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*Attorneys for Defendant California
Association of REALTORS®, Inc.*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

TOP AGENT NETWORK, INC.,

Plaintiff,

v.

NATIONAL ASSOCIATION OF
REALTORS, CALIFORNIA ASSOCIATION
OF REALTORS, INC., and SAN
FRANCISCO ASSOCIATION OF
REALTORS,

Defendants.

Case No. 3:20-CV-03198-VC

**DEFENDANT CALIFORNIA
ASSOCIATION OF REALTORS, INC.'S
NOTICE OF JOINDER IN DEFENDANT
NATIONAL ASSOCIATION OF
REALTORS' OPPOSITION AND
FURTHER OPPOSITION TO PLAINTIFF
TOP AGENT NETWORK, INC.'S
MOTION FOR TEMPORARY
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE AS TO WHY A
PRELIMINARY INJUNCTION SHOULD
NOT ISSUE**

Hearing Date:

Time:

Place:

Judge: Hon. Vince Chhabria

Defendant California Association of REALTORS®, Inc. (“CAR”) joins in the opposition to Plaintiff Top Agent Network, Inc.’s (“TAN’s”) motion for a temporary restraining order and preliminary injunction filed by Defendant National Association of REALTORS® (“NAR”). While CAR helps its members understand the laws and rules that apply to them, including NAR’s Clear Cooperation Policy (the “Policy”), CAR is an independent corporation. Declaration of Richard B. Shumacher ¶ 3. It does not own or operate a multiple listing service. *Id.* ¶ 4. It does not receive fees from any multiple listing services. *Id.* ¶ 5. It does not enforce multiple listing service rules or policies. *Id.* ¶ 6. It does not hold hearings on rule breakers or suspend multiple listing service privileges or CAR membership based on compliance with multiple listing service rules. *Id.* And it does not have the authority to change NAR’s Policy. *Id.* ¶ 7. If the Court were to issue the requested injunction here against CAR, it is not clear how it could comply. CAR’s only role with respect to the Policy is that it provides truthful and practical guidance and information about applicable policies to its members. Thus, CAR should not be subject to this motion or this case, and TAN does not have a likelihood of success against CAR. (TAN will not be able to show that CAR did anything anticompetitive or tortious.) That said, in further support of NAR’s arguments about TAN’s delay, in December 2019, CAR provided its members with a revised form for “Seller Instruction to Exclude Listing from the Multiple Listing Service and Days on Market”—as a member benefit, CAR provides its members with forms to use (which are not mandatory, but are widely used). *Id.* ¶ 9 & Ex. A. CAR’s December 2019 form included a section that a broker could use if the multiple listing service to which she belonged had adopted NAR’s Policy. *Id.* Therefore, while CAR should not be in this case, its December form provided TAN and its members with notice of the forthcoming Policy.

DATED: May 19, 2020

Respectfully submitted,

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

By /s/ Ethan Glass

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Defendants.

Case No. 3:20-CV-03198-VC

**DECLARATION OF RICHARD B.
SHUMACHER IN SUPPORT OF
DEFENDANT CALIFORNIA
ASSOCIATION OF REALTORS, INC.'S
NOTICE OF JOINDER IN DEFENDANT
NATIONAL ASSOCIATION OF
REALTORS' OPPOSITION AND
FURTHER OPPOSITION TO PLAINTIFF
TOP AGENT NETWORK, INC.'S
MOTION FOR TEMPORARY
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE AS TO WHY A
PRELIMINARY INJUNCTION SHOULD
NOT ISSUE**

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Judge: Hon. Vince Chhabria

DECLARATION OF RICHARD B. SHUMACHER

I, Richard B. Shumacher, declare as follows under 28 U.S.C. § 1746:

1. I am Senior Vice President and Chief Operating Officer for California Association of REALTORS®, Inc. (“CAR”). I have personal knowledge of the facts contained herein, and if called as a witness, I could and would testify competently thereto.

2. CAR is a state trade association that provides programs and services to members such as educational programs, marketing tools, and legislative advocacy.

