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**Subject:** Submission to the CPC for 10/152020 hearing on cases VTT-82152, CPC-2018-2114-DB-CU-MCUP-SPR, CPC-2018-2115-DA, ENV-2018-2116-EIR  
**Attachments:** More-MILLENNIUM-BS-8-17.pdf

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To the City Planning Commission office:

Please distribute the attached ten pages to the City Planning Commissioners prior to the October 15, 2020 public hearing on the Millennium matter.

Attached are pages 8 through 17 to the letter submitted by historysoul.

Thank you.

ATTACHMENT I  
(50 pages)

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12 ASSOCIATION

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **COUNTY OF SAN FRANCISCO**

15 MILLENNIUM TOWER ASSOCIATION, a  
16 California nonprofit mutual benefit corporation,

Case No. **CGC-17-557830**

17 Plaintiff,

18 v.

19 MISSION STREET DEVELOPMENT LLC, a  
Delaware Limited Liability Company; MISSION  
20 STREET HOLDINGS LLC, a Delaware Limited  
Liability Company; MILLENNIUM PARTNERS  
21 MANAGEMENT LLC, a New York Limited  
Liability Company; MILLENNIUM PARTNERS  
22 LLC, a New York Limited Liability Company;  
MILLENNIUM PARTNERS I, INC., a New York  
23 Corporation; CHRISTOPHER M. JEFFRIES, an  
individual; PHILIP E. AARONS, an individual;  
24 PHILIP H. LOVETT, an individual; SEAN  
JEFFRIES, an individual; JOHN LUCIANO, an  
25 individual; WEBCOR CONSTRUCTION, INC., an  
unknown business entity; WEBCOR  
26 CONSTRUCTION LP, dba WEBCOR BUILDERS,  
a California Limited Partnership; HANDEL  
27 ARCHITECTS LLP, a New York Limited Liability  
Partnership; TREADWELL & ROLLO, INC., an  
28 unknown business entity; T & R CONSOLIDATED,

**COMPLAINT FOR:**  
1) VIOLATION OF CAL. CIV. CODE  
§ 895 *ET SEQ.*;  
2) NEGLIGENCE;  
3) BREACH OF EXPRESS  
WARRANTIES;  
4) BREACH OF IMPLIED  
WARRANTIES;  
5) STRICT LIABILITY;  
6) NEGLIGENT  
MISREPRESENTATION;  
7) FRAUDULENT  
MISREPRESENTATION;  
8) FRAUDULENT CONCEALMENT;  
9) BREACH OF FIDUCIARY DUTY;  
10) VIOLATION OF CAL. BUS. &  
PROF. CODE § 17200 *ET SEQ.*;  
11) INVERSE CONDEMNATION;  
12) TRESPASS;  
13) NUISANCE; AND  
14) VIOLATION OF CAL. CIV. CODE  
§ 832.

**JURY TRIAL DEMANDED**

BY FAX

1 INC., a California Corporation and successor in  
2 interest to TREADWELL & ROLLO; LANGAN  
3 ENGINEERING AND ENVIRONMENTAL  
4 SERVICES, INC., a New Jersey Corporation and  
5 successor in interest to TREADWELL & ROLLO;  
6 DESIMONE CONSULTING ENGINEERS LLC, a  
7 Delaware Limited Liability Company; DESIMONE  
8 CONSULTING ENGINEERS, PLLC, a California  
9 Professional Limited Liability Company;  
10 TRANSBAY JOINT POWERS AUTHORITY, a  
11 public entity; ARUP NORTH AMERICA  
12 LIMITED, a United Kingdom Corporation; and  
13 DOES 1 through 100,

