

1 Philip J. Wang (SBN 218349)
Law Office of Philip J. Wang
2 160 Bovet Rd. Ste 310
San Mateo, CA 94402
3 Tel: 650.521.9020
phil@philwanglaw.com

4 *Counsel for Plaintiff Precision Concrete Cutting, Inc.*

5
6
7
8 **UNITED STATES DISTRICT COURT FOR THE**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11
12 PRECISION CONCRETE CUTTING, Inc., a
Utah Corporation,

13 Plaintiff,

14 v.

15 BRYAN PATRICK RIFLEY dba CHANNEL
16 ISLANDS SAWING, CO., an individual;
BRYAN PATRICK RIFLEY JR. dba
17 CHANNEL ISLANDS SIDEWALK
GRINDING and CHANNEL ISLANDS
18 SAWING, an individual,

19 Defendants.

CASE NO. C10-00310 JW

UNLIMITED JURISDICTION

AMENDED COMPLAINT FOR:

- (1) PATENT INFRINGEMENT;
- (2) FALSE DESCRIPTION/TRADEMARK INFRINGEMENT UNDER THE LANHAM ACT, 15 U.S.C. 1125(a);
- (3) DILUTION OF TRADEMARK UNDER THE LANHAM ACT, 15 U.S.C. 1125(c);
- (4) CALIFORNIA COMMON LAW TRADEMARK INFRINGEMENT;
- (5) INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE; AND
- (6) VIOLATIONS OF CALIFORNIA BUSINESS AND PROFESSIONS CODE §§17200 ET SEQ.

JURY TRIAL DEMANDED

25
26 Plaintiff, Precision Concrete Cutting, Inc. (“Precision”), sues Defendants Bryan
27 Patrick Rifley dba Channel Islands Sawing, Co. and Patrick Rifley Jr., dba Channel Islands
28 Sidewalk Grinding and Channel Islands Sawing (collectively “Defendants”), and for causes of

1 action alleges as follows:

2 **I. PARTIES**

3 1. Plaintiff Precision is a Utah corporation having principal executive offices located
4 at 3191 North Canyon Road, Provo, Utah 84604.

5 2. Upon information and belief, Defendant Bryan Patrick Rifley dba Channel Islands
6 Sawing, Co. is an individual residing in 461 Las Palomas Dr., Port Hueneme, CA 93041-1539.

7 3. Upon information and belief, Defendant Bryan Patrick Rifley Jr. dba Channel
8 Islands Sidewalk Grinding and Channel Islands Sawing is an individual residing in 461 Las
9 Palomas Dr., Port Hueneme, CA 93041-1539.

10 **II. JURISDICTION AND VENUE**

11 4. Plaintiff brings this action for patent infringement committed by Defendants
12 arising under the patent laws of the United States, and more specifically, under Title 35 U.S.C.
13 §§ 271, 281, 283, 284 and 285.

14 5. Plaintiff further brings this action for false description and trademark
15 infringement committed by Defendants arising under the trademark laws of the United States,
16 and more specifically, under the Lanham Act, 15 U.S.C. §1125(a).

17 6. Plaintiff further brings this action for trademark dilution committed by
18 Defendants arising under the trademark laws of the United States, and more specifically, under
19 the Lanham Act, 15 U.S.C. §1125(c).

20 7. Plaintiff further brings this action against Defendants for California common law
21 trademark infringement.

22 8. Plaintiff further brings this action against Defendants for intentional interference
23 with prospective economic advantage.

24 9. Plaintiff further brings this action against Defendants for violations of the
25 California Business and Professions Code §§17200 *et seq.*

26 10. This Court has original subject matter jurisdiction over the patent claims under 28
27 U.S.C. §§ 1331 and 1338(a) and for the trademark claims under 28 U.S.C. §1338(a) and 15
28 U.S.C. §1121(a). This Court has supplemental jurisdiction under 28 U.S.C. §1367(a) for the

1 California statutory and common law claims because these claims are so related to the claims in
2 the original patent and trademark actions that they form a part of the same case or controversy.

