

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

Quintillion Networks, LLC

Plaintiff(s),

vs.

Bortek, LLC and Utility Technologies, Inc.

Defendant(s).

RECEIVED

APR 27 2018

DWT ALASKA CORP.

CASE NO. 3AN-

By: [Signature]

**SUMMONS AND
NOTICE TO BOTH PARTIES
OF JUDICIAL ASSIGNMENT**

To Defendant: Utility Technologies Incorporated

You are hereby summoned and required to file with the court a written answer to the complaint which accompanies this summons. Your answer must be filed with the court at 825 W. 4th Ave., Anchorage, Alaska 99501 within 20 days* after the day you receive this summons. In addition, a copy of your answer must be sent to the plaintiff's attorney or plaintiff (if unrepresented) Tali Kindred, Holland & Hart LLP, whose address is: 1029 W. Third Avenue, Suite 550, Anchorage, AK 99501.

If you fail to file your answer within the required time, a default judgment may be entered against you for the relief demanded in the complaint.

If you are not represented by an attorney, you must inform the court and all other parties in this case, in writing, of your current mailing address and any future changes to your mailing address and telephone number. You may use court form *Notice of Change of Address / Telephone Number* (TF-955), available at the clerk's office or on the court system's website at www.courtrecords.alaska.gov/webdocs/forms/tf-955.pdf to inform the court. - OR - If you have an attorney, the attorney must comply with Alaska R. Civ. P. 5(i).

NOTICE OF JUDICIAL ASSIGNMENT

TO: Plaintiff and Defendant

You are hereby given notice that:

- ☒ This case has been assigned to Superior Court Judge [Signature] and to a magistrate judge.
- ☐ This case has been assigned to District Court Judge _____.

CLERK OF COURT

4/25/18
Date



By: [Signature]

Deputy Clerk

I certify that on 4/25/18 a copy of this Summons was ☐ mailed ☒ given to ☐ plaintiff ☒ plaintiff's counsel along with a copy of the ☐ Domestic Relations Procedural Order ☐ Civil Pre-Trial Order to serve on the defendant with the summons.
Deputy Clerk [Signature]

* The State or a state officer or agency named as a defendant has 40 days to file its answer. If you have been served with this summons outside the United States, you also have 40 days to file your answer.

