

NOTICE TO HEMPHILL SETTLEMENT CLASS

If you paid charges to, subscribed to, or participated in the Sandicor MLS between January 1, 2000 and September 23, 2004, then you may be a member of the Settlement Class in *Hemphill v. San Diego Association of Realtors, et. al.*, Case No. 04-cv-1495 BEN (JMA) (S.D. Cal.) (“*Hemphill*”). On April 26, 2005, the Court entered a permanent injunction to reflect the terms of a Court-approved settlement. This communication notifies the *Hemphill* Settlement Class that the remaining *Hemphill* parties intend to move the Court to modify that order for permanent injunctive relief to allow for a new MLS distribution structure in San Diego.

The *Hemphill* Action

Hemphill was an antitrust class action filed on July 23, 2004. The defendants were Sandicor, and what were Sandicor’s five shareholders, the five Associations of REALTORS® then operating in San Diego County – San Diego Association of REALTORS® (“SDAR”), North San Diego County Association of REALTORS® (“NSDCAR”), East San Diego County Association of REALTORS® (“ESDCAR”), Pacific Southwest Association of REALTORS® (“PSAR”), and Coronado Association of REALTORS® (“COAR”). The *Hemphill* class consisted generally of all Sandicor MLS subscribers (with certain exceptions) during the period January 1, 2000 through September 23, 2004.

The injunction entered by the Court as part of the settlement contained these provisions mandating a new wholesale/retail distribution structure:

4. Sandicor shall unilaterally determine and advise each of the respective Association Defendants [SDAR, NSDCAR, ESDCAR, PSAR and COAR] of the amount Sandicor will charge that Association Defendant for providing Sandicor MLS Data to that Association Defendant.
5. Each of the Association Defendants shall unilaterally determine the amount it will charge to each user of the Sandicor MLS who has heretofore or who hereafter subscribes to, or participates in, the Sandicor MLS, at or through that given Association Defendant.
6. Each Settling Defendant is hereby enjoined from acting in concert with any other Settling Defendant to fix, raise, establish, or maintain the price or amount to be charged by that Settling Defendant to end users or otherwise fixing prices of support services and other goods and services.

Sandicor has continued to operate under this wholesale/retail model to the present day. There have, however, been changes in its shareholders. In 2009, COAR ceased operations as a Sandicor retailer and ceased being a Sandicor shareholder. In 2012, ESDCAR merged into PSAR. From 2012 to the present, Sandicor has had only three shareholders, SDAR, NSDCAR, and PSAR, who have continued to provide MLS access under the quoted terms of the *Hemphill* injunction.

The Association and State Dissolution Actions and Settlements

In January 2016, SDAR filed *San Diego Association of REALTORS® v. Sandicor, Inc., et al.*, 16 CV0096 MMA KSC (S.D. Cal.), the “Association Action,” against Sandicor, NSDCAR and PSAR asserting antitrust and state law claims. In October 2016, NSDCAR and PSAR sued for the involuntary dissolution of Sandicor, *North San Diego County Association of REALTORS®, et al. v. Sandicor, Inc.*, San Diego County Superior Court Case No. 37-2016-00037384 (the “State Court Dissolution Action”). Both the Association Action and the State Court Dissolution Action arose from fundamental differences between SDAR, on the one hand, and NSDCAR/PSAR, on the other, regarding Sandicor’s operations and governance.

Following more than a year of negotiations involving representatives of SDAR, NSDCAR, and PSAR, those parties and Sandicor agreed on the terms of a settlement to resolve both the Association Action and the State Court Dissolution Action (the “Global Settlement”). The basic terms are SDAR will become the sole shareholder of San Diego Multiple Listing Service (“SDMLS”), SDMLS will replace the Sandicor trade name. NSDCAR and PSAR will instead join the California Regional Multiple Listing Service (“CRMLS”), which will be operating in San Diego County. For a period of at least two years from what is referred to in the settlement as the “Go Live Date” (anticipated to occur in mid-September) end users of both CRMLS and SDMLS will have full access to a shared instance of the Paragon system, which is modeled directly upon the Sandicor Paragon instance, that both MLSs will operate together. SDMLS and CRMLS have also agreed to share all listing data with each other for a period of at least 5 years.

San Diego County has had a single MLS (Sandicor) from 1991 to the present. The effect of the Global Settlement will be that MLS users will have a choice of subscribing to CRMLS, through NSDCAR or PSAR, and/or subscribing directly to SDMLS. CRMLS and SDMLS have represented that they intend to compete for subscribers.

The Global Settlement was negotiated by volunteer leadership from each Association and drafted and reviewed by attorneys representing North San Diego County Association of REALTORS® (NSDCAR), Pacific Southwest Association of REALTORS® (PSAR), Greater San Diego Association of REALTORS® (GSDAR), Sandicor®, and California Regional MLS (CRMLS).

The Motion to Amend the *Hemphill* Injunction

The new structure anticipated by the Global Settlement necessitates amendment of the *Hemphill* injunction.

The attorneys for the remaining parties in *Hemphill* will file a motion requesting amendment of the *Hemphill* injunction in the coming weeks. The motion will ask the Court to strike paragraph numbers 4 and 5 above from the *Hemphill* injunction and to modify paragraph 6 to read:

6. Each Settling Defendant, and their respective successors-in-interest, is enjoined from acting in concert with any other person or entity, directly or indirectly, to fix, raise, establish, maintain, set or coordinate the price or amount to be charged or terms of service for MLS-related services, data, data access, support services or other goods or services.

You may obtain a copy of the motion and supporting declarations by contacting Dan Mogin, MoginRubin LLP, at dmogin@moginrubin.com, 619-687-6611. If you would like to review the

motion or have questions, please contact Dan Mogin, MoginRubin LLP,
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