3 11. Personal jurisdiction and venue are proper in this Court pursuant to 28 U.S.C. §§
4 1391(a), 1391(b), 1391(c), and/or 1400(b), in that Defendants have solicited licenses in this
5 judicial district, caused injury in this judicial district, and a substantial part of the patent
6 infringement events giving rise to this action occurred in this judicial district.

7 **III. FACTUAL BACKGROUND**

8 12. Plaintiff Precision owns the rights to several patents regarding methods and
9 apparatuses for using a right-angle grinder motor equipped with a circular concrete cutting blade
10 to slice off trip hazards at the junction of two concrete slabs. These methods and apparatuses
11 were invented because their inventor had become frustrated with the poor results obtained by the
12 use of conventional trip hazard removal machinery and methods and invented a faster, less
13 expensive and more aesthetically-pleasing way to remove trip hazards.

14 13. In 2002, Precision began to sell franchises with licenses to practice the inventions
15 related to saw-cutting disclosed in Precision's patents. Precision currently has 26 franchises in
16 19 states throughout the continental United States. Each of these franchise territories is
17 independently owned and operated and receives proprietary manuals, equipment, and training
18 from Precision.

19 14. Precision has been using the service marks "Precision Concrete Cutting" and
20 "Trip Hazard Removal Specialist" since January 1, 2002. In addition, Precision has been using a
21 service mark illustrating a stick figure tripping over a sidewalk hazard since February 2005. All
22 three of these marks are valid and distinctive. Precision uses all of these marks on their website
23 and in their marketing literature.

24 15. Precision has applied for trademark registration with the United States Patent and
25 Trademark Office ("USPTO") for its "Precision Concrete Cutting" and "Trip Hazard Removal
26 Specialists" service marks. Precision is in the process of preparing an application for trademark
27 registration with the USPTO for its mark illustrating a stick figure tripping over a sidewalk
28 hazard.

1 16. In or around 2008, Defendants began to imitate Precision’s patented methods and
2 trademarks. Defendants began to describe their service as concrete “sawing” or “saw-cutting.”
3 At about the same time, Defendants began to misappropriate Precision’s service marks. At no
4 time has Precision granted Defendants the right to use Precision’s marks.

5 17. Defendants’ current website, <http://cisidewalkgrinding.com/>, uses Precision’s
6 service marks liberally. Defendants’ homepage states at the top that Channel Islands is “Your
7 Trip Hazard Removal Specialist.” An illustration of a stick figure tripping over a sidewalk
8 hazard is also prominently displayed at the top of the homepage. Defendants’ website also has
9 links to advertisements announcing that they offer “Precision Concrete Cutting.” Use of these
10 services marks confuses customers, leading them to believe erroneously that Defendants either
11 are Precision or are able to offer Precision’s patented technologies.

12 18. In addition to this use of Precision’s service marks on its website and in its
13 advertisements, Defendants’ website contains embedded metatags for Precision’s “Precision
14 Concrete Cutting” service mark. Inclusion of this metatag confuses customers looking for
15 Precision, as it causes them to reach Defendants’ website instead.

16 19. Between 2003 and 2008, the City of San Diego awarded sole-sourced contracts to
17 Precision’s San Diego franchise every year. In 2008, the City of San Diego issued a memo
18 stating that the contract could be sole-sourced to Precision’s San Diego franchise through 2020,
19 eliminating the need to have bidding each year. Each contract was worth between \$200,000 and
20 \$350,000 a year.

21 20. In 2009, Defendants repeatedly contacted the City of San Diego and represented
22 that Precision’s patents were worthless and had been successfully challenged “up north.”
23 Channel Islands also represented erroneously that they could perform the exact same concrete
24 saw cutting service as Precision. Based on these misrepresentations, the City of San Diego
25 informed Precision that the contracts would no longer be sole-sourced and would instead be
26 awarded through traditional bids.

