

No. 21-55614

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**United States Court of Appeals  
for the  
Ninth Circuit**

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ANTHONY JOHNSON,

*Plaintiff, Appellant,*

— v —

MANUEL ALTAMIRANO, RICHARD TURNER, DAVID  
KINNEY, DAVID HUFFMAN, PAUL TYRELL, SEAN  
SULLIVAN, and STORIX, INC.

*Defendants. Appellees,*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTHERN CALIFORNIA (SAN DIEGO)  
CASE NO. 3:19-cv-1185-H-BLM

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**APPELLANT’S REPLY BRIEF**

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## **INTRODUCTION**

Acting under their “Storix” alter-ego, appellees continue using this 5-person company (that Johnson founded) to attack of Johnson’s character and paint him a vexatious litigant despite no evidence of Johnson ever having filed a baseless claim, making a single false allegation, or harming anyone in any way. Appellees hope to prejudice this court with such conclusory allegations, and then ignore any dispositive facts or authority that contradict their positions in hopes the Court will do the same.

Given that the claims were dismissed on factual and legal grounds not normally allowed on a motion to dismiss, it remains unclear whether this review will be under Rule 12(b)(6) or Rule 56 summary judgment standards. As such, Johnson argued all points raised by appellees and the district court in his opening brief. Appellees simply disregarded the opening brief and raised the same arguments from their motions to dismiss as if Johnson had never responded to them.

The Court should reverse the dismissal of Johnson’s claims since appellees ignored all dispositive facts in the complaint (5-ER-1074, “Complaint”), failed to respond to most arguments in the opening brief, and their affirmative and legal defenses are unsupported by any authority when the undisputed facts of the case are applied.



For ease of review, Johnson responds separately to each answering brief with cross-references to repetitive arguments and reference to the opening brief where appellees' arguments were already rebutted.

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**REPLY TO ATTORNEY-DEFENDANTS' ANSWERING BRIEF**

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**I. THE ORDER STRIKING THE MALICIOUS PROSECUTION CLAIM PURSUANT TO CALIFORNIA'S ANTI-SLAPP STATUTE SHOULD BE REVERSED**

“[W]hen an anti-SLAPP motion to strike challenges only the legal sufficiency of a claim, a district court should apply the Federal Rule of Civil Procedure 12(b)(6) standard and consider whether a claim is properly stated.” *Planned Parenthood v. Center for Medical Prog.*, 890 F.3d 828, 834 (9th Cir. 2018). However, “a court must normally convert a Rule 12(b)(6) motion into a Rule 56 motion for summary judgment if it ‘considers evidence outside the pleadings ... [other than] documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice[.]’” *US v. Ritchie*, 342 F.3d 903, 907-908 (9th Cir. 2003) (citations omitted.)

The documents in appellees’ supplemental excerpts of record (“Atty.SER”)<sup>1</sup> should be discarded as irrelevant because they were not filed in the district court, are not subject to judicial notice, and only support a conclusory assertion that “Johnson intended to pursue a competing business.” (Atty.AB, p.4-5.)<sup>2</sup>

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<sup>1</sup> Attorney-Defendants referenced their excerpts as “SER”, which are herein referenced as “Atty.SER” to distinguish those of Partner-Defendants (“Ind.Def.SER”) and Storix, Inc. (“Storix.SER”).

<sup>2</sup> Answering briefs are herein referenced as: Attorney-Defendants (“Atty.AB”); Partner-Defendants (“Ind.Def.AB”); and Storix, Inc. (“Storix.AB”).

**A. Step One: Johnson Concedes the Malicious Prosecution Claim Arose from a Protected Act**

**B. Step Two: Johnson Established a Probability of Prevailing**

**1. Johnson Established Favorable Termination by Pleading and Proving He Prevailed on Storix’s Primary Claim**

Appellees state that “Storix asserted a single cause of action for breach of fiduciary duty against Johnson in the [Direct] Action.” (Atty.RB, p. 21.) After more than two years, they continue to ignore all facts in the complaint, all evidence and the opening brief showing there were two breach of fiduciary duty claims based on entirely different facts and damages. (AOB, p.18.) Appellees cannot defeat a claim by simply stating facts contrary to those in the complaint, which must be considered true. *Cahill v. Liberty Mut. Ins. Co.* (Cahill), 80 F.3d 336, 337-38 (9th Cir. 1996.)

The facts of the complaint show there were two claims, but the district court accepted Storix’s assertion that there was only one. (AOB, p.18.) Again, appellees simply respond to Johnson’s brief by saying there was a single claim, so Johnson provides additional evidence to the contrary:

- (1) Storix’s financial expert testified at trial to a cost of \$1.25 million based on Johnson’s salary developing the software (Johnson RJN, Ex. A, p.9), which Storix claimed as unjust enrichment for the “unfair head start” Johnson obtained starting an alleged competing business.

- (2) Storix produced a demonstrative exhibit in closing arguments showing total damages of \$3,739.14 according to other employee rates and hours spent responding to a customer email Johnson sent. (Johnson RJN, Ex. B.) Appellees admitted post-trial, “That [\$3,739.14] figure was solely based on the amount of estimated cost of employee time ...” (Johnson RJN, Ex. C, p.8.)
- (3) The jury awarded nothing on the “unfair head start” claim – specifically finding that Johnson breached *no* fiduciary duty of confidentiality and *no* fiduciary duty to Storix for his benefit. (3-ER-576; AOB, p.7.)
- (4) The jury Storix awarded Storix exactly \$3,739.14 on the “loss of employee productivity” claim. (3-ER-576; AOB, p.7.)

Furthermore, the Direct Suit could not have included a single claim because Storix was awarded the entire \$3,739.14 demanded on the loss of employee productivity claim – which is far less than the \$25,000 minimum required to bring an *unlimited* action.

