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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION
10

11
12 STORIX, INC., a California corporation,
13 Plaintiff,

14 v.

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

Case No. 37-2015-00028262-CU-BT-CTL
Judge: Hon. Randa Trapp

**MEMORANDUM OF POINTS AND
AUTHORITIES ISO DEFENDANT'S
MOTION TO STRIKE PORTIONS OF
PLAINTIFF'S SAC [FILED
CONCURRENTLY WITH MOTION TO
DEMURRER TO PLAINTIFF'S SAC]**

Date: October 16, 2016
Time: 11:00AM
Dept: C-70

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TABLE OF CONTENTS

1

2

3 **I. INTRODUCTION..... 1**

4 **II. KEY ALLEGATIONS..... 1**

5

6 **III. AUTHORITY FOR MOTION TO STRIKE 2**

7 **IV. ARGUMENT..... 3**

8 A. The Court Should Strike False Allegations of Johnson’s Residency and Events Occurring

9 After Johnson Moved to Florida 3

10 B. The Court Should Strike Allegations Based on Irrelevant Conclusions of Fact..... 4

11 C. The Court Should Strike False and Misleading Allegations That Are Unsupported by

12 Complete Facts and Thus Irrelevant 6

13 D. The Court Should Strike Demand for Punitive Damages Because Such Damages Are Not

14 Supported by the Allegations..... 8

15 E. The Court Should Strike Demand for Injunctive Relief Because Such Relief is Not

16 Supported by the Allegations 9

17 **V. CONCLUSION 13**

18

19

20

21

22

23

24

25

26

27

28

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Cases

American Airlines, Inc. v. Sheppard, Mullin, Richter & Hampton (2002) 96 Cal.App.4th 1017, 1050-1051..... 9

City of Pittsburgh v. W. Penn Power Co., 147 F.3d 256, 263 & n.13 (3d Cir. 1998) 4

Kopelman & Assoc., L.C. v. Collins, 196 W.Va. 489, 493 (1996) 4

Scheid v. Fanny Farmer Candy Shops, Inc., 859 F.2d 434, 436 (6th Cir. 1988) 4

Turman v. Turning Point of Central Calif., Inc. (2010) 191 CA4th 53, 63..... 9

Statutes

Calif. Corp. Code §1602 11

Uniform Trade Secrets Act (CA Civil Code § 3426)..... 11

1 **I. INTRODUCTION**

2 Plaintiff's Second Amended Complaint (SAC) falsely alleges that Johnson was a resident of San
3 Diego County and a citizen of California, knowing that Johnson had moved to Florida prior to key
4 allegations of the SAC. The Court should strike the false allegations of Johnson's residency.

5 Plaintiff states only a single Cause of Action against Johnson, Breach of Fiduciary Duty. Plaintiff
6 then seeks damages for this intentional tort based solely on Plaintiff's contention that Johnson intends to
7 cause harm to Plaintiff, but states only possible or potential harm associated with its conclusions of fact.

8 Plaintiff seeks to claim exemplary damages for breach of fiduciary duty. However, Plaintiff's
9 request for exemplary damages is not supported by the allegations of Plaintiff's SAC. The subject
10 misconduct at issue here is Johnson's alleged formation of a new corporation, registration of an domain
11 name, reservation of port numbers, communications with employees and customers, and Johnson's
12 possession of a copy of software source code. (*See* SAC at ¶ 14-18, 20-21, 25, 27.) There are no facts
13 alleged in the FAC from which the Court may conclude that the complained-of conduct rises to the level
14 of "malice, fraud, or oppression" required to support a punitive damages award, particularly since
15 Plaintiff has not alleged any actual harm caused by Johnson.

16 Plaintiff is also seeking to claim preliminary and permanent injunctive relief for breach of
17 fiduciary duty. However, Plaintiff's demand for injunctive relief is also not supported by the allegations
18 of Plaintiff's SAC. There are no facts alleged in the SAC from which the Court may conclude that
19 Plaintiff has suffered or will suffer irreparable harm absent the requested injunctive relief, or that no
20 adequate remedy exists at law to compensate Plaintiff for any purported harm. Moreover, the injunctive
21 relief is impermissibly broad and vague to reasonably be enforced by this Court.

