

CIVIL ACTION COVER SHEET

DOCKET NUMBER

Trial Court of Massachusetts  
The Superior Court



PLAINTIFF(S): COMMONWEALTH OF MASSACHUSETTS  
ADDRESS: 1 Ashburton Place, 18th Floor, Boston, MA 02108

COUNTY  
Suffolk

DEFENDANT(S): NANTUCKET ASSOCIATION OF REAL ESTATE BROKERS, INC.

ATTORNEY: Matthew Lyons  
ADDRESS: 1 Ashburton Place, 18th Floor, Boston, MA 02108  
617-963-2128

ADDRESS: 5 Federal Street, PO Box 335, Nantucket, MA, 02554-0335

BBO: 657685

TYPE OF ACTION AND TRACK DESIGNATION (see reverse side)

CODE NO. E99 TYPE OF ACTION (specify) Other Administrative Action TRACK X HAS A JURY CLAIM BEEN MADE?  YES  NO  
\*If "Other" please describe: Assurance of Discontinuance pursuant to M.G.L. c. 93, § 9 and M.G.L. c. 93A, § 5.

STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A

The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff counsel relies to determine their damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS  
(attach additional sheets as necessary)

- A. Documented medical expenses to date: 1. Total hospital expenses, 2. Total doctor expenses, 3. Total chiropractic expenses, 4. Total physical therapy expenses, 5. Total other expenses (describe below)
B. Documented lost wages and compensation to date
C. Documented property damages to dated
D. Reasonably anticipated future medical and hospital expenses
E. Reasonably anticipated lost wages
F. Other documented items of damages (describe below)

SUFFOLK SUPERIOR COURT CIVIL CLERK'S OFFICE 2016 NOV 14 A 10:19 MICHAEL JOSEPH DONOVAN CLERK / MAGISTRATE

Subtotal (A): \$
TOTAL (A-F):\$ N/A

G. Briefly describe plaintiff's injury, including the nature and extent of injury:

CONTRACT CLAIMS  
(attach additional sheets as necessary)

Provide a detailed description of claims(s): TOTAL: \$ N/A

Signature of Attorney/Pro Se Plaintiff: X

Date:

RELATED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the Superior Court.

CERTIFICATION PURSUANT TO SJC RULE 1:18

I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.

Signature of Attorney of Record: X Matthew M. Lyons

Date: 11/14/2016

# CIVIL ACTION COVER SHEET INSTRUCTIONS

## SELECT CATEGORY THAT BEST DESCRIBES YOUR CASE

### AC Actions Involving the State/Municipality \*

- AA1 Contract Action involving Commonwealth, Municipality, MBTA, etc. (A)
- AB1 Tortious Action involving Commonwealth, Municipality, MBTA, etc. (A)
- AC1 Real Property Action involving Commonwealth, Municipality, MBTA etc. (A)
- AD1 Equity Action involving Commonwealth, Municipality, MBTA, etc. (A)
- AE1 Administrative Action involving Commonwealth, Municipality, MBTA, etc. (A)

### CN Contract/Business Cases

- A01 Services, Labor, and Materials (F)
- A02 Goods Sold and Delivered (F)
- A03 Commercial Paper (F)
- A04 Employment Contract (F)
- A06 Insurance Contract (F)
- A08 Sale or Lease of Real Estate (F)
- A12 Construction Dispute (A)
- A14 Interpleader (F)
- BA1 Governance, Conduct, Internal Affairs of Entities (A)
- BA3 Liability of Shareholders, Directors, Officers, Partners, etc. (A)
- BB1 Shareholder Derivative (A)
- BB2 Securities Transactions (A)
- BC1 Mergers, Consolidations, Sales of Assets, Issuance of Debt, Equity, etc. (A)
- BD1 Intellectual Property (A)
- BD2 Proprietary Information or Trade Secrets (A)
- BG1 Financial Institutions/Funds (A)
- BH1 Violation of Antitrust or Trade Regulation Laws (A)
- A99 Other Contract/Business Action - Specify (F)

\* Choose this case type if ANY party is the Commonwealth, a municipality, the MBTA, or any other governmental entity UNLESS your case is a case type listed under Administrative Civil Actions (AA).

† Choose this case type if ANY party is an incarcerated party, UNLESS your case is a case type listed under Administrative Civil Actions (AA) or is a Prisoner Habeas Corpus case (E97).

