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

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 SOUTHERN DIVISION

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

15 Plaintiffs,

16 v.

17 ALDRIDGE CONSTRUCTION, INC.,  
18 ALDRIDGE ELECTRIC, INC.,  
19 FOUNDATION CONSTRUCTORS,  
20 INC., FOUNDATION PILE, INC.,  
21 GONSALVES & SANTUCCI, INC.,  
22 HENSEL PHELPS CONSTRUCTION  
23 CO., M-PILE SALES, LLC, MAGCO  
24 DRILLING, INC., MATT  
25 CONSTRUCTION CORP., SHORING  
26 ENGINEERS, and STRUCTURAL  
27 SHOTCRETE SYSTEMS, INC.,  
28

Case No. 2:17-cv-08929-AG (AGR<sub>x</sub>)

**THIRD AMENDED COMPLAINT  
FOR PATENT INFRINGEMENT**

Hon. Andrew J. Guilford

**DEMAND FOR JURY TRIAL**

RONALD REAGAN FEDERAL BUILDING  
AND UNITED STATES COURTHOUSE  
411 WEST 4TH STREET  
SANTA ANA, CA 92701-4516

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Defendants.

Plaintiffs STEVE NEVILLE (“Neville”), SUBSTRUCTURE SUPPORT, INC. (“Substructure”), and TDP SUPPORT, INC. (“TDP”) (collectively “Plaintiffs”) bring this action against ALDRIDGE CONSTRUCTION, INC. and ALDRIDGE ELECTRIC, INC. (both Aldridge entities, collectively “Aldridge Defendants” or “Aldridge”), GONSALVES & SANTUCCI, INC. (“Conco”), FOUNDATION CONSTRUCTORS, INC. and FOUNDATION PILE, INC. (both Foundation entities, collectively, “Foundation Defendants” or “Foundation”), HENSEL PHELPS CONSTRUCTION CO. (“Hensel Phelps”), M-PILE SALES, LLC (“M-Pile Sales”), MAGCO DRILLING, INC. (“Magco”), MATT CONSTRUCTION CORP. (“Matt Construction”), SHORING ENGINEERS (“Shoring”), and STRUCTURAL SHOTCRETE SYSTEMS, INC. (“Structural Shotcrete”) (collectively “Defendants”), and for its causes of action alleges:

**JURISDICTION AND VENUE**

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

2. This is also an action for infringement of a federally registered trademark, false designation of origin under the Lanham Act, and unfair competition under federal, state, and common law. This Court has jurisdiction under 15 U.S.C. § 1121, 28 U.S.C. § 1331, 28 U.S.C. § 1338(a), 28 U.S.C. § 1338(b), 15 U.S.C.A. § 1126, and supplemental jurisdiction under 28 U.S.C. § 1367.

3. Defendant Magco at least makes, uses, offers for sale, sells, and imports infringing products into this judicial district, such that a substantial part of the events giving rise to the claims against Magco occurred in this district.

1 Defendant Magco has a regular and established place of business in Azusa,  
2 California. Defendant Magco is also organized and existing under the laws of the  
3 State of California. Venue is proper under 28 U.S.C. § 1400(b) and 28 U.S.C. §  
4 1391(b).

5 4. Defendant Magco is the registrant for the website at the URL  
6 [www.magcodrilling.com](http://www.magcodrilling.com), where said website is accessible within this judicial  
7 district.

8 5. Defendant Magco, through its principal and agent Michael C. Maggio,  
9 is also the registrant for the website at the URL [www.m-pile.com](http://www.m-pile.com), on which the  
10 infringing products (the “M-Pile” products) are advertised and offered for sale, and  
11 where said website is accessible within this judicial district. The website [www.m-pile.com](http://www.m-pile.com)  
12 lists “Magco Drilling, Inc” as the contractor who uses and sells the  
13 infringing “M-Pile” product. Furthermore, the [www.m-pile.com](http://www.m-pile.com) website states that  
14 “Magco Drilling, Inc” used the M-Pile product in the Los Angeles International  
15 Airport (hereinafter, “LAX”) Terminal Redevelopment Program (Terminals 7 and  
16 8) project.

17 6. Aldridge Defendants have acquired Magco, and have a regular and  
18 established place of business with Magco in this judicial district, and are registered  
19 to do business in California. Therefore, Defendants Magco and Aldridge at least  
20 make, use, offer for sale, and have sold infringing products in this judicial district,  
21 such that a substantial part of the events giving rise to the claims against Magco  
22 and Aldridge occurred in this district. Venue is proper under 28 U.S.C. § 1400(b)  
23 and 28 U.S.C. § 1391(b).

24 7. On information and belief, Defendant M-Pile Sales at least imports,  
25 offers for sale, and sells the infringing products in this judicial district, such that a  
26 substantial part of the events giving rise to the claims against M-Pile Sales occurred  
27 in this district. On information and belief, Defendant M-Pile Sales has a regular  
28 and established place of business in Azusa, California. Venue is proper under 28

1 U.S.C. § 1400(b) and 28 U.S.C. § 1391(b).

2 8. Foundation Defendants reside in this district. Foundation Defendants  
3 have a regular and established place of business within this district in Fontana,  
4 California. Foundation Defendants are also organized and existing under the laws  
5 of the State of California.

6 9. On information and belief, Defendant Foundation Constructors, Inc.  
7 is the parent company of Foundation Pile, Inc. and exercises substantial control  
8 over Foundation Pile, Inc.

9 10. Foundation Defendants are controlled by the same officers.

10 11. Defendant Shoring at least uses, offers for sale, and sells infringing  
11 products in this judicial district, such that a substantial part of the events giving rise  
12 to the claims against Shoring occurred in this district. Defendant Shoring has a  
13 regular and established place of business in Santa Fe Springs, California.  
14 Defendant Shoring is also organized and existing under the laws of the State of  
15 California. Venue is proper under 28 U.S.C. § 1400(b) and 28 U.S.C. § 1391(b).

16 12. Defendant Shoring is the registrant for the website at the URL  
17 [www.shoringengineers.com](http://www.shoringengineers.com). On its website, Shoring notes that it is licensed in  
18 California. Furthermore, on its website, Shoring states that it has worked on several  
19 projects at NBC's Universal City and Universal Studios Hollywood located in  
20 Universal City, California.

21 13. Defendant Structural Shotcrete at least uses, offers for sale, and sells  
22 infringing products in this judicial district, such that a substantial part of the events  
23 giving rise to the claims against Structural Shotcrete occurred in this district.  
24 Defendant Structural Shotcrete has a regular and established place of business in  
25 Santa Fe Springs, California. Defendant Structural Shotcrete is also organized and  
26 existing under the laws of the State of California. Venue is proper under 28 U.S.C.  
27 § 1400(b) and 28 U.S.C. § 1391(b).

28 14. Defendant Shoring is the registrant for the website at the URL

1 [www.structuralshotcrete.com](http://www.structuralshotcrete.com), where said website is accessible within this judicial  
2 district. On this website, Structural Shotcrete states that it is licensed in California.

3 15. Defendant Hensel Phelps at least uses, offers for sale, and sells  
4 infringing products in this judicial district. Defendant Hensel Phelps has a regular  
5 and established place of business in Irvine, California. Venue is proper under 28  
6 U.S.C. § 1400(b) and 28 U.S.C. § 1391(b).

7 16. On information and belief, Defendant Hensel Phelps operates and  
8 controls the website at the URL [www.henselphelps.com](http://www.henselphelps.com).

9 17. Defendant Hensel Phelps states on its website that it has offices in  
10 Northern and Southern California. Furthermore, Hensel Phelps states on its  
11 website that it has worked on the LAX Southwest Terminal 1.5 and the LAX  
12 Terminal Redevelopment Program (Terminals 7 and 8) projects.

13 18. Defendant Conco at least uses, offers for sale, and sells infringing  
14 products in this judicial district. Defendant Conco has a regular and established  
15 place of business in Fontana, California. Venue is proper under 28 U.S.C. §  
16 1400(b).

17 19. On information and belief, Defendant Conco operates and controls the  
18 website at the URL [www.conconow.com](http://www.conconow.com).

19 20. Conco states on its website that it has offices in the Bay Area, Los  
20 Angeles, San Jose, Sacramento, and San Francisco, California. Furthermore,  
21 Conco states on its website that it has worked on the LAX Midfield Satellite  
22 Concourse North project.

23 21. Defendant Matt Construction at least uses, offers for sale, and sells  
24 infringing products in this judicial district. Defendant Matt Construction has a  
25 regular and established place of business in Los Angeles, Santa Fe Springs, and  
26 Westlake Village, California. Defendant Matt Construction is also organized and  
27 existing under the laws of the State of California. Venue is proper under 28 U.S.C.  
28 § 1400(b) and 28 U.S.C. § 1391(b).



1 established place of business at 501 W. Foothill Blvd., Azusa, California 91702.

2 29. On information and belief, Defendant M-Pile Sales is a limited  
3 liability company organized and existing under the laws of Utah. On information  
4 and belief, Defendant M-Pile Sales has a regular and established place of business  
5 at 501 W. Foothill Blvd., Azusa, California 91702.

