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11 SAN DIEGO ASSOCIATION OF REALTORS®

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

14 SAN DIEGO ASSOCIATION OF
REALTORS®, a California
15 Corporation,

16 Plaintiff,

17 v.

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

22 Defendants.
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CASE NO. 16-CV-00096-MMA-KSC

**THIRD AMENDED 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 sections 1601;**
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**

[DEMAND FOR JURY TRIAL]

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

3 **I.**

4 **NATURE OF THE CASE**

5 1. Defendants PACIFIC SOUTHWEST ASSOCIATION OF
6 REALTORS® (“PSAR”) and NORTH SAN DIEGO COUNTY ASSOCIATION
7 OF REALTORS® (“NSDCAR”) (collectively, the “Association Defendants”) are
8 direct competitor who have coordinated with one another, both bilaterally and
9 through their joint domination of a multiple listing service to deprive Plaintiff of
10 members, services, and essential resources in an ongoing effort to exclude Plaintiff,
11 their only other competitor, in the relevant market.

12 2. Plaintiff and the Association Defendants are the sole shareholders of
13 Defendant SANDICOR, INC. (“Sandicor”), San Diego County’s multiple listing
14 service (“MLS”). Although Plaintiff owns a supermajority of Sandicor’s
15 outstanding shares and contributes most of Sandicor’s funding, Sandicor’s board is
16 controlled by the Association Defendants. They have used this position of power to
17 wield 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 Association Defendants, as minority members but controlling
21 shareholders of Sandicor, have also breached their fiduciary duties to Plaintiff by
22 acting in their own interest and operating Sandicor for their sole benefit, to the
23 detriment of Plaintiff and Sandicor. The conduct of the Association Defendants, as
24 well as the directors they have respectfully appointed to Sandicor’s board of
25 directors, has also significantly devalued Sandicor’s assets and given rise to other
26 corporate waste. In addition, they collectively have caused Sandicor to breach its
27 contractual duties to Plaintiff by unjustifiably refusing to provide Plaintiff access to
28 its *own* data. By this action, and as a result of the Association Defendants’

1 wrongful, anticompetitive, and unlawful conduct, Plaintiff seeks monetary damages
2 and declaratory relief.

3 **II.**

4 **THE PARTIES**

5 4. Plaintiff SAN DIEGO ASSOCIATION OF REALTORS® is a
6 California corporation with its principal place of business in San Diego, California.
7 Plaintiff was one of the founding shareholders of Sandicor, and currently owns
8 more than two-thirds of Sandicor's shares.

9 5. Defendant NORTH SAN DIEGO COUNTY ASSOCIATION OF
10 REALTORS® is a California corporation with its principal place of business in
11 Vista, California. At all times relevant hereto, NSDCAR has been a minority
12 shareholder of Sandicor, holding approximately 22% of its outstanding shares.

13 6. Defendant PACIFIC SOUTHWEST ASSOCIATION OF
14 REALTORS® is a California corporation with its principal place of business in
15 Chula Vista, California. At all times relevant hereto, PSAR has been a minority
16 shareholder of SANDICOR, holding approximately 10% of its outstanding shares.

17 7. Defendant SANDICOR, INC. is a California corporation with its
18 principal place of business in San Diego, California. Sandicor was formed for the
19 sole purpose of consolidating several different multiple listing services into one
20 consolidated database.

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

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

10 10. The Association Defendants (PSAR and NSDCAR) and Sandicor are
11 referred to collectively herein as “Defendants.”

12 **III.**

13 **JURISDICTION AND VENUE**

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

18 12. This Court has supplemental jurisdiction over the state law claims of
19 this complaint under 28 U.S.C. § 1367 because the causes of action arise from the
20 same nucleus of operative facts as the federal claims such that they form part of the
21 same case or controversy.

22 13. All relevant acts constituting the antitrust violation alleged in this
23 action occurred within the judicial district of this Court. Venue is proper in the
24 District Court for the Southern District of California under 28 U.S.C. § 1391(b) and
25 15 U.S.C. §§ 15, 22.

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1 IV.

2 **SUBSTANTIVE ALLEGATIONS**

3 14. Plaintiff 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 Plaintiff to boast the highest
8 membership numbers amongst any of the other associations in the marketplace.
9 PSAR and NSDCAR, also competitors in a region that once included eleven
10 associations, have banded together to use their control of the Sandicor board of
11 directors and the company's assets to unjustifiably restrict and, in some instances,
12 exclude Plaintiff from accessing the MLS data feeds that are fundamental to the
13 products and services to which all three associations 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 be
24 included in the MLS database that can then be reviewed by other real estate brokers
25 (*i.e.*, members of the associations and other subscribers). Sandicor's MLS database
26 is not limited to current listings, but also contains historical information regarding
27 sold properties that is critical to analyzing property values and market comparables.

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1 18. The MLS data is of fundamental value to Sandicor’s shareholder
2 associations; so fundamental that the associations created Sandicor as a vehicle to
3 consolidate and share the information.

4 19. This aggregated data feed has turned out to be more crucial than could
5 have been imagined at the time of Sandicor’s incorporation in 1991. As with many
6 industries, the real estate industry’s drive to create online, technology-driven
7 products and services for brokers and consumers exploded exponentially. The
8 products and services of associations and third-party vendors rely on the integration
9 of MLS data feeds and other aspects of the MLS platform for nearly all their utility.
10 The innovation and implementation of these products and services is a primary area
11 in which Plaintiff and the Association Defendants effectively compete, because
12 Realtors join associations primarily for the benefit of these products and services.

13 20. Indeed, a recent CAR publication opened with the following: “Since
14 Board of Choice was implemented many years ago, Associations have competed
15 for membership based on price, quality and service to increase their membership
16 numbers without regard to where members’ offices are located.” That is,
17 associations of realtors are competitors just like competitors in any other market.
18 Associations compete for members with other associations, just as members
19 compete amongst themselves. The antitrust laws limit associations’ scope of action
20 in working together—even where they have business or other interests in doing so.

21 21. Competition and innovation regarding MLS data and its presentation is
22 important. Buying a home is the largest financial transaction most Americans will
23 ever undertake—and the internet has revolutionized the real estate industry.
24 According to a 2011 National Association of Realtors study, as many as 88% of
25 home buyers use the internet as a resource when buying a home. Specifically,
26 “they generally start their search process online and then contact an agent.” The
27 MLS data is an essential input to internet and mobile products that incorporate that
28 data into a broader platform, each with its own functions and advantages. Plaintiff

1 and the Association Defendants compete to offer their members such platforms, as
2 well as other membership advantages.

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

11 23. Despite their collective nature, courts have recognized MLS services
12 to be procompetitive, provided that they allow the free flow of information in a
13 manner that enhances competition rather than restricts it or discriminates against
14 particular participants. Indeed, MLS’s are now an essential facility which enables
15 associations and third parties to compete to provide new ways to harness and use
16 MLS data for the benefit of their members and the public alike.

17 24. The Association Defendants’ conspiracy, as described below, has the
18 unlawful object to eliminate this competitive threat—innovation in the delivery of
19 MLS information—and, ultimately, to eliminate their only other competitor in the
20 market for broker-member services. As set forth below, their collusive actions have
21 stifled Plaintiff’s efforts to provide the innovations it has invested time and money
22 developing. Plaintiff has lost members and has not obtained new members it would
23 have obtained but for the flagrant misconduct of the Association Defendants.

24 **THE RELEVANT MARKET AND MARKET POWER**

25 25. The market from which Plaintiff has been excluded is the market for
26 real estate listing information, which in turn has prevented Plaintiff from effectively
27 competing in the market for real estate salespersons and broker members.
28 Sandicor, like other MLSs throughout the nation, is a local cooperative owned by

1 its shareholders: Plaintiff and the Association Defendants. Sandicor pools and
2 disseminates information on homes available for sale within its area of operation
3 from the member-brokers of the three associations, who are required to submit this
4 information as participants in the MLS. Sandicor combines this data and makes it
5 available to its member-brokers in real time. It is also responsible for maintaining a
6 feed of current and historical data for the associations and third-party syndicators.

7 26. San Diego County is the relevant geographic market and is the area of
8 effective competition between Plaintiff and the Association Defendants.

9 Additionally, Sandicor's MLS covers listings in and only in San Diego County.
10 Realtors in San Diego County will almost exclusively join one or more of Plaintiff
11 or the Association Defendants, as their local Realtor association. The associations
12 fiercely compete for members, and typically do not have many members outside of
13 San Diego County.

