well. For example, they implemented a rule requiring two
 13 logins for any member who transfers associations to discourage members from
 14 transferring associations because listings are login-specific. The rule, which
 15 directly contravenes the service center agreement, was designed to prevent attrition
 16 from PSAR and NSDCAR, whose attrition rates are remarkably higher than
 17 GSDAR's. Because GSDAR offers more comprehensive and unique services to its
 18 members, membership losses for PSAR and NSDCAR are typically membership
 19 gains for GSDAR.

20 35. PSAR and NSDCAR's conspiracy (with the support of SANDICOR's
 21 CEO, Ray Ewing) has the unlawful object to eliminate this competitive threat—
 22 innovation in the delivery of real-estate information—and, ultimately, to eliminate
 23 their only other competitor association in the market for broker-member services.
 24 Their collusive actions have stifled GSDAR's efforts to provide the innovations it
 25 has invested time and money developing, including Just Knock and Showing Suite.
 26 GSDAR has lost members and has not obtained new members it would have
 27 obtained but for PSAR and NSDCAR's conduct.

28 ///

1 36. The collective action of PSAR, NSDCAR and SANDICOR's CEO,
 2 Ray Ewing, thus harmed competition, deprived the marketplace of an independent
 3 center of decision-making, deprived a competitor of a supply necessary to
 4 effectively compete, and injured GSDAR.

5 37. There are no reasonable alternative sources of the data that GSDAR
 6 has requested and is entitled to. Indeed, the only alternative sources of the San
 7 Diego County current and historical listing data are third-party syndicators—the
 8 same ones that PSAR and NSDCAR have jointly coerced into not providing that
 9 data to GSDAR.

10 38. PSAR and NSDCAR were able to accomplish this plan at least in part
 11 by abusing their domination of SANDICOR, and, as described herein, with the
 12 cooperation of SANDICOR's CEO, Ray Ewing. Many of the unlawful acts
 13 undertaken by PSAR and NSDCAR in furtherance of the conspiracy also violated
 14 GSDAR's rights under California law, as further described below.

15 **THE RELEVANT MARKET AND MARKET POWER**

16 39. The market from which GSDAR has been excluded is the market for
 17 real-estate listing information, which in turn has prevented GSDAR from
 18 effectively competing in the market for real-estate salespersons and broker
 19 members. SANDICOR, like other MLSs throughout the United States, is a local
 20 cooperative owned by GSDAR, PSAR, and NSDCAR. SANDICOR pools and
 21 disseminates information on homes available for sale within its area of operation
 22 from the member-brokers of the three associations, who are required to submit this
 23 information as participants in the MLS. SANDICOR combines this data and makes
 24 it available to its member-brokers in real time. It is also responsible for maintaining
 25 a feed of current and historical data for the shareholder associations and third-party
 26 syndicators.

27 ///

28 ///

40. San Diego County is the relevant geographic market and is the area of effective competition between GSDAR, PSAR, and NSDCAR. Additionally, SANDICOR's MLS covers listings in and only in San Diego County. Realtors in San Diego County will almost exclusively join one or more of GSDAR, PSAR, or NSDCAR, as their local Realtor association. The associations fiercely compete for members, and typically do not have many members outside of San Diego County.

41. SANDICOR possesses unique access to MLS data for San Diego County, which is a resource necessary for GSDAR to effectively compete. SANDICOR has market power because it comprises 100% of the market for consolidated MLS data for San Diego County. PSAR and NSDCAR hold a dominant position in the market by way of their control of the SANDICOR board of directors. That is, PSAR and NSDCAR are a group of competitors with separate and independent economic interests with sufficient leverage to force another (SANDICOR) to boycott a competitor at the same level of distribution (GSDAR).

THE SHAREHOLDER AGREEMENT

42. As part of the formation of SANDICOR, each of the Associations made compromises and concessions in terms of SANDICOR's structure and governance. That governance model is now codified in the Second Amended and Restated Shareholder Agreement (the "Shareholder Agreement") dated May 10, 1999.

43. The Shareholder Agreement provides in pertinent part for voting rights as follows:

- 1.1. Each share of capital stock of SANDICOR shall entitle the holder to one vote on all matters presented to the Shareholders, except as provided in Section 3.1 below.

* * * *

2.2 The number of Shares held by each Shareholder shall be determined on April 1 of each year and shall be equal to the total number of REALTOR® members

on such date of such Shareholder, as published by the California Association of REALTORS.

44. The Shareholder Agreement further states the Board of Directors for SANDICOR shall be appointed by its shareholders. Each Association may appoint two directors with up to four votes for every 750 members; however, there is a limit of two directors, with four total votes, per each shareholder Association.

45. For any major corporate actions (including any decisions relating to SANDICOR's corporate or organizational structure), the Shareholder Agreement requires approval of at least two-thirds of the outstanding shares, cast by at least two separate shareholders. In other words, at least two shareholders must approve of all significant corporate activities regardless of voting power accumulated through shares of stock; conversely, a shareholder owning more than two-thirds of the shares may veto any proposal requiring shareholder approval.

46. There were five Associations in existence at the time the Shareholder Agreement was prepared and executed, but now there are only three. More specifically, through a series of mergers by the Associations, the only remaining shareholders of SANDICOR are: (a) GSDAR; (b) NSDCAR; and (c) PSAR. The Board of Directors is comprised of six people, two of which are provided by each of the shareholder associations.

47. Notwithstanding the drastic shift in the composition of SANDICOR's members, its governance model has not changed since the Shareholder Agreement was revised in 1999. Thus, although it currently holds more than two-thirds of SANDICOR's stock (based on its membership size), and thereby provides more than two-thirds of SANDICOR's operational funding (generated through membership dues), Plaintiff only has four-elevenths of the voting power at the director level (under the formula, PSAR's two directors have three votes collectively, NSDCAR's two directors have four votes collectively, and GSDAR's two directors also have four votes collectively). As such, Plaintiff is unable to

undertake any actions that would constitute a significant corporate decision without approval or cooperation of NSDCAR or PSAR, despite owning over two-thirds of the entity.