6 30. On information and belief, Defendant Foundation Constructors, Inc.  
7 is a corporation organized and existing under the laws of California, and having a  
8 regular and established place of business at 81 Big Break Road, Oakley, California  
9 94561.

10 31. On information and belief, Defendant Foundation Pile, Inc. is a  
11 corporation organized and existing under the laws of California, and having a  
12 regular and established place of business at 8375 Almeria Ave., Fontana, California  
13 92335.

14 32. On information and belief, Defendant Shoring is a corporation  
15 organized and existing under the laws of California, and having a regular and  
16 established place of business at 12645 Clark Street, Santa Fe Springs, California  
17 90670.

18 33. On information and belief, Defendant Structural Shotcrete is a  
19 corporation organized and existing under the laws of California, and having a  
20 regular and established place of business at 12645 Clark Street, Santa Fe Springs,  
21 California 90670.

22 34. On information and belief, Defendant Structural Shotcrete shares the  
23 same address as Defendant Shoring at 12645 Clark St., Santa Fe Springs, CA  
24 90670.

25 35. On information and belief, Defendant Structural Shotcrete shares the  
26 same management team as Defendant Shoring.

27 36. On information and belief, Defendant Hensel Phelps is a corporation  
28 organized and existing under the laws of Delaware, and having a regular and



1 established place of business at 18850 Von Karman Avenue, Suite 100, Irvine,  
2 California 92612.

3 37. On information and belief, Defendant Gonsalves & Santucci, Inc. is a  
4 corporation organized and existing under the laws of California, having a regular  
5 and established place of business at 13052 Dahlia Street, Fontana, California  
6 92337, and does business as “The Conco Companies.”

7 38. On information and belief, Defendant Matt Construction is a  
8 corporation organized and existing under the laws of California, and having a  
9 regular and established place of business at 9814 Norwalk Blvd., Suite 100, Santa  
10 Fe Springs, California 90670.

11 **FACTUAL BACKGROUND**

12 39. Steve Neville is the inventor and owner of U.S. Pat. No. 7,914,236  
13 entitled “Screw Pile Substructure Support System” (a copy of which is attached as  
14 Exhibit A) (“the ’236 patent”).

15 40. Mr. Neville has licensed the ’236 patent to Plaintiff TDP as the  
16 exclusive licensee for manufacturing, offering for sale, and selling screw pile  
17 substructure support systems in accordance with the ’236 patent. With respect to  
18 making, offering for sale, and selling patented screw pile substructure support  
19 systems, TDP holds substantially all rights in the ’236 patent, including the right to  
20 sue for past and present infringement for unauthorized manufacturing, sale, and/or  
21 offer for sale of patented screw pile substructure support systems made in  
22 accordance with the ’236 patent. Mr. Neville has licensed the ’236 patent to  
23 Plaintiff Substructure as the exclusive licensee for using screw pile substructure  
24 support systems made in accordance with the ’236 patent. With respect to use of  
25 the patented screw pile substructure support systems, Substructure holds  
26 substantially all rights in the ’236 patent, including the right to sue for past and  
27 present infringement for unauthorized use of patented screw pile substructure  
28 support systems made in accordance with the ’236 patent.



1           41. Steve Neville is the inventor and owner of U.S. Pat. No. 9,284,708  
2 entitled “Screw Pile Substructure Support System” (a copy of which is attached as  
3 Exhibit B) (“the ’708 patent”).

4           42. Mr. Neville has licensed the ’708 patent to Plaintiff TDP as the  
5 exclusive licensee for manufacturing, offering for sale, and selling screw pile  
6 substructure support systems in accordance with the ’708 patent. With respect to  
7 making, offering for sale, and selling patented screw pile substructure support  
8 systems, TDP holds substantially all rights in the ’708 patent, including the right to  
9 sue for past and present infringement for unauthorized manufacturing, sale, and/or  
10 offer for sale of patented screw pile substructure support systems made in  
11 accordance with the ’708 patent. Mr. Neville has licensed the ’708 patent to  
12 Plaintiff Substructure as the exclusive licensee for using screw pile substructure  
13 support systems made in accordance with the ’708 patent, and for practicing the  
14 method for installing a screw pile substructure support system claimed in the ’708  
15 patent. With respect to use of the patented screw pile substructure support systems,  
16 and for practicing the patented methods, Substructure holds substantially all rights  
17 in the ’708 patent, including the right to sue for past and present infringement for  
18 unauthorized use of patented screw pile substructure support systems made in  
19 accordance with the ’708 patent and unauthorized practice of methods claimed in  
20 the ’708 patent.

21           43. Steve Neville is the owner of U.S. Pat. No. 9,587,362 entitled  
22 “Systems and Methods for Coupling a Drill Rig to a Screw Pile” (a copy of which  
23 is attached as Exhibit C) (“the ’362 patent”).

24           44. Mr. Neville has licensed the ’362 patent to Plaintiff Substructure as  
25 the exclusive licensee for practicing the methods for preparing a screw pile for  
26 installation by a drill rig claimed in the ’362 patent. Substructure holds  
27 substantially all rights in the ’362 patent, including the right to sue for past and  
28 present infringement for unauthorized practice of the methods claimed in the ’362

1 patent.

2 45. The above-referenced patents are collectively the “patents-in-suit.”

3 46. Defendants Aldridge and Magco have in the past and continue to at  
4 least make, use, offer for sale, sell, and import products that infringe one or more  
5 claims of each of the patents-in-suit and practice the patented methods in this  
6 judicial district.

7 47. Defendant M-Pile Sales has in the past and continues to at least  
8 import, offer for sale, and sell products that infringe one or more claims of each of  
9 the patents-in-suit in this judicial district.

10 48. Defendant Shoring has in the past and continues to use, offer for sale,  
11 and sell products that infringe one or more claims of each of the patents-in-suit,  
12 and is also practicing the patented methods in this judicial district.

13 49. Defendant Structural Shotcrete has in the past and continues to use,  
14 offer for sale, and sell products that infringe one or more claims of each of the  
15 patents-in-suit, and is also practicing the patented methods in this judicial district.

16 50. Defendant Hensel Phelps has in the past and continues to at least use,  
17 offer for sale, and sell products that infringe one or more claims of each of the  
18 patent-in-suit, and is also practicing the patented methods in this judicial district.

19 51. Defendant Conco has in the past and continues to at least use, offer for  
20 sale, and sell products that infringe one or more claims of each of the patent-in-  
21 suit, and is also practicing the patented methods in this judicial district.

22 52. Defendant Matt Construction has in the past and continues to at least  
23 use, offer for sale, and sell products that infringe one or more claims of each of the  
24 patent-in-suit, and is also practicing the patented methods in this judicial district.

25 53. According to the Los Angeles World Airports website, the LAX  
26 Southwest Terminal 1.5 and the LAX Terminal Redevelopment Program  
27 (Terminals 7 and 8) projects were awarded to Defendant Hensel Phelps.

28 54. Hensel Phelps states on its website that it has worked on the LAX

1 Southwest Terminal 1.5 and the LAX Terminal Redevelopment Program  
2 (Terminals 7 and 8) projects.

3 55. Conco states on its website that it has worked on the LAX Midfield  
4 Satellite Concourse North project.

5 56. Matt Construction states on its website that it has worked on the  
6 NBCUniversal Studios' Area 51 project.

7 57. Plaintiff Substructure is the owner of the federally registered  
8 trademark TORQUE DOWN<sup>®</sup>. The TORQUE DOWN<sup>®</sup> mark has been registered  
9 with the United States Patent and Trademark Office ("USPTO") as U.S.  
10 Registration No. 4,148,221 since May 29, 2012, and is incontestable.

11 58. Attached as Exhibit D is a true and correct copy of U.S. Registration  
12 No. 4,148,221 for the TORQUE DOWN<sup>®</sup> mark. The registration specifically  
13 includes goods and services in International Classes 6 and 37, including:  
14 "foundation piles, building materials used in conjunction with foundation piles, and  
15 foundation systems for substructure building support, all in the nature of steel pipe  
16 piles filled with concrete" and "installation of foundation piles and foundation  
17 systems for substructure building support and associated machinery."

18 59. Plaintiff TDP is authorized to use the TORQUE DOWN<sup>®</sup> mark.  
19 Plaintiff TDP makes, offers for sale, and sells a screw pile foundation system called  
20 the Torque Down<sup>®</sup> Pile. Plaintiff TDP applies the TORQUE DOWN<sup>®</sup> mark to the  
21 Torque Down<sup>®</sup> Pile product at the time of manufacture.

22 60. Plaintiff Substructure uses the Torque Down<sup>®</sup> Pile products to practice  
23 the methods claimed in the '236 patent, the '362 patent, and the '708 patent.

24 61. Since at least 2009, Plaintiff Substructure has continuously used its  
25 TORQUE DOWN<sup>®</sup> mark in commerce in connection with the marketing of the  
26 Torque Down<sup>®</sup> Pile products, as well as the installation of said Torque Down<sup>®</sup> Pile  
27 products for substructure building support and associated machinery.

