

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

6 Pro Se

7
8 **UNITED STATES DISTRICT COURT**
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**
10

11 ANTHONY JOHNSON, an individual,

12 Plaintiff,

13 v.

14 MANUEL ALTAMIRANO, an individual,
15 RICHARD TURNER, an individual,
16 DAVID KINNEY, an individual,
17 DAVID HUFFMAN, an individual,
18 PAUL TYRELL, an individual,
19 SEAN SULLIVAN, an individual,
20 STORIX, INC., a California Corporation,
and DOES 1-5, inclusive,

21 *Defendants.*
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Case No. 3:19-cv-1185-H-BLM

**PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES ISO
OPPOSITION TO MOTION TO
DISMISS OF DEFENDANT
STORIX, INC.**

Hearing Date: October 7, 2019

Hearing Time: 10:30 a.m.

Judge: Hon. Marilyn L. Huff

Dept.: Courtroom I 5A

Complaint Filed: June 24, 2019

Trial Date: Not Set

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1 **I. INTRODUCTION**

2 Plaintiff respectfully submits this Opposition to *Storix’s Motion to Dismiss*
3 *Plaintiff’s Complaint* (hereafter “Motion”) filed by defendant Storix, Inc. (hereafter
4 “Storix”) pursuant to Fed.R.Civ.P. § 12(b)(6) for failure to state a claim upon which
5 relief can be granted.

6 Johnson herein incorporates his concurrently-filed request for judicial notice
7 (hereafter “RJN”). For clarity and consistency with concurrent motions and filings,
8 Johnson herein incorporates Storix’s and attorney-defendants’ request for judicial
9 notice (hereafter “Storix RJN”). The complaint in this action (ECF No. 1) is
10 hereafter referenced as “Complaint”.

11 Storix attempts to dismiss Johnson’s Complaint by making legal conclusions
12 without authority, by ambiguously citing authority that doesn’t actually support their
13 argument, and based on alleged facts contrary to the Complaint without supporting
14 evidence. The Complaint states sufficient facts to support each cause of action as
15 well as facts that defeat Storix’s affirmative defenses. First, *res judicata* doesn’t
16 apply to Johnson’s contract claim since the prior copyright action neither involved
17 nor resolved any issues raised in this case. The fact that Storix owns the SBAdmin
18 software is irrelevant to its breach of the contract wherein it agreed to compensate
19 Johnson for it. Storix now disputes the existence of the same oral agreement it relied
20 on when claiming ownership of Johnson’s copyrights.

21 Second, Storix’s legal conclusion that the Copyright Act preempts Johnson’s
22 contract claim is nonsensical since Johnson doesn’t seek to enforce any rights
23 provided by federal law. Third, Storix fails to explain how its ownership of the
24 SBAdmin copyrights bars Johnson from bringing a breach of contract claim due to
25 Storix’s failure to perform its obligations. Fourth, the contract claim is not barred by
26 the statute of limitations because Storix didn’t breach the contract until 2018. Fifth,
27 Storix’s argument that the oral agreement fails to comply with the Copyright Act’s
28

1 requirements is a reversal of their prior position that no written agreement was
2 needed to satisfy the Act’s transfer requirements.

3 Finally, Storix continues to rely on a trivial jury award of \$3,739 obtained by
4 introducing a new and unrelated claim in closing arguments after realizing their
5 frivolous claim for \$1.3 million was about to fail. Storix tries to justify five years
6 spent suing Johnson for *intending to prepare to secretly* compete (really) with a
7 trivial claim that could have brought in small claims court. Storix is required by law
8 and its own bylaws to indemnify Johnson for his successful defense, particularly
9 against a claim brought by Storix itself. Storix defends Johnson’s indemnification
10 claim by asserting Johnson was sued for advancing his personal interests despite a
11 jury finding that Johnson did no such thing.

12 Johnson’s Complaint states sufficient facts to support each cause of action, as
13 well as facts that defeat Storix’s affirmative defenses. Storix failed to provide
14 authority to support its arguments or dispute those facts. This Court should therefore
15 deny Storix’s motion on all causes of action.