48. To illustrate, Plaintiff, acting as the supermajority shareholder, has formally challenged SANDICOR regarding the approval of certain large dollar value contracts, and the continued appointment of particular officers. To date, Plaintiff's formal challenges to the related actions by Defendants have been ignored, bypassed, and their collective rights have been usurped.

49. More troubling, Plaintiff, acting as the supermajority shareholder, has also formally challenged the contract and continued employment of SANDICOR's CEO, Ray Ewing. Ray Ewing is employed with SANDICOR pursuant to an agreement that provides for automatic (one-year) renewal absent a vote and notification of the SANDICOR board of directors before the end of each one-year term. GSDAR, acting as the supermajority shareholder, has opposed renewal of Ray Ewing's contract, but has been unable to be heard by the current board. Exacerbating the fundamental unfairness, GSDAR is without recourse to address, let alone remedy, Ray Ewing's actions alleged herein because the board is controlled by PSAR and NSDCAR, and they are beneficiaries of Ray Ewing's alleged misconduct.

THE SERVICE CENTER AGREEMENT

50. On or about February 17, 1999, SANDICOR entered into a written contract with Plaintiff wherein it was agreed to provide various MLS-related support services to certain professionals in the real estate industry. The parties amended and restated that agreement on January 15, 2004 (the "Service Center Agreement"). Under the Service Center Agreement, and in exchange for monthly payments, SANDICOR agreed to provide access to its MLS data to Plaintiff and its members (subject to certain restrictions that are not applicable in this case). The Service Center Agreement conferred on Plaintiff and the other Association

1 Defendants the right to use and distribute the MLS data.

2 51. However, as explained above, SANDICOR has materially breached
 3 the Service Center Agreement by refusing to provide Plaintiff unfettered access to
 4 its broker-provided subscriber data as obligated.

5 **THE ASSOCIATION DEFENDANTS' MISUSE OF SANDICOR**

6 52. SANDICOR (and its consolidated MLS database) were created for the
 7 benefit of all of the shareholders, not any particular Association(s). Exclusion of
 8 one or more associations or sets of real-estate brokers from access to the MLS
 9 database could be particularly harmful because access to MLS information is
 10 essential for all competing parties. However, NSDCAR and PSAR have acted in
 11 concert to operate SANDICOR—through their control of the Board of Directors—
 12 in favor of their respective Associations and to the detriment of GSDAR.
 13 Specifically, rather than trying to compete directly with Plaintiff, NSDCAR and
 14 PSAR have opted, instead, to combine to utilize SANDICOR to provide benefits
 15 and services to their own Associations at the expense of Plaintiff and over its
 16 objection.

17 53. As described above, in 2009, Plaintiff began taking steps to create a
 18 web-portal so that its members can provide clients with access to a hyper-local
 19 community resource to assist in the home buying process. Plaintiff devoted
 20 substantial time and resources to create the web-portal, and was prepared to roll the
 21 service out in 2015 once it secured a data feed to SANDICOR's MLS database.
 22 This should not have been a problem, as SANDICOR freely provided data feeds to
 23 requesting parties, often through third-party sources. Instead, the Association
 24 Defendants, through their control of the Board of Directors for SANDICOR and
 25 other means, combined to deny Plaintiff access to the data feed. In addition, the
 26 Association Defendants also jointly convinced a third-party syndicator to refuse to
 27 provide an MLS data stream to Plaintiff. While stifling Plaintiff's efforts to
 28 complete the web-portal by refusing to provide current and historical MLS data

1 (notwithstanding that the MLS information was generated, in large part, by
 2 Plaintiff's members), the Association Defendants also uniformly demanded the
 3 "opt-out" of their respective members' data (their Realtor members' data) from the
 4 syndication feed, thereby significantly reducing the data feed Plaintiff received by
 5 30 percent. The primary purpose of this decision was to reduce the value of the
 6 data feed to Plaintiff so Plaintiff could not offer services and products that would
 7 compete for the Association Defendants' members. At the same time, however, the
 8 Association Defendants permitted other consumer facing websites (like the San
 9 Diego Union Tribune) to access SANDICOR's data feed claiming "those sites are
 10 not in competition with us." In other words, rather than devoting their own
 11 resources to producing a web-portal for the benefit of their own members, the
 12 Association Defendants impermissibly used their control of SANDICOR's Board
 13 of Directors to create a website that directly competes with Plaintiff's web-portal, at
 14 great expense and over Plaintiff's objection, for the sole benefit of the Association
 15 Defendants.

16 54. Plaintiff, through its two directors, consistently opposed the use of
 17 SANDICOR resources to create a consumer portal that competed with the web-
 18 portal it designed, as that type of activity was beyond the scope of SANDICOR's
 19 duties and was the exclusive responsibility of the Associations.

20 55. Because of the significant costs associated with the project, the
 21 development of SANDICOR's web-portal constituted a "Major Corporate
 22 Resolution" as defined by the Shareholders Agreement and required approval of
 23 two-thirds of the shareholders. In theory, Plaintiff, as the supermajority
 24 shareholder, should have been able to prevent the Association Defendants from
 25 developing a competing web-portal that was predominantly funded by Plaintiff and
 26 utilized the subscriber data provided by Plaintiff's members. However, knowing
 27 Plaintiff opposed this project, and conscious that Plaintiff had the right to approve
 28 or reject major capital expenditures, the Association Defendants acted in concert

1 and through SANDICOR to structure the proposal for the website development
2 such that the individual payments fell below the threshold for shareholder approval
3 (\$25,000). But for their collusion and self-interested actions, Plaintiff would have
4 had the right to reject the capital expenditure outright. As a result, the Association
5 Defendants caused SANDICOR to incur more than \$75,000 (in funds that are
6 derived, largely, from Plaintiff's membership) for the sole benefit of PSAR and
7 NSDCAR, and to the detriment of GSDAR.

