

Canada.

3. Defendant Preferred Proppants is a limited liability company organized under the laws of the state of Delaware with its principal place of business at 100 Matsonford Road, Suite 101; Radnor, Pennsylvania 19087. Preferred Proppants may be served with process by serving its registered agent, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

4. Defendants Preferred Pipeline is a limited liability company organized under the laws of the state of Delaware with its principal place of business at 100 Matsonford Road, Suite 101; Radnor, Pennsylvania 19087. Preferred Pipeline may be served with process by serving its registered agent, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

5. Defendants Preferred Resin Sales is a limited liability company organized under the laws of the state of Delaware with its principal place of business at 100 Matsonford Road, Suite 101; Radnor, Pennsylvania 19087. Preferred Resin Sales may be served with process by serving its registered agent, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

6. Defendants Preferred Resin of Genoa is a limited liability company organized under the laws of the state of Delaware with its principal place of business at 100 Matsonford Road, Suite 101; Radnor, Pennsylvania 19087. Preferred Resin of Genoa may be served with process by serving its registered agent, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

7. Defendants Preferred Sands of Wisconsin is a limited liability company organized under the laws of the state of Delaware with its principal place of business at 100 Matsonford

Road, Suite 101; Radnor, Pennsylvania 19087. Preferred Sands of Wisconsin may be served with process by serving its registered agent, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

JURISDICTION AND VENUE

8. This action arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.* This action also arises under the Defend Trade Secrets Act, 18 U.S.C. § 1832, *et seq.* Subject matter jurisdiction is based upon 28 U.S.C. §§ 1331 and 1338(a). The Court has supplemental subject matter jurisdiction over the causes of action stemming from the Texas Uniform Trade Secrets Act based upon 28 U.S.C. § 1367.

9. Venue is proper in this district with regard to Trican's patent infringement causes of action pursuant to 28 U.S.C. § 1400 and 28 U.S.C. § 1391(c)-(d). Venue is proper in this district with regard to Trican's trade secret misappropriation causes of action pursuant to the pendent venue doctrine. Defendants conduct their business within this judicial district and have engaged in acts in the State of Texas that constitute infringement of the '274 Patent and the '738 Patent. Defendants sell and offer for sale the FloPro PPT™ and FloPro NDT™ ("the accused products") for use in the State of Texas. Therefore, Defendants have committed acts of patent infringement and trade secret misappropriation within the State of Texas. The Eastern District of Texas has personal jurisdiction over Defendants stemming from their continuous and systematic contacts with the District (discussed below in ¶10). Thus, Defendants "reside" within the Eastern District of Texas pursuant to 28 U.S.C. § 1391(c)(2).

10. This Court has personal jurisdiction over Defendants for the patent infringement and trade secret misappropriation causes of action because Defendants continue to conduct business in the State of Texas, including but not limited to directly and indirectly shipping,

distributing, offering for sale, selling, and advertising their products in the United States, the State of Texas, and the Eastern District of Texas. Defendants' products have been pumped into wells located in the Eastern District of Texas. Defendants have marketed their products, including their HEAT proppant, to customers in the Eastern District of Texas, thereby purposefully availing themselves to the benefits of the State of Texas and the Eastern District of Texas. Moreover, Defendants purposefully and voluntarily placed one or more of the accused products into the stream of commerce with the expectation that they will be used by their customers in the State of Texas, as evidenced by the fact that the accused products have been pumped into multiple wells located in Texas.

COUNT I
INFRINGEMENT OF U.S. PATENT NO. 7,723,274

11. Trican repeats and re-alleges the allegations of paragraphs 1 through 10 as though fully set forth herein.

12. On May 25, 2010, United States Patent No. 7,723,274 (the '274 Patent), entitled "METHOD FOR MAKING PARTICULATE SLURRIES AND PARTICULATE SLURRY COMPOSITIONS," was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '274 Patent is attached as Exhibit A to this Amended Complaint.

13. Trican is the assignee and owner of the right, title and interest in the '274 Patent, including the right to assert all causes of action arising under the '274 Patent and the right to remedies for infringement of the '274 Patent.

