

1 **LAW OFFICES OF JEFFREY F. SAX**
2 Jeffrey F. Sax (SBN: 109902)
3 333 South Hope Street, 36th Floor
4 Los Angeles, CA 90071
5 Telephone: (213) 217-5480
6 Facsimile: (213) 217-5490

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

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OF ORIGINAL FILED
Los Angeles Superior Court

SEP 18 2006

John A. Clarke, Executive Officer/Clerk
By _____, Deputy

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES**
11 **UNLIMITED JURISDICTION**

12 ALL CITIES REALTY, INC.,

13 Plaintiff,

14 vs.

15 Mark Aandrues through Carla Zeoli, etc., et
16 al.

17 Defendants.

) Case No: BC 355724

) **SUPPLEMENTAL DECLARATIONS IN**
) **OPPOSITION TO MOTION TO STAY**
) **ACTION**

) DATE: September 26, 2006

) TIME: 8:30 a.m.

) DEPT: 39

18
19 Intervenor CF Real Estate Loans, Inc. (dba Re/Max All Cities Realty) reply papers
20 contain numerous new facts. Buried within those new facts are significant falsehoods and
21 misleading statements. Plaintiff All Cities Realty, Inc. cannot let them go unchallenged,
22 especially since Re/Max All Cities Realty has no right to introduce new evidence in the
23 reply brief. Accordingly, the supplemental declarations of Joseph Miner, Lillian Dunlop,
24 and Charles Branham, together with supporting exhibits, are submitted in opposition and
25 filed well in advance of the hearing.

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SUPPLEMENTAL DECLARATION OF JOSEPH MINER

I, Joseph Miner, declare and state as follows:

1. I am the President of Plaintiff All Cities Realty, Inc.

2. The matters stated in this declaration are of my personal knowledge and if called as a witness, I could competently testify thereto.

3. I make this supplemental declaration to rebut the false and misleading statements tendered by Intervenor Re/Max All Cities Realty against All Cities Realty in their briefs.

4. Kelli Todd-Amundson, the President of Re/Max All Cities Realty, has submitted two declarations in support of the motion to stay. Since they are related, I must address them both.

Kelli Todd-Amundson has Presented Inconsistent Information Regarding the Number of Agents at Re/Max All Cities Realty

5. In ¶4 of her August 3, 2006 declaration, she testifies that Re/Max All Cities Realty has "about 481 agents under contract." Actually, per Re/Max All Cities Realty's website, which I accessed on September 8, 2006, Re/Max All Cities Realty has 700 agents ("APPROACHING 700 AGENTS"). A copy of this web page is attached as Exhibit 1.

6. Exacerbating this inconsistency, is Exhibit C to Re/Max All Cities Realty's amended reply papers which is an email from Kelli Todd-Amundson dated August 3, 2006 (the same day that she signed her declaration) where she states there are 572 agents!

7. Whatever number this moving target settles on, and ignoring that the principal Re/Max All Cities Realty officer has made inconsistent statements under penalty of perjury, it is clear that the majority of named defendants have not agreed to allow Re/Max All Cities Realty to defend or indemnify them from All Cities Realty's claims. Per Holly Thomas' declaration, 420 of the Re/Max All Cities Realty agents have requested indemnity from All Cities Realty's claims. That leaves 61 current Re/Max All Cities Realty agents who have not agreed (using Kelli Todd-Amundson's 481 number), or 152 current

1 Re/Max All Cities Realty agents who have not agreed (using Kelli Todd-Amundson's 572
2 number), or 280 current Re/Max All Cities Realty agents who have not agreed (using
3 Re/Max All Cities Realty's web site number of 700). This is not a small number of
4 defendants, nor is it a small range of non-indemnified current agents (61 – 280).

5 8. This also does not account for the fact that about 900 agents have not
6 agreed to allow Re/Max All Cities Realty to defend or indemnify them from All Cities
7 Realty claims. Any judgment that All Cities Realty obtains against Re/Max All Cities
8 Realty in the federal action will not be binding upon any of these independent contractor
9 agents, especially when there is no contractual privity between them. As I discuss below,
10 from Re/Max All Cities Realty own documents, these agents are truly independent and
11 Re/Max All Cities Realty cannot prevent them from using the All Cities Realty name
12 without "Re/Max" which many, if not all of them have done.