22 The Court should strike the allegations and Prayer for Relief set forth below, and also itemized in
23 the *Motion to Strike*, on grounds that they are irrelevant, false, or conclusion of fact, and/or on grounds
24 that they seek punitive and/or injunctive relief without plead facts in the SAC sufficient to recover such
25 damages.

26 **II. KEY ALLEGATIONS**

27 As alleged in the SAC, Johnson formed the corporation Storix, Inc. (Plaintiff) in 2003. (SAC
28 ¶9.) In May 2014, Johnson resigned from his position as an employee of the corporation (SAC ¶11.)

1 Johnson was elected to the board of directors of the corporation in February 2015. (SAC ¶13.) Also in
2 February 2015, Johnson allegedly registered the Internet domain name “janstor.com” and formed a new
3 California corporation named Janstor Technology. (SAC ¶14.) In June 2015, Johnson allegedly
4 reserved two port numbers in the name of Janstor. (SAC ¶15.) Plaintiff complains that Johnson
5 allegedly failed to disclose his conduct to Plaintiff or otherwise seek prior approval from Plaintiff to
6 engage in the alleged acts. (SAC ¶¶14-16, 25.)

7 Additional allegations are that Johnson “threatened to and did send an email notice to Storix’s
8 past, current, and/or potential future customers, ... written in a way that was intended to tarnish the
9 reputation of Storix, Inc.” (SAC ¶17), “directed threats to non-shareholder employees of Storix, Inc.”
10 (SAC ¶18), and “Johnson stole a developmental copy of Storix Inc.’s [] software code” (SAC ¶ 20; See
11 also ¶ 27.)

12 To support the cause for breach of fiduciary duty against Johnson, Plaintiff alleges that Johnson
13 “owed and continues to owe fiduciary duties to Storix, including but not limited to duties of loyalty and
14 care.” (SAC ¶23) and that each allegation of Johnson’s conduct was “furtherance of his efforts to create
15 a business to directly compete with and otherwise cause harm to Storix, Inc., all in breach of the
16 fiduciary duties owed to Storix, Inc.” (SAC ¶25.) Plaintiff then concludes by claiming that Plaintiff
17 “[a]s the proximate result of Johnson’s conduct,” “has sustained and/or will sustain damages in amounts
18 and types according to proof at trial.” (SAC ¶26.)

19 To support its demand for punitive damages, Plaintiff alleges, on information and belief, that
20 Johnson and Janstor have acted “with callous indifference or a wanton disregard for the rights of
21 others.” (SAC at ¶31.) To support its demand for injunctive relief, Plaintiff offers a generalized
22 statement to conclude that the complained-of conduct “will cause great and irreparable injury to Storix,
23 Inc. for which Storix, Inc. lacks any adequate remedy at law.” (SAC ¶ 27.)

24 **III. AUTHORITY FOR MOTION TO STRIKE**

25 Any party, within the time allowed to respond to a pleading may serve and file a notice of
26 motion to strike the whole or any part thereof . . . (Code Civ. Proc. (“CCP”) § 435(b).) CCP §436
27 provides that “The court may, upon a motion made pursuant to Section 435, or at any time in its
28

1 discretion, and upon terms it deems proper: (a) Strike out any irrelevant, false, or improper matter
2 inserted in any pleading.”

3 Irrelevant matter includes: “an allegation that is not essential to the statement of a claim” (CCP §
4 431.10(b)(1)), “an allegation that is not pertinent to nor supported by an otherwise sufficient claim”
5 (CCP § 431.10(b)(2)) and “a demand for judgment requesting relief not supported by the allegations of
6 the complaint”. (CCP § 431.10(b)(3).)

7 IV. ARGUMENT

8 **A. The Court Should Strike False Allegations of Johnson’s Residency and Events Occurring** 9 **After Johnson Moved to Florida**

10 Plaintiff alleges that Johnson “was at the time of the events alleged herein a citizen of the State
11 of California and Resident of the County of San Diego” (SAC ¶ 3), “because their acts and conduct
12 relevant to the present action occurred within the state of California and because they are California
13 residents” (SAC ¶ 7), and “events and occurrences giving rise to the present action occurred within the
14 County of San Diego; because Johnson is, or at the time of the events alleged herein was, a resident of
15 San Diego”. (SAC ¶ 8.)