14. Defendants have been indirectly infringing, and continue to indirectly infringe, one or more claims of the '274 Patent by knowingly and actively inducing their customers to infringe, by contributing to the direct infringement of their customers, and by intentionally

aiding, assisting and encouraging their customers to directly infringe the patent through their manufacture, use, offer for sale and sale of the accused products.

15. Defendants have had knowledge of the '274 Patent since at least December 2014 and knew of its infringement since at least September 2015, when the accused products were first used commercially. Defendants intended to induce patent infringement by customers of the accused products. Defendants' customers include at the following well operators: Sabine Oil and Gas, Parsley Energy Operators, WPX Energy, Chaparral Energy, and Jetta Operating Company. Defendants had knowledge that the inducing acts would cause infringement. Defendants intended and were aware that the normal and customary use of the accused products, which includes producing an aqueous slurry composition by mixing the accused products with water and a gas, would infringe the '274 Patent. With knowledge of the '274 Patent, Defendants performed the acts that constitute induced infringement and have induced direct infringement. For example, Defendants provided the accused products to their customers and further caused their customers to directly infringe one or more claims of the '274 Patent. Defendants thus specifically intended to induce infringement of the '274 Patent.

16. Moreover, as discussed above, Defendants offer for sale and sell the accused products within the United States. The accused products are a material part of the invention of the '274 Patent that are specially made and adapted for use to directly infringe of one or more claims of the '274 Patent. Additionally, the accused products are not a staple article or commodity of commerce suitable for substantial non-infringing use. By providing the accused products to their customers, Defendants contributed to the infringement of one or more claims of the '274 Patent.

17. Accordingly, Defendants indirectly infringe at least claims 17, 18, 26, 27, and 33-

35 of the '274 Patent in violation of 35 U.S.C. § 271(b) and (c).

18. Defendants' indirect infringement of the '274 Patent has been and continues to be intentional, deliberate, willful, and without regard to Trican's rights at least because they had knowledge of the '274 Patent. Defendants have gained profits by virtue of its indirect infringement of the '274 Patent.

19. Because of Defendants' indirect infringement of the '274 Patent, Trican has suffered damages and will continue to suffer damages in the future. Trican is entitled to an injunction against Defendants' continued indirect infringement of the '274 Patent and an award of damages in an amount to be determined at trial.

COUNT II
INFRINGEMENT OF U.S. PATENT NO. 8,236,738

20. Trican repeats and re-alleges the allegations of paragraphs 1 through 19 as though fully set forth herein.

21. On August 7, 2012, United States Patent No. 8,236,738 (the '738 Patent), entitled "CONTROL OF PARTICULATE ENTRAINMENT BY FLUIDS," was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '738 Patent is attached as Exhibit B to this Amended Complaint.

22. Trican is the assignee and owner of the right, title and interest in the '738 Patent, including the right to assert all causes of action arising under the '738 Patent and the right to remedies for infringement of the '738 Patent.

23. Defendants have been indirectly infringing, and continue to indirectly infringe, one or more claims of the '738 Patent by knowingly and actively inducing others to infringe, by contributing to the infringement of others, and/or by intentionally aiding, assisting and encouraging the infringement of others through the manufacture, use, offer for sale and/or sale of

the accused products

24. Defendants have had knowledge of the '738 Patent since at least December 2014 and knew of its infringement since at least September 2015, when the accused products were first used commercially. Defendants intended to induce patent infringement by customers of the accused products. Defendants' customers include at the following well operators: Sabine Oil and Gas, Parsley Energy Operators, WPX Energy, Chaparral Energy, and Jetta Operating Company. Defendants had knowledge that the inducing acts would cause infringement. Defendants intended and were aware that the normal and customary use of the accused products, which includes producing an aqueous slurry composition by mixing the accused products with water and an oil, would infringe the '738 Patent. With knowledge of the '738 Patent, Defendants performed the acts that constitute induced infringement and have induced direct infringement. For example, Defendants provided the accused products to their customers and further caused their customers to directly infringe one or more claims of the '738 Patent. Defendants thus specifically intended to induce infringement of the '738 Patent.

