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RICHARD W. WICKING
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NORTHERN DISTRICT OF CALIFORNIA

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10 Parkmerced Investors Properties LLC and
11 Stellar Larkspur Partners LLC

UNITED STATES DISTRICT COURT

MEJ

FOR THE NORTHERN DISTRICT OF CALIFORNIA

14 PARKMERCED INVESTORS PROPERTIES
15 LLC, a Delaware Limited Liability Company,
16 and STELLAR LARKSPUR PARTNERS, LLC,
17 a Delaware Limited Liability Company,

CV 08

4434

COMPLAINT

17 Plaintiffs,

DEMAND FOR JURY TRIAL

18 v.

19 Does 1-18, Inclusive,

20 Defendants.

22 Plaintiffs Parkmerced Investors Properties LLC and Stellar Larkspur Partners LLC, by and
23 through their undersigned counsel, and for their causes of action, state and allege as follows:

25 **THE PARTIES**

- 26 1. Plaintiff Parkmerced Investors Properties LLC is a Delaware limited liability company.
- 27 2. Plaintiff Stellar Larkspur Partners LLC is a Delaware limited liability company.
- 28 3. Plaintiffs do not know the true names or capacities of Defendants named herein as Does 1

1 through 18 (“Defendants”) and therefore sue these Defendants by a fictitious name. Plaintiffs will
2 amend this Complaint to identify the true name and capacity of Defendants when they are
3 ascertained.

4 **JURISDICTION**

5 4. Jurisdiction is proper under 15 U.S.C. § 1121, 28 U.S.C. §§ 1331 and 1338 in that the claims
6 arise under the laws of the United States. This Court has supplemental jurisdiction over the state law
7 claims pursuant to 28 U.S.C. § 1367(a) because those claims are so related to the federal claims
8 brought herein as to form part of the same case or controversy.

9 **VENUE**

10 5. Venue is proper in the District of Northern California under 28 U.S.C. § 1391(b) because the
11 acts giving rise to this action occurred at least in part within the Northern District of California.

12 **INTRADISTRICT ASSIGNMENT**

13 6. For the purposes of Civil L.R. 3-2(c), this Intellectual Property Action may be assigned to any
14 division of this Court.

15 **BACKGROUND**

16 7. Parkmerced Investors Properties LLC owns the Parkmerced (the “Parkmerced”), a community
17 of more than 3,000 high-rise flats and town homes located at 3711 Nineteenth Avenue, San
18 Francisco, California 94132.

19 8. Stellar Larkspur Partners LLC owns Larkspur Shores Apartment Homes (“Larkspur Shores”),
20 a community of approximately 350 apartments located at 700 Lincoln Village Circle, Larkspur,
21 California 94939.

22 9. Both the Parkmerced and Larkspur Shores (collectively, the “Apartments”) are managed by
23 Alliance Residential Company.

24 10. Defendants unlawfully posted false, misleading and defamatory comments regarding the
25 Apartments on a public website with the URL address www.apartmentratings.com thereby
26 constituting false and misleading description and representation, interference with contract or other
27 economic relationship and libel.

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1 11. Upon information and belief, Defendants include employees, agents or representatives of
2 competing residential apartment communities in the Bay Area, parties or their agents adverse to the
3 Apartments in other proceedings, other persons who are not current or former tenants of the
4 Apartments, and/or persons misrepresenting their identities.

5 **COMMENTS REGARDING PARKMERCED**

6 12. Specifically, on or about September 1, 2008, one or more Defendants published the following
7 false, misleading and defamatory post concerning Parkmerced under the designation "Anonymous":

8 "WORST PLACE I'VE EVER LIVED"

9 "The patrol (if you can ever call them that) are a band of lazy, wreckless, misfit, morons. They
10 waste their hours away drag racing down the street, blasting music in their cars, talking on the
11 phone, and smoking pot, instead of actually doing what they're paid to do, which is protect the
12 residents and their property. Forget about calling them for help. Forget about filing a report. They
13 take their job so lightly, and there is not even the slightest hint of seriousness to them. I'd even go
14 so far as to say the patrol are in on some of the crimes. You've got cars being broken into, things
15 being stolen, walls being tagged, washers and dryers being ---- and pissed in (cause God only
16 knows how funny that is)."

17 These statements were false and misleading and Defendants either knew they were false and
18 misleading, or were reckless and indifferent as to whether they were false and misleading, when the
19 statements were made.

