

COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

STORIX, INC.,)
)
Plaintiff/Respondent,)
vs.) FROM SAN DIEGO COUNTY
) HON. KEVIN A. ENRIGHT
)
ANTHONY JOHNSON,) COA NO. D075308
)
Defendant/) SUPERIOR COURT NO.
Cross-Complainant/) 37-2015-00034545-
Appellant;) CU-BT-CTL
)
DAVID HUFFMAN, et al.,)
)
Defendants/)
Cross-Defendants/)
Respondents.)

REPORTER'S TRANSCRIPT ON APPEAL

Thursday, February 1, 2018

(Pages 1095 through 1312, Inclusive)

Volume 10

1100 Union Street, Department 904
San Diego, California

Reported By:
Leyla S. Jones
CSR No. 12750

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

ANTHONY JOHNSON and
ROBIN SASSI, derivatively
on behalf of STORIX, INC.,
a California corporation,

Hon. Kevin A. Enright

Plaintiffs,

vs.

DAVID HUFFMAN, an
individual; RICHARD TURNER,
an individual; MANUEL
ALTAMIRANO, an individual;
DAVID KINNEY, an individual;
DAVID SMILJKOVICH, an
individual; and DOES 1-20,

CASE NO. 37-2015-
00034545-CU-BT-CTL
(Consolidated with
Case Nos.: 37-2016-
00030822-CU-MC-CTL
and 37-2015-
00028262-CU-BT-CTL)

Defendants,

Trial, Day 5

STORIX, INC., a California
corporation;

Nominal Defendant.

AND CONSOLIDATED ACTIONS

TRANSCRIPT OF PROCEEDINGS

(Pages 1095 through 1312, Inclusive)

Volume 10

February 1, 2018

8:59 a.m.

1100 Union Street, Dept. 904
San Diego, California

REPORTED BY:

Leyla S. Jones

CSR No. 12750

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SAN DIEGO, CALIFORNIA;

THURSDAY, FEBRUARY 1, 2018; 8:59 A.M.

* * *

(Outside the presence of the jury.)

THE COURT: Good morning.

MR. MCCLOSKEY: Good morning.

MR. SULLIVAN: Good morning, Your Honor.

THE COURT: The note that we received from the jury yesterday was now put on the record. It reads, "Juror in top row, third from the end, her phone vibrates multiple times a day. Very distracting. Missed some testimony because of it." And so my thought is I'll call in Juror Number 6 and tell her to stop.

Okay. Then we have a call this morning from Juror Number 11, [Juror Number 11], she said she's sick. She's not coming in, as in not asking but stating. And the symptoms, Robin? What --

THE CLERK: Chills and body aches.

THE COURT: Chills and body aches. It sounds like flu. Just from my observation, from whatever -- for whatever value it is, she doesn't seem that excited to be here. But -- and maybe there's a correlation. But in any event, that's the call that we received. She called and Robin talked to her. Robin, my clerk. And so that's the information we have.

1 So what to do. My suggestion, under the
2 circumstances, is to excuse her and select one
3 alternate to take her place. My concern is that if
4 we go longer than the 13th or 14th, we're going to
5 be losing a fair number of people anyway. That's
6 why it's good to have four alternates, but we'd be
7 down to three pretty quickly.

8 So -- and the way it works is I look to
9 counsel. So you can stipulate to one of the four
10 going in. Absent a stipulation, we put all four
11 names in a hat and pull one. I don't go in order, 1
12 through 4, because I want them all to be attentive.
13 And I don't want 4 figuring that he or she is not
14 going to get in.

15 So you can meet and confer -- well, first
16 of all, I know I've said a lot. Any thoughts?

17 MR. KING: We're in favor of the lottery,
18 pulling out of the hat.

19 THE COURT: And excuse [Juror Number 11]?

20 MR. KING: Yeah.

21 THE COURT: Everybody -- well, first of
22 all, is everyone in agreement to excuse [Juror
23 Number 11]? The alternative is we can say, "No,
24 we'll wait and see you on Monday," but I don't think
25 that's a good idea.

26 MR. KING: I don't want anyone else to get
27 the flu.

28 THE COURT: And it may be that what has

1 been reported is actually true. It may be that this
2 is -- she's heard me say a few times that if all 12
3 can't go forward, we have alternates.

4 My impression is she doesn't want to be
5 here, just from watching her. I know you're paying
6 attention to what's going on, but I'm watching the
7 jury and that's my impression.

8 So, Mr. Sullivan, Mr. McCloskey?

9 MR. MCCLOSKEY: I say we excuse [Juror
10 Number 11], and I'm happy with the lottery,
11 Your Honor.

12 MR. SULLIVAN: Agreed.

13 THE COURT: Okay. Then what we'll do is --
14 Robin, if you could be so kind.

15 And then -- off the record just for a
16 moment.

17 (Brief recess.)

18 THE COURT: Back on the record, do we have
19 the -- we're still working on it -- you have the --

20 THE CLERK: (Nods head.)

21 THE COURT: Wow, that is very quick. So
22 what we'll do is --

23 Leyla, if you could do the honors and no
24 peeking. And just the name that's pulled will be
25 substituted in. I was kidding about peeking.

26 All right. And our new Juror Number 11 is
27 (redacted). Everyone agreed?

28 MR. MCCLOSKEY: Yes, Your Honor.

1 MR. SULLIVAN: Yes, Your Honor.

2 MR. KING: Yes, Your Honor.

3 THE COURT: Okay. Thank you. Let me
4 then --

5 Tom, do we have all the jurors?

6 THE BAILIFF: We were missing -- well, we
7 were missing two, but we're missing one.

8 THE COURT: Okay. And if you could have
9 [Juror Number 6] come in, please.

10 (Whereupon Juror Number 6 enters the
11 courtroom.)

12 THE COURT: Good morning, [Juror Number 6].

13 JUROR NUMBER 6: Good morning.

14 THE COURT: [Juror Number 6], I got a note
15 from one of your colleagues about your phone
16 vibrating at times, and so I'm wondering if you
17 could change it from vibrate to silent, at least
18 while we're in -- and they're concerned about that.
19 In other words, it's distracting.

20 JUROR NUMBER 6: Okay. I have heard a
21 phone vibrating over here. I don't know who it
22 belongs to --

23 THE COURT: Oh.

24 JUROR NUMBER 6: Because mine only did it
25 one time yesterday, and it hasn't done any other
26 time that we've been in here.

27 THE COURT: Okay. No problem. This is not
28 a matter of blame.

1 JUROR NUMBER 6: I have no problem doing
2 that, but --

3 THE COURT: Yeah. There's no -- it's not a
4 matter of blame. It's just some -- I don't want
5 anyone to be distracted.

6 JUROR NUMBER 6: Right.

7 THE COURT: And I did get a note. So we'll
8 do some detective work then if it keeps going.
9 So -- but probably if -- if that can -- if that can
10 be done, that would be great to accommodate your
11 fellow jurors.

12 JUROR NUMBER 6: I can see how they would
13 think that, because when I've heard it every time,
14 I've reached over to hit the button so it stops and
15 I realized that it wasn't mine.

16 THE COURT: Okay. Well, it sounds like
17 further developments will take place. Thank you.
18 And you can remain right there.

19 And let's bring in the rest of the jurors,
20 please.

21 THE BAILIFF: Let me just check that we
22 have everybody.

23 THE COURT: Oh, okay.

24 (Whereupon the jurors enter the courtroom.)

25 THE COURT: All right. Good morning. And
26 thank you for your patience.

27 And, [Juror Number 3], thank you for your
28 call this morning.

1 Then as you see, one of your own is not
2 here. She's called in sick. And so what we do in
3 that situation or what I've done, after conferring
4 with counsel, is I've excused her. And it sounds
5 like the symptoms that she was talking about were
6 flu. So we want to make sure that she gets well and
7 that none of you get it, and so we've excused her.

8 What we do in that situation is we put the
9 names of the four alternates in a hat and more
10 specifically, a bowl, because we don't have a hat
11 and we pull one.

12 And Leyla has pulled the winner, and the
13 winner is [Alternate Number 2]. So, [Alternate
14 Number 2], if you can be kind enough to take seat
15 Number 11.

16 All right. And is -- what the Court has
17 just stated and done, are counsel all in agreement
18 with that --

19 MR. SULLIVAN: Yes.

20 THE COURT: -- in terms of releasing and
21 substituting in the new juror?

22 MR. SULLIVAN: Yes, Your Honor.

23 MR. KING: Yes, Your Honor.

24 MR. MCCLOSKEY: Yes, Your Honor. Thank
25 you.

26 THE COURT: All right. Thank you.

27 And, Mr. Sullivan, please call your next
28 witness.

1 MR. SULLIVAN: Yes. Thank you, Your Honor.
2 Storix will call Richard Turner.

3 THE CLERK: Good morning.

4 RICHARD JAMES TURNER,
5 having been first duly sworn, was examined and
6 testified as follows:

7 THE CLERK: Please be seated at the witness
8 stand. Please state your full name and spell your
9 last name for the record.

10 THE WITNESS: Richard James Turner,
11 T-u-r-n-e-r.

12 THE COURT: All right. And good morning,
13 Mr. Turner.

14 And, Mr. Sullivan, if you could do some
15 housekeeping up here. It looks like there's other
16 things that he won't be needing. Thank you.

17 DIRECT EXAMINATION

18 BY MR. SULLIVAN:

19 Q. Good morning, Mr. Turner. How are you?

20 A. Good. How are you?

21 Q. Tell me who you are and what you do for a
22 living.

23 A. My name is Rich Turner, and I am a member
24 of the support and development team at Storix, Inc.,
25 right now. My primary roles are the management --
26 or the manager of the support group and also as a
27 lead developer.

28 Q. And before you joined Storix, could you

1 just give a brief overview of your employment
2 history?

3 A. Yeah, sure. Are you talking specifically
4 in this field or --

5 Q. Sort of take me up -- did you go to
6 college, and then did you work and --

7 A. Okay. I went to college. Started college
8 in 1984 at San Diego State University. And while in
9 college, I took a part-time job working for Levitz
10 Furniture in the warehouse and eventually joined the
11 management training program there at Levitz and
12 became a manager of Levitz stores.

13 And eventually, Levitz went out of business
14 here in San Diego, and I went back to school. I
15 went to Coleman college and finished up my
16 bachelor's degree at Coleman college. I got a
17 bachelor's degree in computer applications and
18 networks.

19 Following that, I took a couple temporary
20 positions with Intuit doing software testing of
21 their TurboTax product, as well as I took a temp job
22 with Nokia doing some hardware -- computer hardware
23 installation.

24 And then following that, I was hired by a
25 company called Interview to work as a Linux
26 technician in their network operation center. They
27 were -- the company was responsible for streaming
28 media at the time. I worked there for two or three

1 years, and Interview was acquired by Akamai
2 Technologies. And I held the same position at
3 Akamai Technologies, although it turned into a
4 little bit of a leadership role where I did have
5 people that reported to me, but pretty much in the
6 same capacity as with Interview.

7 Eventually, Akamai Technologies closed up
8 their network operations center here in San Diego,
9 and so they closed the operations here. I was
10 fortunate enough to get a contract position with
11 Akamai Technologies doing hardware repair, and that
12 was for about a year. And then in 2002, I was hired
13 by -- hired to work at Storix.

14 Q. You mentioned Linux in part of your answer.
15 I think that -- is that an operating system?

16 A. Linux is an operating system, yes.

17 Q. And those positions with Interview and
18 Akamai, were you doing any computer programming or
19 coding?

20 A. Really, the extent of my coding with those
21 companies would have been shell scripting.

22 Q. And what's shell scripting?

23 A. Shell scripting is when you -- it's a --
24 typically not machine code. It's a language that is
25 typically readable from the command line, and it's a
26 set of instructions written in a script.

27 Q. So it's another version of computer code?

28 A. Sure.

1 Q. Have you worked at Storix since 2002?

2 A. I have.

3 Q. Who hired you?

4 A. Anthony Johnson.

5 Q. How big was the company at the time?

6 A. At that time, there was Anthony and David
7 and myself.

8 Q. David Huffman?

9 A. David Huffman, yes.

10 Q. What were you hired to do when you first
11 joined Storix?

12 A. I was hired to do Linux support. That was
13 the title. But there was many other things that we
14 did. There were three people in the company.

15 Q. What did you do as a Linux support
16 technician?

17 A. Well, I supported the SB Admin product. I
18 also did -- often, we would be responsible for
19 taking sales calls. We would be responsible for
20 entering orders into the accounting system, talking
21 to customers, supporting the software with end
22 users. We would do testing of the software. We
23 would do research. That would -- I would say that
24 would -- initially, that's pretty much was my job
25 responsibilities were.

26 Q. At some point were you also writing code
27 for SB Admin?

28 A. Yes.

1 Q. When did that come about?

2 A. I can't tell you exactly what year, but it
3 was probably within, you know, the next two, three
4 years I was contributing to the coding of the
5 software.

6 Q. You were here for Mr. Huffman's testimony,
7 I believe, correct?

8 A. Yes.

9 Q. We heard from him about the management
10 transition at Storix in 2011. I want to briefly
11 discuss your experience with how things operated
12 before that change.

13 A. Okay.

14 Q. When Mr. Johnson was in charge of Storix,
15 how was it decided what changes would be made in the
16 software?

17 A. Anthony -- Anthony made those decisions.

18 Q. By himself?

19 A. Yes.

20 Q. Was there a process for testing software
21 changes before they were implemented?

22 A. At -- in 2011?

23 Q. Pre-2011.

24 A. Nothing defined.

25 Q. No formal process?

26 A. Correct.

27 Q. What of the quality assurance plan like at
28 the time?

1 A. Nothing formal.

2 Q. Who oversaw the testing of software changes
3 prior to 2011?

4 A. Well, at -- you know, right before
5 Anthony -- the management transition, I was the
6 product manager of the software. So I was
7 responsible for managing product -- projects and --
8 which would have included the testing, but the
9 ultimate decision on when the software was ready to
10 be released and available to our customers was
11 the -- the ultimate decision came from Anthony.

12 Q. Were there any times when Mr. Johnson was
13 in charge at Storix where there were software
14 changes that were released but, in your view, not
15 ready?

16 A. Yes.

17 Q. Can you describe some of those, an example?

18 A. I mean, I can recall an instance where we
19 put out an update. And it was very shortly
20 thereafter, maybe even the next day, we had to put
21 out a -- another update just to fix a problem that
22 was in the software.

23 I remember an occasion where I had a
24 testing plan that I was trying to get through, still
25 had more to do, but there was a company function
26 that everybody wanted to get to. And Mr. Johnson
27 says, you know, "Don't worry about the rest of the
28 testing. Let's go ahead and release it." I wasn't

1 comfortable with it at that time.

2 Q. Did you feel that under Mr. Johnson, there
3 were changes to the software that were implemented
4 in a safe and stable manner always for the customer?

5 A. No.

6 Q. Is it fair to say that when Mr. Johnson was
7 in control that customers essentially did the
8 testing for you?

9 A. Sometimes. I mean, certainly, very early
10 in the soft -- in the -- in the evolution of the
11 software, I think that was the attitude.

12 Q. So it was feedback you were receiving and
13 you would, what, make changes based on customer
14 feedback?

15 A. Correct.

16 Q. In your experience, did -- do you recall
17 Mr. Johnson ever conducting any market research
18 before deciding on new directions to go with the
19 software?

20 A. Not that I'm aware of.

21 Q. We heard yesterday the term cleanup crew,
22 that Mr. Huffman and you served as the cleanup crew
23 for Mr. Johnson. Do you agree that's an accurate
24 description of your roles at that time?

25 A. Yes.

26 Q. Now, we heard yesterday how Mr. Johnson
27 stepped down as an officer and director of Storix in
28 2011. How did you learn he was planning to step

1 away?

2 A. He asked me to come into his office and he
3 told me personally.

4 Q. Just the two of you?

5 A. Yes.

6 Q. What did he tell you?

7 A. He told me that -- that he was sick.

8 Q. Did he tell you what his prognosis was?

9 A. I don't remember if he told me what his
10 prognosis was in our individual meeting, but he
11 eventually did, yes.

12 Q. Is that later in a company-wide meeting?

13 A. That's correct.

14 Q. How did you react?

15 A. Sympathetic. I mean, he was, you know, our
16 leader. He was somebody I considered a friend, and
17 it wasn't good news.

18 Q. Did Mr. Johnson, around that time, tell you
19 anything about how the company would operate after a
20 transition in 2011?

21 A. Well, he asked us to run the company.

22 Q. Did he say -- strike that.

23 At some point was there an agreement
24 where -- around the time when you became one of the
25 shareholders?

26 A. There was, yes.

27 Q. Were there -- what role did you occupy
28 after that transition in 2011?

1 A. I was the product manager.

2 Q. When Mr. Johnson stepped down, were there
3 any restrictions placed on you on what you could do
4 as product manager?

5 A. Not at all. He said that we could run the
6 company any way that we saw fit.

7 Q. Did Mr. Johnson ever tell you anything
8 about this management transition being temporary?

9 A. No.

10 Q. When you were placed in charge of software
11 development, were there any changes that you
12 implemented in the process for developing the
13 software?

14 A. Yes.

15 Q. Can you tell me about those?

16 A. Sure. The -- really, the most important
17 thing -- the most important factor in my mind was
18 the quality of the software; that when an update to
19 the software went out to our customers, that it was
20 thoroughly tested and our customers could trust that
21 it was safe for them to use.

22 So one of the first things that we -- that
23 we did -- or that I put into place were some -- some
24 guidelines, some policies and procedures, by which
25 we could assure that the software was tested
26 properly. There were essentially three tiers of
27 testing that it went through, and there were
28 requirements at each level by the individual

1 developer and the development team at each level to
2 do certain testing.

3 And we all -- I mean, the way that
4 product -- projects -- individual projects were
5 assigned to each developer, and the developers were
6 responsible for their pro -- for their individual
7 project.

8 I mean, we would do collaboration and talk
9 about the projects from time to time, but the
10 ultimate responsibility was with the individual
11 developer. And, you know, we would meet on a weekly
12 basis or whenever we needed to to kind of check in
13 and see how everybody's projects are going.

14 Q. Were the other employees at Storix that
15 were working on software programming with you in
16 agreement with these policy changes? Did they -- in
17 other words, did they follow?

18 A. In 2011?

19 Q. Yeah. After 2011, when you implemented
20 these new procedures, did the other employees
21 performing programming work at Storix follow along?

22 A. I believe so. I didn't hear anything
23 different.

24 Q. How were decisions made with regard to
25 pro -- broader product design choices? Was it a
26 collaborative effort?

27 A. Yeah, it was much more collaborative.

28 Q. Now, we heard from Mr. Huffman that at some

1 point Mr. Johnson returned around 2013 to work on
2 some projects at Storix.

3 Do you recall that?

4 A. I do.

5 Q. What projects do you recall him coming back
6 to work on?

7 A. 2013, before he -- yeah, okay. In 2013,
8 there's two projects I can think of that we -- that
9 we assigned to him. The first one was -- one of
10 them had to do something with the graphical
11 interface. We wanted some changes to the look and
12 feel of the graphical interface, and we also had
13 a -- another copy backup feature that we asked him
14 to work on.

15 Q. Now, around that time, were you one of the
16 programmers working on Version 8.2 that we heard
17 about?

18 A. I -- yeah, I believe we were working on 8.2
19 in 2013, yes.

20 Q. At some point did you and Mr. Huffman
21 discuss with Johnson having Mr. Johnson work on a
22 project for a future release of SB Admin that would
23 occur after release of 8.2?

24 A. Yes. I'm not sure if that was in 2013 or
25 not. I'm not sure about the date. But at some
26 point Anthony came back, and it really seemed like
27 he was going to be back more regularly. So we had a
28 network security update that we wanted to implement

1 into Version 9, and it was something that we asked
2 Anthony to work on.

3 Q. Whose idea was that security update?

4 A. It was either David -- David or myself.

5 Q. Why did you ask Mr. Johnson to work on that
6 project rather than somebody else at Storix?

7 A. Well, we were all -- the rest of the
8 development team was focused on 8.2, trying to get
9 that out. We all had all of our own individual
10 projects to work on, and then we were all going to
11 be working together on the final testing of 8.2.
12 The security update at that time wasn't time
13 sensitive and it -- frankly, Anthony was the best
14 person based on the skills required as well.

15 Q. And was Mr. Johnson's assignment at the
16 time intended to be just one piece of what would be
17 Version 9.1, or did you say, Go out and create 9.1?

18 A. That was -- it was designed to -- just to
19 be the network security. That was one of the things
20 that -- one of the policies or -- that we kind of
21 created with this new development environment is
22 that we would be much more conservative and
23 methodical in our development process and only to
24 work on specific things so that we can move forward
25 in a more methodical manner.

26 Q. So there were more features to be included
27 in what would be Version 9.1?

28 A. Oh, yes, yes. There were many more

1 features.

2 Q. Now, this project that you were assigning
3 to Mr. Johnson, was that a project that you
4 anticipated being included in the Version 8 -- 8.2
5 that was about to be released?

6 A. The -- no. The network security was not
7 planned to be included in Version 8.

8 Q. As head of the software development at the
9 time, did you view that as your decision to make as
10 far as what features would be included in the next
11 update to be released?

12 A. I did, and I felt certainly my boss could
13 override my authority.

14 Q. And who's your boss?

15 A. David Huffman.

16 Q. Did he agree with your decision?

17 A. Yes.

18 Q. And how did Mr. Johnson respond to that
19 decision?

20 A. Not to put the network security into
21 Version 8.2? There was some significant pushback.

22 Q. He did not agree with you?

23 A. That's correct.

24 Q. Can you tell me about that pushback, those
25 discussions?

26 A. He really wanted to get this change, the
27 network security into Version 8.2. We had some
28 lengthy discussions about it as well.

1 Q. Do you recall approximately when you
2 released Version 8.2?

3 A. 2015?

4 Q. 2000 -- 8.2?

5 A. I -- if -- the change log would make it
6 easy to --

7 Q. Well, you were working back on it back in
8 2013, right?

9 A. Okay. Correct, yes.

10 Q. Does that help?

11 A. Then it was probably 2014. Like I said,
12 there's a change log that easily documents when
13 everything was put out.

14 Q. We'll take a look at that.

15 A. Okay.

16 Q. At the time, though, when the other
17 programmers at Storix are focused on 8.2 and
18 Mr. Johnson was working on his project for 9.1, did
19 you have an anticipated release date for 8.2?

20 A. Yes.

21 Q. Did you feel that that project assigned for
22 9.1 would be complete and thoroughly tested enough
23 to meet that deadline for 8.2?

24 A. No.

25 Q. After you released Version 8.2, did you
26 turn your attention to work on Version 9.1?

27 A. Yes, we did.

28 Q. What did you do to start preparing

1 Version 9.1?

2 A. The first thing would have been create a
3 new software base for the 8.2 or the -- for the 9.1
4 software that we were going to be working on, and it
5 would have been essentially copied from 8.2. That
6 would have been our starting point.

7 Q. So you take the code from the prior
8 version --

9 A. Yeah.

10 Q. -- and you start modifying it from there?

11 A. Correct.

12 Q. Did you have an assigned project on
13 Version 9.1?

14 A. Yes.

15 Q. What was that, if you can recall?

16 A. I don't recall.

17 Q. Now, as you started turning your focus to
18 9.1 after 8.2 was released, did you also start to
19 review the work Mr. Johnson had done on his project
20 for 9.1?

21 A. Yes.

22 Q. What did you find when you started doing
23 that review of his progress on that project?

24 A. We found that there were problems with his
25 implementation working, and we also found that he
26 made additional changes other than what he was
27 specifically tasked to do.

28 Q. I think we heard Mr. Huffman the other day

1 say the word "scope creep." Do you understand what
2 that means?

3 A. Yes.

4 Q. What does that mean to you?

5 A. Basically, he went outside the scope of
6 what he was supposed to work on.

7 Q. And did "scope creep" prove to be a problem
8 for the development of 9.1?

9 A. Yes.

10 Q. Why?

11 A. Because there were problems with it. It
12 didn't work with -- it was untested.

13 Q. Did you feel that Mr. Johnson had conducted
14 sufficient testing on that project for Version 9.1?

15 A. No.

16 Q. You testified about a three-tiered testing
17 procedure, I think --

18 A. Yes.

19 Q. -- that you had implemented after the
20 transition in 2011?

21 Did Mr. Johnson follow that testing
22 procedure with his project on 9.1?

23 A. No.

24 Q. Did you discuss the bugs' issue with
25 Mr. Johnson when you started reviewing his work on
26 9.1?

27 A. Yes.

28 Q. How did he respond?

1 A. Unfavorably. He took it -- very defensive,
2 took it very personal.

3 Q. Did he ever complain about the testing you
4 wanted him to do?

5 A. Yes.

6 Q. What sort of complaints did he make?

7 A. Just that he did not want to do it or
8 that -- he said he did do it, but did not have it
9 documented.

10 Q. Was there a procedure for documenting the
11 testing protocols as they're implemented?

12 A. Yes.

13 Q. Did the other programmers at Storix follow
14 that procedure?

15 A. Yes.

16 Q. Did he assign any blame for the bugs that
17 you found in reviewing his work?

18 A. Yeah.

19 Q. Who did he blame?

20 A. He blamed the -- I don't know if it was
21 anybody specifically, but he blamed the changes that
22 we made to 8.2 for causing the problems with his
23 implementation of what he did for 9.1.

24 Q. In your view, was Version 8.2 responsible
25 for the bugs in Mr. Johnson's project?

26 A. No.

27 Q. Now, at that time you were still in charge
28 of software development at Storix, correct?

1 A. Correct.

2 Q. When he -- when Mr. Johnson was working on
3 the software projects, was he supposed to follow up
4 the decisions you reach regarding changes made to
5 the software?

6 A. Yes.

7 Q. Did he do so?

8 A. No.

9 Q. Now, did you see any other problems
10 regarding the design features Mr. Johnson had
11 implemented into his project, perhaps with what
12 you -- the company understood were customer demands
13 or needs?

14 A. There was some disagreement that we had
15 over the use of pass -- or the requirement of the
16 use of passwords in the network security
17 implementation.

18 Q. What was that disagreement?

19 A. The design -- the disagreement was that
20 every single host was required to have a password,
21 and it seemed overly cumbersome if -- especially if
22 you had -- I mean, we have software installations
23 with thousands of clients, and companies having to
24 manage passwords of that many clients would be
25 cumbersome.

26 Q. I think we heard from Mr. Huffman that
27 generally the product, SB Admin, is operated by
28 fairly sophisticated IT personnel at larger

1 companies.

2 Is this -- is SB Admin something that each
3 user on their desktop would be trying to recover, or
4 is this something that the, you know, assigned IT
5 personnel would try to recover the system?

6 A. I would not expect a desktop user to be
7 using our software. It would be a system
8 administrator.

9 Q. So was it -- so was the feedback Storix was
10 receiving from the IT personnel that they didn't
11 want to be encumbered with such passwords throughout
12 the systems?

13 A. The feedback that we received was that
14 given the option of requiring multi -- a single
15 password for every host or having a -- or no
16 passwords, the way our software is today, they would
17 prefer no passwords.

