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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SOHEIL K. SHARAFABADI,

Plaintiff,

v.

UNIVERSITY OF IDAHO, et al.,

Defendants.

CASE NO. C09-1043JLR

ORDER ON PNW'S AND L.A.  
HEARNE'S MOTIONS TO  
DISMISS

**I. INTRODUCTION**

This matter comes before the court on Defendant Pacific Northwest Farmers Cooperative, Inc.'s ("PNW") motion to dismiss (Dkt. # 14) and Defendant L.A. Hearne Company's ("L.A. Hearne") motion to dismiss (Dkt. # 24). PNW and L.A. Hearne request that the court dismiss Plaintiff Soheil K. Sharafabadi's direct and indirect patent infringement claims against them pursuant to Federal Rule of Civil Procedure 12(b)(6). Having reviewed the motions, as well as all papers filed in support and opposition, and

1 | deeming oral argument unnecessary, the court GRANTS in part and DENIES in part  
2 | PNW’s motion to dismiss (Dkt. # 14) and GRANTS L.A. Hearne’s motion to dismiss  
3 | (Dkt. # 24).

## 4 | **II. BACKGROUND**

5 | This is a patent infringement action concerning United States Patent No. 4,980,186  
6 | (“‘186 Patent”), titled “Pseudoplastic Yellow Mustard Gum.” (Compl. (Dkt. # 1) ¶ 13 &  
7 | Ex. 1 (‘186 Patent).) Plaintiff Soheil K. Sharafabadi, a Canadian citizen proceeding *pro*  
8 | *se*, is the inventor and owner of the ‘186 Patent. (*Id.* ¶ 1.) The patent abstract describes  
9 | the ‘186 Patent as “[a]n improved process of gum extraction from whole yellow mustard  
10 | seed . . . .” (*Id.*, Ex. 1.) In general terms, the ‘186 Patent involves a time-temperature  
11 | interdependent process of extracting gum (or mucilage) from yellow mustard seeds by  
12 | treating the seeds in hot water.

13 | In 1992, the University of Idaho allegedly began using the ‘186 Patent as a  
14 | research tool in the course of its breeding program for advanced yellow mustard seed  
15 | lines and cultivars. (*Id.* ¶ 23.) The breeding program resulted in the development of the  
16 | IdaGold yellow mustard seed. (*Id.*) The mucilage content of the IdaGold seed “is  
17 | significantly and markedly higher (better quality) than in any of the alternative cultivars  
18 | available.” (*Id.*, Ex. 2.) Mr. Sharafabadi contends that the University of Idaho used the  
19 | ‘186 Patent as an efficient method to test the mucilage content of its seeds while  
20 | developing the IdaGold seed. (*E.g., id.* ¶ 28.)

1 PNW is an Idaho non-profit agricultural cooperative that sells mustard seeds,  
2 including the IdaGold, to farmers, seed companies, and chemical dealers.<sup>1</sup> (*Id.* ¶ 39;  
3 Declaration of Bill Newbry (“Newbry Decl.”) (Dkt. # 15) ¶¶ 1, 6-8.) In 2003, the  
4 University of Idaho began licensing the IdaGold seeds to PNW’s predecessor-in-interest,  
5 Genesee Union Warehouse Cooperative (“Genesee”).<sup>2</sup> (Compl. ¶ 38.) Genesee  
6 distributed or sold the IdaGold seeds. (*Id.*) In 2008, Genesee merged with another entity  
7 to form PNW, which continues to sell the IdaGold seeds. (*Id.* ¶ 39.) Mr. Sharafabadi  
8 alleges that PNW and Genesee use or used the ‘186 Patent as a quality-control method  
9 for the IdaGold seeds. (*Id.* ¶¶ 38-39.) Specifically, Mr. Sharafabadi alleges:

10 The Defendant PNW Coop has been actively and continuously involved in  
11 distribution, growing, producing, trading, selling, marketing, exporting the  
12 IdaGold yellow mustard seeds which in its development and making fall  
13 within one and more claims of the “186 Patent”. During various stages of  
14 productions and processing of IdaGold yellow mustard seeds the  
15 Defendants Pacific Northwest Farmers Coop uses the “186 Patent” to  
16 produce [a] substantial amount of Pseudoplastic Yellow Mustard Gum for  
17 measuring its viscosity as a means to ensure the quality characteristics of  
18 the IdaGold yellow mustard seeds as well.

