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7 Attorneys for Plaintiff,
8 **ALL CITIES REALTY, INC.**

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 ALL CITIES REALTY, INC.,	)	Case No: SA CV08-195 AHS (MLG)
)	
12 Plaintiff,	)	SECOND AMENDED COMPLAINT
	)	FOR:
13 vs.)	
)	
14 HOLLYMAX REALTY, INC., a California	)	1. FEDERAL TRADEMARK
15 corporation, COMMBROKER, INC. a	)	INFRINGEMENT
)	
16 California corporation; KENNETH G.	)	2. CALIFORNIA TRADEMARK
17 DAVIS, FARZAD ANDY DORRANI,	)	INFRINGEMENT
)	
18 ALLEN JACKSON, ARIANNE KAYS,	)	3. CALIFORNIA COMMON LAW
19 JEANETTTE GURZA-JUNCO, (JULIA)	)	UNFAIR COMPETITION
)	
20 JIAO HONG KULECK, ROB	)	4. VICARIOUS TRADEMARK
21 O’SULLIVAN, SHANNAN O’SULLIVAN,	)	INFRINGEMENT
)	
22 COLETTE STEVENS, SUSAN	)	5. CALIFORNIA STATUTORY
23 WILLIAMS, OMID BENJAMIN	)	UNFAIR COMPETITION
)	
24 ARASTEH, GLEN BEER, MAURICE)	
25 BENITAH, NINA DHILLON, MATTHEW)	
)	
26 FREEDMAN, JACK KHALILI, JIHAN)	
)	
27 KIM, ROBERT MELAMED, GINA)	
)	
28 SAEIDIAN, SIMON SHAHERI, BYRON)	
)	
RIFE, JR., DALE A. ELENIAK, KELLI)	
TODD-AMUNDSON aka KELLI TODD,)	
and DOES 1 through 10, inclusive.)	
)	
Defendants.)	
)	

JURY TRIAL DEMANDED

1 Plaintiff All Cities Realty, Inc. alleges as follows:

2
3 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

4
5 Jurisdiction and Venue

6 1. This action arises under federal trademark laws as well as state unfair
7 competition laws. Subject matter jurisdiction is based upon 28 USC §§1331, 1338,
8 and 1367. Venue is proper in this district under 28 USC §§1391(b) and 1391(c).

9 The Parties

10 2. Plaintiff All Cities Realty, Inc. (“Plaintiff” or “All Cities Realty®” as
11 context requires) is a corporation incorporated under the laws of the State of
12 California with its principal place of business in this judicial district. Plaintiff is the
13 owner of a federally registered service mark for the name “All Cities Realty”
14 registration number 2462619 for the classifications IC 036, US 100 101 102 - goods
15 and services: real estate brokerage and real estate appraisal services. Plaintiff also
16 holds a registered California trademark for the name “All Cities Realty.”

17 3. Defendant Hollymax Realty, Inc. is a corporation incorporated under
18 the laws of the State of California with its principal place of business in this judicial
19 district (“Hollymax”). On information and belief, at all times relevant herein,
20 Hollymax has been one hundred percent owned and controlled by the same
21 ownership group as CF Real Estate Loans, Inc. (aka Re/Max All Cities Realty), a
22 non-party to this action. Although Hollymax and Re/Max All Cities Realty are
23 technically separate corporations, during the time that both Hollymax and Re/Max
24 All Cities Realty engaged in the infringement of Plaintiff’s All Cities Realty®
25 service mark, Hollymax was operated by the same management as Re/Max All
26 Cities Realty for the benefit of the Todd Family. When it became inconvenient to
27 operate Hollymax separately from Re/Max All Cities Realty, the Todd Family folded
28 Hollymax’s agents and the operations of Hollymax, Inc. into the operations of

1 Re/Max All Cities Realty, such that any individuality and separateness no longer
2 exists between the two entities. On information and belief, since the filing of this
3 original complaint, Re/Max All Cities Realty has taken over the operations of
4 Hollymax and is its successor entity.

5 4. Defendant Commbroker, Inc.¹ is a corporation incorporated under the
6 laws of the State of California with its principal place of business in this judicial
7 district (“Commbroker”). On information and belief, at all times relevant herein,
8 Commbroker has been one hundred percent owned and controlled by the same
9 ownership group as CF Real Estate Loans, Inc. (aka Re/Max All Cities Realty), a
10 non-party to this action. Although Commbroker and Re/Max All Cities Realty are
11 technically separate corporations, during the time that both Commbroker and
12 Re/Max All Cities Realty engaged in the infringement of Plaintiff’s All Cities
13 Realty® service mark, Commbroker was operated by the same management as
14 Re/Max All Cities Realty for the benefit of the Todd Family. When it became
15 inconvenient to operate Commbroker separately from Re/Max All Cities Realty, the
16 Todd Family folded Commbroker’s agents and the operations of Commbroker, Inc.
17 into the operations of Re/Max All Cities Realty, such that any individuality and
18 separateness no longer exists between the two entities. On information and belief,
19 since the filing of this original complaint, Re/Max All Cities Realty has taken over
20 the operations of Commbroker and is its successor entity.

21 5. Although Hollymax’s and Commbroker’s operations and agents have
22 now been combined with Re/Max All Cities Realty, the Todd Family has kept the
23 two separate corporate entities, Hollymax and Commbroker, alive but void of agents
24 and ongoing operations. Agents and income have been transferred to Re/Max All
25 Cities Realty, and on information and belief, the Todd family as controlled by Kelli

26 _____
27 ¹ As of the filing of this Second Amended Complaint, Commbroker is in bankruptcy
28 and the action is stayed. The allegations pertaining to Commbroker are for context
only.

