

DECLARATION OF JOSEPH MINER

I, Joseph Miner, declare and state as follows:

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

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

3. First and most important, I am personally responsible for the October 8, 2008 email letter to the agents which is the subject of Defendants' motion to disqualify. Jeffrey F. Sax, All Cities Realty's attorney, did not authorize the email letter, did not approve the email letter, did not write the email letter, did not send the email letter, and has NO responsibility for this letter whatsoever. The letter did not come from an email address Mr. Sax has access to, from a website he has access to, and Mr. Sax was entirely unaware I sent the letter. Although the Defendant constantly repeats, and repeats, that Jeffrey Sax sent the email; Jeffrey Sax DID NOT send the email and had nothing to do with it.

- Jeffrey Sax's name appeared nowhere on the email
- Jeffrey Sax's Law Office appeared nowhere on the email
- Jeffrey Sax's telephone number appeared nowhere on the email
- Jeffrey Sax's email address did not appear in the email
- Jeffrey Sax was never mentioned in the email
- The email was not signed by Jeffrey Sax

4. The TRUTH is completely opposite of what Mr. David Sandelands claims in this totally false motion. I am solely responsible for the October 8, 2008 email. I DO NOT seek approval from Jeffrey Sax for any of the content on my blog and the content on my "remaxlawsuits.com" website, and this was no different. I did not seek his approval for this email.

5. The "All Cities Realty Legal Team" is my wife and I. We are the "Team" that has delivered summonses, packaged 100s of complaints to be served on

1 the agents in the state court action, sorted the discovery, and performed much of the  
2 support work in this litigation since day one. We are the All Cities Realty Legal  
3 Team and we have joked about this to keep our spirits up throughout this entire  
4 unfortunate exercise while fighting California's largest Re/Max franchisee with their  
5 unlimited financial resources and staff. The truth is we are the All Cities Realty:  
6 "legal team", "advertising agency", "janitorial service", "web development agency",  
7 "accounting department" and all other executive and administrative business  
8 divisions of All Cities Realty.

9 6. It was my intention that the October 8, 2008 email, generated directly  
10 by me with help from no one else, offering settlement, did not break any law and  
11 was strictly a good faith gesture to the agents. Many of them could be innocent  
12 victims of Kelli Todd's fraud and I did it entirely on my own and take full  
13 responsibility. For that reason, I gave them an opportunity to get out of the legal  
14 battle before the onset of the trial in the First Federal Action.

15 7. Over the years this legal action has been in the court system I have been  
16 contacted by MANY agents who have wanted out of the legal action and who  
17 wanted additional information as well. At first I had many calls per day; now I  
18 typically get a few calls or emails per month about the lawsuits and regarding trial or  
19 settlement. In fact, I have been **CONTACTED DIRECTLY** by Kelli Todd via  
20 emails, via multiple telephone calls, and she invited me to lunch in Long Beach were  
21 I had lunch with her and one of her management team to talk about the case. She  
22 even paid! I have had MANY direct contacts by Ms. Todd.

23 8. Kelli Todd and David Sandelands in the last motion involving the  
24 lifting of the stay claimed the All Cities Realty® name had been abandoned. Frank  
25 Carone (manager of Commbroker) has supplied a declaration for the Defendant in  
26 this motion. At paragraph 6 of his declaration, Mr. Carone states under oath that  
27 Commbroker did not use the All Cities Realty name. This is not the first time that  
28 Defendants have knowingly filed false statements with this Court. In the recent

1 motions to lift the stay in this action, we showed the court there were at least 58  
2 pages from the Commbroker website “still” using the All Cities Realty name as of  
3 the date of that motion, even though Kelli Todd, Defendants’ principal, stated under  
4 penalty of perjury that they were not using my name and never had. Now Mr.  
5 Carone also makes that statement under penalty of perjury. Attached hereto as  
6 Exhibit 9 is a copy of a webpage from the Commbroker site before it was taken  
7 down. It lists all of the Commbroker agents and clearly displays the All Cities  
8 Realty name. Following Ms. Todd’s perjury in connection with the motion to lift the  
9 stay in this action, the Commbroker website was “finally” removed.

10 9. Additionally, I believe that Defendants altered the emails they have  
11 placed in issue in the motion. I sent out a mass mailing and the recipient of each  
12 email was not personally addressed on the transmittal header. The “to” line was an  
13 email address, not the name of a person. An example of this is Defendants’ Exhibits  
14 A, B and C, which is the email to Byron Rife reprinted three times. However,  
15 Defendants Exhibit D is addressed personally to Lori Robinson, which I did not do.  
16 Defendants’ Exhibit E is addressed personally to Frank Carone, which I also did not  
17 do. Again, no EMAILS were personally addressed; they were all simply sent to  
18 email addresses without the persons names listed. I would have to question the  
19 validity of these emails. If the court looks at Byron Rife’s email, his name is  
20 nowhere to be found. I question how these other emails were “personalized” with the  
21 recipients’ names because I did not send them that way. Attached as Exhibit 8 is a  
22 copy of the October 8, 2008 email letter as I originated it.

