

COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

STORIX, INC.,)
)
Plaintiff/Respondent,)
vs.) FROM SAN DIEGO COUNTY
) HON. KEVIN A. ENRIGHT
)
ANTHONY JOHNSON,) COA NO. D075308
)
Defendant/) SUPERIOR COURT NO.
Cross-Complainant/) 37-2015-00034545-
Appellant;) CU-BT-CTL
)
DAVID HUFFMAN, et al.,)
)
Defendants/)
Cross-Defendants/)
Respondents.)

REPORTER'S TRANSCRIPT ON APPEAL

Wednesday, February 7, 2018

(Pages 1783 through 2024, Inclusive)

Volume 13

1100 Union Street, Department 904
San Diego, California

Reported By:
Leyla S. Jones
CSR No. 12750

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

ANTHONY JOHNSON and
ROBIN SASSI, derivatively
on behalf of STORIX, INC.,
a California corporation,

Hon. Kevin A. Enright

Plaintiffs,

vs.

DAVID HUFFMAN, an
individual; RICHARD TURNER,
an individual; MANUEL
ALTAMIRANO, an individual;
DAVID KINNEY, an individual;
DAVID SMILJKOVICH, an
individual; and DOES 1-20,

CASE NO. 37-2015-
00034545-CU-BT-CTL
(Consolidated with
Case Nos.: 37-2016-
00030822-CU-MC-CTL
and 37-2015-
00028262-CU-BT-CTL)

Defendants,

Trial, Day 8

STORIX, INC., a California
corporation;

Nominal Defendant.

AND CONSOLIDATED ACTIONS

TRANSCRIPT OF PROCEEDINGS

(Pages 1783 through 2024, Inclusive)

Volume 13

February 7, 2018

9:17 a.m.

1100 Union Street, Dept. 904
San Diego, California

REPORTED BY:

Leyla S. Jones

CSR No. 12750

1 APPEARANCES:

2 For Defendant/Cross-Complainant/Appellant,
3 Anthony Johnson:

4 LAW OFFICES OF BERNARD F. KING III
5 BERNARD F. KING III, ESQ.
6 1455 Frazee Road, Suite 500
7 San Diego, California 92108
8 858.746.0862
9 bking@bernardkinglaw.com

10 For Plaintiffs/Respondent, Storix, Inc:

11 PROCOPIO
12 SEAN M. SULLIVAN, ESQ.
13 525 B Street, Suite 2200
14 San Diego, California 92101
15 619.525.3859
16 sean.sullivan@procopio.com

17 For Defendants/Cross-Defendants/Respondents,
18 David Huffman, et al.:

19 WILSON ELSER MOSKOWITZ EDELMAN & DICKER
20 DAVID J. AVENI, ESQ.
21 MICHAEL P. MCCLOSKEY, ESQ.
22 401 West A Street, Suite 1900
23 San Diego, California 92101
24 619.321.6200
25 david.aveni@wilsonelser.com
26 michael.mccloskey@wilsonelser.com
27
28

INDEX OF WITNESSES

DEFENDANT/CROSS-COMPLAINANT/APPELLANT WITNESS:
MICHELLE ORR (ST. CLAIRE)

EXAMINED BY:	PAGE
DIRECT EXAMINATION BY MR. KING	1790
CROSS-EXAMINATION BY MR. MCCLOSKEY	1814
REDIRECT EXAMINATION BY MR. KING	1851
RECROSS-EXAMINATION BY MR. MCCLOSKEY	1852

PLAINTIFFS/RESPONDENT WITNESS: ANTHONY JOHNSON

EXAMINED BY:	PAGE
REDIRECT EXAMINATION RESUMED BY MR. SULLIVAN	1854
RECROSS-EXAMINATION BY MR. KING	1892
RECROSS-EXAMINATION BY MR. MCCLOSKEY	1916

PLAINTIFFS/RESPONDENT WITNESS: BRIAN BERGMARK

EXAMINED BY:	PAGE
DIRECT EXAMINATION BY MR. SULLIVAN	1934
CROSS-EXAMINATION BY MR. KING	1951
REDIRECT EXAMINATION BY MR. SULLIVAN	1961
RECROSS-EXAMINATION BY MR. KING	1964

INDEX OF WITNESSES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28PLAINTIFFS/RESPONDENT WITNESS: BRIAN BONERT

EXAMINED BY:	PAGE
DIRECT EXAMINATION BY MR. SULLIVAN	1965
CROSS-EXAMINATION BY MR. KING	1978
CROSS-EXAMINATION BY MR. AVENI	1982
REDIRECT EXAMINATION BY MR. SULLIVAN	1983

PLAINTIFFS/RESPONDENT WITNESS: DAVID SMILJKOVICH

EXAMINED BY:	PAGE
DIRECT EXAMINATION BY MR. SULLIVAN	1984
CROSS-EXAMINATION BY MR. KING	2003

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SAN DIEGO, CALIFORNIA;

WEDNESDAY, FEBRUARY 7, 2018; 9:17 A.M.

* * *

(Whereupon the jurors enter the courtroom.)

THE COURT: Good morning, ladies and gentlemen, and thank you for your patience this morning. What we're going to do now is we're going to interrupt the testimony of Mr. Johnson in order to accommodate the next witness in terms of scheduling and convenience. This happens actually quite routinely during the -- during trials, and so this witness is going to be called by Mr. King relative to his side of the case as Cross-complainant.

And, Mr. King, if you want to call your next witness, please.

MR. KING: Cross-defendant -- Cross-complainant and Defendant Anthony Johnson calls Michelle Orr.

MICHELLE RENEE ORR,

having been first duly sworn, was examined and

testified as follows:

THE CLERK: Thank you. Please be seated at the witness stand.

THE COURT: Good morning.

THE WITNESS: Good morning.

THE CLERK: Please state your full name and

1 spell your last name for the record.

2 THE WITNESS: Michelle Renee Orr, O-r-r.

3 THE CLERK: Thank you.

4 DIRECT EXAMINATION

5 BY MR. KING:

6 Q. Good morning, Michelle. How are you?

7 A. I'm fine.

8 Q. Thank you for sticking around, and we'll
9 respect your time and make sure we get to the point
10 quickly.

11 You are Mr. Anthony Johnson's sister,
12 correct?

13 A. Yes.

14 Q. And you are familiar with the business
15 Storix?

16 A. Yes.

17 Q. In 2011, you were involve -- you were
18 involved with Storix, right?

19 A. Yes.

20 Q. Tell me what you were doing in 2011 or you
21 started doing in 2011 with Storix.

22 A. Starting with when I --

23 Q. Yep.

24 A. -- entered Storix?

25 Okay. I was -- I had just left corporate
26 America, decided to wash my hands of it, and my
27 brother called me and asked me if I would help him
28 with something. He had received, basically, a death

1 sentence and he wanted to take a step back from
2 Storix, and he needed a little bit of help.

3 He wanted to do a couple of things, but
4 primarily what he wanted to do was be able to step
5 back, deal with his medical issues, and share --
6 give shares to the gentlemen that worked for him at
7 that time, which would change the corporate
8 structure quite a bit. He wasn't quite sure how to
9 do that.

10 He knew that corporate matters are my
11 absolute expertise, and he figured that I'd be the
12 right person that he could trust to help lock them
13 down in a way that safeguards them, basically
14 bulletproof the company. That was what I was asked
15 to come and do, and I agreed to do that.

16 Q. And how was the transfer of shares to the
17 employees accomplished?

18 A. How was it accomplished?

19 Q. Yeah.

20 A. Well, I mean, there was a lot of
21 back-and-forth on what was the best way to do it.
22 But ultimately, the four gentlemen got to pick which
23 method suited them the best, because there was tax
24 implications if they did it one way, and there
25 was -- there was just a lot of pros and cons.

26 And I don't really have the full checklist,
27 and it's been a lot -- it's been several years. So
28 I can't really go into detail without having notes

1 and stuff that I didn't retain. But ultimately,
2 they were able to take on the shares the way that
3 was the best for them.

4 Q. Okay.

5 A. So --

6 Q. In other words -- and what I'm hearing you
7 saying is that it was their choice how -- how the
8 transfer took place, not Mr. Johnson's choice?

9 A. It ultimately came down to their choice,
10 yeah.

11 Q. After shares were transferred, did you
12 continue to have a role with Storix for a while?

13 A. Yeah. Ultimately, I was in a transitional
14 stage when I agreed to help Storix. I had
15 absolutely no intention of staying there. I had --
16 previous to leaving corporate America, I had been
17 involved in a near-death experience and was
18 recovering. It was a transformational experience
19 where I just basically washed my hands of corporate
20 America. I didn't really want anything to do with
21 it.

22 But then when my brother came to me needing
23 this help, I said, "Okay. Everything that you need
24 would take 12 to 18 months. I'll do it, but then
25 I'm out."

26 And my husband at the time had already --
27 we'd already, you know, given up the house and he
28 had already moved to Las Vegas. So I was in the

1 middle of getting everything together to move to
2 Las Vegas, which is where I was born and raised.

3 So I didn't really want to take it on, but
4 I did. But it was never meant to be, you know, a
5 long-term thing. It was just do what needs to be
6 done and get out.

7 Q. So what did you do? What was your --

8 A. Well, my primary goal was to see that the
9 transfer took place and that everybody was, you
10 know, happy. And the big thing was the four
11 gentlemen that were left to ultimately run Storix,
12 none of them had any business experience. I looked
13 at all of their resumes and I was, like, boy, I got
14 to teach these guys some stuff, because I wanted to
15 set them up for success and Anthony wanted to set
16 them up for success.

17 But they didn't know anything about
18 corporate laws or, you know, board meetings or how
19 to be a director. I don't really think any of them
20 had any real significant management experience.

21 So I went in with the intention of
22 safeguarding them in a way where I build all the
23 policies that need to be built just to bulletproof
24 them and, you know, from there teach them what I'm
25 doing so that they can see what needs to take place
26 and ultimately just kind of guide them.

27 So every policy that I put in place, even
28 though I didn't have any -- I didn't have any

1 authority. I was just there to bulletproof. Every
2 policy I put in place, I then put it before them as
3 the board members to vote on it. So I'd present it.
4 This is what needs to happen.

5 And it was all backed by federal and state
6 laws. I mean, it wasn't like I was writing
7 everything. I was just putting together --
8 compiling everything that they needed to be -- to
9 be, you know, within the laws, scope of the law.

10 THE COURT: And if we could go more
11 question and answer, please.

12 MR. KING: Yeah.

13 BY MR. KING:

14 Q. So you were -- you were both an employee
15 working for Storix and also on the board?

16 A. Yes.

17 Q. And then the other four gentlemen, they
18 were the other four board members?

19 A. I believe so, yes.

20 Q. Okay. And how did the other four gentlemen
21 who just became shareholders -- how did you get
22 along with them during the -- the year or so that
23 you were there working?

24 A. Initially, I think it was a really good
25 relationship. Everybody got along. You know, there
26 was a lot of joking and stuff like that. It became
27 very strained about -- kind of halfway through my
28 tenure there. David Huffman had this idea that I

1 was out to get Storix somehow, out to take away
2 something from them or I was only there to --

3 MR. MCCLOSKEY: Objection, Your Honor.
4 This calls for speculation.

5 THE COURT: Sustained.

6 BY MR. KING:

7 Q. Okay. So let me just ask you. Did you
8 have any other -- did you have any other problems or
9 disagreements -- did you run into any other issues
10 with anyone other than David Huffman?

11 A. I didn't have any personal problems with
12 any of the others. David Huffman was the only one
13 that gave me just resistance in every regard.

14 Q. Tell me what problems you ran into with
15 David Huffman.

16 A. Well, I mean, I was there, you know -- I'm
17 an expert in my field and I was there --

18 Q. What is your field?

19 A. My field is -- I am and have been, for a
20 very long time, a licensed private investigator.
21 And I'm still licensed in California, even though I
22 don't practice. I deal with corporate matters,
23 anything from mergers and acquisitions to due
24 diligence to whatever. You know, it's risk
25 management mostly. So I know how to protect a
26 company. There isn't a company out there that
27 couldn't hire me that I couldn't bulletproof. So --

28 Q. So I know you're getting to it. So I'm --

1 so my -- I just want to kind of -- just get a kind
2 of list, and then we'll kind of go into the
3 background of it.

4 Just tell me the different problems you ran
5 into with David Huffman, just generally kind of an
6 overview, table of contents.

7 A. Well, initially, it was just a shift in his
8 ideas about me. I was there to protect them. I was
9 there to help them, and I had no ill intent
10 whatsoever. I just wanted to do a good job on
11 behalf of my brother, you know, Storix.

12 And it meant something to me, because I was
13 involved in the original forming of Storix, so there
14 was some sentiment to it. I wanted it to go into
15 good hands. I wanted them trained properly. I had
16 nothing -- no ill intent whatsoever. But somewhere
17 along the lines, David just started treating me
18 different, like I was an adversary.

19 Q. What did he say to you?

20 A. A lot of times he would ask me ways -- are
21 there ways that we could give the company more
22 perks? And I would say, I can look into certain
23 perks, but there's always going to be tax
24 implications or there's going to be federal
25 guidelines.

26 And the more -- he'd ask me, you know, "Can
27 we do this? Can we do this?" I'd say, "No, we
28 can't do this and here's why."

1 What he started to question was --

2 MR. MCCLOSKEY: Objection, Your Honor. The
3 witness is narrating.

4 THE COURT: Sustained.

5 BY MR. KING:

6 Q. So Mr. Huffman asked you to do more
7 perks --

8 A. To look at it, you know, and I mean --

9 Q. What specific perks did he ask you about?

10 A. Well, the one that comes to mind is the
11 cell phones, the use of cell phones, how can they be
12 paid for or what have you and --

13 Q. How much were the employees being paid or
14 reimbursed for cell phone charges before you came
15 aboard?

16 A. I don't think they were reimbursed at all.
17 I don't know. I don't know. I can't answer that,
18 honestly.

19 Q. Okay. And so Mr. Huffman asked for cell
20 phone perks?

21 A. That was one -- that was one of the things
22 and --

23 Q. Were there any others?

24 A. Well, yeah. Let me just back up for a
25 second, because one of the things that was very
26 important that I wanted these guys to understand is
27 if you want to stay bulletproofed as a corporation,
28 there's a couple things you have to do. And one,

1 never let -- never do anything that's going to let
2 someone pierce your corporate veil.

3 MR. MCCLOSKEY: Objection, Your Honor.
4 This calls for expert testimony.

5 THE COURT: Sustained.

6 BY MR. KING:

7 Q. Okay. So I understand that. So I just
8 want to -- I just want to -- what other perks were
9 there that you can recall Mr. Huffman asking you
10 about besides cell phones?

11 A. Pay raises, ways to cut their taxes
12 somehow, you know. He was asking, you know,
13 legitimate questions, but I was constantly putting
14 up roadblocks. And at one point his conversation
15 with me was, "Every time I ask for anything, you
16 throw up a red flag. You keep throwing up red
17 flags." And I'm, like, that's what I'm supposed to.
18 It became very obvious to me that David at one
19 point -- he just stopped caring about me protecting
20 the company.

21 MR. MCCLOSKEY: Objection, Your Honor. The
22 witness is narrating.

23 THE COURT: Sustained.

24 BY MR. KING:

25 Q. Why -- why did you start to -- when did you
26 start to get concerns about David Huffman, you know,
27 having something against you?

28 A. Just the overall way he started treating

1 me. No good mornings anymore and conversations were
2 very hush-hush between the guys, and I was just very
3 ostracized.

4 Q. Did he do anything to --

5 MR. MCCLOSKEY: Objection, Your Honor.
6 Move to strike. That response was nonresponsive.
7 He asked when.

8 THE WITNESS: I couldn't give a date or a
9 time.

10 THE COURT: It's granted. Excuse me. The
11 last portion is granted.

12 BY MR. KING:

13 Q. Okay. So again, just generally, when you
14 started off at Storix, about how long before you
15 realized Mr. Huffman had -- had some animosity
16 toward you?

17 A. Maybe about two or three months in to my
18 tenure there.

19 Q. And -- and what kind of things would
20 Mr. Huffman say to you that led you to believe that?

21 A. Well, challenging, every time I threw up a
22 red flag, what my motive was in throwing up a red
23 flag.

24 Q. And did Mr. Huffman accuse you of anything
25 in particular?

26 A. Yeah. There was one time in particular
27 that I had a concern about something, and I can't
28 remember specifically what it was. I think it was

1 about how I was managing the 401(k), because that's
2 not -- that wasn't an expertise of mine
3 specifically.

4 And I had sent an e-mail to a former
5 colleague. And in the e-mail, I was very vague
6 because I didn't want to -- I didn't want to alert
7 anybody that Storix was out of compliance with
8 something. What I wanted to do was a little fact
9 digging.

10 Well, he had been monitoring my e-mail
11 without my knowledge. Fine. I didn't have a
12 problem with that. But he had taken the e-mail that
13 I had written to somebody and he'd disseminated it
14 to the other guys and started this whole, like,
15 "What is she up to" kind of thing.

16 Q. Without you knowing?

17 A. Without me knowing. And when I came in to
18 work one day, no one would say a word to me and I
19 had no idea why. And finally, he just confronted me
20 with it, that, you know, "What is this you're
21 doing?"

22 And I said, "Well, you don't want me to
23 bring you a red flag until I even know if it's a red
24 flag." So I was using this e-mail -- this former
25 partner of mine just to say, Hey, is there any
26 compliance issues with -- whatever this area was. I
27 can't really remember what it was. But I was -- it
28 was written in a way where I wasn't telling the

1 whole story because it no one's business outside of
2 Storix. I was protecting the company.

3 Well, David --

4 MR. MCCLOSKEY: Objection, Your Honor. The
5 witness is narrating.

6 THE COURT: Sustained.

7 THE WITNESS: Where do I go from there?

8 BY MR. KING:

9 Q. After Mr. Huffman --

10 A. Confronted me with it?

11 Q. If the judge sustains the objection, I'll
12 ask another question, and then you respond to the
13 question.

14 A. Okay.

15 Q. So after Mr. Huffman -- after you realized
16 Mr. Huffman was monitoring your e-mails, how did you
17 discover that he had disseminated this e-mail to all
18 the employees?

19 A. Because I went in and I just said, "David,
20 what is -- what's the problem? What's going on
21 here?" I just --

22 Q. How did you know there was a problem?

23 A. Because no one would speak to me and they
24 were hush-hush, and it was just -- it was weird. It
25 was weird. There was something in the air. It was
26 just like, What is going on here? I --

27 Q. Was this --

28 A. -- couldn't even --

1 Q. Was this --

2 A. -- talk to him.

3 Q. Was this over the course of a week or one
4 day? Just, like, one day, it changed and --

5 A. In just one day it changed.

6 Q. And how long previous to that had you sent
7 that e-mail?

8 A. Oh, I couldn't tell you. Probably a week
9 before, maybe a few nights before.

10 Q. And so you confronted Mr. Huffman about it?

11 A. Well, I confronted him and said, "What
12 is -- what's going on here?" You know, I mean, I
13 wanted a good relationship with everybody. I wasn't
14 there with any ill intent. I was there to do a good
15 job. If they were upset with me, I wanted to know
16 why.

17 Q. Did you confront him privately or in front
18 of others?

19 A. Privately.

20 Q. What did he say to you privately?

21 A. He showed me the e-mail and said that, you
22 know, We have a problem with this.

23 And that's when I talked to him about it,
24 and I said, "Well, you know, read it now through my
25 eyes. Did you want me to share the whole thing or
26 do you want me to take advantage of this opportunity
27 to do a little digging before I bring a problem to
28 you that's not even a problem yet?" And it turned

1 out it wasn't a problem, but I was concerned that it
2 could have been.

3 Well, he issued me a very genuine apology.
4 He did it in an e-mail, and he did it in front of
5 all of the other gentlemen. And I thought, wow,
6 that's really stand-up. That's a really stand-up
7 thing to do. He issued an apology, and it
8 specifically said in the apology, you know --

9 MR. MCCLOSKEY: Objection, Your Honor. The
10 witness is narrating.

11 THE COURT: Sustained.

12 BY MR. KING:

13 Q. After you confronted him about it, you got
14 an apology. Tell me about that.

15 A. He issued an e-mail apology to me for --
16 for thinking that I was up to something when, in
17 fact, that I was really doing what was best for
18 Storix, and I appreciated that e-mail. I thought
19 that was a really stand-up thing to do. But it
20 became very obvious very soon that when everybody
21 else had, you know, moved on from it, it wasn't a
22 genuine e-mail at all, because his treatment of
23 me was --

24 MR. MCCLOSKEY: Objection, Your Honor.
25 The --

26 MR. KING: Wait, wait, wait.

27 MR. MCCLOSKEY: -- witness is narrating.

28 THE COURT: Sustained.

1 BY MR. KING:

2 Q. How was it obvious to you?

3 A. Because the minute everybody else's back
4 was turned, his treatment of me was still the eye
5 rolling and the huffing and the (descriptive sound)
6 and doing this and walking away when I -- you know,
7 the treatment never changed.

8 Q. Was it -- was that the way he treated you
9 before the apology?

10 A. It had gotten a little bit worse with that,
11 so the apology --

12 Q. When you say --

13 A. The apology --

14 Q. When you say --

15 A. I'm sorry.

16 Q. When you say treatment, you described he
17 would roll his eyes at you?

18 A. Oh, yeah.

19 Q. He would sigh at you dismissively?

20 A. Uh-huh. Yes.

21 Q. Would he interrupt you?

22 A. I don't know that he would necessarily do
23 that, no.

24 Q. Okay. At this point in time, is it fair to
25 say you didn't trust Mr. Huffman?

26 MR. MCCLOSKEY: Objection, Your Honor.
27 That's leading.

28 THE COURT: Sustained.

1 BY MR. KING:

2 Q. What was your opinion about Mr. Huffman
3 around this time?

4 A. Being a private investigator for as long as
5 I have and dealing with --

6 MR. MCCLOSKEY: Objection, Your Honor. The
7 witness is narrating. It's nonresponsive.

8 THE WITNESS: My opinion --

9 THE COURT: Overruled at this time, at this
10 time.

11 THE WITNESS: I consider myself a little
12 bit of an expert in reading people. And it's become
13 very obvious to me when somebody is absolutely
14 untrusting -- no matter what the evidence says, they
15 absolutely are untrusting -- it's usually them
16 that's not trustworthy. So I was suspect of him,
17 yes, because he had no reason to be that way with
18 me. He had no reason to be.

19 BY MR. KING:

20 Q. Now, your brother is not involved with
21 Storix at this time?

22 A. Not at all.

23 Q. He -- do you know what he was doing?

24 A. He was dealing with the fact that he had
25 just been told he only had a few years to live. He
26 was doing his soul-searching and medical evaluations
27 and everything that comes with that.

28 Q. And you just watched him give his -- part

1 of his company to at least one person who you
2 described as untrustworthy? Fair statement?

3 A. I didn't initially have that opinion, no.

4 Q. Okay. After you formed that opinion, did
5 you advise your brother of this?

6 A. I tried to. He wouldn't -- he wouldn't
7 hear of any of it.

8 Q. What was his response?

9 MR. MCCLOSKEY: Objection. That's hearsay.

10 THE COURT: Sustained.

11 BY MR. KING:

12 Q. After you advised your brother of your
13 thoughts on -- experiences with Mr. Huffman, what
14 changed?

15 A. What changed where?

16 Q. Meaning --

17 A. With my brother?

18 Q. -- what did your brother do?

19 A. My brother told me right from the start
20 that he needed --

21 MR. MCCLOSKEY: Objection, Your Honor.
22 That calls for hearsay.

23 THE COURT: Sustained.

24 THE WITNESS: My brother did nothing.

25 THE COURT: No. Ms. Orr, it's not like
26 normal conversation. It's different. So we go
27 question and answer.

28 THE WITNESS: Yes, sir.

1 THE COURT: So next question.

2 BY MR. KING:

3 Q. What, if anything, did your brother do
4 after you told your brother about your concerns
5 regarding Mr. Huffman?

6 A. He did nothing.

7 Q. Were you able to form an opinion about what
8 your brother thought of Mr. Huffman at the time?

9 MR. MCCLOSKEY: Objection, Your Honor.
10 That's speculative.

11 THE COURT: Sustained.

12 BY MR. KING:

13 Q. After that incident where Mr. Huffman was
14 monitoring your e-mail, anything else happen between
15 you and Mr. Huffman that -- that caused you concern?

16 A. I guess the only concern that I had was
17 that there were -- what I would do as part of
18 training them and safeguarding them is I would find
19 areas of weakness within the company, and then I
20 would bulletproof it, whether it's, you know, the HR
21 policy was way antiquated and there was, you know --

22 Q. Okay.

23 A. -- updates.

24 Q. So --

25 A. So one of the things was the cell phone
26 policy, because it kept coming up, can we get
27 reimbursements for cell phones and things like that.

28 And I kept telling them that, you know,

1 what you don't want to do is you don't want to put
2 yourself in a position where somebody can pierce
3 your corporate veil. So you don't want to use your
4 cell phone -- your personal cell phone for
5 business -- there's -- there's legalities there you
6 got to be careful of.

7 Q. So how did that lead to a dispute between
8 you and Mr. Huffman?

9 A. I basically drafted up a cell phone policy
10 that incorporated what you can and can't get away
11 with as far as reimbursement, what's taxable, what
12 isn't. I put it in plain English and I presented it
13 to the board. And my expectation was that they
14 would vote it in, because it was a good policy, but
15 they didn't and they decided to do their cell phone
16 reimbursements anyways.

17 Q. Are you familiar with a gentleman named
18 David Smiljkovich?

19 A. Yes, I am.

20 Q. Who is David Smiljkovich?

21 A. David Smiljkovich -- originally, when the
22 gentlemen were going to be taking over the shares of
23 Storix, I had told them a million times, "Do your
24 due diligence. Do your due diligence. If you're
25 going to do this, you have to research everything
26 and make sure you know what you're getting into."

27 David approached me and he said, you know,
28 "We want to make sure that we're not inheriting a

1 white elephant." And he said, "And I found somebody
2 to come in as an independent third party."

3 Q. When you say "David," you mean David
4 Huffman?

5 A. Yeah. I'm sorry. David Huffman. And I
6 was like, "Good for you." That's what I wanted them
7 to do. I wanted them to take initiative of making
8 sure they're -- they know what they're getting into.

9 So he said that, you know, he was going to
10 bring in this third -- independent third-party
11 person to look over the books. I was like,
12 "Perfect. That's awesome."

13 So we made an appointment for him to come
14 in and I was really, really surprised that this
15 CFO/CEO-level individual auditor that he claimed to
16 be never even asked me for P&L. Never even asked --

17 Q. When you say "P&L," you mean --

18 A. Profit and loss statements. I would think
19 if he's there to -- to look at the books, you're
20 going to look at the books.

21 Q. What did he --

22 A. He never asked me to look at the books.

23 Q. What did he ask you about?

24 A. He asked me about what's going to happen
25 with Anthony's shares when Anthony passes away.

26 Q. This is Mr. Smiljkovich?

27 A. Mr. Smiljkovich. I'm like --

28 Q. How long was he -- how long was he with the

1 company at this point?

2 A. It was the first day that he came in to
3 audit.

4 Q. First day he comes in?

5 A. Yeah. The first day he comes in, he's
6 asking me about my dying brother's -- you know, what
7 he's going to do with his shares.

8 Q. What specifically did he ask?

9 A. That was one -- that was the very first red
10 flag that I got is -- first of all, if you're here
11 to audit, you're here to audit the present, not the
12 future, not the potential future. You're going to
13 audit today, what do you want to see today.

14 And I actually had to remind him, "Are we
15 going to audit the books? Are we here to actually
16 audit the company or are we here to talk about
17 what's going to happen with my brother's will?"

18 It made no sense to me.

19 Q. You mentioned that Mr. Huffman described
20 Mr. Smiljkovich as some independent person?

21 A. Yeah, yeah.

22 Q. What -- what, if anything, did he tell you
23 about his relationship with Mr. Smiljkovich before
24 he was hired?

25 A. I wouldn't go so far as to say that David
26 Huffman lied to me, but he certainly was misleading
27 in the sense that he said, "I've found this
28 independent third party," later to find out this is

1 a good friend of theirs, him and his wife or
2 whatever.

3 And I just thought that was really shady,
4 because it wasn't -- it wasn't necessary. Just tell
5 me, "Hey, I got a friend who can come in and audit
6 the books." Okay. It wasn't necessary to
7 grandstand this whole imaginary official third party
8 thing. Just tell me and all right.

9 Q. So Mr. Smiljkovich comes on. First day, he
10 asks what's going to happen to Anthony's shares
11 after he dies.

12 And then at some point later, you found out
13 that he was not -- he was actually Mr. Huffman's
14 close friend?

15 A. Yes.

16 Q. How long after Mr. Smiljkovich came aboard
17 did you find that out?

18 A. Well, when he came aboard to do the audit,
19 he was only there for a day or two. And it was -- I
20 don't know -- maybe the following week or something
21 that I found out that they were actually friends.

22 Q. Okay.

23 A. I can't remember.

24 Q. When you found that out -- well, let me --
25 after the first day or the day or two that
26 Mr. Smiljkovich was there to do the audit, that --
27 so the day that he was there to do the audit, he
28 never asked for the profit and loss statement?

1 A. He did once I pointed out, "What are you
2 here for? Are you here to audit or are you here to
3 talk about my dying brother?"

4 Q. Okay.

5 A. That was silly.

6 Q. After that day, did you bring those
7 concerns to your brother?

8 A. I tried to.

9 Q. And after you spoke with your brother, what
10 did -- what did you do?

11 A. I mean, Storix was -- I was just there to
12 do my job. My job was to help them lock down
13 everything policy-wise and bulletproof them and get
14 them trained and ready to run with the company. All
15 I can do is raise red flags and go from there.

16 Q. Did you tell your brother that you
17 shouldn't trust these guys?

18 MR. MCCLOSKEY: Objection, Your Honor.
19 That's leading.

20 THE COURT: Sustained.

21 BY MR. KING:

22 Q. What, if anything, did you tell your
23 brother about trusting these -- the individuals that
24 became shareholders of Storix?

25 A. Initially, trust wasn't an issue. It
26 wasn't a trust matter. I was concerned about their
27 lack of experience, but felt like I could get them
28 where they needed to be. So trust was never -- it

1 wasn't an issue for Anthony. It wasn't an issue for
2 me.

3 Q. Anything else happened -- I mean -- strike
4 that.

5 After Mr. Smiljkovich came in for the
6 audit, how long after that did you stay with the --
7 stay with Storix?

8 A. I think I was there short of a year.

9 Q. Okay. So not a year after Mr. Smiljkovich
10 came aboard, but a year total?

11 A. I can't say for sure exactly how long I was
12 there.

13 Q. Okay.

14 A. I want to say about a year.

15 Q. About a year in total? Fair statement?

16 A. Yes.

17 Q. Other than what we discussed, is there
18 anything else that caused you to question the
19 trustworthiness of four defendants and
20 Mr. Smiljkovich?

21 A. I think overall it was just the fact that
22 David had so much -- so much anger and resentment
23 towards me and my being there that made me wonder
24 what he -- what are you really up to? What are you
25 up to?

26 So yeah, I was constantly questioning in my
27 head, but I had no outlet for it. It's kind of
28 like, you know what? You know, it is what it is.

