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Roommate.com, LLC  
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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10

11 FAIR HOUSING COUNCIL OF SAN  
FERNANDO VALLEY; FAIR  
12 HOUSING COUNCIL OF SAN  
DIEGO, individually and on behalf of  
13 the GENERAL PUBLIC,

14 Plaintiffs,

15 v.

16 ROOMMATE.COM, LLC,

17 Defendant.  
18  
19  
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CASE NO. CV03-9386 PA (RZx)

**EX PARTE APPLICATION TO  
STRIKE THE DECLARATION  
OF MARK VERGE AND FOR  
MONETARY SANCTIONS  
PURSUANT TO LOCAL RULE  
83-7 FOR VIOLATING THE  
COURT'S JULY 12, 2004  
ORDER AND THE LOCAL  
RULES;**

**MEMORANDUM OF POINTS  
AND AUTHORITIES; and**

**DECLARATION OF TIMOTHY  
L. ALGER AND [PROPOSED]  
ORDER (filed concurrently)**

Honorable Percy Anderson  
Hearing Date: None Set

1 TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:

2 PLEASE TAKE NOTICE that defendant Roommate.com, LLC  
3 ("Roommate") hereby applies ex parte for an order striking the Declaration of  
4 Mark Verge and for monetary sanctions pursuant to Local Rule 83-7 for failing  
5 and refusing to obey this Court's July 12, 2004 Order and the Local Rules.

6 This Ex Parte Application is brought on the grounds that:

7 (1) Plaintiffs repeatedly have violated the local rules and this Court's standing  
8 orders in filing papers in this action. On two prior occasions, the Court has  
9 rejected or stricken papers filed by plaintiffs.

10 (2) To deter further violation of the local rules and the standing orders, on July  
11 12, 2004, this Court ordered:

12 Be sure you look at my[] trial order, be sure you look at  
13 the local rules, because if you deviate one inch from my  
14 rules or the local rules, those -- whatever documents they  
15 are will not be filed.  
(Declaration of Timothy L. Alger dated September 7, 2004 ("Alger Decl.")  
at ¶ 2, Ex. A (Hearing Transcript dated July 12, 2004) at 27:14-18.)

16 (3) Plaintiffs were required to "serve upon all other parties and file with the  
17 Clerk . . . the evidence upon which [plaintiffs] will rely in opposition to the  
18 motion" not later than fourteen (14) days before the date designated for the  
19 hearing of the motion. C.D. Cal. L.R. 7.9 By stipulation and order, the  
20 briefing schedule was altered for the parties' cross-motions for summary  
21 judgment, so that opposition papers were to be filed on or before August 27,  
22 2004. (Alger Decl. ¶ 7, Ex. E (Order of August 16, 2004).)

23 (4) On September 3, 2004, plaintiffs served (and apparently filed) the  
24 Declaration of Mark Verge in violation of the Court's Order of August 16,  
25 as well as Local Rule 7-9. This prejudiced defendants, who are unable to  
26 respond to the Declaration.

1 (5) Plaintiffs have failed and refused to obey the Local Rules and the Court's  
2 Order of August 16, and therefore are subject to sanctions pursuant to Local  
3 Rule 83-7.

4 Accordingly, Roommate requests that the Court strike the Declaration  
5 of Mark Verge and impose sanctions against plaintiffs' counsel, Gary Rhoades, in  
6 the amount of \$2,000, to compensate Roommate for costs and attorneys' fees.

7  
8 Notice of Application

9 Notice of this Application and the Court's Procedures, that defendants  
10 have until 3:00 p.m. on the day following service to file any opposition to this Ex  
11 Parte Application, have been provided to plaintiffs. (See Alger Decl. ¶ 3, Ex. B  
12 (letter from Timothy Alger to Gary Rhoades dated September 7, 2004).) Mr.  
13 Rhoades did respond to this notice after Mr. Alger completed his declaration, but  
14 immediately before the papers were filed. He did not indicate in his letter whether  
15 he would oppose the Application.

