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8  
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **IN AND FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION**

11 ANTHONY J. JOHNSON, ) Case No. 37-2019-00002457-CU-BT-CTL  
12 )  
Plaintiffs, ) **DEFENDANT’S REPLY IN SUPPORT**  
13 ) **OF MOTION FOR ATTORNEYS’**  
vs. ) **FEES**  
14 )  
DAVID HUFFMAN; RICHARD TURNER; ) **IMAGED FILE**  
15 )  
MANUEL ALTAMIRANO; and DAVID )  
KINNEY, )  
16 ) Judge: Hon. Katherine Bacal  
Defendants. ) Dept.: C-69  
17 ) Action Filed: January 14, 2019  
18 ) Trial Date: Not Set Yet

19 Defendants David Huffman, Richard Turner, Manuel Altamirano, and David Kinney  
20 (collectively, “Defendants”) hereby submit their Reply in support of their Motion for Attorneys’  
21 Fees.

22 **I. DISCUSSION**

23 Defendants are entitled to their reasonable attorneys’ fees if the court determines their anti-  
24 SLAPP motion was meritorious. Although Johnson voluntarily dismissed this matter without  
25 prejudice, because Defendant’s anti-SLAPP motion was pending, the court must award  
26 Defendants’ their attorneys’ fees for a meritorious anti-SLAPP motion. Rather than address the  
27 reasonableness of Defendants’ motion for attorneys’ fees, Johnson’s Opposition only demonstrates  
28 his failure to appreciate the legislative purpose of Cal. Civ. Proc. Code § 425.16 and the

1 consequences of his litigation tactics when he voluntarily dismissed his complaint without  
2 prejudice while Defendants' anti-SLAPP motion was pending.<sup>1</sup>

3 After sifting through Johnson's Opposition, it appears there are two grounds Johnson  
4 asserts relevant to Defendants' motion for attorneys' fees: 1) "Defendants failed to identify fees  
5 specific to preparing the anti-SLAPP motion, instead attempting to have Johnson pay all of their  
6 expenses in this case (again);" and 2) "Defendants did not 'incur' a total of \$15,625 in fees and  
7 costs defeating any claims because Defendants incurred *no expenses*." (Opposition at 6, 7.)

8 As to his first argument, Johnson simply concludes Defendants did not identify fees  
9 specific to their anti-SLAPP motion but does not point to any specific entry that he takes issue  
10 with. In fact, Defendants specifically reviewed its billing entries identifying only those related to  
11 the anti-SLAPP motion.

12 As to his second argument, this argument has been a common theme of Johnson's and  
13 rejected by Judge Enright when granting Defendants' motion for attorneys' fees and cost bill in  
14 the Direct and Derivative Suits. Because Johnson's Opposition fails to cogently address the motion  
15 pending before this Court, Defendants respectfully request the Court grant their motion for  
16 attorneys' fees.

#### 17 **A. Defendants' Attorneys' Fees Are Reasonable**

18 The thrust of Johnson's argument regarding the reasonableness of Defendants' motion for  
19 attorneys' fees is that "Defendants are clearly seeking to *profit* from the litigation by forcing  
20 Johnson to pay the same fees *three times*, and the Court should deny the Motion because it was  
21 clearly brought with the same malicious intent as all the other litigation they forced on Johnson."  
22 (Opposition at 5, 6.) Curiously, Defendants have never instituted any litigation against Johnson  
23 as he alleges. Of the **six (6) lawsuits involving Johnson and Defendants**, all but the Direct Suit  
24 was instituted by Johnson. And the Direct Suit was filed by the company, Storix, against Johnson  
25 as a director for breaching his fiduciary duty when he stood up a competing company.  
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27 <sup>1</sup> Concurrently with his opposition to Defendants' motion for attorneys' fees, Johnson also filed an opposition to  
28 Defendants' anti-SLAPP motion. **Defendants' anti-SLAPP motion is not pending before the Court and therefore  
Johnson's opposition to Defendants' anti-SLAPP motion should be disregarded.** Moreover, Johnson incorporated by  
reference the entirety of his opposition to Defendants' anti-SLAPP motion into his opposition to Defendants' motion  
for attorneys' fees thereby exceeding the page limit allotted for opposition papers. (Opposition at p. 3.)

