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CIVIL BUSINESS OFFICE 9  
CENTRAL DIVISION  
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CLERK SUPERIOR COURT  
SAN DIEGO COUNTY, CA

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

11 NORTH SAN DIEGO COUNTY  
ASSOCIATION OF REALTORS, a California  
12 corporation, and PACIFIC SOUTHWEST  
ASSOCIATION OF REALTORS, a California  
13 corporation,

14 Plaintiffs/Complainants,

15 vs.

16 SANDICOR, INC., a California corporation,

17 Defendant/Respondent.

CASE No. 37-2016-00037384-CU-MC-CTL

**ANSWER TO VERIFIED COMPLAINT  
FOR INVOLUNTARY DISSOLUTION OF  
A CORPORATION**

The Hon. Richard E.L. Strauss, Dept. 75

19 Defendant Sandicor, Inc. (hereinafter "Answering Defendant"), for itself alone and  
20 severing itself from any other defendant, appears and answers plaintiffs' verified complaint herein  
21 ("Complaint") as follows.

22 1. Answering the allegations of paragraph 1 of the Complaint, Answering Defendant  
23 lacks sufficient knowledge, information or belief as to the truth or falsity of said allegations and,  
24 on such basis, denies each and every allegation of said paragraph.

25 2. Answering the allegations of paragraph 2 of the Complaint, Answering Defendant  
26 admits the allegations of said paragraph.

27 3. Answering the allegations of paragraph 3 of the Complaint, Answering Defendant  
28 admits the allegations of said paragraph.

1           4.       Answering the allegations of paragraph 4 of the Complaint, Answering Defendant  
2 admits that plaintiffs currently hold approximately 35 percent of the shares of Answering  
3 Defendant, but further alleges that the number of shares held by any shareholder of Answering  
4 Defendant, including plaintiffs, is subject to adjustment on an annual basis.

5           5.       Answering the allegations of paragraph 5 of the Complaint, Answering Defendant  
6 admits the allegations of said paragraph.

7           6.       Answering the allegations of paragraph 6 of the Complaint, Answering Defendant  
8 admits the allegations of said paragraph.

9           7.       Answering the allegations of paragraph 7 of the Complaint, Answering Defendant  
10 admits that the purpose stated in the first sentence of said paragraph was a purpose for the  
11 formation of Answering Defendant and further admits that Answering Defendant was formed in  
12 1991, but denies any implication that the purpose stated was the sole purpose for the formation of  
13 Answering Defendant, whose articles of incorporation allow it to engage in any lawful act or  
14 activity, subject to certain legal limitations. Answering Defendant admits the allegations of the  
15 second sentence of said paragraph.

16          8.       Answering the allegations of paragraph 8 of the Complaint, Answering Defendant  
17 admits the allegations of said paragraph.

18          9.       Answering the allegations of paragraph 9 of the Complaint, Answering Defendant  
19 admits the allegations of said paragraph.

20          10.      Answering the allegations of paragraph 10 of the Complaint, Answering Defendant  
21 admits SDAR had more members than any other AOR at the time Answering Defendant was  
22 formed, as alleged in the first sentence of said paragraph, and admits the allegations of the second,  
23 third and fourth sentences of said paragraph. Except as specifically admitted, Answering  
24 Defendant denies each and every remaining allegation of said paragraph.

25          11.      Answering the allegations of paragraph 11 of the Complaint, Answering Defendant  
26 admits there were shareholder protection provisions incorporated in Answering Defendant's  
27 governing documents, one purpose of which was to prevent a single shareholder, regardless of  
28 size, from controlling Answering Defendant, and those provisions had other purposes as well.

1 Except as specifically admitted, Answering Defendant denies each and every remaining allegation  
2 of said paragraph.

3 12. Answering the allegations of paragraph 12 of the Complaint, Answering Defendant  
4 admits that it has Articles of Incorporation which were signed by its incorporators, as alleged in  
5 the first sentence of said paragraph. Answering Defendant admits that an amended shareholder  
6 agreement was entered into dated July 25, 1994, as alleged in the second sentence, and admits that  
7 agreement defined the benefits and burdens of being a shareholder of Answering Defendant.

8 Except as specifically admitted, Answering Defendant denies each and every remaining allegation  
9 of said paragraph.

10 13. Answering the allegations of paragraph 13 of the Complaint, Answering Defendant  
11 admits the allegations of said paragraph.

