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7 Attorneys for Defendants  
 KMF ALAMEDA, LLC, DBA  
 8 LADERA WOODS APARTMENTS,  
 KLINGBEIL CAPITAL MANAGEMENT, INC. and  
 9 KLINGBEIL CAPITAL MANAGEMENT, LTD.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF ALAMEDA**

12 MOHAMMAD I. NIAZI, for himself )	Case No. RG17879561
13 individually, and for all persons similarly )	CLASS ACTION
13 situated, )	
14 )	
14 Plaintiffs )	<b>DEFENDANTS' AMENDED ANSWER</b>
15 v. )	<b>TO CLASS ACTION COMPLAINT FOR</b>
16 )	<b>DAMAGES AND INJUNCTIVE RELIEF</b>
16 KMF ALAMEDA, LLC, dba LADERA )	
17 WOODS APARTMENTS, KLINGBIEL )	Assigned for all purposes to the Honorable
17 CAPITAL MANAGEMENT, INC., )	Ioana Petrou
18 JOHNNY RODRIGUEZ, and DOES 1-30, )	Dept: 17
18 AND DOES 1 through 100, inclusive, )	Action Filed: October 20, 2017
19 )	Trial Date: N/A
19 Defendants )	

20

21 Defendants KMF ALAMEDA, LLC, DBA LADERA WOODS APARTMENTS,  
 22 KLINGBEIL CAPITAL MANAGEMENT, INC. and KLINGBEIL CAPITAL MANAGEMENT,  
 23 LTD. (Referred to as "Defendants") hereby answer the Class Action Complaint ("Complaint") of  
 24 Plaintiff MOHAMMAD I. NIAZI for himself individually, and for all persons similarly situated  
 25 ("Plaintiffs"), as follows:

26 **GENERAL DENIAL**

27 Pursuant to California Code of Civil Procedure Section 431.30, Defendants deny each and  
 28 every allegation, all and singular, both generally and specifically, contained in the Complaint and

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1 each purported cause of action contained therein. Defendants further deny that Plaintiffs have  
2 been damaged in the amount or manner alleged in the Complaint, or in any other amount or  
3 manner, by any act or omission of these Defendants. In addition to the above general denial to  
4 Plaintiffs' Complaint, Defendants allege the following affirmative defenses:

5 **AFFIRMATIVE DEFENSES TO ALL CAUSES OF ACTION**

6 In further response to the Complaint, and as separate and distinct affirmative defenses,  
7 Defendants allege as follows:

8 AS AND FOR A FIRST, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,  
9 Defendants allege that Plaintiffs' Complaint, and each cause of action therein, fails to state  
10 facts sufficient to constitute any cause of action.

11 AS AND FOR A SECOND, SEPARATE AND DISTINCT AFFIRMATIVE  
12 DEFENSE, these answering Defendants allege that Plaintiffs' Complaint is barred by the  
13 applicable statutes of limitation enumerated in California Code of Civil Procedure Sections  
14 337, 337.2, 338, 340 and 343.

15 AS AND FOR A THIRD, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,  
16 Defendants allege that the relief sought by Plaintiffs is barred due to the acts, conduct, and  
17 omissions of Plaintiffs which constitute waiver.

18 AS AND FOR A FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE  
19 DEFENSE, Defendants allege that the relief sought by Plaintiffs is barred due to the acts,  
20 conduct, and omissions of Plaintiffs which constitute estoppel.

21 AS AND FOR A FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,  
22 Defendants allege that the relief sought by Plaintiffs is barred due to the acts, conduct, and  
23 omissions of Plaintiffs which constitute laches.

24 AS AND FOR A SIXTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,  
25 Defendants allege that Plaintiffs' Complaint, and each cause of action set forth therein, is  
26 barred by the equitable doctrine of unclean hands.

27 AS AND FOR A SEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
28 DEFENSE, Defendants allege that Plaintiffs' Complaint, and each cause of action contained

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1 therein, is barred because Plaintiffs would be unjustly enriched by receipt of any recovery  
2 prayed for in the Complaint.

