

1 **LAW OFFICES OF JEFFREY F. SAX**  
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4 Los Angeles, CA 90017  
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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 CJC (MLGT)  
12 )  
13 Plaintiff, ) **PLAINTIFF'S EX PARTE MOTION**  
14 vs. ) **FOR THE COURT TO CONSIDER**  
15 HOLLYMAX REALTY, INC., a California ) **PLAINTIFF'S REPLY BRIEF**  
16 corporation, COMMBROKER, INC. a ) **REGARDING ITS MOTION FOR**  
17 California corporation; KENNETH G. ) **RELIEF FROM STAY AND TO**  
18 DAVIS, FARZAD ANDY DORRANI, ) **STRIKE DEFENDANTS' LATE**  
19 ALLEN JACKSON, ARIANNE KAYS, ) **FILED AND PERJURIOUS**  
20 JEANETTE GURZA-JUNCO, (JULIA) ) **OPPOSITION BRIEF**  
21 JIAO HONG KULECK, ROB ) DATE: September 3, 2008  
22 O'SULLIVAN, SHANNAN O'SULLIVAN, ) CTRM: 9B  
23 COLETTE STEVENS, SUSAN ) NO HEARING SET  
24 WILLIAMS, OMID BENJAMIN )  
25 ARASTEH, GLEN BEER, MAURICE )  
26 BENITAH, NINA DHILLON, MATTHEW )  
27 FREEDMAN, JACK KHALILI, JIHAN )  
28 KIM, ROBERT MELAMED, GINA )  
SAEIDIAN, SIMON SHAHERI, BYRON )  
RIFE, JR., DALE A. ELENIAC, and DOES )  
1 through 10, inclusive. )  
Defendants. )

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:  
2 PLEASE TAKE NOTICE that on September 3, 2008 in Courtroom 9(B) of  
3 the United States District Court, located at 411 West Fourth Street, Santa Ana,  
4 California 92701, Plaintiff All Cities Realty, Inc. will move against Defendants for  
5 the following Orders:

- 6 1. That Defendants' late filed and perjurious opposition to Plaintiff's  
7 Motion for Relief of Stay be stricken and not considered;
- 8 2. That Plaintiff's Reply Brief be considered, and that the motion be  
9 decided (and granted) after consideration of all of the papers filed; and
- 10 3. That Defendants be cited for commission of perjury.

11 This Ex Parte Motion is made on the grounds that the scheduled hearing date  
12 for the Motion is September 8, 2008, which has not yet arrived. Defendants'  
13 opposition papers were due on Monday August 25, 2008 at the latest (or Friday  
14 August 22, 2008 if Labor Day is taken into consideration). No opposition was filed  
15 until Thursday August 28, 2008. Defendant Dale Eleniak did not file any  
16 opposition.

17 Before Plaintiff had a chance to prepare a reply brief, which included a request  
18 to strike the untimely opposition, the Court issued a ruling on Friday August 29,  
19 2008 denying the motion.

20 The opposition was based upon two basic premises: (i) since Defendants no  
21 longer used the infringing Re/Max All Cities Realty name, there is no continuing  
22 harm to Plaintiff by a delay in these proceedings; and (ii) the trial in the CF action  
23 will come soon enough so resources should not be expended. THE FIRST  
24 ARGUMENT IS BASED ENTIRELY UPON PERJURY as the reply brief would  
25 have established. THE SECOND ARGUMENT DOES NOT ACCOUNT FOR THE  
26 DAILY PREJUDICE THAT PLAINTIFF IS SUFFERING because: (i) the first  
27 argument is false; and (ii) Defendants are using the continued delays to play bait and  
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1 switch games with their companies, closing them and shifting business activities to  
2 avoid the impact of this lawsuit.

3 Delaying this case is patently unfair to Plaintiff. In this ex parte motion, all  
4 Plaintiff asks is for full and fair consideration of its motion, which includes the reply  
5 brief. After consideration of the reply brief, Plaintiff believes that the motion to lift  
6 the stay will be granted.

7 This ex parte motion will be based on this notice, the memorandum of points  
8 and authorities, the exhibits, the declaration of Jeffrey F. Sax, and on all of the  
9 pleadings, records and files in this action, and such other and further matters as the  
10 Court may consider at the hearing.

11 Defendant's counsel (David Sandelands of Cislo & Thomas and Andrew Leff  
12 of Spile, Siegal, Leff & Goor) have been contacted. They will oppose the ex parte  
13 motion on the grounds that a reply brief is "futile" under the circumstances.

14 Dated: September 3, 2006

LAW OFFICES OF JEFFREY F. SAX

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17  
18 By: 

Jeffrey F. Sax, Attorneys for Plaintiff

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I INTRODUCTION**

This case is about Goliath Re/Max Beach Cities Realty changing its business name to Re/Max All Cities Realty in violation of Plaintiff All Cities Realty, Inc.'s federally registered trademark and then having the unmitigated arrogance to disregard all demands that it abandon the mark (after it lied to All Cities Realty promising to do so). Plaintiff All Cities Realty recently discovered that two other corporate entities controlled by Re/Max All Cities Realty were also using its name: Hollymax and Commbroker. Therefore, this lawsuit was initiated.

