

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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REGIONAL MULTIPLE LISTING  
SERVICE OF MINNESOTA, INC., d/b/a  
NORTHSTARMLS,

Civil No. 12-CV-0965 JRT/FLN

Plaintiff,

v.

**ANSWER, AFFIRMATIVE  
DEFENSES AND  
COUNTERCLAIM**

AMERICAN HOME REALTY  
NETWORK, INC.,

Defendant.

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Defendant American Home Realty Network denies each allegation in the complaint except as specifically admitted below. In further answer to the complaint, AHRN states as follows:

1. AHRN admits that the plaintiff has asserted claims under the Copyright Act, and denies that it has violated any valid copyrights owned by RMLS.

2. The allegations of paragraph 2 of the Complaint are Plaintiff's own summary of its allegations contained in the rest of the Complaint, are not allegations in themselves, and thus do not require a response by AHRN. To the extent a response is required, AHRN admits that RMLS markets its multiple listing service as the NorthstarMLS Database, denies that the database, which is a collection of uncopyrightable facts, is an original compilation subject to copyright protection, denies that RMLS owns copyrights to the photographs displayed on NorthstarMLS, and denies that it has violated any valid copyrights owned by RMLS.

3. AHRN admits the allegations in paragraph 3 on information and belief.

4. AHRN admits the allegations in paragraph 4.

5. The allegations of paragraph 5 of the Complaint state legal conclusions to which no response is required.

6. The allegations of paragraph 6 of the Complaint state legal conclusions to which no response is required and are Plaintiff's own summary of its allegations contained in the rest of the Complaint and thus do not require a response by AHRN. AHRN denies all other allegations in paragraph 6.

7. AHRN denies the allegations in paragraph 7.

8. AHRN denies that RMLS's multiple listing service is employed primarily to benefit buyers and sellers of real property, and otherwise admits the allegations in paragraph 8 on information and belief.

9. AHRN admits the allegations in paragraph 9 on information and belief.

10. AHRN denies the allegations in paragraph 10.

11. AHRN admits upon information and belief that the registration numbers contained within paragraph 11 of the Complaint are those of public record with the United States Copyright Office. AHRN is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 11 of the Complaint, and therefore denies them. In particular, AHRN denies that the uncopyrightable facts appearing in the NorthstarMLS database became subject to copyright protection merely by virtue of their compilation.

12. AHRN admits, upon information and belief, that the registration numbers contained within paragraph 12 of the Complaint are those of public record with the United States Copyright Office. AHRN is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 12 of the Complaint, and therefore denies them.

13. AHRN denies the allegations in paragraph 13.

14. AHRN denies that the materials the plaintiff labels the “Copyrighted Works” have been published merely by virtue of inclusion in the NorthstarMLS Database, and admits some of the material labeled “Copyrighted Works” may be viewed and downloaded by member agents and brokers with password-protected access. AHRN further denies that pages of the NorthstarMLS Database contain a copyright notice because it does not have access the NorthstarMLS Database and so has no way of knowing whether this assertion is true. AHRN admits that the so-called “Photographic Works” contain a copyright notice. AHRN denies any implication in paragraph 14 that RMLS owns a valid and enforceable copyright in the material.

15. AHRN admits the allegations contained in paragraph 15.

16. AHRN admits that some of the factual information that RMLS's complaint seeks to include in its definition of “Copyrighted Works” appears on its neighborcity.com website, admits that the “Photographic Works” identified in the complaint appeared on the website but affirmatively states that all of the “Photographic Works” were removed within days of service of the complaint, denies that the material on the website is subject

to a valid copyright enforceable by RMLS, and otherwise denies the allegations in paragraph 16.

17. To the extent the allegations of paragraph 17 state legal conclusions, no response is required. Otherwise, AHRN denies the allegations in Paragraph 17.

18. AHRN admits that it received a letter from RMLS in November 2011, states affirmatively that the letter speaks for itself, states affirmatively that the “Photographic Works” identified in the complaint had not been registered – or even taken – at the time the letter was sent in November 2011, and denies all other allegations in paragraph 18.

