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Pro Se

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

ANTHONY JOHNSON, an individual,

Plaintiff,

v.

MANUEL ALTAMIRANO, an individual,
RICHARD TURNER, an individual,
DAVID KINNEY, an individual,
DAVID HUFFMAN, an individual,
PAUL TYRELL, an individual,
SEAN SULLIVAN, an individual,
STORIX, INC,. a California Corporation,
and DOES 1-5, inclusive,

Defendants.

Case No. 3:19-cv-1185-H-BLM

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES ISO OPPOSITION TO MOTION TO DISMISS OF DEFENDANTS TYRELL AND SULLIVAN

Hearing Date: October 7, 2019
Hearing Time: 10:30 a.m.
Judge: Hon. Marilyn L. Huff
Dept.: Courtroom I 5A

Complaint Filed: June 24, 2019
Trial Date: Not Set

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I. INTRODUCTION

Plaintiff Anthony Johnson respectfully submits this Opposition to the *Motion to Dismiss* (hereafter "Motion") submitted by Defendants Paul Tyrell and Sean Sullivan (hereafter "Defendants") pursuant to Fed.R.Civ.P. § 12(b)(6) for failure to state a claim upon which relief can be granted.

References are herein made to the lawsuit underlying the malicious prosecution claim, San Diego Superior Court, Case No. 37-2015-00028262-CU-BT-CTL (hereafter "Direct Suit"). Johnson herein incorporates his concurrently-filed request for judicial notice (hereafter "RJN"). For clarity and consistency with their concurrent motions and filings, Johnson herein incorporates Storix's and Attorney-Defendants request for judicial notice in support of their Motion (hereafter "Storix RJN"). The complaint in this action (ECF No. 1) is hereafter referenced as "Complaint".

Defendants again engage in their usual tactics of personal character attacks and misconstruing facts in order to paint Johnson a villain for attempting to protect his rights and defend himself from their persistent legal abuse. Johnson will not respond to the same false allegations, misconstrued evidence and distorted procedural history asserted in Defendants' Motion knowing it will only be repeated in their next pleadings. Such comments are both inappropriate and irrelevant to a motion to dismiss.

Defendants make no effort to show probable cause for using Johnson's own company and his own money to file a lawsuit against him, that their claim is anything more than baseless, or why they did so without notice and on the morning of a settlement conference. Instead, they rely on ambiguous statements in irrelevant cases and prior rulings expecting Johnson will be unable to adequately respond now that their actions rendered him unable to afford legal counsel. They are mistaken. Their efforts to prevent Johnson from bringing this action after their years of legal harassment are futile. Johnson properly pled all elements of malicious prosecution,

including favorable termination of the underlying lawsuit they brought against him. Their attempt to use a trivial claim to prevent Johnson from asserting favorable termination must fail because the trivial claim they introduced in closing arguments to salvage their flailing lawsuit is severable from that determination. Defendants' attempts to distort the record and interpret ambiguous rulings to show probable cause are equally unavailing.

Johnson's Complaint sufficiently pleads facts that satisfy all elements of malicious prosecution, as well as facts that defeat Defendants' affirmative defenses. This Court should deny Defendants' Motion and order Defendants to finally answer Johnson's Complaint.

II. BACKGROUND FACTS

Johnson's Complaint provides sufficient facts to satisfy all elements of a malicious prosecution action, including facts to defeat Defendants' defense on the ground that the underlying Janstor Action did not terminate in Johnson's favor.

III. ARGUMENT AND AUTHORITIES

A. Legal Standard for Motions to Dismiss

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

prejudice to the opposing party by virtue of.... the amendment, [or] futility of the amendment." (Fed.R.Civ.P. § 15(a); *Foman v. Davis*, 371 U.S. 178, 182 (1962).)

B. The Requisite Elements of Malicious Prosecution

Right out of the gate, Defendants attempt to mislead the Court by misquoting the first case, stating, "To *establish a claim* for malicious prosecution under California law, a plaintiff *must plead and prove* that the underlying action was: … ." (Motion at p. 10, italics added.) The case cited, *Parrish v. Latham & Watkins* (2017) 3 Cal.5th 767, 775, actually states, "The tort consists of three elements. *The underlying action must have been*: (i) initiated or maintained by, or at the direction of, the defendant, and pursued to a legal termination in favor of the malicious prosecution plaintiff; (ii) initiated or maintained without probable cause; and (iii) initiated or maintained with malice." (*Id*. at 775.)

