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WITHERSPOON, KELLEY
DAVENPORT TOOLE

Hon. Edward F. Shea

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6 Attorneys for Defendant
7 Walker Parking Consultants/Engineers, Inc.

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CRUMB & MUNDING, P.S.

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF WASHINGTON
10 AT SPOKANE

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DEC 12 2001

JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

11 NUVEEN QUALITY INCOME MUNICIPAL FUND,)
12 INC.; NUVEEN PREMIUM INCOME MUNICIPAL)
13 FUND 4, INC., STRONG MUNICIPAL BOND FUND,) **CS-01-0127 EFS**
14 INC.; SMITH BARNEY MUNICIPAL FUND LIMITED)
15 TERM; SMITH BARNEY MUNICIPAL HIGH-INCOME)
16 FUND; VANGUARD HIGH-YIELD TAX EXEMPT) **DEFENDANT WALKER**
17 FUND; U.S. BANK TRUST NATIONAL ASSOCIATION,) **PARKING**
18 in its capacity as Indenture Trustee on behalf of Holders of) **CONSULTANTS/**
19 Spokane Downtown Foundation Parking Revenue Bonds;) **ENGINEERS, INC's**
20 and ASSET GUARANTEE INSURANCE COMPANY,) **ANSWER AND**
21) **AFFIRMATIVE**
22) **DEFENSES**
23)
24)
25)
26)
27)
28)
29)
30)
31)
32)
33)
34)

Plaintiffs,

v.

23 PRUDENTIAL SECURITIES INCORPORATED, a)
24 Delaware corporation; WALKER PARKING)
25 CONSULTANTS/ENGINEERS, INC., a Michigan)
26 corporation; FOSTER PEPPER & SHEFELMAN)
27 PPLC, a Washington professional limited liability)
28 company; SPOKANE DOWNTOWN FOUNDATION,)
29 a Washington corporation; PRESTON GATES & ELLIS)
30 LLP, a Washington limited liability partnership;)
31 CITIZENS REALTY COMPANY, a Washington)
32 corporation; LINCOLN INVESTMENT COMPANY OF)
33 SPOKANE, a Washington corporation; River Park)
34 Square, L.L.C., a Washington limited liability company,)
RPS II, L.L.C., a Washington limited liability company;)
RWR MANAGEMENT, INC., a Washington corporation,)

Evans, Craven & Lackie, P.S.

ANSWER BY DEFENDANT WALKER PARKING
CONSULTANTS/ENGINEERS, INC. - 1

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1 d/b/a R. W. ROBIDEAUX AND COMPANY; CITY OF)
2 SPOKANE, WASHINGTON, a first-class charter city of)
3 the State of Washington; SPOKANE PUBLIC)
4 DEVELOPMENT AUTHORITY, an unregistered)
5 Washington corporation, doing business as RIVER)
6 PARK SQUARE PARKING,)
7 Defendants.)

8 CITY OF SPOKANE,)
9)
10 Third-Party Plaintiff,)

11 v.)

12)
13 ROY KOEGEN and ANNE KOEGEN, a marital)
14 community, and PERKINS COIE, LLP,)
15 Third-Party Defendants.)
16)

17 COMES NOW Defendant Walker Parking Consultant/Engineers, Inc., by and though
18 its attorney, Patrick M. Risken of Evans, Craven & Lackie, P.S., and Answers the allegations
19 of the Complaint herein as follows:
20
21

22 **Introduction**

23
24 The Plaintiffs' Complaint sets forth a number of section headings or descriptions
25 which are nothing but argument, or at best, editorial hyperbole. To that extent, this Answer
26 Defendant denies the allegations or innuendo within each such heading.
27

28 **JURISDICTION AND VENUE**

- 29
30 1. Denied.
31
32 2. Admitted.