19. AHRN denies the allegations in paragraph 19.

#### **FIRST CLAIM FOR RELIEF**

20. AHRN restates and incorporates its answers to paragraphs 1-19 as though fully set forth herein.

21. AHRN admits that a copy of a certificate of registration for the “Compilation Content” is attached to the complaint, denies that the “Compilation Content” comprises original works of authorship constituting copyrightable subject matter, and denies on information and belief that RMLS has complied with all statutory requirements in securing federal copyright registrations for the “Compilation Content.”

22. AHRN denies the allegations in paragraph 22.

23. AHRN denies the allegations in paragraph 23.

24. AHRN denies the allegations in paragraph 24.

25. AHRN denies the allegations in paragraph 25.

**SECOND CLAIM FOR RELIEF**

26. AHRN restates and incorporates its answers to paragraphs 1-21 as though fully set forth herein.

27. AHRN admits that copies of certificates of registration are attached as Exhibit B to the complaint, and otherwise denies the allegations in paragraph 27.

28. AHRN denies the allegations in paragraph 28.

29. AHRN denies the allegations in paragraph 29.

30. AHRN denies the allegations in paragraph 30.

31. AHRN denies the allegations in paragraph 31.

**FIRST AFFIRMATIVE DEFENSE**

The copyright infringement claims asserted by RMLS are barred by the invalidity of the alleged copyrights because the NorthstarMLS Database is not an original work and contains elements not subject to copyright protection.

**SECOND AFFIRMATIVE DEFENSE**

The copyright infringement claims asserted by RMLS are barred by the invalidity of the alleged copyrights in whole or in part because RMLS does not own the alleged copyrighted works.

**THIRD AFFIRMATIVE DEFENSE**

The copyright infringement claims asserted by RMLS are barred because RMLS has not properly registered the copyrights.

**FOURTH AFFIRMATIVE DEFENSE**

The copyright infringement claims asserted by RMLS are barred because any material allegedly copied by AHRN is not subject to protection under the Copyright Act.

**FIFTH AFFIRMATIVE DEFENSE**

The claims of RMLS are barred by the doctrine of unclean hands.

**SIXTH AFFIRMATIVE DEFENSE**

The claims of RMLS are barred by the doctrine of fair use.

**SEVENTH AFFIRMATIVE DEFENSE**

The claims of RMLS are barred by copyright misuse.

**EIGHTH AFFIRMATIVE DEFENSE**

RMLS's claims of copyright infringement are barred because any copying alleged was *de minimus*.

**NINTH AFFIRMATIVE DEFENSE**

RMLS is not entitled to statutory damages or attorneys' fees under 17 U.S.C. § 412(2) to the extent it did not register its claims of copyright prior to AHRN's alleged infringement or within three months after the first publication.

**COUNTERCLAIM**

1. AHRN brings this counterclaim to remedy the profound harm it has sustained resulting from a group boycott of AHRN, perpetrated in part by RMLS, with the goal of eliminating or suppressing competition in the market for real estate broker services.

2. Because a substantial portion of the events alleged in this counterclaim occurred in Minnesota, venue is proper in this judicial district. This court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 for AHRN's claims arising under Section 1 of the Sherman Act and 28 U.S.C. § 1367 supplemental jurisdiction over the related claims arising under California and Minnesota law.

3. AHRN is a San Francisco start-up whose purpose is to assist homeowners and buyers in identifying and engaging licensed real estate brokers and agents best suited to represent them in a transaction. AHRN owns and operates neighborcity.com, a website that includes a real estate search engine as well as a realtor ratings and rankings service. Consumers use neighborcity.com to search for homes for sale. Once a property is identified, the site recommends and introduces home buyers and sellers to qualified real estate agents who are available to exclusively represent them in the purchase or sale of the home. Consumers in the real estate market have responded positively to the increased access to information about properties and real estate agents that AHRN provides. As a result, AHRN has grown significantly in the last year.

