

1 Peter Afrasiabi (Bar No. 193336)
pafrasiabi@onellp.com
2 Dave Duckworth (Bar No. 170022)
dduckworth@onellp.com
3 David W. Quinto (Bar No. 106232)
dquinto@onellp.com
4 **ONE LLP**
23 Corporate Plaza Drive
5 Suite 150-105
Newport Beach, CA 92660
6 Telephone: (949) 502-2870
Facsimile: (949) 258-5081

7 Attorneys for Plaintiff
8 IRRITEC USA, INC.

9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **EASTERN DIVISION**

13
14 IRRITEC USA, INC., a California
corporation,

15
16 Plaintiff,

17 v.

18 VALPLASTIC USA, LLC, a Delaware
19 Limited Liability Company;
20 SATYANSU KUNDU, an individual;
and DOES 1-10, inclusive,

21
22 Defendants.

Case No. 5:22-cv-660

COMPLAINT FOR:

- (1) PATENT INFRINGEMENT
(2) TRADE DRESS
INFRINGEMENT
(3) FALSE DESIGNATION OF
ORIGIN
(4) UNFAIR COMPETITION (CAL.
BUS. & PROF. CODE § 17200 *ET*
SEQ.)
(5) COMMON LAW UNFAIR
COMPETITION

DEMAND FOR JURY TRIAL

1 Plaintiff Irritec USA, Inc. (“Irritec”), by and through its attorneys of
2 record, complains against Defendants Valplastic USA, LLC (“Valplastic”),
3 Satyansu Kundu (“Kundu”), and Does 1 through 10 (“Does”) (collectively
4 “Defendants”), alleging as follows:

5 **JURISDICTION AND VENUE**

6 1. This is a civil action for patent infringement, trade dress
7 infringement, false designation of origin, and unfair competition under the
8 Patent Act, 35 U.S.C. §§ 271 *et seq.*, Lanham Act, 15 U.S.C. §§ 1051 *et seq.*,
9 and for unfair competition under California Bus. & Prof. §§ 17200 *et seq.*, and
10 unfair competition under California common law.

11 2. This court has subject matter jurisdiction under the Patent Act, 35
12 U.S.C. §§ 271 *et seq.*, Lanham Act, 15 U.S.C. §§ 1051 *et seq.*, 28 U.S.C. §
13 1331, 28 U.S.C. § 1338(a)-(b), and supplemental jurisdiction over the
14 remaining claims under 28 U.S.C. § 1367.

15 3. Venue is proper in this district under 28 U.S.C. § 1391(b)-(c) and
16 28 U.S.C. § 1400(a), in that the claims arise in this judicial district and the
17 injury suffered by Plaintiff took place in this judicial district. Defendants are
18 subject to the general and specific personal jurisdiction of this Court because of
19 their contacts with the State of California. Among other things, Defendants
20 have engaged in direct patent and trade dress infringement or have otherwise
21 induced trade dress infringement in this judicial district. On information and
22 belief, Defendants have sold the infringing products to customers in this
23 district.

24 **PARTIES**

25 4. Plaintiff Irritec USA, Inc. is a California corporation with its
26 principal place of business at 1420 N. Irritec Way in Fresno, California. Irritec
27 USA is a subsidiary of Irritec S.p.A., which is incorporated in Italy.

28 5. Defendant Valplastic USA, LLC is a Delaware limited liability

1 company with its principal place of business at 4570 Eucalyptus Avenue, Suite
2 C, in Chino, California.

3 6. On information and belief, Defendant Satyansu Kundu is the
4 single owner of the single purpose entity Valplastic USA, LLC and resides in
5 Chino Hills, California.

6 7. Does 1 through 10, inclusive, are unknown to Plaintiff, who
7 therefore sues said Defendants by such fictitious names. Plaintiff will ask leave
8 of Court to amend this Complaint to insert the true names and capacities of said
9 Defendants when the same have been ascertained. Plaintiff is informed and
10 believes and, upon such, alleges that each Defendant designated as a “Doe” is
11 legally responsible in some manner for the events and happenings herein
12 alleged and that Plaintiff’s damages as alleged herein were proximately caused
13 by such Defendants.