20 13. Specifically, on or about September 8, 2008, one or more Defendants published the following
21 false, misleading and defamatory statements concerning Parkmerced under the designation
22 "Anonymous":

23 "STAY FAR FAR AWAY AND NEVER LOOK BACK"

24 "Well, their agents are a bunch of liars who will say anything to get you to sign a lease.

25 Management will never respond to any of your complaints or problems; gang members enter the
26 buildings through doors left wide opened and unlocked by Parkmerced staff and then proceed to
27 tag any blank space; you will be charged an outrageous amount of money for water, sewage and
28 trash as they use a formula that is meant to screw you and empty your bank account; loud parties

1 happen every night and their so-called courtesy patrol does nothing even after numerous calls;
2 your car or apartment will be broken into at least once; management will legally raise your rent
3 every few months with passthroughs; and the list can go on and on and on.”

4 “Make sure their residents aren’t also their agents, because they can be very deceitful and
5 manipulative.”

6 These statements were false and misleading and Defendants either knew they were false and
7 misleading, or were reckless and indifferent as to whether they were false and misleading, when the
8 statements were made.

9 14. Specifically, on or about April 1, 2008, one or more Defendants published the following false,
10 misleading and defamatory statements concerning Parkmerced under the designation “Anonymous”
11 in a user response to a post titled “Great”:

12 “This reviewer is lying and works for the management company or has been materially
13 compensated by the management company. . . . Additionally be concerned that the SFPD
14 regularly takes burglary reports with no forced entry . . . This means someone or a group of
15 people have a master key and are using it to steal whatever they can!!!”

16 These statements were false and misleading and Defendants either knew they were false and
17 misleading, or were reckless and indifferent as to whether they were false and misleading, when the
18 statements were made.

19 15. Specifically, on or about May 6, 2008, one or more Defendants published the following false,
20 misleading and defamatory statements concerning Parkmerced under the designation “Anonymous”
21 in a user response to a post titled “Parkmerced= HELL”:

22 “There was a court decision against the owners of this complex for illegally using mechanisms to
23 get people in at a lower rent and then increase that rent after a year.”

24 These statements were false and misleading and Defendants either knew they were false and
25 misleading, or were reckless and indifferent as to whether they were false and misleading, when the
26 statements were made.

1 16. Specifically, on or about April 11, 2008, one or more Defendants published the following
2 false, misleading and defamatory statements concerning Parkmerced under the designation
3 "Anonymous":

4 "They keep rents up illegally"

5 "Please do not be fooled by the salespeople who show you open units in newly painted buildings.
6 YOU will be paying for any new paint, furniture, roofing, and anything this management does
7 instead of fixing things. The Rent Board is allowing them to do minimal maintenance and then
8 repairs are called property improvements. Property improvements are a way for owners to
9 increase rent above the allowable annual rent control rules."

10 "Ask them how often they have assessed extra fees onto tenants and check with the rent board.
11 Some people have had their rent increased over \$200 because of roof repairs and replacing
12 piping. And you will see that more plants are around the rental building than other places, and
13 you pay the maintenance for ALL of the property."

14 "We know that there are homeless people living on the property. There are gangs too. There have
15 been several murders and gang attacks on the property over the years. Please check the police
16 statistics. Unfortunately the property management does not report all the vandalism and other
17 illegal activities on the property so they hide the increasing crime."

18 These statements were false and misleading and Defendants either knew they were false and
19 misleading, or were reckless and indifferent as to whether they were false and misleading, when the
20 statements were made.

21 17. Specifically, on or about September 10, 2007, one or more Defendants published the
22 following false, misleading and defamatory statements concerning Parkmerced under the designation
23 "ansfsustudent":

24 "Steer Clear."

25 "The Villas' business practices are shady, they overcharge you, and they ignore San Francisco's
26 rent laws designed to protect tenants"

1 These statements were false and misleading and Defendants either knew they were false and
2 misleading, or were reckless and indifferent as to whether they were false and misleading, when the
3 statements were made.

4 18. Specifically, on or about May 14, 2007, one or more Defendants published the following
5 false, misleading and defamatory statements concerning Parkmerced under the designation

6 “Anonymous”:

7 “Depressing”

8 “Full Disclosure: I have not lived here, but I did take a tour with my wife and a friend of her’s
9 that was thinking of moving here. . . . Let’s talk about quality. This place is crap, complete
10 rubbish. The rental office is nice, but you won’t be living there. It’s like putting a silk hat on a
11 pig. They have this nice rental office and then they have these crumby apartments. Craziness.

