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13
14 **UNITED STATES DISTRICT COURT**

15 **EASTERN DISTRICT OF CALIFORNIA**

16 ARIES GASIFICATION, LLC,)
17 Plaintiff,)
18 v.)
19 NORTH FORK COMMUNITY POWER,)
LLC, a California limited liability company,)
20 PHOENIX BIOMASS ENERGY, INC., a)
Delaware corporation, and EQTEC PLC, a)
21 foreign corporation,)
22 Defendants.)

CASE NO. 1:20-cv-00961-AWI-BAM

**REPLY MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF
DEFENDANTS' JOINT MOTION TO
DISMISS PURSUANT TO FED. R. CIV. P.
12(b)(6)**

Complaint Filed Date: July 9, 2020

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28

1 **I. INTRODUCTION**

2 Ariès is now backtracking from an already deficient Complaint that ignored most elements
3 from its asserted claims. For the few elements that Ariès did address, it relied on only the EQTEC
4 gasifier pictured in Exhibit 5 to its Complaint. Dkt. 1 ¶¶ 27-30 (“[T]he EQTEC documentation [in
5 Exhibit 5] describes biomass gasifiers that infringe the claims ...”). Yet Ariès now states, “to be
6 clear: at no point does Ariès’ Complaint accuse the exact gasifier pictured in Complaint Exhibit 5 of
7 infringement.” *See Opp.* at 11. But without that “exact gasifier,” no substance remains. The Court is
8 left with a wholly speculative complaint that has zero plausible infringement allegations.

9 There is a reason for Ariès’ about-face. Ariès has finally accepted what Defendants have
10 been saying for months, and what Exhibit 5 itself demonstrates—the only specific gasifier accused
11 in Ariès’ Complaint would be invalidating prior art. Ariès therefore abandoned its only prior attempt
12 to compare its patent claims to any EQTEC gasifier. Now, nothing in the Complaint even attempts to
13 allege plausible facts in the manner that Supreme Court precedent requires. A complaint must, at a
14 minimum, provide facts sufficient for the Court to find it plausible that an accused product meets
15 every element of at least one asserted patent claim. Ariès provides no such facts. Instead, Ariès asks
16 the Court to improperly return to the “good old days” of bare notice pleading, when merely
17 identifying a product and generically alleging infringement was sufficient to embark on a years-long
18 patent war, burdening the federal courts and costing defendants millions to defend. Such concerns
19 are heightened here because Ariès’ deficient infringement allegations are the only offered basis for
20 exercising jurisdiction over EQTEC, a foreign defendant. Thankfully, those days are gone. The law
21 does not permit Ariès to bring them back.

22 Ariès’ new position is that it knows nothing at all about any accused EQTEC product except
23 that (a) it appears to be some kind of forestry waste gasifier, and (b) it will someday be imported and
24 used in North Fork. Lacking anything more, Ariès illogically now attempts to excuse its deficient
25 Complaint by faulting EQTEC for lawfully maintaining its own trade secrets as, well, secrets. Ariès’
26 new excuse fails. True, EQTEC rightly refused Ariès’ demands that EQTEC disclose its confidential
27 product designs to its competitor’s Chief Technology Officer (although EQTEC did provide
28 sufficient technical information to confirm non-infringement). *See Mot.* at 3-5 and Ex. A. That

1 refusal was particularly justified because Aries never offered any basis whatsoever for its
2 infringement assertions. But even if Aries had, no law requires a company to disclose its most
3 confidential information to a competitor to avoid wholly speculative litigation. Nor can Aries shift
4 the burden to Defendants to establish non-infringement. That would turn the law on its head.

5 What the law actually requires is that Aries, as the patent plaintiff, provide facts that support
6 a plausible and non-speculative infringement claim. Aries' own cited authority confirms this. Every
7 decision that Aries cites either (a) has been abrogated by the Supreme Court's precedent and clear
8 amendments to the Federal Rules, (b) arose in a situation where, unlike Aries, the plaintiff alleged
9 plausible factual detail for all claim elements and provided sufficient factual allegations to render
10 any unknown product details plausible, or (c) both. Aries provides no authority that permits a
11 speculative infringement complaint against unknown features of a future product yet to be imported,
12 assembled, or used, and without any plausible factual support for any asserted claims.

