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AMERANTH, INC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

AMERANTH INC. Plaintiff, v. BRINK SOFTWARE, INC., a California corporation; and PAR TECHNOLOGY CORPORATION, a Delaware corporation, Defendants. AND RELATED CROSS-COMPLAINT	Case No. 3:25-cv-02302-RSH-BLM **PLAINTIFF AMERANTH, INC'S REPLY IN SUPPORT OF ITS MOTION TO REMAND, TO DISMISS CROSS-COMPLAINT, AND TO STRIKE AFFIRMATIVE DEFENSES AND CROSS-COMPLAINT** Complaint Filed: July 23, 2025 PER CHAMBERS RULES, NO ORAL ARGUMENT UNLESS SEPARATELY ORDERED BY THE COURT

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I. INTRODUCTION[1]

Ameranth filed this case in the California State Court as a straightforward breach of contract case. Despite Defendants' inappropriate attempt to manufacture additional claims and defenses in order to invoke federal court jurisdiction, these efforts fail. This case remains a contract case that does not raise any federal patent issues and should be remanded to state court.

To place this case in the proper perspective, certain controlling key facts exist:

1. The contract at issue is one between Ameranth and Brink ("Brink Agreement") which remained in place between the parties after the Brink merger with PAR and required the payment of specified royalties through June 26, 2025.

2. By Ameranth's allegations, covenant, and admissions, Defendants will have no further royalty payments under the Brink Agreement after June 26, 2025.

3. No other contracts are at issue or are relevant, including specifically, a separate agreement between Ameranth and PAR.

4. Royalties are being sought only for the time period March 15, 2022 through June 26, 2025, during which multiple Ameranth licensed patents were valid and in force, and before any *Lear* notice on those patents had been provided by Defendants.

5. By its own terms, the Brink Agreement does not require a determination of infringement; royalties are based solely upon the sale and use of an agreed upon, specified, and defined category of Brink products.

Contrary to these facts, Defendants have sought to obfuscate and complicate, to delay, expand and multiply the costs of resolution, by manufacturing affirmative defenses and a separate Cross-Complaint with claims based upon patent issues entirely irrelevant to the Brink Agreement and its enforcement, claims and defenses for which no case or controversy exists, and for which they lack standing.

[1] All internal citations and quotations are omitted and emphasis is added, unless stated otherwise.

Based upon these facts and law, Defendants cannot escape the fact that they are liable for the payment of royalties under the Brink Agreement for the limited time period for which Ameranth seeks enforcement.

In the face of Defendants' questionable attempts to create federal jurisdiction where none exists, Ameranth filed its Motion to Remand, to Dismiss Cross-Complaint, and to Strike Affirmative Defenses and Cross-Complaint (the "Motion"), seeking to properly reduce this litigation back to its relevant core. In response, Defendants took two recent actions. First, Defendants filed an Amended Cross-Complaint (Doc. No. 25) rendering both their Cross-Complaint and the portions of Ameranth's motion addressing it as moot. *Ramirez v. County of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015); *see also Hylton v. Anytime Towing*, No. 11CV1039 JLS (WMc), 2012 WL 1019829, at *5 (S.D. Cal. Mar. 26, 2012) ("[An] amended complaint supersedes the original, the latter being treated thereafter as nonexistent pending motions concerning the original complaint must be denied as moot."). Defendants Amended Cross-Complaint adds allegations, but drops their non-infringement claims in their entirety. Second, Defendants filed a separate Response to Ameranth's Motion (Doc. No. 26) addressing the remaining issues.

The parties filed a joint motion setting a briefing schedule for Ameranth to move against the Amended Cross-Complaint, which the Court granted (Doc. No. 28).[2] Defendants, however, did not amend their Answer, and, thus, this Reply addresses Ameranth's motion to strike certain of Defendants' affirmative defenses. Ameranth does not address Defendants' revisionist history and mudslinging in their Response; such allegations and rhetoric are inappropriate and irrelevant.