13 9. Also in ¶4, Kelli Todd-Amundson testifies that All Cities Realty "guessed" at
14 the names of the agents who work or worked for Re/Max All Cities Realty. In reality, as
15 stated in the opposition papers, All Cities Realty, through my investigation, obtained the
16 names from 3 sources: (1) the Re/Max All Cities Realty published rosters; (2) the Re/Max
17 All Cities Realty web site; and (3) the California Department of Real Estate list of active
18 agents.

19 Kelli Todd-Amundson has Presented Inconsistent Information Regarding the Number of
20 Offices Maintained by the "Brick and Mortar" Re/Max All Cities Realty

21 10. In ¶5 of her August 3, 2006 declaration, she testifies that Re/Max All Cities
22 Realty has "11 offices in the Los Angeles and San Bernardino Counties." Per Exhibit 1,
23 which is taken from the Re/Max All Cities Realty web site, the real figure is 14 offices.
24 However, per the memoranda generated by Holly Thomas there are 15 offices (see
25 Re/Max All Cities Realty Exs. G-H attached to its amended reply brief). But wait. Per the
26 Department of Real Estate, Re/Max All Cities Realty has 20 offices. A copy of the
27 Department of Real Estate records is attached as Exhibit 2.

28 11. If Re/Max All Cities Realty cannot be trusted to present to this court

1 accurate information regarding things as simple as the number of agents it employs and
2 the number of offices it utilizes, nothing that it presents here can be trusted.

3 Kelli Todd-Amundson has Lied to the Court by Declaring that Re/Max All Cities Realty
4 Solicits No Business in Orange County

5 12. Also in ¶15 of her August 3, 2006 declaration, Kelli Todd-Amundson testifies
6 that Re/Max All Cities Realty solicits no business in Orange County. Her purpose is to try
7 to show this court that All Cities Realty does business in a different geographical location
8 than Re/Max All Cities Realty. However, Ms. Todd-Amundson's statement is false and
9 she could not have reasonably believed it to be true. Attached as Exhibit 3 is a published
10 "Current Roster Inventory Report" obtained from the SoCalMLS web site. This is the MLS
11 that serves Orange County and Re/Max All Cities Realty agent Norie Whittaker is a
12 member of this MLS as well as many other Re/Max All Cities Realty agents including
13 Byron Rife, the current Broker of Record for the entire corporation. A copy of the DRE
14 document showing that Rife is the broker for Re/Max All Cities Realty is attached as
15 Exhibit 20. A copy of member information for the Orange County Association of Realtors
16 ("AOR") listing Rife as a member is attached as Exhibit 21. This particular Roster shows
17 that Norie Whittaker, a current Re/Max All Cities Realty agent, has had numerous listings
18 in Laguna Hills, Dana Point, Mission Viejo and the surrounding Orange County areas
19 (about 25 in number). To the best of my knowledge, the only place in California that
20 Laguna Hills, Dana Point and Mission Viejo exist are in Orange County California. I have
21 checked some but not yet had the chance to check all of the other Re/Max All Cities
22 Realty listings, both past and present. With several agents that have been reviewed, the
23 results have been consistent with Ms. Whittaker.

24 13. As an example of this, I attach also as part of Exhibit 3 a listing by Re/Max
25 All Cities Realty agent Dan Sherman for a house in Lake Forest, California. This is also in
26 Orange County. This listing is current as of September 9, 2006. Attached as Exhibit 22 is
27 an MLS listing that appeared on September 12, 2006 by Re/Max All Cities Realty agents
28 Norm and Karen Lucas for a \$1,000,000 home in Huntington Beach. There are many

1 more I could attach but this should suffice to establish the falsity of Kelli Todd-
2 Amundson's declaration.

3 14. Further on this point, see Exhibit 4 to the original opposition, the 2nd page of
4 which contains a map from a page on the Re/Max All Cities Realty web site specifically
5 showing that they do business in Orange County. If one clicks on this map a user may
6 search Orange County listings through the Re/Max All Cities Realty web site.