APR 27 2018

CASE DESCRIPTION – SUPERIOR COURT

Case Number: _____

Type of Action		For Court Use Only	
Check the box that best describes the case. Mark one box only. For district court cases, use form CIV-125D.		Case Type	Action Code
Tort			
<input type="checkbox"/>	Wrongful Death	Civil Superior Court	CISPID
<input type="checkbox"/>	Automobile Tort (But Not Wrongful Death)	Civil Superior Court	CISIDA
<input type="checkbox"/>	Claim Against Owner of Real Property for Personal Injury	Civil Superior Court	CISPIO
<input type="checkbox"/>	Product Liability	Civil Superior Court	CISPL
<input type="checkbox"/>	Intentional Tort (e.g., assault, battery, vandalism)	Civil Superior Court	CISIT
<input type="checkbox"/>	Slander/Libel/Defamation	Civil Superior Court	CISSLD
<input checked="" type="checkbox"/>	Other Tort	Civil Superior Court	CISIDO
<input checked="" type="checkbox"/>	Approval of Minor Settlement – Civil Petition <i>May also be filed as probate case.</i>	Superior Court Misc Petition	CISPET
Malpractice			
<input type="checkbox"/>	Legal Malpractice	Civil Superior Court	CISLMP
<input type="checkbox"/>	Medical Malpractice	Civil Superior Court	CISMMP
<input type="checkbox"/>	Other Malpractice	Civil Superior Court	CISOMP
Other Civil			
<input type="checkbox"/>	Election Contest or Recount Appeal	Civil Superior Court	CISELE
<input type="checkbox"/>	Change of Name - Adult	Change of Name	CICON
<input type="checkbox"/>	Change of Name - Minor	Change of Name	CICONM
<input type="checkbox"/>	Confession of Judgment	Civil Superior Court	CISCONF
<input type="checkbox"/>	Structured Settlement – AS 09.60.200	Superior Court Misc Petition	CISSS
<input type="checkbox"/>	Administrative Agency Proceeding – Request for Court Assistance	Superior Court Misc Petition	CISWRNT
<input type="checkbox"/>	Arbitration - Action Under Uniform Arbitration Act	Civil Superior Court	CISAP
<input type="checkbox"/>	Fraud	Civil Superior Court	CISFRAUD
<input type="checkbox"/>	Unfair Trade Practice and Consumer Protection	Civil Superior Court Clerk: Issue form CIV-128	CISUTP
<input type="checkbox"/>	Writ of Habeas Corpus	Civil Superior Court	CIWHC
<input type="checkbox"/>	Fish & Game - Abatement & Forfeiture of Equipment	Superior Court Misc Petition	CISAF
<input type="checkbox"/>	Appointment of Trustee Counsel	Superior Court Misc Petition	CISTC
<input type="checkbox"/>	Other Superior Court Complaint	Civil Superior Court	CISOCI
<input type="checkbox"/>	Other Superior Court Petition	Superior Court Misc Petition	CISPET
Post-Conviction Relief to Superior Court			
<input type="checkbox"/>	Post-Conviction Relief	Post-Conviction Relief-Sup Ct	CISPCR
Appeal to Superior Court - From Administrative Agency			
<input type="checkbox"/>	Election Contest or Recount Appeal – SEE OTHER CIVIL		
<input type="checkbox"/>	DMV Appeal	Appeal from Admin Agency	CIADDMV
<input type="checkbox"/>	Employment Security Appeal	Appeal from Admin Agency	CIADRESA
<input type="checkbox"/>	Administrative Agency Appeal - Other	Appeal from Admin Agency	CIADR
<input type="checkbox"/>	CSSD License Review Action	Petition for Review or Relief	CICSED
<input type="checkbox"/>	Petition for Review from Administrative Agency	Petition for Review or Relief	CIPRA
<input type="checkbox"/>	Petition for Relief from Administrative Agency – AS 44.62.305	Petition for Review or Relief	CIPRLF
Appeal to Superior Court - From District Court			
<input type="checkbox"/>	Civil Appeal	Appeal from District Court	CIACI2
<input type="checkbox"/>	Criminal Appeal	Appeal from District Court	CIACRM
<input type="checkbox"/>	Minor Offense Appeal	Appeal from District Court	CIAMO
<input type="checkbox"/>	Small Claims Appeal	Appeal from District Court	CIASC
<input type="checkbox"/>	Petition for Review from Civil, Criminal, or Minor Offense Case	Petition for Review or Relief	CIPRD2
<input type="checkbox"/>	Petition for Review from Small Claims	Petition for Review or Relief	CIPRSC

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By: _____

IN THE SUPERIOR COURT OF THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

COPY
Original Received

APR 25 2018

Clerk of the Trial Courts

QUINTILLION NETWORKS, LLC,

Plaintiff,

vs.

BORTEK, LLC and UTILITY TECHNOLOGIES
INCORPORATED.

Defendants.

Case No. 3AN-18-6477 Civil

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

COMES NOW Plaintiff Quintillion Networks, LLC, ("Quintillion") for its complaint in this matter against Bortek, LLC ("Bortek") and Utility Technologies Incorporated, ("UTI"), (collectively "Defendants"), and states the following:

I. PARTIES

1. Quintillion is an Alaska limited liability company, with its principal place of business in Anchorage, Alaska.
2. Bortek is a Delaware limited liability company with its principal place of business in Anchorage, Alaska.
3. UTI is an Alaska corporation with its principal place of business in Palmer, Alaska.