18 Q. And did Mr. Johnson agree with your
19 decision on this issue?

20 A. No.

21 Q. Did you have any disagreements about it?

22 A. Yes.

23 Q. Tell me about those.

24 A. He just dis -- I mean, he felt very
25 strongly about his implementation about the
26 software. And any feedback -- negative feedback
27 that we gave to him, he took personal and became
28 very defensive.

1 Q. Did you intend it as a personal attack?

2 A. Not at all. It was all intended for, you
3 know, creating a better software product.

4 Q. Now, as these issues started to arise, did
5 it become more and more difficult to work with
6 Mr. Johnson?

7 A. Anthony's always been somewhat difficult to
8 work with, but I would say, you know, over time it
9 became more and more difficult.

10 Q. Did you still view these meetings or
11 discussions that became heated as constructive at
12 the time?

13 A. Yes.

14 Q. Did you ever take any criticism personally
15 of work you had been doing on software design?

16 A. Yes.

17 Q. How did you deal with it?

18 A. It's not easy to hear. I mean -- I mean,
19 we are -- I mean, everybody that was there was very
20 serious and passionate about their job. It's not
21 easy to take, but, you know, it's -- it's not
22 personal. I mean, at some point -- you know, we're
23 not -- we're not attacking you personally. We are
24 trying to -- just constructive criticism to create a
25 better product.

26 Q. Did you ever berate Mr. Johnson?

27 A. No.

28 Q. Scream at him?

1 A. No.

2 Q. Call him names?

3 A. No.

4 Q. Now, as you talked to Mr. Johnson about
5 these issues with his work on Version 9.1, did you
6 hope to see him make any sort of change in his
7 approach?

8 A. Yes.

9 Q. What did you hope to see happen?

10 A. I hoped that he would adopt the way that
11 the software was developed in the current
12 environment.

13 MR. SULLIVAN: Your Honor, may I approach?

14 THE COURT: Yes.

15 BY MR. SULLIVAN:

16 Q. Mr. Turner, I've placed in front of you
17 Exhibit 863. Do you recognize that document after
18 reviewing it?

19 A. Yes.

20 (Exhibit 863 referenced.)

21 BY MR. SULLIVAN:

22 Q. What do you recognize that to be?

23 A. It's a couple text messages between myself
24 and Anthony.

25 MR. SULLIVAN: I move to admit and publish
26 863, Your Honor.

27 MR. KING: No objection.

28 THE COURT: Received.

1 (Exhibit 863 received.)

2 BY MR. SULLIVAN:

3 Q. Is there a date on that text message?

4 A. Yes.

5 Q. What's the date?

6 A. May 6, 2014.

7 THE COURT: Do you want the lights dimmed
8 or is this fine?

9 UNIDENTIFIED JUROR: Yes, please.

10 MR. SULLIVAN: Yes, I believe so.

11 THE COURT: Yes. There's a request from
12 the jury, so let's do that.

13 Thank you, Robin.

14 BY MR. SULLIVAN:

15 Q. So is your message to Mr. Johnson the blue
16 text?

17 A. It is.

18 Q. What did you write to him?

19 A. Do you know when you -- when the next day
20 you will be in? Some things related to compile --
21 compiling that I would like to discuss.

22 Q. Had Mr. Johnson been absent from the office
23 around that time?

24 A. Yes.

25 Q. Now, at some point did you learn that he
26 resigned from Storix?

27 A. I did.

28 Q. And it was, in fact, two days after this

1 text message?

2 A. I'm not sure about the dates.

3 MR. SULLIVAN: 138 is already admitted.

4 Can we please see that. Let's highlight the top.

5 BY MR. SULLIVAN:

6 Q. Have you seen this e-mail before,
7 Mr. Turner?

8 A. Yes. And I can see, based on the dates,
9 that yes, it's two days.

10 Q. How did you learn that he had resigned?

11 A. David Huffman told me.

12 Q. So Mr. Johnson did not tell you directly?

13 A. No.

14 MR. SULLIVAN: Can we call up Exhibit 118,
15 please, which was admitted yesterday. Can we blow
16 up the top, please, the header and the first
17 paragraph.

18 BY MR. SULLIVAN:

19 Q. Mr. Turner, do you recognize this e-mail
20 from this header and the top paragraph?

21 A. Yes.

22 Q. Is that the response you sent to
23 Mr. Johnson a few hours after he issued his
24 resignation?

25 A. It wasn't a response. It was me reaching
26 out to Anthony.

27 Q. Why did you send this?

28 A. My hope was that he would reconsider.

1 Q. Did you want him to leave the company?

2 A. No.

3 Q. The first paragraph, you say, "I want you
4 to know that I am disappointed to hear this and that
5 it bothers me greatly because I feel like I am the
6 cause of your decision."

7 Why did you tell Anthony you were
8 disappointed?

9 A. Because I did not want him to leave.

10 Q. Why did you feel like you were the cause of
11 his decision?

12 A. Because I felt like the -- the reason for
13 him leaving was the -- the policies and procedures
14 that had been put in place.

15 Q. But did you feel like you treated him
16 unfairly?

17 A. Not at all.

18 MR. SULLIVAN: Can we see the second
19 paragraph, please.

20 BY MR. SULLIVAN:

21 Q. The second paragraph you wrote, "This is
22 something I have taken very serious and causes many
23 sleepless nights for me worrying about putting out
24 something that may cause problems for our
25 customers."

26 What were you referring to?

27 A. Putting an update out that had not been
28 fully tested.

1 Q. Why did you say that to Mr. Johnson in
2 response to his resignation?

3 A. Because testing was a -- the amount of
4 testing that I required was not consistent with
5 Anthony's opinion.

6 Q. But did you think, as head of software
7 development, that that was your choice to make?

8 A. I thought it was my responsibility, yes.

9 Q. The next sentence says, "For that reason, I
10 have been very cautious and conservative about
11 making changes. This is where we disagree most."

12 What was Mr. Johnson's position on your
13 conservative approach?

14 A. He did not like it.

15 Q. Third paragraph, please, you wrote to
16 Mr. Johnson, "I honestly listen, respect, and value
17 your opinion with relation to the software more than
18 anyone on the planet. Everything I know and have
19 learned was from you. However, my feeling is that I
20 do not get that same level of respect from you.
21 Perhaps I do not deserve it because my skills and
22 qualification are nowhere near the same level as
23 yours, but you were away for a time and someone had
24 to instill a process and culture to the development
25 practices of the software."

26 Did you mean that paragraph when you wrote
27 it?

28 A. Yes.

1 Q. What did you mean by that?

2 A. I mean, I -- kind of exactly what I say. I
3 mean, I had a great deal of respect for Anthony and
4 his experience was a tremendous value to our
5 company, but I did not feel that it was reciprocated
6 at all.

7 Q. Did you feel like you were still treated as
8 a subordinate?

9 A. Yes.

10 MR. SULLIVAN: Let's see the last sentence,
11 please, last paragraph.

12 BY MR. SULLIVAN:

13 Q. "This company, our company, is going to
14 suffer without you. My hope is that you will
15 reconsider and we can discuss how we can best work
16 as a team."

17 Did you want Anthony to stay and keep
18 working for Storix at that time?

19 A. Yes.

20 Q. Why did you want Mr. Johnson to stay
21 despite the difficulties?

22 A. Because he brought great value to our
23 company.

24 Q. Were you being sincere when you wrote this
25 e-mail?

26 A. Yes.

27 Q. Did you ever intentionally act unkind
28 towards Mr. Johnson?

1 A. No.

2 Q. Ever try to force him to quit?

3 A. No.

4 Q. Did you ever try to oust him in any other
5 way from Storix?

6 A. No.

7 Q. Now, after Mr. Johnson resigned, what was
8 the status of the Version 9.1 product that he had
9 been working on? Was it complete?

10 A. No.

11 Q. Did it work?

12 A. No.

13 Q. In your view, was it close to working?

14 A. It's kind of hard to tell. You know, when
15 Anthony resigned, we continued working on his
16 implementation of the software for -- for months.

17 We knew there were issues. We were
18 uncovering bugs along the way. And, you know, as
19 you resolve one -- one bug, then you may discover --
20 there's -- you know, you may -- then you continue
21 with your testing, and then you may discover another
22 bug right after it.

23 So we finally got to a point where we could
24 not resolve an issue, so -- this was after a couple
25 months, and then we decided to go in a different
26 direction.

27 Q. Had Storix hired a new software programmer
28 to work on that project?

1 A. Yes.

2 Q. In your view, was he qualified?

3 A. Yes.

4 Q. Was the issue with not being able to
5 develop or fix the 9.1, in your view, an issue of
6 him lacking the skill to do so?

7 A. No.

8 Q. What was the ultimate decision with regard
9 to that project Version 9.1 that Mr. Johnson had
10 been working on?

11 A. We decided to not use his implementation
12 and go a different direction.

13 Q. Now, at some point after his resignation,
14 did the tone of communications from Mr. Johnson
15 change?

16 A. At some point, yes.

17 MR. SULLIVAN: Can we see Exhibit 340,
18 which was admitted yesterday. Can you blow up the
19 top of the header.

20 BY MR. SULLIVAN:

21 Q. This is an e-mail of July 20th, 2014, so a
22 couple of months after Mr. Johnson had resigned, and
23 you're listed as a copied recipient. The subject
24 line is "Notice."

25 Do you recall receiving this e-mail?

26 A. I do.

27 Q. If you could go to the top of page 2,
28 please. It says, "It was clear that you would not

1 give up any control, make any changes, or allow me
2 to make any decisions when it came to my product."

3 Do you agree with that statement?

4 A. No. In fact, when it became -- when -- I
5 mean, there was at -- one point where we actually,
6 myself and David Huffman, sat down with Anthony and
7 asked him specifically if he wanted a
8 decision-making role, and he said he did not, so --

9 Q. Is that statement consistent with what your
10 understanding of the management of Storix would be
11 after the transition in 2011?

12 A. Can you repeat that question?

13 Q. Sure. Is that statement consistent with
14 what your understanding would be of Storix's
15 management after the transition in 2011?

16 A. The management team wasn't given any
17 restrictions.

18 Q. Second paragraph of page 2, which I think
19 we already have up, the last sentence, "You and Rich
20 won't listen to me or work with me, so you have to
21 get out of the way."

22 Did you refuse to listen to Mr. Johnson?

23 A. No.

24 Q. Did you refuse to work with him?

25 A. No.

26 Q. Go to the second-to-last paragraph. I
27 think you've got it right there in the middle. The
28 last sentence there, "Do whatever you want with

1 Storix, but you'll do it without my software."

2 And then scroll down a little bit.

3 Second-to-last sentence, "I no longer feel bound to
4 any former promises."

5 What was your reaction to receiving that?

6 A. Surprise. I wasn't expecting to see that
7 or feel threatened like that.

8 Q. Did it concern you?

9 A. Yes.

10 Q. Why?

11 A. Base -- I mean, Storix is a -- we have one
12 product. And without the software, then Storix
13 likely would not exist.

14 Q. Did you take that e-mail seriously?

15 A. Yes.

16 Q. Now, I understand there was a separate
17 copyright suit. You understand that too. And this
18 case is not about that. This case involves a
19 lawsuit Storix filed against Mr. Johnson in a
20 company called "Janstor Technology."

21 Are you familiar with the name "Janstor
22 Technology"?

23 A. Yes.

24 Q. The suit was filed in 2015. At that time
25 were you a member of Storix's board of directors?

26 A. Yes.

27 Q. And did you review the complaint and give
28 your consent to it being filed --

1 A. Yes.

2 Q. -- at that time?

3 MR. SULLIVAN: Can we see Exhibit 356,
4 please, which was admitted yesterday.

5 BY MR. SULLIVAN:

6 Q. This is the "Buckle up, boys" e-mail that
7 we saw yesterday. Do you see the second sentence,
8 please? This is dated December 26, 2015, about a
9 month after the Janstor lawsuit was filed.

10 The second sentence says, You have
11 relentlessly striven to push my buttons, hoping I
12 would finally crack and give up everything I worked
13 toward for 30 years to a bunch of spineless, greedy,
14 ungrateful bastards."

15 Was that your goal, to push Mr. Johnson's
16 buttons?

17 A. No.

18 Q. Do you know if that was anybody else at
19 Storix's goal?

20 A. It was not.

21 Q. The last paragraph before his signature, he
22 writes, "But let's not stop there. Customers and
23 business partners are innocent bystanders too, and I
24 bet they'd all be interested in the story here."

25 You're going to see -- close to the
26 second-to-last sentence, "You're going to see this
27 in an announcement letter and every message board I
28 can get to. Good luck finding another job. Sure,

1 get your lawyers to threaten me. It worked so good
2 before."

3 Do you remember receiving that part of the
4 e-mail?

5 A. Yes.

6 Q. What did you understand him to be saying
7 there?

8 MR. KING: Objection. Calls for
9 speculation.

10 THE COURT: Sustained.

11 BY MR. SULLIVAN:

12 Q. How did you interpret that?

13 MR. KING: Objection. Calls for
14 speculation.

15 THE COURT: Overruled.

16 THE WITNESS: I interpreted that as a
17 threat that he was going to contact our customers
18 and business partners.

19 BY MR. SULLIVAN:

20 Q. Now, at some point did you learn that
21 Mr. Johnson had actually sent an announcement to
22 Storix's contacts?

23 A. Yes.

24 Q. How did you learn that?

25 A. I think I was copied on the list that he
26 sent to --

27 Q. And do you recall what occurred upon
28 learning of that announcement at Storix?

1 A. Yeah, there was great concern about it.

2 Q. Did you huddle in a meeting or what did you
3 do?

4 A. Yeah. Once we learned about it, then we --
5 we met and we had to discuss and decide how to
6 handle it.

7 Q. Do you recall approximately how long the
8 meeting lasted?

9 A. The first day, it was, you know, a few
10 hours.

11 Q. Two to three?

12 A. The meeting, sure. But, you know, over the
13 next couple days, we took phone calls from
14 customers. And, you know, it was kind of assessing
15 what damage had been done.

16 Q. So customers were actually calling in in
17 response to the announcement e-mail?

18 A. Yeah, a few of them.

19 Q. Who is Quest?

20 A. Quest is a -- is a software company.

21 Q. Does Storix have any sort of relationship
22 with Quest?

23 A. Yes.

24 Q. What is that relationship?

25 A. We have an OEM agreement to provide our
26 software to Quest.

27 Q. Is that an important relationship for
28 Storix?

1 A. Yes, and long-standing as well.

2 Q. At some point did anybody from Quest
3 contact you about receiving information for
4 Mr. Johnson?

5 A. Yes.

6 Q. Did it relate to Storix's ability to sell
7 SB Admin?

8 A. It was related specifically to the
9 announcement letter that Mr. Johnson e-mailed.

10 Q. And who was that that contacted you?

11 A. Minh Lee.

12 Q. Do you recall approximately when that was?

13 A. About a year ago.

14 Q. And did you have any discussions with
15 Mr. Lee?

16 A. I did. I traded a couple e-mails with him.
17 And then when he expressed concern, I spoke to him
18 on the phone.

19 Q. And how did that resolve?

20 A. He was satisfied.

21 Q. What did you tell him?

22 A. I basically told him that the question of
23 the copyright ownership was resolved favorably in
24 Storix's favor.

25 Q. And that call you believe was last year in
26 2017?

27 A. I think so, yes.

28 Q. But that e-mail we just looked at, 356, was

1 dated September of 2015. Does it concern you at all
2 that that long after that e-mail Storix is still
3 receiving calls from its contacts?

4 A. Yeah, it concerns me.

5 Q. How much time would you estimate you spent
6 dealing with Mr. Lee on Quest's concerns?

7 A. An hour or two.

8 Q. Are you normally the person that deals with
9 customer relations?

10 A. I have a support role, yes.

11 Q. But not on the marketing side, on the
12 support side?

13 A. Not on the marketing side, on the support
14 side, correct.

15 Q. Thank you, Mr. Turner. I have no further
16 questions.

17 THE COURT: All right. Mr. King?

18 CROSS-EXAMINATION

19 BY MR. KING:

20 Q. Mr. Turner, thank you. You testified that
21 Anthony was a little bit hard to work with before --
22 even before he -- he left in 2011; is that correct?

23 A. Correct.

24 Q. Tell me what you mean by that.

25 A. Even before he left in 2011, we often
26 disagreed about certain things, mostly related to
27 the software, sometimes related to the amount of
28 testing that I had hoped to be able to do. But I --

1 you know, he was my boss.

2 Q. And in 2011, when he offered you a chance
3 to become a partner with him and his business, even
4 though you disagreed with him, you still took that
5 opportunity?

6 A. Yes.

7 Q. Now, before Anthony left, you were a
8 product manager, right?

9 A. Correct.

10 Q. But then sometime -- and then after he
11 left, you testified you remained product manager?

12 A. Yes.

13 Q. Isn't it true that Mr. Huffman became
14 product manager after 2011 at some point?

15 A. At some point, yes.

16 Q. And that was because you felt Mr. Huffman
17 had a better -- it was more suited for that job?

18 A. At that time we were kind of reassessing
19 the roles of the people in our company. It's a
20 small company, and some of the roles that -- had
21 shifted around amongst the employees. And David
22 had -- David Huffman had a specific vision and
23 direction of the software, and we all felt that he
24 was the best person for that.

25 Q. So whose policies in product development
26 were they? Were they your policies or were they
27 Mr. Huffman's policies?

28 A. I created them.

1 Q. Okay. Mr. Huffman just implemented them?

2 A. When he became the product manager, yes,
3 that's correct, he continued with them.

4 Q. And we heard Mr. Huffman testify yesterday
5 about how the management of Storix changed after
6 Anthony left.

7 Do you recall that testimony?

8 A. Yes.

9 Q. He testified generally how the -- it was
10 more of a cooperative approach.

11 Would you agree with that?

12 A. Yes.

13 Q. Were the most skilled people in each -- in
14 each facet of the business, whether it be marketing
15 or product development or administration, they kind
16 of -- everyone would defer to their expertise?

17 A. We tried as best we could, sure.

18 Q. We looked at an e-mail. I believe it was
19 Exhibit 118. This has already been admitted.

20 MR. KING: Can we put that up.

21 THE COURT: Do you want the lights down?

22 MR. KING: Sure.

23 If you can go down, Robin, to the third
24 paragraph.

25 BY MR. KING:

26 Q. You admit -- in the second-to-last
27 paragraph, you say, "Perhaps I do not deserve it
28 because my skills and qualification are nowhere near

1 the same level as yours," referring to Anthony, "but
2 you were away for a time, and someone had to instill
3 a process and culture to the development practices
4 of the software."

5 So even though Anthony was more skilled and
6 more experienced, why did the cooperative atmosphere
7 of deferring to the person with the most skill and
8 experience not apply to him?

9 A. We -- we accepted input from Anthony all
10 the time. Sometime -- but Anthony wasn't around all
11 the time as well. We had a plan -- I mean, we had
12 developed a plan on the direction of the software.
13 And, you know, so Anthony wasn't around all the time
14 to be able to be involved in that, so -- but it
15 wasn't like we refused his input. We accepted his
16 input all the time.

17 Q. But the cause of the disagreements -- the
18 cause of Anthony leaving is that you didn't accept
19 his input. He wanted to do it a certain way, and
20 you said, No, that's not the way we're doing it,
21 right?

22 A. No. When -- when Anthony expressed that he
23 did not want to do it the way that the rest of the
24 development team was doing it, we asked him if he
25 wanted to take on that decision-making role, and he
26 said no. So somebody has to be -- somebody has to
27 take on that role.

28 Q. You're saying that you offered Mr. Johnson

1 in -- right before he left in May of 2014 the
2 decision-making role on how to update the software?

3 MR. AVENI: Objection. Misstates
4 testimony.

5 THE COURT: Overruled.

6 THE WITNESS: Not that -- not that date,
7 no.

8 BY MR. KING:

9 Q. Okay. But you offered it to him when he
10 came back in 2013?

11 A. At some point -- I don't remember when it
12 was, but there was a point that we sat him down and
13 asked him if he wanted a decision-making role, and
14 he said no.

15 Q. But when he realized that he meet need to
16 take back that decision-making role and he requested
17 control over some of these processes in 2014, you
18 denied him?

19 A. He never requested it.

20 Q. We saw multiple exhibits, e-mails, I
21 believe after he left, where he asked to have
22 control over Storix's software.

23 Do you recall those?

24 A. After he left?

25 Q. Yeah.

26 A. Yes, after he left.

27 Q. And you denied him that control?

28 A. It wasn't my decision.

1 Q. Was it your decision to give -- if it was
2 your decision, would you have given him that
3 control?

4 MR. SULLIVAN: Objection. Incomplete
5 hypothetical.

6 THE COURT: Overruled.

7 THE WITNESS: I would have considered it,
8 sure.

9 BY MR. KING:

10 Q. Would you have talked with him about it?

11 A. Sure.

12 Q. But you didn't?

13 A. No.

14 Q. Who made that decision if it wasn't you?

15 A. The decision not to allow him to come back?

16 Q. The decision to say, Anthony, no, you don't
17 get any -- you're not going to get any control over
18 the software?

19 A. I think it was us as a group.

20 Q. So your opinion changed, in other words.

21 2013, when he comes back, "Anthony, do you want a
22 decision-making role in the software?" He says no.

23 And then when he says, "Okay. I think I might need
24 a decision-making role in the software," you say, as
25 a group, no, correct?

26 A. That wasn't the only conditions behind
27 that, though.

28 Q. But you don't dispute that you -- in 2014,

1 you denied his request to have some control in the
2 software development process, correct?

3 A. He wasn't an employee at the company.

4 Q. He was a 40 percent owner of the company,
5 correct?

6 A. Correct.

7 Q. He founded the company, correct?

8 A. Correct.

9 Q. He was the author of SB Admin software?

10 A. The original author, sure.

11 Q. He had -- he hired you and Mr. Huffman as
12 the second and third employee of the company after
13 he already started it, correct?

14 A. No.

15 Q. He hired you before he started the company?

16 A. I was not the third employee of the
17 company.

18 Q. Okay. I'm sorry. He hired you and
19 Mr. Huffman after he started the company, correct?

20 A. Correct.

21 Q. And you learned how to code this type of
22 software from Anthony?

23 A. Some of it. Some of it I took classes to
24 learn as well.

25 Q. And then -- and then he gave you a job
26 for up -- continued to give you a job up until 2011,
27 correct?

28 A. Correct.

1 Q. And then in 2011, he off -- he offers you
2 the opportunity to have -- to take ownership of the
3 company, in a sense become a partner with him,
4 correct?

5 A. In exchange for staying with the company
6 for two years, yes.

7 Q. What percentage ownership of Storix did you
8 receive at that time?

9 A. Eighteen, 19 percent.

10 Q. And since 2011, have you received
11 distributions from Storix?

12 A. Yes.

13 Q. How much in distributions have you received
14 since then?

15 A. I do not know.

16 Q. More than \$100,000?

17 A. Likely.

18 Q. More than \$200,000?

19 A. I do not know.

20 Q. You said that -- that after Anthony left in
21 2011, you took a more methodical approach to
22 software development, right?

23 A. Yes.

24 Q. But just so I'm understanding correctly,
25 when Anthony returned in 2013, he started on working
26 on Version 9.1 updates, right?

27 A. He started working on the network -- he was
28 tasked with the network security update, correct.

1 Q. When I say "Version 9.1," I'm talking about
2 the network security updates, but I'll refer to it
3 as "the network security updates."

4 And at the same time he started that, you
5 and the other software development team -- the rest
6 of the software development team started working on
7 the 8.2 updates?

8 A. I don't think that's correct.

9 Q. So you -- you had been working on the 8.2
10 updates for a short time prior to Anthony coming
11 back. Fair statement?

12 A. I don't know if it was a short time, but we
13 were already working on Version 8.2.

14 Q. But you were not finished with 8.2 when
15 Anthony came back, right?

16 A. That's correct.

17 Q. So Anthony was tasked with starting an
18 update on -- starting security updates for
19 Version 9.1, and he had to use some sort of
20 foundation software to build those updates onto,
21 right?

22 A. Correct.

23 Q. And that was Version 8.1?

24 A. Correct.

25 Q. And that was the same version that you
26 were -- that you and the rest of the product
27 development team were updating to turn into
28 Version 8.2, correct?

1 A. Correct.

2 Q. So for seven months, Anthony works on
3 essentially updating Version 8.1?

4 A. That's how he decided to do it.

5 Q. What do you mean he decided? I thought you
6 were the decision-maker?

7 A. Well, that's how he decided to work. Each
8 person is responsible for their own project, so
9 that's how he decided to work on his project. He
10 could have -- as we made updates to Version 8.1 into
11 8.2, he could have pulled those updates from the
12 current living 8.2 into the project he was currently
13 working on.

14 Q. So you're saying he could have -- he could
15 have just decided I'm not going to do any work until
16 you guys finish with your end of the 8.2 updates?

17 A. No, that's not what I'm saying.

18 Q. You're saying that he should have done
19 work; and then when the version 8.2 updates came
20 out, he should have revised his work to accommodate
21 those updates?

22 A. That's what I would have done.

23 Q. Did you tell him that?

24 A. Probably.

25 Q. Did you tell him that's the way he should
26 be doing it when you tasked him with doing these
27 updates?

28 A. I did not -- I don't recall giving him any

1 specific instructions on how to do it.

2 Q. You were -- so you were aware that if he
3 was doing updates to Version 8.1, and then when it
4 came time to test his updates -- security updates to
5 8.1, but using, instead of 8.1, 8.2 as the
6 foundational software, that there would be problems
7 with that, right?

8 A. I would expect that, yes.

9 Q. And so when that was finally -- he finally
10 was finished and he said, "Okay. I'm done," you
11 said, "Okay. Go ahead merge it with 8.2," right?

12 A. I don't remember what the conversation was
13 at that point.

14 Q. But in other words, you wanted him to make
15 it ready for testing; in other words, get it ready,
16 put it on our 8.2 that we just released?

17 A. Correct.

18 Q. And it didn't work?

19 A. It did not.

20 Q. And at that point, you know, there was --
21 that's where a lot of the disagreements started,
22 correct?

23 A. I don't -- I mean, there were disagreements
24 about that. I don't know if that's when they
25 started. They started -- we disagreed -- even
26 before 2011, we had disagreements. So they had been
27 ongoing.

28 Q. And at any point in time prior to those

1 disagreements, did you tell Anthony, say, "Hey, you
2 may want to hold off on your work and wait until you
3 see what we've got for 8.2"?

4 A. No.

5 Q. And for the most part, you were content to
6 have Anthony just working by himself on those
7 security updates while you guys were doing 8.2?

8 A. I was content with everybody working on
9 their own projects independently.

10 Q. But then when Anthony said, I want -- when
11 Anthony tried to merge -- came in and merged with
12 the 8.2 version that you guys had just completed,
13 that's -- that's -- again, that's when the problems
14 arose, correct?

15 In other words, before Anthony tried to
16 merge his security updates with Version 8.2, you had
17 no problems with Anthony, because he was working
18 independently and on his own, as everyone should be?

19 A. I never had a problem with Anthony.

20 Q. But there -- but you do acknowledge that
21 after the merger of the two programs, that's when
22 the disputes with Anthony -- disagreements about the
23 software arose?

24 A. No. That's when disagreements about his
25 merge arose. There were disagreements about the
26 software prior to that.