16 **II. STORIX’S BACKGROUND FACTS**

17 Storix’s statement of background facts contains many assertions of Johnson’s
18 intentions, motivations, and theories of recovery not represented in the Complaint.
19 They preface most facts with “Johnson contends ...”, followed by partial sentences
20 from the allegations of the Complaint amended with their own conclusory
21 statements, thereby twisting them into “alternate facts”.

22 The allegations of the Complaint, *as stated*, must be regarded as true unless
23 defeated by evidence submitted by the defendant. Storix’s blatant attempt to mislead
24 the Court demonstrates their inability to dispute Johnson’s facts. For this reason
25 alone, the Court should deny Storix’s motion.

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1 **III. ARGUMENT AND ANALYSIS**

2 **A. Motions Dismiss Under Rule 12(b)(6)**

3 Dismissal for failure to state a claim under Fed.R.Civ.P. § 12(b)(6) is a
4 disfavored remedy and may only be granted in extraordinary circumstances. (*Broam*
5 *v. Bogan*, 320 F.3d 1023 (9th Cir. 2003); *United States v. Redwood*, 640 F.2d 963,
6 966 (9th Cir. 1981).) On this motion, all allegations of material fact must be
7 accepted as true and construed in the light most favorable to Plaintiff. (*Cahill v.*
8 *Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-8 (9th Cir. 1996); *In re Silicon Graphics,*
9 *Inc. Sec Litig.*, 183 F.3d 970, 983 (9th Cir. 1999).) The Court must also draw all
10 reasonable inferences in favor of the non-moving party. (*Ashcroft v. Iqbal*, 556 U.S.
11 662, 668 (2009); *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S.
12 574, 587 (1986).) If this Court finds the Complaint inadequate, it should “freely give
13 leave to amend when there is no undue delay, bad faith, dilatory motive, undue
14 prejudice to the opposing party by virtue of... the amendment, [or] futility of the
15 amendment.” (Fed.R.Civ.P. § 15(a); *Foman v. Davis*, 371 U.S. 178, 182 (1962).)

16 **B. Johnson’s Claims for Breach of Contract (Fifth Cause) and**
17 **Rescission (Sixth Cause) Are Properly Alleged**

18 **1. *The Doctrine of Res Judicata Doesn’t Bar Johnson’s Claims for***
19 ***Breach of Contract and Rescission Because No Court Has Ever***
20 ***Addressed or Resolved the Issues***

21 Storix asserts that “Johnson previously brought suit on just these issues in this
22 court and lost.” Storix cites no other case involving the same claims or issues raised
23 in the Complaint because none have been previously litigated or decided.

24 **a. Identity of Claims**

25 Storix states that “courts have consistently found that *res judicata* bars
26 contract and related claims involving copyrighted works where a copyright claim
27 has been litigated, since such claims arise from the same nucleus of facts.” (Motion
28 at p. 9.) Storix extracts the words “nucleus of facts” from *Mpoyo v Litton Electro-*
Optical Sys., 430 F.3d 985, 987 (9th Cir. 2005), then misapplies the logic of *Mpoyo*

1 to convert Johnson’s breach of contract claim into one of copyright infringement.
2 Johnson’s *claims* don’t involve copyrights, and this Court’s ruling that Storix owned
3 the copyrights to SBAdmin is not disputed.

4 Storix’s similar arguments fail for obvious reasons. Storix cites *Ivanova v.*
5 *Columbia Pictures Indus., Inc.*, 217 F.R.D. at 505, which involved a stipulated
6 judgment regarding payment of past and future payments on a “distribution
7 contract”. (Motion at p. 10.) The plaintiff’s claim in *Ivanova* was dismissed because
8 the plaintiff didn’t own the copyrights to the films, thus has no rights to enforce
9 under federal law. Accordingly, Johnson cannot bring his contract claim under
10 federal law because Johnson doesn’t own the copyright and Storix didn’t *breach* the
11 contract by infringing.