II. JURISDICTION & VENUE

4. There currently exists a substantial controversy between the parties as to the respective rights and obligations of Quintillion and Defendants under (a) permits and

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authorizations issued to the parties and (b) Alaska statutory and common law. Specifically, a dispute exists between the parties as to whether Defendants' action to excavate and remove groundcover and topsoil from overtop Quintillion's buried fiber optic cable, thereby creating a trench over the cable, diverting water into the trench, and causing permafrost thaw, settlement and erosion, violated the Defendants' permits and authorizations and state and federal law. This Court's declaration is necessary to establish the respective rights and obligations of the parties. Accordingly, this Court has jurisdiction over the parties and this controversy under the Alaska Declaratory Judgment Act, AS 22.10.020(g).

5. Jurisdiction is also conferred upon the Court by AS 22.10.020.

6. Venue is proper in this Court under Alaska Civil Rule 3 and AS 22.10.030 because each party maintains an office, transacts business, and is found within the Third Judicial District at Anchorage.

III. FACTS

7. On or before 2015, Quintillion and or its predecessor and/or affiliate entities contracted with New Horizons Telecom, Inc. to construct a terrestrial fiber optic cable system between Deadhorse, Alaska and Coldfoot, Alaska, (the "Quintillion Installation") in the right-of-way adjacent to the Dalton Highway.

8. On or about April 24, 2015, the State of Alaska, Department of Transportation and Public Facilities ("DOT") issued Quintillion a Utility Permit, which

granted Quintillion a property interest and the right to construct and operate the Quintillion Installation in the DOT right-of-way between Slope Mountain, Alaska and Coldfoot, Alaska.

9. On or about October 23, 2015, the Bureau of Land Management (“BLM”) granted Quintillion a right-of-way to construct and operate the Quintillion Installation in federally-managed lands between Coldfoot, Alaska and Slope Mountain, Alaska.

10. Upon information and belief, in or around 2015, DOT issued Bortek a Utility Permit, which granted Bortek the right to construct and operate a buried fiber optic cable system between Deadhorse, Alaska and Coldfoot, Alaska ((the “Bortek Installation”).

11. Upon information and belief, Bortek’s Utility Permit required that it construct the Bortek Installation in compliance with DOT’s minimum design standards, and requirements which included:

- a. The installation of two (2) 1.25 inch conduits, one to carry cable and one for spare.
- b. Burial of conduit a minimum of 48 or 36 inches below ground, depending on location.
- c. Placement of fiber optic utility five (5) feet apart from the Quintillion Installation.

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12. Upon information and belief, Bortek's Utility Permit provides that Bortek is subject to all previous "Utility Permits and any damage to any other utility will be [Bortek's] responsibility."

13. Upon information and belief, Bortek's Utility Permit requires Bortek to "warrant the restoration/repair of . . . any areas of the right-of-way disturbed in conjunction with the installation of utilities described in this permit."

14. Upon information and belief, Bortek's Utility Permit requires Bortek to "maintain existing drainage patterns during construction of the Facility and restoration of the Right of Way unless other agreed to by [DOT]" and provides that Bortek "shall be responsible for all erosion control prior to final slope stabilization."

15. Upon information and belief, Bortek's Utility Permit obligates Bortek to "immediately repair any damage of existing utilities, [or] storm drainage . . . caused as a result of construction authorized by this permit."

16. Upon information and belief, Bortek's Utility Permit provides that Bortek must ensure that "[a]ll backfill in areas 10' beyond the edge of the rod prism shall be compacted to existing undisturbed soil densities or better, and graded to blend with existing ground surface." In addition, the Utility Permit requires Bortek to "replace and restore all vegetation disturbed"; "replace any topsoil lost as a result of construction under this permit"; and "re-grade all disturbed areas to blend with the existing ground surface and re-seed after completing backfill operations on the facility."

17. In addition to the Utility Permit, Bortek was obligated to secure permits and authorizations from the Alaska Department of Environmental Conservation (“DEC”), Department of Natural Resources, and the United States Army Corps of Engineers (“USACE”), prior to the commencement of construction.

18. Upon information and belief, Bortek contracted with UTI to construct the portion of the Bortek Installation between Dalton Highway mileposts 299 and 260, or thereabouts.

