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

10  
11 ANTHONY JOHNSON, an individual, )

12 Plaintiff, )

13 vs. )

14 MANUEL ALTAMIRANO, an )  
individual, RICHARD TURNER, an )  
15 individual; DAVID KINNEY, an )  
individual, DAVID HUFFMAN, an )  
16 individual, PAUL TYRELL, an )  
individual, SEAN SULLIVAN, an )  
17 individual, STORIX, INC., a California )  
Corporation and DOES 1-5, inclusive, )

18 Defendants. )  
19

Case No. 19CV1185-H-BLM

**DEFENDANTS' OPPOSITION TO  
PLAINTIFF'S MOTION FOR  
RECONSIDERATION**

Judge: Hon. Marilyn L. Huff  
Dept.: Courtroom 15A

Complaint Filed: June 24, 2019  
Trial Date: Not Set

20  
21 Defendants Manuel Altamirano, Richard Turner, David Kinney, and David  
22 Huffman (collectively, "Defendants") hereby oppose Plaintiff Anthony Johnson's  
23 ("Johnson") Motion for Reconsideration of Order.

24 **I. INTRODUCTION**

25 Johnson's motion for reconsideration of this Court's December 2, 2019 order  
26 ("Order"), granting in part and denying in part Defendant's motion to dismiss and  
27 anti-SLAPP motion to strike, fails to set forth any grounds justifying reconsideration  
28 of its Order. Rather than identify clear errors, Johnson repeatedly argues the Court

1 raised arguments *sua sponte* and failed to acknowledge his arguments. But neither of  
 2 these assertions establish clear error and certainly do not justify the extraordinary  
 3 remedy of reconsideration of an order. Defendants respectfully request the Court  
 4 deny Johnson's motion for reconsideration.

## 5 **II. DISCUSSION**

6 A motion for reconsideration is appropriate if: (1) the movant presents the  
 7 court with newly discovered evidence; (2) the court committed clear error or the  
 8 initial decision was manifestly unjust; or (3) there is an intervening change in  
 9 controlling law. *Sch. Dist. No. 1J, Multnomah County v. ACandS, Inc.*, 5 F.3d 1255,  
 10 1263 (9th Cir. 1993). Whether to grant or deny a motion for reconsideration is within  
 11 the sound discretion of the district court. *Navajo Nation v. Norris*, 331 F.3d 1041,  
 12 1046 (9th Cir. 2003) (citing *Kona Enter., Inc. v. Estate of Bishop*, 229 F.3d 877, 883  
 13 (9th Cir. 2000)).

14 “[A] motion for reconsideration should not be granted, absent highly unusual  
 15 circumstances....” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma. GmbH & Co.*, 571  
 16 F.3d 873, 880 (9th Cir. 2009); *see also Kona Enters. v. Estate of Bishop*, 229 F.3d  
 17 877, 890 (9th Cir. 2000) (explaining that reconsideration of a prior order is an  
 18 extraordinary remedy, to be used sparingly in the interests of finality and  
 19 conservation of judicial resources.). “[M]ere dissatisfaction with the court’s order or  
 20 belief that the court is wrong in its decision are not adequate grounds for relief.”  
 21 *SLPR, LLC v. San Diego Unified Port Dist.*, 2010 U.S. Dist. LEXIS 55904, at \*3  
 22 (S.D. Cal. Jun. 8, 2010); *see Twentieth Century-Fox Film Corp. v. Dunnahoo*, 637  
 23 F.2d 1338, 1341 (9th Cir. 1981); *United States v. Westlands Water Dist.*, 134 F.  
 24 Supp. 2d 1111, 1131 (E.D. Cal. 2001).

25 Here, Johnson asserts the Order contains manifest errors of law, is based on  
 26 arguments not raised by Defendants, and ignores Johnson’s arguments and  
 27 authorities. (Doc. N0. 74-1.) Nothing could be further from the truth. The forty-one  
 28 (41) page Order set forth the legal standard relevant to Defendants’ motion to dismiss

1 and anti-SLAPP motion to strike and considered authority presented by all parties.  
2 The Order properly considered arguments presented from both sides. The simple  
3 truth is that Johnson failed to state a claim for relief and/or his causes of action were  
4 barred by applicable affirmative defenses. Johnson's dissatisfaction with the result  
5 does not constitute grounds for reconsideration of an order. As this Court is aware,  
6 Johnson has been embroiled in litigation against Defendants for almost six (6) years.  
7 His ongoing litigation campaign against Defendants has culminated in these current  
8 proceedings, which derive from a common nucleus of facts previously litigated  
9 before this Court and a state court of this jurisdiction. For these reasons, the Court's  
10 Order was proper and not in clear error or manifestly unjust. Johnson's motion  
11 should be denied.