27 21. As a direct and proximate result of Defendants’ misrepresentations, the City of
28 San Diego adopted a slower, traditional bidding system and San Diego did not award any

1 contracts for saw-cutting in 2009 and has yet to award a contract in 2010.

2 **IV. COUNT I**
3 **(Infringement of U.S. Patent No. 7,402,095)**

4 22. Plaintiff hereby incorporates the allegations of paragraphs 1 through 21 of this
5 Complaint as though fully set forth herein.

6 23. U.S. Patent No. 7,402,095 (“the ’095 Patent”) was issued on July 22, 2008,
7 bearing the title "Method for Removing Trip Hazards in Concrete Sidewalks” (See Exhibit A).

8 24. Plaintiff is the owner, by valid assignment, of all right, title and interest in and to
9 the ’095 Patent, including the right to sue for and recover all past, present, and future damages
10 for infringement of the ’095 Patent.

11 25. Plaintiff has not licensed or otherwise authorized Defendants to practice the ’095
12 Patent.

13 26. Defendants, directly or through their agents, have infringed and continue to
14 infringe one or more claims of the ’095 Patent by making, using, selling, and/or offering to sell,
15 or allowing others to make, use, sell, and/or offer for sale, in the United States, California, and/or
16 this judicial district, products or services, that are covered by one or more claims of the ’095
17 Patent. Defendants are liable for infringement of the ’095 Patent pursuant to 35 U.S.C. §271.

18 27. Defendants’ acts of infringement have caused damage to Plaintiff, and Plaintiff is
19 entitled to recover from Defendants the damages sustained by Plaintiff as a result of Defendants’
20 wrongful acts in an amount subject to proof at trial.

21 28. As a consequence of the infringement complained of herein, Plaintiff has been
22 irreparably damaged to an extent not yet determined and will continue to be irreparably damaged
23 by such acts in the future unless Defendants are enjoined by this Court from committing further
24 acts of infringement.

25 29. Upon information and belief, Defendants’ acts of infringement were made or will
26 be made with knowledge of the ’095 Patent. Such acts constitute willful infringement and make
27 this case exceptional pursuant to 35 U.S.C. §§ 284 and 285 and entitle Plaintiff to enhanced
28 damages and reasonable attorneys’ fees.

V. COUNT II
(Infringement of U.S. Patent No. 7,143,760)

1
2 30. Plaintiff hereby incorporates the allegations of paragraphs 1 through 29 of this
3 Complaint as though fully set forth herein.

4 31. U.S. Patent No. 7,143,760 (“the ’760 Patent”) was issued on December 5, 2006,
5 bearing the title “Method for Removing Trip Hazards in Concrete Sidewalks” (See Exhibit B).

6 32. Plaintiff is the owner, by valid assignment, of all right, title and interest in and to
7 the ’760 Patent, including the right to sue for and recover all past, present, and future damages
8 for infringement of the ’760 Patent.

9 33. Plaintiff has not licensed or otherwise authorized Defendants to practice the ’760
10 Patent.

11 34. Defendants, directly or through their agents, have infringed and continue to
12 infringe one or more claims of the ’760 Patent by making, using, selling, and/or offering to sell,
13 or allowing others to make, use, sell, and/or offer for sale, in the United States, California, and/or
14 this judicial district, products or services, that are covered by one or more claims of the ’760
15 Patent. Defendants is liable for infringement of the ’760 Patent pursuant to 35 U.S.C. §271.

16 35. Defendants’ acts of infringement have caused damage to Plaintiff, and Plaintiff is
17 entitled to recover from Defendants the damages sustained by Plaintiff as a result of Defendants’
18 wrongful acts in an amount subject to proof at trial.

19 36. As a consequence of the infringement complained of herein, Plaintiff has been
20 irreparably damaged to an extent not yet determined and will continue to be irreparably damaged
21 by such acts in the future unless Defendants are enjoined by this Court from committing further
22 acts of infringement.

