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Substructure Support, Inc., and
8 TDP Support, Inc.

9
10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 STEVE NEVILLE, SUBSTRUCTURE
13 SUPPORT, INC., and TDP SUPPORT,
14 INC.,

15 Plaintiffs,

16 v.

17 FOUNDATION CONSTRUCTORS,
18 INC. and FOUNDATION PILE, INC.

19 Defendants.
20

Case No. 5:17-CV-02507

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

21
22 Plaintiffs STEVE NEVILLE (“Neville”), SUBSTRUCTURE SUPPORT,
23 INC. (“Substructure”), and TDP SUPPORT, INC. (“TDP”) (collectively
24 “Plaintiffs”) bring this action against FOUNDATION CONSTRUCTORS, INC.
25 (“FCI”) and FOUNDATION PILE, INC. (“FPI”) (collectively “Foundation” or
26 “Defendants”) and for their cause of action allege:
27
28

JURISDICTION AND VENUE

1
2 1. This is an action for patent infringement in violation of the patent laws
3 of the United States, 35 U.S.C. § 1, et seq. This Court has jurisdiction under 28
4 U.S.C. §§ 1331 and 1338(a).

5 2. This is also an action for unfair competition under California state law.
6 This Court has jurisdiction under 28 U.S.C. § 1338(b) and supplemental
7 jurisdiction under 28 U.S.C. § 1367.

8 3. Venue is proper under 28 U.S.C. § 1400(b) in that Defendants reside
9 in this district, Defendants make, use, offer for sale, and have sold infringing
10 products in this judicial district, and have offered infringing products to others for
11 resale within this judicial district, such that a substantial part of the events giving
12 rise to the claim occurred in this district. Defendants have a regular and established
13 place of business within this district in Fontana, California. Defendants are also
14 organized and existing under the laws of the State of California.

15 4. Furthermore, Defendants have substantial contacts with this district,
16 have ongoing and systematic contacts with this judicial district, and have regularly
17 conducted business within this judicial district, including ongoing sales in this
18 district, and, on information and belief, employment of marketing and sales
19 personnel within this district. Defendants have therefore purposefully availed
20 themselves of the privilege of conducting business within this judicial district, and
21 have purposefully directed activities at residents of this judicial district.

22 5. On information and belief, Defendant operate and control the website
23 at the URL www.foundationpiledriving.com.

24 6. Defendants advertise and offer for sale the infringing products and
25 services on the website at the URL www.foundationpiledriving.com, and which
26 website is accessible within this judicial district.

27 7. On information and belief, Defendants have offered for sale and sold
28 the infringing products within the United States, and within this judicial district.

PARTIES

8. Plaintiff Neville is an individual, having a residence in Winters, California.

9. Plaintiff Substructure is a corporation organized and existing under the laws of California, and having a place of business at 4989-A Peabody Road, Fairfield, California 94533.

10. Plaintiff TDP is a corporation organized and existing under the laws of California, and having a place of business at 4989-A Peabody Road, Fairfield, California 94533.

11. On information and belief, Defendant Foundation Constructors, Inc. is a corporation organized and existing under the laws of California, and having a regular and established place of business at 81 Big Break Road, Oakley, California 94561.

12. On information and belief, Defendant Foundation Pile, Inc. is a corporation organized and existing under the laws of California, and having a regular and established place of business at 8375 Almeria Ave., Fontana, California 92335.

FACTUAL BACKGROUND

13. Steve Neville is the inventor and owner of U.S. Patent No. 7,914,236 entitled "Screw Pile Substructure Support System" (a copy of which is attached as Exhibit A) ("the '236 patent").

14. Mr. Neville has licensed the '236 patent to Plaintiff TDP as the exclusive licensee for manufacturing, offering for sale, and selling screw pile substructure support systems in accordance with the '236 patent. With respect to making, offering for sale, and selling patented screw pile substructure support systems, TDP holds substantially all rights in the '236 patent, including the right to sue for past and present infringement for unauthorized manufacturing, sale, and/or offer for sale of patented screw pile substructure support systems made in

1 accordance with the '236 patent.