27 Q. Okay. Anthony said that he -- you
28 testified that Anthony faulted your product team and

1 the updates you made on 8.2 for the -- the
2 incompatibility of the software when he tried to
3 merge them.

4 Do you recall that?

5 A. Sure.

6 Q. When did he tell you that?

7 A. I don't recall. I don't know. I don't
8 recall if it was while he was still there or in
9 subsequent e-mails after he left.

10 Q. Okay. You acknowledge that he's a more
11 skilled and experienced programmer, correct?

12 A. Than?

13 Q. Than yourself.

14 A. Yes.

15 Q. And on -- in response to a more
16 knowledgeable and experienced programmer telling you
17 about these problems with the way that 8.2 was
18 written, what was your response?

19 A. I listened to it.

20 Q. Did you follow his suggestions?

21 A. I don't know what his suggestions were at
22 that time.

23 Q. Okay. Did you demand that Anthony follow
24 your directions at that time?

25 A. I thought that was appropriate, yes.

26 Q. And did Anthony go -- did Anthony do his
27 best to follow your directions?

28 MR. SULLIVAN: Calls for speculation.

1 THE COURT: Sustained.

2 BY MR. KING:

3 Q. Did Anthony follow your directions?

4 A. No, not always.

5 Q. What do you mean "not always"? Did he most
6 of the time?

7 A. I mean, he had in the past. When I would
8 assign him projects, he would do them. But when it
9 came to the policies and procedures required by
10 every member of the development team, he would not
11 always follow those. Sometimes he would try, but it
12 was not consistent.

13 Q. Anthony came to you with his software
14 problems after the merger, and he -- but he wanted
15 you to go ahead and start testing on them, right?

16 A. I -- I mean, he wanted -- he wanted us to
17 start testing with it before -- you know, before
18 Version 8.2 was finished.

19 Q. Okay. And -- and you thought that was a
20 bad idea?

21 A. I did, because we were -- we were
22 focused -- everybody was focused on making sure that
23 8.2 got released.

24 Q. The company's most skilled and experienced
25 programmer says, "I think we should start testing
26 this right now," and you said no?

27 A. I felt that that was -- the best decision
28 was to not start testing the security -- the -- the

1 network communication updates until we finished
2 Version 8.2.

3 Q. How difficult was that for you to have to
4 tell your -- the founder of your company, your
5 former boss, the person you acknowledge is a more
6 experienced and skilled programmer, to tell him no?
7 How did that feel?

8 A. It's not easy, sure.

9 Q. You didn't like having to do it?

10 A. No.

11 Q. You understood that if Anthony Johnson
12 stayed with the company, you were probably going to
13 have to face that situation many more times?

14 A. If I remained in my role and he remained in
15 his role, then there would likely come another
16 occasion where I would have to ask Anthony to follow
17 the policies and procedures of the development team.

18 Q. Let me ask you. Tell me about the
19 Version 8.2 updates. What exactly were those?

20 A. We could look at the change log and it has
21 it documented.

22 Q. I don't want to go into any great detail.
23 I just want to know just generally how was
24 Version 8.2 different from 8.1 in a 30-second
25 summary?

26 A. We added new features to Version 8.2 that
27 were not in Version 8.1.

28 Q. Was -- were some of those features how the

1 interface looked; in other words, the appearance of
2 the interface on the screen?

3 A. Possibly. I do not -- you're talking about
4 in Version 8.2 or --

5 Q. Yeah, Version 8.2.

6 A. Likely.

7 Q. Was one of the new features added a feature
8 where because -- the customer could restore a backup
9 onto a USB thumb drive?

10 A. For 8.2?

11 Q. Yes.

12 A. I'm very confident that that was -- the
13 software was able to do that much before 8.2.

14 Q. Okay. Other than changes to the graphics
15 on the interface, can you think of any other changes
16 to 8.2?

17 A. I mean, it's very well documented in our
18 change log. I mean, I know we did shared NFS
19 servers. There was likely changes to our Web
20 interface. I mean, you're asking me -- you're
21 asking me to guess, and there are documents that
22 show exactly specifically what it is.

23 Q. I'm not asking you to guess. I just want
24 to know what you remember, and I appreciate that.
25 I'm not -- and I understand.

26 So the -- there's some stuff -- there's
27 some stuff with the Web interface, the software
28 interface, some other stuff with servers, and

1 probably some other stuff too, right?

2 A. There was much more.

3 Q. Okay. And then tell me about the security
4 updates Mr. Johnson was doing. Did you understand
5 what those were?

6 A. I did.

7 Q. Those were -- there were a number of --
8 there were a number of facets of the security that
9 was being updated, correct?

10 A. It was the network security.

11 Q. Okay. In other words, just for an example,
12 one of the security updates Mr. Johnson was doing
13 was something called "IP address authentication" or
14 on the subject of IP address authentication,
15 correct?

16 A. Yes. We were trying to improve on our IP
17 address authentication.

18 Q. Tell me generally what "IP address
19 authentication" is.

20 A. It is when you have two computers, and one
21 host wants to contact the second host. The second
22 host looks at -- or recognizes the IP address of the
23 first host to determine whether or not the first
24 host is able to speak to the second host.

25 Q. Got it. In other words, it uses the IP
26 address first as to authenticate it when talking to
27 it?

28 A. Among other things.

1 Q. And IP address is just a bunch of numbers
2 that identify the address of that particular
3 computer, right, or a bunch -- certain -- a short
4 line of text and numbers that identifies the address
5 on the Internet for that computer?

6 A. Generally speaking, the IP address
7 identifies the network address of the -- the
8 original computer.

9 Q. Okay. Now, why was the -- why was it
10 important to improve the security on -- with respect
11 to the authentication -- the IP address
12 authentication system that SB Admin was using?

13 MR. AVENI: Objection. Motion in limine.
14 Hole in the software.

15 THE COURT: Let's take our morning recess,
16 and we'll be in recess 15 minutes, please. Thank
17 you.

18 (Whereupon the jurors exit the courtroom.)

19 THE COURT: We're outside the presence of
20 the jury.

21 Response?

22 MR. KING: I'm not sure which motion in
23 limine they're referring to. I'm not --

24 THE COURT: It's 14 and 15 of Defendants,
25 meaning that this is a shareholder derivative issue,
26 not a issue for this jury.

27 MR. KING: Okay. Yeah. I -- this is --
28 I'm definitely not going into the issue of whether

1 or not the company was damaged by any updates or
2 failure to make updates.

3 The line of inquiry is about the priority
4 of why certain updates were prioritized over others.
5 Mr. Turner testified that 8.2 had a priority over
6 9.1 and that Mr. Johnson didn't respect that
7 priority, and I intend to challenge him on that.

8 MR. AVENI: Your Honor, the priority -- the
9 priority is exactly what the derivative suit was
10 about. Mr. Johnson's position in the derivative
11 suit is that -- that his security update should have
12 been implemented and how important it is. And
13 that's exactly what we're getting into now.
14 Mr. King is trying to establish that Mr. Johnson's
15 security update was so important that they were
16 breaching their duties, effectively, by not giving
17 it priority.

18 MR. KING: Challenging his credibility.
19 He's saying my client didn't respect the process and
20 the priorities that management had decided and were
21 asked to take those priorities at face value, and
22 I'd like to point out that those priorities perhaps
23 were misaligned.

24 MR. AVENI: That is --

25 THE COURT: Well, but, I mean, it's easy to
26 say credibility, because any time's a witness is on
27 the stand, it's credibility. But I guess -- and I
28 heard during voir dire some jurors express concern

1 about how much in the weeds we were going to get.

2 My phrase, not theirs.

3 But I guess -- obviously, there's
4 disagreements. Obviously, there's strong views on
5 what should happen. But I guess when we get into
6 why this worked and why that didn't work -- and we
7 already talked about the differences between 8.1 and
8 8.2, just very generally. But when we get into an
9 area where we're transcending generality --

10 MR. KING: Okay.

11 THE COURT: -- I think we get into the
12 weeds. Now, some may be able to follow this, but I
13 think ultimately that's -- let's fight that out on
14 the derivative suit.

15 MR. KING: I -- you know what? I
16 understand your point and I agree with it.

17 THE COURT: Okay. All right. Is there --
18 there's a -- all right. So the objection is
19 sustained.

20 I have a question. I'm sorry. Question,
21 "Does Mr. Sullivan represent one group of the
22 plaintiffs and Mr. McCloskey represent a different
23 group of the plaintiffs?"

24 And this relates to architecture when we --
25 where we're sitting, and it relates to -- some can
26 probably see plaintiff on the counsel table where
27 Mr. McCloskey is sitting.

28 So if you'd like, I can go over what I've

1 said before. In other words, the answer is no and
2 no.

3 MR. MCCLOSKEY: Do you want to read 103
4 again, Your Honor?

5 THE COURT: I've got that back in chambers.
6 I can do that.

7 MR. SULLIVAN: Perhaps we add the identity
8 of counsel to 103?

9 THE COURT: I can do that.

10 MR. MCCLOSKEY: Yeah. Would that be
11 helpful?

12 THE COURT: And that's fine. And it would
13 be Mr. Aveni as well.

14 MR. MCCLOSKEY: Correct.

15 MR. SULLIVAN: I'm not sure that
16 relationship has been clarified. We're at separate
17 firms. Maybe that's a little bit confusing.

18 MR. KING: Yeah. I don't know -- I don't
19 know if we need to read the whole 103 thing, but I
20 agree with them that I think it's appropriate to
21 say, "Mr. Sullivan represents Storix. Storix is
22 plaintiff. And then Mr. McCloskey and Aveni
23 represent the individuals who are cross-defendants."

24 I think that's what you guys are saying.

25 MR. MCCLOSKEY: Whatever lends clarity,
26 Your Honor.

27 THE COURT: Okay. Well, they're also
28 defendants on your -- on your complaint.

1 MR. KING: Yes, that's correct.

2 THE COURT: Let me look at 103 and we'll go
3 from there. Okay. Thank you. We're in recess.

4 (Brief recess.)

5 THE COURT: Okay. We're back on the
6 record. My feeling is I won't read 103, because
7 that has more information in it than probably is
8 necessary, but I will explain. Okay? And --
9 meaning I'll read the question, which I normally
10 don't do, and then I'll answer. Okay. Are we
11 ready?

12 (Whereupon the jurors enter the courtroom.)

13 THE COURT: And [Alternate Juror Number 4],
14 why don't you move one seat, next to [Juror
15 Number 12] so you'll be closer to the action here.
16 Thank you.

17 Then what I was going to do, just so
18 counsel know, I was going to explain the number of
19 lawsuits in answering this lawsuit if that's agreed.

20 MR. SULLIVAN: Yes, Your Honor.

21 MR. KING: Agreeable.

22 THE COURT: All right. Ladies and
23 gentlemen, I do have a question from one of you.
24 Normally, what I do is I read it, as you know, and
25 so it's seen and counsel are aware of it. And then
26 we move on, and it may or may not be answered. In
27 that case, we still have that question and request
28 in mind.

1 But this one I want to read to all of you
2 so that when I answer it, you'll know what I'm --
3 what I'm answering. And the question is from one of
4 you, "Does Mr. Sullivan represent one group of the
5 plaintiffs and Mr. McCloskey represent a different
6 group of the plaintiffs?"

7 And the answer -- the short answer is no
8 and no. There's three lawsuits. And I instructed
9 at the start of the case, but it's a fair -- fair
10 question, because I recognize there was a lot of
11 parties here.

12 So there's three lawsuits. One is
13 Mr. Sullivan represents Storix, Inc., as plaintiff
14 in a complaint against Mr. Johnson, who is
15 represented by Mr. King. That's case one.

16 Case 2 is Mr. Johnson is a
17 cross-complainant against the individual defendants.
18 And so what that means is Mr. King represents
19 Mr. Johnson on the -- on his cross-complaint against
20 the five individual defendants, which are David
21 Huffman, David Kinney, Manuel Altamirano, Richard
22 Turner, and David Smiljkovich. So that's the
23 cross-complaint and Mr. Johnson against those five
24 individuals. Mr. McCloskey and Mr. Aveni represent
25 those five individuals on the cross-complaint as
26 what we call cross-defendants.

27 There's a third suit, and that is
28 Mr. Johnson has a complaint against the same

1 individuals represented by Mr. King against those
2 same five individuals. So again, Huffman, Kinney,
3 Altamirano, Turner, and Smiljkovich are defendants
4 on the complaint filed by Mr. Johnson represented by
5 Mr. King against those five defendants. Again,
6 Mr. McCloskey and Mr. Aveni represent those
7 defendant -- those defendants on that complaint. So
8 three -- it is a little confusing. Three lawsuits,
9 in effect, three claims and so you have a number of
10 things.

11 But the question was: Does Mr. Sullivan
12 represent one group of plaintiffs? No. He only
13 represents Storix, Inc., on the complaint filed by
14 Storix Inc. Does Mr. McCloskey represent a
15 different group of plaintiffs? Mr. McCloskey
16 represents no plaintiffs. He represents the
17 defendants on the cross-complaint of Mr. Johnson.
18 He represents the same individuals as
19 cross-defendants on the cross-complaint of
20 Mr. Johnson.

21 So I know that's a lot of words. And
22 Mr. Aveni is representing those same individuals as
23 well. So Mr. McCloskey are with one firm. They're
24 representing those individuals together.
25 Mr. Sullivan is with another firm. Mr. King is with
26 another.

27 So clear as mud? I hope that's helpful.

28 Well, was that correct?

1 MR. MCCLOSKEY: Almost.

2 THE COURT: Sorry. I apologize.

3 MR. MCCLOSKEY: In the third case the Court
4 just instructed on, Mr. Aveni and myself do
5 represent the director/management defendants, but
6 there's only three of them that are defendants.
7 Mr. Kinney and Mr. Turner are not defendants in that
8 third case.

9 THE COURT: And I apologize.

10 MR. KING: Mr. McCloskey is correct.

11 THE COURT: And that is correct and I
12 misspoke. So on the complaint, as you heard, I
13 stand corrected, the complaint of Mr. Johnson.

14 So I hope that's helpful, and this will
15 become probably more clear as we get farther along,
16 but that's the role everybody's in. So hopefully,
17 that's helpful. So thank you.

18 And thanks for the correction,
19 Mr. McCloskey.

20 And, Mr. King, continue cross-examination.

21 BY MR. KING:

22 Q. Mr. Turner, after having given it some
23 thought and probably much to the dismay of everyone
24 here, I decided we probably don't need to get into
25 the real fine details of the security architecture
26 of the software, because I don't want anyone going
27 to sleep on me. But I will suffice to say this:
28 The security -- security updates were important --

1 were nevertheless important, though, right?

2 A. To Version 9.1, yes.

3 Q. And the reason security updates are
4 important is because -- so the security -- so the
5 SB Admin software backs up the -- backs up the
6 customer's data onto another server, and that data
7 is -- may be sensitive and that that's why security
8 is important?

9 MR. AVENI: Objection. Motion in limine.

10 MR. SULLIVAN: Also compound.

11 THE COURT: Overruled.

12 THE WITNESS: The security update was
13 necessary for a future product that we were -- a
14 future marketing campaign, a different set of
15 customers that we wanted to market to in the future
16 with Version 9.1. It wasn't something that was
17 necessary for Version 8.2.

18 BY MR. KING:

19 Q. It wasn't necessary, but it would have --
20 it would have, nevertheless, improved security on
21 whatever the previous version was. Fair statement?

22 A. It could have if it -- yes, it could have.

23 Q. That was certainly the intent, to improve
24 the security for the updates that Anthony was
25 working on, right?

26 A. The intent was to market -- to market a new
27 product to a different audience.

28 Q. Right. The updates Anthony was working on,

1 the intent was for him to improve the security,
2 correct?

3 A. For Version 9.1.

4 Q. Got it. And the -- and the Version 8.2
5 that was going parallel on the stuff that you can't
6 exactly remember what it was, but some of the stuff
7 that we discussed, that took priority over Anthony's
8 security updates? That's your testimony, correct?

9 A. It was -- the security update was for
10 Version 9.1. The reason it was in Version 9.1,
11 because we had a new audience that we wanted to
12 market to. The -- we were not going to market to
13 that audience in Version 8.2.

14 Q. So the -- so --

15 MR. KING: Your Honor, I move to strike as
16 nonresponsive.

17 BY MR. KING:

18 Q. I need -- I need just to clarify, because I
19 understand what you're saying but --

20 THE COURT: Just a minute. In response to
21 your motion, granted.

22 BY MR. KING:

23 Q. You put higher priority on whatever the
24 security updates were to -- I'm sorry. You put a
25 higher priority on the 8.2 update than you put on
26 Mr. Johnson's security updates, correct?

27 A. Yeah. 8.2 had a scheduled release date. I
28 mean, it had, pretty much, a deadline. The

1 security -- the network communication update that we
2 tasked Anthony with was for a future version that
3 we -- that did not have a deadline.

4 Q. Anthony disagreed with that assessment of
5 the priority, right?

6 A. Yes.

7 Q. And Anthony, who's, again, more skilled,
8 more experienced in software development, you
9 overruled his objection to prioritizing network
10 security updates that he was working on, correct?

11 A. We had a plan. And to be able to test such
12 a fundamental -- that would have -- that would have
13 been a major change. And to be able to implement
14 something -- a major change like network
15 communication into something that was under a
16 deadline was -- we didn't think it was a good
17 business decision.

18 Q. You overruled Mr. Johnson's concerns about
19 prioritizing 8.2 over his security updates, correct?

20 A. 8.2 was the priority.

21 Q. Okay. You testified that when Mr. Johnson
22 returned in 2013, you and Mr. Huffman sat him down
23 and asked him if he wanted a leadership role or
24 decision-making role or -- in the company, right?

25 A. I don't know if it was in 2013, but it was
26 sometime after that.

27 Q. And you did that because you -- you felt
28 that was the right thing to do?

1 A. We did that because Anthony was expressing
2 himself in a manner that it sounded like that's
3 something that he -- he wanted.

4 Q. And if he wanted it at that time in 2013,
5 you were willing to give it to him?

6 A. It would not have been my decision.

7 Q. You wouldn't have had any objection to it?

8 A. If that was the only condition, then I
9 would agree with that.

10 Q. But you didn't -- you changed your position
11 in 2014; isn't that true?

12 A. In 2014?

13 Q. Yeah. Anthony returned in 2013. You
14 offered him a chance, said, "Hey, Mr. Johnson,
15 Anthony, you want a leadership role. Do you want a
16 decision-making role in the company?" You said --
17 and that was your offer to him, right?

18 A. We asked him, yes.

19 Q. He said no at the time?

20 A. He said what?

21 Q. He said no at the time?

22 A. He said no, correct.

23 Q. But then later, when he asked for more
24 control, for a decision-making role, 2014, you said
25 no?

26 A. This was after he resigned?

27 Q. I'm asking when he asked in 2014 for more
28 control of the software, you said no?

1 A. I don't -- I guess I don't know if I did or
2 not.

3 Q. You're not sure one way or the other?

4 A. I -- the dates are kind of confusing to me.
5 I mean, if you could maybe identify whether or not
6 he was still an employee or not at the time?

7 Q. Did Mr. Johnson ask you for more control
8 over the software in 2014?

9 A. I don't know.

10 Q. If he had, what would -- what would you
11 have said?

12 MR. SULLIVAN: Objection. Calls for
13 speculation.

14 THE COURT: Sustained.

15 BY MR. KING:

16 Q. Mr. Turner, in fact, Mr. Johnson did ask
17 for control of the software in 2014, didn't he?

18 A. I don't know.

19 Q. And the response from Storix was no; isn't
20 that true?

21 A. I -- I don't recall him ever asking to come
22 back until after he had resigned from the company.

23 Q. So whereas in 2013, when he comes -- when
24 he returns, he's -- he says, "Hey, if you want a
25 leadership role, if you would a decision-making
26 role, it's yours." He says, "No. I'll step out of
27 it."

28 But now, 2014, the employees that are now

1 his partners in the business are saying no; isn't
2 that true?

3 A. I don't -- no, I don't think that's true.
4 I --

5 Q. And it was only after that, that you said
6 no to Mr. Johnson, that he said, Fine, I will
7 then -- if that's your position, I will then file a
8 copyright lawsuit. That's what started this,
9 correct?

10 A. Again, I'm not sure about the dates that
11 you're telling me. If you could help me understand.

12 Q. When you said no to Mr. Johnson's request
13 for more control over the software in 2014, that's
14 what started this whole -- this whole dispute,
15 right?

16 A. I can't tell you what -- like I said, the
17 dates, I -- I mean, if you could help me understand
18 whether or not it was after he resigned, I could
19 answer it a little clearer.

20 Q. You're not disputing that you said no to
21 him, though, right?

22 A. When -- after he resigned and he requested
23 that, you know, he wanted to come back, he set
24 conditions that just weren't the same as when we
25 offered him the decision-making role when he was an
26 employee. The conditions were very different.

27 Q. But before he said anything about
28 conditions, he expressed, through Mr. Altamirano, a

1 desire to come back and work and have more control
2 over the software with no other conditions, correct?

3 A. I believe that's correct, but --

4 Q. And you said no to that; isn't that
5 correct?

6 A. That was based on -- it was -- it was --

7 Q. You said -- Mr. Turner, you said no,
8 correct?

9 A. I think us as a group decided that it
10 wasn't best for the company.

11 Q. That's right. You and your fellow
12 defendants said no; isn't that correct?

13 A. You have to understand the conditions that
14 he put upon it.

15 Q. Mr. Turner, you and your fellow defendants
16 said no to Mr. Johnson?

17 A. We said no because the conditions that came
18 along with him returning were not acceptable.

19 Q. And it was at that point that this entire
20 dispute started, correct?

21 A. I do not know.

22 Q. It was at that point that Mr. Johnson began
23 talking about enforcing his -- the copyright claim
24 to the software, right?

25 A. I -- shortly thereafter.

26 Q. And it was -- it was after that time that
27 Mr. Johnson and Ms. Sassi tried to elect -- elected
28 themselves and tried to obtain a third board seat on

1 the board of directors of Storix in 2015, right?

2 A. It --

3 Q. I mean, it was after the copyright lawsuit
4 was filed and started -- first of all, after the
5 copyright lawsuit was filed by Mr. Johnson, and then
6 Storix filed a countersuit against Mr. Johnson in
7 that lawsuit, right?

8 A. Yes.

9 Q. And then while that lawsuit was pending,
10 Mr. Johnson and Ms. Sassi tried to -- well, they
11 elected themselves to the board of directors,
12 correct?

13 A. Correct.

14 Q. And they also tried to elect a third
15 director together with them to try to get control of
16 the company, right?

17 A. They nominated a third person.

18 Q. Right. And during the meeting when that
19 election was held, you were supposed to be the
20 secretary -- well, you were the secretary of the
21 company at that time, right?

22 A. Yes.

23 Q. But you didn't -- you weren't the secretary
24 of that meeting, that shareholders meeting?

25 A. That's correct.

26 Q. You didn't take the shareholder minutes?

27 A. That's correct.

28 Q. Why?

1 A. I believe our attorney was there and it was
2 just something -- it was a role that he was going to
3 go ahead and assume.

4 Q. Your attorneys were controlling the
5 situation at that point?

6 MR. SULLIVAN: Objection. Argumentative.

7 THE COURT: Sustained.

8 BY MR. KING:

9 Q. You deferred to your advice of counsel with
10 respect to who should be the secretary at that
11 meeting?

12 MR. SULLIVAN: Objection. Lacks
13 foundation.

14 THE COURT: Sustained.

15 BY MR. KING:

16 Q. All right. So, in other words, your
17 attorney was the secretary of that shareholder
18 meeting, right?

19 A. For the purposes of taking the minutes, I
20 believe.

21 Q. Yeah. That was Blake Allen?

22 A. Yes.

23 Q. And you remember that shareholder meeting
24 when everyone passed out their ballots to vote,
25 right?

26 A. Yes.

27 Q. And all the shareholders have their ballots
28 and they filled them out, and Mr. Smiljkovich was

1 the director of elections -- inspector of elections.
2 Everyone returned their ballots to Mr. Smiljkovich,
3 right?

4 A. I don't know if everybody returned their
5 ballots.

6 Q. What did everyone do? Put them in the
7 middle of the table?

8 A. No. I -- there was a -- something happened
9 with Manuel and David Kinney, with their ballots.
10 So I don't know if -- if it was, like, everybody got
11 their ballots and immediately --

12 Q. Mr. Altamirano, while everyone was still --
13 while everyone was still voting or at the end of
14 everyone voting -- I'm not sure exactly when --
15 approached Mr. Smiljkovich and asked to speak with
16 him out in the hallway, right?

17 A. Correct.

18 Q. When he returned, Mr. Kinney all of a
19 sudden says, "Oh, I made a mistake in my ballot,"
20 tears up his ballot, and fills out a new ballot,
21 right?

22 A. I know he asked for a new ballot. I don't
23 know about tearing it up.

24 Q. Mr. Johnson's attorney, Gary Eastman, was
25 there at that meeting, right?

26 A. Correct.

27 Q. He told you and everyone else at the
28 meeting, including Mr. Blake Allen, secretary, he

1 told everyone that Mr. Johnson requested that those
2 torn-up ballots be preserved, because -- because
3 Mr. Johnson did not -- Mr. Johnson disputed the
4 procedure of what happened, right?

5 A. I don't remember that.

6 Q. You were secretary at the meeting. Did
7 you -- was it your responsibility to retain the
8 ballots and the torn-up ballots?

9 MR. SULLIVAN: Objection. Misstates prior
10 testimony.

11 BY MR. KING:

12 Q. Sorry. You were secretary of the company
13 at the time, right?

14 A. Yes.

15 Q. Was it your responsibility to retain the
16 ballots and the torn-up ballots following that
17 election?

18 A. I think it -- I thought it was the
19 responsibility of the -- the inspector of elections.

20 Q. Mr. Smiljkovich?

21 A. Correct.

22 Q. And Mr. Smiljkovich took the torn-up
23 ballots and threw them away, right?

24 A. I don't know.

25 Q. Do you know where those torn-up ballots
26 are?

27 A. I don't know where the ballots are.

28 Q. Do you know what happened to the torn-up

1 ballots?

2 A. No.

3 Q. Now, we're still in copyright litigation,
4 which started after you and your fellow defendants
5 told Mr. Johnson no when he asked for more control
6 of the company. And at this point in time, you and
7 your fellow defendants decide to vote on a
8 shareholder agreement, one that we looked at
9 yesterday.

10 Do you recall that?

11 A. Yes.

12 Q. You were on the board at the time, yes?

13 A. Yes.

14 Q. You voted to approve that shareholder
15 agreement, correct?

16 A. Yes.

17 Q. That shareholder agreement did not include
18 Mr. Johnson and Ms. Sassi, correct?

19 A. Correct.

20 Q. It granted you certain rights that did
21 not -- that were not granted to Mr. Johnson and
22 Ms. Sassi, correct?

23 A. Correct.

24 Q. Treated you differently than it treated
25 Mr. Johnson and Ms. Sassi, correct?

26 A. Correct.

27 Q. Three months after the shareholder
28 agreement, now Storix decides that it's going to

1 file a lawsuit against Mr. Johnson.