14 27. Sandicor possesses unique access to MLS data for San Diego County,
15 which is a resource necessary for Plaintiff to effectively compete. Sandicor has
16 market power because it comprises 100% of the market for consolidated MLS data
17 for San Diego County. The Association Defendants hold a dominant position in the
18 market by way of their control of Sandicor's board of directors. That is, the
19 Association Defendants are a group of competitors with separate and independent
20 economic interests with sufficient leverage to force another (Sandicor) to boycott a
21 competitor at the same level of distribution (Plaintiff). As alleged below, however,
22 the Association Defendants have unlawfully combined and conspired to act as one
23 (though carefully maintaining a fiction of "separateness" to maintain control over
24 Sandicor and the critical MLS data), such that there are effectively only two
25 competitors in the marketplace: Plaintiff and PSAR/NSDCAR.

26 **THE SHAREHOLDER AGREEMENT**

27 28. As part of the formation of Sandicor, each of the associations made
28 compromises and concessions in terms of Sandicor's structure and governance.

1 That governance model is now codified in the Second Amended and Restated
2 Shareholder Agreement (the “Shareholder Agreement”) dated May 10, 1999.

3 29. The Shareholder Agreement provides in pertinent part for voting rights
4 as follows:

5 1.1. Each share of capital stock of SANDICOR shall
6 entitle the holder to one vote on all matters presented to
7 the Shareholders, except as provided in Section 3.1
8 below.

9 * * * * *

10 2.2 The number of Shares held by each Shareholder
11 shall be determined on April 1 of each year and shall be
12 equal to the total number of REALTOR® members on
13 such date of such Shareholder, as published by the
14 California Association of REALTORS.

15 30. The Shareholder Agreement further states the board of directors for
16 Sandicor shall be appointed by its shareholders. Each association may appoint two
17 directors with up to four votes for every 750 members; however, there is a limit of
18 two directors, with four total votes, per each shareholder association.

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

26 32. There were five trade associations in existence at the time the
27 Shareholder Agreement was prepared and executed, but now there are only three.
28 More specifically, through a series of mergers by the associations, the only
remaining shareholders of SANDICOR are: (a) Plaintiff; (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.

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1 33. Notwithstanding the drastic shift in the composition of Sandicor's
2 members, its governance model has not changed since the Shareholder Agreement
3 was revised in 1999. Thus, although it currently holds more than two-thirds of
4 Sandicor's stock (based on its membership size), and thereby provides more than
5 two-thirds of Sandicor's operational funding (generated through membership dues),
6 Plaintiff only has four-elevenths of the voting power at the director level (under the
7 formula, PSAR's two directors have three votes collectively, NSDCAR's two
8 directors have four votes collectively, and Plaintiff's two directors also have four
9 votes collectively). As such, Plaintiff is unable to undertake any actions that would
10 constitute a significant corporate decision without approval or cooperation of the
11 Association Defendants—despite owning over two-thirds of the entity.

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

17 35. More troubling, Plaintiff, acting as the supermajority shareholder, has
18 also formally challenged the contract and continued employment of Sandicor's
19 CEO, Ray Ewing. Ray Ewing is employed with Sandicor pursuant to an agreement
20 that provides for automatic (one-year) renewal absent a vote and notification of the
21 Sandicor board of directors before the end of each one-year term. Plaintiff, acting
22 as the supermajority shareholder, has opposed renewal of Ray Ewing's contract, but
23 has been unable to be heard by the current board. In fact, Ray Ewing himself wrote
24 an amendment that was adopted to prevented a vote on his continued employment.
25 Exacerbating the fundamental unfairness, Plaintiff is without recourse to address,
26 let alone remedy, Ray Ewing's actions alleged herein because the board is
27 controlled by the Association Defendants, and they are beneficiaries of Ray
28 Ewing's misconduct, as alleged herein.

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THE SERVICE CENTER AGREEMENT

36. On or about February 17, 1999, Sandicor entered into a written contract with Plaintiff wherein it was agreed that it would 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 to “download, use and distribute ... for membership consumption and statistical purposes.” That is, the Service Center Agreement conferred on Plaintiff the right to access and use Sandicor’s MLS data.

37. However, as explained below, Sandicor has materially breached the Service Center Agreement by refusing to provide Plaintiff unrestricted access to the MLS data despite repeated requests (thereby preventing Plaintiff from using the information or effectively operating the Just Knock platform for membership consumption).

THE ASSOCIATION DEFENDANTS’ MISUSE OF SANDICOR

38. Sandicor (and its consolidated MLS database) were created for the benefit of all of the shareholders, not any particular association(s). Exclusion of one or more associations or sets of real estate brokers from accessing the MLS database could be particularly harmful because access to MLS information is essential for all competing parties. However, the Association Defendants have acted in concert to operate Sandicor—through their control of the board of directors—in favor of their respective associations and to the detriment of Plaintiff. Specifically, rather than trying to compete directly with Plaintiff, the Association Defendants have opted, instead, to combine to utilize Sandicor to provide benefits and services to their respective associations at the expense of Plaintiff and over its objection.

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1 39. As described in more detail below, in 2009, Plaintiff began taking
2 steps to create the Just Knock web-portal so that its members can provide clients
3 with access to a hyper-local community resource to assist in the home buying
4 process. Plaintiff devoted substantial time and resources to create the web-portal,
5 and was prepared to roll the service out in 2015 once it secured an unrestricted data
6 feed to Sandicor’s MLS database—including access to the historical information.
7 This should not have been a problem, as Plaintiff had a contractual right to
8 download and use the data as well as the fact that Sandicor freely provided data
9 feeds to requesting parties, often through third-party sources. Instead, the
10 Association Defendants, through their collective control at the director level for
11 Sandicor and other means, combined to deny Plaintiff access to the data feed. In
12 addition, the Association Defendants also jointly convinced a third-party syndicator
13 (Point2) to refuse to provide an MLS data stream to Plaintiff.

14 40. While stifling Plaintiff’s efforts to complete the web-portal by refusing
15 to provide current and historical MLS data (notwithstanding that the MLS
16 information was generated, in large part, by Plaintiff’s members), as alleged below,
17 the Association Defendants also uniformly demanded the “opt-out” of their
18 respective members’ data (their Realtor members’ data) from the syndication feed,
19 thereby significantly reducing the data feed Plaintiff received by 30 percent. The
20 primary purpose of this decision was to reduce the value of the data feed to Plaintiff
21 so Plaintiff could not offer services and products that would compete for their
22 members. At the same time, however, the Association Defendants permitted other
23 consumer facing websites (like the San Diego Union Tribune) to access Sandicor’s
24 data feed claiming “those sites are not in competition with us.” In other words,
25 rather than devoting their own resources to producing a web-portal for the benefit
26 of their own members, the Association Defendants impermissibly used their control
27 of Sandicor to create a website that directly competes with Plaintiff’s web-portal, at
28 great expense and over Plaintiff’s objection, for their sole benefit.

1 41. Plaintiff, through its two directors, consistently opposed the use of
2 Sandicor’s resources to create a consumer portal that competed with the web-portal
3 it designed, as that type of activity was beyond the scope of Sandicor’s duties and
4 was the exclusive responsibility of the associations.

5 42. Because of the significant costs associated with the project, the
6 development of Sandicor’s web-portal constituted a “Major Corporate Resolution”
7 as defined by the Shareholders Agreement and required approval of two-thirds vote
8 from the shareholders. In theory, Plaintiff, as the supermajority shareholder, should
9 have been able to prevent the Association Defendants from developing a competing
10 web-portal that was predominantly funded by Plaintiff and utilized the subscriber
11 data provided by Plaintiff’s members. However, knowing Plaintiff opposed this
12 project, and conscious that Plaintiff had the right to approve or reject major capital
13 expenditures, the Association Defendants acted in concert and through Sandicor to
14 structure the proposal for the website development such that the individual
15 payments fell below the threshold for shareholder approval (\$25,000). But for their
16 collusion and self-interested actions, Plaintiff would have had the right to reject the
17 capital expenditure outright. As a result, the Association Defendants caused
18 Sandicor to incur more than \$75,000 (in funds that are derived, largely, from
19 Plaintiff’s membership) for the sole benefit of the Association Defendants and to
20 the detriment of Plaintiff.

21 43. The Association Defendants have also used their control of the board
22 of directors for Sandicor to provide educational programs, products and services at
23 great expense for their benefit, that are typically provided by individual associations
24 for their members. Indeed, Plaintiff provides these types of services to its
25 members, and has incurred substantial time and expenses in developing these
26 services. Rather than incurring the expense of providing these services themselves,
27 the Association Defendants opted to, instead, use Sandicor’s funds (which, again,
28 are provided primarily by Plaintiff) to provide their members with these value-

1 added programs/services. As such, the Association Defendants are unfairly using
2 Plaintiff's own funding to cause Sandicor to go beyond its intended purpose and to
3 produce and provide services for the sole benefit of the Association Defendants, all
4 to the detriment of Plaintiff and its members. The Association Defendants also
5 limited Plaintiff's access to data for products Plaintiff offered, delayed contract
6 negotiations, and later offered competing products.