28 62. Plaintiff TDP marks each of the Torque Down<sup>®</sup> Pile products with the

1 TORQUE DOWN<sup>®</sup> mark.

2 63. Plaintiff Substructure has made a significant investment in advertising  
3 and promoting its TORQUE DOWN<sup>®</sup> mark. More than 12,000 Torque Down<sup>®</sup>  
4 Piles products have been sold and used on residential and commercial construction  
5 projects throughout California and the United States.

6 64. The TORQUE DOWN<sup>®</sup> mark is a source identifier for foundation  
7 piles, building materials used in conjunction with foundation piles, and foundation  
8 systems for substructure building support, all in the nature of steel pipe piles filled  
9 with concrete, provided by Plaintiff Substructure.

10 65. The TORQUE DOWN<sup>®</sup> mark is also a source identifier for installation  
11 of foundation piles and foundation systems for substructure building support and  
12 associated machinery provided by Plaintiff Substructure.

13 66. Plaintiff Substructure has previously sold the Torque Down<sup>®</sup> Pile  
14 product to consumers such as general contractors and project owners, including  
15 such entities as Webcor Builders, Swinerton Builders (Swinerton Incorporated),  
16 Cahill Contractors LLC, Hensel Phelps, Howard S. Wright (a Balfour Beatty  
17 company), and J.R. Roberts/Deacon.

18 67. In addition to the rights granted by federal trademark registration, the  
19 TORQUE DOWN<sup>®</sup> mark also enjoys common law trademark protection as a result  
20 of Plaintiff Substructure's consistent and long-standing use of the TORQUE  
21 DOWN<sup>®</sup> mark in commerce, as well as its commitment to quality and investment  
22 of time and effort in marketing and advertising.

23 **TORTIOUS ACTIVITIES OF DEFENDANT**

24 68. Defendants Aldridge and Magco have in the past and continue to  
25 make, use, offer for sale, sell, and import products that infringe, either directly, or  
26 indirectly through inducing infringement or contributory infringement, one or more  
27 claims of each of the '236 and '708 patents. Such infringing products include,  
28 without limitation, the M-Pile Full Displacement Pipe Pile System (hereinafter,

1 “M-Pile system”).

2 69. Defendants Magco and Aldridge have also in the past and continue to  
3 directly infringe by practicing the methods claimed in each of the '236, '708, and  
4 '362 patents.

5 70. Defendant Magco has indirectly infringed the methods claimed in  
6 each of the '236, '708, and '362 patents by inducing others to practice the claimed  
7 methods, and providing a material or apparatus for use in practicing the claimed  
8 methods, knowing the same to be especially made or especially adapted for use to  
9 infringe the patents, and such material or apparatus is not a staple article or  
10 commodity of commerce suitable for non-infringing use.

11 71. Defendant M-Pile Sales has in the past and continues to directly  
12 infringe by importing, offering for sale, and selling products that infringe, either  
13 directly, or indirectly through inducing infringement or contributory infringement  
14 one or more claims of each of the '236 and '708 patents. Such infringing products  
15 include, without limitation, the M-Pile system.

16 72. Defendant M-Pile Sales has indirectly infringed the methods claimed  
17 in each of the '236, '708, and '362 patents by inducing others to practice the  
18 claimed methods, and providing a material or apparatus for use in practicing the  
19 claimed methods, knowing the same to be especially made or especially adapted  
20 for use to infringe the patents, and such material or apparatus is not a staple article  
21 or commodity of commerce suitable for non-infringing use.

22 73. Foundation Defendants have in the past and continue to use, offer for  
23 sale, and sell products, such as the M-Pile system, that infringe one or more claims  
24 of each of the '236 and '708 patents.

25 74. Foundation Defendants have also in the past and continue to directly  
26 infringe by practicing the methods claimed in each of the '236, '708, and '362  
27 patents.

28 75. Foundation Defendants have indirectly infringed the methods claimed

1 in each of the '236, '708, and '362 patents by inducing others to practice the  
2 claimed methods, and providing a material or apparatus for use in practicing the  
3 claimed methods, knowing the same to be especially made or especially adapted  
4 for use to infringe the patents, and such material or apparatus is not a staple article  
5 or commodity of commerce suitable for non-infringing use.

6 76. Defendant Shoring has in the past and continues to use, offer for sale,  
7 and sell products, such as the M-Pile system, that infringe one or more claims of  
8 each of the '236 and '708 patents.

9 77. Defendant Shoring has also in the past and continues to directly  
10 infringe by practicing the methods claimed in each of the '236, '708, and '362  
11 patents.

12 78. Defendant Shoring has indirectly infringed the methods claimed in  
13 each of the '236, '708, and '362 patents by inducing others to practice the claimed  
14 methods, and providing a material or apparatus for use in practicing the claimed  
15 methods, knowing the same to be especially made or especially adapted for use to  
16 infringe the patents, and such material or apparatus is not a staple article or  
17 commodity of commerce suitable for non-infringing use.

18 79. Defendant Structural Shotcrete has in the past and continues to use,  
19 offer for sale, and sell products, such as the M-Pile system, that infringe one or  
20 more claims of each of the '236 and '708 patents.

21 80. Defendant Structural Shotcrete has also in the past and continues to  
22 directly infringe by practicing the methods claimed in each of the '236, '708, and  
23 '362 patents.

24 81. Defendant Structural Shotcrete has indirectly infringed the methods  
25 claimed in each of the '236, '708, and '362 patents by inducing others to practice  
26 the claimed methods, and providing a material or apparatus for use in practicing  
27 the claimed methods, knowing the same to be especially made or especially adapted  
28 for use to infringe the patents, and such material or apparatus is not a staple article

1 or commodity of commerce suitable for non-infringing use.

2 82. On its website at the URL <https://www.m-pile.com>, Defendant Magco  
3 states that “M-Pile Full Displacement Pipe Pile system let’s you ‘screw’ piles into  
4 the ground using a drilling rig....”

5 83. Furthermore, the website lists “Magco Drilling, Inc” as a contractor  
6 who uses and sells the infringing “M-Pile” product at the URL <https://www.m-pile.com/casehistories>.  
7

8 84. Defendant Magco’s website at the URL <https://m-pile.com/press> also  
9 identifies Stephen Wilson as president of M-Pile Sales, LLC.

10 85. Defendant Magco’s M-Pile system includes a tubular pile with a  
11 centerline.

12 86. Defendant Magco’s M-Pile system includes attaching tubular piles to  
13 one another using welds.

14 87. Defendant Magco’s M-Pile system includes a substantially conically  
15 shaped pile tip.

16 88. Defendant Magco’s M-Pile system includes a helical flight on the  
17 exterior of the pile tip.

18 89. A helical flight of Defendant Magco’s M-Pile system extends along  
19 the exterior surface for a distance of at least one quarter of a circumference of the  
20 portion of the shaped pile tip.

21 90. The pile tip of Defendant Magco’s M-Pile system has a first end and  
22 a second end.

23 91. In Defendant Magco’s M-Pile system, the first end of the pile tip  
24 attaches to a tubular pile.

25 92. Defendant Magco’s M-Pile system includes an end plate attached to  
26 the second end of the pile tip.

27 93. Defendant Magco’s M-Pile system includes a protrusion extending  
28 from the end plate.



1           94. Defendant Magco's M-Pile system includes cutter teeth attached to  
2 the pile tip.

3           95. In Defendant Magco's M-Pile system, the tubular pile is filled with  
4 concrete and attached to a pile cap that includes concrete and reinforcing steel.

5           96. Defendant Magco's M-Pile system is installed using a driver tool that  
6 works with a drill rig.

7           97. Defendant Magco's M-Pile system driver tool includes a bracket, a  
8 pivot, and a plate that connects to the drill rig.

9           98. An end of Defendant Magco's M-Pile system driver tool fits inside a  
10 portion of a tubular pile.

11           99. Defendant Magco's M-Pile system driver tool couples to a tubular pile  
12 utilizing pin holes in the tubular pile that are matched to holes in a portion of the  
13 driver tool.

14           100. In Defendant Magco's M-Pile, the tubular pile is placed in a  
15 substantially horizontal position.

16           101. In Defendant Magco's M-Pile, the driver tool is placed in a  
17 substantially horizontal position.

18           102. In Defendant Magco's M-Pile, the driver tool and the tubular pile are  
19 attached to each other.

20           103. In Defendant Magco's M-Pile, the driver tool is configured to pivot  
21 about a pivot axis.

22           104. In Defendant Magco's M-Pile, a pile tip is attached to the tubular pile.

23           105. Defendant Magco installs its M-Pile system, and instructs others to  
24 install its M-Pile system using this driver tool.

25           106. Defendant Magco offers for sale and sells the infringing M-Pile  
26 system to others, intending for them to use and resell the M-Pile system.

27           107. On information and belief, Defendant Aldridge offers for sale and  
28 sells the infringing M-Pile system to others, intending for them to use and resell the

1 M-Pile system.

2 108. On information and belief, Defendant M-Pile Sales offers for sale and  
3 sells the infringing M-Pile system to others, intending for them to use and resell the  
4 M-Pile system.

5 109. Defendant Magco makes, uses, sells, offers for sale, and imports its  
6 M-Pile system knowing it to infringe the patents-in-suit.

7 110. On information and belief, Defendant Aldridge makes, uses, sells, and  
8 offers for sale the M-Pile system knowing it to infringe the patents-in-suit.

