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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION  
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11 STORIX, INC., a California corporation,  
12  
13 Plaintiff,

14 v.

15 ANTHONY JOHNSON, JANSTOR TECHNOLOGY,  
a California corporation, and DOES 1-20,  
16  
17 Defendants.

Case No. 37-2015-00028262-CU-BT-CTL

**DEFENDANT'S REPLY TO PLAINTIFFS  
OPPOSITION TO DEMURRER AND MTS**

**IMAGED FILE**

Date: August 26, 2016  
Time: 11:00 a.m.  
Dept. C-70  
Judge: Hon. Randa Trapp  
Complaint Filed: August 20, 2015  
Trial Date: Not set

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21 Defendant Anthony Johnson ("Johnson") hereby submits this Reply to Plaintiff Storix's  
22 Opposition to Demurrer ("Opposition") to the First Amended Complaint.

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## I. Introduction

You need not read past the first sentence of Storix's opposition to the demurrer or MTS to see that, yet again, the only defense to this malicious lawsuit is another relentless personal attack on Johnson. Unable to justify their now having destroyed Storix with another year of pointless litigation, Plaintiffs now resort to childish name-calling. Plaintiffs oppositions refer to Johnson as despicable, disloyal and evil, and Johnson's actions to save Storix from bankruptcy as indiscretions, inexcusable, bad behavior, fighting dirty, secretive ploys, outrageous and clandestine.

Defendant has never done anything to harm anyone. Plaintiffs shown no evidence of any such behavior by Johnson and Johnson has repeatedly proven such allegations as false in other cases only to have to start again (twice) in this case.

Johnson has lost his company, his life's work, his house and savings, and is still unemployed and without income for 18 months – all by the abuse of the Cross-defendants 52% majority and the attorney they use Johnson's money to pay. Johnson can't get a job without the fear of more allegations of his "intent to compete" and spends every day responding to more pleadings like these. This, while Cross-defendants cowardly hide behind their corporate attorney and have never once showed the slightest interest in any compromise. The scathing accusations of Johnson's character and intentions throughout their oppositions have only increased in vigor and hatred with each new pleading and every new motion, and it's time for this nonsense to stop.

## II. Background

Plaintiff Johnson formed Storix, Inc. in 2003 after operating Storix Software as a sole proprietor since 1999 and was its only shareholder. (*Demurer Johnson Decl ¶¶4-5.*) Johnson solely developed SBAdmin, Storix's only software product, in 1998 and registered a federal copyright in his name.

In 2011, Johnson informed his former long-term employees that he was diagnosed with late stage melanoma (*Demurer Johnson Decl ¶6*) and was given a less than 2-year prognosis. Johnson then gifted Cross-defendants David Huffman, Richard Turner, Manuel Altamirano and David Kinney 60% interest in Storix to protect them from a very difficult job market at the time (*Demurer Johnson Decl ¶6*), promising them the rest upon his death.

1 Johnson's doctors failed to inform him of his 3% chance of recovery after his initial tumors were  
2 removed. Johnson survived, and after two years he returned to Storix to improve the software that had  
3 been sorely neglected in his absence, causing Storix profits and Johnson's remaining income to decline  
4 by 30% in that short time. (*Demurer Johnson Decl* ¶8.) Johnson neither wanted nor expected a  
5 management position, only to improve the product. But, realizing they would not be gifted his remaining  
6 stock any time soon, his former employees immediately launched a campaign to force Johnson out of  
7 the company and to relinquish all stake in the company he founded. (*Demurer Johnson Decl* ¶10.)

8 Everything corporate action since, approved or not, including this lawsuit, was to punish Johnson  
9 for not dying when he said he would. The personal cost to Johnson has been devastating but of no  
10 consequence to the Plaintiffs since they were able to pillage Johnson's company and use its profits to  
11 fund their legal attacks, keep writing their own paychecks, and hijack Johnson's only remaining income  
12 to pay their personal expenses.

### 13 **III. Discussion**

#### 14 **A. This Lawsuit is Malicious Litigation**

15 In the Opposition to Demurrer, Plaintiffs state that Johnson “*actually formed a competing*  
16 *enterprise with the express purpose of competing with Storix, and took other steps to further that effort.*  
17 *It is alleged (and will be proven upon undisputed evidence) that Johnson formed Janstor to directly*  
18 *compete with Storix while he was serving as a director of Storix. (FAC ¶114.)*” (emphasis added)  
19 Plaintiffs have no “undisputed evidence” and had over a year to find some. They've conducted no  
20 discovery in this case while filing multiple pointless motions against Johnson in both state and federal  
21 court for injunctive relief simply to spend Johnson to death and continue to deny him any and all rights  
22 and access to his own company.