Defendants filed a motion to stay this action pending the outcome of a prior pending federal action against CF Real Estate Loans, Inc. aka Re/Max All Cities Realty. At the time that Defendants' motion was filed, trial in the CF action was about two months away. This Court granted the stay because of the proximity of the trial date but invited Plaintiff to apply for relief if the CF trial was continued beyond 2008.

The CF trial was continued for nine months to March 2009. Therefore, Plaintiff applied to have the stay lifted. The hearing date on the motion was September 8, 2008. Opposition papers were due on Monday August 25, 2008 at the latest (or Friday August 22, 2008 if Labor Day is taken into consideration). No opposition was filed until Thursday August 28, 2008. Defendant Dale Eleniak did not file any opposition.

Before Plaintiff had a chance to prepare a reply brief, which included a request to strike the untimely opposition, the Court issued a ruling on August 29, 2008 denying the motion.

The opposition was based upon two basic premises: (i) since Defendants no longer used the infringing Re/Max All Cities Realty name, there is no continuing harm to Plaintiff by a delay in these proceedings; and (ii) the trial in the CF action

1 will come soon enough so resources should not be expended. THE FIRST  
2 ARGUMENT IS BASED ENTIRELY UPON PERJURY as the reply brief would  
3 have established. THE SECOND ARGUMENT DOES NOT ACCOUNT FOR THE  
4 DAILY PREJUDICE THAT PLAINTIFF IS SUFFERING because: (i) the first  
5 argument is false; and (ii) Defendants are using the continued delays to play bait and  
6 switch games with their companies, closing them and shifting business activities to  
7 avoid the impact of this lawsuit.

8 Delaying this case is patently unfair to Plaintiff. For each day's delay,  
9 Defendants continue to use Plaintiff's trade name, and continue to manipulate their  
10 companies so that when it's time to pay the piper, there will not be a defendant left  
11 and Plaintiff will have to chase its judgment through whatever maze of successor  
12 entities exists at that time.

13 In this ex parte motion, all Plaintiff asks is for full and fair consideration of its  
14 motion, which includes the reply. Once the reply brief is considered (whether or not  
15 the opposition papers are stricken, which should also occur), Plaintiff believes that  
16 the motion to lift the stay will be granted. Defendants should also be cited for  
17 perjury.

18 **II BASIS FOR EX PARTE RELIEF**

19 The scheduled hearing date for the motion to lift stay has not yet arrived.  
20 Plaintiff was denied the opportunity to file a reply brief because the Court ruled on  
21 the motion prematurely. Given that the opposition was based mostly on perjury, the  
22 basis for the Court's ruling was erroneous, denying Plaintiff the right to a fair  
23 hearing.

24 If Plaintiff simply files a motion for reconsideration, that plays directly into  
25 Defendants' hands for two basic reasons: (i) it delays the hearing for another 7  
26 weeks (given the 20 day "meet and confer" period under LR 7-3, and the 21 day  
27 notice period); and (ii) Defendants will argue that there are no "new" facts to justify  
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1 the motion. Therefore, Plaintiff's right to relief is most appropriately accomplished  
2 by this motion.

3 None of what transpired is Plaintiff's fault. It was not Plaintiff's fault that  
4 Defendants filed a late opposition. It was not Plaintiff's fault that the Court ruled on  
5 the motion prematurely. Therefore, the conditions for ex parte relief have been met.  
6 [See, e.g., Mission Power Engineering Co. v. Continental Cas. Co. (CD Cal. 1995)  
7 883 F. Supp. 488, 492.]

8 One other point should be noted. In the Court's August 29, 2008 order, the  
9 Court speculated that Judge Stotler continued the trial because Plaintiff asked for  
10 more time to try the case. That is incorrect. At the Final Pretrial Conference, Judge  
11 Stotler told counsel that she had allocated four days each to try the case. She also  
12 stated that more time had been allocated if necessary. Plaintiff asked for additional  
13 time. Judge Stotler invited Plaintiff to file a brief justifying the request. Plaintiff did  
14 so. Based upon Plaintiff's brief, Judge Stotler granted Plaintiff an extra day. So the  
15 CF trial will be 9 court days: 5 for Plaintiff and 4 for Defendant. Judge Stotler gave  
16 no reason for the trial continuance, but it could not have been for that reason.

17 **III CONCLUSION**

18 It is apparent that Plaintiff continues to be harmed, not only by Defendants'  
19 unethical and untoward business tactics, but by their false and misleading  
20 presentations to this Court (and to Judge Stotler as well). Plaintiff is a victim of  
21 circumstance here, with a late filed opposition being considered and a premature  
22 ruling precluding a reply brief.

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1 This ex parte motion should be granted. Plaintiff's reply brief should be  
2 considered. Defendants' opposition should be stricken. The motion to lift the stay  
3 should be granted. The Court should also consider indicting Defendants for perjury.

