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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION
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11
12 STORIX, INC., a California corporation,
13 Plaintiff,

14 v.

15 ANTHONY JOHNSON, JANSTOR TECHNOLOGY,
16 a California corporation, and DOES 1-20,
17 Defendants.

Case No. 37-2015-00028262-CU-BT-CTL
Judge: Hon. Randa Trapp

**MOTION TO STRIKE PORTIONS OF
PLAINTIFF'S FAC**

Date: 8/26/2016
Time: 11:00AM
Dept: C-70

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21 **I. INTRODUCTION**

22 Plaintiff seeks to claim exemplary damages in relation to its First Cause of Action and Second
23 Cause of Action for Breach of Fiduciary Duty and Aiding and Abetting Breach of Fiduciary Duty,
24 respectively. However, Plaintiff's request for exemplary damages is not supported by the allegations of
25 Plaintiff's First Amended Complaint (FAC). The subject misconduct at issue here is Johnson's alleged
26 formation of a new corporation "Janstor Technology" ("Janstor"), registration of the Internet domain
27 name "janstor.com," use of Janstor to reserve of port numbers, and Johnson's communications with
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1 employees and customers. (See FAC at ¶ 22.) This is not the type of shocking, willful, or harmful
2 conduct warranting the imposition of punitive damages. There are no facts alleged in the FAC from
3 which the Court may conclude that the complained-of conduct rises to the level of “malice, fraud, or
4 oppression” required to support a punitive damages award. Therefore, the Court should strike the
5 allegations at Paragraphs 25 and 32 of the FAC at pages 5: 25-28 and 6: 1-3 and 6: 24-28 and 7: 1-2 and
6 Paragraph 2 of the Prayer at page 7: 9 seeking an award of exemplary damages on grounds there is a
7 failure to adequately plead facts sufficient to recover such damages.
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9 Plaintiff is also seeking to claim preliminary and permanent injunctive relief in relation to its
10 First Cause of Action and Second Cause of Action for Breach of Fiduciary Duty and Aiding and
11 Abetting Breach of Fiduciary Duty, respectively. However, Plaintiff’s demand for injunctive relief is
12 not supported by the allegations of Plaintiff’s FAC. There are no facts alleged in the FAC from which
13 the Court may conclude that Plaintiff has suffered or will suffer irreparable harm absent the requested
14 injunctive relief. Further, there are no facts alleged in the FAC from which the Court may conclude that
15 no adequate remedy exists at law to compensate Plaintiff for any purported harm caused by the
16 complained-of conduct. To the contrary, according to the FAC, the potential harm Plaintiff is concerned
17 about is competition to its business. (See FAC at ¶ 16.) Should Plaintiff prevail at trial, it can be fully
18 compensated and made whole for any harm it supposedly suffered by an award of monetary damages.
19 Moreover, the injunctive relief is impermissibly broad and vague to reasonably be enforced by this
20 Court. Therefore, the Court should strike the allegations at Paragraphs 24, 31, and 35 of the FAC at
21 pages 5: 22-24, 6: 21-24, and 7:3-5 and Paragraph 3 of the Prayer at page 7: 10-18 seeking a preliminary
22 and permanent injunction on grounds there is a failure to adequately plead facts sufficient to recover
23 such relief.
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27 **II. KEY ALLEGATIONS**
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1 As alleged in the FAC, Johnson formed the corporation Storix, Inc. (Plaintiff) in 2003. (FAC at
2 ¶ 9.) In May 2014, Johnson resigned from his position as an employee of the corporation. (FAC at ¶
3 11.) Johnson was elected to the board of directors of the corporation in February 2015. (FAC at ¶ 13.)
4 Also in February 2015, Johnson allegedly registered the Internet domain name “janstor.com” and
5 formed a new California corporation named Janstor Technology (“Janstor”). (FAC at ¶ 14.) In June
6 2015, Johnson allegedly reserved two port numbers in the name of Janstor. (FAC at ¶ 15.) Plaintiff
7 complains that Johnson allegedly did not disclose his conduct to Plaintiff or otherwise seek prior
8 approval from Plaintiff to engage in the alleged acts. (FAC at ¶¶ 14 and 15.)