2 You're on the board at the time, right?
3 August 2015, you were on the board of directors,
4 correct, Mr. Turner?

5 A. I believe so.

6 Q. Mr. Johnson was also on the board of
7 directors, correct?

8 A. I believe so.

9 Q. In fact, you signed a unanimous consent to
10 his nomination onto the board in January 2015,
11 right?

12 A. Yes.

13 Q. Ms. Sassi was also on the board of
14 directors in August 2015, correct?

15 A. Yes.

16 Q. You knew Storix intended to file a lawsuit
17 against Mr. Johnson based on the Janstor company in
18 2015 -- in August 2015, right?

19 A. Yes.

20 Q. You concealed that from the other board
21 members, Mr. Johnson, and Ms. Sassi?

22 A. I wouldn't liken it as conceal.

23 Q. You didn't tell them, correct?

24 A. Correct.

25 Q. You didn't send out a notice to the other
26 directors of a board of directors meeting, correct?

27 A. Correct.

28 Q. You didn't send out a notice to all the

1 directors asking for their unanimous consent to
2 file -- unanimous consent to file a lawsuit against
3 the company's 40 percent shareholder and founder,
4 correct?

5 A. He was the person that we were filing the
6 lawsuit against.

7 Q. You didn't ask for the directors' unanimous
8 consent to filing that lawsuit without a board
9 meeting, correct?

10 A. I did not.

11 Q. At the time you knew that Mr. Johnson no
12 longer even lived in California?

13 A. Possibly. I don't know if I knew that or
14 not.

15 Q. You knew he moved to Florida?

16 A. At some point I knew he moved to Florida.
17 I don't know if it was at the time of filing the
18 Janstor suit or not.

19 Q. You knew that Janstor Technologies was
20 dissolved?

21 A. No.

22 Q. You knew that at least shortly after the
23 lawsuit, Janstor Technologies was dissolved,
24 correct?

25 A. At some point I learned that it was
26 dissolved, but I wouldn't characterize it as
27 "shortly."

28 Q. You never, before filing the lawsuit,

1 approached Mr. Johnson and asked him what his intent
2 was in forming Janstor Technology?

3 A. I did not.

4 Q. You didn't bother to -- to even bring to
5 his attention that you had any concerns about
6 Janstor Technology before filing a lawsuit, right?

7 A. No.

8 Q. That was the first suit that's filed in
9 state court. Other than that -- prior to that time,
10 it was just a lawsuit in federal court, right?

11 A. Correct.

12 Q. Mr. Johnson and Ms. Sassi filed a separate
13 complaint that's not part of this action in
14 October 2015 against you and your fellow defendants
15 that was after Storix filed the Janstor complaint,
16 correct?

17 MR. AVENI: Objection. Motion in limine.

18 THE COURT: Overruled.

19 THE WITNESS: Can you repeat the question,
20 please.

21 BY MR. KING:

22 Q. Mr. Johnson and Ms. Sassi filed a separate
23 complaint against you, the defendants in this case,
24 in October 2015 after Storix filed the Janstor
25 complaint against Mr. Johnson, correct?

26 A. Yes.

27 Q. At a board meeting -- you had a board
28 meeting in October 2015. At the time you were still

1 the secretary for the board of directors, right?

2 A. I don't know.

3 Q. At that board meeting, Mr. Johnson asked --
4 Mr. Johnson and Ms. Sassi asked specifically whether
5 or not Storix was paying for the defense costs in
6 the action that was just filed against you and the
7 other defendants, and Mr. Johnson and Ms. Sassi
8 asked the board and the board's counsel at that
9 meeting whether or not Storix was paying for your
10 defense costs, correct?

11 A. Yes.

12 Q. And the response they were given at that
13 meeting was, "No, Storix is not," right?

14 A. I believe that's correct.

15 Q. But that's not true. Storix is paying for
16 your defense costs, correct?

17 A. Storix is advancing our attorney's fees.
18 We have taken an undertaking, each of us, in the
19 event that Storix is not allowed to advance our
20 attorney's fees, that we would have to then pay them
21 back.

22 Q. And that's because you have been sued in
23 your capacity as directors, right?

24 A. I believe that's the case, yes.

25 Q. Mr. Johnson has also been sued in his
26 capacity as a director, correct?

27 A. Correct.

28 Q. Is Storix advancing Mr. Johnson's attorney

1 fees?

2 A. No.

3 Q. You treated Mr. Johnson differently than
4 you treated yourself, correct?

5 A. I -- I followed advice of counsel.

6 Q. You treated -- it was not counsel's
7 decision. You were on the board of directors,
8 correct?

9 A. I was.

10 Q. You had the responsibility for making those
11 decisions, not counsel, right?

12 A. I'm not -- yeah, I don't know if I was
13 responsible for making the decision to advance his
14 fees or not.

15 Q. Someone made that decision on behalf of
16 Storix. Whether it was you or Mr. Huffman or
17 whoever it was, someone made that decision, right?

18 A. I don't know if it was ever asked.

19 Q. You're saying Mr. Johnson never asked for
20 the advancement of his fees, just like you're
21 getting advanced?

22 A. I'm not aware.

23 Q. Okay. Now, you were -- you recall that
24 after you told Mr. Johnson that Storix was not
25 paying for their defense costs, even though they
26 were, you recall that Mr. Johnson had made numerous
27 requests to inspect financial records to investigate
28 that, correct?

1 A. Can you repeat the beginning of that
2 question.

3 Q. Sure. You -- after that meeting in
4 October 2015, Mr. Johnson asked about -- Mr. Johnson
5 and Ms. Sassi asked about who was paying their
6 defense costs. After that meeting, Mr. Johnson
7 made -- Mr. Johnson and Ms. Sassi made numerous
8 requests to inspect the company's financial records;
9 isn't that true?

10 A. Yes.

11 Q. And those requests were -- sorry. And part
12 of those -- the part of the documents Mr. Johnson
13 requested included documents which would have shown
14 that Storix was, in fact, paying for your defense
15 costs in this litigation?

16 MR. SULLIVAN: Objection. Lacks
17 foundation.

18 THE COURT: Sustained.

19 BY MR. KING:

20 Q. Ms. Sassi, in 2016, came to the Storix
21 office for -- but before she came to the Storix
22 office, she sent you and the other defendants notice
23 that she intended to appear at the Storix office and
24 exercise her right as a director to inspect
25 corporate records, correct?

26 A. Correct.

27 Q. When she arrived at the office, you told
28 her she could not, correct?

1 A. On advice of counsel, correct.

2 Q. You told her she could not?

3 A. I don't know if it was me personally.

4 Q. You and your fellow defendants?

5 A. I -- yeah, on advice of counsel, it was not
6 appropriate at that time.

7 Q. It was not appropriate because she would
8 have found out that Storix was paying your attorney
9 fees, right?

10 MR. SULLIVAN: Lacks foundation.

11 THE COURT: Sustained.

12 BY MR. KING:

13 Q. Mr. Johnson asked the Court in sometime --
14 sorry. Mr. Johnson asked Storix to produce
15 documents that would have shown -- sorry. Strike
16 that.

17 Later on in 2016, Mr. Johnson asked to
18 inspect similar financial records of Storix,
19 correct?

20 A. I don't know what documents he requested.

21 Q. Well, he didn't request -- he requested
22 financial records generally?

23 A. Correct.

24 Q. And among the financial records he
25 requested were account payable reports, right?

26 A. I don't know what the specific documents he
27 requested.

28 Q. He requested the account payable reports

1 because that would have shown the bills that Storix
2 was paying. And he wanted those because if he saw
3 those reports, he would know whether or not Storix
4 was, in fact, paying your attorneys, correct?

5 MR. AVENI: Objection. Foundation.

6 THE COURT: Sustained.

7 BY MR. KING:

8 Q. Mr. Johnson came to Storix's office in
9 August 2016, correct?

10 A. Correct.

11 Q. He came to Storix's office intending to
12 inspect corporate records, financial records, right?

13 MR. SULLIVAN: Objection. Calls for
14 speculation.

15 THE COURT: Sustained.

16 BY MR. KING:

17 Q. Mr. Johnson tried to come into Storix's
18 office at the time when he came in August 2016,
19 right?

20 A. He did. I wasn't there, so I -- I don't
21 know.

22 Q. He didn't make it in, did he?

23 A. From the video I saw, that's correct.

24 Q. The founder of the company, the most
25 skilled programmer, and he gave you your job. The
26 video shows Mr. Huffman holding the door against
27 Mr. Johnson's foot, preventing him from entering the
28 office, correct?

1 MR. AVENI: Objection. Foundation.

2 THE WITNESS: I don't know.

3 THE COURT: Sustained.

4 MR. KING: No further questions,

5 Your Honor.

6 THE COURT: Mr. Aveni?

7 CROSS-EXAMINATION

8 BY MR. AVENI:

9 Q. Good morning, Mr. Turner.

10 Now, Mr. King asked you a number of
11 questions with regard to Mr. Johnson asking to come
12 back to the company after he'd resigned.

13 Do you remember those questions?

14 A. I do.

15 Q. And you kept talking about conditions that
16 Mr. Johnson placed on wanting to come back.

17 Do you remember that?

18 A. I do.

19 Q. What were those conditions that you
20 understand Mr. Johnson placed on wanting to come
21 back to the company after he resigned?

22 A. The conditions were that both myself and
23 David Huffman step down from the board and that
24 Anthony become -- you know, have no restrictions
25 about working on the software, having full control
26 over the software.

27 Q. He wanted full control over the software at
28 that time?

1 A. Correct.

2 Q. Is that different than what he had in 2013?

3 Did he have full control over the software --

4 A. No.

5 Q. -- in 2013?

6 Now, you testified that you learned

7 Mr. Johnson resigned. You said you learned that

8 from Mr. Huffman.

9 Do you remember that?

10 A. Correct.

11 Q. Did you reach out to Mr. Johnson after you

12 learned he resigned?

13 A. Yes.

14 MR. AVENI: Can we see Exhibit 118.

15 THE CLERK: What number?

16 MR. AVENI: 118.

17 THE CLERK: Thank you.

18 BY MR. AVENI:

19 Q. Do you remember this e-mail, Mr. Turner, as
20 your response to Mr. Johnson after he resigned?

21 A. Yes.

22 Q. When did you send this e-mail to him?

23 A. It was within hours of learning -- you
24 know, probably a couple hours after learning from
25 Mr. Huffman.

26 Q. And why did you send this e-mail?

27 A. In the hope that Anthony would reconsider
28 his resignation.

1 Q. Were you trying to reach out to Mr. Johnson
2 after he resigned?

3 A. Yes.

4 Q. Were you trying to get him to stay with the
5 company?

6 A. Yes.

7 Q. Thank you. Mr. King asked you some
8 questions with regard to the priority that you
9 placed on completing Version 8.2 compared to
10 Mr. Johnson's work on the security advancement --
11 the security update for Version 9.1.

12 Do you remember that?

13 A. I do.

14 Q. And he asked you why you didn't listen to
15 your most skilled programmer with regard to whether
16 to work on his project and test it versus 8.2.

17 Do you remember that?

18 A. I do.

19 Q. When you were working on 8.2, did that have
20 a deadline?

21 A. Yes.

22 Q. And did Mr. Johnson's work on 9.1 have any
23 kind of a deadline?

24 A. No.

25 Q. And who set those deadlines?

26 A. It would have been myself.

27 Q. Did the decision to set a deadline for
28 Version 8.2 have anything to do with anybody's

1 programming skills?

2 MR. KING: Objection. Leading.

3 THE COURT: Sustained.

4 BY MR. AVENI:

5 Q. Why did you -- why did you set a deadline
6 for Version 8.2?

7 A. It was based on -- excuse me. It was based
8 on our -- we had a plan. I mean, this wasn't an
9 arbitrary thing. We actually had a plan and wanted
10 to get -- get it released by a certain time.

11 Q. And I believe you referred to that in your
12 testimony as a business decision?

13 A. Yes.

14 Q. Why did you say it was a business decision?

15 A. Because it was, you know, specific to the
16 operation of the business. I mean, it was -- we had
17 to make decisions often related to the business, and
18 this was one of them.

19 Q. Did you think as the software developing
20 head at Storix that that was your decision to make?

21 MR. KING: Objection. Leading.

22 THE COURT: Sustained.

23 BY MR. AVENI:

24 Q. Whose decision was that -- was it to make
25 which project to give priority to at Storix? Whose
26 decision was that to make?

27 A. The product manager.

28 Q. And who was the product manager?

1 A. That was me.

2 Q. Now, when Mr. Johnson was in charge of
3 Storix, who made those kinds of decisions?

4 A. Anthony did.

5 Q. And at that time when he was making those
6 decisions, did you defer to the decisions he made?

7 MR. KING: Objection. Leading.

8 THE COURT: Sustained.

9 BY MR. AVENI:

10 Q. Now, let's talk a little bit more about the
11 time period after the turnover of the company and
12 Mr. Johnson was back working at Storix. And you
13 testified that the -- that working with Anthony
14 Johnson became difficult?

15 A. Yes.

16 Q. What was the daily atmosphere like in
17 working with Mr. Johnson?

18 A. Most cases, it was perfectly fine. Just,
19 you know, there were disagreements, no different --
20 I mean, it wasn't like we were arguing all the time.
21 It was, you know, occasionally we would have
22 disagreements. But for the most part, it was
23 pleasant and productive.

24 Q. Now, Mr. King asked you some questions
25 about a shareholder agreement.

26 Do you remember that testimony?

27 A. Yes.

28 Q. Do you recall whether Mr. Johnson and

1 Ms. Sassi were given the opportunity to participate
2 in that shareholder agreement?

3 A. They were.

4 Q. Were they given some opportunity to review
5 the documents before the board voted whether to
6 accept it?

7 MR. KING: Objection. Leading.

8 THE COURT: Treating it as foundational.
9 Overruled.

10 THE WITNESS: Yes. They had three weeks to
11 review it.

12 BY MR. AVENI:

13 Q. And after that three weeks expired, do you
14 know whether they responded to Storix as to whether
15 they were interested in participating?

16 A. They did not.

17 Q. Now, with regard to the advancement of
18 attorney's fees, did you have to sign anything
19 before Storix advanced your attorney's fees?

20 A. Yes.

21 Q. What did you sign?

22 A. It was an undertaking.

23 Q. What is an undertaking, as you understand
24 it?

25 A. The way I understand it, that if -- if it's
26 deemed that Storix is not allowed to advance my
27 fees, then I am responsible for paying them back.

28 Q. Do you understand that it's basically like

1 a contract?

2 A. Yes.

3 Q. A legal document of some sort?

4 A. Yes.

5 Q. Do you know whether Mr. Johnson signed such
6 an agreement?

7 A. I'm not aware.

8 Q. Do you know if Ms. Sassi signed one?

9 A. No, I do not.

10 Q. Mr. Turner, we'll talk again with you
11 during this case, but I have no further questions.
12 Thank you.

13 THE COURT: Mr. Sullivan?

14 REDIRECT EXAMINATION

15 BY MR. SULLIVAN:

16 Q. Very briefly, Mr. Turner, what was your
17 salary in 2017?

18 A. What part?

19 Q. Your annual salary.

20 A. My -- at the end?

21 Q. Yeah.

22 A. Oh, I'm sorry. Yeah, 2017, one -- one --
23 130,000.

24 Q. Would it have made sense to release 9.1
25 before 8.2?

26 MR. KING: Objection. Leading.

27 THE COURT: Sustained.

28

1 BY MR. SULLIVAN:

2 Q. What went into the decision -- strike that.
3 Why was 8.2 set as a priority over 9.1?

4 A. 9.1 was very, very far from being completed
5 and released. Version 8.2 was in progress and ready
6 to go.

7 Q. Was 9.1 a replacement for 8.2?

8 A. Correct.

9 Q. So you wouldn't run the two programs in
10 parallel?

11 A. No.

12 Q. Would have -- including the project that
13 Mr. Johnson was working on with regard to the
14 security features for the future 9.1 release, would
15 have making a decision to include those in the
16 planned 8.2 release have pushed that release
17 deadline?

18 MR. KING: Objection. Leading.

19 THE COURT: Sustained.

20 BY MR. SULLIVAN:

21 Q. If you had made a decision to include the
22 security project that Mr. Johnson was working on for
23 9.1 in 8.2, how would that have impacted the planned
24 deadline you had for 8.2?

25 A. It likely, almost certainly, would have
26 extended it out.

27 Q. Do you have any idea how long that would
28 have been extended out?

1 A. It's hard to say, depending on whether or
2 not it worked.

3 Q. I have no further questions. Thank you,
4 Mr. Turner.

5 THE COURT: Mr. King?

6 RECROSS-EXAMINATION

7 BY MR. KING:

8 Q. Mr. Turner, you talked about signing an
9 undertaking. Undertaking was only signed after the
10 company agreed to advance your fees, right?

11 MR. AVENI: Objection. Lacks foundation.

12 THE COURT: Overruled.

13 THE WITNESS: The undertaking was signed as
14 a requirement for the company to advance our fees.

15 BY MR. KING:

16 Q. Right. The company first agreed to advance
17 your fees before you signed the undertaking?

18 A. I don't believe that's the case.

19 Q. Okay. The company did not agree to advance
20 Mr. Johnson's fees, right?

21 MR. SULLIVAN: Lacks foundation.

22 THE COURT: Overruled.

23 THE WITNESS: My understanding, that's
24 correct.

25 BY MR. KING:

26 Q. So the company never gave Mr. Johnson an
27 undertaking to sign, right?

28 A. I'm not aware.

1 Q. In fact, your undertaking -- your first
2 undertaking you signed was not until February 2016,
3 right?

4 A. I signed it. I don't know what the date
5 was.

6 Q. And you didn't sign an undertaking for this
7 case until April 2017?

8 MR. AVENI: Objection. Lacks foundation.

9 THE COURT: Sustained.

10 MR. KING: No further questions,
11 Your Honor.

12 THE COURT: Mr. Aveni?

13 MR. AVENI: I have no further questions.

14 THE COURT: Mr. Sullivan?

15 MR. SULLIVAN: Nothing further, Your Honor.

16 THE COURT: All right. Thank you,
17 Mr. Turner. You may resume your seat.

18 Mr. Sullivan?

19 MR. SULLIVAN: Thank you, Your Honor. At
20 this time Storix would call Defendant Anthony
21 Johnson.

22 ANTHONY JOHNSON,

23 having been first duly sworn, was examined and
24 testified as follows:

25 THE CLERK: Thank you. Please be seated at
26 the witness stand.

27 MR. SULLIVAN: If it's all right,
28 Your Honor, I'm going to reposition this to the

1 center.

2 THE COURT: Yes, you may.

3 Good morning, Mr. Johnson.

4 THE WITNESS: Good morning.

5 THE CLERK: Please state your full name and
6 spell your last name for the record.

7 THE WITNESS: My name is Anthony Johnson.
8 Last name J-o-h-n-s-o-n.

9 THE CLERK: Thank you.

10 THE WITNESS: Ah, I knew that was going to
11 happen.

12 THE COURT: That's all right.
13 Tom.

14 That's all right. He'll assist.

15 THE WITNESS: The second spill, I guess.

16 THE COURT: See, it's not the first time
17 that's happened.

18 Thank you, Tom. Thank you.

19 DIRECT EXAMINATION

20 BY MR. SULLIVAN:

21 Q. Good morning, Mr. Johnson. We've met
22 before, right?

23 A. Yes, many times.

24 Q. Many times. You've been deposed twice in
25 this litigation, correct?

26 A. In this litigation, yes.

27 Q. This litigation. Once was in July of 2017
28 in Palm Beach, correct?

1 A. Yes.

2 Q. And Mr. McCloskey deposed you that day,
3 correct?

4 A. I believe you both did that day.

5 Q. I believe that day Mr. McCloskey asked
6 questions of you, though; is that right?

7 A. That's correct.

8 Q. And then you were deposed again in
9 Palm Beach in November of 2017, correct?

10 A. Yes, and I believe you both deposed me that
11 day.

12 Q. There were two portions. I'm talking about
13 the first portion of your deposition that day. I
14 sat and asked you questions; is that right?

15 A. I don't recall which was first, but --

16 Q. You recall me asking you questions?

17 A. Yes, of course.

18 Q. You were also deposed in the copyright
19 action that we've been referring to, correct?

20 A. Yes.

21 Q. And that occurred in June of 2015, right?

22 A. Yes.

23 Q. And my colleague Paul Tyrell took your
24 deposition, right?

25 A. Yes.

26 Q. And in each of those three depositions, you
27 raised your hand and you swore to tell the truth,
28 right?

1 A. Yes.

2 Q. Just as if you were sitting in this
3 courtroom before the judge and jury, right?

4 A. Yes.

5 Q. And did you tell the truth each time you
6 were under oath?

7 A. To the best of my recollection, yes.

8 Q. Can we have an agreement today that if I
9 ask you a question, you're going to answer it?

10 MR. KING: Objection. Argumentative.

11 THE WITNESS: Clearly, there are --

12 THE COURT: Hold on.

13 Sustained.

14 BY MR. SULLIVAN:

15 Q. You consider yourself to be truthful,
16 correct?

17 A. Yes.

18 Q. Is that a yes?

19 A. Yes.

20 Q. Sorry. The mic is cutting out.

21 A. I can sit closer. Does this help?

22 THE COURT: Let me try to adjust. Do you
23 want to test?

24 THE WITNESS: I'm sitting a bit closer,
25 so --

26 BY MR. SULLIVAN:

27 Q. Now, in March of 2014, you were employed at
28 Storix, correct?

1 A. I think during that time, I was on payroll,
2 yes.

3 Q. In 2014, you were not an officer of Storix,
4 were you?

5 A. No.

6 Q. You were not the president, right?

7 A. No.

8 Q. You were not the CEO, right?

9 A. No.

10 Q. You were not the product manager, were you?

11 A. No.

12 Q. And you were not on the board of directors
13 that year, were you?

14 A. No.

15 Q. You resigned as an officer and director of
16 Storix in 2011, correct?

17 A. Yes.

18 Q. You remained a shareholder after your
19 resignation from the board and your officer
20 position, though, right?

21 A. Yes.

22 Q. And you continued to own 40 percent of
23 Storix after that time, correct?

24 A. Forty percent share, yes.

25 Q. In 2014, when you were employed at Storix,
26 you were working on a project for Version 9.1 of
27 SB Admin, right?

28 A. From 2013 through 2014, yes.

1 Q. And that was planned for a potential future
2 release of SB Admin, right?

3 A. It was specifically planned for September
4 of 2014.

5 Q. You believe there was a release date set
6 for 9.1?

7 A. Yes, there was.

8 Q. And who set that date?

9 A. Pardon me?

10 Q. Who set that date?

11 A. David Huffman.

12 Q. Okay. And the Version 9.1 that you were
13 working on was based off of the prior version of
14 SB Admin, Version 8. I think we heard that from
15 Mr. Turner.

16 Do you agree with that?

17 A. Not entirely. The prior version you were
18 referring to would be Version 8.1. There was also
19 in parallel with this a Version 8.2 that everyone
20 else was working on. Both were based upon
21 Version 8.1 or began with that version.

22 Q. At the time you were working on your
23 project for Version 9.1, that work was being saved
24 to a Storix server, right?

25 A. That's a little complicated answer, but
26 there were changes that were being made to the
27 software that were periodically and incrementally
28 saved to a repository on a server, yes.

1 Q. That repository is Subversion or SVN?

2 A. We refer to as SVN, and you'll probably
3 hear that a lot. But if I could just describe that
4 very briefly --

5 Q. That's okay. I'll follow up if I need to.

6 A. Okay.

7 Q. SVN is intended to keep track of changes to
8 source code; is that right?

9 A. It does more than just that, but --

10 Q. But it does that?

11 A. It is intended to track the incremental
12 changes to the software, particularly if it -- the
13 need comes to revert back to a prior version, a
14 prior -- or a prior update.

15 Q. Now, your work on Version 9.1, you were
16 doing that with the expectation that Storix would
17 release that work, right, in Version 9.1?

18 A. Yes.

19 Q. At the time?

20 A. Yes.

21 Q. Version 9.1, that was intended to replace
22 Version 8.2 eventually, right?

23 A. It would be a subsequent release, yes.

24 Q. But the user wouldn't want to use 8.2 and
25 9.1 in parallel, would they?

26 A. They would, yes, for a period. Often
27 customers will want to use two versions
28 simultaneously in order to first ensure that

1 whatever new update comes out, if it's fairly
2 significant, is working well enough before they
3 revert their entire operation over to it. And also,
4 it's necessary to run both versions simultaneously
5 in order to upgrade from the older version to the
6 new one.

7 Q. But the ultimate intent was for 9.1 to
8 supplant or replace 8.2, correct?

9 A. Yes, but there would be a need to run them
10 both simultaneously.

11 Q. Now, I want to turn to the events
12 surrounding your resignation. You resigned from
13 Storix in May of 2014, correct?

14 A. Yes.

15 Q. Can you pull up Exhibit 138, which has been
16 previously admitted. We've seen this already in the
17 trial. This is your resignation e-mail to
18 Mr. Huffman, right?

19 A. Yes.

20 Q. When resigning, you're not saying -- or in
21 resigning, you were saying, I'm not going to be on
22 payroll anymore, right?

23 A. I -- the thought hadn't crossed my mind, I
24 guess, at that moment. But it was -- I was
25 notifying them that I effectively just couldn't work
26 with them anymore.

27 MR. SULLIVAN: Your Honor, I'd like to read
28 from Volume 2 of Mr. Johnson's deposition, page 368

1 line 14 to 368 line 20.

2 THE CLERK: Can I get the date of the
3 deposition, please?

4 MR. SULLIVAN: November --

5 MR. KING: Do you have a copy for the
6 witness?

7 MR. SULLIVAN: Yes. May I approach,
8 Your Honor?

9 THE COURT: Yes.

10 MR. KING: Sean, I've got --

11 MR. SULLIVAN: May I read the portion,
12 Your Honor? Was there an objection?

13 MR. KING: What was the line number?

14 MR. SULLIVAN: 368 line 14.

15 THE COURT: And the date of the deposition
16 again?

17 MR. SULLIVAN: I'm sorry. November -- it's
18 the November one, November 12th, 2017.

19 THE CLERK: Thank you.

20 MR. KING: 368 line 14 through -- yeah, no
21 objection.

22 BY MR. SULLIVAN:

23 "Q So sometime in May of 2014 your
24 employment with Storix terminated, correct?

25 "A I terminated my status, I suppose. I
26 don't know what you would call it. Employment
27 termination. There was more. I said I'm not
28 going to be on payroll anymore.

1 "Q Right. You resigned?

2 "A Yes."

3 Q. That e-mail you sent to Mr. Huffman in May
4 of 2014, that accurately described the major reasons
5 why you resigned, didn't it?

6 A. I believe so.

7 Q. The first two sentences read, "I no longer
8 feel there is opportunity for me at Storix that
9 provides a position of trust or respect given my
10 experience, knowledge, and qualifications. While I
11 have no issues, nor attempted to intervene in any
12 way with the company operations, it's no secret that
13 I disagree with basic policies, progress, and vision
14 regarding the software."

15 That's what you stated, right?

16 A. Yes.

17 Q. And in resigning, you also said that you
18 would complete tasks -- towards the bottom, second
19 paragraph, "I will complete tasks currently in
20 progress for about the next two weeks working after
21 hours to avoid any further confrontations."