4 Dated: August 29, 2008

LAW OFFICES OF JEFFREY F. SAX

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7 By:   
8 Jeffrey F. Sax, Attorneys for Plaintiff  
9 All Cities Realty, Inc.  
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DECLARATION OF JEFFREY F. SAX

I, Jeffrey F. Sax, declare and state as follows:

1. I am an attorney licensed to practice law in the State of California, am admitted to this Court, and am attorney of record for Plaintiff in this action.

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

3. This case is about Goliath Re/Max Beach Cities Realty changing its business name to Re/Max All Cities Realty in violation of Plaintiff All Cities Realty, Inc.'s federally registered trademark and then disregarding all demands that it abandon the mark (after it lied to All Cities Realty promising to do so). Plaintiff All Cities Realty recently discovered that two other corporate entities controlled by Re/Max All Cities Realty were also using its name: Hollymax and Commbroker. Therefore, this lawsuit was initiated.

4. Defendants filed a motion to stay this action pending the outcome of a prior pending federal action against CF Real Estate Loans, Inc. aka Re/Max All Cities Realty. At the time that Defendants' motion was filed, trial in the CF action was about two months away. This Court granted the stay because of the proximity of the trial date but invited Plaintiff to apply for relief if the CF trial was continued beyond 2008.

5. The CF trial was continued for nine months to March 2009. Therefore, Plaintiff applied to have the stay lifted. The hearing date on the motion was September 8, 2008. Opposition papers were due on August 25, 2008 at the latest (or August 22, 2008 if Labor Day is taken into consideration). No opposition was filed until August 28, 2008. Defendant Dale Eleniak did not file any opposition.

6. Before Plaintiff had a chance to prepare a reply brief, which included a request to strike the untimely opposition, the Court issued a ruling on August 29, 2008 denying the motion.

1           7.     The opposition was based upon two basic premises: (i) since  
2 Defendants no longer used the infringing Re/Max All Cities Realty name, there is no  
3 continuing harm to Plaintiff by a delay in these proceedings; and (ii) the trial in the  
4 CF action will come soon enough so resources should not be expended.

5           8.     Had Plaintiff been given the opportunity to file a reply brief, Plaintiff  
6 would have presented rebuttal evidence showing that Defendants' factual  
7 presentation was substantially false. There is irrefutable evidence that as of today,  
8 Defendants continue to use Plaintiff's name. (See the Declaration of Joseph Miner  
9 attached to the reply brief.) The reply brief would have also pointed out the  
10 continuing prejudice that Plaintiff is suffering because: (i) of the continued use of  
11 Defendants' name; and (ii) Defendants' manipulation of their companies to avoid the  
12 impact of this lawsuit (as admitted by Kelli Todd in her declaration – which is the  
13 subject of the perjury request in the papers above).

14           9.     In this ex parte motion, all Plaintiff asks is for full and fair consideration  
15 of its motion, which includes the reply. If Plaintiff simply files a motion for  
16 reconsideration, that plays directly into Defendants' hands for two basic reasons: (i)  
17 it delays the hearing for another 7 weeks (given the 20 day "meet and confer" period  
18 under LR 7-3, and the 21 day notice period); and (ii) Defendants will argue that there  
19 are no "new" facts to justify the motion. Therefore, Plaintiff's right to relief is most  
20 appropriately accomplished by this motion.

21           10.    None of what transpired is Plaintiff's fault. It was not Plaintiff's fault  
22 that Defendants filed a late opposition. It was not Plaintiff's fault that the Court  
23 ruled on the motion prematurely. Therefore, the conditions for ex parte relief have  
24 been met.

25           11.    A copy of the reply brief, which is fully prepared, is attached hereto as  
26 Exhibit A. The original reply brief is being filed concurrently with this ex parte  
27 motion and the original is being lodged with this Court.

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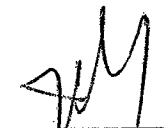
1           12. One other point should be noted. In the Court's August 29, 2008 order,  
2 the Court speculated that Judge Stotler continued the trial because Plaintiff asked for  
3 more time to try the case. That is incorrect. At the Final Pretrial Conference, Judge  
4 Stotler told counsel that she had allocated four days each to try the case. She also  
5 stated that more time had been allocated if necessary. Plaintiff asked for additional  
6 time. Judge Stotler invited Plaintiff to file a brief justifying the request. Plaintiff did  
7 so. Based upon Plaintiff's brief, Judge Stotler granted Plaintiff an extra day. So the  
8 CF trial will be 9 court days: 5 for Plaintiff and 4 for Defendant. Judge Stotler gave  
9 no reason for the trial continuance, but it could not have been for that reason. Copies  
10 of Judge Stotler's Orders evidencing these facts are attached as Exhibit B.

11           13. On September 2, 2008, I provided notice of this ex parte motion to all  
12 counsel by email. They did not agree to the relief requested. The email strings  
13 evidencing our correspondence is attached collectively as Exhibit C.

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

15           Executed on this 3<sup>rd</sup> day of September, 2008 at Los Angeles, California.

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Jeffrey F. Sax