12 You might not have a nice place to live, but at least the dude that showed you the apartment has a
13 nice place to work in. Let’s talk about the people that work here. The leasing agent that showed
14 us around looked and carried himself like a used car salesman. Not only that, but he tried scare
15 tactics at the end of tour. . . . After having seen this joint, I have to say: stay the hell out. This
16 place is in the middle of nowhere and is a complete rip off.”

17 These statements were false and misleading and Defendants either knew they were false and
18 misleading, or were reckless and indifferent as to whether they were false and misleading, when the
19 statements were made.

20 19. Specifically, on our about June 18, 2007, one or more Defendants published the following
21 false, misleading and defamatory statements concerning Parkmerced under the designation

22 “Anonymous”:

23 “Extreme Noise Pollution in Apartments – Banging pipe noise”

24 “Since their Asbestos Abatement Project Mid April 2007, dozens and dozens of tower apartments
25 are experiencing water in hammer noise in heating unit which comes from boiler system. This
26 noise penetrates through your nervous system, causing the inability to sleep through the night.

27 Lack of sleep, disturbing sleep, eardrum pain - will affect your well being. You will not be able to
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1 live in such an intolerable situation. THEY ARE IN VIOLATION OF THE HEALTH AND
2 SAFETY CODE. THEY DON'T SEEM TO CARE.”

3 These statements were false and misleading and Defendants either knew they were false and
4 misleading, or were reckless and indifferent as to whether they were false and misleading, when the
5 statements were made.

6 20. Specifically, on or about July 12, 2008, one or more Defendants published the following false,
7 misleading and defamatory statements concerning Parkmerced under the screen designation
8 “nevercomplain” in a user response to a post titled “Used to Live There – DO NOT MOVE IN”:

9 “I used to live at Villas Parkmerced up until last year. I do not think the new management is
10 sincerely trying to improve anything. All of the improvements being made by Parkmerced are
11 being done a surface level in an attempt to justify raising rents and attracting new tenants. They
12 are not fixing the problems that cause the leaks, broken heat, washing machines, or elevators. I
13 sincerely believe they only have their own best interest at heart and not that have current or future
14 tenants. Since moving, I have filed a lawsuit against Parkmerced, which they have been pushing
15 back further and further with every upcoming court date. The management had changed so many
16 times, that the court lawyers had a difficult time figuring out who the current owners even were.
17 However, it is the current management that will not confront me in court. For anyone thinking of
18 renting here, just don't.”

19 These statements were false and misleading and Defendants either knew they were false and
20 misleading, or were reckless and indifferent as to whether they were false and misleading, when the
21 statements were made.

22 21. Specifically, on or about May 16, 2008, one or more Defendants published the following
23 false, misleading and defamatory statements concerning Parkmerced under the screen designation
24 “Anonymous”:

25 “Parkmerced improperly bills tenants and there is proof”

26 “Protecting Tenants Rights, Holding Landlords Accountable

27 The SFDA s Office recently achieved a major victory for tenants rights in San Francisco. The
28 Office settled a dispute with former landlords of Villas Parkmerced over allegedly improper

1 billing of tenants for utility costs. The landlords agreed to refund over \$300,000 in charges to
2 nearly 4,000 current and former tenants, sending a signal that the Office will vigorously enforce
3 tenants rights under San Francisco s Rent Ordinance."

4 Check this link out to read:

5 http://www.sfdistrictattorney.org/images/SFDISTRICK_ATT.pdf'

6 These statements were false and misleading and Defendants either knew they were false and
7 misleading, or were reckless and indifferent as to whether they were false and misleading, when the
8 statements were made.

9 22. Specifically, on or about September 2, 2008, one or more Defendants published the following
10 false, misleading and defamatory statements concerning Parkmerced under the designation
11 "Anonymous" in a user response to a post titled "WORST PLACE I'VE EVER LIVED":

12 "I've written management several times, called several times, sent copies of letters to the BBB,
13 Rent Board and City Supervisor and managment has decided to IGNORE my complaints."

14 These statements were false and misleading and Defendants either knew they were false and
15 misleading, or were reckless and indifferent as to whether they were false and misleading, when the
16 statements were made.

17 23. Specifically, on or about February 3, 2008, one or more Defendants published the following
18 false, misleading and defamatory statements concerning Parkmerced under the designation
19 "Anonymous":

20 "A real dump!"

21 "To those living in Park Merced take your complaints to the city. I did and according to the
22 building inspector that came out we are not alone the more complaints the city recieves about this
23 dump the better."