22 You were referencing to the work you were
23 doing on the Version 9.1 project, correct, in
24 "completing tasks"?

25 A. That's rather general. I was referring --
26 oh, "completing tasks," yes.

27 Q. During that two weeks, you continued to
28 work on Version 9.1 on Storix's servers, correct?

1 A. Yes. During the two weeks, yes.

2 Q. At least until May 22nd, 2014, right?

3 A. Yes.

4 Q. When your employment ended with Storix in
5 May of 2014, your Version 9.1 project that you were
6 working on was not completed, was it?

7 A. Not entirely.

8 Q. It was not ready to be released to
9 customers, was it?

10 A. It was four months before the release date,
11 so no, of course not.

12 Q. Still required a significant amount of
13 testing and programming work, right?

14 A. Not a significant amount of programming,
15 but a lot of testing.

16 Q. When you resigned, did you expect others at
17 Storix to finish the work needed to complete that
18 project for 9.1?

19 A. I left them with some instructions on how
20 to do so. I can't say that I was confident they
21 would be able to do so.

22 Q. You don't believe they were competent to do
23 so, do you?

24 A. I believed that they were capable of
25 educating themselves enough to do so. I didn't -- I
26 didn't see that they had a track record of wanting
27 to learn new things, so I suppose I wasn't entirely
28 confident that they would.

1 Q. When you resigned from Storix, you took a
2 copy of the source code for the SB Admin Version 9.1
3 project you were working on? You took that home
4 with you, right?

5 A. Yes.

6 Q. Is that a yes?

7 A. Yes.

8 Q. And after your resignation became
9 effective, you continued to work on that source code
10 at your home all alone, right?

11 A. I think I took a few weeks off, but then I
12 continued the development, yes.

13 Q. That work was being done on your personal
14 home computer, correct?

15 A. Yes.

16 Q. And you continued to work on that source
17 code at home even up until the date I took your
18 deposition in November of 2017; isn't that right?

19 A. I would say that -- well, it was a
20 on-and-off project. I can't say whether I was
21 working on it at that time or whether I took a break
22 and went back to it sometime after, but I had been
23 working on it off and on until that time, yes.

24 Q. So earlier you said in 2014 you were not a
25 member of the board of directors of Storix but were
26 still a 40 percent shareholder.

27 You attended Storix's shareholder meeting
28 in February of 2015; is that right?

1 A. Yes. I attended, yes, in person at your
2 offices.

3 Q. And at that meeting you were elected to the
4 board of directors, right?

5 A. Yes.

6 Q. As of February 12th, 2015 -- I'm sorry.
7 Strike that.

8 And you were elected to the board of
9 directors on February 12th along with Ms. Sassi,
10 correct?

11 A. Yes.

12 Q. And you remain on the board even today,
13 correct?

14 A. Yes.

15 THE COURT: I'm wondering if this is a good
16 time to take our noon recess?

17 MR. SULLIVAN: Perfect time, Your Honor.

18 THE COURT: All right. We'll take our noon
19 recess. Remember the admonition. Come back at
20 1:30. Thank you.

21 (Whereupon the jurors exit the courtroom.)

22 (Afternoon recess taken from 11:52 to 1:30.)

23 * * *

24

25

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28

1 SAN DIEGO, CALIFORNIA;
2 THURSDAY, FEBRUARY 1, 2018; 1:30 P.M.

3
4 THE COURT: Good afternoon.

5 MR. MCCLOSKEY: Good afternoon, Your Honor.

6 THE COURT: Please be seated. We have
7 another note and it reads, "Can the judge tell the
8 jurors to silence phones? Vibrating phone going off
9 incessantly is distracting. Thank you."

10 So as expected, the second shoe has
11 dropped, and so we'll say something.

12 Is Tom out there?

13 So it wasn't Juror Number 6, is the rest of
14 the story.

15 (Whereupon the jurors enter the courtroom.)

16 THE COURT: Welcome back, ladies and
17 gentlemen. And I have a note from one of you
18 requesting us to -- or the jurors to silence their
19 phones. So if anyone has it on vibrate, please go
20 ahead and double-check now and please turn it to
21 silent or off or no vibration. Thank you.

22 All right. And, Mr. Sullivan, continue
23 examination of Mr. Johnson.

24 MR. SULLIVAN: Thank you, Your Honor.

25 BY MR. SULLIVAN:

26 Q. Did you have a nice lunch, Mr. Johnson?

27 A. Yes, I did. Thank you.

28 Q. Now, when we broke, we just started talking

1 about your election as a director in February 2015.

2 Do you recall that?

3 A. Not exactly. You'll have to help me out.

4 Q. In February 2015, you were already involved
5 in litigation against Storix, right?

6 A. Yes.

7 Q. That was the action we heard about,
8 correct?

9 A. Yes.

10 Q. That was a lawsuit you filed against Storix
11 in August of 2014; is that right?

12 A. Yes.

13 Q. February 2015, when you became a director,
14 that was about ten months before the trial of that
15 case, correct?

16 A. Yes.

17 Q. Storix won that lawsuit?

18 A. Yes.

19 Q. But well before that trial and immediately
20 after the February 12, 2015, shareholder meeting at
21 which you became a director, you decided that Storix
22 and SB Admin had to be rebranded; is that right?

23 A. I don't know if that was a decision I made
24 at that time.

25 MR. SULLIVAN: Your Honor, I'd like to read
26 from Mr. Johnson's Volume 2 deposition, pages 370
27 line 3 to 370 line 2.

28 Mr. Johnson, you should have a copy of your

1 deposition.

2 THE WITNESS: Okay.

3 THE CLERK: Is this the same November 12th
4 date?

5 MR. SULLIVAN: Yes.

6 THE CLERK: Thank you.

7 BY MR. SULLIVAN:

8 "Q Now, at some point after leaving your
9 employment at Storix and being involved in
10 litigation against the company, did you reach a
11 decision that the software you were working on
12 at home had to be rebranded?

13 "A Yes.

14 "Q Did you want to rebrand the name
15 Storix or -- Storix or just SB Admin?

16 "A Both.

17 "Q When did you reach that decision?

18 "A After the shareholder meeting in 2015
19 when it became evident that the defendants in
20 this case were going to ruin the company.

21 "Q And that was the meeting -- I think
22 it was February 12th, 2015?

23 "A Correct."

24 Q. So you believed at that time the names
25 "SB Admin" and "Storix" to have been damaged beyond
26 repair; is that right?

27 A. I believed they were quickly headed in that
28 direction, yes.

1 Q. So you think at that time there was a
2 chance to repair them?

3 A. It wasn't beyond possibility.

4 Q. February 13th, 2015, the day after you're
5 elected to Storix's board of directors, you formed a
6 California corporation or sought to form a
7 California corporation called "Janstor Technology";
8 that's right, right?

9 A. Yes.

10 Q. Is that a yes?

11 A. Yes.

12 MR. SULLIVAN: Your Honor, may I approach
13 and assist the witness?

14 THE COURT: Yes.

15 BY MR. SULLIVAN:

16 Q. Mr. Johnson, I've placed in front of you
17 Exhibit 142.

18 Do you recognize that document?

19 A. Yes.

20 (Exhibit 142 referenced.)

21 BY MR. SULLIVAN:

22 Q. What do you recognize that to be?

23 A. It is a receipt from LegalZoom that we
24 produced in this case.

25 Q. Is there a date on that document, top left
26 corner?

27 A. It's a little fuzzy, but it says -- I think
28 it says 2/13/2015.

1 MR. SULLIVAN: Your Honor, I'd move to
2 admit and publish Exhibit 142.

3 MR. KING: No objection.

4 THE COURT: Received.

5 (Exhibit 142 received.)

6 MR. SULLIVAN: So if you could zoom in,
7 please, on the top portion and sort of the first few
8 lines. There you go. Perfect.

9 BY MR. SULLIVAN:

10 Q. LegalZoom receipt; order confirmation
11 number; date of purchase, 2/13/2015; grand total,
12 \$634; Express Gold Incorporation - Janstor
13 Technology.

14 So you paid LegalZoom \$634 to form Janstor
15 Technology for you, right?

16 A. Yes. I think there was a number of sort of
17 packages involved in that involved in -- you know,
18 that had to do with the -- all the filings necessary
19 to make that happen.

20 Q. And you wanted them to file the articles of
21 incorporation with the Secretary of State, correct?

22 A. I think that was part of it, yes.

23 Q. You wanted them to create bylaws and
24 resolutions for you, correct?

25 A. That's standard for any such service.

26 Q. And you wanted them to file a statement of
27 information with the Secretary of State for you,
28 correct?

1 A. Apparently, yes.

2 Q. In fact, you had a plan to form Janstor
3 Technologies soon after your election to the Storix
4 board, right?

5 A. I'm not clear on the question.

6 Q. You had a plan to form Janstor Technologies
7 soon after your election to the Storix's board of
8 directors, correct?

9 A. I think the fear I had that ultimately
10 resulted in my forming the corporation I had before
11 the meeting. I think that the meeting basically
12 confirmed those concerns.

13 MR. SULLIVAN: Move to strike as
14 nonresponsive, Your Honor.

15 THE COURT: Granted.

16 MR. SULLIVAN: I'd like to read from your
17 deposition, page 392 line 3 to line 7, same volume,
18 November 2017.

19 MR. KING: No objection.

20 BY MR. SULLIVAN:

21 "Q So the day after you were elected to
22 Storix's board, you sought to have Janstor
23 formed, right?

24 "A It took a little -- I think it took a
25 little longer than that, but I had the idea --
26 idea it was going to happen probably --
27 probably happen soon."

28 Q. At your deposition, you denied that you

1 formed Janstor Technology to compete with Storix,
2 Inc., correct?

3 A. Yes, yes.

4 Q. Janstor was not going to be a Storix
5 competitor. That's your story, right?

6 A. No.

7 Q. The same day that you sought to have
8 Janstor Technology formed, you reserved a website
9 domain name for it, correct?

10 A. Two of them, yes.

11 Q. Two of them. Can you please take a look at
12 Exhibit 143, which should also be in that binder.

13 A. This one?

14 (Exhibit 143 referenced.)

15 BY MR. SULLIVAN:

16 Q. It should be the next exhibit.

17 A. Yes.

18 Q. Do you recognize that document?

19 A. Yes. This is the Network Solutions order
20 confirmation for Storix.com and Storix dot -- I'm
21 sorry -- Janstor.com and Janstor.net.

22 MR. SULLIVAN: Your Honor, I'd move to
23 admit and publish Exhibit 143.

24 MR. KING: No objection.

25 THE COURT: Received.

26 (Exhibit 143 received.)

27 MR. SULLIVAN: Can you highlight the middle
28 portion where it says "Order Summary." That's fine.

1 BY MR. SULLIVAN:

2 Q. So you had two websites in mind, correct,
3 Janstor.com and Janstor.net?

4 A. No. I didn't have any website in mind. I
5 was simply reserving the domain names.

6 Q. Five years you reserved those for?

7 A. At this point -- oh, I reserved it for five
8 years, yes.

9 Q. You paid \$114.95 for each website --

10 A. Yes.

11 Q. -- domain?

12 You also registered for e-mail service in
13 connection with the Janstor domains, right?

14 A. I believe that they were a part of the
15 service, if not a cheap optional service --

16 Q. Take a look at --

17 A. -- that came with it.

18 Q. -- Exhibit 144, please.

19 (Exhibit 144 referenced.)

20 BY MR. SULLIVAN:

21 Q. Do you recognize that document?

22 A. Yes.

23 Q. What is that?

24 A. It looks like a mail service for
25 Janstor.net.

26 MR. SULLIVAN: Your Honor, I'd move to
27 admit and publish Exhibit 144.

28 MR. KING: No objection.

1 THE COURT: Received.

2 (Exhibit 144 received.)

3 MR. SULLIVAN: Highlight that, please.

4 Thank you.

5 BY MR. SULLIVAN:

6 Q. So nsMail Pro for Janstor.net, you signed
7 up for a recurring charge of 6.99 a month, right?

8 A. I believe so, yes.

9 Q. And that would allow you to have e-mail
10 service associated with the domains you reserved?

11 A. Yes.

12 Q. Take a look at Exhibit 145 and 146, please.

13 A. Okay.

14 (Exhibit 145 referenced.)

15 (Exhibit 146 referenced.)

16 BY MR. SULLIVAN:

17 Q. Do you recognize those two documents?

18 A. Yes.

19 Q. What are those?

20 A. Well, the first one was -- had to do with
21 the registration of Janstor.net; the second one for
22 Janstor.com.

23 Q. Okay. Let's take them one at a time. You
24 said the registration for Janstor.net. So let's do
25 Exhibit 145.

26 What specifically -- how does this relate
27 to the registration for Janstor.net?

28 A. I think it was a one-time charge to make

1 the registration private so that my personal
2 information would not be made publicly available.

3 Q. And is the Exhibit 146 the same for
4 Janstor.com?

5 A. Yes.

6 MR. SULLIVAN: Your Honor, I'd move to
7 admit Exhibits 145 and 146.

8 MR. KING: No objection.

9 THE COURT: Received.

10 (Exhibit 145 received.)

11 (Exhibit 146 received.)

12 BY MR. SULLIVAN:

13 Q. And privately registering those domains, I
14 think you just mentioned, but that means your
15 personal information is not revealed when searching,
16 for instance, who is -- database of website domain
17 name owners, correct?

18 A. My personal name, address, e-mail, and
19 phone number, obviously I don't want to be public
20 information that anyone can find on the net.

21 Q. I'd like you to take a look at Exhibit 19.
22 Is that in that binder? Let me help you out.

23 MR. SULLIVAN: Your Honor, may I assist?

24 THE COURT: Yes.

25 (Exhibit 19 referenced.)

26 BY MR. SULLIVAN:

27 Q. Mr. Johnson, do you recognize Exhibit 19?

28 A. Yes.

1 Q. Is that the articles of incorporation for
2 Janstor?

3 A. Yes, it is.

4 MR. SULLIVAN: Your Honor, I'd move to
5 admit and publish Exhibit 19.

6 MR. KING: No objection.

7 THE COURT: Received.

8 (Exhibit 19 received.)

9 BY MR. SULLIVAN:

10 Q. So there's a filing stamp date at the top.
11 That's stamped as received -- filed with the
12 Secretary of State February 20th, 2015, right?

13 A. Yes.

14 Q. Can you flip to Exhibit 17 of that
15 notebook, please.

16 Do you recognize that as the statement of
17 information for Janstor Technology that was filed
18 with the California Secretary of State?

19 A. Yes.

20 (Exhibit 17 referenced.)

21 MR. SULLIVAN: Your Honor, I'd move to
22 admit and publish Exhibit 17.

23 MR. KING: No objection.

24 THE COURT: Received.

25 (Exhibit 17 received.)

26 MR. SULLIVAN: Can you highlight Box 16,
27 please.

28

1 BY MR. SULLIVAN:

2 Q. In completing this form, you described
3 Janstor's type of business to the State as being
4 "technology-software development," correct?

5 MR. KING: Objection. Assumes facts.
6 Lacks foundation.

7 THE COURT: Overruled.

8 THE WITNESS: I described -- I selected an
9 option that LegalZoom had provided me as to what --
10 how this should be filled out. And I believe they
11 gave me sort of the drop-down list of options, and I
12 picked the closest thing, I guess.

13 BY MR. SULLIVAN:

14 Q. In your deposition, you denied that Janstor
15 Technology was a technology software development
16 company, right?

17 A. I believe I denied that it was operating in
18 any capacity.

19 MR. SULLIVAN: Your Honor, I'd like to read
20 page 398 line 7 to 398 line 9 from the same volume,
21 November 2017.

22 MR. KING: No objection.

23 BY MR. SULLIVAN:

24 "Q And Janstor's a technology software
25 development company, right?

26 "A No."

27 Q. You completed all the necessary paperwork
28 to finalize Janstor's formation, correct?

1 A. By "completed," I primarily -- I may have
2 signed some of the documents that LegalZoom sent me.

3 Q. If you needed to execute something to
4 complete the formation of Janstor, you made sure
5 that was done, right?

6 A. I think so.

7 Q. Please turn Exhibit 147, which I think is
8 in the second binder you have.

9 Do you recognize that document?

10 A. Yes.

11 (Exhibit 147 referenced.)

12 BY MR. SULLIVAN:

13 Q. Are those the Janstor corporate documents
14 you reviewed and signed?

15 A. Is this multiple documents?

16 Q. I believe this is the action by written
17 consent, action by unanimous written consent
18 organizational meeting.

19 A. Okay. Yes.

20 MR. SULLIVAN: Your Honor, I'd move to
21 admit and publish Exhibit 147.

22 MR. KING: No objection.

23 THE COURT: Received.

24 (Exhibit 147 received.)

25 BY MR. SULLIVAN:

26 Q. So as I mentioned, page 1 is action by
27 written consent -- we don't need to highlight that.
28 If we go to two, this is an action by unanimous

1 written consent in lieu of organizational meeting by
2 the board of directors of Janstor Technology.

3 You were the sole shareholder of Janstor,
4 correct?

5 A. I think that I had listed myself at the
6 time as a shareholder, but I never actually issued
7 the shares.

8 MR. SULLIVAN: Next page, please. Can you
9 highlight the top, name of shareholder and --

10 BY MR. SULLIVAN:

11 Q. Name of shareholder; number of shares,
12 1,000, correct, page 3?

13 A. Yes, I believe I -- I believe I filled out
14 the form in LegalZoom that said there had to be a
15 shareholder, and so I listed myself but I never
16 actually issued the share. This seems to imply that
17 I would have, so --

18 Q. Page 7. Go to that page, please. Is that
19 your signature dated February 27th, 2015?

20 A. It appears to be.

21 Q. You reviewed it and understood that
22 document before signing it?

23 A. To be honest, I have to go back to what the
24 document was.

25 Q. Let me ask this question --

26 A. I'm not sure what --

27 Q. Do you --

28 A. -- the document is for. It seems to be an

1 over -- an overview of all of the other documents to
2 be -- you know, that are incorporated, so --

3 Q. Did you review that document before signing
4 it?

5 A. I imagine I did.

6 Q. There were no other shareholders of
7 Janstor, right?

8 A. No.

9 Q. You were the president of Janstor, correct?

10 A. I -- if there was a time when a president
11 needed to be listed, then I would have listed
12 myself.

13 Q. You were the chief financial officer?

14 A. Same answer.

15 Q. Yes or no?

16 A. Show me a document and I can answer it.

17 MR. SULLIVAN: Let me see page 3.

18 BY MR. SULLIVAN:

19 Q. Does that refresh your recollection?

20 A. It appears that I was all -- I took the
21 place of all of the I guess mandatory officer
22 positions at the time.

23 Q. And if we could go to the last page,
24 please. Certificate of secretary of Janstor
25 technology, is that your signature?

26 A. Yes.

27 Q. On March 4th, 2015?

28 A. Yes.

1 Q. Did you reserve a Facebook page for
2 Janstor?

3 A. I -- I reserved a Facebook page, yes, I
4 think.

5 Q. So you finalized forming Janstor,
6 registered domains, and signed up for e-mail
7 service.

8 Isn't it true that you took other steps to
9 facilitate Janstor's operations?

10 A. I took no step to actually facilitate its
11 operation, no.

12 Q. Are you familiar with court registrations
13 with IANA.

14 A. Yes.

15 Q. Or something that directs traffic to a
16 network source, correct?

17 A. That's an odd way of putting it, but I --
18 it has something to do with network connections.

19 Q. You don't believe it's something that
20 directs traffic to a network service?

21 A. That's a reasonable vague explanation, yes.

22 Q. IANA is an acronym for Internet Assigned
23 Numbers Authority, right?

24 A. Yes.

25 Q. And IANA is the entity that assigns ports
26 to persons or businesses, right?

27 A. Yes.

28 Q. And access to a port is necessary for

1 software like SB Admin to function properly, right?

2 A. It's a little vague, but a network port is
3 necessary for any -- any -- any program to operate
4 that accesses the network.

5 Q. Does SB Admin access the network?

6 A. Yes.

7 Q. In April of 2015, you submitted a port
8 registration application to IANA for Janstor, right?

9 A. At some point around then, yes.

10 Q. Take a look at Exhibits 151 and 152,
11 please.

12 A. Okay.

13 (Exhibit 151 referenced.)

14 (Exhibit 152 referenced.)

15 BY MR. SULLIVAN:

16 Q. Have you had a chance to review those?

17 A. We've been at this for a long time, so yes.

18 Q. What do you recognize those to be?

19 A. I recognize them to be a -- basically a
20 submission to IANA in order to reserve two port
21 numbers. So --

22 Q. And Exhibit 151 is dated April 1st, 2015;
23 is that right?

24 A. Yes.

25 Q. Is there a specific designation on there on
26 what service Janstor would be using that for?

27 A. Well, it doesn't actually say Janstor would
28 be using it. I was registering it in my name, but I

1 was using Janstor as a description of the port. Are
2 we looking at page 1?

3 Q. Sure. Exhibit 151, if you turn to page 2,
4 the second line from the top under "Description."

5 A. Yes. It says, "Janstor Secure Data." That
6 was the description I referred to.

7 Q. And Exhibit 152, if you look at page 2
8 under "Description" at the same place --

9 A. Yes. "Janstor Status" was the second port
10 description.

11 MR. SULLIVAN: Your Honor, I'd move to
12 admit Exhibits 151 and 152.

13 MR. KING: No objection.

14 THE COURT: Received.

15 (Exhibit 151 received.)

16 (Exhibit 152 received.)

17 BY MR. SULLIVAN:

18 Q. Now, IANA had to review and approve your
19 applications for port registrations, correct?

20 A. Yes, I guess so.

21 Q. In your communications with IANA to attempt
22 to register two ports for Janstor, you were not
23 entirely truthful, were you?

24 A. You know, I had to tell a little white lie
25 to try to correct some confusion at some point. But
26 there was -- I had to sort of -- well, let me --

27 Q. Let me follow up. You answered my
28 question.

1 A. I know where you're going, and I wanted to
2 give a little background, but --

3 MR. SULLIVAN: Your Honor, move to strike.

4 THE COURT: As to the last portion,
5 granted.

6 BY MR. SULLIVAN:

7 Q. That white lie arose when you encountered
8 questions from IANA that required a technical
9 response to your application, correct?

10 A. There were a number of technical questions
11 that I had inadvertently caused a lot of confusion
12 about. So yes, I told a little white lie in order
13 to try to effectively start over and clear up the
14 confusion.

15 Q. Exhibit 155, would you please look at that.
16 Do you recognize that document, Mr. Johnson?

17 A. It's a lengthy e-mail chain, but I'm
18 familiar with it.

19 (Exhibit 155 referenced.)

20 BY MR. SULLIVAN:

21 Q. And that's your e-mail chain with a
22 representative from IANA?

23 A. Yes.

24 Q. And that's in pursuit of your registration
25 of the ports for Janstor, correct?

26 A. Yes.

27 MR. SULLIVAN: Your Honor, I'd move to
28 admit and publish Exhibit 155.

1 MR. KING: No objection.

2 THE COURT: Received.

3 (Exhibit 155 received.)

4 BY MR. SULLIVAN:

5 Q. So you had encountered questions about the
6 need for two ports for Janstor, right?

7 A. That was part of the question. The bigger
8 problem was that I had already registered two ports
9 for Storix, and they were wondering why I needed two
10 more ports.

11 Q. So if we go to page 4 of this document,
12 please, at the top, which starts on Monday,
13 May 4th -- thank you -- you wrote, "Pearl" -- this
14 is you writing, right, flydivers --
15 flydiversd@gmail, that's you?

16 A. Yes, it is.

17 Q. Okay. You wrote, I sent the reply to the
18 software designer responsible for the network
19 communication and I got the following reply. Sorry
20 if my explanation was a bit limited, but he
21 describes the distinction between the ports more
22 clearly. Note that he referenced the Storix app
23 using Ports 5026 and 5027. I was the one that
24 acquired those ports for them long ago, which would
25 have been -- would have best been multiplexed, but
26 this new app has more distinct use of each port as
27 the developer describes, colon.

28 Now, below that e-mail, there's what

1 appears to be an e-mail posted and addressed to you.
2 It says, Anthony, I get what they -- I get they want
3 to keep the port numbers low.

4 And then it goes on from there. And
5 that --

6 MR. SULLIVAN: If we zoom out, please. If
7 you scroll to the next page, please, down at the
8 bottom, where it says "sorry."

9 BY MR. SULLIVAN:

10 Q. "Sorry if TMI, but would like to get past
11 this. Berg."

12 Mr. Johnson, there's no Berg, is there?

13 A. I'm Berg.

14 Q. You are Berg, aren't you?

15 A. I'm Berg.

16 Q. You felt it was easier to create a
17 fictional character, Mr. Berg, to respond to IANA's
18 questions than to simply tell the truth, right?

19 A. No. I actually created Berg to tell the
20 truth, because the con -- I had inadvertently
21 created a great deal of confusion not anticipating
22 that when I was answering questions, the person
23 receiving the answers to those questions was rather
24 technical herself. And it warranted a lot more
25 questions that ended up, again, in a very lengthy
26 e-mail back and forth. And, you know, there was
27 a lot of confusion there that I thought would best
28 be cleared up if I simply started over.

1 So the easiest way to do this was to say,
2 Look, I don't know what I'm talking about here. Let
3 me have my developer explain it.

4 And then I had my developer -- i.e., me --
5 basically start over again. And had I realized that
6 this was going to become such a confusing issue, I,
7 myself, not Berg, would have provided this answer in
8 the first place.

9 Q. You could have just told the truth from the
10 beginning, right?

11 A. What do you mean "the truth"?

12 Q. There was no Berg, that you were the
13 programmer?

14 A. I didn't have -- I'm sorry. I didn't have
15 a reason to tell her there was no Berg. I was
16 trying to simply simplify the issue, clarify it, so
17 that all of these e-mails back and forth would no
18 longer be necessary. And after Berg responded to
19 her questions the way I probably should have in the
20 first place, there was no more need. They granted
21 the ports.

22 Q. So all of this was easier than telling the
23 truth. And at your deposition, you testified that
24 the creation of Berg was the only untruthful
25 statement you made in your application to IANA,
26 right?

27 A. Well, I consider that a bit of a white lie
28 that was certainly harmless and actually was

1 productive. But if you know of something else that
2 I lied about, I'm not aware.

3 MR. SULLIVAN: That wasn't my question.
4 Move to strike as nonresponsive.

5 THE COURT: Granted.

6 MR. SULLIVAN: I'd like to read deposition
7 pages 411 lines 21 to 412 line 4. This is from the
8 Volume 2, the November 2017 deposition.

9 THE CLERK: I'm sorry?

10 MR. SULLIVAN: November 2017.

11 THE CLERK: November 20?

12 MR. SULLIVAN: 2017.

13 THE CLERK: Oh. Thank you.

14 MR. KING: Line 4 to what?

15 MR. SULLIVAN: 411, 21, to 412 line 4.

16 MR. KING: Okay. No objection.

17 BY MR. SULLIVAN:

18 "Q Other than the creation of fictional
19 Berg, were you otherwise truthful and accurate
20 in your communications with IANA?

21 "A I can't think of any other issue that
22 would -- that you would be referring to.

23 "Q You have no reason to believe you
24 were being dishonest with them other than the
25 creation of Berg?

26 "A No reason to believe I was or had any
27 reason to be."

28 Q. Can we please look at Exhibit 151, which I

1 believe has been admitted. Go to page 2. Sorry.