Defendants attempt to convince the Court that, to survive a motion to dismiss, a malicious prosecution plaintiff must "prove" all the elements. The allegations of the Complaint, taken as true, sufficiently state all elements of a malicious prosecution cause of action. Only if the Defendants provide evidence that defeat Johnson's facts may the Court dismiss the cause of action. Defendants have provided no such showing.

C. Johnson Has Established All the Elements of a Claim for Malicious Prosecution

Johnson has sufficiently pled facts showing the Janstor Action was *initiated or maintained* with malice and without probable cause. Defendants attempt to rely on Storix's successful claim not even pled in the litigation to preclude Johnson from establishing "legal termination in favor of the malicious prosecution plaintiff." But Defendants ignore that their *initial* complaint couldn't have included the claim because the act underlying the claim had not yet occurred.

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1. Johnson Obtained a Favorable Termination in the Underlying Litigation

The only successful claim against Johnson was based entirely on an email Defendants claim Johnson sent to all Storix's customers. Storix demanded $3,739.14 for "employees' lost productivity" due to the "fallout" of Johnson's email. (Complaint ¶ 27.) The claim is severable from the "*entire lawsuit"* when determining favorable termination because:

(a) Defendants falsely alleged the event occurred when Johnson was living in California (*Id*. ¶ 23);

(b) The email didn't exist until after the Direct Suit was filed (*Id*. ¶ 23);

(c) The claim was not pled or asserted during the litigation (*Id*. ¶ 27);

(d) The claim was based entirely on facts separate from Storix's unsuccessful claim on which the malicious prosecution action is based;

(e) The claim could been brought in an independent action; and

(f) The claim is pending appeal (Complaint ¶ 27, fn. 5).

Defendants were notified in the Complaint that the claim was severed from the favorable termination determination. (*Id*.) As a result, they attempt to misconstrue cases that don't address the severability of claims as ones that "disfavor" severability. It would do violence to Johnson's right to petition if Defendants were allowed to use such a trivial claim to bar Johnson's malicious prosecution action. Fortunately the "severability rule" is specifically designed to prevent plaintiffs and attorneys, as in this case, from asserting trivial claims to protect themselves from liability for frivolous and malicious lawsuits. No claim better meets the criteria for a severability from the "entire lawsuit" when pleading favorable termination.

"[A] malicious prosecution plaintiff is not precluded from establishing favorable termination where severable claims are adjudicated in his or her favor." (*Lanz v. Goldstone* (2015) 243 Cal.App.4th 441, 460 (citing *Sierra Club Foundation*

v. Graham (1999) 72 Cal.App.4th 1135, 1152-1153); See also *Tabaz v. Cal Fed Finance* (1994) 27 Cal.App.4th 789*,* 794 (*Tabaz*) (holding that a plaintiff may base a malicious prosecution claim on individual claims if the other claims are severable and not "simply different theories for recovering on the same injury".) The "severability rule" was created in *Paramount General Hospital Co. v. Jay* (1989) 213 Cal.App.3d 360, based on the severability analysis in *Albertson v. Raboff* (1956) 46 Cal.2d 375 (*Albertson*).

Defendants' arguments rely on *Lane v. Bell* (2018) 20 Cal.App.5th 61 (*Lane*) and its references to *Crowley v. Katleman* (1994) 8 Cal.4th 666 (*Crowley*). Neither case actually involved severable claims but nonetheless reference the severability of claims established by *Albertson*. Defendants state that "*Lane* rejected prior cases that held favorable termination could be based on a 'severable' claim." (Motion at p. 11.) This is not true. *Lane* noted the severability analysis in the cases it cited, which often found that favorable termination was not established because the underlying claims were <u>not severable</u>. Defendants' argument is nevertheless inapplicable because Johnson does not assert favorable termination *based on the severable claim* but based on those that are *not severable*. Defendants fail to understand that "[a] claim for malicious prosecution need not be addressed to an entire lawsuit; it may, as in this case, be based upon only some of the causes of action alleged in the underlying lawsuit." *Franklin Mint Co. v. Manatt, Phelps & Phillips, LLP* (2010) 184 Cal.App.4th 313, 333.) In *Paramount*, the court reversed a lack of favorable termination determination in finding "the fact that [defendant's] numerous claims may all be broadly deemed to be alleged breaches of fiduciary duty does not enable [defendant] to sidestep the severability rule... ." (*Id*. at 370.) The Defendants in this case attempt to do exactly that.