2 15. Mr. Neville has licensed the '236 patent to Plaintiff Substructure as
3 the exclusive licensee for using screw pile substructure support systems made in
4 accordance with the '236 patent. With respect to use of the patented screw pile
5 substructure support systems, Substructure holds substantially all rights in the '236
6 patent, including the right to sue for past and present infringement for unauthorized
7 use of patented screw pile substructure support systems made in accordance with
8 the '236 patent.

9 16. Steve Neville is the inventor and owner of U.S. Patent No. 9,284,708
10 entitled "Screw Pile Substructure Support System" (a copy of which is attached as
11 Exhibit B) ("the '708 patent").

12 17. Mr. Neville has licensed the '708 patent to Plaintiff TDP as the
13 exclusive licensee for manufacturing, offering for sale, and selling screw pile
14 substructure support systems in accordance with the '708 patent. With respect to
15 making, offering for sale, and selling patented screw pile substructure support
16 systems, TDP holds substantially all rights in the '708 patent, including the right to
17 sue for past and present infringement for unauthorized manufacturing, sale, and/or
18 offer for sale of patented screw pile substructure support systems made in
19 accordance with the '708 patent.

20 18. Mr. Neville has licensed the '708 patent to Plaintiff Substructure as
21 the exclusive licensee for using screw pile substructure support systems made in
22 accordance with the '708 patent, and for practicing the method for installing a
23 screw pile substructure support system claimed in the '708 patent. With respect to
24 use of the patented screw pile substructure support systems, and for practicing the
25 patented methods, Substructure holds substantially all rights in the '708 patent,
26 including the right to sue for past and present infringement for unauthorized use of
27 patented screw pile substructure support systems made in accordance with the '708
28 patent, and unauthorized practice of methods claimed in the '708 patent.

1 19. Steve Neville is the owner of U.S. Patent No. 9,587,362 entitled
2 “Systems and Methods for Coupling a Drill Rig to a Screw Pile” (a copy of which
3 is attached as Exhibit C) (“the ’362 patent”).

4 20. Mr. Neville has licensed the ’362 patent to Plaintiff Substructure as
5 the exclusive licensee for practicing the methods for preparing a screw pile for
6 installation by a drill rig claimed in the ’362 patent. Substructure holds
7 substantially all rights in the ’362 patent, including the right to sue for past and
8 present infringement for unauthorized practice of the methods claimed in the ’362
9 patent.

10 21. The above-referenced patents are collectively the “patents-in-suit.”

11 22. On information and belief, Defendants have in the past, and continue
12 to at least make, use, offer for sale, and sell products that infringe one or more
13 claims of each of the patents-in-suit, and is also practicing the patented methods in
14 this judicial district.

15 **TORTIOUS ACTIVITIES OF DEFENDANTS**

16 23. Defendants have in the past and continue to make, use, offer for sale,
17 and sell products that infringe, either directly, or indirectly through inducing
18 infringement or contributory infringement, one or more claims of each of the ’236
19 and ’708 patents. Such infringing products include, without limitation, the
20 EDTTEX (“Equal Diameter Tubex Tip-EX”) Tips.

21 24. Defendants have in the past and continue to directly infringe by
22 practicing the methods claimed in each of the ’236, ’708, and ’362 patents, and
23 indirectly infringed such claims by inducing others to practice the claimed methods,
24 and providing a material or apparatus for use in practicing the claimed methods,
25 knowing the same to be especially made or especially adapted for use to infringe
26 the patents, and such material or apparatus is not a staple article or commodity of
27 commerce suitable for noninfringing use.

28 25. On their website at the URL

1 <http://www.foundationpiledriving.com/edttex-piles.htm>, Defendants state that
2 “The EDTTEX piles are steel and concrete pipe composite piles that are screwed
3 into the ground under very high torque and down-pressure.”

4 26. Defendants’ EDTTEX piles include a tubular pile with a centerline.

5 27. Defendants’ EDTTEX piles include attaching tubular piles to one
6 another using welds.

7 28. Defendants’ EDTTEX piles include a substantially conically shaped
8 pile tip.

9 29. Defendants’ EDTTEX piles include a helical flight on the exterior of
10 the pile tip.

