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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION
10

11 STORIX, INC., a California corporation,
12 Plaintiff,

13 v.

14 ANTHONY JOHNSON, JANSTOR TECHNOLOGY,
a California corporation, and DOES 1-20,
15 Defendants.
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Case No. 37-2015-00028262-CU-BT-CTL
Judge: Hon. Randa Trapp

**DEFENDANT JOHNSON'S REPLY TO
PLAINTIFF'S OPPOSITION TO
DEMURRER PLAINTIFF'S SAC**

Date: October 16, 2016
Time: 11:00AM
Dept: C-70

19
20 **I. INTRODUCTION**

21 The *existence* of this lawsuit has been used by the Plaintiff in multiple actions against Defendant
22 Anthony Johnson ("Johnson") to justify denying Johnson any rights as the company's largest
23 shareholder and a director. Most notably, they will not allow Johnson access to any of the company's
24 financial records because of their alleged *belief* that Johnson *intends* to somehow use the information to
25 harm Storix. Storix' management, with the 52% share of the company they were gifted by Johnson, has
26 used every dime of Johnson's company profits and Johnson's only income to sue him for 2 ½ years. The
27 cost of the opposing Johnson's demurrers to this lawsuit alone far exceeds any relief Storix could ever
28 hope to be awarded.

1 As Plaintiff points out in their Opposition, Johnson did not show that this is a derivative lawsuit.
2 He didn't do so because it clearly is not, but it should have been. Also, Johnson does not dispute the
3 issue of personal jurisdiction, only that Plaintiff failed to show in the SAC that Johnson is a proper
4 defendant. Plaintiff cannot cure this defect by changing previously false statements. For these reasons,
5 Johnson demurrers to the SAC on the added ground that there is a defect or misjoinder in the parties.

6 Additionally, Johnson further demurrers to the SAC on the ground that the SAC does not state
7 facts with sufficient particularity which Johnson can reasonably be expected to answer, and thus is
8 uncertain due to its ambiguity.

9 II. LEGAL STANDARDS

10 A special demurrer challenges other defects in the complaint, including whether a pleading is
11 uncertain. (C.C.P. §430.10(f)). The term uncertain include the issue of whether the pleading is
12 “ambiguous and unintelligible.” (Ibid.). “All that is required of a plaintiff, even as against a special
13 demurrer, is that he set forth in his complaint the essential facts of his case with **reasonable precision**
14 and **with particularity sufficiently specific to acquaint the defendant of the nature, source, and**
15 **extent of his cause of action.**’ [Citations omitted].) Essentially the problem is one of fairness in
16 pleading so as to give the defendant such notice by the complaint that he may prepare his case.
17 [Citations omitted].” *JVise v. Southern Pacific Company*, 223 Cal.App.2d 50, 63 (1963) (Bold added.)

18 The Complaint needs to provide the defendant **sufficient notice of the cause of action stated**
19 **against it to defend itself.** (*Fuhrman v. California Satellite Systems* (1986) 179 Cal. App.3rd 408, 423.)
20 (bold added.)

21 CCP § 473 allows "a party to amend any pleading or proceeding by adding or striking out the
22 name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect"
23 upon such terms as the court may deem just. A demurrer is properly based on the complaint itself, as
24 well as upon such matter as the court is required to take judicial notice. (CCP § 430.30(a).)

25 III. JOHNSON’S JURISDICTION AND STANDING ARGUMENTS ARE VALID

26 A. Plaintiff’s Arguments Regarding Johnson’s General Appearance Are Irrelevant

27 Plaintiff refers to Johnson’s move to Florida as “recent” to distract from the fact that even the
28 original Complaint was served to Johnson at his Florida address a month after he moved to Florida in

1 early July, 2015. (*See* Motion to Strike/RJN ¶¶ 3-4, Exhibits 3-4.) In their SAC, they falsely claim that
2 Johnson was a resident of San Diego at the time of the events (SAC ¶¶ 3, 7-8), but even events in the
3 earlier FAC occurred after Johnson was no longer a California resident. (SAC ¶¶17-18; see *Motion to*
4 *Strike/RJN* ¶¶ 3-4, Exhibits 3-4.)