16 Plaintiff is and was aware that Johnson had moved to Florida in July 2015, as evidenced by the
17 *Proof of Service* of the original Complaint, filed on August 20, 2016 and served on Johnson at his
18 Florida address on September 8, 2016. (*MTS RJN* ¶3, Exhibit 3). The statement is clearly false because
19 alleged events necessary to state a cause of action were amended to the SAC after the Complaint was
20 filed. First, Plaintiff admits that Johnson’s alleged email to possible customers was sent in September-
21 October 2015. (SAC ¶ 17). As filed concurrently herewith, the referenced email was dated October 16,
22 2016. Secondly, Plaintiff states that Johnson “directed threats” in an email to a Storix employee (SAC
23 ¶18), but the referenced email, as attached herewith, was sent on January 16, 2016. (*MTS RJN* ¶4,
24 Exhibit 4.)

25 Accordingly, the Court should strike the allegation at Paragraphs 3 of the SAC at page 2: 7-9,
26 2:25-28, and 3:1-4 alleging citizenship and residency of Johnson as false. The Court should then strike
27 Paragraphs 17, 18 and 21 at pages 4: 16-28, 5: 1-3 and 5: 19-26 as events occurring when Johnson was
28 not a resident or citizen of California, contradicted by Paragraphs 3, 7 and 8 of the SAC, and thus

1 contain false matter. The Court should also strike the text “*his direction to Storix, Inc.’s past, current*
2 *and possible future customers to cease payments to Storix, Inc., his efforts to tarnish Storix, Inc.’s*
3 *reputation and his threats to Plaintiff’s employees*” in Paragraph 25 at page 6: 13-15 and the text
4 “*further sought to disrupt Storix, Inc.’s customer relationships by broadcasting false statements about*
5 *Storix, Inc.’s products and disparaging Storix, Inc.’s management, including by sending an email blast*
6 *to Storix, Inc.’s customers advising that their versions of SBAdmin were ‘infringing’.*” in Paragraph 28 at
7 page 7: 3-5 as events occurring when Johnson was not a resident or citizen of California, contradicted by
8 Paragraphs 3, 7 and 8 of the SAC, and thus are false matter.

9 **B. The Court Should Strike Allegations Based on Irrelevant Conclusions of Fact and Law**

10 The U.S. Supreme Court has set out that "although the plaintiff enjoys the benefit of all
11 inferences that plausibly can be drawn from the pleadings, a party's legal conclusions, opinions, or
12 unwarranted averments of fact will not be deemed admitted." *Kopelman & Assoc., L.C. v. Collins*, 196
13 W.Va. 489, 493 (1996). Inferring from *Kopelman*, courts commonly require complaints to "contain
14 either direct or inferential allegations regarding all the material elements," and required those
15 allegations to "constitute 'more than bare assertions of legal conclusions.'" *Scheid v. Fanny Farmer*
16 *Candy Shops, Inc.*, 859 F.2d 434, 436 (6th Cir. 1988). And they refused to accept "unwarranted
17 inferences" from those allegations. *E.g., City of Pittsburgh v. W. Penn Power Co.*, 147 F.3d 256, 263 &
18 n.13 (3d Cir. 1998).

19 Plaintiff seeks damages for intentional torts based solely on Plaintiff’s contentions, deductions
20 and conclusions that Johnson intends to cause harm and therefore will cause harm. Nowhere in the SAC
21 does Plaintiff state what actual harm will befall it due to Johnson’s allegations of Johnson’s misconduct,
22 stating only possible or potential harm based solely on Plaintiff’s conclusions of fact. Conclusory
23 allegations are irrelevant and do not support the cause of action for breach of fiduciary duty.

24 Plaintiff repeatedly contends that Johnson intended to compete with Storix, intended to tarnish
25 Storix’ reputation, had “intent”, “desire” and “hope” to harm Storix, and that he made such “efforts” to
26 do so without stating a single fact showing that Johnson either intended or did cause harm to Storix.
27 Johnson’s intent cannot cause harm, and thus Johnson cannot respond to such allegations.
28

1 Plaintiff also makes numerous conclusions of fact that Johnson “threatened” its employees (SAC
2 ¶¶ 18, 25) and alleges that Johnson “sought to disrupt Storix Inc.’s customer relationships by
3 broadcasting false statements about Storix, Inc.’s products and disparaging Storix, Inc.’s management”.
4 (SAC ¶ 28.) Plaintiff’s SAC does not identify any specific statements Johnson made that were
5 threatening, false or disparaging to Storix, or its products, employees, or management. Therefore,
6 Johnson also cannot respond to these allegations.