11 30. Defendants’ EDTTEX piles include a helical flight that extends along
12 the exterior surface for a distance of at least one quarter of a circumference of the
13 portion of the shaped pile tip.

14 31. The pile tip of Defendants’ EDTTEX piles has a first end and a second
15 end.

16 32. In Defendants’ EDTTEX piles, the first end of the pile tip attaches to
17 a tubular pile.

18 33. Defendants’ EDTTEX piles include an end plate attached to the
19 second end of the pile tip.

20 34. Defendants’ EDTTEX piles include a protrusion extending from the
21 end plate.

22 35. On information and belief, Defendants’ EDTTEX piles are filled with
23 concrete and attached to a pile cap that includes concrete and reinforcing steel.

24 36. On information and belief, Defendants’ EDTTEX piles are installed
25 using a driver tool that works with a drill rig.

26 37. On information and belief, Defendants’ EDTTEX driver tool includes
27 a bracket, a pivot, and a plate that connects to the drill rig.

28 38. On information and belief, an end of Defendants’ EDTTEX driver tool

1 fits inside a portion of a tubular pile.

2 39. On information and belief, Defendants' EDTTEX driver tool couples
3 to a tubular pile utilizing pin holes in the tubular pile that are matched to holes in a
4 portion of the driver tool.

5 40. On information and belief, Defendants' EDTTEX piles are placed in
6 a substantially horizontal position.

7 41. On information and belief, Defendants' EDTTEX driver tool is placed
8 in a substantially horizontal position.

9 42. On information and belief, Defendants' EDTTEX driver tool and the
10 tubular pile are attached to each other.

11 43. On information and belief, Defendants' EDTTEX driver tool is
12 configured to pivot about a pivot axis.

13 44. On information and belief, in Defendants' EDTTEX piles, a pile tip is
14 attached to the tubular pile.

15 45. Defendants' actions infringing the patents-in-suit have been and are
16 without the consent or authorization of Plaintiffs.

17 46. On August 12, 2009, Plaintiff Substructure first provided notice to
18 Defendant FCI of U.S. Patent Application No. 11/367,768 (which later issued as
19 the '236 patent), and the fact that it may be of interest to Defendant FCI with respect
20 to FCI's EDTTEX Tips.

21 47. On October 1, 2009, FCI responded to Substructure's August 12, 2009
22 letter. FCI acknowledged that U.S. Patent Application No. 11/367,768 was
23 undergoing examination at the United States Patent and Trademark Office, and
24 stated that they would "continue to monitor the progress of the application with
25 interest."

26 48. FCI was aware of Substructure's own screw pile product and that was
27 associated with U.S. Patent Application No. 11/367,768. In its October 1, 2009
28 letter, FCI stated that it had reviewed Substructure's sales literature, oral marketing,

1 and website, and that it rejected Substructure's assertions that U.S. Patent
2 Application No. 11/367,768 was patentable.

3 49. On information and belief, Defendants FCI and FPI share information
4 between each other.

5 50. Defendants FCI and FPI are controlled by the same officers.

6 **FIRST CAUSE OF ACTION**

7 **PATENT INFRINGEMENT IN VIOLATION OF 35 U.S.C. § 271**

8 51. Plaintiffs refer to and incorporate in this cause of action the preceding
9 Paragraphs above, as though restated herein in full.

10 52. Defendants have made, used, imported, offered for sale, sold, and
11 continue to sell products and/or devices that infringe one or more claims of each of
12 the patents-in-suit, including, but not limited to, the EDTTEX Tips.

13 53. Through their actions, Defendants have infringed at least claims 1, 2,
14 4, 6-9, 14-20, 22-24, 27-30, 32, and 33 of the '236 patent.

15 54. Through their actions, Defendants have infringed at least claims 1-6,
16 9-23, 25, 26, 29, 31, 32, 34-37, and 39 of the '708 patent.

17 55. On information and belief, through their actions, Defendants have
18 infringed at least claims 1, 3-5, 7-9, 11-15, 17, and 18 of the '362 patent.