23 37. Upon information and belief, Defendants’ acts of infringement were made or will
24 be made with knowledge of the ’760 Patent. Such acts constitute willful infringement and make
25 this case exceptional pursuant to 35 U.S.C. §§ 284 and 285 and entitle Plaintiff to enhanced
26 damages and reasonable attorneys’ fees.

27
28

COUNT III
(Infringement of U.S. Patent No. 7,201,644)

1
2 38. Plaintiff hereby incorporates the allegations of paragraphs 1 through 37 of this
3 Complaint as though fully set forth herein.

4 39. U.S. Patent No. 7,201,644 (“the ’644 Patent”) issued on April 10, 2007, bearing
5 the title “Apparatus for Removing Trip Hazards in Concrete Sidewalks” (See Exhibit C).

6 40. Plaintiff is the owner, by valid assignment, of all right, title and interest in and to
7 the ’644 Patent, including the right to sue for and recover all past, present and future damages for
8 infringement of the ’644 Patent.

9 41. Plaintiff has not licensed or otherwise authorized Defendants to practice the ’644
10 Patent.

11 42. Upon information and belief, Defendants, directly or through its subsidiaries,
12 divisions or groups, have infringed and continue to infringe one or more claims of the ’644
13 Patent by making, using, selling and/or offering to sell, or allowing others to make, use, sell
14 and/or offer for sale, in the United States, California and/or this judicial district, products or
15 services, that are covered by one or more of the claims of the ’644 Patent. Defendants are liable
16 for infringement of the ’644 Patent pursuant to 35 U.S.C. § 271.

17 43. Defendants’ acts of infringement have caused damage to Plaintiff, and Plaintiff is
18 entitled to recover from Defendants the damages sustained by Plaintiff as a result of Defendants’
19 wrongful acts in an amount subject to proof at trial.

20 44. As a consequence of the infringement complained of herein, Plaintiff has been
21 irreparably damaged to an extent not yet determined and will continue to be irreparably damaged
22 by such acts in the future unless Defendants are enjoined by this Court from committing further
23 acts of infringement.

24 45. Upon information and belief, Defendants’ acts of infringement were made or will
25 be made with knowledge of the ’644 Patent. Such acts constitute willful infringement and make
26 this case exceptional pursuant to 35 U.S.C. §§ 284 and 285 and entitle Plaintiff to enhanced
27 damages and reasonable attorneys’ fees.
28

COUNT IV
(Infringement of U.S. Patent No. 6,827,074)

1
2 46. Plaintiff hereby incorporates the allegations of paragraphs 1 through 45 of this
3 Complaint as though fully set forth herein.

4 47. U.S. Patent No. 6,827,074 (“the ’074 Patent”) issued on December 7, 2004,
5 bearing the title “Method and Apparatus for Removing Trip Hazards in Concrete Sidewalks”
6 (See Exhibit D).

7 48. Plaintiff is the owner, by valid assignment, of all right, title and interest in and to
8 the ’074 Patent, including the right to sue for and recover all past, present and future damages for
9 infringement of the ’074 Patent.

10 49. Plaintiff has not licensed or otherwise authorized Defendants to practice the ’074
11 Patent.

12 50. Upon information and belief, Defendants, directly or through their agents, have
13 infringed and continue to infringe one or more claims of the ’074 Patent by making, using,
14 selling and/or offering to sell, or allowing others to make, use, sell, and/or offer for sale, in the
15 United States, California and/or this judicial district, products or services, that are covered by
16 one or more of the claims of the ’074 Patent. Defendants are liable for infringement of the ’074
17 Patent pursuant to 35 U.S.C. § 271.

18 51. Defendants’ acts of infringement have caused damage to Plaintiff, and Plaintiff is
19 entitled to recover from Defendants the damages sustained by Plaintiff as a result of Defendants’
20 wrongful acts in an amount subject to proof at trial.

21 52. As a consequence of the infringement complained of herein, Plaintiff has been
22 irreparably damaged to an extent not yet determined and will continue to be irreparably damaged
23 by such acts in the future unless Defendants are enjoined by this Court from committing further
24 acts of infringement.