4. RMLS is among several dozen Multiple Listing Services (“MLS”) and their member-brokers who have also taken notice of AHRN’s success and have decided to band together to stop the company before it becomes a larger threat to their business model, which is designed to maximize brokerage commissions through their own referrals and dual-agency home sales – incidents in which the broker who lists a property is also the broker for the buyer of that property, and so is entitled to the entire

commission for the sale. AHRN threatens that model by connecting potential buyers directly with independent agents who do not face conflict of interest inherent in dual-agency sales.

5. As they have done when other innovative businesses attempt to enter the real estate market, MLS's and their member-brokers have sought to prevent competition by maintaining an iron grip on real estate data that is critical to consumers, and by denying access to that information to anyone who declines to use it in a manner that promotes the MLSs' anticompetitive business model. In furtherance of that goal, RMLS and several dozen other MLSs have agreed not to license to AHRN any material from their respective databases, and have instructed third party syndicators of that data to likewise refuse AHRN access to the data, all with the intent of "[t]hrowing a world of hurt" on AHRN and destroying its business.

6. These exclusionary practices continue a pattern in the real estate industry in which traditional brokerages have undertaken various suppressive measures when challenged by new business models. This conduct has prompted lawsuits by the Department of Justice and investigations by the Federal Trade Commission, all seeking to promote access to property information for new entrants to the real estate industry who challenge or compete with the traditional broker model. The conduct of RMLS and the brokers and MLS's cooperating with it is another stratagem by powerful real estate brokers to suppress information, from which they derive value, to the detriment of consumers.

7. AHRN's NeighborCity® makes the residential real estate market more transparent by giving home buyers and sellers the information they need to make intelligent real estate decisions, especially when hiring a real estate agent and broker. NeighborCity® has developed a highly sophisticated algorithm called AgentMatch® that identifies and rates real estate agents best suited to market or broker the purchase of each property on the market in a particular neighborhood. Consumers can use neighborcity.com to search for properties in their desired location. When a consumer clicks on a particular property, AHRN's algorithm identifies local real estate agents who will be most effective at representing that buyer in the purchase of that property, as well as the most effective agents to represent the sale of that buyer's existing property, if any. To efficiently match consumers with real estate agents, AHRN uses information about the property and then matches it against each agent's particular sales and listing history, the percentage of listings that agent actually sells, and the amount of time those properties remain on the market, relative to other competing agents that assist in the listing, purchase and sale of comparable properties during the same general time frame. AHRN also tracks each agent's effectiveness by identifying the difference between a property's asking price and the price for which it actually sold, the price per foot, the days on market and days to sale, as well as other performance indicators, relative to their peers in comparable listings and transactions, allowing a consumer to understand how well an agent has performed in the past. All of this provides consumers with critical information, not otherwise available, to effectively select a representative for purchasing or selling a

home.

8. Once an AHRN customer selects a real estate agent for the identified property, that customer can instantly get in contact via email or text message, inviting the agent to assist without the customer having to disclose any personal information. The first agent to connect with the customer has an exclusive opportunity to win that client's business. However, the client remains in control of the relationship, deciding if and when to hire the agent after meeting or going on a property tour. If the consumer-agent relationship results in a commission bearing transaction, the AHRN client is entitled to a Feedback Bonus, a partial commission rebate that is delivered by NeighborCity (except where prohibited by law).

9. The relevant market in this action consists of the market for information regarding homes for sale and real estate brokerage services in the markets in which RMLS operates. RMLS, like other MLS's throughout the United States, is a local cooperatives run by local broker-members, affiliated with the National Association of Realtors ("NAR"), who pool and disseminate information on homes available for sale in their regions. An MLS combines its members' data and then makes it available to all of its member-brokers, which enables more efficient exchange of information among brokers. According to an April 2007 Joint Report by the Federal Trade Commission and the U.S. Department of Justice entitled "Competition in the Real Estate Brokerage Industry,"

MLSs are so important to the operation of real estate markets

that, as a practical matter, any broker who wishes to compete effectively in a market must participate in the local MLS and brokers must have access to their local multiple listing service (MLS) to compete effectively. Because brokers usually set the rules for each others' participation in the MLS, it is possible for one dominant group of brokers to establish rules that disfavor other brokers who compete in a manner they dislike.