7 Courts have generally held that an employee does not breach his duty of loyalty (or a
8 nonsolicitation covenant) by advising his employer’s clients that he intends to resign and discussing his
9 future plans. *American Credit Indem. Co. v. Sacks*, 213 Cal. App.3d 622, 636, 262 Cal. Rptr. 92 (1989).
10 Only when the communications are deemed solicitations has the employee has crossed the line. Under
11 California law, an employee is entitled to *announce* a new affiliation, even to those on a customer list
12 that may constitute a trade secret. See *Aetna Bldg. Maint. Co. v. West*, 246 P.2d 11,14 (Cal. 1952);
13 *Morlife, Inc. v. Perry*, 66 Cal.Rptr.2d 731, 73 38 (Cal. Ct.App. 1997); Moss, *Adams & Co. v. Shilling*,
14 224 Cal.Rptr. 456, 458-59 (Cal. Ct.App. 1986); *see also American Credit Indemnity Co. v. Sacks*, 262
15 CaLRptr. 92,100 (Cal. Ct.App. 1989) (“the boundary separating fair and unfair competition in the
16 context of a protected customer list has been drawn at the distinction between an announcement and a
17 solicitation.”).

18 Even if Plaintiff’s contention that Johnson obtained and used a “Storix, Inc. customer contact
19 list” (SAC ¶ 21; see also ¶¶ 17, 25, 28) to compete with Storix were true, such use would only be a
20 breach of duty to Storix if he *expressed his desire or plans to compete* to those customers and solicited
21 their business. The SAC states no facts to support its contention or conclusion that Johnson did or even
22 intended to solicit customers. The Court should strike all allegations of the SAC regarding Johnson’s
23 alleged email to (possible) customers as they are irrelevant to the cause of action for breach of fiduciary
24 duty by striking Paragraphs 17, 21, 25 and 28 of the SAC at pages 4: 16-23, 5: 21-26, 6: 11-18 and 7: 1-
25 19.

26 For all the reasons stated above, the following paragraphs of the SAC should also be stricken as
27 they contain only conclusions of fact and law irrelevant to the cause of action, as indicated by the
28 conclusory trigger words, and their derivatives, of “intent”, “desire”, “hope”, “effort” and “threat”:

1 Paragraphs 16, 17, 18, 19, 20, 25 , 28 and 31 at pages 4: 10-15, 4: 16-23, 4: 24-28 and 5: 1-3, 5: 4-6, 5:
2 7-18, 6: 11-18, 7: 1-19, and 8: 4-10.

3 **C. The Court Should Strike Intentionally False and Misleading Allegations that Are Unsupported**
4 **by Complete Facts**

5 Plaintiff repeatedly uses partial statements, taken wildly out of context, in such a way that is
6 intentionally misleading and incorrect. Most notably, Plaintiff alleges that Johnson sent an email to
7 unknown customers, reciting two partial sentences, out of context, from the email. Plaintiff alleges that
8 Johnson told recipients they were in “possession of unauthorized and infringing copies of [the
9 software]” and that they “*cease any further payment to Storix in relation to [the software] and refrain*
10 *from downloading any further copies*”. (SAC ¶ 17, 21; *MTS RJN* ¶ 5, exhibit 5.) The email actually says
11 the recipient “may” be in possession of infringing software, and Johnson asked them to refrain from
12 further purchases until after the copyright ownership was established at the end of the month.¹ Johnson
13 also expressed that improvements he’d made to the software to “address known security vulnerabilities
14 and increase the network security” would be made available. Johnson expected Storix to be selling his
15 improved software once ownership was determined, since the alternative would be for Storix’
16 management to remain in place and have no product to sell or support. Typically, Plaintiff completely
17 twisted Johnson’s words to say “as a basis to create a competing product ... [Johnson] admits to
18 working to modify that source code after taking it to arrive at a ‘marketable product’” (SAC ¶ 27), and
19 that Johnson “broadcast[ed] false statements about Storix, Inc.’s products”, advising customers that
20 “their versions of SBAAdmin were ‘infringing’.” (SAC ¶ 28.) The referenced email says no such things,
21 and Johnson even told customers that they “may continue using the current software, even if [they]
22 received an infringing license after it was revoked.” (*MTS RJN* ¶ 5, exhibit 5.)

