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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION
10

11 STORIX, INC, a California corporation,

12 Respondent, Plaintiff

13 v.

14 ANTHONY JOHNSON, an individual,
15 JANSTOR TECHNOLOGY, a California Corporation

16 Petitioner, Defendant

17 ANTHONY JOHNSON, an individual

18 Cross-Claimant

19 v.

20 DAVID HUFFMAN, an individual,
21 RICHARD TURNER, an individual,
22 MANUEL ALTAMIRANO, an individual,
23 DAVID KINNEY, an individual,
24 DAVID SMILKOVICH, an individual,

25 Cross-Defendants.

Case No. 37-2015-00028262-CU-BT-CTL

**DEFENDANT'S SUPPLEMENTAL
REQUEST FOR JUDICIAL NOTICE ISO
DEMURRER AND MOTION TO STRIKE
SAC**

IMAGED FILE

Date: October 14, 2016
Time: 11:00 a.m.
Dept. C-70
Judge: Hon. Randa Trapp
Complaint Filed: August 20, 2015
Trial Date: Not set

26 Defendant hereby submits this Supplemental Request for Judicial Notice of the following documents in
27 support of the Demurrer and Motion to Strike to the Plaintiff's SAC, for which documents are attached
28 hereto:

1 1. Attached as **Exhibit 1** is the *Minute Order* from August 1, 2016 overruling Defendant's
2 and Storix counsel's demurrers to the FAC in the judicial proceeding entitled *Anthony Johnson and*
3 *Robin Sassi, derivatively on behalf of Storix, Inc. v. David Huffman, et. al.*, Case No. 37-2015-
4 00034545-CU-BT-CTL, currently pending in the San Diego Superior Court Dept C-73.

5 2. Attached as **Exhibit 2** is the Minute Order from August 26, 2016 denying Plaintiff Storix
6 Inc.'s Workplace Violence Restraining Order against Defendant Anthony Johnson, in the judicial
7 proceeding entitled *Storix Inc vs Anthony Johnson*, Case No. 37-2016-00030643-CU-PT-CTL,
8 dismissed with prejudice from San Diego Superior Court Dept. C-64.

9
10 These documents are proper subject of judicial notice under California Evidence Code section
11 452 as they are, respectively, records of court decisions of this state and of the United States not
12 reasonably subject to dispute and capable of immediate and accurate determination by reference to
13 sources of reasonably indisputable accuracy.

14 A demurrer is properly based on the complaint itself, as well as upon such matter as the court is
15 required to take judicial notice. (CCP § 430.30(a).) "When the ground of demurrer is based on a matter
16 of which the court may take judicial notice pursuant to Section 452 or 453 of the Evidence Code, such
17 matter shall be specified in the demurrer, or in the supporting points and authorities for the purpose of
18 invoking such notice, except as the court may otherwise permit." (CCP § 430.70 [emphasis added].)

19
20 DATED: October 7, 2016
21

22 /s/ Anthony Johnson

23 _____
24 ANTHONY JOHNSON
25 Pro-Se
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EXHIBIT 1

EXHIBIT 1

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 08/01/2016

TIME: 08:40:00 AM

DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil

CLERK: Juanita Cerda

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2015-00034545-CU-BT-CTL** CASE INIT.DATE: 10/13/2015

CASE TITLE: **Johnson vs. HUFFMAN [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Business Tort

APPEARANCES

The Court, having taken the above-entitled matter under submission on 7/29/16 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The Court confirms the tentative ruling, except as modified herein, as the Court's order. Defendant Storix's request (ROA # 143) for judicial notice is GRANTED IN PART AND DENIED IN PART. The Court takes judicial notice of nos. 1d and 1e, and declines to take judicial notice of nos. 1a, 1b, 1c, 1f and 2a.

The Demurrer (ROA # 135) of Defendants David Huffman, Richard Turner, Manuel Altamirano, David Kinney, and David Smiljkovich ("Defendants") to the First, Second, Third and Fourth Causes of Action in the First Amended Complaint ("FAC") of Plaintiffs ANTHONY JOHNSON and ROBIN SASSI, derivatively on behalf of STORIX, INC., a California corporation ("Plaintiffs"), is **OVERRULED**.

Defendants are ordered to file and serve their Answers to the FAC within twenty (20) days of this hearing.