12 14. Answering the allegations of paragraph 14 of the Complaint, Answering Defendant  
13 admits the allegations of the first and second sentences of said paragraph. Answering Defendant  
14 admits the allegations of the third sentence of said paragraph insofar as they allege that each  
15 shareholder is entitled to appoint independent directors with each director having a particular  
16 number of votes based on the number of participants and subscribers to Answering Defendant's  
17 MLS who participate or subscribe through the appointing shareholder, subject to a minimum and  
18 maximum number of votes. Except as specifically admitted, Answering Defendant denies each  
19 and every remaining allegation of said paragraph.

20 15. Answering the allegations of paragraph 15 of the Complaint, Answering Defendant  
21 admits the allegations of said paragraph.

22 16. Answering the allegations of paragraph 16 of the Complaint, Answering Defendant  
23 admits that the number of shares held by a particular shareholder is subject to annual adjustment,  
24 as alleged in the first sentence, but denies each and every remaining allegation of said first  
25 sentence. Answering Defendant admits that major corporate resolutions as defined in the  
26 shareholder agreement require the consent of at least two shareholders holding at least two-thirds  
27 of the shares of Answering Defendant and that the three referenced examples are major corporate  
28 resolutions under the shareholder agreement, as alleged in the second sentence but denies each and

1 every remaining allegation of said second sentence.

2 17. Answering the allegations of paragraph 17 of the Complaint, Answering Defendant  
3 admits that one of the purposes of the provisions of the referenced shareholder agreement was to  
4 prevent a single shareholder from dominating or controlling Answering Defendant. Except as  
5 specifically admitted, Answering Defendant denies each and every remaining allegation of said  
6 paragraph.

7 18. Answering the allegations of paragraph 18 of the Complaint, Answering Defendant  
8 admits that its operative shareholder agreement provides that Answering Defendant is to be and  
9 remain a close corporation and that the quoted language in said paragraph appears in the  
10 shareholder agreement. Except as specifically admitted, Answering Defendant denies each and  
11 every remaining allegation of said paragraph.

12 19. Answering the allegations of paragraph 19 of the Complaint, Answering Defendant  
13 admits that Mr. Mercurio became the CEO of SDAR in or about 2006, as alleged in the first  
14 sentence, but lacks sufficient knowledge, information or belief as to the truth or falsity of the  
15 remaining allegations of said first sentence and, on that basis, denies each and every remaining  
16 allegation of said first sentence. Answering Defendant admits that SDAR has sought greater  
17 control of the governance of Answering Defendant, as alleged in the second sentence of said  
18 paragraph, but lacks sufficient knowledge, information or belief as to the truth or falsity of the  
19 remaining allegations of said second sentence and, on that basis, denies each and every remaining  
20 allegation of said second sentence.

21 20. Answering the allegations of paragraph 20 of the Complaint, Answering Defendant  
22 admits SDAR filed a federal lawsuit against plaintiffs and Answering Defendant. Except as  
23 specifically admitted, Answering Defendant denies each and every remaining allegation of said  
24 paragraph.

25 21. Answering the allegations of paragraph 21 of the Complaint, Answering Defendant  
26 admits that SDAR claims a right, on its own behalf, to an unrestricted feed of MLS data for its  
27 own uses, and that Answering Defendant and plaintiffs dispute that such a right exists. Except as  
28 specifically admitted, Answering Defendant denies each and every remaining allegation of said

1 paragraph including, but not limited to, the characterization of such dispute as an unresolvable  
2 conflict.

3 22. Answering the allegations of paragraph 22 of the Complaint, Answering Defendant  
4 admits the allegations of the first sentence of said paragraph, but further alleges that each real  
5 estate professional must provide Answering Defendant with an irrevocable license to his or her  
6 listing as a condition of listing it in Answering Defendant's multiple listing service. Answering  
7 Defendant admits that SDAR has attempted to obtain MLS data from Answering Defendant, as  
8 alleged in the second sentence of said paragraph. Except as specifically admitted, Answering  
9 Defendant denies each and every remaining allegation of said paragraph.

10 23. Answering the allegations of paragraph 23 of the Complaint, Answering Defendant  
11 admits the allegations of the first sentence of said paragraph. Answering Defendant lacks  
12 sufficient knowledge, information or belief as to the truth or falsity of the remaining allegations of  
13 said paragraph and, on such basis, denies each and every remaining allegation of said paragraph.

