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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

WEILAND SLIDING DOORS AND
WINDOWS, INC.,

vs.

PANDA WINDOWS AND DOORS, LLC
and EYAL AVI SHOSHAN,

Plaintiff,

Defendants.

CASE NO. 10CV677 JLS (MDD)

**ORDER GRANTING
DEFENDANTS’ MOTION TO
DISMISS PLAINTIFF’S SECOND
AMENDED COMPLAINT**

(ECF No. 87.)

This is a suit for patent infringement. Plaintiff Weiland Sliding Doors and Windows, Inc. and Defendant Panda Windows and Doors, LLC, are both in the doors and windows industry. Plaintiff is the owner of U.S. Patent Nos. 7,007,343 and 6,792,651. Plaintiff’s second amended complaint (SAC) asserts claims against Panda Windows and Doors and its president, Eyal Avi Shoshan, for direct patent infringement, inducement of infringement, and contributory infringement of the two patents. (SAC, ECF No. 83.)

Presently before the Court is Defendants’ motion to dismiss Plaintiff’s second amended complaint. (Mot. to Dismiss, ECF No. 87.) Also before the Court is Plaintiff’s opposition, (Opp’n, ECF No. 91), and Defendants’ reply, (Reply, ECF No. 94). After consideration, the Court **GRANTS** Defendants’ motion.

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1 **LEGAL STANDARD**

2 Federal Rule of Civil Procedure 12(b)(6) allows a party to assert by motion the defense that
3 the complaint “fail[s] to state a claim upon which relief can be granted,” generally referred to as a
4 motion to dismiss. The Court evaluates whether a complaint states a cognizable legal theory and
5 sufficient facts in light of Federal Rule of Civil Procedure 8(a), which requires a “short and plain
6 statement of the claim” showing that the pleader is entitled to relief. Although Rule 8 “does not
7 require ‘detailed factual allegations,’ . . . it [does] demand[] more than an unadorned, the-
8 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, —U.S.—, 129 S. Ct. 1937, 1949
9 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). In other words, “a
10 plaintiff’s obligation to provide the ‘grounds’ for his ‘entitle[ment] to relief’ requires more than
11 labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.”
12 *Twombly*, 550 U.S. at 555 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). “Nor does a
13 complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Iqbal*,
14 129 S. Ct. at 1949 (citing *Twombly*, 550 U.S. at 557).

15 “To survive a motion to dismiss, a complaint must contain sufficient factual matter,
16 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting *Twombly*,
17 550 U.S. at 570); see also Fed. R. Civ. P. 12(b)(6). A claim is facially plausible when the facts
18 pleaded “allow[] the court to draw the reasonable inference that the defendant is liable for the
19 misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556). That is not to say that the claim must
20 be probable, but there must be “more than a sheer possibility that a defendant has acted
21 unlawfully.” *Id.* Facts “‘merely consistent with’ a defendant’s liability” fall short of a plausible
22 entitlement to relief. *Id.* (quoting *Twombly*, 550 U.S. at 557). Further, the Court need not accept
23 as true “legal conclusions” contained in the complaint. *Id.* This review requires context-specific
24 analysis involving the Court’s “judicial experience and common sense.” *Id.* at 1950. “[W]here the
25 well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct,
26 the complaint has alleged—but it has not ‘show[n]’—‘that the pleader is entitled to relief.’” *Id.*

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1 ANALYSIS

2 I. Direct Infringement

3 Defendants argue that Plaintiff fails to state a direct infringement claim against Eyal Avi
4 Shoshan. Defendants do not challenge the claim as it pertains to Panda Windows and Doors.

5 Shoshan is the president of Panda Windows and Doors. The corporate veil “shields a
6 company’s officers from personal liability for direct infringement that the officers commit in the
7 name of the corporation, unless the corporation is the officers’ ‘alter ego.’” *Wordtech Sys. Inc. v.*
8 *Integrated Networks Solutions, Inc.*, 609 F.3d 1308, 1313 (Fed. Cir. 2010) (citing *Wechsler v.*
9 *Macke Int’l Trade, Inc.*, 486 F.3d 1286, 1295 (Fed. Cir. 2007)). Thus, to determine whether
10 Shoshan is “personally liable for the direct infringement of the corporation under § 271(a) requires
11 invocation of those general principles relating to piercing the corporate veil.” *Orthokinetics Inc. v.*
12 *Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1579 (Fed. Cir. 1986).