1 Anthony wanted them to have the shares.

2 MR. SULLIVAN: Objection, Your Honor.

3 Narrating.

4 THE COURT: Sustained.

5 BY MR. KING:

6 Q. Was there anything else that occurred to
7 you?

8 MR. MCCLOSKEY: Objection, Your Honor.

9 That calls for a narrative.

10 THE COURT: Overruled.

11 THE WITNESS: Nothing is immediately coming
12 to mind at this moment.

13 BY MR. KING:

14 Q. And you brought your concerns about
15 trustworthiness of the defendants to your brother's
16 attention?

17 A. I did at one point, yes. I attempted to.

18 Q. And your brother told you he had complete
19 trust in --

20 MR. MCCLOSKEY: Objection, Your Honor.

21 That calls for a hearsay response.

22 THE COURT: Sustained.

23 MR. KING: No further questions.

24 THE COURT: Mr. McCloskey.

25 MR. MCCLOSKEY: Thank you, Your Honor.

26 CROSS-EXAMINATION

27 BY MR. MCCLOSKEY:

28 Q. Ms. St. Claire, my name is Mike McCloskey.

1 I represent the director/management defendants.

2 It's the first time we've had an
3 opportunity to exchange, correct?

4 A. I believe so.

5 THE COURT: And she goes by Ms. Orr.

6 BY MR. MCCLOSKEY:

7 Q. My apologies. Oh, well, let's talk about
8 that.

9 Why do you go by Ms. Orr?

10 A. Because that's my name.

11 Q. Wait a minute. When we deposed you, it was
12 St. Claire, correct?

13 A. Correct.

14 Q. Why was it St. Claire?

15 A. My last name was St. Claire at the time.
16 I've since remarried. My name is Orr now.

17 Q. Well, your maiden name is Johnson?

18 A. Yes.

19 Q. Where does St. Claire come from?

20 A. St. Claire was a family name that I adopted
21 about 25 years ago.

22 Q. You said it was a married name. Who was
23 your husband?

24 MR. KING: Objection. Lacks foundation.

25 MR. MCCLOSKEY: She doesn't know who her
26 husband is?

27 MR. KING: That assumes facts not in
28 evidence.

1 THE WITNESS: I'm happy to answer it.

2 THE COURT: Pardon?

3 THE WITNESS: I'm happy to answer it.

4 THE COURT: Based on that objection,
5 overruled.

6 So you may.

7 THE WITNESS: Sir, I was married to Henry
8 Schultz.

9 BY MR. MCCLOSKEY:

10 Q. Schultz, not St. Claire?

11 A. Right.

12 Q. Okay. So we've got Johnson. We've got
13 Schultz. We've got St. Claire and we're got Orr.
14 So let me get this straight. Maiden name Johnson.
15 Married name, first Schultz?

16 A. I didn't -- I never took the last name
17 Schultz.

18 Q. Where is St. Claire --

19 A. I stayed --

20 Q. Where is St. Claire from?

21 A. I've already answered that, sir.

22 Q. I'm sorry. Where did St. Claire come from?

23 A. St. Claire was an old family name from
24 genealogical books that I adopted and had legally
25 changed 25 years ago. I've been St. Claire for
26 25 years. I married Henry Schultz. Henry Schultz
27 passed away.

28 Q. And now you're --

1 A. And I've remarried to Ronald Orr.

2 Q. And you decided to adopt St. Claire because
3 you thought it sounded distinguished; am I right?

4 A. I don't --

5 MR. KING: Objection. Relevance.

6 THE COURT: Sustained.

7 BY MR. MCCLOSKEY:

8 Q. We'll talk about some other names you may
9 have gone by in just a minute.

10 But you said on direct examination, if my
11 memory serves me correctly, that you're an expert in
12 reading people. Did I hear you right?

13 A. I like to think -- I like to think of
14 myself as pretty darn good at it.

15 Q. Now, in reading people, do you think your
16 brother is difficult to deal with?

17 A. Well, every brother is.

18 Q. He's one of them; is that right?

19 A. I don't know that I've had any trouble
20 dealing with him.

21 Q. Never had any trouble dealing with
22 Mr. Johnson?

23 A. Oh, sure, when we were kids, the whole
24 tattletale things, you know. But I don't have
25 trouble with Anthony.

26 Q. How about professionally?

27 A. Professionally? We don't see eye to eye on
28 everything, but we don't -- it's not -- it's not

1 heated debates or fighting or anything like that.

2 Q. Never got in your face?

3 A. Got in my -- has he ever got in my face?

4 MR. KING: Objection. Argumentative.

5 MR. MCCLOSKEY: Yes.

6 THE COURT: Sustained.

7 BY MR. MCCLOSKEY:

8 Q. Did he ever disagree with you?

9 A. Sure.

10 Q. Criticize you?

11 A. No, never criticized me.

12 Q. Call you ungrateful?

13 A. Not to my face.

14 Q. Call you greedy?

15 A. He's never called me greedy.

16 Q. From the tenor of your testimony, it seems
17 to be clear that you don't have much good to say
18 about Mr. Huffman. Is that a fair statement?

19 A. No, that's not a fair statement.

20 Q. You don't particularly care for
21 Mr. Huffman, do you?

22 MR. KING: Objection. Argumentative.

23 THE COURT: Overruled.

24 THE WITNESS: My ideas about Mr. Huffman
25 have changed over time.

26 BY MR. MCCLOSKEY:

27 Q. Talking about today's, Ms. -- Mrs. Orr.

28 A. My opinion about Mr. Huffman today is

1 actually quite different than it was a year ago,
2 so --

3 Q. He's honest, isn't he?

4 A. Honest? I don't know. I can't answer
5 that.

6 Q. You'd believe him under oath, wouldn't you?

7 A. Not necessarily, no.

8 Q. Now, you testified in a deposition in the
9 copyright case, right?

10 A. I may have.

11 Q. And Mr. Sullivan here, he was the
12 individual that deposed you, correct?

13 A. I believe so.

14 Q. And you testified in that copyright case
15 that you wouldn't at all be upset if Mr. Huffman
16 lost in a fiery inferno. That's what you said under
17 oath; isn't that right?

18 A. I believe I did say that, yes.

19 Q. Has that changed since the copyright case?

20 A. Yeah, I believe so.

21 Q. You said you just left corporate America in
22 2011; is that right?

23 A. End of 2010, beginning of 2011.

24 Q. And you said that corporate matters were
25 your absolute experience. Did I hear you correctly?

26 A. Pretty much, sure.

27 Q. So let's talk about corporate America
28 experience. You were working at Eastridge, correct?

1 A. Yes.

2 Q. And that's after your psychology degree
3 from National University in 2001, right?

4 A. Yes.

5 Q. And after your master's degree in public
6 administration from the same university in 2003 --

7 A. Yes.

8 Q. -- am I right?

9 Okay. So you were working at Eastridge,
10 which is, what, a temporary agency, if my memory
11 serves me correctly? Is that right?

12 A. I worked for Epilica, which is the
13 corporate -- the corporate structure -- Eastridge
14 was one of the companies underneath it.

15 Q. I see. Okay. And you managed their loss
16 mitigation?

17 A. Risk management and loss mitigation.

18 Q. And credits and collections, right?

19 A. Yes.

20 Q. Ever sit on the board?

21 A. No.

22 Q. Were you a C-level employee, CFO, CEO --

23 A. No.

24 Q. -- CTO, C something O?

25 A. No.

26 Q. But you got somehow involved in their
27 corporate matters; is that it?

28 A. I was a licensed private investigator and I

1 was hired by many corporations to do whatever they
2 needed me to do.

3 Q. And licensed private investigator. You
4 ever work for the CIA?

5 MR. KING: Objection. Relevance.

6 THE COURT: Sustained.

7 BY MR. MCCLOSKEY:

8 Q. Well, what did you do with your licensed
9 private investigator license?

10 A. I mostly did corporate-type investigations,
11 where there were maybe internal problems going on or
12 there were mergers and acquisitions that needed due
13 diligence or somebody was out of compliance and
14 needed to get departments, you know, built and
15 restructured.

16 Q. You never wrote a cell phone policy before,
17 have you?

18 A. I don't believe I had, no.

19 Q. You never wrote a mergers and acquisitions
20 agreement, had you?

21 A. Yes, I have.

22 Q. You've written an M&A agreement?

23 A. Yes.

24 Q. For who?

25 A. For Eastridge.

26 Q. For Eastridge. And to whom did Eastridge
27 merge with?

28 A. The acquisition never took place.

1 Q. You just wrote some? Is that what
2 happened?

3 A. Yes.

4 Q. Risk management, what did that have to do
5 with developing corporate policy?

6 A. Risk management has everything to do with
7 corporate policy. If you are good at knowing where
8 the risks and where things are going to hit you, you
9 write the policies to prevent anything from
10 happening.

11 Q. Tell me the policies you wrote.

12 A. That would take all day.

13 Q. Just give me the top one or two.

14 A. Human Resources, credit and collections,
15 due diligence, investigations. Gosh, I need some
16 time to think about that. That's -- they're
17 endless.

18 Q. Okay. So you wrote policies, but you never
19 wrote a cell phone policy; is that right?

20 A. No. That was a lower level policy that
21 would have been written by a specific department.

22 Q. You've never put together an agenda for a
23 board of directors meeting, have you?

24 A. Put together an agenda?

25 Q. Yes.

26 A. No.

27 Q. Never drafted minutes for a board of
28 directors meeting, have you?

1 A. Drafted minutes as a secretary, no.

2 Q. As a secretary. You're a secretary?

3 A. Well, that's usually something that the
4 secretary does.

5 Q. For what organization were you secretary?

6 A. I never said I --

7 MR. KING: Objection.

8 THE WITNESS: -- was a secretary.

9 MR. KING: Assumes facts.

10 THE COURT: Sustained.

11 BY MR. MCCLOSKEY:

12 Q. Well, wait a minute. You just said as a
13 secretary, that's what you do. What are you talking
14 about?

15 MR. KING: Objection. Assumes facts.

16 THE COURT: Sustained.

17 BY MR. MCCLOSKEY:

18 Q. Secretary. Tell me about the secretary
19 position.

20 A. I never said I was a secretary.

21 MR. KING: Objection. Assumes facts.

22 Argumentative.

23 BY MR. MCCLOSKEY:

24 Q. Let me move on.

25 THE COURT: Sustained.

26 BY MR. MCCLOSKEY:

27 Q. So you never drafted board minutes, right?
28 Right?

1 A. Correct.

2 Q. Never drafted an agenda for a board of
3 directors meeting, right?

4 A. Right.

5 Q. You've never drafted a shareholder
6 agreement, have you?

7 A. I may have.

8 Q. You may have?

9 A. I may have.

10 Q. You just don't remember it right now?

11 A. You're asking me to spell out everything
12 I've done over 20 years. I mean --

13 Q. Ma'am, you came in here and you said
14 corporate matters were your absolute expertise, and
15 I'm challenging it. So tell me. Shareholder
16 agreement, have you drafted one?

17 A. I believe I have.

18 Q. You just can't remember it?

19 A. Not the details, no.

20 Q. Have you ever drafted a buy-sell agreement
21 amongst shareholders?

22 A. Amongst shareholders, no, I have not.

23 Q. Do you know that that's an issue in this
24 case?

25 A. Yes.

26 Q. And you know that's an issue in this case
27 because you've been working with your brother
28 assembling the presentation of your testimony today;

1 isn't that right?

2 MR. KING: Objection. Argumentative.
3 Beyond the scope.

4 THE COURT: Overruled.

5 BY MR. MCCLOSKEY:

6 Q. Isn't that right?

7 A. Say the question again.

8 MR. MCCLOSKEY: Would you re-read the
9 question?

10 THE COURT: Yes.

11 (Record read.)

12 THE WITNESS: No.

13 BY MR. MCCLOSKEY:

14 Q. Now, you testified on direct that you know
15 a lot about corporate laws, directors, and
16 management experience.

17 Do you remember testifying to that?

18 A. Yes.

19 Q. Okay. How much of that did you do at
20 Epilica?

21 A. I did a lot of that at Epilica under --

22 Q. Director --

23 A. -- due diligence and M&A research.

24 Q. You ever a director?

25 MR. KING: Objection. Asked and answered.

26 THE COURT: Overruled.

27 THE WITNESS: Have I ever directed?

28

1 BY MR. MCCLOSKEY:

2 Q. You were never a director at --

3 A. I was a director. I was a director of loss
4 mitigation. I just wasn't on the board.

5 Q. Ah, I'm sorry. So let me be clear. You
6 were never a member of the board of directors at
7 Epillica?

8 A. No.

9 Q. As a matter of fact, until this case -- I'm
10 sorry. Until Storix, you've never been a member of
11 a board of directors ever; am I right?

12 A. No.

13 Q. Am I right?

14 A. That's something I've avoided.

15 Q. I don't know the answer to my question. Do
16 you understand my question, Mrs. Orr?

17 A. Say it to me again.

18 Q. I'm sorry. Before Storix, you -- it's
19 correct that you've never been a member of a board
20 of directors?

21 A. Correct.

22 Q. Before Storix, you've never been a
23 shareholder; am I right?

24 A. Correct.

25 Q. So when you say a director, you're talking
26 about a director of what?

27 A. Loss mitigation and internal affairs and
28 risk management. I held a director-level position.

1 The managers reported to me.

2 Q. Okay. Director-level position. You were
3 an employee?

4 A. Yes.

5 Q. Now, you testified that Mr. Huffman's
6 representations to you that would indicate to you he
7 didn't trust you caused you to believe he was
8 untrustworthy; am I right?

9 A. I don't know that that caused me to believe
10 it, but that certainly gives you pause when somebody
11 refuses to trust you when there's no reason not to.

12 Q. All right. Let's talk about a reason.

13 A. Okay.

14 Q. Now, you left -- wait a minute. You
15 testified on direct that you were at Storix for a
16 year?

17 A. No, sir. I testified that I didn't
18 remember exactly how long I was there.

19 Q. I'm sorry. I thought I heard "a year" come
20 out of your mouth. Am I wrong?

21 A. You are wrong. I said it was probably
22 about a year.

23 Q. Okay. Well, tell me. How long was it?

24 A. You need me to answer the same question
25 again? I'll say it again. It was probably about a
26 year.

27 Q. Okay. How many months?

28 MR. KING: Objection. Argumentative.

1 THE COURT: Overruled.

2 THE WITNESS: I can't answer if I don't
3 remember. This was several years ago.

4 BY MR. MCCLOSKEY:

5 Q. If you don't recall, ma'am, I'm fine with
6 that. Just tell me that. You don't recall?

7 A. I've already said that several times.

8 Q. It's a fact, isn't it, that you were there
9 for only nine months?

10 A. I can't say if it's a fact.

11 Q. Okay. Well, tell me when you started.

12 A. Maybe -- maybe July.

13 Q. July what?

14 A. 2011. I don't --

15 Q. You started there in September of 2011;
16 isn't that a fact?

17 A. Well, if you already know, quit harassing
18 me about it. I've told you I don't remember the
19 exact dates.

20 Q. Okay. And you left in June of 2012, right?

21 A. About that.

22 Q. Okay. So if you add those up, it's about
23 nine months, right?

24 A. Okay.

25 Q. Now, when you left, you left under the
26 provisions of an exit agreement.

27 Do you remember that?

28 A. Yes.

1 Q. All right. You signed an exit agreement on
2 the 9th of May 2012.

3 Do you recall that?

4 A. Yes.

5 Q. And in that exit agreement -- well, let me
6 ask you this. Wait a minute. When you were there
7 for the nine months, how much money were you making?

8 A. Salary -- I don't remember exactly -- a
9 hundred thousand or 120,000, one of the two.

10 Q. Okay. So you were making \$120,000. Does
11 that refresh your recollection?

12 A. Yeah.

13 Q. Why \$120,000?

14 MR. KING: Objection. Calls for
15 speculation.

16 THE COURT: Sustained.

17 BY MR. MCCLOSKEY:

18 Q. Do you know why you were making \$120,000 as
19 opposed to, let's say, 50- that Mr. Smiljkovich was
20 starting to make?

21 A. Because that's the salary I was accustomed
22 to making.

23 Q. Okay. And isn't it a fact that that salary
24 was set by your brother?

25 A. That salary was given to me in place of his
26 salary.

27 Q. What was his salary?

28 A. My coming aboard didn't cost Storix

1 anything.

2 Q. What was his salary?

3 A. I don't remember what his salary was, but
4 he took that cut in order to give it to me.

5 Q. Okay. So he had 170,000 -- \$175,000
6 salary. Did you know that?

7 A. I know he had a significant salary. He
8 owned the company. Why wouldn't he? What's your
9 salary?

10 MR. MCCLOSKEY: Your Honor -- all right.

11 Okay. Anyway, let me move on.

12 BY MR. MCCLOSKEY:

13 Q. So he took a cut to \$50,000, right?

14 A. I believe it was something in that range.

15 Q. And gave the rest to his sister?

16 A. Yes, on behalf of Storix so that it
17 wouldn't stress Storix out.

18 Q. So you're \$125,000 for nine months?

19 A. 120- --

20 Q. All right.

21 A. -- I think it was.

22 Q. Your last job, what did you make?

23 A. One hundred plus about 20- in perks.

24 Q. So you made 120-, \$125,000 for nine months.
25 And then you left in, effectively, June of 2012,
26 right?

27 A. Okay.

28 MR. KING: Objection. Lacks foundation.

1 Assumes facts.

2 MR. MCCLOSKEY: She doesn't know when she
3 left?

4 THE COURT: Overruled.

5 THE WITNESS: I don't remember when I left.

6 BY MR. MCCLOSKEY:

7 Q. Okay. And you don't remember when you got
8 there and you don't remember how long you were
9 there; is that it?

10 A. You can ask me that ten different ways ten
11 different times. I'm going to give you the same
12 answer.

13 Q. Very well. Now, when you left, you got a
14 \$30,000 severance payment, didn't you?

15 A. Yes.

16 Q. So all in, if you annualize it, you made
17 \$150,000.

18 A. Okay.

19 Q. You would agree with that, right?

20 A. I guess so, sure.

21 Q. You left in June of 2012. I think we
22 established that. Is that fair?

23 A. That's fair.

24 Q. Okay. Now, when you left, I think you went
25 back to Las Vegas. Is that what happened?

26 A. Yes.

27 Q. And you immediately applied for
28 unemployment, didn't you?

1 A. Yes.

2 Q. And you told the EDD, the Employment
3 Development Department of the State of California,
4 that you left because the company size and revenue
5 could no longer justify a position of my caliber and
6 experience.

7 Do you remember saying that?

8 A. Yes.

9 Q. And you, in fact, collected unemployment,
10 right?

11 A. Briefly.

12 Q. Well, briefly? How long did you collect
13 unemployment for?

14 A. I don't -- I don't know. Until I -- until
15 I found a job.

16 Q. How long did it take to find a job?

17 A. I don't remember.

18 Q. It took you longer than six months, didn't
19 it?

20 A. It may have.

21 Q. Because you went back and you renewed your
22 unemployment claim with the State of California
23 six months later, didn't you?

24 A. I don't remember.

25 Q. You don't remember?

26 A. I do not remember.

27 Q. And that -- and that -- in that statement,
28 you said, The position ended, as the company could

1 not afford my position anymore.

2 Do you remember telling the EDD that?

3 A. Yes.

4 Q. But you just -- let me have you -- excuse
5 me. Let me have you turn to Exhibit 75. It's in
6 those books right behind you.

7 MR. KING: Mike, she's got a bum knee. You
8 might --

9 MR. MCCLOSKEY: I'm sorry. I apologize.
10 Let me get it for you.

11 May I approach, Your Honor?

12 THE COURT: Yes.

13 (Exhibit 75 referenced.)

14 BY MR. MCCLOSKEY:

15 Q. We're going to look at 74 as well, so I'll
16 leave this in front of you. Let me pull it out for
17 you. Let me go to Exhibit 75 first.

18 MR. MCCLOSKEY: Let the record reflect that
19 I have now handed to Mrs. Orr what has previously
20 been marked as Exhibit 75.

21 BY MR. MCCLOSKEY:

22 Q. And ask you, Mrs. Orr, what is that?

23 A. That was a LinkedIn recommendation. David
24 and I talked about it. He said he wouldn't -- he
25 wouldn't do anything to smear me if I left, and I
26 sent him a LinkedIn recommendation. I just said,
27 Make me look good. The sooner I get a new gig, the
28 sooner I'm out of your hair.

1 It was obvious to me he wanted me out. And
2 he never gave me the recommendation, so --

3 (Exhibit 74 was referenced.)

4 BY MR. MCCLOSKEY:

5 Q. You recognize this document?

6 A. What are we looking at?

7 Q. Seventy-five.

8 A. Seventy-five. That was what we just talked
9 about.

10 Q. Okay.

11 MR. MCCLOSKEY: Let me move its admission.

12 MR. KING: Objection. Relevance. Hearsay.

13 MR. MCCLOSKEY: Bias. Credibility.

14 THE WITNESS: Are we still talking about
15 the recommendation?

16 THE COURT: Sustained.

17 BY MR. MCCLOSKEY:

18 Q. Okay. You asked Mr. Huffman to address
19 your tenure issue, didn't you?

20 A. That was more me asking him to mention that
21 I was contracted for one year.

22 Q. But you weren't contracted for a year, were
23 you?

24 A. Actually, I was, under a verbal contract
25 for 18 months.

26 Q. Oh, wait a minute. We haven't heard about
27 a verbal contract. What's that?

28 A. Yeah. When Anthony first started to talk

1 me into coming out and I looked over everything that
2 needed to happen, I told him that it would -- for me
3 to start and finish and get everything -- all the
4 objectives met would be anywhere from 12 to
5 18 months, that I would try to wrap it up as quick
6 as I could. I didn't think it would really take
7 18 months, but the agreement was that I would be
8 there between the 12 and 18 months that it would
9 take to wrap everything up.

10 Q. I'm sorry. I don't recall you saying that
11 on direct examination. But that's what happened?

12 A. Okay. But that -- it didn't come up, so --

13 Q. So you wanted Mr. Huffman to endorse you
14 for one year so it didn't like you job hopped.
15 That's what you say in here, right?

16 A. "Maybe we can address the tenure issue by
17 stating that I contracted for a year." Yeah, so it
18 doesn't look like I job hopped. At this point, I'm
19 getting basically pushed out the door. I came up
20 with a solution that would push me out the door, let
21 Storix bring in somebody at a much less salary. I
22 took a severance and I left early. So my concern
23 was that it's going -- this is -- if I leave before
24 the one-year mark, it's going to look like I job
25 hop.

26 Q. Sure.

27 A. So that's a reasonable concern that I would
28 have, if I leave this early, my resume is going to

1 look like -- like I don't know what I'm -- like I'm
2 just job hopping.

3 Q. So you wanted Mr. Huffman --

4 A. That was reasonable.

5 Q. -- to cover for you; is that it?

6 A. I'm sorry?

7 Q. You wanted him to cover for you?

8 A. No, because I seem to remember -- oh, yes,
9 I do remember this much. I do remember staying on
10 with Storix until the one-year mark from Las Vegas,
11 that they could call me with any questions or
12 anything so that I did meet the one-year mark. I
13 probably left -- probably left San Diego in May. I
14 don't really remember.

15 But I can tell you this much. I don't
16 remember exactly how long I was on Storix's payroll.
17 You say I started in September. I can tell you,
18 unequivocally, I started long before that, because
19 the conversations that I started with Anthony were
20 back in June and July, before we had a big trip
21 to -- a big family trip we took to Peru.

22 The work I did in researching everything
23 and lining everything up and getting everything
24 ready to go, I didn't collect a payroll at all for
25 that. I did all that work on my own time from home
26 with Anthony. So I put in -- I put in a good year
27 with Storix.

28 Q. Now, according to this exit agreement, your

1 term ended on June 29, 2012, right?

2 MR. KING: Objection. Hearsay.

3 THE WITNESS: I'm not looking at that, so I
4 don't know.

5 THE COURT: Sustained.

6 BY MR. MCCLOSKEY:

7 Q. We talked about the exit agreement before.

8 A. We talked about it, but I'm not looking at
9 it, so I can't tell you what it says.

10 Q. Well, let me -- so you don't remember?

11 MR. MCCLOSKEY: May I approach?

12 THE COURT: Yes.

13 THE WITNESS: The details of an exit
14 agreement from four years ago, five years ago, no.

15 BY MR. MCCLOSKEY:

16 Q. Well, let me approach and I'll hand you the
17 exit agreement and see if it refreshes your
18 recollection.

19 A. All right.

20 THE CLERK: What exhibit number is it?

21 MR. MCCLOSKEY: I don't know. Do we have
22 an exhibit number?

23 MR. SULLIVAN: Seventy-two.

24 BY MR. MCCLOSKEY:

25 Q. I'm going to hand you Exhibit 72, which is
26 the exit agreement. See if that refreshes your
27 recollection.

28 A. This looks accurate.

1 (Exhibit 72 referenced.)

2 BY MR. MCCLOSKEY:

3 Q. Okay. So you're gone in -- June 29th of
4 2012. That refreshes your recollection?

5 A. Okay.

6 Q. All right. You started in September.
7 That's less than a year, fair?

8 MR. MCCLOSKEY: May I approach, Your Honor,
9 to retrieve the exhibit?

10 THE COURT: Yes.

11 BY MR. MCCLOSKEY:

12 Q. Can I retrieve that?

13 A. Can you what?

14 Q. Retrieve that, ma'am. Thank you.

15 All right. And because you were gone --
16 you were there for less than a year, you wanted
17 Mr. Huffman in his -- in your LinkedIn endorsement
18 to say that you were really there for a year so it
19 doesn't look like you job hopped. That's where
20 we're at. Is that a correct statement?

21 A. Yeah, I said that. Absolutely. That was a
22 concern, if I left early, that it would look like I
23 didn't have as long of a tenure. But I was
24 definitely working with Storix for a year.

25 Q. All right. Let me talk to you about
26 another item. Who's Holly?

27 A. Who's who?

28 Q. Holly. H-o-l-l-y, Holly.

1 A. I don't remember a Holly.

2 Q. Do you remember -- December 7, do you
3 remember that? It's the day -- do you remember that
4 date, 2011?

5 A. No.

6 Q. All right. You approached Mr. Huffman,
7 didn't you, and asked him to send AIS -- who's AIS?

8 A. I don't know.

9 Q. You don't know who AIS was; is that right?
10 You don't know?

11 A. That's what I said. I don't --

12 Q. You asked him --

13 A. -- remember.

14 Q. -- to send AIS, who you don't know who it
15 was, an e-mail to add yourself as Holly as billing
16 contacts and to remove Anthony Johnson.

17 Do you remember that?

18 A. No.

19 MR. MCCLOSKEY: May I approach, Your Honor?

20 THE COURT: Yes.

21 BY MR. MCCLOSKEY:

22 Q. Anything help you refresh your
23 recollection, Mrs. Orr?

24 A. Okay. Whatever you're getting at, just
25 show it to me and I'll tell you if I remember it or
26 not.

27 MR. KING: Mike, can I take a look at the
28 copy?

1 MR. MCCLOSKEY: Yes. I'm sorry. You
2 haven't seen this?

3 MR. KING: No.

4 BY MR. MCCLOSKEY:

5 Q. I'm going to hand you your -- what purports
6 to be your e-mail to Mr. Huffman dated December 7,
7 2011. See if you remember that.

8 A. Okay. That's something that I would have
9 normally done to -- for any small company, to help
10 them appear a little bit larger. You don't want
11 billing inquiries going to somebody with a director
12 title, so you would create just an e-mail with a
13 general, you know -- I don't remember specifically
14 using "Holly," but I've used -- created -- like, in
15 collection departments, people just named Valerie or
16 whatever. I mean, every call center, everything,
17 uses pseudonyms [sic] for things like that.

18 Q. That's a pseudonym; is that it?

19 MR. MCCLOSKEY: May I approach, Your Honor?

20 THE COURT: Yes.

21 THE WITNESS: So that when anything came to
22 a mailbox for Holly, I knew it was billing related.
23 Nothing nefarious about that.

24 BY MR. MCCLOSKEY:

25 Q. So you wanted Mr. Huffman to send -- so
26 who's AIS?

27 A. I don't remember what AIS was. It was one
28 of our service providers for something.

1 Q. So you want Mr. Huffman to send them an
2 e-mail telling them to add you and Holly, which is
3 you, as billing contacts and to remove Anthony
4 Johnson? That's what you're doing there, right?

5 A. It appears to be, yeah.

6 Q. And your address is for past due issues and
7 accounting areas only, right?

8 A. I can't -- that's speculation. I don't
9 know.

10 Q. Okay. Do you want me to hand this back to
11 you?

12 A. Yes, please do.

13 MR. MCCLOSKEY: May I approach, Your Honor?

14 THE COURT: Yes.

15 BY MR. MCCLOSKEY:

16 Q. And then my next question after you answer
17 that would be: For all current issues, you want it
18 to send to Holly, right?

19 A. For billing issues. I don't want them
20 coming to the -- to somebody that's a vice
21 president. That just makes the company look silly.

22 Q. Who's Holly is my question.

23 A. I don't know who Holly is. Holly is a
24 pseudoname so that when e-mail comes in to Holly, I
25 know that it's billing related. It's not urgent.

26 Q. Got it. So it's a pseudoname you made up?

27 A. Yeah, probably.

28 Q. Ever tell AIS that you're making up a

1 pseudoname?

2 A. I don't know who AIS is, sir.

3 Q. It's your e-mail.

4 A. And --

5 MR. MCCLOSKEY: May I approach?

6 THE COURT: Yes.

7 THE WITNESS: Yeah, and it clearly says I'm
8 asking David to handle that. Ask him who AIS is and
9 what that was about.

10 BY MR. MCCLOSKEY:

11 Q. Wait a minute. This is your message to
12 him, right?

13 A. My message is to David, not to AIS.

14 Q. But you're the one who says, Can you please
15 send AIS a brief e-mail? You asked David to do
16 that.

17 A. Right, because David is the president of
18 the company.

19 Q. But you don't know who AIS is.

20 A. And again, you're asking me the same
21 question multiple times. I'm going to give you the
22 same answer multiple times. I don't remember who
23 AIS was.

24 Q. Who's Ruby Jones?

25 A. I don't remember.

26 Q. Ruby Jones was a personal assistant, Karen
27 Perchell (phonetic) at European -- trademark --
28 who's a European trademark attorney; isn't that

1 correct?

2 A. I don't know. If you say so.

3 Q. Back on December 7, the same day, you're
4 sending Ms. Jones an e-mail that says that you're
5 the CFO, right?

6 A. Okay.

7 Q. And you usually don't see individual bills,
8 right?

9 A. Right.

10 Q. Okay. Now, you told Ruby Jones, who is the
11 assistant to the European trademark attorney,
12 that -- let me hand it to you.

13 MR. MCCLOSKEY: May I?

14 THE COURT: Yes.

15 BY MR. MCCLOSKEY:

16 Q. I'm going to ask you to read the paragraph
17 you wrote to Ruby Jones right at the bottom.

18 MR. MCCLOSKEY: Let the record reflect I'm
19 handing her that e-mail.

20 BY MR. MCCLOSKEY:

21 Q. Would you read that?

22 A. What part of it? Do you want me to read
23 the whole thing, my e-mail?

24 Q. That paragraph that's highlighted.

25 A. I said, "I'm the CFO. I don't usually see
26 individual bills." Again, that's not something I
27 would ever --

28 Q. Next paragraph.

1 A. Okay. That we hired a new rep to
2 manage our pay -- manage the payables. Her name is
3 Holly at holly@storix.com.

4 Q. Keep going.

5 A. And Holly is hearing impaired, so she only
6 works electronically. Feel free to copy her on
7 invoices going forward.