9 111. On information and belief, Defendant M-Pile Sales imports, sells, and  
10 offers for sale the M-Pile system knowing it to infringe the patents-in-suit.

11 112. Defendant Magco sells its infringing M-Pile system to others knowing  
12 that such others will use and sell the infringing M-Pile system.

13 113. Defendant Magco instructs those to whom it sells the M-Pile system  
14 how to use and install the M-Pile system, instructing them to use the M-Pile system  
15 in a manner that infringes the patents-in-suit.

16 114. On information and belief, Defendant Magco sold the infringing M-  
17 Pile system to Defendant Shoring.

18 115. On information and belief, Defendant Magco instructed Defendant  
19 Shoring on how to use the M-Pile system in a manner that infringes the patents-in-  
20 suit, and Shoring used the M-Pile System in an infringing manner.

21 116. On information and belief, Defendant Magco sold the infringing M-  
22 Pile system to Defendant Structural Shotcrete.

23 117. On information and belief, Defendant Magco instructed Defendant  
24 Structural Shotcrete on how to use the M-Pile system in a manner that infringes the  
25 patents-in-suit, and Structural Shotcrete used the M-Pile System in an infringing  
26 manner.

27 118. Defendant M-Pile Sales sold the infringing M-Pile system to  
28 Foundation Defendants.

1           119. On information and belief, Defendant M-Pile Sales imports the M-Pile  
2 system into the United States.

3           120. On information and belief, Defendant M-Pile Sales thereafter offers  
4 for sale and sells the infringing M-Pile system to others.

5           121. Foundation Defendants used, offered for sale, and sold the infringing  
6 M-Pile system on at least one project, said project located at the Genentech South  
7 Campus Connector Building 40 in South San Francisco, California, taking place  
8 during at least 2017.

9           122. The M-Pile system used, offered for sale, and sold by Foundation  
10 Defendants had the characteristics described above in paragraphs 85 through 104.

11           123. On information and belief, Foundation Defendants installed the piling  
12 of the M-Pile system using an infringing driver tool.

13           124. On information and belief, Defendant Shoring used and sold the  
14 infringing M-Pile system on at least one project at NBCUniversal in Universal City,  
15 California.

16           125. On information and belief, Defendant Shoring used and sold the  
17 infringing M-Pile system on at least one project at Los Angeles International  
18 Airport in Los Angeles, California.

19           126. The M-Pile system used and sold by Shoring had the characteristics  
20 described above in paragraphs 85 through 104.

21           127. On information and belief, Shoring installed the piling of the M-Pile  
22 system using Defendant Magco's driver tool.

23           128. On information and belief, Defendant Structural Shotcrete used and  
24 sold the infringing M-Pile system on at least one project at NBCUniversal in  
25 Universal City, California.

26           129. On information and belief, Defendant Structural Shotcrete used and  
27 sold the infringing M-Pile system on at least one project at Los Angeles  
28 International Airport in Los Angeles, California.

1 130. The M-Pile system used and sold by Structural Shotcrete had the  
2 characteristics described above in paragraphs 85 through 104.

3 131. On information and belief, Structural Shotcrete installed the piling of  
4 the M-Pile system using Defendant Magco's driver tool.

5 132. Defendant Hensel Phelps is a general contractor. Defendant Hensel  
6 Phelps puts out written requests for construction work which require the use of  
7 "torque down" piles. These work requests include at least projects at LAX  
8 Southwest Terminal 1.5 and the LAX Terminal Redevelopment Program  
9 (Terminals 7 and 8).

10 133. Defendant Hensel Phelps is not authorized to use the TORQUE  
11 DOWN<sup>®</sup> mark.

12 134. Exemplary excerpts from Hensel Phelps work requests for the LAX  
13 Southwest Terminal 1.5 project and the LAX Terminal Redevelopment Program  
14 (Terminals 7 and 8) project requesting "Torque-Down-Pile" and "torque down"  
15 piles are included as follows:

16 LAX Southwest Terminal 1.5 project:

17 **11.2.5. Torque-Down-Pile (TDP) Considerations**

18 A TDP consists of 12.75-inch-outside-diameter, 50 kips per square inch (ksi) steel pipe  
19 with a closed-end conical tip welded to the bottom of the pipe. The pipe wall thickness  
20 is 0.375 inch, resulting in an inside pipe diameter of 12 inches. The specially designed  
21 conical tip includes a single ½-inch-thick, 14-inch-diameter, steel helix plate welded  
22 onto the tip along with various cutting teeth to assist in the pile installation. The piles  
23 are advanced (screwed) into the ground by application of torque and crowd using a  
24 large drill rig.

25 LAX Terminal Redevelopment Program (Terminals 7 and 8) project:

1 Deep foundations are recommended to support the expansion of the Terminal 7 structure. The  
2 project team has selected torque down piles (TDP) as the preferred deep foundation type.  
3 Based on our experience and our preliminary discussion with LADB&S representatives, pile  
4 load testing will be required to use confirm the axial compression capacity of TDP foundations.  
5 LADB&S criteria will preclude the use of driven and/or vibratory pile installation methods for this  
6 project because of the proximity of adjacent structures that could be adversely affected by the  
7 construction vibrations. Cast-in-drilled-hole piles could be used but have schedule and cost  
8 disadvantages compared to TDPs. The design of the TDP foundations will need to consider the  
9 effects on the existing basement-level pedestrian tunnel and other subterranean structures.

7 A TDP is similar to a Caltrans cast-in-steel-shell (CISS) pile except that the TDP are installed by  
8 "screwing" (torqueing) the TDP into the ground compared to the CISS pile, which is installed by  
9 impact driving or vibratory methods. The TDP consists of a steel pipe pile with outside and  
10 inside diameters of 12¾ and 12 inches, respectively. A special ½-inch-thick conical tip with  
11 various cutter teeth forms the bottom of the TDP. After the TDP is screwed into the ground, the

11 135. On information and belief, Defendant Hensel Phelps did not use the  
12 Torque Down® Pile product and instead used the M-Pile product, passing it off as  
13 the Torque Down® Pile product.

14 136. On information and belief, Defendant Hensel Phelps utilized Aldridge  
15 to provide the infringing M-Pile products for at least the LAX Southwest Terminal  
16 1.5 project.

17 137. On information and belief, Defendant Hensel Phelps utilized Aldridge  
18 to install the infringing M-Pile products for at least the LAX Southwest Terminal  
19 1.5 project.

20 138. On information and belief, Defendant Hensel Phelps utilized Magco  
21 to provide the infringing M-Pile products for at least the LAX Terminal  
22 Redevelopment Program (Terminals 7 and 8) project.

23 139. On information and belief, Defendant Hensel Phelps utilized Magco  
24 to install the infringing M-Pile products for at least the LAX Terminal  
25 Redevelopment Program (Terminals 7 and 8) project.

26 140. Defendant Conco is a contractor. On information and belief,  
27 Defendant Conco used the infringing M-Pile product for the Midfield Satellite  
28 Concourse North project at LAX.

1 141. On information and belief, Defendant Conco utilized Shoring to  
2 provide and/or install the infringing M-Pile products for the LAX Midfield Satellite  
3 Concourse North project.

4 142. On information and belief, Defendant Conco utilized Structural  
5 Shotcrete to provide and/or install the infringing M-Pile products for the LAX  
6 Midfield Satellite Concourse North project.

7 143. Defendant Matt Construction is a general contractor. Defendant Matt  
8 Construction puts out written requests for construction work which require the use  
9 of “Torque Down” Piles. These work requests include at least the NBCUniversal  
10 Studios’ Area 51 project.

11 144. Defendant Matt Construction is not authorized to use the TORQUE  
12 DOWN<sup>®</sup> mark.

13 145. An exemplary excerpt from the Matt Construction work request for  
14 the NBCUniversal Studios’ Area 51 project requesting “Torque Down” piles is  
15 included as follows:

16 **8.5 Torque Down Piles**

17 Torque-down piles are concrete-filled steel pipe piles with a closed-end conical tip welded to the  
18 bottom of the pipe. The pipe typically has inside and outside diameters of 12 and 12.75 inches,  
19 respectively. The specially designed conical tip includes a single ½-inch-thick, 14-inch-  
diameter, steel-helix plate welded onto the tip along with various cutter teeth. The piles are

20 “screwed” into the ground by applying torque and crowd (downward pressure) with a large drill  
21 rig. A specially designed hydraulic motor on the drill rig is capable of providing up to 210,000  
22 ft-lbs of torque, enabling the piles to penetrate into very dense sand and weathered bedrock. A  
23 30-ton main winch on the rig provides the necessary crowd. This method of pile installation  
24 results in little to no vibration, and noise is limited to the engine on the drill rig. After the piles  
25 are advanced to the specified tip elevation or to practical refusal, the pipes are filled with  
26 structural concrete.  
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**8.5.1 Axial Capacity-Torque Down Piles**

Preliminary recommendations for allowable axial capacities vs. depth for 12.75-inch outside diameter torque-down piles are provided in Figure 13. The axial capacity calculations incorporate skin friction and end bearing. A factor of safety of 2 is applied to the ultimate axial capacity for static loading condition. A one-third increase in the allowable axial capacity is used when considering wind or seismic loads. The depth of groundwater at 30 feet in the axial capacity analysis corresponds to the current groundwater level at the site, which is approximately 20 feet lower than the reported historic high. We believe that this is the more critical groundwater level with respect to pile axial capacity estimation.

