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California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

STORIX, INC.,

Plaintiff and Respondent,

v.

ANTHONY JOHNSON,

Defendant and Appellant;

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ANTHONY JOHNSON,

Cross-complainant and  
Appellant,

v.

DAVID HUFFMAN et al.,

Cross-defendants, and  
Respondents;

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ANTHONY JOHNSON,

Plaintiff and Appellant,

v.

DAVID HUFFMAN et al.,

Defendants and Respondents.

D075308

(Super. Ct. No.

37-2015-00028262-CU-BT-CTL

Consolidated under lead case

Super. Ct. No.

37-2015-00034545-CU-BC-CTL)

D077096

(Super. Ct. No. 37-2019-

00002457-CU-BT-CTL)

ORDER MODIFYING OPINION  
AND DENYING REHEARING

NO CHANGE IN JUDGMENT

## THE COURT:

It is ordered that the opinion filed herein on December 31, 2020 be modified as follows:

On page 14, insert the following at the end of footnote 6:

Johnson argues that the latter part of section 307(b) applies because no court ever found that “ratifying the lawsuit [two] years after it was filed was just and reasonable to Storix.” The jury’s verdict in favor of Storix and the subsequent judgment establish that Storix’s action against Johnson was just and reasonable to Storix.

On page 23, remove the last paragraph and replace it with the following paragraph:

“ ‘Compliance with the requirements for filing a notice of appeal is mandatory and jurisdictional,’ and an appellate court therefore must dismiss an appeal that is untimely.” (*Starpoint Properties, LLC v. Namvar* (2011) 201 Cal.App.4th 1101, 1107.) “An order granting or denying a special motion to strike shall be appealable under [Code of Civil Procedure] Section 904.1.” (Code Civ. Proc., § 425.16, subd. (i).) Code of Civil Procedure section 904.1 similarly provides that “[a]n appeal . . . may be taken . . . [f]rom an order granting or denying a special motion to strike under [Code of Civil Procedure] Section 425.16.” (Code Civ. Proc., § 904.1, subd. (a)(13); *Reyes v. Kruger* (2020) 55 Cal.App.5th 58, 67 [grant]; *Kyle v. Carmon* (1999) 71 Cal.App.4th 901, 906 [same]; *People ex rel. Lockyer v. Brar* (2004) 115 Cal.App.4th 1315, 1317 [denial].) An appeal also lies if the trial court denies the motion as to some causes of action, for example where the complaint contains claims arising from both protected and unprotected activity. (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 381-382, 394; *Old Republic Construction Program Group v. The Boccardo Law Firm, Inc.* (2014) 230 Cal.App.4th 859, 866, fn. 4.) Additionally, an attorney fees and costs award to a prevailing defendant on an anti-SLAPP motion is directly appealable. (*City of Colton v. Singletary* (2012) 206 Cal.App.4th 751, 782.)

On page 32 remove the second full paragraph, replace it with the following paragraph and add new footnote 13 as indicated:

Johnson cited no authority in his opening brief to support giving the disputed paragraph. In his reply brief, Johnson cited out-of-state authority to support instructing with the disputed paragraph. Out-of-state authority is not binding on California courts. (*Doe v. Occidental College* (2019) 37 Cal.App.5th 1003, 1018, fn. 2.) Additionally, the cases cited by Johnson during his rebuttal oral argument (*Neider v. Dardi* (1955) 130 Cal.App.2d 646 (*Neider*) and *Brown v. Allied Corrugated Box Co.* (1979) 91 Cal.App.3d 477 (*Brown*)) do not assist him because these cases do not relate to this issue. [Insert new footnote 13] In any event, we are not convinced that removal of the disputed paragraph prejudiced Johnson.

Text of new footnote 13:

*Neider, supra*, 130 Cal.App.2d 646 concerns the appointment of a receiver arising from a conflict between two joint venturers and a corporation. (*Id.* at p. 647.) *Brown, supra*, 91 Cal.App.3d 477 concerns an action by minority shareholders in a closely held corporation to involuntarily dissolve the corporation and an appraisal requested by the majority shareholders to ascertain the value of the minority shares. (*Id.* at pp. 479-480.) While these cases contain language that arguably supports Johnson's position (*Neider* at p. 649; *Brown* at p. 487), neither case stands for the proposition that majority shareholders may breach their fiduciary duties by denying the minority shareholder a position with the company. (*California Building Industry Assn. v. State Water Resources Control Bd.* (2018) 4 Cal.5th 1032, 1043 [a case does not stand for a proposition it does not address].)

On page 36, renumber existing footnote 13 to footnote 14.

There is no change in judgment.

The petition for rehearing filed by Anthony Johnson is denied.

HALLER, Acting P. J.

Copies to: All parties

KEVIN J. LANE, Clerk of the Court of Appeal, Fourth Appellate District, State of California, does hereby Certify that the preceding is a true and correct copy of the Original of this document/order/opinion filed in this Court, as shown by the records of my office.

WITNESS, my hand and the Seal of this Court.

01/27/2021



KEVIN J. LANE, CLERK

By  Deputy Clerk