24 These statements were false and misleading and Defendants either knew they were false and
25 misleading, or were reckless and indifferent as to whether they were false and misleading, when the
26 statements were made.

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1 24. Specifically, on or about May 24, 2007, one or more Defendants published the following
2 false, misleading and defamatory statements concerning Parkmerced under the designation
3 "Anonymous" in a user response to a post titled "security patrol is afraid of the tenants":

4 "I dodged the bullet on this one. When I moved to SF 2 years ago, Parkmerced was the first place
5 I tried. I sent them a fax and left messages and they never called me back. I'm glad, I heard they
6 are now going thru a rent scam class action lawsuit. I ended up at SOMA Residences in my loft
7 and have never been happier. It was the best decision I made not pursuing Parkmerced, otherwise
8 I would have never found this loft!"

9 These statements were false and misleading and Defendants either knew they were false and
10 misleading, or were reckless and indifferent as to whether they were false and misleading, when the
11 statements were made.

12 25. Upon information and belief, Defendants may also be responsible for posting or publishing
13 additional false, misleading and defamatory statements that are currently unknown to Plaintiffs.

14 **COMMENTS REGARDING LARKSPUR SHORES**

15 26. Specifically, on or about May 17, 2008, one or more Defendants published the following
16 false, misleading and defamatory statements concerning Larkspur Shores under the designation
17 "Anonymous":

18 "RUN RUN RUN FAR FAR AWAY"

19 "If you are looking to rent at larkspur shores, DONT. Construction noise, poor management,
20 tacky decor, and an indifferent staff make this one of the worst choices to live. I have lived here
21 for almost two years and have watched this once quaint neighborhood transform into a slum. If
22 you are a current tenant and are posting on here because you are as fed up as I am, you have to
23 understand we do have rights and I beg you to contact -----s at Marin Fair Housing----
24 -----, Alliance Residential Corporate Office located in Phoenix, AZ 602-778-2800, when
25 you call this number there is a dial by name directory to screen calls, if you type in "-----" "-----
26 "you get the voicemail of ---- -----, probably not the most appropriate contact, but with enough
27 people calling I am sure he will pass the message on to someone who is. Anyone who would like
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1 to unite and get a petition going to demand action, please feel free to post. Ill be sure to spread the
2 message.”

3 These statements were false and misleading and Defendants either knew they were false and
4 misleading, or were reckless and indifferent as to whether they were false and misleading, when the
5 statements were made.

6 27. Specifically, on or about January 22, 2008, one ore more Defendants published the following
7 false, misleading and defamatory comments concerning Larkspur Shores under the screen
8 designation “Anonymous” in a user response to a post titled “Major Construction Project Underway
9 (For the next TWO years!)”:

10 “yeah the new mgmt is totally making money off the tenants oh and if you don’t agree they
11 EVICT you instead of having the understanding that your lease is up. (My neighbor is getting
12 evicted) I bet the first one on here was the mgmt. Thanks for ripping me off I am out!”

13 These statements were false and misleading and Defendants either knew they were false and
14 misleading, or were reckless and indifferent as to whether they were false and misleading, when the
15 statements were made.

16 28. Specifically, on or about November 6, 2007, one or more Defendants published the following
17 false, misleading and defamatory statements concerning Larkspur Shores under the screen
18 designation “makensie_younce@yahoo.com”:

19 “One Cypress Station Sucks”

20 “The apartment sticks from all the people that live on one level. The office does not care about
21 your problems. Maintence does no care. The get new management and don’t tell. But worst of all i
22 am pregnant and i moved in 3 months ago and me and my boyfriend started to notice everytime
23 we came home the apartment would smell like old people, A stinky restroom, old food evettme it
24 smells different. They won’t do anything about it. The lady says she has walked the apartments
25 around me but she can’t find where the smell is and stupid ----- doesn’t she think i would know if
26 she walked the apartments cause you have to give people notice and i have not seen any notices
27 on peoples doors. I am mad and regret signing a year lease. Does any one know how i can get out
28 of the lease”

1 These statements were false and misleading and Defendants either knew they were false and
2 misleading, or were reckless and indifferent as to whether they were false and misleading, when the
3 statements were made.

4 29. Specifically, on or about November 10, 2007, one or more Defendants published the
5 following false, misleading and defamatory statements concerning Larkspur Shores under the screen
6 designation "Anonymous":

7 "worst experience"

8 "Apartments leaking with mold and falling apart. . . . They made a young gal stay in an apartment
9 with mold 2 feet up on the bedroom wall and a closet full of water. The new management has
10 done nothing about all this and is increasing the rents"

11 These statements were false and misleading and Defendants either knew they were false and
12 misleading, or were reckless and indifferent as to whether they were false and misleading, when the
13 statements were made.