13 In patent cases, federal district courts apply the alter ego law of the regional circuit. *See*
14 *Wechsler*, 486 F.3d at 1295 (citing *Institutform Techs., Inc. v. CAT Contracting, Inc.*, 385 F.3d
15 1360, 1380 (Fed. Cir. 2004)). The Ninth Circuit applies the law of the forum state to determine
16 whether a corporation is the alter ego of an individual. *See Towe Antique Ford Foundation v.*
17 *I.R.S.*, 999 F.2d 1387, 1391 (9th Cir. 1993). Thus, this Court looks to California alter ego law.

18 “Determining whether an alter ego exists or whether to pierce the corporate veil depends
19 on the circumstances surrounding each particular case. Two general requirements recognized by
20 California courts are (1) that there be such unity of interest and ownership that the separate
21 personalities of the corporation and the [parent] no longer exist and (2) that, if the acts are treated
22 as those of the corporation alone, an inequitable result will follow.” *Fed. Reserve Bank of San*
23 *Francisco v. HK Sys., Eaton Corp.*, 1997 WL 227955, at *6 (N.D. Cal. April 24, 1997).

24 Plaintiff fails to allege sufficient facts for this Court to reasonably infer that piercing the
25 corporate veil is proper. Plaintiff asserts that it properly alleges a unity of interest because it
26 alleged in its SAC that Shoshan operated Panda Windows and Doors for Shoshan’s personal
27 benefit. (Opp’n 27 (citing to SAC ¶ 27).) The Court strains to infer from such an allegation that
28 there is such unity of interest that Shoshan and Panda Windows and Doors should be considered

1 one personality. *See Neilson v. Union Bank of Cal., N.A.*, 290 F. Supp. 2d 1101, 1116 (C.D. Cal.
2 2003) (“Conclusory allegations of “alter ego” status are insufficient to state a claim.”). But even
3 assuming this allegation is sufficient, Plaintiff fails to allege an inequitable result. “The kind of
4 inequitable result that makes alter ego liability appropriate is an abuse of the corporate form, such
5 as under-capitalization or misrepresentation of the corporate structure to creditors.” *Firstmark*
6 *Capital Corp. v. Hempel Fin. Corp.*, 859 F.2d 92, 94 (9th Cir. 1988) (internal citations and
7 quotations omitted). Plaintiff makes no such allegations of inequitable result here.

8 Plaintiff’s cause of action for direct infringement is **DISMISSED WITHOUT**
9 **PREJUDICE** as to Defendant Shoshan. Plaintiff fails to allege sufficient factual basis to satisfy
10 the Rule 8 pleading standard.

11 **II. Inducement of Infringement**

12 Plaintiff asserts claims for inducement of infringement against both Shoshan and Panda
13 Windows and Doors. Defendants argue that the claims fail because Plaintiff fails to allege that
14 either defendant had the requisite intent to induce infringement. (Opp’n 5–6.)

15 Under § 271(b), “[w]hoever actively induces infringement of a patent shall be liable as an
16 infringer.” 35 U.S.C. § 271(b). “To prevail on inducement, the patentee must show, first that
17 there has been direct infringement, and second that the alleged infringer knowingly induced
18 infringement and possessed specific intent to encourage another’s infringement.” *Kyocera*
19 *Wireless Corp. v. ITC*, 545 F.3d 1340, 1353–54 (Fed. Cir. 2008) (internal citations and quotations
20 omitted). “[T]he specific intent necessary to induce infringement requires more than just intent to
21 cause the acts that produce direct infringement. Beyond that threshold knowledge, the inducer
22 must have an affirmative intent to cause direct infringement.” *Id.* at 1354 (internal citations
23 quotations omitted).

24 Plaintiff’s SAC fails to allege a § 271(b) violation against either defendant. As an initial
25 matter, Plaintiff fails to allege that there has been direct infringement by a third party. In *Kilopass*,
26 the plaintiffs identified a third party, XMOS, that was allegedly directly infringing on the
27 plaintiff’s patents. *Kilopass*, 2010 WL 5141843, at * 3–4. No allegations concerning patent
28 infringement by a third party can be found within Plaintiff’s SAC. At best, Plaintiff provides a

1 perfunctory allegation that Defendants “actively induce infringement of the Plaintiff’s patents in
2 the United States.” (SAC ¶ 31.) Having failed allege that third parties have directly infringed, the
3 Court finds it difficult to infer that Defendants had the requisite affirmative intent to cause direct
4 infringement.

