

quinn emanuel trial lawyers | washington, dc

1300 I Street NW, Suite 900, Washington, District of Columbia 20005-3314 | TEL (202) 538-8000 FAX (202) 538-8100

WRITER'S DIRECT DIAL NO.
(202) 538-8265

WRITER'S EMAIL ADDRESS
ethanglass@quinnemanuel.com

May 14, 2020

VIA ELECTRONIC FILING

The Honorable Vince Chhabria
United States District Court
Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102

Re: *Top Agent Network, Inc. v. National Association of Realtors, et al.*, 3:20-cv-03198-VC

Dear Judge Chhabria:

I represent Defendant National Association of Realtors in the above-captioned case.

Consistent with the Court's Standing Order for Civil Cases, NAR will not respond to Plaintiff Top Agent Network, Inc.'s request for a temporary restraining order (ECF 8) until instructed to do so by the Court. Should the Court find that further briefing is necessary, NAR respectfully requests, without waiving any of its defenses, including those based on the lack of personal jurisdiction and improper service, that the Court set a normal briefing schedule for the motion that is consistent with Civil Local Rule 7.

While TAN has requested an immediate, *ex parte* injunction, such relief is not appropriate here because TAN "waited months to seek an injunction." *Garcia v. Google, Inc.*, 786 F.3d 733, 746 (9th Cir. 2015) (en banc). TAN only filed its complaint on May 11, 2020, despite the fact that the NAR policy it has challenged (the "Clear Cooperation Policy") was (1) adopted by NAR in November 2019;¹ (2) published in the Realtor Magazine on November 11, 2019;² and (3) became effective on January 1, 2020, as explained to the public on NAR's website.³ Indeed, by its own

¹ <https://magazine.realtor/daily-news/2019/11/11/nar-passes-mls-proposal-to-strengthen-cooperation>.

² *Id.*

³ <https://www.nar.realtor/about-nar/policies/mls-clear-cooperation-policy> (Frequently Asked Questions).

admission, TAN has been aware of the policy since November 5, 2019, when it complained to NAR in written correspondence about the adoption of the policy it now challenges. *See* Compl. ¶ 67. Simply put, TAN sat on its hands—for months—before burdening this Court in the midst of a global pandemic with a request for immediate, injunctive relief.

Moreover, because TAN seeks a *mandatory* injunction—rather than an injunction to preserve the status quo—TAN’s “burden here is doubly demanding”: it “must establish that the law and facts *clearly favor* [its] position, not simply that [it] is likely to succeed.” *Garcia*, 786 F.3d at 740 (emphasis in original). If the Court orders further briefing, NAR will demonstrate that TAN cannot meet that burden.

In light of these facts, and the overarching instruction from the Supreme Court that preliminary injunctions are an “extraordinary remedy never awarded as of right,” *Winter v. NRDC*, 555 U.S. 7, 24 (2008), there is no reason to hurry, and every reason to allow NAR and the other defendants to fully brief TAN’s motion before the Court rules on TAN’s request for injunctive relief.

Respectfully Submitted,

/s/ Ethan Glass
*Counsel for Defendant National Association
of Realtors*