15 (*Id.* ¶ 39; *see also id.* ¶ 38 (pleading similar allegations regarding Genesee).) L.A.  
16 Hearne is a buyer and seller of seeds in King City, California. (*Id.* ¶ 40; Declaration of  
17 Tom Hearne (Dkt. # 25) ¶¶ 2, 4.) L.A. Hearne is a customer of PNW and has purchased

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19 <sup>1</sup> In his complaint, Mr. Sharafabadi names both Pacific Northwest Farmers Coop (PNW  
20 Genesee) and Pacific Northwest Farmers Coop (PNW Colfax) as Defendants. In its motion,  
21 PNW explains that these Defendants are the same entity; PNW merely has offices in both  
22 Genesee, Idaho, and Colfax, Washington. (PNW Mot. at 1 n.1.) Mr. Sharafabadi does not  
dispute this characterization. Therefore, the court will treat both PNW Defendants as a single  
entity.

<sup>2</sup> Genesee is not named as a defendant.

1 | IdaGold seeds from PNW. (Compl. ¶ 40; Hearne Decl. ¶ 3; Newbry Decl. ¶ 13.) With  
2 | respect to L.A. Hearne, Mr. Sharafabadi alleges:

3 |       The Defendant L.A. Hearne Company as an agent or sub-licensee of the  
4 | Defendants PNW Coop and or Montana Specialty Mills, L.L.C. has been  
5 | infringing the “186 Patent” by selling directly, by Phone . . . and by Internet  
6 | . . . in the District of the Washington and throughout the United States the  
7 | IdaGold mustard seeds which in its development employs one and more  
8 | claims of the “186 Patent”.

9 | (Compl. ¶ 40.) The complaint provides no additional factual allegations concerning  
10 | PNW and L.A. Hearne.

11 |       Mr. Sharafabadi alleges claims against PNW and L.A. Hearne for direct and  
12 | indirect infringement of the ‘186 Patent.<sup>3</sup> (*Id.* ¶¶ 14-15, 17-20.) PNW and L.A. Hearne  
13 | now move to dismiss Mr. Sharafabadi’s patent infringement claims against them pursuant  
14 | to Rule 12(b)(6). Mr. Sharafabadi opposes the motions.<sup>4</sup>

### 15 |   **III. ANALYSIS**

#### 16 | **A. Motion to Dismiss Standard**

17 |       To survive a motion to dismiss pursuant to Federal Rule of Civil Procedure  
18 | 12(b)(6), “a complaint must contain sufficient factual matter, accepted as true, to ‘state a  
19 | claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, \_\_\_ U.S. \_\_\_, 129 S. Ct.

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20 |       <sup>3</sup> Mr. Sharafabadi does not cite to specific statutory provisions in his complaint.  
21 | However, he labels his two claims “Direct Infringement of the ‘186 Patent’” and “Contributory  
22 | and Induced Infringement of the ‘186 Patent,” respectively. (Compl. ¶¶ 14-16 (direct) & ¶¶ 17-  
23 | 20 (indirect).)

24 |       <sup>4</sup> Mr. Sharafabadi failed to file his responses to the motion in a timely manner.  
25 | Nevertheless, the court has considered Mr. Sharafabadi’s responses. The court advises Mr.  
26 | Sharafabadi, however, that in the future such late-filed briefing may not be considered.

1 | 1937, 1949 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). It is  
2 | not enough for a complaint to “plead[] facts that are ‘merely consistent with’ a  
3 | defendant’s liability.” *Id.* (quoting *Twombly*, 550 U.S. at 557). Rather, “[a] claim has  
4 | facial plausibility when the plaintiff pleads factual content that allows the court to draw  
5 | the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*  
6 | Although a court considering a motion to dismiss must accept all of the factual  
7 | allegations in the complaint as true, the court is not required to accept as true a legal  
8 | conclusion presented as a factual allegation. *Id.* at 1949-50.