10. While other sources of property information exist, they are often so out of date as to be useless to consumers, and none are known to contain the relationship between a property listing or transaction and the agents that represented the clients on both sides of the transaction. Hence, there are no reasonable alternative sources of real estate data for the relevant areas other than from the MLS. The relevant geographic market in this case is Minnesota and Western Wisconsin because RMLS, in concert with its fellow MLSs in other sections of the United States, is refusing to license AHRN data for properties, brokers and agents located in this area.

11. Buying or selling a home is the largest financial transaction most Americans will ever undertake. Thus, competition in the real estate industry is critical to consumers and the health of the real estate market and US economy. Traditionally, consumers have contracted with a real estate agent to buy or sell a home; the agent, in turn, is generally employed by or in an exclusive independent contracting arrangement with a real estate broker. Real estate brokers, and their agents, match buyers and sellers of homes and provide ancillary services related to closing the transaction. Historically, consumers had very limited access to property data in any given geographic region because brokers – the members of the local MLS – served as the sole source of

information, and prior to the widespread adoption of the Internet, this information was not widely distributed.

12. The residential real estate industry has undergone substantial changes over the last decade, particularly the increased access buyers and sellers have to property information via the Internet. A 2011 NAR Survey indicates that 88 percent of home buyers use the internet as a resource and, “[w]hile buyers also use other resources, they generally start their search process online and then contact an agent.” Thus, tasks that were once the exclusive province of real estate brokerages are now available to the consuming public.

13. This increased access to information has given rise to dynamic business models, such as AHRN’s. Those new business models are challenging traditional brokers in the \$60 billion market for real estate broker commissions by creating tools for consumers and, in turn, greater market efficiency and transparency. In response, MLSs and their traditional broker-members have instituted a variety of exclusionary devices to retain their grip on the flow of information and the corresponding profits in this multi-billion dollar market. As the Department of Justice recognizes, “[n]ew business models are emerging that allow consumers to save thousands of dollars when they buy or sell a home,” but “competition also suffers when brokers exclude low-cost rivals from the multiple listing service (MLS), which limits price competition.” That is what this action is about.

14. In response to AHRN’s increasing presence in the market, RMLS and other

MLS's have entered into a continuing agreement to assert bogus or at best dubious copyrights to information regarding homes, and to refuse to license AHRN access to that allegedly copyrighted material – including property images and descriptions – for use on neighborcity.com. RMLS and its cohorts have agreed among themselves to establish a boycott of AHRN in which each participant has agreed to refrain from licensing material to AHRN currently and in the future.

15. Information contained within MLS databases is shared with other non-MLS members. The information is generally made available through data syndicators, such as Point2/Yardi Systems, Inc. and ListHub/Threewide Corporation/Move, Inc.. The MLS's, including on information and belief RMLS, set restrictions on which third parties the syndicators can allow to access the data feeds, based upon the third parties' business models. Among those restrictions are requirements that a syndicator only grant access to third parties that send customer leads directly to the agent or broker that listed the residential property, and that syndicators not grant access to third parties that provide buyer-side referrals – that is, to real estate agents not affiliated with the listing broker.

16. These restrictions allow the MLS's, on behalf of their participating brokers, to perpetuate a dual-agency business model that maximizes brokers' commissions on real estate sales while suppressing competition in the real estate market. When interested home buyers are referred to the listing agent for a property, and become clients of that agent, the agent and his or her broker get to retain the entire commission for the sale of the property. Because that commission is based on the sale price of the home, a broker

and agent relying on dual agency has no incentive to negotiate the purchase price on behalf of the buyer, and both the buyer and the seller lose any right to independent advice and representation from the agent and broker.

17. AHRN's neighborcity.com is designed to allow consumers to make an independent selection of a real estate agent who will represent their interests, rather than to feed leads to listing agents.

18. AHRN contacted the major established syndicators of MLS data feeds to apply for a license to access the data. All of the syndicators refused to extend the license. In each case, the syndicator told AHRN that it could not have a license because neighborcity.com did not send interested customers to listing agents and instead referred customers to buy-side agents. They stated that they do not work with “referral models” and that NeighborCity did not qualify to receive a syndicated data feed because of the buy-side agent recommendations on the NeighborCity listing pages.

