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10 UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

12 PARKMERCED INVESTORS PROPERTIES)
13 LLC, *et al.*,)

14 Plaintiffs,)

15 v.)

16 DOES 1-18, INCLUSIVE)

17 Defendants.)
18)
19)

No. CV-0800434-MEJ

**AFFIDAVIT OF PAUL ALAN
LEVY**

Date: January 15, 2009

Time: 10 AM

Place: Courtroom B, 15th floor

Judge: James

20 1. My name is Paul Alan Levy. I am lead counsel for movant John Doe. I am a member of
21 the D.C. Bar and am applying to the Court for leave to appear *pro hac vice*. I make this affidavit in
22 support of the motion of John Doe for a protective order barring enforcement of plaintiffs' subpoena
23 and to strike plaintiffs' complaint under California's anti-SLAPP statute.

24 2. I refer to defendant Doe in this affidavit generically using the female gender, without
25 intending to imply that Doe is actually female.

26 3. After I received a request from Doe to protect her right to speak anonymously, I asked
27 apartmentratings.com to provide me with a copy of the subpoena seeking to obtain her identifying
28

1 information and to specify which of the statements enumerated in the complaint had caused it to send
2 a notice of subpoena to my client. The response from apartmentratings.com, along with the subpoena
3 that was attached to that email, is attached as Exhibit A.

4 4. I examined the apartmentratings.com web site to obtain the list of all opinions posted about
5 Larkspur Shores; I printed out the list of such opinions, as well as the list of the comments posted
6 under the opinion title ‘Major Construction Project Underway (For the next TWO years),’ identified
7 in paragraph 2(b) of the subpoena. These lists are attached as Exhibit B. Apartmentratings.com
8 advised that Doe’s information was sought by paragraph 2(b) on page 3 of the subpoena, that sought
9 documents “concerning the identity of the posting on or about January 22, 2008, under the screen
10 designation ‘Anonymous’ in response to a posting on or about April 28, 2008 under the opinion title
11 ‘Major Construction Project Underway (For the next TWO years).’” Inspecting Exhibit B, I
12 determined that apartmentratings.com’s notification to Doe was prompted by the first of the two
13 postings by “Anonymous” on January 22, 2008.

14 5. I examined apartmentratings.com web site to obtain the complete list of opinions posted
15 about plaintiff Parkmerced and printed that list. A copy is attached as Exhibit C.


16 6. I further examined the apartmentratings.com website to determine how comments could
17 be posted either by residents (or prospective residents) and the apartment buildings under review, or
18 by the managers of those buildings, and printed the pages that are attached as Exhibit D.

19 7. Doe provided me with a copy of her lease for her residence at plaintiff Larkspur’s apartment
20 building. I have redacted Doe’s name and other information in the lease that might tend to identify
21 her. The redacted lease is attached as Exhibit E.

22 8. On November 17, 2008, I called counsel for plaintiffs, Terrence Ross, to seek consent to
23 Doe’s motion. I explained in general terms the basis for our motion – the lack of court permission for
24 pre-Rule 26(f) discovery, the lack of jurisdiction, and the failure to make any showing in support of
25 discovery. Mr. Ross told me that he has sought pre-service discovery in some thirty to forty cases and
26 done it just the way he did it here. We also discussed the federal law claim in the complaint, which
27 Mr. Ross characterized as a general Lanham Act claim for misuse of a trademark under section 43(a),

1 and not just a false advertising claim. We discussed such a claim and disagreed about whether an
2 allegation (and showing) of confusion about source is needed for such a claim. Mr. Ross declined to
3 consent.

4 Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of perjury that the foregoing is
5 true and correct. Executed on November 18, 2008.

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8 Paul Alan Levy
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