7 44. In addition to the foregoing, the Association Defendants also operate
8 Sandicor to provide their respective associations with preferential treatment. The
9 following list is not exhaustive, and is included herein simply to illustrate the
10 Association Defendants misuse of Sandicor for their benefit:

- 11 a. Using Sandicor's money (read: Plaintiff's) to fund the
12 Association Defendants' activities (conferences Inman, HAR
13 MLS Connect, CMLS), meetings, dinners, etc.) while generally
14 not authorizing expenditures for Plaintiff's benefit;
- 15 b. Creating committees and task forces chaired almost exclusively
16 by representatives of the Association Defendants, and failing to
17 appoint any, or only minimal, representatives from Plaintiff;
- 18 c. Promoting products that compete with Plaintiff's, but not
19 promoting Plaintiff's products;
- 20 d. Interfering with benefits offered by Plaintiff that may encourage
21 members to leave the Association Defendants and transfer to
22 Plaintiff (*i.e.*, contacting Point 2, engaging a prolonged
23 implementation of Buyside, and denying a feed for Just Knock);
- 24 e. Requiring two "logins" for any member who transfers
25 associations, which discourages members from transferring and
26 disproportionately targets Plaintiff, as the attrition rate for the
27 Association Defendants is remarkably higher than Plaintiff's;
28 and,

1 f. Refusing to respond to Plaintiff's numerous requests to cure the
2 aforementioned issues.

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

11 46. As alleged in more detail below, the San Diego real estate market is
12 unique. It is geographically isolated from other metropolitan areas, which provides
13 San Diego-based real estate brokers a competitive advantage over those outside the
14 area. San Diego County is also a desirable area, and local brokers often receive a
15 substantial number of inquiries from outside of the area (*i.e.*, people from outside
16 San Diego looking at San Diego real estate). Through the creation of Sandicor, all
17 of the MLS information for the entire county has been compiled in a database. This
18 data (both current listing data and historical sales data) is an extremely valuable
19 asset. Indeed, Plaintiff is informed and believes that Sandicor's MLS database
20 information is its (and Plaintiff's) most valuable asset. Accordingly, any action that
21 may dilute the value of Sandicor's database—such as a merger or data-share
22 agreement with a non-San Diego MLS—is against not only the interests of
23 Plaintiff, but Sandicor and the Association Defendants as well.

24 **DEFENDANTS' UNAUTHORIZED EFFORTS TO MERGE SANDICOR**

25 47. Further, while Sandicor's day-to-day operational issues are frequently
26 resolved by consensus, matters of import (*i.e.*, major corporate resolutions) are
27 resolved against Plaintiff often without any formal vote whatsoever, as required.
28 For example, the Association Defendants, in cooperation with Sandicor's CEO,

1 Ray Ewing, recently pushed through a “task force” to investigate a *merger* between
2 Sandicor and the California Regional Multiple Listing Service (“CRMLS”) at
3 considerable expense of Sandicor. (CRMLS is a corporation that provides a partial,
4 piecemeal state-wide MLS listing service.) As described more fully below,
5 Plaintiff, the supermajority shareholder, alone could and did reject the merger
6 proposal, and immediately and consistently objected to the task force’s creation and
7 related activity and expenditures that went forward without the requisite
8 shareholder vote. Further, Plaintiff, in its capacity as a shareholder, has also
9 repeatedly asked for certain books and records from Sandicor—as have directors
10 appointed by Plaintiff to Sandicor’s board, but to no avail.

11 48. In order to circumvent Plaintiff’s objection to the proposed merger and
12 merger investigation, and to avoid Plaintiff’s supermajority shareholder status, Ray
13 Ewing – in his capacity as Sandicor’s CEO, and with the support of the Association
14 Defendants – has been using his position with Sandicor to market the “benefits” of
15 a merger, while defaming Plaintiff to its members and other third-parties, and
16 actively encouraging Plaintiff’s members to leave Plaintiff in favor of the
17 Association Defendants.

18 49. This was not the first such effort by the Association Defendants and
19 Ray Ewing. As early as 2011, Sandicor (and the Association Defendants) has
20 explored mergers with other MLS listing services. Initially, a merger with
21 California Real Estate Technology Services, Inc. was contemplated; fortunately, for
22 the benefit of all involved that transaction did not materialize (in part, because of
23 Plaintiff’s opposition). When that failed, and unbeknownst to Plaintiff, the
24 Association Defendants and Ray Ewing then turned their focus to a merger with the
25 CRMLS.

26 50. Plaintiff is informed and believes that a merger would be economically
27 irrational, and would destroy the value of Sandicor and the MLS’s potential value
28 to the associations. The merger would also dramatically impact each association’s

1 operational revenue. Nonetheless, despite Plaintiff's repeated and express
2 opposition to any merger, the Association Defendants, through their control of
3 SANDICOR, have persisted in expending Sandicor's (Plaintiff's) funds in an effort
4 to push a potential merger, to the detriment of Plaintiff.

5 51. Further to that end, the Association Defendants conspired to push a
6 "task force" through Sandicor's board without providing Plaintiff notice or an
7 opportunity to prevent its creation. In October 2014, the Association Defendants'
8 directors brought (and approved) a motion to create a task force. The motion was
9 inappropriately raised for the first time as a matter of "new business" without prior
10 notice to Plaintiff, but was clearly brought as part of a prior coordinated action by
11 the Association Defendants, with the intent to eliminate any opportunity by Plaintiff
12 to oppose the motion and prevent the creation of the tax force. As a result, the
13 motion passed notwithstanding that the merger and the task force were major
14 corporate resolutions that could not have been passed without Plaintiff's two-thirds
15 shareholder vote, per the Shareholder Agreement.

16 52. Following the creation of this task force, Association Defendants and
17 Ray Ewing have continued to improperly use Sandicor's resources and goodwill to
18 promote and encourage broker-members and brokerage firms to approve a merger
19 with the CRMLS, and to also encourage Plaintiff's members to do business with
20 PSAR or NSDCAR, who support such a merger.

21 **V.**

22 **DERIVATIVE ALLEGATIONS**

23 53. Plaintiff brings the Fourth and Fifth Causes of Action herein
24 derivatively in the right and for the benefit of Sandicor, to redress injuries suffered
25 and to be suffered by Sandicor as a direct result of the breaches of fiduciary duties
26 and waste of corporate assets by the Association Defendants and the directors they
27 have appointed to Sandicor's board of directors.

28 ///

1 54. Plaintiff is a shareholder of Sandicor, and has been a shareholder at all
2 times relevant to the Association Defendants' wrongful conduct alleged herein.

3 55. Plaintiff currently holds the supermajority of the shares of Sandicor,
4 and will adequately and fairly represent the interests of Sandicor and its
5 shareholders in enforcing and prosecuting its rights.

6 56. Plaintiff has not made any demand on Sandicor's board of directors to
7 institute this action and prosecute the derivative claims because any such demand
8 would be futile. As alleged herein, a majority of the members of the board of
9 directors of Sandicor knowingly participated in, approved, benefited from, and
10 deliberately concealed the intentional wrongdoing alleged herein, and having
11 deliberately acted to the detriment of Sandicor, and would not have responded to
12 the efforts to obtain relief. Further, alleged *supra*, Sandicor's CEO, Ray Ewing, is
13 an active participant with the Association Defendants in the complained-of conduct.
14 Plaintiff is informed and believes that the board of directors is incapable of making
15 an independent and disinterested decision to institute and vigorously prosecute an
16 action against the Association Defendants.

17 57. The board of directors is currently comprised of six members: Ron
18 Brownell and Ron Romanowich were appointed from NSDCAR, holding four votes
19 between them; Aaron Kerper and Shun Wakita were appointed from PSAR, holding
20 three votes between them; and Saul Klein and Glen Brush were appointed from
21 Plaintiff, holding four votes between them. Because the Association Defendants
22 control four of the six director positions and seven of eleven director votes, they are
23 in a position to, and do, dominate and control the board of directors of
24 SANDICOR.

25 58. The board of directors participated in, approved, and/or permitted the
26 wrongs alleged herein to have occurred, including, but not limited to, (a) exploring,
27 approving, and creating a taskforce to investigate a merger with CRMLS; which, if
28 the merger went through, will diminish the value of Sandicor's database; (b)

1 authorizing Sandicor to develop a web-portal that competes with one its
2 shareholders (Plaintiff) at great expense and without the necessary shareholder
3 approval; and (c) preventing Plaintiff from obtaining a data feed to use in
4 conjunction with its web-portal while allowing other consumer facing websites to
5 obtain feeds from Sandicor.