II. AMERANTH'S COMPLAINT DOES NOT RAISE A PATENT LAW ISSUE SUFFICIENT TO ESTABLISH FEDERAL JURISDICTION

[2] Due to the overlapping issues presented by the Answer and Amended Cross-Complaint, Ameranth requests that this court consider the issues raised here together with Ameranth's forthcoming motion to dismiss the Amended Cross-Complaint.

Ameranth's Complaint has only two contract claims: breach for failure to pay royalties and unjust enrichment. These were, and remain, straightforward contract disputes that the state court can decide.[3]

Ameranth claims that it is entitled to the payment of royalties required under the Brink Agreement for the period from March 15, 2022 through June 26, 2025 (the date *Lear* notice was given for the four Licensed Patents ('130, '415, '587, and '425 patents)) based on Defendants' use of the Brink POS system and service.[4] Compl. ¶ 7. Pursuant to the specific contract terms of §§ 5.2 and 5.3, royalties are owed on "Brink's online/mobile food/drink ordering/menu hosting system/service" until such time as "all claims of Ameranth's Licensed Patents are finally held invalid and/or the patents are held to be unenforceable (after all appeals are exhausted) prior to the date that such fees are otherwise due to Ameranth under this Agreement." The duration of the royalty payment period is clear. "So long as any single patent under a licensing agreement remains valid, the licensee must continue paying royalties until all covered patents have been held invalid or expire." *Ameranth, Inc. v. ChowNow, Inc.*, Case No.: 3:20-cv-02167-BEN-BLM, 2021 WL 3686056, at *4 n.8 (S.D. Cal. Aug. 19, 2021) (citing *Brulotte v. Thys Co.*, 379 U.S. 29, 29 (1964)).

Under the *Lear* doctrine, however, contractual royalty provisions are not enforced during the period ***after*** notice by a licensee challenging the validity of the specific patents licensed. *Go Med. Indus. Pty., Ltd. v. Inmed Corp.*, 471 F.3d 1264, 1273 (Fed. Cir. 2006). But "the *Lear* doctrine does not prevent a patentee from recovering royalties until the date the licensee first challenges the ***validity of the patent.***" *Id.* (citing *Studiengesellschaft Kohle, M.B.H. v. Shell Oil Co.,* 112 F.3d 1561, 1568 (Fed. Cir.

[3] The Brink Agreement at § 9.2.2 provides that disputes between the parties can be brought in state or federal court. Thus, Defendants' allegation of Ameranth's forum shopping (Doc. No. 26 at PageID.1795) is frivolous.

[4] Brink POS is an "an online/mobile food/drink ordering/menu hosting system/service," as confirmed by the 2023 PAR Brink POS Brochure, Compl. Exh. R, and the PAR Team's 2023 article "Unleash Efficiency: Elevate the Front of House Experience with Brink POS," Compl. Exh. S.

1997)); *see also ChowNow*, 2021 WL 3686056, at *22. The claims made in Ameranth's complaint are entirely consistent with this precedent and within the statute of limitations[5]: Ameranth seeks the payment of royalties only from March 15, 2022 through June 26, 2025, prior to the date of *Lear* notice. It is indisputable that there were no final adjudications of invalidity or unenforceability of any of the four Licensed Patents during the claimed royalty period. For these reasons, a patent law issue is not raised by Defendants' *Lear* notice or Ameranth's specific contract claims.

A. Defendants' Attempt to Have This Court Misinterpret the Brink Agreement in Order to Create a Patent Issue Fails.

The Brink Agreement does not require a patent infringement analysis as a predicate to the payment of royalties. To the contrary, as the settlement of a potential patent and trade secret lawsuit, the dispute was resolved by an agreement to pay royalties on specific products without an infringement finding – an entirely normal and effective settlement arrangement.[6] Defendants paid royalties without dispute for more than seven years, and the conduct of the parties prior to litigation is relevant.[7]

Defendants attempt to muddy the waters by arguing that the substantially different provisions in a contract *not at issue in this case* (the "ChowNow Agreement")[8] are identical in substance and require an identical result. But a plain reading of the agreements side-by-side dispels this comparison.