1 Todd.

2 6. Defendants Kenneth G. Davis, Farzad Andy Dorrani, Allen Jackson,
3 Arianne Kays, Jeanette Gurza-Junco, (Julia) Jiao Hong Kuleck, Rob O’Sullivan,
4 Shannan O’Sullivan, Colette Stevens, and Susan Williams are individuals, are all
5 holders of real estate licenses by the State of California either as real estate
6 salespersons or real estate brokers, and were affiliated with Defendant Hollymax
7 Realty, Inc. during the periods of time relevant to this action (collectively “the
8 Hollymax Individual Defendants”).

9 7. Defendants Omid Benjamin Arasteh, Glen Beer, Maurice Benitah, Nina
10 Dhillon, Matthew Freedman, Jack Khalili, Jihan Kim, Robert Melamed, Gina
11 Saeidian, and Simon Shaheri are individuals, are all holders of real estate licenses by
12 the State of California either as real estate salespersons or real estate brokers, and
13 were affiliated with Defendant Commbroker, Inc. during the periods of time relevant
14 to this action (collectively “the Commbroker Individual Defendants”).

15 8. Defendants Byron Rife, Jr. and Dale A. Eleniak are real estate brokers
16 licensed in California who have acted as the designated corporate real estate brokers
17 during the infringement time period. During all relevant times, Hollymax and
18 Commbroker operated under the broker licenses of Eleniak (through June 12, 2006),
19 and Rife (thereafter and through the present), per the records of the California
20 Department of Real Estate. Since the allegations herein concern the real estate
21 operations of Hollymax and Commbroker, their brokers of record during the relevant
22 time periods, Eleniak and Rife, are vicariously responsible for the wrongs committed
23 against Plaintiff and are named as defendants on that basis.

24 9. At all relevant times, Defendants Byron Rife, Jr. and Dale A. Eleniak
25 were also the real estate brokers of record (the designated corporate brokers) for
26 Re/Max All Cities Realty which operated under their brokers’ licenses. On
27 information and belief, all of the individually named defendants in this action, as
28 well as all defendants in the State Court action described below, also operated under

1 the brokers' licenses of Rife and/or Eleniak.

2 10. Defendant Kelli Todd-Amundson aka Kelli Todd ("Todd") is an
3 individual who, on information and belief, resides in Los Angeles County.

4 11. Plaintiff is unaware of the true names and capacities, whether
5 individual, corporate, associate, or otherwise of defendants Does 1 through 10 and
6 therefore sues these defendants by their fictitious names. Plaintiff will seek leave to
7 amend this Complaint when the entities of the Doe defendants are known.

8 12. Plaintiff is informed and believes and on that basis alleges, that at all
9 relevant times mentioned in this Complaint, defendants, and each of them, were
10 acting in concert and active participation with each other in committing the wrongful
11 acts alleged herein, and were the agents of each other and were acting within the
12 scope and authority of that agency and within the knowledge, consent and approval
13 of one another.

14 13. Plaintiff is further informed and believes, and based upon such
15 information and belief alleges, that at all times mentioned herein, there existed a
16 unity of interests between Defendant Todd on the one hand, and Hollymax and
17 Commbroker, on the other hand, such that the separate corporate or business
18 identity, if any, of Hollymax and Commbroker should be disregarded, and the
19 corporate entities named as defendants herein should be treated merely as the alter-
20 egos of the individual defendant Todd. Adherence to the fiction of separate
21 existence of Hollymax and Commbroker as entities distinct from the individual
22 defendant Todd, would permit an abuse of the corporate entities, would sanction
23 fraud and injustice in that the individual defendant Todd could evade personal
24 liability for her wrongdoing as alleged in this Second Amended Complaint and could
25 and would continue in the corporate or limited liability company name to perpetuate
26 the illegal plan, scheme and device as alleged in this Complaint.

27 14. Plaintiff is further informed and believes, and upon such information
28 and belief alleges, that the individual defendant Todd failed to respect the separate

1 corporate identity of Defendants Hollymax and Commbroker, as follows:

- 2 a. Defendants Hollymax and Commbroker failed to comply with all
3 pertinent corporate or limited liability company formalities;
- 4 b. Corporate funds belonging to Defendants Hollymax and Commbroker
5 were withdrawn for the personal use of individual defendant Todd,
6 and/or her family members, either directly or indirectly, without treating
7 such withdrawals as salaries or dividends;
- 8 c. The individual defendant Todd guaranteed the debts and obligations of
9 Defendants Hollymax and Commbroker;
- 10 d. The individual defendant Todd commingled her moneys, funds and
11 property with those of Defendants Hollymax and Commbroker, and
12 vice-versa.
- 13 e. Defendants Hollymax and Commbroker along with CF Real Estate
14 Loans and Defendant Todd share the same attorneys, accountants,
15 management, and offices;
- 16 f. The individual Defendant Todd refers to Hollymax, Commbroker, and
17 CF Real Estate Loans, Inc. aka Re/Max All Cities Realty as her “family
18 business”;
- 19 g. The individual defendant Todd at all times herein mentioned,
20 completely controlled, dominated, managed and operated Defendants
21 Hollymax and Commbroker; and
- 22 h. Defendants Hollymax and Commbroker are, and at all times mentioned
23 herein were, a mere shell, instrumentality and conduit, without adequate
24 capital through which the individual defendant Todd carried on her
25 personal business through her corporate names.
- 26 i. On information and belief, Kelli Todd is the sole shareholder and
27 controls all important business decisions of Hollymax, Commbroker
28 and CF.

1 Relevant Procedural and Factual History

2 15. All Cities Realty® is engaged in the business of real estate, acting as a
3 corporate real estate broker licensed in the State of California. All Cities Realty®
4 has done business in most southern California counties including Los Angeles,
5 Orange, San Bernardino, Riverside, and San Diego.