19. In relation to its contract to construct the Bortek Installation, UTI submitted a Notice of Intent to the DEC to be covered under the APDES General Permit for Stormwater Discharges for Construction General Permit Activity (“UTI NOI”). The project name referenced on the notice was “MP 300-414 Dalton Highway Fiber Optic Cable.”

20. In the UTI NOI, UTI indicated that the estimated start date for its activities would be “04/01/2016” and that its estimated end date would be “07/31/2018.”

21. In the UTI NOI, UTI represented that it had prepared a Storm Water Pollution Prevention Plan (“SWPPP”) and that the SWPPP had been submitted to the DEC.

22. In June 2015, NHTI began construction on the Quintillion Installation. NHTI completed the majority of construction between Dalton Highway mileposts 299

and 360 in 2015, but returned in 2016 to continue installation, and finally completed this segment in 2017.

23. In 2016, prior to constructing the Bortek Installation within the Subject Property, UTI flew a drone equipped with a camera over the Quintillion Installation, or segments thereof.

24. The purpose of this drone overflight was to document the condition of the right-of-way prior to construction of the Bortek Installation.

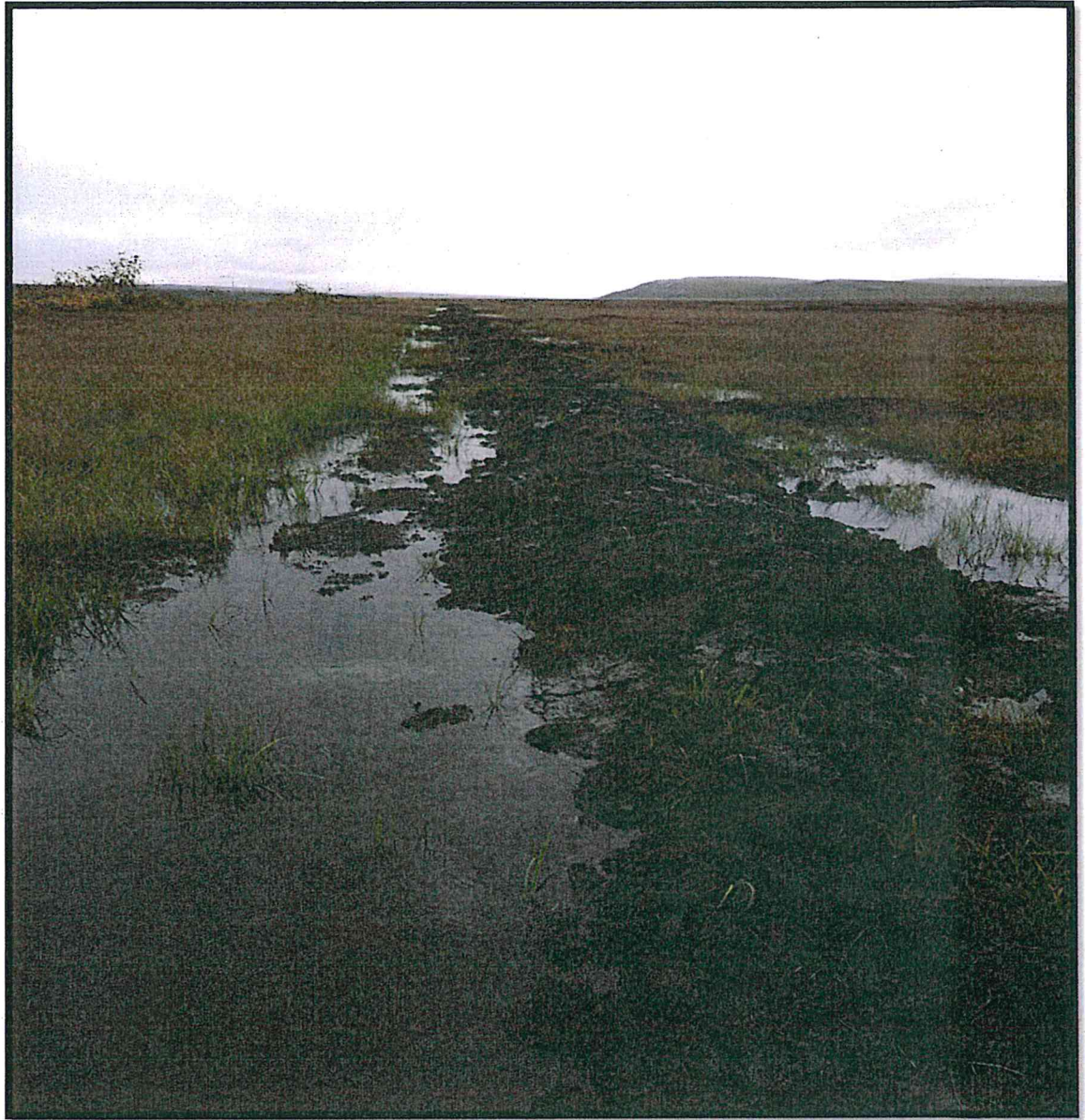
25. The UTI's drone video establishes that prior to construction of the Bortek Installation, the Quintillion Installation within the Subject Property was in acceptable condition for a partially constructed/remediated installation.