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[5] *Gilkyson v. Disney Enters.*, 244 Cal. App. 4th 1336, 1343 (2016) (the continuing nature of the obligation to pay periodic royalties made each breach of that obligation a separate actionable claim; therefore, the breaches occurring within the four-year limitations period were timely). Timely exercising one's rights within a statute of limitations is not "lying in wait" as the Defendants allege.

[6] Brink's founder Mr. Rubin knew and acknowledged that Brink needed a license and requested that Brink be provided one that would allow Brink to use Ameranth's trade secrets, patents, and intellectual property free from any legal concerns. McNally Decl. Exhs. B-D.

[7] *Kennecott Corp. v. Union Oil Co.*, 196 Cal. App. 3d 1179, 1189 (Cal. Ct. App. 1987) ("The conduct of the parties after execution of the contract and before any controversy has arisen as to its effect affords the most reliable evidence of the parties' intentions.").

[8] The ChowNow Agreement was before the court in *Ameranth, Inc. v. ChowNow, Inc.*, Case No.: 3:20-cv-02167-BEN-BLM. *See* Case No.: 3:20-cv-02167-BEN-BLM, Doc. No. 1-2, ¶ 7 ("A true and correct copy of the First Amended Agreement is attached hereto as **Exhibit 3**, and filed under seal."), Exh. 3; *id.*, Doc. No. 18, ¶ 8.

Brink Agreement	ChowNow Agreement
1.3 ***"Licensed Patents"*** shall mean United States Patent Nos. 6,384,850; 6,871,325, and 6,982,733; all reissues and reexaminations of any of the foregoing patents and all patents claiming priority from any application from which any of the foregoing patents issued (including counterparts, divisionals, continuations, continuations-in-part, substitutions, and renewals). Licensed Patents shall not include any Ameranth applications or patents outside the family which includes the patents listed herein.	1.3 ***"Licensed Patents"*** shall mean United States Patent Nos. 6,384,850; 6,871,325, 6,982,733 and 8,146,077; all reissues and reexaminations of any of the foregoing patents and all United States patents, claiming priority from any application from which any of the foregoing patents issued (including counterparts, divisionals, continuations, continuations-in-part, substitutions, and renewals) and any and all counterparts thereof in any country of the world. Licensed Patents shall also include any patent or application owned, filed, or acquired by Ameranth **where the practice of the inventions claimed therein would apply to ChowNow's operations in the Fields of Use.**
5.2 **Additional Payments:** In addition to the lump sum payments required under in Section 5.1, Brink shall pay Ameranth an ongoing royalty for Brink's online/mobile food/drink ordering/menu hosting system/service for the period beginning January 1, 2013 in the amount of: (a) $10/location/month; (b) plus $.10/order.	5.2 **Non-Legacy Payments:** Chow Now agrees to pay Ameranth a running royalty for the period beginning January 1, 2014 for the Patent License granted in Paragraph 2.1 **above for all activities falling within the Fields of Use** (sub-paragraphs (a)-(b), below).

In short, the ChowNow Agreement required royalties where "**practice of the inventions claimed** therein **would apply** to ChowNow's operations in the field of use." The *ChowNow* court explicitly relied on the ChowNow Agreement's terms at § 5.2, and the term "Licensed Patents," as uniquely defined in the ChowNow Agreement – which is decidedly different in the Brink Agreement. *ChowNow*, 2021 WL 3686056, at *1 n.2 ("Additional facts were also taken from the relevant licensing agreements and documents relied upon in the pleadings."). *ChowNow*'s interpretation cannot apply here where such determinative language does not exist.