5 Johnson hasn't attempted to "avoid this lawsuit based on personal jurisdiction." Johnson requests
6 that the Court strike allegations against him occurring after he was no longer a resident of California, not
7 because the court has no personal jurisdiction, but because Plaintiff lied about Johnson's residency at the
8 time of the events. The statements should be stricken as false and clearly conflicting with earlier
9 statements that Johnson was a resident of San Diego the time of all events alleged in the SAC.¹

10 Plaintiff makes more intentionally false statements even as they unnecessarily argue the issue of
11 personal jurisdiction. They claim that Johnson and/or his counsel generally appeared at a demurrer
12 hearing for the original Complaint. No such hearing occurred because Plaintiff filed the FAC ten days
13 before the hearing was to take place. Had that hearing taken place, there would have been no reason to
14 raise issues of personal jurisdiction or question facts as to Johnson's residency *at that time* because the
15 Complaint contained only allegations of events occurring when Johnson was a California resident.

16 The allegations added to the FAC occurred after Johnson moved to Florida. Only then did
17 personal jurisdiction become an issue, and Johnson raised the issue at the hearing to demurrer/strike the
18 FAC on August 26, 2016.

19 **B. Plaintiff Amends an Irrelevant Allegation to the SAC to Establish Personal Jurisdiction**

20 At the prior hearing to demurrer/strike the FAC in August 2016, the Court ordered "The Motion
21 to Strike is granted as to punitive damages and injunctive relief as there are insufficient facts pled to
22 support this relief." The stricken paragraphs of the FAC pertained to all allegations of Johnson forming a
23 competing business. (*See* FAC ¶¶ 14-16, 24-25 and corresponding SAC ¶¶ 14-16 and 27, 31.) Plaintiff
24 was granted leave to amend after claiming they had "new information".

25 At the August hearing, Johnson attempted to have the Court strike additional allegations of
26 events which occurred after Johnson moved to Florida. The Court ruled "The Motion to Strike is denied
27

28 ¹ This does not preclude Johnson from asserting lack of personal jurisdiction as a defense, since evidence to support his residency has been provided the Court by judicial notice.

1 as to allegations that Johnson is [not] a citizen of California, as the argument relies on extrinsic evidence
2 that cannot be considered in a Motion to Strike.” For the purposes of Demurrer/Motion to Strike the
3 SAC, Johnson’s Florida residency has established. (*MTS RJN* ¶ 3, Ex. 3.) Plaintiff’s SAC faces three
4 challenges:

- 5 a) The Court struck all previous allegations pertaining to injunctive relief;
- 6 b) The Court struck all previous allegations pertaining to events occurring while Johnson was
7 a resident of California; and
- 8 c) Other allegations pertaining to events occurring after Johnson moved to Florida
9 alleged in the SAC are potentially subject to the current MTS;

10 In attempt to rescue the demand for injunctive relief in the SAC, Plaintiff adds reference to a vague
11 and irrelevant act to support their previously stricken claim that Johnson intends to “unlawfully
12 compete” with Storix. They simply claim that Johnson “stole” the source code when he resigned in May
13 2014 in order to directly compete with Storix” (*SAC* ¶¶ 20, 27.) Plaintiff omits that Johnson simply took
14 home a *copy* of the software *he created*, and that he has *always* had a copy in his possession. Plaintiff
15 has not alleged any misappropriation or illegal disclosure,² and provided no facts to support their
16 contentions that Johnson “stole”, intended to use the software to compete, or that Johnson’s possession
17 is even “unlawful”.³ (*SAC* ¶ 27.)

18 Ten (10) months after Plaintiff successfully sued Johnson for ownership of his federal copyright
19 to the software, and for the first time ever alleged in this SAC, Plaintiff retroactively accuses Johnson of
20 “stealing” a copy of the software. Plaintiff hadn't even established they owned the software until
21 December 2015 (*SAC* ¶ 12)⁴, much less that Storix suffered any loss even before or after that time.

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25 ² Defendant noted in the Demurrer that Plaintiff has not alleged a misappropriation or illegal disclosure of Storix software
26 code. Plaintiff now requests leave to amend those allegations if this Demurrer is sustained. Plaintiff has had three complaints
27 in which to allege such misconduct.

28 ³ Johnson was a director since February 2015 (*SAC* ¶¶ 13-14, 21), entitling him to a copy of any corporate records
according to Cal. Corp Code § 1602, yet Plaintiff has never stated why Johnson’s possession is “unlawful”.

⁴ Storix sued Johnson for ownership of his registered copyright in July 2014, and a jury decided in December 2015 that
Johnson forfeited his copyright in 2003 when he incorporated his former sole proprietorship.