12 Storix references three out-of-circuit cases involving contract claims arising
13 from copyright infringement and unfair competition. Clearly, those claims pertain to
14 rights provided under the Copyright Act. Johnson can’t sue Storix for infringement
15 of its own copyrights, nor does Johnson claim Storix was unfairly competing using
16 *his* copyrighted material. Storix’s argument is unclear, except to the extent they
17 attempt to apply general language of a case to circumstances it was not intended.
18 The “nucleus of operative facts” of the contract (Motion at p. 12) are Johnson’s
19 transfer of intellectual *property* ownership (in contrast to a licensing agreement) and
20 Storix’s refusal to compensate Johnson for the benefits it received. It doesn’t matter
21 that the property was a copyright, only that Storix took ownership and possession.
22 Federal law doesn’t govern property disputes.

23 The ruling of this Court was that Storix owns the copyrights to SBAdmin, and
24 thus Johnson’s prior copyright infringement claim was barred. Nothing in the ruling
25 relieved Storix of its obligation to compensate Johnson for the copyright – an
26 obligation triggered once Johnson’s involvement in Storix ended. (See Complaint ¶¶
27 11, 22, 29.) Johnson does not “seek to undermine and eviscerate any meaning
28 behind the final judgment entered in the Copyright Action[.]” (Motion at p. 12.)

1 Johnson concedes that Storix owns SBAdmin. (Complaint ¶ 22.) Storix didn't
2 breach its contract by owning the copyrights. Storix breached the contract when it
3 refused to compensate Johnson for them.

4 b. Final Judgment on the Merits

5 Storix's argument here is equally irrelevant. The judgment in the copyright
6 action is not disputed, and the issue of copyright ownership isn't raised in the
7 Complaint. Johnson's prior efforts to have the copyright ruling reversed have no
8 bearing on his claim that Storix is in breach of contract by refusing to provide the
9 agreed-upon consideration. "[T]he jury did not reach the question of whether
10 Johnson was compensated for his copyrights." (Complaint ¶22.)

11 c. Privity Between the Parties

12 Johnson does not dispute that there is privity between the parties.

13 **2. *The Copyright Act Does Not Preempt Johnson's Copyright***
14 ***Claims for Breach of Contract and Rescission***

15 Storix's argument that the Copyright Act preempts Johnson's contract claim is
16 nonsensical. (Motion at p. 13.) Preemption of a state claim doesn't *bar* the claim in
17 federal court – it *requires* the claim to be brought under federal law. Storix provides
18 no explanation for how Johnson's breach of contract claim implicates federal law.
19 They instead attempt to bar Johnson from bringing his claim in any court. They
20 misunderstand the meaning and purpose of preemption.

21 Johnson's contract claim is not seeking to enforce any rights under the
22 Copyright Act, nor does it ask this Court to determine such rights. "State laws
23 granting or protecting other rights (such as breach of contract, conversion,
24 defamation, etc.) have not been preempted. [Citations.]" (*In re Marriage of Worth*
25 (1987) 195 Cal.App.3d 768, 778.) The states are expressly allowed to regulate
26 "activities violating legal or equitable rights that are not equivalent to any of the
27 exclusive rights within the general scope of copyright as specified by section 106."
28 (17 U.S.C. § 301(b)(3).) To avoid preemption, "the state claim must protect rights

1 which are qualitatively different from the copyright rights. The state claim must
2 have an ‘extra element’ which changes the nature of the action.” (*Del Madera*
3 *Properties v. Rhodes and Gardner, Inc.*, 820 F.2d 973, 976 (9th Cir. 1987).) States
4 exclusively govern oral contracts. (*See generally* Cal. Civ. Code §§ 1549-1701.)
5 Storix cites a number of cases where contract claims were preempted because they
6 involved only federal copyright law and no “extra element” governed by state law.
7 (Motion at pp. 14-15.)

8 Storix concludes in saying “Accordingly, the Copyright Act preempts his new
9 state law claims against Storix, and must be dismissed.” (Motion at p. 16.) Storix
10 identifies no elements of Johnson’s claim that are governed by federal law, so their
11 argument that Johnson’s contract claim is preempted (thus forcing him to sue Storix
12 for infringement of its own copyrights) simply makes no sense.