25 53. Upon information and belief, Defendants’ acts of infringement were made or will
26 be made with knowledge of the ’074 Patent. Such acts constitute willful infringement and make
27 this case exceptional pursuant to 35 U.S.C. §§ 284 and 285 and entitle Plaintiff to enhanced
28

1 damages and reasonable attorneys' fees.

2
3 **VI. COUNT V**
(Trademark Infringement/False Description: Lanham Act, 15 U.S.C. § 1125(a))

4 54. Plaintiff hereby incorporates the allegations of paragraphs 1 through 53 of this
5 Complaint as though fully set forth herein.

6 55. Defendants' use of the Precision's service mark "Precision Concrete Cutting"
7 comprises a false description of Defendants' services and an infringement of Precision's
8 trademark and is likely to cause confusion, mistake and deception of the public as to the identity
9 and origin of Defendants' services, causing irreparable harm to Precision for which there is no
10 adequate remedy at law. By reason of the foregoing acts, Defendants are liable to Precision for
11 trademark infringement under 15 U.S.C. § 1125(a).

12 56. Defendants' use of the Precision's service mark "Trip Hazard Removal
13 Specialists" comprises a false description of Defendants' services and an infringement of
14 Precision's trademark and is likely to cause confusion, mistake and deception of the public as to
15 the identity and origin of Defendants' services, causing irreparable harm to Precision for which
16 there is no adequate remedy at law. By reason of the foregoing acts, Defendants are liable to
17 Precision for trademark infringement under 15 U.S.C. § 1125(a).

18 57. Defendants' use of the Precision's service mark comprising an illustration of a
19 stick figure tripping over a sidewalk hazard comprises a false description of Defendants' services
20 and an infringement of Precision's trademark and is likely to cause confusion, mistake and
21 deception of the public as to the identity and origin of Defendants' services, causing irreparable
22 harm to Precision for which there is no adequate remedy at law. By reason of the foregoing acts,
23 Defendants are liable to Precision for trademark infringement under 15 U.S.C. § 1125(a).

24 **COUNT VI**
(Dilution of Trademark: Lanham Act, 15 U.S.C. § 1125(c))

25 58. Plaintiff hereby incorporates the allegations of paragraphs 1 through 57 of this
26 Complaint as though fully set forth herein.

27 59. Defendants' use of the Precision's service mark "Precision Concrete Cutting"
28

1 causes dilution of the distinctive quality of Precision's famous trademark. Defendants' use of
2 Precision's mark began after this mark became famous and Defendants' use was willfully
3 intended to trade on Precision's reputation. Such dilution of Precision's mark has caused and
4 will continue to cause irreparable harm to Precision for which there is no adequate remedy at
5 law. By reason of the foregoing acts, Defendants are liable to Precision for trademark dilution
6 under 15 U.S.C. § 1125(c).

7 60. Defendants' use of the Precision's service mark "Trip Hazard Removal
8 Specialists" causes dilution of the distinctive quality of Precision's famous trademark.
9 Defendants' use of Precision's mark began after this mark became famous, and Defendants' use
10 was willfully intended to trade on Precision's reputation. Such dilution of Precision's mark has
11 caused and will continue to cause irreparable harm to Precision for which there is no adequate
12 remedy at law. By reason of the foregoing acts, Defendants are liable to Precision for trademark
13 dilution under 15 U.S.C. § 1125(c).

14 61. Defendants' use of the Precision's service mark comprising an illustration of a
15 stick figure tripping over a sidewalk hazard causes dilution of the distinctive quality of
16 Precision's famous trademark. Defendants' use of Precision's mark began after this mark
17 became famous, and Defendants' use was willfully intended to trade on Precision's reputation.
18 Such dilution of Precision's mark has caused and will continue to cause irreparable harm to
19 Precision for which there is no adequate remedy at law. By reason of the foregoing acts,
20 Defendants are liable to Precision for trademark dilution under 15 U.S.C. § 1125(c).