## **2. The “Severability Rule” is Applicable to Favorable Termination Because Johnson Prevailed on Storix’s Primary Claim**

Appellees ignore Johnson’s brief when confusing the “severability analysis” in the cases they cite (which is used therein to determine *if* claims are severable) with the well-established “severability rule” that allows a malicious prosecution

action to be directed to severable claims. (AOB, p.17.) They continue to refer to “*Crowley’s* explicit disapproval of the severability analysis in *Friedberg*”, which has no relevance to *whether* a malicious prosecution action may be directed at severable claims. (*Id.*, p.19.) They assert that “the decisions relied upon by Johnson (*Freidberg, Paramount*) have been disapproved and/or abrogated.” (Atty.RB, p.23.) This is patently false. Johnson cited relevant cases where the severability rule applies, and appellees only cited cases involving a single claim. There has never been a disapproval of the severability rule or the finding in *Paramount Gen. Hosp. Co. v. Jay* (1989) 213 Cal.App.3d 360 (the case most analogous to this one) where defendant’s “**numerous claims [] broadly deemed to be alleged breaches of fiduciary duty does not enable [defendant] to sidestep the severability rule as applied in *Albertson* and *Freidberg*.**” (*Id.* at 370, bold added; AOB, p.23.)

Johnson did not fail to support his argument that the severability rule applies to claims that could have brought in separate lawsuits. Johnson provided a thorough discussion of how the severability analysis in *Albertson* and *Friedberg* were replaced by the California “primary rights theory” used to determine *if claims are severable* for the purpose of establishing favorable termination – the same theory used to determine if claims are identical and thereby invoke the doctrines of *res judicata* and claim-splitting. (AOB, pp.18-22.) Such authority, including *Lane* and *Crowley* on which appellees rely, stems from the finding in *Albertson v.*

*Raboff*, 46 Cal.2d 375 (1956), that claims which may be separately appealed are also severable for the purpose of establishing favorable termination. (AOB, p.20.) Johnson appealed the \$3,739.14 loss of employee productivity claim – but not the \$1.25 million “unfair head start” on which Johnson prevailed. (AOB, p.21.)

### **3. Johnson Established a Lack of Probable Cause**

The lack of probable cause element is satisfied if the underlying lawsuit was “initiated or maintained without probable cause.” *Parrish v. Latham & Watkins* (2017) 3 Cal.5th 767, 775. Lack of probable cause may stem from the lack of either a factual foundation or legal basis. *Sierra Club Foundation v. Graham* (1999) 72 Cal.App.4th 1135; *Sangster v. Paetkau* (1998) 68 Cal.App.4th 151. Undisputed facts show the *institution* of the Direct Suit was not legally tenable, much less their having *maintained* it for years.

#### a) The judgment was procured by fraud.

An exception to a finding of probable cause is when a malicious prosecution plaintiff can prove the initial victory at the trial court level was the result of fraud, perjury, or other obstruction of justice. *Parrish, supra*, 3 Cal.5th at 776; *Wilson v. Parker, Covert & Chidester*, 123 Cal.Rptr.2d 19, 23 (2002). In three complaints, appellees “falsely alleged that Johnson lived in California.” (AOB, pp.5-7,26.) Appellees don’t dispute the fact that they knowingly falsified the complaints.

b) Probable cause requires a determination of factual issues.

“[I]f the facts upon which the defendant acted in bringing the prior action ‘are controverted, they must be passed upon by the jury before the court can determine the issue of probable cause... .’” *Sheldon Appel Co. v. Albert & Oliker* (1989) 47 Cal.3d 863, 877 (quotation omitted.) Although appellees dispute no facts, whether they knew Johnson lived in Florida, or whether they knew the claim to be false but nonetheless maintained the action, are factual issues for a jury to decide.

c) The “interim adverse judgment” rule does not apply.

Appellees rely on the “interim adverse judgment” rule, in which success on certain dispositive “pre-trial motions” decided “on the merits” may establish the existence of probable cause. *Parrish, supra*, 3 Cal.5th 767 at 776. They state that a court “denied a motion for summary judgment, or summary adjudication, based on the existence of disputed material facts.” (Atty.AB, p.27.) Appellees provide no support for the apparent argument that “existence of disputed facts” is a judgment “on the merits.” The only ruling referred to was on a whether their belated attempt to ratify the Direct Suit was authorized by Storix. The court merely found “[i]t is disputed whether this ratification and authorization is sufficient.” (3-ER-473.) Nothing in the order implies the Direct Suit was brought with probable cause.

Appellees' reference to post-trial orders are equally unconvincing because they are not interim judgments and nonetheless taken out of context. In the orders for judgment notwithstanding the verdict and new trial, the court merely found there was evidence to support the verdict. (Atty.AB, p. 27-28.) The "verdict" under examination was the \$3,739 loss of employee productivity claim and not the \$1.25 million unfair-head start claim on which Johnson prevailed. (*See, e.g.,* 3-ER-594, 614-619.)

## **II. THE ORDER DISMISSING JOHNSON'S COMPLAINT PURSUANT TO FEDERAL RULE 12(b)(6) SHOULD BE REVERSED**

In reviewing a Rule 12(b)(6) motion to dismiss, allegations of material fact must be accepted as true and construed in the light most favorable to Plaintiff. *Cahill, supra*, 80 F.3d at 337-8. The district court did not consider, and appellees did not dispute, the following facts:

"The court adopted the jury's verdict in favor of Johnson on Storix's primary claim, and further denied all eleven (11) of Storix's demands for injunctive relief. However, the court also adopted the jury's verdict awarding Storix \$3,739 for "loss of employee productivity" on an unrelated claim Storix introduced during trial."

(Complaint ¶27.)

"The Direct Suit was instituted for malicious purposes other than to succeed on the merits, and the claim was pursued to a legal termination on its merits in Johnson's favor. \*The \$3,739 awarded to Storix is severable when determining favorable termination because it was introduced as a separate and unrelated claim at trial and is currently subject of a pending appeal."



(Complaint ¶39, \*fn.6.)

It was improper to dismiss the malicious prosecution claim under Rule 56 summary judgment standards since all that remains are factual disputes. But it was even more improper to dismiss the claim under Rule 12(b)(6) since Johnson stated sufficient facts to support the cause of action that were never disputed.

### **III. THE DISTRICT COURT’S DENIAL OF JOHNSON’S MOTION FOR RECONSIDERATION IS IRRELEVANT**

Johnson is not appealing the denial of his motion for reconsideration, but he referenced the district court’s order only to show issues that it raised numerous *sue sponte* defenses on appellees’ behalf, expecting appellees would raise them for the first time on appeal.

