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SAN DIEGO ASSOCIATION OF REALTORS®

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
CENTRAL DIVISION

NORTH SAN DIEGO COUNTY
ASSOCIATION OF REALTORS®, a
California corporation, and PACIFIC
SOUTHWEST ASSOCIATION OF
REALTORS®, a California corporation,

Plaintiffs,

v.

SANDICOR, INC., a California
corporation,

Defendant,

And

SAN DIEGO ASSOCIATION OF
REALTORS®, a California corporation,

Defendant-Intervenor.

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

**COMPLAINT IN INTERVENTION
FOR STATUTORY BUYOUT [CORP.
CODE § 2000(a)]**

[IMAGED FILE]

DEPT: C-75
IC JUDGE: Richard E. L. Strauss

VIA FAX

FILED
CIVIL BUSINESS OFFICE 9
CENTRAL DIVISION
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SAN DIEGO COUNTY, CA

1 By leave of court, Intervenor SAN DIEGO ASSOCIATION OF REALTORS®
2 (“SDAR”) files this complaint for statutory buyout and thereby intervenes in this action to
3 oppose Plaintiffs PACIFIC SOUTHWEST ASSOCIATION OF REALTORS® (“PSAR”)
4 and NORTH SAN DIEGO COUNTY ASSOCIATION OF REALTORS® (“NSDCAR”)
5 (collectively, the “Association Plaintiffs”) petition for involuntary dissolution of
6 Defendant SANDICOR, INC. (“Sandicor”), alleging as follows:

7 I.

8 **THE PARTIES**

9 1. Defendant Sandicor is a corporation organized under the laws of the State of
10 California with its principal place of business in San Diego, California. Sandicor was
11 formed for the sole purpose of consolidating several different multiple listing services into
12 one consolidated database.

13 2. Plaintiff PSAR is a corporation organized under the laws of the State of
14 California with its principal place of business in Chula Vista, California. PSAR is, and
15 has been at all relevant times, a minority shareholder of Sandicor.

16 3. Plaintiff NSDCAR is a corporation organized under the laws of the State of
17 California with its principal place of business in Vista, California. NSDCAR is, and has
18 been at all relevant times, a minority shareholder of Sandicor.

19 4. Intervenor SDAR is a corporation organized under the laws of the State of
20 California with its principal place of business in San Diego, California. SDAR is one of
21 the founding shareholders of Sandicor, and currently owns about two-thirds of Sandicor’s
22 outstanding shares.

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

1 unnamed defendants.

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

10 **II.**

11 **JURISDICTION AND VENUE**

12 7. The action is properly venued in the Superior Court of California, County of
13 San Diego as Sandicor's principal place of business is located in San Diego County, and
14 the events and actions giving rise to this action occurred in San Diego County.

15 **III.**

16 **GROUNDS FOR INTERVENTION**

17 8. An intervention takes place when the court grants leave to a nonparty to join
18 the plaintiff in claiming what is sought by the complaint; or to unite with defendant in
19 resisting the plaintiff's claims; or to demand anything adverse to both parties. (C.C.P. §
20 387 subd. (a).)

21 9. When a statute entitles a nonparty to intervene in litigation pending between
22 other parties, the court must allow a nonparty to intervene in the action regardless of
23 whether intervention expands the issues in the case or impinges on the right of the original
24 parties to litigate the matter in their own fashion. (C.C.P. § 387 subd. (b).) Relevant to
25 this lawsuit, Corporations Code section 1800 enables a shareholder of a corporation to
26 intervene in an involuntary dissolution procedure against the corporation at any time
27 before trial. (Corp. Code § 1800 subd. (c).)

28 ///

1 Sandicor's shareholder associations; so fundamental that the associations created Sandicor
2 as a vehicle to consolidate and share the information.

3 **B. The Shareholder Agreement.**

4 14. As part of the formation of Sandicor, each of the associations made
5 compromises and concessions in terms of Sandicor's structure and governance. That
6 governance model is now codified in the "Second Amended and Restated Shareholder
7 Agreement" (the "Shareholder Agreement") dated May 10, 1999.

8 15. The Shareholder Agreement provides in pertinent part for voting rights as
9 follows:

10 1.1. Each share of capital stock of SANDICOR shall entitle
11 the holder to one vote on all matters presented to the
Shareholders, except as provided in Section 3.1 below.