26. Upon information and belief, UTI began constructing the Bortek Installation in June 2016. Construction of the Bortek Installation was completed in 2017.

27. At all times during the UTI construction of the Bortek Installation, Bortek was in control of the construction site and overseeing and supervising UTI's work.

28. As illustrated in the photograph below, during the course of construction, at multiple locations, UTI excavated groundcover and topsoil from the Quintillion Installation, thereby creating a trench, and placed the material from the Quintillion Installation on top of the Bortek Installation, thereby creating a mound (the "Mounding").

29. Evidence of Mounding is concentrated between Dalton mileposts 299 and 360 (the “Subject Property”), which is the segment of the Bortek Installation that UTI constructed.



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30. Groundcover and topsoil have insulating properties and, when maintained in place, stabilize the ground adjacent to a buried fiber optic cable installation.

31. The removal by UTI of the groundcover and topsoil from Quintillion's Installation resulted in the thawing of subsurface permafrost and a destabilization of the ground. As a consequence of the thawing and destabilization, water collected and flowed over the Quintillion Installation, which led to further erosion and the thawing of deeper layers of permafrost.

32. The removal by UTI of the groundcover and topsoil from the Quintillion Installation also reduced the burial depth of the installation, putting it at greater risk of damage to external aggression and/or environmental exposure.

33. The creation by UTI of an above-grade mound over the Bortek Installation also diverted water into the trench that UTI excavated over the Quintillion Installation.

34. Un-remediated, the Mounding is likely to cause further erosion and damage to the Subject Property.

35. Upon information and belief, UTI engaged in Mounding in order to achieve the required burial depth over the Bortek Installation.

36. The Mounding, and failure to remediate the Subject Property, violates state and federal environmental laws, and the Defendants' permits, including the DOT Utility Permit, the DEC Construction General Permit, and the USACE Section 404

permit ("404 Permit"). UTI's construction methods caused damage to the Quintillion Installation.

37. To date, NHTI, UTI, Quintillion and Bortek have been involved in engagements with DEC, DOT and the USACE related to the monitoring and remediation of the Bortek Installation and the Quintillion Installation.

38. In December 2017, Bortek, UTI and NHTI submitted to DOT a restoration plan that calls for monitoring of areas where adverse construction impacts have been identified, and restoration of areas where known methods of stabilization are anticipated to be effective.

39. In its submission to DOT, Bortek acknowledges that it is responsible for "visual monitoring" in specified areas, including areas known to have been damaged by the Mounding and excavation and removal of Quintillion's groundcover and topsoil.

40. Quintillion has asked UTI to remediate the damage caused to the Quintillion Installation from UTI's construction practices, or provide a plan to do so, but UTI has failed to provide an acceptable plan.

41. Quintillion has asked Bortek to remediate the damage caused to the Quintillion Installation from UTI's construction practices, or provide a plan to do so, but Bortek has failed to provide an acceptable plan.