8 Q. I thought you were Holly?

9 A. Holly is a pseudonym.

10 Q. Is she hearing impaired, Mrs. Orr?

11 A. Yes. Holly is always hearing impaired.
12 Any pseudonym works electronically and
13 electronically only.

14 MR. MCCLOSKEY: May I approach, Your Honor?

15 THE COURT: Yes.

16 MR. MCCLOSKEY: Let me retrieve this
17 document.

18 THE COURT: And the exhibit number is?

19 MR. MCCLOSKEY: I don't think we have one,
20 but we'll make one. Do we have it? We'll mark it
21 as an exhibit, our next in order.

22 THE COURT: Next in order would be?

23 THE CLERK: 905.

24 (Exhibit 905 marked.)

25 THE COURT: And was there -- there was a
26 previous e-mail as well. Is that --

27 MR. MCCLOSKEY: Correct. That's not an
28 exhibit number either, Your Honor, but we'll mark it

1 as -- can we mark it as 906?

2 THE COURT: Yes.

3 (Exhibit 906 marked.)

4 MR. MCCLOSKEY: Then I move into admission
5 both.

6 MR. KING: Objection. Hearsay. And
7 neither of those were listed on our exhibit list.

8 MR. MCCLOSKEY: This is pure impeachment.

9 THE COURT: All right. Let's take that up
10 at a break. And speaking of break, is this a good
11 time, Mr. McCloskey?

12 MR. MCCLOSKEY: Very well. Thank you.

13 THE COURT: All right. Ladies and
14 gentlemen, we'll take our morning recess. We'll be
15 in recess 15 minutes. Remember the admonition.

16 (Whereupon the jurors exit the courtroom.)

17 THE COURT: We're outside the presence of
18 the jury.

19 Can I see those two exhibits, please.

20 MR. MCCLOSKEY: Certainly.

21 THE COURT: Thank you. All right.

22 Exhibit -- the first one is a two-page document
23 that --

24 MR. MCCLOSKEY: 905, I think, Your Honor.

25 THE COURT: Right. And it's -- the first
26 page is to Ruby Jones.

27 Response, Mr. McCloskey?

28 MR. MCCLOSKEY: Pure impeachment,

1 Your Honor. That's why it's not on the exhibit
2 list.

3 THE COURT: Mr. King?

4 MR. KING: I'm not sure how it's
5 impeachment. She didn't say she lied about
6 anything. She admitted -- he refreshed her
7 recollection about the Holly e-mail. She said
8 that's exactly what it was for. This is confirming
9 exactly what she said. It wasn't on the exhibit
10 list. I'm not sure of the relevance of it.

11 THE COURT: And is it the same positions
12 with regard to 906 --

13 MR. MCCLOSKEY: Yes, Your Honor.

14 THE COURT: -- which is to Mr. Huffman?

15 MR. KING: Yes.

16 THE COURT: And 905 is actually a series of
17 e-mails.

18 MR. KING: I haven't taken a look at those.
19 I only saw the first one.

20 THE COURT: Okay. There's -- by my count,
21 there's -- it looks like four. I'm inclined to
22 sustain as to hearsay, because query whether it is
23 truly impeachment. She's admitting Holly was a
24 pseudoname. She's admitting, in effect, everything
25 that is being asked of her.

26 And unless there's anything else,
27 Mr. McCloskey, I'm going to sustain.

28 MR. MCCLOSKEY: No, Your Honor. That's it.

1 The document doesn't have to come in.

2 THE COURT: I'm sorry. I didn't hear you.

3 MR. MCCLOSKEY: The document doesn't have
4 to come in if you're going to sustain it.

5 THE COURT: All right. And the testimony
6 does stand.

7 MR. MCCLOSKEY: I was just going to say,
8 but the testimony stands.

9 THE COURT: Yes.

10 MR. MCCLOSKEY: Correct. Thank you.

11 THE COURT: Any comment, Mr. Sullivan?

12 MR. SULLIVAN: No.

13 THE COURT: All right. Sustained as to
14 both. All right. Any -- now, schedule --

15 Well, we can go off the record, Leyla.

16 (Brief recess.)

17 (Whereupon the jurors enter the courtroom.)

18 THE COURT: Welcome back.

19 Mr. McCloskey.

20 MR. MCCLOSKEY: Thank you, Your Honor.

21 BY MR. MCCLOSKEY:

22 Q. Mrs. Orr, do you realize that your brother
23 is suing my clients for breach of fiduciary duty and
24 fraud?

25 A. Do I realize that?

26 Q. Yes, ma'am.

27 A. I guess -- yeah, I guess I -- I guess we've
28 talked about that.

1 Q. That's a pretty serious charge, don't you
2 think?

3 A. Yeah.

4 Q. Okay. Now, on cross-examination, we had a
5 chance to engage in some thorough and probing
6 examination, and that's what I'm doing. And to the
7 extent that I've offended you, my apologies. That's
8 not my aim. My aim is just to get what you know.
9 So if I've offended you in any way, I apologize.
10 But let me just ask you a couple more questions.

11 A. Okay.

12 Q. One has to do with Mr. Smiljkovich and I'm
13 going to close with Mr. Huffman. Excuse me.

14 If you could turn to Exhibit 74, please.
15 That should be -- do you have that in front of you,
16 ma'am?

17 A. Yes.

18 Q. All right. Exhibit 74, do you recognize
19 that as an e-mail from you to Mr. Smiljkovich on
20 May 17?

21 A. Yeah. You guys showed me this at the
22 deposition.

23 MR. MCCLOSKEY: Okay. Move its admission,
24 Your Honor.

25 MR. KING: No objection.

26 (Exhibit 74 was received.)

27 THE COURT: Received.

28 MR. MCCLOSKEY: Okay. May I publish?

1 THE COURT: Yes.

2 BY MR. MCCLOSKEY:

3 Q. We're going to go to that first paragraph,
4 and it says, I see we have a new CFO.
5 Congratulations on the position.

6 Do you see that?

7 A. Yes.

8 Q. And then it says, "I really mean that."

9 You really meant that when you sent it in
10 May of 2012?

11 A. Yeah.

12 Q. And you believed that Storix needs someone
13 like Mr. Smiljkovich and felt like an all-around win
14 for everyone, didn't you?

15 A. Yeah, pretty much.

16 Q. Okay. Let me go down to the third
17 paragraph here. "You obviously know that I will be
18 leaving Storix (hence your hire) and I am absolutely
19 thrilled that you were available and willing to take
20 this position."

21 Do you see that?

22 A. Yes.

23 Q. So Mr. Smiljkovich was hired to replace
24 you; is that right?

25 A. Uh-huh.

26 Q. And you -- is that a yes?

27 A. Yes.

28 Q. And you were thrilled about it?

1 A. Yes.

2 Q. You said, I have been very nervous about
3 leaving it to bookkeepers -- leaving it in a
4 bookkeeper's hands. I'm sorry.

5 And that nervousness was a result of what?
6 You wanted more financial experience to deal with
7 it? Is that it?

8 A. Yes.

9 Q. So at the time that you departed and sent
10 this e-mail, you didn't have any objections to
11 Mr. Smiljkovich being hired there. Fair statement?

12 A. Sort of. Sort of a fair statement.

13 Q. All right. Let me talk to you, then, about
14 Mr. Huffman, and I'll conclude with this.

15 A. Okay.

16 Q. If my memory serves me correctly, on direct
17 you indicated that there was no recommendation from
18 Mr. Huffman for you for further employment or
19 whatever; am I right?

20 MR. KING: Objection. Beyond the scope.

21 THE COURT: Overruled.

22 THE WITNESS: I didn't say that I didn't
23 get any recommendation across the board. I said he
24 didn't respond to that LinkedIn request -- for a
25 recommendation on LinkedIn.

26 BY MR. MCCLOSKEY:

27 Q. Ah, maybe I misconstrued what you said. I
28 thought you said he didn't give you a letter of

1 recommendation so that you could use it to seek
2 future employment.

3 A. I never said that, no.

4 Q. I'm sorry. Did he do that?

5 A. I think he had me write it myself, and then
6 he signed it. He did give me a letter when I left,
7 I believe.

8 Q. You wrote it?

9 A. I wrote it.

10 Q. He signed it?

11 A. He signed it. I remember writing it. I
12 don't remember if he actually ever signed it,
13 though.

14 MR. MCCLOSKEY: No further questions.
15 Thank you.

16 THE COURT: Mr. Sullivan?

17 MR. SULLIVAN: Your Honor, I have no
18 questions for this witness. Thank you.

19 THE COURT: Mr. King.

20 MR. KING: Just briefly.

21 REDIRECT EXAMINATION

22 BY MR. KING:

23 Q. You mentioned in exhibit -- what we just
24 looked at. I believe it's 70 --

25 A. Four.

26 Q. Seventy-four, yeah. That you were thrilled
27 and excited that you were to be leaving Storix.
28 Why?

1 A. Well, I knew that he had a lot of financial
2 background. I was never a bookkeeper. I was never
3 an accountant. I never claimed to be. I was --

4 Q. No, no. I'm sorry. I'm asking why were
5 you excited about leaving Storix, not about
6 Mr. Smiljkovich.

7 A. Because I had taken the company as far as I
8 was going to take it, especially considering I was
9 just getting pushback anyways at that point. There
10 was no warm feelings for me to be there at all, no
11 reason for me to continue to try to do right by a
12 company that was -- they hated me, wanted me out. I
13 just didn't see any reason to continue on. I was
14 thrilled to go home to my husband.

15 MR. MCCLOSKEY: Thank you. I have no
16 further questions.

17 THE COURT: Mr. McCloskey.

18 REXCROSS-EXAMINATION

19 BY MR. MCCLOSKEY:

20 Q. You're Mr. Johnson's sister, right?

21 A. Yes.

22 Q. And you're not coming in here to say
23 anything that would harm Mr. Johnson, are you?

24 MR. KING: Objection. Beyond the scope of
25 redirect.

26 THE COURT: Overruled. I'll allow it.

27 THE WITNESS: I'm here to tell the truth.
28 If something happens to hurt him, I'll apologize

1 afterwards. But if you ask me a question, you're
2 going to get a straight answer regardless of who it
3 hurts.

4 MR. MCCLOSKEY: I admire that. Thank you.

5 THE COURT: Mr. Sullivan?

6 MR. SULLIVAN: No questions.

7 MR. KING: No further questions.

8 THE COURT: May this witness be excused?

9 MR. KING: Yes.

10 THE COURT: Thank you, Ms. Orr. You're
11 excused.

12 THE WITNESS: Okay.

13 THE COURT: At this time, we're going to
14 recall Mr. Johnson; is that correct?

15 MR. KING: That's correct.

16 THE COURT: Mr. Johnson, if you'd be so
17 kind.

18 ANTHONY JOHNSON,

19 having been previously duly sworn, was examined and
20 testified as follows:

21 THE COURT: Good morning.

22 THE WITNESS: Good morning.

23 THE COURT: And, Mr. Johnson, you recall
24 you're still under oath?

25 THE WITNESS: I do.

26 THE COURT: Thank you.

27 Mr. Sullivan.

28 MR. SULLIVAN: Thank you, Your Honor.

1 REDIRECT EXAMINATION (Resumed)

2 BY MR. SULLIVAN:

3 Q. Good morning, Mr. Johnson. Yesterday, we
4 were discussing Exhibit 139 when we broke for the
5 day. I just wanted to turn back there briefly. Go
6 to the bottom paragraph of page 1, please.

7 The fourth line down, you write, You added
8 a simple extra feature to that for Version -- or
9 V8.2 and it took a year.

10 You did not believe enough progress had
11 been made by Storix in developing SB Admin since the
12 management transition in 2011, right?

13 A. I'm sorry. Could you repeat the question?

14 Q. Sure. At this time you wrote this e-mail,
15 it was your opinion that Storix's management had not
16 made sufficient progress in further developing
17 SB Admin since the transition in 2011; is that
18 right?

19 A. Could you show me the date of the e-mail
20 when you say "at this time"?

21 Q. Date of e-mail, January 23rd, 2015.

22 A. Yes, that's correct.

23 Q. You were working on 9.1. The rest of the
24 group was working on 8.2. When 8.2 was released,
25 you did not view Version 8.2 as a significant enough
26 change as compared to 8.1; is that correct?

27 A. No, that's not correct.

28 Q. Version 8.2 was a modification or a

1 derivative of Version 8.1; is that right?

2 A. Yes.

3 Q. Do you recall that Version 8.1 was released
4 in or around August of 2012?

5 A. I don't recall that, but that seems
6 about -- about right.

7 MR. SULLIVAN: Your Honor, may I approach?

8 THE COURT: Yes.

9 BY MR. SULLIVAN:

10 Q. Do you have Exhibit 629 in front of you,
11 Mr. Johnson?

12 A. Yes, I do.

13 (Exhibit 629 referenced.)

14 BY MR. SULLIVAN:

15 Q. What is Exhibit 629?

16 A. This is a brief description of the dates in
17 which -- in which various releases -- that is,
18 version release levels of the software were sent
19 out, I believe just one- or two-line description of
20 what was included in those.

21 Q. This is a document you prepared?

22 A. Yes.

23 Q. And it looks like it dates back to the
24 release in December 22nd, 1999, correct?

25 A. Yes.

26 Q. Version 2?

27 A. Two, yes.

28 Q. 2.0?

1 A. Uh-huh.

2 Q. And this goes up through February 27, 2014,
3 release Version 8.2, correct?

4 A. Yes. I assume that's the last time I
5 updated the document.

6 Q. Okay. And did you obtain these documents
7 from -- or these dates from a particular source?

8 A. Yes. They would have come from the change
9 history files that are published on the website for
10 customers to see.

11 Q. So you believe that the release dates are
12 accurate as they corresponded to the referenced
13 versions?

14 A. I have no reason to believe they're not,
15 unless there's a typo.

16 Q. And then the comments regarding each
17 release, those are your comments describing
18 essentially the change or update for that release or
19 version; is that right?

20 A. I assume so, yes.

21 Q. So if you look at Version 8.1, does it
22 appear that was released around August 15th of 2012?

23 A. Yes.

24 Q. You returned in 2012 to assist with that
25 release, correct?

26 A. I returned at various times. And it
27 appears that, according to my comments, I did make
28 some changes in Version 8.1, yes.

1 Q. So you had some input, some contribution to
2 8.1; is that right?

3 A. Yeah. I remember specifically what -- what
4 they wanted me to do.

5 Q. And 8.1 was a derivative of Version 7.2; is
6 that right?

7 A. Yes.

8 Q. So you start with 7.2, and then you go to
9 8.1, right?

10 A. Yes -- well, not necessarily. It could go
11 7.3, 7.4. They just happened to jump from 7.2 to
12 8.1.

13 Q. That's what happen -- that's what actually
14 happened?

15 A. Yes.

16 Q. And 7.2 on this list was released in
17 December 2010, correct?

18 A. Yes.

19 Q. That was the last version that was released
20 before the management transition in 2011, correct?

21 A. Yeah -- yes, uh-huh.

22 Q. So the evolution of the software is a
23 constant evolution. You're moving from one version
24 to the next. So in each iteration, there's a
25 portion of the prior version in the next version,
26 correct?

27 A. Well, that is what would be meant as --
28 well, every -- basically everything to date has

1 evolved from -- from the -- from the software
2 released in 1999.

3 Q. Can you -- and you recall in the copyright
4 trial, you had a software expert, George Edwards,
5 who presented a pretty lengthy opinion on this topic
6 about the sequence of events from version to version
7 and the portion of code that was copied forward,
8 correct?

9 MR. KING: Objection. Relevance.

10 THE COURT: Sustained.

11 MR. SULLIVAN: Your Honor, if I could offer
12 proof on that? It goes to part of the damages
13 opinion.

14 THE COURT: Response?

15 MR. KING: It's not part of this case.
16 We've got a motion in limine on software details.

17 THE COURT: Response?

18 MR. SULLIVAN: Mr. King is aware of what
19 Mr. Bergmark will testify as far as the labor costs
20 associated with programming a portion of the
21 software. This is laying some of that foundation.

22 THE COURT: All right. Overruled, subject
23 to a motion to strike.

24 BY MR. SULLIVAN:

25 Q. I'm sorry. I wasn't sure I got an answer
26 to the last question.

27 Mr. Johnson, do you recall that you had an
28 expert in the software copyright action,

1 Dr. Edwards, who provided an opinion on this issue
2 of copying code version to version and the
3 percentage going forward, correct?

4 MR. KING: Objection. Hearsay.

5 THE COURT: Overruled.

6 THE WITNESS: He -- he provided an opinion
7 as to how the software changed over time in a
8 derivative nature from release to release --

9 BY MR. SULLIVAN:

10 Q. Right.

11 A. -- if that answers your question.

12 Q. So the greater difference between two
13 version release numbers, the code is likely to be
14 more different; is that right? So if we're
15 comparing Version 2 and Version 8, for instance,
16 that's likely to be a greater difference than if
17 we're comparing Version 7 to Version 8?

18 MR. KING: Objection. Calls for
19 speculation.

20 THE COURT: Overruled.

21 THE WITNESS: Naturally, it would be.

22 BY MR. SULLIVAN:

23 Q. And no version from -- let's say from
24 Version 4.0 on has been rewritten from scratch,
25 correct?

26 A. I don't think anything has been rewritten
27 from scratch ever. Some parts may have been
28 rewritten from scratch, but never the entire

1 product.

2 Q. So you mentioned Version 2 -- excuse me.
3 Strike that.

4 Version 7.2 was developed into Version 8.1
5 for the next release, right? And then it went to
6 Version 8.2, correct?

7 A. No. The -- well, if you're only going by
8 version and release, then it went from 8 -- from 7.2
9 to 8.1 to 8.2.

10 Q. So Version 8.1 was more similar to
11 Version 7.2 than was 8.2, correct?

12 A. Yes.

13 Q. At some point when you were working on
14 Version 9.1, you said you merged your Version 9.1
15 with the work the other members of Storix were doing
16 in 8.2, correct?

17 A. No. Actually, I have to admit my attorney
18 said that, but he got it a little backwards.

19 Q. So there was never a merger done?

20 A. No. There was a merger done. It was the
21 direction of the merger. The defendants made
22 changes from -- from 8.1 to 8.2. I also made
23 changes from 8.1 to 9.1, and what they wanted me to
24 do was take the changes between 8.1 and 8.2 they
25 worked on and merge them into my 9.1. So it wasn't
26 my merging my changes with 8.2. It was actually
27 them merging them -- their changes in 8.2 with my
28 9.1.

1 Q. And did you make that merger?

2 A. I did.

3 Q. And that was the -- what resulted in the
4 bug issues we've heard about previously in the
5 trial, correct?

6 A. It resulted in significant problems.

7 Q. And after that merger, did you go about
8 correcting those bug issues?

9 A. I did the best I could to try to correct as
10 many of them as I could before the defendants got
11 their hands on -- on it.

12 Q. How about when you left Storix and you were
13 working on the software coding at your house? Did
14 you continue to work to repair those bug issues?

15 A. I did, yes.

16 Q. Did you eventually cure all those bug
17 issues that resulted from the merger?

18 A. I did, but not by fixing them. I -- I took
19 out all the code that they had written and redid it
20 from scratch.

21 Q. Okay. So I want to go back to 139. Go to
22 the third page, the second paragraph, please. First
23 sentence, you write, "This is why I've been working
24 feverishly on the software for the last eight months
25 since I left you."

26 At your deposition, you claimed that you
27 used the word "feverishly" as an exaggeration to
28 make your point, right?

1 A. I don't recall. I'll take your word for it
2 if it will save time.

3 Q. You cannot give me an estimate of time that
4 equated to "feverishly," correct?

5 A. Well, I worked hard on it. That's all I
6 can say.

7 Q. The next sentence is, "For a while it was
8 intended to give to Storix at no cost."

9 That "it" is a reference to the Version 9.1
10 software you were working on, correct?

11 A. I believe it was the additional changes I
12 made after I left the company.

13 Q. You continue, [as read] "But that ship
14 sailed, and I'm not going to hand over all of my
15 hard work for nothing like I did before. I'm not
16 done, but I've reached a point where it's time for
17 me to bring in people to start learning and helping.
18 One way or another, it will be on the market soon."

19 At your deposition, do you recall claiming
20 you were being dishonest when writing that?

21 A. At my deposition, was I claiming to be
22 dishonest? I'm sorry.

23 Q. You claimed that that statement was not
24 honest?

25 A. I don't know how I would have phrased it at
26 the time, but I will say that this was yet again
27 another attempt to convince them to give up this
28 constant litigation and work with me so that we

1 would have a better product for the company to sell.
2 And I may very well have exaggerated certain things.

3 And I was -- and I had many times
4 threatened, basically, to take the code and sell it
5 independent of Storix after the copyright decision
6 was made, which I, of course, anticipated would
7 be -- I would remain the owner.

8 MR. SULLIVAN: Your Honor, I'd like to read
9 pages 381, line 3, to 381, line 24, of Mr. Johnson's
10 November 2017 deposition.

11 MR. KING: 381?

12 MR. SULLIVAN: Yes.

13 MR. KING: No objection.

14 BY MR. SULLIVAN:

15 Q. Question, okay.

16 And then you continue, But that ship
17 sailed, and I'm not going to hand over all the hard
18 work for nothing like I did before. I'm not done,
19 but I've reached a point where it's time for me to
20 bring in people to start learning and helping. One
21 way or the other, it will be on the market soon.

22 "Q Did you ever bring in people to start
23 learning and helping?

24 "A No.

25 "Q Was it ready to be on the market then
26 January 2015?

27 "A No.

28 "Q But you were close to having a

1 marketable product at that time, right?

2 "A No.

3 "Q So you were not being honest?

4 "A No.

5 "Q Why weren't you being honest?

6 "A Because I was trying to convince
7 these gentlemen to stop the litigation so that
8 Storix could survive. And if I had to
9 exaggerate to do so, then I admittedly did so."

10 You conclude this e-mail -- go to the
11 last -- the second-to-last paragraph, please.

12 [As read] "Honestly, I feel like I jumped
13 in to try to save a drowning person who was
14 determined to pull me down with him. I tried to
15 give up and swim away, but he wouldn't let go of me.
16 So there comes a point when, to save myself, I have
17 to push the other guy down while I still have
18 strength."

19 Storix was drowning as a result of the
20 copyright litigation you filed, wasn't it?

21 A. Certainly wasn't my objective.

22 Q. When that case was not going your way, you
23 wanted to push it further under water, didn't you?

24 A. I think that this e-mail shows that I'm
25 trying to stop the others from drowning me and the
26 company along with it. And I -- I don't see what --
27 I don't see what you're saying from these words or
28 any of these e-mails.

1 Q. We saw in this e-mail and you testified, I
2 believe, yesterday that you formed Janstor to save
3 the company or to salvage what was left of Storix,
4 something to that effect; is that right?

5 A. And I believe if you were to continue
6 reading that sentence, it says that --

7 Q. Sir, was that --

8 A. -- Storix was a sinking ship.

9 Q. -- right? Was that right? Just answer my
10 question.

11 A. Yes.

12 Q. So the company you're trying to save is
13 Storix, right?

14 A. That's always been the intent.

15 Q. But you wanted to have a company ready to
16 buy up the assets of Storix, right?

17 A. If necessary. I wanted to keep the
18 business running whatever it took.

19 Q. Last Thursday, when I first spoke with you,
20 we saw that you were the only officer, director, and
21 shareholder of Janstor; isn't that right?

22 A. I was an officer and director. I don't
23 know -- 100 percent know if I was a shareholder. I
24 may --

25 Q. Well, sir --

26 A. -- have been.

27 Q. -- go back to the document we all saw.

28 A. Okay.

1 Q. You never offered any proposal to the other
2 shareholders of Storix that they could exchange
3 their shares in Storix for shares in Janstor, did
4 you?

5 MR. KING: Objection. Calls for 1152.

6 THE COURT: Response?

7 MR. SULLIVAN: The testimony is he formed
8 this company to save a separate entity. The only
9 way --

10 THE COURT: Overruled.

11 THE WITNESS: You're describing a merger.

12 BY MR. SULLIVAN:

13 Q. No, I was not, sir.

14 A. No. You just described a merger. Why
15 would I offer shares in a -- another company to
16 those people who brought the one I'm buying the
17 assets for into bankruptcy.

18 Q. Precisely. You wanted to be the only
19 shareholder in Janstor, right?

20 A. Well, certainly, if the defendants were
21 going to bankrupt Storix in litigation. And there
22 would no longer be any shareholders of Storix if it
23 were insolvent.

24 Q. Litigation you filed. And you did not seek
25 to have a corporate name change effected for Storix,
26 did you?

27 A. I wasn't in a position to do anything with
28 Storix.

1 Q. Formed an entirely new corporate entity,
2 Janstor, right?

3 A. An entity, sure.

4 Q. And you'd save Storix if it failed by
5 effectively being the only owner of its assets in
6 that situation, right?

7 A. If there was -- if Storix was bankrupted
8 and its assets were in -- in receivership, then
9 anyone could have done that.

10 MR. SULLIVAN: Please play Clip 98.

11 (Video played but not reported upon order
12 of the Court.)

13 BY MR. SULLIVAN:

14 Q. When Mr. King was questioning you, we heard
15 you testify that you were not consulted as a board
16 member about the filing of a lawsuit against you and
17 Janstor in August 2015.

18 Do you recall that?

19 A. I -- I recall that, yes.

20 Q. You contend Storix's board must pass a
21 resolution or a formal vote to institute litigation.
22 Is that your position?

23 A. Well, I have a much stronger position when
24 it comes to board members suing board members. But
25 certainly, at the very least, it would have required
26 a resolution of some sort.

27 Q. At the very least, that's the only way, in
28 your view, the company has the authority to pursue

1 litigation, right?

2 A. No, absolutely not.

3 Q. Is it true that when you were on the board,
4 prior to stepping down in 2011, that Storix had
5 previously instituted litigation without a formal
6 board vote?

7 A. No, it didn't. There was a
8 cease-and-desist letter against someone who was
9 infringing on our trademark and it was dropped.

10 Q. Do you recall a gentleman by the name of
11 Wolfgang Hofffs (phonetic)?

12 A. Yes.

13 Q. German individual?

14 A. Yes.

15 Q. You sued Mr. Hofffs -- Storix sued
16 Mr. Hofffs, didn't it, in Germany?

17 A. It didn't get anywhere as far as I know. I
18 think we sent a cease-and-desist letter. There may
19 have been a formal complaint presented to him, and
20 it got dropped on -- I don't -- I don't -- I'm not
21 sure how far it went. I was dealing with an
22 attorney in Germany and all of the paperwork was
23 written in German, so it was a little difficult for
24 me to --

25 Q. That was in 2007, correct?

26 A. Approximately.

27 MR. SULLIVAN: Your Honor, may I approach?

28 THE COURT: Yes.

1 BY MR. SULLIVAN:

2 Q. I've handed you a document which is not
3 marked as an exhibit.

4 MR. SULLIVAN: Perhaps mark it as the next
5 in line.

6 MR. KING: Can I look at it?

7 BY MR. SULLIVAN:

8 Q. Do you recognize --

9 THE COURT: This will be marked as
10 Exhibit 907. Thank you.

11 (Exhibit 907 marked.)

12 BY MR. SULLIVAN:

13 Q. Mr. Johnson, do you recognize that document
14 I've handed you? Is that an e-mail exchange between
15 you and Matt Schaefer in February 2007?

16 A. It appears to be between me and Matt
17 Schaefer. I honestly don't have any recollection of
18 it.

19 Q. Matt Schaefer was a German trademark
20 attorney you hired to represent Storix in the
21 dispute with Mr. Hoff's, right?

22 A. There was a dispute, and all of this is
23 really quite fuzzy to me. It didn't last long and
24 so I -- all I -- I can acknowledge that this appears
25 to be an e-mail chain that I'm involved in. That's
26 about it.

27 MR. SULLIVAN: Your Honor, I'd move to
28 admit and publish Exhibit 907.

1 MR. KING: Objection. Hearsay. Wasn't on
2 the exhibit list. Improper impeachment. He didn't
3 deny any of this.

4 THE COURT: I need a copy.

5 MR. SULLIVAN: I'm sorry, Your Honor.

6 THE COURT: Are you focused on one portion?
7 This is many pages.

8 MR. SULLIVAN: The fourth page, the
9 paragraph above "Regards, Anthony," and the fifth
10 page, the first paragraph that describes -- the
11 first couple paragraphs describe the proceedings in
12 Germany.

13 THE COURT: And fifth page again? I'm
14 sorry.

15 MR. SULLIVAN: The references to the
16 proceedings in Germany.

17 THE COURT: Response to the objections?

18 MR. SULLIVAN: It's impeachment. I believe
19 he claimed he had not sued Mr. Hoff's. And also, it
20 will help refresh his recollection to the extent he
21 did not deny it.

22 THE COURT: Sustained. If you'd like to
23 lay a further foundation, you may.

24 MR. SULLIVAN: Sure. Thank you,
25 Your Honor.

26 THE COURT: Or use it to refresh.

27 BY MR. SULLIVAN:

28 Q. Mr. Johnson, if you flip to the fourth

1 page, please. Do you see that paragraph right above
2 your signature, "Regards, Anthony"?

3 A. I may have the wrong page. I'm sorry.

4 Q. It's the Storix 2003.

5 A. Just before my signature?

6 THE COURT: I think it's the page previous.

7 THE WITNESS: Previous to my --

8 THE COURT: What you're looking at now.

9 THE WITNESS: Okay. Yes.

10 BY MR. SULLIVAN:

11 Q. You have a paragraph that starts, "It comes
12 down to this."

13 Do you see that?

14 A. "It comes down to this," yes.

15 Q. By reading that, does that refresh your
16 recollection whether Storix sued Mr. Hoff's at that
17 time?

18 A. No. I'm having a communication with an
19 attorney that is -- that looks like a threat to sue
20 him when he attempted to extort Storix by
21 threatening Storix with a lawsuit.

22 Q. So that next sentence, it says, "I'm not
23 suing Hoff's because he's infringing on that mark."
24 Does that help refresh your recollection whether you
25 were suing him?

26 A. Well, it says I'm not suing him.

27 Q. What's the next sentence?

28 A. It says, "I'm suing him because he

1 threatened me and hurt my business with baseless
2 claims that I was infringing on his."

3 Q. Does that help refresh your recollection
4 whether you had sued Mr. Hoff's in Düsseldorf,
5 Germany?

6 A. I don't know that the suit was filed. I'm
7 speaking with the attorney, I think, with -- about
8 what the intention of a lawsuit might be if it were
9 filed. Whether it was filed, I don't know.

10 I think that -- I think we responded to
11 him -- rather strongly to his, you know, extortion
12 attempt and he backed down. I don't know that a
13 file -- I don't think a lawsuit was filed. If --

14 Q. Sir --

15 A. -- it took a complaint before that
16 happened, I'm not aware.

17 Q. Sir, how about if you flip to the next
18 page.

19 A. Okay.

20 Q. Do you see the e-mail that Mr. Schaefer had
21 sent to you? Read that first paragraph. And does
22 that refresh your recollection whether there was a
23 pending proceeding in Düsseldorf, Germany, at the
24 time?

25 A. Oh, I see, yes. Yeah, what's interesting
26 about this is there was apparently the lawsuit
27 that -- that there was a lawsuit filed. And I don't
28 know whether they filed it against me or vice versa,

1 because -- I'll be honest. It was -- what was
2 surprising to me is that some time went by, and I
3 didn't even know any of this was happening. And I
4 basically, at some point later, got word from the
5 attorney that there were oral proceedings, and I
6 guess he backed down or something.

7 MR. SULLIVAN: Your Honor, may I approach?

8 THE COURT: Yes.

9 THE WITNESS: There was literally a lawsuit
10 happening I didn't even realize was still going on.
11 Okay.

12 BY MR. SULLIVAN:

13 Q. Mr. Johnson, I've handed you a document,
14 which I believe we can mark as 908, since it's not
15 previously marked exhibit.