Defendants provide no authority that defeats severability of the claim in the Janstor Action because the cases they cite, which base favorable termination on the "entire lawsuit", don't involve severable claims, nor do they disapprove the

severability rule. Defendants' argue that "*Lane* rejected prior cases" by making an ambiguous reference to *StaffPro, Inc. v. Elite Show Servs., Inc*. (2006) 136 Cal.App.4th 1392, 1403 (*StaffPro*). (Motion at p. 11.) *StaffPro* didn't disapprove severability, it just didn't find favorable termination because "the underlying defendant did not prevail on every claim asserted in the underlying action … because the judgment awarded affirmative relief to the underlying plaintiff[.]" (*Lane* at p. 74, underline added.) Storix's only successful claim was never asserted in the underlying litigation (until closing arguments), and Storix was denied all eleven demands for injunctive relief based on all the facts – including the email on which Storix's belated claim was based.

Crowley is the hallmark case on the "favorable termination" issue. "*Crowley* specifically approved *Freidberg's* conclusion there was *no* favorable termination under the facts of Freidberg." (*Lane* at p. 75, underline added.) "[T]he action had evidently not terminated favorably to *Freidberg* because the judgment assessed substantial damages against him." (*Ibid*.) Also, the *Friedberg* claims were not severable because "Reasonable value of services, joint venture and tortious interference were simply different theories for recovering on the same injury: the failure to share attorney fees." (*Tabaz* at p. 794; citing *Freidberg v. Cox* (1987) 197 Cal.App.3d 381, 388.) *Friedberg* expressly recognized, however, that the result would have been different had the causes of action been severable. (*Friedberg* at p. 387-388.) *StaffPro* didn't reject the severability rule, but rejected favorable termination because "[t]he trial court's order in the underlying action required StaffPro to take remedial action with respect to many of the core allegations[.]" (*StaffPro* at p. 694.) *Lane* and *StaffPro* properly found an absence of favorable termination under the facts of Friedberg, but Storix's only successful claim was based on entirely different facts and theories and all demands for injunctive relief were denied.

Lastly, *Crowley* relies "exclusively on the settled rule that an appeal may be taken from only a portion of a judgment when that portion is 'severable' in the sense that the issues raised in the appeal can be resolved without regard to the issues determined by the portion of the judgment that was not appealed." (*Crowley* at 387, citing, *inter alia*, *American Enterprise, Inc.* v. *Van Winkle* (1952) 39 Cal.2d 210, 216-217.) The disposition of a separate and independent claim which is *not* appealed from may be considered final for the purposes of malicious litigation. (*Albertson* at p. 378.) Johnson is appealing the severable claim, thereby further severing it from the "entire lawsuit" and establishing favorable termination. Had Johnson not appealed the claim, he still would have established favorable termination since he directed the probable cause element of the malicious prosecution action to only the *non-severable* claim. (Complaint ¶¶ 39-40.)

Defendants statement that "A jury found Johnson breached his fiduciary duty to Storix. … there is no way to interpret that finding other than an absence of innocence[.]" (Motion at p. 11.) They are mistaken because the entire judgment of breach of fiduciary duty is based on the severed claim. Their determination to use this trivial claim to prevent Johnson from showing favorable termination only further proves the maliciousness of the action.

2. Johnson Has Established a Lack of Probable Cause for Storix's Claim Against Him

"A claim for malicious prosecution need not be addressed to an entire lawsuit; it may ... be based upon only some of the causes of action alleged in the underlying lawsuit." (*Lane* at fn. 6.) "As our Supreme Court stated in *Singleton* v. *Perry* (1955) 45 Cal.2d 489, 497 [289 P.2d 794], 'Indeed, it would seem almost a mockery to hold that, by uniting groundless accusations with those for which probable cause might exist, the defendants could thereby escape liability ....'" (*Tabaz at p. 792,* citing *Singleton v. Perry* (1955) 45 Cal.2d 489, 497; *Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 292 ["An action for malicious prosecution lies when

but one of alternate theories of recovery is maliciously asserted"].) Johnson directed the cause of action only to Storix's unsuccessful claim that Johnson was operating a competing business. (Complaint ¶¶ 39-40.) The fact that Storix prevailed on a different claim doesn't establish probable cause for bringing or maintaining the malicious one.