42. If the restoration and grading of the Subject Property is not performed during the summer of 2018, the impacted areas, or significant portions thereof, are

anticipated to experience further damage from water diversion, permafrost thaw, and erosion. This degradation will result in an increased cost of any restoration performed in subsequent years.

43. Quintillion has been required to retain counsel to prosecute this action and has and will continue to incur attorney's fees and costs as a result of the Defendants' failure to comply with state and federal laws, and their obligations under the Utility Permit and other permits for the construction of the Bortek Installation.

First Cause of Action for Nuisance

Bortek and UTI

44. Quintillion re-avers and incorporates by reference all previous paragraphs.

45. Alaska Statute 09.45.230 allows a "person to bring a civil action to enjoin or abate a private nuisance" and to receive damages.

46. In 2016 and 2017, Bortek and UTI interfered with Quintillion's use or enjoyment of the Subject Property by excavating groundcover and topsoil from the Quintillion Installation, placing that groundcover and topsoil over the Bortek Installation, and then failing to remediate the disturbed area.

47. Bortek and UTI's interference with Quintillion's use and enjoyment of the Subject Property was intentional and/or unreasonable, reckless, or negligent.

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48. Bortek and UTI's interference was a legal cause of significant harm to the Subject Property because it (1) reduced the burial depth of the Quintillion cable, (2) removed stabilizing groundcover and native material from the Quintillion Installation, (3) diverted water by creating a trench over the Quintillion cable and a mound over the Bortek Installation; all of which together has contributed to the collection of water over the Quintillion Installation, which has led to the thaw of subsurface permafrost, settlement, and erosion.

49. As a result of the action, inactions and omissions of Bortek and UTI, Quintillion has suffered and will continue to suffer general, compensatory and consequential damages, inclusive of but not limited to any and all amounts incurred and to be incurred for the investigation, assessment, monitoring, treatment, removal and/or remediation of the damage caused by UTI to the Subject Property, the diminution in value of the Subject Property, all in amounts not yet fully ascertained, but which will be more specifically shown in accordance with proof at the time of trial.

50. Quintillion has requested and continues to seek to have Bortek UTI abate and enjoin the nuisance, but the Defendants have failed and refused to do the same and the nuisance persists. The failure of the Defendants to timely mitigate, through assessment, investigation, monitoring, and remediation, will further increase the damages and injuries Quintillion has and will continue to incur.

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51. The existence of the trenches and the Mounding throughout the Subject Property, has resulted in a condition which is an obstruction to the free use of the Subject Property, and an interference with Plaintiff's comfortable use and enjoyment of the Subject Property.

52. Quintillion prays that a mandatory and/or prohibitory injunction be issued, requiring the Defendant to enjoin and abate said nuisance and/or to perform any and all actions necessary to assess, investigate, monitor, and remediate the Subject Property.

Second Cause of Action for Trespass

Bortek and UTI

53. Quintillion re-avers and incorporates by reference all previous paragraphs.

54. Defendants' unauthorized excavation of groundcover and topsoil from the Subject Property in 2016 and 2017, and the continued migration of water and eroded materials from Bortek's property onto the Quintillion Installation, constitutes a continuing and/or permanent trespass on the Subject Property caused by Defendants' actions, inactions, or omissions, whereby the Defendants have acted negligently, intentionally or tortiously, in causing such trespass and have acted negligently, intentionally or tortiously in failing to abate and enjoin such trespass and in failing to investigate, assess, monitor, treat, remove and/or remediate the ongoing erosion, drainage, and damage caused to the Subject Property.

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55. As a result of the actions and inactions of the Defendants a continuing trespass exists and continues to exist resulting in damage to the Subject Property, as the Mounding perpetrated by the Defendants diverts water and sediment to Quintillion Installation giving rise to a new cause of action on a daily basis. Alternatively, to the extent any damages and/or injuries cannot be abated, the trespass is permanent, with permanent damages and injuries to Quintillion.

