

1 SUPPLEMENTAL DECLARATION OF JOSEPH MINER

2
3 I, Joseph Miner, declare and state as follows:

4 1. I am the President of Plaintiff All Cities Realty, Inc. and have been
5 since its inception.

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

8 3. I submit this supplemental declaration to rebut Defendant's constant
9 inaccurate representations to this Court.

10 **An Overview of Mr. Sandelands Accusations**

11 4. Starting on page 1 of Defendant's rebuttal, Mr. Sandelands blasts out
12 fabricated accusations with no support. I personally have had nothing to do with
13 much of this. I reference his accusations by page/line number.

14 ➤ 1/22 - Regarding the protective order: First, they didn't even give their
15 own financial expert their own books! How Mr. Sandelands can make a
16 case of this I have no idea. I know that Jeff Kravitz, Esq. finally signed
17 the protective order and Mr. Sandelands has NEVER produced the
18 books for us to this day – no matter what he says.

19 ➤ 1/27 - As detailed many times, we filed the State Court action to obtain
20 jurisdiction over all perpetrators who were infringing on the All Cities
21 Realty® trademark.

22 ➤ 2/3 - We have NOT purposely inflated the number of agents on the
23 State Court Action. I have gone into detail on this below. Mr.
24 Sandelands also misleads the court in this situation. At any one time
25 they claimed 700 agents on their own website. Over time during the
26 infringement many agents came and went, which increased the number
27 of agents who infringed over the four year period of infringement.
28 Considering they have infringed until well into 2008 (6 total years of

1 agents coming and going)... I am certain the true and correct number of
2 agents who have infringed will rise. That number will be known when
3 Ms. Todd gives us a truthful and accurate list of her agents and brokers
4 from 2002 on. See below for more information.

5 ➤ 2/8 - Mr. Sandelands/Defendant took the position that the agents are
6 independent contractors. It was of great concern that Mr. Sandelands
7 would argue that the independent contractors were responsible for
8 themselves and try to convince a jury that the lion's share of the
9 infringement fell on the shoulders of the agents. This is why the agents
10 were sued. When I finally sued them, Kelli Todd told them not to worry
11 and that she would defend and indemnify them because nobody was
12 going to take HER NAME. Many agents have called me and told me
13 that they get little or no information from Remax and when I have
14 queried them about their attorney they don't know who David
15 Sandelands is. The statute of limitations may have run if I had not filed
16 at that time as it has taken 44 months to get this into court. It was a
17 proper and prudent move to sue the agents.

18 ➤ 2/10 - I have NOT filed any of these suits to harass or gain any kind of
19 advantage. Actually there is NO advantage to me as it has cost me
20 dearly to do all this. I would have preferred one lawsuit but the
21 deceptive way that Ms. Todd runs and advertises her companies
22 combined with stonewalling tactics Mr. Sandelands has used in
23 discovery caused much of this. The suits were filed simply to bring all
24 perpetrators to justice.

25 ➤ 2/18 - Mr. Sandelands must be clairvoyant or spying on us. He makes
26 accusations regarding my use of the word "plans"... either he must
27 know what I am thinking or he must have known someone who told
28 him what my battle plans were. Unfortunately this is pure incorrect

1 speculation on his part.