3 AS AND FOR AN EIGHTH, SEPARATE AND DISTINCT AFFIRMATIVE  
4 DEFENSE, Defendants allege that as applied to the allegations of the Complaint, Business and  
5 Professions Code Section 17200, *et. seq.*, violates Defendants rights to substantive and  
6 procedural due process under Article I, Section 7 of the California Constitution and the  
7 Fourteenth Amendment to the United States Constitution, in that it would render a judgment for  
8 persons that are not parties to this lawsuit, who have not been given notice of these proceedings  
9 and/or an opportunity to be heard, and over whom this Court has no jurisdiction, and because  
10 the claims alleged under Business and Professions Code Section 17200, *et. seq.*, would present  
11 the possibility of duplicative recoveries.

12 AS AND FOR A NINTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,  
13 Defendants allege that Plaintiffs purported representative claim under Business & Professions  
14 Code Section 17200, *et. seq.*, is barred by the provisions of Business & Professions Code  
15 Sections 17203 and 17204.

16 AS AND FOR A TENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,  
17 Defendants allege that Plaintiffs approved and/or ratified the conduct of these answering  
18 Defendants, and that Plaintiffs are therefore estopped from asserting any claim based thereon.

19 AS AND FOR AN ELEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
20 DEFENSE, Defendants allege that Plaintiffs lacks standing to bring one or more of the causes  
21 of action stated in the Complaint.

22 AS AND FOR A TWELFTH, SEPARATE AND DISTINCT AFFIRMATIVE  
23 DEFENSE, Defendants allege that Plaintiffs' Complaint, and each cause of action therein, is  
24 vague, uncertain, ambiguous, or unintelligible as it pertains to these Defendants.

25 AS AND FOR A THIRTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
26 DEFENSE, Defendants allege that Plaintiffs' Complaint and each claim for relief thereof are  
27 barred in whole or in part because Plaintiffs have sustained no injury or damage by reason of  
28 acts or omissions of these Defendants.

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1 AS AND FOR A FOURTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
2 DEFENSE, Defendants allege that Defendants were substantially compliant pursuant to California  
3 Code of Civil Procedure Section 1947.7(c).

4 AS AND FOR A FIFTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
5 DEFENSE, Defendants allege that at all times Defendants acted in compliance with all contracts,  
6 statutory and regulatory requirements applicable to their activities, and otherwise conducted itself  
7 as a reasonable business under the circumstances.

8 AS AND FOR A SIXTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
9 DEFENSE, Defendants allege that Defendants did not engage in any extreme and/or outrageous  
10 conduct directed towards Plaintiffs, thereby preventing Plaintiffs from recovering damages for  
11 intentional infliction of emotional distress as well as any claim for other physical and/or mental  
12 injuries.

13 AS AND FOR A SEVENTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
14 DEFENSE, Defendants allege that Defendants conduct was a just and proper exercise of  
15 management discretion undertaken in a fair and honest manner, without malice or unlawful  
16 motive, and regulated by good faith under the circumstances that existed at the time.

17 AS AND FOR AN EIGHTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
18 DEFENSE, Defendants allege that all of Defendants' actions and omissions, as alleged by  
19 Plaintiffs, were justified by business necessity.

20 AS AND FOR A NINETEENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
21 DEFENSE, Defendants allege that Plaintiffs' Complaint and each claim for relief thereof (1) fails  
22 to allege that Defendants breached a consensual term, (2) fails to allege, nor can it allege, a breach  
23 of an express term conferring the exercise of discretionary authority upon these answering  
24 Defendants; and (3) improperly invokes the implied covenant to attempt to substitute for or  
25 derogate from the express terms of the written contract.

26 AS AND FOR A TWENTIETH, SEPARATE AND DISTINCT AFFIRMATIVE  
27 DEFENSE, Defendants allege that there was a mutual mistake of fact or law, or a unilateral  
28 mistake of fact or law by these answering Defendants.

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1 AS AND FOR A TWENTY-FIRST, SEPARATE AND DISTINCT AFFIRMATIVE  
2 DEFENSE, Defendants allege that Plaintiffs' Complaint, and each claim stated therein, is barred  
3 by the parol evidence rule because the agreements alleged in the Complaint are fully integrated,  
4 embodying the complete terms of the agreements between the parties.

5 AS AND FOR A TWENTY-SECOND SEPARATE AND DISTINCT AFFIRMATIVE  
6 DEFENSE, these answering Defendants allege that any and all putative members of the class  
7 may practicably be brought before the Court.