16 THE COURT: It will be so marked.

17 (Exhibit 908 marked.)

18 BY MR. SULLIVAN:

19 Q. Sir, if you look at the first page, do you
20 see that's a certificate of translation?

21 A. Yes.

22 Q. And if you flip to the third page, there's
23 an e-mail that appears to be from Mr. Schaefer to
24 you February 21, 2007.

25 Do you see that?

26 A. Yes.

27 Q. And it references an attachment.

28 Do you see that?

1 A. That begins with the word "Grund"? Is
2 that --

3 Q. No. At the top, it says, "Replik
4 190207.PDF" in the header of the e-mail from
5 Mr. Schaefer to you.

6 A. Can you tell me which page it is?

7 Q. The e-mail -- the third page of the e-mail.

8 A. Okay.

9 Q. Just focus on the header of the e-mail.

10 A. Oh, the header of the e-mail?

11 Q. Yes, sir.

12 A. The one-page e-mail?

13 Q. Yes, sir.

14 A. Again, refer me to what it was you --

15 Q. There's a reference to an attachment.

16 A. Yes, an attachment, Replik.

17 Q. And that's an e-mail from Mr. Schaefer to
18 you February 21, 2007. Is that what it appears to
19 be?

20 A. Yes.

21 Q. He had written, Dear Anthony. As you
22 now -- I think that meant "know" -- we had a term to
23 respond to the final letter by Hoff's attorney. The
24 submission is enclosed here forthwith for your
25 information.

26 Do you see that?

27 A. Yes.

28 Q. Do you recall receiving a submission --

1 copy of the submission Mr. Schaefer had submitted in
2 that proceeding?

3 A. I think I vaguely recall receiving a
4 document that was very -- that was in German.

5 Q. Okay. So if you turn the page, you'll see
6 a document that appears to be in German. I don't
7 speak German, but that's what it looks like to me.

8 A. Yes.

9 Q. Does that look like the document that you
10 received from Mr. Schaefer that was in German that
11 you referenced?

12 A. It was the document that he attached, which
13 I believe is followed by an English translation of
14 it.

15 Q. Sir, if you turn to what's tabbed
16 Exhibit B, it's several pages in after the
17 attachments.

18 A. Okay. This appears to be the English
19 translated version, if I'm not mistaken.

20 Q. Do you see there's a plaintiff identified?

21 A. Not a format I'm used to, so I don't see
22 the plaintiff.

23 Q. I will agree with you, sir.

24 A. Oh, case between Storix, Inc., yes.

25 Q. Storix, Inc., and Wolfgang Hoffs,
26 defendant, correct?

27 A. Yes.

28 Q. In the top left corner, "Düsseldorf

1 District Court."

2 Do you see that?

3 A. Yes.

4 Q. The date is February 19th, 2007.

5 Do you see that?

6 A. Yes.

7 Q. Does that help refresh your recollection
8 that Storix, Inc., had filed a proceeding in
9 Düsseldorf, Germany, against Wolfgang Hoffs in 2007?

10 A. I -- I don't know if it was, in fact, filed
11 or just presented to them. But I do know that once
12 it was filed, he gave up his claim.

13 Q. Okay. Let me clarify my question.

14 It was at least pending in February of
15 2007. Does that help refresh your recollection?

16 A. Yes.

17 MR. SULLIVAN: Might I approach again,
18 Your Honor?

19 THE COURT: Yes.

20 BY MR. SULLIVAN:

21 Q. Sir, do you have Exhibit 494 in front of
22 you?

23 A. Yes.

24 (Exhibit 494 referenced.)

25 BY MR. SULLIVAN:

26 Q. Do you recognize that document?

27 A. Yes.

28 Q. What do you recognize it to be?

1 A. It is a waiver of notice of meeting of
2 board of directors of Storix, Inc.

3 Q. Is there a second page to that document?

4 A. The -- well, it wasn't that document. A
5 second document that is part of the same exhibit,
6 the minutes of annual meeting of board of directors
7 of Storix, Inc.

8 Q. Is there a date on that document?

9 A. It says March 10th, 2006.

10 Q. Does your signature appear on that
11 document?

12 A. Yes, my signature appears as secretary and
13 director.

14 MR. SULLIVAN: Your Honor, I'd move to
15 admit and publish Exhibit 494.

16 MR. KING: Relevance.

17 THE COURT: Relevance?

18 MR. SULLIVAN: We just established that
19 there was a litigation pending in 2007. Mr. Johnson
20 has previously testified the company could only
21 institute or participate in litigation with a board
22 vote. I'm trying to establish --

23 THE COURT: All right. Overruled.
24 Received.

25 (Exhibit 494 received.)

26 BY MR. SULLIVAN:

27 Q. Go to the next page, the minutes, if I can
28 zoom in on after the meeting was called to order by

1 Anthony Johnson down to the paragraph above the
2 signature.

3 Sir, in these minutes from 2006, there's no
4 mention of litigation against Mr. Hoff's in Germany,
5 correct?

6 A. Correct.

7 Q. There's no mention of board approval to
8 retain Mr. Schaefer's firm, correct?

9 A. Correct.

10 Q. Only matter that appears to be addressed
11 was the election of the officers for next year; is
12 that right?

13 A. Correct.

14 MR. SULLIVAN: Can we see Exhibit 495,
15 please, which is previously admitted. Go to the
16 second page, please.

17 BY MR. SULLIVAN:

18 Q. These are the minutes for January 2007
19 annual board of directors meeting. Excuse me. This
20 is a special meeting of board of directors, January
21 of 2007.

22 MR. SULLIVAN: Can we zoom in on that,
23 please.

24 BY MR. SULLIVAN:

25 Q. Sir, there's no mention of a approval by
26 the board to retain Mr. Schaefer's firm, is there?

27 A. No. I don't see why there would be.

28 Q. There's no mention of board approval to

1 pursue litigation against Mr. Hoff's in Germany,
2 correct?

3 A. I don't see why there would be.

4 Q. Only matter that appears to be discussed
5 was adoption of the 401(k) retirement plan, right?

6 A. Well, that would be a board matter.

7 MR. SULLIVAN: Can we see Exhibit 496,
8 which was previously admitted, please. Second page,
9 please.

10 BY MR. SULLIVAN:

11 Q. Sir, these are the minutes of the Storix
12 board of directors from March 2007 annual meeting.
13 No mention of approval to retain Mr. Schaefer's
14 firm, correct?

15 A. Again, I don't know that that was a board
16 matter.

17 Q. So a month after the proceeding in Germany
18 we just saw there was a filing in, correct?

19 A. Yes.

20 Q. No mention of board approval to sue
21 Mr. Hoff's in Germany, correct?

22 A. Again, I don't think that was a board
23 matter.

24 Q. Only matter addressed here is the election
25 of officers for the coming year, correct?

26 A. It appears so.

27 Q. Exhibit 497, please. Already admitted.

28 THE CLERK: That's not in.

1 MR. SULLIVAN: I'm sorry.

2 THE CLERK: 497?

3 MR. SULLIVAN: 497. You don't have it
4 admitted?

5 THE CLERK: No.

6 (Exhibit 497 referenced.)

7 THE WITNESS: I can save you by -- time by
8 saying there was never a board approval of a lawsuit
9 to sue Mr. Hoff's, if we can move this along.

10 BY MR. SULLIVAN:

11 Q. Thank you, sir. That speeds things up
12 immeasurably.

13 Storix also settled a trademark
14 infringement lawsuit in 2004, correct?

15 A. Yes, I believe so.

16 Q. It received a \$60,000 payment, right?

17 A. Yes.

18 Q. Do you have Exhibit 492 in front of you?

19 A. Yes, I do.

20 (Exhibit 492 referenced.)

21 BY MR. SULLIVAN:

22 Q. Do you recognize that document as the
23 minutes of the annual meeting of board of directors
24 of Storix, March 14th, 2004?

25 A. Yes. It's similar to that of the
26 subsequent years that you've displayed.

27 MR. SULLIVAN: Your Honor, I'd move to
28 admit and publish Exhibit 492.

1 MR. KING: No objection.

2 (Exhibit 492 received.)

3 BY MR. SULLIVAN:

4 Q. Is that your handwriting, sir?

5 A. Yes.

6 Q. Is there any mention of board approval of
7 litigation regarding trademark matters?

8 A. There was no board approval of any
9 litigation in that matter either.

10 Q. Was there any board approval of the
11 settlement of that matter?

12 A. There was no board approval of the
13 settlement of that matter.

14 Q. You've testified in response to Mr. King's
15 questions that you sent Exhibit 22, which is the
16 customer announcement e-mail we've seen before,
17 because you were entirely convinced beyond any doubt
18 that Storix had no chance in the litigation that was
19 pending, correct?

20 A. Not the litigation, just the copyright
21 ownership decision.

22 Q. That was what the basis of the litigation
23 was, correct?

24 A. That was the basis of Storix's complaint
25 against me.

26 Q. It was a cross-claim -- or a
27 counterclaim -- excuse me --

28 A. Yes.

1 Q. -- for a declaratory relief?

2 A. Yes. I didn't sue for ownership because I
3 didn't think I needed to.

4 Q. Prerequisite of an infringement claim is
5 being the owner, is it not?

6 A. Yes.

7 Q. So you did sue -- claim to be the owner,
8 correct?

9 A. No. I sued for infringement. I was
10 countersued for ownership. And based on that, my
11 infringement claim was rendered moot.

12 Q. You believed 100 percent you would win,
13 right?

14 A. Even my attorney told me it was 100 percent
15 certain, so I believed him.

16 Q. I believe you told Mr. McCloskey that you
17 were guaranteed a victory by your attorney in three
18 weeks from the e-mail you sent, right?

19 A. I didn't say I was guaranteed. I said I
20 firmly believed -- I clearly believed that I
21 would -- at least the issue of copyright ownership
22 would have been decided.

23 Q. Mr. McCloskey played a video clip for you
24 where you said you only lost because of sheer luck.
25 Do you remember that?

26 A. Yes.

27 Q. That's not entirely true, is it?

28 A. No. I guess it -- I guess to be more

1 specific, I -- well, there was a lot of luck
2 involved, but there were a lot of factors in --
3 where I was very unlucky that, when combined,
4 allowed a pretty crazy decision to be made.

5 Q. See Exhibit -- or paragraph 5 of Exhibit 23
6 previously admitted.

7 THE CLERK: What exhibit?

8 THE COURT: Twenty-three.

9 BY MR. SULLIVAN:

10 Q. You wrote, "The judge, after reading the
11 verdict, even looked at them as she referred to the
12 'moral issues' in the case. There will be a retrial
13 based on the way their equally unethical attorneys
14 prejudiced the jury in such a blatant and obvious
15 way. I had to fire my own attorney for not
16 listening to me and acting on it as I saw it
17 unfolding."

18 Sir, Paul Tyrell and I were the attorneys
19 at the trial for Storix, correct?

20 A. Correct.

21 Q. So I'm one of those unethical attorneys,
22 correct?

23 A. Yes.

24 Q. You believe I'm unethical?

25 MR. KING: Objection. Argumentative.
26 Irrelevant.

27 THE COURT: Sustained.

28

1 BY MR. SULLIVAN:

2 Q. The jury was prejudiced. That's your
3 position?

4 A. Defining the word "prejudiced" to mean that
5 they were misled into believing facts that were
6 either untrue or irrelevant to the issue of
7 copyright ownership, then that's how they were
8 prejudiced.

9 Q. They were misled by the unethical
10 attorneys, of which I'm one, correct?

11 MR. KING: Objection. Argumentative.

12 THE COURT: Sustained.

13 BY MR. SULLIVAN:

14 Q. Your own attorney was at fault for not
15 listening to you as it unfolded, right?

16 A. To some degree, yes.

17 Q. You had to fire him?

18 A. I tried to.

19 Q. You tried to right before closing argument,
20 right?

21 A. Yes.

22 Q. Sir, you believe that trial was a circus,
23 don't you?

24 A. It -- I believe that to be an accurate
25 description.

26 Q. The result was based on fraudulent jury
27 instructions. Those are your words, right?

28 A. Yes.

1 Q. And you lost because Judge Huff does not
2 know copyright law, correct?

3 A. I don't believe that she does. I think it
4 was -- even she made that clear from the beginning
5 that --

6 Q. So everybody --

7 A. -- this wasn't her area.

8 Q. So everybody in that courtroom, except for
9 you, was to blame for that loss, correct?

10 A. Oh, I certainly never said that.

11 Q. You've identified everybody in that room
12 but yourself.

13 A. There were a lot of people in that room
14 besides myself, and I never said I didn't take any
15 blame either.

16 Q. You testified that your -- to Mr. King that
17 your creation of the fictional character Berg was
18 merely to facilitate the clarification of an issue,
19 but not to misrepresent any facts.

20 Do you recall saying that?

21 A. I did not say -- not -- I don't believe I
22 said not to misrepresent any facts.

23 Q. Sir, Berg's existence was a
24 misrepresentation of fact, was it not?

25 A. Is -- it was an alter ego, much like my
26 sister just used, which I found a little funny,
27 because it's not --

28 Q. Sir, do you see Berg in the room today?

1 A. No, I guess I don't.

2 Q. Have you ever seen Berg?

3 A. Mr. Sullivan, you and everyone else knows
4 there's no Berg. I invented Berg to clarify an
5 issue, no different than Holly was invented to
6 create an extra person to receive e-mails at Storix.
7 I didn't know anything about that, but I thought
8 that was pretty clever. And I certainly would not
9 have had any issue with that.

10 Q. Clever, twisting the truth to get what you
11 need, correct?

12 MR. KING: Objection. Argumentative.

13 THE COURT: Sustained.

14 BY MR. SULLIVAN:

15 Q. Sir, you told Mr. King that was your only
16 misrepresentation to IANA, didn't you?

17 A. I don't remember if I said that or not.

18 Q. You admitted the other day when I was
19 examining you that you also misrepresented in your
20 correspondence with IANA that the product was ready
21 to be released in June 2015, didn't you?

22 A. I don't remember. I don't remember what
23 was happening in May of 2015, and I don't remember
24 my response. I believe that I said, Well, I --
25 honestly, I don't remember what I said.

26 Q. The product was not ready for release in
27 June of 2015; is that right?

28 A. It could have been ready for release, but

1 it wouldn't have been released because the copyright
2 issue was pending. So it wouldn't have been
3 released whether it was ready or not, so I --

4 Q. Sir, you testified that you made that
5 misrepresentation in order to give IANA a sense of
6 urgency in approving your application.

7 You don't recall that?

8 A. I was asked if that was the purpose for the
9 urgency. I don't know that I claimed it was, you
10 know -- I don't know. It was such an unimportant
11 issue that I honestly don't know why we're still
12 talking about it. But if I got it wrong, I'm sorry.
13 I don't remember because it's just not important.

14 Q. Yesterday, you claimed that on
15 September 19th, 2015, dissolution of Janstor was
16 your second filing to dissolve the company?

17 A. Yes. I -- well, I don't know if the first
18 filing went through. I just --

19 Q. You claim you filed one in June of 2015,
20 correct?

21 A. That's my recollection now, but --

22 Q. Sir, you're aware that the Secretary of
23 State's corporate records are public, aren't you?

24 A. I know that some of -- there's some
25 information public. I wasn't able to obtain the
26 record that you did. Well, maybe the record didn't
27 exist, because I went -- I went to actually look for
28 the form that I filed in June and I couldn't find

1 it.

2 Q. Right.

3 A. So I assumed that wasn't one that was
4 published.

5 Q. We saw the complete certified file that my
6 office obtained, Exhibit 521, correct? There was no
7 June 2015 filing in that document, right?

8 A. Well, I think by the time you searched for
9 it, that appeared. I wish it had appeared when I
10 searched for it. Then it would have made more sense
11 to me.

12 Q. So, sir, all we have about that June 2015
13 attempt is your word, correct? Yes or no?

14 A. I guess so. I'm not sure why it's
15 relevant, but --

16 Q. Sir --

17 A. -- yeah, I guess so.

18 Q. -- Exhibit 356, the "Buckle up, boys"
19 e-mail --

20 A. Pardon me?

21 Q. The "Buckle up, boys" e-mail, Exhibit 356,
22 you do not regret sending that e-mail, do you?

23 A. Yes, I do.

24 Q. You do now? Is that a recent development?

25 A. I don't regret the words that I used to --
26 I don't regret the words that I used. I regret that
27 this has now turned -- probably ended up costing the
28 company a million dollars suing me for it.

1 Q. You don't regret your actions; you regret
2 the consequences of your actions. Is that what
3 you're saying?

4 A. I regret all the damage that's been done to
5 everyone over -- because they made something out of
6 it that it's not.

7 Q. But you meant every word when you sent that
8 e-mail, right?

9 A. I can't say every word. I was -- but I was
10 in a pretty angry state at that point --

11 Q. You still --

12 A. -- given the circumstances.

13 Q. -- mean every word of that e-mail today,
14 don't you?

15 THE REPORTER: One at a time, Counsel.

16 THE WITNESS: I would have to read it
17 again.

18 MR. SULLIVAN: Play Clip 119, please.

19 (Video played but not reported upon order
20 of the Court.)

21 BY MR. SULLIVAN:

22 Q. Exhibit 22, the customer announcement
23 e-mail, you don't regret sending that, do you?

24 A. Yes, I do.

25 Q. You do now? That's a change, isn't it?

26 A. Only after you sued me for it eight months
27 later.

28 Q. So again, the consequences, not the act?

1 MR. KING: Objection. Argumentative.

2 THE COURT: Overruled.

3 THE WITNESS: I wouldn't have regretted
4 sending it if it had served the purpose that it was
5 intended to, but it instead turned into 3 1/2 years
6 of litigation over something that never caused any
7 harm. So yeah, I regret it.

8 BY MR. SULLIVAN:

9 Q. You meant every word when you wrote that
10 e-mail, right?

11 A. Which one are we talking about?

12 Q. Customer announcement e-mail.

13 A. I'm pretty sure that I meant the words at
14 the time. I believe I noted that there was a
15 sentence at the end I inadvertently failed to omit
16 from my previous draft. But other than that --

17 Q. You still believe and mean every word of
18 that e-mail today, right?

19 A. Well, clearly not, because you took my
20 copyright from me. So it's pretty much moot.

21 Q. Exhibit 23, the e-mail you sent to Brian
22 Bonert January 2016, you don't regret sending that
23 e-mail to him, do you?

24 A. I do for the same reasons.

25 Q. Regret the consequences, not the act,
26 right?

27 A. I regret that he did what I suggested he
28 not do and give it to David Huffman so that they

1 could turn it into hundreds of thousands of dollars
2 of more litigation against me.

3 Q. Another Storix employee not following your
4 direction, correct?

5 A. It wasn't my direction. It was a
6 suggestion that -- if he had taken that suggestion,
7 then we probably could have saved several hours of
8 this court time.

9 Q. Sir, you meant every word when you sent
10 that Mr. e-mail to Mr. Bonert, correct?

11 A. I meant every word. There were some --
12 something -- some statements that were disproven
13 regarding the appeal of the copyright, but --

14 Q. You still believe in every word of that
15 e-mail today, right?

16 A. Yeah, I don't have every word in front of
17 me. So, you know, I have to be careful with you
18 when I say things like "every word." But I don't --
19 I believe that everything that I put in the e-mail
20 and the intent behind those words were true then and
21 would probably still be true now if it hadn't been
22 another two years since I sent that and two more
23 years of litigation over it.

24 MR. SULLIVAN: Let's play Clip 123, please.

25 (Video played but not reported upon order
26 of the Court.)

27 MR. SULLIVAN: Thank you, Your Honor. I
28 have no further questions.

1 THE WITNESS: You just referred to the
2 Brian Bonert e-mail, and now you're talking about
3 the e-mail from a year earlier.

4 THE COURT: No question.

5 Mr. King.

6 RECROSS-EXAMINATION

7 BY MR. KING:

8 Q. I wasn't paying attention too much over the
9 last couple days, but I think it sounds a bit like,
10 Mr. Johnson, you might be a little bit angry. Is
11 that a fair statement?

12 A. I don't even know if I would describe it as
13 anger. I -- you know, I don't even know that I -- I
14 don't even -- you know, I think anger I suppose has
15 become such a part of my existence now that I don't
16 even know what anger doesn't feel like anymore.

17 Q. What started it, the anger?

18 A. Oh, well, the -- anger. Well, I've never
19 been in a 12-step program before, but I know that
20 there's a lot of different --

21 Q. In this case --

22 A. -- phases that you go through.

23 Q. In this case, what started it?

24 A. What -- well, what started the difficulties
25 versus the anger?

26 Q. Sure.

27 A. Okay. You know, it was -- it was -- I
28 spent -- I spent all this time, you know, trying to

1 do right by my employees, and I feel like I'm being
2 punished because I didn't die when I said I was
3 going to.

4 And I just -- and no matter what I did to
5 try to -- to try to figure out what the hell was
6 going on, why were they treating me this way, you
7 know, why -- why were they so hostile, why would --
8 why -- why were they kicking me out of my company --

9 MR. SULLIVAN: Objection. Narration.
10 Beyond the scope of cross.

11 THE COURT: Sustained.

12 BY MR. KING:

13 Q. You came back 2013 and 2014. You expected
14 to work alongside your former employees, not as boss
15 and employee but as partners.

16 But that's not what happened, right?

17 MR. SULLIVAN: Objection. Leading.

18 BY MR. KING:

19 Q. What happened?

20 THE COURT: Sustained.

21 BY MR. KING:

22 Q. What happened when you came back?

23 A. You know, when I came back, I went to work,
24 you know, on a project that I worked on alone. And
25 I wasn't used to work -- I wasn't not used to
26 working alone, and most of the software development
27 that was done prior to my leaving I did myself.
28 Other people did some small projects that were maybe

1 a part of it.

2 And I also wanted -- you know, they were
3 doing whatever they were doing, and I honestly
4 didn't know what all they were working on. I know
5 they were working on Version 8.2 at the time, and I
6 wasn't -- I wasn't a part of that. I didn't
7 contribute anything to that, and I wasn't -- I
8 wasn't asked to, but --

9 Q. But then eventually, things broke down and
10 you resigned?

11 MR. SULLIVAN: Objection. Leading.

12 BY MR. KING:

13 Q. When you resigned --

14 THE COURT: Sustained.

15 BY MR. KING:

16 Q. -- at that point, did you feel betrayed
17 yet?

18 A. I wouldn't -- I was just -- I was -- I was
19 confused at this point. I was still confused. I --

20 Q. What were you confused about? You were --
21 that -- you weren't getting along. The people that
22 were -- the people that you invited to be your
23 partners --

24 MR. SULLIVAN: Objection. Leading,
25 Your Honor.

26 MR. MCCLOSKEY: And there's testimony from
27 counsel.

28 THE COURT: Sustained.

1 BY MR. KING:

2 Q. What were you confused about?

3 A. All -- I mean, it's just so hard to put
4 into words, because there was so much of it that
5 just kind of comes flooding back. I was just -- I
6 had no idea why I was being treated so badly, and
7 I'm not just talking about, you know, them having
8 some policy I wasn't adhering to. It was just
9 vicious. It was everything I said, everything I did
10 was just wrong.

11 And I couldn't -- and no matter how much it
12 was inconvenient to me, I would bend over backwards
13 to try to do whatever, you know, was needed to be
14 done the way they wanted it to be done to try to,
15 you know -- to try to just avoid this problem, but
16 it just kept getting worse. If it wasn't one thing,
17 it was something else. If I -- if I tried to do
18 something the way they wanted me to, it wasn't good
19 enough. I mean, I -- it was just --

20 Q. But you -- Mr. Johnson, you heard testimony
21 from Mr. Huffman, Mr. Turner, saw their e-mails.
22 They said they wanted you back. They said they
23 wanted you there.

24 How do you -- how do you -- how do you
25 comport that with what you just said? Why didn't
26 you go back?

27 A. I tried to. I mean, yes, I got those -- I
28 got those e-mails from them, but it came so shortly

1 after just the biggest blowout that was just the
2 most irrational, unreasonable, you know -- I mean,
3 it just -- kind of an explosion that I -- it was
4 just -- I had no way to respond to it, you know,
5 because there was just no possible way I could say
6 or do anything.

7 Q. You're referring to the argument where
8 Mr. Huffman and Mr. Turner said that they didn't
9 want any of the work you had been doing on
10 Version 9.1? Is that what you're referring to?

11 MR. SULLIVAN: Objection. Leading.

12 THE WITNESS: There was -- there was --

13 THE COURT: Sustained.

14 THE WITNESS: I'm sorry. The objection is
15 sustained?

16 BY MR. KING:

17 Q. What conversation were you referring to?

18 A. The last -- the last day, you know, it came
19 down to my being told, after all this work that I
20 had done, that nobody wanted it, nobody ever asked
21 for it, they would never sell it because it required
22 you to put in a password; that I didn't know
23 anything about what customers wanted because I
24 wasn't answering customer support calls; that -- you
25 know, that no one ever asked for it in the first
26 place.

27 Now, when I'm left with that, I mean,
28 how -- I mean, what's left to respond to? I can't

1 fix it. I can't -- there's just nothing else I can
2 do, so --

3 Q. How, if at all, did your view change when
4 you learned that they were hiring the programmer
5 from Texas to come and replace you?

6 A. After the things they said and after
7 learning what -- that and other things that were
8 happening that really raised my suspicion about --
9 about issues, that led me to believe they -- they
10 really truly were trying to get rid of me one way or
11 another.

12 I -- again, I was just so confused. I
13 didn't understand. I was blaming myself. Okay? I
14 do this all the time. I thought it must be me. I
15 must have done something and -- but I couldn't
16 figure out why.

17 Q. And then what happened when you asked, no
18 conditions, to come back?

19 A. Well, to do so, I thought it would -- it
20 would be best to reach out to Manuel Altamirano,
21 because he wasn't involved in the disputes. He
22 wasn't a technical person. He wasn't involved in
23 the software development. And he was also a
24 salesman, who -- whose amount of money depended on
25 how much the product made. And I would assume he
26 would want the product, you know, improved.

27 Q. So what happened?

28 A. I went to Manuel. So I approached Manuel

1 Altamirano to ask him to try to help me figure out
2 what was going on, what was the problem? Why is
3 this happening? Why am I being treated this way?
4 What -- you know, if anything, tell me what I did
5 wrong, because no one else really did.

6 Q. And so -- and what did that lead to?

7 A. It led to a lot of conversations.

8 Ultimately, they -- he told me that they said they
9 do not want me back and I'm not welcome at the
10 company anymore, but he wouldn't say why. I mean,
11 he just wouldn't say why. That was the torture, I
12 mean.

13 Q. So -- so after they told you that they
14 didn't want Version 9.1, they didn't want your
15 software updates, what, if anything, did they not
16 want at the company?

17 MR. MCCLOSKEY: Objection. That calls for
18 speculation.

19 THE WITNESS: They --

20 THE COURT: Sustained.

21 BY MR. KING:

22 Q. What, if anything, did they not want at the
23 company?

24 MR. MCCLOSKEY: Objection, Your Honor.
25 Calls for speculation.

26 THE COURT: Sustained.

27 THE WITNESS: I need -- I guess I need a
28 question. I'm sorry.

1 BY MR. KING:

2 Q. What did you understand the other
3 defendants wanted for you to have as a role at the
4 company at that point?

5 A. They wanted my role up to -- they wanted,
6 initially, my role to be to do myself and without
7 their assistance the Version 9.1, and then they
8 wanted to take my stock from me and get rid of me.

9 Q. What did they want your role to be after --
10 after you had these discussions with Mr. Altamirano,
11 what did they want your role to be?

12 MR. SULLIVAN: Calls for speculation.
13 Objection.

14 THE WITNESS: They wanted --

15 THE COURT: Sustained.

16 BY MR. KING:

17 Q. What, if anything, did they tell you your
18 role would be?

19 A. I was not to have any role at Storix.

20 Q. They -- it's not that they didn't want 9.1?
21 They didn't want you?

22 MR. SULLIVAN: Objection. Calls for
23 speculation.

24 MR. MCCLOSKEY: And it's argumentative as
25 well.

26 THE COURT: Sustained.

27 BY MR. KING:

28 Q. That hurt your feelings, didn't it?

1 MR. SULLIVAN: Objection. Lacks
2 foundation.

3 THE WITNESS: Well, yeah, my feelings were
4 hurt. I was just --

5 THE COURT: Overruled. Okay.

6 THE WITNESS: Of course my feelings were
7 hurt. I -- you know, but it was just amplified by
8 the fact that still no one would explain to me why.
9 I mean, why --

10 BY MR. KING:

11 Q. You thought these people were your friends;
12 they liked you for more than just you giving them a
13 paycheck?

14 A. They said they were my friends. I
15 thought they --

16 MR. MCCLOSKEY: Counsel is --

17 THE WITNESS: -- were my friends.

18 MR. MCCLOSKEY: -- testifying, Your Honor.
19 Leading and counsel is testifying.

20 THE COURT: Sustained.

21 BY MR. KING:

22 Q. But what was the truth?

23 A. The truth -- well, it was nearly -- it was
24 about a year and a half at -- it was -- about a year
25 and a half went by before I really understood what
26 was going on. And that was the hard part, because I
27 didn't get any answers and --

28 Q. Well, set aside about a year and a half

1 later. Talking about the truth as it existed when
2 you had those conversations with Mr. Altamirano.

3 MR. SULLIVAN: Calls -- objection. Calls
4 for speculation. Lacks foundation.

5 MR. MCCLOSKEY: It's argumentative.

6 THE COURT: Sustained. I'm wondering if
7 this is a good time for our noon recess.

8 MR. KING: That's fine.

9 THE COURT: All right. Ladies and
10 gentlemen, we'll take our noon recess. Have a great
11 lunch. See you back at 1:30. Thank you.

12 (Whereupon the jurors exit the courtroom.)

13 (Afternoon recess taken from 11:58 to 1:32 p.m.)

14 * * *

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SAN DIEGO, CALIFORNIA;

WEDNESDAY, FEBRUARY 7, 2018; 1:33 P.M.

* * *

(Whereupon the jurors enter the courtroom.)

THE COURT: All right. We're all back.

And, Mr. King.

RE CROSS-EXAMINATION (Resumed)

BY MR. KING:

Q. Mr. Johnson, if you'd take a look at the binder on the ledge there. Take a look at 785.

Do you recognize that document?

THE CLERK: I'm sorry. Did you say 785?

MR. KING: I did.

THE CLERK: Thank you.

THE WITNESS: Yes, I do.

BY MR. KING:

Q. And can you tell me what that is?

A. It's an e-mail dated January 2016 from myself to David Huffman.

Q. Does it include an e-mail from Mr. Huffman to yourself dated January 13th, 2016?

A. Yes. It's actually, I guess, a forward or a reply to -- this would be from David -- David Huffman to me. And he's copying David Smiljkovich and Matthew Short, the Procopio attorney.

MR. KING: Move to admit 785.

THE CLERK: It's already in.

1 THE COURT: It's in.

2 BY MR. KING:

3 Q. And Mr. Huffman's e-mail to you, what does
4 he say?

5 A. It says, "As per your request in the
6 January 2016 board of directors meeting, I am
7 forwarding a current profit and loss statement as of
8 January 11th, 2016."

9 MR. KING: Your Honor, may I approach?

10 THE COURT: Yes.

11 BY MR. KING:

12 Q. Mr. Johnson, this exhibit marked as 631, is
13 that the profit and loss statement as of
14 January 11th, 2016, attached to Mr. Huffman's
15 e-mail?

16 A. Yes, it is.

17 MR. KING: Your Honor, I move to admit into
18 evidence Exhibit 631.

19 MR. MCCLOSKEY: No objection, Your Honor.

20 MR. SULLIVAN: No objection, Your Honor.

21 THE COURT: Received.

22 (Exhibit 631 received.)