19 56. By their aforesaid acts, Defendants have violated 35 U.S.C. § 271(a)
20 by their infringement of the patents-in-suit.

21 57. On information and belief, Defendants' infringement of the patents-
22 in-suit, both presently, and in the past, has been willful.

23 58. On information and belief, the acts of infringement of Defendants will
24 continue unless enjoined by this Court.

25 59. Plaintiffs are being damaged by Defendants' infringement of the
26 patents-in-suit, and are being and will continue to be irreparably damaged unless
27 Defendants' infringement is enjoined by this Court. Plaintiffs, therefore, do not
28 have an adequate remedy at law.

1 60. This is an “exceptional case” within the meaning of 35 U.S.C. § 285.

2 **SECOND CAUSE OF ACTION**

3 **INDIRECT PATENT INFRINGEMENT IN VIOLATION**

4 **OF 35 U.S.C. §§ 271(b) and (c)**

5 61. Plaintiffs refer to and incorporate in this cause of action the preceding
6 Paragraphs above, as though restated herein in full.

7 62. On information and belief, Defendants have in the past and continue
8 to make, use, offer for sale, and sell the EDTTEX Tips.

9 63. On information and belief, Defendant has in the past and continues to
10 supply the EDTTEX Tips to others for use and/or resale.

11 64. Defendant FCI had knowledge of the '236 patent at least as early as
12 August 2009.

13 65. Notice to FCI provided effective notice to FPI as well.

14 66. Defendants therefore had knowledge of U.S. Patent No. 7,914,236.

15 67. Defendant FCI was also notified that Substructure had related pending
16 patent applications that would likely cover the EDTTEX tips.

17 68. One such application issued as U.S. Patent No. 9,284,708, and another
18 issued as U.S. Patent No. 9,587,362.

19 69. On information and belief, Defendants had knowledge of U.S. Patent
20 No. 9,284,708 as of issue date March 15, 2016.

21 70. On information and belief, Defendants had knowledge of U.S. Patent
22 No. 9,587,362 as of issue date March 7, 2017.

23 71. On information and belief, Defendants have in the past and continue
24 to make, use, offer for sale, sell, and supply the EDTTEX tips for use in practicing
25 a patented process, which EDTTEX tips products are material to practicing the
26 invention, have no substantial non-infringing uses, and are known by Defendants
27 to be especially made or especially adapted for use in an infringement of the
28 patents-in-suit.

1 72. The EDTTEX tips are used to directly infringe at least claims 1, 2, 4,
2 6-9, 14-20, 22-24, 27-30, 32, and 33 of the '236 patent.

3 73. The EDTTEX tips are used to directly infringe at least claims 1-6, 9-
4 23, 25, 26, 29, 31, 32, 34-37, and 39 of the '708 patent.

5 74. The EDTTEX tips are used to directly infringe at least claims 1, 3-5,
6 7-9, 11-15, 17, and 18 of the '362 patent.

7 75. The EDTTEX tips are used to construct a patented system, and to
8 practice a patented method.

9 76. Through their sales, supply and distribution activities, Defendants are
10 liable for contributory infringement of the patents-in-suit pursuant to 35 U.S.C. §
11 271(c).

12 77. On information and belief, Defendants have in the past and continue
13 to make, sell, and offer for sale EDTTEX tips to enable users to practice a patented
14 process or use a patented system, with the knowledge that such acts constitute
15 infringement of the patents-in-suit.

16 78. The EDTTEX tips are also used to practice a patented process, or use
17 a patented system, thereby directly infringing the patents-in-suit.

18 79. Defendants provide specific instruction on how to use EDTTEX tips,
19 to construct a patented system, and to practice a patented method.

20 80. Through such activities, Defendants are liable for inducing
21 infringement of the patents-in-suit, pursuant to 35 U.S.C. § 271(b).

22 81. On information and belief, Defendants' inducement of infringement
23 and contributory infringement of the patents-in-suit, both presently and in the past,
24 has been willful.

25 82. On information and belief, the acts of inducement of infringement and
26 contributory infringement of Defendants will continue unless enjoined by this
27 Court.