9 |         Form 18 of the Federal Rules of Civil Procedure provides a sample complaint for  
10 | direct patent infringement. *See also* Fed. R. Civ. P. 84 (“The forms in the Appendix  
11 | suffice under these rules and illustrate the simplicity and brevity that these rules  
12 | contemplate.”). The Federal Circuit and a range of district courts have concluded that  
13 | the sample complaint of Form 18 meets the *Twombly* standard. *E.g.*, *McZeal v. Sprint*  
14 | *Nextel Corp.*, 501 F.3d 1354, 1356-58 (Fed. Cir. 2007); *Elan Microelecs. Corp. v. Apple,*  
15 | *Inc.*, No. C09-01531 RS, 2009 WL 2972374, at \*2 (N.D. Cal. Sept. 14, 2009); *Adv.*  
16 | *Analogic Techs., Inc. v. Kinetic Techs., Inc.*, No. C09-1360 MMC, at \*1 (N.D. Cal. July  
17 | 8, 2009); *S.O.I.TEC Silicon On Insulator Techs., S.A. v. MEMC Elec. Materials, Inc.*,  
18 | No. 08-292-SLR, 2009 WL 423989, at \*2 (D. Del. Feb. 20, 2009). Pursuant to Form 18  
19 | a plaintiff alleging a direct infringement claim need only provide the following general  
20 | information:

- 21 |         1) an allegation of jurisdiction; 2) a statement that the plaintiff owns the  
22 |         patent; 3) a statement that defendant has been infringing the patent “by  
       making, selling, and using [the device] embodying the patent”; 4) a

1 statement that the plaintiff has given the defendant notice of its  
infringement; and 5) a demand for an injunction and damages.

2 *McZeal*, 501 F.3d at 1357; see Fed. R. Civ. P. Form 18. In *McZeal*, the Federal Circuit  
3 determined that a complaint for direct patent infringement that includes these elements is  
4 sufficient to meet “the low bar for pro se litigants to avoid dismissal on the basis of Fed.  
5 R. Civ. P. 12(b)(6).”<sup>5</sup> *Id.* at 1358. By contrast, the Federal Rules of Civil Procedure do  
6 not provide an analogous form for indirect patent infringement claims. See *Elan*  
7 *Microelecs.*, 2009 WL 2972374, at \*2.

## 8 **B. Patent Infringement Claims Against PNW**

### 9 1. Direct Patent Infringement: 35 U.S.C. § 271(a)

10 To establish a claim for direct patent infringement, a plaintiff must show that the  
11 defendant “without authority makes, uses, offers to sell, or sells any patented invention,  
12 within the United States or imports into the United States any patented invention during  
13 the term of the patent therefor . . .” 35 U.S.C. § 271(a). “Direct infringement requires a  
14 party to perform or use each and every step or element of a claimed method or product.”  
15 *BMC Res., Inc. v. Paymentech, LP*, 498 F.3d 1373, 1378 (Fed. Cir. 2007). “For process  
16 patent or method patent claims, infringement occurs when a party performs all of the  
17 steps of the process.” *Id.*

18 PNW argues that Mr. Sharafabadi’s direct patent infringement claims must be  
19 dismissed because he has pleaded only conclusory allegations that are insufficient to state

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21 <sup>5</sup> The Federal Circuit decided *McZeal* after *Twombly* but before *Iqbal*. This court agrees  
22 with the sentiment expressed by at least one other district court that it is difficult to reconcile  
Form 18 with the Supreme Court’s guidance in those decisions. See *Elan Microelecs.*, 2009 WL  
2972374, at \*2.

1 a plausible claim under the *Iqbal-Twombly* standard. (PNW Mot. at 12-15.) PNW  
2 concedes that Mr. Sharafabadi’s complaint includes some accurate facts (*id.* at 13), but  
3 asserts that the court should disregard Mr. Sharafabadi’s key allegation:

4         During various stages of productions and processing of IdaGold yellow  
5         mustard seeds the Defendants Pacific Northwest Farmers Coop uses the  
6         “186 Patent” to produce [a] substantial amount of Pseudoplastic Yellow  
7         Mustard Gum for measuring its viscosity as a means to ensure the quality  
8         characteristics of the IdaGold yellow mustard seeds as well.

9 (Compl. ¶ 39.) PNW argues that this allegation is a conclusory statement not entitled to  
10 the presumption of truth because it is unsupported by accompanying facts. (PNW Mot. at  
11 13.)

12         The line between factual allegations and legal conclusions is not always clear, and  
13 Mr. Sharafabadi’s allegations against PNW represent an example of such blurring. PNW  
14 correctly observes that Mr. Sharafabadi has not thoroughly developed his allegations.

