IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

MIDWEST ENERGY EMISSIONS CORP., Plaintiff, vs. BERKSHIRE HATHAWAY ENERGY COMPANY; MIDAMERICAN ENERGY COMPANY; PACIFICORP; ALLIANT ENERGY CORPORATION; INTERSTATE POWER AND LIGHT COMPANY; WISCONSIN POWER AND LIGHT COMPANY; and ALLIANT ENERGY CORPORATE SERVICES, INC., Defendants.	Case No. 4:24-cv-00243-SHL-WPK MDL Case No. 4:24-md-03132-SHL-WPK **ORDER ON MOTIONS TO DISMISS AND MOTION TO SEVER**

In this single case, Plaintiff Midwest Energy Emissions Corp. ("ME2C") brings claims for patent infringement against seven Defendants from two unrelated corporate families for allegedly infringing activity at ten different facilities in three different states. This is too much. For reasons explained in full below, the Court concludes as follows:

- the Court lacks personal jurisdiction and venue over Defendant PacifiCorp and TRANSFERS the case against PacifiCorp to the United States District Court for the District of Wyoming;
- the Court lacks personal jurisdiction and venue over Defendant Alliant Energy Corporation ("Alliant") and DISMISSES the case against Alliant;
- the Court lacks venue over Defendant Wisconsin Power and Light Company ("WPL") and TRANSFERS the case against WPL to the United States District Court for the Western District of Wisconsin; and
- ME2C has failed to state a claim upon which relief can be granted against Defendants Berkshire Hathaway Energy Company ("BHE") and Alliant Energy Corporate Services, Inc. ("AECS"), and thus the Court DISMISSES the cases against those entities.

All dismissals are without prejudice.

This leaves two Defendants against whom claims will proceed in this forum: Interstate Power and Light Company ("IPL") and MidAmerican Energy Company ("MidAmerican"). As to those two entities, the Court GRANTS IN PART and DENIES IN PART their motions to dismiss. ME2C has stated a viable infringement claim against them both as to their jointly owned facility

in Ottumwa, Iowa, but not other facilities. ME2C also has stated viable willful infringement claims against them.

Finally, the Court DENIES Defendants' Motions to Sever. The issue of severance is moot as to the five Defendants whose cases are being dismissed or transferred. Severance is DENIED WITHOUT PREJUDICE as to IPL and MidAmerican because there is sufficient factual overlap in ME2C's claims against those entities to justify keeping them together.

I. BACKGROUND.

ME2C's First Amended Complaint alleges patent infringement claims against seven Defendants relating to six patents. The patents involve processes for capturing mercury emissions from coal-fired power plants. (ECF 59, ¶¶ 58–62.) ME2C alleges that it acquired relevant patent rights from researchers who developed new techniques for capturing mercury emissions. (Id., ¶¶ 57, 63–67.) "In particular, the inventors discovered, and ultimately proved, the benefits of combining halogen treatments (*e.g.*, bromine containing materials) in-flight with backend sorbents (*e.g.*, activated carbon)." (Id., ¶ 67.)

ME2C develops, markets, and sells products and services that practice the patented technology. (Id., ¶ 74.) ME2C alleges, however, that refined coal producers have induced power plant operators to infringe the patents-in-suit by offering the same technology at no or artificially low cost. (Id., ¶ 78.) ME2C won an infringement case in the District of Delaware against various entities for infringement of some of the patents at issue in this case. (Id., ¶¶ 81, 85.) ME2C alleges that Defendants here are engaged in similar forms of infringing activity at, collectively, ten power plants in three states.

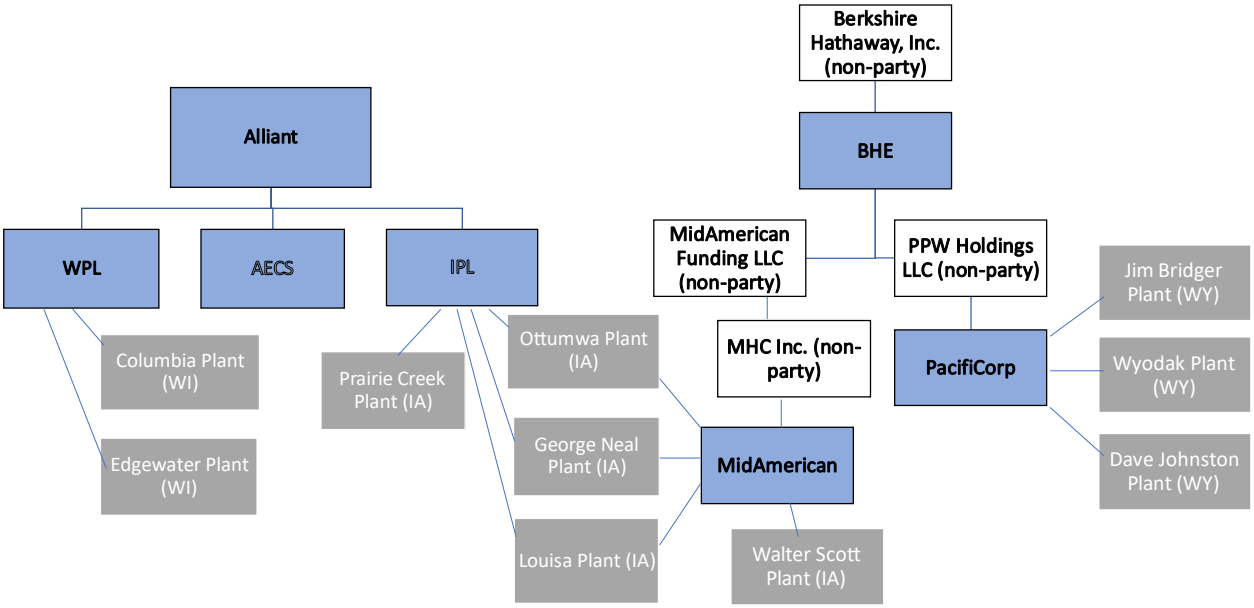
The seven Defendants come from two separate corporate families. The first, which the Court will refer to as the "Berkshire Hathaway Family," has non-party Berkshire Hathaway Inc. at the top. (Id., ¶ 15.) Defendant BHE is a direct subsidiary of Berkshire Hathaway Inc. (Id.) BHE has a direct subsidiary called PPW Holdings, LLC, which is a non-party. (Id.) Defendant PacifiCorp is a direct subsidiary of PPW Holdings, LLC, and thus an indirect subsidiary of BHE. (Id.) PacifiCorp owns three plants in Wyoming where allegedly infringing activity occurs: the Wyodak Power Plant ("Wyodak") in Gillette, Wyoming (id., ¶¶ 123–24); the Jim Bridger Power Plant ("Jim Bridger") in Rock Springs, Wyoming (id., ¶¶ 129–30); and the Dave Johnston Power Plant ("Dave Johnston") in Glenrock, Wyoming (id., ¶¶ 135–36).

Separately, BHE has a direct subsidiary called MidAmerican Funding, LLC (a non-party), which, in turn, has a direct subsidiary called MHC Inc. (also a non-party). (Id., ¶ 15.) Defendant MidAmerican is a direct subsidiary of MHC Inc., and thus an indirect subsidiary of BHE. (Id.) MidAmerican owns four plants in Iowa where allegedly infringing activity occurs: Units 3 and 4 of the Walter Scott Jr. Energy Center ("Walter Scott") in Council Bluffs, Iowa (id., ¶¶ 86–87); the Louisa Energy Center ("Louisa") in Muscatine, Iowa (id., ¶¶ 93–94); Units 3 and 4 of the George Neal Energy Center ("George Neal") in Sergeant Bluff and Salix, Iowa (id., ¶¶ 101–02); and the Ottumwa Generating Station ("Ottumwa") in Ottumwa, Iowa (id., ¶¶ 109–10). PacifiCorp has no ownership interest in these facilities, nor does MidAmerican have any ownership interest in the PacifiCorp facilities in Wyoming where allegedly infringing activity occurs. Instead, the only connection from a corporate structure perspective between MidAmerican and PacifiCorp is that they share BHE as an indirect parent. (Id., ¶ 15.)

The second corporate family will be referred to as the "Alliant Family" and has Defendant Alliant at the top. (Id., ¶ 18.) As relevant here, Alliant has three direct subsidiaries, all named as Defendants: WPL, AECS, and IPL. (Id., ¶¶ 17–18.) WPL has a direct majority ownership in two facilities where allegedly infringing activity occurs: the Columbia Energy Center ("Columbia") and Edgewater Generating Station ("Edgewater"). (Id., ¶¶ 141–42, 147–48.) Both are in Wisconsin. (Id., ¶¶ 141, 147.) AECS does not own any facilities where allegedly infringing activity occurs, while IPL fully owns one: the Prairie Creek Generating Station ("Prairie Creek") in Cedar Rapids, Iowa. (Id., ¶¶ 117–18.) IPL also has a minority ownership interest in the Ottumwa, George Neal, and Louisa Plants. (Id., ¶¶ 95, 103, 111.)

From a corporate structure perspective, there is no relationship between the Berkshire Hathaway Family and the Alliant Family. The only relevant area of overlap is the co-ownership of the Ottumwa, George Neal, and Louisa Plants by MidAmerican (from the Berkshire Hathaway Family) and IPL (from the Alliant Family). (Id., ¶¶ 94–95, 102–03, 110–11.) MidAmerican is the majority owner of these facilities, and IPL is the minority owner. (Id.) There is no overlapping ownership in the other seven facilities where allegedly infringing activity occurs.

Collectively, then, the relationship between the parties and infringing facilities is illustrated here (with parties shaded in blue and facilities shaded in gray):



Additional facts are provided below in the context of each Defendant's motion to dismiss.

II. ME2C HAS NOT ESTABLISHED PERSONAL JURISDICTION OR VENUE AS TO PACIFICORP.

PacifiCorp moves to dismiss on several grounds, including improper venue, lack of personal jurisdiction, and failure to state a claim for joint and/or willful infringement. (ECF 79.) If not dismissed from the case, PacifiCorp moves to sever. (ECF 92.) ME2C resists in all respects. For reasons explained below, the Court concludes that ME2C has not established personal jurisdiction or venue over PacifiCorp. The Court therefore TRANSFERS the case against PacifiCorp to the United States District Court for the Western District of Wisconsin.

A. Relevant Facts.

ME2C alleges that PacifiCorp owns and operates three plants in Wyoming where infringing activity occurs. (ECF 59, ¶¶ 123–24, 129–30, 135–36.) ME2C acknowledges that none of these facilities is located in Iowa and does not allege that PacifiCorp directly owns or operates property in Iowa. ME2C does allege, however, that PacifiCorp has a "regular and established place of business" in Iowa in the sense that it has an intercompany administrative services agreement with BHE and MidAmerican that includes sharing office space in the Iowa-based corporate headquarters of those entities. (Id., ¶¶ 32, 34, 160.) ME2C further alleges that some PacifiCorp officers and directors conduct the entity's business out of those offices by virtue of having dual

roles with both PacifiCorp and BHE or as part of the intercompany agreement that includes employee sharing. (Id., ¶ 160.) PacifiCorp has paid hundreds of millions of dollars for these dual-role employees and other services under the intercompany agreement. (Id., ¶ 33.) ME2C alleges that these dual-role employees committed acts of infringement in Iowa and induced, contributed to, and approved acts of infringement. (Id., ¶¶ 32–35.) ME2C also alleges that PacifiCorp is BHE's alter ego and/or is liable for the acts of infringement of both BHE and MidAmerican under joint enterprise or agency theories. (Id., ¶¶ 25, 36, 200.)