13 Despite Aries' improper attempts to introduce new facts via its opposition brief, Aries still
14 fails to provide sufficiently plausible allegations to even begin to meet the required pleading
15 standards. The Defendants respectfully submit that Aries' Complaint must be dismissed.

16 **II. ARIES' COMPLAINT MUST BE DISMISSED**

17 **A. Aries ignores the law that forbids baseless and speculative pleadings.**

18 The core argument permeating Aries' brief is an attempt to revive defunct case law
19 surrounding the "notice pleading" standard of old Form 18. That form accompanied old Rule 84 of
20 the Federal Rules of Civil Procedure and described a barebones infringement complaint having the
21 kind of speculative and unsupported infringement claims that Aries now proffers. But in December
22 2015, the Supreme Court struck Rule 84 and Form 18 by amendment, thus ending the era of notice
23 pleading for patent claims.¹ With Form 18 gone, a plaintiff may no longer proceed by merely
24 alleging jurisdiction, patent ownership, infringement and damages, without providing sufficient facts
25 to render the infringement allegation plausible and non-speculative.

26 Aries' improper resort to the old law is perhaps unsurprising: its Complaint barely suffices to

27 _____
28 ¹ See Supreme Court Amendments to the Federal Rules of Civil Procedure (Dec. 1, 2015) at
[http://www.supremecourt.gov/orders/courtorders/frev15\(update\)_1823.pdf](http://www.supremecourt.gov/orders/courtorders/frev15(update)_1823.pdf).

1 meet the old Form 18 standard, particularly now that Aries has stripped it of even the few deficient
 2 allegations that it did contain (i.e., the labeled pictures regarding Exhibit 5). The law no longer
 3 permits such deficient pleadings. As of December 1, 2015, “allegations of direct infringement are
 4 now subject to the pleading standards established by *Twombly* and *Iqbal*, requiring plaintiffs to
 5 demonstrate a ‘plausible claim for relief.’” *Atlas IP LLC v. Pacific Gas and Elec. Co.*, No. 15-CV-
 6 05469-EDL, 2016 WL 1719545, *2 (N.D. Cal. Mar. 9, 2016) (citing *Bell Atl. Corp. v. Twombly*, 550
 7 U.S. 544, 555 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Further, a complaint’s
 8 sufficiency is determined by its contents alone, which must include factual allegations that rise
 9 “above the speculative level.” *Mosaic Brands, Inc. v. The Ridge Wallet LLC*, No. 2:20-cv-
 10 04556ABJCX, 2020 WL 5640233, at *2 (C.D. Cal. Sept. 3, 2020) (emphasis added).

11 Aries has not, and now admittedly cannot, meet this burden. Instead, Aries relies on decisions
 12 dating from years before the 2015 amendment that struck Form 18. *See* Opp. at 3, 5-6 (citing *K-Tech*
 13 *Telecomms., Inc. v. Time Warner Cable, Inc.*, 714 F.3d 1277 (Fed. Cir. 2013), *ABB Turbo Sys. AG v.*
 14 *TurboUSA, Inc.*, 774 F.3d 979, 988 (Fed. Cir. Dec. 17, 2014), *Potter Voice Techs., LLC v. Apple*
 15 *Inc.*, 24 F. Supp. 3d 882, 887 (N.D. Cal. January 6, 2014)). Those decisions are no longer good law
 16 and provide no reliable information regarding what suffices to state a claim under the current
 17 standards. *See, e.g., Big Baboon, Inc. v. SAP Am., Inc.*, No. 17-CV-02082-HSG, 2018 WL 1400443,
 18 at *2-3 (N.D. Cal. Mar. 20, 2018) (discussing the abrogation of Rule 84 and Form 18 as applied in
 19 the 2013 *K-Tech* decision that Aries relies upon).

20 Aries now asserts that because it lacks sufficient facts to provide any plausible infringement
 21 allegations, it should be permitted to proceed based on a sheer possibility that a gasifier used in
 22 North Fork will someday, somehow, meet all elements of an asserted claim. But the “facial
 23 plausibility standard ... requires the plaintiff to allege facts that add up to ‘more than a sheer
 24 possibility that a defendant has acted unlawfully.” *Big Baboon*, 2018 WL 1400443, at *3 (emphasis
 25 added). Aries’ Complaint is wholly speculative and its cited authority is dead letter.