14 24. Answering the allegations of paragraph 24 of the Complaint, Answering Defendant  
15 lacks sufficient knowledge, information or belief as to the truth or falsity of the allegations of the  
16 first sentence of said paragraph and, on such basis, denies each and every allegation of said first  
17 sentence. Answering Defendant admits SDAR has attempted to obtain MLS data from a third-  
18 party, as alleged in the second sentence of said paragraph, but denies the characterization of such  
19 data as "contested," in that neither SDAR nor complainants, in their capacity as shareholders of  
20 Answering Defendant, has any right to the MLS data for their own uses. Answering Defendant  
21 admits that the events alleged in the first two sentences of said paragraph occurred prior to the  
22 filing of the referenced federal lawsuit, as alleged in the third sentence of said paragraph, but  
23 denies each and every remaining allegation of said third sentence.

24 25. Answering the allegations of paragraph 25 of the Complaint, Answering Defendant  
25 admits that under the operative shareholder agreement, passage of a Major Corporate resolution  
26 requires the affirmative votes of at least two shareholders who collectively hold two-thirds of the  
27 shares of Answering Defendant, as alleged in the first sentence of said paragraph, but denies each  
28 and every remaining allegation of said first sentence. Answering Defendant admits the allegations

1 of the second sentence of said paragraph. Answering Defendant admits that SDAR cannot pass a  
2 Major Corporate Resolution with only its vote, as alleged in the third sentence, but denies each  
3 and every remaining allegation of said third sentence. Answering Defendant denies each and  
4 every allegation of the fourth sentence of said paragraph. Answering Defendant admits that there  
5 was some delay in approving a Major Corporate Resolution to authorize a capital expenditure to  
6 upgrade certain computer hardware, as alleged in the fifth sentence of said paragraph, but denies  
7 each and every remaining allegation of said fifth sentence.

8       26. Answering the allegations of paragraph 26 of the Complaint, Answering Defendant  
9 admits that its board of directors voted to form the ad hoc committee as alleged in the first  
10 sentence of said paragraph, and further admits that the directors of Answering Defendant who  
11 were appointed by SDAR voted against formation, but denies each and every remaining allegation  
12 of said first sentence. Answering Defendant admits the allegations of the second sentence of said  
13 paragraph. Answering Defendant lacks sufficient knowledge, information or belief as to the truth  
14 or falsity of the allegations of the third sentence of said paragraph and, on such basis, denies each  
15 and every allegation in said third sentence. Answering Defendant denies each and every  
16 allegation of the fourth sentence of said paragraph.

17       27. Answering the allegations of paragraph 27 of the Complaint, Answering Defendant  
18 denies each and every allegation of said paragraph.

19       28. Answering the allegations of paragraph 28 of the Complaint, Answering Defendant  
20 admits the allegations of said paragraph.

21       29. Answering the allegations of paragraph 29 of the Complaint, Answering Defendant  
22 admits that SDAR has attempted to obtain the agreement of the shareholders to terminate the close  
23 corporation status of Answering Defendant, as alleged in the first sentence of said paragraph, but  
24 lacks sufficient knowledge, information or belief as to the truth or falsity of the remaining  
25 allegations of said first sentence of said paragraph and, on such basis, denies each and every  
26 remaining allegation of said first sentence. Answering Defendant admits the allegations of the  
27 second, third, and fourth sentences of said paragraph, except that Answering Defendant lacks  
28 sufficient knowledge, information or belief as to the allegation of the fourth sentence that each of

1 the shareholders received advice of counsel in connection with the second shareholders agreement,  
2 and on such basis, denies the allegation of receipt of such advice, although Answering Defendant  
3 is aware that each of the shareholders had legal counsel at or about the time of the execution of  
4 said agreement. Answering Defendant lacks sufficient knowledge, information or belief as to the  
5 truth or falsity of the allegations of the fifth sentence of said paragraph and, on such basis, denies  
6 each and every allegation of said fifth sentence.

7 30. Answering the allegations of paragraph 30 of the Complaint, Answering Defendant  
8 lacks sufficient knowledge, information or belief as to the truth or falsity of the allegations of said  
9 paragraph and, on such basis, denies each and every allegation of said paragraph.

10 31. Answering the allegations of paragraph 31 of the Complaint, Answering Defendant  
11 admits that SDAR attempted to have its vote on Answering Defendant's board of directors  
12 increased in an effort to gain more control over Answering Defendant. Except as specifically  
13 admitted, Answering Defendant denies each and every remaining allegation of said paragraph.

