

CIVIL COVER SHEET

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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS PARKMERCED INVESTORS PROPERTIES LLC, a Delaware Limited Liability Company, and STELLAR LARKSPUR PARTNERS, LLC, a Delaware Limited Liability Company

DEFENDANTS
DOES 1-18, Inclusive

(b) County of Residence of First Listed Plaintiff DELAWARE (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant UNKNOWN (IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

G. CHARLES NIERLICH
GIBSON, DUNN & CRUTCHER LLP
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Attorneys (If Known)

MEJ E-filing

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input checked="" type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. s. 1125(a)
Brief description of cause:
Internet publication of defendants' false and misleading comments regarding plaintiffs' properties.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

- SAN FRANCISCO/OAKLAND
- SAN JOSE

DATE

Sept. 23, 2008

SIGNATURE OF ATTORNEY OF RECORD

G. Charles Nierlich

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15 Attorneys for Plaintiffs
16 Parkmerced Investors Properties LLC and
17 Stellar Larkspur Partners LLC

18 UNITED STATES DISTRICT COURT
19 FOR THE NORTHERN DISTRICT OF CALIFORNIA

20 PARKMERCED INVESTORS PROPERTIES
21 LLC, a Delaware Limited Liability Company,
22 and STELLAR LARKSPUR PARTNERS, LLC,
23 a Delaware Limited Liability Company,

24 Plaintiffs,

25 v.

26 Does 1-18, Inclusive,

27 Defendants.

E-filing

MEJ

CV 08

4434

COMPLAINT

DEMAND FOR JURY TRIAL

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

THE PARTIES

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

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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.

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”
27
28

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. Crazy. . . .
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
28

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.

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
28

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 managment 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.

1 **COUNT III**

2 **(LIBEL)**

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

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

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

8 **PRAYER FOR RELIEF**

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

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

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

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

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

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

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

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

23
24 DATED: September 23, 2008

GIBSON, DUNN & CRUTCHER LLP

25
26 By: *G. Charles Nierlich*
27 G. Charles Nierlich

28 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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