Unlike in *ChowNow*, § 5.2 of the Brink Agreement requires the running royalty be paid for specific, designated products and services: "Brink's online/mobile food/drink ordering/menu hosting system/service." This is in stark contrast to the ChowNow language: "the practice of the inventions claimed" "for all activities falling within the Field[] of Use." This distinction is conclusive. No patent interpretation issues need be resolved to enforce the Brink Agreement's royalty payment provisions. *See* Doc. 20-1 ("Ameranth Op.") at PageID.1023-1025.

B. Ameranth's Claims for Breach of the Brink Agreement and Unjust Enrichment Do Not Raise Patent Law Issues.

Under the terms of the Brink Agreement, the enforcement of royalties is not dependent on a determination of infringement or invalidity. *Id.* at PageID.1031-36.

Defendants attempt to distinguish *Cellport Systems, Inc. v. Peiker Acustic GMBH & Co. KG*, 762 F.3d 1016 (10th Cir. 2014), because of an "acknowledgement" in the Brink Agreement. But that "acknowledgment" does not undercut Ameranth's position with respect to the Tenth Circuit's decision:

> Peiker [Defendant] argues that because the License Agreement says that the royalty payments are "in consideration for [Peiker's] rights under the several patents included in Licensed Patents," royalty payments can only be due on products that actually infringe Cellport's patents. But that language does not prevent the parties ***from agreeing that a royalty is due on a non-infringing product*** . . . .

Id. at 1022. Likewise, Ameranth cited *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 138 (1969), for the proposition "[r]oyalties from a license agreement do not need to be based on the actual use of a patent, and can be dictated by the 'convenience of the parties.'" Defendants do not and cannot dispute this legal tenet. Doc. No. 26 at PageID.1800.

Despite Defendants attempt to distinguish it, *Cricket Holdings, LLC v. Harvest Direct, LLC*, No. CV 14-14268-NMG, 2015 WL 13694479 (D. Mass. Apr. 13, 2015), *report and recommendation adopted*, No. CV 14-14268-NMG, 2015 WL 13694483 (D.

Mass. May 22, 2015), applies. The district court remanded state court claims for a breach of license agreement where "it is not clear from the face of the Agreement that the products for which Harvest had to pay royalties were limited to can openers . . . and it does not appear that the plaintiffs' breach of contract claim is dependent on whether the Tornado Can Opener infringed on the '825 patent." 2015 WL 13694479, at *7. The same is true here – the Brink Agreement expressly requires royalty payments for "Brink's online/mobile food/drink ordering/menu hosting system/service." Brink Agreement at § 5.2. And in *Inspired Dev. Grp., LLC v. Inspired Prods. Grp., LLC*, 938 F.3d 1355 (Fed. Cir. 2019), the Federal Circuit recognized the principle that the licensee may have taken the license "to avoid uncertainty and litigation," and not because it necessarily believed it was infringing. *Id.* at 1363. This provides "[t]he benefit [of allowing the licensee] to invest or have others invest in its products with greater confidence, as well as the avoidance of costs and fees associated with suit," *id.*, and the licensor "could succeed on its claim by showing that by conferring the license on [licensee], [licensee] avoided litigation, acquired investment it may not have otherwise, or succeeded in preventing competition for a certain length of time." *Id.*

Defendants next argue that the Brink Agreement is "a running royalty agreement where the obligation to pay royalties is directly tied to the use of specific patents." Doc. 26 at PageID.1801. But the plain contract language contradicts this theory, and *NeuroRepair, Inc. v. The Nath L. Grp.*, 781 F.3d 1340 (Fed. Cir. 2015), supports Ameranth's position. The Federal Circuit held that even though "NeuroRepair's state law claims, as presented in its complaint of March 20, 2009, include a number of references to patent issues," *id.* at 1344, "those issues would not be of sufficient importance 'to the federal system as a whole,' as required under the third part of the *Gunn* test." *Id.* at 1345. The same is true here where there is no need to address, let alone resolve, any patent issues in adjudicating Ameranth's unjust enrichment claim.