7 Kelli Todd-Amundson has Lied to this Court by Asserting that All Cities Realty does
8 Business ONLY in Orange County

9 15. In ¶11 of her August 3, 2006 declaration, Kelli Todd-Amundson attaches a
10 lone page from the All Cities Realty web site and argues that All Cities Realty only does
11 business in Orange County. However, she did not show all of the All Cities Realty web
12 site pages. There are pages for Orange County, Los Angeles County, San Bernardino
13 County, Riverside County, and San Diego County. There is also a link to
14 allcitiesnetagent.com which lists every city and area in the four counties mentioned. A
15 print out of some of these pages on the All Cities Realty web site is attached as Exhibit 8.
16 There are 100s of All Cities Realty pages on the Internet and her statement is just plainly
17 false. It is impossible to believe that she did not know it. If she looked at the All Cities
18 Realty web site to obtain the Orange County page, she must have seen the pages for the
19 other counties because they are all grouped together.

20 16. In fact, despite the claims of Re/Max All Cities Realty, All Cities Realty has
21 done business in Los Angeles County and the surrounding counties in competition with
22 Re/Max All Cities Realty (before they adopted our name) for the past ten years. I attach
23 as Exhibit 15 a copy of a page from the All Cities Realty web site from 1997 showing this.

24 Other False Issues Raised by Re/Max All Cities Realty

25 (i) *Re/Max All Cities Realty Falsely Asserts that All Cities Realty is not a*
26 *Legimate Real Estate Broker*

27 17. Somehow, Kelli Todd Amundson is trying to convince the Court that All
28 Cities Realty is not a legitimate real estate broker while Re/Max All Cities Realty is. In

1 ¶12 of her August 3, 2006 declaration, she tries to belittle All Cities Realty's telephone
2 numbers. These are state of the art Accessline VOIP business phone numbers and they
3 do everything: call forwarding, voice mail, fax, email, and locate me if I wish. These are
4 high-end business telephone services. On a related matter, I detail below the false
5 assertion that All Cities Realty has no office (made in the moving papers), and then that
6 All Cities Realty office is a sham (strongly implied in the amended reply). All Cities Realty
7 has an office in a fabulous location next to the Orange County Fairgrounds. (See ¶¶ 44-
8 46 below.)

9 18. As an aside, Re/Max All Cities Realty has also belittled All Cities Realty as
10 an internet discount brokerage company offering 4% commissions. That position is
11 impeached by their very own newsletter (Summer 2006), attached as Exhibit 11, which
12 states on the last page that Re/Max All Cities Realty's average commission is 2.13%,
13 meaning that the total transaction commission average would be 4.26%, which is very
14 similar to All Cities Realty's commission rate structure. Re/Max All Cities Realty's lies
15 against All Cities Realty as presented to this court continue to build.

16 (ii) *Re/Max All Cities Realty Falsely Asserts that All Cities Realty Sent*
17 *Threatening Emails to its Agents*

18 19. In ¶15 of her undated declaration submitted in support of Intervenor Re/Max
19 All Cities Realty's amended reply brief, Ms. Todd-Amundson testifies that All Cities Realty
20 sent threatening emails to Re/Max All Cities Realty's agents. Although she purports to
21 attach a copy of such an email to her declaration, she does not. So I have attached it as
22 Exhibit 9 so the court can see that it is not threatening. Nevertheless, neither I nor
23 anyone else at All Cities Realty has ever threatened an agent at Re/Max All Cities Realty.
24 I did send out a courtesy email to selected Re/Max All Cities Realty agents for
25 informational purposes before serving them with the summons and complaint to let them
26 know that a lawsuit had been filed and the underlying facts and circumstances. There
27 were no threats involved and the email was written as diplomatically as possible
28 considering the circumstances.

