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

10  
11 ANTHONY JOHNSON, an individual,

12 Plaintiff,

13 v.

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

22 *Defendants.*

Case No. 3:19-cv-1185-H-BLM

**PLAINTIFF'S REPLY TO  
OPPOSITION TO MOTION TO  
RECUSE BY DEFENDANTS  
STORIX INC., TYRELL AND  
SULLIVAN**

Judge: Marilyn L. Huff  
Dept: Courtroom 15A

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

1 **INTRODUCTION**

2 Plaintiff Anthony Johnson hereby submits this reply to the Opposition to  
3 Plaintiff’s Motion to Recuse submitted by defendants Storix Inc. (Storix) and  
4 defendants Tyrell and Sullivan (hereafter “Attorney-Defendants”). Neither the  
5 Attorney-Defendants nor defendants Altamirano, Turner, Kinney and Huffman  
6 (Partner-Defendants) were parties to the prior copyright case that was the subject of  
7 the reassignment in accordance with the “low number rule”. The only party to the  
8 prior copyright case was Storix, Inc., whose claims against in the Partner-  
9 Defendants in the shareholder derivative lawsuit in state court the Attorney-  
10 Defendants fought against.

11 This case was reassigned to Judge Huff without any party submitting a notice  
12 of related cases and without any of the criteria for a case transfer being met.  
13 Attorney-Defendants argue that Johnson is “judge shopping”, but Johnson did not  
14 oppose the original case assignment. They also argue that the current case and prior  
15 copyright case involve the same issues but identify no such issues because there are  
16 none. They further argue that Johnson is opposing the transfer because he’s simply  
17 dissatisfied with Judge Huff’s prior rulings. That is simply not true. Johnson opposes  
18 the transfer because (1) there was no reason transfer it in the first place, and (2)  
19 because Judge Huff’s demonstrated her unwillingness to reconsider facts and issues  
20 that were the basis of her historic attorney fee award against Johnson despite being  
21 irrelevant to the copyright litigation and disproven in state court.

22 Attorney-Defendants provide no reason the case should have been assigned to  
23 Judge Huff but insist it remain in her court so Johnson’s claim of malicious litigation  
24 against them can be heard by the same judge who previously refused to  
25 acknowledge their misconduct. There is simply no reason the case should have been  
26 transferred, and no reason the transfer order should not be set aside or assigned to a  
27 different judge to ensure the appearance of fairness and justice in this case.

## ARGUMENT

### A. Johnson Has Established that Recusal is Warranted

The authorities cited by Attorney-Defendants have no bearing on the circumstances of this case. They state that “In this case, Johnson is simply unhappy with past rulings of the court, and wants to forum shop for a potentially more sympathetic audience.” (Opp. at p. 4.) Yet, Johnson is the only party willing to leave the case where it was first assigned. Attorney-Defendants further argue that “[Johnson] simply complains about the court’s commentary during oral argument, and the court’s subsequent ruling.” (*Id.*) Not true. Johnson cited transcripts and rulings to show that Judge Huff’s rulings were knowingly based on disproven facts and ignorance of the malicious conduct of the defendants that gave rise to Johnson’s current claims.

It’s not Judge Huff’s prior rulings, but her refusal to set aside her prior opinions or acknowledge the litigation misconduct of the Attorney-Defendants that are the primary grounds for Johnson’s motion. Johnson didn’t simply cite “the court’s orders assessing the evidence, his testimony, and his conduct.” (Opp. At p. 5.) Johnson cited transcripts showing that he proved to Judge Huff that the evidence and testimony was misconstrued by the Attorney-Defendants and was disproven after being fully litigated in state court. Johnson reminded her of the shareholder derivative lawsuit he brought on Storix’s behalf that the Attorney-Defendants *unlawfully* defended against their own client’s interests. Johnson showed Judge Huff that the claims from which she based her prior fee award had finally been litigated in state court and were completely rejected by a jury. Judge Huff ignored these facts when reissuing the still-largest attorney fee award against any individual author in U.S. history. Johnson had to endure 4 years of legal abuse by the Attorney-Defendants (fueled by Judge Huff’s attorney fee order) before finally bringing his current malicious prosecution claim. These are exactly the type of “unusual circumstances” that warrant recusal.

1 Johnson doesn't challenge any of Judge Huff's prior rulings, but it's not  
2 unreasonable to expect Judge Huff to resist a new ruling in this case that might also  
3 prove the unreasonableness of her prior fee award. More concerning is that Judge  
4 Huff turned a blind eye to the litigation misconduct of the Attorney-Defendants that  
5 is now the central issue of this litigation. The Attorney-Defendants are "judge  
6 shopping", not Johnson, and any reasonable person would question Judge Huff's  
7 ability to be impartial under these circumstances.