For unjust enrichment and pursuant to state law, Ameranth need only establish (1) "receipt of a benefit" and (2) "unjust retention of the benefit at the expense of

another." *Lectrodryer v. SeoulBank*, 77 Cal. App. 4th 723, 726 (Cal. Ct. App. 2000). As alleged, Ameranth will establish these elements by proving that PAR/Brink (1) received the benefits of the license by marking its products with Ameranth's patents confirming its right to make and sell its products under these patents, avoiding uncertainty and litigation, and enabling investment in it and its products with confidence, and (2) failed to the pay royalties required under the Brink Agreement that provides these benefits. None of this proof requires or implicates patent law issues.

Defendants attempt to dispute Ameranth's allegations by arguing that in ***one*** system document, the "Administrator Portal Guide, there was an oversight and the document was marked with three of Ameranth's original '850, '325 and '077 patents." Doc. No. 26 at PageID.1802. However, that document, revised multiple times over four years up through mid-2025, continued to mark: "PAR holds the following patents in the United States that pertain to the Brink POS software suite: 6,382,850; 6,871,325; 8,146,077." *See, e.g.,* Compl. Exh. J at p. ii, Exh. K at p. ii, Exh. L at p. ii, Exh. M at p. ii, Exh. N at p. ii, Exh. O at p. ii, Exh. P at p. ii. Further, and as additional evidence that there was no repudiation and no termination, Ameranth has recently discovered that, contrary to Defendants' representations to this Court, they still continue to mark with Ameranth's patents – even through today in 2026. *See* PAR Online Store (available at https://store.partech.com/ (last accessed Jan. 27, 2026)) ("Patents 6,384,850; 6,871,325; 6,982,733; 8,146,077").

This continuous marking evidences that Defendants did not view the Brink Agreement as being "completely repudiated," or the patents found invalid or expired, and they continued to enjoy the benefits associated with them. Nor could such repudiation occur under the express terms of the contract since it applied "to all patents claiming priority from any application from which any of the foregoing patents [i.e., the '850, '325, and '733 patents] issued," which means the royalty obligations would be extended when a future patent claiming priority from any of these expressly identified patents issued. Brink was aware that future patents were pending as well as their

potential future royalty obligations and agreed to those contract provisions. Brink was not misled, no estoppel arose, and there was no "lying in wait." Ameranth was contractually entitled to await future patents to issue, and then seek royalties on them.

Defendants argue that "no possible benefit was conferred on Defendants from this marking," citing *Belden Canada Ulc v. CommScope, Inc.*, No. CV 22-782-RGA, 2025 WL 2879591, at *5 n.5 (D. Del. Aug. 9, 2025). But, *Belden* had nothing to do with the benefit obtained from marking and, instead, addressed whether portions of a damages expert's report had sufficient evidentiary support for the value of a transferred, expired patent. *Id.* at *5.[9] Just as a company benefits from marking its products to show innovation, protect the product, and entice consumers to purchase, Defendants' marking conveyed those messages, afforded those benefits, and Defendants were unjustly enriched. No patent law issue is involved in litigating Ameranth's unjust enrichment claim.

III. DEFENDANTS' MANUFACTURED "DISPUTES" DO NOT ESTABLISH FEDERAL JURISDICTION

Defendants remarkably contend that they can claim federal jurisdiction simply by alleging a dispute between the parties that implicates patent issues. But that argument begs the question: Do the allegations supporting the claimed dispute plausibly allege facts and law that establish a legitimate patent dispute for which they have standing? The clear answer is: No.

