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Attorney for Defendant Criterion General, Inc.

IN THE SUPERIOR COURT OF THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska
corporation,

Plaintiff,

v.

716 WEST FOURTH AVENUE LLC,
KOONCE PFEFFER BETTIS, INC., d/b/a
KPB ARCHITECTS, PFEFFER
DEVELOPMENT, LLC, LEGISLATIVE
AFFAIRS AGENCY, and CRITERION
GENERAL, INC.,

CASE NO. 3AN-15-05969CI

Defendants.

DEFENDANT CRITERION CONSTRUCTION, INC.'S
FIRST SUPPLEMENTAL DISCLOSURES

Defendant Criterion Construction, Inc., makes the following SUPPLEMENTAL disclosure (REMOVING ANY CLAIM OF ATTORNEY/CLIENT AS TO ANY NON-MANAGEMENT GROUP LEVEL EMPLOYEES OF Criterion Construction) in accordance with Alaska Civil Rules 26(a)(1).

DEFENDANT CRITERION CONSTRUCTION, INC.'S
SUPPLEMENTAL DISCLOSURES – Page 1

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1
2 **A. FACTUAL BASIS OF DEFENSES – 26(a)(1)(A)**

3 Defendant denies the allegations in the Complaint. Response to this disclosure may
4 be supplemented as becomes necessary. Subject to the present status of discovery and
5 investigation herein, defendant makes the following initial disclosures. Defendant reserves
6 the right to supplement or change its disclosures as additional information is discovered, and
7 as otherwise in accordance with the Civil Rules and the Court's pretrial schedule.
8

9 Affirmative Defense No. 1: *Plaintiff may have failed to state a claim for which relief*
10 *can be granted.* There is no contractual privity between plaintiff and defendant. The
11 Complaint does not allege or identify any duty owed by defendant to plaintiff. The
12 Complaint provides no facts on how defendant's conduct caused plaintiff's alleged damages.
13 Discovery has only just begun and all records have not yet been obtained. Supplementation
14 or withdrawal of this defense may occur depending on the facts developed during discovery.
15

16 Affirmative Defense No. 2: *Plaintiff may have failed in whole or in part to mitigate,*
17 *minimize, or avoid the damages allegedly sustained, and any recovery must be reduced by*
18 *that amount.* The affirmative defense has been pled in the Answer in order to preserve the
19 affirmative defense. Discovery has just begun and all records have not yet been obtained.
20 Supplementation or withdrawal of this defense may occur depending on the facts developed
21 during discovery.
22

23 Affirmative Defense No. 3: *Defendant asserts all defenses stated in Rule 12(b).*
24 The affirmative defense has been pled in the Answer in order to preserve the affirmative
25 defense. Discovery has just begun and all records have not yet been obtained.
26

1 Supplementation or withdrawal of this defense may occur depending on the facts developed
2 during discovery.

3 Affirmative Defense No. 4: *Plaintiff's damages, if any, may have been proximately*
4 *caused in whole or in part by the actions and/or negligence of the Plaintiff. Plaintiff's*
5 *recovery, if any, should be reduced in proportion to the percentage of Plaintiff's and/or other*
6 *third parties' fault.* The affirmative defense has been pled in the Answer in order to preserve
7 the affirmative defense. Discovery has just begun and all records have not yet been obtained.
8 Supplementation or withdrawal of this defense may occur depending on the facts developed
9 during discovery.

11 Affirmative Defense No. 5: *Plaintiff's recovery should be reduced by the*
12 *comparative fault of persons other than defendant.* The affirmative defense has been pled in
13 the Answer in order to preserve the affirmative defense. Discovery has just begun and all
14 records have not yet been obtained. Supplementation or withdrawal of this defense may
15 occur depending on the facts developed during discovery.

17 Affirmative Defense No. 6: *Plaintiff's claims may be barred by waiver, estoppel,*
18 *and/or unclean hands.* Plaintiff had an engineering consultant who monitored and approved
19 some of defendant and its subcontractor's work. The affirmative defense has been pled in the
20 Answer in order to preserve the affirmative defense. Discovery has just begun and all
21 records have not yet been obtained. Supplementation or withdrawal of this defense may
22 occur depending on the facts developed during discovery.