The district court raised an issue of *res judicata* according to a prior malicious prosecution claim brought in state court that Johnson voluntarily dismissed without prejudice. A complaint dismissed without prejudice is not preclusive. (AOB, p.25.) Even so, it would not be preclusive to Attorney-Defendants who were not parties to the prior action. (*Id.*) Appellees state that “Johnson’s assertion ... is unsupported by citation to authority”, but Johnson provided relevant and binding case law. (*Id.*) Furthermore, the California Court of Appeals’ finding of insufficient facts on the post-dismissal cost and fee motion was based on a different complaint which, unlike this one, didn’t allege facts showing there were severable claims. (AOB, p.24.)

Johnson does not “presume[] without analysis that [Attorney-Defendants] could be considered co-obligors with respect to a tort claim for malicious prosecution.” (Atty.AB, p.35.) Attorney-Defendants are specifically named in relevant allegations throughout the complaint. (Complaint ¶¶17,21,23,26,30,38-43.) They confuse issue preclusion (where they’re not required to be a party to the prior action) with claim preclusion (where they are). (See Atty.AB, p.33.)

Appellees claim for the first time that this is a “relitigation of the severability issue.” (Atty.AB, p.34.) The “issue” referred to is “*whether* the claims were severable” – which has never been disputed. (AOB, p.24.) Collateral estoppel only applies to issues actually litigated and necessarily decided in a prior action. *DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 825. “A decision, of course, does not stand for a proposition not considered by the court.” *Nolan v. City of Anaheim* (2004) 33 Cal.4th 335, 343. It also requires a final judgment on the merits, and there is no final judgment in a case voluntarily dismissed without prejudice. (See AOB, p. 26.)

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## REPLY TO PARTNER-DEFENDANTS' ANSWERING BRIEF

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Appellees argue that many claims are barred by *res judicata*, but they cite no prior litigation where any of the claims were previously litigated. The “primary rights” theory is used to determine if claims are identical. “A cause of action ... arises out of an antecedent primary right and corresponding duty and the delict or breach of such primary right and duty by the person on whom the duty rests[. ...] When two actions involving the same parties seek compensation for the same harm, they generally involve the same primary right.” *Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal.4th 788, 797-798 (Boeken). (Citations omitted.)

**A. The Judgment in the Underlying Action is Not Determinative as to Whether Favorable Termination Has Been Met**

Partner-Defendants also ignore all facts of the complaint and arguments in the opening brief showing there were two separate claims and that Johnson prevailed on the only claim actually alleged in the complaint and litigated at trial. (AOB, pp.7,18-23.) Johnson thus provided additional evidence in the *Reply to Attorney-Defendants' Answering Brief* §§ I.B.1 at p.4-5.

Appellees continue to cite the same irrelevant cases, *Crowley v. Katleman*, 8 Cal.4th 666, 685 (1994) and *Lane v. Bell*, 20 Cal.App.5th 61 (2018) that involved only one claim. (AOB, pp.18-20.) They provide no support for their assertion that “claims cannot be severed to establish favorable termination.” (Ind.Defs.AB, p.13.) They cite the same inapt cases when confusing the “severability analysis” with

what they now refer to as “*Johnson’s proposed severability rule.*” (Ind.Defs.AB, p.14.) Johnson addressed the argument in the opening brief and in the *Reply to Attorney-Defendants’ Answering Brief* § I.B.2 at p.5-7.

Appellees argue that, “[a]ccording to Johnson, ... a jury’s acceptance of one damages theory creates a severable claim as to the other damages theory for the purposes of establishing favorable termination.” (*Id.*, p.13-14.) The Direct Suit judgment involved two separate claims, not different “damages theories.” “The elements of an unjust enrichment claim are the ‘receipt of a benefit and unjust retention of the benefit at the expense of another.’” *Peterson v. Cellco Partnership* (2008) 164 Cal.App.4th 1583, 1593. The jury found that Johnson breached no duty to Storix for his benefit (AOB, p.7; Complaint ¶26; 3-ER-576), thereby finding no unjust enrichment. Damage caused from loss of employee productivity is entirely different.

**B. Johnson Properly Stated Two Claims for Breach of Fiduciary Duty**

Appellees assert a *res judicata* defense without referencing any transactional facts in the Complaint or any court order showing that an identical claim was previously litigated or decided. The fact that Johnson “litigated a breach of fiduciary claim in the Direct Suit [cross-complaint] and in the Derivative Suit [on Storix’s behalf]” is irrelevant. First, Breach of fiduciary duty is not a specific claim but a broad definition of a claim. (AOB, p.23; *See Paramount Gen. Hosp. Co. v.*

*Jay, supra*, 213 Cal.App.3d at 370.) Second, the Derivative Suit litigated Storix's claims, not Johnson's, and neither it nor the Direct Suit (cross-complaint) contained any claims based on the same facts.

As appellees acknowledge, there are two breach of fiduciary duty claims against them in this case: (1) "denying Plaintiff indemnification for his defense [the Direct Suit]" and "using Storix profits that would have otherwise been owed to Plaintiff to defend against the claims in the state court derivative action." (Ind.Def,AR, pp.15-16.) The second claim is actually broader as it encompasses a *series of acts* for which "Johnson further demands recovery of his 40% of Storix's earnings that appellees deprived him for years by using all company profits for their sole personal benefit." (Complaint. ¶¶ 46-47.)

Appellees provide no evidence to support their bald assertion that Johnson's breach of fiduciary duty claims were previously litigated and decided.

**1. Partner-Defendants can be held liable for failing to indemnify Johnson**

Appellees are wrong that only Storix can be held accountable for their refusal to provide Johnson the same indemnification they afforded themselves for years. "Shareholders, officers, and directors of corporations have been held personally liable for intentional torts when they knew or had reason to know about but failed to put a stop to tortious conduct." *PMC, Inc. v. Kadisha* (2000) 78 Cal.App.4th 1368, 1379-1381. "A corporate officer or director is, in general,

personally liable for all torts which he authorizes or directs or in which he participates, notwithstanding that he acted as an agent of the corporation and not on his own behalf.” *The Committee for Idaho’s High Desert, Inc. v. Yost*, 92 F.3d 814, 823 (9th Cir. 1996). “[A]n agent is liable for his own acts, regardless of whether the principal is liable or amenable to judicial action.” *Frances T. v. Village Green Owners Assn.* (1986) 42 Cal.3d 490, 505 (Frances T).