5 Plaintiff’s cause of action for inducement of infringement is **DISMISSED WITHOUT**
6 **PREJUDICE** as to both defendants. Plaintiff fails to allege sufficient factual basis to satisfy the
7 Rule 8 pleading standard.

8 **III. Contributory Infringement**

9 Plaintiff asserts claims for contributory infringement against both Shoshan and Panda
10 Windows and Doors. Defendants argue that the claims fail because Plaintiff fails “to identify any
11 ‘component’ of a drainage track that is sold by Panda/Shoshan, with knowledge that it is especially
12 designed for use in a patented invention.” (Opp’n 7.)

13 Under 35 U.S.C. § 271(c), whomever offers to sell or sells within the United States a
14 component for use in a patented invention is liable for contributory infringement if: (1) the
15 component constitutes “a material part of the invention”; (2) the alleged infringer knows that the
16 component is “especially made or especially adapted for use in an infringement of [the] patent”;
17 and (3) the component is “not a staple article or commodity of commerce suitable for substantial
18 noninfringing use.” 35 U.S.C. § 271(c); *see also i4i P’ship v. Microsoft Corp.*, 598 F.3d 831,
19 850–51 (Fed. Cir. 2010). A plaintiff must also show direct infringement by a third party. *See*
20 *Anton/Bauer, Inc. v. PAG, Ltd.*, 329 F.3d 1343, 1349 (Fed. Cir. 2003).

21 Plaintiff’s allegations regarding “components” are insufficient to plead a § 271(c)
22 violation. Plaintiff pleads that “Defendants have sold and continue to sell in the United States
23 components that are a material part of the Patented Door Systems taught by the ‘343 and the ‘651
24 patents” SAC ¶ 37. This allegation does nothing more than mirror statutory language. And
25 other than this statement, the SAC is devoid of factual allegations regarding components. The
26 Court finds that the complaint does not contain sufficient factual matter to state a claim to relief
27 that is plausible on its face. *See Iqbal*, 129 S. Ct. at 1949.

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1 Plaintiff cites *Kilopass Tech Inc. v. Sidense Corp.*, 2010 WL 5141843 (N.D. Cal. Dec. 13,
2 2010), in support of the argument that Plaintiff need not identify specific components. The
3 *Kilopass* defendant argued that the plaintiff failed to assert a § 271(c) claim because of the
4 Supreme Court’s ruling in *Microsoft Corp. v. AT&T Corp.*, 550 U.S. 437 (2007). The *Kilopass*
5 plaintiff relied on “GDS files” as the component. The *Kilopass* defendant argued that the
6 “Supreme Court clearly stated that ‘information, instructions or tools’ used to create
7 components—which is what [Defendant’s] GDS files are here—are not themselves components
8 under the patent laws.” *Kilopass*, 2010 WL 2141843, at *5. Thus, the *Kilopass* defendant argued,
9 the plaintiff failed to state a § 271(c) claim.

10 Far from disaffirming the need to allege a specific component, the *Kilopass* court
11 dismissed the defendant’s argument on the basis that *Microsoft Corp. v. AT&T Corp.* was a
12 § 271(f) case and inapplicable to the plaintiff’s § 271(c) claim. *Kilopass*, 2010 WL 2141843, at
13 *5. *Kilopass* does not stand for the proposition that “no specific identification of a supplied
14 component was necessary at the pleading stage.” (Opp’n 13.) Thus, this Court finds Plaintiff’s
15 reliance on *Kilopass* unhelpful.

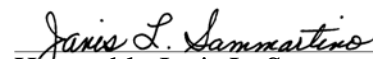
16 Plaintiff’s cause of action for contributory infringement is **DISMISSED WITHOUT**
17 **PREJUDICE** as to both defendants. Plaintiff fails to allege sufficient factual basis to satisfy the
18 Rule 8 pleading standard.

19 CONCLUSION

20 For the reasons stated about, Defendants’ motion to dismiss is **GRANTED** in its entirety.
21 Plaintiff’s claim against Eyal Avi Shoshan for direct infringement and its claims for inducement of
22 infringement and contributory infringement are **DISMISSED WITHOUT PREJUDICE**. Any
23 amended complaint **SHALL** be filed within 28 days of this Order being electronically docketed.

24 **IT IS SO ORDERED.**

25
26 DATED: August 10, 2011

27 
28 Honorable Janis L. Sammartino
United States District Judge