16 This Ex Parte Application is based on the attached Memorandum of  
17 Points and Authorities; the Declaration of Timothy L. Alger; the Exhibits thereto;  
18 and such other oral or documentary evidence as may be presented at or before any  
19 hearing that the Court might hold, and any other matters of which this Court may  
20 take judicial notice.

21

22 DATED: September 7, 2004

23

QUINN EMANUEL URQUHART  
OLIVER & HEDGES, LLP

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By Timothy L. Alger (SBS)  
Timothy L. Alger  
Attorneys for Defendant  
Roommates.com, LLC

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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3 **Preliminary Statement**

4 Plaintiffs' counsel, Gary Rhoades, has continued his practice of  
5 disobeying the Local Rules and this Court's orders. This time, he has submitted a  
6 declaration in opposition to Roommate's Motion for Summary Judgment a full  
7 week after it was due, and in a manner that made it impossible for Roommate to  
8 respond.

9 Mr. Rhoades previously filed an improper supplemental brief in  
10 opposition to defendant Roommate.com, LLC's ("Roommate") motion to dismiss  
11 for lack of personal jurisdiction. He also filed an incomplete motion for  
12 preliminary injunction that was rejected by the Court. When the preliminary  
13 injunction papers were rejected, Mr. Rhoades was required to inform Roommate of  
14 that decision. Mr. Rhoades failed to notify Roommate, and instead re-filed the  
15 brief.

16 After those two episodes, the Court explicitly warned that any papers  
17 filed not in compliance with the Court's standing orders and Local Rules would be  
18 stricken. Despite that warning, Mr. Rhoades ignored this Court's Order of August  
19 16, 2004 and the Local Rules and filed an untimely declaration, which now should  
20 be stricken.

21 Further, the Court should impose monetary sanctions against  
22 Mr. Rhoades in the amount of \$2,000 to compensate Roommate for the costs and  
23 attorneys' fees that it incurred in connection with this motion.

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1 Statement of Facts

2 On June 3, 2004, plaintiffs' counsel, Gary Rhoades, filed an improper  
3 surreply in support of plaintiffs' opposition to Roommate's Motion to Dismiss, and  
4 the Court struck the brief. (See Declaration of Timothy L. Alger dated September  
5 7, 2004 ("Alger Decl.") at ¶ 4, Ex. C (Court Order dated June 3, 2004 striking  
6 Errata Supplement in Support of Plaintiffs' Opposition to Defendant's Motion to  
7 Dismiss for Lack of Personal Jurisdiction.) At a hearing on the Motion to  
8 Dismiss, the Court castigated Mr. Rhoades at length for disregarding the Court's  
9 explicit prohibition on supplemental briefs. A month later, Rhoades filed an  
10 incomplete motion for preliminary injunction, and then, when the Court notified  
11 Rhoades that the brief had been rejected, Rhoades failed to pass the information  
12 along to Roommate. (See Alger Decl. ¶¶ 2, 5, Exhs. A (July 12 Hearing  
13 Transcript) at 3:13-19, D (Court Order dated July 7, 2004, stating that plaintiffs'  
14 preliminary injunction motion has never been filed). The Court castigated  
15 Mr. Rhoades a second time at the scheduling conference July 12, 2004. As the  
16 Court left the bench at the conclusion of the conference, it stated: "Be sure you  
17 look at my[] trial order, be sure you look at the local rules, because if you deviate  
18 one inch from my rules or the local rules, those -- whatever documents they are  
19 will not be filed." (Id. at 27:14-18.)

20 Despite this warning, and despite two reprimands in open court,  
21 Rhoades chose to untimely file and serve the Declaration of Mark Verge after the  
22 deadline to file opposition papers, a week after the deadline to file opposition  
23 papers, on September 3, 2004. (Alger Decl. ¶ 6, Ex. F (Declaration of Mark  
24 Verge.)<sup>1</sup> The date scheduled for the summary judgment hearing is September 13,  
25

26 <sup>1</sup> Furthermore, none of the statements made in the Verge Declaration were  
27 listed in plaintiffs separate statement of genuine issues. This is no surprise,  
28 because the Verge Declaration is wholly irrelevant to this litigation. The  
declaration discusses the practices of a different publication, factually distinct

(continued...)

