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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ANTHONY JOHNSON,

Plaintiff,

v.

MANUEL ALTAMIRANO, an
individual; RICHARD TURNER, an
individual; DAVID KINNEY, an
individual; DAVID HUFFMAN, an
individual; PAUL TYRELL, an
individual; SEAN SULLIVAN, an
individual; STORIX, INC., a California
corporation; and DOES 1-5, inclusive,

Defendants.

Case No.: 3:19-cv-01185-H-BLM

**ORDER REQUESTING
ADDITIONAL BRIEFING**

Background

This case arises out of a series of cases involving Plaintiff Anthony Johnson and Storix, Inc. As such, the Court details the full procedural history of the litigation below.

I. The Prior Federal Action

On August 8, 2014, Anthony Johnson – the Plaintiff in this action – filed a complaint in federal court, Case No. 14-cv-1873-H-BLM, against Storix – one of the defendants in this action – alleging claims for: (1) federal copyright infringement under the Copyright

1 Act of 1976, 17 U.S.C. § 101, *et seq.*; (2) contributory copyright infringement; and (3)
2 vicarious copyright infringement. (Doc. No. 34-2, RJN Ex. 1.) On September 19, 2014,
3 Storix filed an answer to Johnson’s complaint and counterclaims for: (1) a declaratory
4 judgment of non-infringement; and a declaratory judgment that it is the owner of the
5 copyrights at issue. (*Id.* Ex. 2.)

6 The action was tried before a jury beginning on December 8, 2015. (Doc. No. 34-2,
7 RJN Ex. 3 at 1.) On December 15, 2015, the jury returned a verdict that was in favor of
8 Storix on all causes of action. (*Id.* at 2.) Specifically, in the verdict, the jury found that
9 “Storix, Inc. proved by a preponderance of the evidence that Anthony Johnson’s copyright
10 infringement claim against Storix, Inc. is barred because Anthony Johnson transferred
11 ownership of all pre-incorporation copyrights, including SBAdmin Version 1.3, in writing
12 from himself to Storix, Inc.” (*Id.*) On November 16, 2016, the Court entered an amended
13 judgment incorporating the jury’s verdict “in favor of Defendant and Counter-Claimant
14 Storix, and against Plaintiff Anthony Johnson.” (*Id.* at 3.)

15 Johnson appealed the Court’s judgment to the United States Court of Appeals for
16 the Ninth Circuit. On December 19, 2017, the Ninth Circuit affirmed in part, reversed in
17 part, and remanded for further proceedings. *Johnson v. Storix, Inc.*, 716 F. App’x 628, 632
18 (9th Cir. 2017), *cert. denied*, 139 S. Ct. 76 (2018). In the decision, the Ninth Circuit
19 affirmed the jury’s verdict on liability, as well as the Court’s decision to award Storix
20 attorneys’ fees. *Id.* at 631. However, the Ninth Circuit held that the fees awarded were
21 “unreasonable,” and remanded with instructions for the Court “to reconsider the amount.”
22 *Id.* at 632. On April 2, 2018, the Ninth Circuit issued its mandate.¹ (Doc. No. 283.)

23 On August 7, 2018, after issuing an order awarding attorneys’ fees on remand, the
24 Court entered a second amended judgment in the action. (Doc. No. 34-2, RJN Ex. 6.) On
25 February 5, 2020, the Ninth Circuit affirmed the Court’s second amended judgment. (Doc.
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28 ¹ Johnson subsequently filed a petition for writ of certiorari with the United States Supreme Court,
which the Supreme Court denied on October 1, 2018. *Johnson v. Storix*, 139 S. Ct. 76 (2018).

1 No. 320.) On May 18, 2020, the Court held an appeal mandate hearing and spread the
2 Ninth Circuit’s mandate. (Doc. No. 320.) On June 29, 2020, the Supreme Court denied
3 Johnson’s petition for writ of certiorari. Johnson v. Storix, No. 19-1244 (U.S. Jun. 29,
4 2020).

5 **II. The State Court Actions**

6 On August 20, 2015, Storix filed a complaint in state court, Case No. 37-2015-
7 28262-CU-BT-CTL, against Anthony Johnson and Janstor Technology, alleging claims
8 for: (1) breach of fiduciary duty against Johnson; and (2) aiding and abetting breach of
9 fiduciary duty against Janstor. (Doc. No. 34-2, RJN Ex. 8.) On October 13, 2015, Anthony
10 Johnson along with Robin Sassi filed a derivative complaint on behalf of Storix in state
11 court, Case No. 37-2015-34545-CU-BT-CTL, against David Huffman, Richard Turner,
12 Manuel Altamirano, David Kinney, and David Smiljkovich, alleging claims for: (1) breach
13 of fiduciary duty; (2) abuse of control; (3) corporate waste; and (4) an accounting. (Doc.
14 No. 34-3, RJN Ex. 14.) The two actions were subsequently consolidated by the state court.