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10 Plaintiff’s FAC states two causes of action: (1) breach of fiduciary duty; and (2) aiding and
11 abetting breach of fiduciary duty. (FAC, generally.) To support the First Cause of Action for breach of
12 fiduciary duty, Plaintiff uses the boilerplate allegation that Johnson “owed and continues to owe
13 fiduciary duties to Storix, including but not limited to duties of loyalty and care.” (FAC at ¶ 20.)
14 Plaintiff then alleges that Johnson breached this supposed fiduciary duty by “his formation of a new
15 corporation, his registration of the Internet domain name “janstor.com”, his use of Janstor to reserve port
16 numbers”, and his communications with employees and customers. (FAC at ¶ 20.) Plaintiff then
17 concludes by using another boilerplate allegation claiming that Plaintiff “[a]s the proximate result of
18 Johnson’s conduct,” “has sustained and/or will sustain damages in amounts and types according to proof
19 at trial.” (FAC at ¶ 23.)

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22 To support the Second Cause of Action for aiding and abetting breach of fiduciary duty, Plaintiff
23 alleges that “Janstor is wholly owned and controlled by Johnson.” (FAC at ¶ 27.) Plaintiff then alleges
24 that Janstor has “engaged in affirmative acts to aid and abet and conceal Johnsons’ breaches of fiduciary
25 duty, including, but not limited to Janstor’s registration of ports.” (FAC at ¶ 28.) Plaintiff then
26 concludes with a boilerplate allegation claiming that Plaintiff “[a]s the proximate result of Defendants
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1 conduct,” “has sustained and/or will sustain damages in amounts and types according to proof at trial.”
2 (FAC at ¶ 30.)

3 Plaintiff is seeking punitive damages and injunctive relief in relation to its First Cause of Action
4 and Second Cause of Action for Breach of Fiduciary Duty and Aiding and Abetting Breach of Fiduciary
5 Duty, respectively. To support its demand for punitive damages, Plaintiff alleges, on information and
6 belief, that Johnson and Janstor have acted “with callous indifference or a wanton disregard for the
7 rights of others.” (FAC at ¶¶ 25 and 32.) To support its demand for injunctive relief, Plaintiff offers a
8 generalized statement to conclude that the complained-of conduct “will cause great and irreparable
9 injury to Storix, Inc. for which Storix, Inc. lacks any adequate remedy at law.” (FAC at ¶¶ 24, 31, and
10 32.)
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12 **III. AUTHORITY FOR MOTION TO STRIKE**

13 Any party, within the time allowed to respond to a pleading may serve and file a notice of
14 motion to strike the whole or any part thereof . . .
15 (Code Civ. Proc. § 435(b).) A motion to strike can be used to cut out any ‘irrelevant, false or improper’
16 matters inserted therein. (Code Civ. Proc. § 436(a).) This includes: “a demand for judgment requesting
17 relief not supported by the allegations of the complaint.” (Code Civ. Proc. § 431.10(b).)
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19 **IV. ARGUMENT**

20 **A. THE COURT SHOULD STRIKE THE PUNITIVE DAMAGES ALLEGATIONS IN THE 21 FAC AND DEMAND FOR PUNITIVE DAMAGES IN THE PRAYER BECAUSE 22 PUNITIVE DAMAGES ARE NOT SUPPORTED BY THE ALLEGATIONS OF THE 23 FAC**

24 Plaintiff is seeking punitive damages in relation to its First Cause of Action and Second Cause of
25 Action for Breach of Fiduciary Duty and Aiding and Abetting Breach of Fiduciary Duty, respectively.
26 To support its demand for punitive damages, Plaintiff alleges, on information and belief, that Johnson
27 and Janstor have “engaged in the acts alleged herein with the intent to harm Storix, Inc., and with
28 callous indifference or a wanton disregard for the rights of others, including Storix, Inc. and its other