23 BY MR. KING:

24 Q. Mr. Johnson, that's a financial statement?

25 A. Yes. It's profit and loss statement for
26 January to December 2015, so all of 2015.

27 Q. And that was e-mailed to you on January 13,
28 2016, right?

1 A. Yes.

2 Q. What is the profit or loss shown on that
3 financial statement for the year 2015? And this is
4 for Storix, right?

5 A. This is for Storix, of course. The numbers
6 are very small, a little bit smudged at the bottom,
7 but I can see that it appears to represent a loss
8 of -- is that \$654,000? Perhaps \$554,000.

9 Q. Okay. I believe it's \$554,000.

10 A. Okay.

11 Q. And this was three days before you sent
12 your e-mail to Brian Bonert, correct?

13 A. Correct.

14 Q. And that e-mail to Brian Bonert, that's
15 where you asked him to let you know if the company
16 was laying off any employees, right?

17 A. Among other things, yes.

18 Q. You were concerned about the company's
19 financial situation after seeing, among other
20 things, a loss of \$554,000?

21 MR. MCCLOSKEY: Objection. That's leading,
22 Your Honor.

23 THE COURT: Sustained.

24 MR. KING: Your Honor, may I approach the
25 witness --

26 THE COURT: Yes.

27 MR. KING: -- and show him an exhibit?
28

1 BY MR. KING:

2 Q. If you'll look at that binder on your left.

3 A. This one?

4 Q. Yep. Move this one out of your way. If
5 you can turn to Exhibit 69. Can you tell me what
6 Exhibit 69 is?

7 A. It is an e-mail from my sister to me dated
8 August 15th, 2011.

9 (Exhibit 69 referenced.)

10 BY MR. KING:

11 Q. And are there other e-mails in there?

12 A. Yes. There is other e-mail -- this is a
13 forward, I guess, of at least -- it looks like two
14 other e-mails. Well, actually, at least two other
15 e-mails.

16 MR. KING: Your Honor, move to admit
17 Exhibit 69 into evidence.

18 MR. SULLIVAN: No objection, Your Honor.

19 MR. MCCLOSKEY: No objection, Your Honor.

20 THE COURT: Received.

21 (Exhibit 69 received.)

22 BY MR. KING:

23 Q. Now if you could go down to the earlier
24 e-mail. What is this e-mail right here? You're
25 writing to Gary and Ed. Who are they?

26 A. On August 14th, 2011, I'm writing to Gary
27 and Ed. We're discussing, it appears, some of the
28 issues with the stock transfer having to do with the

1 taxation.

2 Q. Okay. And where it says, "Put the
3 employees, except the newest one, under contract
4 that basically guarantees them a percentage of the
5 quarterly profits (not counting this bonus itself,
6 of course) until I pass."

7 Is this the alternative kind of thing that
8 we're calling the bonus plan that you were
9 considering after initially proposing a gift of
10 stock?

11 A. Yes.

12 MR. KING: Now, Robin, if you can scroll to
13 the top -- top paragraph.

14 BY MR. KING:

15 Q. This is your sister writing to you in
16 response. And she says, [as read] "My concern all
17 along with giving them the stock up front is that
18 even though you have asked for a two-year
19 commitment, enforcing that once the transfer is made
20 final becomes a separate 'sticky' legal issue. Once
21 you give them the stock and they pay taxes on it,
22 its theirs. Storix could always take action on
23 breach of contract, but it would be for dollar value
24 based on actual damages."

25 She goes on in the third paragraph to say,
26 "I know you trust these gentlemen explicitly, but
27 the sad fact is that an otherwise good employee can
28 simply lose focus due to personal issues at any time

1 or just flat out go 'rogue' because he lets his new
2 found ownership go to his head."

3 Did you respond to your sister's e-mail?

4 A. I don't recall if I responded to this
5 e-mail, but we had, I'm sure, a conversation
6 following that.

7 Q. Now, your sister, after the stock transfer
8 in 2011, came on, worked at Storix, right?

9 MR. KING: Let me just go back up to the
10 top of this e-mail, Robin.

11 BY MR. KING:

12 Q. This is August 15, 2011. Is your sister
13 already working with you at Storix at this point?

14 A. Yes. She started, I think, in July of
15 2011, a couple of months before I did -- before I
16 left right after this stock transfer in September.

17 Q. And she -- and she testified that she
18 thought she had a 12- to 18-month commitment; is
19 that correct?

20 A. Yes, that's what she testified.

21 Q. At some point she called you with -- to
22 talk about how things were going during -- after you
23 had left in 2011?

24 MR. SULLIVAN: Objection. Objection.
25 Leading.

26 MR. KING: Just foundational.

27 THE COURT: Overruled.

28

1 BY MR. KING:

2 Q. What, if anything, did your sister say to
3 you about how things were going at Storix?

4 MR. MCCLOSKEY: Objection. That's hearsay.

5 THE COURT: Sustained.

6 BY MR. KING:

7 Q. You heard your sister testify earlier she
8 had told you concerns about -- that she had with
9 trustworthiness of Mr. Huffman.

10 Do you recall those conversations?

11 A. Yes.

12 Q. What did you tell her?

13 MR. MCCLOSKEY: Objection. That's hearsay.

14 THE COURT: Sustained.

15 BY MR. KING:

16 Q. After your sister told you she had concerns
17 with Mr. Huffman --

18 MR. MCCLOSKEY: Objection. Now we're
19 backdooring hearsay, Your Honor.

20 MR. KING: That's already been admitted
21 into evidence. She testified to that.

22 MR. MCCLOSKEY: This is counsel's question.
23 That's the problem with the nature of his question.

24 THE COURT: Sustained.

25 BY MR. KING:

26 Q. After your sister talked to you, did you
27 still trust Mr. Huffman and the other defendants?

28 A. That's difficult to answer without going

1 into the nature of the conversation.

2 Q. In 2012, you're still on leave, still
3 hadn't come back yet.

4 After your sister had talked to you about
5 how things were going, did you still trust
6 Defendants, which you had given stock to Storix?

7 A. I did, yes. I -- I have to admit that I
8 somewhat ignored --

9 MR. MCCLOSKEY: Objection. The witness is
10 narrating.

11 THE COURT: Overruled.

12 THE WITNESS: I had ignored my sister's
13 concerns, because I specifically had said that I
14 would not interfere in the business in my absence,
15 and I planned to stick by that.

16 BY MR. KING:

17 Q. Did you still trust the defendants when you
18 came back to work for Storix in 2015?

19 A. I didn't have a particular reason not to
20 outside of what my sister had said, which did not
21 involve me.

22 Q. Did you have any reason to believe when you
23 came back in 2013 that you couldn't trust the
24 defendants as your business partners?

25 A. I -- I didn't have a reason not to trust
26 them as my business partners at that point, no.

27 Q. In 2014, at the time you left, how did that
28 change, if at all?

1 A. Well, the situation was obviously very
2 confusing, because I was -- I didn't understand why
3 I was being treated with the hostility that I was.
4 So there certainly was a strong feeling of betrayal
5 and, I guess, mistrust, because I didn't understand
6 where it was coming from.

7 MR. KING: Robin, let's take a look at
8 Exhibit 46. Go to the second page down to where it
9 says the numbers 1, 2, 3.

10 BY MR. KING:

11 Q. This is an e-mail to your attorney at the
12 time, right?

13 A. Well, by "at the time," this was about a
14 week after the February 2015 shareholder meeting
15 that we've talked about before.

16 Q. Okay. So let's scroll up and see the exact
17 date. It's February 20, 2015. Your attorney, Gary
18 Eastman, right?

19 A. Yes.

20 Q. You're discussing some options that you
21 have. So we've got --

22 MR. KING: Robin, can you zoom in on those.

23 BY MR. KING:

24 Q. First option, you invalidate the election,
25 take over the company, and then fire them all and
26 rebrand the company/product.

27 What do you mean "invalidate the election"?
28 Do you mean doing some legal challenge?

1 A. Yes. The initial idea was because, you
2 know, our plan to take the three board seats in
3 there to take over the board and be able to put an
4 end to all this didn't work.

5 And because of the -- the methods that --
6 or the actions that took place at the meeting, our
7 plan was then to file an action, just a motion with
8 the Court, to invalidate the election.

9 Q. And did that happen?

10 A. It didn't happen.

11 Q. You didn't invalidate the election. You
12 didn't take over the company. Didn't fire them all.
13 Didn't go with Plan Number 1, right?

14 A. Well, Plan Number 1 before this was,
15 obviously, to take over the board and keep them all,
16 and that didn't work. The second -- this being the
17 second plan was after those actions keeping them on
18 was no longer an option, but --

19 Q. Let's take a look at Plan Number 2. You
20 request the above buyout, start a new company, and
21 compete with them. What was the above buyout? Was
22 that what you were talking about in the paragraph
23 that starts with "Matt seemed pretty furious"?

24 He's -- you talk about asking for a fairly
25 low buyout of your shares and a percentage of the
26 next two years' gross sales. In exchange, I'll drop
27 the copyright case and give them a license. I will
28 retain the right to the same code, as long as -- as

1 well as any security updates.

2 In other words, contemplate some sort of
3 settlement of the copyright litigation where you
4 would be able to go your own separate way. That's
5 what you were -- that's what you were referring to
6 in Number 2, right?

7 MR. MCCLOSKEY: Objection. Leading.

8 THE COURT: Sustained.

9 BY MR. KING:

10 Q. What were you referring to in Number 2?

11 A. In Number 2, the idea was to essentially
12 just end the copyright litigation, split the
13 copyright. They can buy out my shares and we would
14 go our separate ways. And basically, I would have
15 to start over.

16 Q. Did that happen?

17 A. But I would start over with at least, you
18 know, my version of the software.

19 Q. Did that happen?

20 A. No.

21 Q. Why not?

22 A. They --

23 MR. SULLIVAN: Objection, Your Honor.

24 Motion in limine.

25 MR. MCCLOSKEY: Speculative as well.

26 MR. SULLIVAN: Storix motion in limine, the
27 one on settlement and mediation.

28 THE COURT: Response?

1 MR. KING: I'll withdraw it.

2 BY MR. KING:

3 Q. Number 2 did not happen, correct?

4 A. Did not happen.

5 Q. Number 3, "We continue the copyright
6 litigation, and I still start a new company and
7 compete with them."

8 Tell me what Plan Number 3 involved.

9 A. Well, it's a little brief, and we -- I
10 talked about this with my attorney. The intention
11 there was we continue the copyright litigation. But
12 if the copyright ownership was confirmed in my name,
13 then -- and Storix continued to sell it anyway, then
14 I would again start a new company and compete with
15 them.

16 Q. In other words, Number 3 involved you
17 winning the copyright case?

18 MR. SULLIVAN: Objection. Leading.

19 THE WITNESS: Yeah. There was --

20 THE COURT: Just a minute.

21 THE WITNESS: I'm sorry.

22 THE COURT: Overruled.

23 THE WITNESS: I'm sorry. The question --

24 BY MR. KING:

25 Q. Answer?

26 A. I didn't quite --

27 Q. In other words, Plan Number 3 involved you
28 winning the copyright case?

1 A. Well, it would have required my winning the
2 copyright case, yes.

3 Q. Did you win the copyright case?

4 A. I did not.

5 Q. So of all those three plans, those options
6 that you put up there, did any of them happen?

7 A. No.

8 Q. Mr. McCloskey asked you on cross-exam about
9 why you were -- felt defrauded, because you're
10 bringing a fraud cause of action.

11 Tell me how -- tell me why you were
12 defrauded in this case.

13 A. I was defrauded in this case because I was
14 induced into coming back and working at the company,
15 to spend a year working on this new version of the
16 software, quite a significant -- probably the
17 largest update to the software that's ever been
18 done.

19 And during -- it was later discovered that
20 during the time that I was doing all that work, the
21 defendants were attempting to enact what's called a
22 buy-sell agreement that would require shareholders
23 who were employees of the company to sell their
24 shares back to the company if their employment
25 ended.

26 At the same time, it was discovered that
27 they were also seeking a loan for the specific
28 purpose of buying my shares in the company. And

1 this was happening during the time that I was
2 working on this long-term project after they learned
3 that I wasn't going to die after all. And I
4 wouldn't have committed to such a long project if I
5 knew that, if I thought I was --

6 Q. Okay. But that's a -- like, all this
7 succession planning, it's normal stuff. They told
8 you about it while they were doing it. What's the
9 big deal?

10 A. They didn't tell me about any of this. I
11 had to find this out -- we were a year into
12 copyright litigation before I finally found this
13 out, and that's the first time I finally realized
14 why all this was going on in the first place.

15 Q. Are you saying they concealed this from
16 you?

17 A. Clearly concealed it from me. They
18 intentionally concealed it from me.

19 Q. And what would you have done if you had
20 known about it?

21 A. I think it depends on what time I would
22 have known about it. If they --

23 Q. What would you have done differently?

24 A. Well, I certainly would not have committed
25 a year of my life to working feverishly on
26 Version 9.1 of the software, because they were --
27 they were going to -- they were setting me up. They
28 were setting me up to fire me as soon as I finished

1 it.

2 And then this software now, which would
3 have been the first new release of the software
4 in 3 1/2 years, at the time 2 1/2 years maybe, would
5 have certainly, in my experience, at the very least
6 doubled the marketability of the product. And I
7 would have received nothing for that, because I
8 would have been -- I would no longer have any shares
9 in the company.

10 Q. Well, what would you have done differently?
11 Would you have continued to work on this update had
12 you known?

13 A. Well, certainly not if I knew it was only
14 going to be for their benefit.

15 MR. KING: No further questions.

16 THE COURT: Mr. McCloskey?

17 MR. MCCLOSKEY: Thank you, Your Honor.

18 RECROSS-EXAMINATION

19 BY MR. MCCLOSKEY:

20 Q. Buy-sell agreement, Mr. Johnson, isn't that
21 the one we went through chapter and verse yesterday?

22 A. No, it's not.

23 Q. There's some other buy-sell agreement out
24 there?

25 A. There was an attempt to enact a buy-sell
26 agreement prior to the one that you mentioned.

27 Q. Which one is that? What exhibit is that?

28 A. Well, you haven't brought it up yet.

1 Q. Oh. It's not my burden, is it?

2 A. Pardon me?

3 Q. It's not my burden.

4 MR. KING: Objection. Argumentative.

5 THE COURT: Sustained.

6 BY MR. MCCLOSKEY:

7 Q. We haven't seen the buy-sell agreement
8 you're talking about in this trial yet, have we?

9 MR. KING: Objection. Argumentative.
10 Assumes facts not in evidence.

11 MR. MCCLOSKEY: I agree. It assumes facts
12 not in evidence, Your Honor.

13 THE COURT: All right. Sustained.

14 BY MR. MCCLOSKEY:

15 Q. So the buy-sell agreement you're talking
16 about right now, where is it? Have you seen that in
17 evidence here?

18 A. I haven't seen it in evidence here.

19 Q. Okay. That's all I need to know.

20 But the buy-sell agreement -- the
21 shareholder agreement is one that we went through
22 chapter and verse yesterday. Do you remember that
23 testimony, sir?

24 A. Yes.

25 Q. And you're not claiming, are you, sir, that
26 no one ever told you about that agreement or invited
27 you to participate with that agreement, right?
28 You're not saying that?

1 A. That agreement wasn't the buy-sell
2 agreement.

3 Q. Okay. So your fraud claim doesn't include
4 that agreement, does it?

5 A. It was perhaps a contributing factor, but
6 it's not the buy-sell agreement.

7 Q. Okay. It's not the buy-sell agreement that
8 the defendants concealed from you, which if you had
9 known it existed, you would have never come back to
10 work; is that right?

11 A. Are we talking about the shareholder
12 agreement or the buy-sell agreement now?

13 Q. I'm talking about the buy-sell agreement
14 that we've never seen in this trial.

15 A. I don't know if -- if I would have come
16 back had there been a buy-sell agreement, because
17 with only that knowledge, I wouldn't have had enough
18 information to know what they were up to.

19 Q. So the only evidence that's in this
20 courtroom that there was a buy-sell agreement that
21 was never revealed to you that caused you to testify
22 today that you were defrauded is your testimony?

23 A. So far.

24 Q. Okay. Loan to buy shares, what loan was
25 that?

26 A. Pardon me?

27 Q. The loan to buy shares, that was the other
28 element in your fraud claim, if my memory serves me

1 correctly. You just testified to that.

2 A. Yes.

3 Q. What loan was that?

4 A. That was the loan that will be presented
5 later in this trial.

6 Q. We haven't seen that loan yet, right?

7 A. No. I'm sorry. I'm trying to save some
8 time.

9 Q. But you know that that loan never went
10 through, right?

11 A. I don't actually know that it didn't.

12 Q. Well, do you know that it did?

13 A. I don't know it did.

14 Q. Okay. But if that loan had gone through,
15 you wouldn't have come back to work, because that
16 would have revealed some kind of a scheme to buy
17 your shares? Is that it?

18 A. Well, it wouldn't have revealed anything
19 because they were keeping it a secret from me.

20 Q. Okay. But if you had known about it, you
21 wouldn't have come back to work; is that right?

22 A. I don't know what I would have done at what
23 point in time based on having learned that. I
24 believe that I would have confronted those
25 individuals that I knew at the time were aware of it
26 and working on it.

27 And, you know, who knows what would have
28 happened, but I certainly would not have continued

1 down the path I was down if that -- you know, if
2 that had been known and it was revealed to me that
3 they were continuing that intent. At the very
4 least, I would have put a stop to it.

5 Q. I'm trying to understand that -- an element
6 of fraud is called reliance. What was your reliance
7 on the fact that there was this buy-sell agreement
8 or a loan to buy shares?

9 A. I think that you're mis -- confusing
10 reliance.

11 Q. Okay. I'm sorry. Help me here. What is
12 it? You said that's your fraud claim. I'm trying
13 to understand your fraud claim.

14 A. The reliance was not on the buy-sell
15 agreement that I did not know about. The reliance
16 was on their concealment of the buy-sell agreement
17 that I did not know about.

18 Q. Gotcha. And this loan to buy the shares,
19 that's -- that's another thing you didn't know
20 about?

21 A. Another concealment, yes.

22 Q. Okay. And had you known about it, you
23 wouldn't have come back to work for Storix, true?

24 A. I would have acted differently. I would
25 not have done work that I knew I would never benefit
26 from. I might have tried some other effort to
27 resolve the situation in a way that perhaps we could
28 have even continued all working together, but I most

1 certainly would not have done all of that work for
2 less than a third of my former salary knowing that
3 all of the benefit of my work would only go to the
4 defendants and I would be cut out of the deal.

5 Q. Okay. What would you have done had you
6 known of this?

7 A. At -- you'll need to give me a time frame.

8 Q. Let's move on. And I'm going to talk to
9 you about Exhibit 69. That's that e-mail from your
10 sister to Mr. Johnson, yourself, dated August 15,
11 2011. You testified on --

12 MR. MCCLOSKEY: Pull that up, because I
13 think it's been admitted. Can you pull that up,
14 Erin? I'm sorry.

15 BY MR. SULLIVAN:

16 Q. We're going to pull that up. We're going
17 to go that first paragraph. I'm just going to ask
18 you a couple of questions and I'll be done with
19 this.

20 You testified, as Erin's pulling up the
21 document, that Ms. St. Claire was working for Storix
22 on August 15, 2011; is that right?

23 A. Yes.

24 Q. You hired her?

25 A. I -- I think I did. I might have.

26 Q. Well, how about Mr. --

27 A. I suppose I did, because I was the
28 president of -- and then the only officer, I guess,

1 at the time.

2 Q. Did she come to the office?

3 A. Yes.

4 Q. So in August of 2000 -- excuse me -- August
5 of 2011, Ms. St. Claire was coming to Storix's
6 office and working because you hired her; is that
7 right?

8 A. I guess. I believe so.

9 Q. And I think you said you hired her in July?

10 A. I think it was July.

11 Q. Was she coming to the office in July?

12 A. Was she coming into the office in July, did
13 you say?

14 Q. Yes, sir.

15 A. Again, I think I hired her in July, so I
16 think she was coming into the office in July.

17 Q. Okay. And Mr. Huffman, he was in the
18 office all day, right?

19 A. I don't know.

20 Q. July/August, he was in the office then?

21 A. I don't know. There was various vacations
22 happening here and there. I couldn't say for sure.

23 Q. Well, you would know that if Ms. St. Claire
24 came to the office in July and August, Mr. Huffman
25 would have saw it because he was there, right?

26 A. They knew each other, if that's what you
27 mean.

28 Q. Well, let's go to the first paragraph

1 there. We're going to start with the second
2 sentence, My concern all along with giving them the
3 stock upfront is that even though you have asked for
4 a 2 year commitment, enforcing that once the
5 transfer is made final becomes a separate, quote,
6 sticky, unquote, legal issue.

7 Do you see that?

8 A. Yes.

9 Q. Okay. Now, she was hired to serve at
10 Storix at this time, right? That's why you hired
11 her, to work for Storix?

12 A. Yes. Her first job, however, was to assist
13 with the -- with my transition out of the company.

14 Q. Sure. That makes a lot of sense.

15 A. That's a big part of it.

16 Q. I think she testified to that as well.

17 She had a concern that you have asked for a
18 two-year commitment. You asked the individuals in
19 exchange for the stock for a two-year commitment; am
20 I right?

21 A. No.

22 Q. Okay. She's wrong?

23 A. She's not wrong.

24 Q. Okay.

25 A. You're mis -- you are interpreting her
26 statement to me that followed a number of
27 conversations between she and I and she and the
28 attorneys.

1 Q. Let's go down to the last paragraph, [as
2 read] "I know you trust these gentlemen explicitly,
3 but the sad fact is that an otherwise good employee
4 can simply lose focus due to personal issues at any
5 time or just -- just flat go rogue because he lets
6 his newfound ownership go to his head."

7 Do you see that part?

8 A. Yes.

9 Q. And then if you go to the last clause of
10 the next sentence, "My job here is to protect you
11 and the company," do you see that?

12 A. Yes.

13 Q. Did you take this advice into consideration
14 when, in fact, you extended a two-year commitment in
15 exchange for the stock you gave these folks?

16 A. I didn't extend a two-year commitment in
17 exchange for the stock. That was not my exchange.

18 Q. Okay. What did you do? No two-year
19 commitment whatsoever; is that right?

20 A. That was not my idea, my concern, or my
21 requirement.

22 Q. Okay. Why do you suppose she said, "Even
23 though you have asked for a two-year commitment"?
24 Why do you suppose she said that?

25 A. Because if you wanted to go through the
26 rest of the e-mail, which we won't, because it does
27 copy a number of other statements from the attorneys
28 having to do with a lot of technicalities on tax

1 issues and so forth, this e-mail followed the --
2 basically, after we came up with the -- what we
3 thought would be a better idea, which would be the
4 bonus plan, and Mr. Huffman wouldn't agree to that,
5 this then went back to finding a way to do a stock
6 transfer in a way that would benefit them best
7 financially as far as the taxation was concerned.

8 The attorneys -- and, you know, working
9 with Michelle -- and I wasn't too involved with this
10 myself, but simply being kept informed on the
11 issue -- was that the in -- the individuals
12 themselves had an option of whether they wanted to
13 take what I recall as an 83(b) tax election, which
14 allowed them to take -- to -- to basically receive
15 the stock immediately, which was always going to be
16 the case. And if they paid the stock -- the taxes
17 on that stock within 30 days, they would, therefore,
18 not have to pay taxes on it at the end of the year
19 when it would be --

20 MR. MCCLOSKEY: Objection, Your Honor. The
21 witness is narrating. It's nonresponsive.

22 THE COURT: Sustained.

23 THE WITNESS: You asked me why.

24 BY MR. MCCLOSKEY:

25 Q. Talking about a two-year commitment, Mr. --

26 A. I'm explaining why there was a two-year
27 commitment.

28 Q. I thought we were getting into tax issues,

1 83(b) elections, and all that.

2 A. That is the biggest part of the two-year
3 commitment.

4 Q. So you did ask for a two-year commitment?

5 A. I did not ask for a two-year commitment.

6 Q. Why was there a two-year commitment given?

7 A. Well, I'll skip the details then and say
8 that the defendants chose an option in which if
9 they -- if they received the stock as compens -- as
10 compensation for future services, they were able to
11 take a tax election they wouldn't have otherwise.

12 And it was recommended to me that that have
13 a five-year commitment with a five-year vesting
14 schedule. They would still, again, receive the
15 stock right away, but they wouldn't be -- you know,
16 they would not vest in the stock for five years,
17 after which time they would own it regardless of
18 whether they terminated their employment.

19 I told my sister that that no longer seemed
20 like a gift to me, despite the fact that -- and I
21 thought if it was going to be presented to them, I
22 wanted it to at least be the least -- the least
23 amount of vesting period that I suppose the IRS
24 would accept. And the attorney said that they could
25 probably get away with two years, but nothing less.

26 So if the individuals -- and they could
27 have each, individually, chosen it or not chosen
28 it -- wanted this tax election, then they would

1 themselves be committing to a two-year commitment.
2 I asked for a two-year commitment instead of a
3 five-year commitment as part of that election for
4 those who wanted to take it. And that's what you're
5 reading here in the e-mail.

6 Q. So you'd rather have had a five-year
7 commitment; is that right?

8 A. That is exactly the opposite of what I just
9 said.

10 Q. Okay. Well, let's move on. I'm going to
11 go to Exhibit 631. It was just admitted into
12 evidence. I want to talk to you about that
13 spreadsheet. It's a profit and loss statement.

14 MR. MCCLOSKEY: Let me -- while you pull it
15 up -- you can't pull it up? It's new, isn't it? I
16 better --

17 THE WITNESS: I have a copy in very tiny
18 print.

19 BY MR. MCCLOSKEY:

20 Q. Okay. Profit and loss statement,
21 January-December 2015, you didn't prepare that, did
22 you?

23 A. I wasn't allowed near anything.

24 Q. I'm just asking a question, sir. Did you
25 prepare it or not?

26 A. I did not prepare it.

27 Q. So you don't know if any of these numbers
28 are correct or not, do you?

1 A. I never know if anything is correct or not.
2 This is just what they keep giving me.

3 Q. Let's go down toward the bottom of the
4 first page.

5 A. I only have one page. Mine is very tiny.
6 Maybe you have a larger.

7 Q. There's two pages to 631, isn't there?

8 A. I only have one page, but it does have the
9 net income at the bottom. Is this --

10 THE COURT: I've got two pages and I can
11 give him my page.

12 MR. MCCLOSKEY: I'll -- I don't think I
13 need it, Your Honor.

14 BY MR. MCCLOSKEY:

15 Q. Last couple of questions here, Mr. Johnson.
16 I want to talk to you about the membership.

17 Mr. King talked to you about your viewing
18 this just a few days before you launched the e-mail
19 to Mr. Bonert that we have looked at chapter and
20 verse, right?

21 A. Yes.

22 Q. And you're saying that it's the discovery
23 of the numbers that are set forth in this
24 Exhibit 31 [sic], profit and loss statement, that
25 induced you -- compelled you to send that e-mail; is
26 that right?

27 A. Yes.

28 Q. Because you --

1 A. At the time, yes.

2 Q. You believed that Storix at the time then
3 was teetering on the brink of bankruptcy; is that
4 correct, sir?

5 A. I -- it was certainly headed in that
6 direction.

7 Q. Okay.

8 A. I mean, that is quite a substantial loss.

9 Q. Now, go down to the bottom where it says,
10 "Net Operating Income." Do you see that?

11 A. Net -- yes, net operating income.

12 Q. Is what? What does it say there?

13 A. Again, my numbers are so tiny. Minus
14 600 -- \$548,000, is that about right?

15 Q. No. Net operating income is minus
16 \$555,984.53. Do you see that? Do you agree with
17 that?

18 A. No. Mine does not say that. Mine I
19 believe says \$548,774.

20 Q. I'm sorry. A little over a half million
21 bucks, right? That's a loss?

22 A. A lot over 5 -- half million, but it's a
23 big loss, yes.

24 Q. All right. Let's go up a little bit, then,
25 and talk to me about the legal and professional
26 fees. What number is that?

27 A. Legal and professional fees is one million
28 seven hundred -- or 370 -- is that 573- or \$373,000?

1 Q. I got about a million three seventy-five.
2 Is that about right?

3 A. Approximately, yes.

4 Q. Okay. So back then there were legal fees
5 being -- and what were those legal fees being spent
6 on?

7 MR. KING: Objection. Calls for
8 speculation. Lacks foundation.

9 THE COURT: Sustained.

10 BY MR. MCCLOSKEY:

11 Q. Do you have any idea what those legal fees
12 were being spent on? I mean, you've come in here
13 and talked to us for four days about legal fees.
14 What was it being spent on?

15 MR. KING: Objection. Calls for
16 speculation. Lacks foundation.

17 THE COURT: Sustained.

18 BY MR. MCCLOSKEY:

19 Q. Do you have any idea what those legal fees
20 were being spent on?

21 MR. KING: Lacks foundation. Calls for
22 speculation.

23 THE COURT: Sustained.

24 BY MR. MCCLOSKEY:

25 Q. Well, let me ask you this: It's a fact,
26 then, Mr. Johnson, that you have no idea what those
27 legal fees were being spent on?

28 A. That is not true.

1 Q. Okay. What is it?

2 MR. KING: Objection. Lacks foundation.
3 Calls for speculation.

4 THE COURT: In light of the answer,
5 overruled.

6 THE WITNESS: During the period of January
7 to December 2015, I believe about 60 percent of that
8 money was spent on copyright litigation.

9 BY MR. MCCLOSKEY:

10 Q. What's the other 40 percent spent on?

11 A. Seeing that it was December 2015, it was
12 all spent on, to my knowledge, Procopio suing me for
13 operating a secret competing company, attending --
14 having two to three attorneys attending every board
15 and shareholder meeting, and any number of other --
16 any other -- any number of other actions that could
17 be used to interfere with my ability to have any
18 participation in the company.

19 Q. Sixty percent of \$1.375 million is about
20 800 grand; would you agree? Is that math right?

21 A. I don't think that would be quite right,
22 but --

23 Q. Okay. Well, you do the math.

24 A. Well, let's call it \$900,000.

25 Q. Okay. Nine hundred thousand dollars, and
26 that's in connection with your copyright suit?

27 A. No -- oh, wait. You said 60 percent?

28 Q. I'll go with whatever -- the number you

1 want, Mr. Johnson.

2 A. I think from January to December, that
3 might be about right.

4 Q. Okay. So 60 percent of \$1.375 million is
5 about \$800,000. Would you agree with that math?

6 A. Roughly.

7 Q. Okay. Now, if you drop that down to the
8 net operating income of minus 555-, then you've got
9 a profit of about \$225,000.

10 A. I'm sorry. Did you have a question?

11 Q. You have a profit of about \$225,000,
12 correct?

13 MR. KING: Objection. Calls for math.

14 THE WITNESS: You know, we don't need to
15 put it on the paper. That's all right. I'll take
16 your word for it.

17 BY MR. MCCLOSKEY:

18 Q. Do the math right on that butcher paper.
19 Do you want to do it?

20 A. I don't want to do it. That's all right.
21 I'll take 200,000 if you want --

22 Q. So there had been --

23 A. -- if we can speed this along.

24 Q. So there would had been a profit of
25 \$200,000 if you had not filed the copyright case;
26 isn't that true?

27 A. I -- I don't believe that's true, no.

28 Q. Okay. And the fact of the matter is that

1 had there been a profit, you would have never sent
2 that e-mail to Mr. Bonert, correct?