1 2004, meaning that the deadline for filing and serving opposition papers under  
2 Rule 7-9 was August 31, 2004. But the actual deadline for opposition papers was  
3 earlier, August 29, 2004, because the parties filed a stipulation, approved by the  
4 Court on August 16, 2004. (See Alger Decl., ¶ 7, Ex. E.) Rhoades filed and fax-  
5 served the Declaration of Mark Verge in opposition to Roommate's summary  
6 judgment motion on September 3, 2004 -- the same day that Roommate served and  
7 filed its reply. This made it impossible for Roommate to respond to the  
8 declaration. (See Alger Decl. ¶ 6.)

9 Roommate has incurred fees and costs bringing this application.  
10 Roommate's counsel has billed at least \$2,000 to prepare the application. (See  
11 Alger Decl. ¶ 9).

12  
13 **Argument**

14 I. **THE COURT SHOULD STRIKE AS UNTIMELY THE DECLARATION**  
15 **OF MARK VERGE**

16 "Each opposing party shall, . . . not later than fourteen (14) days  
17 before the date designated for the hearing of the motion . . . serve upon all other  
18 parties and file with the Clerk . . . the evidence upon which [plaintiffs] will rely in  
19 opposition to the motion." (Local Rule 7-9.) However, this regular deadline may  
20 be altered by stipulation pursuant to Local Rule 7-1, if the Court approves:  
21 "Written stipulations regarding the progress of the case shall be filed with the  
22 Court, be in the form provided by L.R. 52-9, and will not be effective until  
23 approved by the judge . . . ." (Local Rule 7-1.)

24 Here, the parties stipulated, and the Court approved, that all papers in  
25 opposition to motions for summary judgment had to be filed and hand- or fax-

26 \_\_\_\_\_  
27 <sup>1</sup> (...continued)  
28 from Roommates.com, and subject to different legal obligations. The declaration  
was obviously filed to clutter the record and in the false hope of prejudicing the  
Court.

1 served no later than August 27, 2004. Nevertheless, Rhoades filed the Declaration  
2 of Mark Verge in opposition to Roommate's summary judgment motion on  
3 September 3, 2004.

4           Furthermore, Rhoades' violation of the Local Rules was willful.  
5 Rhoades must have known that the deadline for opposition papers was August 27,  
6 2004 because he stipulated to that deadline and because he filed and properly  
7 served all other opposition papers on that day. (Alger Decl. ¶ 7.) He apparently  
8 also attempted to have the Verge Declaration signed by the deadline so that he  
9 could submit it with the other opposition papers. (Alger Decl. ¶ 6, Ex. F (Verge  
10 Declaration) (fax line states that the declaration was sent by  
11 "RHOADESLAWOFFICE" on August 26, 2004 at 11:31 a.m.)) Mr. Verge signed  
12 the declaration on August 31, 2004, four days before Rhoades filed and served it.  
13 (See id.) Mr. Rhoades provided no excuse for the further delay, which prejudiced  
14 Roommate by precluding it from addressing the declaration in its reply brief.  
15 (Alger Decl. ¶ 6.)

16           Mr. Rhoades' maneuver here is obvious: he knew that the Verge  
17 Declaration had to be filed in opposition to Roommate's Motion for Summary  
18 Judgment, where Roommate discussed the burden of reviewing and editing  
19 hundreds of thousands of Roommate profiles. When he did not get the  
20 declarations filed on time, he filed it with his reply in support of Plaintiffs'  
21 Summary Judgment Motion, even though it is improper in that context.  
22 Mr. Rhoades correctly titled the Vegas Declaration, but he assumed, incorrectly,  
23 that both the Court and Roommates would be asleep at the switch and he would be  
24 permitted to submit late evidence, in violation of the Local Rules and this Court's  
25 Order of August 16, 2004. Given this, and Mr. Rhoades' track record of violating  
26 the rules, it is clear that the violation here was willful.