12 **A. The Court Properly Held Johnson Did Not Satisfy the Elements of**  
13 **Malicious Prosecution and for Indemnification**

14 In his motion for reconsideration, Johnson continues with the same arguments  
15 set forth in opposition to Defendants' motion to dismiss and anti-SLAPP motion to  
16 strike – severability of claims is proper for determining whether the favorable  
17 termination element is satisfied. As the Court correctly held and as supported under  
18 the authority of *Lane v. Bell*, 20 Cal. App. 5<sup>th</sup> 61 (2018) as well as *Crowley v.*  
19 *Katleman*, 8 Cal. 4<sup>th</sup> 666 (1994), the underlying action upon which Johnson relies did  
20 not terminate in his favor. The judicially noticeable judgment clearly established  
21 Storix, Inc. as the prevailing party and judgment was entered against Johnson. (Doc.  
22 No. 34-4, RJN Ex. 17.) As a result, Johnson cannot satisfy the elements of his  
23 malicious prosecution claim.

24 In addition, because judgment was entered against Johnson in the underlying  
25 action, he was not entitled to indemnification under Cal. Corp. Code § 317. The  
26 Court correctly found that to be entitled to indemnification under Cal. Corp. Code §  
27 317, Johnson must be successful on the merits in defense of the action. As discussed  
28 above, the judicially noticeable judgment clearly established Storix, Inc. as the

1 prevailing party and judgment was entered against Johnson. (Doc. No. 34-4, RJN  
2 Ex. 17.) Johnson was not therefore entitled to indemnification as a matter of law.

3 **B. The Court Properly Held Johnson’s Breach of Contract and Rescission**  
4 **Claims Were Barred by *Res Judicata***

5 Johnson’s arguments in support of reconsideration of the Order as applied to  
6 Breach of Contract and Rescission fail to appreciate the analysis in the Order  
7 determining there was an identity of claims satisfying the elements required for  
8 application of *res judicata*. Specifically, Johnson fails to appreciate that his claims  
9 for breach of contract and rescission, arising from an alleged oral contract from 2003,  
10 are from the same nucleus of operative facts as the claims for the copyright  
11 infringement and declaratory judgment in the prior federal proceedings. The Court  
12 clearly articulated the relevant requirements for identity of claims and held Johnson’s  
13 breach of contract and rescission claims should have been tried in the previous  
14 copyright litigation. Defendants satisfied the requirements for *res judicata*, which is  
15 an absolute bar to Johnson’s breach of contract and rescission claims.

16 Moreover, Johnson’s attempt to circumvent his actual pleadings by claiming  
17 “tortious conduct” allegations alter his pleading a breach of contract claim such that  
18 it is now a tort is without merit. (Doc. No. 74-1.) Similarly, Johnson concedes  
19 Defendants were not parties to the contract. Johnson filed a claim for breach of  
20 contract. A breach of contract claim is not merely transformed into a tort because of  
21 artful pleading. Accordingly, the Court properly held that Johnson’s breach of  
22 contract and rescission claims fail as a matter of law as to Defendants because they  
23 were not parties to the contract.

24 **C. The Court Properly Held Johnson’s Economic Interference Claims**  
25 **Fail as a Matter of Law**

26 Johnson asserted two claims under Economic Interference: i) intentional  
27 interference with contractual relations, and ii) intentional interference with  
28 prospective economic advantage. As the Court held, each of these claims fail as a

1 matter of law based on well-established authority. (Doc. No. 73); *see also*  
2 *Shoemaker v. Myers*, 52 Cal. 3d 1, 24 (1990) (agents acting on behalf of corporation  
3 not liable for inducing breach of contract); and *Roth v. Rhodes*, 25 Cal. App. 4<sup>th</sup> 530,  
4 546 (1994) (an existing relationship is required for establishing intentional  
5 interference with prospective economic advantage). Johnson’s motion does not cite  
6 to any new evidence or authority contrary to that upon which Defendants’ asserted  
7 and the Court properly relied. Accordingly, Johnson cannot, as a matter of law,  
8 assert claims of economic interference against Defendants.

9 **III. CONCLUSION**

10 For the reasons set forth above, Johnson’s motion for reconsideration should  
11 be denied. Johnson has not set forth any grounds justifying reconsideration of the  
12 Order and is therefore not entitled to this extraordinary remedy.

13  
14 Dated: January 7, 2020

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16  
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