6 16. Commencing in or about 1997, All Cities Realty® had a superior
7 presence on the Internet and was one of the pioneers in Internet real estate
8 marketing. Through its own proprietary ingenuity, it was able to maintain prime
9 positions on search engines results, making its web site one of the first places that
10 real estate consumers would visit when conducting real estate searches.

11 17. Over the years, the Internet grew exponentially with respect to the real
12 estate consumer and, on information and belief, almost all real estate consumers now
13 use the Internet for: locating their prospective, real estate agents and brokers, real
14 estate purchases, and making decisions regarding these purchases.

15 18. In or about late 2002, a company called CF Real Estate Loans, Inc., a
16 California corporate real estate broker licensee and direct competitor of Plaintiff All
17 Cities Realty, also began doing business as All Cities Realty. CF Real Estate Loans,
18 Inc. was a Re/Max International franchisee, and on information and belief, is still a
19 Re/Max International franchisee. According to the public records of the California
20 Department of Real Estate, CF Real Estate Loans, Inc. has filed many fictitious
21 name statements including for “Re/Max All Cities Realty.” CF Real Estate Loans,
22 Inc.’s own website states that Re/Max All Cities Realty was chosen as the adopted
23 “umbrella name” for all arterial companies/dba (owned by CF) including the
24 Defendant Companies. The dba “Re/Max All Cities Realty” was allowed to expire
25 on November 12, 2007 and to Plaintiff’s knowledge has not been renewed. A copy
26 of the DRE webpage containing this information is attached hereto as Exhibit 1.

27 19. All Cities Realty® and the Re/Max All Cities Realty website, which in
28 reality is operated by, and consists of three separate corporations, Hollymax,

1 Commbroker, CF, are in identical businesses, offering the same or similar products,
2 competitors for the same real estate consumers in the same geographic markets and
3 both make significant use of Internet marketing.

4 20. Commencing in about 2003, CF Real Estate Loans, Inc. (dba Re/Max
5 All Cities Realty) began extensive marketing campaigns both in the print media and
6 on the Internet using the names “All Cities Realty” and “Re/Max All Cities Realty.”
7 With regard to the Internet, CF Real Estate Loans, Inc. on information and belief,
8 with the knowledge and participation, and under the authority of Kelli Todd, and the
9 responsible managing parties and brokers of record of both Hollymax, Commbroker
10 (Dale Eleniak and Byron Rife), created hundreds of websites using the name “All
11 Cities Realty” and thousands of sub-pages on these websites using the “All Cities
12 Realty” trade name. This had the effect of diluting All Cities Realty’s® trade name
13 and web presence. As alleged below, in or about 2005, both Hollymax and
14 Commbroker joined in those marketing efforts, promoting their businesses on the
15 internet (and other media as well) under the name “Re/Max All Cities Realty” or
16 simply just as “All Cities Realty”.

17 21. On information and belief this “new” Re/Max All Cities Realty named
18 website was displayed using the domain name www.realestatelosangeles.com. This
19 website was the marquee “all inclusive” website for Kelli Todd’s personally owned
20 multiple real estate Corporations, including CF, Hollymax and Commbroker. In mid
21 2005, this website was re-designed and the decision was made to more
22 conspicuously display the new umbrella name Re/Max All Cities Realty for all of
23 Todd’s Corporations (Hollymax, Commbroker and CF Real Estate Loans, Inc.) even
24 though Kelli Todd, Dale Eleniak and other Corporation’s management had been
25 warned in advance, both orally and in writing, by Plaintiff not to use the All Cities
26 Realty® Federal Trademark.

27 22. Hollymax, according to Plaintiff’s information, had NO other corporate
28 website. Hollymax advertised, made use of, and prominently displayed the All Cities

1 Realty Federal Trademark for all its real estate agents and real estate listings on the
2 website. The agents and listings were listed as belonging to Re/Max All Cities
3 Realty (when they were in fact Hollymax agents and listings with no DBA, business
4 license for the name, real estate license for the name to sell as Re/Max All Cities
5 Realty – no license to use the “All Cities Realty” name whatsoever) causing public
6 and consumer confusion. Hollymax controlled its portion of the website in the
7 manner described in more detail herein.

8 23. On information and belief the listed Hollymax Defendant agents used
9 the “backend” or “non-public” area of the Re/Max All Cities Realty website to
10 directly contribute and personally perform daily/weekly functions needed to
11 maintain the publicly visible Re/Max All Cities Realty website personally
12 participating in maintaining the website with ongoing content and design - including:
13 (1) placing new real estate listings on the website, (2) uploading photos for these real
14 estate listings, (3) describing and entering the data that would display on the Internet
15 regarding the real estate listings, (4) controlling the listings making listings active or
16 inactive, and (5) personally updating bios, contact information, email addresses and
17 personal photos. Additionally the Hollymax Defendant agents were able to download
18 corporate information, read corporate memorandums, and were made aware of
19 corporate news and legal issues. The agents were aware and personally participated
20 in helping to craft and maintain the Hollymax website containing the Re/Max All
21 Cities Realty designations, promotions, and advertisements. On information and
22 belief the Defendant agents used the website, print media, signs, business cards,
23 contractual documents to third parties, and in other situations unknown to the
24 Plaintiff at this time, globally, internationally, interstate and intrastate, violating state
25 and federal laws in support of Plaintiff’s rights and protections.

