

1 David B. Sandelands, Esq. No. 198,252
2 Peter S. Veregge, Esq. No. 155,769
3 CISLO & THOMAS LLP
4 1333 Second Street, Suite 500
5 Santa Monica, California 90401
6 Telephone: (310) 451-0647
7 Facsimile: (310) 394-4477
8 Email: dsandelands@cislo.com
9 Email: pveregge@cislo.com

10 Attorneys for Defendants
11 Hollymax Realty, Inc., Commbroker, Inc., Kelli Todd, Byron Rife
12 and Kenneth G. Davis, et al.

13 **UNITED STATES DISTRICT COURT**

14 **CENTRAL DISTRICT OF CALIFORNIA**

<p>15 ALL CITIES REALTY, INC., a 16 California corporation,</p> <p>17 Plaintiff,</p> <p>18 vs.</p> <p>19 HOLLYMAX REALTY, INC, a 20 California corporation, 21 COMMBROKER, INC., a California 22 corporation, KENNETH G. DAVIS, 23 FARZAD DORRANI, ALLEN 24 JACKSON, ARIANNE KAYS, 25 JEANETTE GURZA-JUNCO, JIAO 26 HONG KULECK, ROB 27 O'SULLIVAN, SHANNAN 28 O'SULLIVAN, COLETE 29 STEVENS, SUSAN WILLIAMS, 30 OMID ARASTEH, BLEN BEER, 31 MAURICE BENITAH, NINA 32 DHILLON, MATTHEW 33 FREEDMAN, JACK \KHALII, 34 JIHAN KIM, ROBERT 35 MELAMED, GINA SAEIDIAN, 36 SIMON SHAHERI, BYRON RIFE, 37 JR., DALE ELENIAK, and KELLI 38 TODD individuals, and DOES 1-10 inclusive,</p> <p style="text-align: center;">Defendants.</p>	<p>) CASE NO. SA CV08-195-CJC(MLGx)</p> <p>) EX PARTE APPLICATION BY CISLO) & THOMAS, LLP TO WITHDRAW) AS COUNSEL FOR ALL) DEFENDANTS AND REQUEST) THAT THE DEADLINE FOR ALL) DEFENDANTS TO ANSWER BE) EXTENDED BY 60 DAYS</p> <p>) [Declaration of David B. Sandelands) appended hereto; Proposed Order filed) concurrently herewith]</p> <p>) Trial Date: None Set</p>
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1 **TO THE COURT, ALL PARTIES, AND ALL COUNSEL OF RECORD:**

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3 Pursuant to Local Rule 7-19 and the Court’s inherent power, the law firm
4 of Cislo & Thomas, LLP (“Cislo & Thomas”) will and hereby does apply *ex*
5 *parte* for leave to withdraw as counsel of record for all of the defendants that it
6 represents in this action. Specifically, Cislo & Thomas applies for leave to
7 withdraw as counsel for Hollymax Realty, Inc., Commbroker, Inc., Kenneth G.
8 Davis, Farzad Dorrani, Allen Jackson, Arianne Kays, Jeanette Gurza-Junco, Jiao
9 Hong Kuleck, Rob O’sullivan, Shannan O’sullivan, Colete Stevens, Susan
10 Williams, Omid Arasteh, Glen Beer, Maurice Benitah, Nina Dhillon, Matthew
11 Freedman, Jack Khalii, Jihan Kim, Robert Melamed, Gina Saeidian, Simon
12 Shaheri, and Byron Rife, Jr. (collectively “Defendants”).¹

13
14 I.
15 **SPECIFIC RELIEF SOUGHT**

16 Cislo & Thomas seeks an order relieving it as counsel for Defendants and
17 further seeks an order extending the deadline for Defendants to answer by 60
18 days. Cislo & Thomas seeks this relief pursuant to Rule of Professional Conduct
19 3-310(C)(2) because an actual conflict of interest has arisen among the defendants
20 it represents. Due to the attorney-client privilege, Cislo & Thomas is not free to
21 explain the nature of the conflict further, here. However, Cislo & Thomas is
22 authorized to discuss the matter *in camera* with the Court, if the Court so desires.
23
24

25
26 _____
27 ¹ Ms. Kelli Todd is not identified in the above-mentioned list because on January 21, 2010,
28 the Court issued an Order dismissing the claims against Kelli Todd with prejudice. (*See*
Docket Entry No. 87, Order Granting in Part and Denying in Part, Hollymax Defendants’
Motion to Dismiss Second Amended Complaint.) Thus, Ms. Todd is no longer a party to this
lawsuit.