3 A. It -- I'm sorry. If what?

4 MR. MCCLOSKEY: No further questions,
5 Your Honor. Thank you.

6 MR. SULLIVAN: Nothing further, Your Honor.

7 MR. KING: Nothing further.

8 THE COURT: All right. Thank you,
9 Mr. Johnson. You my resume your seat.

10 THE WITNESS: Thank you much.

11 THE COURT: Mr. Sullivan?

12 MR. SULLIVAN: We just need to check. We
13 have two Brians to call. I don't know if they're
14 both here.

15 THE COURT: All right.

16 MR. SULLIVAN: Brian Bergmark.

17 BRIAN BERGMARK,

18 having been first duly sworn, was examined and
19 testified as follows:

20 THE CLERK: Thank you. Please have a seat
21 at the witness stand.

22 THE COURT: Good afternoon.

23 THE WITNESS: Good afternoon, Your Honor.
24 Oh, jeez. Good start.

25 MR. SULLIVAN: Your Honor, might I move
26 this podium to the side?

27 THE COURT: Yes. And then also, if you
28 could do some housekeeping up here. There's a

1 number of exhibits on the witness stand. Thank you.

2 That's all right. It happens a lot, as Tom
3 knows.

4 Thank you, Tom.

5 THE CLERK: Please state your full name and
6 spell your last name for the record.

7 THE WITNESS: My name is Brian Bergmark.
8 Last name is B-e-r-g-m-a-r-k.

9 THE CLERK: Thank you.

10 DIRECT EXAMINATION

11 BY MR. SULLIVAN:

12 Q. Good afternoon, Mr. Bergmark. How are you?

13 A. Good afternoon. Fine.

14 Q. Could you tell us a little bit about who
15 you are?

16 A. Yes. I'm a clumsy forensic accountant.
17 I'm a forensic accountant. The majority of my work
18 is -- I'm a CPA, but the majority of my work is
19 involved in quantifying economic damages and valuing
20 businesses and addressing accounting and
21 business-related issues.

22 Q. How long have you been involved in
23 performing that type of work?

24 A. It's approaching 30 years now.

25 Q. Tell us about where you work.

26 A. I'm the founder and one of the owners of a
27 company by the name of Torrey Partners. We -- about
28 20 people based here in San Diego, people with --

1 that do the same type of work that I do. It's a
2 consulting firm mostly related to accounting,
3 economic, and valuation issues.

4 Q. And I'm sorry. Did you mention the type of
5 people who are on staff at Torrey Partners?

6 A. I haven't, no. So there are other people
7 who are CPAs, like I am, that have M.B.A.s in
8 finance. We have people who are economists, Ph.D.
9 economists. We have fraud examiners. We have
10 people who are -- do data analysis related to,
11 again, accounting and financial issues primarily,
12 valuation issues.

13 Q. You mentioned that you're a CPA. What sort
14 of educational background do you have?

15 A. So I have a Bachelor of Science in
16 economics system science, which is economics with a
17 little bit more math involved, quantitative
18 economics. I have an M.B.A. with an emphasis in
19 finance. The Bachelor of Science is from UCLA. The
20 M.B.A. is from San Diego State University. And then
21 as part of my credentials and license that I hold, I
22 have to have about another 40 hours of additional
23 education every year.

24 Q. Have you ever taught any classes or given
25 any seminars?

26 A. I have. I've taught accounting courses at
27 UCSD Extension, but that's been a while ago. More
28 recently, I've been a guest lecturer at San Diego

1 State and UCSD, mostly in their valuation courses
2 addressing economic damage issues. And I provide
3 seminars for attorneys and accountants about
4 valuations and forensic accounting issues.

5 Q. Do you have any sorts of licenses or
6 certifications?

7 A. So the -- the CPA that I mentioned is a
8 license, so I'm licensed in California as a CPA. I
9 also am certified through the National CPA Society
10 as an -- accredited in business valuation. I'm also
11 an accredited senior appraiser of businesses, which
12 is from the American Society of Appraisers. And I'm
13 a certified financial forensic, which is also --
14 it's the CPA's way of designating people who do
15 forensic accounting type of work.

16 Q. Can you tell us a little bit about your
17 experience providing testimony?

18 A. So I've testified frequently. I've
19 testified over a hundred times here in San Diego,
20 pretty much throughout Southern California. I've
21 also testified in Arizona and Illinois and Nevada
22 and have testified in state courts and federal
23 courts.

24 Q. Do you tend to work for one side or the
25 other, for either the plaintiffs or defendants?

26 A. It's pretty equally weighted between the
27 two. Sometimes I'm retained by the plaintiff's side
28 of the case that's making the claim. Sometimes I'm

1 retained by the defendants who are trying to respond
2 to that claim.

3 Q. Have you ever worked for Storix or been
4 involved in a matter involving Mr. Johnson?

5 A. Yes.

6 Q. We've been hearing testimony about the
7 copyright litigation. Was it that case that you
8 were involved in?

9 A. Yes.

10 Q. Would you tell us about what role you've
11 served in this matter?

12 A. In this matter, as in --

13 Q. In this case we're here today on.

14 A. This one. I've been asked to really do,
15 primarily, two things. One is to address some of
16 the claims that are being made on behalf of your
17 clients, and that would be the people who are the
18 directors of the company, and also -- so addressing
19 damages sustained by them, but also address some
20 accounting and damage issues, just how would you
21 quantify damages in certain circumstances.

22 And then I've also been asked to
23 potentially respond to the claims from Mr. Johnson
24 in terms of damages that I may be asked to address,
25 but I think at this point I'm only asked to address
26 the first component.

27 Q. Correct. This case involves some
28 consolidated actions, and one of those cases is by

1 Storix, Inc., the company, as the plaintiff.

2 And so the first element of what you were
3 discussing of your role, is that related to Storix's
4 involvement as the plaintiff in its claim?

5 A. I wasn't sure about the particular names of
6 the parties. But yes, it would be related
7 to this -- to Storix's claims and the directors'
8 claims.

9 Q. And have you formed any opinions in that
10 regard?

11 A. Yes.

12 Q. In forming your opinions in this case, what
13 sorts of documents and information did you review?

14 A. Well, first of all, I had information from
15 the copyright case that was relevant to my analysis.
16 So I had the data that I had reviewed related to
17 that case, which included summary reports of Robert
18 Taylor and a Mr. Edwards related to the cop -- the
19 value of the copyright or the cost of developing the
20 software in that previous case.

21 And in this case, I've reviewed the
22 testimony for Mr. Johnson. There was two different
23 volumes of his deposition testimony that I reviewed.
24 And I've read a lot of pleadings that have gone back
25 and forth between the parties, so the complaint,
26 discovery responses, those types of things. And
27 I've also reviewed a report from Robert Taylor, who
28 is Mr. Johnson's expert in the case.

1 Q. Did you do any research related to wage
2 rates?

3 A. I didn't.

4 Q. What did you -- what did you do?

5 A. Well, I -- as -- part of my analysis is to
6 identify some of the labor costs that go into
7 developing the software. So I did some research
8 about what a software engineer's pay would be, but
9 ultimately what I did was to rely upon the analysis
10 that Mr. Taylor had performed, again, Mr. Johnson's
11 expert, in a previous case and in this case.

12 Q. And so let's discuss your opinions. You
13 said you formed some opinions. What opinions have
14 you formed?

15 A. Well, first, I've -- there's really, as I
16 said, kind of three categories of things here. One
17 would be how you would quantify damages in certain
18 circumstances. The second would be what are assets
19 of a company specifically, when does a company have
20 an asset and what are those -- what would be
21 considered an asset of a company. And then the
22 third one would be to identify the total cost that
23 went into developing the 9.1 software during the
24 time period when Mr. Johnson was with the company.

25 Q. So let's take those one at -- one at a
26 time. The first issue you mentioned was doing a
27 calculation related to damages. We just heard an
28 objection on math. Are we going to have to do math?

1 A. Not for that part of it.

2 Q. Tell me about your opinion.

3 A. Yeah. So all I've really been asked to
4 address was -- I understand there's some claims in
5 the case that Mr. Johnson interfered with some of
6 the customers of the company. And to the extent
7 that there was that type of interference, how would
8 you go about quantifying the damages in those
9 circumstances. And I didn't have -- put a number to
10 that, but I've been asked to identify how would you
11 go about doing that. And --

12 Do you want me to continue?

13 Q. Yeah. What was the opinion you reached in
14 how you would go about doing that?

15 A. So there's really two categories of that.
16 What you're trying to do is -- specifically, if
17 Mr. Johnson did interfere with those clients, were
18 there any sales lost as a result of that. So did
19 some of the revenues that the company -- would have
20 been generated from sales, were those impacted.
21 That would be one thing, is to evaluate those sales
22 and then subtract any costs associated with what
23 those sales would have been to come up with a
24 loss-of-profit number.

25 The alternative, or another way to do it,
26 would be to just identify what the costs were that
27 the company incurred to respond to that
28 interference. So if the company had to spend more

1 time addressing issues that it would not have
2 otherwise had to address if it wasn't for that
3 interference, then what's the cost of those times.

4 So if certain employees were diverted from
5 doing other things that they would have normally had
6 to do and -- and because of those actions, what's
7 the value of that time that they were diverted.

8 So that would be accumulated by the amount
9 of hours that they put into that, the cost of -- the
10 value of their payroll, so what are -- what's their
11 pay rate, what's -- times the number of hours,
12 include benefits associated with that. That's the
13 value of their time that was -- been diverted.

14 And then if there's any out-of-pocket
15 costs, if they had to hire somebody else, if they
16 had to incur other costs that wouldn't have
17 otherwise been incurred, then that would be a damage
18 as well.

19 Q. So with regard to the value of time, how
20 would you go about arriving at the figure for the
21 time value for a particular employee?

22 A. To include -- when I'm doing that type of
23 analysis, it depends what kind of records I have
24 available to me or what kind of evidence or
25 testimony might be available.

26 So if I have records that -- where somebody
27 has a time sheet where it says, "I spent seven hours
28 responding to this client. That was unusual for me.

1 And so I would -- I put down that amount of time on
2 a time sheet," then I would be able to use that and
3 take that person's hours times the rate and come up
4 with the damage.

5 More often than not, most companies don't
6 keep track of things that way, so what I end up
7 using is testimony from individuals or interviewing
8 the people who are involved in those issues to
9 identify an estimate of their time. And then I take
10 that times their pay rate to come up with what the
11 cost would be.

12 Q. And how would you get that pay rate?

13 A. It typically would be -- you would be able
14 to have that. So for that individual, you can find,
15 typically, that pay rate for that individual. And
16 usually, their pay rate, if you go to their payroll
17 records during that time period, you can quantify
18 that.

19 If they're a salaried person, then you
20 would come up -- take the salary divided by the
21 number of hours that they typically work to come up
22 with an average pay rate and apply that.

23 Q. So if somebody worked a full year, would
24 you divide an annual salary by a certain number of
25 weeks, typically?

26 A. Yeah. If you're -- so if you're 40 hours a
27 week and 52 weeks a year, because you're typically
28 including that people have vacation and vacation

1 time -- or sick time that they get paid for if
2 they're a salaried person, then you would take the
3 total salary and divide it by 2,080 hours, which is
4 40 hours a week times 52 weeks per year.

5 Q. And for the company, you would then sum the
6 total for each employee that you identified that
7 rate times the amount of time spent addressing that
8 to arrive at a total figure for the company? Is
9 that how you do it?

10 A. Now you're talking about doing math?

11 Q. Yeah.

12 A. But yeah, that's exactly what you'd be
13 doing, is taking that information, the evidence
14 about the number of hours, applying the applicable
15 pay rate, and in a lot of circumstances I would
16 apply a benefit rate too because there are payroll
17 taxes and other things that the company's incurring,
18 and come up with the math associated with that and
19 add those up in total.

20 Q. Now, you also mentioned one of the parts of
21 the opinion you had formed had to do with the value
22 of the software.

23 MR. SULLIVAN: We actually have a
24 demonstrative, which I don't believe there's an
25 objection to that. We'd like to publish it to the
26 jury.

27 MR. KING: No objection, Your Honor.

28 THE COURT: Exhibit number?

1 MR. MCCLOSKEY: It will be the next in
2 line. It's 909, I believe.

3 THE CLERK: Yes, sir.

4 THE COURT: So marked.

5 (Exhibit 909 marked.)

6 BY MR. SULLIVAN:

7 Q. Okay. Mr. Bergmark, what are we looking
8 at?

9 A. So this is a summary and there's -- now
10 there is math and a lot of numbers here. But
11 there's really two columns on the far right, and
12 those two columns are different alternatives that
13 I've identified.

14 And there's really two components of what
15 goes into the totals that are at the bottom here.
16 And so just the totals there included are
17 \$1,234,994, and the other one is 1,255,996, if you
18 see the double-underlined numbers.

19 Q. Okay. And how do you get there?

20 A. So what I'm trying to do here is simply
21 identify the cost that went into developing the
22 software. Okay. And there's really two components
23 of that.

24 One component is based on the previous case
25 and the expert that Mr. Johnson had in the previous
26 case. They identified how much time and cost went
27 into developing Version 7.2 of the software. So
28 seven point -- and 7.2 was then used to be given to

1 Mr. Johnson. I think there may be some -- there
2 were some other changes that were made to it between
3 7.2 and 8.1 and 8.2. But basically, all of 7.2
4 ultimately went into what he started working on as
5 9.1.

6 So what I've done is I've added the
7 compon -- the 7.2 conclusion that was reached in the
8 previous case by Mr. Johnson, that expert, and then
9 I added the cost of time that Mr. Johnson indicated
10 he spent on adding to 7.2 in preparing the
11 beginnings of 9.1 during the time period when he was
12 with the company.

13 So the top half of the sheet is that
14 component. It's how do I come up with what -- the
15 cost that Mr. Johnson incurred while he was with the
16 company changing 8.1 and 7.2 to 9.1, how much time
17 did he put in to develop 9.1 while he was with the
18 company. And that was during the time period from
19 August 2013 through May of 2014.

20 So that first -- first title there is cost
21 of time provided by Mr. -- by Johnson August '13 to
22 2014. And I've got two different alternatives for
23 that, one basing it on \$96,000 a year of value of
24 what the time of -- what the cost of an engineer and
25 software engineer would be, and the other one if I
26 use \$124,000 of a salary for the cost of an
27 engineer. And so --

28 THE COURT: And I know we're in the middle

1 of the answer, but if we could go more question and
2 answer.

3 MR. SULLIVAN: Sure.

4 THE COURT: Thank you.

5 BY MR. SULLIVAN:

6 Q. So why would you choose \$96,000?

7 A. So as I said, I did some research on my own
8 about the cost of this -- of an eng -- a software
9 engineer. But ultimately, I determined that it was
10 within the range of what Mr. Johnson's expert had
11 identified in the first case, which was \$96,000 a
12 year, and what he identified in this case, which was
13 \$124,000 a year.

14 So I -- because Mr. Johnson's expert used
15 the 96,000 in the first case and 124,000 in this
16 case, I've used both of those numbers as
17 alternatives.

18 Q. So we've heard testimony in this case that
19 Mr. Johnson was only earning \$50,000 a year. Why
20 not use that number?

21 A. Well, it's unclear whether the \$50,000 was
22 representative of the value of his time or was
23 compensating him for other things, medical insurance
24 or other things that I saw that he was indicating he
25 was getting paid enough to pay him for his medical
26 insurance. So if I used 50,000, it would change the
27 analysis. But I was trying to identify what the
28 cost of a software engineer would be, and his expert

1 used the 96,000 to the 124,000 instead.

2 Q. So you're just looking at the market, what
3 the market rate would be?

4 A. Correct.

5 Q. You mentioned a third opinion having to do
6 with -- I'm sorry. Are you finished explaining
7 what's in the demonstrative?

8 A. I can be quicker, but no, I haven't quite
9 got there.

10 Q. My apologies.

11 A. So the top half of the schedule, then,
12 takes that -- the salaries -- the alternatives, the
13 96,000 over 124-. The next thing it does is comes
14 up with an hourly rate. And I used -- in this case,
15 I used Mr. Johnson's testimony that said he was
16 working 50 hours per week, and I divided it by 50
17 weeks per year to come up with the rate of his pay.
18 And that was either \$36.92 or \$47.69, depending upon
19 which salary number I used.

20 And then I multiplied that times the number
21 of hours that he worked during the time period from
22 August of 2013 through May of 2014. So that's --
23 that time period is less than a year. It's
24 39 weeks, and he indicated in his testimony that he
25 thought he was working on it about 50 hours per
26 week.

27 So I multiply the 50 hours per week times
28 39 weeks for the time period is 1950 hours times the

1 pay rate, the 36.92 or the 47.69, to come up with
2 the either \$71,944 or \$92,996. And that's the value
3 of the time that Mr. Johnson put into developing the
4 software from -- from 8.1 or 8.2 while he was with
5 the company to develop part of 9.1.

6 Q. And why is that number significant?

7 A. Well, because as I said, there was two
8 components of what I've done. So that's one
9 component. That's the time that Mr. Johnson put in
10 while he was with the company. The time -- and so I
11 already had a number for what it was worth when he
12 got back to the company in around August of 2013,
13 and that was what his expert had come up with in the
14 previous case.

15 He said that basically 7.2, which was used
16 to develop 9.1, had a value of \$1,163,000. Okay.
17 And that's based on the expert testimony from
18 another individual in the case who identified all
19 the hours and what time would be spent to come up
20 with the 7.2 software. And then using Mr. Taylor's
21 range of \$96,000 per year, they came up with the
22 \$1,163,000 number.

23 So when I add that to the time that
24 Mr. Johnson spent after that, the 71,994 or the
25 92,996, I come up with the totals that we talked
26 about at the beginning, 1.2 -- 1,234,000 or
27 1,255,000.

28 Q. So -- so again, just so I understand

1 correctly, those estimates are if you were to start
2 from scratch trying to estimate what it would take
3 to get to this software in terms of labor costs at
4 the point in which Mr. Johnson resigned from Storix?

5 A. Correct.

6 Q. Have we discussed everything on your
7 demonstrative?

8 A. We have now, yes.

9 Q. All right. You mentioned another element
10 of your opinion?

11 A. So the other thing I was asked to address
12 was related to Janstor, and the question that was
13 posed to me was -- there were two things.
14 Janstor -- there was testimony that Mr. Johnson had
15 established a couple things for Janstor, had
16 established some domain names and had established
17 some port registrations for that company.

18 The question posed to me was: Would
19 that -- would those things be considered assets of
20 the company once they were established? And the
21 answer is yes. I mean, if you -- the definition of
22 an asset for a company is something that you -- that
23 provides future value to the company.

24 So the domain name, if it's established for
25 the company, establishes something that has future
26 value for the company or can be used in the future
27 by the company. The port registration would be the
28 same thing. Once you establish that port

1 registration, it's considered an asset of the
2 company and is -- has value to the company.

3 Q. So we're not just talking about hard
4 tangible assets, like desks and chairs and computers
5 and things like that; is that right?

6 A. Well, those would be the same sort of
7 things. Again, the definition of an asset isn't a
8 tangible piece of equipment, a cup or anything along
9 those lines or cash that's in the books.

10 It would be considered those types of
11 things, like -- intangible things, like a port
12 registration or a domain name, but those things
13 actually have been established. There's a process
14 that you go through to establish those things, but
15 those are considered assets of the company.

16 Q. Now, in your experience, does a company
17 actually have to have a product on the market in
18 order to be considered in operation?

19 A. No. That's -- sometimes you consider that.
20 It depends on the type of company, but there's a lot
21 of companies who have -- who are in operations who
22 don't have a product yet. There's a lot of
23 companies -- especially software development
24 companies would fall into that category.

25 You're developing software over time or
26 you're putting things in place to eventually sell a
27 product or potentially sell a product. You're doing
28 research and development to potentially sell a

1 product. That doesn't mean you're not in
2 operations. Once you've started putting things in
3 process, once you've started buying domain names and
4 port registrations, you're considered in operations
5 as a company.

6 Q. Thank you, Mr. Bergmark.

7 A. You're welcome.

8 MR. SULLIVAN: No further questions.

9 THE COURT: Good time for our afternoon
10 recess?

11 MR. KING: Yeah.

12 THE COURT: All right. Ladies and
13 gentlemen, let's take our afternoon recess. We'll
14 be in recess 15 minutes. Remember the admonition.
15 Thank you.

16 (Whereupon the jurors exit the courtroom.)

17 THE COURT: We're outside the presence of
18 the jury and off the record, Leyla.

19 (Brief recess.)

20 (Whereupon the jurors enter the courtroom.)

21 THE COURT: Welcome back.

22 And, Mr. King.

23 CROSS-EXAMINATION

24 BY MR. KING:

25 Q. Good afternoon, Mr. Bergmark.

26 A. Good afternoon.

27 Q. We were looking at this demonstrative that
28 you prepared?

1 A. Yes.

2 Q. You come up with a couple numbers,
3 1,234,000, 1,255,000, right?

4 A. Yes.

5 Q. And those are damage numbers, right?

6 A. Well, it depends how the Court uses them.
7 All I've been asked to do was to accumulate the
8 cost of --

9 Q. You're not saying that -- you're not saying
10 that Storix has suffered \$1,234,000 in damages, have
11 you -- are you? That's not your opinion, right?

12 MR. SULLIVAN: Objection. Calls for a
13 legal opinion.

14 THE COURT: Overruled.

15 THE WITNESS: My analysis was to accumulate
16 the total cost of the software through the time that
17 Mr. Johnson left. So I'm not sure how --

18 BY MR. KING:

19 Q. So I just want to know. Your opinion is
20 not saying that Storix suffered \$1,200,000 in
21 damages, right?

22 A. Yeah, that's -- again, all I've been asked
23 to do was accumulate those costs, so I'm not sure
24 how it would be used by the Court.

25 Q. So the answer is no, correct?

26 A. I wasn't here to form a damage opinion.
27 It's an accumulation of cost numbers. So like I
28 said, I don't know how the Court would use it.

1 Q. You don't know what the damages are; fair
2 statement?

3 A. I've quantified the total cost of the
4 software. I haven't been asked to specifically
5 quantify the damages.

6 MR. KING: Objection, Your Honor.
7 Nonresponsive. Move to strike.

8 THE COURT: Granted.

9 BY MR. KING:

10 Q. You don't know what the damages are, do
11 you?

12 A. I haven't been asked to address that.
13 That's correct.

14 Q. You say in your opinion that Mr. Johnson's
15 time cost between 96,000 and 124,000, right?

16 A. That's what Mr. Taylor valued it at, yes.

17 Q. Okay. Now, "cost," that means money
18 actually spent, right?

19 A. Not necessarily. There's a lot of
20 circumstances where I'm just asked to value
21 somebody's time. So if their time -- and how do you
22 value that time? It would be based on, typically, a
23 wage or some -- some survey of information. So not
24 necessarily.

25 Q. Wait a minute. You're saying that yours
26 says cost. It doesn't say value. You're saying
27 that no one paid this amount?

28 A. Again, what I'm identifying is the value of

1 the time that we --

2 Q. So you're not identifying the cost of time.
3 You're identifying the value, right?

4 A. Well, I think you could say it the same
5 way. I mean, I'm not sure if that cost was actually
6 incurred from a check written, but it is -- a value
7 is identified based on the cost.

8 Q. So if Mr. Johnson was paid less than either
9 of those amounts, he was paid less than the value he
10 provided? Is that what you're saying?

11 A. That's one way of looking at it. There may
12 be other reasons that he was paid something
13 differently than the value of his time. But I've
14 identified, again -- Mr. Taylor --

15 Q. So is this or is this not the value of his
16 time? I'm trying to -- I want to be clear. Is it
17 or is not -- this not the value of Mr. Johnson's
18 time?

19 A. It's the value of the time that went into
20 preparing the software that -- Mr. Taylor had
21 identified that as the value of a computer engineer,
22 the time associated with a computer engineer, so it
23 would be the value of the time.

24 Q. Okay. And you're not saying that Storix
25 actually paid for that value. You don't know
26 exactly what Storix paid, right?

27 A. I know that Mr. Johnson was getting paid
28 some other amounts during different time periods.

1 Again, this is the approach that Mr. Taylor took,
2 and his analysis was to identify the value of the
3 cost of --

4 Q. So you're relying on Mr. Taylor's analysis,
5 right?

6 A. A lot of it is based on what Mr. Taylor had
7 done in his previous report and in his current
8 analysis, yes.

9 Q. You didn't redo his analysis, right?

10 A. I was asked to do some different things
11 than what he did, so --

12 Q. But you didn't redo the work that
13 Mr. Taylor did, correct?

14 A. No. I accepted what he did for the
15 1,163,000. I accepted what he did for the 96,000
16 and the \$124,000 amounts, but I -- my analysis is
17 how many hours did Mr. Johnson put into the software
18 during the period from August 2013 to May 2014 and
19 added it to Mr. Taylor's number.

20 Q. Okay. And so the -- the total amount, the
21 combined costs, that's -- that's -- that doesn't
22 actually represent any amount of money that Storix
23 actually spent, does it?

24 A. That's -- exactly how Mr. Taylor defined it
25 was costs. So that's -- what I'm using is his --
26 his definition.

27 Q. Okay. You're saying that this number
28 represents money Storix actually spent?

1 A. That's how Mr. Taylor identified it as --
2 the million one sixty-three was his analysis of cost
3 and --

4 Q. Except for this number right here, because
5 you said this wasn't money actually spent, right?

6 A. No. It's val -- it's an estimate of the
7 value of his time. Mr. Taylor did this -- used the
8 same numbers for purposes of his analysis.

9 Q. So which one is it? Is it the value of
10 time or is it cost actually spent?

11 A. I said it's the value of the time that --

12 Q. Okay.

13 A. -- Mr. Taylor used, and then I used it for
14 purposes of this analysis too.

15 Q. So that number is the value. It doesn't
16 represent cost actually spent; fair statement?

17 A. It's the value of the time that they spent
18 that Mr. Taylor also used for purposes of his cost
19 accumulation in his analysis. So they're really
20 interchangeable for purposes of this analysis.

21 Q. And you came up with that number because
22 that's the value of software that Mr. Johnson was
23 working on, right?

24 A. That's the cost -- the value of the time
25 that went into developing the software through the
26 end of Mr. Johnson leaving the company.

27 Q. Okay. And you're familiar with the -- this
28 case. It's a -- Storix has brought a breach of

1 fiduciary duty case against Mr. Johnson, right?

2 A. I don't remember all the claims in the
3 case, no.

4 Q. Okay. So do you -- do you believe that
5 Storix suffered \$1,200,000 of damages?

6 A. Again, I haven't been asked to address
7 that.

8 Q. Has Storix suffered any lost profits that
9 you're aware of?

10 A. I haven't been asked to address that. They
11 may have. I don't know.

12 Q. Has Storix suffered any extra costs that
13 you're aware of because of anything that Mr. Johnson
14 did?

15 A. Again, that wasn't the scope of what I was
16 asked to do. I had very specific tasks. If I was
17 asked to do that, I may have identified that, but I
18 haven't been asked to do that.

19 Q. Okay. And what does the value of Storix --
20 the SB Admin software have anything to do with
21 Storix and Johnson in this case?

22 A. Again, I had specific tasks. I wasn't
23 asked to --

24 Q. I --

25 A. -- identify how the Court's going to use it
26 in the case, so I don't know how they will use it.
27 I was asked -- I'm the finance guy. I accumulated
28 the information.

1 Q. Okay.

2 A. I was asked to identify the total value of
3 the software, the cost that goes into developing the
4 software, through that date.

5 Q. Okay. You talked earlier about estimating
6 the cost of -- to the company of responding to
7 interference from something Johnson may have
8 written.

9 Do you recall that?

10 A. Yeah. I don't say it was something he had
11 written, but I was asked to identify how you would
12 go about --

13 Q. And --

14 A. -- quantifying damages related to
15 interference.

16 Q. And the idea is to try and figure out how
17 much extra the company paid because of some
18 interference above and beyond what it would have
19 paid?

20 MR. SULLIVAN: Objection. Misstates
21 testimony.

22 BY MR. KING:

23 Q. Fair statement?

24 THE COURT: Overruled.

25 THE WITNESS: Yeah, it's not necessarily
26 what they would have paid beyond. It's whether they
27 had to divert time to do something else. Sometimes
28 it's an out-of-pocket number. Sometimes they divert

1 people from things they typically do to do other
2 things to respond to the claims, and those would be
3 a damage as well.

4 BY MR. KING:

5 Q. Okay. So that -- in other words, if we're
6 going to figure out how much extra cost in terms of
7 labor costs, we want to know how much the company
8 actually spent in labor costs and how much the
9 company would have spent in labor costs had
10 Johnson -- or had this interference not happened;
11 fair statement?

12 A. Not necessarily. Again --

13 Q. Why?

14 A. Because if you take somebody -- if
15 somebody's typically in your sales department going
16 out doing sales or responding to accounts receivable
17 and handling their typical accounts receivable, but
18 they're asked to go off and do other things, then
19 they have taken time away from those things that
20 they would have normally been doing and diverted it
21 to something else. So they become -- they got
22 behind in those things or there's a value associated
23 with that diversion and --

24 Q. They may have gotten behind in those
25 things, right? You don't know?

26 A. They weren't spending the time on the
27 things that they were supposed to be spending it on.

28 Q. Okay. And again, you don't know one way or

1 the other whether any -- there are any increased
2 labor costs because of anything Johnson did, right?

3 A. Again, I -- so the only numbers I put
4 together are the numbers we've talked about here,
5 which are not related to that. The interference
6 analysis, I would just ask to identify how you would
7 go about doing that. So I haven't been asked to
8 address whether or not that occurred or not.

9 Q. Have you done any analysis as to how
10 much -- as to how much the value of SB Admin
11 software costs?

12 A. I'm not sure I know what you mean.

13 Q. Have you looked at the code that
14 Mr. Johnson worked on?

15 A. No. I'm not an expert in the code. That's
16 why I relied on --

17 Q. Who was the expert?

18 A. A guy named George Edward. He was involved
19 in the copyright case, and he was the one who gave
20 Mr. Taylor information so that Mr. Taylor could
21 identify how much time went into developing the code
22 through one -- 7.2, which is the \$1,163,000 amount.

23 Q. Have you spoken with Mr. Taylor -- or
24 Mr. Edwards?

25 A. No.

26 Q. So Mr. Edwards did some research and then
27 gave -- based on something Mr. Edwards said,
28 Mr. Taylor did some research, and then Mr. Taylor

1 came up with a number, and then based on what
2 Mr. Taylor's number was, you came up with a number;
3 fair statement?

4 A. That's how I would have done it in that
5 other case to get through the 7.2. So I've accepted
6 what Mr. Taylor had done for purposes of that case.

7 MR. KING: And I have no further questions.

8 THE COURT: Mr. McCloskey?

9 MR. MCCLOSKEY: No, none, Your Honor.

10 Thank you.

11 THE COURT: Mr. Sullivan?

12 MR. SULLIVAN: Very briefly.

13 REDIRECT EXAMINATION

14 BY MR. SULLIVAN:

15 Q. Mr. Bergmark, who hired Mr. Taylor in the
16 copyright suit?

17 A. I understood Mr. Johnson did.

18 Q. From your discussion with Mr. King on cost
19 versus value, is this opinion you're providing
20 related to costs spent by Storix or the market rate
21 of developing costs for the SB Admin?

22 A. It's the market rate that is determined --
23 that has determined the estimated costs. So it's
24 interchangeable, I said here. It's the market rate
25 that Mr. -- again, Mr. Taylor developed this \$96,000
26 amount and identified it as the estimated labor
27 costs that went into developing 7.2.

28 I've used the same approach for taking 7.2

1 up to the time that Mr. Johnson left and had worked
2 on 9.1. So it's based on the value of that time
3 that Mr. Taylor identified as a cost issue. So
4 really, they're interchangeable here.