23 10. Part of the purpose of my email to the agents is that their own CEO,  
24 Kelli Todd, is either boldly lying to her agents, or to the court. In one statement she  
25 is claiming she is broke and has to close her offices. See Exhibit 10 which is a copy  
26 of a recent article from the Los Angeles Business Journal in which she is quoted.  
27 See also Exhibit 11 which is a Dunn & Bradstreet alert I received on October 15,  
28 2008 for Ms. Todd’s company alerting me to a decline in its financial condition. Yet

1 at the same time she is claiming to 1,000 agents she can indemnify all of them from  
2 damages in a major trademark lawsuit. (See Kelli Todd's declaration submitted with  
3 this motion at ¶3.) You simply can not have it both ways. In one breath Ms. Todd  
4 boldly states she is going to indemnify all her agents (this prevents them from suing  
5 her for her wrongdoings) and on the other had she states to the court and to the  
6 Plaintiff she is going out of business and has no money. The agents are depending on  
7 her telling the truth, and making life decisions relying on her telling the truth. She  
8 has not had to show the court a single shred of evidence that she can indemnify a  
9 single agent let alone 1,000 agents. This is no difference here between newsworthy  
10 CEOs who commit wrongdoing such as of Kenneth Lay of Enron, Herbert McDade  
11 III of Lehman Brothers, Steve Rotella of WAMU, Robert Steel of Wachovia,  
12 Herbert Allison, Jr. of Fannie Mae, David Moffett of Freddie Mac and the heads of  
13 other recent institutional failures. When Ms. Todd lies, the agents suffer.  
14 Apparently, having me enlighten the agents is very worrisome to Ms. Todd;  
15 otherwise, why would she act so radically.

16 11. The Defense was WELL AWARE Attorney Jeffrey Sax had NOTHING  
17 to do with the sending of that email PRIOR to filing their motion! Defense Attorney  
18 David Sandelands reads my Internet blog often, almost daily. Prior to filing this  
19 motion David Sandelands and the Defendants READ the facts of the email, before  
20 filing this motion and were informed that I was 100% responsible for the email.  
21 They knew completely beforehand from my own blog that I wrote and sent the  
22 email!

23 12. After I learned that Defendants and Sandelands had given ex parte  
24 notice to attempt to disqualify Mr. Sax from representing All Cities Realty in this  
25 action, on October 19, 2008 I posted a blog on my "remaxlawsuits.com" website  
26 addressing the issue. A copy is attached hereto as Exhibit 4. As relevant, it states:

27 *"I will tell you that the email that went out to the agents the other*  
28 *day is truthful, accurate, and was entirely written by me - Joseph*

1 *Miner, and then sent from this website by me. I take full*  
2 *responsibility for telling the truth, writing and sending the email to*  
3 *the agents; Kelli even gave me most of the email addresses. Someone*  
4 *has to tell the truth here... it should be noted that my attorney Jeff*  
5 *Sax NEVER approved the email in question, and the All Cities*  
6 *Realty legal team referred to is my wife and I --- because she has*  
7 *helped me through so much of this. We make a great TEAM!"*

8 On the second page of the blog, I wrote a note directly to Sandelands who I know  
9 reads my blog almost every day:

10 *"David... your CISLO work IP is: 209.151.225.66 and we here at*  
11 *ACR are watching you watch us. PROOF Note\* don't use the*  
12 *"hidemyass" proxy because it does not work."*

13 As proof that Cislo & Thomas owns 209.151.225.66, I attach as Exhibit 5 the  
14 "whois" page that shows the ownership of IP addresses. I have set up my website to  
15 track and record each visitor to the site. I can see what pages were visited, when  
16 they were visited, and who visited them. Proof that Sandelands visited the blog on  
17 October 16, 2008 at 2:59 p.m., and on October 20, 2008 at 1:07 p.m. is attached as  
18 Exhibit 6 (to be clear I have had hundreds of visits from the Cislo & Thomas firm to  
19 my site and I have kept track of all these visits). Proof that the Re/Max defendants  
20 (Hollymax/Commbroker) visited the same website on October 20, 2008 at 1:45 p.m.  
21 is on the third page of Exhibit 6. The motion was filed at 2:43 p.m. on October 20,  
22 2008. In case there is any question that I own the "remaxlawsuits.com" website,  
23 where the blog is contained, I attach as Exhibit 7 another "whois" page that clearly  
24 identifies me as the owner.

25 13. In reviewing Defendants' ex parte motion and the copies of the October  
26 8, 2008 email that they attach, I believe that Defendants have presented "altered"  
27 versions of the October 8, 2008 to attempt to argue that a personalized message was  
28

1 sent to each agent. Attached as Exhibit 8 is a copy of the original email which  
2 contains no personalization whatsoever.

