

1 **LAW OFFICES OF JEFFREY F. SAX**

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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 Plaintiff, )

13 vs. )

14 ) PLAINTIFF'S REPLY TO  
15 ) OPPOSITION TO MOTION FOR  
16 ) RELIEF FROM STAY

17 HOLLYMAX REALTY, INC., a California )  
18 corporation, COMMBROKER, INC. a )  
19 California corporation; KENNETH G. )  
20 DAVIS, FARZAD ANDY DORRANI, )  
21 ALLEN JACKSON, ARIANNE KAYS, )  
22 JEANETTTE GURZA-JUNCO, (JULIA) )  
23 JIAO HONG KULECK, ROB )  
24 O'SULLIVAN, SHANNAN O'SULLIVAN, )  
25 COLETTE STEVENS, SUSAN )  
26 WILLIAMS, OMID BENJAMIN )  
27 ARASTEH, GLEN BEER, MAURICE )  
28 BENITAH, NINA DHILLON, MATTHEW )  
29 FREEDMAN, JACK KHALILI, JIHAN )  
30 KIM, ROBERT MELAMED, GINA )  
31 SAEIDIAN, SIMON SHAHERI, BYRON )  
32 RIFE, JR., DALE A. ELENIAK, and DOES )  
33 1 through 10, inclusive. )

DATE: September 8, 2008  
TIME: 1:30 p.m.  
CTRM: 9B

Defendants. )

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Cases

Litton Industries, Inc. v. Lehman Bros. Kuhn Loeb, Inc.  
(SDNY 1991) 767 F. Supp. 1220, 1235,  
rev'd on other grounds, (2<sup>nd</sup> Cir. 1992) 967 F. 2d 742 .....4



1 **II INTRODUCTION**

2 Justice delayed is justice denied. The passage of two years from the first  
3 scheduled trial date in the CF action has harmed Plaintiff beyond what words can  
4 describe. CF (aka Re/Max All Cities Realty) usurped Plaintiff's trade name (All  
5 Cities Realty® during the greatest real estate market in history (2002-2007). CF  
6 boasted publicly of sales exceeding 20 BILLION DOLLARS. During this time, CF  
7 refused to change its name. Under applicable law, Plaintiff is entitled to  
8 disgorgement of those profits. Had the trial occurred in early 2007 when it was first  
9 scheduled, Plaintiff would have obtained the justice that was due.

10 Now that trial is scheduled for mid-2009 (with no guarantee that Judge Stotler  
11 will try the case at that time), The Todd family, owners of CF, Hollymax, and  
12 Commbroker (either directly or indirectly), have had time to plan their business  
13 strategy to try to avoid the judgment that it knows is coming. In that regard, per the  
14 opposition papers to this motion, **in anticipation of the upcoming trial date (then  
15 scheduled for January 2008)**, The Todd family ostensibly changed CF's business  
16 name from Re/Max All Cities Realty to Re/Max Marquee Partners. This occurred  
17 only in November 2007.

18 When this action was filed in the Spring of 2008 after Plaintiff discovered that  
19 two other entities controlled by CF existed and were using Plaintiff's All Cities  
20 Realty® name, the Todd family again jumped to action. They are closing  
21 Commbroker and moving its agents into CF. Commbroker is going away (being  
22 closed), but the agents (and the business they generate) are not! They are simply  
23 jumping to a different ship. In that way, the Todd family is attempting to use Judge  
24 Stotler's many continuances to its advantage. But that is not all. The Todd family  
25 recently de facto folded Hollymax. All of Hollymax's agents were recently  
26 transferred to CF, leaving Hollymax bereft of agents, assets, and collectability. In  
27 that way, the Todd family is trying to moot this case in the event that the stay is  
28 lifted. We would hope the Court sees where this will lead if this case is not opened

1 right now, at least for discovery purposes.

2 Justice delayed is justice denied. Discovery needs to begin and this case needs  
3 to be tried before all evidence is eliminated. When the companies are closed the  
4 evidence will be lost, overwritten, eliminated and discarded – much of it purposely!

5 CF will then find a way to ostensibly fold its business operations and open up  
6 in another successor entity – something which undoubtedly is being planned. No  
7 doubt after that occurs, CF will file bankruptcy, forcing Plaintiff to undergo another  
8 journey through the court system both in the bankruptcy court and in a new lawsuit  
9 against the successor entity.

10 Time is everything. By dismantling its companies Hollymax Inc. and  
11 Commbroker Inc. before the discovery of this case is permitted, the Todd family is  
12 engaging in untoward tactics before the litigation even begins. There is an old mafia  
13 adage: “no witness... no problem.” The Todd family has coined their own adage:  
14 “no companies... no lawsuits.”