"Where there is no dispute as to the facts upon which an attorney acted in filing the prior action, the question of whether there was probable cause to institute that action is purely legal." (*Ross v. Kish*, 51 Cal.Rptr.3d 484, 495.) "[T]he probable cause element calls on the trial court to make an objective determination of the `reasonableness' of the defendant's conduct, i.e., to determine whether, on the basis of the facts known to the defendant, the institution of the prior action was legally tenable,' as opposed to whether the litigant subjectively believed the claim was tenable." (*Parrish v. Latham & Watkin* (2017) 3 Cal.5th 767, 776 (*Parrish*).) "The elements of a cause of action for breach of fiduciary duty are the existence of a fiduciary relationship, breach of fiduciary duty, and damages." (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 820.) Even the second amended complaint alleged no harm related to its claim of a competing business. (Complaint ¶ 38.) It also repeats false allegations Defendants knew not to be true, without which they could not have brought the lawsuit at all. (*Id.*) Based on the allegations of the Complaint, accepted as true, Defendants instituted and maintained the claim knowing it was untenable.

Defendants misrepresent that the "interim adverse judgment rule" applies to denials of demurrers and summary judgment motions that don't address the merits of a claim. First, they generally refer to the court denying demurrers to the Janstor Action, finding the complaint was sufficiently *pled*. The rule is not invoked on a denial of demurrer since the court doesn't address the merits. Similarly, denial of summary judgment may be considered an adverse judgment only if the court found there were disputable facts based on the merits of the action. *Crowley*, *supra*, 8

Cal.4th at p. 692, declined to apply the interim adverse judgment rule to a summary judgment motion, finding that "the denial of Crowley's motion for summary adjudication of issues as to all grounds except lack of due execution was not a judgment on the merits for that purpose."

Defendants fail to explain how denial of summary judgment in the Direct Suit establishes probable cause. "[I]f a claim succeeds at a hearing on the merits, then, unless that success has been procured by certain improper means, the claim cannot be 'totally and completely without merit.' [Citation.]" (*Parrish* at p. 776, underlines added.) The only issue addressed by the court was whether Storix had "standing to bring this suit" given the fraudulent act of ratification by which Defendants attempted to escape liability. (Storix RJN, Ex. 16 at p. 200.) The court didn't address any claims of the Direct Suit, finding only that "[i]t is disputed whether this ratification and authorization is sufficient." (*Ibid*.) Whether the lawsuit was properly approved is irrelevant because Defendants aren't being sued for not obtaining proper approval.

The case cited by Defendants further defeats their argument. "[E]ven where a ruling is based on the court's evaluation of the merits of the claim, the ruling does not establish the existence of probable cause if the ruling is 'shown to have been obtained by fraud or perjury.'" (*Parrish* at p. 778; citing *Wilson v. Parker, Covert & Chidester* (2002) 28 Cal.4th 811, 817.) As noted above, the Complaint alleges perjury (Complaint ¶¶ 18, 23, 40), without which Storix would have no standing and thus *no* favorable rulings, and Defendants do not *do not dispute* those allegations. Notably, "[I]f denial of summary judgment was induced by materially false facts submitted in opposition, equating denial with probable cause might be wrong. Summary judgment might have been granted but for the false evidence." (*Antounian v. Louis Vuitton Malletier* (2010) 189 Cal. App. 4th 438, 451, underline added.)

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That is exactly what Defendants did.[1]

Defendants refer to two state court rulings in their attempt to establish probable cause. Their argument again fails due to the fact that Johnson need only establish lack of probable cause in bringing the unsuccessful claim that he was competing with Storix, not the entire lawsuit. Furthermore, Johnson has established malicious prosecution if the Janstor Action was *initiated* without probable cause. Defendants attempt to rely on the fact that Storix's successful claim precludes Johnson from establishing favorable termination, but ignore that the *initial* complaint was filed before the severable claim had even accrued.