23 Johnson never competed with Storix nor intended to. Johnson once noted in an email that he  
24 would compete with Storix only as a last case scenario, but only after the copyright ownership was  
25 decided in his favor and only if Cross-defendants still refused to work with him. Plaintiffs know this, but  
26 sat on their obscure and misleading evidence for eight months until finally filing the original Complaint  
27 against Johnson just three hours before sitting down with him at a settlement conference. (*Johnson Decl.*  
28

¶6-7.) Johnson was duped once again by Plaintiffs only to return to his home in *Florida* (*Johnson Decl*  
¶5) to be served another lawsuit. This time for forming, but never operating, a company in *California*.<sup>1</sup>

### **B. Plaintiff Lacks Standing Because Storix Did Not Authorize This Lawsuit**

Storix is not suing Johnson. The real Plaintiffs, now Cross-defendants, hired attorney Paul Tyrell of the law firm of Procopio (“Tyrell”) to destroy Johnson at any cost, then sat quietly back as their viscous attack-lawyer ripped him apart for the last two years. The only evidence of any discussion of this lawsuit or any allegations herein are the pleadings themselves, never once at a Board or shareholder meeting.

This lawsuit arose from the Plaintiffs personal grudge against Johnson for keeping 40% of the company he founded. Now, it boils down to Storix counsel's personal grudge against Johnson for not giving up, and Storix now having an obsolete software product incapable of generating enough income to pay the \$600,000-\$800,000 in legal expenses owed to Tyrell’s firm. (*Johnson Decl.* ¶10, Ex. 1.)

Clearly the real Plaintiffs are aware of this lawsuit, because the FAC and opposition to this demurrer refer to the angry email Johnson sent to the Plaintiffs after he learned they were using his company to sue him again. But it was 6 months later before Johnson learned that no director or shareholder of Storix actually approved of this suit (*Johnson Decl.* ¶¶8-9), but simply gave Storix counsel *carte blanche* to do whatever he wanted. None of the real Plaintiffs in this case ever participated in any way and no one but Tyrell has ever provided a declaration.

Tyrell states in Storix’s opposition a that “Director and shareholder approval is not required for every corporate act.” Of course not every act requires board approval, but it is well understood that corporate actions involving a major investment of corporate funds requires the approval of a *disinterested* board or majority of shareholders, and such decisions must be reflected in the corporate minutes. The board recently paid Tyrell considerable funds in their attempt (and failure) to demurer Johnson’s *derivative lawsuit* against them on the grounds that Johnson did not obtain the approval of the board members before suing them. (see *Johnson Decl.* ¶14; RJN Exhibit 1.) Tyrell’s hypocrisy couldn’t be more obvious as he now reverses his position. Not only does he believe that the board does not have

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<sup>1</sup> In the footnote of Opp to MTS pg 3, Plaintiffs point out an explicative Johnson used in an email to “Storix shareholders”. The shareholders referred to are the Cross-defendants, who Johnson just learned had filed another lawsuit against him. This is not an email in which Plaintiffs allege Johnson breached any duty.

1 to approve of a lawsuit against Johnson, but that he may bring this action on behalf of the company even  
2 though he is neither a director nor a shareholder.

3 **C. Plaintiff Stated No Actual Harm Caused By Any Alleged Acts**

4 In the FAC Plaintiffs still allege no harm Johnson caused Storix. Plaintiffs state that Johnson is  
5 wrong when “Johnson contends that because Storix has not ascribed the harm claimed in the FAC a  
6 dollar figure, that his demurrer has merit.” Storix counsel is again just making up words and attributing  
7 them to Johnson. Neither word “dollar” or “figure” appear anywhere in Defendants demurrer or MTS.

8 Plaintiff made only the general statement “damages in amounts and types according to proof at  
9 trial and in excess of the jurisdictional amount of this court. (FAC 23, 30, Prayer).” This may satisfy a  
10 requirement to reserve the right to calculate a dollar amount later, but doesn't satisfy the requirement of  
11 stating what harm was caused. Saying repeatedly that Storix “has and/or will sustain damages” doesn't  
12 let Plaintiffs “foot in the door” as they wait for some actual cause of action to occur before trial.

13 **D. Facts Alleged in FAC are Still Insufficient To Constitute a Cause of Action**

14 The allegations in the Complaint are that Johnson 1) formed a company; 2) register two "ports";  
15 and 3) obtained a domain name. Plaintiffs don't say how this relates to Storix, much less harmed Storix,  
16 and have shown no nexus between their allegations and the cause of action of breach of fiduciary duty.