26 **B. Aries’ infringement allegations remain deficient and have grown weaker.**

27 Contrary to all decisions from this court and others throughout the Ninth Circuit, Aries’
 28 Complaint fails to allege plausible facts as to each asserted claim. *See* Mot. at 8-19. Rather than

1 address these deficiencies, Aries takes a giant step backward. Contradicting the infringement
 2 allegations throughout its Complaint, Aries now abandons all accusations against the prior art
 3 gasifier in Exhibit 5. But that prior art gasifier is the only product Aries ever compared to any (but
 4 not all) asserted claim elements. *See* Dkt. 1 ¶¶ 29, 38, 47, 56, 65. Now, Aries admits that it can only
 5 speculate that a future North Fork gasifier might someday, somehow, someway infringe. Opp. at 10
 6 (admitting that Aries has no further technical information about the North Fork project and Aries has
 7 already provided all the information that it has). No law permits a suit based wholly on such
 8 speculation. *Mosaic Brands*, 2020 WL 5640233, at *2.

9 Aries attempts to deflect from its deficient pleadings with the strawman argument that “claim
 10 charts” are not required—an improper attempt to elevate form over function. Opp. at 3-4.
 11 Defendants never asserted that Aries’ allegations must be in chart form. Rather, Aries’ Complaint is
 12 vacuous no matter the format. The law requires, however presented, a complaint that “plausibly
 13 allege[s] that the accused products practice each of the limitations found in at least one asserted
 14 claim.” *e.Digital Corp. v. iBaby Labs, Inc.*, No. 15-CV-05790-JST, 2016 WL 4427209, at *3-4
 15 (N.D. Cal. Aug. 22, 2016); Mot. at 10-11 (discussing cases). Indeed, even a complaint that uses a
 16 chart format, and addresses every claim element (which Aries has not even attempted to do), fails to
 17 satisfy the pleading standards if the factual allegations within that chart are deficient. *Mosaic*
 18 *Brands*, 2020 WL 5640233, at *2. A complaint must plausibly address each element, whether in
 19 prose or in a chart. *Id.* The Complaint does not meet these pleading standards, and Aries’ opposition
 20 brief cannot rectify these deficiencies.²

21 **C. Aries’ “secrecy” gripes fail to justify its completely speculative accusations.**

22 Aries mistakenly suggests that its complete lack of facts about the North Fork gasifier entitles
 23

24 ² Lacking any supporting facts, Aries tries to bootstrap its speculative allegations with undisclosed,
 25 unspecified “knowledge and experience” never provided in the Complaint. Opp. at 12. Indeed, Aries’
 26 opposition is improperly rife with new factual allegations. *See, e.g.*, Opp. at 1 (“Defendants have purposefully
 27 hidden information about the technical specifications of the North Fork reactor.”); *Id.* at 8 (allegations
 28 regarding supposed “simple technical diagrams”); *Id.* at 4-5 and Ex. A (relying on a declaration provided in
 post-Complaint settlement negotiations); *Id.* at 7-8 (asserting new facts regarding gasifier technology
 generally), *Id.* at 11, 12 n.7 & Ex. B (relying on post-filing documents). The Court must disregard these
 unpled statements, which in any event would not raise Aries’ allegations beyond their current speculative
 level. *See Ervin v. Drennan, et al*, No. 2:19-cv-01883-KJM-CKD PS, 2020 WL 7769832, at *1 (E.D. Cal.
 Dec. 30, 2020) (“[T]he court disregards any additional allegations asserted only in plaintiff’s opposition.”).

1 it to a lower pleading standard—a standard it hopes will allow a wholly speculative complaint that
2 pleads every claim element on “information and belief” (a statement that would be untrue here, and
3 violate Rule 11, because Aries admits that it lacks any “information” from which it could plausibly
4 form any such “belief”). Opp. at 5-8. But Aries’ unsupported speculation and its desire to “look
5 under the hood” to gain access to Defendants’ confidential information and trade secrets do not give
6 it license to pursue baseless litigation simply because it acquired four patents in the broad gasifier
7 industry. To proceed, federal litigation requires more than a hope and prayer.