21 **COUNT VII**

22 **(California Common Law Trademark Infringement)**

23 62. Plaintiff hereby incorporates the allegations of paragraphs 1 through 61 of this
24 Complaint as though fully set forth herein.

25 63. Defendants' use of Precision's service mark "Precision Concrete Cutting"
26 comprises common law infringement of Precision's trademark under California common law.
27 Precision's use of its mark is prior to that of Defendants, and Defendants' use of this mark is
28 likely to cause confusion, mistake and deception of the public as to the identity and origin of

1 Defendants' services. By reason of the foregoing acts, Defendants are liable to Precision for
2 common law trademark infringement under California common law.

3 64. Defendants' use of Precision's service mark "Trip Hazard Removal Specialists"
4 comprises common law infringement of Precision's trademark under California common law.
5 Precision's use of this mark is prior to that of Defendants, and Defendants' use of this mark is
6 likely to cause confusion, mistake and deception of the public as to the identity and origin of
7 Defendants' services. By reason of the foregoing acts, Defendants are liable to Precision for
8 common law trademark infringement under California common law.

9 65. Defendants' use of Precision's service mark comprising an illustration of a stick
10 figure tripping over a sidewalk hazard comprises common law infringement of Precision's
11 trademark under California common law. Precision's use of this mark is prior to that of
12 Defendants, and Defendants' use of this mark is likely to cause confusion, mistake and deception
13 of the public as to the identity and origin of Defendants' services. By reason of the foregoing
14 acts, Defendants are liable to Precision for common law trademark infringement under California
15 common law.

16 **COUNT VIII**
17 **(Intentional Interference with Prospective Economic Advantage)**

18 66. Plaintiff hereby incorporates the allegations of paragraphs 1 through 65 of this
19 Complaint as though fully set forth herein.

20 67. There was an established economic relationship between Precision and the City of
21 San Diego that included the strong probability of future economic benefit to Precision.

22 68. Defendants knew of this relationship.

23 69. Defendants took acts intentionally designed to disrupt this relationship and
24 thereby gain economic advantage by wrongly alleging that Precision's patents had been found
25 invalid and that Defendants could perform Precision's patented techniques.

26 70. These intentional acts on the part of the Defendants disrupted the economic
27 relationship between Precision and the City of San Diego, by causing San Diego to institute a
28 competitive bidding procedure rather than awarding Precision sole-sourced contracts through

1 2020.

2 71. As a result of this disruption, Defendants proximately caused economic harm to
3 Precision, in an amount to be determined at trial.

4 **COUNT IX**
5 **(Violation of California Business & Professions Code §§ 17200 *et seq.*)**

6 72. Plaintiff hereby incorporates the allegations of paragraphs 1 through 71 of this
7 Complaint as though fully set forth herein.

8 73. Defendants actions discussed herein constitute unfair competition within the
9 meaning of California Business and Professions Code §§ 17200 *et seq.* Defendants unfair and
10 illegal business practices include, but are not limited to, infringing Precision's patents, infringing
11 and diluting Precision's trademarks, and intentionally interfering with Precision's prospective
12 economic advantage. These acts are wrongful in themselves, have given Defendants an unfair
13 advantage over Precision, and have the potential to confuse consumers.

14 74. Pursuant to California Business and Professions Code §17203, Precision is
15 entitled to permanent injunctive relief ordering Defendants to cease this unfair competition, as
16 well as disgorgement of all of Defendants' profits associated with this unfair competition.