“The alter ego doctrine does not immunize officers, directors or shareholders of a corporation from tortious conduct that they themselves commit in the course of acting for the corporation.” *Filet Menu, Inc. v. CCL&G., Inc.* (2000) 94 Cal.Rptr.2d 438, 477. “One who assumes to act as an agent is responsible to third persons as a principal for his acts in the course of his agency, ... [w]hen his acts are wrongful in their nature.” Cal. Civ. Code § 2343. "As the separate personality of the corporation is a statutory privilege, it must be used for legitimate business purposes and must not be perverted. When it is abused it will be disregarded and the corporation looked at as a collection or association of individuals[.]” *Mesler v. Bragg Management Co.* (1985) Cal.3d 290, 300.

Next, appellees argue again that, even if they can be held liable, Johnson is entitled to no relief because the entire Direct Suit did not terminate in his favor. The argument is without merit and fully argued in the *Reply to Attorney-Defendants’ Answering Brief*, §§ I.B.1-2 at p.4-7.

**2. *Res Judicata* Does Not Bar Johnson’s Second Breach of Fiduciary Duty Claim**

For more than two years, appellees simply refuse to cite any operative facts in the Complaint or in any prior litigation, and they point to no identical claim or issue that was ever litigated and decided. (*See* AOB, pp.36-38.)

This claim involved a series of acts in which they used Johnson’s 40% of Storix’s profits without authority and for their personal benefit. Johnson is entitled to his share of company funds improperly taken by appellees for their personal use. Most notable was their having taken direct funds and other resources from Storix to defend against the company’s own shareholder derivative claims. Johnson thoroughly argued this issue with reference to statutes showing they acted unlawfully, without authority, and this claim was never adjudicated. (AOB, p.36-38.)

Appellees argue that “[t]he primary right asserted by Johnson is the right not to be wrongfully deprived of his rights as a minority shareholder.” They made the same statement in the district court, and Johnson argued in the opening brief that their interpretation of “a right not to be deprived a right” was nonsensical. (AOB, p.36.) Appellees nevertheless repeated it as if for the first time. (Ind.Def.RB, p.19.) If they’re correct, any claim involving a right of any kind is preclusive to all others.

Appellees refer to Storix’s shareholder derivative claim as identical to this claim because their “abus[ing] the reimbursement policy of the company”

(regarding their personal cell phones) is the same as “advance[ing] defense fees and costs.” (Ind.Def.AB, p.20.) Appellees have never cited any *transactional* facts in the current or any prior action.

### **C. Johnson Properly Stated a Claim for Conversion**

#### **1. *Res judicata* does not bar Johnson’s conversion claim**

Appellees argue for the first time that the conversion claim is barred by *res judicata* because “[t]his claim and the alleged harm is the same harm Johnson sought compensation for in the Derivative Suit” which included “various actions taken to promote their financial self-interest” and “alleged loss of undistributed profits and alleged self-dealing.” (Ind.Def.AB, p.23.) Again, they ignore that claims are defined according to a primary right, a *specific* breach of that right (operative fact), and the same harm. *Boeken, supra*, 48 Cal.4th at 797. General similarities do not suffice. Money appellees stole from Johnson’s earnings in 2011-2013 is not the same money taken from Storix to fund their personal litigation against Johnson since 2015. (Complaint ¶30.)

*Res judicata* requires that a prior identical claim be actually litigated. “*Res judicata*, or claim preclusion, prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them.” *Mycogen Corp. v. Monsanto Co.*, 28 Cal.4th 888, 896 (2002) (underline added.). Appellees point to no transcript or order showing that a conversion claim was ever before



litigated. Nor do they show that it involves the same facts, primary right, violation, or damage as any claim in a prior action.

Appellees refer to general allegations that “suggest Johnson should have litigated this current conversion claim in his Derivative Suit.” (Ind.Def.RB, p.24.) They ignore the undisputed facts in the Complaint showing the conversion was not discovered until 2018 (after the state trial) because they denied Johnson access to Storix’s financial records for years. (Complaint ¶¶17-19,23-24,51.) Simply put, Johnson could not have brought a conversion claim prior to discovering the conversion, and any suggestion that he knew of a \$475,000 conversion as early as 2011 but didn’t mention it until 2018 is simply absurd.

Johnson’s conversion claim is not “merely a repackaged claim from Johnson’s Derivative Suit.” The derivative suit litigated claims for all shareholders, and the conversion claim involves only Johnson’s money.

**2. Issue preclusion does not bar litigation of Johnson’s lack of access to Storix’s financial records**

Appellees provide no explanation for how prior litigation over Johnson’s access to company records has any relevance to a claim against them for stealing his company earnings. They argue without explanation that an “accounting claim” in the shareholder derivative suit was somehow identical to the conversion claim. Since the district court raised the issue, Johnson thoroughly argued in his opening brief how an accounting claim (especially in a shareholder derivative suit) has

nothing to do with a conversion claim. (AOB, p.29-31.) Appellees offer no argument to the contrary, and they can't blindly assert a *res judicata defense* without reference to any operative facts in the complaint or an order showing that an identical conversion claim was actually litigated and decided.

**D. Johnson Stated a Claim for Economic Interference**

**1. Partner-Defendants were not privileged to interfere in the contract**

Appellees assert “manager’s privilege”, which does nothing but raise a factual dispute. “[A] manager or agent may, with impersonal or disinterested motive, properly endeavor to protect the interests of his principal by counseling the breach of a contract with a third party which he reasonably believes to be harmful to his employer's best interests.' [Citations.]" *Aalgaard v. Merchants Nat. Bank, Inc.* (1990) 224 Cal.App.3d 674, 684 (underlines added.) “[W]ith respect to an interference cause of action ... '[w]hether or not [agents] were privileged to cause the corporation to discontinue its relations [...] in the belief that such a course of action was in the best interests of the corporation [requires] resolution of the factual issues presumptively involved[.]’” *Ibid.* (citing *Collins v. Vickter Manor, Inc.* (1957) 47 Cal.2d 875, 883.)

Appellees argue for the first time they “*could* reasonably believe that an oral contract between Johnson and himself ... was not in the best interests of Storix.” (Ind.Def.RB, p.27, italics added.) Johnson alleged that appellees “had personal

interests in interfering with the contract after they became shareholders of Storix eight (8) years after the contract was formed.” (Complaint ¶ 55.) Appellees don’t dispute the allegation, and whether they “could reasonably believe” the contract was harmful to Storix is irrelevant.