13
14 **3. *Storix’s Argument that Johnson Lacks Standing to Pursue a***
15 ***Breach of Contract Claim Based on a Copyrighted Work He***
Does Not Own Makes No Sense

16 Storix asserts that “Johnson has zero ownership interest in such copyrights.
17 Accordingly, he has no standing to assert rights in or to such copyrights, which he is
18 attempting to do.” (Motion at p. 16.) Again, Johnson’s contract claim doesn’t
19 involve nor attempt to enforce any copyrights to SBAdmin. Storix argues that
20 Johnson cannot bring an infringement action because he doesn’t own the copyrights,
21 but immediately contradicts that assertion by saying Johnson cannot bring his breach
22 of contract claim because it must be an infringement action. It’s impossible to
23 decipher their argument except to say that Johnson can’t bring any claim in any
24 court to enforce Storix’s obligation to compensate Johnson for the property
25 conveyed after Storix derived millions of dollars under the contract. Such would be
26 a total deprivation of Johnson’s right to due process.

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1 **4. Johnson’s Contract and Rescission Claims Are Not Barred By**
2 **the Two-Year Statute of Limitations**

3 Storix argues that Johnson’s claim is barred by the 2-year statute of
4 limitations for oral contracts based on their assumption that Johnson’s claim accrued
5 in 2014. Storix notes that the oral agreement granted Storix “rights to market, sell,
6 copy, distribute and license SBAdmin to third-parties in exchange for compensation
7 for the **copyright if or when Johnson’s participation in Storix ended.**” (Motion at
8 p. 18, bold in original; Complaint ¶ 11.) “Under the law of contracts, parties may
9 expressly agree that a right or duty is conditional upon the occurrence or
10 nonoccurrence of an act or event.” (*Platt Pacific, Inc. v. Andelson* (1993) 6 Cal.4th
11 307, 313.) Storix tries to alter the event that triggered Storix’s obligation by
12 redefining the date on which Johnson’s *involvement* in Storix terminated. Storix
13 quotes an allegation of the Complaint stating that, in 2014, “he could no longer
14 tolerate the hostility and resigned in protest.” (Complaint ¶ 13.) Storix then argues
15 that “Storix’s obligation to ‘compensate’ him for the SBAdmin copyright arose in
16 May 2014, yet it never paid him.” (Motion at p. 18.) Storix’s attempt to avoid
17 compensating Johnson for the property it obtained under the contract fails for a
18 number of reasons.

19 First, “[E]quitable estoppel may apply to avoid the statutes of fraud and to
20 make an oral agreement enforceable if (a) the promisee *detrimentally relied* on the
21 agreement and would suffer an *unconscionable injury* if the oral agreement were not
22 enforced *or* (b) the promisor would receive *unjust enrichment* if allowed to retain the
23 benefit of the promisee's performance without abiding by the promisor's obligations
24 under the oral agreement.” (*Estate of Housley* (1997) 56 Cal. App. 4th 342, 359,
25 italics in original; See also *Wright v. Wright*, B189282 (Cal. Ct. App. July 31,
26 2007).)

27 Second, Storix effectively argues they breached the contract in 2014 despite
28 Johnson not demanding payment at that time. Johnson didn’t require Storix to

1 perform its obligation in 2014 but instead, “used his shares to elect himself to the
2 board in order to continue his involvement in the company and to avoid triggering
3 Storix's obligation to pay for the copyright he then knew Storix could no longer
4 afford.” (Complaint ¶ 15.) Storix can’t escape its obligation by dictating an earlier
5 date in order to *retroactively* breach its own contract at a time outside the statute of
6 limitations. Storix’s current management were not parties to the contract (Complaint
7 ¶ 55), and thus cannot dictate the precedent event that triggers an obligation under a
8 contract they aren’t parties to. Johnson intentionally remained on the Storix board
9 until such time that a court found he couldn’t represent Storix’s interests. (*Id.* ¶ 28.)
10 Thereafter, he didn’t re-elect himself to the board. (*Id.* ¶ 29.) “This finally
11 terminated Johnson's involvement in Storix and triggered Storix's obligation to pay
12 Johnson for his copyrights.” (*Id.*) Johnson couldn’t sue for breach of contract in
13 2014 because Storix’s obligation to compensate him didn’t accrue until 2018.