8 Aries attempts to justify its vacuous Complaint by citing exclusively out-of-circuit decisions
9 for the premise that a plaintiff need not plead any plausible facts with respect to any specific claim
10 elements if it lacks full insight into a defendant’s product. *See* Opp. at 5-6. But Aries’ cited decisions
11 fail to support such an interpretation, and fail to justify Aries’ speculative Complaint.

12 In *Gracenote*, the complaint “name[d] and describe[d] the product,” “describe[d] in detail”
13 how the accused product functioned, “state[d] its theory of infringement,” “provide[d] a detailed
14 description of the alleged infringing conduct,” and “provide[d] all information that detailed
15 infringement charts would provide.” *Gracenote, Inc. v. Sorenson Media, Inc.*, No. 2:16-CV-950 CW,
16 2017 WL 2116173, *3 (D. Utah May 15, 2017). Further, the *Gracenote* allegations “encompass[ed]
17 the limitations from each of the asserted infringed patent claims,” and the “infringing conduct
18 alleged [was] specific and detailed” with only “some” (not all) infringement allegations made on
19 information and belief. *Id.* at *3. None of that is present in Aries’ Complaint.

20 *Gracenote* cited the now abrogated *K-Tech* decision, but only for the premise that, where the
21 complaint provided detailed facts that were sufficient to conclude that “all of the [accused product]
22 suites appear to be implicated in the infringing conduct,” the defendant could not avoid suit by
23 keeping secret where within its software suite it chose to implement the specifically accused
24 functionality. *Id.* at *3 (emphasis added). The *Gracenote* decision noted that, under the
25 circumstances, the *names* of the accused products’ specific software modules need not be provided
26 because they were “particularly within the control of the defendant.” *Id.* at *4. But nowhere did the
27 *Gracenote* court, or any other, permit a completely speculative complaint, devoid of any plausible
28 and salient facts about the accused product’s functionality, as Aries proffers here.

1 Aries’ remaining decisions also fail to support its request that this Court permit a completely
2 speculative complaint. As Aries’ brief seems to admit, none of its decisions countenanced an
3 infringement complaint completely devoid of factual allegations regarding the accused product’s
4 functionality as to each claim element. *Lacks Enterprises* did not address this issue at all and instead
5 found a breach of contract claim sufficient where the “Defendant alone” had information regarding
6 just one item—the dates that it produced the royalty-bearing products. Opp. at 6; *Lacks Enterprises,*
7 *Inc. v. HD Supply, Inc.*, No. 16-10867 DPH, 2016 WL 6083748, at *6 (E.D. Mich., Oct. 18, 2016).

8 In *Network Managing Solutions*, the Court actually dismissed the case. *Network Managing*
9 *Solutions, LLC v. Cellco Partnerships*, No. 16-CV-295 (RGA), 2017 WL 472080 at *1 (D. Del. Feb.
10 3, 2017). The plaintiff tried to allege infringement of every asserted claim element by proxy—
11 asserting that the patents applied to specific industry standards for cellular communication and that
12 the defendants adopted those standards. *Id.* The Court found that this proxy-based allegation might
13 be acceptable, but only if the plaintiff could amend its complaint to allege that “to practice the
14 standard necessarily means that defendant also practices the patent.” *Id.* (emphasis added). Aries has
15 made no such infringement allegations here, not directly and not by proxy. The Complaint does not,
16 and cannot, plausibly allege that any EQTEC gasifier “necessarily” infringes any patents. To the
17 contrary, there are potentially innumerable ways to construct a gasifier.³ For any missing claim
18 elements (which in this case is all of them), Aries must at least provide sufficient facts to show that
19 infringement is “the only way” the accused products could plausibly operate. *Pure Parlay LLC, v.*
20 *Stadium Tech. Group, Inc; GVC Holdings, PLC*, No. 2:19-CV-00834-GMN-BNW, 2021 WL 94478,
21 at *4 (D. Nev. Jan. 11, 2021) (emphasis added) (“Plaintiff has not provided any fact-based
22

23 ³ Aries admits that “[s]everal methods of gasification are possible.” Dkt. 1 ¶ 19. Indeed, a search for
24 “gasifier” within the “claim(s)” field on the USPTO database confirms this. The search yields 1,634 granted
25 patents describing various gasification technologies. See <http://patft.uspto.gov/netacgi/nph-Parser?Sect1=PTO2&Sect2=HITOFF&p=1&u=%2Fnetacgi/nph-bool.html&r=0&f=S&l=50&TERM1=gasifier&FIELD1=ACLM&co1=AND&TERM2=&FIELD2=&d=PTX>
26 T (last visited Jan. 15, 2021). One such patent, US1941678A (Henri) claims priority to the 1920s. See
27 <https://patents.google.com/patent/US1941678A/> (last visited Jan. 16, 2021). Gasification is thus at least a
28 century-old technology, with countless modifications and improvements made thereon, resulting in the wide
variety of gasifier technology found in the market today. The Court may take judicial notice of such materials. *Mir v. Little Co. of Mary Hosp.*, 844 F.2d 646, 649 (9th Cir. 1988).