Whether appellees believed the contract was harmful is a factual issue, but one they’ve already decided against themselves. The 2003 oral contract was for “rights” to software that would have allowed Storix to pay Johnson a license fee after his involvement in the company ended. In 2014, appellees obtained a court order declaring that a 2004 annual report clarified the oral contract to involve all exclusive and irrevocable (i.e. ownership) rights. Appellees can’t interfere in the contract by claiming now that *their own decision* was harmful to Storix. Regardless, these are factual issues that must be decided by a jury.

**2. Partner-Defendants, as agents of Storix, can and did interfere with the contract**

Appellees reverse their previous argument by saying they are not “strangers” to the contract and therefore cannot interfere with *their own contract*. They are not parties to the contract between Johnson and Storix. “[S]trangers [are] interlopers who have no legitimate interest in the scope or course of the contract’s performance. [citations] As such, “a contracting party is incapable of interfering with the performance of his or her own contract[.]” *PM Group, Inc. v. Stewart* (2007) 154 Cal.App.4th 55, 65. (citations omitted.) Appellees are strangers because

they have no interest in “the scope” of the contract and the contract is not dependent on their “performance.”

Appellees had no legitimate interest in the contract and interfered with Storix’s performance, not their own. They are, however, majority shareholders with a personal interest in interfering in the contract to ensure Johnson gets nothing for the software he spent 15 years developing while they keep all money from the sales for themselves.

**3. The claim does not fail since there was an existing relationship for prospective economic advantage**

Appellees argue that Johnson fails to state a claim because there was no economic relationship with Veeam software. The cause of action is for interference in a “prospective” economic advantage, which only requires a showing that it was “reasonably probable that the prospective economic advantage would have been realized but for defendant's interference.” *Youst v. Longo* (1987) 43 Cal.3d 64, 71. The complaint need only show “*a probability of future economic benefit to the plaintiff.*” *Youst v. Longo* (1987) 43 Cal.3d 64, 75 (italics original; citing *Buckaloo v. Johnson* (1975) 14 Cal.3d 815.)

Johnson had more than “a mere expectation that *a relationship* will be created.” Johnson stated specific facts in the complaint and in his brief. (AOB, p.48.) There was an existing relationship between Veeam and all Storix’s

shareholders, and there was nothing speculative about a specific offer of \$5 million and formal letter of intent to buy their stock. (*Id.*)

**4. The claim does not fail since there was an independent wrong**

Appellees argue that “the threat of continued litigation is not itself an independent wrongful act by any legal measure sufficient to establish this tort.” (Ind.Def.RB, p.31.) But the only case they cite, *Pacific Gas & Electric Co. v. Bear Stearns & Co.*, 50 Cal.3d 1118, 1130 (1990), says nothing of the sort. Extorting Johnson with the threat of continued litigation and deepening hardship unrelated to the prospective economic relationship is a wrongful act, and appellees don’t dispute that their act disrupted the relationship. (*See* AOB, p.48.)

**E. Johnson Stated Claims for Breach of Contract, Rescission and Indemnification**

**1. The fact that Partner-Defendants Are Not Parties to the Contract is Immaterial**

Johnson named Partner-Defendants as parties to the contract-related claims, in addition to Storix, to preserve his ability to obtain relief because Partner-Defendants are always hiding behind their “Storix” alter-ego. A breach of contract claim ordinarily requires a defendant to be a party to the contract. In this case, appellees redefined the terms of a 2003 contract between Johnson and Storix they were not a party to, then breached the contract (as Storix) in 2018. They chose to impose the cost of owning Johnson’s copyrights on Storix, and then made it

impossible for Storix to perform its contractual obligation by rendering the company insolvent after Johnson performed his obligation for 15 years. (Complaint ¶¶59,61)

Appellees are majority shareholders, officers and/or directors of Storix, and “an agent is liable for his own acts, regardless of whether the principal is liable or amenable to judicial action.” *Frances T, supra*, 42 Cal.3d at 505.

## **2. *Res Judicata* Does Not Bar Breach of Contract and Rescission**

Appellees raise for the first time a *res judicata* defense against the contract-related claims. They argue that Storix’s obligation to compensate Johnson for his copyrights arose when he resigned from the company in 2014. They omit facts showing it was their hostility that forced him to resign. (Complaint ¶ 13.) Nonetheless, the argument that Johnson’s participation in the company ended at that time, thereby triggering Storix’s obligation and causing the claim to accrue, is without merit. Johnson continued his participation in the company as a director through 2018. (Complaint ¶¶ 15,29.) Johnson’s participation did not “end” because of a short lag between the time appellees forced him out of the company and he was able to elect himself to the board.

Appellees’ argument that “[a] party cannot by negligence or design withhold issues and litigate them in consecutive actions” misconstrues the case they cite. The preceding sentence states that, “[i]f the matter was within the scope of the

action, related to the subject-matter and relevant to the issues, so that it *could* have been raised, the judgment is conclusive on it despite the fact that it was not in fact expressly pleaded or otherwise urged.” *Aerojet–General Corp. v. American Excess Ins. Co.*, 97 Cal.App.4th 387, 402 (2002) (italics original.) The breach of contract claim accrued in 2018 after Storix became obligated to pay Johnson for his copyrights, Johnson demanded payment, and Storix refused. (Complaint ¶¶ 29,65.) Johnson could not have brought this claim in the copyright action four years before it accrued. (AOB, pp.40-43.)

Johnson had every right to rescind the contract when Storix refused to perform its obligation, and appellees fail to explain how *res judicata* bars the rescission claim.

### **3. The Copyright Act Does Not Preempt the Breach of Contract Claim**

The argument that the “breach of contract claim arises from matters involving *copyrightable subject matter*” is a misinterpretation of common law. A contract doesn’t fall within the *subject matter of the Copyright Act* simply because it involves a copyright. (AOB, p.45.) Breaching a contractual obligation to compensate an author for ownership of his copyrights has nothing to do with copyright infringement.

The “nature of the state law claim to determine what rights the plaintiff seeks to enforce” (Ind.Def.RB, p.34) reveals that Johnson simply demanded

payment for property conferred and was refused. It doesn't matter if the property is real, tangible or intellectual. Johnson thoroughly argued with authority that the Copyright Act is not implicated in cases of breach of contract where no rights defined under the Act (section 106) are infringed. (*See* AOB, pp.45-46.)