6 59. Moreover, the directors appointed by the Association Defendants have
7 a direct and substantial financial interest in supporting the acts complained of
8 herein. Because they are members of their respective shareholder associations, they
9 stand to benefit directly from the products and services provided by Sandicor.
10 More specifically, because their respective associations are incapable or unwilling
11 to devote resources to develop websites, or develop programs and services for its
12 members (unlike Plaintiff), these board members have a direct interest in having
13 those functions performed by Sandicor. Given their personal financial interests in
14 the business of Sandicor, there is reasonable doubt that they are disinterested and
15 independent. Further, the board cannot prosecute these claims without tacitly
16 admitting the wrongdoing of their respective associations. As a result, any demand
17 upon the board of directors for Sandicor would be futile.

18 60. Demand is also excused because Plaintiffs have repeatedly voiced
19 concerns about the acts complained of herein, but those complaints have fallen on
20 deaf ears. More specifically, Plaintiff vehemently opposed the devotion of more
21 than \$75,000 of Sandicor's funding over time to the creation, re-development and
22 service of a web-portal. The board of directors ignored these concerns and pushed
23 the deal through. To avoid Plaintiff's contractual right to approve or veto major
24 capital expenditures (such as for the creation of a web-portal), the board of directors
25 acted to surreptitiously mischaracterize the actual expense of the project. Thus, not
26 only has the board of directors refused to consider or delay or discuss any of
27 Plaintiff's concerns or address the unfairness of the transactions and damages they
28 would cause to Sandicor, the board has also taken steps to avoid any oversight or

1 input from Plaintiff whatsoever.

2 61. Demand would likewise be futile because the Sandicor directors
3 appointed by the Association Defendants have not only been complacent in acting
4 on behalf of Sandicor, but were necessary actors in commissioning the improper
5 conduct alleged herein.

6 62. On information and belief, the directors appointed by the Association
7 Defendants are protected against liability for breaches of fiduciary duty by a
8 liability insurance policy. Because certain provision in the insurance policy(ies)
9 exclude coverage under particular circumstances, if those directors were to cause
10 Sandicor to sue themselves or their shareholder associations, this may disrupt the
11 potential for insurance protection. As such, the directors appointed by the
12 Association Defendants are hopelessly conflicted and incapable of making any
13 independent determination that would cause Sandicor to bring this action.

14 **FIRST CAUSE OF ACTION**

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

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

17 63. Plaintiff incorporates the allegations in paragraphs 1 through 62 above
18 as though fully set forth herein.

19 **I. BACKGROUND REGARDING THE CONSPIRING PARTIES**

20 64. Plaintiff, PSAR, and NSDCAR are horizontal competitors in the
21 market for real estate broker members in the San Diego County area. They are the
22 only three associations in the relevant market, and they fiercely compete with one
23 another for a nearly finite group of broker members.

24 65. The primary means by which Plaintiff and the Association Defendants
25 compete is by differentiation, i.e., through the development and offering of unique
26 products and services for their respective members. In turn, most broker members
27 decide to join one of the associations (to the exclusion of the other associations)
28 based on the comparative products and services available to members.

1 66. Starting in or around 2011, merger talks began between three
2 competing associations: NSDCAR, PSAR, and the East San Diego County
3 Association of Realtors (“ESDCAR”). Plaintiff is informed and believes that the
4 purpose of the proposed merger was to consolidate their resources so they could
5 develop and offer products and services comparable to those offered by Plaintiff.
6 The merger was approved by the members of PSAR and ESDCAR, who merged at
7 or around that time under the name PSAR. The merger was rejected by
8 NSDCAR’s members. While the merger with NSDCAR did not go through at that
9 time Association Defendants nevertheless continued their efforts to combine on an
10 informal basis.

11 67. Since that time, PSAR and NSDCAR have aligned their respective
12 committees and committee responsibilities, and convened joint committee meetings
13 to ensure each association was acting the same as the other and to prepare for a
14 potential future merger. They also started working together to offer “joint” services
15 to their respective members in competition with Plaintiff, including joint caucus
16 dinners financed largely by Sandicor (and thus, in part, by Plaintiff).

17 68. PSAR and NSDCAR also worked to coordinate their marketing efforts
18 and to coordinate promotions designed to harm Plaintiff. For example, the
19 Association Defendants regularly hold jointly marketed broker summits and
20 symposiums. The events alternate locations between each of the two associations’
21 epicenters, and are sometimes billed as a PSAR event or an NSDCAR event, but
22 promotional materials often include the logos of PSAR, NSDCAR, and Sandicor.
23 In all cases, the leaders of each association attend (as many as 25), as do members
24 from both associations. Leaders from large and medium-sized brokerages (which
25 are often members of all associations) also often attend. Though the billed topics
26 vary widely, nearly all such events include a discussion of “the other association”
27 [Plaintiff] and its efforts to take “your [realtors’] data.” The events are designed to
28 rally the Association Defendants’ “base” and to convince brokerages, brokers, and

1 other real estate professionals in San Diego County to cancel their memberships
2 with Plaintiff and to further influence other firm members (who are independent
3 contractors) to drop their memberships with Plaintiff.

4 69. In addition to these jointly marketed and promoted events, the
5 Association Defendants also worked together to coordinate the offering of identical
6 promotions, including offering transfer “credits” for any dues or fees paid to
7 Plaintiff if the broker leaves Plaintiff and joins PSAR or NSDCAR as their primary
8 membership. That is, PSAR and NSDCAR jointly developed a plan designed to
9 entice members away from Plaintiff, and presented a jointly determined set of
10 incentives to encourage Plaintiff’s members to switch associations. This is not only
11 a direct action against each association’s interest to compete for members against
12 *all* competing associations, it is also an illegal agreement to coordinate on matters
13 relating to the terms, promotions, and/or pricing for membership fees.

14 70. Plaintiff is informed and believed that, PSAR and NSDCAR ultimately
15 decided to abandon another attempt for a formal merger because they realized that
16 they had greater power through the fiction of separateness. As a result, Plaintiff is
17 informed and believes that the Association Defendants entered into an agreement to
18 align, but purposefully structured the deal such that they remained technically
19 “separate” entities. This fiction of “separateness” ensured that the Association
20 Defendants would remain in control of Sandicor’s board, and as described below,
21 would have control over the MLS data, which was an essential to all the
22 associations’ products and services.

23 71. This common plan now firmly in place, PSAR and NSDCAR recently
24 acknowledged that they have formalized a “shared services agreement,” under
25 which “access to many services, resources, and discounts offered by either
26 Association will not be available to both PSAR and NSDCAR members
27 irrespective of with which association they have their primary membership.” Their
28 disclosure regarding this previously disavowed “shared services agreement”

1 confirmed that the newly discovered agreement was, in fact, an “expansion of a
2 relationship between the two Associations that has been in effect since 2013”.

3 72. The operation of shared service centers is an idea that has been
4 consistently rejected by the competing associations in the past because it would
5 require competing associations to share confidential membership records.
6 Confidential membership records consist largely of trade secret information that
7 legitimate competitors do not share, absent illegal coordination, because those
8 membership records could be used to recruit members by competitors. PSAR and
9 NSDCAR now share these records—the first two Sandicor associations to do so in
10 its history—but have only been able to do so through a market allocation agreement
11 amongst themselves whereby they have agreed to *not* recruit each others’ members,
12 but rather only members of Plaintiff. In reaching this express market allocation,
13 PSAR and NSDCAR have acted against their own respective interests to fulfill their
14 joint effort as against Plaintiff.

15 **II. SANDICOR’S GOVERNANCE FORM FACILITATED COLLUSION**

16 73. Plaintiff and the Association Defendant collectively own and control
17 Sandicor, which was formed by the associations (and their predecessors) for the
18 sole purpose of aggregating and distributing unfiltered MLS data for the benefit of
19 all of the associations (and their members).

20 74. Sandicor stands in a vertical relationship with Plaintiff and the
21 Association Defendants, and it controls (and provides) a critical supply (aggregated
22 MLS data) that is necessary for the associations to effectively compete. The
23 availability of this aggregated MLS data is critical to the associations, which is why
24 they created Sandicor and entered into specific written agreements to ensure they
25 had unfettered access to that data.

26 75. In addition to aggregating and distributing the MLS data to its
27 members, Sandicor also monetizes the MLS data feed. Among other things, it sells
28 the MLS data feed to third parties (i.e., the Union Tribune), and also sells the MLS

1 data to syndication services, which, in turn, re-sell the same MLS data to consumer-
2 facing websites (such as Zillow, Redfin, etc.) and other sources. The aggregated
3 MLS data is not private or confidential, but is actually distributed to the public
4 regularly, through numerous different sources.