15 Defendant’s opposition papers are comprised of complete untruths to sway the  
16 Court’s opinion. Statements such as “Nothing has Changed”... when in fact much  
17 has changed are simply illustrative of the “big lie” that Defendants continue to bring  
18 before the Court. Defendants, in the background, are cleverly and diabolically  
19 gutting their companies to attempt to permanently eliminate Plaintiff’s ability to  
20 gather its evidence for trial.

21 A decision by this Court to not allow the start of discovery at this time may be  
22 the MOST prejudicial decision that the Court could make towards Plaintiff.

23 Plaintiff owns a valid Federal Trademark and continues to do business; it has  
24 not closed its doors and has NEVER abandoned its mark as the Defendant boasts  
25 (another part of the “big lie”).

26 Plaintiff will go to the ends of the earth to bring Defendants and their  
27 principals to justice. The question is will there be a Defendant remaining to sue, and  
28 will that occur during Plaintiff’s lifetime, or will the battle be carried on by

1 Plaintiff's heirs? The stay must be lifted.

2 **III DEFENDANTS' OPPOSITION IS MISLEADING ON THE ISSUE OF**  
3 **CONTINUING INFRINGEMENT**

4 Assuming arguendo that this Court considers the opposition papers and their  
5 argument that there is no need for urgency because any infringement has now  
6 ceased, the Court should consider that Defendants representations to the Court,  
7 primarily through the declaration of Kelli Todd are false and misleading.

8 A. Defendants Continue to Infringe, Even as of Today

9 One of the basic "themes" of the opposition is that because Defendants  
10 finally changed their name, there is no harm in waiting for the CF trial. However,  
11 Defendants' evidence is false! Plaintiff's trademarked name "All Cities Realty" is  
12 still illicitly used on Defendants' websites even as of today. The Declaration of  
13 Joseph Miner, attached hereto, rebuts Defendants' claims with pages from their own  
14 websites and simple Google searches.<sup>1</sup> In summary:

15 A. A search conducted on Google on August 28, 2008 solely of  
16 Defendants' website listings shows that Defendant continues to use the name All  
17 Cities Realty more than 80% of the time on its Internet web pages! (See Exhibit 1,  
18 hereto.) So anyone looking at the website today will see that Plaintiff's name is still  
19 affiliated with Defendants' websites, which is still confusing to the public and is still  
20 damaging Plaintiff.

21 B. A print out of Defendants' main webpage on August 29, 2008 shows  
22 the pictures of its agents, which are linked to the agents' respective pages as part of  
23 Defendants' website. Those agents' pages all prominently display the All Cities  
24 Realty name in the WEBPAGE TITLE which is displayed the headers and footers of

25 \_\_\_\_\_  
26 <sup>1</sup> In a further attempt to sandbag Plaintiff, Defendants argue that Plaintiff should not  
27 be allowed to introduce any additional evidence in the reply. However, Plaintiff is  
28 permitted to rebut new factual assertions made in an opposition. [Litton Industries,  
Inc. v. Lehman Bros. Kuhn Loeb, Inc. (SDNY 1991) 767 F. Supp. 1220, 1235, rev'd  
on other grounds, (2<sup>nd</sup> Cir. 1992) 967 F. 2d 742.]

1 the printed page exhibit – this is the title of the webpage like the title of a book – it  
2 could not be more predominant. (See Exhibit 2 hereto.) So again, anyone perusing  
3 Defendants’ website, will again see Plaintiffs’ name even though Defendant’s claim  
4 the “company” name has been changed. The company name may have been  
5 changed but the continued use, infringement, and advertising of the name All Cities  
6 Realty has not! Confusion abounds.

7 C. Attached hereto as Exhibit 3 is a page from Defendants’ website as of  
8 August 29, 2008 which shows that the agents are still being advertised under the  
9 company name and trademark All Cities Realty even as of today! This shows that  
10 Defendants’ presentation to this Court is entirely dishonest and that Kelli Todd has  
11 committed perjury.

12 Plaintiff continues to be damaged on a daily basis by Defendants’ conduct. It  
13 may be less blatant, but it still exists.

14 B. Defendants are Playing Bait and Switch Games with their Entities

15 With regard to Defendants game playing with its entities and agents, Exhibit 4  
16 consists of the California Department of Real Estate website printouts for Hollymax.  
17 On August 22, 2008, there were 25 salespersons listed. (See Ex. 4, pp. 1-3.) On  
18 August 29, 2008, there were -0- salespersons listed. (See Ex. 4, p. 4.) So where did  
19 those agents go? Read on.

20 On August 26, 2008 in the morning, the DRE website listed 268 salespersons  
21 for Re/Max Marquee Partners. (See Exhibit 5 hereto.) On August 26, 2008 in the  
22 afternoon, the DRE website listed 293 salespersons listed for Re/Max Marquee  
23 Partners – exactly 25 more! (See Exhibit 6 hereto.) Is it a coincidence?