1 In addition, Johnson’s opposition does not identify any particular billing entry that he takes  
2 issue with. Johnson simply concludes “the billing records supporting this Motion shows the  
3 Defendants are claiming fees for three motions – the bond, demurrer, and anti-SLAPP – even  
4 though the anti-SLAPP motion addressed the fewest claims.” (Opposition at p. 6.) But Johnson  
5 does not assist the Court by specifically pointing out instances where this is the case. In this regard,  
6 Johnson’s Opposition is fatally deficient. The Court should grant Defendants’ motion for  
7 attorneys’ fees.

8 **B. Defendants Incurred Attorneys’ Fees Defending Johnson’s Complaint**

9 Defendants submitted concurrently with its Motion for Attorneys’ Fees all billing  
10 statements reflecting work performed related to their anti-SLAPP motion. Johnson’s statement  
11 that Defendants incurred no fees is without merit. Rather than belabor the point, Defendants  
12 respectfully request the Court grant its motion for attorneys’ fees.

13 **II. DEFENDANTS’ ANTI-SLAPP MOTION IN MERITORIOUS**

14 Although Johnson did not address the merits of Defendants’ anti-SLAPP motion in his  
15 opposition to Defendants’ motion for attorneys’ fees, Defendants will briefly supplement its anti-  
16 SLAPP motion and the merits of their position.

17 **A. Claim 1: Wrongful Use of Civil Proceedings**

18 The judgment in the prior action is “the criterion by which to determine who was the  
19 successful party.” *Crowley v. Katleman*, 8 C4th 666, 684-686 (1994). Johnson, however,  
20 completely ignores the reality of the underlying action (and judgment) and instead asserts he is  
21 entitled to sever certain claims when analyzing favorable termination. The cases Johnson asserts  
22 support this severability rule, however, were specifically addressed in *Lane v. Bell*, 20 Cal.App.5th  
23 61 (2018) and previously by the California Supreme Court in *Crowley v. Katleman*, 8 C4th 666  
24 (1994). In sum, **there is no severability rule when determining favorable termination**. A favorable  
25 termination must be to the entire underlying action, and here, judgment was entered in favor of  
26 Storix. Johnson cannot state a cause of action for malicious prosecution.

27 The *Lane* case, decided in 2018, called out and discussed the cases, which Johnson  
28 contends creates a severability rule. *See Lane*, 20 Cal.App.5th at 75-78. The *Lane* court thoroughly

1 analyzed the progeny of cases since *Albertson v. Raboff*, 46 Cal.2d 375 (1956) and *Crowley* and  
2 correctly concluded severability analysis does not apply to the favorable termination element of a  
3 malicious prosecution claim. Here, the judgment as a whole in the underlying action did not  
4 terminate in Johnson’s favor as required by *Crowley* and *Lane*. As a result, Johnson cannot satisfy  
5 the first gate keeping element of a malicious prosecution claim. Because Johnson cannot satisfy  
6 this gate keeping element, the Court need not consider the probable cause and malice elements of  
7 malicious prosecution. See *Lane*, 20 Cal.App.5<sup>th</sup> at 64.

8 **B. Claim 2: Breach of Fiduciary Duty**

9 Defendants’ anti-SLAPP motion expressly set forth clear examples where Johnson  
10 identified communicative acts of Defendants that fall within the ambit of the anti-SLAPP statute.  
11 (ROA No. 46.). These acts included directing Storix counsel to file pleadings and defend the  
12 Derivative Action. (*Ibid.*) Accordingly, the identified acts satisfy prong one of the anti-SLAPP  
13 analysis.