In support of its Motion to Dismiss, PacifiCorp presented additional facts, starting with the fact that it is an Oregon corporation with its principal place of business in Oregon. (ECF 79-2, ¶ 3.) According to a Declaration submitted in support of PacifiCorp's Motion to Dismiss, "PacifiCorp does not have any business operations in Iowa. PacifiCorp owns no physical place of business in Iowa." (Id., ¶ 4.) More specifically, it has no power plants, employees, or registered agents in Iowa, nor is it registered to do business in Iowa. (Id., ¶¶ 5–8.) PacifiCorp is an indirect subsidiary of BHE but characterizes itself as a "separate corporation, governed by its own management structure, and as such, makes it own decisions independent of BHE." (Id., ¶¶ 9, 11.) "BHE does not hold itself to be PacifiCorp's agent and PacifiCorp does not hold itself to be BHE's agent." (Id., ¶ 10.) "BHE's and PacifiCorp's finances are maintained in separate accounts." (Id., ¶ 12.) PacifiCorp has its own bank accounts and lines of credit. (Id., ¶ 13.) "No third-party debts owed to or by PacifiCorp are paid to or by BHE." (Id.) Under the intercompany administrative services agreement, PacifiCorp pays its share of costs with its corporate relatives, with all payments coming from PacifiCorp bank accounts or lines of credit. (Id., ¶ 14.)

"PacifiCorp is responsible for its own liquidity, has significant assets and is not undercapitalized." (Id., ¶ 16.) "PacifiCorp maintains and adheres to its own corporate bylaws" and has a separate board from BHE with separate bylaws and formalities. (Id., ¶¶ 18–19.) Regardless of whether they serve dual roles, PacifiCorp's officers and directors owe fiduciary duties to PacifiCorp. (Id., ¶ 20.)

B. Legal Standards.

Following a defendant's timely motion under Fed. R. Civ. P. 12(b)(2), the plaintiff has the burden to establish the existence of personal jurisdiction. *See Hawkeye Gold, LLC v. China Nat'l Materials Indus. Imp. & Exp. Corp.*, 89 F.4th 1023, 1030 (8th Cir. 2023). "[T]his burden does not shift because the defendant challenges jurisdiction." *Id.* To survive a timely motion to dismiss, the

plaintiff must "make a prima facie showing that personal jurisdiction exists by pleading sufficient facts to support a reasonable inference that the defendant can be subjected to jurisdiction within the state." *Id.* (quotations omitted). Unlike a motion to dismiss for failure to state a claim, the Court may consider a larger pool of information in determining if personal jurisdiction exists, including affidavits, declarations, and other exhibits. *See Pederson v. Frost*, 951 F.3d 977, 979 (8th Cir. 2020). Since the Court did not resolve evidentiary disputes at the hearing, it views the facts in the light most favorable to ME2C. *Id.*

The plaintiff also bears the burden of proving venue. *See In re Volkswagen Grp. of Am., Inc.*, 28 F.4th 1203, 1207 (Fed. Cir. 2022). In a patent infringement case, Federal Circuit precedent is governing. *See id.* Venue in such cases is governed by 28 U.S.C. § 1400(b), which is "intended to be restrictive of venue in patent cases." *In re ZTE (USA) Inc.*, 890 F.3d 1008, 1014 (Fed. Cir. 2018). Specifically, venue exists in "the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business." 28 U.S.C. § 1400(b). "[A] domestic corporation 'resides' only in its State of incorporation." *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 581 U.S. 258, 262 (2017). When the defendant does not reside in the district, the plaintiff must show that the defendant committed acts of infringement in the district and: "(1) there must be a physical place in the district; (2) it must be a regular and established place of business; and (3) it must be the place of the defendant." *In re ZTE*, 890 F.3d at 1014.

C. ME2C Has Not Established Personal Jurisdiction or Venue With Respect to PacifiCorp.

It is undisputed that PacifiCorp has no direct physical or operational presence in Iowa, with the company instead owning power plants, as relevant here, only in Wyoming. The core of the dispute is therefore whether ME2C has done enough to establish personal jurisdiction and venue by virtue of PacifiCorp's relationship with *other* entities that have physical and operational presence in Iowa. The Court concludes that ME2C has not satisfied its burden as to either personal jurisdiction or venue.

As a threshold matter, the Court rejects ME2C's argument that PacifiCorp waived the right to challenge venue or personal jurisdiction by also moving to sever. PacifiCorp moved to dismiss in its first responsive pleading and expressly made the later motion to sever subject to the company's earlier objections to venue and personal jurisdiction. (ECF 92-1.) There is no basis for finding waiver in these circumstances. To the contrary, courts often consider venue and

jurisdictional objections at the same time as motions to sever. *See, e.g.*, *Khan v. Hemosphere, Inc.*, 825 F. App'x 762 (Fed. Cir. 2020); *LG Elecs., Inc. v. P'ships and Uninc. Ass'ns*, 2021 WL 5742389 (N.D. Ill. Dec. 2, 2021). And for good reason: there are significant efficiency advantages to handling such motions together instead of piecemeal.

Turning to the merits, the Eighth Circuit has addressed personal jurisdiction in the context of alter ego and/or veil-piercing claims several times. These cases "consistently have insisted that 'personal jurisdiction can be based on the activities of [a] nonresident corporation's in-state subsidiary … only if the parent so controlled and dominated the affairs of the subsidiary that the latter's corporate existence was disregarded so as to cause the residential corporation to act as the nonresidential corporate defendant's alter ego.'" *Viasystems, Inc. v. EBM-Papst St. Georgen GmbH & Co., KG*, 646 F.3d 589, 596 (8th Cir. 2011) (quoting *Epps v. Stewart Info. Servs. Corp.*, 327 F.3d 642, 648–49 (8th Cir. 2003)). In other words, "a court's assertion of jurisdiction is contingent on the ability of the plaintiff[] to pierce the corporate veil." *Epps*, 327 F.3d at 649. "State law is viewed to determine whether and how to pierce the corporate veil." *Id.*

Federal Circuit precedent is in accord, recognizing that personal jurisdiction may be established under an alter ego or agency theory if the out-of-state defendant exercises sufficient control over the in-state subsidiary. *See Celgard, LLC v. SK Innovation Co.*, 792 F.3d 1373, 1379 (Fed. Cir. 2015). Again, state law must be analyzed to determine whether the plaintiff has alleged and/or proven sufficient facts to support the application of the alter ego and veil-piercing doctrines[1] apply. *See Taurus IP, LLC v. DaimlerChrysler Corp.*, 726 F.3d 1306, 1338 (Fed. Cir. 2013).

At the outset, there is an important difference between what ME2C is arguing here and how personal jurisdiction and venue are litigated in most other cases involving the veil-piercing or alter ego doctrines. Typically, those doctrines arise when a plaintiff is trying to establish personal jurisdiction over a *parent* corporation based on a *subsidiary*'s connections to the forum state. *See, e.g.*, *Epps*, 327 F.3d at 649 (articulating the issue as whether "the [out-of-state] parent so controlled and dominated the affairs of the [in-state] subsidiary"). Here, ME2C is arguing the opposite: the out-of-state *subsidiary*, PacifiCorp, should be subject to personal jurisdiction based on the connections of the in-state *parent*, BHE, to the forum state. This is often referred to as "reverse-

[1] The Court discusses the alter ego and veil-piercing doctrines interchangeably for the purpose of determining jurisdiction, but it recognizes they can be two separate theories under Iowa law. *See United States v. Huyser*, No. 4:23-CV-00144-SHL-WPK, 2024 WL 5054962, at *22 (S.D. Iowa Sept. 30, 2024) (gathering Iowa cases).

piercing," and some courts have held that it cannot serve as the basis for exercising personal jurisdiction over the out-of-state subsidiary. *See, e.g.*, *Home-Stake Prod. Co. v. Talon Petrol., C.A.*, 907 F.2d 1012, 1021 (10th Cir. 1990); *Titan Feeding, LLC v. Corey Cattle Co., LLC*, No. 19-CV-02541-PAB-SKC, 2022 WL 4182458, at *13 (D. Colo. Sept. 13, 2022) (collecting cases). As the Tenth Circuit has explained, "[t]he dominated corporation does not direct and control its dominating corporate or individual alter ego. Accordingly, it is unfair to impute to the dominated corporation the forum contacts of its alter ego." *Home-Stake*, 907 F.2d at 1021. The Eighth Circuit agrees. *See Richards v. Aramark Servs., Inc.*, 108 F.3d 925, 928 (8th Cir. 1997) (rejecting plaintiff's attempt to apply reverse-piercing theory to gain personal jurisdiction over subsidiary by virtue of parent's contacts with forum state). By contrast, other courts—including, importantly, the Federal Circuit—have been open to exercising personal jurisdiction in "reverse-piercing" situations. *See Taurus IP, LLC*, 726 F.3d at 1338; *Int'l Equity Invs., Inc. v. Opportunity Equity Partners, Ltd.*, 475 F. Supp. 2d 456, 459–60 (S.D.N.Y. 2007).

It is unclear whether this Court should apply Eighth Circuit or Federal Circuit precedent. As a general proposition, lower courts are obligated to apply Federal Circuit precedent when evaluating venue and personal jurisdiction in patent infringement cases. *See, e.g.*, *In re Volkswagen Grp. of Am., Inc.*, 28 F.4th at 1207 (venue); *Red Wing Shoe Co. v. Hockerson-Halberstadt, Inc.*, 148 F.3d 1355, 1358 (Fed. Cir. 1998) (personal jurisdiction). However, because the alter-ego and veil-piercing doctrines are not unique to patent law, lower courts apply the law of its regional circuit on those issues. *Wechsler v. Macke Int'l Trade, Inc.*, 486 F.3d 1286, 1295 (Fed. Cir. 2007). Here, the issues of personal jurisdiction and venue are intermingled with the alter-ego and veil-piercing doctrines, and thus there are arguments for applying each of Eighth Circuit and Federal Circuit precedent. In an abundance of caution, the Court will, consistent with Federal Circuit precedent, give ME2C the benefit of the doubt by assuming reverse-piercing is a viable theory for establishing personal jurisdiction and venue.