- 2 ➤ 3/11 - I have NOT admitted to improper contacts with agents. I was
3 contacted BY the agents; not me contacting the agents. See below for a
4 full explanation.
- 5 ➤ 3/15 – The www.remaxlawsuits.com website is more than TWO
6 THOUSAND pages of information on the Defendants. I believe that
7 everything I have said is factually accurate. Mr. Sandelands has had
8 YEARS to “correct” me if he felt something was not factually accurate.
9 He has chosen NOT to do this until now... effectively minutes before
10 trial. As explained in my last declaration, my only desire has been to get
11 the truth out to the agents and I have given Mr. Sandelands AND Ms.
12 Todd’s other attorneys full opportunity to refute anything stated on that
13 site saying that I would take it down after investigation. My goal is to
14 provide the TRUTH and only the TRUTH to the agents and others
15 reading the site. It’s almost laughable that with close to 2,100 pages of
16 written information on the website that he can only come up with a few
17 words that irritate him. Apparently 99.999% of everything on the site is
18 true and accurate. Regarding Judge Carney: what I said on the website
19 was how I interpreted Judge Carney’s comments in his order. I meant
20 nothing improper by what I said – I would have been happy to put up
21 his order if Mr. Sandelands had asked. I have 100% respect for Federal
22 Judges, never would I try and twist Judge Carney’s words as Mr.
23 Sandelands would like the Court to think. I have only posted on the site
24 issues as I have understood them. Only a handful of agents in the entire
25 three years have contacted me regarding the site in a negative way.
- 26 ➤ 3/26 – The settlement email has been fully explained to the court. I have
27 spent hundreds of thousands of dollars on this lawsuit. I simply thought
28 I could settle some of these future claims by sending the email. My

1 comments were truthful as I understood them, not THREATENING as
2 Mr. Sandelands would like the Court to believe. Out of all the letters
3 sent... I only got a few responses. Here is one of them...

4
5 **“I can be reached at 310-XXX-XXXX. My name is XXX XXXXXXXX and I am**
6 **an agent named in the Remax lawsuit. I would rather that nobody from**
7 **Remax knows that I am reaching out to you. Thank you.”**

- 8
- 9 ➤ 21/4 – It was Mr. Sandelands himself who stated this exact statement
10 regarding the law to the State Court Judge. How can he blame this on
11 me? During a State Court hearing in 2006 while attempting to convince
12 the Judge to stay the case, Mr. Sandelands told the Judge **“If CF**
13 **[Re/Max All Cities Realty] is found guilty your honor, they [the**
14 **agents] will all be guilty.”** These were Mr. Sandeland’s own words to
15 the court; perhaps he has forgotten. I was there and I witnessed his
16 statement and it was my big “ah ha!” I remember it very clearly. If this
17 is not true then he apparently misled the Judge in the State Court
18 hearing to stay the case. (He appears to have dropped this statement,
19 forgetting that he made it, from his amended reply.)
- 20 ➤ Much of Mr. Sandelands comments are just a repeat of his original
21 motion, I have addressed everything he has stated on my previous
22 declaration. For issues that might be somewhat confusing for the Court I
23 have attempted to explain them below. However, some of these issues,
24 such as the commingling of the corporations and agents are just plain
25 confusing and are difficult to put into words.

26 **The commingling of the Commbroker and Hollymax agents with the CF site**

27 5. 11/12 - Ms. Todd’s rosters listing her agents, one of the few discovery
28 items we received, made NO mention of different corporations – only that agents

1 worked at different numbered offices – the offices were not designated as
2 Commbroker or as Hollymax but simply as office numbers. While Ms. Thomas
3 apparently stated that Ms. Todd had additional corporations, she must have
4 purposely LEFT OUT the fact that all the agents and all the offices were all
5 commingled into one website - APPEARING AS IF IT WAS ONE COMPANY
6 under the All Cities Realty trademark. Ms. Thomas did not point this particular fact
7 out to us and this fact was never mentioned. Because it was contrary to common
8 logic, to law, and contrary to corporate structure to commingle three corporations as
9 if they were one - on a single website under a DBA, it was simply not obvious that
10 Ms. Todd had combined these corporations disguised as one company. I take full
11 blame for not figuring it out until 2008. However, one just does not look at 700 agent
12 photos under one moniker and immediately think “Oh.. those agents must belong to
13 the different corporations that Holly Thomas mentioned”. Kelli Todd gave us so
14 many different agent counts it was mind boggling – she apparently didn’t know how
15 many agents she had and neither did we because of lack of discovery. Neither Mr.
16 Sandelands, Ms. Thomas, nor Ms. Todd ever informed us that all three corporations
17 were “guilty” of trademark infringement and never pointed out that all three
18 corporations were intertwined into one website under the All Cities Realty® federal
19 trademark.