25. Moreover, as discussed above, Defendants offer for sale and sell the accused products within the United States. The accused products are a material part of the invention of the '738 Patent that are specially made and adapted for use to directly infringe of one or more claims of the '738 Patent. Additionally, the accused products are not a staple article or commodity of commerce suitable for substantial non-infringing use. By providing the accused products to third-party users, Defendants contributed to the infringement of one or more claims of the '738 Patent.

26. Defendants indirectly infringe at least claims 1, 16-23, 32, 33, 36, and 38-42 of the '738 Patent in violation of 35 U.S.C. § 271(b) and (c).

27. Defendants' indirect infringement of the '738 Patent has been and continues to be intentional, deliberate, willful, and without regard to Trican's rights at least because they had knowledge of the '738 Patent.

28. Defendants have gained profits by virtue of its indirect infringement of the '738 Patent.

29. Because of Defendants' indirect infringement of the '738 Patent, Trican has suffered damages and will continue to suffer damages in the future. Trican is entitled to an injunction against Defendants' continued indirect infringement of the '738 Patent and an award of damages in an amount to be determined at trial.

COUNT III
TRADE SECRET MISAPPROPRIATION UNDER FEDERAL DEFEND TRADE
SECRETS ACT

30. Trican repeats and re-alleges the allegations of paragraphs 1 through 29 as though fully set forth herein.

31. Defendants have misappropriated and wrongfully exploited Trican's trade secrets and confidential information in violation of the Defend Trade Secrets Act, 18 U.S.C. § 1832, *et seq.* Defendants have, without Trican's authorized consent, used Trican's trade secrets and confidential information in interstate commerce. Defendants have supplied the accused products and instructed its customers how to use the accused products in Texas.

32. Trican has invested considerable time, effort, and financial resources to develop and protect the trade secrets and confidential information. Trican has treated the information as confidential and has protected the information from discovery by third parties. The information gives Trican an advantage over others in the marketplace who do not know of or how to use it.

33. Defendants have acquired Trican's trade secrets and confidential information.

The trade secrets and confidential information provided to Dustpro, LLC under a non-disclosure agreement include, but are not limited to, product data sheets, testing procedures and protocols, chemical compositions, and chemical dosage rates. Defendants acquired and used Trican's trade secrets and confidential information without Trican's consent, thereby committing trade secret misappropriation.

34. Defendants have used and disclosed Trican's trade secrets and confidential information to their customers in violation of federal and state laws. Defendants have caused harm to Trican through the misappropriation of Trican's trade secrets and confidential information. Defendants are in a position to continue to cause harm to Trican.

35. Trican requests, among other things, that Defendants be enjoined from disclosing or using, or further disclosing or using Trican's trade secrets and confidential information pursuant to 18 U.S.C. § 1836 (3)(A). Use and disclosure of Trican's trade secrets will irreparably harm Trican and destroy Trican's trade secrets and confidential information.

36. To the extent Trican's injuries are compensable, Trican asks that Defendants be ordered to pay all actual and consequential damages resulting from their wrongful conduct, including but not limited to unjust enrichment, head-start damages, and any other damages to which Trican is entitled pursuant to 18 U.S.C. § 1836 (3)(B).

37. Trican further prays for exemplary damages pursuant to 18 U.S.C. § 1836 (3)(C) because Defendants' misappropriation was willful and malicious.

COUNT IV
TRADE SECRET MISAPPROPRIATION UNDER TEXAS UNIFORM TRADE
SECRETS ACT

38. Trican repeats and re-alleges the allegations of paragraphs 1 through 37 as though fully set forth herein.

39. Defendants have misappropriated and wrongfully exploited Trican's trade secrets and confidential information in violation of the Texas Uniform Trade Secrets Act, TEX. CIV. PRAC. & REM. CODE § 134A, *et seq.* Defendants have, without Trican's authorized consent, used Trican's trade secrets and confidential information. Defendants have supplied the accused products and instructed its customers how to use the accused products in Texas.