3. CAR is an independent corporation.

4. CAR does not own or operate a multiple listing service. Nor do any of its subsidiaries.

5. CAR does not receive fees from any multiple listing services.

6. CAR does not enforce policies or rules related to multiple listing services. CAR does not hold hearings on rule breakers or suspend multiple listing service privileges or CAR membership based on compliance with multiple listing service rules.

7. CAR does not have the authority to change or withdraw the National Association of REALTORS®’ Clear Cooperation Policy (the “Policy”).

8. As a benefit to its members, CAR provides members with forms they can use in their businesses. The forms are not mandatory, but CAR understands that they are widely used by CAR members.

9. In December 2019, CAR provided its members with a revised form for “Seller Instruction to Exclude Listing from the Multiple Listing Service and Days on Market.” Attached as **Exhibit A** to this declaration is a true and correct copy of CAR’s December 2019 revised sample form for “Seller Instruction to Exclude Listing from the Multiple Listing Service and Days on

Market.” The form includes a section that a broker can use if the multiple listing service to which she belongs has adopted NAR’s Policy. The form thus provided CAR members with notice of the Policy.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. This declaration was executed on May 19, 2020 in Calabasas, California.

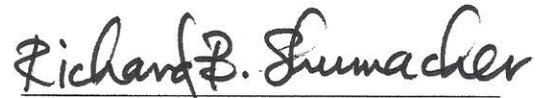

Richard B. Shumacher

Exhibit A



CALIFORNIA
ASSOCIATION
OF REALTORS®

**SELLER INSTRUCTION TO EXCLUDE LISTING
FROM THE MULTIPLE LISTING SERVICE
AND DAYS ON MARKET**
(C.A.R. Form SELM, Revised 12/19)

This is an addendum ("Addendum") to the Listing Agreement or Other _____ ("Agreement") dated _____ on property known as _____ ("Property"), in which _____ is referred to as Seller and _____ is referred to as Broker.

1. **MULTIPLE LISTING SERVICE:** Broker is a participant/subscriber to the _____ Multiple Listing Service (MLS). The MLS is a database of properties for sale that is available and disseminated to and accessible by all other real estate agents who are participants or subscribers to the MLS or a reciprocal MLS. Property information submitted to the MLS describes the price, terms and conditions under which the Seller's Property is offered for sale.
2. **MANDATORY SUBMISSION TO MLS:** The MLS generally requires brokers participating in the service to submit all exclusive right to sell and exclusive agency listings for residential real property or vacant lots to the MLS within **2 (or _____) Days** of obtaining all necessary signatures of the seller(s) on the listing agreement unless Broker submits to the MLS an instruction signed by Seller (such as this form or a local equivalent form) excluding the listing from the MLS.
3. **EXPOSURE TO BUYERS THROUGH MLS:** Listing property with an MLS exposes a seller's property to all real estate agents and brokers who are participants or subscribers to the MLS, or a reciprocal MLS, and potential buyer clients of those agents and brokers. The MLS may further transmit the MLS database to Internet sites that post property listings online.
4. **CLOSED/PRIVATE LISTING CLUBS OR GROUPS:** The MLS provides broad exposure for a listed property. Closed or private listing clubs or groups are not the same as the MLS: They are accessible to a much more limited number of licensees and provide less exposure for listed property. Whether listing property through a closed, private network - and excluding it from the MLS - is advantageous or disadvantageous to a seller, and why, should be discussed with the agent taking the seller's listing.
5. **IMPACT OF EXCLUSION OF PROPERTY FROM MLS:** If Property is excluded from the MLS, Seller understands and acknowledges that: **(a)** real estate agents and brokers from other real estate offices who have access to that MLS, and their buyer clients, may not be aware that Seller's Property is offered for sale; **(b)** information about Seller's Property will not be transmitted to various real estate Internet sites used by the public to search for property listings; and **(c)** real estate agents, brokers and members of the public may be unaware of the terms and conditions under which Seller is marketing the Property.
6. **IMPACT/REDUCTION OF EXPOSURE:** Any reduction in exposure of the Property may lower the number of offers made and negatively impact the sales price.
7. **(DOM) DAYS ON MARKET or DAYS ON MLS:**
 - A. The number of days an unsold property remains either on market or on MLS, may affect the perception of how desirable the property is to real estate agents and buyers.
 - B. Many MLS's use the term DOM to mean Days on Market, while others use the acronym to mean Days on MLS. As a general rule, if DOM means Days on Market, the first Day on Market will be the beginning date of the Listing Agreement, which is either the beginning date identified on the Agreement, or the date of the last signature required to make the Agreement valid, whichever is later. DOM may alternatively begin later than the effective date of the Listing Agreement as long as NO MARKETING of the Property occurs prior to that date. Marketing is any communication made to the public containing any information, details, price or terms of any potential sale of the Property, or any communication made to the public with regard to the Brokerage firm or Agent's representation of the Seller. Marketing includes, but is not limited to: Placing a sign on the Property, Internet Website posts, Social Media posts, Flyers or Advertising, and Open Houses. Where DOM means Days on MLS, it's possible that marketing time prior to submission to the MLS might not be measured on the MLS. Calculating DOM will differ depending on the MLS.
 - C. **On Market Date.** Many MLSs treat the date the Listing is submitted to the MLS or, the date marketing begins, whichever is earlier, as the "on market date" for the purpose of calculating the DOM.
 - D. You should talk to your real estate broker or agent about the meaning of DOM and On Market Date and how they might affect the sale of your Property.