14 Third, whether Storix’s *obligation* under the contract had been triggered in
15 2014 or 2018 is immaterial because Storix didn’t *breach* the contract until Johnson
16 demanded compensation and Storix refused. (Complaint ¶ 29.) “A contract cause of
17 action does not accrue until the contract has been breached.” (*Spear v. Cal. State*
18 *Automobile Ass’n* (1992) 2 Cal.4th 1035, 1042.) The statute of limitations only
19 commences to run ‘after the cause of action shall have accrued’ (Code Civ. Proc. §
20 312) and the ‘cause of action accrues when a suit may be maintained thereon, and
21 the statute of limitations therefore begins to run at that time.” (*Maddox v. Rainoldi*
22 (1958) 163 Cal.App.2d 384, 392.) “[T]he period cannot run before plaintiff
23 possesses a true cause of action, by which we mean that events have developed to a
24 point where plaintiff is entitled to a legal remedy[.]” (*Hydro-Mill v. Hayward, Tilton*
25 *and Rolapp*, (2004) 10 Cal.Rptr.3d 582, 594, citations omitted.)

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1 **5. Johnson’s Breach of Contract and Rescission Claims Do Not**
2 **Fail as a Matter of Law Since 17 U.S.C. § 204(a) Doesn’t Bar**
3 **Enforcement of Rescission of a Contract Under State Law**

4 Again, Storix attempts to apply federal law to a contract claim involving
5 property ownership. Storix states that “To the extent that Johnson alleges a purely
6 oral agreement for the exclusive licensing and distribution rights to SBAdmin, that
7 claim fails as a matter of law.” (Motion at p. 18.) As a threshold matter, Johnson
8 never alleged the oral agreement was for “exclusive” copyrights – Storix did.
9 Johnson consistently argued that he agreed to grant Storix the “rights to market, sell,
10 copy, distribute and license SBAdmin to third-parties” (Complaint ¶ 11) and the
11 Ninth Circuit noted Johnson’s assertion that the assets transferred were ““whatever
12 was necessary to continue doing business as Storix, the same thing that I was doing
13 as Storix Software.”” (RJN, Ex. 3 at p. 13.) Storix’s new management insisted the
14 company needed “ownership” of all copyrights – meaning all exclusive and
15 irrevocable rights provided under 17 U.S.C § 106. “[T]he Ninth Circuit upheld the
16 district court judgment, finding that Johnson assigned his ownership rights by way
17 of an oral assignment.” (Complaint ¶ 22; RJN, Ex. 3 at p. 13 [“The Annual Report
18 qualified as a ‘note or memorandum’ that was signed by Johnson and memorialized
19 a transfer of assets”].) Oral contracts are invalid “unless they, or some note or
20 memorandum thereof, are in writing and subscribed by the party to be charged or by
21 the party’s agent[.]” (Cal. Civ. Code § 1624(a).) “There is sufficient evidence that a
22 contract has been made [if] ... There is a note, memorandum, or other writing
23 sufficient to indicate that a contract has been made, signed by the party against
24 whom enforcement is sought[.]” (Cal. Civ. Code § 1624(b)(3)(D).) The writing was
25 not a transfer agreement, but confirmed the existence of the oral agreement.

26 Storix argues that the contract cannot be rescinded even after they refused to
27 perform their obligation because rescission would require an oral transfer that
28 “cannot survive writing requirements of [17 U.S.C] section 204[.]” (Motion at p.

1 19.) Unbelievably, Storix is not only reversed its prior position but, if their assertion
2 is true, Johnson couldn't have transferred ownership to Storix in the first place.
3 Although that was Johnson's position, this Court found otherwise, and the Ninth
4 Circuit affirmed. But Storix is partly right. The Court found that no written
5 agreement was needed to deem Storix the copyright owner, but the Copyright Office
6 won't record the transfer without one. This simplifies the matter. Storix never
7 recorded the transfer with the Copyright Office. The copyright is still registered to
8 Johnson (Motion at p. 16), so there is no need for a writing to record a transfer.