14 Defendants.

## 15 I. INTRODUCTION

16 1. The Millennium Tower, a 419-unit luxury condominium project at 301 Mission  
17 Street in San Francisco, was the tallest residential high rise on the West Coast when it opened in  
18 2009. Shimmering like a translucent 58-story crystal, this landmark structure attracted a diverse  
19 community of more than a thousand residents. Urban professionals welcomed the opportunity to  
20 live minutes from the financial district's hive of corporate headquarters; retirees and empty-  
21 nesters traded the equity in their suburban homes for the panoramic vistas of a waterfront  
22 skyscraper; and young families with children embraced the unique experience of a vertical  
23 neighborhood. With units averaging nearly \$2 million, the tower's developer, Millennium  
24 Partners, generated in excess of \$750 million in sales between 2009 and 2013<sup>1</sup>.

25 2. To the dismay of those who sank so much of their life savings into the  
26 Millennium Tower, the Tower itself is now sinking—and has been for years, even before the first  
27 unit was sold in 2009. As much of the Bay Area and beyond has come to learn, Millennium  
28 Partners erected this glamorous building on an improperly designed and constructed foundation  
system, then looked the other way as the building was further besieged by other construction  
defects and negligent construction practices. By the time it debuted as “the luxury benchmark

<sup>1</sup> J.K. Dineen, *Millennium Tower in San Francisco is a \$750M sellout*, S.F. Bus. Times (Apr. 5, 2013), <http://www.bizjournals.com/sanfrancisco/print-edition/2013/04/05/millennium-tower-in-san-francisco-is.html>.

1 for San Francisco city living,”<sup>2</sup> the high-rise tower had already sunk more than 8 inches into the  
 2 mud, sand, and clay on which it was built. And the sinking continues unabated. The Tower has  
 3 since dropped another 8 inches, bringing it now 16 inches closer to the “diverse tapestry of arts,  
 4 culture and culinary delights”<sup>3</sup> that originally drew its residents to this vibrant South of Market  
 5 neighborhood. As the Tower has sunk, it has also tilted. The precast concrete floors are now  
 6 non-level, and at the top, where a penthouse unit sold for \$9.8 million, the tower leans by more  
 7 than 12 inches.

8 3. But those who knew of the high rise’s troubles kept it secret for years, and two  
 9 parties even memorialized their agreement to keep all exchanged documents and information  
 10 confidential.<sup>4</sup> Millennium Partners and the Transbay Joint Powers Authority (“TJPA”), which  
 11 was preparing to build an underground and above-ground transit center (“Transit Center”) on an  
 12 adjacent site, entered into a bilateral confidentiality agreement covering all documents and  
 13 information exchanged. Rejecting transparency and accountability, Millennium Partners and the  
 14 TJPA agreed that the “[d]ocuments and information” exchanged about the Property and the  
 15 Transit Center were proprietary and confidential.<sup>5</sup> The Millennium Tower Association  
 16 (“HOA”)—the not-for-profit association responsible for the key building systems—was shut out,  
 17 and the truth about the mounting problems was hidden, and stayed hidden, for many years.

18 4. For its part, Millennium Partners is an experienced New York-based real estate  
 19 development firm that boasts of having developed more than 2,900 luxury condominiums, eight  
 20 five-star hotels, including the 40-story Four Seasons near Moscone Center, two extended-stay  
 21 luxury hotels, 1,200,000 square feet of office space, and 1,000,000 square feet of retail space,  
 22 among other developments.<sup>6</sup> It claims to own and operate an impressive portfolio worth over  
 23

24 <sup>2</sup> Millennium Partners, <http://millenniumptrs.com/about-mp/> (last visited Mar. 28, 2017).

25 <sup>3</sup> *Id.*

26 <sup>4</sup> The March 17, 2010 Confidentiality Agreement replaced and superseded a February 26, 2010  
 27 agreement in its entirety, and the parties to the March 17, 2010 Confidentiality Agreement agreed  
 28 that the “February 26, 2010 agreement shall have no further force and effect.”

<sup>5</sup> Confidentiality Agreement between Millennium Partners and the TJPA (March 17, 2010).