1 (iii) *Re/Max All Cities Realty has Defamed All Cities Realty*

2 20. On the other hand, from ¶¶6-12 of her undated declaration submitted in
3 support of Intervenor Re/Max All Cities Realty's amended reply brief, Ms. Todd-
4 Amundson attaches copies of Re/Max All Cities Realty emails transmitted by Re/Max All
5 Cities Realty to its agents. These emails belittle All Cities Realty and myself and are false
6 and defamatory. All Cities Realty is considering its remedies against Re/Max All Cities
7 Realty, Ms. Todd-Amundson and the author of the emails, Holly Thomas, in that regard.

8 (iv) *Re/Max All Cities Realty has Lied to this Court that they Offered to Cease*
9 *Using the name All Cities Realty and their Offer was Rejected*

10 21. In ¶15 of her undated declaration submitted in support of Intervenor Re/Max
11 All Cities Realty's amended reply brief, Ms. Todd-Amundson testifies that Re/Max All
12 Cities Realty offered to stop using the name All Cities Realty after the federal lawsuit was
13 filed. In fact, Dale Eleniak (a former Re/Max All Cities Realty officer and former broker of
14 record) specifically stated the opposite and laughed at me when he was told that legal
15 action was forthcoming. Had Re/Max All Cities Realty acted honestly and honorably, All
16 Cities Realty could have settled this dispute with Re/Max All Cities Realty. As further
17 evidence of its falsity, Re/Max All Cities Realty continues to enhance the use of the name
18 today.

19 (v) *Re/Max All Cities Realty has Lied to this Court about its Gross Revenues (or*
20 *Alternatively, Has Published False Financial Information to the Public)*

21 22. In ¶16 of her undated declaration submitted in support of Intervenor Re/Max
22 All Cities Realty's amended reply brief, Ms. Todd-Amundson testifies that Re/Max All
23 Cities Realty's "gross revenues are approximately 1/2000th of Plaintiff's estimate of \$3.5
24 billion." Using a calculator, that leads to annual gross revenues of \$1.75 million. Giving
25 her all benefit of the doubt, this appears to be a product of "creative accounting." I attach
26 as Exhibit 6 a copy of a report from Realtor Magazine for July 2003 of the top 100
27 companies nationally, ranking by sales. Re/Max All Cities Realty is ranked 27th with sales
28 in 2002 of almost \$2.7 BILLION. The magazine could not have obtained that figure

1 unless Re/Max All Cities Realty supplied it. It is consistent with the opposition papers (Ex.
2 3 thereto) and the other news article concerning the interview with Kelli Todd-Amundson
3 in July/August 2005 listing Re/Max All Cities Realty's sales as approaching \$3.5 BILLION.

4 23. Also consistent with this figure is the gross sales figure published by Re/Max
5 All Cities Realty in their quarterly newsletter. The issue for the summer of 2006 shows
6 their gross revenue for 2006 through April as \$1.15 BILLION. Annualizing this figure
7 makes it \$3.45 BILLION. A copy of the newsletter is attached as Exhibit 11. See the last
8 page at the bottom for their published sales figures. See also Exhibit 23 which is a page
9 from their web site printed on September 12, 2006 in which they admit to sales in the
10 BILLIONS.

11 24. In ¶17 of her undated declaration submitted in support of Intervenor Re/Max
12 All Cities Realty's amended reply brief, Ms. Todd-Amundson testifies that Re/Max All
13 Cities Realty "shares in the commissions earned by its agents." This is directly contrary to
14 Re/Max All Cities Realty's responses to Interrogatories propounded by All Cities Realty in
15 the federal action. See Exhibit 2 to the original opposition papers, per paragraph 7 of my
16 original declaration.

17 (v) *Re/Max All Cities Realty has Lied to this Court that it has Never Done*
18 *Business as All Cities Realty without the "Re/Max Moniker*

19 25. In ¶18 of her undated declaration submitted in support of Intervenor Re/Max
20 All Cities Realty's amended reply brief, Ms. Todd-Amundson states that Re/Max All Cities
21 Realty "does not do, and has never done, business as "All Cities Realty."" She states this
22 again in ¶19 of her declaration. This is false. I will cite two examples (of many). Attached
23 as Exhibit 4 is a copy of a page from Re/Max All Cities Realty's web site that I accessed
24 on September 9, 2006. It clearly states in bold text and underlined: "**Our All Cities**
25 **Realty History**". Attached as Exhibit 5 is one page from the results of a Google search
26 that I performed on July 27, 2005 with the search criteria "all cities realty." Towards the
27 middle of the page, there is a "hit" for an agent, Sandra Castro, who works for Re/Max All
28 Cities Realty. Sandra Castro's listing plainly states it is for "All Cities Realty." It is

1 surrounded by "hits" for Re/Max All Cities Realty, creating confusion that they are
2 probably the same company.