14 30. Specifically, on or about September 28, 2007, one or more Defendants published the
15 following false, misleading and defamatory statements concerning Larkspur Shores under the screen
16 designation "Anonymous":

17 "New Owners/Management As of July 2007"

18 "The new owners are here for the BIG BUCKS! Rents for tenants have gone up \$200-\$400 a
19 month! No negotiations. Management doesn't care if you're a quiet tenant who pays the rent on
20 time, or if you're nice to your neighbors, or if your dog doesn't bark incessantly. No sir, it's the
21 bottom line. Pay them!"

22 These statements were false and misleading and Defendants either knew they were false and
23 misleading, or were reckless and indifferent as to whether they were false and misleading, when the
24 statements were made.

25 31. Upon information and belief, Defendants may also be responsible for posting or publishing
26 additional false, misleading and defamatory statements that are currently unknown to Plaintiffs.

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COUNT I

(UNFAIR COMPETITION UNDER THE LANHAM ACT)

32. Paragraphs 1 through 31 are repeated and realleged as if fully set forth herein.

33. Defendants' activities constitute false or misleading descriptions of fact and false or misleading representations of fact in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) because Defendants misrepresent the nature, characteristics and qualities of the Apartments.

COUNT II

**(INTERFERENCE WITH CONTRACT
OR OTHER ECONOMIC RELATIONSHIP)**

34. Paragraphs 1 through 33 are repeated and realleged as if fully set forth herein.

35. Upon information and belief, Defendants had knowledge of the existence of contractual relations between Plaintiffs and the Tenants.

36. Without any justifiable basis, Defendants interfered with contractual relations between Plaintiffs, the Tenants, prospective Tenants and others to Plaintiffs' disadvantage by anonymously posting on a public Internet site false and misleading comments about the Apartments.

37. Defendants posted these false and misleading comments with the intent to harm Plaintiffs financially and to induce the Tenants, prospective Tenants and others to sever their economic relationships with Plaintiffs.

38. As a proximate result of Defendants' conduct, Plaintiffs have suffered disruptions in their relationships with the Tenants, prospective Tenants and others.

39. As a result of Defendants' acts alleged herein, Plaintiffs have been damaged in an amount greater than the minimum jurisdictional limits of the Court.

40. In doing the acts alleged herein, Defendants were willful and fraudulent.

41. Unless restrained, Defendants will disrupt other economic relationships between Plaintiffs, the Tenants, prospective Tenants and others to Plaintiffs' great and irreparable injury, for which damages would not afford adequate relief, in that they would not completely compensate for the injury to Plaintiffs' business reputation and goodwill.

COUNT III

(LIBEL)

42. Paragraphs 1 through 41 are repeated and realleged as if fully set forth herein.

43. Defendants have published false and defamatory statements regarding the Apartments on a public Internet site.

44. Upon information and belief, Defendants knew of the falsity of such statements or were reckless and indifferent to the falsity of such statements at the time they made them.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor, and against Defendants, as follows:

1. For a preliminary and permanent injunction enjoining Defendants and their respective agents, servants, employees, officers, and assigns, and all other persons in active concert or participation with them from further publication of any false and misleading comments regarding the Apartments;

2. For an award of money damages in accordance with the evidence, together with interest thereon for damage to Plaintiffs' business reputation;

3. For an award of punitive damages sufficient to punish and deter the conduct complained of herein;

4. For an award of a sufficient amount to conduct a corrective advertising campaign to dispel the effects of Defendants' wrongful conduct and false and misleading statements;

5. For a retraction of the false statements complained of herein;

6. Awarding Plaintiffs their attorneys' fees and costs of this action; and

7. Awarding such other and further relief as the Court deems appropriate.

DATED: September 23, 2008

GIBSON, DUNN & CRUTCHER LLP

By: *G. Charles Nierlich*

G. Charles Nierlich

Attorneys for Plaintiffs
Parkmerced Investors Properties LLC and
Stellar Larkspur Partners LLC

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REQUEST FOR JURY TRIAL

Plaintiffs hereby demand a jury trial.

DATED: September 23, 2008

GIBSON, DUNN & CRUTCHER LLP

By: *G. Charles Nierlich*
G. Charles Nierlich

Attorneys for Plaintiffs
Parkmerced Investors Properties LLC and
Stellar Larkspur Partners LLC

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