17 Plaintiffs may have initially *assumed* Johnson formed “Janstor” with intent to compete with  
18 Storix, but they never asked. Johnson informed Plaintiffs in interrogatories and deposition during  
19 copyright case discovery why he formed Janstor. It wasn't to compete with Storix, but to *rebrand* Storix  
20 after Plaintiffs tarnished Storix's name by neglecting its software for years and dragging it through court  
21 suing its own founder. Johnson never operated Janstor. He never used, marketed or sold any software to  
22 anyone. They've known this for two years.

23 On March 14, 2016, Plaintiffs had to act fast with the previous demurrer hearing was only nine  
24 days away. After eight months waiting for Johnson to *actually* cause harm to Storix, they filed this FAC  
25 for no other reason than to delay this case another 5 months while continuing to use the *existence* of this  
26 lawsuit to justify denying Johnson any and all rights as a director and shareholder of Storix. The FAC  
27 added only two paragraphs with new allegations:  
28

- 1 1. Johnson sent an email to an employee which Plaintiffs again mischaracterized saying  
2 “Johnson also *directed threats* to non-shareholder employees of Storix” [actual emphasis]  
3 (Opp to MTS pg 3; FAC ¶18). The referenced email was sent to a single employee and could  
4 in no way be viewed as a threat.<sup>2</sup>
- 5 2. Johnson sent an email to some customers, allegedly “written in a way that was intended to  
6 tarnish the reputation of Storix” (FAC ¶ 17.) This has been their interpretation in pleadings  
7 for over a year, but the Opposition to MTS for the first time advance this to a level of  
8 “despicable conduct” by change the context of the email to “*Johnson’s harassment of*  
9 *customers*” (Opp to MTS pg 4.)<sup>3</sup>

10 Both of these alleged wrongful acts of sending these two emails occurred after Plaintiffs filed the  
11 original Complaint, but Plaintiffs draw no nexus between these co-called "despicable acts" and a breach  
12 of fiduciary duty.

#### 13 **E. Storix Claims of Harm Were Already Deemed Insufficient In Federal Court**

14 When Johnson first emailed the Cross-Defendants’ unconscionable acts, attaching the *proposed*  
15 (but not actual) email, Storix filed and was denied an Ex-Parte TRO and expedited motion for  
16 preliminary injunction. (*Johnson Decl.* ¶15; RJN ¶2, Ex. 2.) After a less-strongly worded email was  
17 actually sent, Storix filed and was also denied a noticed motion for preliminary injunction. The Court  
18 noted that “[Storix] is unable to cite harm that has befallen it as a result of Plaintiff’s email to customers.  
19 Defendant has not satisfied the elements necessary to obtain a preliminary injunction, especially in light  
20 of the significant First Amendment issues at Stake.” (*Johnson Decl.* ¶15; RJN ¶3, Ex. 3.)

21 None months later, still with no new evidence, Storix attempted to influence *this action* by filing  
22 yet another 25-page Motion for Further Relief in the same Federal Court. Storix concluded by saying  
23 “Given Johnson’s stated competitive intentions and his admitted unauthorized possession and use of  
24 SBAdmin to create unauthorized derivatives of Storix’s copyrighted work, the relief requested by this  
25

26 <sup>2</sup> Again Plaintiffs don't produce the email as this would make it more difficult to take partial sentences out of  
27 context to dictate Johnson’s intentions. (*Johnson Decl.* ¶12, Ex. 3.)

28 <sup>3</sup> Plaintiff does not produce the actual email because it's not hard to see Johnson's intent was just the opposite.  
Plaintiffs also don't want anyone to know that Storix sales increased dramatically in the three months following  
that email. (*Johnson Decl.* ¶11, Ex. 2.)

1 motion is entirely appropriate and necessary to enforce and give meaning to the judgment and help  
2 prevent the irreparable harm to Storix that Johnson seeks to inflict.” (*Johnson Decl.* ¶15; RJN ¶4, Ex. 4.)

3 This court should sustain this demurrer with prejudice to stop Storix counsel from further  
4 wasting the company’s money and the court’s by forcing Johnson to repeatedly defend against the same  
5 allegations.

#### 6 **F. Plaintiff’s Claims Against Janstor Must Also Be Dismissed Without Prejudice**

7 Even knowing Johnson had moved to Florida (Demurer Johnson Decl ¶13), that Janstor was not  
8 formed to compete with Storix, that Janstor never operated, and that Johnson never competed or even  
9 intended to compete with Storix, Plaintiffs still served both Johnson *and Janstor* the original Complaint  
10 at Johnson's home in *Florida*. Eight months later, still waiting for Johnson to actually harm Storix  
11 (according to both the Complaint and the FAC, Johnson "*has and/or will cause harm to Storix*"),  
12 Plaintiffs filed the FAC nine days before the prior demurrer hearing. Johnson proved Janstor never  
13 operated and was dissolved before the original Complaint was filed. Johnson informed Tyrell and the  
14 Court during a hearing in April that he did not intend to pay an attorney to defend Janstor anymore since  
15 no award can be obtained from a company that never had any assets.

