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F I L E D
Clark of the Superior Court

JUN 15 2010

Attorney for Plaintiff

BY: A. LUM

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN DIEGO, NORTH COUNTY DIVISION

10) Case No: 37-2010-00056531-CU-MC-NC
11 CHUCK SMJAR,)
12) EX PARTE APPLICATION FOR TEMPORARY
13 Plaintiff,) RESTRaining ORDER AND ORDER TO
14 vs.) SHOW CAUSE RE PRELIMINARY
15) INJUNCTION; CERTIFICATION RE
16 NORTH SAN DIEGO COUNTY ASSOCIATION) NOTICE; AND MEMORANDUM OF POINTS
17 OF REALTORS, Incorporated, and JIM) AND AUTHORITIES
18 ALDREDGE, GINNI FIELD, KURT)
19 KINSEY, MARIA WEISS, and DOES 1) Date: June 17, 2010
20 through 20,) Time: 1:30 PM
21) Dept: 30
22 Defendants.) Judge: Hon. Thomas P. Nugent
23)
24)
25)
26)
27)
28)

19 Plaintiff Chuck Smiar applies for a temporary restraining order
20 restraining defendants NORTH SAN DIEGO COUNTY ASSOCIATION OF
21 REALTORS, Incorporated, JIM ALDREDGE, GINNI FIELD, KURT KINSEY, MARIA
22 WEISS, and their agents, servants and employees, from doing,
23 commencing, or continuing any actions of any kind in furtherance of
24 any plan of merger between NSDCAR and SDAR as described in the
25 "Confidentiality and Non-Disclosure Agreement" and "non-binding
26 Memorandum of Understanding" referenced in the complaint filed
27 herein, or as described in any related merger agreement, proposed
28

1 corporate document or other document, or otherwise, and an order to
2 show cause why a preliminary injunction should not be granted
3 enjoining defendants, and their agents, servants, and employees from
4 performing the above described acts during the pendency of this
5 action. This application is made on the grounds that the plaintiff
6 is entitled to the relief demanded, and the relief, or any part
7 thereof, consists in restraining the commission or continuance of the
8 act complained of, either for a limited time period or perpetually,
9 and on the further ground that great and irreparable injury will
10 result to plaintiff before the matter can be heard on notice.
11

12 Plaintiff has not previously applied to any judicial officer for
13 similar relief.

14 This application is based on the verified complaint on file in
15 this case, and on the declarations of Larry Wight and Kevin K.
16 Forrester attached to this application, and on the attached
17 memorandum.

18 Dated: June 14, 2010

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21 _____
22 Kevin K. Forrester,
23 Attorney for Plaintiff
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1 SUPPORTING DECLARATION OF KEVIN K. FORRESTER RE ADVANCE NOTIFICATION
2 I, Kevin K. Forrester, declare:

3 1. I am an attorney at law duly admitted to practice before all
4 courts of the State of California and the attorney of record herein
5 for plaintiff, Chuck Smiar, in the above-described action.

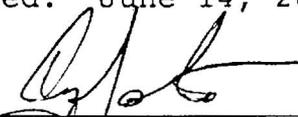
6 2. On June 14, 2010, at 4:00 p.m., I informed the CEO and agent
7 for service of process of defendant North San Diego County
8 Association of REALTORS, Incorporated, Dianne McMillan, by face-to-
9 face conversation, that the above application for a temporary
10 restraining order and order to show cause would be made on June 17,
11 2010, at 1:30 p.m., in Department 30 of the above-entitled court. I
12 also served Ms. McMillan with the complaint in this action.

13 3. On June 14, 2010, at 4:45 p.m., I informed the legal
14 assistant to David S. Bright, Esq., the attorney for defendant North
15 San Diego County Association of REALTORS, Incorporated, Gisela
16 Hofmann, by telephone that the above application for a temporary
17 restraining order and order to show cause would be made on June 17,
18 2010, at 1:30 pm, in Department 30 of the above-entitled court.