20 **Regarding our legal battle plans**

21 6. 12/26 - While I just do not have hours and hours and hours to refute
22 every little nuance that David Sandelands throws out to the Court, Mr. Sandelands
23 should know as well as anyone that litigation is war and any good warrior should
24 have some sort of battle plans. Just like he and his team are planning whatever they
25 are planning: like papering the court with 13 motions in limine, denying us discovery
26 and failing to provide us with depositions throughout the discovery period, attacking
27 us in every way on every day prior to trial - including attempting termination
28 sanctions and finally tactically filing bankruptcy on a stripped company (after

1 moving the money making agents over into the real company); we have also made
2 plans and our plans were many. It's just like playing a good game of chess. Unlike
3 Mr. Sandelands, never have our plans been to be abusive or to abuse the legal
4 system. Part of our plans have been to make certain that EVERY infringer sees their
5 day in court, and the only way to do this was to file the Actions we have. It was all
6 explained in the previous declaration.

7 **Proper contacts with former Re/Max agents**

8 7. 13/20 - Again, it is true many State Court agent Defendants have called
9 me and emailed me. I cannot stop them from doing that. Mr. Sandelands and Ms.
10 Todd must be personally responsible for herding their own stray cats. Perhaps if they
11 [Remax] would have called and informed all the "represented agents" that they have
12 a real attorney with a phone number to call – these people might not be calling me
13 (in my past declaration I notified the court they never passed out the summons and
14 complaint). I have done my duty and informed all people who call that they are not
15 supposed to be calling or talking to me if they are represented by an attorney, and
16 like I have stated previously NOT A SINGLE AGENT knows who David
17 Sandelands is. My website clearly states "Don't Wait –CALL YOUR ATTORNEY
18 TODAY ASK WHAT YOU SHOULD DO!" Contrary to what Mr. Sandelands
19 states, I have NEVER admitted to anything improper, nor have I done anything
20 improper to admit to. We are playing this game fair and square. Actually I am trying
21 to help the agents NOT hurt them; that is what Mr. Sandelands is truly worried about
22 - 1695 agents suing Remax for putting them in this position.

23 **The mysterious 1695 Re/Max State Action agent count**

24 8. 15/5 - As stated in several declarations over the years here again is how
25 I arrived at 1695 agents. First, one of the few discovery items that Remax did
26 provide was "monthly" agent rosters. From approximately August 2002 through
27 June of 2005; we received about 34 months worth of agent rosters. The names on the
28 rosters changed monthly because they gain and lose agents. (We now know that

1 Kelli Todd also included her employees on the Agent roster that was provided to us.)
2 Trying to compare 34 separate months of “printer paper” rosters of 700+/- agents
3 with the names changing each and every month would have been beyond my IQ
4 level and typing abilities. The next best thing that I thought of doing was to compile
5 all the names by scanning all the separate rosters and dump all the names into a
6 database. So, if a single agent was there for all 34 months, then his or her name
7 would be in the database 34 times from the 34 separate rosters. 700+/- agents times
8 34 months equates to 23,800 names. Because the State lawsuit was filed about a year
9 later and we had no agent rosters for that period I grabbed the agent names that were
10 listed on Ms. Todd’s own website. I was able to obtain all the names that were listed
11 as agents on her site (which by chance gave me Commbroker and Hollymax agents
12 as well for that time period - but I did not know it). I also grabbed, shortly before the
13 State lawsuit was filed, the agent names from the Department of Real Estate website,
14 all the agents that worked for Ms. Todd’s Remax on that date. So I started with
15 approximately 23,800 scanned names from the combined rosters, the additional
16 names from the Re/Max All Cities Realty website and the names from DRE website.
17 This gave me many, many names to cull through... possibly somewhere around
18 25,000. (I do have the original files if the court is interested.) Ms. Todd claimed she
19 had 700 agents. Through the DRE I can get a list of the agents who worked for her
20 during any time period, but NOT the brokers who worked for her. Brokers who work
21 through another broker do not need to be listed on the DRE website. So the only way
22 to capture all the agents/brokers who worked for Ms. Todd over this time period was
23 to do exactly what I did to obtain the names. EXAMPLE: If you have a 700 agent
24 office and have a 200 agent turnover each year over four years you would have
25 approximately 500 + 200, 200, 200, 200 or a total of 1300 agents in all (so 1,700
26 different agents over a four year period was not out of the question as real estate
27 agents routinely move around). By hand I personally sorted and culled the 25,000
28 duplicative names from all sources. The problem came when it became apparent that