17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, Plaintiff prays for entry of judgment that:

19 **1. Patent Infringement:**

20 A. Defendants have infringed the '095 Patent;

21 B. Defendants account for and pay to Plaintiff all damages caused by their
22 infringement of the '095 Patent, and to enhance such damages by three times in light of
23 Defendants' willful infringement, all in accordance with 35 U.S.C. § 284;

24 C. Defendants have infringed the '760 Patent;

25 D. Defendants account for and pay to Plaintiff all damages caused by its
26 infringement of the '760 Patent, and to enhance such damages by three times in light of
27 Defendants' willful infringement, all in accordance with 35 U.S.C. § 284;

28

1 E. Defendants have infringed the '644 Patent;

2 F. Defendants account for and pay to Plaintiff all damages caused by their
3 infringement of the '644 Patent, and to enhance such damages by three times in light of
4 Defendants' willful infringement, all in accordance with 35 U.S.C. § 284;

5 G. Defendants have infringed the '074 Patent;

6 H. Defendants account for and pay to Plaintiff all damages caused by their
7 infringement of the '074 Patent, and to enhance such damages by three times in light of
8 Defendants' willful infringement, all in accordance with 35 U.S.C. § 284;

9 I. Plaintiff be granted permanent injunctive relief pursuant to 35 U.S.C. § 283
10 enjoining Defendants, their officers, agents, servants, employees and those persons in active
11 concert or participation with them from further acts of patent infringement;

12 J. Plaintiff be granted pre-judgment and post-judgment interest on the damages
13 caused to it by reason of Defendants' patent infringement;

14 K. The Court declare this an exceptional case and that Plaintiff be granted its
15 reasonable attorneys' fees in accordance with 35 U.S.C. § 285;

16 L. Costs be awarded to Plaintiff; and,

17 M. Plaintiff be granted such other and further relief as the Court may deem just
18 and proper under the circumstances.

19 **2. False Description/Trademark Infringement**

20 A. Plaintiff's marks are valid and enforceable under the Federal Lanham Act, 15
21 U.S.C. §§ 1051 *et seq.*;

22 B. Defendants' use of Plaintiff's marks "Precision Concrete Cutting," "Trip
23 Hazard Removal Specialists," and the illustration of a stick figure tripping over a sidewalk
24 hazard constitutes false description and trademark infringement under 15 U.S.C. § 1125(a);

25 C. Pursuant to 15 U.S.C. § 1116(a), Defendants be permanently enjoined from
26 using Precision's service marks "Precision Concrete Cutting," "Trip Hazard Removal
27 Specialists," and the illustration of a stick figure tripping over a sidewalk hazard, as well as any
28 mark that imitates or is confusingly similar to or in anyway similar to Precision's marks, or that

1 is likely to cause confusion, mistake, deception, or public misunderstanding as to the origin of
2 Precision's services or their connectedness to Defendant;

3 D. Defendants be required to file with the Court and serve on Precision within
4 thirty (30) days after entry of the Injunction, a report in writing under oath setting forth in detail
5 the manner and form in which Defendant has complied with the Injunction;

6 E. Pursuant to 15 U.S.C. § 1117, Defendants be held liable for all damages
7 suffered by Precision resulting from the acts alleged herein and be compelled to account to
8 Precision for any and all profits derived by it from its illegal acts complained of herein;

9 F. The Court declare this to be an exceptional case and award Precision its full
10 costs and reasonable attorneys' fees pursuant to 15 U.S.C. § 1117;

11 G. The Court grant Precision any other remedy to which it may be entitled as
12 provided for in 15 U.S.C. §§ 1116 and 1117 or under state law; and,

13 H. For such and other further relief that the court deems just and proper.

14 **3. Trademark Dilution**

15 A. Precision's marks are famous marks, entitled to protection under the Federal
16 Lanham Act, 15 U.S.C. §§ 1051 *et seq.*;

17 B. Defendants' use of Precision's marks "Precision Concrete Cutting," "Trip
18 Hazard Removal Specialists," and the stick figure tripping over a sidewalk hazard constitutes
19 trademark dilution under the Lanham Act, 15 U.S.C. § 1125(c);

20 C. Defendants' use of Precision's marks was willfully done to trade on
21 Precision's reputation under 15 U.S.C. § 1125(c)(2);