26 24. Commbroker, according to Plaintiff’s information, did have a separate
27 corporate website displaying its agents and listings. Yet, this Corporation also
28 integrated its agents and its listings into the Re/Max All Cities Realty website via a

1 joint decision made by the management teams of Commbroker and CF Real Estate
2 Loans, Inc., including, on information and belief, Kelli Todd, Dale Eleniak, and
3 Byron Rife. Commbroker advertised, made use of, and prominently displayed the
4 All Cities Realty Federal Trademark, for all its real estate agents and real estate
5 listings that were displayed on the website that it shared with Re/Max All Cities
6 Realty. The agents and listings were listed as belonging to Re/Max All Cities Realty
7 (when they were in fact Commbroker agents and listings with no DBA, business
8 license for the name, real estate license for the name to sell as Re/Max All Cities
9 Realty – no license to use the “All Cities Realty” name whatsoever) causing public
10 and consumer confusion.

11 25. On information and belief the listed Commbroker Defendant agents
12 used the “backend” or “non-public” area of the Re/Max All Cities Realty website to
13 directly contribute and personally perform daily/weekly functions needed to
14 maintain the publicly visible Re/Max All Cities Realty website personally
15 participating in maintaining the website with ongoing content and design - including:
16 (1) placing new real estate listings on the website, (2) uploading photos for these real
17 estate listings, (3) describing and entering the data that would display on the Internet
18 regarding the real estate listings, (4) controlling the listings making listings active or
19 inactive, and (5) personally updating bios, contact information, email addresses and
20 personal photos. Additionally the Commbroker Defendant agents were able to
21 download corporate information, read corporate memorandums, and were made
22 aware of corporate news and legal issues. The agents were aware and personally
23 participated in helping to craft and maintain the Commbroker websites containing
24 the Re/Max All Cities Realty designations, promotions, and advertisements. On
25 information and belief the Defendant agents used the website, print media, signs,
26 business cards, contractual documents to third parties, and in other situations
27 unknown to the Plaintiff at this time, globally, internationally, interstate and
28 intrastate, violating state and federal laws in support of Plaintiff’s rights and

1 protections.

2 26. The management teams of Defendants Hollymax and Commbroker
3 were aware, in advance, of Plaintiff's registered trademark. Defendants Hollymax
4 and Commbroker, by and through their officers and directors, including Defendants
5 Kelli Todd, Dale Eleniak, and Byron Rife, began using Plaintiff's trademark in the
6 marketing and operation of the business. Specifically, Defendants Hollymax and
7 Commbroker advertised their listings and their agents and solicited the public for
8 business using the name "All Cities Realty" and/or Re/Max All Cities Realty. They
9 engaged in this conduct in a variety of methods including placing Plaintiff's "All
10 Cities Realty" name significantly on these websites, which generated 1,000s of web
11 pages with the All Cities Realty Federal Trademark prominently displayed and
12 embedded in the website. Thousands of other websites, such as Real Estate oriented
13 sites, internet directories, online telephone directories, were linked to these pages
14 and the website using the embedded phrase "All Cities Realty." They also used
15 Plaintiff's "All Cities Realty" name in their "SEO" or Search Engine Optimization
16 methods so that search engines would index that name and direct internet users to
17 Defendants' websites rather than Plaintiff's website. Defendants advertised on the
18 internet using Plaintiff's "All Cities Realty" name, advertised significantly in
19 periodicals and print media using Plaintiff's "All Cities Realty" name, and other
20 methods unknown to Plaintiff at this time. By engaging in this activity and other
21 real estate sales activity not known to Plaintiff at this time, each named Defendant
22 herein used Plaintiff's registered service mark in commerce, causing consumer
23 confusion, and derived revenue from that use. The bottom line is that each named
24 Defendant herein was operating a real estate business using and knowingly
25 benefitted from Plaintiff's registered service mark.

26 27. On information and belief the Defendant agents also knowingly,
27 willingly and personally participated in this scheme by using business cards bearing
28 the All Cities Realty trademark, by creating personal websites bearing the All Cities

1 Realty trademark, by creating business multi page websites displaying the All Cities
2 Realty trademark, by creating and distributing print media bearing the All Cities
3 Realty trademark and listing themselves on Internet based websites and directories
4 improperly advertising and using the All Cities Realty® Federal Trademark;
5 nationally and globally causing the Plaintiff great damage and harm.

6 28. As previously alleged, the Defendant agents also had their own
7 integrated personal biography page with photographs and, email, and other contact
8 information appearing under the All Cities Realty® trademark as if they were agents
9 of Re/Max All Cities Realty. The Defendant agents knowingly conducted business
10 as Re/Max All Cities Realty and/or knew that the companies they worked for,
11 namely Hollymax and Commbroker, conducted business as Re/Max All Cities
12 Realty.

13 29. Additionally, the Defendant agents used Plaintiff's "All Cities Realty"
14 name in the conduct of real estate activity that required a California real estate
15 license, including, but not limited to advertising (via the websites, internet, and print
16 media as alleged herein) as agents of others to engage in the purchase, sale and rental
17 of real estate representing others, and the solicitation of business for that purpose.
18 The Defendant agents acted under the management, direction and control of
19 Defendants Kelli Todd, Dale Eleniak, and Byron Rife. Only with active brokers
20 licenses, using either Eleniak or Rife as the brokers of record, did the Defendant
21 Corporations and agents have the authority and ability to bind real estate license
22 related contractual obligations such as listing real estate for sale acting as an agent of
23 the seller, or acting as an agent in a real estate transaction, as the agent for the buyer,
24 as a state licensed real estate agent of Re/Max All Cities Realty, through Hollymax
25 and/or Commbroker as the corporate entities.

26 30. Because the Defendant corporations and agents named herein each had
27 their own page on the Re/Max All Cities Realty website located on the Internet using
28 the www.realestatelosangeles.com domain name, it appeared to the consumer and

1 general public as if they were all part of Re/Max All Cities Realty – on information
2 and belief this was Kelli Todd’s intent when ultimately choosing the umbrella name
3 All Cities Realty and often displayed her “sales data” in annual “who’s the biggest”
4 contests as one single entity. All Corporate Defendants, including Hollymax and
5 Commbroker, and all agent Defendants were using All Cities Realty’s federal
6 trademark without Plaintiff’s prior knowledge or permission.