A. Defendants' Patent "Defenses" Are Irrelevant.

Defendants attempt to create federal jurisdiction where none exists by adding irrelevant defenses in their Answer (and duplicating them in a separate Cross-Complaint) is irrelevant to Ameranth's contract claims and ring hollow. The specific defenses claimed as a basis for federal jurisdiction are all tied to the validity of the Licensed Patents, and, thereby, to the *Lear* notice. Yet, their proposed challenges, even

[9] The footnote text quoted by Defendants is from the footnote related to this issue.

if successful, would be of no consequence. They cannot extinguish their prior obligations to pay royalties up to the date of the *Lear* notice. Thus, they raise no patent issues for the relevant royalty period—the only period Ameranth seeks enforcement.

While a few affirmative defenses are possibly relevant to Ameranth's contract claims, none of them implicate legitimate patent issues and can and should be addressed in the state court contract action. Ameranth's Opening established that Defendants' fourth, fifth, sixth,[10] ninth, twelfth, and fourteenth affirmative defenses should be stricken under Rule 12(f) or dismissed as impertinent and immaterial. They have "no essential or important relationship to the claim for relief," *Fantasy Inc. v. Fogarty* 984 F.2d 1524,1527 (9th Cir. 1993). Ameranth Op. at PageID.1043-52. Defendants' Response is based on arguments that cannot be squared with the *Lear* doctrine, are contrary to the clear language of the Brink Agreement, and fail to address their failure to properly plead them.

B. Defendants' *Lear* Notice Did Not Terminate the Brink Agreement.

Defendants argue that, pursuant to their earlier 2020 *Lear* notice as to patents not among the four Licensed Patents at issue here, they repudiated the entire Brink Agreement by their unilateral decision and "definitive step of ceasing all royalty payments" and cite to *MedImmune*. Doc. No. 26 at PageID.1806. However, after that 2020 *Lear* notice, PAR sent a *Lear* notice as to the '797 patent, Compl. ¶ 39, confirming that PAR/Brink knew the Brink Agreement had not expired or been terminated. These actions were insufficient to terminate the contract, which does not permit a unilateral termination action by PAR/Brink, Brink Agreement § 6, and did not constitute *Lear* notice on future-issued patents that could not have been identified at the time, including those at issue here under Ameranth's Complaint for breach of contract which were awarded later. Further, *MedImmune* confirmed the Supreme Court's decision in *Lear* that "we rejected the argument that a repudiating licensee must comply with its contract

[10] The first of the two affirmative defenses labeled "sixth" in Defendants' Answer.

and pay royalties until its claim is vindicated in court," *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 124 (2007), but it did not hold that failing to pay a royalty for some, but not all, licensed patents terminates the entire agreement, and caselaw holds otherwise.[11]

"A material breach, or repudiation, gives rise to a right to exercise a termination provision in a contract." *Dow Chemical Co. v. U.S.*, 226 F.3d 1334, 1346 (Fed. Cir. 2000). However, Ameranth never exercised that right to terminate. *See Syntellect Technology Corp. v. Brooktrout Technology, Inc.*, No. Civ.A. 3:96-CV-2789, 1998 WL 249212, at *2 (N.D. Tex. May 11, 1998) (after considering a licensee's argument that it repudiated a license agreement by failing to pay royalties, ruling that the licensor could not sue the licensee for patent infringement because the licensor did not terminate the agreement). Under the express terms of the Brink Agreement there is no automatic termination. It can only be terminated if Ameranth chooses to do so, and only by written notice, which has not occurred. In such circumstances, Ameranth has "the right to pursue any and all remedies available at law or in equity." Brink Agreement §§ 6.2, 6.3, 6.5, 9.14.

Defendants attempt to void enforcement of the contract by taking an absurd position: that a contracting party can simply unilaterally repudiate a contract and escape liability for its payment provisions by simply failing to comply with them. This could never be true and is not valid under basic principles of contract law. Nor can such actions, as they argue, constitute a legitimate *Lear* notice. Defendants clearly understood *Lear* notice law since they gave a timely *Lear* notice in August 2021 to the earlier '797 patent, and they cannot feign ignorance now. They did not give effective *Lear* notice for the four Licensed Patents until June 27, 2025.