8 AS AND FOR A TWENTY-THIRD SEPARATE AND DISTINCT AFFIRMATIVE  
9 DEFENSE, these answering Defendants allege that the putative class is not ascertainable and is  
10 not sufficiently numerous to warrant class treatment.

11 AS AND FOR A TWENTY-FOURTH SEPARATE AND DISTINCT AFFIRMATIVE  
12 DEFENSE, these answering Defendants allege that the questions of law or fact common to the  
13 putative class members are not substantially similar and individual issues predominate over the  
14 questions that are common.

15 AS AND FOR A TWENTY-FIFTH SEPARATE AND DISTINCT AFFIRMATIVE  
16 DEFENSE, these answering Defendants allege that the claims of the Plaintiffs are not typical of  
17 the claims of the putative class members.

18 AS AND FOR A TWENTY-SIXTH SEPARATE AND DISTINCT AFFIRMATIVE  
19 DEFENSE, these answering Defendants allege that class certification is inappropriate because  
20 the claims of, or defenses to, each of Plaintiffs' claims, do not raise questions of law or fact  
21 which are common to claims of, or defenses to, the claims of each member of the putative  
22 class.

23 AS AND FOR A TWENTY-SEVENTH SEPARATE AND DISTINCT  
24 AFFIRMATIVE DEFENSE, these answering Defendants allege that class certification is  
25 inappropriate because the claims of, or defenses to, each of Plaintiffs' claims, are not typical of  
26 the claims of, or defenses to, the claims of each member of the putative class.

27 AS AND FOR A TWENTY-EIGHTH SEPARATE AND DISTINCT AFFIRMATIVE  
28 DEFENSE, these answering Defendants allege that Plaintiffs cannot maintain this action as a

1 class action because Plaintiffs cannot fairly and adequately protect and represent the interest of  
2 each member of the class.

3 AS AND FOR A TWENTY-NINTH SEPARATE AND DISTINCT AFFIRMATIVE  
4 DEFENSE, these answering Defendants allege that class certification is inappropriate because  
5 Plaintiffs cannot demonstrate that class litigation is superior to other available means for  
6 adjudication of the claims raised in this case.

7 AS AND FOR A THIRTIETH SEPARATE AND DISTINCT AFFIRMATIVE  
8 DEFENSE, these answering Defendants allege that class certification is inappropriate because  
9 the prosecution of separate claims or defenses by or against individual members of the  
10 purported class will not create a risk of either inconsistent or varying adjudications which will  
11 establish incompatible standards of conduct applicable to either Plaintiffs, members of the  
12 putative class, or Defendants.

13 AS AND FOR A THIRTY-FIRST SEPARATE AND DISTINCT AFFIRMATIVE  
14 DEFENSE, these answering Defendants allege that class certification is inappropriate because  
15 the prosecution of separate claims or defenses by or against individual members of the  
16 purported class will not create a risk that such adjudications would substantially impair or  
17 impede the ability of other members of the putative class to protect his or her interest.

18 AS AND FOR A THIRTY-SECOND SEPARATE AND DISTINCT AFFIRMATIVE  
19 DEFENSE, these answering Defendants allege that class certification is inappropriate because  
20 the questions of law or fact alleged to be common to the claims of, or defenses to, the claims of  
21 Plaintiffs and each member of the putative class do not predominate over any questions of law  
22 or fact affecting Plaintiffs individually or individual members of the putative class, and class  
23 representation is not superior to other available methods for fair and efficient adjudication of  
24 the controversy.

25 AS AND FOR A THIRTY-THIRD SEPARATE AND DISTINCT AFFIRMATIVE  
26 DEFENSE, these answering Defendants allege that class certification is inappropriate because  
27 each member of the putative class has an interest in individually controlling the prosecution of  
28 separate claims or defenses.

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1 AS AND FOR A THIRTY-FOURTH SEPARATE AND DISTINCT AFFIRMATIVE  
2 DEFENSE, these answering Defendants allege that class certification is inappropriate because  
3 trial of this case as a class action will deprive Defendants of due process of law in violation of  
4 the Constitution of the United States.

5 AS AND FOR A THIRTY -FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE  
6 DEFENSE, Defendants allege that Plaintiffs' damages, if any, are too speculative and remote to  
7 justify recovery.