5 76. While Sandicor's Board of Directors hold independent fiduciary duties
6 to Sandicor and its shareholders (including Plaintiff), the Association Defendants
7 have been careful to nominate only those people they can direct and control.
8 Indeed, representatives of the associations on the Sandicor board are expected to
9 often require consultation with their respective associations before taking a
10 position or voting at Sandicor board meetings. Plaintiff is informed and believes
11 that Sandicor's board members are frequently ordered to vote in a particular way, in
12 concert with the members of the other colluding association.

13 77. As a result, the individual members appointed by PSAR and NSDCAR
14 to Sandicor's board often operate at the direction of the leadership of their
15 respective associations, and often times act against Sandicor's business and
16 economic interests where it benefits their associations to do so (as alleged more
17 specifically below). This includes, among other things, using Sandicor's
18 operational funding to create and offer products and services that PSAR and
19 NSDCAR were otherwise unable to provide to their members.

20 78. In light of Sandicor's antiquated governance structure (which provided
21 each shareholder with the same number of board members notwithstanding their
22 comparative sizes), PSAR and NSDCAR realized that they could not merge, but
23 actually had greater power remaining separate. Had they merged (and had the
24 merger passed antitrust scrutiny), they would have lost control over an essential
25 supply that Plaintiff (and all of the other associations) needed: MLS data.

26 **III. DEVELOPMENT OF COMPETING WEB PORTALS**

27 79. Historically, each of the parties has had unfettered access to the
28 aggregated MLS data through Sandicor's portal. While the broker members were

1 able to access and use MLS listing information (historical and current data), it was
2 not user-friendly and did not have any additional, value-added features for its
3 brokers or their clients. This limitation impacted the three associations equally, that
4 is until Plaintiff disclosed its new technological innovation.

5 80. Based on consumer demand and input from members, Plaintiff began
6 devoting a substantial portion of its finite resources into the development of a new,
7 innovative platform for its members to use to review, search, and use MLS data in
8 2009. Called “Just Knock,” Plaintiff’s platform was designed to be a hyper-local
9 community resource to assist both buyers and sellers in the home-buying process.
10 It could be used by broker members to browse or search MLS data (both current
11 and historical data), and it also had a public-facing portal that could be used by the
12 broker-members’ clients. None of the other local associations were providing
13 similar services at that time (or now).

14 81. Just Knock’s functionality depended on the integration of the
15 aggregated MLS data feed. Because Sandicor controlled the data feed, and because
16 PSAR and NSDCAR collectively controlled Sandicor’s board of directors, Plaintiff
17 was forced to disclose this innovation, Just Knock, to its competitors NSDCAR and
18 PSAR in 2010, well before it was completed or ready to be rolled out for use. But
19 for their involvement in the operation of Sandicor, PSAR and NSDCAR would not
20 have known about Just Knock before it was rolled out, and would not have had the
21 opportunity to collude to prevent it from launching.

22 82. The Associations recognized the value of this new, user-friendly
23 portal, but lacked the resources (independently or collectively) to create their own
24 portal to compete with Plaintiff. Instead, they (through their appointed board
25 members at Sandicor) attempted to use Sandicor’s funds to prepare a “new” web
26 portal to compete with Just Knock. Plaintiff objected, however, because Sandicor’s
27 purpose was to aggregate and distribute the data to members, not to devote
28 substantial resources into the development of websites that compete with Plaintiff

1 for the sole benefit of PSAR and NSDCAR. As such, Sandicor's Board agreed in
2 2012 to discontinue their efforts to create a competing web portal, and passed a
3 resolution on November 21, 2012 amending the bylaws to clarify that Sandicor
4 would not offer products and services that compete with the local associations.

5 IV. THE ANTITRUST CONSPIRACY

6 83. Recognizing Just Knock as a potentially devastating competitive
7 threat, without the resources to create their own competing product, and without
8 Sandicor's operational funding to do the job for them, the leadership of PSAR and
9 NSDCAR agreed to cut-off the critical data supply Plaintiff needed.

10 84. In furtherance of this agreement, the Association Defendants first
11 banded together and used their collectively control over Sandicor's Board of
12 Directors to refuse Plaintiff's direct (and repeated) requests for the MLS data.
13 Specifically, beginning in or around 2010, Plaintiff approached Sandicor with a
14 request for the MLS data feed. Although that Plaintiff had the contractual right to
15 *download* and *use* the aggregated data feed for membership consumption, the
16 Association Defendants combined to prevent Sandicor from providing the data to
17 Plaintiff. Despite further efforts by Plaintiff to change Sandicor's mind, including
18 offering to pay Sandicor for the data feed, like third parties would do, Sandicor
19 repeatedly refused Plaintiff's request.

20 85. Sandicor's refusal to provide MLS data to Plaintiff was contrary to
21 precedent, contrary to Sandicor's economic interests, and contrary to the terms of
22 the Parties' Service Center Agreement. Indeed, Sandicor's sole purpose is to
23 *aggregate* and *deliver* MLS data to the associations for the benefit of their
24 members. It had never before refused to *deliver* MLS data to one of its member
25 associations, and it was, in fact, contractually obligated to provide the aggregated
26 data feed to the associations (including Plaintiff) for membership consumption.

27 86. Sandicor also regularly distributes the same MLS data to third parties
28 and syndication services, such that its MLS data can be accessed through a number

1 of different platforms (i.e., the Union Tribune, Zillow, Redfin, etc.). While
2 Sandicor was economically incentivized to sell/distribute the same data to third
3 parties, its board of directors nevertheless refused to provide Plaintiff with the data
4 feed (under any terms, paid or unpaid). There was no legitimate economic or
5 business justification for the decision by PSAR and NSDCAR's appointed
6 directors, which served only to further the Association Defendants' conspiracy and
7 not any legitimate interest of Sandicor. As evidenced by other concerted acts in
8 furtherance, it is apparent that this decision was, in fact, prompted entirely by
9 PSAR's and NSDCAR's common plan to deny Plaintiff's requests and ability to
10 bring this competitive product to market.

11 87. In or around 2013, after its multiple requests to Sandicor had been
12 summarily (and illogically) rejected, Plaintiff attempted a work-around by
13 obtaining a syndicated data feed from a third party, Point2, who was contractually
14 permitted to re-sell the data. PSAR and NSDCAR eventually took note, and
15 realized that their plan would fail if Plaintiff was able to obtain access to the data
16 from a third party. To prevent that from happening, they each took identical steps
17 to render the syndicated data feed unusable by making it incomplete and inaccurate.

18 88. First, Ray Ewing (Sandicor's Chief Executive Officer and a long-time
19 member of NSDCAR) contacted Point2 and instructed them to eliminate any data
20 originating from NSDCAR and PSAR's brokers. He explained his view that
21 Plaintiff was "not entitled to any data from us" because the Board of Directors had
22 not authorized it in response to Plaintiff's repeated requests.

23 89. Following suit, PSAR (through Rich D'Ascoli – one of PSAR's
24 directors for Sandicor) and NSDCAR (through Dianne McMillan – its Chief
25 Executive Officer) immediately contacted Point2 and issued independent, but
26 identical, instructions to Point2, demanding that they "block" any listings
27 originating from their members from going to Plaintiff's Just Knock portal. Thus,
28 rather than allowing their members—competing brokers—to decide whether their

1 listings should appear on Just Knock, the Association Defendants colluded to
2 prevent those brokers from even opting in to the syndication feed.

3 90. Ultimately, PSAR and NSDCAR were successful in preventing
4 Plaintiff from obtaining the essential supply of information from every legal and/or
5 legitimate source, rendering Plaintiff's new product effectively useless.

6 91. Thus, not only did the Association Defendants combine and conspire
7 to cause Sandicor to reject Plaintiff's request for the data feed (despite Plaintiff's
8 contractual right to receive and use such data), but they went out of their way to
9 prevent Plaintiff from obtaining a usable data stream through third parties—
10 notwithstanding that the third parties had access to the full, aggregated data feed,
11 and had the contractual right to re-sell that data feed to entities such as Plaintiff.

12 92. When asked at a board meeting as to why the PSAR and NSDCAR-
13 controlled board intervened with Plaintiff's relationship with Point2 to prevent
14 Plaintiff from accessing the syndicated data feed (notwithstanding the fact that
15 Sandicor had no qualms with Point2 providing the same data to third parties),
16 Aaron Kerper of PSAR (then, the chair of Sandicor's board of directors) explained
17 that the discrepancy was "because [the third parties] aren't competing with us."

18 93. Efforts to obtain another syndication data feed were futile, because at
19 or around the same time that the Association Defendants conspired to cut off the
20 syndicated MLS data feed from Point2, the only other potential syndication feed
21 source underwent an acquisition and was consolidated with Point2 such that there
22 was only one syndication data feed available on the market (the limited data feed
23 discussed above).