Even so, the fact that ME2C is using a reverse-piercing theory is relevant to whether it has met its burden. ME2C asserts, for example, that the in-state activities of employees who have dual roles with PacifiCorp and BHE should be attributed to PacifiCorp for purposes of determining personal jurisdiction. But this is inconsistent with ME2C's overarching theory that BHE is controlling PacifiCorp; presumably, if this theory is correct, the dual role employees are doing *BHE*'s bidding, not *PacifiCorp*'s, when they are in Iowa. The Court will not attribute those acts to

PacifiCorp in a situation where that entity does not otherwise have contacts with Iowa. Similarly, it is not plausible for venue purposes to allege that PacifiCorp—which owns power plants in Wyoming—is engaged in acts of infringement in Iowa merely by virtue of sharing employees with an Iowa-based parent.

Relatedly, ME2C is noticeably vague in its allegations about what the dual role employees in Iowa are doing that relates to the alleged infringement in Wyoming. At best, ME2C alleges—sometimes "on information and belief"—that the dual role employees work in Iowa and have "participat[ed] in, induc[ed], and approv[ed] the conduct giving rise to infringement…." (ECF 59, ¶¶ 32–37.) These allegations are so non-specific that they do not help ME2C establish personal jurisdiction and/or venue. "After all, the relevant prong of § 1400(b) restricts venue to 'where the defendant has committed acts of infringement'—not where the defendant has committed acts related to (but not part of) acts of infringement." *Celgene Corp. v. Mylan Pharms. Inc.*, 17 F.4th 1111, 1121 (Fed. Cir. 2021). Here, at most, ME2C has alleged that PacifiCorp has committed acts "related to (but not part of) acts of infringement" in Iowa. This is not enough to satisfy ME2C's burden. Instead, ME2C must allege sufficient other facts to plausibly allege that PacifiCorp is BHE's alter ego or that veil-piercing is appropriate.

ME2C's veil-piercing and alter ego arguments essentially rest on five facts: (i) PacifiCorp is an (indirect) subsidiary of BHE; (ii) BHE is (indirectly) the sole owner of PacifiCorp, resulting in control over PacifiCorp's actions and profits; (iii) there is some overlap between officers and directors of BHE and PacifiCorp; (iv) there is an intercompany agreement that results in the sharing of personnel and resources between BHE and PacifiCorp; and (v) a recent filing with the Securities and Exchange Commission raised questions about PacifiCorp's capitalization. When placed in the proper context, these facts are not enough to state a plausible alter ego or veil-piercing claim.

The first fact—PacifiCorp's status as an indirect subsidiary of BHE—is obviously not enough to plausibly make BHE liable for PacifiCorp's liabilities. *See, e.g.*, *State ex rel. Neidig v. Superior Nat. Ins. Co.*, 173 P.3d 123, 131 (Or. 2007) (describing veil-piercing as "extraordinary remedy"); *Cemen Tech, Inc. v. Three D Indus., L.L.C.*, 753 N.W.2d 1, 6 (Iowa 2008) (requiring the plaintiff to prove "exceptional circumstances" before the veil may be pierced). Holding otherwise would obliterate the corporate form by allowing a plaintiff to survive a motion to dismiss in any veil-piercing case in which an entity has a shareholder or parent; which is to say, any veil-piercing case, period. Even at the pleading stage, the law demands more.

The fact that BHE is (indirectly) PacifiCorp's sole owner and therefore has the voting power to control the entity's actions and profits is also not enough to plausibly state a veil-piercing or alter ego claim. Again, holding otherwise would go too far by allowing a veil-piercing or alter ego claim to reach discovery whenever a parent or shareholder owns 100% of a subsidiary. Neither Iowa nor Oregon law would support such a broad interpretation of the veil-piercing and alter ego doctrines. *See Amfac Foods, Inc. v. Int'l Sys. & Controls Corp.*, 654 P.2d 1092, 1100 (Or. 1982) ("Ownership of all the stock of the corporation by one person, in and of itself, is insufficient to [pierce the corporate veil]. Nor is the control of the corporation by a shareholder, in and of itself, sufficient to support a claim for recovery [for veil-piercing]."); *Schultz v. Portfolio Recovery Assocs., LLC*, No. 12-CV-2022-LRR, 2012 WL 5332194, at *6 (N.D. Iowa Oct. 29, 2012) ("[The parent's] mere ownership of [the subsidiary] is not a sufficient contact with Iowa to provide this court with personal jurisdiction over [the parent].").

ME2C next emphasizes the overlap in officers and directors of BHE and PacifiCorp and the sharing of personnel and resources pursuant to an intercompany agreement. In context, however, these allegations provide no meaningful support for the veil-piercing and alter ego claims because ME2C offers no facts plausibly suggesting that the overlap in personnel or resources is designed to perpetuate fraud, harm PacifiCorp's creditors, or otherwise abuse the corporate form. Indeed, the very fact that the sharing of personnel and resources is governed by a formal agreement demonstrates that BHE and PacifiCorp are *respecting* the corporate form, not *abusing* it. ME2C's inability to plausibly allege otherwise is a fatal deficiency, as both Oregon and Iowa law consider fraud or misuse of the corporate form in determining whether the veil can be pierced or alter ego liability will apply. *See, e.g.*, *Greenleaf Auto Repair, LLC v. Ideal Auto Works, LLC*, 509 P.3d 750, 752 (Or. Ct. App. 2022) (affirming dismissal of veil-piercing claim based on plaintiff's failure to allege that the owner abused the corporate form in a way that caused injury); *In re Marriage of Ballstaedt*, 606 N.W.2d 345, 349 (Iowa 2000) ("A court may disregard a corporate structure by piercing the corporate veil only under circumstances where the corporation is a mere shell, serving no legitimate business purpose, *and used primarily as an intermediary to perpetuate fraud or promote injustice.*" (emphasis added)); *Briggs. Transp. Co. v. Starr Sales Co.*, 262 N.W.2d 805, 810 (Iowa 1978) (requiring "[a]n abuse of the corporate privilege"). To that end, PacifiCorp has presented evidence—which ME2C has not tried to rebut—that PacifiCorp has its own employees and management, follows all requisite corporate formalities, keeps its own accounts, handles its

own finances, and maintains its own books and records. The mere allegation of overlap in personnel and resources is not enough in these circumstances to allow ME2C to use a veil-piercing or alter ego theory to satisfy its burden of proof on venue or personal jurisdiction.

In context, ME2C's allegation that PacifiCorp is undercapitalized is also insufficient to establish personal jurisdiction or venue on a veil-piercing or alter ego theory. (ECF 59, ¶ 41.) ME2C's allegation emanates from a statement in a recent 10-K about PacifiCorp's credit ratings, but there is nothing in the 10-K or ME2C's First Amended Complaint to suggest BHE caused the change in credit rating—much less that it did so in an effort to shield assets or otherwise abuse the corporate form. Thus, again, ME2C has not plausibly alleged an abuse of the corporate form. *See Greenleaf Auto Repair,* 509 P.3d at 752; *Briggs. Transp. Co.*, 262 N.W.2d at 810; *TrueNorth Cos., L.C. v. TruNorth Warranty Plans of N. Am., LLC*, 423 F. Supp. 3d 604, 615 (N.D. Iowa 2019). Moreover, and in any event, the statement in the 10-K is sufficiently opaque that, even if accepted as true, it does not rebut PacifiCorp's evidence that the company has been adequately capitalized at all relevant times. (ECF 79-2, ¶ 16.)

For these reasons—as well as those set forth in Section VI, below, regarding ME2C's joint enterprise and agency theories—the Court concludes that ME2C has failed to meet its burden of proving personal jurisdiction or venue as to PacifiCorp. For reasons explained in Section V below, the Court TRANSFERS the case against PacifiCorp to the United States District Court for the District of Wyoming, rather than dismissing it outright.

III. ME2C HAS NOT ESTABLISHED PERSONAL JURISDICTION OR VENUE AS TO ALLIANT ENERGY CORPORATION.

Like PacifiCorp, Alliant moves to dismiss for lack of venue, lack of personal jurisdiction, and failure to state a claim. (ECF 88.) It also moves to sever. (ECF 92.) ME2C resists in all respects. The Court concludes that it lacks personal jurisdiction and venue over Alliant and therefore DISMISSES the case against that entity.

A. Relevant Facts.

Alliant is a Wisconsin corporation with its principal place of business in Wisconsin. (ECF 59, ¶ 5; ECF 88-2, ¶ 2.) According to a Declaration submitted in support of Alliant's Motion to Dismiss, the company has no physical or operational presence in Iowa, nor does it have any employees here. (ECF 88-2, ¶¶ 7–8, 28.) It is, however, the direct or indirect corporate parent of WPL, IPL, and AECS. (Id., ¶ 6.) Alliant is a holding company and does not directly conduct business with the public, nor does it directly own or operate any coal-fired power plants or have

employees who work in such plants. (Id., ¶¶ 9–11.) Alliant and each of its subsidiaries are sufficiently capitalized, keep their finances separate from each other, and otherwise maintain corporate formalities. (Id., ¶¶ 30–34.)

ME2C alleges that Alliant is vicariously liable for patent infringement committed by its subsidiaries because Alliant exercises control over those subsidiaries and profits from their infringing activity. (ECF 59, ¶¶ 24, 45, 97, 105, 113, 143, 149.) Alliant shares all of its directors and officers with IPL, including directors and officers whom ME2C alleges had the authority to stop the allegedly infringing activity at IPL power plants. (Id., ¶¶ 168–69.) According to ME2C, Alliant, through its subsidiary AECS, negotiates agreements for the purchase and sale of electricity from subsidiaries and shares employees and resources amongst IPL and WPL. (Id., ¶¶ 172–74; 210–12.) "Alliant also touts that it makes decisions regarding the operation of coal-fired power plants owned by IPL and WPL, including power plants where acts of infringement have occurred." (Id., ¶ 46.) ME2C alleges that these facts are sufficient to make Alliant liable under agency and joint enterprise theories. (Id., ¶ 206.)

B. Legal Standards.

See Section II.B, above.

C. ME2C Has Not Established Personal Jurisdiction or Venue With Respect to Alliant.

As a threshold matter, the Court rejects ME2C's argument that Alliant waived the ability to challenge personal jurisdiction or venue by virtue of also having moved to sever. ME2C's argument is unavailing as to Alliant for the same reasons it was unavailing as to PacifiCorp; namely: (i) Alliant filed the motion to sever subject to the motion to dismiss; and (ii) there are significant efficiency advantages to considering such motions all at once instead of piecemeal.

On the merits, ME2C's position starts out on stronger footing against Alliant than PacifiCorp because this time ME2C is trying to establish jurisdiction and venue over the out-of-state parent (Alliant) based on control of the in-state subsidiary (IPL). This is the more traditional—and plausible—way for the veil-piercing and alter ego doctrines to be applied, as there is nothing inherently implausible about assuming the (dominant) parent is pursuing its own interests when it allegedly acts through the (subservient) subsidiary in the forum state.

Nonetheless, ME2C has not done enough to establish personal jurisdiction or venue over Alliant based on veil-piercing and alter ego theories because there is nothing in the pleadings to suggest Alliant used its subsidiary to perpetuate fraud or otherwise abused the corporate form. In

other words, ME2C has again failed to allege a crucial element of the veil-piercing and alter ego doctrines under Iowa law. *See In re Marriage of Ballstaedt*, 606 N.W.2d at 349.

