

1 Paul A. Tyrell (Bar No. 193798)
Sean M. Sullivan (Bar No. 254372)
2 PROCOPIO, CORY, HARGREAVES & SAVITCH
LLP
3 525 B Street, Suite 2200
San Diego, CA 92101
4 Telephone: 619.238.1900
Facsimile: 619.235.0398
5 Attorneys for Plaintiff Storix, Inc.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO - CENTRAL

10 STORIX, INC., a California corporation,
11 Plaintiff,
12 v.
13 ANTHONY JOHNSON; JANSTOR
TECHNOLOGY, a California corporation; and
14 DOES 1-20,
15 Defendant.
16
17 ANTHONY JOHNSON, an individual,
18 Cross-Claimant,
19 v.
20 DAVID HUFFMAN, an individual, RICHARD
TURNER, an individual MANUEL
21 ALTAMIRANO, an individual, DAVID KINNEY,
an individual, DAVID SMILJKOVICH, an
22 individual, and DOES 1-5,
23 Cross-Defendants.

Case No. 37-2015-00028262-CU-BT-CTL
STORIX, INC.'S OPPOSITION TO
ANTHONY JOHNSON'S MOTION TO
STRIKE PORTIONS OF THE FIRST
AMENDED COMPLAINT
Date: August 26, 2016
Time: 11:00 a.m.
Dept: C-70
Judge: Hon. Randa Trapp
Complaint Filed: August 20, 2015
Trial Date: Not Set

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I. INTRODUCTION

Plaintiff Storix, Inc. (“Storix”) brought this suit against defendants Anthony Johnson (“Johnson”) and Janstor Technology, Inc. (“Janstor”)¹, after it uncovered Johnson’s clandestine plan to compete with Storix while sitting on Storix’s board of directors. After Johnson’s disloyal scheme was revealed, and Janstor’s existence was unearthed, Johnson started back-tracking the seriousness of his commitment to compete with and otherwise harm Storix.²

Johnson now wants to avoid the consequences of his despicable conduct by striking the demand for exemplary damages at the pleading stage. However, Johnson’s conduct was truly outrageous and certainly meets the threshold for exemplary damages under any standard. Moreover, the need for injunctive relief is clear, as Johnson has demonstrated his intent to harm the company far beyond its bottom line, and Storix should not be limited to monetary damages or e forced to wait for Johnson’s next disloyal ploy to materialize.

Johnson’s motion to strike should be denied in its entirety.

II. DISCUSSION

A. Standard for a Motion to Strike

In ruling on a motion to strike, the allegations in the complaint are considered in context and presumed to be true: “(J)udges read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth.” *Clauson v. Sup.Ct.*, 67 Cal.App.4th 1253, 1255 (1998). The same liberal policy regarding amendment of pleadings applies as on sustaining demurrers. Therefore, if a defect is correctible, an amended pleading should be allowed. *See Grieves v. Sup.Ct.*, 157 Cal.App.3d 159, 168 (1984) [relying on C.C.P. § 576 which authorizes court to allow amendment of pleadings at any time “in furtherance of justice”]; *Price v. Dames & Moore*, 92 Cal.App.4th 355, 360 (2001).

¹ Janstor is not a moving party for purposes of this demurrer. As a corporation it cannot be self-represented.

² The parties are involved in contentious related litigation, including a copyright infringement suit that Johnson brought against Storix, which trial he lost in December 2015, and a derivative suit Johnson brought in California Superior Court against Storix’s other director/shareholders in late 2015. Johnson now faces the prospect of a significant award against him for all or much of Storix’s attorneys’ fees incurred in the copyright litigation.

1 **B. Johnson’s Motion to Strike the Exemplary Damages Should be Denied as**
2 **Storix Alleged Despicable Conduct**

3 The substantive law applicable to a claim for exemplary or punitive damages is found in
4 Civil Code section 3294 which states:

5 “In an action for the breach of an obligation not arising from contract, where it is
6 proven by clear and convincing evidence that the defendant has been guilty of
7 oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may
8 recover damages for the sake of example and by way of punishing the defendant.”