First, Defendants cite a state court's finding that "[t]he evidence supports that Johnson breached his fiduciary duty to Storix." (Storix RJN, Exs. 21, 23.) The jury found Johnson breached a fiduciary duty by sending an email, from which Storix added a claim of "employees' loss of productivity." (Complaint ¶ 27.) Not only is the malicious prosecution action directed to a different claim, that email didn't even exist when Defendants filed the Janstor Action. (Complaint ¶ 23; RJN, Ex. 4.) Defendants admitted the judgment was "solely based" on "employee time associated with dealing with the fallout" of the email. (Complaint ¶ 27; RJN, Ex. 9 at p. 61.) The state court's comments regarding "evidence" pertains only to Johnson's "breach of fiduciary duty" by sending the email, not the claim *actually asserted* in the Janstor Action complaint subject to this malicious prosecution action.

Second, Defendants by misquoting a prior court, saying it "expressly [found] Storix pursued the case against Johnson in 'good faith'." (Motion at p. 15.) The court "expressly" found no such thing. Defendants omit that the court's comment

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[1] Johnson argued the board didn't approve the lawsuit before it was filed and that Defendants couldn't ratify it two years later because they were not disinterested. Storix argued that it was ratified by a majority of board members, but wouldn't say which ones. Summary judgment was denied because Johnson didn't specifically identify the directors who ratified the lawsuit in his motion.

related to an award of costs to Storix as a prevailing party in the entire action. The court made no reference to the underlying claims or that it *agreed* the claims were brought "in good faith." The court stated only that "Storix reasonably and in good faith brought an unlimited civil action against Johnson believing that the ultimate recovery would exceed the limited jurisdictional limit." (Storix RJN, Ex. 24.) The comment was extraneous to the court's ruling, and the ruling has no relevance to this action. Whether Defendants believed "in good faith" they could obtain a larger amount from Johnson is immaterial. Defendants likely brought the action expecting Johnson to *settle* for a greater amount regardless of whether it was brought with probable cause. For a court's finding to be considered an "adverse judgment", it must be a *judgment* that reflects on the merits of the claim at issue.

As demonstrated in the next section, the Complaint is ripe with undisputed facts that clearly establish Defendants lacked probable cause in initiating *and* maintaining the Janstor Action. The facts need only state all elements of the cause of action, and Defendants produce no evidence or authority to defeat those facts.

3. Johnson Properly Asserted Improper Motive Driving the Litigation Against Him

Cases cited by Defendants pertain to motions requiring a plaintiff *prove* malicious intent. Johnson has sufficiently *pled* all elements of malicious prosecution, which is all that's required to defeat a motion to dismiss. The Complaint is far from "boilerplate" and also asserts sufficient facts for Defendants to defend the claim.

"Although lack of probable cause alone does not automatically equate to a finding of malice, it is a factor that may be considered." (*Ross v. Kish, supra*, 51 Cal.Rptr. at 497.) "[M]alice may still be inferred when a party knowingly brings an action without probable cause. [Citations.]" (*Ibid.*, quoting *Swat-Fame, Inc. v. Goldstein,* 101 Cal.App.4th 613, 634, italics omitted.)

The "malicious" element of malicious prosecution is satisfied if the case was *initiated or maintained* with malicious intent. (*Parrish v. Latham, supra,* 3 Cal.5th at

p. 775.) The facts of the Complaint, regarded as true, establish the Janstor Action was initiated *and* maintained with malicious intent. (Complaint ¶¶ 39-40.) Defendants filed the Janstor Action hours before a settlement conference in the copyright case (Complaint ¶ 17.) The complaint alleged no harm (Complaint ¶ 38) and falsely alleged Johnson resided and events therein occurred in San Diego. (Complaint ¶ 18.) The Janstor Action didn't seek recovery from harm, but was intended to *cause* harm as "demonstrated by their callous indifference or wanton disregard for Johnson's rights and the extreme financial burden their conduct was causing." (Complaint ¶ 42.)

Malice is also established by Defendants maintaining the Janstor Action without probable cause, as evidenced by their amending the complaint nine months after it was filed (to avoid a demurrer) but still falsely alleging Johnson resided and events therein occurred in San Diego. (Complaint ¶ 23.) Defendants continued to assert Johnson was operating a competing business knowing the allegation was false and possessing no evidence to support the claim. (Complaint ¶¶ 24, 40.) Malicious intent is further evidenced by Defendants using the *existence* of the Janstor Action to assist the other defendants in concealing their misconduct. (Complaint ¶ 46, 51.) Throughout the Complaint are allegations of Defendants taking legal actions to prevent Johnson from obtaining Storix's financial records. (Complaint ¶¶ 30, 32, 50.) Most significant is the fact that the other defendants refused to dismiss the Janstor Action unless Johnson agreed to sell Storix and use his share of the proceeds to pay the legal debts owed to the Defendants. (Complaint ¶ 25.)

