

+

1 Since Re/Max All Cities Realty filed an "All Cities Realty" fictitious name notice on
2 August 8, 2002, I am assuming that Re/Max All Cities Realty began benefiting from the use of
3 the "All Cities Realty" name beginning in August 2002, and have calculated damages through
4 December 2006. I have also calculated interest that would have been earned on those damages at
5 10% simple interest using a mid-period convention.

6 I am also assuming that the profits Re/Max All Cities Realty earned since August 2002
7 above what Re/Max All Cities Realty earned in 2001 is due to the benefit of using the "All Cities
8 Realty" name. I intend to spend more time in examining this assumption for reasonableness and
9 may adjust my opinion in the future.

10 A measure of the damages suffered by All Cities Realty is the amount of gross revenues
11 realized by Re/Max All Cities Realty using of the "All Cities Realty" name. From August 2002
12 through December 2006 these revenues amounted to \$444.4^{A-1} million. When interest is added, the
13 amount is \$538.3^{A-1} million. See Tabs 2 and 4.

14 Since it appears that a significant portion of the revenues received by Re/Max All Cities
15 Realty is paid out to agents, another measure of the damages suffered by All Cities Realty is
16 revenues resulting from Re/Max All Cities Realty's use of the trademark "All Cities Realty"
17 minus the portion of these revenues paid to its real estate agents plus the amount Re/Max All
18 Cities Realty receives from its agents to cover expenses. (The amount that Re/Max All Cities
19 Realty receives from its agents to cover expenses was obtained in current dollars.) It is my
20 opinion that this amount is \$16.7^{A-1, B-1} million. When interest is added, the amount is \$20^{A-1} million. See
21 Tabs 2 through 5.

22 A third measure of damages is a reasonable royalty for the use of the name "All Cities
23 Realty." For purposes of my calculations I have used the franchise royalty fee percentage
24 charged by real estate franchisors as the reasonable royalty rate. When applying a royalty rate of
25

1 6% the damages are \$26.6 million. When interest is added, the amount is \$32.3 million. See Tabs
2 2 and 6.

3 There are additional damages suffered by All Cities Realty measured by the cost of
4 corrective advertising. I have not yet been able to inspect the evidence that would enable me to
5 ascertain the amount of these damages. Accordingly my opinions relating to damages resulting
6 from corrective advertising will be incorporated into a supplemental report.

7
8 RESERVATION OF RIGHT TO AMEND

9 I reserve the right to amend my opinions based on information which may become
10 available at a later date from the parties and other sources, including testimony of relevant
11 witnesses.

12
13 DATA AND INFORMATION CONSIDERED

14 See Tab 7.

15
16 EXHIBITS

17 The trial exhibits I will prepare will be based on information contained within my reports.

18
19 REBUTTAL TESTIMONY

20 I anticipate being called to render rebuttal testimony responsive to the expert(s) called by
21 Defendants.

22
23 QUALIFICATIONS

24 My qualifications are set forth in my Curriculum Vita attached into this declaration.

25

1 PUBLICATIONS

2 My publications are set forth in my Curriculum Vita attached to this declaration.

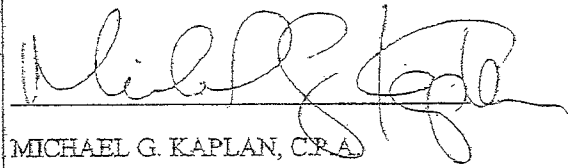
4 COMPENSATION TO BE PAID FOR THE STUDY AND TESTIMONY

5 My compensation, pursuant to my retention agreement, is at my firm's standard hourly
6 rates. Rates currently range from \$90 through \$475 per hour.

8 PRIOR TESTIMONY

9 My prior testimony is set forth in my Curriculum Vita attached to this declaration.

10
11 ~~I declare under the penalty of perjury that the foregoing is true and correct to the best of~~
12 my knowledge. Executed the 8th day of November, 2006 at Los Angeles, California.

13
14 
15 MICHAEL G. KAPLAN, C.F.A.

16
17
18
19
20
21
22
23
24
25

+

California Business Portal



DISCLAIMER: The information displayed here is current as of MAR 07, 2008 and is updated weekly. It is not a complete or certified record of the Corporation.

Corporation		
HOLLYMAX REALTY INC.		
Number: C2313808	Date Filed: 6/4/2001	Status: active
Jurisdiction: California		
Address		
400 S SEPULVEDA BLVD #100		
MANHATTAN BEACH, CA 90266		
Agent for Service of Process		
GINA SMEARER		
400 S SEPULVEDA BLVD #100		
MANHATTAN BEACH, CA 90266		

Blank fields indicate the information is not contained in the computer file.

If the status of the corporation is "Surrender", the agent for service of process is automatically revoked. Please refer to California Corporations Code Section 2114 for information relating to service upon corporations that have surrendered.

California Business Portal



DISCLAIMER: The information displayed here is current as of MAR 07, 2008 and is updated weekly. It is not a complete or certified record of the Corporation.

Corporation		
COMMBROKER, INC.		
Number: C2612469	Date Filed: 5/5/2004	Status: active
Jurisdiction: California		
Address		
400 S SEPULVEDA BLVD STE 100		
MANHATTAN BEACH, CA 90266		
Agent for Service of Process		
GINA SMEARER		
400 S SEPULVEDA BLVD STE 100		
MANHATTAN BEACH, CA 90266		

Blank fields indicate the information is not contained in the computer file

If the status of the corporation is "Surrender", the agent for service of process is automatically revoked. Please refer to California Corporations Code Section 2114 for information relating to service upon corporations that have surrendered.

PROOF OF SERVICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action; my business address is: 660 S. Figueroa Street, 24th Floor, Los Angeles, CA 90017.

On March 12, 2008, I served the following described as: on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

David Sandelands, Esq.
Cislo & Thomas, LLP
4300 Long Beach Blvd., Suite 405
Long Beach, California 90807

- (MAIL) I am readily familiar with the firm's practice of collection and processing correspondence by overnight mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- (BY TELECOPY) I caused such document to be delivered by telecopy transmission to the offices of the addressee at (562) 595-9319
- (BY PERSONAL DELIVERY) I caused such envelope to be delivered by hand to the offices of the addressee.
- (FEDERAL) I declare that I am employed in the offices of a member of this Court at whose direction the service was made.

Executed on March 12, 2008, at Los Angeles, California.