14 32. Answering the allegations of paragraph 32 of the Complaint, Answering Defendant  
15 admits that SDAR has previously threatened to file an action for involuntary dissolution of  
16 Answering Defendant. Except as specifically admitted, Answering Defendant denies each and  
17 every remaining allegation of said paragraph.

18 33. Answering the allegations of paragraph 33 of the Complaint, Answering Defendant  
19 admits the allegations of said paragraph.

20 34. Answering the allegations of paragraph 34 of the Complaint, Answering Defendant  
21 admits the allegations of said paragraph.

22 35. Answering the allegations of paragraph 35 of the Complaint, Answering Defendant  
23 admits there are disagreements among its shareholders. Except as specifically admitted,  
24 Answering Defendant denies each and every remaining allegation of said paragraph.

25 36. Answering the allegations of paragraph 36 of the Complaint, Answering Defendant  
26 by this reference incorporates its answer to paragraphs 1 through 35, inclusive, of the Complaint.

27 37. Answering the allegations of paragraph 37 of the Complaint, Answering  
28 Defendants deny each and every allegation of said paragraph.

1           38.     Answering the allegations of paragraph 38 of the Complaint, Answering  
2 Defendants deny each and every allegation of said paragraph.

3           39.     Answering the allegations of paragraph 39 of the Complaint, Answering  
4 Defendants deny each and every allegation of said paragraph.

5           40.     Answering the allegations of paragraph 40 of the Complaint, Answering Defendant  
6 lacks sufficient knowledge, information or belief as to the truth or falsity of the allegations of the  
7 first and second sentences of said paragraph and, on such basis, deny each and every allegation of  
8 said sentences. Answering Defendant further denies that a division in kind of the MLS database  
9 would be legally or practically available in the event of an involuntary dissolution of Answering  
10 Defendant. Answering Defendant admits there is a disagreement among the shareholders as to the  
11 permitted use by each shareholder of MLS data, as alleged in the third sentence of said paragraph,  
12 but denies there is any legal basis for SDAR's position on permitted use, and further denies each  
13 and every remaining allegation of said third sentence. Answering Defendant admits that the scope  
14 of SDAR's use of MLS data is at issue in the federal litigation, as alleged in the fourth sentence of  
15 said paragraph, but lacks sufficient knowledge, information or belief as to the remaining  
16 allegations of said fourth sentence and, on such basis, denies each and every remaining allegation  
17 of said fourth sentence. Answering Defendant admits the allegations of the fifth sentence of said  
18 paragraph. Answering Defendants admits the allegations of the sixth sentence of said paragraph,  
19 but denies that there is any legal or contractual basis for SDAR's position on its use of MLS data.

20           41.     Answering the allegations of paragraph 41 of the Complaint, Answering Defendant  
21 lacks sufficient knowledge, information or belief as to the truth or falsity of the allegations of said  
22 paragraph and, on such basis, denies each and every allegation of said paragraph.

23           42.     Answering the allegations of paragraph 42 of the Complaint, Answering Defendant  
24 lacks sufficient knowledge, information or belief as to the truth or falsity of the allegations of said  
25 paragraph and, on such basis, denies each and every allegation of said paragraph. Answering  
26 Defendant further denies that the relief sought by said paragraph is available in the event of a  
27 dissolution of Answering Defendant.

28           43.     Answering the allegations of paragraph 43 of the Complaint, Answering Defendant

1 lacks sufficient knowledge, information or belief as to the truth or falsity of the allegations of said  
2 paragraph and, on such basis, denies each and every allegation of said paragraph. Answering  
3 Defendant further denies that the relief sought by said paragraph is available in the event of an  
4 involuntary dissolution of Answering Defendant.

5 44. Answering the allegations of paragraph 44 of the Complaint, Answering Defendant  
6 lacks sufficient knowledge, information or belief as to the truth or falsity of the allegations of said  
7 paragraph and, on such basis, denies each and every allegation of said paragraph. Answering  
8 Defendant further denies that the relief sought by said paragraph is available in the event of an  
9 involuntary dissolution of Answering Defendant.

10 **FIRST AFFIRMATIVE DEFENSE**

11 **(Failure to State a Cause of Action)**

12 45. The Complaint fails allege facts constituting a cause of action against Answering  
13 Defendant.

14 **SECOND AFFIRMATIVE DEFENSE**

15 **(Waiver)**

16 46. Answering Defendant is informed and believes, and on such basis alleges, that  
17 plaintiffs, by their own acts and/or omissions occurring at times relevant to the Complaint, have  
18 waived any right to dissolution of Answering Defendant or other relief which would otherwise be  
19 available in this action.