<sup>6</sup> Millennium Partners, <http://millenniumptrs.com/about-mp/> (last visited Mar. 28, 2017).

1 \$4 billion.<sup>7</sup> In other words, purchasers of Millennium Tower units had every reason to believe  
2 that they were placing their faith in a developer with the resources and know-how to properly  
3 design and construct a building whose height was not a moving target. And, in addition to the  
4 residents who bought into the dream of a world-class property built to the highest standards, the  
5 other inhabitants of bustling SoMa reasonably trusted that the slender skyscraper towering above  
6 them was constructed responsibly.

7 5. Christopher Jeffries and his son Sean Jeffries directed and led the development of  
8 Millennium Tower. Christopher Jeffries is a founder of Millennium Partners and retains the  
9 largest ownership interest.<sup>8</sup> Even with his partnership's vast holdings, Christopher Jeffries  
10 himself makes the final decisions about the Millennium Tower and speaks with authority about  
11 the causes of its sinking and tilting. Christopher Jeffries was the primary spokesperson for  
12 Millennium Partners in its September 20, 2016 press conference at City Hall, where he insisted  
13 that "[Millennium Partners] did this building the right way."<sup>9</sup> The co-founders of Millennium  
14 Partners, Philip Aarons and Philip Lovett, also had significant involvement overseeing and  
15 managing the development of the Millennium Tower, but, as Mr. Aarons testified, "the final  
16 decisions at Millennium are made by Chris Jeffries."<sup>10</sup>

17 6. Other day-to-day responsibilities for the Millennium Tower's development fell to  
18 Sean Jeffries, leader of West Coast development for Millennium Partners and the sole member of  
19 the entity that Millennium Partners created to oversee the project at 301 Mission Street—Mission  
20 Street Development. As part of a strategic nationwide push, Sean Jeffries had expanded the West  
21 Coast office to complete various projects valued at over a billion dollars, including the

22  
23 <sup>7</sup> *Id.*

24 <sup>8</sup> Aug. 12, 2010 Philip Aarons Dep. 9:11-13 & 43:17-21, cited as Ex. 5 to Plaintiff's Notice of Filing  
25 Exhibits in Support of Plaintiffs' Responses to Defendants' Motions for Summary Judgment and  
26 Motions for Judgment on the Pleadings, *Altenel, Inc. v. Millennium Partners, LLC, et al.*, No. 1:11-  
27 cv-22806-KMW, ECF No. 338-5.

28 <sup>9</sup> Associated Press, *San Francisco Skyscraper Is Leaning - And Sinking*, Popular Mechs. (Oct. 24,  
2016), <http://www.popularmechanics.com/technology/infrastructure/a23521/san-francisco-skyscraper-is-leaningand-sinking/>.

<sup>10</sup> Aug. 12, 2010 Philip Aarons Dep. 42:18-21, *supra* note 8.

1 Millennium Tower.<sup>11</sup> Sean Jeffries was joined on the West Coast by Vice President John  
2 Luciano, whom Millennium Partners installed on the HOA board from 2009 to 2016.

3 7. After the confidential exchange of documents over the Millennium Tower’s  
4 worsening condition, both Sean Jeffries and John Luciano kept the alarming data regarding the  
5 Tower’s sinking from the HOA and continued selling the condominium units to unsuspecting  
6 homeowners. This subterfuge went on for years as Millennium Partners, and specifically Sean  
7 Jeffries, kept receiving regular reports that the Millennium Tower was sinking and tilting but  
8 never shared those reports with the HOA.