22 D. Defendants be permanently enjoined from using Precision's service marks
23 "Precision Concrete Cutting", "Trip Hazard Removal Specialists", and the stick figure tripping
24 over a sidewalk hazard, as well as any similar mark that dilutes the distinctiveness of Precision's
25 famous marks;

26 E. Pursuant to 15 U.S.C. § 1117, Defendants be held liable for all damages
27 suffered by Precision resulting from the acts alleged herein and be compelled to account to
28 Precision for any and all profits derived by it from its illegal acts complained of herein;

1 F. The Court declare this to be an exceptional case and award Precision its full
2 costs and reasonable attorneys' fees pursuant to 15 U.S.C. § 1117;

3 G. The Court grant Precision any other remedy to which it may be entitled as
4 provided for in 15 U.S.C. §§ 1116 and 1117 or under state law; and,

5 H. For such and other further relief that the court deems just and proper.

6 **4. Common Law Trademark Infringement**

7 A. Precision's use of the marks "Precision Concrete Cutting," "Trip Hazard
8 Removal Specialists," and the stick figure tripping over a sidewalk hazard are prior to that of
9 Defendants and valid and protectable under California common law;

10 B. Defendants' use of these marks creates a likelihood of confusion such that
11 Defendants' use of these marks constitutes trademark infringement under California common
12 law;

13 C. Defendants be permanently enjoined from using Precision's service marks
14 "Precision Concrete Cutting", "Trip Hazard Removal Specialists", and the illustration of a stick
15 figure tripping over a sidewalk hazard, as well as any mark that imitates or is confusingly similar
16 to or in anyway similar to Precision's marks, or that is likely to cause confusion, mistake,
17 deception, or public misunderstanding as to the origin of Defendants' services or their
18 connectedness to Plaintiff;

19 D. Precision be awarded damages in an amount to be proven at trial, attorneys'
20 fees, costs, and all other remedies available; and

21 E. Precision be granted such other and further relief as the Court may deem just
22 and proper under the circumstances.

23 **5. Intentional Interference with Prospective Economic Advantage**

24 A. Defendants have intentionally interfered with Precision's prospective
25 economic advantage;

26 B. Defendants' acts proximately caused injury to Precision;

27 C. Precision be awarded damages in an amount to be proven at trial, attorneys'
28 fees, costs, and all other remedies available;

1 D. Precision be granted such other and further relief as the Court may deem just
2 and proper under the circumstances.

3 **6. Violations of California Business and Professions Code §§ 17200 *et seq.***

4 A. Defendants' conduct constitutes a violation of California Business &
5 Professions Code §§ 17200 *et seq.* as set forth above;

6 B. Pursuant to California Business & Professions Code § 17203 and the equitable
7 powers of this Court, Defendants be ordered to restore to Plaintiff all funds acquired by means of
8 any act or practice declared by this Court to be unlawful or fraudulent or to constitute unfair
9 competition under Business & Professions Code §§ 17200 *et seq.*;

10 C. Pursuant to California Business & Professions Code § 17203, Defendants be
11 enjoined from all further unlawful or fraudulent actions against Plaintiff including, but not
12 limited to, infringing Plaintiff's patents, infringing Plaintiff's trademarks, unfair competition,
13 diluting Plaintiff's trademarks, and interfering with Plaintiff's current contracts or with
14 Plaintiff's prospective economic advantage;

15 D. Plaintiff be awarded damages in an amount to be proven at trial, attorneys'
16 fees, costs, and all other remedies available pursuant to California Business & Professions Code
17 §§ 17200 *et seq.*; and

18 E. Plaintiff be granted such other and further relief as the Court may deem just
19 and proper under the circumstances.

20
21 **DEMAND FOR JURY TRIAL**

22 Plaintiff demands trial by jury on all claims and issues so triable.

23
24 Dated: March 15, 2010

LAW OFFICE OF PHILIP J. WANG

25
26 By: _____ /s/
27 Philip J. Wang
28 *Attorney for Plaintiff Precision
Concrete Cutting, Inc.*