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1 II. THE COURT SHOULD IMPOSE MONETARY SANCTIONS TO  
2 REIMBURSE ROOMMATE FOR COSTS AND FEES

3 "The violation of or failure to conform to any of these Local Rules  
4 may subject the offending party or counsel to: . . . (b) the imposition of costs and  
5 attorneys' fees to opposing counsel, if the Court finds that the conduct rises to the  
6 level of bad faith and/or willful disobedience of a court order." (Local Rule 83-7.)

7 As stated above, Mr. Rhoades' violation of the Local Rules was  
8 willful. Rhoades' failure to file and serve the declaration for four days after Mr.  
9 Verge signed it compounded the violation because it prevented Roommate from  
10 responding to the declaration in its reply brief. Furthermore, this is the third time  
11 that Mr. Rhoades has violated the Local Rules and the Court's Orders in this  
12 litigation, and this violation occurred soon after the Court warned Rhoades to be  
13 careful of further violations. Warnings have proven ineffective. The Court should  
14 impose monetary sanctions against Rhoades in the amount of \$2,000 to  
15 compensate Roommate for its costs and attorneys' fees in bringing this application.

16  
17 Conclusion

18 For the foregoing reasons, Roommate respectfully requests that the  
19 Court strike as untimely the Declaration of Mark Verge and order Gary Rhoades to  
20 pay Roommate \$2,000 in monetary sanctions to compensate Roommate for its  
21 costs and attorneys' fees.

22  
23 DATED: September 7, 2004

24 QUINN EMANUEL URQUHART  
25 OLIVER & HEDGES, LLP

26  
27 By Timothy L. Alger (SOS)  
28 Timothy L. Alger  
Attorneys for Defendant  
Roommates.com, LLC



1 **PROOF OF SERVICE**

2  
3 I am a resident of the State of California, over the age of eighteen  
4 years, and not a party to the within action. My business address is Quinn Emanuel  
5 Urquhart Oliver & Hedges, LLP, 865 S. Figueroa Street, 10th Floor, Los Angeles,  
6 California 90017-2543.

7 On September 7, 2004, I served the within  
8 **EX PARTE APPLICATION TO STRIKE THE DECLARATION OF MARK**  
9 **VERGE AND FOR MONETARY SANCTIONS PURSUANT TO LOCAL**  
10 **RULE 83-7 FOR VIOLATING THE COURT'S JULY 12, 2004 ORDER**  
11 **AND THE LOCAL RULES;**

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 on the interested parties in this action by placing a true copy thereof, enclosed in a  
14 sealed envelope, addressed as stated:

15 **Gary W. Rhoades**  
16 **Law Offices of Gary W. Rhoades**  
17 **834 1/2 S. Mansfield Ave.**  
18 **Los Angeles, CA 90036**  
19 **Telephone: 323.937.7095**  
20 **Fax: 775.640.2274**

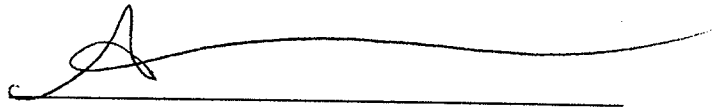
21  [FAX] by transmitting via a facsimile transmission machine whose  
22 telephone number is (213) 624-0643 the document listed above to the  
23 facsimile transmission machine whose telephone number is as set  
24 forth above. The above-described transmission was reported as  
25 complete without error by a transmission report issued by the  
26 facsimile transmission machine upon which the said transmission was  
27 made immediately following the transmission.

28  [MAIL] As follows: I am "readily familiar" with the firm's practice of  
collection and processing correspondence for mailing. Under that  
practice it would be deposited with U.S. postal service on that same

1 day with postage thereon fully prepaid at Los Angeles, California in  
2 the ordinary course of business, addressed as set forth below. I am  
3 aware that on motion of the party served, service is presumed invalid  
4 if postal cancellation date or postage meter date is more than one day  
5 after date of deposit for mailing in affidavit.  
6

7 I declare that I am employed in the office of a member of the bar of  
8 this court at whose direction the service was made.  
9

10 Executed on September 7, 2004, at Los Angeles, California.  
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13 **ALBERT V. VILLAMIL**  
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