**4. The Partner-Defendants can be required to pay for Johnson's indemnification**

Appellees may be held liable to Johnson for Storix's failure to indemnify him for his successful defense against the claim *they filed* against him for the same reasons as the breach of fiduciary duty (§B) and breach of contract (§E.1) claims.

a) *Res Judicata* does not bar indemnification

Appellee's argument that "Johnson was not the successful party in the Direct Suit" is both irrelevant and unrelated to *res judicata* since Johnson has never brought an indemnification claim. (Ind.Def.RB, p.36.) Regardless, appellees ignore well-established authority that Johnson is entitled to indemnification for his successful defense of any "claim, issue or matter therein." (AOB, p.32.)

Appellees are wrong that there is a "good faith" requirement for indemnification under Cal. Corp. Code §317(d). Their citation to *Wilshire-Doheny Associates, Ltd. v. Shapiro* (2000) 100 Cal.Rptr.2d 478, stating that "the conduct of the agent which gives rise to the claim against him must have been performed in connection with his corporation functions and not with respect to purely personal matter" only applies to claims for "permissive" indemnification under Corp. Code



§§ 317(b) and (c) – when agents seek to have the company fund their defense prior to adjudication or after they were unsuccessful. “As a general rule, ‘[w]hen the Legislature has used a term or phrase in one part of a statute but excluded it from another, courts do not imply the missing term or phrase in the part of that statute from which the Legislature has excluded it.’ [Citation.] **The Legislature having omitted a good faith requirement from subdivision (d) of section 317, this court should not read it into the statute.**” *Wilshire-Doheny Associates, Ltd. v. Shapiro, supra*, 100 Cal.Rptr.2d at 488 (bold added).

Section 317(d) is provides mandatory indemnification for agents who were successful in the entire lawsuit *or* “any claim, issue or matter” therein. It imposes no requirement that a court find Johnson acted in good faith, nor does the act for which he was sued need to be within the role of a director. Johnson was sued because he was a director, and he prevailed against Storix’s primary claim.

For the same reason, appellees are wrong that the *alleged* act be “in the interests” of the corporation. (Ind.Def.RB, p.36.) Regardless, an act of “standing up a competing enterprise” resulting in “unjust enrichment” is irrelevant because the jury specifically found that Johnson did not breach *any* fiduciary duty for his benefit or breach *any* duty of confidentiality to Storix. (AOB, p.7.) An act cannot be against the interests of the corporation if it never took place.

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**REPLY TO STORIX’S ANSWERING BRIEF**

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**I. THIS CIRCUIT SHOULD REVERSE THE ORDER DISMISSING JOHNSON’S CLAIMS AGAINST STORIX**

**A. Legal Standards Require the Review of Storix’s Motion to Dismiss under Rule 56 Summary Judgment Standards**

See *Reply to Attorney-Defendants’ Answering Brief* § I at p.3.

**B. The Court Improperly Dismissed Johnson’s Contract and Rescission Claims Based on Claim and Issue Preclusion**

Storix collectively refers to the “breach of contract and rescission claims” as though they were the same, even though the rescission claim is an alternative that seeks different relief than the breach of contract claim. As shown below, Storix’s breach of contract defenses are without merit. Regardless, the Court should reverse the dismissal of the rescission claim since Storix makes no independent reference to it and does not respond to Johnson’s arguments. (AOB, p.42-43.)

**1. The Copyright Action Did Not Arise from the Same Transactional Nucleus of Facts**

Johnson does not “contest the Copyright Action judgment as he seeks to enforce rights enmeshed in the copyright ownership and non-infringement analysis, including as to a license and a retransfer of copyright ownership.” (Storix.RB, p.18.) Storix offers no response to Johnson’s argument that the judgment merely confirmed that copyright ownership was transferred by an

“annual report” Johnson signed in 2004 (*See* AOB, pp.39-40), and Storix points to no facts or argument where Johnson disputes the copyright judgment in any way.

## **2. The Contract Claims Do Not Destroy or Impair Rights Established in the Copyright Action**

Storix does not explain its contention that Storix’s obligation to *pay* Johnson for his copyrights “undermines” the copyright judgment. The argument appears to be that rescinding the contract would impair such rights, but Storix did not respond to Johnson’s showing that no copyrights were “established” in the Copyright Action. (AOB, p.42-43.)

Storix’s statement that “issues of copyright ownership and license are routinely pursued in the same action” is an apparent argument that Johnson should have brought the contract claims in the Copyright Action, but it fails for a number of reasons. Storix misapplies the statement in *Seven Arts Filmed Ent. Ltd.v. Content Media Corp. PLC*, 733 F.3d 1251, 1254 (9th Cir. 2013) (Seven Arts) saying, “the gravamen of a copyright infringement suit is ownership.” The statement pertains to the fact that a plaintiff must own the copyrights to sue for infringement. Johnson is not suing for infringement.

There is no comparison between the “transactional nucleus of facts” in the Copyright Action and this case. Storix cannot point to any issue decided in the Copyright Action pertaining to payment for his copyrights, whether licenses or ownership.

### **3. Johnson's Claims Do Not Involve an Infringement of Copyrights**

Storix's entire defense to this claim is difficult to decipher. As appellees admit, "Storix pleaded a license defense" in the Copyright Action, but it later argued that it owned all copyrights from the time of its formation (and won). It doesn't matter to Johnson whether Storix owns the copyrights or was granted licenses. Either way, Storix is obligated to pay him for the rights provided.

Appellees say that Johnson "deny[ed] the existence of 'any oral agreement regarding a transfer of ownership of, or license to use, Johnson's copyrighted materials in the Original Work.' [and] '[t]here clearly was no meeting of the minds regarding the scope of any purported license.'" (Storix.AB, p.21.) The statement pertained to "[t]he 2011 stock transfer transaction [which] did not include or coincide with any writing signed by Johnson transferring his copyright ownership to Storix, Inc. or licensing his copyrighted materials to Storix, Inc." (Storix.RJN-4, p.7.) Partner-Defendants were *gifted* their stock in 2011 and there was no reason for Johnson to discuss any copyright issues with them.

The argument that Johnson "is pursuing payments under a non-exclusive license" completely misstates the facts. Again, this action is not for copyright infringement. Storix obtained a declaratory judgment that Johnson transferred copyright ownership "in writing" in 2004, and Johnson's demand for payment is

consistent with that judgment. Storix points to no transactional facts in this case that were litigated and decided to the contrary in the Copyright Action.