15 On March 14, 2016, Storix filed a first amended complaint in Case No. 37-2015-
16 28262, alleging the same two causes of action. (Doc. No. 34-2, RJN Ex. 9.) On April 13,
17 2016, Johnson filed a cross-complaint in Case No. 37-2015-28262 against David Huffman,
18 Richard Turner, Manuel Altamirano, David Kinney, and David Smiljkovich, alleging
19 claims for: (1) breach of fiduciary duty; (2) civil conspiracy; and (3) fraud. (Id. Ex. 13.)
20 On June 2, 2016, Johnson and Sassi filed a first amended complaint in the derivative action,
21 alleging the same four causes of action. (Doc. No. 34-3, RJN Ex. 15.) On September 6,
22 2016, Storix filed a second amended complaint in Case No. 37-2015-28262, alleging the
23 same two causes of action for: (1) breach of fiduciary duty against Johnson; and (2) aiding
24 and abetting breach of fiduciary duty against Janstor. (Doc. No. 34-2, RJN Ex. 11.)

25 Following a jury trial, on February 20, 2018, a jury returned a verdict in Case No.
26 37-2015-28262 in favor of Storix and against Johnson on Storix’s claim for breach of
27 fiduciary duty and against Johnson on all of his cross-claims. (Doc. No. 34-4, RJN Ex.
28 17.) Specifically, in the verdict, the jury found that “Anthony Johnson breach[ed] his duty

1 of loyalty by knowingly acting against Storix, Inc.’s interests while serving on the Board
2 of Directors of Storix, Inc.” (Id. at 1.) In addition, the jury award Storix \$3,739.14 “as a
3 result of Anthony Johnson’s acts or conduct in breach of a fiduciary duty or duties owed
4 to Storix, Inc.” (Id. at 2.)

5 On May 16, 2018, after a bench trial, the state court issued a decision and order on
6 the claims in the derivative action, finding in favor of the defendants and against the
7 plaintiff on all four causes of action. (Doc. No. 34-4, RJN Ex. 20.) On September 12,
8 2018, the state court entered a consolidated judgment in the two actions as follows: (1)
9 “[i]n favor of plaintiff Storix, Inc. and against Defendant Anthony Johnson on Storix Inc’s
10 complaint for breach of fiduciary duty;” (2) “Cross-Complainant Anthony Johnson shall
11 take nothing from Cross-Defendants David Huffman, Richard Turner, Manuel Altamirano,
12 David Kinney, and David Smiljkovich, or any of them, on the Cross-Complaint filed in
13 Case No. 37-2015-00028262-CU-BT-CTL;” (3) “Plaintiffs Anthony Johnson and Robin
14 Sassi shall take nothing from Defendants David Huffman, Richard Turner, Manuel
15 Altamirano, David Kinney, and David Smiljkovich, or any of them on the First Amended
16 Derivative Complaint filed in Case No. 37-2015-00034545-CUBT-CTL.” (Id. Ex. 22.)

17 On December 10, 2018, Plaintiff appealed the September 12, 2018 consolidated
18 judgment to the California Court of Appeal. (Doc. No. 63-1, Exs. C, D.) See Storix, Inc.
19 v. Johnson, No. D075308 (Cal. App., filed Dec. 10, 2018) (docket).² While that appeal
20 was pending, Johnson filed a complaint against defendants Huffman, Altamirano, Turner,
21 and Kinney alleging claims for malicious prosecution, breach of fiduciary duty,
22 conversion, economic interference, fraud/constructive fraud, and civil conspiracy. (Doc.
23 No. 40 at 3, 41–42.) The named defendants responded to the complaint by filing an anti-
24 SLAPP motion challenging the claims. (Id.) Johnson responded by voluntarily dismissing
25 the action without prejudice. (Id.) The defendants in that action then filed a costs
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27 ² Docket available at
28 https://appellatecases.courtinfo.ca.gov/search/case/briefing.cfm?dist=41&doc_id=2277885&doc_no=D075308&request_token=NiIwLSEmXkw3WyApSCNdVENIQEA6UkxbJCNOSzpRMCAgCg%3D%3D.

1 memorandum and a motion for attorney fees seeking fees permitted by the anti-SLAPP
2 statute. (Id.) The state court judge award the defendants \$2,364.45 in costs and \$12,237.50
3 in attorney fees. (Id.) On December 18, 2019, Johnson appeal this order to the California
4 Court of Appeal. See Johnson v. Huffman, Case No. D077096 (Cal. App., filed Jan. 15,
5 2020) (docket).

