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**BY ELECTRONIC FILING**

July 31, 2020

California Court of Appeals  
FOURTH APPELLATE DISTRICT  
Division One  
750 B Street, Suite 300  
San Diego, CA 92101  
(619) 744-0760

RE: STORIX, INC.,  
Plaintiff and Respondent,  
v.  
ANTHONY JOHNSON,  
Cross-Claimant, Defendant and Appellant;  
DAVID HUFFMAN et al.,  
Defendants, Cross-defendants and Respondents.  
**Appeal Case No. D075308**  
**San Diego County Super. Ct. No. 37-2015-00028262-CU-BT-CTL**  
**San Diego County Super. Ct. No. 37-2015-00034545-CU-BT-CTL**

To the Honorable Justices of the Court and All Parties:

Defendant/Cross-Claimant/Appellant Anthony Johnson (“Johnson”) hereby responds to the Court’s request of July 30 2020 to provide a supplemental letter briefing from addressing the timeliness of Johnson’s appeal from the order granting in part the anti-SLAPP motion of cross-defendants/respondents David Huffman, Richard Turner, Manuel Altamirano, David Kinney, and David Smiljkovich (collectively “Cross-Defendants”). The issue is whether Johnson untimely appealed from the final judgment under Code Civ. Proc. (“CCP”) § 904.1(a)(1) and an intermediate order under CCP § 906 rather than taking a direct appeal pursuant to CCP § 904.1(a)(13) of an order granting or denying a special motion to strike under (“anti-SLAPP” motion) under CCP § 425.16).

**1. The anti-SLAPP order did not dispose of the case**

The cases cited by the Court in its request involve anti-SLAPP motions that struck entire complaints or entire causes of action leaving no unresolved issues. As demonstrated below, that is not the case here. Johnson indicated he was appealing the final judgment on his cross-complaint pursuant to Code Civ. Proc. (“CCP”) §§ 904.1(a)(1) and 577 because it was “a final

judgment disposing of all issues between the parties.” (AOB at p. 13-14; 12 CT 3352.) The anti-SLAPP order is included in the final judgment that finally disposed of the issue Johnson raised in opposition to the anti-SLAPP motion but remained unresolved through final judgment. Johnson also stated that he was appealing the anti-SLAPP order under CCP § 906 as an “intermediate ruling, proceeding, order or decision which involves the merits or [...] which substantially affects the rights of a party[.]” (AOB at p. 15.)

## 2. The anti-SLAPP order was interlocutory.

Johnson could not take a direct appeal from the anti-SLAPP order under CCP § 904.1(a)(13) because the order was interlocutory. “Section 904.1, subdivision (a) allows appeal ‘[f]rom a judgment, except ... an interlocutory judgment ...’ [...] ‘A judgment that disposes of fewer than all of the causes of action framed by the pleadings, however, is necessarily ‘interlocutory’ (Code Civ. Proc., § 904.1, subd. (a)), and not yet final, as to any parties between whom another cause of action remains pending.” *Kurwa v. Kislinger* (2013) 57 Cal. 4th 1097, 1101 (quoting *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 741.) “An interlocutory judgment is one that ‘disposes of fewer than all of the causes of action framed by the pleadings,’ such that a cause of action is still pending between the parties despite the judgment. [Citation.]” *City of Colton v. Singletary* (2012) 206 Cal. App. 4th 751, 780 (citing *Morehart* at p. 741.) “The theory of the rule is that ‘‘piecemeal disposition and multiple appeals in a single action would be oppressive and costly, and that a review of intermediate rulings should await the final disposition of the case.’ (9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 58, p. 113; [citations].)’’” *Ibid.* (quoting *Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 697.)

“We find further support for our conclusion that the trial court’s order granting defendants’ anti-SLAPP motion was a judgment in section 577, which provides that a final judgment is ‘the final determination of the rights of the parties in an action or proceeding.’ ‘[A] judgment, no matter how designated, is the final determination of the rights of the parties in an action. Thus, an ‘order’ which is the final determination in the action is the judgment.’ *Passavanti v. Williams* (1990) 225 Cal.App.3d 1602, 1606.