7 31. Knowing that All Cities Realty, Inc. was protected by its Federal
8 Trademark, Kelli Todd, Dale Eleniak, and Byron Rife knowingly and willfully
9 permitted and actively encouraged Hollymax, Commbroker and all named agents to
10 make use of the All Cities Realty® registered Federal Trademark causing significant
11 damage to All Cities Realty, Inc. Each of these three individuals had the ability to
12 prevent these damages by stopping or preventing the use of the name and registered
13 mark, but made the willful decision to continue with the infringing activity.

14 32. Stewart Hoffman was the IT Director for Re/Max All Cities Realty. On
15 information and belief, he also performed services for Defendants Hollymax and
16 Commbroker and their agents. As part of his job duties, acting under express
17 authority from the management of Defendants Hollymax and Commbroker, namely
18 Kelli Todd and others in authority (whose identities are not known to Plaintiff at this
19 time), Hoffman, designed, programmed, constructed and participated in maintaining
20 the separate web pages for Defendants Hollymax and Commbroker and each of the
21 individual agents named as defendants herein using Plaintiff’s “All Cities Realty”
22 name and/or the “Re/Max All Cities Realty” name. On information and belief, he
23 directed subordinates in these duties as well. As alleged above, Hollymax and
24 Commbroker, and the defendant agents used these websites to promote their
25 personal business activities using Plaintiff’s name in violation of Plaintiff’s federal
26 and state trademark rights.

27 33. The business and marketing activities of Hollymax, Commbroker, and
28 the Defendant individual agents caused actual confusion with the real estate

1 consumers who believed that Re/Max All Cities Realty and All Cities Realty® were
2 either affiliated or were the same company. In addition, when All Cities Realty®
3 and Re/Max All Cities Realty appeared side by side on hundreds of Internet search
4 result pages, it created a great likelihood of consumer confusion even if actual
5 confusion did not always occur.

6 34. All Cities Realty® is the owner of the web address (domain name)
7 “allcitiesrealty.com.” Prior to the outset of its use of the All Cities Realty® name,
8 the management team of Hollymax and Commbroker (who was also the
9 management team of Re/Max All Cities Realty) checked the availability of the name
10 “All Cities Realty” on the web and found that the dominant web address,
11 “allcitiesrealty.com” had been taken. They visited Plaintiff’s “allcitiesrealty.com”
12 web site and learned that Plaintiff had a federal service mark for the All Cities
13 Realty® name. Nevertheless, with that advance knowledge, CF Real Estate Loans,
14 Inc. began doing business as Re/Max All Cities Realty as alleged herein and even
15 went as far to secure use of the Internet domain name www.allcitiesrealty.net. Later,
16 with the same advance knowledge and direct warnings from Plaintiff not to use the
17 service mark, Hollymax and Commbroker commenced doing business using
18 Plaintiff’s “All Cities Realty” name.

19 35. Based upon this and other conduct, All Cities Realty, Inc. first filed a
20 lawsuit against CF Real Estate Loans, Inc. in this court, Case No. CV 05-0615 AHS
21 (“All Cities Realty® v. Re/Max All Cities Realty action”). The All Cities Realty®
22 v. Re/Max All Cities Realty action is still pending.

23 36. During the proceedings in the All Cities Realty® v. Re/Max All Cities
24 Realty action, Re/Max All Cities Realty disclaimed responsibility for its real estate
25 agents’ conduct in the use and marketing of the All Cities Realty® name (indicating
26 “Agents” were sole proprietors - i.e. the agents were responsible for their own
27 actions). Based upon this “verified” position, All Cities Realty® filed a second
28 lawsuit against the disclaimed agents in California State Court, Case No. BC 355724

1 (“the State Court action”) who had operated under the All Cities Realty® name.
2 When Re/Max All Cities Realty learned of the State Court action, it sought to
3 intervene in the State Court action and was allowed to do so. Re/Max All Cities
4 Realty then sought a stay of the State Court action. During the “stay” proceedings,
5 Re/Max All Cities Realty reversed its position and stated under penalty of perjury
6 that it would defend and indemnify any named agent that requested it. However,
7 Re/Max All Cities Realty never provided any proof to the State Court that it had the
8 financial wherewithal to honor its commitment to the agents, even to the extent that
9 it could pay the first appearance fee on behalf of the agents, an amount in excess of
10 \$600,000. Without being able to pay the first appearance fee, Re/Max All Cities
11 Realty could not honor its stated commitment to defend the defendant agents in the
12 State Court action, and certainly, based upon that assumption, could not honor its
13 stated promise to indemnify them. On that basis, Re/Max All Cities Realty’s
14 representations to its agents and the court were fraudulent.

15 37. In the State Court action, the court granted Re/Max All Cities Realty’s
16 petition for a stay and currently the State Court action is stayed pending the outcome
17 of the All Cities Realty® v. Re/Max All Cities Realty action.

18 Current Trademark Violations and Unfair Competition

19 38. According to the public records of the California Department of Real
20 Estate, Hollymax has filed fictitious name statements to duly obtain and maintain
21 real estate licenses, but never obtained or was granted a real estate license under the
22 “Re/Max All Cities Realty” or “All Cities Realty” names. A copy of the DRE
23 webpage containing this information is attached hereto as Exhibit 2.

24 39. According to the public records of the California Department of Real
25 Estate, Commbroker has filed fictitious name statements to duly obtain and maintain
26 real estate licenses, but never obtained or was granted a real estate license under the
27 “Re/Max All Cities Realty” or “All Cities Realty” names. A copy of the DRE
28 webpage containing this information is attached hereto as Exhibit 3.