### ER Equitable Remedies

- D01 Specific Performance of a Contract (A)
- D02 Reach and Apply (F)
- D03 Injunction (F)
- D04 Reform/ Cancel Instrument (F)
- D05 Equitable Replevin (F)
- D06 Contribution or Indemnification (F)
- D07 Imposition of a Trust (A)
- D08 Minority Shareholder's Suit (A)
- D09 Interference in Contractual Relationship (F)
- D10 Accounting (A)
- D11 Enforcement of Restrictive Covenant (F)
- D12 Dissolution of a Partnership (F)
- D13 Declaratory Judgment, G.L. c.231A (A)
- D14 Dissolution of a Corporation (F)
- D99 Other Equity Action (F)

### PA Civil Actions Involving Incarcerated Party †

- PA1 Contract Action involving an Incarcerated Party (A)
- PB1 Tortious Action involving an Incarcerated Party (A)
- PC1 Real Property Action involving an Incarcerated Party (F)
- PD1 Equity Action involving an Incarcerated Party (F)
- PE1 Administrative Action involving an Incarcerated Party (F)

### TR Torts

- B03 Motor Vehicle Negligence - Personal Injury/Property Damage (F)
- B04 Other Negligence - Personal Injury/Property Damage (F)
- B05 Products Liability (A)
- B06 Malpractice - Medical / Wrongful Death (A)
- B07 Malpractice - Other (A)
- B08 Wrongful Death, G.L. c.229 §2A (A)
- B15 Defamation (A)
- B19 Asbestos (A)
- B20 Personal Injury - Slip & Fall (F)
- B21 Environmental (F)
- B22 Employment Discrimination (F)
- BE1 Fraud, Business Torts, etc. (A)
- B99 Other Tortious Action (F)

### RP Real Property

- C01 Land Taking (F)
- C02 Zoning Appeal, G.L. c. 40A (F)
- C03 Dispute Concerning Title (F)
- C04 Foreclosure of a Mortgage (X)
- C05 Condominium Lien & Charges (X)
- C99 Other Real Property Action (F)

### MC Miscellaneous Civil Actions

- E18 Foreign Discovery Proceeding (X)
- E97 Prisoner Habeas Corpus (X)
- E22 Lottery Assignment, G.L. c. 10 §28 (X)

### AB Abuse/Harassment Prevention

- E15 Abuse Prevention Petition, G.L. c. 209A (X)
- E21 Protection from Harassment, G.L. c. 258E(X)

### AA Administrative Civil Actions

- E02 Appeal from Administrative Agency, G.L. c. 30A (X)
- E03 Certiorari Action, G.L. c.249 §4 (X)
- E05 Confirmation of Arbitration Awards (X)
- E06 Mass Antitrust Act, G. L. c. 93 §9 (A)
- E07 Mass Antitrust Act, G. L. c. 93 §8 (X)
- E08 Appointment of a Receiver (X)
- E09 Construction Surety Bond, G.L. c. 149 §§29, 29A (A)
- E10 Summary Process Appeal (X)
- E11 Worker's Compensation (X)
- E16 Auto Surcharge Appeal (X)
- E17 Civil Rights Act, G.L. c.12 §11H (A)
- E24 Appeal from District Court Commitment, G.L. c.123 §9(b) (X)
- E25 Pleural Registry (Asbestos cases) (X)
- E94 Forfeiture, G.L. c265 §56 (X)
- E95 Forfeiture, G.L. c.94C §47 (F)
- E99 Other Administrative Action (X)
- Z01 Medical Malpractice - Tribunal only, G.L. c. 231 §60B (F)
- Z02 Appeal Bond Denial (X)

### SO Sex Offender Review

- E12 SDP Commitment, G.L. c. 123A §12 (X)
- E14 SDP Petition, G.L. c. 123A §9(b) (X)

### RC Restricted Civil Actions

- E19 Sex Offender Registry, G.L. c.6 §178M (X)
- E27 Minor Seeking Consent, G.L. c.112 §12S (X)

TRANSFER YOUR SELECTION TO THE FACE SHEET

#### EXAMPLE:

CODE NO.	TYPE OF ACTION (specify)	TRACK	HAS A JURY CLAIM BEEN MADE?	
B03	Motor Vehicle Negligence-Personal Injury	_F_	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO

### STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A

**DUTY OF THE PLAINTIFF** - The plaintiff shall set forth, on the face of the civil action cover sheet (or attach additional sheets as necessary), a statement specifying the facts on which the plaintiff relies to determine money damages. A copy of such civil action cover sheet, including the statement as to the damages, shall be served with the complaint. **A clerk-magistrate shall not accept for filing a complaint, except as otherwise provided by law, unless it is accompanied by such a statement signed by the attorney or pro se party.**

**DUTY OF THE DEFENDANT** - If the defendant believes that the statement of damages filed by the plaintiff is inadequate, the defendant may file with his/her answer a statement specifying the potential damages which may result if the plaintiff prevails.