15 PNW also presents evidence to suggest that Mr. Sharafabadi’s allegations may be  
16 incorrect. On a motion to dismiss, however, the court need only satisfy itself that the  
17 complaint surmounts “the low bar for pro se litigants to avoid dismissal,” without  
18 consideration of contradictory evidence outside the four corners of the complaint.

19 *McZeal*, 501 F.3d at 1358. Here, the court is satisfied that Mr. Sharafabadi has alleged a  
20 claim for direct patent infringement sufficient to survive a motion to dismiss. Mr.

21 Sharafabadi has provided the information contemplated by Form 18 and has advised  
22 PNW of his allegation that PNW is using the ‘186 Patent in the course of its business as a

quality control method. *Cf. id.* at 1357. Therefore, the court denies PNW’s motion to  
dismiss Mr. Sharafabadi’s direct patent infringement claim.

1     2.   Indirect Patent Infringement: 35 U.S.C. §§ 271(b) and 271(c)

2           A claim of indirect patent infringement may be predicated on either infringement  
3 by inducement or contributory infringement. With respect to infringement by  
4 inducement, patent law provides that “[w]hoever actively induces infringement of a  
5 patent shall be liable as an infringer.” 35 U.S.C. § 271(b). “Inducement requires a  
6 showing that the alleged inducer knew of the patent, knowingly induced the infringing  
7 acts, and possessed a specific intent to encourage another’s infringement of the patent.”  
8 *Vita-Mix Corp. v. Basic Holding, Inc.*, 581 F.3d 1317, 1328 (Fed. Cir. 2009); *see DSU*  
9 *Med. Corp. v. JMS Co., Ltd.*, 471 F.3d 1293, 1304 (Fed. Cir. 2006) (en banc in relevant  
10 part). Direct infringement is a prerequisite to an indirect inducement claim. *Alloc, Inc. v.*  
11 *Int’l Trade Comm’n*, 342 F.3d 1361, 1374 (Fed. Cir. 2003) *C.R. Bard, Inc. v. Adv.*  
12 *Cardiovascular Sys., Inc.*, 911 F.2d 670, 675 (Fed. Cir. 1990) (“A person *induces*  
13 infringement under § 271(b) by actively and knowingly aiding and abetting another’s  
14 direct infringement.”). If the patentee establishes direct infringement, then he or she must  
15 also prove two additional elements: the patentee must show that the alleged infringer  
16 committed an act that constitutes infringement, *Veritas Operating Corp. v. Microsoft*  
17 *Corp.*, 562 F. Supp. 2d 1141, 1156 (W.D. Wash. 2008), and that the alleged infringer  
18 intended to cause direct infringement, *DSU Med. Corp.*, 471 F.3d at 1305-06. “Intent can  
19 be shown by circumstantial evidence, but the mere knowledge of possible infringement  
20 will not suffice.” *Vita-Mix Corp.*, 581 F.3d at 1328.

21           With respect to contributory infringement, a party is liable if he or she “offers to  
22 sell or sells within the United States or imports into the United States a component of a



1 patented machine, manufacture, combination or composition, or a material or apparatus  
2 for use in practicing a patented process, constituting a material part of the invention,  
3 knowing the same to be especially made or especially adapted for use in an infringement  
4 of such patent, and not a staple article or commodity of commerce suitable for substantial  
5 noninfringing use, shall be liable as a contributory infringer.” 35 U.S.C. § 271(c). Direct  
6 infringement is also a prerequisite to a contributory infringement claim. *Cross Med.*  
7 *Prods., Inc. v. Medtronic Sofamor Danek, Inc.*, 424 F.3d 1293, 1312 (Fed. Cir. 2005).  
8 “Beyond a showing of direct infringement, to prevail on a charge of contributory  
9 infringement, a patentee must prove two elements: (1) knowledge and (2) materiality.”  
10 *Veritas Operating Corp.*, 562 F. Supp. 2d at 1157; *see Lucent Techs., Inc. v. Gateway,*  
11 *Inc.*, 580 F.3d 1301, 1320 (Fed. Cir. 2009) (“[T]o succeed on a claim of contributory  
12 infringement, in addition to proving an act of direct infringement, plaintiff must show  
13 that defendant knew that the combination for which its components were especially made  
14 was both patented and infringing’ and that defendant’s components have no substantial  
15 non-infringing uses.” (internal quotations omitted)).