19. The effort to restrict AHRN's participation in the market for real estate information and services has been coordinated, at least in part, and supported by the National Association of Realtors (“NAR”), a trade association that, on information and belief, establishes and enforces policies for its individual members and promulgates rules governing the conduct of NAR-member MLS's – including RMLS.

20. NAR held its annual meeting in Anaheim, California from November 11 to 14, 2011. The NAR annual meeting featured discussions of the perceived threat AHRN poses to the industry and what the industry could do to shut down AHRN.

21. Following the annual NAR meeting, as part of the ongoing campaign to shut AHRN out of the market, AHRN received more than 30 similar cease and desist letters from MLSs across the country – including from RMLS. Each letter claimed that AHRN was improperly using information – including basic factual information regarding properties on the market – over which each respective MLS claimed a copyright.

22. Though it disputed the copyright assertions, AHRN responded to each of these MLS letters, with an offer to purchase a license to the disputed material.

23. In furtherance of their group boycott, all of the MLSs refused to even discuss a licensing agreement.

24. These actions by brokers and multiple listing services came shortly after AHRN rolled out updated profile pages for 850,000 agents that feature agent scores and performance metrics based on their transaction history.

25. The NAR held its Midyear Meeting in Washington D.C. between May 14 and 19, 2012. On information and belief, NAR's Board voted on Saturday, May 19, 2012 to fund this lawsuit and a substantially similar lawsuit against AHRN in the United States District Court for the District of Maryland.

26. On the final day of the Midyear Meeting, the NAR Board of Directors approved new rules to further exclude competitors like AHRN from receiving MLS data or cooperating with MLS-member brokers to receive or share the MLS listing data, as reported in the meeting minutes:

[A]pproved a set of comprehensive amendments to NAR's

Internet Data Exchange (IDX) policy and MLS rules to clarify that “participant websites” are those in which MLS participants have actual and apparent control of the sites. . . . Control means participants can add, delete, modify, or update their information, and a reasonable consumer would recognize the information as the participants.

Separately, the board acknowledged the growing complexity of MLS technology issues by creating an MLS Technology and Emerging Issues Subcommittee, which will anticipate and analyze MLS technology issues.

Approved \$161,667 in legal assistance for seven cases, involving . . . 4) challenging misappropriation of MLS data by a third-party Web site....

27. The concerted and uniform reaction among the MLS's is consistent with the plan conceived, in general terms, by John Mosey, president of RMLS. On December 22, 2011, AHRN was copied on an email that Mosey sent to Mitchell Skinner, RMLS' counsel. In that email, Mosey acknowledges that RMLS and other MLS's acted in concert against AHRN, stating: “[a]cross the country, multiple MLS’s . . . called in the full force and fury of their respective legal advisors. . . .” Mosey’s email then asks how to “connect the dots” between the MLS's so “we can act collectively, either in cost sharing and/or strategically by taking action against [AHRN] that has the desired outcomes of . . . throwing a world of hurt on [AHRN and its CEO]...[and] sending a message that our copyrights are enforceable and we are serious about punishing anyone who doesn't take us seriously.”

28. This plan to “throw[] a world of hurt” on a company that challenges the MLS's long-established business model is another example of anticompetitive conduct

that has drawn the attention of the Department of Justice and the Federal Trade Commission to the real estate industry in recent years:

1. In the November 18, 2008 Final Judgment upon consent in *United States v. National Association of Realtors®*, Case No. 05 C 5140 (N.D. Ill.), NAR agreed “not to adopt, maintain, or enforce any Rule, or enter into or enforce any agreement or practice, that directly or indirectly . . . prohibits, restricts, or impedes the referral of Customers whose identities are obtained from a [virtual office website] by a [Person who possesses a Broker’s license] who uses a [virtual office website] to any other Person, or establishes the price of any such referral[.]”
2. Likewise, the August 27, 2009 Final Judgment upon consent in *United States v. Consolidated Listing Service, Inc.*, Case No. 2:08-CV-01786-SB (D.S.C.), stated that the defendant MLS “shall not adopt, maintain, or enforce any Rule, or enter into or enforce any agreement or practice, that directly or indirectly . . . discriminates against or disadvantages any Member or Licensee based on the Member’s or Licensee’s office location, pricing or commission rates, business model, contractual forms or types used, or services or activities the Member or Licensee performs or does not perform for any home buyer or home seller[.]”
3. Other courts have similarly found that anticompetitive MLS rules are unreasonable. “When broker participation in the [MLS] is high, the service itself is economically successful and competition from other listing services is