1 explanation regarding why [practicing the missing claim elements] is ‘the only way’ for the Accused
2 Product to determine baseline odds”). Aries has shown no industry standard or technical constraint
3 that warrants any such inference.

4 Similarly, the plaintiff in *K-Tech*, the abrogated decision that serves as the thin reed on which
5 Aries bases its opposition, alleged infringement by proxy. *K-Tech*, 714 F.3d at 1282. K-Tech
6 explained why and how its patents applied to industry standards for digital television and alleged
7 facts showing that the applicable regulatory scheme would “require” complying with those
8 standards. *Id.* at 1282, 1285 (emphasis added). Aries has no such facts.

9 Only for the identity of the “specific device or product” within the defendants’ overall
10 systems did *K-Tech* state that a defendant could not “shield itself from a complaint for direct
11 infringement by operating in such secrecy that the filing of a complaint itself is impossible” (when
12 Form 18 was available). *Id.* at 1286. Lacking infringement facts, Aries now seeks to make an
13 accused products’ mere identity (here, a gasifier for North Fork) the tail that wags the entire
14 plausibility dog. *Opp.* at § II.A. But merely identifying an accused product has never been sufficient
15 to render an infringement claim plausible, not even when Form 18 was alive. For example, as
16 explained above, the complaint in *K-Tech* went far beyond categorically identifying the accused
17 product. Instead, K-Tech’s complaint explained, amongst many other factual details, exactly “what
18 K-Tech asserts [the accused] systems do, and why.” *K-Tech*, 714 F.3d at 1287. Aries’ Complaint
19 lacks this “what” and “why.” Aries admittedly has no facts about “what” the North Fork gasifier
20 does and never provides any basis for “why” it would be plausible to conclude that this gasifier
21 would meet any, let alone all, elements of any patent claim. As *K-Tech* itself confirmed “we think it
22 clear that an implausible claim for patent infringement rightly should be dismissed.” *Id.* at 1284.

23 Aries improperly seeks to concoct from its cited decisions a new rule that (a) because some
24 courts allowed some plaintiffs to proceed despite partially lacking information (in situations where
25 the plaintiff could nevertheless provide facts that supported reasonable inferences regarding all
26 missing information), (b) this court must permit a “notice” pleading that completely lacks any
27 factual allegations, circumstantial or otherwise, regarding all elements required to state a plausible
28 infringement claim. There is no such rule. This Court should decline Aries’ invitation to create one

1 because that would require rejecting the Supreme Court’s precedent in *Twombly* and *Iqbal*, and
2 decisions from district courts throughout the Ninth Circuit. Courts must reject such speculative
3 pleading where the complaint fails to at least allege facts sufficient to render it plausible that
4 infringement is “the only way” for accused products to work. *Pure Parlay*, 2021 WL 94478, at *4.

5 Aries retracted all accusations regarding the only EQTEC gasifier it even partially analyzed.
6 *See Opp.* at 11 (“[A]t no point does Aries’ Complaint accuse the exact gasifier pictured in Complaint
7 Exhibit 5 of infringement”). Aries now points to no product, no functionality, no proxy, and no
8 necessity that could justify its claims. Indeed, Aries admits that it cannot point to any specific
9 product or any functionality at all, which is no surprise because the North Fork project site was an
10 empty field when Aries filed its Complaint. *Opp.* at 7 (“[N]othing about the North Fork project,
11 including the ultimate embodiment of the gasification reactor being constructed, is public.”). Yet,
12 providing plausible facts for each claim element is exactly what Aries’ own cited authority requires.