Johnson alleges more than sufficient facts to support the "malice" element of malicious prosecution. Defendants neither dispute these facts nor provide any evidence to the contrary.

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D. The *Rooker-Feldman* Doctrine is Inapplicable Because There Are No State Court Judgments Relevant to Their Motion

Defendants' argument that Johnson is attempting to challenge state court rulings is unsupported by the Complaint or any such rulings, and Defendants provide no reference to the record to support their argument. Johnson does not challenge nor request this Court ignore any rulings.

(a) Johnson does not assert Storix was not entitled to a judgment of $3,739.14.

(b) Johnson does not challenge the state court's ruling that an "abundance" of evidence supported the $3,739.14 judgment.

(c) Johnson does not challenge a ruling that Storix was authorized to pursue the direct claim against him.

(d) Johnson does not challenge that Storix was the prevailing party.

(e) Johnson does not challenge a ruling that Storix pursued its claims against Johnson in good faith because no court made such a ruling.

First, the "$3,739 judgment" was based on a different claim than the one this malicious prosecution cause of action is directed to. Therefore, references to the judgment are immaterial. Second, the statements referred to were not "rulings" but comments in orders immaterial to the ruling. Third, Defendants misrepresent the court's comments by extracting a few words to intentionally misconstrue their meaning as well as the issue they refer to.

For Defendants' argument to have merit, a ruling of this Court on an issue must negate a prior state court ruling, or the prior ruling must have preclusive effect on an issue to be determined by this Court. Defendants identified no such issues.

IV. CONCLUSION

The Complaint states sufficient facts to support each element of malicious prosecution, including facts that defeat each of Defendants' affirmative defenses. Defendants provided no evidence, arguments or authority to support their contention

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that Johnson's cause of action for malicious prosecution fails as a matter of law. Furthermore, Defendants attempt to take advantage of a self-represented litigant by misapplying law, distorting the record, and misquoting evidence, prior rulings and case precedents. Defendants bring baseless arguments and concurrent duplicative motions to cause delay and inflict additional burden on Johnson. As such, Johnson request that the Court impose sanctions to deter such misconduct in the future.

For all the foregoing reasons, the Court should deny Defendants' motion to dismiss Johnson's complaint and require defendants Paul Tyrell and Sean Sullivan to answer without further delay.

DATED: September 12, 2019 Respectfully submitted,

By:

ANTHONY JOHNSON, In Pro Per

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CERTIFICATE OF SERVICE

I, the undersigned certify and declare as follows:

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

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

1. **PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES ISO OPPOSITION TO MOTION TO DISMISS OF DEFENDANTS TYRELL AND SULLIVAN**

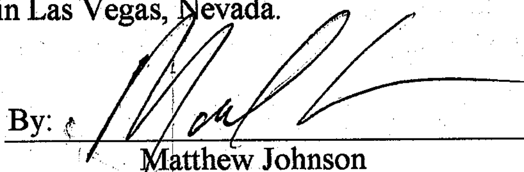
by depositing the document(s) in a sealed envelope with the U.S. Postal Service. The undersigned hereby certifies that he caused a copy of the foregoing document(s) to be delivered to the Clerk of the U.S District Court, Southern District of California, by thereby mail.

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

Marty B. Ready Michael P. McCloskey WILSON ELSER MOSKOWITZ EDELMAN & DICKER, LLP 401 West A Street, Suite 1900 San Diego, CA 92101 Email: marty.ready@wilsonelser.com Email: michael.mccloskey@wilsonelser.com Tel: (619) 881-6431 (Attorney for Defendants Altamirano, Turner, Kinney & Huffman)	Paul A. Tyrell Sean Sullivan PROCOPIO, CORY, HARGREAVES & SAVITCH LLP 525 B Street, Suite 2200 San Diego, CA 92101 Email: paul.tyrell@procopio.com Email: sean.sullivan@procopio.com Tel: (619) 619.238.1900 (Defendants, Attorneys for corporate defendant, Storix, Inc.)

I certify and declare under penalty of perjury under the laws of the United States of American and the State of California that the foregoing is true and correct.

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



By: ______________________
Matthew Johnson