1 some people were not named consistently in all sources of information including the
2 rosters. EXAMPLE: Joseph Smith may also go by Joe Smith, and then on the
3 website may be named J. Smith and on one roster be named J. E. Smith or a
4 nickname of JoJo Smith; who is to say they are not all different agents named Joe
5 Smith, J. E. Smith and J. Smith? After all, George Foreman has 10 children, the five
6 boys are all named George Foreman. EXAMPLE: Patty James may have had her last
7 name first on the DRE website or James Patty... so, I could not with 100% certainty,
8 eliminate either James Patty or Patty James. The reality is that Ms. Todd on her own
9 website claimed 700 agents (at that one moment in time). Over a four year span
10 many agents came and went. I culled the list down to 1,695 individuals and after
11 looking at that list for days on end I culled as many people as I believed that I could
12 reasonably rule out. As of today, because I have more information, I believe that
13 over that four year period Ms. Todd had at least 1,200 different agents... but she is
14 not telling us or providing us with a true and correct list. So until she does 1,695 is
15 the number. There was no malice or any intentional anything... the goal was simply
16 to establish the agents/brokers to sue in State Court. It was a Herculean job just
17 putting the names together. Mr. Sandlands states less than 500 have tendered their
18 defense... that means to me at least 800 more agents have not tendered their defense
19 to Ms. Todd. Until Ms. Todd offers a list of ALL agents and brokers who worked for
20 all her organizations, we won't have a final number. If Ms. Todd provides us with an
21 accurate digital list of all brokers and agents who worked for her company between
22 the dates of infringement and the date of filing I believe we could easily amend the
23 complaint. I have all files to show the court the exact steps taken to accomplish this
24 task. I would like Mr. Sandlands to provide the Court with an accurate list of ALL
25 agents and brokers that worked for CF, Commbroker and Hollymax between August
26 2002 and June 2006 and at that time we can see how far off my list of agents really
27 is. That would end the speculation as to how many agents they are "really"
28 defending as compared to how many agents there are, and how many agents should

1 really be named in the State Action. NOTHING has been malicious on my part in
2 this battle.

3 9. Now that I have presented this undeniable tangible evidence to the court
4 with documents and hard copy backing up each and every accusation I make and
5 each and every untruth that I am forced to refute, and have once again refuted Mr.
6 Sandelands unfounded and scathing accusations turning black to white and making
7 the company who had their own Federal Trademark seized; THE BAD GUY. I
8 would hope the court allow me to finally continue my suit as soon as possible and
9 allow me the justice that I and my company deserve. It can not be refuted; these
10 people are who they are and have done what they have done. They have committed
11 federal crimes, loan fraud, insurance kickbacks and seized my trademark [which are
12 all OK according to Mr. Sandelands] and I have informed their own agents who
13 these people really are with hard documentation, and have sued people who have
14 seized my trademark [which is NOT OK according to Mr. Sandelands] again he has
15 turned black to white. I have documentation and witnesses to prove every single
16 thing I have said and every claim I have made! I have graciously supplied them and
17 their counsel with eight disks of hard data to prove every single accusation I make. I
18 have suffered tremendously at the hands of this company and their attorney. At this
19 time I simply ask the court to proceed and let me have my day.

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21 I declare under penalty of perjury that the foregoing is true and correct.
22 Executed on this 18th day of February, 2009 at Costa Mesa, California.

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26 _____
Joseph Miner
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