The same is true under Wisconsin law, to the extent it applies given that Alliant is incorporated in Wisconsin. To pierce the corporate veil under Wisconsin law, the plaintiff must establish, *inter alia*, that honoring the corporate form "would accomplish some fraudulent purpose, operate as a constructive fraud, or defeat some strong equitable claim…." *Consumer's Co-op. of Walworthy Cnty. v. Olsen*, 419 N.W.2d 211, 219 (1988) (citation omitted). In other words, the plaintiff must show that the corporate form was misused in a way that "proximately cause[d] the injury or unjust loss complained of." *Id.* at 218; *see also id.* (explaining that the parent's mere exercise of control, "absent a showing of injustice, would not justify exception to the general rule of corporate nonliability"). Here, ME2C does not allege that Alliant misused the corporate form to commit fraud or otherwise perpetuate an injustice. Instead, at most, ME2C simply wants Alliant to be liable for its subsidiary's alleged infringement. More is required to state a claim for veil-piercing or alter ego liability. *See Blanchar v. Lake Land Builders, Inc.*, 763 N.W.2d 249, at *6 (unpublished table decision) (affirming dismissal where pleading "contains neither specific allegations nor a general statement from which we could reasonably infer that [the entity's] alleged lack of a separate existence was a cause of [the plaintiff's] injury"); *Dissolved Air Floatation Corp. v. Kothari*, No. 14-C-1223, 2016 WL 5376192, at *5–6 (E.D. Wis. Sept. 26, 2016) (dismissing complaint where "there is no suggestion that the very existence of the corporate form was somehow part of an effort to perpetuate fraud"). ME2C's agency and joint infringement theories require closer analysis. Some courts have held that mere allegations of control and financial benefit are enough to survive a motion to dismiss on an agency theory even if those allegations are not enough to establish alter ego liability. *See, e.g.*, *StrikeForce Techs., Inc. v. PhoneFactor, Inc.*, No. CV 13-490-RGA-MPT, 2013 WL 6002850, at *5–6 (D. Del. Nov. 13, 2013) (dismissing alter ego theory but not agency theory where plaintiff alleged close relationship between parent and subsidiary but not fraud or abuse of the corporate form); *T-Jat Sys. 2006 Ltd. v. Expedia, Inc.*, No. CV 16-581-RGA-MPT, 2017 WL 896988, at *5–6 (D. Del. Mar. 7, 2017) (similar); *see also Brit. Telecomms. PLC v. IAC/InteractiveCorp*, 356 F. Supp. 3d 405, 409–10 (D. Del. 2019) (denying motion to dismiss infringement claims arising out of alleged agency relationship between holding company and subsidiary companies).

Relevant case law indicates, however, that the agency relationship will give rise to liability only if it is "directly related to the cause of action." *Id.* at 409; *see also In re Volkswagen Grp. of Am., Inc.*, 28 F.4th at 1210 ("[C]ontrol over one aspect of a party's or agent's activities does not affect the analysis of whether that party is an agent for a different activity."). Here, ME2C has not done enough to establish a connection between Alliant's "control" over its subsidiaries and the alleged infringement at the subsidiaries' facilities. Instead, for the most part, the First Amended Complaint simply makes generic allegations about Alliant inducing or controlling the infringing activity (e.g., ECF 59, ¶ 20) and couples them with allegations about overlap in executive management of the respective entities (e.g., id., ¶ 168 ("IPL, WPL, and Alliant share the same directors and officers.")) and allegations that would apply to virtually any parent/subsidiary relationship (e.g., id., ¶ 45 (alleging that IPL and WPL are subsidiaries of Alliant and contribute to Alliant's consolidated financials)). This is not enough to plausibly allege that Alliant is responsible for the allegedly infringing activity of its subsidiary, as there is a "well established principle of corporate law that directors and officers holding positions with a parent and its subsidiary can and do change hats to represent the two corporations separately, despite their common ownership." *United States v. Bestfoods*, 524 U.S. 51, 69 (1998) (cleaned up, quoting *Lusk v. Foxmeyer Health Corp.*, 129 F.3d 773, 779 (5th Cir. 1997)). "Since courts generally presume that the directors are wearing their 'subsidiary hats' and not their 'parent hats' when acting for the subsidiary, it cannot be enough to establish liability here that dual officers and directors made policy decisions and supervised activities at the facility." *Id.* at 69–70 (internal citations omitted).

Perhaps recognizing this problem, the First Amended Complaint contains a few paragraphs, often "[o]n information and belief," alleging the direct involvement of Alliant employees in the operations of the power plants where the alleged infringement occurred. (ECF 59, ¶¶ 50, 165, 169.) The most specific of these allegations is found in Paragraph 169, which identifies three so-called "Alliant employees" who have provided input regarding the use of additives and sorbents at IPL's and WPL's facilities. (Id., ¶ 169.) Paragraph 169 further alleges that "Alliant managers operate as plant managers responsible for operating the IPL and WPL power plants accused of infringement in this case." (Id.) Paragraph 50 makes a similar point. (Id., ¶ 50.)

The problem for ME2C is that these allegations were directly rebutted by the Declaration submitted in support of Alliant's Motion to Dismiss, which states that none of the employees identified in Paragraph 169 is an Alliant employee and there are no Alliant employees serving as

plant managers in IPL or WPL plants. (ECF 88-2, ¶¶ 14, 24–26.) ME2C's response to the Motion to Dismiss does not challenge these aspects of the Declaration or explain why ME2C believed the employees in question *were* Alliant employees. The Court therefore will not give the allegations of Paragraph 169 any weight in evaluating whether ME2C has met its burden of proving personal jurisdiction or venue through an agency theory.

Without those allegations, ME2C is left to rely primarily on generic arguments about "control," most of which are inherent in the parent-subsidiary relationship. For example, ME2C argues that the common officers and directors of Alliant and IPL "could stop the[] infringement, and yet it has chosen to allow that infringement to continue." (ECF 99, p. 11.) If this were enough to establish the parent's liability for the subsidiary's affairs, "nearly every corporate family having an executive board controlling the overall business operations of its subsidiaries could, at the pleading stage, plausibly be characterized a joint enterprise under 35 U.S.C. § 271(a)." *LBS Innovations, LLC v. Nokia USA Inc.*, No. 15-CV-1972, 2016 WL 3407611, at *4 (E.D. Tex. June 21, 2016). The law is not so broad. *See id.* (dismissing joint enterprise claims); *Gevo, Inc. v. Butamax Advanced Biofuels LLC*, No. CV 12-1724, 2013 WL 3381258, at *4 (D. Del. July 8, 2013) (same).

For these reasons—as well as those set forth in Section VI, below, regarding ME2C's joint enterprise, agency, and other vicarious liability theories—the Court concludes that ME2C has not established personal jurisdiction or venue over Alliant. For reasons explained in Section V, the Court DISMISSES Alliant from the case.

IV. ME2C HAS NOT ESTABLISHED VENUE AS TO WISCONSIN POWER AND LIGHT.

Although WPL does not challenge personal jurisdiction, it does move to dismiss for improper venue and failure to state a claim. (ECF 90.) It also moves to sever. (ECF 92.) The Court concludes that ME2C has not established venue over WPL and therefore TRANSFERS the case against that entity to the United States District Court for the Western District of Wisconsin.

A. Facts.

WPL is a Wisconsin corporation with its principal place of business in Madison, Wisconsin. (ECF 59, ¶ 8.) WPL has no offices, facilities, or places of business in Iowa, nor does it have any employees here. (ECF 90-2, ¶¶ 15–16.) It is, however, registered to do business in Iowa and has a registered agent here for service of process. (ECF 59, ¶ 8.) WPL is a subsidiary of Alliant and sister entity to IPL and AECS. (Id., ¶ 18.)

WPL owns or co-owns and operates two facilities at issue here: the Columbia Plant and Edgewater Plant. (Id., ¶¶ 142, 148; ECF 90-2, ¶ 12.) Both are in Wisconsin. (ECF 59, ¶¶ 141, 147.) ME2C alleges, on information and belief, that WPL owns and operates Columbia and Edgewater "for the benefit of Alliant" and that profits made by WPL from those facilities are paid to Alliant. (Id., ¶¶ 143, 149.) ME2C further alleges that Alliant controls WPL and induces WPL to perform acts of infringement. (Id., ¶ 164.) Alliant induces infringement by: (i) providing technical, administrative, logistical, and/or financial services to WPL; (ii) negotiating agreements relating to mercury control on behalf of WPL; and (iii) having overlapping employees, directors, and officers with WPL. (Id., ¶¶ 165–68.) Several people serve in dual roles as executives of each of Alliant, WPL, and IPL. (Id., ¶ 168.) In addition, ME2C alleges that so-called "Alliant employees" are involved in investigating and providing advice regarding the use of additives in WPL's facilities. (Id., ¶ 169.) According to a Declaration submitted by WPL, however, only one of these employees is based in Iowa and none is employed by Alliant. (ECF 90-2, ¶¶ 24–26.) Moreover, and in any event, the Declaration asserts that the WPL employees with knowledge about the operation of the Columbia and Edgewater facilities are located in Wisconsin. (Id., ¶¶ 21–23.) Finally, the Declaration asserts that each of WPL, Alliant, IPL, and AECS maintains its own, independent corporate identity, is adequately capitalized, and keeps its own finances. (Id., ¶¶ 30, 33–34.)

B. Legal Standards.

See Section II.B, above.

C. ME2C Has Not Established Venue With Respect to WPL.

ME2C's venue argument revolves in part around its theory that WPL is the alter ego of its corporate parent, Alliant. As explained above, however, ME2C has not alleged sufficient facts to state a plausible veil-piercing or alter-ego claim against Alliant under Iowa or Wisconsin law. The alter-ego and veil-piercing allegations relating to Alliant are therefore insufficient to make venue appropriate as to WPL.

With veil-piercing and alter-ego theories off the table, ME2C argues venue based on waiver, consent, and joint enterprise or agency theories. The Court rejects ME2C's waiver argument for the same reason it rejected it as to Alliant and PacifiCorp. The Court also rejects ME2C's consent theory, which is based on WPL being registered to do business in Iowa and having a registered agent here for service of process. These facts might be enough to establish personal jurisdiction over WPL, *see Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122 (2023), but they are not

sufficient to establish venue in a patent infringement case because "[t]he patent venue statute alone [28 U.S.C. § 1400(b)] should control venue in patent infringement proceedings." *TC Heartland*, 581 U.S. at 265. Meaning: ME2C must show that WPL either "resides" or "has committed acts of infringement and has a regular and established place of business" in Iowa. *Id.*

ME2C cannot meet this burden. As to WPL's place of residence, *TC Heartland* squarely holds that "a domestic corporation 'resides' only in its State of incorporation for purposes of the patent venue statute." *Id.* at 262. WPL therefore resides in Wisconsin, not Iowa.