5 Q. Mr. King mentioned that you relied on
6 Mr. Taylor's work. Had you reviewed Mr. Taylor's
7 work in full?

8 A. Yes.

9 Q. Did you understand what he had done?

10 A. Yes.

11 Q. Did you agree with the methodology he
12 employed to arrive at his opinions?

13 A. For purposes of what we're talking about
14 here, yes.

15 Q. Did you understand the information on which
16 he relied to find his opinions?

17 A. Yes.

18 Q. Did you believe that was sufficient to form
19 the opinions that you arrived at?

20 A. Yes.

21 Q. You mentioned the cost to the company of
22 employees being distracted. Now, I just want to
23 understand that element of your opinion.

24 You're not saying that -- as I understand
25 it, that the company had to pay higher amounts to
26 the employees that were on staff, are you?

27 A. That may have been the case.

28 Q. Potentially. Okay.

1 A. But typically, the analysis that I would do
2 related to that would be internally identify the
3 amount of time that somebody was on staff, was
4 diverted from doing what their normal job was, how
5 much was that, what's the cost of that diversion
6 to --

7 Q. So if the employee is a salary employee and
8 the company is paying a fixed amount to that
9 employee for them to be there a certain amount of
10 hours per week, why does it matter whether they're
11 doing normal daily duties or they're doing something
12 like addressing issues related to interfering
13 e-mails? How is the company harmed in that
14 instance?

15 A. Right. Again, this is -- the question is:
16 Did the company -- was there an additional
17 diversion? Was there something that impacted the
18 efficiency of the operation to the company as a
19 result of the claims that are related to the case?

20 So if somebody had to go and do -- respond
21 to a client or do some things that they would
22 normally not have to do, they're taking time away
23 from the normal part of their job that they're paid
24 to do. So that's an additional cost to the company,
25 lack of efficiency.

26 Q. Thank you, Mr. Bergmark. I have no further
27 questions.

28 THE COURT: Mr. King?

1 MR. KING: Just one quick question.

2 RECROSS-EXAMINATION

3 BY MR. KING:

4 Q. Johnson's hourly rate, \$36/\$47.

5 Mr. Bergmark, what's your hourly rate
6 you're charging Storix for being here today?

7 A. My hourly rate is 390 an hour.

8 MR. KING: No further questions,
9 Your Honor.

10 THE COURT: Mr. McCloskey?

11 MR. MCCLOSKEY: None, Your Honor. Thank
12 you.

13 THE COURT: So may this witness be excused?

14 MR. SULLIVAN: Yes, Your Honor.

15 THE COURT: Thank you, Mr. Bergmark.
16 You're excused.

17 MR. KING: Your Honor, before Mr. Bonert
18 takes the stand, I'd like for there to be an offer
19 of proof as to what the relevancy of his testimony
20 will be. I don't know if there's any relevance.

21 MR. SULLIVAN: Mr. Bonert is the recipient
22 of the infamous Bonert e-mail. He's one of the
23 Storix employees. He's a sales and marketing guy
24 who can address the fallout of the customer e-mail
25 Mr. Johnson sent.

26 THE COURT: All right. Brian Bonert.

27 BRIAN BONERT,

28 having been first duly sworn, was examined and

1 testified as follows:

2 THE CLERK: Thank you. Please be seated at
3 the witness stand.

4 THE COURT: Good afternoon.

5 THE WITNESS: Good afternoon.

6 THE CLERK: Please state your full name and
7 spell your last name for the record.

8 THE WITNESS: Sure. It's Brian Bonert,
9 B-o-n-e-r-t.

10 THE CLERK: Thank you.

11 DIRECT EXAMINATION

12 BY MR. SULLIVAN:

13 Q. Good afternoon, Mr. Bonert.

14 A. Good afternoon.

15 Q. Could you tell us who you are and what you
16 do?

17 A. I'm Brian. I've been with Storix since
18 May 1st, 2012, and I do sales and marketing.

19 Q. Just to be clear, you have not been present
20 during the testimony throughout this trial, have
21 you?

22 A. No. I've been back at the office.

23 Q. Office is pretty empty this week?

24 A. A little quiet there.

25 Q. When you were hired in May of 2012, had
26 Storix -- was Mr. Johnson working at the company
27 then?

28 A. He was there on occasion.

1 Q. Can you estimate how often you'd see him?

2 A. Couple times a week, and then it would be
3 stretches for a few weeks that he wouldn't be there.

4 Q. Did you know much about him or who he was?

5 A. Not really.

6 Q. What did you know about him?

7 A. I knew he was the founder of the company.

8 Q. Did you have much interaction with him at
9 the time?

10 A. No.

11 Q. Prior to working at Storix, had you worked
12 in the software industry before?

13 A. I have. I've been with five other software
14 companies over the last 24 years.

15 Q. What have you done at those other
16 companies?

17 A. Primarily sales and marketing and sales and
18 leadership.

19 Q. Is that all in San Diego?

20 A. No. First was in Iowa and then moved to
21 California, so the rest of them are San Diego based.

22 Q. Have they been -- what size companies have
23 they been?

24 A. Couple of them were large public companies.
25 A couple were smaller, privately owned. And one was
26 a startup, very small.

27 Q. And you were hired at Storix in May of
28 2012. What was your title?

1 A. Business development and channel manager.

2 Q. What is channel manager?

3 A. We sell our product directly to customers,
4 but we can also sell through companies that resell
5 products, like CDW or Insight. They're kind of big
6 reseller companies, so I manage those partnerships.

7 Q. Did you have a boss?

8 A. I report to Manuel.

9 Q. Were there any weekly meetings that you
10 started attending once you were hired at Storix?

11 A. Yes. Every Monday we had a full company
12 staff meeting.

13 Q. Did you have ever occasion to see
14 Mr. Johnson attend any of those meetings?

15 A. Yeah. He was there occasionally.

16 Q. Are you part of a technical team?

17 A. No. I'm just on the sales side.

18 Q. Do you have a general understanding of what
19 the software does?

20 A. I do.

21 Q. I would imagine to sell it, you probably
22 have to.

23 A. I better, yeah.

24 Q. Storix's offices, are they fairly small?
25 large?

26 A. It's a small office suite. It's kind of
27 one big long suite that -- individual offices that
28 have a door with a glass window and then a big

1 common area that we use as kind of a conference
2 room.

3 Q. It's pretty close quarters working with
4 these other gentlemen?

5 A. Yeah. You can hear the conversations
6 pretty much across the whole suite.

7 Q. Do you recall a point in time when
8 Mr. Johnson returned to work more regularly or
9 routinely at Storix?

10 A. Yeah. In 2013, he was there more often.

11 Q. Do you recall witnessing any interactions
12 between Mr. Johnson and the other technical folks at
13 Storix on software issues?

14 A. So after our staff meetings on Mondays,
15 there was usually an engineering or technical
16 meeting that would happen either right after that or
17 later in the day.

18 Q. Did you attend those?

19 A. No, I didn't attend them. But my office
20 is, like, 15 feet away from the open conference
21 room.

22 Q. And did you -- do you recall hearing or
23 witnessing anything that occurred at those meetings?

24 A. Sure. There would be just sort of the
25 normal conversations about product updates that need
26 to be made, and sometimes those conversations got
27 louder.

28 Q. What do you mean by "louder"?

1 A. Disagreement on how something should be
2 done, whether it's how a fix should be implemented.
3 But there was definitely some disagreement on how --
4 the development strategy or how they should work on
5 the product. And if I didn't close my door, I could
6 hear most of that.

7 Q. And who do you recall generally being in
8 attendance at these technical meetings?

9 A. It was -- well, pretty much, Anthony and
10 David and Rich and then Dave Kinney when he was an
11 employee, and then we had a couple different support
12 people that would be there.

13 Q. Do you recall any one of those gentlemen
14 tending to be the loudest individual?

15 A. It would kind of go back and forth, but
16 a lot of times Anthony was the one who got the
17 loudest near the end.

18 Q. What was your impression of Mr. Johnson's
19 reactions during those exchanges?

20 A. Kind of, you know, it's my way or it's
21 wrong or he didn't agree with making really any
22 change that wasn't his idea. There was one
23 discussion that was about the actual process of
24 developing different parts, and he didn't like what
25 was being suggested on how it should be changed.
26 And he really sort of to me sounded like he was, you
27 know, disagreeing but playing the victim in that.

28 Q. Do you recall learning at some point that

1 Mr. Johnson resigned?

2 A. Yes.

3 Q. That was in May of 2014?

4 A. I believe that's it.

5 Q. What were you told about his resignation?

6 A. Just that he chose to leave the company.

7 MR. SULLIVAN: Call up Exhibit 356, please.

8 BY MR. SULLIVAN:

9 Q. It's already been admitted, Mr. Bonert.
10 You've not been in trial, but we've spent a lot of
11 time on this e-mail, so I won't belabor it.

12 But do you recognize -- if we blow up the
13 bottom header there that has the --

14 A. The "Buckle up, boys" e-mail.

15 Q. This is the infamous "Buckle up, boys"
16 e-mail.

17 A. Yes.

18 Q. You were on the copy line. Do you recall
19 receiving this e-mail, sir?

20 A. I do.

21 Q. What did you think when you received this
22 e-mail?

23 A. Shocked. It was surprising that, one, I'd
24 be included on it; but two, just what he was saying
25 in it.

26 Q. And the date of this e-mail is
27 September 26, 2015. Did you have any concerns about
28 this e-mail when you received it?

1 A. Yes.

2 Q. What were those concerns?

3 A. The biggest thing is that he was
4 threatening to send an e-mail to a customer list he
5 somehow had, and I was worried about what that was
6 going to do to our customers.

7 Q. Did you take that threat seriously?

8 A. Yes.

9 MR. SULLIVAN: Let's see Exhibit 22,
10 please. Zoom into the header of the e-mail.

11 BY MR. SULLIVAN:

12 Q. This is another e-mail we spent a lot of
13 time in this trial on. I don't want to spend a lot
14 of time on it with you, but I'll represent to you
15 this is what we've come to know as the customer
16 notice e-mail.

17 Do you recall learning at some point that
18 contacts of -- customers of Storix actually received
19 an e-mail from --

20 A. Yes. I had a copy of that e-mail forwarded
21 to me from one of my customers saying, What the heck
22 is this?

23 Q. Do you recall how soon after the e-mail was
24 sent you got that customer contact?

25 A. It was that morning. It was -- I don't
26 know exactly what time, but it wasn't long after the
27 customer received it.

28 Q. Do you recall that day what happened at

1 Storix in terms of dealing with this e-mail?

2 A. We were sort of in, you know, triage mode.
3 We didn't know who the e-mail went to, and I know
4 that David and the guys were in touch with legal to
5 figure out what the appropriate response would be.
6 And we were receiving a few e-mails and a few phone
7 calls, and we took it upon ourselves to reach out to
8 some of our larger customers that we were afraid got
9 the e-mail to make sure that they knew we knew.

10 And then during that day, we were pulling a
11 list from our customer database trying to figure out
12 who might have received it. And then we used an
13 e-mail that was crafted by legal to respond to it,
14 and so then we got that sent out before the end of
15 the day. But the entire day was really spent on,
16 like, trying to deal with that.

17 Q. Can you estimate for me the number of
18 customers that you had communications with regarding
19 this e-mail around that time?

20 A. Personally, it was between 15 and 20 of my
21 customers and I know Manuel had plenty of customers
22 to.

23 Q. You believe you were successful --

24 A. For the most part, yes.

25 Q. Sorry. Let me finish the question.

26 Successful in addressing their concerns?

27 A. Yeah, for those we were able to communicate
28 with, I think they -- they understood it and -- but

1 there was definitely I think a few that had some
2 doubt.

3 Q. How long after the date of this e-mail do
4 you recall hearing things about this e-mail from
5 customers?

6 A. So it -- initially that very day and then
7 throughout the rest of that week it was a pretty
8 regular topic and then a couple times a week after
9 that, and we actually had partners or customers
10 several months later say, Hey, I just happened to
11 see this and it was something that got forwarded
12 maybe from somebody else. So it was a few months
13 that it was a ripple effect.

14 Q. Can you estimate for me how much time you
15 spent addressing issues related to the fallout from
16 this e-mail?

17 A. Personally, somewhere between probably 20
18 and 30 hours.

19 Q. And did that distract from job activities
20 that you would have otherwise done?

21 A. Absolutely.

22 MR. SULLIVAN: Let's see Exhibit 23,
23 please. Okay. Zoom in on the header.

24 BY MR. SULLIVAN:

25 Q. This is another e-mail we've come to refer
26 to, your namesake, the Bonert e-mail.

27 A. Yes.

28 Q. So you recall receiving this e-mail?

1 A. I do.

2 Q. This was January 16, 2016, to you from
3 Mr. Johnson?

4 A. Apparently responding to a call I never
5 made.

6 Q. So -- okay. That was my first question.
7 There's the subject line there. It says, "Thanks
8 for your call."

9 Was there a call?

10 A. No.

11 Q. So you had not had phone communications
12 with Mr. Johnson leading up to this e-mail?

13 A. None whatsoever.

14 Q. What was your interpretation of this e-mail
15 when you received it?

16 A. It was shocking. It felt very threatening,
17 and it was filled with a lot of inaccuracies and --
18 yeah, it was a concern.

19 Q. You said "threatening." What was
20 threatening about it?

21 A. Well, one of his lines in there is, This is
22 not a threat. I generally take that as a threat.

23 Q. Did you fear that perhaps your job was in
24 jeopardy?

25 A. It could have been, not from him directly,
26 but the things he was saying he was going to do.

27 Q. Did it concern you that as a result of him
28 sending that prior customer e-mail, there might be

1 something further he was willing to do?

2 A. Could have been, yes.

3 Q. Now, at the bottom --

4 MR. SULLIVAN: Can you go to the closing
5 paragraph. Blow up everything after the italicized
6 all the way down to the signature. Thank you.

7 BY MR. SULLIVAN:

8 Q. Okay. There's a line there, bolded
9 language, "I'm still a company director and its
10 largest shareholder, so there's no reason you can't
11 communicate with me and no reason you should have to
12 tell anyone else, especially Manuel," underlined,
13 exclamation point.

14 What did you think when you read that?

15 A. It was one of those, Please blow it up
16 after you read it. And I thought that -- it didn't
17 make any sense to me.

18 Q. Did you tell Manuel?

19 A. Absolutely.

20 Q. So you didn't follow the special
21 instruction?

22 A. No, I didn't.

23 Q. Down at the bottom, the next paragraph, it
24 says, "I take a chance e-mailing you only, because
25 Huffman is probably keeping tabs, so delete this and
26 call me if you want to talk."

27 Did you ever have a concern that
28 Mr. Huffman was reading your e-mail?

1 A. No.

2 Q. Did you try to delete the e-mail?

3 A. No.

4 Q. Did you ever call Mr. Johnson in response?

5 A. No.

6 Q. Why not?

7 A. I didn't want to get involved in any way,
8 and it was best to keep my distance.

9 Q. There's a statement in paragraph 4 that I'd
10 like to focus on, [as read] "You don't have to
11 believe a word, but understand I've still been
12 working on the software for two years now. I have a
13 marketable product and you don't. They tell me now
14 they own -- they tell you they own -- now own the
15 copyright, but they don't."

16 Did you agree with any of that?

17 MR. KING: Objection. Relevance.

18 THE COURT: Relevance?

19 MR. SULLIVAN: He's in the -- sales and
20 marketing. He's -- Mr. Johnson's critiquing the
21 marketability of the product, and he can confirm
22 that.

23 THE COURT: Overruled.

24 THE WITNESS: Restate the question.

25 BY MR. SULLIVAN:

26 Q. Sure. Would you agree with any of that?

27 A. No.

28 Q. All right. Let's take it one at a time.

1 "I have a marketable product and you
2 don't." What's your impression of whether Storix's
3 SB Admin is marketable?

4 A. We've been selling it for many years since
5 the start of the -- after he left, and we continue
6 to sell it just fine.

7 Q. Are you familiar with the sales figures and
8 revenue figures of SB Admin at Storix?

9 A. I am.

10 Q. How so?

11 A. I do a lot of the reporting and sales
12 planning. So at weekly meetings, I'm the one that's
13 providing the sales report. And when we do our
14 planning for next year's, I'm doing all the
15 reporting. And we're a small enough company that I
16 actually enter my own orders into the system, so I'm
17 very familiar with what our sales numbers are.

18 Q. Is your compensation tied to sales?

19 A. I am commissioned, yes.

20 Q. Do you continue to make sales and earn
21 commissions even today?

22 A. I do.

23 Q. Mr. Johnson says, [as read] "They tell you
24 they own -- now own the copyright, but they don't."
25 How did you interpret that statement?

26 A. I was a little confused by it considering
27 we had just won the copyright lawsuit.

28 Q. Did you have any concerns about this e-mail

1 with regards to Mr. Johnson possibly competing with
2 Storix?

3 A. Yes.

4 Q. Why is that?

5 A. Well, he said he's got a version of the
6 product that he thinks is sellable, and I didn't
7 know what he could do with it. He could have put it
8 on the Internet and tried to sell it for \$5 a copy
9 and compete with us, or he could have given it away.
10 I had no idea what his intentions were.

11 Q. What did you do after receiving this
12 e-mail?

13 A. I forwarded it to Manuel, my supervisor.

14 Q. What's your annual salary, sir?

15 A. Eighty-five thousand dollars.

16 Q. Thank you. I have no further questions at
17 this time.

18 THE COURT: Mr. King?

19 CROSS-EXAMINATION

20 BY MR. KING:

21 Q. Mr. Bonert, you're in the sales and
22 marketing department?

23 A. Yes.

24 Q. Your job is to know the product, right?

25 A. Well enough to talk about it with
26 customers, yes.

27 Q. You have to know your competitors' products
28 too, right?

1 A. I do.

2 Q. Who are your biggest competitors?

3 A. One of the more common ones that we run
4 into is a company called Cristie, which we -- I
5 would say we compete directly with, and there's some
6 open source utilities.

7 Q. Do you do a pretty good job of keeping
8 track of new competitors?

9 A. We try.

10 Q. Ever seen any new competition from
11 Mr. Johnson in the market?

12 A. Personally, no.

13 Q. Ever seen him selling software online
14 anywhere?

15 A. I didn't.

16 Q. Ever seen Mr. Johnson ever trying to
17 solicit any of Storix's customers?

18 A. Well, he e-mailed them saying that they
19 were in possession of a product that wasn't ours.

20 Q. But have you ever seen him trying to sell
21 it to Storix customers?

22 A. Not directly.

23 Q. You -- your boss -- your direct boss is
24 Manuel Altamirano?

25 A. Correct.

26 Q. Sitting here today, right?

27 A. Yeah, behind you.

28 Q. Yeah. And you're also aware that Mr. David

1 Huffman, sitting here at counsel table --

2 A. Yes.

3 Q. -- also your boss, right, because he's
4 president of the company?

5 A. Correct.

6 Q. Either of them could terminate your
7 employment, correct?

8 A. Sure.

9 Q. This is -- you would survive on your wages,
10 right?

11 A. Correct.

12 Q. If you lost those wages, that would be
13 pretty serious for you, wouldn't it?

14 A. As it would be for anyone.

15 Q. When Mr. Johnson sent that e-mail to you in
16 2016, same situation, Mr. Altamirano/Mr. Huffman,
17 they could terminate your employment, correct?

18 A. I don't understand the question.

19 Q. In 2016, when Mr. Johnson sent that e-mail
20 to you, was the same situation too -- true -- was
21 the same situation also true? In other words, at
22 that time, could Mr. Altamirano or Mr. Huffman
23 terminate your employment?

24 A. They were my management at that time, yes.

25 Q. They were the people that controlled
26 whether or not you got paid, correct?

27 A. Sure.

28 Q. Okay. You don't want to do anything to

1 upset the people that control how you get paid,
2 correct?

3 A. I wouldn't characterize it that way.

4 Q. You have a pretty substantial interest,
5 getting paid, right?

6 A. Yeah, to do my job.

7 Q. Can you tell me approximately how many
8 customers has Storix lost because of anything
9 Mr. Johnson said?

10 A. I don't specifically know of any.

11 Q. Can you tell me approximately how many
12 customers have stopped renewing their maintenance
13 contracts with Storix because of anything
14 Mr. Johnson has said?

15 A. I can't tell you that for certain, because
16 there's customers who choose not to renew and they
17 don't tell us why.

18 Q. When you were working alongside
19 Mr. Johnson, did you have any arguments with him?

20 A. No, I had very little interaction with him.

21 Q. Did you tell anyone that you didn't like
22 working with him?

23 A. No.

24 Q. Tell anyone that he bothered you?

25 A. I had very little interaction with him.

26 MR. KING: No further questions.

27 THE COURT: Mr. Aveni?

28

CROSS-EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BY MR. AVENI:

Q. Good afternoon, Mr. Bonert.

A. Good afternoon.

Q. I just have a couple of very, very brief questions for you.

You testified with regard to some disagreements you heard among the software developers. Do you remember that?

A. Yes.

Q. Did you ever hear any discussions about Mr. Johnson's work during those meetings?

A. With respect to, like, the quality of work or --

Q. Anything related to the work he was doing. Did you hear anything about that?

A. They were -- nothing that I can think of specifically.

Q. Did you hear anything about disagreements about the policies and procedures related to software development?

A. Yeah. As I mentioned, there was one conversation that was about, like --

MR. KING: Objection. Hearsay. Strike.

THE COURT: Sustained.

BY MR. AVENI:

Q. Did you hear anything Mr. Johnson said with regard to policies and procedures related to the

1 software development?

2 A. Just from my office when they were having a
3 meeting that he didn't like the changes that they
4 were proposing on how development should be done.

5 Q. Now, when Mr. Johnson returned to Storix
6 and was working on Version 9.1, did you know the
7 status of his terminal illness at that time?

8 A. Not at all.

9 Q. Did you ever hear Mr. Johnson say anything
10 in the office regarding the status of his terminal
11 illness after he returned?

12 A. It was never a topic.

13 Q. Thank you. No further questions.

14 REDIRECT EXAMINATION

15 BY MR. SULLIVAN:

16 Q. Very briefly, have you ever considered
17 leaving Storix as a result of all the disputes
18 surrounding --

19 A. It's frustrating, but I enjoy the product.
20 I enjoy the market. I enjoy the people I work with.

21 Q. Do you have any concern that given your
22 experience in the software industry, you wouldn't be
23 able to find another job that's comparable?

24 A. No.

25 MR. SULLIVAN: Thank you, Your Honor.

26 Nothing further.

27 THE COURT: Mr. King?

28 MR. KING: Nothing further.

1 THE COURT: Mr. Aveni?

2 MR. AVENI: Nothing further, Your Honor.

3 THE COURT: May this witness be excused?

4 MR. SULLIVAN: Yes.

5 THE COURT: Thank you, Mr. Bonert. You're
6 excused.

7 Mr. Sullivan?

8 MR. SULLIVAN: Your Honor, Storix calls
9 David Smiljkovich.

10 DAVID SMILJKOVICH,

11 having been first duly sworn, was examined and

12 testified as follows:

13 THE CLERK: Thank you. Please be seated at
14 the witness stand.

15 THE COURT: Good afternoon.

16 THE WITNESS: Good afternoon. I'm bringing
17 my own water.

18 THE CLERK: Please state your full name and
19 spell your last name for the record.

20 THE WITNESS: My name is David Smiljkovich,
21 S-m-i-l-j-k-o-v-i-c-h.

22 THE CLERK: Thank you.

23 DIRECT EXAMINATION

24 BY MR. SULLIVAN:

25 Q. That's a lot of consonants, but I think I
26 finally got it.

27 Please tell us who you are.

28 A. I'm the former chief financial officer for

1 Storix, Inc.

2 Q. When were you hired at Storix, Inc.?

3 A. I was hired in June of 2012.

4 Q. Tell us a little bit about your background
5 and training. Do you have a college degree?

6 A. Yes. I have a Bachelor of Arts degree in
7 economics from Humboldt State University. I also
8 have a graduate certificate in accountancy from
9 National University.

10 Q. What sort of experience in accounting and
11 bookkeeping do you have?

12 A. I have cumulatively approximately 25 years
13 of financial accounting experience in both small
14 businesses and large across various industries,
15 trucking through technology companies,
16 manufacturing.

17 Q. Now, earlier today we heard from Michelle
18 St. Claire. Do you know her?

19 A. Yes, I do.

20 Q. For a time, did you work with her at
21 Storix?

22 A. For about a day and a half.

23 Q. What were you initially hired to do at
24 Storix?

25 A. Initially, I was requested by David Huffman
26 to come in and do a brief review of the processes
27 that were being done in the finance and accounting
28 department, being done by Michelle St. Claire

1 specifically.

2 Q. Was your understanding that she was leaving
3 the company at that time?

4 A. Yes. In fact, she sent me an e-mail
5 congratulating me on -- well, at the time I was not.
6 I'm sorry. Let me back up.

7 When I did the brief review, I did not know
8 that she was going to be leaving.

9 Q. But you at some point came to understand
10 that?

11 A. Correct. Later on, Mr. Huffman had
12 informed me that he received news from
13 Ms. St. Claire that she was leaving the company and
14 that he would like me to consider joining Storix.

15 Q. Earlier Mr. King, in discussing his
16 discussion with Ms. St. Claire, suggested that you
17 and Mr. Huffman were such close friends and that's
18 why you were brought on; is that true?

19 MR. KING: Objection. Leading.

20 THE COURT: Sustained.

21 BY MR. SULLIVAN:

22 Q. Were you hired at Storix because of a close
23 relationship with Mr. Huffman?

24 MR. KING: Objection. Leading and calls
25 for speculation.

26 THE COURT: Sustained.

27 BY MR. SULLIVAN:

28 Q. Did you know Mr. Huffman before being hired

1 at Storix?

2 A. I did. I did.

3 Q. How?

4 A. I knew him, actually, primarily through his
5 wife, Robin Sassi, who is a longtime childhood
6 friend of mine. Her father and my father actually
7 went to San Diego State University together back in
8 the '70s, and they -- we grew up just, like, a block
9 away from each other in the Carlsbad area. So I've
10 known her all my life and really considered her
11 family.

12 Q. And was your closer relationship with her
13 or Mr. Huffman?

14 A. It was initially with her. And when she
15 married Mr. Huffman, then I began to know him. And,
16 you know, we typically went to each other's birthday
17 parties, weddings, births, things like that, so --

18 Q. Now, at some point, you were brought on on
19 a permanent basis at Storix, right?

20 A. That's correct.

21 Q. How did you become CFO? Who hired you?

22 A. I was hired by David Huffman.

23 Q. Are you still Storix's CFO?

24 A. No, I no longer work at Storix.

25 Q. At some point recently did it come to light
26 that you had made personal charges on a corporate
27 credit card?

28 MR. KING: Objection. Leading.

1 THE COURT: Sustained.

2 BY MR. SULLIVAN:

3 Q. Why do you believe you -- strike that.

4 Why are you no longer working at Storix?

5 A. I'm no longer working at Storix because I
6 was let go from the company.

7 Q. What was the basis of being let go?

8 A. The reason I was let go is during my
9 deposition in this case, I was asked some questions
10 regarding some charges that were made on the credit
11 card. At the time I was extremely embarrassed and
12 ashamed of what I had done, that I had made some
13 charges.

14 Q. What were those charges for?

15 A. They were primarily for vaping and another
16 charge that was roughly \$22.

17 Q. Can you tell us in your own words how those
18 charges came about?

19 A. For many years, I had been struggling with
20 smoking. I had been going back and forth trying to
21 quit, and I had come to learn that possibly vaping
22 was a way to transition away from smoking. And what
23 really happened with me was, it became a real
24 contentious point with my wife and I, and I felt
25 like I just could not communicate with her about
26 that. And so in an attempt to hide that from my
27 wife, I made the charges on the company credit card.

28 Q. How many times did you buy vaping products

1 with the corporate card?

2 A. Several times over a few years.

3 Q. You mentioned there was one other charge
4 for around \$22?

5 A. Correct.

6 Q. How much in total did those personal
7 charges add up to?

8 A. They added up to around \$2,000.

9 Q. You mentioned that -- in your deposition in
10 this case, those charges were addressed. When you
11 were asked about them, did you admit those charges
12 were yours?

13 A. At the time, no. I later corrected my
14 testimony.

15 Q. Why did you not admit those were your
16 charges?

17 A. I was just -- I was extremely embarrassed
18 and caught off guard by it, and I did -- I just was
19 incredibly embarrassed and ashamed of what I had
20 done and --

21 Q. What did you do after your deposition?

22 A. After my deposition, I went through and I
23 totaled up all the charges that I had made, which
24 were more than the ones brought up during my
25 deposition, and then I received some counsel from a
26 friend. And it was -- it was the kind of man-to-man
27 counsel that said, "Hey, you know, you really need
28 to own up to what you've done. You need to do the

1 right thing," and that's what I wanted to do. I
2 wanted to do the right thing.

3 Q. So what did you do next?

4 A. So the next thing I did was I went home and
5 I talked to my wife, and I told her what I had done.
6 And -- sorry. It was really upsetting. She was
7 really upset. She was really upset that I had done
8 such a stupid thing. I was upset that I had done
9 such a stupid thing too.

10 We spent most the night talking about it,
11 until about 3 o'clock in the morning. And in the
12 end, you know what she said? "I don't even care
13 about the vaping charges. Why -- if you really
14 wanted to do that, you should have just come and
15 told me."

16 Q. How did that resolve between you and your
17 wife?

18 A. We are still married and she supports me
19 100 percent. She said that she understands how the
20 situation came about, but she told me -- she said,
21 "That's not who you are. That's not your character,
22 and you just need to do the right thing and let the
23 guys know."

24 Q. So what did you do next?

25 A. So I -- the next day, I scheduled a meeting
26 with David Huffman, and I explained to him
27 everything that happened. That day, I gave him a
28 check for all of the charges that I had made, and I

1 asked him for my -- for his personal forgiveness,
2 because he was my friend.

3 Q. What about the rest of these gentlemen?

4 A. After I met with David, he told me to go
5 home for the day and that he was going to set up a
6 meeting with the other guys in the morning. And I
7 agreed to that and I met with them the next day, and
8 I expressed the same thing. I told them what had
9 happened, that I was incredibly sorry.

10 He informed them that I had paid back the
11 charges that I had made on the card, and I asked
12 them for their forgiveness as well. And I told them
13 that I accept whatever they decide to do, whether I
14 will not continue with Storix or whether I will,
15 that it was up to them, that I would accept whatever
16 consequence they deemed necessary in this case.

17 Q. You mentioned at your deposition you didn't
18 tell the truth about those charges. Did you ever
19 change your testimony and correct it?

20 A. I did. I changed -- I corrected my
21 testimony.

22 Q. Did you take full responsibility for what
23 you had done?

24 A. I did.

25 Q. What decision did you ultimately learn
26 Mr. Huffman and Storix had made with regard to your
27 employment?

28 A. They decided to terminate my employment.

1 Q. When was your last day with the company?

2 A. It was on December 11th, 2017.

3 Q. Is there anything you'd like to tell
4 Mr. Huffman and the others about what you did?

5 A. I do.

6 David, I'm so sorry for what I did. And
7 the thing that really upsets me the most is that I
8 would really hate that if my failure, my bad
9 decision, were to affect this case in any way. And
10 I'm just -- I'm incredibly sorry for what happened.
11 It was a stupid thing for me to do. It didn't have
12 to happen, and it was -- it was my fault.

13 Q. Have you ever used your corporate credit
14 card for personal charges other than the ones you
15 went through and identified and reimbursed the
16 company for?

17 A. No.

18 Q. Did you ever have any reason to believe
19 that any of the other **director/management** defendants
20 at Storix knew about your use of the corporate
21 credit card for personal charges before you
22 confessed?