12 * * * * *

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

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

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

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1 18. There were five trade associations in existence at the time the Shareholder
2 Agreement was prepared and executed, but now there are only three. More specifically,
3 through a series of mergers by the associations, the only remaining shareholders of
4 Sandicor are: SDAR, NSDCAR, and PSAR. The Sandicor board of directors is comprised
5 of six people, two of which are provided by each of the shareholder associations.

6 19. Notwithstanding the drastic shift in the composition of Sandicor's members,
7 its governance model has not changed since the Shareholder Agreement was revised in
8 1999. So, while SDAR holds almost two-thirds of Sandicor's shares (based on its
9 membership size), and contributes almost two-thirds of Sandicor's operational funding,
10 SDAR only has four-elevenths of the voting power at the director level; SDAR's two
11 directors have four votes collectively, NSDCAR's two directors have four votes
12 collectively, and PSAR's two directors have three votes collectively. As such, SDAR is
13 unable to unable to effect the will of a near-supermajority of the MLS's membership, or
14 regulate the concerted actions undertaken by the Association Plaintiffs.

15 20. To illustrate, and as described more fully below, SDAR has formally
16 challenged Sandicor regarding the approval of certain large dollar value contracts, and the
17 continued appointment of particular officers. To date, SDAR's formal challenges to the
18 related actions by the Association Plaintiffs and Sandicor have been ignored, bypassed,
19 and their collective rights have been usurped.

20 **C. The Service Center Agreement.**

21 21. On or about February 17, 1999, Sandicor entered into a written contract with
22 SDAR wherein it was agreed that it would provide various MLS-related support services
23 to certain professionals in the real estate industry. The parties amended and restated that
24 agreement on January 15, 2004 (the "Service Center Agreement"). Under the Service
25 Center Agreement, and in exchange for monthly payments, Sandicor agreed to provide
26 access to its MLS data to SDAR to "download, use and distribute ... for membership
27 consumption and statistical purposes." That is, the Service Center Agreement conferred
28 on SDAR the right to access and use Sandicor's MLS data.

1 22. However, as explained below, Sandicor has materially breached the Service
2 Center Agreement, at the direction of Sandicor directors controlled by the Association
3 Plaintiffs, by refusing to provide SDAR with unrestricted access to the MLS data despite
4 repeated requests (thereby preventing SDAR from using the information or effectively
5 operating a software platform for membership consumption).

6 **D. The Association Plaintiffs' Misuse of Sandicor.**

7 23. Sandicor (and its consolidated MLS database) was created for the benefit of
8 all of the shareholders, and not any particular association(s). Exclusion of one or more
9 associations or sets of REALTORS® from accessing the MLS database could be
10 particularly harmful because access to MLS information is essential for all competing
11 parties. However, the Association Plaintiffs have acted in concert to operate Sandicor—
12 through their dominion and control of the board of directors—in favor of their respective
13 associations and to the detriment of SDAR. Specifically, rather than trying to compete
14 directly with SDAR, the Association Plaintiffs have opted, instead, to combine to utilize
15 Sandicor to provide benefits and services to their respective associations at the expense of
16 SDAR and over its objection.

17 24. As described in more detail below, in 2009, SDAR was in development of a
18 new product and service for its members, known as “Just Knock.” SDAR’s Just Knock
19 product is innovative, and provides clients with access to a hyper-local community
20 resource to assist in the home buying process, but it requires access to the data feed from
21 Sandicor’s MLS database—an access secured by contract (the Service Center
22 Agreement), and an access routinely provided to third parties. Inexplicably, the
23 Association Plaintiffs exercised their collective control of Sandicor and denied SDAR’s
24 request. In addition, the Association Plaintiffs also took steps to prevent SDAR from
25 accessing this needed information from third parties.

26 25. While using their collective control of Sandicor to prevent SDAR from
27 bringing its new product to market, the Association Plaintiffs also uniformly acted to
28 prevent its respective members from contributing to the data pool that SDAR required.

1 26. The primary purpose of these actions was to hinder SDAR's competitive
2 threat, but in doing so, the Association Plaintiffs – individually, and through their
3 collective control of the MLS – caused Sandicor to violate contractual and statutory
4 obligations to its largest shareholder (and its 18,000+ members).

5 27. Finally, the Association Plaintiffs impermissibly used their control of
6 Sandicor to create a website that directly competes with SDAR's web-portal. SDAR,
7 through its two directors, consistently opposed the use of Sandicor's resources to create a
8 consumer portal that competed with the web-portal it designed, as that type of activity was
9 beyond the scope of Sandicor's duties and was the responsibility of the associations.