1 shareholders and employees, as demonstrated by “his words threatening harm to Storix, Inc. and
2 statements indicating that he intends to harm Storix, Inc.” and “their actions and their words indicating
3 their intent and desire to harm Storix, Inc. (FAC at ¶¶ 25 and 32.) Plaintiff’s allegations fail to satisfy
4 the requirements for specificity in pleading a claim for exemplary damages. The reason for specificity
5 in pleading exemplary damage claims is made clear in decisions such as *American Airlines, Inc. v.*
6 *Sheppard, Mullin, Richter & Hampton* (2002) 96 Cal.App.4th 1017 (*American*), where the court began
7 by asking: “The question is whether defendants’ conduct may be characterized as ‘*despicable*.’”
8 (*American, supra*, 96 Cal.App.4th at p. 1050 [emphasis added].) The court goes on to answer its
9 question by stating that the complained-of conduct must be “so vile, base, contemptible, miserable,
10 wretched or loathsome that it would be looked down upon and despised by ordinary decent people.” (*Id.*
11 at pp. 1050-1051.) “Punitive damages are proper only when the tortious conduct *rises to levels of*
12 *extreme indifference* to the plaintiff’s rights, a level which decent citizens should not have to tolerate.”
13 (*Ibid.* [emphasis added].)

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16 A motion to strike may lie where the facts alleged do not rise to the level of “malice, fraud or
17 oppression” required to support a punitive damages award. (See *Turman v. Turning Point of Central*
18 *Calif., Inc.* (2010) 191 CA4th 53, 63.) That is the situation here. Plaintiff alleges no facts to satisfy the
19 requirements for an exemplary damage claim, but rather Paragraphs 25 and 32 of the FAC at pages 5:
20 25-28, 6: 1-3, 6: 24-28 and 6: 1-2. simply contain boilerplate, conclusory allegations that Defendants
21 acted with “callous indifference or a wanton disregard for the rights of others.” Notably, the FAC does
22 not contain any complete statements Johnson made or conduct Johnson supposedly engaged in that
23 would support Plaintiff’s allegation that Johnson indicated that “he intends to harm Storix, Inc.” The
24 FAC simply takes partial statements, out of context, in such a way that is misleading and incorrect.
25 (FAC at ¶¶ 17, 18.) No complete facts are alleged from which the Court may conclude that Johnson or
26 Janstor acted or communicated in such a way as to “threaten harm” to Plaintiff, Plaintiff’s business, or
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1 Plaintiff's shareholders. Plaintiff's vague, generalized conclusions of fact and law are insufficient to
2 satisfy the required specificity of pleading. Thus, Paragraphs 25 and 32 of the FAC at pages 5: 25-28,
3 6: 1-3, 6: 24-28, and 7: 1-3 and Paragraph 2 of the Prayer at page 7: 9 seeking an award of exemplary
4 damages should be stricken by the Court on grounds that Plaintiff failed to adequately plead facts
5 sufficient to recover such damages.
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7 As an additional ground, Plaintiff's claim for exemplary damages as against Janstor is improper
8 as a matter of law because the allegations in the FAC fail to satisfy the requirements of California Civil
9 Code, section 3294, subdivision (b), related to the requirements for an award of exemplary damages
10 against a corporation.
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12 **B. THE COURT SHOULD STRIKE THE INJUNCTIVE RELIEF ALLEGATIONS IN THE**
13 **FAC AND DEMAND FOR INJUNCTIVE RELIEF IN THE PRAYER BECAUSE**
14 **INJUNCTIVE RELIEF IS NOT SUPPORTED BY THE ALLEGATIONS OF THE FAC**

15 Plaintiff is seeking injunctive relief in relation to its First Cause of Action and Second Cause of
16 Action for Breach of Fiduciary Duty and Aiding and Abetting Breach of Fiduciary Duty, respectively.
17 To support its request for injunctive relief, Plaintiff merely concludes that "[u]nless and until enjoined
18 by this Court," "the breaches of fiduciary duties and unlawful competition" "will cause great and
19 irreparable injury to Storix, Inc. for which Storix, Inc. lacks any adequate remedy at law." (FAC at ¶¶
20 24, 31, and 32.)