33 **SUMMARY OF COMPLAINT**

34
ANSWER BY DEFENDANT WALKER PARKING
CONSULTANTS/ENGINEERS, INC. - 2

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1 specific facts as alleged in Paragraphs 13 and 14 of the Complaint herein, and therefore denies
2 same. Said Defendant may amend its Answer herein after certain discovery into these
3 allegations is completed.
4

5
6 9. Defendant Walker Parking admits that it is a Michigan Corporation with
7 offices in Indianapolis, Indiana, and that it performs consulting services in the parking
8 industry, including the preparation of engineering and feasibility studies, as alleged in
9 Paragraph 15 of the Complaint. To the extent that the remainder of the allegations of that
10 Paragraph contain editorial comment or other characterization of the services performed by
11 Walker Parking, or how it advertises itself, the remainder of that Paragraph is denied. The
12 allegations of Complaint Paragraph 15, lines 14 through 26 and regarding certain alleged
13 events in 1995, are factually incorrect and therefore are specifically denied.
14
15
16
17

18 10. Defendant Walker Parking admits that it entered into a contract to perform
19 certain services for the City of Spokane, at its direction, in 1996. That work included the
20 study and preparation of a financial feasibility analysis for the River Park Square parking
21 garage. John Dorsett is properly identified in that Paragraph. The remainder of Paragraph
22 16, from lines 8 through 19 are factually incorrect and therefore are specifically denied.
23
24
25

26 11. Defendant Walker Parking admits that the financial feasibility analysis
27 ordered by the City of Spokane, and prepared at the direction of the City of Spokane, was
28 issued in June 1996 and was later revised, again at the City's direction, as alleged in
29 Paragraph 17 of the Plaintiffs' Complaint. Due to the editorial and/or factually incorrect
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31
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1 nature of the remainder of the statements made in that Paragraph, the remainder of the
2 allegations contained therein are denied.
3

4 12. Defendant Walker Parking Consultants is without sufficient knowledge of the
5 specific facts as alleged in Paragraphs 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32,
6 33, 34, 35 and 36 of the Complaint herein, and therefore denies same. Said Defendant may
7 amend its Answer herein after certain discovery into these allegations is completed. Any
8 characterization of the work performed by Walker Parking, in any of those Paragraphs and
9 added by the Plaintiffs only as editorial comment or to insert an opinion (*i.e.*, Paragraph 20,
10 "totally unreliable"; Paragraph 26, "materially false and misleading"; Paragraph 36, "totally
11 unrealistic and unreliable") is denied. Documents quoted within those Paragraphs speak for
12 themselves, and to the extent that the quoted material is incorrect or otherwise incomplete or
13 contextually inaccurate, those allegations are denied.
14
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19

20 13. Defendant Walker Parking admits that the City of Spokane is a first-class
21 charter city, as alleged in Paragraph 37 of the Complaint. Defendant Walker Parking cannot
22 answer as to what Defendant City knew or did not know at the time alleged, and therefore
23 denies same and the remainder of the allegations of that Paragraph. Defendant Walker
24 Parking again specifically denies any opinion or editorial comment injected into the case by
25 this Complaint, in this Paragraph.
26
27
28

29 14. Defendant Walker Parking Consultants is without sufficient knowledge of the
30 specific facts as alleged in Paragraphs 38, 39, 40 and 41 of the Complaint herein, and
31 therefore denies same. Said Defendant may amend its Answer herein after certain discovery
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1 into these allegations is completed. Any characterization added by the Plaintiffs only as
2 editorial comment or to insert an opinion is denied.
3

4 15. Defendant Walker Parking denies each and every allegation contained in
5
6 Paragraph 42 and 43 of the Complaint.

7 **GENERAL ALLEGATIONS**
8 **APPLICABLE TO ALL CLAIMS FOR RELIEF**
9 **The Conservative Walker/Ernst & Young Reports**

10 16. Defendant Walker Parking Consultants is without sufficient knowledge of the
11
12 specific facts as alleged in Paragraphs 44, 45 and 46 of the Complaint herein, and therefore
13
14 denies same. Said Defendant may amend its Answer herein after certain discovery into these
15
16 allegations is completed.

