

1 Kevin K. Forrester (SBN 129023)
Attorney at Law
2 4403 Manchester Ave Ste 205
Encinitas CA 92024-7903
3 Telephone: (760) 944-1918
Facsimile: (760) 944-3517
4

Attorney for Plaintiff
5
6
7

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

10
11 CHUCK SMAR,) Case No.: 37-2010-00056531-CU-MC-NC
12 Plaintiff,)
13 vs.) COMPLAINT FOR: (1) BREACH OF
) FIDUCIARY DUTIES, (2) RESCISSION,
) (3) TEMPORARY RESTRAINING ORDER,
) and (4) PRELIMINARY AND PERMANENT
) INJUNCTIONS
14 NORTH SAN DIEGO COUNTY ASSOCIATION)
OF REALTORS, Incorporated, and JIM)
15 ALDREDGE, GINNI FIELD, KURT)
KINSEY, MARIA WEISS, and DOES 1)
16 through 20,)
17 Defendants.)
18

19
20 Plaintiff alleges:

21 Nominal Defendant

22 1. Defendant NORTH SAN DIEGO COUNTY ASSOCIATION OF REALTORS,
23 Incorporated, hereinafter referred to as "NSDCAR", is, and at all
24 times herein mentioned was, a corporation duly organized and existing
25 under the laws of the State of California and has its principal place
26 of business in San Diego County, California.

27 ///

28 ///

1 executive session, and without the knowledge or approval of the
2 NSDCAR members.

3 12. Said actions of the Director Defendants are in furtherance
4 of the interests of SDAR in becoming the sole surviving REALTOR
5 Association in San Diego County at the cost of eliminating the
6 Director Defendants' own REALTOR Association, and violate the
7 Director Defendants' fiduciary duties of care and loyalty to NSDCAR
8 and its members.

9 13. Before February 11, 2010, Plaintiff made the following
10 efforts to secure action by the Directors: Plaintiff asked for, and
11 received, permission from the Board of Directors to address the
12 Directors on the subject of this complaint and, on February 11, 2010,
13 by and through plaintiff's counsel, Kevin Forrester, did address the
14 Directors and specifically request that they comply with their
15 fiduciary duties of good faith, care, and loyalty to NSDCAR, and
16 cease and desist from all efforts to merge NSDCAR with SDAR. The
17 above-described actions of Chairman of the Board JIM ALDREDGE were in
18 direct response to plaintiff's efforts to secure action by the
19 Directors. On March 18, 2010, plaintiff delivered to the Board of
20 Directors a true copy of the complaint which plaintiff then proposed
21 to file (a complaint which included the first two causes of action of
22 this complaint), and demanded that the Board of Directors either
23 cease and desist from any and all merger discussions, negotiations,
24 and/or information sharing with SDAR or take such action as is
25 necessary for the corporation to prosecute the causes of action
26 therein set forth against the aforementioned defendants.
27

28 ///

1 and void. Said agreements and understandings should, therefore, be
2 rescinded, and any and all confidential information provided or
3 received by NSDCAR and/or SDAR pursuant to such agreements should be
4 returned to their providing parties forthwith.

5
6 Count 3, Temporary Restraining Order,
7 Preliminary and Permanent Injunctions, and Damages

8 21. Plaintiff incorporates by reference and realleges each and
9 every allegation set forth above, as though fully set forth herein.

10 22. Defendants' wrongful conduct, unless and until enjoined and
11 restrained by order of this court will cause great and irreparable
12 injury to NSDCAR in that NSDCAR will be dissolved, terminate and
13 cease to exist as a result of merging with SDAR.

14 23. NSDCAR has no adequate remedy at law for the injuries that
15 are threatened, as all of NSDCAR's assets and goodwill will, together
16 with NSDCAR, cease to exist as a result of merging with SDAR, and
17 NSDCAR will thereafter have no means to pursue damages on behalf of
18 itself or its members.

19 24. If plaintiff is successful in this action, a substantial
20 benefit will result to NSDCAR, on whose behalf this action is
21 prosecuted, and plaintiff is entitled to his costs, disbursements and
22 reasonable attorney's fees incurred herein from and against NSDCAR.

23 WHEREFORE, plaintiff prays judgment against defendants NSDCAR,
24 JIM ALDREDGE, GINNI FIELD, KURT KINSEY, and MARIA WEISS:

25 1. For an order requiring defendants to show cause, if any they
26 have, why they should not be enjoined as set forth in this complaint,
27 during the pendency of this action;

28 ///

1
2 2. For a temporary restraining order, a preliminary injunction,
3 and a permanent injunction, all enjoining defendants, and each of
4 them, and their agents, servants, and employees, and all persons
5 acting under, in concert with, or for them:

6 a. From doing, commencing, or continuing any actions of any
7 kind in furtherance of any plan of merger between NSDCAR and SDAR as
8 described in the "Confidentiality and Non-Disclosure Agreement" and
9 "non-binding Memorandum of Understanding" referenced in the
10 complaint, or as described in any related merger agreement, proposed
11 corporate document or other document, or otherwise.

12 3. Granting appropriate equitable relief, including the
13 rescission prayed for herein, to remedy Director defendants' breaches
14 of fiduciary duties;

15 4. Against NSDCAR, for the costs and disbursements of this
16 action, including reasonable attorneys' fees, accountants' and
17 experts' fees, costs, and expenses; and,

18 5. Granting such other and further relief as the Court deems
19 just and proper.
20

21 Dated: June 14, 2010

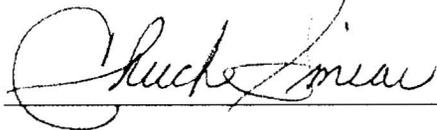
22
23 
24 _____
25 Kevin K. Forrester,
26 Attorney for Plaintiff
27
28

1 VERIFICATION

2 I, Chuck Smiar, am the plaintiff in the above-entitled action.
3 I have read the foregoing complaint and know its contents. The same
4 is true of my own knowledge, except as to those matters that are
5 alleged in the complaint on information and belief, and as to those
6 matters, I believe them to be true.

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

9 Dated: June 14, 2010

10 
11 _____