9 8. On information and belief, the HOA alleges that Sean Jeffries, acting through  
10 multiple Millennium Partners entities, helped to make sure that no other entity shared that  
11 information, either. The TJPA, for instance, had been granted certain easements to the  
12 Millennium Tower property, which the agency needed to proceed with its excavation activities.  
13 Sean Jeffries signed the original October 10, 2008 easement agreement as the authorized  
14 representative of Mission Street Development. After responsibility for the Millennium Tower  
15 transferred from Mission Street Development to the HOA, the easement agreement had to be  
16 updated in 2011 to reflect that change; the amendment required the TJPA to provide monitoring  
17 data, which would have included the building’s sinking and tilting, to Mission Street  
18 Development and the HOA. Sean Jeffries signed the amended easement agreement and  
19 designated himself as the HOA’s “authorized representative”—thereby intercepting the TJPA’s  
20 data before it could ever reach the HOA members not employed by Millennium Partners.<sup>12</sup> On  
21 information and belief, the HOA alleges that Sean Jeffries was not a member of the board of  
22 directors of the HOA at the time of signing and was not authorized to sign or receive such  
23 monitoring data on behalf of the HOA.

24 9. Long after construction was complete and all units had been sold, Sean Jeffries  
25 continued to involve himself with the building’s management and attend periodic HOA meetings.

26  
27 <sup>11</sup> Kristine Carber, *The Feel-Good Developer*, Gentry Wealth (Summer 2012).

28 <sup>12</sup> At least two board members were residents not employed by Millennium Partners at the time the  
September 1, 2011 First Amendment to the Easement Agreement was signed.

1 In early 2014, after the Tower had sunk over 13 inches, and residents noticed signs of sidewalk  
2 settlement, Sean Jeffries wrote to the HOA’s president to propose quarterly meetings between the  
3 HOA and Millennium Partners. Sean Jeffries also agreed to provide updates on the adjoining  
4 TJPA construction site, where the Transit Center was still under construction, including  
5 substantial underground work to accommodate the extension of the Caltrain line and the future  
6 High Speed Rail project.

7 10. In a February 2014 update to the HOA, Sean Jeffries professed ignorance about  
8 the Tower’s troubles: “I have not been made aware to date of any information that gives us  
9 concern for the safety of the building or any significant impact on the structure.”<sup>13</sup> But Sean  
10 Jeffries was aware. He knew that the Tower was sinking and tilting, and he also knew that  
11 excavation for the TJPA’s underground “train box” and the associated construction were  
12 significantly impacting the Tower. **Rather than alert those who had the most to lose, Sean**  
13 **Jeffries continued to hide this information from the HOA.**

14 11. The TJPA likewise knew that its construction activities would affect the  
15 Millennium Tower and that its excavation activities alone would cause the Tower to sink further.  
16 As a condition of the easement permitting access to the Millennium Tower, the TJPA agreed that  
17 “[t]he Support System and the Transit Center shall be designed and constructed to stabilize the  
18 soil beneath the [property], prevent the material movement and/or settlement of the [property]  
19 and provide for the structural support, integrity and safety of the [property] during and after  
20 TJPA’s construction of the Transit Center . . . .”<sup>14</sup>

21 12. The TJPA, through its massive, ill-planned construction operation, and  
22 **Millennium Partners, with its defective design and construction, both contributed to the myriad**  
23 **problems plaguing the Millennium Tower. These problems were compounded by the active**  
24 **concealment by Millennium Partners and its employees, and the apparent complicity of the**  
25 **TJPA.**

26 13. Other factors, including **inadequate garage construction and waterproofing,**

27 <sup>13</sup> Letter from Sean Jeffries (Millennium Partners) to Jeff Peters (HOA) (Feb. 28, 2014).

28 <sup>14</sup> October 10, 2008 Easement Agreement between the TJPA and Mission Street Development.

1 defective windows, curtain wall corrosion and water intrusion, inter-unit odor transmission,  
2 cracks, and alignment issues, have also taken a toll on the livability of the Millennium Tower.  
3 Millennium Partners bills the property as “rare” and “an address like no other.” And it is indeed  
4 rare and unique, but now mainly because failures of this magnitude in planning, design,  
5 development, and construction are almost unheard of in contemporary high rises.