23 Plaintiff is fully aware that Johnson is within his rights as a director to exercise his **business**
24 **judgment** in providing a cautionary warning to customers, even suggesting they refrain from purchasing
25 *potentially* infringing software until the situation was resolved. Johnson noted in the aforementioned

26
27 ¹ The copyright ownership decision was unexpectedly decided later by a jury, who decided that Johnson forfeited
28 ownership of his registered copyright by incorporating Storix, Inc. in 2003. The decision is currently pending
appeal as a matter of law.

1 email “*I made no effort to disparage or compete with Storix in any way.*” Plaintiff actually alleges that
2 this email demonstrates *efforts to disparage and compete with Storix*, when the email itself clearly says
3 just the opposite. (*MTS RJN ¶ 5*, exhibit 5.)

4 Furthermore, in September 2015, when Johnson *proposed* sending the aforementioned email,
5 Plaintiff petitioned for, and was denied, a restraining order in federal court (*MTS RJN ¶ 1*, exhibit 1). In
6 October 2015, *after* the actual email was sent, the same court denied Plaintiff’s motion for injunction,
7 noting “As of October 23, 2015, none of Defendant’s [Storix] customers had, to the best of Defendant’s
8 knowledge, made any decisions adverse to Defendant as a result of Plaintiff’s October 6, 2015 email”
9 and “Defendant is unable to cite any harm that has befallen it as a result of Plaintiff’s email to
10 customers. Defendant has not satisfied the elements necessary to obtain a preliminary injunction,
11 **especially in light of the significant First Amendment issues at stake.**” (*MTS RJN ¶ 2*, exhibit 2 [bold
12 added].)

13 Plaintiff contends that Johnson breached his fiduciary duty by not *disclosing* his alleged conduct
14 to Storix. (¶¶ 14-15, 25.) Plaintiff immediately contradicts the same allegations by saying “Johnson has
15 *communicated* his intent to compete directly with Storix” (SAC ¶16), referring to the very same conduct.

16 The SAC further contradicts itself by stating that Johnson “directed threats to non-shareholder
17 employees” then “instructed the employee to delete the email” (SAC ¶18, emphasis added.) Plaintiff
18 alleges that “Johnson sent an email to a non-shareholder employee advising that ‘you and the other
19 innocent employees are about to lose your jobs.’” (SAC ¶ 18.) Again, Plaintiff intentionally uses half-
20 truths. Johnson wasn’t threatening the employee’s job, only informing him of the impact Storix
21 management’s determination to litigate the company into bankruptcy was likely to have. Johnson
22 wanted the employee to inform him if there were any human resources left to fight for. The Court need
23 only look at the actual *content* of the email and use reasonable interpretation see that it in no way a
24 threatened the employee. (*MTS RJN ¶4*, exhibit 4.)

25 Finally, Plaintiff’s wildly exaggerated accusations culminate in the single new allegation of the
26 SAC, that “Johnson **stole** a developmental copy of Storix, Inc.’s confidential, proprietary, and non-
27 public software code when he resigned from the company in **May 2014**”. (SAC ¶ 20, bold added.)
28 Plaintiff adds that Johnson “took that code with the express desire and intent to modify it and ‘rebrand’

1 it under a new name in order to directly compete with Storix, Inc. Not only did Johnson hope to use
2 Storix, Inc.’s own source code against it in competition, but Johnson intended and desired that Storix
3 would collapse in the face of such competition.” (SAC ¶20.) In a single sentence, Plaintiff contends that
4 Johnson “hoped”, “intended” and “desired” to use Storix’ source code, again drawing the conclusion,
5 without facts, that Johnson was planning to use it to compete with Storix. What Plaintiff fails to mention
6 is that Johnson designed and created the software in 1998 and has always had a copy of the software in
7 his possession.² Plaintiff’s clearly wishes to misguide the Court into believing that Johnson is a *thief*
8 who intends to disclose Storix’ confidential software code to the public (*See* ¶ 20), exaggerating the fact
9 that Johnson merely took home a *copy*.³

10 For the reasons set forth above, the Court should strike Paragraphs 14, 15 and 16 of the SAC at
11 pages 4: 1-4, 4: 5-9, and 4: 10-15 as they state contradictory facts irrelevant to a cause of action, and
12 Paragraphs 17, 20, 21, 27, 28 and 31 of the SAC at pages 4: 16-23, 5: 7-18, 5: 19-26, 6: 22-27, 7: 1-19
13 and 8: 4-10 as false and misleading and thus irrelevant to a cause of action.