9 In *G.D. Searle & Co. v. Superior Court*, 49 Cal. App. 3d 22, 29 (1975), the California Court
10 of Appeal explained requisite pleading for punitive damages:

11 “When the plaintiff alleges an **intentional wrong**, a prayer for **exemplary**
12 **damage may be supported by pleading that the wrong was committed**
13 **willfully or with a design to injure....**” (emphasis added).

14 Johnson’s conduct is not only inexcusable, but without a doubt was intentional, and so
15 supports the availability of exemplary damages. As alleged in the FAC, Johnson (among many
16 other things that could be yet still alleged),

17 “in or around September-October 2015, subsequent to his election to Plaintiff’s
18 board of directors, Johnson threatened to and did send an email notice to Storix’s
19 past, current, and/or potential future customers and demanded that the recipients
20 ‘cease any further payment to Storix in relation to [use of SBAdmin] and refrain
21 from downloading any further copies.” (FAC ¶ 17).

22 Johnson also *directed threats* to non-shareholder employees of Storix. (FAC ¶ 18). This
23 included telling them (falsely) that they were going to lose their jobs, and boasting that he had a
24 “marketable product” ready to unleash, which he created using Storix’s code. (*Id.*). Storix alleges
25 that such conduct was “intend[ed] to harm Storix, Inc.” (FAC ¶ 25).³

26 Accordingly, Storix has adequately alleged intentional, despicable conduct warranting
27 exemplary damages and Johnson’s motion on this issue must be denied.
28

³ Of note, Storix withheld many of Johnson’s actual statements from its pleading, which underscore Johnson’s hostility and despicable conduct. This include telling Storix’s shareholders: “Here’s your one option. Get the f**k out. Give your stock back to the company, resign your board seat, terminate your employment.” Johnson used the full expletive.

1 **C. Johnson’s Motion to Strike the Request for Injunctive Relief Should be Denied;**
2 **Absent Injunctive Relief, Storix Will Suffer Irreparable Harm**

3 There is also no merit to Johnson’s request to strike Storix’s prayer for injunctive relief. As
4 alleged in the FAC, Johnson has previously taken steps to interfere with Storix’s customer base and
5 harm its goodwill. Injunctive relief is properly issued to prevent harm to a party’s reputation and
6 goodwill where the finding of such potential harm is based on evidence rather than “platitudes.”
7 *Herb Reed Enterprises, LLC v Fla. Entm’t Mgmt.*, 736 F.3d 1239, 1250 (9th Cir. 2013). *See, e.g.,*
8 *Stuhlbarg Int’l Sales Co., Inc. v. John D. Brush and Co., Inc.*, 240 F.3d 832, 841 (9th Cir. 2001)
9 (holding that evidence of loss of customer goodwill supports finding of irreparable harm).

10 Johnson sent an “announcement letter” email to an unknown number of Storix customers in
11 which he urged those customers to cease payment to Storix and cease downloading its software.
12 (FAC ¶17.) Johnson clearly wanted to damage Storix’s business reputation and goodwill. When
13 Johnson’s actions are considered, as well as:

- 14 • his admitted intent to disrupt customer relationships,
- 15 • his desire to bully his way into control of the company,
- 16 • his hatred for those in control of Storix, and
- 17 • his belief that judicial inaction equates to a green light for further bad behavior, it is
18 apparent that Johnson will continue his campaign to harm Storix’s reputation and
19 relationships and to bully its management and shareholders such that injunctive relief is
20 needed and money damages are inadequate. *See Beauharnais v. Illinois*, 343 U.S. 250, 266
21 (1952); *also Paradise Hills Associates v Procel*, 235 Cal.App.3d 1528, 1546 (1991)
22 (injunction may properly issue to protect business from untrue statements and harassment
23 of customers).