CISLO & THOMAS LLP
Attorneys at Law
SUITE 900
233 WILSHIRE BOULEVARD
SANTA MONICA, CALIFORNIA 90401-1211
Telephone: (310) 451-0647
Facsimile: (310) 394-4477
www.cislo.com

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II.

NOTICE OF APPLICATION

Counsel for Plaintiff All Cities Realty, Inc., Jeffrey Sax, Esq., and Counsel for Defendant Dale Eleniak, Andy Leff, Esq., were notified of this application by email on January 22, 2010. (Sandelands Decl. ¶5.) Counsel for Mr. Eleniak also received notice via voicemail on January 25, 2010, at 1:00 p.m. (*Id.* at ¶7.) Counsel for Plaintiff, Mr. Sax has confirmed via a response email that he received notice. (*Id.* at ¶6.) Mr. Sax did not state whether he would oppose this motion. (*Id.*) Counsel for Mr. Eleniak has not responded to notice of this application. (*Id.* at ¶7.)

MEMORANDUM

III.

LEGAL STANDARD

Rule 3-310(C) of the Rules of Professional Conduct of the State Bar of California provides in pertinent part: “A member shall not, without the informed written consent of each client . . . (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict . . .” *See Rule of Professional Conduct, 3-310(C)(2).* Where an actual conflict arises during the course of simultaneous representation, the rule of disqualification is a *per se* or “automatic” one. *Flatt v. Superior Court*, 9 Cal. 4th 275, 284 (1994). In cases of dual representation where an actual conflict of interest arises, an attorney must withdraw because “[a]n attorney’s duty of loyalty is not one that is capable of being divided.” *Id.* at 282.

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233 WILSHIRE BOULEVARD
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III.
ARGUMENT

In this action, Cislo & Thomas represents a total of 23 defendants comprising two corporate defendants, one broker defendant and 20 agent defendants. (Sandelands Decl. ¶2.) Unfortunately, an actual conflict of interest has arisen that would prevent Cislo & Thomas from providing each of the aforementioned clients its undivided loyalty. (Sandelands Decl. ¶3.) Cislo & Thomas now finds itself in a position where, were it to continue representing all of the defendants, it would have no choice but to favor some defendants to the prejudice of others. (*Id.*) For this reason, Cislo & Thomas seeks leave to withdraw as counsel for all of the defendants it represents in this action. Due to the attorney-client privilege, Cislo & Thomas is not free to explain the specific nature of the conflict, here. However, Cislo & Thomas is authorized to discuss the matter *in camera* with the Court, if the Court so desires. (Sandelands Decl. ¶4.)

IV.
REQUEST TO EXTEND THE FEBRUARY 1, 2010 DEADLINE TO ANSWER AND CONTINUE THE FEBRUARY 22, 2010 SCHEDULING CONFERENCE BY 60 DAYS TO ALLOW DEFENDANTS TIME TO RETAIN NEW COUNSEL

Rule 3-700(A)(2) of the California Rules of Professional Conduct requires withdrawing counsel to take:

“reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment

CISLO & THOMAS LLP
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233 WILSHIRE BOULEVARD
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1 of other counsel, complying with rule 3-700(D)
2 [relating to releasing, upon the client’s request, client
3 papers and property reasonably necessary to the client’s
4 representation], and complying with applicable laws
5 and rules”

6 *See Cal. R. Prof. Conduct 3-700(A)(2).*

7
8 **A. The Court Has The Authority to Extend the Deadline for the**
9 **Defendants to Answer and to Continue the Scheduling**
10 **Conference**

11 It is well established that the Court has the inherent authority to schedule
12 trial and other case proceedings in its discretion to manage its docket. *See*
13 *Southern California Edison Co. v. Lynch*, 307 F.3d 794, 807 (9th Cir. 2002)
14 (“District courts have inherent power to control their dockets. . . . Our review
15 of such decisions is deferential; we will reverse a district court’s litigation
16 management decisions only if it abused its discretion”) Accordingly, this
17 Court is authorized to grant the requested extension.