8 AS AND FOR AN THIRTY -SIXTH, SEPARATE AND DISTINCT AFFIRMATIVE  
9 DEFENSE, Defendants allege that Plaintiffs' Complaint, and each cause of action thereof, for  
10 injunctive relief, disgorgement, and restitution are barred in whole or in part because at all  
11 times Defendants were acting upon a reasonable good faith belief that tjeor actions were lawful,  
12 just, and proper.

13 AS AND FOR AN THIRTY -SEVENTH, SEPARATE AND DISTINCT  
14 AFFIRMATIVE DEFENSE, Defendants allege that Plaintiffs have failed sufficiently to plead  
15 special damages. Accordingly, Plaintiffs are not entitled to recover such damages.

16 AS AND FOR A THIRTY -EIGHTH, SEPARATE AND DISTINCT AFFIRMATIVE  
17 DEFENSE, these answering Defendants allege that Plaintiffs' Complaint violates Defendants right  
18 to due process as provided in the Fifth and Fourteenth Amendments to the U.S. Constitution and  
19 Article I, Section 13 of the Constitution of the State of California and therefore fails to state a  
20 cause of action upon which punitive or exemplary damages may be awarded.

21 AS AND FOR A THIRTY -NINTH, SEPARATE AND DISTINCT AFFIRMATIVE  
22 DEFENSE, these answering Defendants allege that the punitive damages sought by Plaintiffs are  
23 barred because there is no allegation of sufficient facts to warrant an award of punitive damages.

24 AS AND FOR A FORTIETH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,  
25 these answering Defendants allege that the penalties sought by the Complaint violate the excessive  
26 fines clause of the United States and California Constitutions

27 AS AND FOR A FORTY-FIRST, SEPARATE AND DISTINCT AFFIRMATIVE  
28 DEFENSE, these answering Defendants allege that Defendants presently have insufficient

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1 knowledge or information on which to form a belief as to whether it may have additional, as yet  
2 unstated, affirmative defenses available. Defendants reserve herein the right to assert additional  
3 defenses in the event that discovery indicates that they would be appropriate.

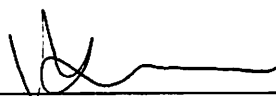
4 AS AND FOR A FORTY-SECOND, SEPARATE AND DISTINCT AFFIRMATIVE  
5 DEFENSE, these answering Defendants allege that Plaintiff's Complaint, and each cause of action  
6 therein, is barred against Defendant KLINGBEIL CAPITAL MANAGEMENT, INC. because it is  
7 an improper party and wrongly joined in this action.

8 WHEREFORE, Defendants KMF ALAMEDA, LLC, DBA LADERA WOODS  
9 APARTMENTS, KLINGBEIL CAPITAL MANAGEMENT, INC. and KLINGBEIL CAPITAL  
10 MANAGEMENT, LTD. seek such relief as may be appropriate, including judgment in favor of  
11 Defendants KMF ALAMEDA, LLC, DBA LADERA WOODS APARTMENTS, KLINGBEIL  
12 CAPITAL MANAGEMENT, INC. and KLINGBEIL CAPITAL MANAGEMENT, LTD. and  
13 against Plaintiffs MOHAMMAD I. NIAZI, for himself individually, and for all persons similarly  
14 situated as follows:

- 15 1. That Plaintiffs' Complaint be dismissed with prejudice in its entirety;
- 16 2. That Plaintiffs take nothing by way of their Complaint;
- 17 3. That costs of suit and attorneys' fees, if appropriate, incurred in the defense of this  
18 action be awarded to Defendants KMF ALAMEDA, LLC, DBA LADERA WOODS  
19 APARTMENTS, KLINGBEIL CAPITAL MANAGEMENT, INC. and KLINGBEIL CAPITAL  
20 MANAGEMENT, LTD. and
- 21 4. For such other relief as the Court deems just and proper.

22 DATED: November 15, 2018

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A Professional Law Corporation

24 By:   
25 Helene A. Simvoulakis-Panos, Esq.

Attorneys for Defendant  
KMF ALAMEDA, LLC, DBA LADERA  
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KLINGBEIL CAPITAL MANAGEMENT,  
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