14 **D. The Court Should Strike Demand for Punitive Damages Because Such Relief Is Not Supported**
15 **by the Allegations**

16 To support its demand for punitive damages, Plaintiff alleges, on information and belief, that
17 Defendant “engaged in the acts alleged herein with the intent to harm Storix, Inc., and with callous
18 indifference or a wanton disregard for the rights of others, including Storix, Inc. and its other
19 shareholders and employees, by his words threatening harm to Storix, Inc. and statements indicating that
20 he intends to harm Storix, Inc.” (SAC ¶ 31.) Plaintiff’s allegations fail to satisfy the requirements for
21 specificity in pleading a claim for exemplary damages. The reason for specificity in pleading exemplary
22 damage claims is made clear in decisions such as *American Airlines, Inc. v. Sheppard, Mullin, Richter &*
23 *Hampton* (2002) 96 Cal.App.4th 1017 (*American*), where the court began by asking: “The question is
24 whether defendants’ conduct may be characterized as ‘*despicable*.’” (*American, supra*, 96 Cal.App.4th
25 at p. 1050 [emphasis added].) The court goes on to answer its question by stating that the complained-of

26 _____
27 ² Other officers and directors have had personal possession of a copy of the software, and likely do today, but
28 only Johnson is accused of “stealing” it.

³ Johnson never refused to return the software he originally left with. He refused to turn over or destroy the
improvements he made to the software after he resigned. Storix demanded Johnson also turn over his derivative
work.

1 conduct must be “so vile, base, contemptible, miserable, wretched or loathsome that it would be looked
2 down upon and despised by ordinary decent people.” (*Id.* at pp. 1050-1051.) “Punitive damages are
3 proper only when the tortious conduct *rises to levels of extreme indifference* to the plaintiff’s rights, a
4 level which decent citizens should not have to tolerate.” (*Ibid.* [emphasis added].)

5 A motion to strike may lie where the facts alleged do not rise to the level of “malice, fraud or
6 oppression” required to support a punitive damages award. (See *Turman v. Turning Point of Central*
7 *Calif., Inc.* (2010) 191 CA4th 53, 63.) Plaintiff alleges no facts to satisfy the requirements for an
8 exemplary damage claim, but simply boilerplate, conclusory allegations that Defendants acted with
9 “callous indifference or a wanton disregard for the rights of others.” (SAC ¶ 31.)

10 Further, Plaintiff’s own pleading by virtue of the phrase “will sustain” damage or “will cause”
11 harm concedes the fact that Plaintiff has not yet suffered any harm and that the possibility of future harm
12 is speculative at best. (SAC ¶¶ 26; 27, 29, 30.) Therefore, Plaintiff’s allegations fail to satisfy the
13 requirements for specificity in pleading a claim for injunctive relief or exemplary damages. (See
14 *American Airlines, Inc. v. Sheppard, Mullin, Richter & Hampton* (2002) 96 Cal.App.4th 1017, 1050-
15 1051; *Turman v. Turning Point of Central Calif., Inc.* (2010) 191 CA4th 53, 63.)

16 For the reasons set forth above, Paragraph 31 of the SAC at page 8: 4-10 and Paragraph 2 of the
17 Prayer at page 10: 4 seeking an award of punitive damages should be stricken on grounds that Plaintiff
18 failed to adequately plead facts sufficient to recover such damages.