1 **C. Storix Does Not Have Standing To Pursue This Direct Action**

2 Plaintiffs' argument that Storix can pursue this lawsuit against one of its own directors has no
3 merit. In the Opposition, Plaintiff states "To the extent it becomes an issue, Storix will establish that
4 ample authority to pursue the claims herein exists" and "Johnson's argument that this action was not
5 appropriately authorized by the Company's management is a fact issue he can try to argue at trial."
6 Plaintiff must establish they have authority to pursue this action on behalf of Storix, and Johnson
7 shouldn't have to wait for trial before Plaintiff must do so.

8 As shown in the Demurrer, only *disinterested* Directors or Shareholders have the right to
9 approve any litigation on behalf of a corporation. In this case, a majority of Directors are *directly* suing a
10 minority director for malicious reasons. Each allegation and demand for injunctive relief is intended
11 solely to prevent Johnson's access to Storix financial records. Johnson has never demanded to see
12 anything else.

13 There is absolutely no credibility in Plaintiff's misleading case citations involving *dissolved*
14 *corporations*. Dissolved corporations are managed by receivers, and neither directors nor shareholders
15 have any legal authority. Such receivers are always disinterested parties and thus may pursue direct
16 actions against prior directors for misconduct during their tenure.

17 In the Opposition, Plaintiff repeats its claims that "*Director and shareholder approval is not*
18 *required for every corporate act.*" (Emphasis added.) Again, "[T]he basic principle of corporate
19 governance is that the decisions of a corporation, **including the decision to initiate litigation**, should be
20 made by the **board of directors or the majority of shareholders**. *Daily Income Fund, Inc. v. Fox*, 464
21 U.S. 523 (1984) [bold added].

22 As shown in the Demurrer, a *direct* lawsuit against a director by the Board must be approved by a
23 majority of *disinterested* directors, but there is no evidence or declaration by any director approving of
24 this lawsuit. *Derivative* lawsuits are designed to provide shareholders, the *real party of interest*, a means
25 to pursue actions on behalf of the corporation when the Board cannot be trusted to fairly represent the
26 company interests.

27 Johnson properly pursued the related a *derivative* action against the majority of Board members
28 on behalf of Storix because he was willing to commit his own money to save the company from the

1 Board's abuse of control and waste of corporate resources. (*Johnson v. Huffman* ("Derivative Suit"),
2 Case No. 37-2015-00034545-CU-BT-CTL.) Johnson defeated the effort of the Storix Board, controlled
3 by the defendants, to Demurrer that lawsuit on all causes of actions. Nevertheless, the same Board
4 majority continue to pay corporate counsel to obstruct and interfere with that action against them. And
5 Plaintiff continues to use *the existence of this action* to conceal financial records which Johnson has
6 repeatedly demanded in his role as a Storix director.

7 Storix counsel has recently filed a motion to quash a subpoena, for the third time, in the
8 company's own Derivative Suit against its directors. No progress can be made in this or any related case
9 while Storix counsel continues to represent "Storix" in this lawsuit against Johnson, while also
10 representing the "Defendants" in the Derivative Suit *against* Storix. Despite the obvious conflict of
11 interest involved, Plaintiff has not established the *identity of the real plaintiff*, and thus there is a further
12 defect and misjoinder of the parties.

13 **IV. STORIX HAS NOT PROPERLY ALLEGED CLAIMS AGAINST JOHNSON**

14 Plaintiff hypocritically accuses Johnson of abusing the demurrer process by basing the Demurrer
15 to the SAC on the same grounds the court previously overruled at the hearing to demurrer/strike the
16 FAC after the Court found that "there are sufficient facts pled to support the claims for breach of
17 fiduciary duty." However, Plaintiff filed their SAC alleging the same facts after the Court granted
18 Johnson's *Motion to Strike* all allegations or the FAC related to punitive damages and injunctive relief.

19 Plaintiff was granted leave to amend when counsel stated they had "new information" to provide.
20 In the SAC, Plaintiff added only one new allegation – "Johnson stole a copy of the [software] when he
21 resigned in May 2014." (SAC ¶¶ 20, 27.)⁵ Plaintiff amended the complaint, now for a second time, for
22 the sole purpose of causing added financial harm to Johnson (and Storix) by adding this irrelevant fact in
23 order to continue this frivolous litigation.⁶ Accordingly, Johnson should be afforded the same
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26 ⁵ This "new information" is over 2 years old, states no facts as to how Johnson's possession of a *copy* caused any
27 harm to Storix, and by their own admission occurred when Johnson was not even a director. (SAC ¶¶ 13-14.)