8 56. The Association Defendants have also used their control of the Board
9 of Directors for SANDICOR to provide educational programs, products and
10 services at great expense, that are typically provided by individual Associations for
11 their members. Indeed, Plaintiff provides these types of services to its members,
12 and has incurred substantial time and expenses in developing these services. Rather
13 than incurring the expense of providing these services themselves, the Association
14 Defendants opted to, instead, use SANDICOR's funds (which, again, are provided
15 primarily by Plaintiff) to provide their members with these value-added
16 programs/services. As such, the Association Defendants are unfairly using
17 Plaintiff's own funding to cause SANDICOR to go beyond its intended purpose and
18 to produce and provide services for the sole benefit of the Association Defendants,
19 all to the detriment of Plaintiff and its members. The Association Defendants also
20 limited Plaintiff's access to data for products Plaintiff offered, delayed contract
21 negotiations, and later offered competing products.

22 57. In addition to the foregoing, the Association Defendants also operate
23 SANDICOR to provide their respective Associations with preferential treatment.
24 The following list is not exhaustive, and is included herein simply to illustrate the
25 Association Defendants misuse of SANDICOR for their benefit:

not authorizing expenditures for Plaintiff's benefit;

- b. Creating committees and task forces chaired almost exclusively by an Association Defendant representatives, and failing or appoint any, or only minimal, Plaintiff representatives;
 - c. Promoting products that compete with Plaintiff's, but not promoting Plaintiff's products;
 - d. Interfering with benefits offered by Plaintiff that may encourage members to leave the Association Defendants and transfer to Plaintiff (*i.e.*, contacting Point 2, engaging a prolonged implementation of Buyside, and denying a feed for Showing Suite);
 - e. Requiring two "logins" for any member who transfers Associations, which discourages members from transferring and disproportionately targets Plaintiff, as the attrition rate for the Association Defendants is remarkably higher than as Plaintiff's; and
 - f. Refusing to respond to Plaintiff's numerous requests to cure the aforementioned issues.

58. Under the terms of the operative Shareholder Agreement, Plaintiff is without recourse to prevent this mismanagement or a further waste of assets. Despite that it holds more than two-thirds of the shares of SANDICOR, it has only four-elevenths of the director voting power. Further, as alleged herein, the Association Defendants have also surreptitiously restructured and misrepresented costs to avoid Plaintiff's review and approval rights. Despite this state of affairs, Plaintiff is unable to effect any changes to the existing governance of SANDICOR because the Shareholder Agreement calls for at least two shareholders to pass a major resolution.

111

1 59. As alleged above, the San Diego real estate market is unique. It is
2 geographically isolated from other metropolitan areas, which provides San Diego-
3 based real estate brokers a competitive advantage over those outside the area. San
4 Diego County is also a desirable area, and local brokers often receive a substantial
5 number of inquiries from outside of the area (*i.e.*, people from outside San Diego
6 looking at San Diego real estate). Through the creation of SANDICOR, all of the
7 MLS information for the entire County has been compiled in a database. This data
8 (both current listing data and historical sales data) is an extremely valuable asset.
9 Indeed, Plaintiff is informed and believes that SANDICOR's MLS database
10 information is its (and Plaintiff's) most valuable asset. Accordingly, any action that
11 may dilute the value SANDICOR's database—such as a merger or data-share
12 agreement with a non-San Diego MLS—is against not only the interests of
13 Plaintiff, but SANDICOR and the Association Defendants as well.

DEFENDANTS' UNAUTHORIZED EFFORTS TO MERGE SANDICOR

16 60. Further, while SANDICOR’s day-to-day operational issues are
17 frequently resolved by consensus, matters of import (*i.e.*, a major corporate
18 resolutions) are resolved against Plaintiff often without any formal vote whatsoever,
19 as required. For example, the Association Defendants in cooperation with
20 SANDICOR’s CEO, Ray Ewing, recently pushed through a “task force” to
21 investigate a *merger* between SANDICOR and the California Regional Multiple
22 Listing Service (“CRMLS”) at considerable SANDICOR expense. (CRMLS is a
23 corporation that provides a partial, piecemeal state-wide MLS listing service.) As
24 described more fully below, Plaintiff, the supermajority shareholder alone could
25 and did reject the merger proposal, and immediately and consistently objected to
26 the task force’s creation and related activity and expenditures that went forward
27 without the requisite shareholder vote. Further, Plaintiff, in its capacity as a
28 shareholder, has also repeatedly asked for certain books and records for

1 SANDICOR, but to no avail.

2 61. In order to get around Plaintiff's objection to the proposed merger and
 3 merger investigation, and to avoid Plaintiff's supermajority shareholder status, Ray
 4 Ewing – in his capacity as SANDICOR's CEO, and with the support of the
 5 Association Defendants – has been using his position with SANDICOR to market
 6 the "benefits" of a merger, while defaming Plaintiff to its members and other third-
 7 parties, and actively encouraging Plaintiff's members to leave Plaintiff in favor of
 8 the Association Defendants.

9 62. This was not the first such effort by the Association Defendants and
 10 Ray Ewing. As early as 2011, SANDICOR—through the Association
 11 Defendants—has explored mergers with other MLS listing services. Initially, a
 12 merger with California Real Estate Technology Services, Inc. was contemplated;
 13 fortunately, for the benefit of all involved that transaction did not materialize (in
 14 part, because of Plaintiff's opposition). When that failed, and unbeknownst to
 15 Plaintiff, the Association Defendants and Ray Ewing then turned their focus to
 16 CRMLS.