8. **SELLER OPT-OUT:** Seller certifies that Seller understands the implications of not submitting Property to the MLS and instructs Broker as follows (Check one):
- A. Market Property immediately but **DO NOT** submit Listing to the MLS for a period of ____ calendar days from the commencement of the listing or until _____(date).
 - B. Market Property immediately but **DO NOT** submit Listing to the MLS during the entire listing period provided for in the Agreement.
 - C. **DO NOT** Market the Property immediately. Begin marketing the Property on _____(date). Submit Listing to the MLS on _____(date).

9. **MLS CLEAR COOPERATION POLICY:**

- A. **The MLS to which Broker belongs has adopted a rule that requires all listings be submitted to the MLS within one business day after marketing a property to the public.** Public marketing includes flyers displayed in windows, yard signs, digital marketing on public facing websites, brokerage website displays, email blasts, multi-brokerage listing sharing networks, and applications available to the general public. Public marketing does not include an office exclusive listing where there is direct promotion of the listing between the brokers and licensees affiliated with the listing brokerage, and one-to-one promotion between these licensees and their clients.
- B. Under these circumstances, keeping the Property off the MLS means that **(i)** no public marketing will occur and **(ii)** the scope of marketing that will occur will consist only of direct one-on-one promotion between the brokers and licensees affiliated with the listing brokerage and their respective clients. By checking paragraph 9 and signing below, **(i)** Seller understands the implication of not submitting Property to the MLS is that any marketing of the property will be limited to the exposure offered by office exclusives and **(ii)** Seller nonetheless instructs Broker to exclude the listing from the MLS for the period of time specified in paragraph 8. Should any public marketing commence, seller understands and agrees that the listing will be submitted to the MLS within one business day.
- C. **If this paragraph 9 is checked, it supersedes any contrary information specified in paragraphs 2 or 7 or any contrary instruction specified in paragraph 8.**

10. In all cases specified in 8 or 9 above, the Property may be submitted to MLS sooner than specified if authorized in writing by Seller.

By signing below, Seller acknowledges that Seller has read, understands, accepts and has received a copy of this Addendum.

Seller _____ Date _____
 Address _____ City _____ State _____ Zip _____
 Telephone _____ Fax _____ E-mail _____
 Seller _____ Date _____
 Address _____ City _____ State _____ Zip _____
 Telephone _____ Fax _____ E-mail _____
 Real Estate Broker (Firm) _____ BRE Lic. # _____
 By (Broker or Office Manager) _____ BRE Lic. # _____ Date _____
 Address _____ City _____ State _____ Zip _____
 Telephone _____ Fax _____ E-mail _____

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