28 ⁶ Storix first filed the original Complaint just hours before a mandatory settlement conference in the copyright
suit, which Johnson was not even informed of until he returned home to Florida from that sham conference to be
served another lawsuit. Since then, Storix added demanding for injunctive relief after Johnson started demanding
financial records, purportedly to prevent Storix from accessing the "trade secret" software that Johnson wrote.

1 opportunity to amend his demurrer to correct any curable defects which may have caused it to be
2 previously overruled.

3 **A. Plaintiff Has Not Established that Johnson Owed Fiduciary Duty to Plaintiff**

4 The Court sustained Johnson’s motion to strike all allegations pertaining to injunctive relief and
5 punitive damages at the prior hearing in August. The Court then reversed its tentative ruling to allow
6 Plaintiff leave to amend after Plaintiff said they had “new information”. Plaintiff amended the FAC with
7 a single allegation – that Johnson “stole” a copy of the software source code in May 2014 (SAC ¶¶ 20,
8 27.)

9 Plaintiff reiterates “As alleged in the SAC, and conceded in [t]his opposition, Johnson was
10 elected to Storix’s board of directors in February 2015. (See SAC 1, 13; Demurrer, p. 2).” Clearly,
11 Johnson was not a director in 2014, yet Plaintiff claims he breached his fiduciary duty as a director in
12 May, 2014. Plaintiff says the software code was only available to employees (SAC ¶ 20), but also that
13 Johnson owed a fiduciary duty as a “former employee” (SAC ¶ 24.) Johnson never had any employment
14 contract with the company *he founded*, or a non-disclosure agreement or non-compete clause regarding
15 the software *he authored*.

16 To establish a cause of action for breach of fiduciary duty, Plaintiff must show that Defendant
17 owed Plaintiff a fiduciary duty at the time of the event. Not only has Plaintiff failed to establish who the
18 Plaintiff actual is, they’ve also failed to established that Johnson owed “Storix” a fiduciary duty at the
19 time of the alleged event.

20 **B. Plaintiff Has Not Alleged That Johnson Breached a Fiduciary Duty**

21 First, in reply to Plaintiff’s statement of Johnson making “closing arguments” in his Demurrer,
22 Johnson points out that Plaintiff raised this specific issue the hearing to demurrer the FAC in August.
23 Plaintiff informed the Court that Johnson told customers to stop doing business with or paying Storix.
24 The Court replied that Plaintiffs contention as “very damning”, but Johnson didn't have an opportunity
25 to respond. While admittedly irrelevant to a Demurrer, Johnson took advantage of this Demurrer to
26 rebut the statement Plaintiff typically takes out of context -- first to avoid any question of prejudice

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1 caused by Plaintiff, and secondly to show Plaintiff’s constant use of partial facts in basing their meritless
2 conclusions.⁷

3 Plaintiff goes on to argue that their **contentions, deductions and conclusions of fact and law**
4 based on benign and irrelevant acts provide sufficient facts to constitute a cause of action. Their
5 contradictory arguments are that Johnson *intended* to compete with Storix, then that he *actually* “formed
6 a competing enterprise”, and now revise their arguments again by saying that Johnson “*made*
7 *preparations*” to compete with Storix.

8 In this Court’s ruling to Demurrer the FAC, it stated “The Demurrer is overruled because there
9 are sufficient facts pled to support breach of fiduciary duty and aiding/abetting breach of fiduciary duty.
10 (See, *Berg & Berg Enterprises, LLC v. Boyle* (2009) 178 Cal.App.4th 1020, 1037 [“Berg”]; *Bancroft-*
11 *Whitney Co. v. Glen* (1966) 64 Cal.2d 327, 347 [“Bancroft-Whitney”] disapproved of by *Frantz v.*
12 *Johnson* (2000) 116 Nev. 455 [“Frantz”]).” The single allegation of the FAC which appears to have
13 survived Demurrer was restated in the SAC, which pertains to Johnson’s failure to *disclose* his alleged
14 intent to complete. Now Plaintiff attempts to redirect focus to an *implied* fact that Storix was somehow
15 harmed by their previously-stricken conclusion that Johnson made preparations to compete.

