

1 ANTHONY JOHNSON  
2 1728 Griffith Ave.  
3 Las Vegas, NV 89104  
4 Telephone: (619) 246-6549  
5 Email: flydiversd@gmail.com

6 Pro Se

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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,  
and DOES 1-5, inclusive,

21 *Defendants.*

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

**PLAINTIFF'S REPLY TO  
OPPOSITION TO MOTION TO  
RECUSE BY DEFENDANTS  
ALTAMIRANO, TURNER,  
KINNEY AND HUFFMAN**

Judge: Marilyn L. Huff  
Complaint Filed: June 24, 2019

[28 U.S.C. Section 144 and  
28 U.S.C Section 455(a)]

1 **INTRODUCTION**

2 The opposition to Johnsons Motion to Recuse Judge Huff is brought by  
3 Defendants Altamirano, Turner, Kinney and Huffman (Partner-Defendants).  
4 Conspicuously absent are defendants Tyrell and Sullivan (Attorney-Defendants)  
5 even though Mr. Sullivan, who represents Mr. Tyrell, is also represented by the  
6 same attorney bringing this opposition.

7 Defendants oppose the recusal on two grounds: (1) Johnson did not provide a  
8 legally sufficient affidavit, and (2) Johnson has not established existence of personal  
9 bias. Johnson’s declaration and supporting evidence are more than legally sufficient.  
10 Defendant don’t dispute any of Johnson’s arguments or evidence, nor do they  
11 address a key issue Johnson raised and to which Judge Huff specifically ordered a  
12 response – whether there was sufficient cause to reassign the case in the first place.

13 Johnson has established that a reasonable person with knowledge of all the  
14 facts would conclude that Judge Huff’s impartiality might reasonably be questioned.

15 **DISCUSSION**

16 Johnson’s declaration does not contain conclusory allegations and opinions,  
17 but facts supported by reference to the record, including statements by Judge Huff at  
18 hearings and the resulting court orders.

19 First, Defendants mis-cite *Liteky v. United States*, 510 U.S. 540, 555 (1994) in  
20 saying that “rulings and opinions based on facts and evidence introduced in a prior  
21 proceeding tried to jury verdict are insufficient to provide grounds for recusal.”  
22 (Opp. at p. 2.) This is apparently derived from the statement, “judicial rulings *alone*  
23 almost never constitute a valid basis for a bias or partiality motion.” (*Ibid.*, italic  
24 added.) The issue here is not that Judge Huff’s prior decision to award fees against  
25 Johnson was wrong, but that to hear this case Judge Huff must set aside the prior  
26 opinions she refused to abandon even after Johnson showed they were based on false  
27 facts and conclusory statements of the Attorney-Defendants.

1 Second, Defendants further cite *Likety* at p. 550 in stating, “Bias or prejudice  
2 warranting recusal must somehow be based on a disposition or opinion that is  
3 wrongful or inappropriate because it is undeserved or is based on knowledge that  
4 should not be possessed or is excessive in degree.” (Opp at p. 3.) Judge Huff’s  
5 opinion was wrongful in that it was based entirely on disproven facts and issues  
6 irrelevant to the copyright case, excessive given the Ninth Circuit reversed and  
7 remanded it as such, and underserved as the largest attorney fees ever awarded  
8 against any individual in a copyright case and the only fees awarded against any  
9 party with an objectively reasonable position since *Kirtsaeng v. Wiley*, 136 S. Ct.  
10 1979 (2016). Judge Huff also refused to abandon her opinion even after Johnson  
11 showed on remand that the entire factual basis of the award had no relevance to the  
12 copyright issues or impacted on the attorneys’ fees.

13 Third, Johnson argued there was no cause to reassign this case to Judge Huff  
14 simply because it mentioned copyright litigation that terminated in December 2015.  
15 The current case does not involve any issues of the copyright litigation. Judge Huff  
16 specifically ordered, “In their response, Defendants should address Plaintiff’s  
17 contentions that the low number rule does not apply and that another judge should  
18 determine whether recusal is appropriate.” (ECF No. 17 at pp. 2-3.) Defendants  
19 made no attempt to do so.

20 Lastly, Johnson argued that Judge Huff cannot be impartial in a case  
21 involving a malicious litigation claim against Attorney-Defendants whose litigation  
22 misconduct she previously refused to acknowledge. (Johnson Decl. ¶ 32.) Those  
23 Attorney-Defendants do not even oppose Johnson’s motion.

## 24 CONCLUSION

25 The order transferring the case to Judge Huff should be set aside and the case  
26 returned to Judge Sammartino or the case should be reassigned to a different judge.  
27 Johnson respectfully requests a decision in this matter be issued promptly so that  
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1 Defendants' six pending motions scheduled for October 7, 2019 can be heard  
2 without further delay.

3  
4 DATED: September 16, 2019

Respectfully submitted,

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6 By:



7 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 16, 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 ALTAMIRANO, TURNER, KINNEY AND HUFFMAN**

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 17, 2019 in Las, Nevada.

22 By: 

23 \_\_\_\_\_  
24 Matthew Johnson  
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