As to WPL's "place of business," Federal Circuit precedent establishes that it must be "a physical, geographical location in the district from which the business of the defendant is carried out." *In re Cray, Inc.*, 871 F.3d 1355, 1362 (Fed. Cir. 2017). And it must be "regular," which is to say, it operates in a "steady, uniform, orderly, and methodical manner." *Id.* (cleaned up). "In other words, sporadic activity cannot create venue." *Id.* Here, ME2C has not plausibly established that WPL conducts "regular" business in Iowa given that WPL has no offices, facilities, operations, or employees here. *See, e.g.*, *PS Prods. Inc. v. Panther Trading Co., Inc.*, 122 F.4th 893, 899 (Fed. Cir. 2024) ("[The defendant] does not have a regular and established place of business in Arkansas because it has no physical presence there.") Moreover, to the extent WPL conducts business in Iowa at all, the First Amended Complaint does not plausibly establish that this business includes "acts of infringement" given that WPL's plants are in Wisconsin. *See* 28 U.S.C. § 1400(b) (establishing that venue is proper only where the defendant residents or "where the defendant has committed acts of infringement **and** has a regular and established place of business" (emphasis added)); *Bausch Health Ireland Ltd. v. Mylan Lab'ys Ltd.*, No. CV2110403SRCJSA, 2022 WL 683084, at *6 (D.N.J. Mar. 8, 2022) (concluding that plaintiff failed to establish venue over defendant whose only alleged tie to the forum state revolved around actions of other defendants).

This leaves ME2C's joint enterprise, agency, and other vicarious liability theories. For reasons explained in full in Section VI below, the Court concludes that ME2C has not alleged a viable joint enterprise theory against WPL and thus venue is not appropriate on that basis.

V. THE COURT TRANSFERS THE CASES AGAINST WPL AND PACIFICORP TO THEIR RESPECTIVE HOME DISTRICTS BUT DISMISSES THE CASE AGAINST ALLIANT OUTRIGHT.

The only remaining question as to WPL, PacifiCorp, and Alliant is whether the Court should dismiss the cases against them outright or order transfer to their respective home districts. All parties recognize that transfer is authorized by 28 U.S.C. § 1406(a), which gives district courts

discretion in any case where venue is lacking to transfer it "to any district or division in which it could have been brought" if doing so is "in the interest of justice." "Normally transfer will be in the interest of justice because normally dismissal of an action that could be brought elsewhere is 'time-consuming and justice-defeating.'" *Miller v. Hambrick*, 905 F.2d 259, 262 (9th Cir. 1990) (quoting *Goldlawr, Inc. v. Heiman*, 369 U.S. 463, 467 (1962)). This is particularly true with respect to WPL and PacifiCorp, as ME2C clearly intends to sue those entities *somewhere*, following which the cases will immediately return to this District for pretrial matters as part of the MDL consolidation. From an efficiency standpoint, it would make little sense to force ME2C through the steps of re-filing those cases anew.

From a legal standpoint, however, things are more complicated. In *HollyAnne Corporation v. TFT, Inc.*, 199 F.3d 1304, 1307 (Fed. Cir. 1999), the Federal Circuit held that the district court improperly transferred a case pursuant to 28 U.S.C. § 1406(a) after dismissing it for lack of personal jurisdiction. It is somewhat difficult to reconcile *HollyAnne Corp.* with the United States Supreme Court's decision in *Goldlawr, Inc. v Heiman*, which squarely held that "[t]he language of § 1406(a) is amply broad enough to authorize the transfer of cases, however wrong the plaintiff may have been in filing his case as to venue, whether the court in which it was filed had personal jurisdiction over the defendants or not." 369 U.S. at 466. It is also difficult to reconcile *HollyAnne Corp.* with 28 U.S.C. § 1631, which authorizes district courts to transfer actions if "there is a want of jurisdiction." *See Franco v. Mabe Trucking Co., Inc.*, 3 F.4th 788, 794–95 (5th Cir. 2021) (holding that "jurisdiction" as used in § 1631 refers to both subject-matter and personal jurisdiction).

The Court cannot imagine that the Federal Circuit intended not to follow on-point Supreme Court precedent. Accordingly, the Court interprets *HollyAnne* as revolving around the highly technical question of whether a Court may "transfer" a case that it has already "dismissed." *See Sawgrass Techs., Inc. v. Texas Original Graphics, Inc.*, No. 06-1190, 2007 WL 634434, at *2–3 (Fed. Cir. Mar. 2, 2007) (interpreting *HollyAnne* to mean that courts must choose between dismissal and transfer). In other words, so long as the Court does not <u>dismiss</u> ME2C's case against a Defendant over whom the Court lacks personal jurisdiction, the Court may <u>transfer</u> that case.

With this interpretation of *HollyAnne* in mind, the Court <u>transfers</u> ME2C's cases against PacifiCorp and WPL to the District of Wyoming and Western District of Wisconsin, respectively, pursuant to § 1406(a). *See Laseraim Tools, Inc. v. SDA Mfg., LLC*, 624 F. Supp. 2d 1027, 1033

(E.D. Ark. 2008) (transferring, but not dismissing, patent infringement case based on lack of personal jurisdiction and venue). Venue and personal jurisdiction exist over PacifiCorp in the District of Wyoming because that is where PacifiCorp operates allegedly infringing power plants. Similarly, venue and personal jurisdiction exist over WPL in the Western District of Wisconsin because that is where WPL's principal place of business is located and the site of one of the plants where WPL engages in allegedly infringing activity. The Court understands, of course, that the cases against WPL and PacifiCorp almost certainly will end up returning to this District for pretrial purposes as part of the multi-district litigation.

The Court dismisses, rather than transfers, ME2C's claims against Alliant. Unlike WPL and PacifiCorp, Alliant is not alleged to have direct ownership over any allegedly infringing plants. Instead, ME2C's claims against Alliant revolve around veil-piercing, alter ego, joint enterprise, and agency theories, among others. Given the Court's ruling in the context of personal jurisdiction and venue that ME2C has not stated a plausible claim against Alliant under those theories, it would not be in the interest of justice to transfer the case to a district where personal jurisdiction and venue exist over Alliant. Doing so would essentially force a district court in the new district to address the same issues this Court has already decided. *See Ananiev v. Wells Fargo Bank, N.A.*, 968 F. Supp. 2d 123, 132 (D.D.C. 2013) (dismissing rather than transferring based on futility).

For these reasons, the Court GRANTS Alliant's Motion to Dismiss. It DENIES PacifiCorp's and WPL's Motions to Dismiss but orders that the cases against those entities be TRANSFERRED to the District of Wyoming (PacifiCorp) and Western District of Wisconsin (WPL) pursuant to 28 U.S.C. § 1406(a).

VI. THE COURT GRANTS IN PART AND DENIES IN PART DEFENDANTS' MOTIONS TO DISMISS THE ALLEGATIONS OF JOINT INFRINGEMENT.

The Court next must consider whether ME2C has stated viable claims for direct infringement under joint enterprise, agency, and other various liability theories or for inducing infringement.[2] The Court concludes that ME2C has failed to do so with respect to any entities other than IPL and MidAmerican. The cases against the other five entities therefore are

[2] As it relates to PacifiCorp, WPL, and Alliant, the Court is technically analyzing whether ME2C sufficiently alleged joint enterprise or agency theories for purposes of establishing personal jurisdiction and/or venue pursuant to Fed. R. Civ. P. 12(b)(2) and (b)(3). As to those three entities, the Court can consider materials outside the pleading as part of the analysis. The other four entities have moved to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim, and thus the Court must restrict its analysis to the four corners of the First Amended Complaint and documents necessarily incorporated by reference therein.

DISMISSED as to BHE, Alliant, and AECS and TRANSFERRED as to PacifiCorp and WPL. As for IPL and MidAmerican, ME2C has stated a viable joint enterprise and agency claim against those entities as it relates to activities at the Ottumwa Plant but not any other facilities. The infringement claims against IPL and MidAmerican therefore will proceed on a joint basis as to the Ottumwa Plant but on an individual basis as to the other facilities (the George Neal, Louisa, and Prairie Creek Plants for IPL and the Walter Scott Plant for MidAmerican).

A. Facts.

ME2C alleges that MidAmerican operates part or all of four coal-fired power plants where infringing activity occurs: the Walter Scott Plant in Council Bluffs, Iowa (ECF 59, ¶¶ 86–87); the Louisa Plant in Muscatine, Iowa (id., ¶¶ 93–94); Units 3 and 4 of the George Neal Plant in Sergeant Bluff and Salix, Iowa (id., ¶¶ 101–02); and the Ottumwa Plant in Ottumwa, Iowa (id., ¶¶ 109–10). ME2C alleges that MidAmerican operates those plants "for the benefit of BHE." (Id., ¶¶ 89, 96, 104, 112[3].)

ME2C alleges that IPL is a minority owner of three of these plants: Louisa, George Neal, and Ottumwa. (Id., ¶¶ 95, 103, 111.) ME2C alleges, upon information and belief, that IPL operates those three plants "for the benefit of Alliant." (Id., ¶¶ 97, 105, 113.) IPL also separately owns a fourth facility, known as Prairie Creek, in Cedar Rapids, Iowa, where infringing activity allegedly occurs. (Id., ¶¶ 117–18.) Alliant is IPL's direct parent entity but is not otherwise alleged to have a direct ownership interest in the facilities owned (or partly-owned) by IPL. Alliant also is not alleged to have a direct ownership interest in the facilities in Wisconsin owned by WPL, which is another direct Alliant subsidiary.

AECS is also not alleged to have a direct ownership interest in the IPL or WPL plants (or any other plants, for that matter). ME2C alleges, however, that "the employees identified by WPL as participating in acts of infringement include employees of Alliant and/or AECS (including Eric Sandvig, Benjamin Depies, Lisa Barton, Robert Durian, John Larsen, Michael Li, and Jeff Hansen)." (Id., ¶ 50.) ME2C alleges that these employees have "investigated and advised regarding the use of additives and sorbents used in the infringing acts" at IPL and WPL plants, "interacted with state regulators regarding environmental regulations related to the patented methods," and

[3] Paragraph 112 alleges, probably inadvertently, that "IPL owns and operates Ottumwa for the benefit of BHE." (ECF 59, ¶ 112.) Presumably ME2C meant to use "MidAmerican" instead of IPL, as Paragraph 113 alleges that "IPL owns its share of Ottumwa for the benefit of Alliant." (Id., ¶ 113.) This discrepancy is not material to the Court's ruling.

"have operated as plant managers responsible for operating the IPL and WPL power plants accused of infringement in this case." (Id.) ME2C further alleges, sometimes "on information and belief," that AECS employees are involved in working on projects at the IPL and WPL plants and that AECS acts as an agent for IPL and WPL when it provides resources and services to those entities. (Id., ¶¶ 166, 172.) ME2C alleges that IPL and WPL pay for these resources and services pursuant to service agreements and that "[o]n information and belief, this provides Alliant, AECS, IPL, and WPL with equal rights of control over these shared employees and resources." (Id., ¶ 173.)