**8.5.2 Lateral Capacity-Torque Down Piles**

The torque-down piles may be used to resist lateral loads. We performed lateral capacity calculations for 12.75-inch-diameter piles. We calculated allowable pile lateral capacity in accordance with Section 1810.3.3.2 of the 2013 California Building Code with 2014 County of Los Angeles Amendments and used the computer program "LPILE" in our pile lateral load analyses. The depth of groundwater at 10 feet in the lateral capacity analysis corresponds to the CDMG reported historic high for the site. We believe that this is the more critical groundwater level with respect to pile lateral capacity estimation.

146. Defendant Matt Construction also states on its website that Matt Construction "had to use torque-down piles to drill into the ground" when working on the NBCUniversal Studios' Area 51 project.

147. On information and belief, Defendant Matt Construction did not use the Torque Down<sup>®</sup> Pile product and instead used the M-Pile product, passing it off as the Torque Down<sup>®</sup> Pile product.

148. On information and belief, Defendant Matt Construction utilized Shoring to provide the infringing M-Pile products for at least the NBCUniversal Studios' Area 51 project.

149. On information and belief, Defendant Matt Construction utilized Shoring to install the infringing M-Pile products for at least the NBCUniversal Studios' Area 51 project.

150. On information and belief, Defendant Matt Construction utilized Structural Shotcrete to provide the infringing M-Pile products for at least the NBCUniversal Studios' Area 51 project.

151. On information and belief, Defendant Matt Construction utilized



1 Structural Shotcrete to install the infringing M-Pile products for at least the  
2 NBCUniversal Studios' Area 51 project.

3 152. On information and belief, Defendant Magco provided infringing M-  
4 Pile products for at least projects at the Discovery Science Center in Santa Ana,  
5 California.

6 153. On information and belief, Defendant Magco installed infringing M-  
7 Pile products for at least projects at the Discovery Science Center in Santa Ana,  
8 California.

9 154. Defendants' actions infringing the patents-in-suit have been and are  
10 without the consent or authorization of Plaintiffs.

11 155. In February 2012, Michael C. Maggio of Magco signed an agreement  
12 that referred to the '236 patent, demonstrating Magco's knowledge of the '236  
13 patent at least as early as February 2012.

14 156. Defendant Magco previously worked with Plaintiffs Neville and  
15 Substructure, and has been aware of the '236 patent since at least as early as 2012.

16 157. By letter from Plaintiff Substructure's counsel dated March 15, 2013,  
17 Substructure demanded that Magco cease and desist from "manufacture, use,  
18 importation, operation, use or sale of any product or method described in U.S.  
19 Patent No. 7,914,236."

20 158. By that same letter, Plaintiff Substructure notified Magco that "[a]ny  
21 further manufacture, use, importation, operation, use or sale of any product or  
22 method described in U.S. Patent No. 7,914,236 shall be unlawful, will subject  
23 Magco to imposition of damages and injunctive relief, as well as punitive damages  
24 for willful conduct."

25 159. In a letter of intent dated February 9, 2012, and signed by a principal  
26 of Magco, Michael C. Maggio, specific reference is made to the inventor Mr. Steve  
27 Neville and "a certain patent titled 'Screw Pile Substructure Support System,'"   
28 which is the '236 patent.

1           160. On information and belief, in February 2012, Stephen Wilson,  
2 president of M-Pile Sales, was party to an agreement that referred to the '236  
3 patent, demonstrating at least his knowledge of the '236 patent at least as early as  
4 February 2012. This agreement was the same agreement signed by Michael C.  
5 Maggio of Magco, and specific reference was made therein to inventor Steve  
6 Neville and "a certain patent titled 'Screw Pile Substructure Support System,'"   
7 which is the '236 patent.

8           161. Stephen Wilson of M-Pile Sales previously worked with Plaintiffs  
9 Neville and Substructure, and has been aware of the '236 patent since at least as  
10 early as 2012.

11           162. By letter from Plaintiff Substructure's counsel dated March 28, 2013,  
12 Substructure demanded that Stephen Wilson cease and desist from placing "any  
13 new orders for TDP Tips with any supplier, or take orders from any customer."

14           163. By that same letter, Plaintiff Substructure notified Stephen Wilson that  
15 "[a]ny further manufacture, importation, operation, use, or sale of any product or  
16 method described in U.S. Patent No. 7,914,236 without Steve Neville's written  
17 approval shall be unlawful."

18           164. On information and belief, Defendants Magco and Aldridge make,  
19 use, offer to sell, sell, and import the M-Pile system which directly competes with  
20 Plaintiff Substructure's Torque Down<sup>®</sup> Pile product.

21           165. On information and belief, Defendants Magco and Aldridge have sold  
22 and are selling the M-Pile system to others, passing it off as the TORQUE DOWN<sup>®</sup>  
23 pile system. Defendants Magco's and Aldridge's passing off of the M-Pile system  
24 as the TORQUE DOWN<sup>®</sup> pile system is intentionally confusing and deceiving  
25 customers into believing that the M-Pile system it provides is sponsored by,  
26 approved by, or otherwise affiliated with Plaintiff Substructure.

27           166. Defendants Magco and Aldridge have sold the M-Pile system for use  
28 in at least the LAX Southwest Terminal 1.5 project.

1           167. Defendants Magco and Aldridge have sold the M-Pile system for use  
2 in at least the LAX Terminal Redevelopment Program (Terminals 7 and 8) project.

3           168. Defendants Magco and Aldridge have sold the M-Pile system for use  
4 in at least the Discovery Science Center project.

5           169. On information and belief, Defendant M-Pile Sales imports, offers to  
6 sell, and sells the M-Pile system which directly competes with Plaintiff  
7 Substructure's Torque Down<sup>®</sup> Pile product.

8           170. On information and belief, Defendant Shoring uses, offers to sell, and  
9 sells the M-Pile system which directly competes with Plaintiff Substructure's  
10 Torque Down<sup>®</sup> Pile product.

11           171. On information and belief, Defendant Shoring has sold and is selling  
12 the M-Pile system to others, passing it off as the TORQUE DOWN<sup>®</sup> pile system in  
13 at least the LAX Midfield Satellite Concourse North project and the NBCUniversal  
14 Studios' Area 51 project. Defendant Shoring's passing off of the M-Pile system as  
15 the TORQUE DOWN<sup>®</sup> pile system is intentionally confusing and deceiving  
16 customers into believing that the M-Pile system it provides is sponsored by,  
17 approved by, or otherwise affiliated with Plaintiff Substructure.

18           172. On information and belief, Defendant Structural Shotcrete uses, offers  
19 to sell, and sells the M-Pile system which directly competes with Plaintiff  
20 Substructure's Torque Down<sup>®</sup> Pile product.

21           173. On information and belief, Defendant Structural Shotcrete has sold  
22 and is selling the M-Pile system to others, passing it off as the TORQUE DOWN<sup>®</sup>  
23 pile system in at least the LAX Midfield Satellite Concourse North project and the  
24 NBCUniversal Studios' Area 51 project. Defendant Structural Shotcrete's passing  
25 off of the M-Pile system as the TORQUE DOWN<sup>®</sup> pile system is intentionally  
26 confusing and deceiving customers into believing that the M-Pile system it  
27 provides is sponsored by, approved by, or otherwise affiliated with Plaintiff  
28 Substructure.

1           174. On information and belief, Defendant Hensel Phelps has sold and is  
2 selling the M-Pile system to project owners, passing it off as the TORQUE  
3 DOWN<sup>®</sup> pile system. Defendant Hensel Phelps is at least using the TORQUE  
4 DOWN<sup>®</sup> mark in connection with the marketing, sale, and provision of the M-Pile  
5 system in at least the LAX Southwest Terminal 1.5 project and the LAX Terminal  
6 Redevelopment Program (Terminals 7 and 8) project. Thus, the parties' respective  
7 goods are sold through identical channels of trade and to identical consumers.

8           175. Defendant Hensel Phelps is intentionally infringing Plaintiff  
9 Substructure's TORQUE DOWN<sup>®</sup> mark, and is intentionally confusing and  
10 deceiving customers into believing that the M-Pile system it provides is sponsored  
11 by, approved by, or otherwise affiliated with Plaintiff Substructure.

12           176. Defendant Hensel Phelps's unauthorized and infringing use of the  
13 TORQUE DOWN<sup>®</sup> mark commenced long after the registration and first use of the  
14 TORQUE DOWN<sup>®</sup> mark.

15           177. On information and belief, Defendant Matt Construction has sold and  
16 is selling the M-Pile system to project owners, passing it off as the TORQUE  
17 DOWN<sup>®</sup> pile system. Defendant Matt Construction is at least using the TORQUE  
18 DOWN<sup>®</sup> mark in connection with the marketing, sale, and provision of the M-Pile  
19 system in the NBCUniversal Studios' Area 51 project. Thus, the parties' respective  
20 goods are sold through identical channels of trade and to identical consumers.