21 Plaintiff's allegations fail to satisfy the requirements for specificity in pleading a claim for
22 injunctive relief. To obtain injunctive relief, the plaintiff must show that the defendant's wrongful acts
23 threaten to cause irreparable injuries, i.e., those which cannot be adequately compensated in damages.
24 (*Intel Corp. v. Hamidi* (2003) 30 Cal.4th 1342, 1352.) Plaintiff failed to do so here.
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26 The FAC does not contain any facts as to why or how it will be "irreparably injured" absent the
27 requested injunctive relief. There are no facts in the FAC indicating that Janstor is actually doing
28 business in competition with Plaintiff currently or in the near future. There are no facts in the FAC

1 indicating that Johnson has already solicited, or is likely to solicit in the future, Plaintiff's clients on
2 behalf of Janstor or otherwise tried to steal or divert business from Plaintiff to Janstor. In fact, no facts
3 are pled from which the Court can even conclude that Janstor is a functioning, operational business. The
4 mere registration of a domain name or reservation of port numbers does not amount to the existence of a
5 competing company. Plaintiff does not plead any facts to suggest that Johnson's alleged breach of
6 fiduciary duty caused Plaintiff to lose profits, lose business opportunities, threatened Plaintiff's
7 reputation or goodwill, or otherwise resulted in any actual detriment to Plaintiff, Plaintiff's business, or
8 Plaintiff's shareholders. Further, Plaintiff's own pleading by virtue of the phrase "will sustain" damage
9 (FAC at ¶ 23) concedes the fact that Plaintiff has not yet suffered any harm and that the possibility of
10 future harm is speculative at best.
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13 Likewise, Plaintiff does not plead any facts as to why no adequate remedy exists at law to
14 compensate Plaintiff for any purported harm caused by the complained-of conduct. To the contrary, the
15 alleged harm at issue pled by Plaintiff is competition to its business. (FAC at ¶ 16.) Should Plaintiff
16 prevail at trial, it can be fully compensated and made whole for any harm it supposedly suffered by an
17 award of monetary damages based on lost profits or unjust enrichment.
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19 Additionally, the Court must strike Plaintiff's demand for injunctive relief at Paragraph 3 of the
20 Prayer at page 7: 10-18 because the demand, as currently pled, is impermissibly broad and vague. "An
21 injunction must be narrowly drawn to give the party enjoined reasonable notice of what conduct is
22 prohibited." (*Strategix, Ltd. v. Infocrossing W., Inc.* (2006) 142 Cal. App. 4th 1068, 1074, quoting,
23 *Thompson v. 10,000 RV Sales, Inc.* (2005) 130 Cal.App.4th 950, 979.) This particularity requirement is
24 based on the courts' recognition that a directive "in terms so vague that men of common intelligence
25 must necessarily guess at its meaning and differ as to its application violates the first essential of due
26 process of law." (*In re Berry* (1968) 68 Cal. 2d 137, 156.)
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1 Plaintiff's proposed preliminary and permanent injunction fails to contain a reasonably adequate
2 description of the conduct which is prohibited. For example, Plaintiff asks that "Defendants be enjoined
3 from engaging in further acts in furtherance of their plan to engage in competition with Storix, Inc.,
4 either directly or indirectly." (Prayer at ¶ 3(a).) Yet, there is no indication on the face of the FAC as to
5 what types of "further acts" would be prohibited. Further, Plaintiff asks that "Defendants be enjoined
6 from soliciting Storix, Inc.'s customers or **prospective customers.**" (Prayer at ¶ 3(b) [emphasis
7 added].) Yet, there is no indication on the face of the FAC what constitutes a "prospective" customer.