17 63. In October 2014, a motion to explore a merger was formally
 18 proposed—without notice to Plaintiff—and approved notwithstanding the fact that
 19 the merger is a major corporate resolution that could not have been passed without
 20 Plaintiff's two-thirds shareholder vote, per the Shareholder Agreement. If the
 21 merger were to indeed go through, it would destroy the value of SANDICOR and
 22 value proposition offered by the Associations. The merger would also dramatically
 23 impact each Association's operational revenue. Nonetheless, despite Plaintiff's
 24 repeated and express opposition to any merger, the Association Defendants,
 25 through their control of SANDICOR, have persisted in expending SANDICOR
 26 funds in an effort to push a potential merger, to the detriment of Plaintiff. The
 27 Association Defendants and Ray Ewing have also engaged brokers whose agents
 28 are subscribers, in whole or in part, of Plaintiff thus creating harm with Plaintiff's

1 business relationships and causing the members to leave Plaintiff's Association.

DERIVATIVE ALLEGATIONS

3 64. Plaintiff brings the Fourth and Fifth Causes of Action herein
 4 derivatively in the right and for the benefit of SANDICOR, to redress injuries
 5 suffered and to be suffered by SANDICOR as a direct result of the breaches of
 6 fiduciary duties and waste of corporate assets by the Association Defendants.

7 65. Plaintiff is a shareholder of SANDICOR, and has been a shareholder at
 8 all times relevant to the Association Defendants' wrongful conduct alleged herein.

9 66. Plaintiff currently holds the supermajority of the shares of
 10 SANDICOR, and will adequately and fairly represent the interests of SANDICOR
 11 and its shareholders in enforcing and prosecuting its rights.

12 67. Plaintiff has not made any demand on the Board of Directors to
 13 institute this action and prosecute the derivative claims because any such demand
 14 would be futile. As alleged herein, a majority of the members of the Board of
 15 Directors knowingly participated in, approved, benefited from, and deliberately
 16 concealed the intentional wrongdoing alleged herein, and having deliberately acted
 17 to the detriment of SANDICOR, and would not have responded to the efforts to
 18 obtain relief. Further, alleged *supra*, SANDICOR's CEO, Ray Ewing, is an active
 19 participant with PSAR and NSDCAR in the complained-of conduct. Plaintiff is
 20 informed and believes that the Board of Directors is incapable of making an
 21 independent and disinterested decision to institute and vigorously prosecute an
 22 action against the Association Defendants.

23 68. The Board of Directors is currently comprised of six members: Ron
 24 Brownell and Ron Romanowich were appointed from NSDCAR, holding four votes
 25 between them; Aaron Kerper and Shun Wakita were appointed from PSAR, holding
 26 three votes between them; and Saul Klein and Glen Brush were appointed from
 27 Plaintiff, holding four votes between them. Because the Association Defendants
 28 control four of the six director positions and seven of eleven director votes, they are

1 in a position to, and do, dominate and control the Board of Directors of
 2 SANDICOR.

3 69. The Board of Directors participated in, approved, and/or permitted the
 4 wrongs alleged herein to have occurred, including, but not limited to, (a) exploring,
 5 approving, and creating a taskforce to investigate a merger with CRMLS; which, if
 6 the merger went through, will diminish the value of SANDICOR's database; (b)
 7 authorizing SANDICOR to develop a web-portal that competes with one its
 8 shareholders (Plaintiff) at great expense and without the necessary shareholder
 9 approval; and (c) preventing Plaintiff from obtaining a data feed to use in
 10 conjunction with its web-portal while allowing other consumer facing websites to
 11 have feeds from SANDICOR.

12 70. Moreover, the directors appointed by NSDCAR and PSAR have a
 13 direct and substantial financial interest in supporting the acts complained of herein.
 14 Because they are members of their respective shareholder Associations, they stand
 15 to benefit directly from the products and services provided by SANDICOR. More
 16 specifically, because their respective Associations are incapable or unwilling to
 17 devote resources to develop websites, or develop programs and services for its
 18 members, these board members have a direct interest in having those functions
 19 performed by SANDICOR. Given their personal financial interests in the business
 20 of SANDICOR, there is reasonable doubt that they are disinterested and
 21 independent. Further, the Board cannot prosecute these claims without tacitly
 22 admitting the wrongdoing of their respective Associations. As a result, any demand
 23 upon the Board of Directors would be futile.

24 71. Demand is also excused because Plaintiffs have repeatedly voiced
 25 concerns about the acts complained of herein, but those complaints have fallen on
 26 deaf ears. More specifically, Plaintiff vehemently opposed the devotion of more
 27 than \$75,000 of SANDICOR's funding over time to the creation, re-development
 28 and service of a web-portal. The Board of Directors ignored these concerns and

1 pushed the deal through. To avoid Plaintiff's contractual right to approve major
2 capital expenditures (such as for the creation of a web-portal), the Board of
3 Directors acted to surreptitiously mischaracterize the actual expense of the project.
4 Thus, not only has the Board of Directors refused to consider or delay or discuss
5 any of Plaintiff's concerns or address the unfairness of the transactions and
6 damages they would cause to SANDICOR, the Board has also taken steps to avoid
7 any oversight or input from Plaintiff whatsoever.

8 72. Demand would likewise be futile because the Association Defendants
9 directors have not only been complacent in acting on behalf of SANDICOR, but
10 were necessary actors in the improper conduct alleged herein.

11 73. On information and belief, the Directors appointed by the Association
12 Defendants are protected against liability for breaches of fiduciary duty by a
13 liability insurance policy. Because certain provision in the insurance policy(ies)
14 exclude coverage under particular circumstances, if those Directors were to cause
15 SANDICOR to sue themselves or their shareholder Associations, this may disrupt
16 the potential for insurance protection. As such, the Directors appointed by the
17 Association Defendants are hopelessly conflicted and incapable of making any
18 independent determination that would cause SANDICOR to bring this action.