40. Trican has invested considerable time, effort, and financial resources to develop and protect the trade secrets and confidential information. Trican has treated the information as confidential and has protected the information from discovery by third parties. The information gives Trican an advantage over others in the marketplace who do not know of or how to use it.

41. Defendants have acquired Trican's trade secrets and confidential information. The trade secrets and confidential information provided to Dustpro, LLC under a non-disclosure agreement include, but are not limited to, product data sheets, testing procedures and protocols, chemical compositions, and chemical dosage rates. Defendants acquired and used Trican's trade secrets and confidential information without Trican's consent, thereby committing trade secret misappropriation.

42. Defendants have used and disclosed Trican's trade secrets and confidential information in violation of federal and state laws. Defendants have caused harm to Trican through the misappropriation of Trican's trade secrets and confidential information. Defendants are in a position to continue to cause harm to Trican.

43. Trican requests, among other things, that Defendants be enjoined from disclosing or using, or further disclosing or using Trican's trade secrets and confidential information pursuant to TEX. CIV. PRAC. & REM. CODE § 134A.003. Use and disclosure of Trican's trade secrets will irreparably harm Trican and destroy Trican's trade secrets and confidential

information.

44. To the extent Trican's injuries are compensable, Trican asks that Defendants be ordered to pay all actual and consequential damages resulting from their wrongful conduct, including but not limited to unjust enrichment, head-start damages, and any other damages to which Trican is entitled pursuant to TEX. CIV. PRAC. & REM. CODE § 134A.004.

45. Trican further prays for exemplary damages pursuant to TEX. CIV. PRAC. & REM. CODE § 134A.004(b) because Defendants' misappropriation was willful and malicious.

PRAYER FOR RELIEF

WHEREFORE, Trican respectfully requests entry of judgment in its favor and against Defendants as follows:

A. A declaration that Defendants have and do infringe one or more claims of both the '274 Patent and the '738 Patent;

B. An injunction against Defendants and their officers, agents, servants, employees, attorneys, and others in active concert or participation with them from further infringing the '274 Patent and the '738 Patent;

C. An order awarding Trican damages to be paid by Defendants adequate to compensate for Defendants' past infringement of the '274 Patent and the '738 Patent, and any continuing or future infringement of the '274 Patent and the '738 Patent through the date such judgment is entered, together with pre-judgment and post-judgment interest, costs and expenses as justified under 35 U.S.C. § 284;

D. An order awarding Trican damages, including treble damages, based on any infringement found to be willful, pursuant to 35 U.S.C. § 284, together with prejudgment interest;

E. An order declaring that this an exceptional case and awarding Trican its costs, expenses, disbursements and reasonable attorneys' fees under 35 U.S.C. § 285 and all other applicable statutes, rules and common law;

F. An order requiring accounting of all infringing acts including, but not limited to, those acts not presented at trial and an award for damages to Trican for any such acts;

G. An injunction against Defendants and their officers, agents, servants, employees, attorneys, and others in active concert or participation with them from further disclosing or using Trican's trade secrets and confidential information pursuant to 18 U.S.C. § 1836 (3)(A) and TEX. CIV. PRAC. & REM. CODE § 134A.003;

H. An order awarding Trican to be paid all actual and consequential damages resulting from Defendants' wrongful conduct, including but not limited to unjust enrichment, head-start damages, and any other damages to which Trican is entitled pursuant to 18 U.S.C. § 1836 (3)(B) and TEX. CIV. PRAC. & REM. CODE § 134A.004.

I. An order awarding exemplary damages to be paid by Defendants pursuant to 18 U.S.C. § 1836 (3)(C) and TEX. CIV. PRAC. & REM. CODE § 134A.004(b) because Defendants' misappropriation was willful and malicious; and

J. Such other and further relief as this Court may deem just and proper.

JURY DEMAND

In accordance with Rule 38 of the Federal Rules of Civil Procedure, Trican respectfully demands a jury trial of all issues triable to a jury in this action.

Dated: March 8, 2017

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2017, the foregoing document was served on all counsel of record, using the Court's CM/ECF system, pursuant to the Federal Rules of Civil Procedure and Local Rule CV-5(a)(3).

/s/ Jayme Partridge
Jayme Partridge