24 94. These identical actions were not merely coincidental, but were carried
25 out consciously in furtherance of the agreement and conspiracy by and between
26 PSAR and NSDCAR to prevent Just Knock from getting off the ground. Officers of
27 both competing associations contacted a third party the same day, issuing identical
28 instructions, in combination with the other collusive conduct alleged herein,

1 demonstrates their unlawful coordination.

2 95. This behavior is economically irrational, and has no legitimate
3 business purpose other than to further the Association Defendants' anticompetitive
4 agreement. Both the Association Defendants and their members would profit from
5 the inclusion of their listings in Just Knock, which would have provided exposure
6 to potential purchasers across the county. Instead, they each elected to forego these
7 short-run benefits for the greater goal of eliminating competition by Plaintiff.

8 96. Despite Plaintiff's investment of hundreds of thousands of dollars in
9 development of Just Knock in anticipation of its roll-out, the Association
10 Defendants success in cutting off the essential data supply forced Plaintiff to
11 discontinue its plans to bring its new product to market. Just Knock's development
12 was halted at the "beta" stage, and the website was never rolled out or marketed to
13 the public (or to Plaintiff's members).

14 97. The Association Defendants' restraints are a *per se* violation of
15 Section 1 of the Sherman Act because their conspiracy was designed to prevent
16 Plaintiff from bringing new competitive tools to the marketplace, and to weaken
17 Plaintiff as a competitor through its waste of finite competitive resources.

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

21 99. The Association Defendants' conduct further constitutes a concerted
22 refusal to deal, through Sandicor, by limiting and/or excluding Plaintiff from access
23 to an essential resource: the local MLS data feed. Together, PSAR and NSDCAR,
24 through and with Sandicor, have control over an essential supply that Plaintiff is
25 unable to duplicate. They have worked together to deny Plaintiff access to that
26 supply despite it being feasible and economically incentive to provide access to it.
27 There is no available substitute for this data in the relevant geographic market, and
28 it is essential to competition amongst the competing associations.

1 **A. Plus-Factor No. 1 – Sandicor, NSDCAR, and PSAR Acted Against Their**
2 **Own Interests**

3 100. The directors of Sandicor, who were hand-picked and operated at the
4 will of PSAR and NSDCAR, acted against Sandicor’s self-interest by refusing to
5 allow Sandicor to provide Plaintiff with an aggregated data feed. This was contrary
6 to Sandicor’s central purpose (which was designed solely to aggregate and
7 distribute the data to the association), contrary to the terms of the parties’ Service
8 Center Agreement, and inconsistent with its prior practices. It was also contrary to
9 Sandicor’s economic interests, as it regularly monetized and sold the data to third
10 parties and syndication providers, but refused to sell that same data to Plaintiff.
11 Further, while syndication providers are allowed to re-sell that data to other third
12 parties for distribution, the Association Defendants took steps to interfere with
13 Point2’s ability to re-sell the data to Plaintiff. There is no rational economic or
14 business reason for these actions, other than to further their agreement to eliminate
15 Plaintiff’s competitive threat.

16 101. PSAR and NSDCAR further acted against their own interests in
17 entering into a market allocation agreement, as alleged above, including more
18 specifically an agreement to refrain from recruiting each others’ members.
19 Although it is in both of the associations’ best interests to compete for *all* potential
20 members, they are now sharing data and confidential trade secret information with
21 one another to facilitate joint service centers pursuant to a market allocation
22 agreement under which neither PSAR nor NSDCAR is permitted to—or will—
23 attempt to recruit members of each others’ associations.

24 102. Further, PSAR and NSDCAR acted against the interests of their own
25 members by unilaterally removing their members’ listing data from the Point2
26 syndication feed, despite the fact that the inclusion of that information would have
27 enabled their members’ listings to be displayed and usable by people across the
28 county.

1 103. The fact that PSAR and NSDCAR acted contrary to their respective
2 self-interests (and against the interests of their members), and caused Sandicor to
3 act contrary to its economic interests in breach of their fiduciary duties to Sandicor
4 and its shareholders, is a “plus factor” that shows the above-described parallel
5 conduct was the result of an unlawful agreement and conspiracy.

6 **B. Plus-Factor No. 2 – Interfirm Communications and Opportunity to**
7 **Conspire.**

8 104. Unlike most arms-length competitors, PSAR and NSDCAR had
9 multiple interactions on a regular basis. Among other things, they jointly operate
10 Sandicor through hand-picked “directors,” whose sole purpose is to further the
11 interests and push the agendas of their respective associations.

12 105. In addition to interaction by these “directors,” various members of
13 PSAR and NSDCAR’s leadership would regularly attend Sandicor meetings and
14 functions, providing a unique opportunity for these “competitors” in the market to
15 meet and conspire. These opportunities also existed outside of Sandicor, as they
16 created Joint Committees and otherwise took steps to align their operations
17 following the failed merger attempt.

18 106. The structure of the industry also facilitated collusion because Plaintiff
19 was forced to disclose its development of Just Knock to its competitors well before
20 it was ready to launch. Specifically, because PSAR and NSDCAR are represented
21 on Sandicor’s Board of Directors, and because Sandicor controls the MLS data feed
22 Just Knock needed to function, the Association Defendants learned about Just
23 Knock and had ample time, opportunity, and motive to conspire to prevent it from
24 launching.

25 107. These regular interactions between the leadership of these two
26 competitors lead directly to (and facilitated) PSAR and NSDCAR’s identical, but
27 illogical, actions, including causing Sandicor to refuse Plaintiff’s request for the
28 data feed and taking identical steps to render the syndicated data feed useless.

1 108. These regular interactions between leadership of these competing
2 organizations are “plus factors” that tend to show an antitrust conspiracy.

3 **C. Plus-Factor No. 3 – Strong Motive to Enter Into Alleged Conspiracy.**

4 109. As alleged above, PSAR and NSDCAR had a strong motive to
5 conspire against Plaintiff. Plaintiff was (and still is) the dominant player who
6 controls more than 2/3 of the relevant market for broker-members. At a time when
7 they were faced with increasing attrition rates by members choosing to leave PSAR
8 and NSDCAR and join Plaintiff, they learned that Plaintiff was developing a new,
9 innovative platform for its members to use MLS data. But for their positions in the
10 operation of Sandicor, they would not have known about Just Knock nor had an
11 opportunity to conspire to prevent it from launching. This platform was highly
12 sought after, and PSAR and NSDCAR recognized that it was a potentially
13 devastating competitive threat. They were powerless to stop Plaintiff from rolling
14 out this product acting independently, did not have the resources to develop their
15 own competing product, and were only able to take steps to prevent Plaintiff from
16 rolling out Just Knock acting in concert.

17 110. The presence of this strong motive to enter into the conspiracy is yet
18 another “plus factor” that is probative of an antitrust conspiracy.

19 **D. Plus-Factor No. 4 – Complex Actions That Were Not Coincidental.**

20 111. As described above, PSAR and NSDCAR took nearly identical actions
21 in short order. After they collectively voted to reject Plaintiff’s request for a data
22 feed from Sandicor, they caused Sandicor to contact Point2 and limit and restrict
23 the Just Knock data feed. Almost immediately after Sandicor’s agent reached out
24 to Point2, representatives of both PSAR and NSDCAR separately contacted Point2
25 with identical instructions: eliminate their members’ listings from the syndicated
26 data feed that was to be provided to Plaintiff. Further, PSAR and NSDCAR each
27 then implemented identical rules that would prevent their own members from even
28 having the option to opt-in to the Just Knock data feed.

1 112. This conduct (which, as noted above, was contrary to each of their
2 self-interests), reveals a complicated arrangement that PSAR and NSDCAR had
3 adopted for the purpose of frustrating and preventing Plaintiff from introducing a
4 new competitive tool into the marketplace, and not independent, parallel conduct.

5 **E. Plus-Factor No. 5 – Admission Of Anticompetitive Intent for Actions.**

6 113. The Association Defendants do not deny that their intentions were
7 anticompetitive. To the contrary, PSAR’s own representative (who was then the
8 chair of the board of Sandicor) explained that Sandicor had no problem giving the
9 data to third parties (such as the Union Tribune), but would not provide the same
10 data to Plaintiff because the rationale behind Sandicor’s refusal to provide the data
11 feed to Plaintiff, “because they [Union Tribune] aren’t competing with us.”

12 114. This admission of anticompetitive intent is a “plus factor” that
13 eliminates any doubt that the actions could have been the result of mere conscious
14 parallelism, and were in fact part of an unlawful conspiracy.