6 14. Burdened with design and construction defects, and further battered by the TJPA  
7 construction activities on its land and the adjoining property, the Millennium Tower has  
8 continued its slow descent into the prehistoric clay on which it was built. Unable to initially  
9 detect the sinking and tilting on its own—and kept from the truth by the parties that did know—  
10 the HOA learned far too late of the conditions jeopardizing the Millennium Tower. Had it —  
11 known sooner, the HOA could have demanded that the developer implement a retrofit, or it  
12 could have sought to halt other activities contributing to the damage, such as those of the TJPA.

13 15. Millennium Partners and the TJPA now each publically places unequivocal blame  
14 on the other. Regardless of who contributed most to the damage, one fact is indisputable: Both  
15 Millennium Partners and the TJPA possessed the damning data but did nothing with it. Neither  
16 tried to stem the sinking; neither sought to alert the HOA.

17 16. And now, in an attempt to show that adjoining construction sites are the exclusive  
18 cause of the sinking, Millennium Partners has sought an order to stop the TJPA from any final  
19 dewatering. Forced to confront its own culpability, Millennium Partners instead points the finger  
20 at others, despite sitting on the data for years and never seeking to stop the dewatering when it  
21 would have made a difference.

22 17. The victims of this debacle are the residents and the HOA, who placed their trust  
23 and confidence—and over half a billion dollars—in the hands of Millennium Partners. With this  
24 Complaint for strict liability, breach of warranties, fraud, and negligence, as well as violations of  
25 the California Civil Code and California Business and Professions Code, among other claims, the  
26 HOA seeks what it plainly deserves—a safe home free from continued sinking and tilting, the  
27 same home that its members thought they were buying before the truth was revealed.  
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**II. THE PROPERTY**

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18. The Millennium Tower development is located at 301 Mission Street in San Francisco and comprises three primary structures: a 58-story tower (the "Tower"), an adjacent 12-story building on a reinforced concrete podium that includes residences and common areas (the "Podium"), and a five-level subterranean garage (the "Garage") (collectively, the Tower, the Podium, and the Garage constitute the "Millennium Tower" or "Property"). The Millennium Tower consists of 419 separate residential condominiums and two commercial units, forming a mixed-use condominium project.

19. The underlying real property is a rectangular lot measuring approximately 183.5 feet by 275 feet, a total area of approximately 50,463 square feet. The Property is bounded by Mission Street to the northwest, Fremont Street to the southwest, and Beale Street to the northeast. The future Transit Center abuts the Property to the southeast, and the temporary and permanent easements granted to the TJPA encroach five feet onto the Property on the southeast side.

20. The Millennium Tower is more fully described in the Map entitled "Final Map 4146 A 420 Unit Residential Unit and 8 Commercial Unit Mixed Use Condominium Project" filed for record in the Official Records of the City and County of San Francisco, State of California, on May 15, 2008, in Book 105 of Condominium Maps, pages 146-147 (the "Center Map"), being Lot 19 of Assessor's Block 3719, to be developed as described on the condominium plan entitled "A Mixed Use Condominium Plan for Millennium Tower – 301 Mission Street – San Francisco, California" filed for record in the Official Records of the City and County of San Francisco, State of California, on March 13, 2009, as Document Number 2009-I732547-00 in Reel J847, Image 0102, and more particularly, contains two Commercial Components and three Residential Components.

21. Under the governing documents, and pursuant to California law, the HOA is the owner of the common areas of the Millennium Tower, including but not limited to the land, foundations, footings, beams, supports, roofs, interior and exterior load-bearing walls, Garage, basement areas, exterior building surfaces, window walls, curtain walls, glazing, electrical

1 rooms, sewer and drainage systems, and utility pipes and conduits. The HOA is responsible for  
2 the operation and administration of the common areas and the maintenance, repair, and  
3 replacement of all improvements within the common areas. The HOA has the sole and exclusive  
4 right to pursue claims and causes of action related to deficiencies in, and damage to, the common  
5 areas of the Millennium Tower.