21           178. Defendant Matt Construction is intentionally infringing Plaintiff  
22 Substructure's TORQUE DOWN<sup>®</sup> mark, and is intentionally confusing and  
23 deceiving customers into believing that the M-Pile system it provides is sponsored  
24 by, approved by, or otherwise affiliated with Plaintiff Substructure.

25           179. Defendant Matt Construction's unauthorized and infringing use of the  
26 TORQUE DOWN<sup>®</sup> mark commenced long after the registration and first use of the  
27 TORQUE DOWN<sup>®</sup> mark.

28

**FIRST CAUSE OF ACTION**

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

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

181. Defendants Magco and Aldridge have in the past and continue to make, use, import, offer for sale, and sell the M-Pile Full Displacement Pipe Pile System that infringes at least claims 1-4, 6-11, 14-19, 22-24, 27, 29, and 32 of the '236 patent.

182. Defendants Magco, Aldridge, Foundation, Shoring, Structural Shotcrete, Hensel Phelps, Conco, and Matt Construction have used and continue to use a method utilizing the M-Pile Full Displacement Pipe Pile System that infringes at least claim 33 of the '236 patent.

183. Defendant M-Pile Sales has in the past and continues to import, offer for sale, and sell the M-Pile Full Displacement Pipe Pile System that infringes at least claims 1-4, 6-11, 14-19, 22-24, 27, 29, and 32 of the '236 patent.

184. Defendants Foundation, Shoring, Structural Shotcrete, Hensel Phelps, Conco, and Matt Construction have in the past and continue to use, offer for sale, and sell the M-Pile Full Displacement Pipe Pile System that infringes at least claims 1-4, 6-11, 14-19, 22-24, 27, 29, and 32 of the '236 patent.

185. Defendants Magco and Aldridge have in the past and continue to make, use, import, offer for sale, and sell the M-Pile Full Displacement Pipe Pile System that infringes at least claims 1-23, 25, 27, and 39 of the '708 patent.

186. Defendants Magco, Aldridge, Foundation, Shoring, Structural Shotcrete, Hensel Phelps, Conco, and Matt Construction have used and continue to use a method utilizing the M-Pile Full Displacement Pipe Pile System that infringes at least claims 31, 32, and 34-37 of the '708 patent.

187. Defendant M-Pile Sales has in the past and continues to import, offer for sale, and sell the M-Pile Full Displacement Pipe Pile System that infringes at

1 least claims 1-23, 25, 27, and 39 of the '708 patent.

2 188. Defendants Foundation, Shoring, Structural Shotcrete, Hensel Phelps,  
3 Conco, and Matt Construction have in the past and continue to use, offer for sale,  
4 and sell the M-Pile Full Displacement Pipe Pile System that infringes at least claims  
5 1-23, 25, 27, and 39 of the '708 patent.

6 189. Defendants Magco, Aldridge, Foundation, Shoring, Structural  
7 Shotcrete, Hensel Phelps, Conco, and Matt Construction have used and continue to  
8 use methods utilizing the M-Pile Full Displacement Pipe Pile System that infringe  
9 at least claims 1, 3-5, 7-9, 11, 14, and 17-18 of the '362 patent.

10 190. By these acts, Defendants have violated 35 U.S.C. § 271(a) by their  
11 infringement of the patents-in-suit.

12 191. On information and belief, Defendants' infringement of the patents-  
13 in-suit, both presently, and in the past, has been willful.

14 192. On information and belief, the acts of infringement of Defendants will  
15 continue unless enjoined by this Court.

16 193. Plaintiffs are being and will continue to be irreparably damaged by  
17 Defendants' infringement of the patents-in-suit unless Defendants' infringement is  
18 enjoined by this Court. Plaintiffs, therefore, do not have an adequate remedy at  
19 law.

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

21 **SECOND CAUSE OF ACTION**

22 **INDIRECT PATENT INFRINGEMENT IN VIOLATION**

23 **OF 35 U.S.C. §§ 271(b) AND (c)**

24 195. Plaintiffs refer to and incorporate in this cause of action the preceding  
25 Paragraphs above, as though restated herein in full.

26 196. On information and belief, Defendants Magco and Aldridge have in  
27 the past and continue to make, use, import, offer for sale, and sell the M-Pile  
28 System.

1           2197. On information and belief, Defendant M-Pile Sales has in the past and  
2 continues to import, offer for sale, and sell the M-Pile System.

3           2198. On information and belief, Defendants Magco and Aldridge have in  
4 the past and continue to supply the M-Pile System to others for use and/or resale.

5           2199. Magco, through at least Michael C. Maggio, had knowledge of the  
6 '236 patent at least as early as February 2012.

7           2200. On information and belief, Defendant M-Pile Sales has in the past and  
8 continues to supply the M-Pile System to others for user and/or resale.

9           2201. On information and belief, M-Pile Sales had knowledge of the '236  
10 patent at least as early as February 2012.

11           2202. Plaintiff TDP is the exclusive manufacturer of products licensed under  
12 the patents-in-suit.

13           2203. Defendant Magco was notified at least as early as February 2012 that  
14 Plaintiffs had related pending patent applications that would likely cover the M-  
15 Pile System.

16           2204. On information and belief, Defendant M-Pile Sales was notified that  
17 Plaintiffs had related pending patent applications that would likely cover the M-  
18 Pile System.

19           2205. One such application issued as U.S. Pat. No. 9,284,701, and another  
20 issued as U.S. Pat. No. 9,587,362.

21           2206. Defendant Magco therefore had knowledge of U.S. Pat. No. 7,914,236  
22 at least as early as February 2012.

23           2207. On information and belief, Defendant Magco had knowledge of U.S.  
24 Pat. No. 9,284,708 as of issue date March 15, 2016.

25           2208. On information and belief, Defendant Magco had knowledge of U.S.  
26 Pat. No. 9,587,362 as of issue date March 7, 2017.

27           2209. On information and belief, Defendant M-Pile Sales had knowledge of  
28 U.S. Pat. No. 7,914,236 at least as early as February 2012.



1           210. On information and belief, Defendant M-Pile Sales had knowledge of  
2 U.S. Pat. No. 9,284,708 as of issue date March 15, 2016.

3           211. On information and belief, Defendant M-Pile Sales had knowledge of  
4 U.S. Pat. No. 9,587,362 as of issue date March 7, 2017.

5           212. On information and belief, Defendants Magco, Aldridge, and M-Pile  
6 Sales have in the past and continue to import, offer for sale, sell, and supply the M-  
7 Pile System for use in practicing a patented process, which M-Pile System products  
8 are material to practicing the invention, have no substantial non-infringing uses,  
9 and are known by Defendants Magco, Aldridge, and M-Pile Sales to be especially  
10 made or especially adapted for use in an infringement of the patents-in-suit.

11           213. The M-Pile System is used to directly infringe at least claims 1-4, 6-  
12 11, 14-19, 22-24, 27, 29, 32, and 33 of the '236 patent.

13           214. The M-Pile System is used to directly infringe at least claims 1-23, 25,  
14 27, 31, 32, 34-37, and 39 of the '708 patent.

15           215. The M-Pile System is used to directly infringe at least claims 1, 3-5,  
16 7-9, 11, 14, and 17-18 of the '362 patent.

17           216. On information and belief, Defendant M-Pile Sales imports, receives,  
18 stores, and distributes the M-Pile System to others, intending that they use the M-  
19 Pile System to infringe the patents-in-suit.

20           217. On information and belief, Defendant Magco has in the past and  
21 continues to supply the M-Pile System to others, intending that they use the M-Pile  
22 System to infringe the patents-in-suit.

23           218. Defendants Foundation, Shoring, Structural Shotcrete, Hensel Phelps,  
24 Conco, and Matt Construction have used the M-Pile System to infringe at least  
25 claims 1-4, 6-11, 14-19, 22-24, 27, 29, 32, and 33 of the '236 patent.

26           219. Defendants Foundation, Shoring, Structural Shotcrete, Hensel Phelps,  
27 Conco, and Matt Construction have used the M-Pile System to infringe at least  
28 claims 1-23, 25, 27, 31, 32, 34-37, and 39 of the '708 patent.

1           220. Defendants Foundation, Shoring, Structural Shotcrete, Hensel Phelps,  
2 Conco, and Matt Construction have used the M-Pile System to infringe at least  
3 claims 1, 3-5, 7-9, 11, 14, and 17-18 of the '362 patent.

4           221. The M-Pile System is used to construct a patented system, and to  
5 practice a patented method.

6           222. Through their importation, sales, supply, and distribution activities,  
7 Defendants Magco, Aldridge, and M-Pile Sales are liable for contributory  
8 infringement of the patents-in-suit pursuant to 35 U.S.C. § 271(c).

9           223. On information and belief, Defendants Magco, Aldridge, and M-Pile  
10 Sales have in the past and continue to import, sell, or offer for sale the M-Pile Full  
11 Displacement Pipe Pile System to enable users to practice a patented process or  
12 construct a patented system, with the knowledge that such acts constitute  
13 infringement of the patents-in-suit.

14           224. The M-Pile System is also used to practice a patented process, or  
15 construct a patented system, thereby directly infringing the patents-in-suit.