**C. Johnson’s Contract and Rescission Claims are Not Barred by Issue Preclusion**

Appellees, not Johnson, are collaterally estopped from asserting that Storix was granted non-exclusive licenses because they claimed exclusive licenses at trial and won. Johnson does not “seek to relitigate the issue of the terms of a license” because no terms (other than the *type* of licenses) were ever litigated.

Storix argues that Johnson did “not consciously” grant Storix licenses by misconstruing his testimony at trial. Johnson stated: “I was 100 percent owner of Storix, Inc. So, did I have to decide myself to give myself license to sell what I was already selling before? Not consciously.” That had nothing to do with Storix’s agreement to pay for the rights it was granted if and when Johnson was no longer involved in the company. (Complaint ¶ 11.) Storix appears to raise a factual dispute as to whether Johnson agreed to give Storix all rights to his software *for free*. No issues related to payment for ownership was ever litigated or decided, and the issue is a factual one for a jury.

Storix makes no effort to counter Johnson’s arguments as to the rescission of the contract or the unjust enrichment that must be returned if the contract is found to be invalid. (AOB, p.42-43.) There are no circumstances under California law in

which a party can claim ownership of another's property under a *non-written agreement* and give nothing in return. (*Id.*)

**D. Johnson Did Not Misconstrue or Misapply Jurisdictional Requirements to Avoid Preclusion**

Whether the district court in the Copyright Action had supplemental jurisdiction to hear a contract claim is irrelevant. In 2014, Johnson believed the rights were non-exclusive and revokable and he was therefore within his rights to revoke Storix's license and sue for infringement if Storix continued selling the software – notwithstanding the oral contract that imposed an obligation to pay Johnson for the rights it was granted when his involvement in the company terminated. (Complaint ¶ 11.) The “transactional nucleus of facts” in the Copyright Action pertained to the type of licenses Storix was granted, not whether or when it was obligated to pay for them.

**E. Johnson's Accrual Argument Does Not Lack Merit**

After the copyright trial, Johnson continued to serve on the board and litigated Storix's derivative claims to defer Storix's obligation to pay for what had then been declared as “ownership rights” – rights he knew the company could no longer afford. (Complaint ¶ 15.) Only after Storix was denied any relief in the shareholder derivative suit did Johnson terminate his company involvement and trigger Storix's obligation to compensate him for the copyrights. (*Id.*, ¶ 29.) Johnson could not have brought a breach of contract claim in 2014 because the

contract was not breached until 2018. Storix does not dispute any facts in the complaint or the argument in Johnson’s opening brief. (AOB, p.40.)

Storix reverses the logic in *Seven Arts, supra*, 733 F.3d at 1257, which does not support the argument that “Storix plainly and expressly repudiated Johnson’s claims for any payments owed for SBAdmin sales, including payments tied to ownership... .” (Storix.RB, p.27.) “Paramount plainly and expressly repudiated Seven Arts’s copyright ownership” by “choosing to continue paying royalties.” (*Ibid.*) Storix could have chosen to pay royalties, but it insisted on copyright ownership. It isn’t absolved of its obligation to pay Johnson for that ownership *because* it repudiated Johnson’s claim.

Storix doesn’t dispute any facts in the complaint, so it’s unclear why Storix is challenging the accrual of the claim. Regardless, any factual dispute over when or how the contract claim accrued is related to statute of limitations, which is also an issue for a jury to decide. *E-Fab, Inc. v. Accountants, Inc. Services* (2007) 64 Cal.Rptr.3d 9, 17.

**F. The Contract-Based Claims Have Nothing to Do with the Writing Requirement of 17 U.S.C. §204(a)**

Storix’s argument regarding the “preclusive effect of the Copyright Act’s writing requirement” is incoherent. Storix simply ignored all facts and argument showing the Copyright Act is not implicated in this case. (AOB, p.39-40, 44-45.)

## **II. ALTERNATIVE GROUNDS SUPPORT REVERSING DISMISSAL OF THE CONTRACT AND RESCISSION CLAIMS**

### **A. The Copyright Act Does Not Preempt Johnson's Claims for Breach of Contract and Rescission**

The breach of contract claim's "extra element" is non-payment for *ownership*, which is not "equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106." (Storix.RB, p.30.) Johnson is not suing for copyright infringement, and Storix does not respond to the facts or arguments showing the Copyright Act is irrelevant to this case. (AOB, pp.39-45.) Even if the Copyright Act were somehow implicated in the contract, it doesn't bar its rescission. (AOB, p.42-43.)

### **B. The Statute of Limitations Does Not Bar Johnson's Contract and Rescission Claims**

The breach of contract and rescission claims are not "predicated on the same events" as in the Copyright Action. The Complaint shows that the claims didn't accrue until three years after the Copyright Action was decided and, in any event, statute of limitations is an issue for a jury to decide. (*See* § I.E at p.31.)

### **C. Johnson Does Not Lack Standing to Sue for Breach of Contract**

Johnson doesn't dispute the judgment in the Copyright Action that Storix owns the copyrights. Storix's argument is unclear, but it appears to be that Johnson cannot sue Storix for infringement because Storix owns the copyrights. Again, Johnson is not suing for infringement. Even so, Storix acknowledges that a



copyright owner must “fully transfer” exclusive rights before they may be enforced by the transferee. 17 U.S.C. 501(b). Storix asserts that Johnson “lacks standing to assert any rights in or to the copyrighted works”, but *only Johnson* is entitled to enforce the copyrights because they are registered to him with the U.S. Copyright Office and will remain so until Storix pays for them. *See* 17 U.S.C. § 411.<sup>3</sup>

### **III. THE DISTRICT COURT IMPROPERLY DISMISSED JOHNSON’S INDEMNIFICATION CLAIM**

Attorney-Defendants and Partner-Defendants, now acting as Storix, continue to ignore the simple fact that there were two separate and distinct claims in the Direct Suit, which Storix now refers to as a “single cause of action.” (Storix.RB, p.37.) An unsupported statement is insufficient to defeat a claim on a motion to dismiss, where the facts of the complaint are presumed true. *See Cahill, supra*, 80 F.3d at 337-8. Johnson not only pled, but *proved*, there were two claims and he prevailed on Storix’s primary claim. *See Reply to Attorney-Defendants’ Answering Brief* §§ I.B.1-2 at pp.4-7; AOB, p.18.

