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

11 ANTHONY JOHNSON, an individual,

12 Plaintiff,

13 v.

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

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

**PLAINTIFF'S OPPOSITION TO
MOTION FOR AN UNDERTAKING
PURSUANT TO C.C.P. § 1030 BY
DEFENDANTS ALTAMIRANO,
TURNER, KINNEY AND HUFFMAN**

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

1 **I. OPPOSITION TO DEFENDANTS’ MOTION**

2 Plaintiff Anthony Johnson (“Johnson”) hereby opposes *DEFENDANTS’*
3 *MOTION FOR AN UNDERTAKING* (“Motion”) pursuant to C.C.P. § 1030.
4 Defendants move this Court to impose a bond on Johnson on grounds that (1)
5 Johnson is an out-of-state plaintiff, and (2) because there is a possibility they might
6 prevail in the action. Defendants’ own Motion defeats both grounds.

7 First, Defendants argue that Johnson must post a bond – not because they
8 might have difficulty enforcing a judgment against an out-of-state plaintiff, but
9 because “the success of these enforcements is tenuous given Johnson admits he sold
10 his house in San Diego ‘to afford the first bond’” (Motion at p. 20) and Johnson’s
11 “ability to satisfy a judgment and/or cost bill seems unlikely.” (Motion at p. 21.)
12 Defendants offer no argument as to how Johnson’s out-of-state residence imposes
13 any burden otherwise. Instead, they admittedly bring their Motion knowing the
14 added financial burden will likely prevent Johnson from pursuing his claims against
15 them if granted. “In requiring a security bond for defendants' costs, care must be
16 taken not to deprive a plaintiff of access to the federal courts.” (*Simulnet East*
17 *Assocs. v. Ramada Hotel Operating Co.*, 37 F.3d 573, 576-7 (9th Cir. 1994)
18 (Simulnet).)

19 Second, if Defendants expect to defeat Johnson’s claims at this preliminary
20 stage based *only* on technical defenses, then why are they demanding an \$85,000
21 bond for their costs they expect to incur through trial? Defendants correctly cite the
22 factors this Court must weigh in determining their Motion, including “(i) the degree
23 of probability/improbability of success on the merits, ...” (Motion at p. 6; *Simulnet*,
24 *supra*, 37 F.3d at 576.) Defendants make no attempt to argue the merits of any
25 claims. Instead, they rely on the same technical arguments set forth in their
26 concurrent *Motion to Dismiss* and *Special Motion to Strike*. Their Motion dictates
27 that no cost bond is necessary because, for every one of their arguments that
28 succeed, there will be there will be one less claim to defend. Instead of showing the

1 costs they expect to incur, they effectively argue they won't be incurring any unless
2 their Motion fails. But in that case, of course, they haven't shown a possibility of
3 success and thus no need for Johnson to pay a bond. Furthermore, Defendants are
4 required to show a reasonable possibility of prevailing on all claims since otherwise
5 they can't be the "prevailing party" entitled to *any* costs.

6 It's hard to imagine what Defendants hoped to achieve with their 21-page
7 Motion except to burden Johnson and the Court with numerous duplicative motions
8 in order to further delay their answer until they can finally Johnson out of the
9 litigation. This is the same shameless abuse of process that unnecessarily doubled
10 the cost and length of all the state court litigation and gave rise to many of the
11 current claims.

12 This Court must deny Defendants motion since they demonstrated no
13 possibility of prevailing in the litigation. The Court should also order sanctions
14 against the Defendants and their attorneys for their frivolous motions in order to
15 finally deter their persistent misconduct and allow the litigation to proceed without
16 further delay.

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18 DATED: September 21, 2019

Respectfully submitted,

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20 By:



ANTHONY JOHNSON, In Pro Per

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned certify and declare as follows:

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

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

- 8 **1. PLAINTIFF'S OPPOSITION TO MOTION FOR AN UNDERTAKING
9 PURSUANT TO C.C.P. § 1030 BY DEFENDANTS ALTAMIRANO, TURNER,
10 KINNEY AND HUFFMAN**

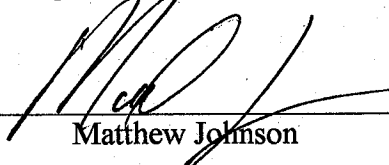
11 by depositing the document(s) in a sealed envelope with the U.S. Postal Service. The undersigned
12 hereby certifies that he caused a copy of the foregoing document(s) to be delivered to the Clerk of
13 the U.S District Court, Southern District of California, by thereby mail.

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

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

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

24 By: 
25 Matthew Johnson