**A CIVIL COVER SHEET MUST BE FILED WITH EACH COMPLAINT.  
FAILURE TO COMPLETE THIS COVER SHEET THOROUGHLY AND ACCURATELY  
MAY RESULT IN DISMISSAL OF THIS ACTION.**

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION NO.

16-3466B

COMMONWEALTH OF MASSACHUSETTS )  
)  
)

Plaintiff, )  
)  
)

v. )  
)  
)

NANTUCKET ASSOCIATION OF REAL )  
ESTATE BROKERS, INC. )  
)  
)

Defendant. )  
)  
)

SUFFOLK SUPERIOR COURT  
CIVIL CLERK'S OFFICE  
2016 NOV 14 A 10:19  
MICHAEL JOSEPH DONOVAN  
CLERK / MAGISTRATE

**ASSURANCE OF DISCONTINUANCE PURSUANT  
TO G.L. CH. 93 § 9 and G.L. CH. 93A § 5**

**I. INTRODUCTION**

1. Pursuant to the provisions of Massachusetts General Laws Chapters 93 and 93A, the Commonwealth of Massachusetts ("Commonwealth"), by and through its Attorney General Maura Healey (the "Attorney General"), undertook an investigation into certain conduct, methods, acts, and practices employed by the Nantucket Association of Real Estate Brokers, Inc. ("NAREB") pertaining to its requirements for joining NAREB as a full member.

2. Based upon that investigation, the Attorney General alleges that NAREB violated Massachusetts General Laws Chapter 93, § 4, and Massachusetts General Laws Chapter 93A, § 2 by engaging in a conspiracy in restraint of trade or commerce in the

Commonwealth, and unfair methods of competition and/or unfair or deceptive acts or practices, with respect to competition among real estate brokers on Nantucket.

3. NAREB expressly denies those allegations, but agrees to enter into this Assurance of Discontinuance ("Assurance") pursuant to G.L. c. 93, § 9 and G.L. c. 93A, § 5 in order to resolve the Attorney General's investigation. In lieu of litigation, the Attorney General agrees to accept this Assurance on the terms and conditions contained herein, pursuant to G.L. c. 93, § 9 and G.L. c. 93A, § 5. The Attorney General and NAREB each voluntarily enter into this Assurance.

## **II. DEFINITIONS**

4. "NAREB" means the Nantucket Association of Real Estate Brokers, Inc., a non-profit corporation organized under Massachusetts General Laws, Chapter 180, with an address at 5 Federal Street, PO Box 335, Nantucket, MA, 02554-0335, and any company or entity through which it does business or which is under its direct or indirect control by any means, or any of those companies' or entities' predecessors or successors in interest, parent corporations, holding companies, subdivisions, subsidiaries, affiliated entities, officers, directors, trustees, partners, agents, servants, employees, and contract workers.

## **III. BACKGROUND**

5. The Attorney General alleges the following, which NAREB denies: NAREB controls a multiple listing service that lists real estate for sale on the island of Nantucket. That multiple listing service contains the vast majority of real estate listings for sale on Nantucket. In order for a broker to list real estate for sale through NAREB's multiple listing service, that broker needs to belong to NAREB. Without access to the

listing service with the majority of real estate listings, a broker is effectively excluded from competing in the market for real estate brokerage in Nantucket.

6. NAREB currently charges \$5,000 to prospective full members who wish to join NAREB as a broker and thereby gain full access to NAREB's multiple listing service. Under the NAREB Bylaws a "full member" is one of the principals of an active real estate brokerage, and an "affiliate member" is an individual who is associated with a full member.

7. NAREB currently has a by-law that requires prospective full members to have a usual place of business on Nantucket in order to join NAREB, and thereby gain full access to NAREB's multiple listing service.

8. NAREB currently has a by-law that requires prospective full members to demonstrate involvement in the Nantucket community in order to join NAREB, and thereby gain full access to NAREB's multiple listing service.

#### **IV. ALLEGED VIOLATIONS**

9. The Attorney General alleges that NAREB, by certain of its rules and membership fee, excludes competitors from and restrains competition in the Nantucket, Massachusetts real estate brokerage market in violation of Massachusetts General Laws Chapter 93, § 4, and Massachusetts General Laws Chapter 93A, § 2.

10. Specifically, the Attorney General alleges:

- (1) NAREB's initiation fee of \$5,000 is excessive and inhibits prospective full members from joining and competing with existing members;
  - (2) NAREB's by-law requiring a usual place of business on Nantucket inhibits prospective full members from joining and competing with existing members;
- and

(3) NAREB's by-law requiring that prospective full members demonstrate community involvement can be used as a pretext to inhibit prospective members from joining and competing with existing members.

