

Issued by the
UNITED STATES DISTRICT COURT
 Central District of California

PARKMERCED INVESTORS PROPERTIES LLC and
 STELLAR LARKSPUR PARTNERS, LLC
 V.

SUBPOENA IN A CIVIL CASE

Does 1-18

Case Number:¹ 08-cv-4434-MEJ (pending in
 Northern District of California)

TO: ApartmentRatings.com
 909 North Sepulveda Blvd, 11th Floor
 El Segundo, CA 90245

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):


Please see Attachment A

PLACE	DATE AND TIME
Gibson, Dunn & Crutcher LLP, 333 South Grand Ave., Los Angeles, CA 90071	November 10, 2008 at 10:00 am

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rule of Civil Procedure 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
	10/03/08

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
Terence P. Ross, c/o Gibson, Dunn & Crutcher LLP, 1050 Connecticut Avenue, NW, Washington, DC 20036
Phone: (202) 955-9500

(See Federal Rule of Civil Procedure 45 (c), (d), and (e), on next page)

¹ If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Federal Rule of Civil Procedure 45 (c), (d), and (e), as amended on December 1, 2007:

(c) PROTECTING A PERSON SUBJECT TO A SUBPOENA.

(1) **Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) **Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) **Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) **When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) **When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information;
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or
- (iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) **Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(d) DUTIES IN RESPONDING TO A SUBPOENA.

(1) **Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) **Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) **Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) **Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

(D) **Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) **Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) **Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT.

The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

ATTACHMENT A
TO SUBPOENA DUCES TECUM TO
APARTMENTRATINGS.COM

ApartmentRatings.com shall, utilizing the definitions and instructions set forth in Sections A and B below, produce the documents set forth in Section C below.

A. INSTRUCTIONS

1. If you object to producing any document (in whole or in part) based on any privilege, you should state the nature of the privilege claimed and the basis thereof; identify and describe the document and the reason for which it was created; identify the creator of the document and all persons named on it, to whom the document was sent, for whose use it was prepared, and state the date of the document. This information should be set forth separately on a privilege log.

2. If you find any document request or term used in a request to be vague, ambiguous, subject to varying interpretations, or unclear, state what portion of the request or term you find to be vague, ambiguous, subject to varying interpretations, or unclear, state your understanding of the request or term, and respond in accordance with that understanding.

3. If any responsive document is no longer in existence, cannot be located or is not in your possession, custody or control, identify it, describe its subject matter and describe its disposition including without limitation identifying the person or persons (a) having knowledge of the contents of the document and/or its destruction, deletion or disposition and (b) responsible for its destruction, deletion or other disposition.

4. To the extent you believe that any responsive document is not within your possession, custody, or control, but rather, is within the possession, custody, or control of another individual or entity, identify the individual or entity that may possess the responsive document and identify the responsive document that you believe that individual or entity may possess.

5. All responsive and potentially responsive documents should be preserved and maintained pending the outcome of this action.

B. DEFINITIONS

1. "All" includes the term "each" or "any," and vice versa. The singular shall include the plural, and the disjunctive shall include the conjunctive, and vice versa.

2. "Communication" means the transmittal of any information in any manner. The term "communication" includes, but is not limited to, any oral, written, or electronic correspondence and evidence thereof, no matter how that correspondence or evidence is stored, memorialized, or fixed. It furthermore includes, but is not limited to, any summaries, reviews, reports, notes, logs, records, journals, minutes, or outlines concerning or memorializing the transmittal of information.

3. "Concerning" means constituting, evidencing, reflecting, describing, effecting, relating to, referring to, pertaining to, or about, either directly or indirectly, or being in any way logically or factually connected with the specified subject matter. Any request for documents "concerning" any subject matter includes a request for documents reflecting communication about that subject matter.

4. "Document" is used in its broadest sense and is meant to include all items referred to and included within the scope of the Federal Rules of Civil Procedure. The term "document" is specifically meant to include, but is not limited to, any and all electronic documents and data, no matter how they are stored. The term "document" also is meant to include, but is not limited to, all original and nonidentical copies, and all nonidentical drafts or versions of any document.

5. The "Website" means the Internet website associated with the Uniform Resource Locator www.apartmentratings.com.

6. "Parkmerced" means the community of high-rise flats and townhomes located at 3711 Nineteenth Avenue, San Francisco, California 94132.

7. "Larkspur Shores" means the community of apartments located at 700 Lincoln Village Circle, Larkspur, California 94939.

C. DOCUMENTS TO BE PRODUCED

Please produce the following documents or things in your possession, custody or control:

1. All documents concerning the identity of the Website user or users responsible for the following postings and responses on the Website concerning Parkmerced, including but not limited to all Internet Protocol addresses:

- a. The posting on or about September 8, 2008 under the screen designation "Anonymous" and opinion title "STAY FAR FAR AWAY AND NEVER LOOK BACK."
- b. The posting on or about September 2, 2008 under the screen designation "Anonymous" in response to a posting on or about September 1, 2008 under the opinion title "WORST PLACE I'VE EVER LIVED."
- c. The posting on or about September 1, 2008 under the screen designation "Anonymous" and opinion title "WORST PLACE I'VE EVER LIVED."
- d. The posting on or about July 12, 2008 under the screen designation "nevercomplain" and opinion title "Used to Live There – DO NOT MOVE IN."
- e. The posting on or about May 16, 2008 under the screen designation "Anonymous" and opinion title "Parkmerced improperly bills tenants and there is proof."

- f. The posting on or about May 7, 2008 under the screen designation "Anonymous" in response to a posting on or about May 6, 2008 under the opinion title "Parkmerced=HELL."
- g. The posting on or about April 11, 2008 under the screen designation "Anonymous" and opinion title "They keep rents up illegally."
- h. The posting on or about April 1, 2008 under the screen designation "Anonymous" in response to a posting on or about March 23, 2008 under the opinion title "Great."
- i. The posting on or about February 3, 2008 under the screen designation "Anonymous" and opinion title "A real dump!"
- j. The posting on September 10, 2007 under the screen designation "ansfsustudent" and opinion title "Steer Clear."
- k. The posting on or about June 18, 2007 under the screen designation "Anonymous" and opinion title "Extreme Noise Pollution in Apartments – Banging pipe noise."
- l. The posting on or about May 24, 2007 under the screen designation "Anonymous" in response to a posting on or about September 30, 2007 under the opinion title "security patrol is afraid of the tenants."
- m. The posting on or about May 14, 2007 under the screen designation "Anonymous" and opinion title "Depressing."

2. All documents concerning the identity of the Website user or users responsible for the following postings and responses on the Website concerning Larkspur Shores, including but not limited to all Internet Protocol addresses:

- a. The posting on or about May 17, 2008 under the screen designation "Anonymous" and opinion title "RUN RUN RUN FAR FAR AWAY."
- b. The posting on or about January 22, 2008 under the screen designation "Anonymous" in response to a posting on or about April 28, 2008 under the opinion title "Major Construction Project Underway (For the next TWO years!)."
- c. The posting on or about November 10, 2007 under the screen designation "Anonymous" and opinion title "worst experience."
- d. The posting on or about November 6, 2007 under the screen designation "makensie_younce@yahoo.com" and opinion title "One Cypress Station Sucks."
- e. The posting on or about September 28, 2007 under the screen designation "Anonymous" and opinion title "New Owners/Management As of July 2007."