14 **FACTS COMMON TO ALL COUNTS**

15 8. Irritec S.p.A. and its subsidiaries, including Irritec USA, are a
16 leading irrigation technology business whose products are sold in more than
17 140 countries. Irritec creates solutions for irrigation to save water and
18 minimize ecological footprints in the agriculture industry. Founded in 1974,
19 Irritec designs, manufactures, and sells innovative irrigation products for both
20 agriculture and turf irrigation systems that guarantee maximum efficiency in
21 water usage. It has manufacturing facilities in the United States and five other
22 countries.

23 9. Irritec has received numerous patents for its innovative products
24 that help its mission to improve the efficiency of agricultural industries
25 worldwide.

26 10. One such patent is US Patent No. 6,695,355 B1 (“the ‘355
27 Patent”), entitled “Pipe Fitting Element Particularity for Plastic Pipes,” issued
28 to Irritec’s Italian parent on February 24, 2004, a copy of which can be found at

1 <https://patft1.uspto.gov/netacgi/nph->
2 [Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=%2Fnetacgi/nph-](https://patft1.uspto.gov/netacgi/nph-Parser?Sect1=PTO1&Sect2=HITOFF&d=PALL&p=1&u=%2Fnetacgi/nph-TO%2Fsrchnum.htm&r=1&f=G&l=50&s1=6695355.PN.&OS=PN/6695355&RS=PN/6695355)
3 [TO%2Fsrchnum.htm&r=1&f=G&l=50&s1=6695355.PN.&OS=PN/6695355&](https://patft1.uspto.gov/netacgi/nph-TO%2Fsrchnum.htm&r=1&f=G&l=50&s1=6695355.PN.&OS=PN/6695355&RS=PN/6695355)
4 [RS=PN/6695355.](https://patft1.uspto.gov/netacgi/nph-TO%2Fsrchnum.htm&r=1&f=G&l=50&s1=6695355.PN.&OS=PN/6695355&RS=PN/6695355)

5 11. Irritec's '355 Patent issued on February 24, 2004 and expired on
6 May 24, 2020.

7 12. The '355 Patent is directed to a coupler for connecting standard
8 irrigation tubing. In the '355 Patent, the tube coupler is also referred to as a
9 pipe fitting, and thus the terms "coupler" and "fitting", and "tube" and "pipe",
10 respectively, are used interchangeably herein. Though the '355 Patent is
11 directed to the novel construction of the fitting and not the piping, the claims of
12 the '355 Patent cover the combination of the novel pipe fitting and the well-
13 known pipe. Thus, to directly infringe the '355 Patent, one must make, use,
14 offer to sell, or sell the combination of the claimed pipe and pipe fitting. See
15 35 U.S.C. § 271(a). Alternatively, one can infringe the '355 Patent by inducing
16 a third party to infringe the '355 Patent by inducing the third party to make, use,
17 offer to sell, or sell the combination of the claimed pipe and pipe fitting. See
18 35 U.S.C. § 271(b). To induce infringement, the infringer must have (1)
19 known of the patent, (2) knowingly induced the infringing acts, and (3)
20 possessed a specific intent to encourage another's infringement of the patent.
21 Still alternatively, one can commit contributory infringement of a patent the
22 infringer: (1) had knowledge of the infringed patent; (2) was providing to a
23 third party a material component of an infringing article; and (3) that the
24 component was especially made or adapted for use in such infringing article, in
25 this case, the combination of the claimed pipe and pipe fitting; and (4) the
26 component was not a staple article or commodity of commerce suitable for
27 substantial noninfringing use. See 35 U.S.C. § 271(c).

28 13. Irritec is the exclusive United States licensee of the '355 Patent

1 with the right to sue for patent infringement including past patent infringement.
2 Plaintiff Irritec USA, Inc. is the U.S. division of the worldwide set of Irritec
3 companies and so uses “USA” to denote its specific geographic location as
4 distinguished from those of other Irritec entities.

5 14. Products manufactured and sold in the United States under the
6 ‘355 patent include Irritec’s Perma-Loc tube couplers that, as described below,
7 have a unique, stylized, and distinctive trade dress. Irritec further uses its own
8 unique numbering system to denote its products by series numbers, i.e., 500,
9 600, 700, 800, 900 and 1000 series.

10 15. The Perma-Loc tube couplers are a line of important products
11 made to exacting specifications to ensure their durability and strength needed to
12 protect against unnecessary breakage and water loss. Consumers of the Perma-
13 Loc tube couplers expect the excellence that the Irritec brand connotes and the
14 attributes that Irritec’s design and manufacture represent in its products.