23 A. No, they did not.

24 Q. Did you fully reimburse Storix for any
25 personal charge you made on the corporate card at
26 any time?

27 A. Yes.

28 Q. Do you accept the decision that was made

1 with respect to the termination of your employment?

2 A. I did. I do.

3 Q. Okay. I want to change gears a little bit.

4 During the time you were CFO, what were
5 your responsibilities at Storix?

6 A. I had several. The primary responsibility
7 was to manage the finances for the company. I also
8 managed the office, the facilities. I worked with
9 very special projects that were assigned to me, like
10 a large move of the corporate facilities from a
11 location in Mission Valley to one in Kearny Mesa.

12 Q. Did you also handle Human Resources issues?

13 A. Yes, I did.

14 Q. Would you say that during your time as CFO
15 that you had the most familiarity with the financial
16 records at Storix?

17 A. That's correct.

18 Q. How does Storix maintain its financial
19 records? Does it use some sort of software?

20 A. Yes. It uses a software program called
21 QuickBooks Online.

22 Q. Were you the one responsible for
23 maintaining the QuickBooks Online database?

24 A. Primarily, although the salespeople did
25 make entries themselves for sales that they
26 performed.

27 Q. Who was responsible while you were employed
28 at Storix for compiling the company's financial

1 information?

2 A. That was my task.

3 Q. Were you responsible for ensuring the data
4 was accurate?

5 A. Yes.

6 Q. See Exhibit 772, please, which we
7 previously admitted, 2015 annual report. Can we
8 scroll to page 5, please. There's a financial
9 summary on this page of the annual report.

10 Do you recognize that?

11 A. Yes, I do.

12 Q. Did you have a role in preparing that?

13 A. Yes, I prepared that section. Typically,
14 the way it worked is David Huffman would work on the
15 annual report. He would forward it to me. I would
16 then insert the financial numbers, and then I would
17 e-mail it back to him.

18 Q. So did you -- where did you obtain those
19 figures for 2015?

20 A. I got them from QuickBooks.

21 Q. Are those -- these 2015 figures in the
22 annual report the final figures?

23 A. Yes, the ones in the annual report are
24 final figures.

25 Q. Do you believe those figures to be accurate
26 to the best of your knowledge?

27 A. I do.

28 Q. In 2015, employment costs were \$1,062,916.

1 And that included all employees' salaries?

2 A. Yes, it did, salaries/commissions.

3 Q. Administrative expenses in 2015 are sort of
4 out of line with what were in prior years.

5 Do you know why that figure seems so much
6 higher than in prior years?

7 A. Yes. Yes, I do.

8 Q. Why is that?

9 A. That is because -- that is the account
10 category that contained legal and professional fees,
11 and the copyright litigation caused an incredible
12 increase in the amount we were spending on legal
13 fees.

14 Q. That trial occurred in December of 2015?

15 A. That is correct.

16 MR. SULLIVAN: Can we see Exhibit 872,
17 please, previously admitted. We can scroll to
18 page 38.

19 BY MR. SULLIVAN:

20 Q. Do you recognize this as Storix's 2016
21 annual report?

22 A. Yes, I do.

23 Q. Show you page 41 of the documents, page 4
24 in the report. There's a similar summary of
25 information here which includes 2016 numbers.

26 Do you see that?

27 A. Yes, I do.

28 Q. Did you have a role in compiling this

1 information?

2 A. Yes. I inserted those figures into the
3 report.

4 Q. So this is similar to what you did for
5 2015. These are the final 2016 numbers?

6 A. Exactly.

7 Q. Did you get those from QuickBooks?

8 A. Yes, I did.

9 Q. Do you believe those to be accurate to the
10 best of your knowledge?

11 A. I do.

12 Q. So 2016, employment costs were -- or
13 employment expenses, 992,500 -- 800 -- \$553,
14 correct?

15 A. Correct.

16 Q. And administrative expenses, just shy of a
17 million dollars, \$912,041.

18 Do you have an understanding as to why that
19 was higher than in the years past as well?

20 A. Yes. We weren't involved in as much
21 litigation, so the costs were going down in terms of
22 legal fees. Most of the other expenses were pretty
23 flat. So it was the work on legal that was really
24 the driver of that account category going up and
25 down in drastic amounts.

26 Q. In 2016 --

27 THE COURT: Mr. Sullivan, if you can try to
28 speak closer to the microphone.

1 MR. SULLIVAN: Sure. Sorry about that,
2 Your Honor.

3 BY MR. SULLIVAN:

4 Q. In 2016, despite still being in litigation,
5 did total revenues still exceed total expenses?

6 A. They did.

7 Q. And is that the net operating income figure
8 or the net income figure, I should say?

9 A. Yes. I can't see it completely clearly.
10 It looks like about 255,000, maybe, 614.

11 Q. That's what I see. You were a member --
12 were you ever a member of Storix's board of
13 directors?

14 A. Yes, on several different occasions.

15 Q. When was the last time?

16 A. The last time was in 2017, just last year.

17 Q. Did you recently resign from the board of
18 directors?

19 A. I did.

20 Q. When were you elected to that board
21 position?

22 A. It was --

23 Q. The last time, I should say.

24 A. The last time, it was -- oh, the very first
25 time?

26 Q. No, the last time. Up until the time you
27 resigned, when had you been elected?

28 A. Oh, it was in -- during the beginning of

1 2017.

2 Q. Do you recall who was on the board with you
3 at that time?

4 A. Yes. All of the board members were Anthony
5 Johnson, Robin Sassi, David Huffman, Manuel
6 Altamirano, and myself.

7 Q. So it's a five-seat board?

8 A. Correct.

9 Q. Did you attend the 2017 board meeting as a
10 board member?

11 A. Yes, I did.

12 Q. Were you aware that -- while serving as a
13 director that previously, in August 2015, Storix had
14 filed a lawsuit against Mr. Johnson for breach of
15 fiduciary duty?

16 MR. KING: Objection. Leading.

17 THE COURT: Sustained.

18 BY MR. SULLIVAN:

19 Q. While you were a director, were you aware
20 of any pending litigation against Mr. Johnson?

21 A. I was.

22 Q. Did that include any company -- any claims
23 by the company?

24 A. Yes.

25 Q. What claims did you understand that
26 included?

27 A. There was a claim for breach of fiduciary
28 duty against Mr. Johnson for competing against the

1 company.

2 Q. At the 2017 board of director meetings, do
3 you recall discussing the topic of that lawsuit?

4 MR. KING: Objection. Leading.

5 THE COURT: Treating it as foundational.
6 Overruled.

7 THE WITNESS: I do.

8 BY MR. SULLIVAN:

9 Q. How was it discussed? In what context?

10 A. It was discussed in terms of whether it was
11 going to be approved. It was -- the discussion was
12 also about that there was a previous approval and
13 unanimous -- or that there was consent by a majority
14 of board members at the time, and the issue was
15 coming up to the board for final ratification.

16 Q. What did you understand "ratification" to
17 mean?

18 A. Meaning final approval. At the time --
19 excuse me -- that the lawsuit was filed, there was
20 not a board meeting scheduled. And so the -- a
21 majority of the board approved the lawsuit. The
22 board members approved the lawsuit. And then at the
23 next available meeting in 2016, the board, as a
24 whole, looked at the issue and it was approved by a
25 majority of the board.

26 Q. So was -- did the ratification vote pass?

27 A. Correct.

28 Q. Did anybody rule against the ratification?

1 A. Yes.

2 Q. Who was that?

3 A. I believe that was Robin Sassi and Anthony
4 Johnson.

5 Q. At some point did you become aware that
6 Mr. Johnson had sent an announcement e-mail to
7 Storix's customers in October of 2015?

8 A. I did.

9 Q. How did you become aware of that?

10 A. It was hard to miss it. It was the talk of
11 the office and pretty much stopped business for the
12 day.

13 Q. Do you recall what happened at the company
14 when you found out?

15 A. We did -- took various actions; some
16 proactive, some reactive. The proactive actions
17 were to contact legal counsel to get advice on how
18 we should respond. We drafted a memo that would be
19 released to customers, and we dealt with customer
20 calls that were coming in and proactively calling
21 customers to let them know what had happened and to
22 assure them that everything was indeed fine and that
23 Storix owned the copyright.

24 Q. Did performing those actions detract from
25 your ability to perform your otherwise required job
26 duties?

27 A. Yes, it took my whole day that very first
28 day.

1 Q. How many hours in total would you say you
2 spent addressing the fallout from that announcement
3 e-mail?

4 A. I don't remember off the top of my head.

5 Q. You said you spent the first day --

6 A. The first day the whole day for sure.

7 Q. How long of a day do you typically work?

8 A. I typically work eight hours a day.

9 Q. After that day, did you spend any time
10 working on the matter?

11 A. It was more follow-up, so it would be
12 trailed off as the days went on. So, you know, the
13 next day would have been maybe a couple hours, three
14 hours. Day after that, maybe an hour, you know. As
15 the time went on, it would just go down to almost
16 nothing.

17 Q. When was the last time you recall hearing
18 from a customer about that announcement e-mail?

19 A. Yeah, that was kind of scary, because it
20 had been some time, and so we thought maybe the
21 fallout was done and it had worked itself through.
22 And then we received a very distressing e-mail from
23 a very important business partner that bought
24 hundreds of thousands of dollars worth of product
25 from us every year. And they, you know, basically
26 told us, "Hey, we got this notice. Should we cancel
27 our -- should I call legal and cancel our agreement
28 with you?"

1 Q. Who's that customer?

2 A. That was -- the person was Minh (phonetic)
3 that we talked to. His name was Minh, but he was --
4 he worked for a company called -- I'm sorry. I
5 can't think of it right now.

6 Q. Does Quest sound familiar?

7 A. Pardon?

8 Q. Does Quest --

9 MR. KING: Objection. Leading.

10 THE COURT: Sustained.

11 THE WITNESS: I can't remember off the --
12 they have been changing names. They were owned by
13 Dell for a little. It's probably Quest software.

14 BY MR. SULLIVAN:

15 Q. How has Quest software -- how was that
16 issue resolved?

17 A. I was involved in that, so Rich Turner and
18 I called the person that had contacted him. We
19 discussed that there was a lawsuit in federal court,
20 that the company had won the lawsuit. And I told
21 them that I would connect with our legal counsel and
22 we would work on drafting some sort of letter that
23 would give them and their legal department assurance
24 that there was no need for them to cancel their
25 agreement with us and -- so that they could continue
26 business.

27 Q. How much time would you estimate you spent
28 on that effort?

1 A. On that day, I think I spent about six
2 hours total.

3 Q. What's your annual salary -- or I'm sorry.
4 What was your annual salary up until your
5 termination?

6 A. At that time, I was making 87,000 per year.

7 Q. Thank you, Mr. Smiljkovich.

8 MR. SULLIVAN: I have no further questions,
9 Your Honor.

10 THE COURT: Mr. King?

11 CROSS-EXAMINATION

12 BY MR. KING:

13 Q. Good afternoon, Mr. Smiljkovich.

14 A. Good afternoon.

15 Q. You were hired in 2012, correct?

16 A. That is correct.

17 Q. And in 2012, you were first hired as -- to
18 do -- to do an audit of the company's finances,
19 right?

20 A. That is not correct.

21 Q. What were you hired -- what was the
22 first -- what was the first limited scope of your
23 task? Because there's a point in time where you
24 came in for just a few days before coming on
25 full-time, right?

26 A. That is correct.

27 Q. What did you do during those few days?

28 A. During those few -- it was actually about a

1 day or a day and a half that I met with Michelle
2 St. Claire, and I did a basic review of the
3 processes that she was performing in the accounting
4 department to assess whether or not everything was
5 being performed properly.

6 Q. You heard her testimony today?

7 A. I did.

8 Q. Why did you ask her that time -- that day
9 that you were there about Mr. Johnson's shares at
10 the company?

11 A. It was a known situation that Mr. Johnson
12 was going to pass away. That's what I had been
13 told. And the main thing that I was concerned about
14 was that the company had a plan to deal with that
15 situation. Considering the amount of shares that he
16 had, it would be a tremendous impact to the company
17 if there was actually no plan in place. And so it
18 was really just a checklist item of common things
19 that are in a company, which is succession plan,
20 method of accounting, on and on.

21 Q. You wanted a plan -- you wanted the company
22 to have a plan to deal with Johnson's shares after
23 he died?

24 A. No. At the time when I was speaking with
25 Michelle, like we were just discussing, I was asking
26 her if the company had a plan.

27 Q. Got it. You wanted to know if the company
28 had a plan to deal with Mr. Johnson's shares after

1 he died?

2 A. No. I wanted to know if there was any -- I
3 wanted to know if there was any plan in place at all
4 regarding succession in general, specifically
5 Mr. Johnson, because he was obviously on a very
6 short time schedule. And it was -- it's a critical
7 aspect of -- of the continuation of the business.

8 Q. And what did Michelle tell you?

9 A. She said, "Yeah, there's something. He's
10 taking care of it." I said --

11 Q. So who's the next person you talked to
12 about what would happen to Mr. Johnson's shares?

13 A. The next time that topic had been brought
14 up was after I had been hired. And I had talked to
15 David Huffman and I said, you know, "Michelle told
16 me you guys got a plan in place. You know, I'm here
17 working now. What's the plan?"

18 And he said, "Oh, there's no plan."

19 Q. Did you -- did he ask, "What plan are you
20 talking about?"

21 A. I don't remember his exact words, but my
22 impression was that there was no plan.

23 Q. No plan for what?

24 A. That they would -- that a 40 percent
25 shareholder was going to be passing away in the next
26 two years, and there was no agreements, no plan, no
27 understanding of what happens when he passes away.
28 Do the shares go to family? Do they go to some

1 third unknown party? What happens? It's a -- I
2 think it's a pretty important thing to know in a
3 privately held small company.

4 Q. Mr. Huffman agree with you that there
5 should be a plan for that?

6 A. Yes, he did.

7 Q. Did he task you with going about and
8 setting up a plan to deal with that?

9 A. He approved me looking into it. He didn't
10 task me with it. I went to him and recommended
11 that, Hey, there should be some sort of agreement
12 between all of the shareholders regarding their
13 shares in the event of life, whether it be divorce,
14 leaving Storix, passing away, whatever, that it was
15 a common thing in small privately held companies for
16 there to be agreements between the shareholders
17 regarding the shares of the company.

18 Q. How soon after you started did you have
19 this conversation?

20 A. I don't recall exactly, because when I
21 first started, I would -- I would say it would
22 probably be late 2012.

23 Q. And at that time you knew that Mr. Huffman
24 and your childhood friend Ms. Sassi were going
25 through a divorce?

26 A. It was actually quite a surprise to me. I
27 found out near the end of their divorce that they
28 were having a divorce.

1 MR. KING: Move to strike as nonresponsive.

2 THE COURT: Granted.

3 BY MR. KING:

4 Q. At that time of that conversation, you knew
5 that Mr. Huffman and Ms. Sassi were getting a
6 divorce?

7 A. Are you talking about the conversation I
8 had with David about succession plan?

9 Q. Yes.

10 A. I did not know.

11 Q. At some point in 2012, you did know that,
12 you learned that, correct?

13 A. I don't think I learned that until 2013.

14 MR. KING: Your Honor, if I may approach
15 the witness?

16 THE COURT: Yes.

17 BY MR. KING:

18 Q. Mr. Smiljkovich, I'm going to show you what
19 we marked at your deposition and is marked here at
20 trial as Exhibit 172.

21 Do you recognize this document?

22 A. Just give me a moment.

23 (Exhibit 172 referenced.)

24 BY MR. KING:

25 Q. Okay.

26 A. Yes, I remember this e-mail.

27 Q. This is an e-mail from you to Ms. Robin
28 Sassi on February 4, 2013, correct?

1 A. That is correct.

2 MR. KING: Your Honor, I move to admit
3 Exhibit 172 into evidence.

4 MR. MCCLOSKEY: Just the e-mail between
5 Mr. Smiljkovich and Mr. -- Ms. Sassi? because this
6 exhibit is -- consists of numerous e-mails.

7 MR. KING: Sure. It's the entirety of the
8 exhibit.

9 BY MR. KING:

10 Q. It's a chain of e-mails underneath this
11 e-mail, correct, Mr. Smiljkovich?

12 A. Just give me a second here. There seems to
13 be some communications with legal counsel.

14 Q. And these were disclosed from you to
15 Ms. Robin Sassi, right?

16 A. It appears so.

17 MR. KING: Your Honor, I move to admit the
18 entirety of Exhibit 172.

19 MR. SULLIVAN: No objection, Your Honor.

20 MR. MCCLOSKEY: No objection, Your Honor.

21 THE COURT: Received.

22 (Exhibit 172 received.)

23 MR. KING: Robin, put that up on the screen
24 over here. Turn to the top of the exhibit.

25 BY MR. KING:

26 Q. You are writing Robin on February 4, 2013.
27 You say, "I'm feeling horrible about the situation I
28 put you in with David H."

1 That's David Huffman, right?

2 A. That is correct.

3 Q. And you've been doing your best to stay
4 neutral and out of the way, referring to their
5 divorce between them, correct?

6 A. Correct.

7 Q. And then you go on to say, "I want to tell
8 you that I'm truly sorry that I just complicated
9 your negotiations with David. It was not at all my
10 intention. As a sign of good faith on my part, I'm
11 forwarding my e-mail conversation with Stacy
12 DenHerder and her associate James Cunningham to
13 you."

14 Why did Ms. Sassi feel that you had
15 complicated your negotiations?

16 MR. MCCLOSKEY: Objection, Your Honor.
17 That calls for speculation.

18 THE COURT: Sustained.

19 MR. MCCLOSKEY: And this is a motion in
20 limine.

21 BY MR. KING:

22 Q. Why are you sending this e-mail to
23 Ms. Sassi?

24 A. I am sending this e-mail to Ms. Sassi
25 because from time to time we would talk about my
26 work at Storix. She would often call me and ask me
27 questions about how things were going, such and
28 such.

1 I was telling her that I was involved in
2 succession planning, and I was telling her different
3 aspects about the plan that I was beginning to come
4 up with or ideas that I was exploring about the
5 succession plan.

6 And I apparently hit a flashpoint with her.
7 I wasn't quite sure what that was, but she became
8 very upset and agitated about something that I was
9 working on. And I was extremely confused and I felt
10 incredibly bad, because she was my friend and I
11 wasn't trying to upset her or mess up whatever was
12 going on with her and David. I was trying to stay
13 out of it.

14 And so I was communicating this e-mail to
15 her because -- I was basically just saying, "Hey,
16 I'm sorry. I was not trying to -- not trying to
17 mess up -- mess with whatever is going on with you
18 guys in your lives."

19 Q. Did she tell you why she felt that was
20 messing -- that was -- that was troublesome to her?

21 A. She eventually told me that it had to do
22 with the right-of-first-refusal aspect. And I
23 believe she said specifically, "I don't like the
24 idea of a right of first refusal until after I have
25 my shares."

26 Q. What did you understand she was talking
27 about?

28 A. One of the concepts that I was exploring

1 during the succession planning was the idea that if
2 somebody was leaving the company or was passing away
3 or whatever was triggering an event that caused them
4 to leave the company, that the company would have
5 first dibs, essentially, on whatever shares that
6 person owned before.

7 Q. How did that relate to Robin?

8 A. I think -- in retrospect, it's easy for me
9 to understand. I can't quite understand -- I don't
10 quite remember where my mindset was at the time.
11 But from -- as I sit here now, she was apparently
12 trying to get a percentage of David's shares in
13 Storix. And she believed that if some sort of right
14 of first refusal was enacted, that she then would
15 not be able to get those shares. And she obviously
16 thought that this was some sort of malicious attempt
17 on our part to do that, and it was not.

18 Q. In other words -- sorry. Make sure I
19 summarize correctly.

20 A. Sure.

21 Q. You were -- you understood Ms. Sassi as
22 being concerned that this right of first refusal you
23 were exploring would have had the effect of
24 preventing her from obtaining any division of shares
25 that Mr. Huffman owned as part of the divorce?

26 A. That was my understanding of what she felt
27 about the situation.

28 Q. Now, let's take a look at the e-mails that

1 are below that. You sent her this chain of e-mails
2 that you had with this law firm, DenHerder, right?

3 A. Correct.

4 Q. That was a sign of good faith to Ms. Sassi
5 to show her, Hey, I'm not -- this is not about you,
6 right?

7 A. Yes, exactly. The idea was to say, Hey,
8 look, this is what I've been working on. I'm not
9 working on something to mess up her life. I'm
10 trying to do some legitimate work here, trying to do
11 some good for the company.

12 Q. If you turn to the last -- earliest e-mail
13 on this chain. It looks like it is from you to
14 Stacy DenHerder on January 11, 2013. And at this
15 point, this is -- this is after you and Mr. Huffman
16 had had the talk about doing some succession plan,
17 right?

18 A. Yes.

19 Q. And you had had -- and had you met with
20 anyone else other than Mr. Huffman about getting a
21 succession plan going?

22 A. At that time, I don't believe so. I just
23 told him -- I gave him advice that I thought that
24 that would be a good thing for the company, and he
25 gave me the okay to gather some information and get
26 some debt information basically together. And once
27 I had something to present and talk about, that then
28 we would move forward and talk with the other guys.

1 Q. So then you went and sent this e-mail to
2 Stacy DenHerder on January 11th; fair statement?

3 A. Correct.

4 Q. Had you spoken with any other law firms
5 prior to this one?

6 A. No.

7 Q. And you go on -- in the second paragraph,
8 you say, "I have a new situation, which is not
9 family related." You say you were hired last May
10 and -- let me get my pointer so it's clear.

11 You say you were hired last May and the
12 company is a California S corporation with five
13 shareholders. That's Storix, right?

14 A. That's correct.

15 Q. Okay. There's a single shareholder until
16 September 2011 when that person sold 60 percent of
17 his shares to four of the veteran employees of the
18 company.

19 That person you're talking about is Anthony
20 Johnson?

21 A. Yes.

22 Q. Okay. And because -- because he discovered
23 he had a medical condition and his doctors
24 anticipated he'd live another two years. Go to the
25 next page, and you describe what the company's share
26 ownership looks like at the time.

27 So at the time Anthony Johnson, 40 percent
28 shareholder?

1 A. Yes.

2 Q. And David Huffman, 19.64; Rich Turner,
3 18.76; Mr. Altamirano, 12.36; and Mr. Kinney, 9.24,
4 right?

5 A. Yes.

6 Q. And you say, [as read] "I've been advising
7 the CEO that for the company's stability, Storix
8 should attempt to come to an agreement with Anthony
9 Johnson to buy back his shares in the event of his
10 death."

11 You say, "Anthony has a sister, named
12 Michelle, who would likely be the executor of his
13 trust. Long before I started at Storix, she played
14 some mind games with the new board members and joked
15 about who she may or may not sell Anthony's shares
16 to after he passes."

17 What did you know about that?

18 A. These are things that she said to me after
19 I started working at Storix.

20 Q. How long were you working with Michelle?

21 A. About a day and a half.

22 Q. And she told you that she was going to play
23 mind games?

24 A. That was my interpretation of what she
25 said. I was actually quite shocked that she would
26 say something to me, I mean, in those regards. I
27 hardly even knew her.

28 Q. And so you wanted to enter -- you'd want to

1 enter into a legally binding agreement between
2 Storix, Inc., and Anthony Johnson's estate to
3 automatically buy back his shares at a set price
4 upon his death. That's what you wanted, right?

5 A. That's what I thought would be beneficial
6 for the company.

7 Q. Now, at the time how many discussions with
8 Mr. Johnson did you have about this proposal?

9 A. I never met Mr. Johnson at that time.

10 Q. How many discussions did Mr. Huffman have
11 with Mr. Johnson about this proposal?

12 A. I --

13 MR. MCCLOSKEY: Objection. Calls for
14 speculation.

15 THE COURT: Sustained.

16 BY MR. KING:

17 Q. Do you know if anyone at Storix had talked
18 to Mr. Johnson about this idea to buy back his
19 shares after he dies?

20 A. No, I do not know.

21 Q. Did you have any reason to believe that
22 Mr. Johnson was aware of this?

23 A. At that time, no, but I wanted him to be.

24 Q. And so you contacted him and told him?

25 A. I eventually did.

26 Q. When?

27 A. In 2014.

28 Q. Okay. After he left Storix, right?

1 A. Correct.

2 Q. But you never told him in 2013, right?

3 A. I did not tell him in 2013. At that time I
4 was still coming up with a plan as to how we would
5 even -- how --

6 Q. How you would deal with his -- how you
7 would deal with his property after he died, that was
8 what you were looking for, right?

9 A. No. I was trying to come up with some kind
10 of plan between all of the shareholders so that they
11 had some kind of idea about what was going to
12 happen, whether it was Anthony or Manuel or David
13 Huffman or anybody for that matter.

14 Q. Can you turn to the -- actually, let's see.
15 The second page of this looks like -- the first
16 page, there's an e-mail from James Cunningham
17 eventually responding to you on January 30th. He
18 says, "Hello, David. It sounds like Storix, Inc.
19 shareholders need to execute a buy-sell agreement."

20 Is that the first time you ever heard the
21 term "buy-sell agreement"?

22 A. I'm sorry. Just give me a moment.

23 Q. First page of Exhibit 172.

24 A. Okay. Yes.

25 Q. And Mr. Cunningham goes on and says, "The
26 agreement would be between all shareholders for the
27 purpose of protecting the management and control of
28 the corporation against intrusion by persons not

1 acting in the business of the corporation."

2 Persons like Ms. Sassi?

3 A. Persons like direct competitors.

4 Q. Is Ms. Sassi a direct competitor?

5 A. No.

6 Q. "Protecting the management." Mr. Johnson
7 at the time wasn't among the management, right?

8 A. Those are James Cunningham's words, not
9 mine.

10 Q. Did you disagree with James Cunningham's --

11 A. I do.

12 Q. I'm sorry. My question is: Did you
13 disagree with him at the time and tell him?

14 A. I did not tell him, but I disagreed with
15 that term.

16 Q. Did you go ahead and hire him to send out a
17 letter saying that they were going to begin the
18 process of drafting a buy-sell agreement?

19 A. No. He left DenHerder & Associates before
20 we were able to start working on drafting any sort
21 of agreement.

22 Q. Turn the page in the binder to Exhibit 173.
23 It's an e-mail chain between you and Mr. Barry
24 Cogdill.

25 Do you recognize this document?

26 A. I do.

27 (Exhibit 173 referenced.)

28 MR. KING: Your Honor, I move to have

1 Exhibit 173 admitted into evidence.

2 MR. MCCLOSKEY: No objection, Your Honor.

3 MR. SULLIVAN: No objection, Your Honor.

4 THE COURT: Received.

5 (Exhibit 173 received.)

6 BY MR. KING:

7 Q. If you go to the second page of
8 Exhibit 173, on February 7, 2013, you write to
9 Mr. Cogdill. You say, "I am also casually working
10 with David H. on executing a buy-sell agreement
11 between all shareholders."

12 Now, at this point in time, this is about a
13 month or so after your first contact with DenHerder,
14 right?

15 A. Correct.

16 Q. So at this point in time, the other
17 shareholders that were on -- that were at the
18 company, they were aware of the buy-sell agreement
19 idea?

20 A. I don't remember when exactly I let them --
21 I was -- made them aware.

22 Q. And you said, "You and I spoke of insuring
23 the loss of a key company executive. In your
24 experience, do these two concepts ever work
25 together? I'm not just talking in the event of
26 death. But if one of the shareholders were to
27 suddenly decide to leave the company or get
28 divorced, we want to make sure we have the financial

1 ability to buy back those shares to maintain control
2 of the company."

3 That was what you wanted to do, right?

4 A. What I was discussing with Barry, who is
5 our insurance broker --

6 MR. KING: Objection. Move to strike.
7 Nonresponsive.

8 THE WITNESS: What I --

9 THE COURT: Denied.

10 THE WITNESS: What I was discussing with
11 Barry, who was an insurance broker, is key man
12 insurance and the concept of using key man insurance
13 to replace executives that leave the company or pass
14 away or some other thing like that, because the
15 company was a small privately held company and the
16 effect of any single person suddenly and
17 unexpectedly leaving the company would be a huge
18 problem for the company.

19 BY MR. KING:

20 Q. So you said it right here, "But if one of
21 the shareholders were to suddenly decide to leave or
22 get divorced, we want to make sure we have the
23 financial ability to buy back those shares to
24 maintain control of the company."

25 Where did you talk about executives
26 leaving?

27 A. That would be a page ahead.

28 Q. Okay. So -- but in this e-mail, you were

1 asking about shareholders, right, not just
2 executives?

3 A. Correct, but you're talking about an e-mail
4 chain.

5 Q. I understand that.

6 And you wanted to make sure that if any one
7 of the shareholders died -- it didn't matter if they
8 were an executive. You wanted to make sure that if
9 they died or if they left employment with the
10 company or if they got divorced, that management of
11 the company didn't change, right?

12 A. Ultimately, I didn't care what the
13 shareholders decided. I was just exploring
14 different options and --

15 Q. You were just doing what Mr. Huffman had
16 told you to do?

17 A. No, I was not.

18 Q. You were acting on your own?

19 A. I was. I thought that the company needed a
20 plan in the event of various scenarios that could
21 arise. Mr. Johnson was a key aspect of that because
22 he was a known situation. He was dying and I was
23 deathly afraid that if a 40 percent shareholder in
24 the company suddenly passed away and nobody had a
25 plan to deal with it that it would be a catastrophic
26 event for the company, and I didn't want that to
27 happen.

28 Now, I personally don't care what

1 Mr. Johnson wanted to do with his shares. If he
2 wanted to give them to his sister, his family, I
3 don't care. But I wanted there to be a plan in
4 place.

5 Q. It says right here you want to make sure
6 you have the financial ability to buy back the
7 shares to maintain control of the company. That
8 sounds different than what you just testified. How
9 do you explain that?

10 A. We needed -- if one of the options was to
11 buy back the shares, if that was one of the things
12 that the shareholders ultimately agreed upon, then I
13 was exploring different mechanisms on how to do
14 that.

15 Q. Before there was any agreement?

16 A. Well, of course. I was drafting a concept.
17 So I was researching different ideas. So that way I
18 could present them to everybody, and they could make
19 the final decision on what they wanted to do.

20 Q. But you never presented this to
21 Mr. Johnson? You never told Mr. Johnson that you
22 wanted to make sure the company could -- to make
23 sure the management would maintain control of the
24 company in the event that shareholders got divorced,
25 shareholders died, or shareholders left their
26 employment? You never told him that, did you?

27 A. I did not share my work product with
28 Anthony Johnson, no.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 STATE OF CALIFORNIA)
2 COUNTY OF SAN DIEGO)

3

4 I, Leyla S. Jones, a Certified Shorthand
5 Reporter, do hereby certify:

6 That prior to being examined, the witness
7 in the foregoing proceedings was by me duly sworn to
8 testify to the truth, the whole truth, and nothing
9 but the truth;

10 That said proceedings were taken before me
11 at the time and place therein set forth and were
12 taken down by me in shorthand and thereafter
13 transcribed into typewriting under my direction and
14 supervision;

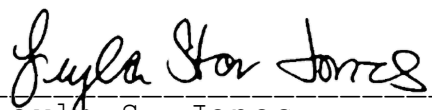
15 I further certify that I am neither counsel
16 for, nor related to, any party to said proceedings,
17 nor in any way interested in the outcome thereof.

18 In witness whereof, I have hereunto
19 subscribed my name.

20

21 Dated: June 16, 2019

22

23 
24 _____
Leyla S. Jones
CSR No. 12750

25

26

27

28