8 **B. The Case Transfer Was Improper and the Low-Number Rule**  
9 **Inapplicable**

10 Attorney-Defendants argue that "the entire premise of [Johnson's] new claim  
11 is that he is owed money for the transfer of the same SBAdmin copyright that the  
12 parties litigated in that case." Whether or not Storix paid Johnson for ownership of  
13 his copyrights was irrelevant to the copyright litigation, never decided by any court,  
14 and a contract-related issue to be decided under state law.

15 Attorney-Defendants generally misquote the "low-number rule", which  
16 actually states:

17 **Local Rule 40.1(e). Low Number Rule, Criteria.** The clerk must  
18 promptly examine the original complaint or petition in each civil action  
19 and proceeding hereafter filed and ascertain whether any one or more  
20 civil actions or proceedings pending *or* any one or more currently filed  
21 appear (1) to arise from the same or substantially identical transactions,  
22 happenings, or events; or (2) involve the same or substantially the same  
23 parties or property, or (3) involve the same patent or the same trademark;  
24 or (4) call for determination of the same or substantially identical  
25 questions of law; or (5) where a case is refiled within one year of having  
26 previously been terminated by the Court; or (6) for other reasons would  
27 entail substantial duplication of labor if heard by different judges.

28 Most relevant is that the final judgment in the copyright case was issued in  
December 2015, and there are no "pending" proceedings in the district court. The  
cases do not involve even remotely similar transactions, and the current case doesn't  
involve any federal copyright issues. Storix was the only defendant in the copyright

1 case, but Storix is only named a defendant in this case because the other defendants  
2 (with majority control of Storix) insist they were acting under Storix's authority.  
3 There are no similar questions of law or any other criteria by which the case should  
4 have been transferred.

5 **CONCLUSION**

6 Any reasonable person with knowledge of all the facts and circumstances  
7 would doubt Judge Huff's ability to be impartial. The order transferring the case to  
8 Judge Huff should be set aside and the case returned to Judge Sammartino or  
9 reassigned to a different judge. Johnson respectfully requests a decision in this  
10 matter be issued promptly so that the defendants' six pending motions can be heard  
11 on October 7, 2019 without further delay.

12  
13 DATED: September 19, 2019

Respectfully submitted,

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15 By:



16 ANTHONY JOHNSON, In Pro Per  
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1 **CERTIFICATE OF SERVICE**

2 I, the undersigned certify and declare as follows:

3 I am over the age of eighteen years and not a party to this action. My address is 1728  
4 Griffith Ave., Las Vegas, Nevada, which is located in the county where the service described  
5 below took place.

6 On September 19, 2019, from my address in Las Vegas, Nevada, I served a copy of the  
7 following document(s):

8 **PLAINTIFF’S REPLY TO OPPOSITION TO MOTION TO RECUSE BY  
9 DEFENDANTS STORIX INC., TYRELL AND SULLIVAN**

10 by depositing the document(s) in a sealed envelope with the U.S. Postal Service. The undersigned  
11 hereby certifies that he caused a copy of the foregoing document(s) to be delivered to the Clerk of  
12 the U.S District Court, Southern District of California, by thereby mail.

13 The undersigned also certifies that the following recipients have consented to service by email and  
14 have been delivered a copy of the document(s) by sending to the email addresses listed below:

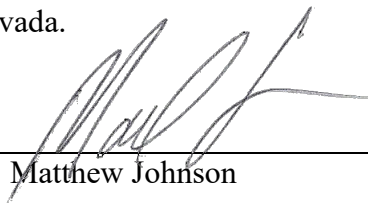
15 Marty B. Ready  
16 WILSON ELSER MOSKOWITZ EDELMAN  
17 & DICKER, LLP  
18 401 West A Street, Suite 1900  
19 San Diego, CA 92101  
20 Email: marty.ready@wilsonelser.com  
21 Tel: (619) 881-6431  
22 (Attorney for Defendants Altamirano,  
23 Turner, Kinney, Huffman & Sullivan)

24 Sean Sullivan  
25 PROCOPIO, CORY, HARGREAVES &  
26 SAVITCH LLP  
27 525 B Street, Suite 2200  
28 San Diego, CA 92101  
Email: sean.sullivan@procopio.com  
Tel: (619) 619.238.1900  
(Defendant, Attorney for defendants Tyrell &  
Storix, Inc.)

19 I certify and declare under penalty of perjury under the laws of the United States of  
20 American and the State of California that the foregoing is true and correct.

21 Executed on September 19, 2019 in Las, Nevada.

22 By:

  
Matthew Johnson