24 With regard to Commbroker, Defendants admit that while it is being closed  
25 down, the agents will still be employed by CF. (See Kelli Todd Declaration, ¶2, and  
26 Ex. A thereto in which she states on the first page at the 2<sup>nd</sup> bullet point that the  
27 “Investment Division” of CF will remain open and available for use.) This is simply  
28 another ruse as the Company being sued is being closed!

1 Plaintiff continues to be harmed by the game playing of Defendants due to the  
2 delays in reaching trial. At some point, the Court must act to protect Plaintiff. That  
3 time should be now.

4 **IV CONCLUSION**

5 It is apparent that Plaintiff continues to be harmed, not only by Defendants'  
6 unethical and untoward business tactics, but by their false and misleading  
7 presentations to this Court (and to Judge Stotler as well). Enough is enough. This  
8 motion should be granted and the stay should be lifted so that this case can be  
9 adjudicated. The stay that has been ordered only causes harm to Plaintiff's business,  
10 the permanent inability for Plaintiff to gather its evidence for trial and prevents the  
11 expeditious disposition of this case.

12 Dated: August 29, 2008

LAW OFFICES OF JEFFREY F. SAX

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15 By: \_\_\_\_\_  
16 Jeffrey F. Sax, Attorneys for Plaintiff  
17 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. I did not receive Defendants' opposition until late Thursday afternoon, August 28, 2008. Given the Labor Day weekend, this late filing left me with insufficient time to research and prepare a fully considered reply brief. With regard to Defendant Dale Eleniak, I did not receive an opposition at all.

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

Executed on this 29<sup>th</sup> day of August, 2008 at Los Angeles, California.

\_\_\_\_\_  
Jeffrey F. Sax



1           6.     On August 28, 2008, I visited the website of the California Department  
2 of Real Estate and searched for Hollymax. Attached hereto as Exhibit 4 is the print  
3 out from that website. It shows that on August 22, 2008, there were 25 salespersons  
4 listed. (See Ex. 4, pp. 1-3.) On August 29, 2008, I visited the DRE website again.  
5 This time there were zero salespersons listed. I printed out the website again and  
6 attach it as the last page of Exhibit 4. (See Ex. 4, p. 4.)

7           7.     On August 26, 2008 in the morning, I visited the DRE website for  
8 Re/Max Marquee Partners. It listed 268 salespersons for Re/Max Marquee Partners.  
9 (I attach a copy of the print out of that website as Exhibit 5 hereto, which was  
10 printed on August 29, 2008. The number of agents is listed on the third page.) On  
11 August 26, 2008 in the afternoon, the DRE website listed 293 salespersons listed for  
12 Re/Max Marquee Partners – exactly 25 more! (See Exhibit 6 hereto, also at page 3.)

13           8.     I attach as Exhibit 7 the front page of Defendant Commbroker’s website  
14 as of August 28, 2008, which I visited and printed out at that time. It still lists the  
15 business as “Re/Max All Cities Realty.

16           9.     As of the date of this motion Defendant continues to use our Registered  
17 Federal Trademark.

18           10.    For years now I have done everything in my power to get the  
19 Defendants’ into court. In good faith I filed a lawsuit because my Federal Trademark  
20 had been violated. In every case the Defendants’ have evaded discovery and  
21 promoted lies to the court to evade the court system.

22           11.    At current I own 250 domain names. I also currently have about 50  
23 websites on the Internet. I began my Internet career in 1996 when the Internet was  
24 new. There were no college courses for the Internet. I have learned hands on for the  
25 past 12 years with an intense use of the Internet. Most people who know me consider  
26 me an expert in the use of the Internet.

27           12.    With all due respect, the court’s written comments regarding the stay of  
28 this case and the linking of websites is incorrect and the court’s comments are quite

1 different than the reality of the infringement. Whereas just “linking” to an outside  
2 site not using our Trademark may not be infringing, the Defendants placed PAGES  
3 on the Re/Max All Cities Realty website. The pages were of its agents with photos  
4 and bios using the All Cities Realty® registered Federal Trademark – it’s just that  
5 simple. The concept and infringement is quite different than the Court had  
6 remarked.

7 13. A website is “self-contained” like a book. With a book you turn the  
8 pages; with a website you click on hyperlinks (links) to move you through the site.  
9 Unlike a book, a link can move you to a completely different website – this WAS  
10 NOT the case in the situation we presented to the Court. The agents and pages in  
11 question and presented to the Court in the complaint are actual pages of agents who  
12 were employed at both Hollymax and Commbroker but displayed in the “book” of  
13 the Re/Max All Cities Realty website. The difference is significant. These are not  
14 “simple links to an outside site.” These are PAGES embedded in the Re/Max All  
15 Cities Realty website with agents that don’t belong to that company, advertising  
16 illegally as if they were using the All Cities Realty® Registered Federal Trademark.