18
19 At this time, the deadline for Defendants to file an answer is February 1,
20 2010. Cislo & Thomas believes that due to an actual conflict among the parties,
21 it cannot file an answer on behalf of all of the defendants without dividing its
22 loyalties and improperly favoring some defendants to the prejudice of others.
23 For this reason, the Court should extend the deadline for all Defendants to
24 answer by 60 days to allow Defendants sufficient time to retain new counsel.
25 The Court should similarly continue the Scheduling Conference by at least 60
26 days.

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IV.
CONCLUSION

For the foregoing reasons, Cislo & Thomas respectfully requests that it be relieved as counsel for Defendants and further requests that Defendants' deadline to answer and the date of the scheduling conference be extended by 60 days in order to allow Defendants time to obtain new counsel.

Respectfully submitted,
CISLO & THOMAS LLP



By: _____

Dated: January 25, 2010

David B. Sandelands, Esq.
Peter S. Veregge, Esq.
Attorneys for Defendants
Hollymax Realty, Inc., Commbroker,
Inc., Kelli Todd, Byron Rife
and Kenneth G. Davis, et al.

CISLO & THOMAS LLP
Attorneys at Law
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SANTA MONICA, CALIFORNIA 90401-1211
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DECLARATION OF DAVID B. SANDELANDS

I, David B. Sandelands, declare as follows:

1. I am a partner at the law firm of Cislo & Thomas LLP. I represent defendants Hollymax Realty, Inc., Commbroker, Inc., Kenneth G. Davis, Farzad Dorrani, Allen Jackson, Arianne Kays, Jeanette Gurza-Junco, Jiao Hong Kuleck, Rob O'sullivan, Shannan O'sullivan, Colete Stevens, Susan Williams, Omid Arasteh, Glen Beer, Maurice Benitah, Nina Dhillon, Matthew Freedman, Jack Khalii, Jihan Kim, Robert Melamed, Gina Saeidian, Simon Shaheri, and Byron Rife, Jr. (collectively "Defendants") in the above-entitled action. I make this declaration of my own personal knowledge or on information and belief where so stated. If called as a witness, I could and would competently testify to the truth of the matters asserted herein.

2. In this action, Cislo & Thomas represents a total of 23 defendants comprising two corporate defendants, i.e. Hollymax Realty, Inc. and Commbroker, Inc., one broker defendant, i.e. Byron Rife, Jr. and 20 agent defendants as identified in paragraph 1 above.

3. At this time, an actual conflict of interest has arisen among the defendants that would prevent Cislo & Thomas from providing each of its aforementioned clients its undivided loyalty. Cislo & Thomas now finds itself in a position where, were it to continue representing all of the defendants, it would have no choice but to favor some defendants at the expense of others. For this reason, Cislo & Thomas seeks leave to withdraw as counsel for all of the defendants it represents in this action.

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Attorneys at Law
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SANTA MONICA, CALIFORNIA 90401-1211
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4. Due to the attorney-client privilege, Cislo & Thomas is not free to explain the nature of the conflict further, here. However, Cislo & Thomas is authorized to discuss the matter *in camera* with the Court, if the Court so desires.

5. On January 22, 2010 at about 5:15 p.m., I sent Counsel for Plaintiff All Cities Realty, Inc., Jeffrey Sax, Esq. and Counsel for Defendant Dale Eleniak, Andy Leff, Esq., an email notifying them of this *ex parte* application. Notification by email is proper in this action because the parties routinely communicate by email and have routinely used email to give notice of motions.

6. Counsel for Plaintiff, Mr. Sax, has confirmed via a response email that he received notice. Mr. Sax did not state whether he would oppose this motion.

7. In addition to providing notice by email on January 22, 2010, on January 25, 2010, at 1:00 p.m., I called the office of counsel for Mr. Eleniak, i.e. Mr. Leff, and left a voicemail giving notice of this motion. Mr. Leff's secretary confirmed that he was in the office on January 25th, but was out for lunch at the time of my phone call. Mr. Leff has not responded to notice of this application.

I declare under penalty of perjury that the foregoing is true and correct.
Executed at Santa Monica, California, on January 25, 2010.



David B. Sandelands

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PROOF OF SERVICE

I am over the age of eighteen (18) years, employed in the County of Los Angeles, and not a party to the above-entitled action. My business address is 1333 2nd Street, Suite 500, Santa Monica, California 90401.