17 17. Defendant Walker Parking admits that in 1995 it provided analysis for the
18
19 Garage for Ernst & Young, as alleged in part in Paragraph 47 of the Complaint. Defendant
20
21 Walker Parking Consultants is without sufficient knowledge of the remainder of the specific
22
23 facts as alleged in Paragraph 47 of the Complaint herein, and therefore denies same. Said
24
25 Defendant may amend its Answer herein after certain discovery into these allegations is
26
27 completed. Defendant Walker Parking specifically denies the editorial or opinion comment
28
29 of Paragraph 47 of the Complaint at lines 19 through 22. The Walker Parking financial
30
31 feasibility analysis speaks for itself, so any characterization made by Plaintiffs at Paragraph
32
33 47, lines 22 through 26, which is inaccurate or otherwise inconsistent with that analysis is
34
35 denied.

18. Defendant Walker Parking Consultants is without sufficient knowledge of the

1 specific facts as alleged in Paragraphs 48, 49, 50, 51 and 52 of the Complaint herein, and
2 therefore denies same. Said Defendant may amend its Answer herein after certain discovery
3 into these allegations is completed. Any allegation of what Defendant Walker Parking knew
4 and/or any intent alleged on the part of Defendant Walker Parking (Paragraph 52) is denied.
5

6
7 **The Fraud Based Assumptions and the Walker Report**
8

9 19. Defendant Walker Parking denies the allegations of Paragraphs 53 and 54 of
10 the Complaint.
11

12 20. Defendant Walker Parking admits that the RPS Garage had previously
13 participated in a parking validation program or programs, as alleged in Paragraph 55 of the
14 Complaint. Defendant Walker Parking is without sufficient knowledge of the remainder of
15 the specific facts as alleged in Paragraph 55 of the Complaint herein, and therefore denies
16 same. Said Defendant may amend its Answer herein after certain discovery into these
17 allegations is completed.
18

19 21. Defendant Walker Parking denies the allegations contained in Paragraph 56,
20 57 and 58 of the Complaint.
21

22 22. In answer to Paragraph 59 of the Complaint, Defendant Walker Parking
23 included data regarding the historic average parking stay, which data was provided to said
24 Defendant by the City of Spokane and others. The feasibility analysis produced by Defendant
25 Walker Parking speaks for itself. Defendant Walker Parking is without information as to
26 what was or was not disclosed to potential bond buyers, and therefore denies that allegation.
27 Defendant Walker Parking specifically denies allegations that it knew certain assumptions
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1 were “unreasonable”, “false” or “misleading”, as alleged in that Paragraph. Defendant
2 Walker Parking denies the remainder of the allegations of Paragraph 59 of the Complaint.
3

4 23. Defendant Walker Parking denies the specific allegations contained in
5 Paragraphs 60, 61 and 62 of the Complaint, as alleged. Defendant Walker Parking
6 specifically denies any characterization of its work as “false and misleading” or any
7 implication that it was involved in a “fraudulent scheme”, Paragraph 62. Furthermore,
8 Defendant Walker Parking is without information as to what was or was not disclosed to
9 potential bond buyers, and therefore denies those allegations as well.
10
11

12 **The Garage Valuation Sham**

13
14
15 24. Defendant Walker Parking denies the title or caption of this particular section
16 of the Complaint as editorial or opinion, and without any substance.
17

18 25. Defendant Walker Parking Consultants is without sufficient knowledge of the
19 specific facts as alleged in Paragraphs 63, 64, 65, 66, 67, 68 and 69 of the Complaint herein,
20 and therefore denies same. Said Defendant may amend its Answer herein after certain
21 discovery into these allegations is completed. Defendant Walker Parking specifically denies
22 that it or its work somehow “dictated” the valuation method for the Garage, as alleged in
23 Paragraph 65. The documents quoted in Paragraphs 65, 66, 67, 68 and 69 speak for
24 themselves, and to the extent that those quotes are inaccurate in content or context, those
25 allegations are denied.
26
27
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29

30
31 26. Defendant Walker Parking Consultants answers Paragraph 70 of the
32
33
34

1 Complaint by stating that the so-called Barrett document speaks for themselves, and any
2 mischaracterization of same is denied.
3

4 27. Due to the editorial and/or opinion nature of the allegations contained in
5 Paragraph 71 of the Complaint, this Defendant denies same. Defendant Walker Parking
6 Consultants is without sufficient knowledge of the specific facts as alleged in Paragraphs 71
7 and 72 of the Complaint herein, and therefore denies same. Said Defendant may amend its
8 Answer herein after certain discovery into these allegations is completed.
9
10