16           225. Defendants Magco, Aldridge, and M-Pile Sales provide specific  
17 instruction on how to use the M-Pile System to construct a patented system, and to  
18 practice a patented method.

19           226. Through such activities, Defendants Magco, Aldridge, and M-Pile  
20 Sales are liable for inducing infringement of the patents-in-suit, pursuant to 35  
21 U.S.C. §§ 271(b).

22           227. On information and belief, Defendants Magco's, Aldridge's, and M-  
23 Pile Sales' inducement of infringement and contributory infringement of the  
24 patents-in-suit, both presently, and in the past, has been willful.

25           228. On information and belief, the acts of inducement of infringement and  
26 contributory infringement of Defendants Magco, Aldridge, and M-Pile Sales will  
27 continue unless enjoined by this Court.

28           229. Plaintiffs are being damaged by Defendant's 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.

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

6 **THIRD CAUSE OF ACTION**

7 **TRADEMARK INFRINGEMENT IN VIOLATION**

8 **OF 15 U.S.C. § 1114**

9 231. Plaintiff Substructure refers to and incorporates in this cause of action  
10 the preceding Paragraphs above, as though restated herein in full.

11 232. Defendant Hensel Phelps, through the acts and omissions described  
12 herein, has used, and is using, in commerce reproductions or colorable imitations  
13 of Plaintiff’s federally registered TORQUE DOWN® mark in connection with the  
14 sale, offering for sale, distribution, or advertising of goods and services on or in  
15 connection with which such use is likely to cause confusion, or to cause mistake,  
16 or to deceive.

17 233. Defendant Hensel Phelps, through the acts and omissions described  
18 herein, has applied such reproductions or colorable imitations to labels, signs,  
19 prints, packages, wrappers, receptacles, or advertisements intended to be used in  
20 commerce upon or in connection with the sale, offering for sale, distribution, or  
21 advertising of goods or services on or in connection with which such use is likely  
22 to cause confusion, or to cause mistake, or to deceive.

23 234. Defendant Matt Construction, through the acts and omissions  
24 described herein, has used, and is using, in commerce reproductions or colorable  
25 imitations of Plaintiff’s federally registered TORQUE DOWN® mark in connection  
26 with the sale, offering for sale, distribution, or advertising of goods and services on  
27 or in connection with which such use is likely to cause confusion, or to cause  
28 mistake, or to deceive.

1 235. Defendant Matt Construction, through the acts and omissions  
2 described herein, has applied such reproductions or colorable imitations to labels,  
3 signs, prints, packages, wrappers, receptacles, or advertisements intended to be  
4 used in commerce upon or in connection with the sale, offering for sale,  
5 distribution, or advertising of goods or services on or in connection with which  
6 such use is likely to cause confusion, or to cause mistake, or to deceive.

7 236. The infringements of Plaintiff Substructure's registered trademark,  
8 and each of them, as described, have irreparably injured Plaintiffs in an amount not  
9 yet ascertained but in an amount to be determined, which injury will continue  
10 unless enjoined by Order of this Court.

11 **FOURTH CAUSE OF ACTION**

12 **FALSE DESIGNATION OF ORIGIN AND UNFAIR COMPETITION**

13 **IN VIOLATION OF 15 U.S.C. § 1125**

14 237. Plaintiff Substructure refers to and incorporates in this cause of action  
15 the preceding Paragraphs above, as though restated herein in full.

16 238. On information and belief, Defendant Magco's and Aldridge's  
17 provision and passing off of the M-Pile system to others in at least the LAX  
18 Southwest Terminal 1.5 project, the LAX Terminal Redevelopment Program  
19 (Terminals 7 and 8) project, and the Discovery Science Center project complained  
20 herein is likely to cause confusion, or to cause mistake, or to deceive as to the  
21 origin, sponsorship, or approval of such goods.

22 239. On information and belief, the aforesaid acts of Defendants Magco  
23 and Aldridge were undertaken willfully with the intention of causing confusion,  
24 mistake, or deception.

25 240. On information and belief, Defendant M-Pile Sales' provision of the  
26 M-Pile system to others complained herein is likely to cause confusion, or to cause  
27 mistake, or to deceive as to the origin, sponsorship, or approval of such goods.

28 241. On information and belief, the aforesaid acts of Defendant M-Pile

1 Sales were undertaken willfully with the intention of causing confusion, mistake,  
2 or deception.

3 242. On information and belief, Defendant Shoring’s provision and passing  
4 off of the M-Pile system to others in at least the LAX Midfield Satellite Concourse  
5 North project and the NBCUniversal Studios’ Area 51 project complained herein  
6 is likely to cause confusion, or to cause mistake, or to deceive as to the origin,  
7 sponsorship, or approval of such goods.

8 243. On information and belief, the aforesaid acts of Defendant Shoring  
9 were undertaken willfully with the intention of causing confusion, mistake, or  
10 deception.

11 244. On information and belief, Defendant Structural Shotcrete’s provision  
12 and passing off of the M-Pile system to others in at least the LAX Midfield Satellite  
13 Concourse North project and the NBCUniversal Studios’ Area 51 project  
14 complained herein is likely to cause confusion, or to cause mistake, or to deceive  
15 as to the origin, sponsorship, or approval of such goods.

16 245. On information and belief, the aforesaid acts of Defendant Structural  
17 Shotcrete were undertaken willfully with the intention of causing confusion,  
18 mistake, or deception.

19 246. Defendant Hensel Phelps has used Plaintiff Substructure’s TORQUE  
20 DOWN<sup>®</sup> mark in connection with their goods and services in at least the LAX  
21 Southwest Terminal 1.5 project and the LAX Terminal Redevelopment Program  
22 (Terminals 7 and 8) project, where the advertising, promotion, and use of such  
23 goods and services in commerce is likely to cause confusion, or to cause mistake,  
24 or to deceive as to the origin, sponsorship, or approval of such goods.

25 247. By using “Torque Down” and other very similar marks that are  
26 identical to Plaintiff Substructure’s TORQUE DOWN<sup>®</sup> mark, Defendant Hensel  
27 Phelps misrepresents and falsely describes to the general public the origin and  
28 source of the products and services offered for sale, and creates a likelihood of

1 confusion, mistake, or deception to ultimate purchasers as to the source of the  
2 products.

3 248. On information and belief, the aforesaid acts of Defendant Hensel  
4 Phelps were undertaken willfully with the intention of causing confusion, mistake,  
5 or deception.

6 249. Defendant Matt Construction has used Plaintiff Substructure's  
7 TORQUE DOWN<sup>®</sup> mark in connection with their goods and services in at least the  
8 NBCUniversal Studios' Area 51 project, where the advertising, promotion, and use  
9 of such goods and services in commerce is likely to cause confusion, or to cause  
10 mistake, or to deceive as to the origin, sponsorship, or approval of such goods.

11 250. By using "Torque Down" and other very similar marks that are  
12 identical to Plaintiff Substructure's TORQUE DOWN<sup>®</sup> mark, Defendant Matt  
13 Construction misrepresents and falsely describes to the general public the origin  
14 and source of the products and services offered for sale, and creates a likelihood of  
15 confusion, mistake, or deception to ultimate purchasers as to the source of the  
16 products.

17 251. On information and belief, the aforesaid acts of Defendant Matt  
18 Construction were undertaken willfully with the intention of causing confusion,  
19 mistake, or deception.

20 252. The confusion, mistake, or deception referred to herein arises out of  
21 the aforesaid acts of the above-mentioned Defendants, and the acts of said  
22 Defendants constitute false designation of origin and unfair competition in  
23 violation of 15 U.S.C. § 1125(a), Section 43(a) of the Lanham Act.

24 253. By reason of acts of the above-mentioned Defendants, Plaintiff  
25 Substructure has suffered and will continue to suffer irreparable damage, in an  
26 amount not yet ascertained but in an amount to be determined, which damage will  
27 continue unless and until such acts are enjoined by Order of this Court.

28

**FIFTH CAUSE OF ACTION**

**STATE STATUTORY UNFAIR COMPETITION**

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3 254. Plaintiffs refer to and incorporate in this cause of action the preceding  
4 Paragraphs above, as though restated herein in full.

5 255. By the acts complained of herein, Defendants Magco and Aldridge  
6 have engaged in unfair competition under Section 17200 of the Business and  
7 Professions Code of the State of California.

8 256. On information and belief, Defendants Magco's and Aldridge's  
9 provision of the M-Pile system to others complained herein constitutes unlawful,  
10 unfair, fraudulent business practices, and deceptive and misleading advertising and  
11 is likely to, and is intended to, cause confusion to the purchasers and potential  
12 purchasers of the products.

13 257. By the acts complained of herein, Defendant M-Pile Sales has  
14 engaged in unfair competition under Section 17200 of the Business and Professions  
15 Code of the State of California.

16 258. On information and belief, Defendant M-Pile Sales' provision of the  
17 M-Pile system to others complained herein constitutes unlawful, unfair, fraudulent  
18 business practices, and is likely to, and is intended to, cause confusion to the  
19 purchasers and potential purchasers of the products.

20 259. By the acts complained of herein, Foundation Defendants have  
21 engaged in unfair competition under Section 17200 of the Business and Professions  
22 Code of the State of California.