On Monday, January 25, 2010, I served:

EX PARTE APPLICATION BY CISLO & THOMAS, LLP TO WITHDRAW AS COUNSEL FOR ALL DEFENDANTS AND REQUEST THAT THE DEADLINE FOR ALL DEFENDANTS TO ANSWER BE EXTENDED BY 60 DAYS and [PROPOSED] ORDER RE SAME

to be sent by ECF electronic mail to the following:

All Cities Realty and Dale Eleniak

by placing it in an envelope addressed as follows to:

Hollymax Realty, Inc.
400 S. Sepulveda Boulevard, Suite 100
Manhattan Beach, CA 90266

Commbroker, Inc.
400 S. Sepulveda Boulevard, Suite 100
Manhattan Beach, CA 90266

Byron Rife, Jr.
400 S. Sepulveda Boulevard, Suite 100
Manhattan Beach, CA 90266

Kenneth Davis
1239 S. Redondo Boulevard
Los Angeles, CA 90019

Jeanette Gurza-Junco
353 N. Spaulding Avenue
Los Angeles, CA 90036

Arianne Kays
7719 Hollywood Boulevard
Los Angeles, CA 90046

Jiao Hong Kuleck
434 N. Crescent Heights Boulevard
Los Angeles, CA 90048

Susan Williams
1530 Poinsettia Place, #326
Los Angeles, CA 90043

Rob O'Sullivan
1213 S. Sycamore
Los Angeles, CA 90027

Shannon O'Sullivan
1213 S. Sycamore
Los Angeles, CA 90027

Farzad Andy Dorrani
3270 Oakshire Drive, #28
Los Angeles, CA 90068

Allen Jackson
9400 La Tiera, #2116
Los Angeles, CA 90045

Colete Stevens
501 N. Rossmore Ave., #A102
Los Angeles, CA 90004

Omid Benjamin Arasteh
131 S. Maple Drive, #13
Beverly Hills, CA 90212

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Maurice Benitah
1059 S. Shenandoah, #208
Los Angeles, CA 90035

Nina Dhillon
Post Office Box 18126
Beverly Hills, CA 90209

Jack Khalili
10650 Holman Avenue, #106
Los Angeles, CA 90024

Jihan Kim
2021 W. Fathom Lane
Anaheim, CA 92801

Robert Melamed
1352 Allenford Avenue
Los Angeles, CA 90049

Simon Shaheri
178 N. Crescent Drive, #8
Beverly Hills, CA 90210

Glen Beer
3721 Malibu Vista Drive
Malibu, CA 90265

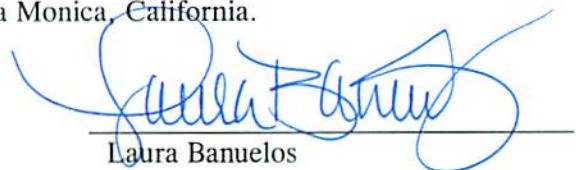
Matthew Freedman
7033 Vanalden Avenue
Reseda, CA 91335

Gina Saeidian
354 Hilgard
Los Angeles, CA 90024

- BY MAIL:** I placed the envelope for collection and mailing following our ordinary business practices. Under that practice, on the same day that correspondence is placed for collection and mailing, it is deposited with the United States Postal Service with first class postage thereon fully prepaid at Santa Monica, California, in the ordinary course of business.
- BY FEDERAL EXPRESS/OVERNIGHT DELIVERY:** I caused a copy of such document to be sent via overnight delivery to the office(s) of the addressee(s) shown above.
- BY FACSIMILE:** I caused a copy of such document to be sent via facsimile machine to the office(s) of the addressee(s) at the phone number(s) shown above. The transmission was reported as complete by a transmission report issued by the facsimile machine immediately following the transmission.
- BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the person(s) identified above.

I declare, under penalty of perjury under the laws of the United States of America that the foregoing is true and that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on Monday, January 25, 2010, at Santa Monica, California.



Laura Banuelos

CISLO & THOMAS LLP
ATTORNEYS AT LAW
1333 2ND STREET, SUITE 500
SANTA MONICA, CALIFORNIA 90401
TELEPHONE: (310) 451-0647 FACSIMILE: (310) 394-4477