6 On November 20, 2019, the appeal in Case No. No. D075308 was fully briefed by
7 the parties. See id. On July 7, 2020, Johnson filed a motion to consolidate the appeal in
8 Case No. D075308 with another state court appeal, Case No. D077096. See id. On July
9 30, 2020, the California Court of Appeal issued a letter to the parties requesting
10 supplemental briefing on the timeliness of Johnson’s appeal in D077096. See id. On
11 September 11, 2020, the California Court of Appeal granted Johnson’s motion to
12 consolidate the two appeals. See id.

13 On December 31, 2020, the California Court of Appeal issued its opinion in the
14 consolidated appeals: Storix, Inc. v. Johnson, Case No. D075308 and Johnson v. Huffman,
15 Case No. D077096. (Doc. No. 104.) In the opinion, the California Court of Appeal
16 affirmed all challenged judgments and orders. (Id. at 3.) Specifically, the Court of Appeal
17 affirmed the judgment in Case No. 37-2015-00034545-CUBT-CTL. (Id. at 47.) In
18 addition, the Court of Appeal affirmed the order in Case No. 37-2019-00002457-CU-BT-
19 CTL and remanded that case “to the trial court with directions to conduct further
20 proceedings as are appropriate with respect to an award of attorney fees incurred in this
21 aspect of the appeal only.” (Id.)

22 On January 27, 2021, the California Court of Appeal issued modifications to the
23 December 31, 2020 opinion. See Storix, Inc. v. Johnson, No. D075308 (Cal. App., filed
24 Dec. 10, 2018) (docket). The January 27, 2021 order expressly noted that there was “no
25 change in judgment.” Id.

26 On February 18, 2021, Johnson filed a petition for review with the California
27 Supreme Court. Id. On April 22, 2021, the California Supreme Court denied Johnson’s
28 petition for review. Id. On April 22, 2021, the California Court of Appeal issue its

1 remittitur. Id.

2 **III. The Present Action**

3 On June 24, 2019, Plaintiff Anthony Johnson, proceeding *pro se*, filed a complaint
4 against Defendants Manuel Altamirano, Richard Turner, David Kinney, David Huffman,
5 Paul Tyrell, Sean Sullivan, and Storix, Inc., alleging causes of action for: (1) malicious
6 prosecution; (2) breach of fiduciary duty; (3) conversion; (4) economic interference; (5)
7 breach of contract; (6) rescission; and (7) indemnification. (Doc. No. 1, Compl.) On
8 September 30, 2019, the Court denied Plaintiff's motion for recusal under 28 U.S.C. §§
9 144 and 455(a). (Doc. No. 51.) On October 2, 2019, Plaintiff filed a petition for writ of
10 mandamus with the United States Court of Appeals for the Ninth Circuit, challenging the
11 Court's denial of his motion for recusal. (Doc. No. 60.) On November 22, 2019, the Ninth
12 Circuit denied Plaintiff's petition for writ of mandamus and closed the case. In re Johnson,
13 No. 19-72507, Docket No. 3 (9th Cir. Nov. 22, 2019). (Doc. No. 71.)

14 On December 2, 2019, the Court issued an order: (1) granting in part and denying in
15 part Defendants Altamirano, Huffman, Kinney, and Turner's Rule 12(b)(6) motion to
16 dismiss; (2) granting Defendants Storix, Tyrell, and Sullivan's Rule 12(b)(6) motions to
17 dismiss with prejudice; (3) granting in part and denying in part Defendants Altamirano,
18 Huffman, Kinney, and Turner's anti-SLAPP motion to strike; (4) granting Defendants
19 Tyrell and Sullivan's anti-SLAPP motion to strike; and (5) denying Defendants
20 Altamirano, Huffman, Kinney, and Turner's motion for a statutory undertaking. (Doc. No.
21 73.) In the order, the Court dismissed Plaintiffs' claims for malicious prosecution,
22 economic interference, breach of contract, rescission, and indemnification with prejudice.
23 (Id. at 40.) The Court declined to dismiss Plaintiff's claims for conversion and breach of
24 fiduciary duty. (Id.) With respect to those two claims, the Court rejected Defendants'
25 assertion of *res judicata* on the grounds that the consolidated judgment at issue was not yet
26 final because Plaintiff's appeal of the judgment remained pending before the California
27 Court of Appeal. (See id. at 29, 32 (citing Sosa v. DIRECTV, Inc., 437 F.3d 923, 928 (9th
28 Cir. 2006) ("Under California law, . . . a judgment is not final for purposes of *res judicata*

1 during the pendency of and until the resolution of an appeal.”’)).) In addition, on December
2 2, 2019, the Court denied Plaintiff’s motion to stay the proceedings. (Doc. No. 72.)