2 In applying for the port registration, you
3 were asked in Number 8 to explain the state of the
4 development of your protocol.

5 Do you recall that?

6 A. Not offhand. I'll have to read it. Excuse
7 me. Okay.

8 Q. And you typed the words that are in the
9 brackets, correct?

10 A. Yes.

11 Q. Can you read what you wrote in response to
12 Number 8, please?

13 A. Development is complete for a new product
14 to be released around June of this year. This is a
15 derivative of a former product that is used -- that
16 used only dynamic ports but was not useable across
17 most firewalls, and new product is tailored for use
18 in a WAN environment.

19 Q. Those were your words, right?

20 A. Yes.

21 Q. You were not being truthful with IANA
22 again, were you?

23 A. I'm not sure that I necessarily wasn't. I
24 really had no idea if and when the product would
25 ever be released. If the situation with Storix
26 changed, it could have been released at any time.

27 Q. That first sentence, "Development is
28 complete," was not true, was it?

1 A. At the time on 4/1/2015?

2 Q. Yes, sir.

3 A. Yeah, it was. I mean, it -- I mean, I --
4 there's been ongoing development since then, but at
5 least at the time it was probably a stable release.

6 MR. SULLIVAN: Your Honor, I'd like to read
7 from Mr. Johnson's November 2017 deposition, pages
8 416 line 21 to 417 line 9.

9 MR. KING: No objection.

10 BY MR. SULLIVAN:

11 "Q Okay. So the first sentence, then,
12 you're saying is not accurate? Development was
13 not complete for a new product, right?

14 "A That is accurate.

15 "Q It was accurate or is not?

16 "A No, I'm --

17 "Q My statement is accurate?

18 "A It is your statement. I don't
19 remember where we are. Let me tell you.

20 "Q Was development --

21 "A Development was not complete for a
22 new product.

23 "Q It was not expected to be released
24 around June of 2015, correct?

25 "A That is correct."

26 A. I'm sorry. Which -- which deposition was
27 that?

28 Q. November of 2017.

1 A. Okay.

2 Q. You made that statement in response to
3 Number 8 to give IANA some sense of urgency so that
4 they would issue ports to you, correct?

5 A. No. Honestly, there was no -- there was no
6 way to impose any urgency on them on this.

7 MR. SULLIVAN: Your Honor, I'd like to read
8 pages 417 line 10 to 417 line 12 from the
9 November 2017 deposition.

10 MR. KING: No objection.

11 BY MR. SULLIVAN:

12 "Q So you were trying to give IANA some
13 sense of urgency that they issue ports to you?

14 "A Yeah. In a way, yes."

15 Q. Now, the second sentence, reference to a
16 derivative of a former product, that was in
17 reference to Storix's SB Admin, correct?

18 A. Yes.

19 Q. Is that a yes?

20 A. Yes.

21 Q. You intentionally used exaggerations to
22 obtain the port registrations for Janstor from IANA,
23 correct?

24 MR. KING: Objection. Argumentative.

25 THE WITNESS: I --

26 THE COURT: Overruled.

27 THE WITNESS: I'm sorry. I don't believe
28 they were exaggerations. I think I might have made

1 some assumptions or estimates that were incorrect.
2 I don't know. It seemed -- it seemed pretty
3 mundane.

4 MR. SULLIVAN: Your Honor, I'd like to read
5 pages 417 line 25 to 418 line 4 from the
6 November 2017 deposition of Mr. Johnson.

7 MR. KING: No objection.

8 BY MR. SULLIVAN:

9 "Q So there's a lot inaccurate in
10 that -- in that Number 8 response?

11 "A There are -- well, there's
12 exaggerations that were intended to actually
13 avoid the questions that I inadvertently ended
14 up creating."

15 Q. At that time in April --

16 A. Was there a question?

17 Q. I'm sorry?

18 A. Was there a question in response to that?

19 Q. No, there was not.

20 A. Okay.

21 Q. There will be one now.

22 At that time in April of 2015, Storix was
23 still selling SB Admin, right?

24 A. Of course.

25 Q. And Storix is still selling SB Admin today,
26 correct?

27 A. Yes.

28 Q. It's not a former product, is it?

1 A. I'm afraid there's a little bit of mincing
2 of words here. It would have been a derivative of a
3 former product. The derivative -- I mean, it
4 essentially would be a former derivative if -- it's
5 a little -- there's some confusion of words there,
6 so I'm not sure how to answer your question the way
7 it was posed.

8 Q. SB Admin is a current product offered by
9 Storix, isn't it?

10 A. Yes.

11 Q. The protocol in your communications with
12 IANA, that was in reference to the software to be
13 sold under the name "Janstor," right?

14 A. Yes, yes.

15 Q. And that was a protocol which was based off
16 the Storix SB Admin Version 9.1 source code that you
17 had been working on, right?

18 A. Yes.

19 Q. And you had named the new Janstor product
20 or protocol "JT Admin"; is that right?

21 A. Yes.

22 Q. Now, you eventually succeeded in obtaining
23 two port registrations with IANA, didn't you?

24 A. Yes.

25 Q. Can we see exhibit -- I'm sorry.

26 Mr. Johnson, would you look at Exhibit 156 in your
27 notebook, please.

28 (Exhibit 156 referenced.)

1 BY MR. SULLIVAN:

2 Q. Do you recognize Exhibit 156?

3 A. Yes.

4 Q. What do you recognize that to be?

5 A. That was the port numbers that were
6 assigned.

7 Q. What's the date on that?

8 A. June 8th, 2015.

9 MR. SULLIVAN: Your Honor, I move to admit
10 and publish Exhibit 156.

11 MR. KING: No objection.

12 THE COURT: Received.

13 (Exhibit 156 received.)

14 BY MR. SULLIVAN:

15 Q. Highlight just the upper half, please. So
16 June 8th, 2015, e-mail is copied to
17 jtdmin@janstor.com. Is that you at the top in the
18 header?

19 A. Yes, apparently.

20 Q. It says, "Dear Anthony Johnson: Your
21 request has been processed. We have assigned the
22 following TCP ports to Janstor Technology with you
23 as the point of contact." And then there's some
24 technical information there.

25 Are those ports still actively registered
26 for Janstor?

27 A. Yes.

28 Q. There's a benefit to having ports assigned,

1 right?

2 A. Well, both are necessary to have ports
3 assigned. I guess you would say there's --

4 Q. Mr. Johnson, my question was: There's a
5 benefit to having ports assigned, correct?

6 A. I guess.

7 MR. SULLIVAN: Your Honor, I'd like to read
8 from Mr. Johnson's November 2017 deposition pages
9 430 line 3 to 430 line 11.

10 MR. KING: No objection.

11 BY MR. SULLIVAN:

12 "Q So there's a benefit to it, right --

13 "A Well --

14 "Q -- to be assigned -- being assigned a
15 port? You wouldn't seek it otherwise, right?

16 "A We wouldn't seek it. I was going to
17 say the same thing. You wouldn't seek it if
18 there weren't some benefit, but the benefit is
19 just to ensure that running your -- running
20 your product isn't going to conflict with other
21 products."

22 Q. You cannot run two products on the same
23 system that use the same ports, right?

24 A. Generally not.

25 Q. Storix has two ports reserved with IANA,
26 right?

27 A. I reserved them under the Storix name, yes.

28 Q. Those are Ports 5026 and 5027, right?

1 A. Yes, yes.

2 Q. And you initially used Storix's assigned
3 ports in developing the Janstor product, right?

4 A. No. It wasn't -- I wasn't developing the
5 Janstor product. I was developing Storix
6 Version 9.1.

7 Q. When you continued working on that software
8 after resigning from Storix, did you continue to use
9 the assigned ports -- the ports that were assigned
10 to Storix?

11 A. No.

12 Q. No?

13 A. No.

14 MR. SULLIVAN: Your Honor, I'd like to read
15 pages 426 line 4 to 426 line 10 from the same
16 November 2017 deposition.

17 MR. KING: No objection.

18 BY MR. SULLIVAN:

19 Q. Question --

20 MR. KING: Actually, I take that back. I
21 do have an objection. I think the first -- let's
22 see. The first two lines above that line, 2 and 3,
23 need to be read for context.

24 THE COURT: So again, Mr. Sullivan, your
25 call as to whether you agree or disagree. If you
26 agree, read it. If you don't --

27 MR. SULLIVAN: If I can read the question
28 that leads into those two lines, I have no

1 objection.

2 MR. KING: No problem.

3 BY MR. SULLIVAN:

4 Q. So I'll start on page 425 line 23.

5 "Q Let's see. Oh, on page 4 in the
6 middle, there's a paragraph and I think this is
7 directed to you. And it says, Anthony, comma.
8 But that's by fictional Berg, right?

9 "A Berg is sending me the responses to
10 the questions that I forwarded him from Pearl.

11 "Q You write in that paragraph, Right
12 now we're using 5026 and 5027 because the
13 Storix app isn't widely used. Do you see that?

14 "A Yes.

15 "Q 5026 and 5027, are those the ports
16 that are reserved for Storix SB Admin?

17 "A Yes."

18 A. Was that not consistent with your question
19 and my answer?

20 Q. Mr. Johnson, there was no question pending.
21 I'll ask one in a moment here.

22 After you resigned in May of 2014, you
23 never told Storix that you continued to use its
24 ports to develop JT Admin, the Janstor product,
25 right?

26 MR. KING: Objection. Assumes facts.

27 THE COURT: I didn't hear you -- object --
28 the ground?

1 MR. KING: Assumes facts not in evidence.

2 THE COURT: Overruled.

3 THE WITNESS: I'm sorry. I forgot the
4 question.

5 BY MR. SULLIVAN:

6 Q. After you resigned in May of 2014, you
7 never told Storix that you continued to use its
8 ports to develop JT Admin, the Janstor product,
9 right?

10 A. Wrong.

11 Q. You told somebody at Storix that you were
12 developing JT Admin using Storix's assigned port
13 numbers?

14 A. No, I did not.

15 Q. Mr. Johnson, my question was whether you
16 told anyone at Storix, and you said I was wrong. So
17 who did you tell?

18 A. You had a two-part question, whether I told
19 someone at Storix and whether I was using Storix
20 port numbers. I had no reason to tell Storix either
21 way, but nevertheless, I wasn't using Storix port
22 numbers.

23 Q. You assumed no one at Storix would care,
24 right?

25 A. There was no reason for anyone to care, no.

26 Q. You mentioned earlier -- but do you recall
27 what event occurred on June 10, 2015?

28 A. June 10th?

1 Q. Yes, sir.

2 A. Not offhand.

3 Q. Do you recall that was the date of your
4 deposition in the copyright action that you filed
5 against Storix?

6 A. Yes.

7 Q. Do you recall that Mr. Tyrell took your
8 deposition that day?

9 A. Yes.

10 Q. Now, Mr. Tyrell, he briefly questioned you
11 about Janstor at your deposition in June of 2015,
12 right?

13 A. Yes.

14 Q. And you were surprised to be asked about it
15 that day, weren't you?

16 A. Yes.

17 Q. Up until the date of your deposition, you
18 had not told anyone at Storix about the formation of
19 Janstor Technology, right?

20 A. I had not, if that was the question.

21 Q. That was the question.

22 A. Okay.

23 Q. You saw no reason to tell anybody at
24 Storix, right?

25 A. Right.

26 Q. In fact, you didn't have any reason to
27 believe that any of the other directors at Storix
28 knew anything about Janstor at the time of your

1 deposition in the copyright action, right?

2 A. Right.

3 Q. So Storix or any of your codirectors did
4 not learn about Janstor from you, right?

5 A. I don't see how.

6 Q. You never told anyone about it, right?

7 A. I never told anyone anywhere about it.

8 Q. You claim that your intention in forming
9 Janstor was to rebrand Storix and SB Admin, right?

10 A. It was one of the reasons.

11 Q. You began that effort after becoming a
12 director of Storix, right?

13 A. I began the effort at some point after that
14 time, yes.

15 Q. The name "Janstor," you chose that name --
16 J for Johnson, a-n for Anthony, s-t-o-r for Storix;
17 is that right?

18 A. No. I toyed with many, many names and that
19 was probably about Number 30 on the list. It was a
20 matter of finding a -- a brand name that was not in
21 use and had a domain available, and the s-t-o-r
22 stands for "storage," not "Storix."

23 MR. SULLIVAN: Your Honor, I'd like to read
24 from Mr. Johnson's November 2017 deposition, pages
25 371 line 16 to 372 line 3.

26 MR. KING: No objection.

27 BY MR. SULLIVAN:

28 "Q Okay. How did you choose the name

1 'Janstor Technology'?

2 "A To be honest, I had lots of ideas in
3 mind, and it certainly wasn't my first. But it
4 was the first thing that I came up with that I
5 couldn't find any references to on the Web, so
6 no potential conflicts that I'm aware of.

7 "Q Does it stand for anything? Is it an
8 acronym or --

9 "A I think I took, you know, my e-mail
10 address -- actually, it was backwards. I don't
11 remember. It was probably Johnson, Anthony.
12 And then the 'stor' had to do with Storix
13 software."

14 A. Okay. I don't know when I -- how long ago
15 that was, so I may have a faulty recollection.

16 Q. Mr. Johnson, you're familiar with what a
17 trademark is, right?

18 A. Yes.

19 Q. And you're familiar with the process to
20 obtain a trademark registration, right?

21 A. Yes.

22 Q. And you understand that a trademark is a
23 brand or name that a company can use to market a
24 product or service, correct?

25 A. Yes.

26 Q. And you know that a trademark and corporate
27 formation are two different things, don't you?

28 A. Yes, yes.

1 THE COURT: I think if you point it
2 directly -- in other words, if you speak straight
3 into it.

4 THE WITNESS: Yeah. I've kind of been
5 trying that. How's this? Okay?

6 THE COURT: That's better.

7 BY MR. SULLIVAN:

8 Q. And a company can own a trademark, right?

9 A. Yes.

10 Q. In fact, you created the original Storix
11 brand, right?

12 A. Yes.

13 Q. And you created the original SB Admin
14 brand, right?

15 A. Yes.

16 Q. And you formed a Storix corporation in
17 2003, right?

18 A. Yes.

19 Q. And SB Admin, that is the brand name of the
20 product that Storix, the corporation, sells, right?

21 A. Yes.

22 Q. And Storix now owns a trademark
23 registration with both the name "Storix" and
24 "SB Admin," right?

25 A. Currently, yes.

26 Q. You never went to the Storix board to voice
27 your concern that a damage you claim had been done
28 to Storix or SB Admin brand names, whether related

1 to litigation or not, that you felt those names had
2 to be rebranded, right?

3 A. I don't know what you mean by going to the
4 board. I was not allowed to go to the board. I was
5 only allowed to go to your law firm or that -- I
6 should say I was only allowed to hire personal
7 counsel to talk to your law firm to talk to the
8 board for me. So it hardly seemed an issue that
9 warranted that expense.

10 Q. You're not allowed to talk to the board?
11 That's your testimony?

12 A. Only at board meetings that your law firm
13 is in attendance at and that is noticed and
14 scheduled by Mr. Huffman.

15 Q. In your deposition, you found it humorous
16 that I asked you whether you had asked -- brought
17 the issue of rebranding to the board of directors of
18 Storix, right?

19 A. I don't remember. I thought the entire
20 issue of the Janstor suit was rather humorous.

21 Q. You think this is a big joke?

22 A. I think that anybody who knew the issues
23 and just the utter stupidity of it would find it to
24 be a big joke, yes.

25 Q. You're allowed to address the board at
26 board meetings, aren't you, Mr. Johnson?

27 A. Barely, but yes.

28 Q. You're allowed the same amount of time as

1 the other board members to address the board at
2 board meetings, right?

3 A. At the board meetings, according to the
4 rules that they decided upon in which the board
5 members who are not employees of the company are
6 allowed three minutes to speak once per quarter at a
7 board meeting, that is true.

8 Q. And despite believing that the names were
9 so badly damaged that they had to be rebranded, you
10 didn't believe that issue was worthy of your three
11 minutes at the board meeting, right?

12 A. It wasn't a topic of discussion. I -- I'm
13 not -- I'm not really sure what you're implying.
14 This -- it was pretty clear that Storix was being
15 tarnished. Whether I was forming a corporation to
16 try to take over that responsibility I don't think
17 was at issue here. I -- I'm not sure I understand
18 the question.

19 There was very limited time for discussion.
20 Mr. Huffman decided what could and could not be
21 discussed before the meeting and limited any
22 discussion from Ms. Sassi and myself to three
23 minutes, so --

24 MR. SULLIVAN: Your Honor --

25 THE WITNESS: -- it just wasn't an issue
26 that came up.

27 MR. SULLIVAN: Your Honor, I'd like to read
28 from Mr. Johnson's November 2017 deposition page 448

1 line 3 to line 15.

2 MR. KING: No objection.

3 BY MR. SULLIVAN:

4 "Q Why didn't you say something to the
5 board that you were concerned that however the
6 litigation should go that damage was being done
7 to the Storix or SB Admin brand name and that
8 you thought, as a director, it would be in the
9 company's best interest to pursue a new brand
10 name for the software?

11 "A Well, because of -- your firm wrote
12 new rules of conduct for directors that limited
13 my speaking time to three minutes per board
14 meeting, which only occurred once a quarter.
15 So I had to be somewhat efficient with my
16 speaking time, and I didn't think that was
17 irrelevant [sic] enough to take up that
18 precious three minutes that I was allowed to
19 speak."

20 A. I'm pretty sure that's what I just said.

21 MR. SULLIVAN: Move to strike, Your Honor.

22 THE COURT: Granted.

23 BY MR. SULLIVAN:

24 Q. Now, Janstor Technology, that's no longer
25 listed as an active corporation with the Secretary
26 of State; is that right?

27 A. No.

28 Q. It's not right or is that right?

1 A. I'm sorry. It is not listed as an active
2 corporation.

3 Q. At some point you filed a request to have
4 that corporation dissolved, correct?

5 A. Approximately July, I think, of 2015, June
6 or July.

7 Q. June or July of 2015. We just heard your
8 deposition in the copyright action it was June 10th
9 of 2015, right?

10 A. Yes.

11 Q. Two days after you obtained the port
12 registrations for Janstor from IANA, right?

13 A. I'm sorry. Say that again.

14 Q. Two days after you obtained approval for
15 your port registrations with IANA was your
16 deposition, correct?

17 A. I'll take your word for it.

18 Q. We can look at the documents, but those --

19 A. I don't need to. I'll take your word for
20 it. I understand it was soon thereafter.

21 Q. You deny that you dissolved Janstor as a
22 result of being confronted at your deposition with
23 its existence, correct?

24 A. Correct, correct.

25 Q. In fact, you stated and testified you
26 believe you may have even requested that the
27 Secretary of State dissolve Janstor before your
28 deposition of June 2015, right?

1 A. At the time, I wasn't entirely sure and I
2 was rather on the spot. I think given more thought,
3 I had some question as to whether I actually
4 submitted the form before or after I moved to
5 Florida at the end of June. And as it turns out, I
6 believe I filed it before I left for Florida in
7 June.

8 Q. What's the name of that form? Do you
9 recall? Was it called a request for dissolution or
10 something?

11 A. Something like a request for dissolution.

12 Q. And you testified and denied that the
13 reason you did not release the Janstor product in
14 June, as you indicated your plan to IANA to be, was
15 as a result of being confronted with the existence
16 of Janstor at your June 2015 deposition; is that
17 right?

18 A. That's correct.

19 Q. In this case, you had first denied at your
20 deposition that Janstor Technology was an active
21 corporation for at least several months after it was
22 formed, right?

23 A. It was never an active corporation. It was
24 never operational by the meaning of "active." I
25 want to be clear on that. It may have been active
26 on paper with the Secretary of State, but it never
27 operated in any way.

28 Q. Take a look at Exhibit 148. Do you

1 recognize that document?

2 A. I do.

3 (Exhibit 148 referenced.)

4 BY MR. SULLIVAN:

5 Q. What is that?

6 A. It is -- it looks like a Web search that
7 was done on the Secretary of State website for
8 Janstor Technology.

9 MR. SULLIVAN: Your Honor, I'd move to
10 admit and publish Exhibit 148.

11 MR. KING: No objection.

12 THE COURT: Received.

13 (Exhibit 148 received.)

14 MR. SULLIVAN: Zoom in to the top, please.

15 BY MR. SULLIVAN:

16 Q. So the corporation date of 2/20/2015,
17 status: active, correct?

18 A. At the time this was printed, yes.

19 MR. SULLIVAN: Let's look at the time this
20 was printed. Can you zoom into the bottom right
21 corner, please.

22 BY MR. SULLIVAN:

23 Q. June 11th, 2015, at 5:41 p.m., that's the
24 day after your deposition in the copyright action,
25 correct?

26 A. Yes.

27 Q. Storix filed its lawsuit in this case
28 against you and Janstor on August 20th, 2015,

1 correct?

2 A. Yes.

3 Q. In April of 2016, you filed a
4 cross-complaint in response to that complaint,
5 right?

6 A. No.

7 Q. Do you have Exhibit 26 there?

8 A. Which one?

9 (Exhibit 26 referenced.)

10 BY MR. SULLIVAN:

11 Q. Twenty-six, two six.

12 A. Mine ends at 25.

13 Q. Oh, it does?

14 MR. SULLIVAN: Your Honor, may I assist?

15 THE COURT: Yes.

16 BY MR. SULLIVAN:

17 Q. Do you have Exhibit 26 in front of you,
18 Mr. Johnson?

19 A. Yes.

20 Q. Is that the cross-complaint you filed in
21 this action?

22 A. Yes.

23 Q. You were pro se at the time?

24 A. Yes.

25 Q. And you filed --

26 A. By that, it means I was self-represented,
27 yes.

28 Q. And that was filed on April 13th, 2016?

1 A. Yes.

2 Q. Paragraph 48, can you look at that, please.

3 MR. SULLIVAN: Is there any objection to --
4 I'm sorry, Your Honor. I move to admit and publish
5 Exhibit 48 -- or 26. Excuse me.

6 MR. KING: There is an objection. I think
7 it's irrelevant. I think that -- Evidence Code
8 Section 352 as well.

9 THE COURT: If I could ask you -- well, let
10 me ask this: Is it a verified cross-complaint?

11 MR. SULLIVAN: I don't believe so,
12 Your Honor. No.

13 THE COURT: Filed pro se?

14 MR. SULLIVAN: It is filed pro se. I just
15 want to show paragraph 48.

16 THE COURT: In other words, if we reserve
17 on admission, you just want to show 48?

18 MR. SULLIVAN: Yes, Your Honor.

19 MR. KING: I still have an objection.

20 THE COURT: Why don't we do this. Could
21 you move to another line?

22 MR. SULLIVAN: Sure.

23 THE COURT: And then we'll address it.

24 BY MR. SULLIVAN:

25 Q. In filing your cross-complaint against
26 Storix, did you allege that you had dissolved
27 Janstor in August of 2015?

28 A. I -- I think that by then it was dissolved.

1 I don't know if I said that I did it then or before.

2 Q. Why don't you look at paragraph 48.

3 A. Okay.

4 Q. Does that refresh your recollection as to
5 what you alleged?

6 A. Okay. It says it was dissolved sometime in
7 August 2015. I might have been more accurate in
8 saying sometime by August 2015. I really don't
9 recall.

10 Q. In fact, you testified that you had filed
11 the paperwork to have Janstor dissolved even prior
12 to August of 2015, right, at your deposition?

13 A. It could have been. I just don't remember.
14 And if I got it wrong -- I don't know if I'm wrong
15 now or then to be honest.

16 Q. You testified to that multiple times,
17 right?

18 MR. KING: Objection. Vague.

19 MR. SULLIVAN: "That" being Janstor --

20 THE COURT: Well, sustained.

21 BY MR. SULLIVAN:

22 Q. Excuse me. You testified to Janstor being
23 dissolved by August 2015 multiple times, right?

24 A. I don't know. Apparently, I've also
25 testified that it was June or July. So I -- I
26 have -- all I can say is if you want to put a more
27 accurate time frame to it, it was sometime between
28 June and August.

1 Q. You denied that you dissolved Janstor
2 Technology in response to being sued by Storix in
3 August of 2015, right?

4 A. Yes.

5 Q. You testified that dissolving Janstor after
6 the filing of the complaint by Storix would actually
7 make you look more guilty, right?

8 A. I testified that? I don't -- is that what
9 you said? I testified to that?

10 Q. You testified to that statement?

11 A. Can you refer me to that? because that
12 doesn't sound like me.

13 MR. SULLIVAN: Sure. I'd like to play a
14 clip from Volume 1, page 114 line 7 to line 22.

15 UNIDENTIFIED JUROR: I'm having a hard time
16 hearing him.

17 MR. SULLIVAN: Sorry.

18 THE COURT: Okay. And --

19 UNIDENTIFIED JUROR: Especially when he's
20 reading.

21 THE COURT: Thank you.

22 Mr. Sullivan, just try to keep your voice
23 up.

24 MR. SULLIVAN: Certainly.

25 THE COURT: Thank you.

26 MR. KING: Okay.

27 MR. SULLIVAN: Okay. No objection.

28 (Video playing but not reported upon

1 stipulation.)

2 BY MR. SULLIVAN:

3 Q. Dissolving Janstor after the filing of the
4 Janstor complaint would be a foolish thing to do.
5 That was your testimony, right?

6 A. I think you're miswording what I had to
7 say.

8 MR. SULLIVAN: Your Honor, might I
9 approach?

10 THE WITNESS: I said I think if I had done
11 that, it would actually make me look even more
12 guilty than what you're claiming, so it would have
13 been foolish for me to dissolve it afterwards.

14 And actually, this is -- this actually
15 recalls [sic] my memory here when it says Janstor
16 Technology was dissolved sometime in August 2015.
17 That statement may very well be true, but I filed
18 for the dissolution sometime before that, as I
19 explained there. And that's where the confusion
20 was. I did not dissolve it. The Secretary of State
21 dissolved it.

22 MR. SULLIVAN: Your Honor, may I approach
23 and assist the witness?

24 THE COURT: Yes.

25 BY MR. SULLIVAN:

26 Q. Mr. Johnson, I've placed in front of you
27 Exhibit 521.

28 Do you recognize that document?

1 A. This -- yes. You showed me before the
2 articles of incorporation that were filed on
3 February 20th, 2015.

4 (Exhibit 521 referenced.)

5 BY MR. SULLIVAN:

6 Q. These are certified copies that my office
7 obtained from the Secretary of State. The first
8 page is the articles of incorporation.

9 A. I'm sure I sent you a copy of all of this
10 as well.

11 Q. I understand. Page 2 is an attachment to
12 the articles of incorporation.

13 A. Okay.

14 Q. What's page 3 titled?

15 A. "Short Form Certificate of Dissolution."

16 Q. And page 4 --

17 A. Okay.

18 Q. -- is that the statement of information?

19 A. Statement of information from February of
20 2015.

21 Q. And page 5, you'll see a stamp from the
22 Secretary of State, January 11th, 2018.

23 Do you see that?

24 A. Yes.

25 MR. SULLIVAN: Your Honor, I'd move to
26 admit and publish Exhibit 521.

27 MR. KING: No objection.

28 THE COURT: Received.

1 (Exhibit 521 received.)