9 Moreover, injunctive relief must be tethered to a substantive cause of action. (*Mesa Shopping*
10 *Ctr.-E., LLC v. Hill* (2014) 232 Cal. App. 4th 890, 901.) Here, Plaintiff asks that "Defendants be
11 enjoined from soliciting Storix, Inc.'s customers or prospective customers." (Prayer at ¶ 3(b) [emphasis
12 added].) Plaintiff further asks that "Defendants be ordered to return to Plaintiff all property of Storix,
13 Inc." (Prayer at ¶ 3(c).) Neither of these requests, however, are tied to the First or Second Cause of
14 Action for breach of fiduciary duty and aiding and abetting breach of fiduciary duty, respectively. No
15 facts are alleged in the FAC that Johnson breached a fiduciary duty by soliciting Plaintiff's customers.
16 Likewise, no facts are alleged in the FAC that Johnson breached a fiduciary duty by misappropriating,
17 using, or disclosing personal property of Plaintiff without Plaintiff's authorization or consent. Rather,
18 the basis for the First and Second Cause of Action is simply Johnson's alleged formation of Janstor,
19 registration of "janstor.com," reservation of port numbers, and sparse communications with customers
20 and employees. (FAC at ¶ 22)

23 Plaintiff's requested injunctive relief impermissibly assumes that Johnson actually has
24 possession of Plaintiff's property and that such alleged possession is illegal. However, the FAC does
25 not contain any facts to support such proposition. The FAC does not include a cause of action for
26 misappropriation, conversion, or the like. Additionally, Plaintiff's requested injunctive relief
27 impermissibly assumes that any solicitation of Plaintiff's customers or *prospective* customers is illegal.
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1 The FAC does not contain any facts indicating that Johnson signed an employment agreement or
2 confidentiality agreement or some other written contract waiving his right to form a competing business
3 after he resigned from the corporation. The mere fact that Johnson is a director and shareholder does not
4 mean that Johnson is necessarily precluded from engaging in activity competitive to Plaintiff.
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6 Accordingly, the Court should strike the allegations at Paragraphs 24, 31, and 33 of the FAC at
7 pages 5: 22-24, 6: 1-4, and 6:21-23 and Paragraph 3(a), (b), and (c) of the Prayer at page 7: 10-18
8 seeking a demand for injunctive relief on grounds there is a failure to adequately plead facts sufficient to
9 recover such relief.

10 **C. THE COURT SHOULD STRIKE ALLEGATIONS OF JANSTOR AND JOHNSON AS A**
11 **CITIZEN OR CORPORATION OF CALIFORNIA BECAUSE PLAINTIFF HAD**
12 **KNOWLEDGE AT THE TIME THE ORIGINAL COMPLAINT WAS FILED THAT**
13 **JOHNSON WAS A RESIDENT OF FLORIDA AND THAT JANSTOR WAS**
14 **DISSOLVED.**

15 Plaintiff alleges that Johnson “is, or at the time of the events alleged herein was, a citizen of the
16 State of California...” (FAC ¶ 3). Also, Plaintiff alleges that Janstor “is a California corporation.” (FAC
17 ¶ 4.) Plaintiff fails to properly amend the FAC with the proper facts: (1) that Johnson was a Florida
18 resident as of July 2015, before the original complaint was filed, and (2) that Janstor is a dissolved
19 corporation as of the time the FAC was submitted, which is information readily available to the public.

20 Accordingly, the Court should strike the allegations at Paragraphs 3 and 4 of the FAC at page 2:
21 7-9 and 2: 10-12 alleging citizenship and residency of both Johnson and Janstor.

22 **V. CONCLUSION**

23 For the reasons stated above, Defendants’ motion to strike should be granted and the Court
24 should strike the specified portions and matter from Plaintiff’s FAC:
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- 26 1. Paragraphs 24, 31, and 33 of the FAC at pages 4: 5: 22-24, 6: 1-4, and 6:21-23 and Paragraph
27 3 of the Prayer at page 7: 10-18 seeking a demand for injunctive relief on grounds there is a
28 failure to adequately plead facts sufficient to recover such relief and on grounds that such

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relief is improper as a matter of law.

- 2. Paragraphs 25 and 32 of the FAC at pages 5: 25-28, 6: 1-3, 6: 24-28 and 6: 1-2 and Paragraph 2 of the Prayer at page 7: 9 seeking an award of exemplary damages on grounds there is a failure to adequately plead facts sufficient to recover such damages.
- 3. Paragraphs 3 and 4 of the FAC at page 2: 7-9 and 2: 10-12 as incorrect, false, and misleading.

DATED: April 13, 2016

/s/ Anthony Johnson

ANTHONY JOHNSON