3 On January 30, 2020, the Court denied Plaintiff’s motion for reconsideration of the
4 Court’s December 2, 2019 order on Defendants’ motions to dismiss and anti-SLAPP
5 motions to strike, and the Court denied Plaintiff’s motion for entry of a partial final
6 judgment under Rule 54(b) or, in the alternative, for certification under 28 U.S.C. § 1292.
7 (Doc. No. 88 at 22.) In the order, the Court also granted Defendants Altamirano, Huffman,
8 Kinney, and Turner’s motion to stay the action pending the appeal in Storix, Inc. v.
9 Johnson, Case No. D075308. (Id.) Specifically, the Court stayed the action pending the
10 appeal in Storix, Inc. v. Johnson, Case No. D075308 for six months from the date of the
11 order, January 30, 2020.³ (Id.)

12 On August 25, 2020, the Court granted Defendants Altamirano, Huffman, Kinney,
13 and Turner’s motion for a six-month further stay of the action pending the appeal in Case
14 No. D075308. (Doc. No. 97.) In the order, the Court also denied Plaintiff’s request that
15 the motion and action be heard by a different judge. (Id. at 6-9.) On October 5, 2020, the
16 Court denied Plaintiff’s motion for reconsideration of the Court’s August 25, 2020 order.
17 (Doc. No. 103.) On January 8, 2021, Defendants filed a notice of decision, attaching the
18 California Court of Appeal’s December 31, 2020 opinion that was issued in the
19 consolidated appeals: Storix, Inc. v. Johnson, Case No. D075308 and Johnson v. Huffman,

21 ³ While this action was stayed, on July 16, 2020, Plaintiff filed a new complaint in federal court
22 naming as defendants David Kinney, Richard Turner, Manuel Altamirano, David Huffman, David
23 Smiljkovich, Paul Tyrell, Sean Sullivan, Storix Inc., Judge Marilyn Huff, Judge Randa Trapp, Judge Kevin
24 Enright, and Judge Katherine Bacal, and alleging claims for: (1) violation of civil right pursuant to 42
25 U.S.C. § 1983; (2) conspiracy to interfere with civil rights under 42 U.S.C. § 1985(2); (3) neglect to
26 prevent conspiracy to interfere pursuant to 42 U.S.C. § 1986; and (4) common counts for failure to
27 compensate for goods provided and money had and received. See Johnson v. Kinney, Case No. 20-cv-
28 1354-TWR-MSB, Docket Entry No. 1 (S.D. Cal., Jul. 16, 2020). On February 24, 2021, the court in
Kinney dismissed Judge Huff with prejudice. Id., Docket Entry No. 44 at 80. The Court notes that
Plaintiff’s naming of this Judge as a defendant in Case No. 20-cv-1354 does not require recusal. See
United States v. Sutcliffe, 505 F.3d 944, 958 (9th Cir. 2007) (“A judge is not disqualified by a litigant’s
suit or threatened suit against h[er]”); United States v. Hymes, 113 F. App’x 755, 757 (9th Cir. 2004)
 (“[T]he fact that Hymes had filed a lawsuit against the trial judge was not a sufficient basis for recusal.”).

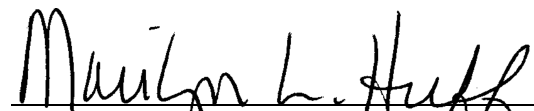
1 Case No. D077096. (Doc. No. 104.)

2 **Discussion**

3 The Court notes that on December 31, 2020, the California Court of Appeal issued
4 its opinion, and on April 22, 2021, the California Court of Appeal issued its remittitur. See
5 Storix, Inc. v. Johnson, No. D075308 (Cal. App., filed Dec. 10, 2018) (docket); cf. Macedo
6 v. Bosio, 86 Cal. App. 4th 1044, 1051 n.5 (2001) (“Our Supreme Court denied review on
7 April 12, 1994, and our remittitur issued on May 11, 1994. Hence, under section 1049 of
8 the Code of Civil Procedure, the judgment became final as of that date.”); San Bernardino
9 Cnty. Hosp. v. Meeks, 187 Cal. App. 3d 457, 464–65 (1986) (“[W]hen an appeal is taken
10 the action remains pending . . . until the appeal is disposed of by the filing of the remittitur
11 from the appellate court.” (citations and footnote omitted)). In light of this, the Court
12 requests further briefing from the parties on the effect, if any, of the California Court of
13 Appeal’s December 31, 2020 opinion and April 22, 2021 remittitur on the Court’s stay of
14 this action and the Court’s December 2, 2019 order. Defendants must file their brief by
15 **May 10, 2021**. Plaintiff must file a responsive brief by **May 24, 2021**. Defendants may
16 file an option reply brief on **May 28, 2021**. Plaintiff may file an optional sur-reply brief
17 on **June 4, 2021**.

18 **IT IS SO ORDERED.**

19 DATED: April 26, 2021

20 
21 MARILYN L. HUFF, District Judge
22 UNITED STATES DISTRICT COURT
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