9 Furthermore, Johnson, as the author and the President, sole shareholder,
10 officer and director of Storix, was the only party to the oral agreement. (Motion at p.
11 11.) "A contract may be rescinded if all the parties thereto consent." (Cal. Civ. Code
12 § 1689(a).) "All parties to the contract at the time it was formed consented to its
13 rescission." (Complaint ¶ 64.) Johnson can also unilaterally rescind the contract due
14 to Storix's failure to provide consideration. "A party to a contract may rescind the
15 contract ... If the consideration for the obligation of the rescinding party, before it is
16 rendered to him, fails in a material respect from any cause." (Cal. Civ. Code §
17 1689(b)(4).) "[T]o effect a rescission a party to the contract must ... Give notice of
18 rescission to the party as to whom he rescinds." (Cal. Civ. Code § 1691(a).) Johnson
19 gave notice of the rescission to Storix. (Complaint ¶¶ 29, 64.) "When a contract has
20 been rescinded in whole or in part, any party to the contract may seek relief based
21 upon such rescission by (a) bringing an action to recover any money or thing owing
22 to him by any other party to the contract[.] ... The aggrieved party shall be awarded
23 complete relief, including restitution of benefits, if any, conferred by him as a result
24 of the transaction[.]" (Cal. Civ. Code § 1692.)

25 Johnson provided Storix the opportunity to meet its obligation under the
26 contract and Storix simply refused. (Complaint ¶¶ 29, 65.) As an *alternative* to the
27 breach of contract cause of action, Johnson seeks a declaratory judgment of
28 rescission and restitution of benefits conferred under the contract. (Complaint ¶¶ 66,

1 75.) Storix can avoid rescission by simply providing the promised consideration.
2 (Complaint ¶ 75.) Storix cannot refuse to provide consideration *and* retain both the
3 property Johnson conveyed and the benefits it received by the conveyance. The fact
4 that the benefits Storix received under the contract included copyrights is
5 immaterial. Copyright ownership is “intellectual property” and, like any other
6 property, may be conveyed by a contract enforceable under state law.

7 Lastly, Johnson can always execute a writing that supersedes the first. “A
8 contract not in writing may be modified in any respect by consent of the parties, in
9 writing, without a new consideration, and is extinguished thereby to the extent of the
10 modification.” (Cal. Civ. Code § 1697.) “The execution of a contract in writing,
11 whether the law requires it to be written or not, supersedes all the negotiations or
12 stipulations concerning its matter which preceded or accompanied the execution of
13 the instrument.” (Cal. Civ. Code § 1625.)

14 No federal laws are implicated in Johnson’s breach of contract claim, nor does
15 any federal law prohibit the rescission of a contract involving transfers of
16 intellectual property. Johnson alleged all elements for the causes of action of breach
17 of contract and rescission. (Complaint ¶¶ 58-65.)

18 **C. Johnson’s Claim for Indemnification (Seventh Cause)**
19 **Should Not be Dismissed Since Corporations Code § 317**
20 **Requires Storix to Indemnify Johnson**

21 Storix argues that Johnson is not entitled to any indemnification under Cal.
22 Corp. Code § 317 because, according to *Plate v. Sun-Diamond Growers* (1990) 225
23 Cal. App.3d 1115 (*Plate*), Johnson “must have been sued ‘by reason of the fact’ that
24 he was performing his corporate duties.” (*Plate* at 1123; Motion at p. 19.) Storix
25 again attempts to mislead the Court by misquoting *Plate* and the statute it refers to.
26 “The first prerequisite to indemnification under section 317, subdivision (b), is that
27 the action against the person is *brought by reason of the fact that the person is or*
28 *was an agent of the corporation.*” (*Plate* at 1123, italics added.) Storix sued Johnson

1 “as a director” (Storix RJN, Ex. 11 ¶¶ 1, 23, 28) and could not have done so
2 otherwise.