3 26. Kelli Todd-Amundson is personally VERY aware agents are not using the
4 Re/Max symbol in their business and makes it a major portion of a recent story SHE
5 AUTHORED in their quarterly newsletter. A copy of this newsletter is attached as Exhibit
6 11. She states the exact opposite in her sworn declarations.

7 27. In fact, in this very newsletter (see page 2), Re/Max All Cities Realty admits
8 that they cannot force its agents to use the "Re/Max" name. The subject of Kelli Todd-
9 Amundson's "talk" with the agents is regarding "branding" and encourages them to use
10 the Re/Max brand. It appears that they can't force them to use it, they really can't control
11 them because they are independent contractors. So they have no true ability to "police"
12 the use of the All Cities Realty name with 700 agents, and 1000s of emails going out daily
13 etc. Also, conspicuous by its absence is any mention of use of the All Cities Realty name
14 without the "Re/Max" moniker in front of it. There is NO prohibition by Re/Max All Cities
15 Realty of its agents from using All Cities Realty as their trade name.

16 28. In that regard, I attach as Exhibit 7 copies of a web page for a European
17 Real Estate Directory in which Sandra Castro, a Re/Max All Cities Realty agent is listed
18 as **All Cities Realty**. Also part of Exhibit 7 is page from a Google search under "all cities
19 realty" showing Re/Max All Cities Realty agent Dan Sherman using the name **All Cities**
20 **Realty**, together with many other "hits" for other properties and agents using the Re/Max
21 All Cities Realty name. It creates confusion. Using the Yahoo search engine with the
22 same criteria, I found another listing by Dan Sherman for a Malibu horse property using
23 the name **All Cities Realty**. It too is part of Exhibit 7.

24 29. In ¶¶22 and 23 of her undated declaration submitted in support of Intervenor
25 Re/Max All Cities Realty's amended reply brief, Kelli Todd-Amundson states that All Cities
26 Realty, through my declaration, misrepresented the emails sent by Re/Max All Cities
27 Realty agents in that I deleted the "Re/Max" from the name. This is false. I have been
28 doing internet related business for at least 10 years. In that time I have educated myself

1 and become an expert in email systems, spam avoidance, virus screening and protection,
2 search engines and other internet related business issues. Giving all the details is
3 beyond the scope of this declaration. I understand how most commercial consumer email
4 systems work with respect to these issues. Most commercial companies that offer email
5 as part of their services, i.e., AOL, Yahoo, Gmail, and MSN, cater to the consumer
6 market. The consumer market is generally unsophisticated and relies on these
7 companies to protect them from viruses and spyware. One of the tactics that the email
8 purveyors use is to prevent file attachments from downloading on to the personal
9 computer. These take many forms, including pop up ads and pictures as part of the
10 email. How many times do you look at your email and it says in substance: "pictures have
11 been blocked, click here if you want to see them"? It then warns you about viruses before
12 allowing you to access the pictures. The "Re/Max" logo images fall within that category.
13 Although the sender may transmit a communication that identifies the sender as from
14 Re/Max All Cities Realty, the "Re/Max" is an image file that gets automatically blocked.
15 The 3rd page of Exhibit 4 to the original opposition contains such an example. Based
16 upon this, I know and believe that thousands, if not tens of thousands of emails and other
17 internet communications and advertisements sent out by Re/Max All Cities Realty are
18 received by the recipient as merely "All Cities Realty." Any responsible company would
19 know this and take action to avoid it. The same is true for images indexed by search
20 engines such as Google. Images are NOT indexed. When an agent uses an IMAGE and
21 ALL CITIES REALTY, only the phrase ALL CITIES REALTY is indexed by the search
22 engine. Any term on an IMAGE (graphic), such as "Re/Max," is completely left out.
23 Because of these 1000s of indexed web page indexes will not contain the term "Re/Max"
24 in the brief information displayed by the search engine and I have download several
25 examples of this as well. I cannot believe that Kelli Todd-Amundson is that naïve.