13 Unlike the plaintiffs in all of Aries’ cited decisions, Aries fails to plausibly allege that any
14 asserted claim element has been met. Allowing such a speculative complaint would give Aries free
15 reign to indiscriminately sue anyone and everyone in the gasification industry. Indeed, this would
16 open the floodgates to completely speculative infringement complaints by patent holders across all
17 industries. The law closed those gates permanently when Form 18 was stricken; they should not be
18 reopened for Aries now, based on so little.

19 **D. Aries cannot shift the burden to the defendants to prove non-infringement.**

20 Continuing its improper campaign to force Defendants to reveal their trade secrets, Aries
21 makes the illogical argument that Defendants should have supported their motion with a declaration
22 disclosing confidential accused product details and providing a “non-infringement” claim chart.
23 *Opp.* at 9-10 (“Notably, Defendants’ Motion does not provide the Court with detailed claim charts
24 that clearly show how infringement of Aries’ patents by the North Fork reactor is impossible.”).
25 Aries cites nothing to support that remarkable proposition because the law is directly to the contrary.
26 The burden is now, and always will be, on Aries to show infringement. *Synchronoss Techs., Inc. v.*
27 *Dropbox Inc.*, 389 F. Supp. 3d 703, 709 (N.D. Cal. 2019) quoting *Dolly, Inc. v. Spalding & Evenflo*
28 *Cos.*, 16 F.3d 394, 397 (Fed. Cir. 1994) (The patent holder has the burden to prove that each accused

1 product “includes every limitation of [an asserted] claim.”). Moreover, defendants are not permitted
2 to support a motion to dismiss with new facts outside the complaint (except materials warranting
3 judicial notice). Defendants thus need not show any evidence of non-infringement here, let alone
4 disclose their trade secrets. To the contrary, the issue before the Court is the complete absence of any
5 facts sufficient to render Aries’ infringement contentions plausible. Aries’ attempts to shift the
6 burden of non-infringement to the Defendants are a baseless distraction.

7 **E. Aries failed to adequately plead indirect or willful infringement.**

8 Aries’ indirect and willful infringement claims still fail alongside its direct infringement
9 claims. Mot. at 19-20, 24; *Gutterglove, Inc. v. American Die and Rollforming, Inc.*, No. 2:16-CV-
10 02408-WHO, 2018 WL 2356756, at *14 (E.D. Cal. May 24, 2018); *AlterG, Inc. v. Boost Treadmills*
11 *LLC*, 388 F. Supp. 3d 1133, 1143-44. Further, a claim for contributory infringement requires facts—
12 not threadbare conclusions—demonstrating the components sold or offered for sale have no
13 substantial non-infringing uses. *Artrip v. Ball Corporation*, 735 Fed. Appx. 708, 713 (Fed. Cir.
14 2018) (citing *In re Bill of Lading*, 681 F.3d 1323, 1337 (Fed. Cir. 2012)). Yet, Aries provides only a
15 boilerplate recitation of the elements of contributory liability. Dkt.1 ¶¶ 42, 51, 60, 69 (each vaguely
16 referencing unspecified “biogasifier components”). Aries vaguely points to “biogasifier components
17 being created in North Fork,” but fails to identify any specific components or any plausible factual
18 allegations that such mystery components lack substantial non-infringing uses. Opp. 15-16.

19 Aries spills much ink arguing that it has adequately alleged that Defendants knew of the
20 patents due to Aries’ letters. Opp. at 13-16. But such knowledge alone is insufficient to support
21 indirect or willful infringement claims. For example, mere recitations of willful infringement without
22 factual allegations of specific egregious conduct tied to specifically infringing products are not
23 enough. *Fortinet, Inc. v. Forescout Techs., Inc.*, No. 20-CV-03343-EMC, 2020 WL 6415321, at *14
24 (N.D. Cal. Nov. 2, 2020); *Google LLC v. Princeps Interface Techs. LLC*, No. 19-CV-06566-EMC,
25 2020 WL 1478352, at *2 (N.D. Cal. Mar. 26, 2020) (“courts in this District have required willful
26 infringement claims to show both knowledge of the . . . [p]atents *and* egregious conduct”) (internal
27 citations omitted) (citing *Finjan, Inc. v. Cisco Sys.*, No. 17-CV-00072-BLF, 2017 WL 2462423, at
28 *5 (N.D. Cal. Jun. 7, 2017)). And “[i]nduced infringement requires more than mere knowledge of

1 the induced acts; rather, the accused must have ‘knowledge that the induced acts constitute patent
2 infringement’” as well as the specific intent to infringe. *McRee v. Goldman*, No. 11-CV-00991-LHK,
3 2012 WL 3745190, at *3 (N.D. Cal. Aug. 28, 2012) (citing *Global-Tech Appliances, Inc. v. SEB*
4 *S.A.*, 563 U.S. 754, 764-766 (2011)); *Commil USA, LLC v. Cisco Sys.*, 575 U.S. 632 (2015).