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

25 29. The Association Plaintiffs have also used their control of the board of
26 directors for Sandicor to provide educational programs, products and services at great
27 expense for their benefit, that are typically provided by individual associations for their
28 members. Indeed, SDAR provides these types of services to its members, and has

1 incurred substantial time and expenses in developing these services. Rather than incurring
2 the expense of providing these services themselves, the Association Plaintiffs opted to,
3 instead, use Sandicor's funds (which, again, are provided primarily by SDAR) to provide
4 their members with these value-added programs/services. As such, the Association
5 Plaintiffs are unfairly using SDAR's own funding to cause Sandicor to go beyond its
6 intended purpose and to produce and provide services for the sole benefit of the
7 Association Plaintiffs, all to the detriment of SDAR and its members. The Association
8 Plaintiffs also limited SDAR's access to data for products SDAR offered, delayed contract
9 negotiations, and later offered competing products.

10 30. In addition to the foregoing, the Association Plaintiffs also operated
11 Sandicor to provide their respective associations with preferential treatment. The
12 following list is not exhaustive, and is included herein simply to illustrate the Association
13 Plaintiffs' misuse of Sandicor for their benefit:

- 14 a. Using Sandicor's money (almost two-thirds of which was provided by
15 SDAR) to fund the Association Plaintiffs' activities (conferences such as
16 Inman, HAR MLS Connect, CMLS, meetings, dinners, etc.) while
17 generally not authorizing expenditures for SDAR's benefit;
- 18 b. Creating committees and task forces (for subjects that SDAR received no
19 prior notice of, or openly opposed) chaired almost exclusively by
20 representatives of the Association Plaintiffs, and failing to appoint any,
21 or only minimal, representatives from SDAR;
- 22 c. Promoting products that compete with SDAR's, but not promoting
23 SDAR's products;
- 24 d. Interfering with benefits offered by SDAR that may encourage members
25 to leave the Association Plaintiffs and transfer to SDAR (i.e., contacting
26 Point 2, an SDAR vendor, engaging a prolonged implementation of
27 Buyside, another SDAR vendor, and denying a feed for Just Knock);

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- e. Requiring two “logins” for any member who transfers associations, which discourages members from transferring and disproportionately targets SDAR, as the attrition rate for the Association Plaintiffs is remarkably higher than SDAR’s; and,
- f. Refusing to respond to SDAR’s requests to cure these issues.

31. Under the terms of the Shareholder Agreement, SDAR is without recourse to prevent this mismanagement or a further waste of Sandicor’s assets. Despite that it holds almost two-thirds of the shares of Sandicor, it has only four-elevenths of the director voting power. Further, as alleged herein, the Association Plaintiffs have also surreptitiously restructured and misrepresented costs to avoid SDAR’s review/approval rights. Despite this, SDAR is unable to effect changes to the existing governance of Sandicor because the Shareholder Agreement calls for at least two shareholders to pass a major resolution.

E. The Related Federal Action.

32. Due to the Association Plaintiffs’ anti-competitive conduct and gross mismanagement of Sandicor, SDAR filed a lawsuit on January 14, 2016 in the United States District Court for the Southern District of California, Case No. 16-CV-0096-MMA-KSC, alleging causes of action for antitrust violations under federal and state laws, breach of fiduciary duty (derivative and direct), breach of contract, and related tort claims. That litigation is ongoing.

33. Perhaps believing that they can disrupt the business operations of their competitor, or could gain an edge in the federal lawsuit, the Association Plaintiffs jointly petitioned for an involuntary dissolution of Sandicor under Corporations Code section 1800. SDAR, however, as the near-supermajority shareholder of Sandicor, can avoid the dissolution proceeding by electing the valuation and buyout of the Association Plaintiffs’ shares in Sandicor – as is permitted under Corporations Code section 2000(a).

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///

1 **FIRST CAUSE OF ACTION**

2 **(Statutory Buyout against PSAR and NSDCAR)**

3 34. SDAR incorporates the allegations in paragraphs 1 through 33, above, as
4 though fully set forth herein.