Like Alliant and AECS, BHE is not alleged to have a direct ownership interest in any facilities where infringing activity occurs. Instead, as to the MidAmerican plants, BHE owns an entity that owns an entity that owns MidAmerican. Similarly, as to PacifiCorp, BHE's ownership is indirect and involves an intermediate subsidiary. ME2C alleges, however, that BHE has an intercompany administrative services agreement with MidAmerican and PacifiCorp that includes sharing office space. (Id., ¶ 160.) ME2C further alleges that some BHE officers and directors conduct the business of MidAmerican and PacifiCorp by virtue of having dual roles with both PacifiCorp and BHE or as part of the intercompany agreement that includes employee sharing. (Id., ¶¶ 158, 160.) ME2C alleges that MidAmerican and PacifiCorp have paid hundreds of millions of dollars for these dual-role employees and other services under the intercompany agreement. (Id., ¶ 160.) ME2C alleges that these dual-role employees committed acts of infringement and induced, contributed to, and approved acts of infringement. (Id., ¶¶ 32–37.) ME2C also alleges that BHE is the alter ego of PacifiCorp and MidAmerican and/or is liable for their respective acts of infringement under joint enterprise or agency theories. (Id., ¶¶ 25, 200.)

B. Legal Standards.

"Direct infringement under [35 U.S.C.] § 271(a) occurs where all steps of a claimed method are performed by or attributable to a single entity." *Akamai Techs., Inc. v. Limelight Networks, Inc.*, 797 F.3d 1020, 1022 (Fed. Cir. 2015). "Where more than one actor is involved in practicing the steps, a court must determine whether the acts of one are attributable to the other such that a single entity is responsible for the infringement." *Id.* Under Federal Circuit precedent, one entity is responsible for another entity's acts in two scenarios: "(1) where that entity directs or controls others' performance, and (2) where the actors form a joint enterprise." *Id.*

The first scenario is analyzed through general principles of vicarious liability. *Id.* An entity can be liable for infringement based on control "if it acts through an agent (applying traditional

agency principles) or contracts with another to perform one or more steps of a claimed method." *Id.* at 1023. "[L]iability under § 271(a) can also be found when an alleged infringer conditions participation in an activity or receipt of a benefit upon performance of a step or steps of a patented method and establishes the manner or timing of that performance." *Id.* Whether an entity directed or controlled the acts of another is generally a question of fact. *Id.*

The second scenario—joint enterprise—refers to situations in which "all [actors] can be charged with the acts of the other, rendering each liable for the steps performed by the other as if each is a single actor." *Id.* To establish joint enterprise liability, the plaintiff must prove four elements: "(1) an agreement, express or implied, among the members of the group; (2) a common purpose to be carried out by the group; (3) a community of pecuniary interest in that purpose, among the members; and (4) an equal right to a voice in the direction of the enterprise, which gives an equal right of control." *Id.* (citing Restatement (Second) of Torts § 491 cmt. c.). The overarching question is "whether all method steps can be attributed to a single entity." *Id.*

C. ME2C Has Not Plausibly Alleged Claims for Direct Infringement Under a Joint Enterprise or Agency Theory Against Any Defendants Other Than IPL and MidAmerican.

1. The Joint Enterprise and Agency Doctrines Do Not Circumvent or Replace the Veil-Piercing and Alter Ego Doctrines in the Context of Related Corporate Entities.

To analyze the merits of Defendants' motions to dismiss the joint infringement claims, it is helpful to start with a deeper understanding of the Federal Circuit's decision in *Akamai Technologies, Inc. v. Limelight Networks, Inc.*, which has become a seminal case on situations where multiple parties are allegedly involved in the infringing activity. 797 F.3d 1020. In *Akamai*, the defendant's customers performed a crucial step in the allegedly infringing method, and thus the defendant argued that it could not itself be liable for infringement. *Id.* at 1024. Following extensive appellate litigation—including before the United States Supreme Court—the Federal Circuit eventually disagreed, holding that the defendant could be liable for joint infringement based on the level of control it exercised over its customers' actions. *Id.* This control included requiring customers to sign a standard contract delineating the steps the customers needed to perform to use the defendant's service, as well as a "welcome letter" instructing the customer how to use the service. *Id.* In both places, the defendant effectively dictated to the customers that they had to perform the final step in the infringing method. *Id.* at 1024–25. Accordingly, the Federal Circuit affirmed the jury's conclusion that the defendant was responsible for all steps of the

claimed method. *Id.* at 1025; *see also Eli Lilly & Co. v. Teva Parenteral Meds., Inc.*, 845 F.3d 1357, 1366 (Fed. Cir. 2017) (affirming infringement judgment against medical providers on induced infringement theory even though patients allegedly performed some of the steps of the infringement method).

There were no alter ego or veil-piercing claims at issue in *Akamai*, nor did it involve an alleged joint enterprise or vicarious liability among related corporate entities. Instead, *Akamai* focused on situations where an alleged infringer induces a third party to complete a crucial step in the infringing method and then uses the third-party's involvement as a basis for arguing against the alleged infringer's own liability. ME2C does not allege anything similar here; rather, ME2C is attempting to expand *Akamai* into an area the Federal Circuit did not appear to have in mind.

In *LBS Innovations, LLC v. Nokia USA Inc.*, the Eastern District of Texas rejected a plaintiff's similar attempt to apply *Akamai* to alleged infringement by related corporate entities. 2016 WL 3407611, at *4. *LBS Innovations* explained that the plaintiff's approach, if accepted, would mean that "nearly every corporate family having an executive board controlling the overall business operations of its subsidiaries could, at the pleading stage, plausibly be characterized a joint enterprise under 35 U.S.C. § 271(a)." *Id.* "That is plainly not the thrust of *Akamai*." *Id.* This Court agrees. *Akamai* was designed to address infringers who cleverly place customers or other third-parties into the infringing process. It was not meant to allow a plaintiff to use allegations about joint enterprise or vicarious liability to circumvent the veil-piercing and alter ego doctrines. *See Smith v. Garlock Equip. Co.*, 658 F. App'x 1017, 1027 (Fed. Cir. 2016) (refusing in post-*Akamai* case to hold parent entity responsible through direct or vicarious liability theories for a subsidiary's sale of infringing products).

2. <u>ME2C Has Not Established a Viable Joint Enterprise, Agency, or Other Direct or Vicarious Liability Theory Against PacifiCorp, Alliant, or WPL for Purposes of Personal Jurisdiction and/or Venue.</u>

With the proper interpretation of *Akamai* in mind, the Court reiterates that ME2C has not established a viable joint enterprise, agency, or other direct or vicarious liability theory against PacifiCorp, Alliant, or WPL for purposes of personal jurisdiction and/or venue. As explained in preceding sections, ME2C's allegations against those entities consist largely of facts that would be present in virtually any parent-subsidiary relationship. If these facts were enough to state a joint enterprise claim, it would undermine the consistent recognition of courts in patent infringement

cases and otherwise that the corporate form must be respected and given effect. *See Bestfoods*, 524 U.S. at 70; *LBS Innovations*, 2016 WL 3407611, at *4.

Granted, direct and/or vicarious infringement can occur in circumstances beyond those in which alter ego or veil-piercing liability can be established. However, *Akamai* requires either a sufficient level of control by one party over another or an agreement between the parties to carry out the infringing activity. Neither is alleged here as to PacifiCorp, Alliant, or WPL except in a generic, conclusory way. For example, the mere fact that there is overlap in directors and officers or sharing of resources does not mean BHE controls PacifiCorp or that the two are part of a joint enterprise. *See Bestfoods*, 524 U.S. at 70. The same is true for ME2C's vague allegations that Alliant induces infringement by providing technical, administrative, logistical, and/or financial services to WPL and IPL and negotiates agreements relating to mercury control on behalf of those entities. These allegations are too vague to establish that Alliant or BHE "controlled [their subsidiaries] regarding matters of patent infringement." *Nespresso USA, Inc. v. Ethical Coffee Co. SA*, 263 F. Supp. 3d 498, 505 (D. Del. 2017) (dismissing for lack of personal jurisdiction); *see also Amarte USA Holdings, Inc. v. Kendo Holdings Inc.*, No. 22-CV-08958-CRB, 2023 WL 5418732, at *2 (N.D. Cal. Aug. 21, 2023) (denying leave to amend to add parent companies to complaint where plaintiff failed to plausibly allege parents' direct involvement in acts of infringement); *Pegasus Imaging Corp. v. Northrop Grumman Corp.*, NO. 807-CV-1937-T-27EAJ, 2008 WL 5099691, at *2–3 (M.D. Fla. Nov. 25, 2008) (similar, dismissing claim).

The closest ME2C comes to stating a viable claim against any of these entities is when it alleges in Paragraphs 50 and 169 that "Alliant employees" are involved in the management and operation of IPL and WPL plants. (ECF 59, ¶¶ 50, 169.) This comes close to plausibly alleging the type of direct control that even *Bestfoods* recognizes could result in a parent entity being held liable for the activities of a subsidiary. *See Bestfoods*, 524 U.S. at 71–72. But, as noted above, Paragraphs 50 and 169 fall apart under scrutiny. Alliant's Declaration establishes—and ME2C, for present purposes, does not contest—that none of the employees identified in Paragraph 169 is an Alliant employee and there are no Alliant employees serving as plant managers in IPL or WPL plants. (ECF 88-2, ¶¶ 14, 24–26.) As the Court is allowed under Fed. R. Civ. P. 12(b)(2) and (b)(3) to consider this Declaration in ruling on Alliant's Motion to Dismiss, it must conclude that ME2C has not met its burden of establishing venue or personal jurisdiction over Alliant.

The bottom line is that ME2C has not plausibly alleged or established that PacifiCorp, Alliant, or WPL are liable under a joint enterprise, agency, or other direct or vicarious liability theory; hence the Court's conclusions above that: (a) the cases against PacifiCorp and WPL must be transferred to their respective home districts based on improper venue and lack of personal jurisdiction; and (b) the case against Alliant must be dismissed altogether for improper venue.

3. ME2C Has Not Stated a Viable Joint Enterprise, Agency, or Other Direct or Vicarious Liability Theory Against BHE.

Because BHE is moving to dismiss on the merits pursuant to Fed. R. Civ. P. 12(b)(6), the Court must limit its analysis as to BHE to the four corners of the pleadings and documents necessarily embraced therein. The issue is whether ME2C's allegations about BHE's relationship with MidAmerican and PacifiCorp, accepted as true, are sufficient to plausibly allege the type of agency relationship or control over infringing activity required by *Akamai*.