24 Affirmative Defense No. 7: *Plaintiff's claims may be barred by the doctrine of lack*
25 *of privity.* There is no contractual relationship between plaintiff and defendant. The
26

1 affirmative defense has been pled in the Answer in order to preserve the affirmative defense.
2 Discovery has just begun and all records have not yet been obtained. Supplementation or
3 withdrawal of this defense may occur depending on the facts developed during discovery.

4 Affirmative Defense No. 8: *Defendant adopts all affirmative defenses alleged by*
5 *other defendants and reserves the right to assert further defenses and claims pending*
6 *discovery and investigation in this case.* The affirmative defense has been pled in the
7 Answer in order to preserve the affirmative defense. Discovery has just begun and all
8 records have not yet been obtained. Supplementation or withdrawal of this defense may
9 occur depending on the facts developed during discovery.
10

11 **B. PERSONS WITH DISCOVERABLE INFORMATION – 26(a)(1)(B)**

12 **1. 3Form (Finish Carpentry)**

13 2300 South 2300 West
14 Salt Lake City, UT 84119
(801) 994-8180

15 **2. 716 West Fourth Avenue LLC (Owner)**

16 737 West 5th Avenue
17 Anchorage, AK 99501
(907) 646-4644

- 18
 - Robert O'Neill, Direct of Project Management
 - Mark Pfeffer, Managing Member

20 **3. Alaska Abatement Corporation (Carpet Adhesive Removal)**

21 520 West 58th Avenue, Suite J
22 Anchorage, AK 99518
(907) 563-0088

- 23
 - John Anderson, President
 - Wayne Schmidt

1 **4. Alas-Co General Construction Co, Inc. (Building Insulation)**
2 111 East 80th Avenue
3 Anchorage, AK 99518
4 (907) 522-2297

5 • Jeff Jensen

6 **5. Alaska Building, Inc. (Plaintiff)**
7 406 G Street, Suite 206
8 Anchorage, AK 99501
9 (907) 274-7686

10 • James B. Gottstein

11 **6. Alaska Concrete Services, Inc. (Cast-in-Place Concrete)**
12 2321 Cinnabar Loop
13 Anchorage, AK 99507
14 (907) 345-2399

15 **7. Alaska Demolition, LLC (Site Preparation)**
16 2817 Rampart Drive, Suite 101
17 Anchorage, AK 99501
18 (907) 274-3366

19 • Mike Waddell

20 **8. Anchorage Sand & Gravel Company, Inc. (Concrete)**
21 1040 O'Malley Road
22 Anchorage, AK 99515
23 (907) 348-6700

24 • Kevin Norton

25 **9. Alaska Stairlift & Elevator, LLC (Wheelchair Lift)**
26 230 East Potter Drive, Suite 5
 Anchorage, AK 99518
 (907) 245-5438