28 83. Plaintiffs are being damaged by Defendants' inducement of

1 infringement and contributory infringement of the patents-in-suit, and are currently
 2 being, and will continue to be irreparably damaged unless Defendant's actions are
 3 enjoined by this Court. Plaintiffs, therefore, do not have an adequate remedy at
 4 law.

5 84. This is an "exceptional case" within the meaning of 35 U.S.C. § 285.

6 **THIRD CAUSE OF ACTION**

7 **STATE STATUTORY UNFAIR COMPETITION IN VIOLATION OF** 8 **SECTION 17200, CALIFORNIA BUSINESS AND PROFESSIONS CODE**

9 85. Plaintiffs refer to and incorporate in this cause of action the preceding
 10 Paragraphs above, as though restated herein in full.

11 86. By the acts complained of herein, Defendants have engaged in unfair
 12 competition under Section 17200 of the Business and Professions Code of the State
 13 of California.

14 87. On information and belief, Defendants' provision of the EDTTEX tips
 15 to others constitutes unlawful and unfair business practices.

16 88. On information and belief, the aforesaid acts of Defendants have
 17 caused damage to Plaintiffs, in an amount not yet ascertained but in an amount to
 18 be determined.

19 89. By reason of acts of Defendants, Plaintiffs have suffered and will
 20 continue to suffer irreparable damage, in an amount not yet ascertained but in an
 21 amount to be determined, which damage will continue unless and until such acts
 22 are enjoined by Order of this Court.

23 **RELIEF REQUESTED**

24 WHEREFORE, Plaintiffs Neville, Substructure, and TDP demand judgment
 25 against Defendants as follows:
 26

27 1. That this Court adjudge and declare:

28 a. That it has jurisdiction of the parties and of the subject matter

1 of this action;

2 b. That United States Patent No. 7,914,236 (“the ’236 patent”) is
3 valid;

4 c. That United States Patent No. 9,284,708 (“the ’708 patent”) is
5 valid;

6 d. That United States Patent No. 9,587,362 (“the ’362 patent”) is
7 valid;

8 e. That Defendants have committed acts of patent infringement by
9 their manufacture, use, offer for sale, and sale of products and/or systems
10 which infringe the patents-in-suit, and by their practicing of methods claimed
11 by the patents-in-suit;

12 f. That Defendants have induced infringement of the patents-in-
13 suit; and

14 g. That Defendants have contributorily infringed the patents-in-
15 suit.

16 2. That Defendants, their officers, directors, owners, agents,
17 representatives, employees, assigns and suppliers, and all persons acting in concert
18 or privity with any of them be preliminarily and permanently enjoined from
19 making, using, importing, offering for sale or selling any device and/or system
20 which infringes, either directly or indirectly through inducement or contributorily,
21 the patents-in-suit;

22 3. That Plaintiffs be awarded damages covered by the acts of patent
23 infringement of Defendants in the amount of Plaintiffs’ lost profits to be determined
24 at trial, but in any event, an amount not less than a reasonable royalty pursuant to
25 25 U.S.C. § 284;

26 4. That the damage award be trebled due to Defendants’ willful
27 infringement;

28 5. That Defendants pay Plaintiffs prejudgment interest;

1 6. That Plaintiffs have and recover their costs in this action, including
2 attorneys' fees; and

3 7. That Plaintiffs have such other and further relief as the court may
4 deem just and proper.

5
6 Dated: December 18, 2017

Respectfully submitted,

7 KPPB LLP

8
9 By: /s/ Joel A. Kauth

10 Joel A. Kauth

11
12 Attorneys for Plaintiffs Steve Neville,
13 Substructure Support, Inc., and TDP
14 Support, Inc.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure Rule 38(b), Plaintiffs STEVE NEVILLE, SUBSTRUCTURE SUPPORT, INC., and TDP SUPPORT, INC. hereby demand a trial by jury of all issues in their Complaint so triable.

Dated: December 18, 2017

Respectfully submitted,

KPPB LLP

By: /s/ Joel A. Kauth

Joel A. Kauth

Attorneys for Plaintiffs Steve Neville,
Substructure Support, Inc., and TDP
Support, Inc.

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