14 With respect to the prong two analysis of the anti-SLAPP statute, Defendants cite to rulings  
15 in a sister court where the issues Johnson is raising in support of his breach of fiduciary duty claim  
16 were already litigated and therefore subject to the preclusive effect of *res judicata*. Defendants’  
17 anti-SLAPP Motion cites to judicially noticeable facts establishing Johnson’s claim for breach of  
18 fiduciary duty is barred by *res judicata*. It is clear from the judgment in the Direct Suit and  
19 Derivative Suit that Johnson is simply re-litigating that which has already been decided. Johnson  
20 has failed to state a cause of action for breach of fiduciary duty.

21 **C. Claim 3: Conversion**

22 Johnson’s conversion claim also fails for the same reason his breach of fiduciary duty claim  
23 fails, i.e., *res judicata* bars his claim. Johnson’s conversion claim is nothing more than an alternate  
24 theory of recovery to redress the same alleged harm. Specifically, Johnson argues Defendants  
25 “converted” profits owed to him to pay their attorneys to defend his litigation. (Complaint ¶¶ 45,  
26 46.) But as discussed above, a sister court has already heard this argument before in the Direct  
27 and Derivative Suit and held that Johnson had failed to meet his burden. For at least this reason,  
28 Defendants’ motion for attorneys’ fees should be granted based on the meritorious nature of their

1 anti-SLAPP motion.

2 **D. Claim 5: Fraud**

3 Defendants identified specific statements Johnson alleges support his claim for fraud. But  
4 these alleged statements were made by Defendants in connection litigation in the Derivative Suit.  
5 The litigation privilege is therefore an absolute defense. "Communications with 'some relation'  
6 to judicial proceedings are absolutely immune from tort liability by the litigation privilege."  
7 *Rusheen v. Cohen*, 37 Cal.4<sup>th</sup> 1048, 1057 (2006). Defendants' position with respect to Johnson's  
8 fraud claim substantiates the merits of their anti-SLAPP motion. Defendants' motion for  
9 attorneys' fees should be granted.

10 **III. CONCLUSION**

11 Johnson's Opposition to Defendants' motion for attorneys' fees fails to coherently address  
12 the reasonableness of the fees claimed for bringing a meritorious anti-SLAPP motion. For at least  
13 this reason and the reasons stated above, Defendants submit their anti-SLAPP motion passes the  
14 merits test entitling them to their reasonable attorneys' fees.

15  
16 DATED: October 18, 2019

**WILSON, ELSER, MOSKOWITZ,  
EDELMAN & DICKER, LLP**

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18 

19 By: Michael P. McCloskey, Esq.  
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23 and DAVID KINNEY  
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28

1 *Anthony J. Johnson v. Richard Turner; David Kinney; Manuel Altamirano; David Huffman*  
2 San Diego County Superior Court Case No. 37-2019-00002457-CU-BT-CTL

3 **PROOF OF SERVICE**  
4 [CCP §§ 1013A(3) and 2015.5]

5 I, the undersigned, am employed in the county of San Diego, State of California. I am over  
6 the age of eighteen (18) years and am not a party to the within action. My business address is  
7 401 West A Street, Suite 1900, San Diego, California, 92101.

8 On October 18, 2019, I caused to be served the following document(s) described as follows:

9 **DEFENDANT'S REPLY IN SUPPORT OF MOTION FOR ATTORNEYS' FEES**

10 on the following parties in this action:

11 ***Plaintiff In Pro Per***

12 Anthony Johnson  
13 1728 Griffith Avenue  
14 Las Vegas, NV 89104  
15 Telephone: (619) 246-6549  
16 Email: flydiversd@gmail.com

17 by the following method of service:

- 18  **BY ELECTRONIC TRANSMISSION VIA ECF** – I electronically filed the foregoing  
19 document(s) with the Clerk of the Court through the CM/ECF system for the San Diego  
20 County Superior Court, Central Division, via OneLegal, which sent Notification of  
21 Electronic Filing to the persons listed. Upon completion of transmission of said documents,  
22 a certified receipt is issued to the filing party acknowledging receipt by the CM/ECF  
23 system.

24 Executed on October 18, 2019, at San Diego, California. I declare under penalty of perjury  
25 under the laws of the State of California that the foregoing is true and correct.

26 

27 Irene Gonzales