 • Melissa Davidson

1 **10. Andy Milner Company (Metal Decking)**

2 1520 Shore Drive
3 Anchorage, AK 99515
4 (907) 349-0906

- 5 • John Swartz

6 **11. BBFM Engineers, Inc. (Engineering Consultants)**

7 510 L Street, Suite 200
8 Anchorage, AK 99501
9 (907) 274-2236

- 10 • Dennis Berry
11 • Forest Braun
12 • Troy Feller
13 • Scott Gruhn

14 **12. Blower & Blower Window Cleaning (Window Cleaning)**

15 P.O. Box 91864
16 Anchorage, AK 99501
17 (907) 903-5611

- 18 • Tom Blower, Project Manager

19 **13. Bradshaw & Associates, Inc. (Spray-Applied Fireproofing)**

20 1205 East 72nd Avenue
21 Anchorage, AK 99518
22 (907) 522-7205

- 23 • Pat Brashler

24 **14. Carlile Transportation Systems, Inc. (Ocean Freight)**

25 1800 East 1st Avenue
26 Anchorage, AK 99501
 (907) 276-7797

- Jessica Matich

- Steve Lebida – Worker on LIO project;
- David Lind – Worker on LIO project;
- Joshua Lind – Worker on LIO project;
- John McBride – Worker on LIO project;
- Tyler McIntosh – Worker on LIO project;
- Jeremy McKee – Worker on LIO project;
- Scott Mercier – Worker on LIO project;
- William Miller – Worker on LIO project;
- Lance Moistner – Worker on LIO project;
- Dustin Picton – Worker on LIO project;
- Dane Prince – Worker on LIO project;
- Shay Rosser – Worker on LIO project;
- Jon Salgat – Worker on LIO project;
- Chad Shannon – Worker on LIO project;
- Kevin Shults – Worker on LIO project;
- Rob Skaats – Worker on LIO project;
- Dennis Smedley – Worker on LIO project;
- Antonio Smith – Worker on LIO project;
- Dale Smith – Worker on LIO project;
- Mike Smith – Worker on LIO project;
- Tyler Smith – Worker on LIO project;
- Mike Somahkawahl – Worker on LIO project;
- James Spain – Worker on LIO project;
- David Thompson, Jr. – Worker on LIO project;
- Reed Thwaites – Worker on LIO project;
- Cory Toews – Worker on LIO project;
- Howard Tresham – Worker on LIO project;
- Terry Velarde – Worker on LIO project;
- Robert Voss – Worker on LIO project;
- Walter Warner – Worker on LIO project;
- **Kendall Wilson** – Project Engineer for LIO project; *
- Travis Wilson – Worker on LIO project.

18. Denali Drilling, Inc. (Pilings Installation)

8240 Petersburg Street
Anchorage, AK 99507
(907) 562-2312

- Ron L. Pichler, President

1
2 **19. Dimond Fabricators (Rebar)**

3 11400 Lang Street
4 Anchorage, AK 99515
5 (907) 348-6752

- 6 • Dane Smulick, Rebar Manager

7 **20. Door Systems of Alaska, Inc. (Operable Panel Doors)**

8 18727 Old Glen Highway
9 Chugiak, AK 99567
10 (907) 688-3367

- 11 • John Slater

12 **21. EBSC Engineering, LLC (Engineering Consultant)**

13 11301 Olive Lane
14 Anchorage, AK 99515
15 (907) 222-1085

- 16 • Edward Hakala, Principal Engineer
17 • Luke Mattson

18 **22. Edge Surveying – Survey**

19 12501 Old Seward Highway # D
20 Anchorage, AK 99515
21 (907) 344-5990

- 22 • Tony Wilson

23 **23. Far North Acoustics, Inc. (Acoustical Ceilings)**

24 P.O. Box 111474
25 Anchorage, AK 99511
26 (907) 344-5119

- Jon Andreasen

24. General Mechanical, Inc. (Mechanical)

 9135 King Street
 Anchorage, AK 99515
 (907) 522-5959

- David Stanfield, Project Manager

1
2 **25. GMC Contracting, Inc. (Earthwork)**

3 351 East International Airport Road
4 Anchorage, AK 99518
5 (907) 561-4733

- 6 • Frank Chandler, Vice President, Construction Division

7 **26. Greenstreet General Contracting, LLC (Garage Shoring)**

8 P.O. Box 1191
9 Palmer, AK 99645
10 (907) 745-6778

- 11 • Darrell Greenstreet, Owner
12 • Donna Ballard, Office Manager

13 **27. Guardian Security Systems, Inc. (Security)**

14 2600 Seward Highway
15 Anchorage, AK 99503
16 (907) 274-5275

- 17 • James Bryan, Security Consultant

18 **28. Inline Steel Fabricators, Inc. (Structural Steel)**

19 P.O. Box 9396
20 Yakima, WA 98909
21 (509) 248-4554

- 22 • Michael Corn, President
23 • Matt Mayhak, Detail Manager
24 • J. J. Johnson, Production Manager

25 **29. K-C Corporation, Inc. (Exterior/Interior Framing; Interior Supply and**
26 **Hang Sheetrock, Sheathing)**