15 16. The marketplace for these parts of course has competitors. All
16 competitors, except Defendants, use their own numbering system to denote
17 their product parts, much like Lexus, Mercedes, BMW, and Ford, etc. use their
18 own numbering systems to denote their models and do not copy their
19 competitors’ numbering systems. They do so to protect the distinctiveness of
20 their models, thereby protecting consumers from confusion.

21 17. Irritec’s products, including its Perma-Loc tube couplers, are well
22 known and easily recognizable by their unique overall look and feel created by
23 aesthetic embellishments that include the stylized, tapered nuts; the number,
24 position and shape of longitudinal tapered ribs on the nuts; and number, size
25 and shape of the three radially extending discs in the middle of Irritec’s all-
26 black products. The aesthetic embellishment on Irritec’s products, together
27 with Irritec’s unique numbering system used to identify them, are aesthetic and
28 non-functional, and are referred to herein as “the Trade Dress.” The Trade

1 Dress is well known, and the public associates the Trade Dress with Irritec
2 resulting in the Trade Dress having secondary meaning.

3 18. To the extent that the stylized, tapered nuts, longitudinal tapered
4 ribs on the nuts, and three radially extending discs are capable of performing a
5 function, the shape, style and number of these features: 1) are not described in
6 the '355 Patent as providing a utilitarian advantage; 2) are not touted in Irritec's
7 advertising materials as possessing utilitarian advantages; 3) possess an infinite
8 number of functionally equivalent designs; and 4) do not provide a simple or
9 inexpensive method of manufacture that is not available to other designs, as
10 evidenced in part by the plethora of other companies selling products designed
11 to achieve the same goals but which have a distinct visual appearance.

12 **DEFENDANTS' UNLAWFUL ACTIVITIES**

13 19. At least as early as 2018, Valplastic USA commenced selling its
14 "Ultra-Loc" brand of tube couplers that infringed at least one claim of the '355
15 Patent. The Ultra-Loc tube couplers were advertised and sold to be used as
16 couplers for irrigation tubing, and thus were especially made or adapted for use
17 in creating a pipe and pipe fitting combination that infringed the '355 Patent.
18 The Ultra-Loc tube couplers were not suitable for non-infringing uses.

19 20. At least as early as early 2019, Valplastic USA had knowledge of
20 the '355 Patent. Specifically, on January 28, 2019, Irritec's counsel sent Kundu
21 a cease and desist letter informing Kundu and Valplastic USA that their Ultra-
22 Loc tube couplers infringed the '355 Patent. Valplastic's counsel confirmed
23 receipt of the letter.

24 21. After being informed of the '355 Patent, Valplastic continued to
25 sell tube couplers that resulted in Valplastic USA's customers directly
26 infringing the '355 Patent before the '355 Patent expired on May 24, 2020.
27 The decision to continue selling tube couplers known to infringe the '355
28 Patent was made by Kundu, and thus Kundu actively and knowingly assisted,

1 and otherwise aided and abetted, with Valplastic's infringement of the '355
2 Patent. Specifically, Kundu and Valplastic (1) knew of the '355 Patent, (2)
3 knowingly induced their customers to make pipe/pipe couplers that infringed
4 the '355 Patent, and (3) possessed a specific intent to encourage their
5 customers' infringement of the '355 Patent, so as to induce infringement of the
6 '355 Patent. Furthermore, Kundu and Valplastic had (1) knowledge of the
7 infringed patent; (2) was providing to third parties a material component of an
8 infringing article; and (3) that the component was especially made or adapted
9 for use in such infringing article that was not suitable for substantial
10 noninfringing use, so as to contributorily infringe the '355 Patent.

11 22. Many months later in the middle of 2019, Valplastic's attorney
12 represented during a phone call with Irritec's counsel that Valplastic would
13 promptly change, or had changed, the design of their Ultra Loc tube couplers to
14 a design that did not infringe the '355.

15 23. Upon information and belief, Valplastic did not promptly change
16 the design of the infringing Ultra Loc couplers, or did not change the design of
17 the infringing Ultra Loc couplers at all.

18 24. Rather than simply invent and create his own products, Kundu,
19 through his solely-owned company Valplastic USA, has simply initiated a
20 scheme of wholesale copying of Irritec's products by creating exact replica
21 molds of Irritec's Perma-Loc tube couplers and other products and is using the
22 identical numbering system for his replica counterfeit products, which
23 Defendant calls the Ultra Loc tube fittings. This pattern of literally molding
24 Plaintiff's products, intended and done by both Defendants, is done to save the
25 resources it would take to actually design something original oneself which
26 costs more for design and also molds and testing and tooling.