26 30. Also coming under the category of naivete (or falsehood) is the assertion
27 that I blacked out the "Re/Max" logo. Obviously the exhibits were printed out on a black
28 and white laser printer. The "Re/Max logo on the website is darkly colored. Dark colored

1 items on websites such as dark blue and dark red often print out as black because that is
2 all the printer is capable of doing. The black and white laser printer is the most common
3 printer in business.

4 31. The bottom line is that this court should not believe anything that Kelli Todd-
5 Amundson or her cohorts put before this court as an unsupported statement. Most of
6 them are false and misleading.

7 (vi) *Re/Max All Cities Realty's "Offer" to "Indemnify" its Agents from All Cities*
8 *Realty's Claims Does Not Withstand Even the Slightest Scrutiny*

9 32. Re/Max All Cities Realty has stated to this Court that it will indemnify any
10 past or present agent who asks for indemnity from the All Cities Realty claims. But what
11 is that exactly worth? There is no evidence that Re/Max All Cities Realty has the financial
12 ability to provide the indemnity in the face of a large judgment. Kelli Todd-Amundson
13 specifically states she will not indemnify anyone who has not used the Re/Max symbol in
14 front of ALL CITIES REALTY. (See her undated declaration filed with the amended
15 reply, ¶20.) I have shown three examples of that alone in this response. So agents Norie
16 Whittaker and Dan Sherman will have to get their own lawyers (or Kelli Todd-Amundson
17 has just made another false statement to the Court).

18 33. The court should note that both Kelli Todd-Amundson and her father Robert
19 Todd, the founder of Re/Max All Cities Realty (formally Beach Cities Realty), filed for
20 bankruptcy when faced with large judgments in the past and that was just a few million
21 dollars. See Exhibit 16 which are print outs from an independently sourced Bankruptcy
22 information sheet. Robert Todd was also convicted of two counts of loan fraud which
23 caused him to have his real estate broker license revoked, and cede ostensible control of
24 Re/Max All Cities Realty to his daughter Kelli Todd-Amundson. See Exhibit 12 which is
25 public evidence of the felony conviction (court docket sheet and selected news articles).
26 See also Exhibit 3 to the original opposition, which is an article/interview of Kelli Todd-
27 Amundson in which she admits to the bankruptcies and the felony conviction. However,
28 in the articles Kelli Todd-Amundson states that Robert Todd turned in his real estate

1 license. In fact, it was revoked. A copy of the DRE public record establishing this is
2 attached as Exhibit 10.

3 34. I also note that Kelli Todd-Amundson does not have a real estate license. It
4 was once suspended and recently she allowed it to expire. A copy is attached as Exhibit
5 13. Thus, she can make false public statements (including to the court) without fear of
6 losing her license.

7 35. In this regard, I attach as Exhibit 14 a copy of a letter from Kelli Todd-
8 Amundson to the editor of Lore Magazine (see Ex. 3 to the original opposition) thanking
9 them for their article and announcing that her father Bob Todd is retiring. That was
10 published in September/October 2005. As I mentioned above, Exhibit 11 is Re/Max All
11 City Realty's current newsletter (Summer 2006). The front page contains a photo of the
12 officers and Robert Todd is in the photo (back left). So he's involved even now!
13 However, Kelli Todd-Amundson previously stated that Bob Todd retired in 1998. The
14 target continues to move.