11. The Attorney General alleges that this course of conduct constitutes a contract, combination, or conspiracy in restraint of trade or commerce in the Commonwealth in violation of G.L. c. 93 § 4. The Attorney General further alleges that these methods, acts, or practices constitute unfair methods of competition and/or unfair or deceptive acts or practices in the conduct of trade or commerce in violation of G.L. c. 93A, § 2. The Attorney General alleges that NAREB knew or should have known that the conduct alleged herein constitutes unfair methods of competition and/or unfair or deceptive acts or practices in violation of G.L. c. 93A, § 2(a) and the regulations promulgated thereunder.

12. NAREB expressly denies the Attorney General's allegations.

13. This Assurance does not constitute an admission by NAREB of any fact, allegation, or noncompliance with any federal, state or local law, rule, or regulation. NAREB has voluntarily entered into this Assurance with a view to resolving the Attorney General's investigation expeditiously. NAREB enters into this Assurance for the purpose of resolving this investigation only, and this Assurance does not create any rights for any third party.

14. This Assurance is made without trial or adjudication of any issue of fact or law.

## V. ASSURANCES

15. NAREB shall alter its initiation fee for new Full Members from five thousand dollars (\$5,000) to five hundred dollars (\$500).

16. NAREB shall eliminate Section 1(B)(1) of the NAREB by-laws, which currently provide as follows:

“An individual real estate broker seeking Full Membership in NAREB must demonstrate the applicant’s involvement in the Nantucket community and the Nantucket real estate industry, consistent with the stated purpose of NAREB.”

17. NAREB shall modify Section 1(A)(1) of the NAREB by-laws as follows:

*Current language:*

**“(A) Qualifications:**

1. The entity, if any, for which the individual acts as a principal, is duly licensed by the Commonwealth of Massachusetts as an active real estate broker, with a usual place of business in Nantucket, Massachusetts;”

*Modified language:*

**“(A) Qualifications:**

1. (a) The broker must have a usual place of business on the island of Nantucket, Massachusetts; or  
  
(b) For any property that the broker lists on Nantucket, the broker or a licensed agent of the broker must make arrangements to be present to show the listed property within forty-eight (48) hours of a request by a NAREB member on behalf of a prospective buyer. The time requirement will be extended if the seller, the seller’s tenant or bad weather delays a showing. If the listing broker fails to meet the time requirement on three or more occasions in a rolling 12-month period, then NAREB may take enforcement action consistent with its By-Laws and Code of Ethics, which may include suspending or terminating the broker’s membership. In addition, the business location of the listing broker shall be stated in writing on the listing agreement or in some other writing provided to the seller before the listing agreement is made.”

**VI. Payment**

18. The Attorney General and NAREB mutually agree that NAREB shall pay to the Commonwealth the sum of five thousand dollars (\$5,000.00) in costs of investigation.

19. Upon execution of this Assurance of Discontinuance, NAREB shall deliver a certified check or money order in the amount of five thousand dollars (\$5,000.00) to Matthew Lyons at the Office of the Attorney General. Said certified check or money order shall be made payable to "The Commonwealth of Massachusetts."

**VII. MISCELLANEOUS PROVISIONS**

20. This Assurance shall be binding upon NAREB, and any company or entity through which it does business or which is under its direct or indirect control by any means, or any of those companies' or entities' predecessors or successors in interest, parent corporations, holding companies, subdivisions, subsidiaries, affiliated entities, officers, directors, trustees, partners, agents, servants, employees, and contract workers.

21. The Effective Date of this Assurance is the date the Attorney General files this Assurance with the Suffolk Superior Court.

22. NAREB shall notify the Attorney General in writing at least thirty (30) days prior to any proposed change or event that may affect the compliance obligations under this Assurance. A copy of this Assurance shall be given to any successor entity and to any companies through which NAREB does business or which is under its direct or indirect control by any means.

23. The Attorney General agrees not to proceed with or institute any civil action or other proceeding, based upon G.L. c. 93, G.L. c. 93A, or any other federal, state, or local law, rule or regulation, against NAREB, or any companies through which



27. This Assurance shall expire ten (10) years from the date of its entry. Any violation of this Assurance will be subject to the provisions of G.L. c. 93A, § 5.

Nantucket Association of Real Estate  
Brokers

Commonwealth of Massachusetts  
Attorney General Maura Healey

By: 

By: Matthew M. Lyons

Title: PRESIDENT

Title: Assistant Attorney General, Antitrust

Date: 10-13-16

Date: 11-14-16