FIRST CAUSE OF ACTION

(Violation of the Sherman Act, 15 U.S.C. § 1)

(Against NSDCAR, PSAR, and DOES 1 through 20)

22 74. Plaintiff incorporates the allegations in paragraphs 1 through 73 above
23 as though fully set forth herein.

24 | 75. Section 1 of the Sherman Act, 15 U.S.C. § 1 provides:

25 Every contract, combination in the form of trust or
26 otherwise, or conspiracy, in restraint of trade or
27 commerce among the several States, or with foreign
28 nations, is declared to be illegal. Every person who shall
make any contract or engage in any combination or
conspiracy hereby declared to be illegal shall be deemed
guilty of a felony

1 76. Defendants PSAR and NSDCAR are horizontal competitors of
 2 Plaintiff. SANDICOR generally stands vertically to Defendants and Plaintiff as a
 3 cooperative that provides essential services—a consolidated multiple listing
 4 service—necessary for its members to compete.

5 77. PSAR and NSDCAR combined and conspired to restrain trade in
 6 interstate commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, by
 7 engaging in a concerted scheme to exclude Plaintiff from the market for broker-
 8 member services by cutting off Plaintiff's access to the MLS data feed necessary for
 9 it to effectively compete.

10 78. In furtherance of the conspiracy, PSAR and NSDCAR used their
 11 combined domination of the SANDICOR board of directors to prevent Plaintiff
 12 from accessing current and historical MLS data through SANDICOR and from a
 13 third-party syndicator of the data. PSAR and NSDCAR, by combining, have market
 14 power because they control SANDICOR and its essential MLS data. They also
 15 make up two of the three Realtor associations in San Diego County.

16 79. Defendants' restraints are a *per se* violation of Section 1 of the
 17 Sherman Act because their conspiracy was designed to allocate markets and exclude
 18 their horizontal competitor, Plaintiff, from the relevant product and service markets
 19 in San Diego County.

20 80. In the alternative, Defendants' conduct violates Section 1 of the
 21 Sherman Act under the rule of reason or quick-look analysis because the
 22 anticompetitive harm outweighs any procompetitive benefits.

23 81. Defendants' conduct also constitutes a concerted refusal to deal,
 24 through SANDICOR, by excluding Plaintiff from access to an essential resource, the
 25 local MLS data feed.

26 ///

27 ///

28 ///

1 82. Defendants, through their domination of SANDICOR, had market
2 power. In the alternative, SANDICOR have market power because it is a
3 cooperative that exclusively controls access to the MLS data necessary for GSDAR
4 to compete in the market for member-broker services.

5 83. Defendants conduct and agreements harm competition within the
6 relevant market by excluding one of only three broker associations from effective
7 competition.

8 84. Defendants' conduct has no procompetitive or business justification.
9 Their conduct also lacks any scientific, health, or safety justification.

10 85. Plaintiff has no adequate remedy at law to prevent Defendants from
11 continuing their illegal acts.

SECOND CAUSE OF ACTION

(Violation of the Cartwright Act)

(Against NSDCAR, PSAR, and DOES 1 through 20)

15 86. Plaintiff incorporates the allegations in paragraphs 1 through 85 above
16 as though fully set forth herein.

17 87. Defendants PSAR and NSDCAR are horizontal competitors of
18 Plaintiff. SANDICOR generally stands vertically to Defendants and Plaintiff as a
19 cooperative that provides essential services—a consolidated multiple listing
20 service—necessary for its members to compete.

21 88. PSAR and NSDCAR combined and conspired to restrain trade in
22 interstate commerce in violation of the Cartwright Act, by engaging in a concerted
23 scheme to exclude Plaintiff from the market for broker-member services by cutting
24 off Plaintiff's access to the MLS data feed necessary for it to effectively compete.

25 89. In furtherance of the conspiracy, PSAR and NSDCAR used their
26 combined domination of the SANDICOR board of directors to prevent Plaintiff
27 from accessing current and historical MLS data through SANDICOR and from a
28 third-party syndicator of the data. PSAR and NSDCAR, by combining, have

market power because they control SANDICOR and its essential MLS data. They also make up two of the three Realtor associations in San Diego County.

90. Defendants' restraints are a per se violation of the Cartwright Act because their conspiracy was designed to allocate markets and exclude their horizontal competitor, Plaintiff, from the relevant product and service markets in San Diego County.

91. In the alternative, Defendants' conduct violates the Cartwright Act under the rule of reason or quick-look analysis because the anticompetitive harm outweighs any procompetitive benefits.

92. Defendants' conduct also constitutes a concerted refusal to deal, through SANDICOR, by excluding Plaintiff from access to an essential resource, the local MLS data feed.

93. Defendants, through their domination of SANDICOR, have market power. In the alternative, SANDICOR had market power because it is a cooperative that exclusively controls access to the MLS data necessary for GSDAR to compete in the market for member-broker services.

94. Defendants conduct and agreements harm competition within the relevant market by excluding one of only three broker associations from effective competition.

95. Defendants conduct has no procompetitive or business justification. Their conduct also lacks any scientific, health, or safety justification.

96. Plaintiff has no adequate remedy at law to prevent Defendants from continuing their illegal acts.

THIRD CAUSE OF ACTION

(Direct Claim for Breach of Fiduciary Duty By Controlling Shareholders)

(Against NSDCAR, PSAR, and DOES 1 through 20)

97. Plaintiff incorporates the allegations in paragraphs 1 through 96, above, as though fully set forth herein.

1 98. Defendants NSDCAR and PSAR, collectively, are controlling
 2 shareholders of SANDICOR. Among other things, the Association Defendants
 3 owed Plaintiff fiduciary duties of loyalty and care.