16 First, *Berg* states “As a preliminary matter, we dispense with Berg's claim that because of prior
17 rulings on demurrers to its superseded pleadings, the trial court lacked jurisdiction to consider whether
18 the third amended complaint alleged a viable cause of action for breach of fiduciary duty. Citing *Bennett*
19 *v. Suncloud* (1997) 56 Cal.App.4th 91.” The Court should reconsider Johnson’s grounds to demurrer on
20 the basis of failure to state a cause action after considering the **false, conflicting and irrelevant matters**
21 specified in the Motion to Strike to be heard concurrently herewith.

22 Secondly, in *Bankroft-Whitney*, the court noted that the employee was disloyal not by failing to
23 disclose his intentions to work for the competitor, or by making preparations to compete. Rather, the
24 employee breached his duty of loyalty because the nature of the preparations had clearly harmed the
25 current employer and resulted in the employer losing a number of its employees. Plaintiff contends,

26 _____
27 ⁷ It is highly inappropriate for Plaintiff to cite a federal court order regarding an award of attorney fees
28 when a) the jury decision is pending appeal as a matter of law; b) the court was echoing Plaintiff’s arguments of
which Johnson was offered no rebuttal; and c) there is a pending motion for reconsideration of jury fees based on
proof that Plaintiff intentionally misconstrued evidence and completely misstated Johnson’s testimony.

1 without facts, that Johnson made preparations to complete Plaintiff also stated no facts to show that
2 Johnson attempted to loot any employees or customers, nor that he ever did so.

3 Lastly, a Nevada court in *Frantz* disapproved or *Bankroft-Whitney*, disagreeing only as to
4 whether direct evidence was required, saying “we explicitly disapprove of such a requirement based on
5 our belief that an existing business is entitled to compensation in instances where indirect circumstantial
6 evidence shows that **its competitors harmed it through unfair and illegal business tactics.**” (bold
7 added.) Plaintiff’s contention that Johnson intended to compete with Storix is neither direct nor
8 circumstantial evidence. Plaintiff states no facts that Johnson’s alleged “competing business” caused
9 harm, and Plaintiff cites no authority to support its conclusion that any competition was “illegal”.

10 **A. Plaintiff Suffered No Injury**

11 The Demurrer properly argues Plaintiff’s failure to show harm. The Court previously struck all
12 allegations pertaining to injunctive relief and punitive damages, leaving only special damages. Plaintiff
13 has only made vague allegations of special damages, but without the least bit of particularity necessary
14 for Johnson to answer or to mount any defense. Actual harm, not Plaintiff’s speculation of some
15 unknown future harm is a required element of the cause of action for breach of fiduciary duty.

16 **B. Leave to Amend Should Not be Granted**

17 Plaintiff was granted leave to amend its FAC after convincing the Court that they had “new
18 information”. Plaintiff has not provided any new information, only stated irrelevant new facts pertaining
19 to a single benign act occurring two and a half years ago, for which it still has suffered no harm.
20 Plaintiff has continued this frivolous lawsuit for over a year and their desperate and far-reaching
21 conclusory allegations having no merit, and there’s no benefit to Storix to keep waiting for some
22 unknown harm to eventually manifest.

23 The Court has broad discretion to look beyond the four-corners of the pleadings when making a
24 reasonable determination as to whether fatal defects in the SAC can be cured. Allowing Plaintiff a fourth
25 attempt to state facts to support their baseless accusations is unwarranted.

26 **C. CONCLUSION**

27 Plaintiff shows no concern for Storix well-being as they spend all of the company’s profits in
28 litigation against Johnson with nothing to gain. As such, Storix would benefit from the Court finding this

1 lawsuit to be malicious prosecution, sustaining the Demurrer and the Motion to Strike filed concurrently
2 herewith, and dismissing the lawsuit against Johnson with prejudice.

3 The Court should determine, based on reasonable interpretation of the pleadings in this case,
4 that: 1) The Storix board majority, consisting of the Cross-Defendants in this action, were actively
5 involved in bringing and continuing this lawsuit; 2) the lawsuit ended in Johnson's favor; 3) no
6 reasonable person in Storix' circumstances would have believed that there were reasonable grounds to
7 bring the lawsuit against Johnson; 4) Storix acted primarily for a purpose other than succeeding on the
8 merits of the claim; 5) Johnson was harmed; and 6) Storix' conduct was a substantial factor in causing
9 Johnson's harm.

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12 DATED: October 6, 2016

/s/ Anthony Johnson
ANTHONY JOHNSON
Self-Represented