2 BY MR. SULLIVAN:

3 Q. Can we go to the third page, please. As
4 you mentioned, page 3 is titled "Short Form
5 Certificate of Dissolution."

6 MR. SULLIVAN: Can we zoom in on the
7 signature block at the bottom and the date.

8 BY MR. SULLIVAN:

9 Q. Is that your signature, Mr. Johnson?

10 A. Yes, it is.

11 Q. What date is above your signature
12 Mr. Johnson?

13 A. September 19th, 2015.

14 Q. That's after August 2015; isn't it?

15 A. Yes. It is also after I filed this form
16 the first time.

17 Q. Can we go to the top, please, the filed by
18 stamp.

19 What is the date on the Secretary of State
20 file stamp?

21 A. It says September 22nd, 2015.

22 Q. That's more than one month after the
23 Janstor suit was filed, right?

24 A. And what I believe to be about three months
25 after I filed the first form that the Secretary of
26 State called me about to say that I needed to file
27 the short form instead.

28 Q. Do you have a copy of that?

1 A. No, I don't.

2 Q. Neither do I.

3 A. Sorry. I'm sorry that this is the first
4 time that has been put before me in the three years
5 that we've been at this, so -- but it certainly rang
6 a bell for the first time.

7 Q. Sure. Let's change topics.

8 THE COURT: Before we do that, is this a
9 good time for --

10 MR. SULLIVAN: It's an excellent time, yes.

11 THE COURT: Ladies and gentlemen, we'll
12 take our afternoon recess. Remember the admonition.
13 See you back in 15 minutes.

14 (Whereupon the jurors exit the courtroom.)

15 THE COURT: Going back to Exhibit 26 and
16 its admission, I asked you to reserve. I'm
17 wondering what the status is.

18 MR. SULLIVAN: I achieved my purpose.

19 THE COURT: All right. We'll show it's
20 moot at this point then.

21 MR. KING: Thank you.

22 MR. SULLIVAN: Thank you.

23 THE COURT: Thank you. We're in recess.

24 (Brief recess.)

25 THE COURT: Have you heard it was Number 9?
26 Oh, you haven't heard. I can tell by your faces.
27 The detective work has been done and the phone, it
28 belongs to Number 9, not Number 6. And there's a

1 power pack on it, and she can't get it off because
2 it constantly is repowering. I think her son gave
3 it to her.

4 And so what we've done is we've locked --
5 and the rest of the jurors tried to work it, but no
6 one can work it. So it's now in the anteroom. I
7 don't think the juror can hear it, and that's with
8 the door closed and locked. So she'll get it at the
9 end of the day.

10 Thank you, Tom.

11 Okay. Ready?

12 (Whereupon the jurors enter the courtroom.)

13 THE COURT: All right. Welcome back,
14 ladies and gentlemen. And I heard we had a
15 collaborative effort on [Juror Number 9]'s phone.
16 And no problem, [Juror Number 9]. And thank you
17 for --

18 JUROR NUMBER 9: He has it in the magic
19 room.

20 THE COURT: Yes. Thank you. And I
21 appreciate everybody's efforts.

22 Mr. Sullivan.

23 MR. SULLIVAN: Thank you, Your Honor.

24 BY MR. SULLIVAN:

25 Q. Mr. Johnson, is Jeff Harding a friend of
26 yours?

27 A. He was.

28 Q. No longer?

1 A. I just haven't seen him in three years now,
2 two years now.

3 Q. I think we just put away the notebook with
4 Exhibit 20 in it. Would you mind grabbing that real
5 quick.

6 Do you recognize Exhibit 20?

7 A. Yes.

8 (Exhibit 20 referenced.)

9 BY MR. SULLIVAN:

10 Q. Is that an e-mail exchange between you and
11 Jeffrey Harding?

12 A. Yes.

13 Q. Dated February 26, 2015?

14 A. Yes.

15 MR. SULLIVAN: Your Honor, I'd move to
16 admit and publish Exhibit 20, please.

17 MR. KING: No objection.

18 THE COURT: Received.

19 (Exhibit 20 received.)

20 BY MR. SULLIVAN:

21 Q. So February 26, 2015, that's about two
22 weeks after you joined the Storix board of
23 directors, correct?

24 A. Yes.

25 Q. If we could look at the -- it's the last
26 paragraph at the bottom of the page, four lines from
27 the bottom.

28 A. First page?

1 Q. Yes, sir.

2 "But so as not to waste any more time
3 depending on how this goes, I recently acquired
4 domain names, filed for a new corporation, and
5 rebranded the software under the new name."

6 Those are the words you wrote to
7 Mr. Harding, correct?

8 A. Yes.

9 Q. And you had rebranded SB Admin under the
10 new name "Janstor," right?

11 A. Well, I -- I have since then. I think at
12 the time I changed a couple of titles, but that was
13 about it.

14 Q. I'm sorry. Was that a yes or no? You had
15 or had not rebranded SB Admin as Janstor JT Admin?

16 A. At that time I had not to a very far
17 degree, I guess.

18 Q. How about at the time of your deposition in
19 this case, your first deposition?

20 A. I most likely had gotten a lot further. I
21 don't know if it -- if I had completely done so or
22 not.

23 I apologize for the nose breathing, but I
24 can't seem to avoid it.

25 Q. I wasn't sure if that was you or me with my
26 new mic.

27 THE COURT: I think what I -- just so it's
28 not a mystery, what I can do is I can turn the mic

1 down. But I think what it is -- I don't know. But
2 if you speak straight into it, in other words, if
3 you're pointing it right at your mouth -- I don't
4 think distance matters so much.

5 THE WITNESS: I'm trying. But in order to
6 get heard, I have to get so close that my nose is
7 now --

8 MR. KING: I think what he's saying is tilt
9 the mic up a tiny bit.

10 THE WITNESS: This way?

11 THE COURT: Yeah, straight into it. Then I
12 think it will work.

13 THE WITNESS: Okay. You're still going to
14 hear my nose, I think.

15 THE COURT: Let me try this. I'll turn the
16 mic down, but just -- I think Mr. King is correct.
17 Tilt it up and then speak straight into it, and I
18 think it will work.

19 THE WITNESS: Testing, testing.

20 THE COURT: You have two mics.

21 MR. SULLIVAN: Testing, testing. See, this
22 one, I have to speak down.

23 THE COURT: So what's wrong with that?

24 MR. SULLIVAN: I'll do my best.

25 THE WITNESS: I have this thing earlier. I
26 just have to keep doing the duck thing.

27 MR. SULLIVAN: All right. If I could read
28 page 109, line 20 to 22 of Mr. Johnson's first

1 volume deposition.

2 THE CLERK: November?

3 MR. SULLIVAN: This one is in July of 2017.

4 THE CLERK: Thank you.

5 MR. KING: No objection.

6 BY MR. SULLIVAN:

7 "Q You rebranded the software under the
8 new name. What's the new name?

9 "A Janstor."

10 Q. Now, the second page of Exhibit 20, third
11 paragraph from the bottom, third full sentence --
12 well, let's start at beginning. "Of course, they
13 didn't even earn the shares I gave them in the first
14 place."

15 Are you referring to the defendants in this
16 case or shareholders?

17 A. The defendants and -- the shareholder
18 defendants.

19 Q. Did each of those shareholder defendants
20 comply with the two-year commitment to earn the
21 shares?

22 A. They didn't have to -- they didn't have a
23 commitment to earn the shares. They always were
24 earning money from the shares.

25 Q. There's a two-year commitment to the
26 company in exchange for obtaining those shares,
27 right?

28 A. That was a commitment that they implied

1 upon themselves, yes.

2 Q. They all met that commitment, right?

3 A. At this time I don't know. I mean, as of
4 today, yes. At -- by the time of this e-mail, yes.

5 Q. Can you read the third full paragraph,
6 third sentence for me, please.

7 A. Do you include the indented paragraphs?

8 Q. The one that's highlighted on the board
9 that's underlined.

10 A. I can read it there. "Of course, they
11 didn't even earn the shares I gave them in the first
12 place, but now they're claiming ownership of my
13 life's work. They are destroying that work. I no
14 longer give a shit about the company or those
15 fucking assholes. I can't start over because this
16 is what I know and I just can't go work for someone
17 else."

18 Q. You wrote those words, right, Mr. Johnson?

19 A. Yes, I did.

20 Q. Those words were about the defendants?

21 A. Yes.

22 Q. Ms. Sassi, seated at defense table, she's a
23 close friend of yours, right?

24 A. She is now, yes.

25 Q. We heard earlier in the case that she's
26 actually Mr. Huffman's ex-wife, right?

27 A. Yes.

28 Q. And she's also a shareholder, correct?

1 A. Yes.

2 Q. Now a member of the board of directors,
3 right?

4 A. Yes.

5 Q. But she is not and she never has been an
6 employee of Storix, right?

7 A. Correct.

8 Q. A personal relationship with Ms. Sassi,
9 that began during the course of your problems with
10 Storix, right?

11 A. At the beginning -- immediately after my
12 resignation, I believe.

13 Q. And you and Ms. Sassi would refer to one
14 another as "besties," right?

15 A. We -- as far as I recall, you pulled that
16 off of a Facebook post where we had a picture
17 together and we referred to ourselves as "besties."

18 Q. Is that short for "best friends"?

19 A. Well, I guess you'd call it that.

20 Q. Well, it's a term of endearment?

21 A. I don't think that -- I think -- I don't
22 think that I am her best friend. She's certainly
23 been my best friend for a while.

24 Q. Is it a term of endearment?

25 A. Yeah, I guess so.

26 Q. Now, you communicated with Ms. Sassi about
27 your strategy in the copyright action with Storix,
28 right?

1 A. Well, there was communication that
2 certainly was related to the copyright action and
3 perhaps -- perhaps there was some strategy in there.

4 Q. And you and Ms. Sassi would text frequently
5 throughout the time in which the copyright action
6 litigation was pending, right?

7 A. Yes.

8 Q. So Ms. Sassi became a director on
9 February 12th, 2015, the same day as you, right?

10 A. Yes.

11 Q. And you used some of your shares of your
12 40 percent to assist in voting her on to the board,
13 right?

14 A. Yes.

15 Q. Do you have the binder with Exhibit 39 in
16 it?

17 A. I don't. I can grab it if you like.

18 Q. If you would.

19 Are you there now, sir?

20 A. Pardon me?

21 (Exhibit 39 referenced.)

22 BY MR. SULLIVAN:

23 Q. Are you there now?

24 A. I am.

25 Q. Do you recognize Exhibit 39 as an e-mail
26 exchange between you and Ms. Sassi?

27 A. Yes.

28 Q. The date on that e-mail exchange of the

1 last e-mail?

2 A. July 17th, 2014.

3 MR. SULLIVAN: Your Honor, I'd move to
4 admit and publish Exhibit 39, please.

5 MR. KING: No objection.

6 THE COURT: Received.

7 (Exhibit 39 received.)

8 BY MR. SULLIVAN:

9 Q. July of 2014, that was early on in your
10 dispute with Storix before the copyright litigation
11 was filed, right?

12 A. Yes.

13 Q. Your last e-mail at the top, second
14 paragraph, the writing to Ms. Sassi, the second
15 sentence, you write, "I can start a well funded and
16 more professionally staffed company."

17 Do you see that?

18 A. Yes, I do.

19 Q. So you had already considered in July of
20 2014 to form a competing venture, correct,
21 competition with Storix?

22 A. I'm sorry. Would you repeat the question?

23 Q. By the date of this e-mail, you had already
24 contemplated forming a competing company against
25 Storix, right?

26 A. No.

27 Q. Last sentence of that paragraph, "I feel
28 bad for current shareholders, but they bit the hand

1 that fed them, refused to talk, and I'm taking it
2 all back now."

3 You wanted out of the deal that was struck
4 in 2011, right?

5 A. I didn't want out of the deal, and this was
6 a rant. It was a momentary rant.

7 Q. So you didn't mean what you were writing to
8 Ms. Sassi?

9 A. Well, I also ranted to Ms. Sassi that I
10 wanted to crash a plane into the side of the
11 building, but I wasn't very serious about that. I
12 mean, this is a similar situation.

13 Q. Sir, you --

14 A. Obviously, it happened a year before you
15 sued me for intending to compete, so nothing
16 happened between then and there. And if I were
17 going to compete, I certainly would have done it by
18 then.

19 Q. Do you have the binder with Exhibit 140 in
20 it? Could you take a look at that, please.

21 A. What was the number?

22 (Exhibit 140 referenced.)

23 BY MR. SULLIVAN:

24 Q. One forty. I think that binder is still on
25 your desk.

26 A. It's not.

27 MR. SULLIVAN: May I assist?

28 THE COURT: Yes.

1 THE WITNESS: Oh, I'm sorry. It is.

2 BY MR. SULLIVAN:

3 Q. Do you have Exhibit 140 in front of you,
4 Mr. Johnson?

5 A. I do.

6 Q. Do you recognize that document?

7 A. I need a moment here. Oh, yes, I do.

8 Q. It's another e-mail exchange between you
9 and Ms. Sassi; is that right?

10 A. Yes. This was just a couple of weeks prior
11 to the 2015 shareholder meeting, I guess.

12 Q. January 23rd, 2015, is the date of the
13 e-mail, right?

14 A. Yes.

15 MR. SULLIVAN: Your Honor, I move to admit
16 and publish Exhibit 140.

17 MR. KING: No objection.

18 THE COURT: Received.

19 (Exhibit 140 received.)

20 BY MR. SULLIVAN:

21 Q. In the last e-mail, that looks like your
22 responding -- excuse me.

23 MR. SULLIVAN: Let's go down to -- can we
24 go down to the e-mail at 10:20 e-mail from Robin
25 Sassi, the middle of the page. Up. The next one
26 up. It should be the third paragraph.

27 BY MR. SULLIVAN:

28 Q. So this is a message from Ms. Sassi to you,

1 correct?

2 A. I -- yes.

3 Q. The last sentence of the first paragraph,
4 Ms. Sassi wrote to you, "Be careful too, they may be
5 your competitors and you might be giving them
6 information to compete against you."

7 Do you see that?

8 A. Yes.

9 Q. In response, third paragraph of your
10 response, you write, "To tell the truth, I'm about
11 50-50 as far as whether it's best for me to return
12 or start a new business. In one case, I get back to
13 running the business I built, and in the other, I
14 get better people I can now afford to hire and
15 100 percent of the stock. I really don't care."

16 You wrote that, right?

17 A. Yes.

18 Q. As you mentioned, that's just a couple of
19 weeks before you became a director of Storix, right?

20 A. Yes.

21 Q. Turn to Exhibit 141, please. Do you
22 recognize Exhibit 141?

23 A. Yes.

24 (Exhibit 141 referenced.)

25 BY MR. SULLIVAN:

26 Q. What do you recognize that to be?

27 A. Communication between myself and Ms. Sassi,
28 I believe, if we're looking at the one about going

1 out for drinks.

2 Q. No. I'm just wondering if you recognize
3 the whole document as an exchange of text messages
4 for you and Ms. Sassi, not a particular text at this
5 point?

6 A. Yeah, I'm sorry. We produced about 80 or
7 90 pages and there's 4 here.

8 Q. And are your messages in light gray? I
9 don't know if your copy is in color or not.

10 A. It appears so.

11 Q. And are her messages in what appear to be
12 dark gray?

13 A. Yes.

14 MR. SULLIVAN: Your Honor, I move to admit
15 Exhibit 141.

16 MR. KING: I actually have an objection
17 based on the motions in limine to the admission of
18 the entire exhibit.

19 THE COURT: And the number of the motion in
20 limine?

21 MR. KING: Defendants' MIL Number 6.

22 THE COURT: And without verbalizing,
23 response?

24 MR. SULLIVAN: I think it's in response to
25 a single sentence in one text message that we'd be
26 fine with that. That's not the message I want to
27 highlight.

28 THE COURT: All right. So right now you're

1 moving the entirety. And I'm just asking, just in
2 the interest of expediting, redaction sufficient?

3 MR. SULLIVAN: It would be for me,
4 Your Honor, if it's the issue I believe that's being
5 raised.

6 THE COURT: Is that fine, Mr. King?

7 MR. KING: I think we could probably do
8 that, yeah.

9 THE COURT: Okay. Then --

10 MR. SULLIVAN: It seems like we're on the
11 same page.

12 THE COURT: Mr. McCloskey?

13 MR. KING: Actually, there's one -- sorry.
14 There's --

15 THE COURT: Let's do this. Show Mr. King
16 what you're going to -- what you plan to show up on
17 the screen in terms of publication. And then the
18 Court intends to receive it subject to redaction or
19 redactions, if that's agreeable. And the redactions
20 relate to Defendants' Motion in Limine Number 6. Is
21 that agreed?

22 MR. SULLIVAN: I think we have an
23 agreement.

24 THE COURT: Okay. Agreed?

25 MR. KING: We agree on the -- what can be
26 published. We can talk about the other issues
27 later.

28 MR. MCCLOSKEY: Agree, Your Honor. Thank

1 you.

2 (Exhibit 141 received.)

3 BY MR. SULLIVAN:

4 Q. So, Mr. Johnson, on the second page of that
5 exhibit, the light gray text message in the middle
6 of the page, do you see that?

7 A. On the first page?

8 Q. The second page, the light gray text
9 message in the middle.

10 A. I'm sorry. Wrong page. Yes, yes.

11 Q. And if you -- you've got to look at the
12 first page, I think, to put that text message in
13 context with time.

14 A. Yes. It's February 12th.

15 Q. Sometime after 4:23 p.m.?

16 A. 4:23 p.m., sometime, yeah.

17 Q. Can you read -- that's your text message in
18 lite gray?

19 A. Sure. It says, "I understand. I'm going
20 to finally catch up on my drinking," smiley face.
21 "Tomorrow I'm applying for a business license and
22 acquiring a website. Well, if I sober up enough."

23 Obviously, tongue and cheek, but --

24 Q. Is that in reference to Janstor?

25 A. I'm not entirely sure that I decided on a
26 name then, but it was in reference to -- to forming
27 something, you know. There wasn't much of a plan at
28 that point.

1 Q. If you could turn to the fourth page,
2 please. Sorry, technical difficulties.

3 Mr. Johnson, while we work on that, would
4 you mind reading the -- there we go. Just in time.

5 A. "That's cool. I don't even know what day
6 of the week it is. I've been working at getting
7 Storix new competitor set up and still updating the
8 software, but give me a call anytime to let me know
9 when you're ready to go party."

10 Q. You wrote those words to Ms. Sassi while
11 you were a member of Storix's board of directors,
12 correct?

13 A. I believe I wrote them approximately two
14 hours or so after I became a director of Storix.

15 Q. And that "competitor" comment was in
16 reference to what became Janstor Technology,
17 correct?

18 A. Well, in a way.

19 Q. Were you setting up any other companies at
20 the time?

21 A. Pardon me?

22 Q. Were you setting up any other companies
23 other than Janstor at the time?

24 A. I wasn't setting anything up at the time.

25 Q. Mr. Johnson, we just looked at a number of
26 exhibits where you set up Janstor Technology and
27 began that process the day after becoming a director
28 of Storix, Inc.

1 A. Yes, and those took place over the course
2 of about a three-day period. And after -- after the
3 board meeting, we were sort of tongue of cheek
4 referred to this process as -- as Storix competitor,
5 when, in fact, it had -- it was never intended to be
6 a competitor.

7 Q. So it was just a joke?

8 A. Well, it was just sort of a -- kind of a
9 joke between us, I suppose, just her and I. And at
10 least -- and I don't think either of us anticipated
11 that, you know, you were going to be suing me for
12 saying that for three years.

13 Q. You didn't anticipate being caught? Is
14 that what you're saying?

15 A. No, I didn't get caught. You have to do
16 something to get caught. It was -- the problem was
17 I said something three years ago, and you're still
18 suing me for it.

19 Q. "Still updating the software" --

20 A. Yes.

21 Q. -- that's a reference to Version 9 --

22 A. Yes.

23 Q. -- point 1, correct?

24 A. Yes.

25 Q. Let me finish my question, please.

26 A. I'm sorry.

27 Q. Do you have Exhibit 139 in front of you?

28 A. Yes.

1 (Exhibit 139 referenced.)

2 BY MR. SULLIVAN:

3 Q. Do you recognize that document?

4 A. I do.

5 Q. What do you recognize that document to be?

6 Is that an e-mail you sent to Rich Turner, Manuel
7 Altamirano, and Dave Kinney on January 23rd, 2015?

8 A. Yes, it is.

9 Q. Subject line's: "My final final thoughts
10 for you to consider"?

11 A. Yes.

12 MR. SULLIVAN: Move to admit and publish
13 Exhibit -- is it 139?

14 MR. KING: Objection. Evidence Code 1152.

15 THE COURT: Response?

16 MR. SULLIVAN: I don't know if that's in
17 reference to the entire document or a specific
18 portion.

19 THE COURT: Mr. King?

20 MR. KING: I think the -- it renders the
21 entire document subject to admissibility, but --
22 that's my answer.

23 THE COURT: So the reference is on the
24 objection to the entirety?

25 MR. KING: Yes.

26 THE COURT: Let's do this, in light of the
27 length. My preference is to move to another line.

28 MR. SULLIVAN: Okay.

1 THE COURT: Thank you. Unless there's a
2 more specific reference, I think that's the best way
3 to proceed.

4 MR. SULLIVAN: I'll move on, Your Honor.

5 THE COURT: Thank you.

6 BY MR. SULLIVAN:

7 Q. Now, earlier, you said you did not form
8 Janstor to compete with Storix, Inc.

9 Is that your testimony?

10 A. That's correct. That's correct.

11 Q. You formed Janstor and did the other acts
12 we discussed to be prepared to take over Storix's
13 business opportunities in the event it failed,
14 correct?

15 A. That was a potential.

16 Q. That was your plan, right?

17 A. That was a potential.

18 Q. If Storix failed, you'd be ready to step in
19 and sift through the ashes with a new business,
20 right?

21 A. Those were your words. I would never refer
22 to it as sifting through the ashes.

23 MR. SULLIVAN: Can we see Exhibit 356,
24 which I believe was admitted yesterday.

25 BY MR. SULLIVAN:

26 Q. Mr. Johnson, this is what we've come to
27 refer to as the "Buckle up, boys" e-mail. I think
28 you're probably pretty familiar with it by now.

1 If we could see the -- now, in sending this
2 e-mail, in the cc line, you included Brian Bonert,
3 Nydia Davenport, and Rick Chatham, as well as R.
4 Hawkins, who I believe is Reuben Hawkins.

5 Who are those individuals?

6 A. They're employees I suspect that might
7 still be working at Storix at that time.

8 Q. Why did you copy employees of Storix on
9 this e-mail?

10 A. I think it's actually explained in the
11 e-mail itself, but it more -- well, I might defer
12 the rest of my answer for your questions, but -- or
13 I can go on, but I'm afraid it might go beyond your
14 scope.

15 Q. Was this e-mail intended as a threat to
16 Storix's managers?

17 A. It was a threat of litigation, yes.

18 Q. There was another threat in there as well,
19 wasn't there?

20 A. You'll have to be specific. I don't know
21 what you would refer to as a threat.

22 Q. Scroll down. You were threatening to send
23 an announcement letter to Storix's customers, right?

24 A. Yeah, there was something to that effect.

25 Q. There was a draft announcement letter
26 appended to the bottom of your e-mail, correct?

27 A. Yes.

28 Q. That e-mail that you were threatening to

1 send to Storix's customers, that was not necessarily
2 going to benefit Storix, was it?

3 A. Well, that particular e-mail that I
4 threatened to send was more intended to instill some
5 fear in the defendants that the things that they had
6 been doing to me up to this point would be made
7 public, but it wasn't an e-mail that was ultimately
8 sent to customers.

9 Q. Sir, my question was: The e-mail that you
10 were threatening to send to Storix's customers was
11 not necessarily to benefit Storix, was it?

12 A. The e-mail I threatened to send was not an
13 e-mail I sent, so clearly, it was not intended to
14 cause harm to Storix.

15 MR. SULLIVAN: Your Honor, I'd like to read
16 from Mr. Johnson's deposition, page -- July 2017,
17 page 124, 19, through -- line 19 through line 22.

18 MR. KING: Nineteen through 22?

19 MR. SULLIVAN: Yes.

20 MR. KING: No objections.

21 BY MR. SULLIVAN:

22 "Q How did you believe that is going to
23 benefit Storix?

24 "A Because, well, you have to -- well,
25 I'm not sure that was necessarily going to
26 benefit Storix."

27 Q. In fact, maybe a week or so later, after
28 the "Buckle up, boys" e-mail, you sent an e-mail

1 announcement to Storix's customers, correct?

2 A. A week -- a week or so later after you
3 filed a restraining order against me that was
4 denied.

5 Q. That was not my question, sir.

6 A. No, it was not.

7 Q. Can you look at Exhibit 22, please. It was
8 admitted yesterday.

9 A. I'm happy to go off what's on the screen.

10 Q. Does that work for you?

11 A. That book in front of me --

12 MR. SULLIVAN: Okay. Can you zoom up the
13 header, please.

14 BY MR. SULLIVAN:

15 Q. This is an e-mail from your personal Gmail
16 account, correct?

17 A. Yes.

18 Q. And it's sent to another Gmail account,
19 flydiversd+storix@gmail.com.

20 Who is that addressed to?

21 A. It's -- it's addressed to my same e-mail
22 account. That's a special format that Google
23 accepts. If you use your e-mail address followed by
24 a plus and anything after that, it ignores the plus
25 and anything after that and sends it to your Gmail
26 account, but it allows me to -- but it allows you to
27 have e-mail filters that, you know, capture an
28 e-mail to that address and file them into a

1 particular folder.

2 Q. So is this an e-mail that you received from
3 yourself --

4 A. Yes.

5 Q. -- in a --

6 A. Yes, it is.

7 Q. So was your e-mail address on the list of
8 recipients of this e-mail that you sent out?

9 A. The e-mail was sent to myself with that
10 "+Storix" extension and to a number of e-mail
11 addresses that were potentially customers. I don't
12 know how many. But a handful of them that were
13 bcc'd on the e-mail that were protected from their
14 e-mail addresses being made public.

15 Q. You testified at your deposition that you
16 think your announcement went to only two Storix
17 customers; is that right?

18 A. No. I believe the testimony was that I'm
19 only aware that customer received any response from
20 two of the customers.

21 Q. So you think it was actually sent to more
22 than two customers?

23 A. It was sent to more than two. But knowing
24 the type of e-mail that it is, it would likely have
25 gone into a spam folder -- filter on most cases.
26 And those that didn't, I anticipated maybe, you
27 know, five or so would have seen it.

28 Q. Mr. Johnson, it was not your intent in

1 sending this e-mail to have it filtered into a spam
2 folder, was it?

3 A. It was intended to send it to a handful of
4 customers in order to elicit a response from one or
5 two of them.

6 Q. The only benefit you saw to Storix in
7 sending this e-mail was that they would take you
8 seriously; is that right?

9 A. There were -- it's a little bit more
10 complicated than that, so I can't really answer that
11 question.

12 MR. SULLIVAN: I'd like to read page 128
13 line 6 to line 14 from Mr. Johnson's July 2017
14 deposition.

15 MR. KING: No objection.

16 BY MR. SULLIVAN:

17 "Q What good do you believe would be
18 brought to Storix by telling at least two of
19 its customers that they may be in possession of
20 unauthorized and infringing copies of the very
21 product they licensed from Storix?