16 Here, Mr. Sharafabadi pleads no factual allegations sufficient to support an  
17 indirect infringement claim against PNW under either § 271(b) or § 271(c).<sup>6</sup> The  
18 complaint focuses on PNW’s sale of the IdaGold seeds and PNW’s alleged use of the  
19 ‘186 Patent to test the quality of the IdaGold seeds (Compl. ¶¶ 38-39), but does not

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21 <sup>6</sup> In his complaint, Mr. Sharafabadi describes the actions of the University of Idaho, as  
22 well as the actions of Oregon State University and Washington State University, that he believes  
constitute indirect patent infringement. (*E.g.*, Compl. ¶¶ 48, 51.) He simply makes no similar  
allegations regarding PNW.

1 allege, for instance, any facts concerning either how PNW induced or contributed to  
2 another party's direct infringement of the '186 Patent or PNW's knowledge. The  
3 allegations in the complaint, even taken as true, are insufficient to state a claim for  
4 indirect infringement.<sup>7</sup> Without more, Mr. Sharafabadi has not alleged sufficient facts  
5 regarding a plausible claim of indirect patent infringement against PNW. The court  
6 therefore dismisses the indirect infringement claims pleaded against PNW.

7 In his response, Mr. Sharafabadi presents new arguments regarding PNW's  
8 alleged indirect infringement. (Resp. to PNW (Dkt. # 56) at 5.) Specifically, Mr.  
9 Sharafabadi contends that PNW indirectly infringed the '186 Patent by providing samples  
10 of its commercial IdaGold seeds to the University of Idaho for performance tests of the  
11 seeds using the '186 Patent. (*Id.*) The factual allegations underlying these arguments do  
12 not appear in his complaint. Because Mr. Sharafabadi did not include these factual  
13 allegations in his complaint, the court declines to consider them in evaluating the  
14 complaint for purposes of PNW's motion to dismiss.

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18 <sup>7</sup> In making this determination, the court is mindful that Form 18 only addresses direct  
19 infringement, not indirect infringement. Fed. R. Civ. P. Form 18; *see Elan Microelecs.*, 2009  
20 WL 2972374, at \*2. As one district court explains:

21 Both types of indirect infringement include additional elements, none of which  
22 Form 18 even purports to address. In the absence of any other form that addresses  
indirect infringement and is made binding on the courts through Rule 84, the  
Court must apply the teachings of *Twombly* and *Iqbal*.

*Id.*

1        3.    35 U.S.C. § 271(g)

2            Patent law provides that whoever “offers to sell, sells, or uses within the United  
3 States a product which is made by a process patented in the United States shall be liable  
4 as an infringer . . . .” 35 U.S.C. § 271(g). With respect to the question of whether a  
5 product is “made by a process patented in the United States,” the Federal Circuit explains  
6 that the patented process “must be used directly in the manufacture of the product, and  
7 not merely as a predicate process to identify the product to be manufactured.” *Bayer AG*  
8 *v. Housey Pharms., Inc.*, 340 F.3d 1367, 1378 (Fed. Cir. 2003). For example, “[a] drug  
9 product, the characteristics of which were studied using the claimed research processes . .  
10 . is not a product ‘made by’ those claimed processes.” *Id.* at 1377.

11            Here, Mr. Sharafabadi alleges that the University of Idaho used the ‘186 Patent as  
12 a means to research the mucilage content of mustard seeds in the course of developing  
13 the IdaGold seeds. (*E.g.*, Compl. ¶ 28.) He characterizes the University of Idaho as  
14 using the ‘186 Patent “as a Research Tool and Research Material in making, producing  
15 and development of the IdaGold and other new advanced breeding lines and cultivars of  
16 yellow mustard seeds.” (*Id.*) Although Mr. Sharafabadi “claims sole proprietary rights to  
17 the IdaGold,” he does not allege that the Universities or any other entities directly used  
18 the ‘186 Patent to actually produce the IdaGold seeds; rather, he alleges only that the  
19 Universities used the ‘186 Patent as a research tool to test the characteristics of various  
20 yellow mustard seeds. These factual allegations, even accepted as true, are insufficient to  
21 make out a § 271(g) claim. Mr. Sharafabadi does not allege that PNW or any other  
22 defendant used the ‘186 Patent to directly manufacture or produce the IdaGold seeds.