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[11] In *MedImmune*, the license agreement pertained to only two patents, the licensee had the right to terminate the license agreement upon six-months written notice, the licensee continued to make royalty payments and sought to invalidate the only patent for which the licensor sought a royalty, and the Supreme Court held the licensee "was not required, insofar as Article III is concerned, to break or terminate its 1997 license agreement before seeking a declaratory judgment in federal court that the underlying patent is invalid, unenforceable, or not infringed." *MedImmune*, 549 U.S at 121-22, 137.

IV. DEFENDANTS' INEQUITABLE CONDUCT, PATENT MISUSE, UNCLEAN HANDS, AND EQUITABLE ESTOPPEL DEFENSES ARE INSUFFICIENTLY PLED

Ameranth's Motion establishes that Defendants failed to properly plead the affirmative defenses of inequitable conduct, patent misuse, unclean hands, and equitable estoppel found in their Answer. Ameranth Op. at PageID.1048-52. Instead of amending their affirmative defenses, they amended their Cross-Complaint. However, that action does not cure the defects in their Answer's affirmative defenses because the pleading requirements are necessary in the Answer where they are alleged. As such, Ameranth's Motion addressing these affirmative defenses should be granted.

A. Defendants' Affirmative Defenses Contain Immaterial and Impertinent Subject Matter

Defendants' patent-related affirmative defenses (i.e., fourth, fifth, sixth,[10] ninth, twelfth, and fourteenth affirmative defenses) are immaterial and impertinent to the simple breach of contract issues pled in the Complaint and should be stricken for at least this reason.

This is a straight-forward breach of contract action based on the Brink Agreement and Ameranth has not asserted any patent infringement nor need it do so. A later finding of invalidity or non-infringement. even if it did occur, would be of no consequence. Defendants would still be liable to pay royalties under the Brink Agreement for the limited claimed period of March 15, 2022 through June 26, 2025. *See, e.g.,* Brink Agreement at § 5.3.

Defendants' twelfth affirmative defense of unclean hands is not supported by law. The Brink Agreement does not require Ameranth to file suit or provide written notice of patents as they issue. Ameranth did publicly and timely announce each of their issuances on its web site. Ameranth was thus not silent. Rather it was PAR/Brink's obligation to serve *Lear* notices if and when it believed that the remaining issued Licensed Patents were invalid, before they did so on June 27, 2025, or be bound, as they

now are, to the payment of royalties through that date. And, "[n]othwithstanding the [alleged] inflammatory language, a threat to file a lawsuit does not rise to the level of duress required to render a contract unenforceable." *Applogix Development Group, Inc. v. Dallas Central Appraisal District*, Civil No. 3:05-CV-1105-H, 2006 WL 2482958, at *4 (N.D. Tex. Aug. 29, 2006).

Having to needlessly address Defendants' contrived patent-related defenses will exponentially complicate and delay this case by requiring litigation of issues whose resolution would not impact Defendants' contractual liability. Their dismissal aligns with the purpose of Rule 12(f) – to "avoid the expenditure of time and money" that will arise from litigating any "spurious" patent issues, *Evans Hotels, LLC v. Unite Here! Local 30*, Case No.: 18-cv-2763-RSH-AHG, 2025 WL 2630515, at *1 (S.D. Cal. Sept. 12, 2025), and is warranted since they bear "'no essential or important relationship to the claim[s] for relief,' nor would they 'pertain, and [be] necessary, to the issues in question.'" *Neo4j, Inc. v. PureThink, LLC*, Case No. 5:18-cv-07182-EJD, 2023 WL 122402, at *8 (N.D. Cal. Jan. 6, 2023) (quoting *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993)).

V. CONCLUSION

For the reasons provided herein and in Ameranth's Opening, Ameranth's Complaint should be remanded to California State Court since it is solely a breach of contract action which raises no relevant, legitimate federal law patent issues.

Dated: January 28, 2026

Respectfully submitted,

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