11
12 28. In answer to Paragraph 73 of the Complaint, Defendant Walker admits that the
13 City Council passed Resolution No. 96-144 on or about November 25, 1996, and states that
14 the Resolution speaks for itself. Defendant Walker Parking is without knowledge as to the
15 truth or veracity of the Plaintiffs' characterization of so-called Auble and Barrett Report
16 "warnings", and therefore denies same.
17
18

19
20 **The Sabey Corporation Warning**

21 29. Defendant Walker Parking Consultants is without sufficient knowledge of the
22 specific facts as alleged in Paragraphs 74, 75, 76 and 77 of the Complaint herein, and
23 therefore denies same. Said Defendant may amend its Answer herein after certain discovery
24 into these allegations is completed. Furthermore, the so-called "Sabey Report" and "Walker
25 Report" speak for themselves, and Defendant Walker Parking denies any allegations in the
26 Complaint, Paragraph 77, which are inaccurate in either content or context with reference to
27 those two "Reports."
28
29
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32 30. Defendant Walker Parking denies that it knew anything of the so-called
33
34

1 “Sabey Report” in December 1996, as alleged in Paragraph 78 of the Complaint, since it was
2 no longer involved in the project at that time. Defendant Walker Parking Consultants is
3 without sufficient knowledge of the remainder of the specific facts as alleged in Paragraph
4 78 of the Complaint herein, and therefore denies same.
5
6

7 31. Defendant Walker Parking admits that the City of Spokane adopted
8 Resolution No. 97-2 on January 13, 1997, as alleged in Paragraph 79 of the Complaint.
9 Furthermore, that Resolution speaks for itself. Defendant Walker Parking is without any
10 information as to precisely when the City received the so-called “Sabey Report”, and therefore
11 denies same.
12
13
14

15 **The Coopers & Lybrand Warning**

16 32. Defendant Walker Parking Consultants is without sufficient knowledge of the
17 specific facts as alleged in Paragraphs 80, 81, 82, 83 and 84 of the Complaint herein, and
18 therefore denies same. Furthermore, the so-called “Coopers & Lybrand Report” speaks for
19 itself, and Defendant Walker Parking denies any allegations in the Complaint, Paragraphs 81,
20 82, 83 and 84, which are inaccurate in either content or context.
21
22
23

24 33. Defendant Walker Parking denies that it somehow knew of the so-called
25 “Coopers & Lybrand Report” prior to the issuance of the bonds, as alleged in Paragraph 85
26 of the Complaint, or that it either reviewed it or failed to review it, as alleged therein.
27 Defendant Walker Parking denies the remainder of the allegations contained in Paragraph 85
28 of the Complaint.
29
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34

1 **The Ordinance**

2
3 34. Defendant Walker Parking admits that the City of Spokane passed an
4 Ordinance on January 27, 1997, as alleged in Paragraph 86 of the Complaint. Defendant
5 Walker Parking Consultants is without sufficient knowledge of the remainder of the specific
6 facts as alleged in Paragraphs 86, 87 and 88 of the Complaint herein, and therefore denies
7 same. Furthermore, the so-called "Ordinance" speaks for itself, and Defendant Walker
8 Parking denies any allegations in the Complaint, Paragraphs 86, 87 and 88, which are
9 inaccurate in either content or context.
10
11

12
13 35. Defendant Walker Parking Consultants is without sufficient knowledge of the
14 specific facts as alleged in Paragraph 89 of the Complaint herein, and therefore denies same.
15
16

17 **Another Fraudulent Boost to Projected Revenues**

18 36. Defendant Walker Parking denies the title or caption of this particular
19 section of the Complaint as scintillating creative writing, and without any substance.
20

21 37. In answer to Paragraph 90 of the Complaint, Defendant Walker denies same
22 as factually inaccurate. Defendant Walker admits that its analysis was supplemented in 1998.
23 Due to the argumentative nature of the remainder of the allegations in Paragraph 90 of the
24 Complaint, Defendant Walker Parking denies same.
25
26

27 38. Defendant Walker Parking denies the allegations in Paragraph 91 of the
28 Complaint.
29
30

31 **The False and Misleading Official Statements**

32 39. Defendant Walker Parking denies the title or caption of this particular
33
34

1 section of the Complaint as allegation only, and without any substance.