15 **V. THE CONSPIRACY INJURED PLAINTIFF AND COMPETITION**

16 115. The above-described conduct of NSDCAR and PSAR has caused and
17 continues to cause harm to competition by preventing the launch of an innovative
18 new platform that would improve quality and choice for consumers. By conspiring
19 to prevent Just Knock from reaching the marketing, Defendants also injured
20 Plaintiff by depriving it of the ability to effectively compete with this new product.

21 116. Competition was harmed because Just Knock was designed to provide
22 consumers—here, real estate brokers and their clients—with useful tools they have
23 never been offered and otherwise cannot obtain from other sources (certainly not
24 from NSDCAR or PSAR). Just Knock made searching for a home an interactive
25 experience where buyers could not only search for specific homes within the MLS
26 listings, but also learn more about San Diego’s neighborhoods, including schools,
27 services, and events. The Association Defendants’ actions prevented Just Knock
28 from entering the market and thus deprived the market of competition in terms of

1 quality and availability. Plaintiff suffered harm flowing directly from that
2 anticompetitive harm: the exclusion of Just Knock prevented it from competing
3 effectively in the market for broker members, who choose to join an association
4 based on the benefits they can derive from that association—including Just Knock.

5 117. Further, by derailing Just Knock, the Association Defendants also
6 weakened Plaintiff as a competitive threat. Plaintiff committed substantial, finite
7 resources to developing Just Knock as a core benefit to market to members and
8 prospective members—resources it could have spent competing with Defendants in
9 other ways. However, Just Knock was rendered worthless by Defendants
10 conspiracy. Plaintiff has also been placed at a competitive disadvantage, as its
11 efforts to offer unique products and services to its members and prospective
12 members (for whom the associations compete) has been thwarted.

13 118. As a result of Defendants’ anticompetitive conduct, as alleged herein,
14 Plaintiff has been damaged by, among other things:

- 15 a. Plaintiff has lost members, and lost the opportunity to gain new
16 members, by its inability to deliver the sales portal websites despite
17 previous marketing, and its inability to use those tools in the
18 ongoing marketing for new members. Plaintiff is informed and
19 believes it has lost at least 200 new members that it would have
20 recruited/retained but for Defendants’ conduct. As a direct and
21 proximate result of this conduct, Plaintiff has lost tens of thousands
22 of dollars in its loss of membership fees that would have been
23 collected for the expected duration of membership.
- 24 b. Plaintiff lost thousands of dollars in subscription fees that its
25 members would have paid for use of the Just Knock but for the
26 Defendants’ anticompetitive conduct.
- 27 c. Plaintiff lost hundreds of thousands of dollars in advertisement
28 revenue that it would have received through advertisements on its

1 sales portal websites but for the Defendants’ anticompetitive
2 conduct, in addition to lost advertisement placement fees.
3 d. Plaintiff lost hundreds of thousands of dollars in development costs,
4 staffing costs, marketing costs, and equipment expenses that were
5 incurred for the creation and roll-out of Just Knock, which are not
6 recoverable because the websites have been rendered useless by
7 Defendants’ conduct.
8 e. Plaintiff was forced to incur substantial legal fees and costs for
9 legal issues caused by Plaintiff’s business disruption and efforts to
10 negotiate for the release of the MLS data feed to which Plaintiff is
11 entitled, as described herein.

12 119. Plaintiff has suffered damages, and will continue to suffer damages, as
13 a direct and proximate result of the Association Defendants’ conduct as alleged
14 herein. These injuries are the same type of injury that the antitrust laws were
15 intended to prevent.

16 120. Plaintiff has no adequate remedy at law to prevent the Association
17 Defendants from continuing their illegal acts.

18 **SECOND CAUSE OF ACTION**
19 **(Violation of the Cartwright Act)**
20 **(Against NSDCAR, PSAR, and DOES 1 through 20)**

21 121. Plaintiff incorporates the allegations in paragraphs 1 through 120
22 above as though fully set forth herein.

23 122. The Association Defendants are horizontal competitors of Plaintiff.
24 Sandicor generally stands vertically to the Association Defendants and Plaintiff as a
25 cooperative that provides essential services—a consolidated multiple listing
26 service—necessary for its members to compete.

27 123. The Association Defendants combined and conspired to restrain trade
28 in interstate commerce in violation of the Cartwright Act, by engaging in a

1 concerted scheme to exclude Plaintiff from the market for broker-member services
2 by unreasonably and unjustifiably restricting and/or preventing Plaintiff's access to
3 the MLS data feed necessary for it to effectively compete in the marketplace (and to
4 which it is entitled).

5 124. In furtherance of the conspiracy, the Association Defendants used their
6 combined domination of the board of directors for Sandicor to restrict and/or
7 prevent Plaintiff from accessing current and historical MLS data through Sandicor,
8 and from a third-party syndicator of the data (Point2). By combining forces, the
9 Association Defendants control Sandicor and its essential MLS data and thus have
10 market power. They also comprise two of the three Realtor associations in San
11 Diego County.

12 125. The Association Defendants' restraints are a per se violation of the
13 Cartwright Act because their conspiracy was designed to intervene in the
14 marketplace, divide the marketplace and/or allocate members, and exclude their
15 horizontal competitor, Plaintiff, from the relevant product and service markets in
16 San Diego County.

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

20 127. The Association Defendants' conduct also constitutes a concerted
21 refusal to deal, through Sandicor, by limiting and/or excluding Plaintiff from access
22 to an essential resource: the local MLS data feed.

23 128. The Association Defendants, through their domination of Sandicor's
24 board of directors, have market power. In the alternative, Sandicor had market
25 power because it is a cooperative that exclusively controls access to the MLS data
26 necessary for Plaintiff to compete in the market for member-broker services.

27 129. The Association Defendants' conduct and agreements harm
28 competition within the relevant market by excluding one of only three broker

1 associations from effective competition.

2 130. The Association Defendants' conduct has no procompetitive or
3 business justification. Their conduct also lacks any scientific, health, or safety
4 justification.

5 131. Plaintiff has no adequate remedy at law to prevent the Association
6 Defendants from continuing their illegal acts.

7 **THIRD CAUSE OF ACTION**

8 **(Direct Claim for Breach of Fiduciary Duty By Controlling Shareholders)**
9 **(Against NSDCAR, PSAR, and DOES 1 through 20)**

10 132. Plaintiff incorporates the allegations in paragraphs 1 through 131,
11 above, as though fully set forth herein.

12 133. The Association Defendants are collectively controlling shareholders
13 of Sandicor. Among other things, the Association Defendants owed Plaintiff
14 fiduciary duties of loyalty and care.

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

1 regard to the interests of Sandicor or Plaintiff.

2 135. In contemplating, planning, or effecting these transactions, the
3 Association Defendants were not acting in good faith and breached their fiduciary
4 duties to Plaintiff.

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

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

13 138. Plaintiff is informed and believes that, unless immediately enjoined by
14 order of the Court, the Association Defendants will continue to operate for the sole
15 benefit of themselves and to the detriment of Sandicor and Plaintiff. No adequate
16 remedy exists at law for the injuries suffered by Plaintiff, and Plaintiff will suffer
17 great and irreparable injury if the Association Defendants' wrongful conduct is not
18 immediately enjoined and restrained.

19 **FOURTH CAUSE OF ACTION**

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

21 **(Against All Defendants)**

22 139. Plaintiff incorporates the allegations in paragraphs 1 through 138,
23 above, as though fully set forth herein.

24 140. As alleged herein, the Association Defendants have breached their
25 fiduciary duties as controlling shareholders and have proximately caused and will
26 continue to cause Sandicor to suffer substantial money damages. Further, the
27 directors appointed by the Association Defendants to Sandicor's boards—Ron
28 Brownell (NSDCAR), Ron Romanowich (NSDCAR), Aaron Kerper (PSAR), and

1 Shun Wakita (PSAR)—similarly breached their fiduciary duties to the detriment of
2 Sandicor and in favor of their respective associations. The conduct of the
3 Association Defendants and their appointed directors has threatened to devalue and
4 destroy Sandicor’s most valuable asset, without consideration and on unjust terms,
5 all to the detriment of Sandicor and its shareholders.

6 141. Sandicor has been injured by reason of the Association Defendants’
7 and appointed directors’ intentional breach and/or reckless disregard of their
8 fiduciary duties owed to Sandicor and for their actions and failures to exercise their
9 fiduciary responsibilities in good faith. Plaintiff, as a shareholder and
10 representative of Sandicor, seeks damages and other relief for Sandicor, including
11 legal fees and costs, and other expenditures Sandicor has incurred and will incur in
12 connection with the conduct described above.

13 142. As a direct and proximate result of the conduct of the Association
14 Defendants and their appointed directors, Sandicor has sustained damages, and will
15 continue to sustain damages, in an amount in excess of the jurisdictional limits of
16 this Court subject to proof at the time of trial. When the true sum and extent of
17 Sandicor’s damages are ascertained, Plaintiff reserves the right to amend this
18 Complaint accordingly.