lacking, rules which invite the unjustified exclusion of any broker should be found unreasonable.” *United States v. Realty Multi-List*, 629, F.2d 1351, 1374 (5th Cir. 1980). Defendants’ conduct is the old guard real estate industry’s next effort to stifle competition.

29. The concerted effort to suppress competition from companies like AHRN depends in large part on the ability of RMLS and other MLS's to, as Mosey put it in his December 22, 2011 e-mail, “send a message that our copyrights are enforceable” and intimidate potential competitors with threats of copyright enforcement litigation – despite knowing that much of the information over which they claim copyright privilege is not copyrightable, not properly registered in compliance with the Copyright Act, or not owned by them.

30. MLS's acknowledge that they cannot feasibly register a copyright for each of the elements in their databases. At the 2012 Council of MLS meeting in Boston, for example, a speaker told the attendees that it would be “extremely burdensome” if each “MLS must recognize every copyright element in the database to register.”

31. Rather than take on that burden, the MLSs – including RMLS in this litigation and Metropolitan Regional Information Systems, Inc. in the Maryland litigation, as well as the MLS's that sent the series of cease and desist letters to AHRN in late 2011 and early 2012 – have elected to misrepresent the nature of their rights to the information contained in the MLS databases.

32. Real estate listings are collections of facts: location of the listed property,

the date of construction, number of bedrooms and bathrooms, square footage, size of lot, asking price, time on the market and similar information.

33. While under certain circumstances compilations of facts are copyrightable, “facts are not copyrightable.” *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 358 (U.S. 1991). As the Supreme Court observed in *Feist*:

Many compilations consist of nothing but raw data, i.e., wholly factual information, not accompanied by any original written expression. On what basis may one claim a copyright in such a work? Common sense tells us that 100 uncopyrightable facts do not magically change their status when gathered in one place.... The *sine qua non* of copyright is originality.

34. The collective action described by John Mosey in his December 22, 2011 e-mail, including the barrage of cease and desist letters from around the country and the filing of substantially similar lawsuits in Minnesota and Maryland, is designed to create the inaccurate and false impression that RMLS, MRIS and other MLS's own valid and enforceable copyrights to the facts and photographs that appear in their listings, and that AHRN's use of the information is unlawful, with the intent of discouraging brokers and agents from working with AHRN client referrals.

35. This collective action is additionally advanced by RMLS's practice of placing watermarks on all photographs in its database, falsely asserting that RMLS holds the copyright to those photographs. On information and belief, RMLS has not received assignments of the copyrights to those photographs that meet the requirements of the Copyright Act, and has only even attempted to register the 50 photographs identified as

the “Photographic Works” in its complaint solely for the purpose of bringing this action against AHRN.

36. The ultimate goal of this collective action by RMLS and its co-conspirators is to maintain their control over the manner in which real estate information is shared with the consuming public, and to direct the flow of buyer demand generated by the Internet to its largest broker-members, allowing them to maintain control over the manner in which real estate brokers set their compensation. The goal of this collective action to enforce dubious copyrights, as one presenter at the Council for MLS 2012 meeting in Boston candidly acknowledged, is to “Keep the cows in the barn, and milk them for the MLS and [their] members.”

## **COUNT I**

### **Violation of Sherman Act § 1**

37. RMLS has joined the National Association of Realtors, other MLS's – including MRIS – and their respective member brokers in a common scheme to impose unreasonable restraints of trade in individual state and local real estate markets served by MLSs and in the national real estate market, including, but not limited to Minnesota, Maryland and California, and other states from which AHRN has received cease and desist letters (“Relevant Markets”).