56. As a result of the actions and inactions of the Defendants, Quintillion has suffered and will continue to suffer general, compensatory and consequential damages inclusive of but not limited to any and all amounts incurred or to be incurred from the investigation, assessment, monitoring, removal and/or remediation, the diminution in value of the Subject Property, and all other amounts to be determined in the Court with proof at trial, all of which have not yet been fully ascertained but which will more specifically be shown in accordance with proof at the time of trial.

57. Quintillion has requested and continues to request, in writing, to have the Defendants abate and enjoin the alleged trespass, but the Defendants have failed and refuse to do so and the trespass continues to exist. Quintillion requests a mandatory and/or prohibitory injunction be issued requiring the Defendants and each of them to enjoin and abate the alleged trespass and/or to perform any and all assessment, monitoring, investigation, removal, remediation, treatment, cleanup or otherwise to accomplish the same.

Third Cause of Action for Bad Faith Trespass Without Claim of Right

Bortek and UTI

58. Quintillion re-avers and incorporates by reference all previous paragraphs.

59. Quintillion retains a property interest in the Subject Property, including the groundcover and topsoil overlying the fiber optic cable.

60. Quintillion provided the Defendants with written notice that the Subject Property had been damaged as a result of Bortek and UTI's construction and remediation practices.

61. The Defendants do not have a reasonable or good faith basis to believe they hold any present legal interest in the groundcover and topsoil that was excavated and removed from the Subject Property and placed on the Bortek Installation.

62. Defendants' conduct alleged above constitutes bad faith trespass.

63. Defendants' conduct alleged above was done willfully and/or with bad faith motives.

64. Defendants' conduct, including its refusal to remediate the areas they damaged, was motivated by financial gain.

65. Defendants had knowledge of the adverse consequences to Quintillion of its conduct alleged above.

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66. As a direct and proximate result of Defendants' bad faith trespass upon the Subject Property, Quintillion is entitled to an award of punitive damages in an amount to be proven at trial.

Fourth Cause of Action for Negligence Per Se

UTI and Bortek

67. Quintillion re-avers and incorporates by reference all previous paragraphs.

68. The actions and omissions of UTI and Bortek in regard to the construction and remediation of the Bortek Installation violated state and federal laws.

69. The damage to the Subject Property and the Quintillion Installation, including the reduced burial depth of the Quintillion cable, erosion, settling, ponding, and permafrost thaw, were caused, in whole or in part, by the failure of Bortek and UTI to comply with state and federal laws.

70. As a result of the negligent and reckless actions and omissions of UTI and Bortek, Quintillion has suffered and will continue to suffer general, compensatory and consequential damages, including but not limited to amounts incurred or to be incurred by the Quintillion for the assessment, monitoring, investigation, and/or remediation of damage to the Subject Property as well as resulting from the diminution in the value of the Subject Property, and other amounts that have not been fully ascertained at this time, but all of which will be more specifically shown in accordance with proof at the time of trial.

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Fifth Cause of Action for Negligence

UTI and Bortek

71. Quintillion re-avers and incorporates by reference all previous paragraphs.

72. UTI and Bortek had a duty to execute and oversee the construction and remediation of the Bortek Installation in a manner that comports with industry best practices, the applicable SWPPP, the DEC Construction General Permit, DOT's minimum design standards, Bortek's DOT Utility Permit, and state and federal laws.

73. UTI and Bortek breached this duty when they excavated and removed groundcover and topsoil from the Quintillion Installation, placed it in a subsurface mound overtop the Bortek Installation, and then failed to remediate and restore the impacted areas.

74. As a result of UTI and Bortek's failure to act with reasonable care, the Quintillion Installation was damaged as described herein.

Sixth Cause of Action for Res Ipsa Loquitor Negligence

Bortek and UTI

75. Quintillion re-avers and incorporates by reference all previous paragraphs.

76. The excavation of the Quintillion Installation and concomitant mounding of groundcover and topsoil overtop the Bortek Installation would not have occurred but for the negligence of UTI and Bortek.

77. Defendants' conduct and omission are presumed to be negligent because:

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- a. a long mound would not have formed without someone placing large volumes of topsoil and material;
- b. a long ditch does would not have formed adjacent to Bortek's fiber optic cable without someone digging and removing topsoil and material from Quintillion's Subject Property; and
- c. poor drainage generally does not occur if an area has been property graded.