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<sup>3</sup> The declaratory judgment in the Copyright Action allowed Storix to continue selling Johnson’s software, but it provided Storix no rights under the Copyright Act because courts have no authority to *order* a copyright transfer except in a bankruptcy proceeding. *See* 17 U.S.C. 201(e).

**A. The District Court Did Not Determine That Johnson Could Not Establish He Obtained a Favorable Outcome**

Storix provides no authority for its assertion that indemnification requires a “favorable outcome” of an entire lawsuit. Corp. Code § 317(d) does not require success of an entire lawsuit, but explicitly states that an agent of a corporation “shall be indemnified” for a successful defense of “any claims, issues or matters therein.”

Storix argues, “in order for a plaintiff to recover under Section 317(d), the plaintiff ‘must make the same showing of a prior favorable termination required to maintain a malicious prosecution action.’” (Storix.RB, p.38, citing *Dalany v. Am. Pac. Holding Corp.* (1996) 42 Cal.App.4th 822, 830.) Storix ignores Johnson’s showing that *Dalany* applies only to cases terminated by settlement and not “on the merits.” (AOB, p.33.) Storix also ignores Johnson’s clear showing that “breach of fiduciary duty” is not a specific claim but only a *type* of claim. (*Id.*, p.22-23.)

Storix’s reference to a court order deeming it the “prevailing party” in the Direct Suit for the purpose of awarding costs is irrelevant, as is the court’s finding that Storix “in good faith” “believe[ed] that the ultimate recovery would be in excess of the limited jurisdictional limit.” (3-ER-618.) Appellees believed Johnson would be unable to defend a frivolous claim, but they were wrong.

Section 317(d) requires no showing of “favorable termination” of the entire action or a showing that Johnson acted “in good faith.” *See Reply to Partner-Defendants’ Answering Brief* § E.4(a) at pp.25-26.

**B. Johnson Was Sued “By Reason of the Fact” that He Was an Agent of the Corporation.**

Storix ignores the facts of the complaint and the opening brief showing he was specifically sued because as a Storix director, and that he need not show he acted “in the interests of the corporation” because the alleged act never happened. (AOB, p.31-32.) A finding to the contrary would absurdly allow Johnson to be denied indemnification *because* he disproved the claim.

**C. Johnson Was Not Required to Seek an Indemnification Determination from the State Court**

Corp. Code § 317(d) requires no finding of “good faith” or that any alleged acts were taken in the “interests of the corporation” and not “with personal motives.” *See Reply to Partner-Defendants’ Answering Brief* § E.4.(a) at p.5. Storix’s reference to a “standard of conduct” requirement is only applicable “except as provided in subdivision (d).” Corp. Code § 317(e). Simply put, if a defendant prevails, there is no other showing of any kind required to obtain mandatory indemnification under Section 317(d).

**D. Denying Johnson Indemnification Would Violate Public Policy and Lead to Absurd Results**

Here, Storix repeats its meritless arguments above, any of which would be a violation of public policy regarding liability protection afforded corporate agents. Johnson is not seeking indemnification for “inconsequential issues” or because Storix obtained “lesser damages than were sought.” (Storix.RB, p.48.) Johnson completely defeated a \$1.25 million claim. There is no need to “parse out any level of ‘success’” because there was no “mixed ruling.” (*Id.*) Storix’s statement that “Johnson did not prevail on a single claim in the Direct Suit” contradicts the facts of the complaint and the jury’s verdict. (*See* § III at 34-35.)

**E. Johnson’s Reference to Storix’s Bylaws is Not Conclusory**

Storix does not dispute the material fact that its bylaws contain a clause mandating Johnson’s indemnification.

**1. The Complaint’s Reference to the Bylaws Cannot Be Disregarded**

Storix’s argument that references to its bylaws are “bald conclusions” is absurd. Appellees could offer the bylaws to prove otherwise but did not do so. Since the facts of the complaint are assumed true, and Storix does not dispute them, the Court has sufficient ground to reverse the dismissal of the indemnification claim.

## **2. Corporations Code §317(g) Does Not Restrict or Preclude Indemnification Here**

Storix argues that “Section 317(g) does not directly authorize a corporation’s bylaws to expand indemnification for breaches of duty to the corporation.” (Storix.RB, p.52.) That may be true, but Johnson seeks indemnification for a claim in which he was found *not* to have breached a fiduciary duty to the corporation.

Storix is correct that Corp. Code § 204(a)(11) doesn’t allow a corporation to expand indemnification rights where “indemnification is expressly prohibited” by Section 317. But indemnification is mandated (not prohibited) in Section 317(d) for “any claim, issue or matter” on which Johnson prevailed. Storix references Section 204(a)(10), which limits the corporation’s ability to expand indemnification rights with respect to “money damages.” Johnson doesn’t seek indemnification for the \$3,739.14 in money damages awarded against him.

## **IV. THE DISTRICT COURT’S DENIAL OF JOHNSON’S MOTION FOR RECONSIDERATION IS IRRELEVANT**

Johnson is not appealing the order denying the motion, and Storix simply repeats the arguments raised by the district court that were already defeated in Johnson’s opening brief. *See Reply to Attorney-Defendants’ Answering Brief* § III at p.10.

V. **IT WAS IMPROPER FOR STORIX TO OPPOSE RECUSAL**

It's improper for a party to oppose a recusal motion. Appellees make purely legal arguments that were thoroughly rebutted in the opening brief. (AOB, pp. 52-57.)

**CONCLUSION**

The Court should reverse the dismissal of Johnson's claims and remand further proceedings to the judge originally assigned to the case.

Dated: November 19, 2021

Respectfully Submitted,

*s/Anthony Johnson*

Anthony Johnson

*Pro Se Appellant*

Ninth Circuit Case Number(s): No. 21-55614

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**CERTIFICATE OF COMPLIANCE FOR BRIEFS**

I hereby certify that:

1. I am a self-represented party.
2. This brief contains 8396 words, excluding the items exempted by Fed. R. App. P. 32(f), which complies with the 7,000 word limit of Cir. R. 32-1 and the 1,400 word extension allowed in Cir. R. 32-2(b) for a single brief replying to multiple briefs.
3. The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

Executed on November 19, 2021

By: s/Anthony Johnson

Anthony Johnson  
*Pro Se Appellant*

Ninth Circuit Case Number(s): No. 21-55614

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**CERTIFICATE OF SERVICE**

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I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system:

**APPELLANT'S REPLY BRIEF**

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Anthony Johnson  
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