19 4. There was no response to either notification, other than of
20 acknowledgment and understanding. Therefore, I could not determine
21 whether to expect opposition to the application.

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

24 Dated: June 14, 2010

25 
26 _____
27 Kevin K. Forrester,
28 Attorney for Plaintiff

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION SHOULD BE
3 ISSUED IN ORDER TO PRESERVE THE STATUS QUO UNTIL A FINAL
4 DETERMINATION OF THE MERITS OF THE ACTION. IN THIS CASE, THE STATUS
5 QUO, NAMELY THE CONTINUED EXISTENCE OF THE NORTH SAN DIEGO COUNTY
6 ASSOCIATION OF REALTORS ("NSDCAR"), MAY BE DISRUPTED TO THE DETRIMENT
7 OF THE PLAINTIFF AND THE NOMINAL DEFENDANT, NSDCAR, PENDING THE
8 OUTCOME OF THIS ACTION UNLESS INJUNCTIVE RELIEF IS GRANTED, BECAUSE
9 DEFENDANTS' WRONGFUL ACTIONS COULD ACHIEVE THE DESTRUCTION OF NSDCAR
10 IN FEWER THAN TEN (10) DAYS BEFORE ANY CONSIDERATION OR DETERMINATION
11 OF THE MERITS OF THIS ACTION IS POSSIBLE.

12 A preliminary injunction may be granted to preserve the status
13 quo until a final determination of the merits of the action
14 (Continental Baking Co. v. Katz (1968) 68 Cal.2d 512, 528, 67 Cal.
15 Rptr. 761, 439 P.2d 889; People v. Black's Food Store (1940) 16
16 Cal.2d 59, 62, 105 P.2d 361; O'Connell v. Superior Court (2006) 141
17 Cal.App.4th 1452, 1471, 47 Cal. Rptr.3d 147).

18 On September 17, 2009, the NSDCAR Board of Directors named a
19 task force comprised of the Board Chairman, Jim Aldredge, and
20 directors Ginni Field, Kurt Kinsey and Maria Weiss (defendants
21 herein) to explore possible benefits of a merger of the 5,000-member
22 NSDCAR with the 10,000-member San Diego Association of REALTORS
23 ("SDAR"), in which SDAR would be the surviving corporation.

24 Since that time, this faction of the NSDCAR Board of Directors
25 (the "Merger Task Force") has abandoned the interests of the members
26 of NSDCAR and has worked confidentially and, as it turns out,
27 effectively to facilitate what has become in every sense a hostile
28 takeover of NSDCAR by SDAR. The President of the California
Association of REALTORS has become so concerned about what he terms

1 "deceptive, misleading and coercive behavior inappropriate to a
2 REALTOR organization" and potential "conflicts of interest" and
3 "self-dealing" in the efforts of SDAR to take over NSDCAR (and the
4 other local REALTOR associations), that he addressed a letter dated
5 June 2, 2010, to the Presidents and Directors of all four local San
6 Diego County REALTOR associations reminding them of their legal and
7 ethical obligations. (See President Steve Goddard's letter attached
8 to Declaration of Larry Wight in Support of Ex Parte Application.)
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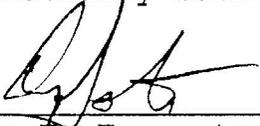
10 Our efforts to counteract the wrongful acts of the Merger Task
11 Force has included all of those efforts set forth in our verified
12 complaint, together with scheduling our own public "Merger Forums" to
13 present opposition to the view being presented to the members by the
14 Merger Task Force in their own public Town Hall Forums. All of these
15 public meetings started Monday, June 14, 2010.
16

17 The electronic membership vote on the merger of NSDCAR and SDAR
18 is scheduled to take place June 18 to June 25, 2010. This vote must
19 be stopped until all of the actions of all of the directors that lead
20 to this vote are considered and ruled upon by this court.
21

22 Please stop this corporate hijacking before it is too late.

23 Dated: June 15, 2010

24 Respectfully submitted,

25 
26 _____
27 Kevin K. Forrester,
28 Attorney for Plaintiff