78. Bortek is the only other party permitted to construct an underground utility in the Subject Property during the period in which the damage to the Quintillion Installation was caused.

79. As a direct and proximate result of Defendants' negligent, reckless, and/or wanton acts and omissions, Quintillion's groundcover and topsoil was removed, the Subject Property was damaged, and Quintillion is entitled to damages in an amount to be proven at trial.

Seventh Cause of Action for Unlawful Holding of Real Property

80. Quintillion re-avers and incorporates by reference all previous paragraphs.

81. Quintillion is the lawful owner of the Subject Property, including the groundcover and topsoil, and a present right to possession of the Subject Property.

82. In 2017 and 2018, Quintillion provided UTI and Bortek with written notice to restore and remediate impacted areas within the Subject Property.

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83. Defendants do not have a reasonable or good faith basis to believe they hold any present legal interest in the material that was excavated from the Quintillion Installation and placed overtop the Bortek Installation.

84. Defendants' conduct constitutes wrongful and bad faith possession and/or constructive possession of the Subject Property.

85. Quintillion is entitled to injunctive relief restoring possession of the Subject Property, pursuant to AS 09.45.630.

86. As a direct and proximate result of Defendants' conduct and wrongful withholding of its property, Quintillion has suffered damages in an amount to be proven at trial.

Eighth Cause of Action for Declaratory Relief

Bortek and UTI

87. Quintillion re-avers and incorporates by reference all previous paragraphs.

88. An actual controversy exists between the Quintillion and the Defendants herein in that Quintillion contends and the Defendants deny that if Quintillion's allegations with respect to their damages and injury are true, that the Defendants, and each of them, have responsibility for such costs and damages that have been or will be incurred for activities performed and/or to be performed in the repair, investigation, assessment, monitoring, treatment, removal, remediation and cleanup of the trench on

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the Subject Property, and for such other damages in amounts that Quintillion will continue to incur.

89. Quintillion requests that a judicial determination and declaration setting forth the parties' rights and obligations as necessary and appropriate in order to avoid a multiplicity of actions and in order for the respective parties herein to ascertain their rights and duties with respect to the Quintillion's claims herein, and each of them.

PRAYER FOR RELIEF

Therefore, the Plaintiff, Quintillion, prays for the following relief:

- A. For the Court to grant Quintillion judgment against Bortek and UTI on Quintillion's Causes of Action;
- B. For a judicial determination and declaration that UTI and Bortek are in violation of their permits and state and federal law;
- C. For a judicial determination and declaration setting forth the parties' rights, obligations and duties under their permits and state and federal law;
- D. For reimbursement of costs, restitution and a mandatory and/or prohibitory injunction requiring the Defendants to enjoin and abate the alleged nuisance at the Subject Property and to perform any and all necessary investigation, assessment, repair, monitoring, remediation, or other similar work on and at the Subject Property and in the vicinity of the Subject Property;
- E. For damages, in an amount to be determined at trial;

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- F. For punitive damages in an amount to be proven at trial;
- G. Ordering Bortek and UTI to quit;
- H. That Quintillion be awarded costs and attorney's fees; and
- I. For such further and other relief as the Court may deem just and proper.

DATED at Anchorage, Alaska this 25th day of April, 2018.

HOLLAND & HART LLP
Counsel for Quintillion Networks, LLC

By: _____


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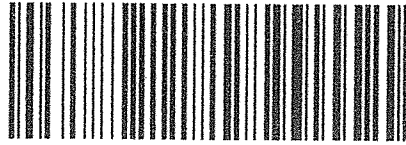
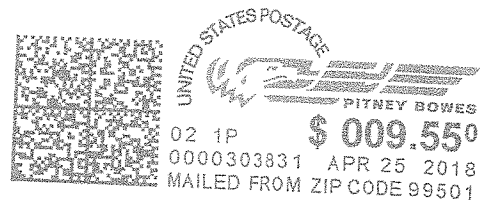
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