27 25. So identical are the knock-offs that even Irritec's own, cosmetic
28 defects including a slightly off-centered product number identifier on Irritec's

1 products, which off-centered numbering serves no functional purpose, is also
2 off center in the knock-off counterfeits manufactured by Defendants and then
3 imported into the United States.

4 26. Defendants are infringing Irritec's patents and knocking off
5 Irritec's Trade Dress with their counterfeit products. They are also creating
6 confusion and the likelihood for it, thereby causing a significant reputational
7 risk to Irritec. Indeed, Kundu has a local business here in California but no
8 business location in any other country. His use of "USA" in his business name
9 is thus meant to convey a similarity to Irritec's name as being part of a
10 worldwide family of companies. And unlike Irritec USA, which does
11 manufacture products in the United States, Kundu's Valplastic USA has no
12 U.S. manufacturing facilities and sells exclusively knock-off products
13 manufactured abroad.

14 27. Defendant's carbon copying of Irritec's products is not new.
15 Defendant Kundu was earlier advised that his products infringed the '355
16 patent. In response, he agreed to make changes but reneged on his agreement
17 to do so. Instead, Kundu and Valplastic USA have augmented their carbon
18 copying business model by replicating Irritec's parts lock, stock and barrel.

19 28. The agriculture industry highly values water, a prized and scarce
20 commodity worldwide. Irritec has become a leading supplier of key
21 agricultural parts, such as the Perma-Loc Series of irrigation tube fittings,
22 because it makes its products in an exacting manner and its products are widely
23 recognized in the marketplace as simply superior. Kundu and Valplastic USA
24 manufacture and sell their identical knock-off products cheaply because, among
25 other things, they use inferior grades of plastic to make their products. As a
26 consequence, Irritec is being irreparably harmed in that products in the
27 marketplace identical to its own are inferior but are being passed off as Irritec
28 products. The consumer confusion of Valplastic USA's products with genuine

1 Irritec products harms Irritec in that they are likely to break, thereby causing
2 farmers to lose water, thus creating a false perception that Irritec created faulty,
3 substandard products. Indeed, anyone inspecting a failed water system would
4 be unlikely to tell that the failed system was not manufactured by industry
5 leader Irritec.

6 29. This type of destruction of goodwill in the agricultural irrigation
7 industry has happened before when cheap knock-offs that caused damage were
8 erroneously associated with the creator of the superior product, resulting in the
9 near destruction of the original creator. As an example, an irrigation
10 manufacturing company recently suffered irreparable damage after a
11 counterfeiter copied its irrigation plumbing parts with an inferior product.
12 Consumers could not tell the difference between the real plumbing parts and
13 the counterfeit plumbing parts after the counterfeit parts failed in the
14 agricultural fields. Since no one could tell the difference, the reputable
15 company was forced to pay warranty claims on the counterfeit failures and
16 suffered devastation to its reputation. Irritec expects the same to happen when
17 the Valplastic Ultra Loc tube fittings fail in the fields.

18 30. To protect its brand, the products that the agriculture industry
19 depends upon and trusts for their quality, this action now follows to end the
20 piratical scheme of Defendants.

21 **FIRST CAUSE OF ACTION**

22 **(Patent Infringement, 35 U.S.C. § 271 et seq., Against All Defendants)**

23 31. Plaintiff incorporates here by reference the allegations set forth in
24 paragraphs 1 through 30 above.

25 32. Irritec is the exclusive licensee with the right to assert all causes of
26 action available under the Patent Act with respect to the '355 Patent and the
27 right to all remedies for infringement of the '355 Patent.