"The standing requirements for a derivative action reflect the limited adverse relationship between the shareholder plaintiff and the corporation. The shareholder plaintiff must allege it is a record or beneficial shareholder of the corporation, it presented the basis of the litigation to the corporation's board, and it tried to secure from the board such action as plaintiff desires." Patrick v. Alacer Corp. (2008) 167 Cal. App. 4th 995, 1004; Corp. Code, § 800(b)(1)(2). "Demand on the board will be excused only when plaintiff sufficiently alleges the demand would have been futile." Id. Corp. Code, § 800(b)(2). Plaintiffs did not make a demand on the board of directors, however, Plaintiffs allege demand futility. **To evaluate demand futility, the Court must be apprised of facts specific to each director from which it can conclude that that a particular director could or could not be expected to fairly evaluate claims of the shareholder.** Shields v. Singleton, (1993) 15 Cal. App. 4th 1611.

The FAC alleges sufficient facts to meet the demand futility requirement. Specifically, Plaintiffs allege the majority of seats on the Board of Directors of Storix, Inc. have been occupied by Defendants. (FAC ¶124). As a result, Plaintiffs, as minority directors, allege they are incapable to stop the majority board from abusing their control. (FAC ¶¶ 81, 104, 131). Furthermore, demand would be futile where a majority of directors are alleged to have been involved in wrongful conduct. See *Gottesfeld v. Richmaid Ice Cream Co.* (1953) 115 Cal. App. 2d 854, 860. Plaintiffs' allegations include, but are not limited to, Defendants giving themselves improper raises and bonuses, conspiring to remove Plaintiff Johnson from Storix, and diverting corporate funds. (FAC ¶¶ 36, 62, 155). Therefore, Plaintiffs' have satisfied their burden of meeting the demand futility requirement.

Defendants also argue that Plaintiffs cannot adequately represent the interest of Storix, Inc. The Court, in determining the adequacy of Plaintiff shareholder's claim in a derivative suit, is entitled to rely on affidavits submitted by the parties. *Hornreich v. Plant Industries, Inc.* (1976) 535 F. 2d 550. 552. However, given the factual dispute and necessity and use of evidence extrinsic to the FAC, this issue cannot be addressed or resolved via a Demurrer.

The Demurrer (ROA # 138) of Nominal Defendant STORIX, INC. ("Storix") to Plaintiffs' FAC, is **OVERRULED**.

The general Demurrer to each cause of action in the Complaint as asserted by STORIX, is **OVERRULED**. This ruling is remised on the concurrent analysis set forth in the ruling on the Demurrer asserted by the individual Defendants.

The special Demurrer to each cause of action in the Complaint, as asserted by STORIX, is **OVERRULED**. The Complaint is not ambiguous or unintelligible. See Code Civ. Proc., § 430.10(f).

Storix's Request (ROA # 143) for judicial notice is **DENIED**.

Storix is ordered to file and serve their Answers to the FAC within twenty (20) days of this hearing



Judge Joel R. Wohlfeil

EXHIBIT 2

EXHIBIT 2

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 09/26/2016

TIME: 08:30:00 AM

DEPT: C-64

JUDICIAL OFFICER PRESIDING: Tamila Ipema

CLERK: Lucy Pena-Sanchez

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: J. Arnold

CASE NO: **37-2016-00030643-CU-PT-CTL** CASE INIT.DATE: 09/02/2016

CASE TITLE: **Storix Inc vs Anthony Johnson [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Petitions - Other

EVENT TYPE: Hearing on Restraining Order

APPEARANCES

Erik T Johnson, counsel, present for Petitioner(s).

Anthony Johnson, self represented Respondent, present.

David L Huffman, Protected Person is present.

David Smiljkovich, Protected Person is present.

The Matter Comes Before the Court for a Hearing on Restraining Order.

The Court informs the parties that this matter is not being reported by a court reporter or recorded electronically.

Over the respondent's objection, the Court will view surveillance video presented as evidence.

The Court finds that **respondent's threats are legal threats.**

After careful review of the entire record, the Court now rules as follows:

The Court finds that the Petitioner has not met the high burden of proof that is required. The Petitioner has not proved their case by a Clear and Convincing Evidence under CCP Sec. 527.8 et seq. **Therefore, the request for injunction is DENIED.**

The Court's decision is based on the law that governs CCP 527.8. et seq.
Petitioner may refile regarding any new future incidents but not as to the issues stated today.

Restraining order as requested is denied with prejudice in its entirety.

Tamila Ipema

Judge Tamila Ipema