1 40. On information and belief, from about the middle of 2005 through the
2 date that this complaint was originally filed and thereafter, Hollymax and
3 Commbroker were listed simply as “offices” of Re/Max All Cities Realty on the
4 Re/Max All Cities Realty website when in fact they were separate California
5 Corporations. Their true separate corporate identities were “hidden” from Plaintiff,
6 (and the consumer) who did not discover their separate existence until shortly before
7 this lawsuit was filed. All Defendant agents named herein worked for Hollymax
8 and/or Commbroker and had no rights to use the Federal Trademark All Cities
9 Realty® nor did they have licenses, or fictitious name statements to use Re/Max All
10 Cities Realty. The display of these entities and individuals on the Re/Max All Cities
11 Realty website was confusing, fraudulent and in violation of All Cities Realty’s
12 federal service mark.

13 41. At or shortly prior to the time that Hollymax and Commbroker first
14 appeared as offices on the Re/Max All Cities Realty website, their management was
15 aware of Plaintiff’s claims of infringement and made the conscious decision to
16 conduct real estate business using the “All Cities Realty” name under the moniker of
17 “Re/Max All Cities Realty”. As alleged above, the management teams of Hollymax
18 and Commbroker were the same people responsible for managing CF Real Estate
19 Loans, Inc., aka Re/Max All Cities Realty, and were managed, dominated, and
20 controlled by Defendant Kelli Todd.

21 42. On information and belief, each real estate agent who worked with
22 Hollymax and Commbroker conducted business using the “All Cities Realty” name,
23 which is a trademark owned by Plaintiff. Hollymax and Commbroker also
24 conducted business using the “All Cities Realty” name with no Re/Max housemark.
25 On information and belief, many (if not all) of the Defendant agents and brokers who
26 worked with Re/Max All Cities Realty were informed and notified of the Trademark
27 Lawsuit and then made the conscious decision to continue to use the Trademark All
28 Cities Realty® in violation of Plaintiff’s rights.

1 43. At all times relevant to this action, on information and belief, each of
2 Defendant's webpages intentionally prominently displayed the name "All Cities
3 Realty" and the name "Re/Max All Cities Realty" which was in violation of
4 Plaintiff's All Cities Realty® service mark. As alleged above, the activities of
5 Hollymax, and Commbroker have created not only a likelihood of confusion
6 between the names All Cities Realty® and Re/Max All Cities Realty, but actual
7 confusion between those names. Images on the Re/Max All Cities Realty website
8 were named "allcitiesrealty" which were picked up by search engines such as
9 Google, further exacerbating this confusion issue.

10 44. Attached hereto as Exhibit 4 is one of the web pages from CF Real
11 Estate Loans' website for Hollymax. When comparing the mailing address listed on
12 Ex. 4 to the address listed on Ex. 2 (the DRE webpage), they are the same address.
13 As such, Hollymax is being marketed using the All Cities Realty® name in violation
14 of Plaintiff's federal and state trademark rights, and in violation of California law
15 governing the conduct and operation of real estate brokerage businesses. On
16 information and belief, Hollymax's business plans included internet marketing under
17 the name Re/Max All Cities Realty and knowingly used the offending websites to
18 further that purpose.

19 45. The Hollymax Individual Defendants are currently, or during the
20 relevant time period have been, listed as All Cities Realty agents in violation of
21 Plaintiff's federal and state trademark rights and California law governing the
22 conduct and operation of real estate brokerage businesses. On information and
23 belief, the Hollymax Individual Defendants have performed real estate services in
24 violation of said trademark rights and California real estate law by engaging in the
25 advertising, purchase and sale of real estate, acting as, or soliciting to be agents
26 representing others in the offering, representation, and the solicitation to the general
27 public for the purchase, rental, and sale of real estate. Attached hereto collectively
28 as Exhibit 5 are printouts from the Re/Max All Cities Realty web pages showing the

1 Hollymax Individual Defendants presence therein, and with some of the DRE public
2 information showing the Hollymax Individual Defendants' affiliation with
3 Hollymax.

4 46. Attached hereto as Exhibit 6 is one of the web pages from CF Real
5 Estate Loans' website for Commbroker. When comparing the mailing address listed
6 on Ex. 6 to the address listed on Ex. 3 (the DRE webpage), they are the same
7 address. As such, Commbroker is being marketed under the All Cities Realty®
8 name in violation of Plaintiff's federal and state trademark rights, and in violation of
9 California law governing the conduct and operation of real estate brokerage
10 businesses. On information and belief, Commbroker's business plans included
11 internet marketing under the name Re/Max All Cities Realty and knowingly used the
12 offending websites to further that purpose with express approval of Defendant
13 management and Defendant agents.

14 47. All Defendants named herein, during the relevant time periods, have
15 used Plaintiff's service marks in their global internet advertising, print media
16 advertising, signage, other promotional activities, and in the actual conduct of real
17 estate business whether internationally, interstate or intrastate.

18 48. The Commbroker Individual Defendants are currently, or during the
19 relevant time period have been, listed as All Cities Realty agents in violation of
20 Plaintiff's federal and state trademark rights and California law governing the
21 conduct and operation of real estate brokerage businesses. On information and
22 belief, the Commbroker Individual Defendants have performed real estate services in
23 violation of said trademark rights and California real estate law by engaging in the
24 purchase and sale of real estate, acting as, or soliciting to be agents representing
25 others in the offering, representation, and the solicitation to the general public for the
26 purchase, rental and sale of real estate.. Attached hereto collectively as Exhibit 7 are
27 printouts from the Re/Max All Cities Realty web pages showing the Commbroker
28 Individual Defendants presence therein, and with some of the DRE public

1 information showing the Commbroker Individual Defendants affiliation with
2 Commbroker.