4 99. Through their actions described above, the Association Defendants
 5 breached their fiduciary duties to Plaintiff by: (a) causing SANDICOR to expend
 6 \$75,000 on a web-portal for the sole benefit of the Association Defendants and over
 7 the objection of Plaintiff, and without submitting the capital expenditure for
 8 shareholder vote as required by the Shareholder Agreement; (b) causing
 9 SANDICOR to expend time and resources developing educational programs and
 10 services for the exclusive benefit of the Association Defendants, and over
 11 Plaintiff's opposition; (c) stifling the efforts of Plaintiff to create its own web-portal
 12 for its members by refusing to provide a data feed or MLS data; (d) causing
 13 SANDICOR to enter into a data-share contract with CRMLS which threatens to
 14 destroy and devalue SANDICOR's most valuable asset: its database; (e) approving
 15 the data-share agreement with CRMLS despite not following proper corporate
 16 procedures sand without regard to its ultimate fairness to SANDICOR's
 17 shareholders; and (f) otherwise operating SANDICOR for the exclusive benefit of
 18 the Defendant Associations' interests, without regard to the interests of
 19 SANDICOR or Plaintiff.

20 100. In contemplating, planning, or effecting these transactions, the
 21 Association Defendants were not acting in good faith and breached their fiduciary
 22 duties to Plaintiff.

23 101. As a direct and proximate result of the Association Defendants'
 24 breaches of their fiduciary duties, Plaintiff has sustained damages, and will continue
 25 to sustain damages, in an amount in excess of the jurisdictional limits of this Court
 26 subject to proof at the time of trial. When the true sum and extent of Plaintiff's
 27 damages are ascertained, Plaintiff will amend this Complaint accordingly.

28 ///

1 102. Plaintiff is informed and believes that the Association Defendants
 2 performed the acts herein alleged with malice, fraud, and oppression, and they are
 3 therefore liable for exemplary or punitive damages.

4 103. Plaintiff is informed and believes that, unless immediately enjoined by
 5 order of the Court, the Association Defendants will continue to operate for the sole
 6 benefit of themselves and to the detriment of SANDICOR and Plaintiff. No
 7 adequate remedy exists at law for the injuries suffered by Plaintiff, and Plaintiff
 8 will suffer great and irreparable injury if the Association Defendants' wrongful
 9 conduct is not immediately enjoined and restrained.

10 **FOURTH CAUSE OF ACTION**

11 **(Derivative Claim for Breach of Fiduciary Duty)**

12 **(Against All Defendants)**

13 104. Plaintiff incorporates the allegations in paragraphs 1 through 103,
 14 above, as though fully set forth herein.

15 105. As alleged herein, the Association Defendants' breaches of fiduciary
 16 duties have proximately caused and will continue to cause SANDICOR to suffer
 17 substantial money damages. The Association Defendants conduct has threatened to
 18 devalue and destroy SANDICOR's most valuable asset, without consideration and
 19 on unjust terms, all to the detriment of SANDICOR and its shareholders.

20 106. SANDICOR has been injured by reason of the Association
 21 Defendants' intentional breach and/or reckless disregard of their fiduciary duties
 22 owed to SANDICOR for their actions and failures to exercise their fiduciary
 23 responsibilities in good faith. Plaintiff, as a shareholder and representative of
 24 SANDICOR, seeks damages and other relief for SANDICOR, including legal fees
 25 and costs, and other expenditures SANDICOR has incurred and will incur in
 26 connection with the conduct described above.

27 ///

28 ///

1 107. As a direct and proximate result of Defendants' breaches of their
2 fiduciary duties, SANDICOR has sustained damages, and will continue to sustain
3 damages, in an amount in excess of the jurisdictional limits of this Court subject to
4 proof at the time of trial. When the true sum and extent of SANDICOR's damages
5 are ascertained, Plaintiff reserves the right to amend this Complaint accordingly.

6 108. Plaintiff is informed and believes that, unless enjoined by order of the
7 Court, the Association Defendants will continue to operate SANDICOR the sole
8 benefit of themselves and to the detriment of SANDICOR and its shareholders. No
9 adequate remedy exists at law for the injuries alleged herein, and SANDICOR will
10 suffer great and irreparable injury if the Association Defendants' wrongful conduct
11 is not immediately enjoined and restrained.

FIFTH CAUSE OF ACTION

(Derivative Claim for Waste of Corporate Assets)

(Against All Defendants)

15 109. Plaintiff incorporates the allegations in paragraphs 1 through 108,
16 above, as though fully set forth herein.

17 110. By their actions alleged herein, the Association Defendants have either
18 directly or indirectly, and with reckless disregard, abandoned and abdicated their
19 responsibilities and fiduciary duties to appropriate manage the business and assets
20 of SANDICOR in a manner consistent with operations of similarly privately held
21 companies.

22 111. Through the improper policies and procedures established and
23 executed, including without limitation the decision to undertake capital
24 expenditures without shareholder authorization and to directly compete with
25 Plaintiff, mischaracterizing the nature of the capital expenditure to avoid oversight
26 and approval by Plaintiff, and the decision to dilute SANDICOR's valuable
27 database via a merger with CRMLS without adequate consideration, the
28 Association Defendants have caused SANDICOR to waste valuable corporate

1 assets. These decisions were made in the financial interests of the Association
2 Defendants without regard for the best interests of SANDICOR and its
3 shareholders.

4 112. As a direct and proximate result of the Association Defendants' gross
5 mismanagement and breaches of fiduciary duty, including the duty of loyalty and
6 care, as alleged herein, SANDICOR has incurred, and will likely incur in the future,
7 material financial damages in addition to damages to its reputation and goodwill, all
8 in an amount subject to proof at the time of trial.