2
3 40. Defendant Walker Parking Consultants is without sufficient knowledge of the
4 specific facts as alleged in Complaint Paragraph 92 and its numerous sub-parts, and therefore
5 denies same. Furthermore, the so-called "Official Statements" speak for themselves, and
6 Defendant Walker Parking denies any allegations in the Complaint, Paragraph 92, which are
7 inaccurate representations of either content or context of the "Official Statements" or any
8 document cited or quoted in those "Official Statements".
9
10

11
12 41. Defendant Walker Parking specifically denies the allegations contained in
13 Paragraph 92(k), 93 and 94 of the Complaint.
14

15 42. Defendant Walker Parking Consultants is without sufficient knowledge of the
16 specific facts as alleged in Complaint Paragraph 95, 96, 97, 98, 99, 100 and 101, and therefore
17 denies same.
18

19
20 43. Defendant Walker Parking admits that the RPS Mall was not completed or
21 leased as contemplated in 1995 or 1996, as apparently alleged in Paragraph 102 of the
22 Complaint. Defendant Walker Parking Consultants is without sufficient knowledge of the
23 remainder of the specific facts as alleged in Complaint Paragraph 102, and therefore denies
24 same.
25
26

27
28 44. Defendant Walker Parking Consultants is without sufficient knowledge of the
29 specific facts as alleged in Complaint Paragraphs 103 and 104, and therefore denies same.
30

31 45. Defendant Walker Parking admits the allegations contained in Complaint
32
33
34

1 Paragraph 105, insofar as it reflects the election of Mayor John Talbott and Council member
2 Steve Eugster, and the continued participation of Council members Cheri Rodgers and Steve
3 Corker.
4

5
6 46. Defendant Walker Parking Consultants is without sufficient knowledge of the
7 specific facts as alleged in Complaint Paragraph 106, 107, 108, 109, 110, 111, 112, 113 and
8 114, and therefore denies same.
9

10 47. Defendant Walker Parking admits the allegations contained in Paragraph 115
11 of the Complaint.
12

13 48. Defendant Walker Parking denies the allegations contained in Paragraphs 116
14 and 117 of the Complaint.
15

16
17 **FIRST CLAIM FOR RELIEF**
18 **(Section 10(b) of the 1934 Act [15 U.S.C. § 78j],**
19 **Violation of S.E.C. Rule 10b-5 Promulgated Thereunder)**
20 **(Asserted Against All Defendants)**

21 **(Violation of Section 20(a) of the 1934 Act [15 U.S.C. § 78t(a)])**
22 **(Asserted Against the Developers and the City)**

23 49. Defendant Walker Parking reasserts all preceding Paragraphs of the Answer,
24 as if fully set forth herein, consistent with Paragraph 118 of the Complaint.
25

26 50. Defendant Walker Parking denies each and every allegation of Paragraph 119
27 of the Complaint, as those allegations are directed to or imply said Defendant.
28

29 51. Defendant Walker Parking is without sufficient knowledge of the specific
30 facts as alleged in Complaint Paragraph 120 and 121, and therefore denies same.
31

32 52. Defendant Walker Parking specifically denies the allegations contained in
33
34

1 Paragraphs 122, 123, 124, 125 and 126 of the Plaintiffs' Complaint.

2
3 **SECOND CLAIM FOR RELIEF**
4 **(The Securities Act of Washington,**
5 **WASH. REV. CODE 21.20.430(1); 21.20.430(3); 21.20.430(7))**
6 **(All Defendants Except the City)**

7 53. Defendant Walker Parking reasserts all preceding Paragraphs of the Answer,
8 as if fully set forth herein, consistent with Paragraph 127 of the Complaint.

9
10 54. Defendant Walker Parking is without sufficient knowledge of the specific
11 facts as alleged in Complaint Paragraph 128, and therefore denies same.