The answer is "no." The mere allegation that BHE is the (indirect) parent entity of MidAmerican and PacifiCorp is not enough to state a plausible basis for holding BHE liable for the other entities' acts of infringement, irrespective of whether the theory of liability is characterized as direct, vicarious, based on inducement, or otherwise. *See LBS Innovations*, 2016 WL 3407611, at *4; *Amarte USA Holdings*, 2023 WL 5418732, at *2. Nor is it enough to allege overlap between directors and officers of BHE and its subsidiaries, as there is a presumption that these directors and officers will wear their respective "parent" and "subsidiary" hats without causing one to become responsible for the other's liabilities. *See Bestfoods*, 524 U.S. at 70. Finally, ME2C's allegations about an intercompany agreement and sharing of resources between BHE and its subsidiaries are too vague and attenuated from the alleged acts of infringement to plausibly state a claim for direct or vicarious liability. *See Nespresso USA,* 263 F. Supp. 3d at 505 (framing the issue as whether the parent exercised control "regarding matters of patent infringement"); *Pegasus Imaging*, 2008 WL 5099691, at *3 (dismissing for failure to state a claim based on plaintiff's "fail[ure] to include sufficient factual allegations of [the parent's] direct participation in the 'decisions, processes, or personnel directly responsible for the infringing activity'" (quoting *Banff Ltd. v. Ltd., Inc.*, 869 F. Supp. 1103, 1109 (S.D.N.Y. 1994))). *Akamai* requires an agreement and/or control as to the specific acts of infringement, not mere oversight or resource-sharing at a general level.

Beyond these allegations, the First Amended Complaint provides only formulaic legal conclusions about BHE having an agency relationship or being in a "joint enterprise" with the

entities who own the facilities where the allegedly infringing activity occurs. (E.g., ECF 59, ¶¶ 184–86.) This is not enough to state a viable claim when the remaining allegations show nothing more than a typical relationship between related corporate entities. *See Hamilton v. Palm*, 621 F.3d 816, 817–18 (8th Cir 2010) ("A pleading that merely pleads labels and conclusions, or a formulaic recitation of the elements of a cause of action, or naked assertions devoid of factual enhancement will not suffice" (quotations omitted)).

For these reasons, the Court GRANTS BHE's Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6). BHE will be dismissed from the case altogether. The dismissal is, however, WITHOUT PREJUDICE. Although ME2C has not done enough to state a claim against BHE, the Court cannot say once and for all that it would never be able to do so, particularly if discovery shows that BHE is directly involved in operations at the relevant plants.[4]

4. ME2C Has Not Stated a Viable Joint Enterprise Claim Against AECS.

ME2C comes somewhat closer to the mark in its joint enterprise allegations against AECS, particularly keeping in mind that the Court cannot consider anything other than the four corners of the First Amended Complaint when evaluating AECS's Motion to Dismiss. Specifically, ME2C comes close to alleging the direct involvement of AECS employees in the management and operation of the IPL and WPL facilities where the alleged acts of infringement occur. (ECF 59, ¶ 50.) *See Bestfoods*, 524 U.S. at 72 (recognizing that one entity in a corporate family might be liable for operations at another entity's facility if an employee of the first entity manages or directs activities there).

Alas, ME2C's allegations still fall short because they are too vague and internally inconsistent with respect to whether the employees in question are actually AECS employees. Paragraph 50, for example, alleges that the people who manage and operate the relevant plants and participate in acts of infringement "include employees of Alliant and/or AECS…" (ECF 59, ¶ 50.) Which is it? Elsewhere, some of the employees identified in Paragraph 50 as potentially being AECS employees are labeled as "Alliant employees" (id., ¶ 169) or joint employees of WPL and Alliant (id., ¶ 47). The First Amended Complaint never specifically alleges them to be AECS employees. Accordingly, the First Amended Complaint does not contain the level of specificity

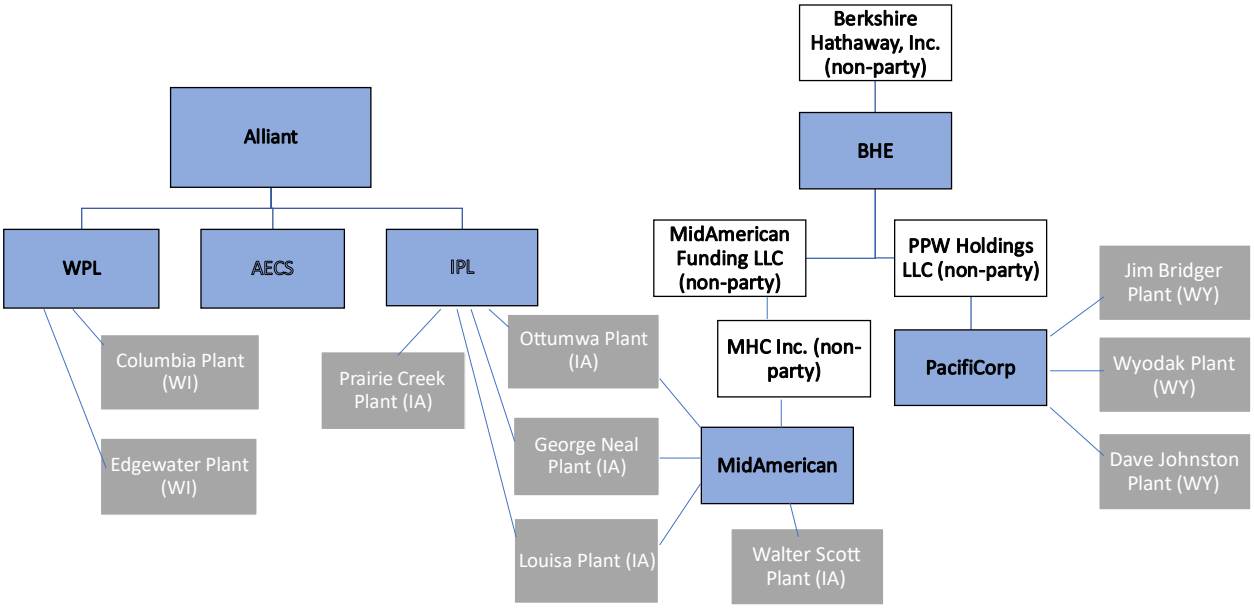
[4] This is not an invitation for ME2C to engage in a fishing expedition as to BHE, but rather a recognition that discovery into operations at the relevant plants might show BHE's involvement in some material way. If so, the Court would entertain a motion for leave to amend consistent with the deadline for amending pleadings in the operative scheduling order.

necessary to plausibly state that AECS employees are involved in managing or operating the WPL and IPL plants. *See, e.g.*, *Varga v. U.S. Bank Nat. Ass'n*, 764 F.3d 833, 843 (8th Cir. 2014) (affirming dismissal for failure to state claim where complaint made vague and conclusory allegations without factual enhancement).

Without that allegation, ME2C's infringement claim against AECS is deficient. AECS is a sister entity to WPL and IPL, not a parent. Accordingly, AECS does not possess even the general level of control and oversight that Alliant possesses over WPL and IPL (not that general control or oversight is enough to state a plausible claim for joint infringement), nor would AECS necessarily share in any profits those entities generate. Moreover, although the First Amended Complaint alleges the involvement of AECS in various aspects of IPL's and WPL's operations, these allegations are too vague and attenuated from the alleged acts of infringement to state a plausible claim. For example, the Court cannot plausibly infer that AECS exercises the kind of control required by *Akamai* from generic allegations that IPL and WPL "rely on employees, facilities, and services from AECS to perform acts of infringement" or that "IPL and WPL receive various administrative and general services from an affiliate, AECS." (ECF 59, ¶¶ 172–73.) *See Nespresso USA,* 263 F. Supp. 3d at 505; *Amarte USA Holdings,* 2023 WL 5418732, at *2; *Pegasus Imaging*, 2008 WL 5099691, at *3. For these reasons, the Court GRANTS AECS's Motion to Dismiss. Like BHE, the dismissal of AECS is WITHOUT PREJUDICE.

5. <u>ME2C Has Stated a Viable Joint Enterprise Claim Against IPL and MidAmerican as to the Ottumwa Facility Only.</u>

ME2C's joint infringement claims against IPL and MidAmerican warrant special attention because those entities are from entirely separate corporate families and yet allegedly co-own three facilities where infringing activity occurs. In other words, as depicted below, IPL and MidAmerican form a bridge between otherwise-distinct corporate groups:



This bridge is important because it is difficult to imagine that a sophisticated entity like IPL—which already owns at least one power plant of its own—would invest in power plants owned by an unrelated entity without having at least some ability to influence operations there.

The problem for ME2C, however, is that the First Amended Complaint largely fails to provide any meaningful allegations about the relationship between IPL and MidAmerican beyond the fact that IPL is a minority investor in those three plants. The First Amended Complaint does not explain, for example, *why* IPL is a minority investor in MidAmerican's plants or what "minority" even means; for example, if IPL owns a 49.9% interest in the three plants, it would imply a greater ability to control operations there than if the ownership interest is 1%. ME2C also does not allege whether IPL's investment is memorialized in some sort of agreement with MidAmerican and, if so, what it says. These are crucial gaps in the First Amended Complaint, and it is not the Court's prerogative to fill them in. *See, e.g.*, *Varga*, 764 F.3d at 843.

In lieu of drilling down on the details of the relationship between IPL and MidAmerican, ME2C generically alleges that those entities are engaged in a "joint enterprise" (ECF 59, ¶ 209) or makes other formulaic—but hollow—allegations. This type of conclusory language is not enough to survive a motion to dismiss. *See Hamilton*, 621 F.3d at 817–18. Thus, for the most part, the Court concludes that ME2C has failed to state viable claims against MidAmerican and IPL under joint enterprise, agency, inducement, or other direct or vicarious liability theories. More

specifically, ME2C has failed to establish a viable basis for holding IPL liable for acts of infringement at the George Neal and Louisa facilities, where it is the mere minority owner.

There is one exception. In Paragraphs 186 and 187 of the First Amended Complaint, ME2C alleges that MidAmerican induces infringement at one of the three co-owned plants (Ottumwa) "by enlisting IPL as operating agent and by directing IPL and paying IPL to perform the patented methods to ensure that Ottumwa remains in compliance with applicable mercury regulations, and thus remains operational." (ECF 59, ¶¶ 186–87.) IPL implicitly but wisely admits that this allegation is enough to satisfy Fed. R. Civ. P. 12(b)(6) when combined with the allegation that IPL is a minority owner of the Ottumwa Plant. When all inferences are drawn in ME2C's favor, it is plausible that a company like IPL that is in the business of owning and operating power plants would be hired to operate a power plant in which it owns a minority interest. It follows as to that facility only that each of IPL and MidAmerican could be liable under a joint enterprise or agency theory for any infringing activity.[5]

In sum, ME2C has failed to state a plausible joint enterprise or agency claim against MidAmerican and IPL with respect to any facility other than Ottumwa. Accordingly, the Court DISMISSES the claims against IPL for liability at the George Neal and Louisa Plants where IPL is only alleged to be a minority owner. As to the Ottumwa Plant, however, the infringement claims may move forward against IPL. Accordingly, the Court GRANTS IN PART and DENIES IN PART MidAmerican's and IPL's Motions to Dismiss as it relates to ME2C's agency and joint enterprise theories.