“As a general test, which must be adapted to the particular circumstances of the individual case, it may be said that where no issue is left for future consideration except the fact of compliance or noncompliance with the terms of the first decree, that decree is final, but where anything further in the nature of judicial action on the part of the court is essential to a final determination of the rights of the parties, the decree is interlocutory.’ [Citations.]” *Melbostad v. Fisher* (2008) 165 Cal.App.4th 987, 995-996. An order is immediately appealable only if there is “no issue left for future determination, and the order disposed of the entire case against defendants.” *Id.* at 996; *See also Dana Point Safe Harbor Collective v. Superior Court* (2010) 51 Cal. 4th 1, 5.) When partially granting Cross-Defendants’ anti-SLAPP motion, “[t]he Court decline[d] to strike the entire Cross-Complaint or an entire cause of action.” (5 CT 1289.) Instead, the court stuck specific language in Johnson’s cross-complaint related to the lawsuit (“Janstor Suit”) underlying one of Johnson’s cross-claims. The court denied the motion as to the other cross-claims. (*Id.*) The anti-SLAPP order did not dispose of the entire case against the Cross-Defendants.

**3. The anti-SLAPP order did not resolve the primary issue relevant to further proceedings.**

The rights of the parties were not finally determined by the anti-SLAPP order because the primary issue underlying Johnson's opposition to the anti-SLAPP motion remained unresolved and was necessary to final judgment of the consolidated proceedings involving the same parties. Johnson's cross-complaint alleged that Cross-Defendants "act[ed] in concert to file suit in the name of Storix without approval of Storix" and that Johnson was harmed by "loss of money in defending a suit that was not authorized by Storix." (AOB at p. 41; 3 CT 595.) Johnson's cross-complaint was consolidated with the Janstor Suit wherein Johnson's primary defense was that Storix never approved it. (AOB at pp. 29-37.) The proceedings included a consolidated shareholder derivative lawsuit that also included Storix's claim against Cross-Defendants for filing the Janstor Suit without its approval. (AOB at p. 19; 3 CT 632).

Cross-defendants argued in their anti-SLAPP motion that filing the Janstor Suit was protected activity. Johnson opposed the motion by arguing that Cross-Defendants filed the lawsuit without Storix's approval, and therefore filing the lawsuit was not protected activity. The court struck the allegations from Johnson's cross-complaint pertaining to filing the Janstor Suit without addressing whether Cross-Defendants were authorized to do so. (AOB at p. 41; 5 CT 1289.) Because the court struck the allegations without resolving the issue, Johnson re-raised the argument at summary judgment of the Janstor Suit (AOB at p. 18; 5 CT 1310) and in his motions for directed verdict (AOB at p. 23; 17 RT 2802), judgment notwithstanding the verdict (AOB at p. 35; 12 CT 3292), and new trial (AOB at p. 36; 13 CT 3402.) The court refused a jury instruction to decide whether the Janstor Suit was approved or ratified by *disinterested* directors of Storix and ambiguously found after trial that the lawsuit was approved as a matter of law. Johnson therefore raised the issue on appeal. (AOB at pp. 31-35).

Johnson couldn't directly appeal the anti-SLAPP order under CCP § 904.1(a)(13) because the issue raised in opposition to the anti-SLAPP motion was still being litigated through final judgment. Johnson therefore appeals the anti-SLAPP order as an intermediate order after final judgment under CCP §§ 904.1(a)(1) and 906.

The Court of Appeals should review the order granting in part Cross-Defendants' anti-SLAPP motion. Johnson submits this letter the day after the Court's request in hopes that the attorneys for Cross-Defendants follow suit to avoid any further delay in hearing the appeal.

Sincerely,

s/Anthony Johnson  
Defendant/Cross-Claimant/Appellant  
In pro per

**PROOF OF SERVICE**

I, Anthony Johnson, declare that I am over the age of 18 and self-represented in the foregoing action. I am familiar with the business practice for electronic filing and service through the TrueFiling system, pursuant to which practice I served the foregoing **SUPPLEMENTAL LETTER BRIEF** by electronic filing and by sending to the e-mail addresses of counsel listed below:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 31, 2020 at Las Vegas, Nevada.

s/ Anthony Johnson