12
13 55. Defendant Walker Parking denies each and every allegation of Paragraph 129
14 of the Complaint, as those allegations are directed to or imply said Defendant.

15
16 56. Defendant Walker Parking is without sufficient knowledge of the specific
17 facts as alleged in Complaint Paragraphs 130, 131 and 132, and therefore denies same.

18
19 57. Defendant Walker Parking denies each and every allegation of Paragraph 133
20 of the Complaint, as those allegations are directed to or imply said Defendant.

21
22 58. Defendant Walker Parking is without sufficient knowledge of the specific
23 facts as alleged in Complaint Paragraph 134, and therefore denies same.

24
25 **THIRD CLAIM FOR RELIEF**
26 **(Common Law Fraud/Aiding and Abetting Common Law Fraud)**
27 **(All Defendants Except the City)**

28
29 59. Defendant Walker Parking reasserts all preceding Paragraphs of the Answer,
30 as if fully set forth herein, consistent with Paragraph 135 of the Complaint.

31
32 60. Defendant Walker Parking denies each and every allegation of Paragraphs
33
34

1 136, 137, 138, 139, 140 and 141 of the Complaint, as those allegations are directed to or
2
3 imply said Defendant.

4 **FOURTH CLAIM FOR RELIEF**
5 **(Common Law Negligent Misrepresentation)**
6 **(All Defendants Except the City)**

7 61. Defendant Walker Parking reasserts all preceding Paragraphs of the Answer,
8
9 as if fully set forth herein, consistent with Paragraph 142 of the Complaint.

10 60. Defendant Walker Parking denies each and every allegation of Paragraphs
11
12 143, 144 and 145 of the Complaint, as those allegations are directed to or imply said
13
14 Defendant.

15 62. Defendant Walker Parking is without sufficient knowledge of the specific
16
17 facts as alleged in Complaint Paragraph 146, and therefore denies same.

18 WHEREFORE, having stated its Answer to the Complaint herein, and furthermore
19
20 as Affirmative Defenses thereto, Defendant Walker Parking Consultants/Engineers, Inc.,
21
22 states:

23 1. Failure to state a claim upon which relief may be granted against this
24
25 Defendant, as to all claims made by the Plaintiffs herein;

26 2. That any losses allegedly suffered by the Plaintiffs herein were due to the acts
27
28 or omissions of parties, persons or entities over which this Answering Defendant had no
29
30 control;

31 3. That this litigation is frivolous, as to this Answering Defendant;

32 4. Failure of any and all elements of negligence that must be proved by the
33
34

ANSWER BY DEFENDANT WALKER PARKING
CONSULTANTS/ENGINEERS, INC. - 15

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1 Plaintiffs, as alleged against this Answering Defendant;

2
3 5. Failure of any and all elements of fraud that must be proved by clear and
4 convincing evidence, as alleged against this Answering Defendant;

5
6 6. Scienter;

7
8 7. Estoppel and/or waiver;

9
10 8. Failure to join indispensable party or parties under Rule 19;

11
12 9. Intervening/superseding acts of others;

13
14 10. Statute of limitations;

15 11. Losses claimed were based upon market factors over which this Defendant
16 had no control;

17
18 12. Res judicata and/or collateral estoppel;

19
20 13. This Defendant is not jointly and/or severally liable for any of the losses
21 claimed by the Plaintiffs;

22
23 14. Laches; and

24
25 15. This Answering Defendant reserves the right to amend this Answer to include
26 additional Affirmative Defenses as discovery continues.

27
28 WHEREFORE, Defendant Walker Parking Consultants/Engineers, Inc., prays for the
29 following:

30
31 1. Dismissal of the Plaintiffs' claims against it, with prejudice;

32
33 2. An award of this Defendant's attorney's fees and costs incurred in
34 investigating and defending this action; and

ANSWER BY DEFENDANT WALKER PARKING
CONSULTANTS/ENGINEERS, INC. - 16

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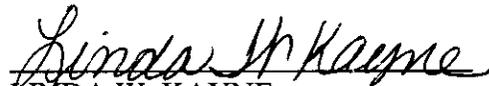
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31
32 
33 LINDA W. KAYNE

34 *Evans, Craven & Luckie, P.S.*