19 143. Plaintiff is informed and believes that, unless enjoined by order of the
20 Court, the Association Defendants and appointed directors will continue to operate
21 Sandicor to the sole benefit of themselves and to the detriment of Sandicor and its
22 shareholders. No adequate remedy exists at law for the injuries alleged herein, and
23 Sandicor will suffer great and irreparable injury if the Association Defendants’ and
24 their directors’ wrongful conduct is not immediately enjoined and restrained.

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1 **FIFTH CAUSE OF ACTION**

2 **(Derivative Claim for Waste of Corporate Assets)**

3 **(Against All Defendants)**

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

6 145. By their actions alleged herein, the Association Defendants and the
7 directors they appointed to Sandicor’s board—Ron Brownell (NSDCAR), Ron
8 Romanowich (NSDCAR), Aaron Kerper (PSAR), and Shun Wakita (PSAR)—have
9 either directly or indirectly, and with reckless disregard, abandoned and abdicated
10 their responsibilities and fiduciary duties to appropriately manage the business and
11 assets of Sandicor in a manner consistent with operations of similarly privately held
12 companies.

13 146. Through the improper policies and procedures established and
14 executed, including without limitation the decision to undertake capital
15 expenditures without shareholder authorization and to directly compete with
16 Plaintiff, mischaracterizing the nature of the capital expenditure to avoid oversight
17 and approval by Plaintiff, and the decision to dilute Sandicor’s valuable database
18 via a merger with CRMLS without adequate consideration, the Association
19 Defendants and their appointed directors have caused Sandicor to waste valuable
20 corporate assets. These decisions were made in the financial interests of the
21 appointed directors and their respective associations without regard for the best
22 interests of Sandicor and its shareholders.

23 147. As a direct and proximate result of the Association Defendants’ and
24 appointed directors’ gross mismanagement and breaches of fiduciary duty,
25 including the duty of loyalty and care, as alleged herein, Sandicor has incurred, and
26 will likely incur in the future, material financial damages in addition to damages to
27 its reputation and goodwill, all in an amount subject to proof at the time of trial.

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1 148. Plaintiff is informed and believes that, unless enjoined by order of the
2 Court, the Association Defendants and the directors they appointed to Sandicor’s
3 board will continue to mismanage Sandicor and waste valuable corporate assets.
4 No adequate remedy exists at law for the injuries alleged herein, and Sandicor will
5 suffer great and irreparable injury if the Association Defendants’ and the appointed
6 directors’ wrongful conduct is not immediately enjoined and restrained.

7 **SIXTH CAUSE OF ACTION**

8 **(Direct Claim for Violation of Corporations Code section 1601)**

9 **(Against All Defendants)**

10 149. Plaintiff incorporates the allegations in paragraphs 1 through 148,
11 above, as though fully set forth herein.

12 150. Plaintiff has made repeated written demands on Sandicor to make
13 available for inspection all of the accounting books and records and minutes of
14 proceedings to that which it is entitled to inspect as a shareholder of the company.
15 The directors appointed by Plaintiff to Sandicor’s board—Saul Klein and Glen
16 Brush—have similarly made repeated written demands on Sandicor to inspect all
17 books, records and documents to that which they are entitled to inspect as a director
18 of the company.

19 151. However, Sandicor (acting through the Association Defendants) have
20 steadfastly refused to provide Plaintiff or the directors it has appointed to the
21 company’s board the documents and records to which they are entitled to inspect.
22 The targeted documents relate to the implemented data share agreement and
23 negotiations regarding the potential merger with CRMLS and in connection with
24 the ongoing operation of SANDICOR, including without limitation the terms of the
25 merger discussions and the financial data of SANDICOR. Despite the reasonable
26 requests for information, Defendants have refused to provide Plaintiff with the
27 information and records that it is entitled to inspect and copy in its capacity as a
28 shareholder and by and through the directors on Sandicor’s board of directors.

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

7 153. Plaintiff requests an order compelling Sandicor to produce for
8 inspection all books, records and documents authorized by California Corporations
9 Code section 1601, and an accounting of SANDICOR.

10 **SEVENTH CAUSE OF ACTION**

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

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

13 154. Plaintiff incorporates the allegations in paragraphs 1 through 153,
14 above, as though fully set forth herein.

15 155. The Association Defendants' misconduct, including without limitation
16 the violations of state and federal antitrust laws, the breaches of the fiduciary duties
17 of loyalty and trust, among others, constituted unfair, unlawful and/or fraudulent
18 business practices in violation of California Business and Professions Code sections
19 17200 *et seq.*

20 156. These actions were likely to, and did, actually mislead and deceive
21 Plaintiff, its members, and others.

22 157. As a result of the Association Defendants' wrongdoings alleged
23 herein, Plaintiff has been deprived of money and compensation in amounts to be
24 proven at trial. Plaintiff is entitled to disgorgement under California Business and
25 Professions Code section 17203, restoring it the equity that the wrongful acts
26 deprived it of, or to monetary relief or other restitutionary relief.

27 158. Plaintiff is informed and believes that, unless enjoined by order of the
28 Court, the Association Defendants will continue to undertake the unfair, unlawful

1 and/or fraudulent business practices herein alleged. No adequate remedy exists at
2 law for the injuries alleged herein.

3 **EIGHTH CAUSE OF ACTION**

4 **(Breach of Written Contract)**

5 **(Against Sandicor and DOES 1 through 20)**

6 159. Plaintiff incorporates the allegations in paragraphs 1 through 158,
7 above, as though fully set forth herein.

8 160. Pursuant to the Service Center Agreement entered into by the parties
9 on or about January 15, 2004, as amended, Sandicor agreed that, in exchange for
10 monthly payments, it would provide access to its MLS data to Plaintiff to
11 “download, use and distribute ... for membership consumption and statistical
12 purposes.”

13 161. Plaintiff performed all conditions, covenants, and promises required of
14 it by the Service Center Agreement, including, but not limited to, remitting monthly
15 payments to Sandicor.

16 162. Sandicor, through its board of directors controlled by the Association
17 Defendants, materially breached, and continue to breach, the Service Center
18 Agreement by, among other things, refusing to provide Plaintiff with unrestricted
19 access to Sandicor’s MLS data feed to which it is entitled.

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

23 164. Plaintiff also requests an award of reasonable attorneys’ fees and costs
24 incurred in the enforcement of the provisions of the Service Center Agreement.

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1 **NINTH CAUSE OF ACTION**

2 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

3 **(Against Sandicor and DOES 1 through 20)**

4 165. Plaintiff incorporates the allegations in paragraphs 1 through 164,
5 above, as though fully set forth herein.

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

11 167. Plaintiff performed all conditions, covenants, and promises required of
12 it by the Service Center Agreement, including, but not limited to, remitting monthly
13 payments to Sandicor.

14 168. All of the conditions required for Sandicor's performance had occurred
15 or were otherwise excused.

16 169. Sandicor, through its board of directors controlled by the Association
17 Defendants, unfairly interfered with Plaintiff's right to receive the benefits of the
18 Service Center Agreement by refusing to provide Plaintiff with unrestricted access
19 to Sandicor's MLS database to which it is entitled.

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

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

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1 180. An actual controversy has arisen and now exists between Plaintiff, on
2 the one hand, and Defendants, on the other hand. Plaintiff contends that Section 4.2
3 of the Shareholder Agreement is unenforceable on grounds that it imposes an
4 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 regard
9 for the interests of Plaintiff and in favor of actions to benefit their respective
10 associations. Conversely, Defendants claim Section 4.2 is enforceable as written.

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

26 182. Plaintiff requests a judicial determination of the above-referenced
27 disputes. Such determinations are necessary and appropriate at this time so Plaintiff
28 may ascertain its rights and duties as a shareholder of Sandicor. This situation

1 requires a final resolution and statement of affairs immediately.

2 183. Plaintiff requests, in the alternative, a judicial determination that it
3 may compel a conversion of Sandicor from a close corporation to a C corporation
4 by an affirmative vote of two-thirds of the outstanding shares, as provided for by
5 California Corporations Code section 158.

6 **JURY TRIAL DEMAND**

7 Plaintiff hereby demands a jury trial.

8 **PRAYER FOR RELIEF**

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

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

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

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

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

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

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1 6. For an order compelling Sandicor to produce for inspection all books,
2 records and documents authorized by California Corporations Code section 1601,
3 and an accounting of Sandicor;

4 7. For declaratory relief regarding the parties' rights and interests in
5 Sandicor;

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

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

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

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13 DATED: September 5, 2016

HIGGS FLETCHER & MACK LLP

14
15 By: /s/ Alexis S. Gutierrez

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