### 6 III. THE PARTIES

7 22. Plaintiff HOA is a California nonprofit mutual benefit corporation formed and  
8 existing under the laws of the State of California and established as a common interest  
9 development, as described in California Civil Code sections 4080 and 5980, with its principal  
10 place of business within the County of San Francisco, California. The HOA represents the  
11 interests of the owners of condominium units and the sub-associations in this common-interest  
12 development.

13 23. By the express terms of the HOA's governing documents, and pursuant to  
14 California Civil Code section 5980, the HOA is granted the general authority and responsibility  
15 to bring this action in its own name as the real party in interest and without joining with it the  
16 members in matters pertaining to the Millennium Tower.

17 24. The HOA has the sole and exclusive right and duty to manage, operate, control,  
18 repair, replace, and restore the Millennium Tower, including the right to enter into contracts to  
19 accomplish its duties and obligations. It also has all the powers necessary to carry out its rights  
20 and obligations, including the right, duty, and power to contract for legal services to prosecute  
21 any action affecting the HOA when it deems such action necessary to enforce its powers, rights,  
22 and obligations, including the bringing of this action. Under California Civil Code sections 4775  
23 and 5980, the HOA seeks recovery for damages to the Millennium Tower, including, among  
24 other things, damages to the common areas; damages to the separate interests that the HOA is  
25 obligated to maintain and repair; and damages to the separate interests within the HOA's  
26 common interest, power, and standing.

27 25. Defendant Mission Street Development LLC ("MSD") is a limited liability  
28 company formed and existing under the laws of the State of Delaware, and doing business in the

1 City and County of San Francisco, California, including the development, construction,  
2 improvement, marketing, and sale of the Millennium Tower and its units.

3 26. Defendant Mission Street Holdings LLC (“MSH”) is a limited liability company  
4 formed and existing under the laws of the State of Delaware, and doing business in the City and  
5 County of San Francisco, California, including the development, construction, improvement,  
6 marketing, and sale of the Millennium Tower and its units.

7 27. Defendant Millennium Partners Management LLC (“MPM”) is a limited liability  
8 company formed and existing under the laws of the State of New York, and doing business in the  
9 City and County of San Francisco, California, including the development, construction,  
10 improvement, marketing, and sale of the Millennium Tower and its units. MPM was the  
11 “Assured” for a 2007 loss occurring at the Millennium Tower in 2007. On information and  
12 belief, the HOA alleges that MPM employees were also entitled to a discounted price on  
13 Millennium Tower units by virtue of MPM’s involvement and affiliation with the development.

14 28. Defendant Millennium Partners LLC (“MP LLC”) is a limited liability company  
15 formed and existing under the laws of the State of New York, and doing business in the City and  
16 County of San Francisco, California, including the development, construction, improvement,  
17 marketing, and sale of the Millennium Tower and its units. On information and belief, the HOA  
18 alleges that MP LLC served as a Guarantor in connection with a loan provided to MSD in 2005,  
19 the purpose of which was to finance the construction of the Millennium Tower. And pursuant to  
20 the Millennium Tower Move In/Out Procedures, MP LLC is required to be listed as an additional  
21 insured on moving companies’ liability insurance policies.

22 29. Defendant Millennium Partners I, Inc. (“MPI”) is a corporation formed and  
23 existing under the laws of the State of New York, and doing business in California as New York  
24 SF Millennium Partners I, Inc., including the development, construction, improvement,  
25 marketing, and sale of the Millennium Tower and its units.

26 30. Collectively, MSD, MSH, MPM, MP LLC, and MPI constitute the “Millennium  
27 Defendants.”

28 31. Defendant Christopher M. Jeffries is a Founding Partner and controlling