3 14. My opinion is that this filing is NOT about this single email. This is  
4 about eliminating my free speech, crippling my lawsuits by eliminating my attorney,  
5 and eliminating my website www.remaxlawsuits.com. My website tells the TRUTH  
6 about these people and the legal actions. The Defendants read the website, David  
7 Sandelands reads the website, the agents and brokers read the website.

8 15. The website was created to battle the Defendant's silence, lies and  
9 completely untrue statements. I created the site www.remaxlawsuits.com because the  
10 agents were TOTALLY UNAWARE there was a federal lawsuit regarding the  
11 federally trademarked name All Cities Realty®. Kelli Amundson (now Todd) had  
12 hidden this from all her agents and encouraged them to continue to use the name.  
13 Ms. Todd was propagating the use of the name while not even telling the agents that  
14 there was a federal action for trademark infringement. The site is 100% truthful  
15 about their background, history and misdeeds. This motion is just a desperate  
16 measure to try and cripple my case as the trial gets closer. 81,000 VISITORS have  
17 been to www.remaxlawsuits.com since it has been on the Internet from May of 2007.  
18 The site displays public information about the Defendants and general information  
19 about the cases. Hundreds of the agents are aware of the site, keep track of the  
20 lawsuits, and are well aware of what is going on. Rather than put a settlement letter  
21 "open to the public" I sent out an informative email and settlement offer. Am I not  
22 allowed to offer settlement directly to defendants? I did make the document  
23 available on the Internet, but only the persons who got the email would know the  
24 address; it was never made "public".

25 16. Each and every agent had the ability to opt-out of the email list after  
26 receiving the email. Out of all the 500 agents that got this email, only TWO  
27 respondents have opted out. This clearly shows at the bottom of each email that one  
28 may opt-out of the list and NEVER receive another email. If it was the Agents that

1 did not wish this information, 100s would have opted out of further emails. It is Kelli  
2 Todd who this has upset and worries about not controlling the information her agents  
3 receive.

4 17. The source of all the email addresses was Kelli Todd. The fact that her  
5 Senior Management team received the emails; Kelli Todd provided them to us and I  
6 guess that all her employees are on the list she said were agents. This is only the  
7 second email I have sent in three years to the agents, the first email was to notify the  
8 agents of the lawsuit because Ms. Todd did not.

9 18. While the Defendants (actually Ms. Todd) demanded I take down the  
10 remaxlawsuits website, I have not. They filed a lawsuit against me and then dropped  
11 the lawsuit. A copy of the docket sheet showing their conduct is attached as Exhibit  
12 12. Interestingly, their attorney was Andrew Leff, who represents Defendant Dale  
13 Eleniak in this action.

14 19. Not a single declaration comes from a current "agent" or a "former  
15 agent". These declarations come from Kelli Todd's inside group of senior managers.

16 20. Defendants continue to accuse All Cities Realty of not doing business  
17 (actually, I personally just cancelled an escrow Monday morning, the 20<sup>th</sup>, because  
18 the buyer lost his job). Defendants know this is false as I have given them  
19 information to the contrary in the First Federal Action. Contrary to Defendants'  
20 assertion, Plaintiff has attempted to actively market its real estate business under its  
21 All Cities Realty® name despite the difficulties involved because of the name  
22 dilution from the actions of Defendants. Attached as Exhibit 3 are samples of  
23 Plaintiff's web pages advertising its "Net Agent" program showing that I have  
24 marketed it since at least 2006. Making Defendants' falsehood more egregious,  
25 Defendants know about this program and have commented on it during the  
26 proceedings in the All Cities Realty® v. Re/Max All Cities Realty action.

27 21. As I have stated before to the court, during the past six years that I have  
28 been battling these people never have I witnessed a completely truthful statement to

1 the Court from the parties, the employees, or their attorney David Sandelands. They  
2 have done nothing but use their financial wealth and every evasive tactic and  
3 mistruth to evade and mislead. This new motion just goes to show the court what I  
4 say is again true. They have filed this motion, knowing what they say to the court are  
5 complete untruths, yet they file them anyway, and have never been sanctioned for  
6 lying to the court. Yet, my attorney bills just keep climbing past the moon  
7 responding to their frivolous, dishonest motions and declarations. While writing this  
8 declaration I have now been advised of more motions they are filing; they will do  
9 anything to prevent me from getting discovery.

10 22. In conclusion, I know that this declaration is long and not always  
11 directly on point (relating to the email communication); however, it is very important  
12 to me that the Court understand the bigger picture. I thank the Court for its  
13 consideration.

14 I declare under penalty of perjury that the foregoing is true and correct.

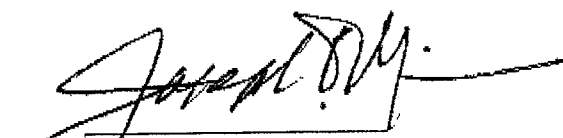
15 Executed on this 21<sup>st</sup> day of October, 2008 at Costa Mesa, California.  
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