5 35. Section 2000 of the Corporations Code expressly provides that the right of a
6 majority shareholder to purchase the shares of a plaintiff is an alternative to an involuntary
7 dissolution of a corporation: “[I]n any suit for involuntary dissolution, ... , the holders of
8 50 percent or more of the voting power of the corporation may avoid the dissolution of the
9 corporation ... by purchasing for cash the shares owned by the plaintiffs ... at their fair
10 value.” (Corp. Code § 2000 subd. (a); *Kennedy v. Kennedy* (2015) 235 Cal.App.4th 1474,
11 1481 [“Under those circumstances, the purchasing shareholders ‘may avoid the
12 dissolution of the corporation and the appointment of any receiver’ by buying the
13 plaintiff’s shares”].) If the majority shareholder elects to purchase the stock, and the
14 parties are unable to agree upon the fair value of the shares, the court upon application
15 “shall stay the winding up and dissolution proceeding” pending a valuation. (Corp. Code
16 § 2000 subd. (b).) Indeed, the statutory procedure “embodies a summary proceeding
17 which supplants the action for involuntary dissolution.” (*Go v. Pacific Health Services,*
18 *Inc.* (2009) 179 Cal.App.4th 522, 530.)

19 36. Once invoked by a party, section 2000 “mandates” the entry of an
20 alternative decree staying the “winding up and dissolution” action until payment is made
21 (or not made) by the purchasing party within a fixed period of time. (Corp. Code § 2000
22 subd. (c) [“The court shall enter a decree which shall provide in the alternative for
23 winding up and dissolution of the corporation unless payment is made for the shares
24 within the time specified by the decree.”].)

25 37. The buyout procedure should be ordered in this case because: (a) the
26 Association Plaintiffs have petitioned for an involuntary dissolution of Sandicor; (b)
27 SDAR, the holder or more than 50% of the shares of Sandicor, has elected to purchase the
28 Association Plaintiffs’ shares; and (c) there has been no agreement on the value of the

1 stock. Plaintiff is also prepared to post the required bond. Accordingly, the dissolution
2 proceeding should be stayed pending a final valuation of the Association Plaintiffs'
3 shares.

4 38. In addition, due to the serious risks that the Association Plaintiffs will
5 mismanage Sandicor and its assets before the appraisal process is completed, SDAR
6 requests an order appointing a corporate receiver to manage Sandicor pending a resolution
7 of the buyout procedure and that control of Sandicor be transferred to SDAR. (Corp.
8 Code § 1803.)

9 V.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, SDAR prays for relief as follows:

12 39. That the Association Plaintiffs' petition for involuntary dissolution of
13 Sandicor be denied; or, in the alternative, that the dissolution proceeding be stayed
14 pending a final valuation of the Association Plaintiffs' shares;

15 40. An order appointing a corporate receiver to oversee the business operations
16 of Sandicor;

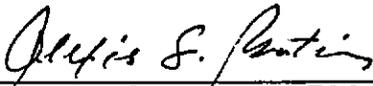
17 41. An order transferring control of Sandicor to SDAR in the interim until the
18 statutory buyout process is completed;

19 42. For reasonable costs incurred by SDAR; and,

20 43. For such other and further relief as the court deems just and proper.

21 DATED: November 2, 2016

HIGGS FLETCHER & MACK LLP

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23 By: 
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26 EDWIN M. BONISKE, ESQ.
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28 Attorneys for Intervenor SAN DIEGO
ASSOCIATION OF REALTORS®

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**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
CENTRAL DIVISION**

NORTH SAN DIEGO COUNTY
ASSOCIATION OF REALTORS®, a
California corporation, and PACIFIC
SOUTHWEST ASSOCIATION OF
REALTORS®, a California corporation,

Plaintiff,

v.

SANDICOR, INC., a California
corporation,

Defendant.

and

SAN DIEGO ASSOCIATION OF
REALTORS®, a California corporation,

Defendant-Intervenors.

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

PROOF OF SERVICE

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I, DENISE MENDOZA, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within-entitled action; my business address is 401 West "A" Street, Suite 2600, San Diego, California 92101-7913. On November 2, 2016, I served the within documents, with all exhibits (if any):

COMPLAINT IN INTERVENTION FOR STATUTORY BUYOUT

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. A copy of the transmission report issued by the transmitting facsimile machine is attached hereto.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California, addressed as set forth below.
- by placing the document(s) listed above in a sealed overnight envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to an overnight agent for delivery.
- by having the document(s) listed above personally delivered to the person(s) at the address(es) set forth below via American Messenger Service.
- by transmitting via e-mail the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

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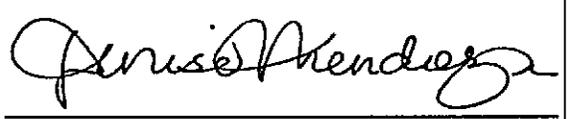
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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on November 2, 2016, at San Diego, California.



DENISE MENDOZA