9 113. Plaintiff is informed and believes that, unless enjoined by order of the
10 Court, the Association Defendants will continue to mismanage SANDICOR and
11 waste valuable corporate assets. No adequate remedy exists at law for the injuries
12 alleged herein, and SANDICOR will suffer great and irreparable injury if the
13 Association Defendants' wrongful conduct is not immediately enjoined and
14 restrained.

SIXTH CAUSE OF ACTION

(Direct Claim for Violation of Corporations Code sections 1601 and 1602)
(Against All Defendants)

18 114. Plaintiff incorporates the allegations in paragraphs 1 through 113,
19 above, as though fully set forth herein.

20 115. Since seizing control of SANDICOR, the Association Defendants have
21 repeatedly failed to provide Plaintiff with access to the records and documents of
22 the company, in violation of the company's bylaws and California Corporations
23 Code sections 1601 and 1602, both in connection with the implemented datashare
24 agreement and negotiations regarding potential merger with CRMLS and in
25 connection with the ongoing operation of SANDICOR, including without limitation
26 the terms of the merger discussions and the financial data of SANDICOR. Despite
27 Plaintiff's reasonable requests for information, Defendants have refused to provide
28 Plaintiff with the information and records that it is entitled to inspect and copy in its

1 capacity as a shareholder and by and through the directors Plaintiff has appointed to
 2 SANDICOR's Board of Directors.

3 116. Plaintiff is informed and believes that, unless enjoined by order of the
 4 Court, the Association Defendants (acting through the Board of Directors for
 5 SANDICOR) will continue to withhold material documents and information from
 6 Plaintiff. No adequate remedy exists at law for the injuries alleged herein, and
 7 Plaintiff will suffer great and irreparable injury if the Association Defendants'
 8 wrongful conduct is not immediately enjoined and restrained.

9 117. Plaintiff requests an order compelling SANDICOR to produce for
 10 inspection all books, records and documents authorized by California Corporations
 11 Code section 1601 and 1602, and an accounting of SANDICOR.

SEVENTH CAUSE OF ACTION

(Violation of California Business and Professions Code section 17200, *et seq.*)

(Against All Defendants)

15 118. Plaintiff incorporates the allegations in paragraphs 1 through 117,
 16 above, as though fully set forth herein.

17 119. The Association Defendants' misconduct, including without limitation
 18 the breaches of the duties of loyalty and trust alleged above, constituted unfair,
 19 illegal, and/or fraudulent business practices and acts in violation of Business &
 20 Professions Code sections 17200 et seq.

21 120. These actions were likely to, and did, actually mislead and deceive
 22 Plaintiff and others.

23 121. As a result of the Association Defendants' wrongdoing, Plaintiff has
 24 been deprived of money and compensation in amounts to be proven at trial.
 25 Plaintiff is entitled to disgorgement under Business & Professions Code § 17203,
 26 restoring it the equity that the wrongful acts deprived it of, or to monetary relief or
 27 other restitutionary relief.

28 ///

1 122. Plaintiff is informed and believes that, unless enjoined by order of the
2 Court, the Association Defendants will continue to undertake the illegal, unfair, and
3 fraudulent business practices herein alleged. No adequate remedy exists at law for
4 the injuries alleged herein, and SANDICOR will suffer great and irreparable injury
5 if the Association Defendants' wrongful conduct is not immediately enjoined and
6 restrained.

EIGHTH CAUSE OF ACTION

(Breach of Written Contract)

(Against All Defendants)

10 123. Plaintiff incorporates the allegations in paragraphs 1 through 122,
11 above, as though fully set forth herein.

12 124. Pursuant to the Service Center Agreement entered into by the parties
13 on or about January 15, 2004, as amended, SANDICOR agreed that, in exchange
14 for monthly payments, it would provide access to its MLS data to Plaintiff and its
15 members.

16 125. Plaintiff performed all conditions, covenants, and promises required of
17 it by the Service Center Agreement, including, but not limited to, remitting monthly
18 payments to SANDICOR.

19 126. SANDICOR, through its Board of Directors controlled by the
20 Association Defendants, materially breached, and continue to breach, the Service
21 Center Agreement by, among other things, refusing to provide Plaintiff with access
22 to SANDICOR's MLS database.

23 127. As a direct and proximate result of the aforementioned breach of
24 contract by Defendants, Plaintiff has suffered damage in an amount to be shown
25 according to proof at trial.

26 128. Plaintiff also requests an award of reasonable attorneys' fees and costs
27 incurred in the enforcement of the provisions of the Service Center Agreement.

28 //

NINTH CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing)
(Against All Defendants)

129. Plaintiff incorporates the allegations in paragraphs 1 through 128, above, as though fully set forth herein.

130. SANDICOR and Plaintiff entered into the Service Center Agreement on or about January 15, 2004, as amended. The Service Center Agreement carried with it, by operation of law, the implied understanding that both parties would not do anything to unfairly interfere with the right of the other party to receive the benefits of the agreement.

131. Plaintiff performed all conditions, covenants, and promises required of it by the Service Center Agreement, including, but not limited to, remitting monthly payments to SANDICOR.

132. All of the conditions required for SANDICOR's performance had occurred or were otherwise excused.

133. SANDICOR, through its Board of Directors controlled by the Association Defendants, unfairly interfered with Plaintiff's right to receive the benefits of the Service Center Agreement by refusing to provide Plaintiff with access to SANDICOR's MLS database.

134. As a direct and proximate result of the aforementioned breach of contract by Defendants, Plaintiff has suffered damage in an amount to be shown according to proof at trial.

135. Plaintiff also requests an award of reasonable attorneys' fees and costs incurred in the enforcement of the provisions of the Service Center Agreement.