15 36. There is also no evidence that all of the agents desire indemnity. In fact, not
16 all of the Re/Max All Cities Realty agents currently under contract have even sought
17 indemnity for the All Cities Realty claims. What are the odds that the other 900 agents
18 will all want that indemnity? This is especially true when they start to learn the truth of this
19 matter and Re/Max All Cities Realty's fabrications publicly come to light. Attached as
20 Exhibit 24 is an email from a Re/Max All Cities Realty agent who continues to send me
21 email under the name All Cities Realty. He states that Re/Max All Cities Realty tells him
22 that they will tear the other lawyers apart and he should keep using the name All Cities
23 Realty.

24 (vii) *Re/Max All Cities Realty Never Informed its Agents about the Federal*
25 *Trademark Lawsuit, Showing that the Agents are Truly Independent, Will*
26 *Not be Bound by the Federal Judgment Against Re/Max All Cities Realty,*
27 *and Implying that their Motion to Stay is a Ruse on this Court*

28 37. Re/Max All Cities Realty's office in-house legal counsel, Holly Thomas, also

1 seems to have an aversion for telling the truth. The amended opposition is littered with
2 her memoranda to the Re/Max All Cities Realty agents containing lies and deception. I
3 will highlight just a few of these items.

4 38. Exhibit B to the amended reply is Holly Thomas' memo to "all agents" dated
5 July 25, 2006 regarding this lawsuit. From her first paragraph it appears the agents were
6 NEVER informed that they were using a registered trademark and there was a federal law
7 suit that may involve them. It appears that they were encouraged to use the ALL CITIES
8 REALTY mark.

9 (viii) *Re/Max All Cities Realty Continues to Lie About All Cities Realty to its*
10 *Agents*

11 39. In paragraph #2 Holly Thomas falsely states that All Cities Realty served 20
12 Re/Max All Cities Realty agents at open houses but we served just 10 people. And of that
13 10 about half did not have any one there but the agent. They made us to look like
14 monsters.

15 40. Exhibit E to the amended reply is Holly Thomas' memo to "agents" dated
16 August 9, 2006 regarding this lawsuit. The memo states that Re/Max All Cities Realty is
17 now the "REAL" party to the lawsuit by All Cities Realty, not the agents. This statement is
18 obviously false and deceives the agents into thinking they are not parties to the legal
19 action.

20 41. Exhibit F to the amended reply is Holly Thomas' memo to "agents" dated
21 August 22, 2006 regarding this lawsuit. The memo states that All Cities Realty refused to
22 be deposed. This is a lie to the agents she purportedly represents. My attorneys noticed
23 the depositions of Re/Max All Cities Realty personnel: Bob Todd, Kelli Amundson, Dale
24 Eleniak, Byron Rife, Stewart Hoffman etc. and they refused to produce them. It is the
25 subject of a federal court motion. On the other hand, Re/Max All Cities Realty wanted to
26 depose me on dates that neither I nor my attorneys were available. I agreed to appear
27 the following week but they refused. Attached as Exhibit 17 is a file copy of my attorney's
28 deposition notice and as Exhibit 18 an excerpt from our motion to compel that discusses

1 this issue.

2 42. Re/Max All Cities Realty makes other false claims that I will briefly address.
3 First, they state that there is no proof that All Cities Realty is expanding.

4 43. It has ALWAYS been the goal of All Cities Realty to either franchise or to
5 have branch offices throughout the State of California. That is the exact reason for the
6 name and the mark All Cities Realty was chosen. Currently we are advertising for new
7 agents in California Statewide from the Oregon border to the north and to the Mexican
8 border to the south for new agents in 200 city newspapers statewide. A copy of the
9 newspaper list is attached as Exhibit 19. These papers cover ALL the areas services by
10 the Re/Max All Cities Realty and its agents and associated brokers. We intend and have
11 always intended to significantly expand this business. We also have a website at
12 www.allcitiesnetagent.com that is specifically to attract new agents combined with the
13 newspaper advertisements. The use of the All Cities Realty name by the agents of
14 Re/Max All Cities Realty causes significant confusion and also the dilution of our mark,
15 our California corporate name, and our trade name. This situation is preventing me from
16 ever franchising ALL CITIES REALTY or opening branch offices in the greater Los
17 Angeles area. People are NOW going to associate the ALL CITIES REALTY name with
18 Re/Max. I never wanted that.