23 260. Foundation Defendants' provision of the M-Pile system to others  
24 complained herein constitutes unlawful, unfair, fraudulent business practices, and  
25 deceptive and misleading advertising and is likely to, and is intended to, cause  
26 confusion to the purchasers and potential purchasers of the products.

27 261. By the acts complained of herein, Defendant Shoring has engaged in  
28 unfair competition under Section 17200 of the Business and Professions Code of



1 the State of California.

2 262. On information and belief, Defendant Shoring's provision of the M-  
3 Pile system to others complained herein constitutes unlawful, unfair, fraudulent  
4 business practices, and deceptive and misleading advertising and is likely to, and  
5 is intended to, cause confusion to the purchasers and potential purchasers of the  
6 products.

7 263. By the acts complained of herein, Defendant Structural Shotcrete has  
8 engaged in unfair competition under Section 17200 of the Business and Professions  
9 Code of the State of California.

10 264. On information and belief, Defendant Structural Shotcrete's provision  
11 of the M-Pile system to others complained herein constitutes unlawful, unfair,  
12 fraudulent business practices, and deceptive and misleading advertising and is  
13 likely to, and is intended to, cause confusion to the purchasers and potential  
14 purchasers of the products.

15 265. By the acts complained of herein, Defendant Hensel Phelps has  
16 engaged in unfair competition under Section 17200 of the Business and Professions  
17 Code of the State of California.

18 266. Defendant Hensel Phelps's use of the infringing advertising, marking,  
19 and promotion complained of herein constitutes unlawful, unfair, fraudulent  
20 business practices, and deceptive and misleading advertising and is likely to, and  
21 is intended to, cause confusion to the purchasers and potential purchasers of the  
22 products.

23 267. By the acts complained of herein, Defendant Conco has engaged in  
24 unfair competition under Section 17200 of the Business and Professions Code of  
25 the State of California.

26 268. On information and belief, Defendant Conco's provision of the M-Pile  
27 system to others complained herein constitutes unlawful, unfair, fraudulent  
28 business practices, and deceptive and misleading advertising and is likely to, and

1 is intended to, cause confusion to the purchasers and potential purchasers of the  
2 products.

3 269. By the acts complained of herein, Defendant Matt Construction has  
4 engaged in unfair competition under Section 17200 of the Business and Professions  
5 Code of the State of California.

6 270. Defendant Matt Construction's use of the infringing advertising,  
7 marking, and promotion complained of herein constitutes unlawful, unfair,  
8 fraudulent business practices, and deceptive and misleading advertising and is  
9 likely to, and is intended to, cause confusion to the purchasers and potential  
10 purchasers of the products.

11 271. On information and belief, the aforesaid acts of Defendants have  
12 caused damage to Plaintiff Substructure, in an amount not yet ascertained but in an  
13 amount to be determined.

14 272. By reason of acts of Defendants, Plaintiff Substructure has suffered  
15 and will continue to suffer irreparable damage, in an amount not yet ascertained  
16 but in an amount to be determined, which damage will continue unless and until  
17 such acts are enjoined by Order of this Court.

18 **SIXTH CAUSE OF ACTION**

19 **COMMON LAW TRADEMARK INFRINGEMENT**

20 273. Plaintiff Substructure refers to and incorporates in this cause of action  
21 the preceding Paragraphs above, as though restated herein in full.

22 274. Since 2009, Plaintiff Substructure has continuously and exclusively  
23 used its TORQUE DOWN<sup>®</sup> mark.

24 275. As noted in detail above, since at least as early as 2009, Plaintiff  
25 Substructure has used its TORQUE DOWN<sup>®</sup> mark in connection with goods and  
26 services in International Classes 6 and 37, including foundation piles, building  
27 materials used in conjunction with foundation piles, and foundation systems for  
28 substructure building support.

1           276. Since at least 2009, Plaintiff Substructure has continuously used its  
2 TORQUE DOWN<sup>®</sup> mark in commerce in connection with the marketing of the  
3 Torque Down<sup>®</sup> Pile products.

4           277. Through its continuous use of the TORQUE DOWN<sup>®</sup> mark, and its  
5 continued advertising and promotion, Plaintiff Substructure has established the  
6 TORQUE DOWN<sup>®</sup> mark as a source identifier. Plaintiff Substructure has  
7 established goodwill in its TORQUE DOWN<sup>®</sup> mark with consumers, and  
8 consumers recognize the TORQUE DOWN<sup>®</sup> pile as an indicator of the high quality  
9 goods and services provided by Plaintiff Substructure.

10           278. On information and belief, Defendant Hensel Phelps was aware of the  
11 goodwill built up in Plaintiff Substructure's TORQUE DOWN<sup>®</sup> mark.

12           279. On information and belief, Defendant Matt Construction was aware of  
13 the goodwill built up in Plaintiff Substructure's TORQUE DOWN<sup>®</sup> mark.

14           280. On information and belief, in at least the LAX Southwest Terminal  
15 1.5 project and the LAX Terminal Redevelopment Program (Terminals 7 and 8)  
16 project, Defendant Hensel Phelps used the TORQUE DOWN<sup>®</sup> mark in connection  
17 with goods and services provided to project owners.

18           281. On information and belief, in at least the NBCUniversal Studios' Area  
19 51 project, Defendant Matt Construction used the TORQUE DOWN<sup>®</sup> mark in  
20 connection with goods and services provided to project owners.

21           282. Given the similar goods and services and the similar channels of trade  
22 in which they are offered, the above-mentioned Defendants' use of mark identical  
23 to Plaintiff Substructure's TORQUE DOWN<sup>®</sup> mark is likely to cause confusion,  
24 mistake, and/or deception among consumers.

25           283. Plaintiff Substructure has suffered and will continue to suffer  
26 irreparable damage, in an amount not yet ascertained but in an amount to be  
27 determined, which damage will continue unless and until such use is enjoined by  
28 Order of this Court.

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**RELIEF REQUESTED**

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

1. That this Court adjudge and declare:
  - a. That it has jurisdiction of the parties and of the subject matter of this action;
  - b. That United States Patent No. 7,914,236 (“the ’236 patent”) is valid;
  - c. That United States Patent No. 9,284,708 (“the ’708 patent”) is valid;
  - d. That United States Patent No. 9,587,362 (“the ’362 patent”) is valid;
  - e. That all Defendants have committed acts of patent infringement by their manufacture, use, offer for sale, and sale of products and/or systems which infringe the patents-in-suit, and by their practicing of methods claimed by the patents-in-suit;
  - f. That Defendants Magco, Aldridge, and M-Pile Sales have induced infringement of the patents-in-suit; and
  - g. That Defendants Magco, Aldridge, and M-Pile Sales have contributorily infringed the patents-in-suit.

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

3. That Plaintiffs be awarded damages covered by the acts of patent

1 infringement of all Defendants in the amount of Plaintiffs' lost profits to be  
2 determined at trial, but in any event, an amount not less than a reasonable royalty  
3 pursuant to 25 U.S.C. § 284;

4 4. That Defendants Hensel Phelps and Matt Construction, their officers,  
5 directors, owners, agents, representatives, employees, assigns and suppliers, and all  
6 persons acting in concert or privity with any of them be preliminarily and  
7 permanently enjoined from using the trademarks, advertising, packaging, and  
8 promotion of Plaintiffs, or any trademarks, advertising, packaging, and promotion  
9 likely to cause confusion, mistake, or deception with any of Plaintiff's trademarks,  
10 products, packaging, or trade dress.

11 5. That Defendants Hensel Phelps and Matt Construction be required to  
12 immediately destroy all physical media, and immediately change all electronic  
13 media, including but not limited to web sites, applications, electronic files, graphics  
14 files, or other software in their possession or custody and/or under their control  
15 bearing the trademarks of Plaintiffs, or bearing any mark or symbol likely to cause  
16 confusion, mistake, or deception with any Plaintiff's trademark, product, or  
17 packaging.

18 6. That Defendants Hensel Phelps and Matt Construction be required to  
19 pay Plaintiff Substructure for the cost of corrective advertising to address the  
20 confusion, mistake, and/or deception caused by defendants' unlawful acts alleged  
21 herein.

22 7. Plaintiff Substructure has such other and further relief as the Court  
23 may deem appropriate to prevent the public from deriving the erroneous impression  
24 that any goods or services provided by or promoted by Defendants Magco,  
25 Aldridge, M-Pile Sales, Shoring, Structural Shotcrete, Hensel Phelps, and Matt  
26 Construction, are authorized by Plaintiff Substructure or related in any way to  
27 Plaintiff Substructure, its products, or services.

28 8. That the damage award be trebled due to all Defendants' willful

1 infringement;

2 9. That all Defendants pay Plaintiffs prejudgment interest;

3 10. That Plaintiffs have and recover their costs in this action, including  
4 attorneys' fees; and

5 11. That Plaintiffs have such other and further relief as the court may  
6 deem just and proper.

7

8 Dated: January 2, 2019

Respectfully submitted,

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KPPB LLP

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By: /s/ Mark Yeh

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Mark Yeh

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

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**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: January 2, 2019

Respectfully submitted,

KPPB LLP

By: /s/ Mark Yeh

Mark Yeh

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

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