5 Ariès does not allege that it ever provided the Defendants with any claim charts or any other
6 factual basis for any infringement claims,⁴ nor does Ariès allege that it rebutted the Defendants’ pre-
7 suit communications that provided multiple bases for non-infringement. A defendant with a
8 subjective belief of non-infringement merely continuing its normal course of business after a lawsuit
9 has been filed does not constitute intentional or egregious misconduct. *Arbmetrics, LLC v. Dexcom,*
10 *Inc.*, 3:18-cv-00134-JLS-MSB, Dkt. 47 (S.D. Cal. Feb. 19, 2019) (granting motion to dismiss post-
11 suit willfulness claim: “Such a proposition would force defendants that subjectively believe they are
12 not infringing to choose between halting normal business operations as a cautionary measure or face
13 the possibility of a tripled damages . . . This goes against the spirit of *Halq*, which aims to punish
14 only the most dastardly conduct in willful infringement claims.”) (emphasis added).

15 III. CONCLUSION

16 Defendants respectfully request that the Court dismiss Ariès’ speculative and deficient
17 Complaint for failing to state a claim upon which relief may be granted.⁵

18 Dated: January 18, 2021

Respectfully submitted,

19 /s/ Ellisen Shelton Turner
20 Ellisen Shelton Turner
KIRKLAND & ELLIS LLP

21 ⁴ As to Ariès’ cited authority, in *Intellicheck*, the pre-suit letter attached claim charts (unlike Ariès) and
22 *Pagemelding* was decided under the old Form 18 standard. Opp. at 13 (citing *Intellicheck Mobilisa, Inc. v.*
23 *Wizz Sys., L.L.C.*, No. C15-0366JLR, 2016 U.S. Dist. LEXIS 7290 (W.D. Wash. Jan. 20, 2016); *Pagemelding,*
Inc. v. ESPN, Inc., No. C 11-06263 WHA, 2012 U.S. Dist. LEXIS 84293 (N.D. Cal. June 18, 2012)).

24 ⁵ Ariès’ footnote requesting leave to amend is not a proper motion and Defendants’ will respond in full
25 should Ariès ever make a proper motion in that regard. Opp. at 17. But Ariès repeatedly admits that it has
26 already “pleaded its allegations to the best of its abilities based upon the information and knowledge to which
27 it does have access” and that it has no other technical details about any EQTEC gasifier that might someday
28 be operational in North Fork. Opp. at 10. Hence, Ariès’ own brief confirms that any such amendment would
be futile. Notably, Ariès could have amended the Complaint as a right any time before Defendants responded,
or within 21 days after Defendants moved to dismiss, but it did not. Ariès’ belated footnoted request should
be denied. See e.g., *Crone v. Tracy Unified Sch. Dist.*, No. 2:20-CV-01451-JAM-AC, 2020 WL 7182345, at
*2 (E.D. Cal. Dec. 7, 2020) (“The Court need not grant leave to amend where amendment would be futile”)
(citing *Deveraturda v. Globe Aviation Sec. Servs.*, 454 F.3d 1043, 1049 (9th Cir. 2006)).

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SIGNATURE ATTESTATION

I hereby attest that concurrence has been obtained from Shane G. Smith, counsel for Defendants North Fork Community Power, LLC and Phoenix Biomass Energy, Inc., as indicated by a “conformed” signature (/s/) within this e-filed document.

/s/ Ellisen Shelton Turner
Ellisen Shelton Turner

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CERTIFICATE OF SERVICE

I, Ellisen Shelton Turner, an attorney, hereby certify that on January 18, 2021, I caused a true and correct copy of the foregoing document to be served via the Court’s ECF system upon all counsel of record.

/s/ Ellisen Shelton Turner
Ellisen Shelton Turner