 2964 Commercial Drive
 Anchorage, AK 99501
 (907) 258-2425

- Byron Kohfield, Project Manager

1
2 **30. KPB Architects (Architect)**

3 425 G Street, Suite 800
4 Anchorage, AK 99501
5 (907) 274-7443

- 6 • Jeffrey P. Koonce, Principal
7 • Andrew J. Weiss, Architect

8 **31. Legislative Information Office**

9 716 West 4th Avenue, Suite 200
10 Anchorage, AK 99501
11 (907) 269-0111

12 **32. Northclad Rainscreen Solutions (Panel Systems)**

13 11831 Beverly Park Road, Building C
14 Everett, WA 98204
15 (425) 487-1111

- 16 • Tina Hutchinson

17 **33. Northern Geotechnical Engineering, Inc. (Geotechnical Consultant)**

18 11301 Olive Lane
19 Anchorage, AK 99515
20 (907) 344-5934

- 21 • Shelley A. McCoy, Project Engineer
22 • Keith F. Mobley, President

23 **34. North Star Equipment Service (Crane)**

24 790 Ocean Dock Road
25 Anchorage, AK 99501
26 (907) 263-0117

- Steve Poste, Vice President

35. Otis Elevator Company (Elevator System)

 619 East Ship Creek Avenue, Suite 301
 Anchorage, AK 99501
 (907) 278-4575

- Michael V. Liebing, General Manager

1
2 **36. Pfeffer Development, LLC (Project Manager)**

3 425 G Street
4 Anchorage, AK 99501
5 (907) 646-4644

- 6 • Mark Pfeffer, Managing Member
7 • Bob O'Neil
8 • Shea Simasko, Property Manager

9 **37. Quinn's Decorative Concrete (Concrete Place and Finish)**

10 12450 West Melanie Avenue
11 Wasilla, AK 99654
12 (907) 360-5394

- 13 • Rick Quinn

14 **38. Rain Proof Roofing, Inc. (Roofing)**

15 2201 East 84th Court
16 Anchorage, AK 99507
17 (907) 344-2297

- 18 • John Birchfield

19 **39. Redi Electric, LLC (Electrical)**

20 6151 A Street
21 Anchorage, AK 99518
22 (907) 561-2323

- 23 • Larry Rhymer, President

24 **40. Reid Middleton (Engineering Consultants)**

25 4300 B Street, Suite 302
26 Anchorage, AK 99503
 (907) 562-3439

- David Stierwalt, PE

- 1 **41. Rep Tile (Tile)**
2 800 High View Drive
3 Anchorage, AK 99515
4 (907) 345-3843
- 5 • Lawrence Wissing, Owner
- 6 **42. Smith Masonry (Masonry Infills)**
7 P.O. Box 670809
8 Chugiak, AK 99501
9 (907) 688-2002
- 10 • Jerry Smith
- 11 **43. Spenard Builders Supply – Miscellaneous**
12 P.O. Box 99060
13 Anchorage, AK 99509
14 (907) 261-9284
- 15 • Chuck Savoini
- 16 **44. Star Seismic, LLC (Restrained Braces)**
17 6300 North Sagewood Drive, Suite H #511
18 Park City, UT 84098
19 (435) 940-9222
- 20 • Rob Burby
- 21 **45. Statewide Door & Glass (Entrance/Storefront; Glazing)**
22 221 East Ship Creek Avenue
23 Anchorage, AK 99501
24 (907) 562-2074
- 25 • Michael Hammer, President
- 26 **46. Summit Anchor Company (Steel)**
 4507 Metropolitan Court
 Fredrick, MD 21704
 (301) 874-4941
- Jim Giuffreda

1 **47. Wallcovering Plus, Inc. (Wallcoverings)**

2 9138 Arlon Street, Suite A3-267

3 Anchorage, AK 99507

4 (907) 346-2642

- 5 • Robbie Muir

6 **48. Whalen Construction, Inc.**

7 P. O. Box 112156

8 Anchorage, AK 99511

9 (907) 360-3261

- 10 • Patrick Whalen

11 **C. WRITTEN OR RECORDED STATEMENTS – 26(a)(1)(C)**

12 Jim Gottstein, President

13 Alaska Building, Inc.

14 C/O Law Offices of James B. Gottstein

15 *January 3, 2015, statement of Claim by Jim Gottstein.* Plaintiff is believed to be in
16 possession of this statement.