19 **E. The Court Should Strike Demand for Injunctive Relief Because Such Relief is Not**
20 **Supported by the Allegations**

21 To support its request for injunctive relief, Plaintiff merely concludes that “[u]nless and until
22 enjoined by this Court, Johnson’s breaches of fiduciary duties and unlawful competition will cause great
23 and irreparable injury to Storix, Inc. for which Storix, Inc. lacks any adequate remedy at law.” (SAC ¶
24 27.) Plaintiff’s allegations fail to satisfy the requirements for specificity in pleading a claim for
25 injunctive relief. To obtain injunctive relief, the plaintiff must show that the defendant’s wrongful acts
26 threaten to cause irreparable injuries, i.e., those which cannot be adequately compensated in damages.
27 (*Intel Corp. v. Hamidi* (2003) 30 Cal.4th 1342, 1352.) Plaintiff’s general allegation failed to do so here.
28

1 The SAC does not contain any facts as to why or how it will be “irreparably injured” absent the
2 requested injunctive relief. There are no facts in the SAC indicating that Defendant is actually doing
3 business in competition with Plaintiff currently or in the near future.

4 First, there are no facts in the SAC indicating that Johnson has already solicited, or is likely to
5 solicit in the future, Plaintiff’s clients or otherwise try to steal or divert business from Plaintiff to
6 Johnson. In fact, no facts are pled from which the Court can even conclude that any company formed by
7 Johnson is a functioning, operational business. The mere formation, registration of an internet domain
8 name, or reservation of “port numbers” does not amount to the existence of a competing company.
9 (SAC ¶¶ 14-16, 25.) Plaintiff’s allegations that Johnson “stole” software code (SAC ¶¶ 20, 27), sent an
10 email to customers to allegedly disrupt its business (SAC ¶¶ 17, 21, 28), and sent a “threatening” email
11 to an employee (SAC ¶¶ 18, 25), occurred about twenty-eight (28), eighteen (18) and nine (9) month
12 ago, respectively, yet still specify no harm caused by the alleged conduct.

13 Second, Plaintiff does not plead any specific facts to suggest that any of Johnson’s alleged
14 breach of fiduciary duty caused or will cause Plaintiff to lose profits, lose business opportunities, or
15 otherwise result in any actual detriment to Plaintiff. Plaintiff’s own pleading by virtue of the phrase
16 “will sustain” damage concedes the fact that Plaintiff has not yet suffered any harm and that the
17 possibility of future harm is speculative at best. (SAC ¶ 26.)

18 Likewise, Plaintiff does not plead any facts as to why no adequate remedy exists at law to
19 compensate Plaintiff for any purported harm caused by the complained-of conduct. To the contrary, the
20 alleged harm at issue pled by Plaintiff is competition to or interference with its business. (SAC ¶¶ 16-18,
21 20, 21.) Should Plaintiff prevail at trial, it can be fully compensated and made whole for any harm it
22 supposedly suffered by an award of monetary damages based on lost profits or unjust enrichment.

23 Plaintiff’s demand for injunctive relief (Prayer at ¶ 3), as currently pled, is impermissibly broad
24 and vague. “An injunction must be narrowly drawn to give the party enjoined reasonable notice of what
25 conduct is prohibited.” (*Strategix, Ltd. v. Infocrossing W., Inc.* (2006) 142 Cal. App. 4th 1068, 1074,
26 quoting, *Thompson v. 10,000 RV Sales, Inc.* (2005) 130 Cal.App.4th 950, 979.) This particularity
27 requirement is based on the courts’ recognition that a directive “in terms so vague that men of common
28 intelligence must necessarily guess at its meaning and differ as to its application violates the first

1 essential of due process of law.” (*In re Berry* (1968) 68 Cal. 2d 137, 156.) Plaintiff’s proposed
2 preliminary and permanent injunction fails to contain a reasonably adequate description of the conduct
3 which is prohibited. For example, Plaintiff asks that “Defendants be enjoined from engaging in **further**
4 **acts** in furtherance of their plan to engage in competition with Storix, Inc., either directly or **indirectly.**”
5 (Prayer at ¶ 3(a) [bold added].) Yet, there is no indication in SAC as to what types of “further acts”
6 would be prohibited or what it means to “indirectly” compete. Further, Plaintiff asks that “Defendants
7 be enjoined from soliciting Storix, Inc.’s customers or **prospective customers.**” (Prayer at ¶ 3(b) [bold
8 added].) There is no indication on the face of the FAC what constitutes a “prospective” customer.