1 *Bayer AG*, 340 F.3d at 1378. Likewise, he does not allege that PNW sells pseudoplastic  
2 yellow mustard gum. Mr. Sharafabadi disputes the applicability of *Bayer AG* to the facts  
3 of his case, but does not show how or why the court should follow a different approach.  
4 (Resp. to PNW at 8.) Therefore, to the extent Mr. Sharafabadi alleges a § 271(g) claim  
5 against PNW, the court dismisses the claim.

### 6 **C. Patent Infringement Claims Against L.A. Hearne**

7 In his complaint, Mr. Sharafabadi pleaded only that L.A. Hearne is an agent or sub-  
8 licensee of PNW or Defendant Montana Specialty Mills, LLC, and that it sells the  
9 IdaGold mustard seeds. (Compl. ¶ 40.) Mr. Sharafabadi does not allege that L.A. Hearne  
10 used or uses the ‘186 Patent. Even accepting the allegations in the complaint as true, Mr.  
11 Sharafabadi has not made out a claim for direct infringement. Likewise, the factual  
12 allegations contained in the complaint are insufficient to make out a claim under §§  
13 271(b), 271(c), or 271(g), for the reasons discussed above. Therefore, the court dismisses  
14 all of Mr. Sharafabadi’s claims against L.A. Hearne.

### 15 **D. Available Remedies**

16 PNW argues that the court should dismiss Mr. Sharafabadi’s claims against it  
17 because neither damages nor injunctive relief are available as a remedy on the facts of  
18 this case. (PNW Mot. at 19-21.)

#### 19 1. Damages

20 Pursuant to 35 U.S.C. § 286, “no recovery shall be had for any infringement  
21 committed more than six years prior to the filing of the complaint . . . for infringement in  
22 the action . . . .” PNW argues that under § 286 Mr. Sharafabadi cannot recover damages

1 for any infringement claim because the alleged infringement ended in 2002. (PNW Mot.  
2 at 19-20.) PNW’s argument presupposes that the court disregard Mr. Sharafabadi’s  
3 allegation that PNW uses the ‘186 Patent in the course of its business to test the quality of  
4 the IdaGold seeds. (*Id.* at 20.) As discussed above, the court declines to do so. Further,  
5 although Mr. Sharafabadi does not include specific dates in relation to his direct patent  
6 infringement claims against PNW, the court is satisfied that these claims plausibly fall  
7 within the 6-year period contemplated by § 286.

## 8 2. Injunctive Relief

9 Pursuant to 35 U.S.C. § 283, a patent holder may seek injunctive relief “to prevent  
10 the violation of any right secured by patent.” However, “when the rights secured by a  
11 patent are no longer protectable by virtue of expiration or unenforceability, entitlement to  
12 injunctive relief becomes moot because such relief is no longer available.” *Kearns v.*  
13 *Chrysler Corp.*, 32 F.3d 1541, 1550 (Fed. Cir. 1994). Here, Mr. Sharafabadi and PNW  
14 agree that the ‘186 Patent expired in August 2009. (PNW Mot. at 20; Resp. to PNW at 9  
15 (“The ‘186 Patent’ is valid and expired.”).) This precludes Mr. Sharafabadi from  
16 obtaining injunctive relief under § 283. *Id.* Therefore, the court dismisses Mr.  
17 Sharafabadi’s request for injunctive relief.<sup>8</sup>

## 18 E. Requests for Attorney’s Fees

19 At this time, the court denies without prejudice PNW’s and L.A. Hearne’s requests  
20 for attorney’s fees. (PNW Mot. at 21-22; L.A. Hearne Mot. at 17.)

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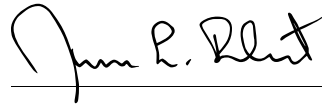
21  
22 <sup>8</sup> The court notes that alternative forms of equitable relief may be available. *See, e.g.,*  
*Astrazeneca AB v. Impax Labs., Inc.*, 490 F. Supp. 2d 368, 374-76 (S.D.N.Y. 2007).

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**IV. CONCLUSION**

For the foregoing reasons, pursuant to Rule 12(b)(6), the court GRANTS in part and DENIES in part PNW's motion to dismiss (Dkt. # 14) and GRANTS L.A. Hearne's motion to dismiss (Dkt. # 24). The court grants Mr. Sharafabadi leave to amend. *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). Mr. Sharafabadi may file an amended complaint within 20 days of this order.

Dated this 27th day of November, 2009.

  
\_\_\_\_\_  
JAMES L. ROBART  
United States District Judge