17 **D. DESCRIPTION BY CATEGORY OF DOCUMENTS AND TANGIBLE THINGS – 26(a)(1)(D)**

18 Criterion is in possession of following categories of documents which may be
19 relevant to the allegations in the Complaint:

- 20 • Construction contracts;
21 • Daily Reports;
22 • Invoices and work orders;
23 • Emails and other correspondence regarding the project;
24 • Engineering Consultation reports;
25 • Pictures and videos; and
26 • Drawings and specifications;

 This disclosure may be supplemented.

1 **E. PHOTOGRAPHS, VIDEOTAPES, ETC. – 26(a)(1)(E)**

2 See attached CD with pictures and videos taken by Criterion.

3 **F. INSURANCE AGREEMENTS – 26(a)(1)(F)**

4 See attached CD with insurance agreement.

5 **G. DAMAGE CLAIMS – 26(a)(1)(G)**

6 Criterion is not making a claim for damages.

7 **H. IDENTITY OF POTENTIALLY RESPONSIBLE PERSONS – 26(a)(1)(H)**

8 Jim Gottstein, President of the Alaska Building, Inc., and persons acting on his behalf
9 as a representative or a consultant, may be at fault or the damages alleged in the Complaint.
10 Criterion will likely seek allocation of fault against Jim Gottstein, and persons acting on his
11 behalf as a representative or a consultant, contingent on the course of discovery.
12

13 This disclosure may be supplemented.

14 DATED this 19th day of August, 2015.

15
16 SCHEER & ZEHNDER LLP

17
18 By 

19 Mark P. Scheer, ASBA No. 8807153

20 mscheer@scheerlaw.com

21 Scheer & Zehnder LLP

22 701 Pike Street, #2200

23 Seattle, WA 98101

24 Tel: 206-262-1200

25 Fax: 206-223-4065

26 Attorney for Defendant Criterion General, Inc.

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Alaska, that the following is true and correct:

I am employed by the law firm of Call & Hanson, P.C.

At all times hereinafter mentioned, I was and am a citizen of the United States of America, a resident of the State of Alaska, over the age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness herein.

On the date set forth below I served the document(s) to which this is attached, in the manner noted on the following person(s):

PARTY/COUNSEL	DELIVERY INSTRUCTIONS
<u>Counsel for Plaintiff</u> James B. Gottstein Law Offices of James B. Gottstein 406 G Street, Suite 206 Anchorage, AK 99501	(X) Via U.S. Mail () Via Legal Messenger () Via E-Mail () Via Overnight Mail
<u>Counsel for Defendant</u> <u>716 West Fourth Avenue LLC</u> Jeffrey W. Robinson Ashburn & Mason P.C. 1227 W. 9th Avenue, Suite 200 Anchorage, Alaska 99501-5914	(X) Via U.S. Mail () Via Legal Messenger () Via E-Mail () Via Overnight Mail
<u>Counsel for Defendant</u> <u>Pfeffer Development, LLC</u> Cynthia L. Ducey Delaney Wiles 1007 W. 3rd Avenue, Suite 400 Anchorage, AK 99501	(X) Via U.S. Mail () Via Legal Messenger () Via E-Mail () Via Overnight Mail

<u>Counsel for Defendant</u> <u>Legislative Affairs Agency</u> Kevin M. Cuddy Stoel Rives LLP 510 L Street, Suite 500 Anchorage, AK 99501	<input checked="" type="checkbox"/> Via U.S. Mail <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via E-Mail <input type="checkbox"/> Via Overnight Mail
<u>Counsel for Defendant</u> <u>Koonce Pfeffer Bettis, Inc. d/b/a</u> <u>KPB Architects</u> Daniel T. Quinn Richmond & Quinn 360 K Street, Suite 200 Anchorage, Alaska 99501	<input checked="" type="checkbox"/> Via U.S. Mail <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via E-Mail <input type="checkbox"/> Via Overnight Mail

DATED this 19th day of August, 2015, at Anchorage, Alaska.


Mona Schultz, Legal Secretary