9 Moreover, injunctive relief must be tethered to a substantive cause of action. (*Mesa Shopping*
10 *Ctr.-E., LLC v. Hill* (2014) 232 Cal. App. 4th 890, 901.) Here, Plaintiff asks that “Defendants be
11 enjoined from soliciting Storix, Inc.’s customers or prospective customers” (Prayer at ¶ 3(b)) and
12 “Defendants be ordered to return to Plaintiff all property of Storix, Inc.” (Prayer at ¶ 3(c).) Neither of
13 these requests are tied to a cause of action for breach of fiduciary duty. No facts are alleged in the SAC
14 state that Johnson breached a fiduciary duty by soliciting Plaintiff’s customers or depriving Storix of any
15 property.

16 Likewise, no facts are alleged in the SAC that Johnson breached a fiduciary duty by
17 misappropriating, using, or disclosing personal property of Plaintiff without Plaintiff’s authorization or
18 consent. Rather, the basis for the First Cause of Action is simply Johnson’s alleged formation of a
19 company, sparse communications with customers and employees. (SAC at ¶ 25.) Plaintiff further
20 claims that “Johnson stole a developmental copy of Storix Inc.’s confidential, proprietary and non-
21 public software code” and “Johnson has refused to return the unauthorized confidential and proprietary
22 software code, which he has no right to possess.” (SAC ¶ 20.) By Plaintiff’s admission, Johnson took a
23 “*copy of the software in May 2014.*” (SAC ¶ 20.) Storix was never deprived of the software. Plaintiff’s
24 requested injunctive relief impermissibly assumes that Johnson’s possession of Plaintiff’s property is
25 illegal, but does not state any facts or authority to support such a **conclusion of law.** In fact, any

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1 director is entitled to inspect *and copy* any records of any type (Calif. Corp. Code §1602), so any copy in
2 his possession is authorized by law.⁴

3 Plaintiff states that “Storix, Inc. is entitled to injunctive relief to restrain Johnson from using its
4 own source code in competition with it and from interfering with its customers unfairly.” (SAC ¶ 28.)
5 The SAC does not include a cause of action for misappropriation, conversion, or the like. Nevertheless,
6 California has adopted the *Uniform Trade Secrets Act* (CA Civil Code § 3426). Under the Act,
7 "misappropriation" refers to the disclosure of a trade secret acquired by improper means -- theft, bribery,
8 misrepresentation, breach or inducement of a breach of duty to maintain secrecy. Plaintiff has not stated
9 any facts in the SAC to support the allegation that Johnson *plans* to use the company’s source code in
10 competition, interfere with its customers, or disclose its secrets by improper means.

11 Additionally, Plaintiff’s requested injunctive relief impermissibly assumes that any solicitation
12 of Plaintiff’s customers or *prospective* customers is illegal. The SAC does not contain any facts
13 indicating that Johnson signed an employment agreement or confidentiality agreement or some other
14 written contract waiving his right to form a competing business after he resigned from the corporation.
15 The mere fact that Johnson is a director and a shareholder does not mean that Johnson is necessarily
16 precluded from engaging in activity competitive to Plaintiff.

17 Lastly, Plaintiff suggest that, “*if* Johnson discloses confidential and proprietary information” or
18 “*if* Johnson uses his title of ‘Director’ to continue disparaging”, but states no facts as to when or how
19 Johnson actually disclosed information or how Johnson used his title to actually disparage Storix.
20 Accordingly, the Court should strike Paragraphs 29 and 30 of the SAC at pages 7:20-24, 7:25-30 and
21 8:1-3 as irrelevant to the relief requested.

22 For all the reasons set forth above, the Court should also strike the allegations at Paragraphs 27
23 and 28 of the SAC at pages 6: 22-27 and 7:1-19, and Paragraph 3 of the Prayer at page 10: 5-13 seeking
24 a demand for injunctive relief on grounds that there is a failure to adequately plead facts sufficient to
25 recover such relief.

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28 ⁴ Other current and former officers and directors have had, and likely still have, personal possession of a copy of
the software. Johnson created the software, and is the only person ever accused of “stealing” it.

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V. CONCLUSION

For the many reasons stated above, Defendants' motion to strike should be granted and the Court should strike the specified portions and matter from Plaintiff's FAC, as detailed above and itemized in the *Motion to Strike*.

DATED: September 21, 2016

/s/ Anthony Johnson
ANTHONY JOHNSON
Self-Represented