3 49. As a summary of the above, attached hereto as Exhibit 8 is a flow chart
4 that depicts the relationship of the named defendants as it relates to the violation of
5 Plaintiff's All Cities Realty® service mark.

6 **FIRST CLAIM FOR RELIEF**

7 (Federal Trademark Infringement)

8 50. Each and every allegation in paragraphs 1 to 49 is incorporated by
9 reference as though fully set forth herein.

10 51. All Cities Realty® currently uses it service mark in interstate commerce
11 in promotion of its business and has done so at all times relevant to this action.

12 52. All Cities Realty® has not given any of the named defendants
13 permission to use in any way its registered service mark All Cities Realty®.

14 53. Defendants' activities, by using Plaintiff's service marks in their
15 internet advertising, print media advertising, signage, other promotional activities,
16 and actual conduct of real estate business, as alleged above constitute trademark
17 infringement in violation of 15 USC §§1114 and 1125(a).

18 54. Defendants' activities have caused actual confusion, deception, and
19 mistake among the consuming public as to the true identity of Plaintiff's real estate
20 brokerage services to the injury of Plaintiff. Alternatively, Defendants' activities are
21 likely to have caused actual confusion, deception, and mistake among the consuming
22 public as to the true identity of Plaintiff's real estate brokerage services to the injury
23 of Plaintiff.

24 55. Plaintiff has no adequate remedy at law for the above actions of
25 Defendants.

26 56. Unless Defendants are restrained by this Court from continuing their
27 unlawful infringement of Plaintiff's All Cities Realty® service mark, these injuries
28 will continue to occur.

1 57. Plaintiff is therefore entitled to injunctive relief restraining and
2 enjoining Defendants, their agents, servants, employees and all persons or entities
3 acting in concert with them, from using Plaintiff's All Cities Realty® service mark
4 in any form, including, but not limited to "All Cities Realty," "Re/Max All Cities
5 Realty," or "Re/Max All Cities" in the conduct or promotion of their business.

6 58. Defendants have consciously, willfully and deliberately infringed upon
7 the service mark of Plaintiff and accordingly, Plaintiff is entitled to recover all
8 damages sustained as a result of Defendants' unlawful conduct, including treble
9 damages, the costs of suit, and attorneys' fees as provided by applicable statute and
10 law, including 15 USC §§1117, and 1125(c)(2).

11 **SECOND CLAIM FOR RELIEF**

12 (California Trademark Infringement)

13 59. Each and every allegation in paragraphs 1 to 49, and 51 to 58 is
14 incorporated by reference as though fully set forth herein.

15 60. Defendants have willfully, knowingly, and deliberately infringed upon
16 the service mark of Plaintiff and accordingly, Plaintiff is entitled to recover all
17 damages sustained as a result of Defendants' unlawful conduct as provided under
18 applicable California state law.

19 **THIRD CLAIM FOR RELIEF**

20 (California Common Law Unfair Competition)

21 61. Each and every allegation in paragraphs 1 to 49, and 51 to 58 is
22 incorporated by reference as though fully set forth herein.

23 62. By reason of the foregoing, Defendants have been, and are engaged in
24 acts of unfair competition in violation of the common law of California.

25 63. By said conduct, Defendants have been, and are exploiting Plaintiff's
26 reputation and goodwill in the marketplace for Defendants' own commercial gain.

27 64. As a result of Defendants' conduct, Plaintiff has been damaged in a sum
28 not yet ascertained but exceeding \$75,000.

1 agents made the decision to conduct their business under Plaintiff's "All Cities
2 Realty" name, and therefore exercised control over Plaintiff's service mark because,
3 on information and belief, the individually named defendants in fact used Plaintiff's
4 service mark in the conduct of their real estate business activities under the
5 "authority" of Hollymax and Commbroker without Plaintiff's prior knowledge,
6 permission, or control.

7 69. Defendants Eleniak and Rife were/are the brokers of record for
8 Defendants Hollymax and Commbroker. As brokers of record, they are responsible
9 for the trade names under which Defendants Hollymax and Commbroker do
10 business. In fact, they are required to be officers of the companies and in that
11 capacity execute applications with the California Department of Real Estate for
12 permission to use the trade names under which Defendants Hollymax and
13 Commbroker do business. Without the signatures of Eleniak and/or Rife on the
14 required Department of Real Estate forms and applications, Defendants Hollymax
15 and Commbroker could not legally do business under a different trade name, i.e.,
16 "All Cities Realty" or "Re/Max All Cities Realty." On information and belief, at
17 various times, both Defendants Eleniak and Rife executed such documents on behalf
18 of Defendants Hollymax and Commbroker that sought to use Plaintiff's registered
19 service mark; and/or they knowingly allowed Hollymax and Commbroker, in direct
20 violation of California Real Estate Laws, to use the Re/Max All Cities Realty
21 naming scheme (so that Kelli Todd could use her coveted umbrella name), by
22 advertising, or allowing these three separate corporations to use a single name which
23 Hollymax and Commbroker were not licensed to use. Eleniak and Rife either filed
24 the proper documents for licensure for Hollymax and Commbroker to use Plaintiff's
25 name and were rejected but used the name illegally anyway; or they never attempted
26 to license the name for Hollymax and Commbroker and simply used it illegally. The
27 end result was that both Hollmax and Commbroker both used the name illegally in
28 two ways; in the respect of California Real Estate law by operating and advertising

1 using a fictitious name without a valid real estate license and/or business license for
2 that name (All Cities Realty) while concurrently infringing on Plaintiff's Trademark
3 rights.