24 There is also great risk that Johnson’s disloyal competitive actions will harm Storix if not
25 enjoined.

26 Johnson’s suggestion that Storix simply sue for money damages alone, while he is free to
27 take whatever measures he deems fit to fight dirty, cannot be reconciled with his extensive efforts

1 at self-help prior to entry of judgment, which are designed to scare customers away from Storix
2 and, in doing so, deprive Storix of the revenue it needs to continue litigating. Injunctive relieve is
3 appropriate under these circumstances and Storix's entitlement to such relief is adequately alleged.
4 Thus, Johnson's motion should be denied.

5 III. CONCLUSION

6 For the foregoing reasons, Storix respectfully requests that the Court deny Johnson's
7 motion to strike in its entirety. In the event that any aspect of the motion is granted, Storix
8 respectfully requests that it be granted leave to amend.

9 DATED: August 15, 2016

10 PROCOPIO, CORY, HARGREAVES & SAVITCH
11 LLP

12 By: 

13 Paul A. Tyrell
14 Sean M. Sullivan
15 Attorneys for Plaintiff Storix, Inc.

1 **PROOF OF SERVICE**

2 I am a resident of the State of California, over the age of eighteen years, and not a party to
3 the within action. My business address is PROCOPIO, CORY, HARGREAVES & SAVITCH
4 LLP, 530 "B" Street, Suite 2100, San Diego, California 92101. On August 15, 2016, I served the
5 within documents:

6 **STORIX, INC.'S OPPOSITION TO ANTHONY JOHNSON'S MOTION TO
7 STRIKE PORTIONS OF THE FIRST AMENDED COMPLAINT**

8 **BY U.S. MAIL** by placing the document(s) listed above in a sealed envelope with postage
9 thereon fully prepaid, in the United States mail at San Diego, California addressed as set forth
10 below. I am readily familiar with the firm's practice of collection and processing
11 correspondence for mailing. Under that practice it would be deposited with the U.S. Postal
12 Service on the same day with postage thereon fully prepaid in the ordinary course of business.
13 I am aware that on motion of the party served, service is presumed invalid if postal
14 cancellation date or postage meter date is more than one day after date of deposit for mailing
15 an affidavit.

16 **BY E-MAIL OR ELECTRONIC SERVICE (via One Legal Online Court Services):** I
17 served upon the designated recipients via electronic transmission through the One Legal
18 system on August 15, 2016. Upon completion of said transmission of said documents, a
19 certified receipt is issued to filing party acknowledging receipt by One Legal's system. Once
20 One Legal has served all designated recipients, proof of electronic service is returned to the
21 filing party.

22 **BY OVERNIGHT DELIVERY** by placing the document(s) listed above in a sealed overnight
23 envelope and depositing it for overnight delivery at San Diego, California, addressed as set
24 forth below. I am readily familiar with the practice of this firm for collection and processing
25 of correspondence for processing by overnight mail. Pursuant to this practice, correspondence
26 would be deposited in the overnight box located at 530 "B" Street, San Diego, California
27 92101 in the ordinary course of business on the date of this declaration.

28 Anthony Johnson
716 NE 20th Drive
Wilton Manners FL 33305
flydiversd@gmail.com
In Pro Per

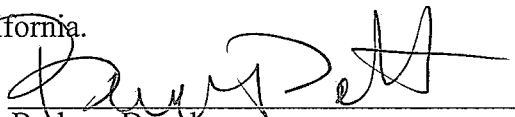
Robin Sassi
101 Market Street #414
San Diego, CA 92101
RJSassi@rjsassilaw.com
In Pro Per

Michael P. McCloskey
David J. Aveni
Wilson, Elser, Moskowitz, Edelman &
Dicker LLP
655 West Broadway, Suite 900
San Diego, CA 92101
(619) 321-6200
(619) 321-6201 fax
michael.mccloskey@wilsonelser.com
david.aveni@wilsonelser.com
***Counsel for David Huffman, Richard
Turner, Manuel Altamirano, David
Kinney and David Smiljkovich***

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

Executed on August 15, 2016, at San Diego, California.


Barbara Donahoo