17 14. To muddy up the water, using the Court’s stays and postponements to  
18 their advantage, the Todd family (Kelli Todd) has moved, or is moving these agents  
19 to her other company. The confusion is by design and the Todd family taking full  
20 advantage of these Court imposed stays and trial postponements. What has totally  
21 benefited them has been totally prejudicial to me.

22 15. These Stays and Postponements could not have negatively influenced  
23 my life more than they have. Another stay could cost me another \$100,000 which I  
24 simply do not have. Is Justice all about financial wealth? Does the Court realize what  
25 costs are incurred by the “Davids” of this world? With every stay and postponement  
26 and every day we wait for Court - a witness moves out of state, a website is changed,  
27 a company disappears, and my maintenance costs on this Federal lawsuit escalate out  
28 of this Universe. I am David not Goliath. The Court’s actions are obviously more

1 favorable to Goliath than to David.

2 16. It should be noted that Hollymax Realty Inc. has NEVER had it's own  
3 website to our knowledge. From the beginning All HOLLYMAX's agents were  
4 illegally posted on Re/Max All Cities Realty's website in violation of the All Cites  
5 Realty mark and in violation of Real Estate Law.

6 17. On the evening of August 28, 2008 I downloaded the entire website of  
7 Commbroker Inc. The pages annotated here were download by me and annotated by  
8 me. Commbroker statements to the court are hollow and Ms. Todd has again  
9 perjured herself to a federal Judge.

10 18. A copy of Commbroker's entire website is available for the court to  
11 review upon demand. As of the date I copied this entire website, 8/28/08, a minimum  
12 of FIFTY EIGHT WEB PAGES from the Commbroker website continue to use the  
13 All Cities Realty® Registered Trademark. In most of these pages it appears both in  
14 the TITLE of each page and as the COMPANY NAME at bottom of each page, a  
15 feat impossible to miss by any company owner attempting to disclaim use.

16 19. Commbroker continues to use the All Cities Realty® name following  
17 the latest motion by David Sandelands, Esq. and the sworn declaration of Kelli  
18 Todd.

19  
20 I declare under penalty of perjury that the foregoing is true and correct.

21 Executed on this 2<sup>nd</sup> day of September, 2008 at Costa Mesa, California.  
22  
23  
24

25 \_\_\_\_\_  
26 Joseph Miner  
27  
28

**PROOF OF SERVICE**

1 STATE OF CALIFORNIA )  
2 ) ss.  
3 COUNTY OF LOS ANGELES )

4 I am employed in the County of Los Angeles, State of California. I am over  
5 the age of eighteen (18) years and not a party to the within action; my business  
6 address is: 660 S. Figueroa Street, 24<sup>th</sup> Floor, Los Angeles, CA 90017.

7 On August 18, 2008, I served the following described as: **PLAINTIFF’S**  
8 **NOTICE OF MOTION AND MOTION FOR RELIEF FROM STAY;**  
9 **MEMORANDUM OF POINTS AND AUTHORITIES, DECLARATION, AND**  
10 **EXHIBITS IN SUPPORT THEREOF** on the interested parties in this action by  
placing a true copy thereof enclosed in a sealed envelope addressed as follows:

11 Andrew L. Leff, Esq.  
12 SPILE, SIEGAL, LEFF & GOOR, LLP  
13 16501 Ventura Boulevard, Suite 610  
14 Encino, California 91436

15 David B. Sandelands, Esq.  
16 CISLO & THOMAS, LLP  
17 4300 Long Beach Boulevard, Suite 405  
18 Long Beach, California 90807

19  (MAIL) I am readily familiar with the firm’s practice of collection and  
20 processing correspondence by overnight mailing. Under that practice it would  
21 be deposited with U.S. postal service on that same day with postage fully  
22 prepaid at Los Angeles, California in the ordinary course of business. I am  
23 aware that on motion of the party served, service is presumed invalid if postal  
cancellation date or postage meter date is more than one day after date of  
deposit for mailing in affidavit.

24  (BY TELECOPY) I caused such document to be delivered by telescope  
25 transmission to the offices of the addressee.

26  (BY PERSONAL DELIVERY) I caused such envelope to be delivered by  
27 hand to the offices of the addressee.  
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(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(FEDERAL) I declare that I am employed in the offices of a member of this Court at whose direction the service was made.

Executed on August \_\_, 2008, at Los Angeles, California.

\_\_\_\_\_  
David Jones