38. The scheme in restraint of trade has been effectuated by:

1. The concerted refusal to deal with AHRN by refusing to engage in any good faith negotiation of licensing agreements for the data in the scheme

participants' real estate listing databases. This group boycott constitutes a *per se* violation of the Sherman Act.

2. The coordinated assertion of invalid copyright claims to facts, data and other material that is not subject to copyright protection, or for which the scheme participants do not hold a valid copyright, all for the purpose of preventing competitors from making lawful use of the information and thus suppressing competition in the real estate market.

39. The scheme's unlawful objectives are to inhibit competition between and among member real estate brokers of MLSs and AHRN; to inhibit innovation in the delivery of information to, and for the benefit of, buyers and sellers of residential real estate, i.e. consumers of real estate brokerage services; and illegally stabilize and inflate real estate broker commissions, by raising barriers to entry to impede AHRN's entry into, and eventually drive AHRN out of, the Relevant Markets.

40. The collective action among actual and potential competitors "depriv[ed] the marketplace of independent centers of decision-making."

41. The anti-competitive acts of the Conspiracy have directly harmed competition and have injured AHRN's sales and good will in an amount to be determined at trial.

## COUNT II

### **Violation of Minnesota Antitrust Law Minn. Stat. § 325D.49 et. seq**

42. The common scheme alleged in this counterclaim constitutes a "contract,

combination, or conspiracy between two or more persons refusing to deal with another person” in violation of Minn. Stat. § 325D.53 subd. 1(3).

43. By its participation in the common scheme, RMLS has caused injury to AHRN, including loss of sales, a decrease in AHRN's ability to market and grow its business, and curtailment of AHRN's ability to obtain funding to support and expand its business.

44. Pursuant to Minn. Stat. § 325D.57, AHRN is entitled to an award of three times its actual damages, together with costs, disbursements and reasonable attorney fees.

### **COUNT III**

#### **Violation of Cartwright Act, Cal Bus. & Prof. Code §16720 et seq.**

45. The common scheme alleged in this counterclaim is a “combination of capital, skill or acts by two or more persons” designed to “create or carry out restrictions in trade or commerce” in the residential real estate market in all of the states in which the scheme's participants do business, including Minnesota and California. Such a combination constitutes a trust in violation of Cal. Bus. & Prof. Code §§ 16720 and 16726.

46. By its participation in the common scheme alleged in this counterclaim, RMLS has caused injury to to AHRN, including loss of sales, a decrease in AHRN's ability to market and grow its business, and curtailment of AHRN's ability to obtain funding to support and expand its business.

47. Pursuant to Cal. Bus. & Prof. Code § 16750, AHRN is entitled to an award

of three times its actual damages, injunctive relief and reasonable attorney fees.

#### **COUNT IV**

##### **Violation of Minnesota Deceptive Trade Practices Act § 325D.44**

48. By advising its member brokers that information obtained and used by AHRN on its neighborcity.com website is subject to valid copyright protection, and that AHRN's use of such information is unlawful, RMLS has disparaged the services and business of AHRN with false and misleading statements in violation of Minn. Stat. § 325D.44 subd. 1(8).

49. Pursuant to Minn. Stat. § 325D.45, AHRN is entitled to an order enjoining RMLS from making false and misleading statements regarding its services and business and an award of reasonable attorney fees.

WHEREFORE, AHRN requests judgment against RMLS as follows:

1. A declaration that the unlawful combination and conspiracy alleged in this complaint is an unreasonable restraint on trade or commerce in violation of the Sherman Act, the Minnesota Antitrust Law and the Cartwright Act;
2. An injunction, enjoining, both preliminarily and permanently, RMLS from continuing its participation in the unlawful combination and conspiracy alleged in this complaint;
3. An award to AHRN of damages, as provided by law, in an amount to be determined at trial and trebled in accordance with antitrust law;
4. An award to AHRN of the costs of this suit and reasonable attorneys' fees, as

provided by law;

5. Interest from and after the date of the service of this counterclaim; and
6. Such other and further relief as the court deems just, equitable.

Dated: November 1, 2012

**SNYDER GISLASON FRASIER LLC**

**/S CHAD A. SNYDER**

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