16 Plaintiff’s counsel still refuses to dismiss Janstor from this case in order to continue attacking on  
17 Johnson from two fronts for the same ludicrous claims. A default judgment against Janstor would  
18 deprive Johnson of the year of attorney fees he was forced to personally spend defending a non-existing  
19 company.

#### 20 **G. Plaintiffs Pursue This Lawsuit To Conceal Their Misconduct**

21 Johnson can easily prove the above facts as well as every allegation against the Cross-defendants  
22 in the Cross-complaint, except that much of the evidence is currently embedded in discovery from the  
23 related copyright case. Storix counsel duped Johnson into signing a *protective order in the copyright*  
24 *case* shortly before this lawsuit was filed against him. Since then, Tyrell refuses to even discuss lifting  
25 or amending that protective order, de-designating the confidentiality of even benign emails, or allowing  
26 the use of any discovery in related cases involving the same parties. (*Johnson Decl.* ¶13, Ex. 4.) He's  
27 already taken Johnson to court to prevent him from using a single page of his own deposition.  
28

1 This lawsuit failed in its original mission -- to bankrupt Johnson. For a year it served a second  
2 purpose, now it's only purpose -- to prevent Johnson from having access to any evidence that proves the  
3 multitude of unethical and illegal acts as alleged in the Cross-complaint and the related derivative  
4 lawsuit.

5 Plaintiffs and Storix counsel have repeatedly concluded that Johnson cannot be allowed access to  
6 any Storix information because he *will* use it to compete and thus harm Storix. They've made that far-  
7 reaching claim for over a year without Johnson having done anything to warrant such concerns, yet they  
8 stand by it even after another State Court decided on August 1, 2016 that such a factual dispute is not  
9 cause to deny Johnson's right to represent Storix in the derivative action. **Both the defendant's and**  
10 **Storix counsel's demurrers to Johnson's derivative complaint were overruled on all causes.**  
11 (*Johnson Decl.* ¶14; RJN ¶1, Ex. 1.)

12 Plaintiffs still will not allow Johnson access to the premises or the books and records of the  
13 corporation as afforded any director by law. (Cal Corp Code § 1085.) Instead, they insist that Johnson  
14 serve discovery against the company, then filed an **anti-SLAPP motion** against the Cross-Complaint in  
15 this case in order to put a stay on all discovery, now forcing Johnson to *prove* the allegations of the  
16 Cross-complaint without further discovery.

17 Storix counsel insists that Johnson must also serve discovery on Storix in the related derivative  
18 lawsuit, even though Johnson filed the lawsuit *on Storix behalf*. Storix Counsel then insists that the  
19 board (meaning the defendants) control the discovery responses and that Storix counsel themselves be  
20 allowed to remove and redact documents as needed. Storix counsel advised, supported and defended the  
21 Cross-Defendants in almost every allegation of misconduct in the Cross Complaint and in the related  
22 shareholder derivative action.

#### 23 IV. Conclusion

24 The Court should sustain Defendants demurrer and motion to strike the FAC on all causes of  
25 action and dismiss Storix FAC with prejudice on one or all of the following grounds:

- 26 1. The FAC is malicious prosecution and is of no benefit to any party in continuing this action.
- 27 2. Plaintiff lacks standing to bring this lawsuit without proper action taken and approved by the  
28 Storix board or its shareholders, and Storix did not so approve.

1           3. The FAC states no cause of harm and thus no cause of action for breach of fiduciary duty.

2           4. If the Court finds a stated cause of harm (or potential harm) was sufficient, there is no nexus  
3           between alleged acts, alleged harm and a breach of fiduciary duty.

4           Defendant further requests that claims against Janstor be dismissed with prejudice since Janstor  
5 could not have aided and abetted Johnson in acts for which the Court finds no cause of action.

6           Plaintiff should not be given leave to amend as there is no evidence or showing in these  
7 pleadings that any causes of action exist, will exist, or that any defects can be cured. The Court also  
8 should not give leave to amend a complaint which was not properly authorized by Plaintiff.

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10  
11 DATED: August 19, 2016

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13                               /s/ Anthony Johnson

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15                               ANTHONY JOHNSON  
16                               Pro-Se  
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