19 44. Re/Max All Cities Realty has also submitted in its amended reply a
20 declaration from Lorne Wallace who was sent to spy on All Cities Realty and myself. He,
21 too, has lied to the Court. Mr. Wallace is a Canadian software maker who has significant
22 ties to both Re/Max All Cities Realty, and Re/Max International. Re/Max International is
23 one of his LARGEST clients. He supplies software to the big Re/Max franchises.
24 According to the release he supplies 17 of the 20 top multi-office branches (Ms.
25 Amundson's would be included in that figure) and 28 of the 50 largest Re/Max offices. A
26 copy of two press releases is attached as Exhibit 25.

27 45. Mr. Wallace belittles the All Cities Realty office, its location, and me. What
28 he doesn't tell the Court is the following:

- 1 • his significant relationship with Re/Max All Cities Realty and his relationship with
- 2 Re/Max International; his livelihood appears to depend on them;
- 3 • that he showed up at about 7:00 a.m. and I happened to be in the office early
- 4 dealing with the lawsuit issues;
- 5 • that he knocked on my door and told me that he wasn't interested in real estate
- 6 with me but that he was looking to buy the shopping center, a subject which I
- 7 discussed with him briefly;
- 8 • while I was gone retrieving a business card that he requested, he secretly
- 9 photographed my office and then misreported what he saw. Shame on him!

10 46. Mr. Wallace also does not tell the Court that right next to my office in the
11 supposedly dilapidated shopping center is a new Starbucks and new Subway (appears
12 the location could not be that bad). He does not tell the Court that the shopping center is
13 located directly caddy corner from the Orange County Fairgrounds. More than 1,000,000
14 people visit each summer for the 3 week fair and 10,000 each weekend throughout the
15 year for the OC Market Place, and the beach traffic coming from and going to the harbor.
16 There is a large All Cities Realty sign for all to see. We are in a center on the corner of
17 the very busy Newport Blvd with a traffic count of 22,000 cars per day – more than
18 8,000,000 per year! A copy of some photos of my office lobby and the corner where it is
19 located is attached as Exhibit 26.

20 Conclusion

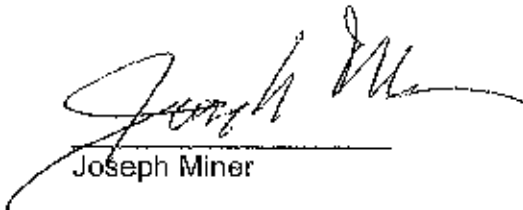
21 47. In conclusion, the agents have been sued because they are independent
22 contractors. Re/Max All Cities Realty does not have the ability to police them, or to force
23 them to use the Re/Max in front of the All Cities Realty name as they are independent
24 contractors; not employees. Kelli Todd-Amundson refuses to indemnify them if they didn't
25 use the Re/Max symbol, yet apparently never tells them of the year long impending legal
26 action. Kelli Todd-Amundson is well aware that many agents are not using the Re/Max
27 logos and personally writes a major article in their newsletter regarding using the Re/Max
28 logo. With all this, she continues to encourage them to use the name ALL CITIES

1 REALTY. The agents have violated the state laws regarding our service mark, our
2 corporate name, and our trade name. To us, whether they use the Re/Max or not, it's still
3 is confusing to the public. The federal court action is against CF Real Estate Loans, Inc -
4 DBA Re/Max All Cities Realty only. The federal action is not binding on the agents who
5 are being sued in this state action under a completely different theory. This company and
6 these people seizing control of my name has victimized my corporation and myself. We
7 are suffering damage daily as a result of these malicious and egregious actions. We have
8 played by the rules, we have told the truth, we have legally protected our name and mark
9 in every necessary way. Staying or delaying this action will only allow me and my
10 corporation to be hurt further, and delay the onset of this case which will be litigated
11 regardless of the outcome of the federal action. The sooner this case is litigated the less
12 in damages we will incur, and the less financially we will have to bear. We have suffered
13 for four years. We are ready to proceed.

14 48. I respectfully request that the motion to stay be denied.

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

17 Executed on this 13th day of September, 2006.

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Joseph Miner