28 33. Defendants in the last 6 years infringed the '355 Patent prior to the

1 Patent's expiration literally and/or under the doctrine of equivalents by making,
2 using, selling offering for sale, and/or importing into the United States without
3 authorization at least the following models: Valplastic Ultra Loc tube fittings
4 ("Accused Products") in combination with a pipe, in this judicial district and
5 elsewhere in the United States. Defendants' infringing Ultra Loc tube fittings
6 and pipe can be found on Defendant's website at:

7 <http://www.valplasticusa.com/index.html>

8 http://www.valplasticusa.com/files/Fittings_2_page.pdf

9 34. Defendants are also liable under 35 U.S.C. § 271(b) for actively
10 inducing infringement of the '355 Patent. On information and believe, after
11 having knowledge of the '355 Patent, Kundu and Valplastic possessed the
12 specific intent to induce their customers' infringement of the '355 Patent, and
13 in fact did induce infringement of the '355 Patent, by engaging in affirmative
14 acts including selling the Ultra Loc tube fittings, by providing manuals, guides,
15 advertising and solicitation and otherwise providing sales related materials, and
16 by instructing and/or demonstrating to customers, distributors, and end users
17 the normal operations of the Accused Products.

18 35. Kundu and Valplastic are also liable under 35 U.S.C. § 271(c) for
19 contributing to the infringement of the '355 Patent. On information and belief,
20 after having knowledge of the '355 Patent, Kundu actively and knowingly
21 assisted, and otherwise aided and abetted, with Valplastic in selling the
22 Accused Products which were a material component of an infringing article;
23 while knowing the Accused Products were especially made or adapted for use
24 in such infringing article; and the Accused Products were not suitable for a
25 substantial non-infringing use.

26 36. Based on Irritec's preliminary investigations, Defendants' sale of
27 Accused Products infringed one or more claims of the '355 Patent.

28 37. Defendants' infringement was within the statute of limitations for

1 historical infringement claims has been done with full knowledge and
 2 awareness that Defendants' making, using, selling, offering for sale, and
 3 importation of the Accused Products constitutes infringement of the '355
 4 Patent.

5 38. Defendants' actions constitute direct infringement, contributory
 6 infringement, and/or active inducement of infringement of one or more claims
 7 of the '355 patent in violation of 35 U.S.C. § 271.

8 39. Irritec is entitled to recover damages sustained as a result of
 9 Defendants's wrongful acts in an amount to be proven at trial.

10 40. Irritec has sustained damages and will continue to sustain damages
 11 as a result of Defendants' aforesaid acts of infringement.

12 41. Defendants' infringement of Irritec's rights under the '355 patent
 13 will continue to damage Plaintiff's business, causing irreparable harm, for
 14 which there is no adequate remedy at law, unless it is enjoined by this Court.

15 42. In addition, Defendants has infringed the '355 patent – directly,
 16 contributorily, and by inducement – with full knowledge of the '355 patent and
 17 despite having full knowledge that its actions constituted infringement of that
 18 patent. For at least this reason, Defendants has willfully infringed the '355
 19 patent, entitling Irritec to increased damages under 35 U.S.C. § 284 and to
 20 attorney fees and costs incurred in prosecuting this action under 35 U.S.C. §
 21 285.

22 **SECOND CAUSE OF ACTION**

23 **(Trade Dress Infringement, 15 U.S.C. § 1125, Against All Defendants)**

24 43. Plaintiff incorporates here by reference the allegations set forth in
 25 paragraphs 1 through 30 above.

26 44. Plaintiff owns Trade Dress in its Perma-Loc Series products as
 27 alleged above.
 28

1 45. The Trade Dress is nonfunctional.

2 46. The Trade Dress is a valid, protectable and distinctive trademark
3 that Irritec has continuously used for decades and uses today to promote its
4 goods.

5 47. Defendants have made, used, imported, offered for sale,
6 advertised, and sold products that embody Plaintiff's Trade Dress.

7 48. To any ordinary observer, the look and feel of Defendants' knock-
8 off products is confusingly similar to the distinctive and ornamental look and
9 feel of Plaintiff's products. Indeed, even the method of advertising the knock-
10 off products utilizes the Trade Dress in the product series numbering and the
11 exact method of identifying specific, particular characteristics of the products
12 in a particular order (and no other characteristics either).

13 49. At no time did Defendants have the authorization, legal right, or
14 consent to engage in such activities but acted in disregard of Irritec's rights in
15 its Trade Dress.

16 50. Defendants have long been aware for years of Plaintiff's Trade
17 Dress and unique products that are highly successful in the marketplace,
18 making Irritec an industry leader.

19 51. Defendants' actions complained of herein were intentional, willful,
20 and malicious and undertaken with a deliberate intent to trade on the goodwill
21 associated with the Trade Dress.

22 52. Plaintiff is informed and believes and thereon alleges that as a
23 proximate result of the unfair advantage accruing to Defendants' business from
24 deceptively trading on Irritec's advertising, sales, and consumer recognition,
25 Defendants have made substantial sales and profits in amounts to be established
26 according to proof.