111

111

111

11

TENTH CAUSE OF ACTION

(Intentional Interference with Contractual Relations)

(Against NSDCAR, PSAR, and DOES 1 through 20)

136. Plaintiff incorporates the allegations in paragraphs 1 through 135, above, as though fully set forth herein.

137. SANDICOR and Plaintiff entered into the Service Center Agreement on or about January 15, 2004.

138. The Association Defendants, through their control of SANDICOR's Board of Directors, knew of the Service Center Agreement.

139. The Association Defendants, through SANDICOR's Board of Directors, intended to disrupt the performance of the Service Center Agreement in conjunction with their ongoing efforts to operate SANDICOR for their sole benefit, and to the detriment of Plaintiff and SANDICOR.

140. The Association Defendants, through SANDICOR's Board of Directors, prevented the performance of the Service Center Agreement by refusing to provide Plaintiff with access to SANDICOR's MLS database.

141. As a direct and proximate result of the aforementioned interference with contractual relations by the Association Defendants, Plaintiff has suffered damage in an amount to be shown according to proof at trial.

142. Plaintiff is informed and believes that the Association Defendants performed the acts herein alleged with malice, fraud, and oppression, and they are therefore liable for exemplary or punitive damages.

ELEVENTH CAUSE OF ACTION

(Direct Claim for Declaratory Relief)

(Against All Defendants)

143. Plaintiff incorporates the allegations in paragraphs 1 through 142, above, as though fully set forth herein.

111

1 144. An actual controversy has arisen and now exists between Plaintiff, on
 2 the one hand, and the Association Defendants, on the other hand. Plaintiff contends
 3 that Section 4.2 of the Shareholder Agreement is unenforceable on grounds that it
 4 imposes an impermissible restriction on voting. The provision calls for at least two
 5 shareholders to approve a major corporate resolution irrespective of the actual
 6 number of shares voted in favor or, or against, a proposal. Such a requirement
 7 unlawfully facilitates and enables the minority shareholders (NSDCAR and PSAR)
 8 to mismanage SANDICOR to the financial detriment of SANDICOR and without
 9 regard for the interests of Plaintiff in favor of actions to benefit their respective
 10 Associations. Conversely, Defendants claim Section 4.2 is valid and enforceable as
 11 written.

12 145. In addition to the dispute articulated in paragraph 90, additional
 13 controversies have arisen and now exist between the parties regarding the corporate
 14 structure of SANDICOR. First, Plaintiff submitted a formal proposal to
 15 SANDICOR requesting certain corporate changes be made to remedy the
 16 unintended disconnect between ownership (Plaintiff) and control (Association
 17 Defendants). Those changes include: (a) installing new members to SANDICOR's
 18 Board of Directors such that Plaintiff is represented by a supermajority or,
 19 alternatively, a simple majority, or (b) decentralizing SANDICOR and vesting
 20 autonomy in the individual Associations. The proposals were rejected, thus
 21 resulting in further controversy between the parties with respect to their respective
 22 rights and interests in SANDICOR. Next, Plaintiff, acting as the supermajority
 23 shareholder, has also submitted a formal proposal to SANDICOR, recognize the
 24 prerogative of a supermajority of the shareholders with respect to large dollar value
 25 contracts and executive leadership. To date, Plaintiff's formal challenges to the
 26 related actions by Defendants have been ignored, bypassed, and their collective
 27 rights have been usurped.

28 ///

146. Plaintiff requests a judicial determination of the above-referenced disputes. Such determinations are necessary and appropriate at this time so Plaintiff may ascertain its rights and duties as a shareholder of SANDICOR. This situation requires a final resolution and statement of affairs immediately.

147. Plaintiff requests, in the alternative, a judicial determination that it may compel a conversion of SANDICOR from a close corporation to a C corporation by an affirmative vote of third-thirds of the outstanding shares, as provided for by California Corporations Code section 158.

JURY TRIAL DEMAND

148. Plaintiff hereby demands a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. For an award of compensatory damages in three times the amount sustained by it as a result of Defendants' anticompetitive actions to be determined at trial, as provided in 15 U.S.C. § 15(a);

2. For an award of compensatory and consequential damages on Plaintiff's state law claims in an amount subject to proof at the time of trial, but not less than \$1,500,000;

3. For an order requiring Defendants to pay restitution to Plaintiff, in an amount subject to proof at trial, to restore the wrongful gains they have accrued by their wrongful acts and conduct:

4. For exemplary and punitive damages against each defendant in a sum sufficient to punish and make an example of said defendants:

111

111

111

111

1 5. For a preliminary and permanent injunction all requiring the
2 defendants named herein, and each of them, and their respective officers, directors,
3 agents, attorneys, servants, and employees, and all persons acting under, in concert,
4 with or for them from carrying on the wrongful acts complained of herein pending a
5 trial on the merits, and thereafter;

6 6. For an order compelling SANDICOR to produce for inspection all
7 books, records and documents authorized by California Corporations Code section
8 1601 and 1602, and an accounting of SANDICOR;

9 7. For declaratory relief regarding the parties' rights and interests in
10 SANDICOR:

11 8. For pre-judgment interest as provided in 15 U.S.C. § 15(a) and under
12 California law;

13 9. For Plaintiff's costs and expenses of this action, including Plaintiff's
14 reasonable attorneys' fees necessarily incurred in bringing and pressing this case, as
15 provided in 15 U.S.C. § 15(a); and,

16 10. For such other and further relief as the Court deems just and proper.

DATED: January 14, 2016

HIGGS FLETCHER & MACK LLP

By: *s/Alexis S. Gutierrez*

ALEXIS S. GUTIERREZ, ESQ.
EDWIN M. BONISKE, ESQ.
GEOFFREY M. THORNE, ESQ.
Attorneys for Plaintiff
GREATER SAN DIEGO COUNTY
ASSOCIATION OF REALTORS,
INC.