20 **THIRD AFFIRMATIVE DEFENSE**

21 **(Estoppel)**

22 47. Answering Defendant is informed and believes, and on such basis alleges, that  
23 plaintiffs, by their own acts and/or omissions occurring at times relevant to the Complaint, are  
24 estopped from obtaining dissolution of Answering Defendant or other relief which would  
25 otherwise be available in this action.

26 **FOURTH AFFIRMATIVE DEFENSE**

27 **(Laches)**

28 48. Answering Defendant is informed and believes, and on such basis alleges, that

1 plaintiffs have unreasonably delayed in presenting their claim for dissolution to this Court, which  
2 unreasonable delay has prejudiced the ability of Answering Defendant to defend against said  
3 claim, and plaintiffs are therefore barred by the doctrine of laches from obtaining dissolution of  
4 Answering Defendant or other relief which would otherwise be available in this action.

5 **FIFTH AFFIRMATIVE DEFENSE**

6 **(Unclean Hands)**

7 49. Answering Defendant is informed and believes, and on such basis alleges, that  
8 plaintiffs, by their own acts or omissions occurring at times relevant to the Complaint, have been  
9 guilty of unclean hands, and are therefore barred from obtaining dissolution of Answering  
10 Defendant or other relief which would otherwise be available in this action.

11 **SIXTH AFFIRMATIVE DEFENSE**

12 **(Right to Amend)**

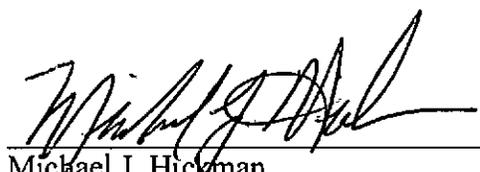
13 50. Answering Defendant reserves its right to amend its answer to assert additional  
14 affirmative defenses, or to otherwise amend or modify its answer, upon undertaking investigation  
15 and discovery of plaintiffs' claims.

16 WHEREFORE, defendant Sandicor, Inc., having fully answered plaintiffs' verified  
17 complaint herein, prays for judgment as follows:

- 18 1. That the complaint, and this action, be dismissed;
- 19 2. For costs of suit herein incurred; and
- 20 3. For such other and further relief as the Court deems just and proper.

21 DATED: November 23, 2016

MUSICK, PEELER & GARRETT LLP

22  
23 By: 

24 Michael J. Hickman  
25 Attorneys for SANDICOR, INC.  
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**VERIFICATION**

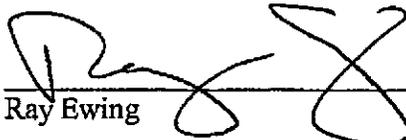
I, Ray Ewing, declare:

I am the Chief Executive Officer of Sandicor, Inc., a party to this action, and am authorized to make this verification for and on its behalf

I have read the foregoing ANSWER TO VERIFIED COMPLAINT FOR INVOLUNTARY DISSOLUTION OF A CORPORATION and know its contents. The same are true to the best of my knowledge, information and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 23, 2016.

  
Ray Ewing

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SAN DIEGO, CALIFORNIA

NSDCAR and PSAR v. SANDICOR, et al  
San Diego Superior Court Case No.: 37-2016-00037384-CU-MC-CTL

PROOF OF SERVICE

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STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

CLERK SUPERIOR COURT  
SAN DIEGO, CALIFORNIA

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Diego, State of California. My business address is 225 Broadway, Suite 1900, San Diego, California 92101-5028.

On November 23, 2016, I served true copies of the following document(s) described as:

**ANSWER TO VERIFIED COMPLAINT FOR INVOLUNTARY DISSOLUTION OF A CORPORATION**

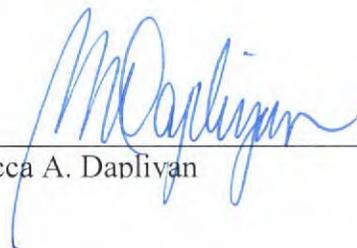
on the interested parties in this action as follows:

*SEE ATTACHED SERVICE LIST*

- BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Musick, Peeler & Garrett LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent from e-mail address r.dapliyan@mpglaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 23, 2016, at San Diego, California.

  
\_\_\_\_\_  
Rebecca A. Dapliyan

SERVICE LIST

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