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*National Association of REALTORS®,*

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*San Francisco Association of REALTORS®*

**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

**CALIFORNIA ASSOCIATION OF  
REALTORS®, INC.'S MOTION TO  
DISMISS TAN'S COMPLAINT FOR  
FAILURE TO STATE A CLAIM – FED. R.  
CIV. P. 12(B)(6)**

Hearing Date: September 17, 2020

Time: 10:00 a.m.

Place: Courtroom 4, 17th Floor

Judge: Hon. Vince Chhabria

**NOTICE OF MOTION AND MOTION TO DISMISS**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 17, 2020, at 10:00 a.m., or as soon thereafter as the matter may be heard before the Honorable Vince Chhabria, in Courtroom 4 of the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, California, 94102, Defendant California Association of REALTORS®, Inc. (“C.A.R.”) will and hereby does move this Court for an order granting its Motion to Dismiss the Complaint as to C.A.R. pursuant to Federal Rule of Civil Procedure 12(b)(6). Pursuant to Standing Order ¶ 8, counsel for Defendants conferred with opposing counsel prior to filing this motion, and they agreed September 17, 2020 was a convenient date for the motion to be heard. The motion is based on this Notice of Motion, the Memorandum of Points and Authorities, the Court’s files in this action, the oral argument of counsel at the hearing, and on such materials and evidence as may be presented to the Court.

**RELIEF REQUESTED**

C.A.R. requests that the Court dismiss Plaintiff’s Complaint with prejudice, as to C.A.R., on the ground that Plaintiff fails to state a claim against C.A.R. upon which relief can be granted.

DATED: July 10, 2020

Respectfully submitted,

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

By /s/ Ethan Glass

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**MEMORANDUM OF POINTS AND AUTHORITIES**

Defendant California Association of REALTORS®, Inc. (“C.A.R.”) joins the Motion to Dismiss Plaintiff Top Agent Network, Inc.’s (“TAN’s”) Complaint that was filed today on behalf of all Defendants. TAN’s Complaint should be dismissed in its entirety for the reasons discussed in that Motion. In addition, TAN has failed to state a claim upon which relief could be granted as to C.A.R. for the following reasons.

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), TAN must “plead[] factual content that allows the court to draw the reasonable inference that [C.A.R.] is liable for the misconduct alleged.” *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In suits with “multiple defendants,” that includes pleading a distinct “factual basis for each defendant’s liability.” *Sumotext Corp. v. Zoove, Inc.*, No. 16-1370, 2017 WL 2774382, at \*8 (N.D. Cal. June 26, 2017). However, TAN challenges the Clear Cooperation Policy that was adopted by the *National Association of REALTORS®*. The Complaint fails to allege any acts by C.A.R. that could be the basis of a claim.

Specifically, TAN merely alleges that C.A.R. “recently opined” on the Policy, Compl. ¶ 33, and that C.A.R. “adopted an extreme interpretation” of the Policy, *id.* ¶ 75. But opining on another’s policy cannot form the basis of antitrust or tort claims. That C.A.R. provides non-binding opinions or informational model rules about NAR’s policies, or that C.A.R. made a presentation about the new rule, *Id.* ¶ 75, is not sufficient to show that C.A.R. caused TAN’s alleged harm, and thus it does not state a claim against C.A.R. TAN does not allege that C.A.R. owns or operates a multiple listing service. It does not allege that C.A.R. receives fees from any multiple listing services. It does not allege any facts showing that C.A.R. enforces multiple listing service rules or policies, including the Policy challenged in TAN’s Complaint. Thus, there is no

basis for TAN's conclusory allegation that C.A.R. "adopt[ed] . . . the Policy." *Id.* ¶ 96. Indeed, TAN never explains how an entity that does not operate, control, mandate or enforce rules for a multiple listing service can possibly "adopt" a binding rule that governs multiple listing services.

Because each claim in TAN's Complaint is based on the implementation and enforcement of a Policy that governs multiple listing services, and because TAN has not plausibly alleged that C.A.R. implements or enforces rules that govern multiple listing services, C.A.R. should be dismissed from this lawsuit.

DATED: July 10, 2020

Respectfully submitted,

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