27 53. As a proximate result of the unfair advantage accruing to
28 Defendants' businesses from deceptively trading on Irritec's advertising, sales,

1 and consumer recognition, Irritec has been damaged and deprived of substantial
2 sales and has been deprived of the value of its Trade Dress as a commercial
3 asset, in amounts to be established according to proof.

4 54. Plaintiff is informed and believes and thereon alleges that
5 Defendants' acts were committed, and continue to be committed, with actual
6 notice of Irritec's exclusive rights and with an intent to cause confusion, to
7 cause mistake, and/or to deceive, and cause injury to the reputation and
8 goodwill associated with Irritec and Irritec's products. At a minimum, Plaintiff
9 is entitled to injunctive relief and to recover Defendants' profits, together with
10 Plaintiff's attorneys' fees pursuant to 15 U.S.C. § 1117. In addition, pursuant
11 to 15 U.S.C. § 1118, Plaintiff is entitled to an order requiring destruction of all
12 infringing materials in Defendant's possession.

13 **THIRD CAUSE OF ACTION**

14 **(False Designation of Origin/Unfair Competition, 15 U.S.C. § 1125(a),**
15 **Against All Defendants)**

16 55. Plaintiff incorporates here by reference the allegations set forth in
17 paragraphs 1 through 30 and 44-54 above.

18 56. Irritec is informed and believes and thereon alleges that its Trade
19 Dress has become associated in the minds of consumers with Irritec and its
20 respective goods.

21 57. Defendants have sold in interstate commerce agricultural products
22 that Defendants marketed through the use of counterfeit carbon copy products
23 that are likely to cause confusion and irreparable harm to the Irritec Trade
24 Dress.

25 58. The marketing and sale of Defendants' products constitutes a false
26 designation of origin, which is likely to cause confusion and mistake and to
27 deceive consumers as to the source or origin of such goods or as to the
28 sponsorship or approval of such goods by Irritec.

1 59. Irritec is informed and believes and thereon alleges that as a
2 proximate result of Defendants' false designation of origin, Defendants stand to
3 make substantial sales and profits in amounts to be established according to
4 proof.

5 60. Irritec is informed and believes and thereon alleges that unless
6 restrained by this Court, Defendants will continue to designate falsely the
7 origin of their goods, causing irreparable damage to Plaintiff and engendering a
8 multiplicity of lawsuits. Pecuniary compensation will not afford Irritec
9 adequate relief for its resulting damages. Further, Plaintiff is informed and
10 believes and thereon alleges that in the absence of injunctive relief, customers
11 are likely to continue being mistaken or deceived as to the true source, origin,
12 sponsorship, and affiliation of Defendants' goods and services.

13 61. Irritec is informed and believes and thereon alleges that
14 Defendants' acts were committed, and continue to be committed, with actual
15 notice of Irritec's Trade Dress marks and with an intent to cause confusion, to
16 cause mistake, to deceive, and to cause injury to the reputation and goodwill
17 associated with Irritec and Irritec's genuine products.

18 **FOURTH CAUSE OF ACTION**

19 **(Unfair Competition California Business & Professions Code § 17200 *et***
20 ***seq.* Against All Defendants)**

21 62. Plaintiff incorporates here by reference to the allegations as set
22 forth in paragraphs 1 through 61 above and 65-69 below.

23 63. Defendants' conduct as alleged herein constitutes unfair and
24 deceptive acts or practices in the course of a business, trade, or in commerce, in
25 violation of Cal. Bus. & Prof. Code §§ 17200 and 17500, *et seq.*

26 64. Plaintiff is informed and believes and thereon alleges that as a
27 direct and proximate result of Defendants' wrongful conduct as described
28 above, Defendants have gained property and revenues properly belonging to

1 Irritec. Irritec therefore seeks restitution of these amounts. Irritec also seeks
2 injunctive relief restraining Defendants, their officers, agents, and employees,
3 and all persons acting in concert with them, from further engaging in acts of
4 unfair competition and/or fraudulent business acts against Irritec and its
5 intellectual property.

6 **FIFTH CAUSE OF ACTION**

7 **(Common Law Unfair Competition Against All Defendants))**

8 65. Plaintiff incorporates here by reference the allegations as set forth
9 in paragraphs 1 through 30 and 44 through 64 above.

