

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 09/15/2017

TIME: 09:00:00 AM

DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil

CLERK: Juanita Cerda

REPORTER/ERM: Lori Kowalski CSR# 10810

BAILIFF/COURT ATTENDANT: R. Camberos

CASE NO: **37-2015-00034545-CU-BT-CTL** CASE INIT.DATE: 10/13/2015

CASE TITLE: **Johnson vs. HUFFMAN [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Business Tort

EVENT TYPE: Motion Hearing (Civil)

MOVING PARTY: Robin Sassi, Anthony Johnson

CAUSAL DOCUMENT/DATE FILED: Motion for Preliminary Injunction Notice of Motion for Preliminary Injunction, 08/23/2017

APPEARANCES

Bernard F King, III, counsel, present for Defendant,Plaintiff(s).

David Aveni, specially appearing for counsel Michael P McCloskey, present for Defendant,Cross - Defendant,Plaintiff(s).

Paul A Tyrell, counsel, present for Defendant,Plaintiff(s).

Anthony Johnson, self represented Cross - Complainant, present telephonically.

The Court hears oral argument and confirms the tentative ruling as follows:

The Motion (ROA # 434) of Plaintiffs Robin Sassi and Anthony Johnson ("Plaintiffs") for a preliminary injunction enjoining nominal Defendant Storix, Inc. ("Storix") from continuing to advance litigation costs to Defendants David Huffman, Richard Turner, David Smiljkovich, Manuel Altamirano, and David Kinney (collectively "individual Defendants") in contravention of the corporate bylaws, or, alternatively, for a mandatory injunction requiring Storix to advance Plaintiff Johnson's litigation costs incurred in defending against Storix' Janstor lawsuit, is DENIED.

A trial court considers two interrelated questions in deciding whether to issue a preliminary injunction: (1) is Plaintiff likely to suffer greater injury from a denial of the injunction than Defendant is likely to suffer from its grant; and (2) is there a reasonable probability that Plaintiff will prevail on the merits. Robbins v. Superior Court (1985) 38 Cal. 3d 199, 206; Code Civ. Proc. 526(a). The Court's determination must be guided by a "mix" of the potential-merit and interim-harm factors. Butt v. State of California (1992) 4 Cal. 4th 668, 678. A preliminary injunction is appropriate when pecuniary compensation would not afford adequate relief; or where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief. Code Civ. Proc. 526(a). The burden is on the moving party to show all elements necessary to support issuance of a preliminary injunction. O'Connell v. Superior Court (2006) 141 Cal. App. 4th 1452, 1481. A preliminary injunction amounts to a mere interlocutory order to

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maintain the status quo pending a determination of the action on its merits. Varian Medical Systems, Inc. v. Delfino (2005) 35 Cal. 4th 180, 191.

The requested injunctive relief will upset the present status quo and will harm defendants by potentially depriving them of the ability to obtain legal counsel. Also, this is the type of harm that can be redressed with a monetary award, rather than injunctive relief. Plaintiffs have not satisfied their burden of demonstrating that monetary damages would not be adequate. In addition, Plaintiffs fail to demonstrate a probability of prevailing. Both parties present plausible arguments regarding whether Storix is properly advancing litigation costs and fees.

Specifically regarding the alternative request to compel Storix to advance Plaintiff Johnson's litigation costs, an injunction is prohibitory if it requires a person to refrain from a particular act and mandatory if it compels performance of an affirmative act that changes the position of the parties. Davenport v. Blue Cross of California (1997) 52 Cal. App. 4th 435, 446. "The granting of a mandatory injunction pending the trial, and before the rights of the parties in the subject-matter which the injunction is designed to affect have been definitely ascertained... is not permitted except in extreme cases, where the right thereto is clearly established, and it appears that irreparable injury will flow from its refusal." Hagen v. Beth (1897) 118 Cal. 330, 331. Mandatory preliminary injunctions are rarely granted (and if granted, are subject to stricter scrutiny on appeal). Edmon & Karnow, Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2017) at ¶ 9:550. "We emphasize that a preliminary mandatory injunction is rarely granted, and is subject to stricter review on appeal.... The granting of a mandatory injunction pending trial is not permitted except in extreme cases where the right thereto is clearly established...." Teachers Ins. & Annuity Assn. v. Furlotti (1999) 70 Cal. App. 4th 1487, 1493 (internal citations and quotations omitted). As discussed above, Plaintiffs have not sufficiently demonstrated a likelihood of prevailing on the merits, or that the balancing of harm weighs in his favor.

Defendants' Request (ROA # 440) for judicial notice is GRANTED.

The Court directs Attorney Tyrell to serve notice of the Court's ruling.



Judge Joel R. Wohlfeil