4 70. Eleniak and Rife were responsible for, and on information and belief,
5 did supervise all of the real estate sales activities that required a California real estate
6 license conducted by Defendants Hollymax and Commbroker and their real estate
7 agents while using Plaintiff's registered "All Cities Realty" name. Among other
8 things, those activities included, but were not limited to, advertising for the purchase
9 or sale of real estate acting as the agent for a principal, executing listing agreements,
10 and providing advice as an agent in a transaction. As the brokers of record, Eleniak
11 and Rife had control of the decision of what name to use for the conduct of
12 Defendants Hollymax's and Commbroker's real estate business because only they,
13 as brokers of record, could legally execute the forms required by the California
14 Department of Real Estate for the purpose of obtaining the Corporate real estate
15 license. Just as any real estate broker or broker of record chooses to follow a law or
16 knowingly break a law, both Eleniak and Rife had the choice and absolute power, as
17 Brokers of Record, to ultimately prevent Hollymax, Commbroker or CF Real Estate
18 Loans, Inc. to the use or advertise the trademarked name ALL CITIES REALTY. As
19 brokers of record, according to California law they have ultimate responsibility and
20 authority for such decisions.

21 71. If Kelli Todd insisted using Plaintiff's registered trademark, Defendants
22 Eleniak and Rife could have refused to abide by Todd's demand or decision.
23 Ultimately the current Broker of Record could have invalidated all the Corporation's
24 broker licenses, or reported these violation issues to the Department of Real Estate.
25 Kelli Todd, as the CEO and sole stockholder, did not have the power to force either
26 Eleniak or Rife, as the designated corporate broker, to violate California Real Estate
27 Law; these actions were willful decisions by each individual who knew in advance
28 the name was Trademarked AND there was a pending lawsuit. These individuals

1 were not only responsible to the State of California, and abiding by State and Federal
2 laws, but to the 700 agents who worked under their licenses and looked to them for
3 guidance.

4 72. In addition, as to Defendant Rife only, on information and belief, he
5 engaged in direct real estate sales activity acting as a licensed agent in real estate
6 transactions using the “All Cities Realty” and/or “Re/Max All Cities Realty” names.

7 73. Defendants Hollymax, Commbroker, and the individually named
8 defendants herein are jointly and severally responsible for the infringement of CF
9 Real Estate Loans, Inc., upon Plaintiff’s service mark.

10 74. Defendants’ activities have caused actual confusion, deception, and
11 mistake among the consuming public as to the true identity of Plaintiff’s real estate
12 brokerage services to the injury of Plaintiff. Alternatively, Defendants’ activities are
13 likely to have caused actual confusion, deception, and mistake among the consuming
14 public as to the true identity of Plaintiff’s real estate brokerage services to the injury
15 of Plaintiff.

16 75. Plaintiff has no adequate remedy at law for the above actions of
17 Defendants.

18 76. Unless Defendants are restrained by this Court from continuing their
19 unlawful infringement of Plaintiff’s All Cities Realty® service mark, these injuries
20 will continue to occur.

21 77. Plaintiff is therefore entitled to injunctive relief restraining and
22 enjoining Defendants, their agents, servants, employees and all persons or entities
23 acting in concert with them, from using Plaintiff’s All Cities Realty® service mark
24 in any form, including, but not limited to “All Cities Realty,” “Re/Max All Cities
25 Realty,” or “Re/Max All Cities” in the conduct or promotion of their business.

26 78. Defendants have willfully and deliberately infringed upon the service
27 mark of Plaintiff and accordingly, Plaintiff is entitled to recover all damages
28 sustained as a result of Defendants’ unlawful conduct, including treble damages, the

1 costs of suit, and attorneys' fees as provided by applicable statute and law, including
2 15 USC §§1117, and 1125(c)(2).

3 **FIFTH CLAIM FOR RELIEF**

4 (California Statutory Unfair Competition)

5 79. Each and every allegation in paragraphs 1 to 49, 51 to 58, and 67 to 76,
6 are incorporated by reference as though fully set forth herein.

7 80. Defendants have been engaged in the unlawful, unfair, and fraudulent
8 business practices in the conduct and operation of their real estate businesses, in
9 violation of California Business & Professions Code §§17200 et seq. Such unfair
10 competition includes, but is not limited to false, misleading, and deceptive
11 advertising.

12 81. In addition to the injunctive relief sought herein, Plaintiff is entitled to
13 receive an award of Defendants' unjust profits arising from the use by Plaintiff's
14 registered trade name.

15 **PRAYER FOR RELIEF**

16
17 Plaintiff ALL CITIES REALTY, INC., prays for judgment against
18 Defendants, and each of them, as follows:

19 1. Damages in an amount according to proof, but no less than \$350,000.00
20 per individual defendant, and no less than \$5,000,000 per corporate defendant, with
21 Kelli Todd being jointly and severally responsible for all damages as the alter ego of
22 the corporate defendants;

23 2. A permanent injunction enjoining Defendants, and each of them, and all
24 those acting in concert or participation with Defendants, to refrain from using the
25 service mark All Cities Realty®, or any colorable variation thereof, in connection
26 with services as a real estate agent and other real estate services;

27 3. A disgorgement of profits in an amount according to proof, but no less
28 than \$350,000.00 per individual defendant, and no less than \$5,000,000 per

1 corporate defendant, with Kelli Todd being jointly and severally responsible for all
2 damages as the alter ego of the corporate defendants;

3 4. Costs of suit herein and

4 5. Such other and further relief as the court deems just in proper.

5
6 **PLAINTIFF DEMANDS A TRIAL BY JURY OF THIS ACTION.**

7
8 Dated: October 30, 2009

LAW OFFICES OF JEFFREY F. SAX

9
10
11 By: 

12 Jeffrey F. Sax, Attorneys for Plaintiff
13 All Cities Realty, Inc.
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