10 66. Upon information and belief, Defendants will continue to infringe
11 the Irritec Trade Dress.

12 67. By the acts and activities of Defendants complained of herein,
13 Defendants have been unjustly enriched.

14 68. As a direct and proximate result of the acts and activities of
15 Defendants complained of herein, Irritec has been damaged in an amount not
16 yet ascertainable. When Irritec has ascertained the full amount of damages, it
17 will seek leave of court to amend this Complaint accordingly.

18 69. Plaintiff in informed and believes, and based thereon alleges, that
19 Defendants, in doing the things herein alleged, acted willfully, maliciously, and
20 oppressively, with full knowledge of the adverse effect of their actions on
21 Irritec, and with willful and deliberate disregard for the consequences to Irritec,
22 entitling Irritec to an award of punitive damages.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff Irritec USA, Inc., respectfully requests the
25 following relief against Defendants as follows:

26 1. With regard to Irritec's claim against Defendants for trade dress
27 infringement and false designation of origin:

28 a. Defendants' profits pursuant to the Lanham Act;

- 1 b. Damages sustained by the Plaintiff for trademark
- 2 infringement;
- 3 c. Trebling for a willful violation;
- 4 d. Corrective Advertising remedies;
- 5 e. Attorneys' fees;
- 6 f. Costs of suit;
- 7 2. With regard to Irritec's patent infringement claims:
- 8 a. Damages under the Patent Act;
- 9 b. Profits form related products sold with the infringing
- 10 products as unlawful convoyed sales;
- 11 c. A willfulness finding and trebling of damages as a result
- 12 under 35 U.S.C. § 284;
- 13 d. Attorneys' fees;
- 14 e. Costs of suit.

15 3. Preliminarily and permanently enjoining Defendants and their
16 agents, employees, officers, directors, owners, representatives, successor
17 companies, related companies, and all persons acting in concert or participation
18 with them and each of them from:

19 The import, export, making, manufacture, reproduction, assembly,
20 use, acquisition, purchase, offer, sale, transfer, brokerage,
21 consignment, distribution, storage, shipment, licensing,
22 development, display, delivery, marketing, advertising or
23 promotion of the unauthorized and counterfeit Irritec products as
24 identified in the complaint and any other unauthorized Irritec
25 product or colorful imitation thereof using the Trade Dress;

26 4. Pursuant to 15 U.S.C. § 1116(a), directing Defendants to file with
27 the Court and serve on Irritec within thirty (30) days after issuance of an
28 injunction, a report in writing and under oath setting forth in detail the manner

1 and form in which Defendants have complied with the injunction;

2 5. For an order from the Court requiring that Defendants provide
3 complete accountings and for equitable relief including that Defendants
4 disgorge and return or pay their ill-gotten gains obtained from the illegal
5 transactions entered into and pay restitution, including the amount of monies
6 that should have been paid if Defendants had complied with their legal
7 obligations, or as equity requires;

8 6. Pursuant to 15 U.S.C. § 1118, requiring that Defendants and all
9 others acting under Defendants' authority or at their cost, be required to deliver
10 to Plaintiff for destruction of all products, accessories, labels, signs, prints,
11 packages, wrappers, receptacles, advertisements, and other material in their
12 possession, custody or control baring any of the Irritec trademarks.

13 7. For restitution for unfair, fraudulent, and illegal business practices
14 under California Business & Professions Code § 17200 in an amount to be
15 proven at trial;

16 8. For damages in an amount to be proven at trial for unjust enrichment;

17 9. For an award of exemplary and punitive damages in amount to be
18 determined by the Court;

19 10. For Plaintiff's reasonable attorneys' fees;

20 11. For all costs of suit;

21 12. For such other and further relief as the Court may deem just and
22 equitable.

23 Dated: April 18, 2022

ONE LLP

24 By: /s/ Peter R. Afrasiabi

25 Peter Afrasiabi
26 Dave Duckworth
27 David W. Quinto

28 Attorneys for Plaintiff,
IRRITEC USA, INC.

DEMAND FOR JURY TRIAL

Plaintiff Irritec USA, Inc. hereby demands trial by jury of all issues so triable under the law.

Dated: April 18, 2022

ONE LLP

By: /s/ Peter R. Afrasiabi

Peter Afrasiabi
Dave Duckworth
David W. Quinto

Attorneys for Plaintiff,
IRRITEC USA, INC.