3 Importantly, “the conduct of the agent which gives rise to the claim against
4 him must have been performed in connection with his corporate functions and not
5 with respect to purely personal matters.” (Motion at pp. 18-19, citing *Plate, supra*,
6 Cal. App.3d at 1123.) The jury rejected Storix’s absurd claim related to Johnson’s
7 alleged competing business, finding that “Johnson [did not] breach his duty of
8 confidentiality by using Storix, Inc.’s confidential information for his own benefit or
9 interest while serving on the Board of Directors of Storix, Inc.” (Storix RJN, Ex. 17
10 at p. 203) and “Johnson [did not] receive a benefit that he otherwise would not have
11 achieved or to which he was not entitled as a result of breaching the duty of loyalty
12 or duty of confidentiality that he owed to Storix, Inc.” (*Id.*) Storix sued Johnson
13 *because* he was a director, demanding almost \$1.3 million for “unjust enrichment”
14 based on his allegedly obtaining an “unfair head start” using Storix’s confidential
15 information. (RJN, Ex. 8 at p. 51.) The jury clearly rejected the entire claim. Storix
16 insists Johnson “performed” the wrongful conduct involving “purely personal
17 matters”, ignoring the jury’s finding that Johnson didn’t perform the conduct at all,
18 much less for personal benefit.

19 Indemnification must be provided by the corporation when a director
20 successfully defends a claim brought “by reason of the fact that the person is or was
21 an agent of the corporation.” (Cal. Corp. Code § 319(c) and (d).) If courts were to
22 hold otherwise, any board majority (like these defendants) could simply sue any
23 minority director (like Johnson) who opposes them or threatens to expose their
24 misconduct.

25 Johnson properly alleged all elements of an indemnification cause of action.
26 (Complaint ¶¶ 69-71.)
27
28

1 **IV. CONCLUSION**

2 Storix’s defense of *res judicata* is inapplicable since they identified no claims
3 or relevant underlying issues that were raised or decided in any prior action. Also,
4 all Johnson’s claims are brought within the applicable statute of limitations.

5 Storix has not identified any causes of action that are insufficiently pled. This
6 Court must therefore deny Storix’s motion to dismiss as to the breach of contract
7 and rescission causes of action. However, if this Court finds Johnson’s Complaint
8 inadequate, he should be freely granted leave to amend.

9
10 DATED: September 12, 2019

Respectfully submitted,

11
12 By:



ANTHONY JOHNSON, In Pro Per

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned certify and declare as follows:

3 I am over the age of eighteen years and self-represented in this action. My address is 1728
4 Griffith Ave., Las Vegas, Nevada, which is located in the county where the service described
5 below took place.

6 On September 12, 2019, from my address in Las Vegas, Nevada, I served a copy of the
7 following document(s):

- 8 **1. PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES ISO
9 OPPOSITION TO MOTION TO DISMISS OF DEFENDANT
10 STORIX, INC**

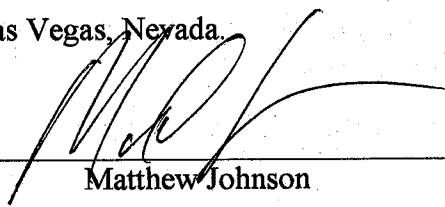
11 by depositing the document(s) in a sealed envelope with the U.S. Postal Service. The undersigned
12 hereby certifies that he caused a copy of the foregoing document(s) to be delivered to the Clerk of
13 the U.S District Court, Southern District of California, by thereby mail.

14 The undersigned also certifies that the following recipients have consented to service by email and
15 have been delivered a copy of the document(s) by sending to the email addresses listed below:

<p>16 Marty B. Ready 17 Michael P. McCloskey 18 WILSON ELSER MOSKOWITZ EDELMAN 19 & DICKER, LLP 401 West A Street, Suite 1900 San Diego, CA 92101 Email: marty.ready@wilsonelser.com Email: michael.mccloskey@wilsonelser.com Tel: (619) 881-6431 (Attorney for Defendants Altamirano, Turner, Kinney & Huffman)</p>	<p>Paul A. Tyrell Sean Sullivan PROCOPIO, CORY, HARGREAVES & SAVITCH LLP 525 B Street, Suite 2200 San Diego, CA 92101 Email: paul.tyrell@procopio.com Email: sean.sullivan@procopio.com Tel: (619) 619.238.1900 (Defendants, Attorneys for corporate defendant, Storix, Inc.)</p>
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20 I certify and declare under penalty of perjury under the laws of the United States of
21 American and the State of California that the foregoing is true and correct.

22 Executed on September 12, 2019 in Las Vegas, Nevada.

23
24 By: 
25 Matthew Johnson