6. Summary.

AECS and BHE will be dismissed from the case without prejudice based on ME2C's failure to state a claim for direct or vicarious infringement.

Alliant will be dismissed from the case without prejudice based on ME2C's failure to establish venue.

[5] Paragraphs 186 and 187 also allege that BHE and Alliant induce infringement at the Ottumwa facility by "enlisting IPL as operating agent." (ECF 59, ¶¶ 186–87.) The difference, however, is that BHE and Alliant are not alleged to be the direct owners of that facility; instead, at most, they directly or indirectly own *subsidiaries* who own that facility. The allegations against BHE and Alliant therefore require the corporate veil to be pierced and/or run into problems under *Bestfoods* and its progeny. Those same problems do not exist for IPL and MidAmerican because they are alleged to own the Ottumwa facility directly. Moreover, the Court was permitted to consider matters outside the pleadings when evaluating BHE's and Alliant's motions to dismiss. The Court cannot do so for MidAmerican's or IPL's motions.

The cases against PacifiCorp and WPL will be transferred to the District of Wyoming and Western District of Wisconsin, respectively, based on lack of personal jurisdiction and venue in this forum.

The claims against IPL and MidAmerican will proceed, but the claims for joint liability against those entities will move forward only as to the Ottumwa Plant. Meaning: (i) ME2C's claims will move forward as to the Prairie Creek Plant against IPL alone; (ii) ME2C's claims will move forward as to the George Neal, Louisa, and Walter Scott Plants against MidAmerican alone; and (iii) ME2C's claims will move forward as to the Ottumwa Plant against both IPL and MidAmerican on a joint liability basis.

VII. THE COURT DENIES THE MOTIONS TO DISMISS ME2C's CLAIMS FOR WILLFUL INFRINGEMENT AGAINST IPL AND MIDAMERICAN.

The final issue on the merits is whether ME2C has stated a viable claim for willful infringement for which enhanced damages are recoverable under 35 U.S.C. § 284. The Court will address this issue only as to IPL and MidAmerican given that the other five Defendants already have been dismissed or transferred for other reasons. As to IPL and MidAmerican, the Court concludes that ME2C has stated a viable claim for willful infringement and therefore DENIES the Motions to Dismiss on that issue.

35 U.S.C. § 284 authorizes enhanced damages of up to three times compensatory damages in "egregious cases of misconduct beyond typical infringement." *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 579 U.S. 93, 110 (2016). Such damages are designed to punish wrongdoers for conduct that has been characterized as "willful, wanton, malicious, bad-faith, deliberate, consciously wrongful, flagrant, or—indeed—characteristic of a pirate." *Id.* at 103–04. Whether a defendant's culpability rises to the requisite level "is generally measured against the knowledge of the [defendant] at the time of the challenged conduct." *Id.* at 105. "The subjective willfulness of a patent infringer, intentional or knowing, may warrant enhanced damages, without regard to whether his infringement was objectively reckless." *Id.*

"Neither the Supreme Court in *Halo* nor the Federal Circuit in [*SRI International, Inc. v. Cisco Systems, Inc.*, 930 F.3d 1295 (Fed. Cir. 2019)] directly addressed the pleading requirements for an enhanced damages claim." *Bos. Sci. Corp. v. Nevro Corp.*, 415 F. Supp. 3d 482, 495 (D. Del. 2019). "Because of the difficulty in articulating precisely the range or type of circumstances that would transform a 'simple "intentional or knowing"' infringement claim into an enhanced damages claim, the safest course is to allow an enhanced damages claim to proceed beyond the

pleadings stage if the operative pleading alleges facts from which it can be plausibly inferred that the party accused of infringement had knowledge of the asserted patent and knowledge that the party's alleged conduct constituted, induced, or contributed to the infringement of the asserted patent." *Id.*

Here, the parties' briefing revolves largely around two issues: (i) whether a party's pleading in and of itself can serve as the requisite "notice" to state a viable claim for willful infringement damages, as least as to the post-suit period; and (ii) if not, whether ME2C's allegations about pre-suit meetings with representatives from various Defendants are sufficient to state a viable claim for willful infringement. These allegations include, among other things, that ME2C's representatives "contacted representatives from Defendant Alliant" in February and October 2021 to attempt "to negotiate an agreement with respect to Alliant's practicing ME2C's patented processes, including Alliant's practicing of the patents-in-suit." (ECF 59, ¶ 215.) During these discussions, "ME2C specifically identified several of the patents-in-suit and explained that they covered the use of bromides and activated carbon." (Id.) Similarly, ME2C alleges that it contacted MidAmerican in October 2021 to attempt to negotiate a similar agreement, and again "specifically identified several of the patents-in-suit and explained that they covered the use of bromides and activated carbon." (Id., ¶ 217.) ME2C further alleges that MidAmerican and Alliant were subpoenaed in connection with litigation in Delaware revolving around the same patents. (Id., ¶ 221.) Finally, ME2C notes that it filed its original Complaint in this case in July 2024 but that Defendants have continued using the patented processes since then. (Id., ¶¶ 227–28.)

This Court agrees with Judge Connolly's statement in *Boston Scientific Corp. v. Nevro Corp.* that the "safest course" is to allow a claim for willful damages to proceed when a plaintiff has plausibly alleged at least *some* level of pre-suit knowledge of the existence of the plaintiff's patents and their potential relevance to the defendant's operations. *See* 415 F. Supp. 3d at 495. Here, ME2C alleges that it contacted MidAmerican in 2021 and 2024 and "specifically identified several of the patents-in-suit and explained that they covered the use of bromides and activated carbon." (ECF 59, ¶¶ 217–18.) This is enough to plausibly establish a sufficient level of knowledge to allow ME2C's willful infringement claims to move forward.

The situation is slightly different as to IPL because ME2C merely alleges contact with "Alliant representatives" (Id., ¶¶ 215–16) and it is unclear, in context, whether Alliant literally just means "Alliant" or if it refers to representatives from the larger Alliant corporate family. The Court

need not resolve this ambiguity, however, because it already concluded above that ME2C stated a plausible infringement claim against IPL and MidAmerican based on joint enterprise or agency as to the Ottumwa Plant. Accordingly, at least as to that facility, ME2C has stated a plausible willful infringement claim against IPL and MidAmerican alike. There is no reason to go further in trying to parse out that exact parameters of ME2C's willful infringement claims. Such analysis is better left for summary judgment or trial.

For these reasons, the Court DENIES IPL's and MidAmerican's motions to dismiss the willful infringement claims.

VIII. THE COURT DENIES WITHOUT PREJUDICE THE MOTION TO SEVER.

The last issue for the Court to address is Defendants' Motion to Sever, which will be DENIED AS MOOT as to all Defendants except IPL and MidAmerican given that the cases against those other Defendants have already been dismissed or transferred. As to IPL and MidAmerican, the Court DENIES the Motions to Sever WITHOUT PREJUDICE.

In a patent case, issues of joinder and severance are governed by Fed. R. Civ. P. 18 and 20, as modified by 35 U.S.C. § 299. As to joinder of claims, Fed. R. Civ. P. 18(a) states that a plaintiff "may join, as independent or alternative claims, as many claims as it has against an opposing party." As to joinder of parties, Fed. R. Civ. P. 20(a)(2) states that multiple parties may be joined as defendants if "(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all defendants will arise in the action." 35 U.S.C. § 299(b) qualifies, however, that "accused infringers may not be joined in one action as defendants or counterclaim defendants, or have their actions consolidated for trial, based solely on allegations that they each have infringed the patent or patents in suit."

Had it been forced to decide the issue, the Court would have had little difficulty concluding that severance of some claims and Defendants was appropriate under the case as originally pled. There is no persuasive legal basis, for example, for combining in a single case PacifiCorp's alleged infringement in Wyoming with WPL's alleged infringement in Wisconsin. However, the severance analysis looks very different now that all Defendants have been dismissed or transferred except IPL and MidAmerican. As to those two Defendants, the First Amended Complaint alleges infringement at five facilities, three of which they co-own, including one where ME2C has stated viable joint infringement claims under joint enterprise and agency theories.

In these circumstances, there is sufficient factual overlap to satisfy Fed. R. Civ. P. 18(a) and 20(a)(2) and 35 U.S.C. § 299. As to the Ottumwa Plant, for example, joinder is clearly appropriate given that MidAmerican is the majority owner and allegedly hired IPL, the minority owner, to manage the facility. As Defendants correctly acknowledge, it would make little sense *not* to have those claims tried together. *See MGT Gaming, Inc. v. WMS Gaming, Inc.*, 978 F. Supp. 2d 647, 661 (S.D. Miss. 2013) (denying motion to sever as to parties who "allegedly have an ongoing relationship to the same products which allegedly infringe the same patent").

Once the infringement claims at the Ottumwa Plant are consolidated, it is not appropriate to sever the rest. Instead, given the overlap in patents, technology, and parties, it is more efficient to have the parties proceed through discovery in a single case instead of breaking it into three pieces, one involving IPL's alleged infringement at the Prairie Creek Plant, another involving IPL and MidAmerican's alleged joint infringement at the Ottumwa plant, and a third involving MidAmerican's alleged infringement at the Louisa, George Neal, and Walter Scott Plants. *See Omega Pats., LLC v. Skypatrol, LLC*, No. 1:11-CV-24201-KMM, 2012 WL 2339320, at *2 (S.D. Fla. June 19, 2012) (denying motion to sever where splitting the case "would not promote judicial economy or reduce expenses but instead would create two separate but similar infringement actions with the potential for inconsistent outcomes"). The Court therefore DENIES IPL's and MidAmerican's Motions to Sever. The denial is, however, without prejudice. The Court is willing to reconsider if the joint infringement claims fail to survive summary judgment or discovery reveals that a single trial involving alleged infringement at all five facilities would be unwieldy.

IX. CONCLUSION.

For reasons set forth above, the Court rules as follows:

- PacifiCorp's Motion to Dismiss (ECF 79) is GRANTED IN PART and DENIED IN PART. The Court TRANSFERS the case against PacifiCorp to the District of Wyoming.
- MidAmerican's Motion to Dismiss (ECF 84) is GRANTED IN PART and DENIED IN PART.
- AECS's Motion to Dismiss (ECF 87) is GRANTED WITHOUT PREJUDICE.
- Alliant's Motion to Dismiss (ECF 88) is GRANTED WITHOUT PREJUDICE.
- IPL's Motion to Dismiss (ECF 89) is GRANTED IN PART and DENIED IN PART.

- WPL's Motion to Dismiss (ECF 90) is GRANTED IN PART and DENIED IN PART. The Court TRANSFERS the case against WPL to the Western District of Wisconsin.
- BHE's Motion to Dismiss (ECF 91) is GRANTED WITHOUT PREJUDICE.
- Defendants' Motion to Sever (ECF 92) is DENIED AS MOOT as to PacifiCorp, AECS, Alliant, WPL, and BHE and DENIED as to IPL and MidAmerican.

IT IS SO ORDERED.

Dated: January 10, 2025

STEPHEN H. LOCHER
U.S. DISTRICT JUDGE