22 "A I believe that Storix would benefit
23 in the long run from these individuals taking
24 me seriously. And this was intended to let
25 them know that they should take me seriously,
26 but not -- but done so on such a small scale
27 that it wasn't really intended to do any harm."

28 Q. You never issued a retraction for -- you

1 never issued a retraction for the noticed
2 announcement e-mail you sent in October 2015, did
3 you?

4 A. David Huffman sent a retraction about two
5 hours after that, so I didn't see a point.

6 Q. Sir, that was not my question.

7 A. I did not.

8 Q. And no point after sending this e-mail did
9 you ever tell any of Storix's customers that they
10 should continue paying Storix for SB Admin licenses,
11 correct?

12 A. It didn't appear to be necessary to do so.
13 I wasn't aware of any customers that had stopped
14 doing business with customers [sic] as a result -- I
15 mean with Storix as a result.

16 MR. SULLIVAN: Your Honor, might I approach
17 and assist the witness?

18 THE COURT: Yes.

19 BY MR. SULLIVAN:

20 Q. Mr. Johnson, I've placed in front of you
21 Exhibit 874. Do you recognize it as an e-mail
22 exchange -- or an e-mail you sent to David Kinney on
23 October 7th, 2015?

24 A. Yes.

25 (Exhibit 874 referenced.)

26 BY MR. SULLIVAN:

27 Q. Subject line is: "Fwd: Buckle up, boys"?

28 A. Yes.

1 Q. The date is October 7, 2015, correct?

2 A. Yes.

3 Q. Is that the day after you sent the
4 announcement letter?

5 A. Yes.

6 MR. SULLIVAN: Your Honor, I'd move to
7 admit and publish Exhibit 874.

8 MR. KING: I object on grounds of Evidence
9 Code 1152.

10 MR. SULLIVAN: It's the same issue we
11 discussed yesterday with regard to the original
12 "Buckle up, boys" e-mail.

13 THE COURT: Okay. If -- is it any
14 different?

15 MR. KING: It's a different e-mail. It's a
16 different text.

17 MR. SULLIVAN: Yes, it's an extension of
18 that. It's a forward of that e-mail to Mr. King.

19 THE COURT: Again, a multi-page document.
20 Any specific reference or to the entirety?

21 MR. KING: The -- I think the last two
22 pages are the earlier e-mail that we looked at.
23 It's the first page. And it is to the entirety of
24 the first page, but -- yeah, the entirety of the
25 first page.

26 THE COURT: So the entirety of the first
27 page of 874?

28 MR. KING: Yes.

1 THE COURT: Any more specific reference?

2 MR. KING: Specifically, the last paragraph
3 is what --

4 THE COURT: Response?

5 MR. SULLIVAN: I don't intend to ask about
6 the last paragraph, Your Honor.

7 THE COURT: All right. And are you -- and
8 so my understanding, 1152, three-page document, goes
9 to page 1 and specifically the last paragraph,
10 page 1 in its entirety, but even more specifically,
11 the last paragraph; am I correct?

12 MR. KING: That's correct.

13 THE COURT: Or does it go to page 2 and 3
14 as well?

15 MR. KING: Only to the extent that that
16 would be a continuation of my objection that we
17 ruled on yesterday.

18 THE COURT: I understand. Let's do this.
19 Is it all right -- are you only going with page 1?

20 MR. SULLIVAN: Yes.

21 THE COURT: Utilize -- well, the objection
22 is overruled relative to publishing page 1 with the
23 exception of the last paragraph, and I'm reserving
24 on the last paragraph for further discussion outside
25 the presence of the jury.

26 Will that work right now? No one has to
27 agree with that, but I want to make sure --

28 MR. SULLIVAN: That would work for me,

1 Your Honor.

2 THE COURT: In other words, we're
3 reserving -- I'm overruling as to all paragraphs
4 with the exception of last, and I'll reserve on
5 that. So I'm allowing publication at this time.

6 (Exhibit 874, redacted, received.)

7 MR. KING: I still have my objection. I
8 object to publication, but --

9 THE COURT: Understood.

10 MR. KING: -- you got to make your rulings.

11 THE COURT: Right. So that will be the
12 Court's ruling.

13 You're allowed to publish. Talk about what
14 I am reserving on later.

15 MR. SULLIVAN: Thank you, Your Honor.

16 THE COURT: And so electronically, can you
17 do that; in other words, publish without the last
18 paragraph?

19 MR. SULLIVAN: If the clerk might be able
20 to blacken the screen, I think we can get it pulled
21 up and then focus. Okay. We got it. Thank you,
22 Your Honor.

23 THE COURT: Thank you.

24 BY MR. SULLIVAN:

25 Q. Now, Mr. Johnson, this was sent in October
26 of 2015. At that time did you understand Mr. Kinney
27 had left employment with Storix?

28 A. I learned that day that he left Storix,

1 because I copied all of the defendants on this
2 e-mail and this one bounced back telling me he was
3 no longer employed there.

4 Q. And the second paragraph, which is the
5 first paragraph in this blown up portion, you
6 mentioned -- you write, "As I mentioned this was the
7 last resort, but if I wait until October 30, the MSJ
8 will be decided and Storix will close its doors
9 (because I will not license the software to the
10 company as long as any of you have any part of it.)"

11 Is that a threat to Storix?

12 A. Clearly not, because the next three words
13 are -- or five words say "to try to avoid that."

14 Q. So telling the shareholder of Storix that
15 the company would not be licensed to sell the only
16 software the company sells is not intended as a
17 threat to Storix? Is that your testimony?

18 A. Clearly not. It is a threat to the
19 defendant shareholders, based on, as I said before,
20 the series of pretty unconscionable things that they
21 had been doing to me just prior to this incident.

22 Q. The third paragraph, "Below this e-mail,
23 you you'll find the e-mail I sent to you, your
24 conspirators, and some employees at Storix. It is
25 followed by the e-mail I sent to a large number of
26 customers yesterday. Storix is today in a panic.
27 Their phones are ringing off the hook and attorneys
28 are gathering."

1 Is that your goal in sending that
2 announcement letter to customers?

3 A. Well, knowing that Kinney was no longer a
4 part of Storix, I admittedly exaggerated the
5 situation to some extent. And who knows at this
6 point. In the state of mind I was in, I could have
7 been beating my chest a bit.

8 But nevertheless, the intent here was to
9 try to convince him that now that he's no longer an
10 employee at Storix and dependent on his Storix's
11 salary that it's no longer -- I mean, I see no
12 longer for there to be a purpose in him continuing
13 to defend the unconscionable things that they were
14 doing.

15 Q. You wanted the phones at Storix to be
16 ringing off the hook when you sent that e-mail,
17 didn't you?

18 A. I wanted them to hear from a customer or
19 two about specific things that I'm sure you'd rather
20 I not talk about.

21 Q. You wanted Storix's attorneys to be
22 gathering, right?

23 A. Well, your attorneys are gathered every
24 time they ask to go to the bathroom, so I don't --
25 you know, it's hard -- it was hardly a surprise.

26 Q. You wanted Storix to suffer harm from that
27 e-mail, didn't you?

28 A. No, I did not.

1 Q. The next sentence, "Unfortunately, Procopio
2 is notorious for dropping its clients as soon as
3 they can't pay their bills, and as you may know,
4 Storix has already spent all its money hiding behind
5 their majority vote to try to prevent anyone from
6 finding out what you've been doing to me."

7 Sir, you understand Procopio is the firm I
8 work at, right?

9 A. Yes. And I have to admit that that was a
10 misstatement there, because you haven't dropped
11 them. You've actually been funding them to the tune
12 of about, to my knowledge, 6- or \$700,000 now.

13 Q. The goal in sending that letter to Storix's
14 customers was to deprive them of legal counsel,
15 right?

16 A. It was -- I don't know how you draw that
17 conclusion.

18 Q. You expected Procopio to drop them as soon
19 as the bill went unpaid, right?

20 A. No. I expected you to be dropping them
21 anytime now, because they were already in debt.

22 Q. "Procopio is notorious for dropping its
23 clients as soon as they can't pay their bills."

24 A. And Storix could not pay its bills at this
25 point.

26 Q. Notorious?

27 A. Yes, yes, notorious. I have heard that
28 from many sources.

1 Q. Name one client that was dropped for
2 failing a bill.

3 A. Pardon me?

4 Q. Name one client that was dropped for
5 failing to pay a bill.

6 A. Well, first of all, I wouldn't know the
7 name of a client, because people I talk to that are
8 associated with Procopio wouldn't probably divulge
9 that.

10 Q. The last sentence of this paragraph, "This
11 will end Storix ability to bring in any more income
12 from my work that they just keep using to attack
13 me."

14 That was your goal, wasn't it, to destroy
15 Storix's revenues?

16 A. My goal was to threaten, I suppose, if you
17 want to use that word, Mr. Kinney, who I considered
18 to be the most likely person to want to stop this
19 nonsense, into believing that whatever he expects to
20 get in income from the shares that he's been holding
21 on to is not going to be of any value. And as I
22 suspected, you had already cut off all share
23 distributions about five months earlier and have
24 never paid anything since.

25 Q. Sir, am I a member of Storix's board of
26 directors?

27 A. Well, you do control the board of
28 directors.

1 Q. Sir, am I a member of Storix's board of
2 directors?

3 A. No, not to --

4 Q. Do I have --

5 A. -- my knowledge. Pardon me?

6 THE REPORTER: One at a time, Counsel.

7 BY MR. SULLIVAN:

8 Q. Do I have any vote as to whether Storix
9 disputes a distribution or not?

10 A. I don't believe any vote has ever passed
11 without the permission of Procopio.

12 Q. Sir, do you have Exhibit 23 in front of
13 you?

14 A. Yes. I'm sorry.

15 (Exhibit 23 referenced.)

16 BY MR. SULLIVAN:

17 Q. Two three.

18 A. I do not. I can get it if you like.

19 MR. SULLIVAN: Your Honor, may I approach?

20 THE COURT: Yes.

21 BY MR. SULLIVAN:

22 Q. Mr. Johnson, do you have Exhibit 23?

23 A. I do.

24 Q. Do you recognize that as an e-mail you sent
25 to Brian Bonert on January 16, 2016?

26 A. I do.

27 MR. SULLIVAN: Your Honor, I'd move to
28 admit and publish Exhibit 23.

1 MR. KING: Same objection I raised in the
2 motion in limine, which is Civil Code Section 47(b),
3 but also Evidence Code Section 352.

4 THE COURT: Let me ask this: Anything
5 different from our previous discussion?

6 MR. KING: Yeah, a little bit.

7 THE COURT: And you want to reference the
8 paragraph?

9 Or objection to the entirety?

10 MR. KING: To the entirety.

11 THE COURT: And understanding that, any
12 more specificity?

13 MR. KING: No more specificity.

14 THE COURT: So absent anything else, the
15 prior discussion stands. And so I'm wondering if
16 there's anything else specifically, Mr. King, you'd
17 like me to address.

18 MR. KING: The specific thing is just --
19 you know, to put the Evidence Code Section 352
20 objection on the record.

21 THE COURT: All right. With regard to it,
22 anything in response?

23 MR. SULLIVAN: I think we addressed it in
24 sufficient detail at the in limine motion. And with
25 regard to the other similar exhibit, same issues.

26 THE COURT: All right. Previous discussion
27 stands. As to 352 specifically, the Court finds
28 that the probative value exists and that probative

1 value is not substantially outweighed by the danger
2 of undue prejudice. And therefore, in light of that
3 ruling and for those reason, overruled.

4 MR. SULLIVAN: Thank you, Your Honor.

5 THE COURT: Received.

6 MR. SULLIVAN: We can publish Exhibit 23,
7 please.

8 (Exhibit 23 received.)

9 BY MR. SULLIVAN:

10 Q. Turn to the second page, the last
11 paragraph, please, the third full sentence. "I take
12 a chance e-mailing you, only because Huffman is
13 probably keeping tabs, so delete this and call me if
14 you want to talk."

15 Do you believe Mr. Huffman monitors
16 employees' e-mails at Storix?

17 A. I'm sorry. Can you repeat that?

18 Q. Do you believe --

19 THE COURT: Mr. Sullivan, I know. Just try
20 to project as best you can.

21 BY MR. SULLIVAN:

22 Q. Do you believe Mr. Huffman monitors
23 employee's e-mails at Storix?

24 A. I'm aware that he does.

25 MR. SULLIVAN: Second paragraph -- if we
26 could go back to the first page, if you can
27 highlight the second full paragraph, please.

28

1 BY MR. SULLIVAN:

2 Q. You write, "I'm contacting you," meaning
3 Mr. Bonert, who's an employee at Storix, right?

4 A. Yes.

5 Q. And not a shareholder, just an employee?

6 A. Yes.

7 Q. "I'm contacting you to let you know that
8 you and the other innocent employees are about to
9 lose your jobs."

10 So you're going with this e-mail to Storix
11 employees and telling them they're about ready to
12 lose their jobs?

13 A. No, no.

14 Q. Am I misreading that sentence?

15 A. Yes.

16 Q. "You and the other innocent employees are
17 about to lose your jobs." It is underlined. How am
18 I misreading that?

19 A. You said that I was contacting Storix
20 employees to tell them they're about to lose their
21 jobs, and that is not reflected in this e-mail.

22 Q. What are the last five words of that
23 sentence?

24 A. You said "employees." I contacted one
25 employee.

26 Q. Quibbling over plural versus singular, is
27 that it?

28 MR. KING: Objection. Argumentative.

1 THE COURT: Sustained.

2 THE WITNESS: It's a very -- it's a very --

3 BY MR. SULLIVAN:

4 Q. Go to the --

5 A. It's a rather important fact that I was
6 trying to elicit the cooperation or some information
7 from an employee that, although I didn't know very
8 well, I found him to be fairly upstanding. And his
9 having been a sales person would have certainly
10 known more about the financial state of the company
11 than I did since your firm won't let me see any
12 financials from the company.

13 MR. SULLIVAN: Your Honor, move to strike
14 as nonresponsive. There was no question pending.

15 THE COURT: As to the last portion,
16 granted.

17 BY MR. SULLIVAN:

18 Q. Paragraph 4, "You don't have to believe a
19 word, but understand I've still been working on the
20 software for 2 years now. I have a marketable
21 product, and you don't."

22 You were referencing the Version 9.1
23 software you had, right?

24 A. No.

25 Q. What were you referencing?

26 A. I was referencing the Janstor software that
27 I had developed by this time.

28 Q. At the time of this e-mail, in January of

1 2016, Storix continued to market and sell SB Admin;
2 isn't that right?

3 A. Yes.

4 Q. It still had a marketable product, didn't
5 it?

6 A. Not very, but yes.

7 Q. You were a director of the corporation at
8 the time you wrote this e-mail to Mr. Bonert, right?

9 A. Yes.

10 Q. And your motive in sending this e-mail was
11 to try to remove the management defendants from the
12 company, right?

13 A. Not -- that was -- had no part of this
14 e-mail, but I certainly have tried to do so in other
15 ways.

16 MR. SULLIVAN: Your Honor, I'd like to read
17 from Mr. Johnson's July 2017 deposition, page 150
18 line 18 to 151 line 2.

19 THE CLERK: Is it July 12th, 2017?

20 MR. SULLIVAN: Correct.

21 THE COURT: Thank you.

22 MR. KING: No objection.

23 BY MR. SULLIVAN:

24 "Q How is it that you believe, as a
25 Storix director, an entity to which you owe the
26 upmost duty of good faith and loyalty, it was
27 going to benefit from this e-mail to one of its
28 employees? How was it --

1 "A Anything --

2 "Q How was it going to help, sir?

3 "A Well, I'm trying to answer. Anything
4 that would remove these defendants from this
5 company would benefit the company.

6 "Q Okay."

7 A. Which deposition was that?

8 Q. July 2017.

9 A. And that was from you or from the
10 defendants' counsel?

11 Q. Mr. McCloskey asked you that question, sir.

12 A. Okay.

13 Q. Do you know Robert Taylor?

14 A. I don't think so.

15 Q. Isn't he a financial expert that you
16 retained in the copyright litigation?

17 A. Oh, yes. Yes. I don't know him
18 personally. Counsel has worked closely with him.

19 Q. You hired him to prepare reports in that
20 case, right?

21 A. I hired him. I didn't work with him
22 because I'm not allowed to -- access to the same
23 information that he is.

24 Q. You've retained him in this case as well,
25 correct?

26 A. Yes.

27 Q. He testified at the copyright trial on your
28 behalf, correct?

1 A. Yes, yes.

2 Q. You wouldn't have asked him to testify on
3 your behalf if he was providing an invalid opinion,
4 right?

5 A. I see that as a leading question, so --

6 Q. These are all leading questions, sir.
7 That's the point.

8 A. Well, I mean, it's sort of damned if I do,
9 damned if I don't answer that question.

10 Did he say something that I don't know
11 agree with? I don't know. If I answer the question
12 yes, then I'm going to be punished for it. So if
13 you could be more specific.

14 Q. Was it your intent in eliciting reports and
15 testimony from Mr. Taylor that he provide valid
16 opinions?

17 A. Yes.

18 Q. And you would have corrected him if it was
19 an opinion that you thought was invalid, right?

20 A. If I caught something that I thought was
21 relevant and valid, I would have noted it, yes.

22 Q. Prior to your resignation from Storix, you
23 estimated that you worked 50 hours a week on the
24 Version 9.1 product -- project; is that right?

25 A. I believe at times I said 50 to 60.

26 Q. Fifty to 60. And that was from mid-2013
27 until May of 2014; is that right?

28 A. It was probably -- well, no. The

1 develop -- the full-time development work probably
2 began in October. It was probably three months --
3 three to four months before that was spent doing
4 research and documentation.

5 Q. What sort of hours were you working then
6 during that period weekly?

7 A. Which period?

8 Q. The research and documentation you just
9 noted. Was it 50 to 60 hours the entire time?

10 A. I don't know. A great deal more time has
11 passed. Since it's been two years -- two-plus years
12 since that report was written, I would have had a
13 much clearer idea then. I'm not sure I could
14 provide as accurate an answer now.

15 Q. Storix never gave you informed written
16 consent to pursue Janstor, did it?

17 A. There was -- I saw no need to pursue
18 written consent.

19 Q. When we began this case, Mr. King, in his
20 opening, said you were like Milton from Office
21 Space.

22 Do you feel like Milton from Office Space?

23 A. I saw the movie. I know the reference. I
24 am not personally like Milton from Office Space, but
25 I believe the reference to -- was to the way the
26 company was treating Milton from Office Space, and
27 there are certainly parallels.

28 Q. How about Berg? Are you like Berg?

1 A. Pardon me?

2 Q. Are you like Berg?

3 A. I'm sorry. Berg doesn't have a
4 personality.

5 MR. SULLIVAN: Your Honor, I have no
6 further questions at this time.

7 THE COURT: All right. And I asked you to
8 reserve on Exhibit 139, and I'm ready to rule,
9 unless there's something more specific.

10 MR. KING: Nothing more specific.

11 THE COURT: And again, just so -- 1152?

12 MR. KING: Correct.

13 THE COURT: Anything else?

14 MR. KING: (Shakes head.)

15 THE COURT: Okay. So I don't know how --
16 what you can do. I know you just finished your
17 questioning, Mr. Sullivan, but the objection on
18 Exhibit 139 is overruled. So if you want to pursue
19 that now, if you want to yield to Mr. King and
20 reserve on that, you may, whatever you'd like to do.

21 MR. SULLIVAN: I'm happy to yield and
22 reserve, Your Honor.

23 THE COURT: All right. Mr. King?

24 THE CLERK: Your Honor, to clarify, is 139
25 received?

26 THE COURT: 139 is received.

27 (Exhibit 139 received.)

28 THE CLERK: Thank you.

CROSS-EXAMINATION

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MR. KING: Robin, if we could put up Exhibit 20 again.

BY MR. KING:

Q. Mr. Johnson, explain. This is an e-mail between you and Mr. Jeff Harding, correct?

A. Yes.

Q. And this was on -- this was actually two e-mails, because it looks like there's an e-mail that Jeff Harding sent to you at 1:00 p.m. on February 26, 2015, and then it looks like you had a response later that afternoon.

A. Yes.

Q. And just so I'm clear, the indented portions, they are Mr. Harding speaking, right?

A. Yes, and the nonindented portions are where I'm actually replying to his indented portions, I believe.

Q. Okay. Mr. Harding, is he one of the people that talked to you about Procopio's law firm?

A. Yes.

MR. KING: Robin, if you could scroll down to the bottom of the page, please.

BY MR. KING:

Q. There's an indented paragraph there. It says, "Take the money and start another company."

That's Mr. Harding's e-mail to you, right?

A. Yes.

1 Q. And then the paragraph below that is your
2 response?

3 A. Yes.

4 Q. Did you tell -- did you tell Mr. Harding --
5 was Mr. Harding asking you to -- asking if -- I'm
6 sorry.

7 Did you agree with Mr. Harding's suggestion
8 about starting a new company?

9 A. No.

10 Q. Why not?

11 A. For the reasons that I -- I stated.
12 Specifically, I spent ten years developing the
13 company resources they now have, including the
14 staff, equipment, certifications, business partners,
15 sales, support, and licensing apps.

16 If I started a company today, it would be
17 at least six months to have anyone trained enough to
18 provide even basic support, and I would still have
19 to rewrite much of the current code and the entire
20 website and the Web interface to the product.

21 Q. So if you're not competing with the
22 company, you're not -- if you don't have the
23 resources to start up a new competitor company,
24 what's the point of having Janstor? Why did you --
25 why did you start it?

26 A. Well, again, just as I had had
27 conversations with Ms. Sassi on the phone, I had
28 conversations with Jeff Harding on the phone.

1 Q. Hold on. Let me interrupt you. I'm not
2 asking about your conversation with Mr. Harding.
3 I'm asking why did you start Janstor if it wasn't --
4 if -- you know, if was there -- you know, there's --
5 you didn't have the resources to compete with
6 Storix?

7 A. And my comment was only to preface that
8 things that I say in an e-mail, he will understand
9 beyond what you see on the e-mail based on
10 conversations that we've had.

11 Q. Okay.

12 A. And part of that conversation was that I
13 was worried that they had now taken Storix into
14 negative numbers.

15 Q. What do you mean by "negative numbers"?

16 A. Well, Storix had never lost money before.
17 In 2010/2011, it was making a million dollars in
18 profit, and now it's losing money. And that was --
19 this is at a time when there was a relatively small
20 amount of litigation expense.

21 Q. But Storix --

22 A. But nevertheless --

23 Q. Storix had enough money saved up to go on
24 for a long time, right?

25 A. Well, no, it didn't. I mean, it -- well, I
26 would say that it would have gone on for a long time
27 with the money that it had saved up if it hadn't
28 given all of that money away by the end of 2015 and

1 plus about a half million dollars more, so --

2 Q. What do you mean "given away"?

3 A. Given it to the attorneys.

4 Q. Spent it on litigation?

5 A. Yes.

6 Q. You expected, because of litigation
7 expenses, Storix was going to run out of money and
8 have to file bankruptcy?

9 MR. MCCLOSKEY: Objection. Leading.

10 THE COURT: Sustained.

11 BY MR. SULLIVAN:

12 Q. What did you think was going to happen to
13 Storix?

14 A. The entire premise of all of this was
15 knowing the situation that the company was getting
16 into, the determination of the defendants to
17 continue the litigation at any cost to the company
18 and it appeared to be with complete disregard to the
19 product itself and the product improvements, and
20 simply spending all of the profits and, therefore,
21 all of the shareholder funds, resulting, of course,
22 in Ms. Sassi and I having all of our income cut off.

23 There was no doubt, given that the
24 litigation at this stage had -- you know, had barely
25 begun, that the company would very likely be wiped
26 out. And we did know at this point that the company
27 had already suffered its first loss in its history.

28 So -- and I expressed this to Robin. I

1 expressed this to Jeff. And I was very worried no
2 longer about the employee shareholders, who were
3 deciding their own fate, but the other employees of
4 the company who, if there was any chance of this
5 business conceding -- sorry -- succeeding, were
6 going to be very much needed and valuable.

7 The assets of the company including the
8 computers and the software and the building and
9 lease and so forth, whatever physical assets that
10 were needed, simply, you know, couldn't go into
11 receivership or the company would never survive.

12 So the intent was, therefore, to basically
13 create a -- just create a cheap corporation, have it
14 in reserve, a California corporation, one which
15 could quickly buy up the assets if the company was
16 no longer to pay its legal bills.

17 And I mistakenly was under the impression
18 that attorneys would not just endlessly pour money
19 into a company that doesn't pay its legal bills,
20 but --

21 MR. MCCLOSKEY: Objection, Your Honor.
22 Motion in Limine Number 3, Your Honor.

23 THE COURT: Granted. Treat it as a motion
24 to strike as to the last portion.

25 MR. MCCLOSKEY: I was just going to ask you
26 to move to strike.

27 THE COURT: Next question.

28

1 BY MR. KING:

2 Q. So what exactly did Janstor have to do with
3 saving the company?

4 A. It -- it's -- well, first and foremost, it
5 served the purpose of -- of knowing that there was a
6 good -- you know, really the only chance to really
7 increase the viability or marketability of a product
8 would be to change its brand name at this point, and
9 not just because of the tarnished representations
10 that it suffered as a result of the litigation, but
11 the fact that the software hadn't been upgraded in
12 so many years.

13 And the second reason being that, you know,
14 I wanted to be able to keep the company running or
15 keep the business running if the company suddenly
16 became insolvent. And that was a very real big fear
17 of me -- of mine. I did not want to start a new
18 company. I didn't want to run any company, but I at
19 least wanted to try to keep this one in business if
20 it were insolvent and -- well, technically, it's
21 been insolvent for several years now, but it's
22 been --

23 MR. MCCLOSKEY: Objection, Your Honor.
24 This is narrating.

25 THE WITNESS: -- operating in the dark --
26 in the black, so --

27 THE COURT: Sustained.

28 THE WITNESS: Sorry.

1 THE COURT: Granted as to the last portion.

2 BY MR. KING:

3 Q. Why not --

4 THE COURT: Motion to strike. Next
5 question.

6 BY MR. KING:

7 Q. Why not wait to start up Janstor until
8 after Storix goes insolvent? Why did you have to do
9 it before?

10 A. By that --

11 MR. SULLIVAN: Objection. Lacks
12 foundation. Calls for speculation.

13 THE COURT: Sustained.

14 BY MR. KING:

15 Q. Why did you want to start up Janstor before
16 Storix ever entered into insolvency?

17 MR. SULLIVAN: Objection. Lacks
18 foundation. Calls for speculation.

19 THE COURT: Sustained.

20 BY MR. KING:

21 Q. Why did you want to start up Janstor at the
22 time that you did?

23 A. I think that the answer's reflected in one
24 of the e-mails that you might want to present that I
25 think there's still some discussion over right now,
26 and it had to do with the fact that I was very
27 fearful that the -- that there would be no human
28 resources left of Storix, and that was the most

1 valuable thing.

2 I can buy computers. Okay. I can, you
3 know, can -- you know, a lot of things that I can
4 do, but the hardest thing to do is to get a
5 productive employee, particularly in a technical
6 business, because it's very hard to have any -- any
7 technical employee in a technical role to be, you
8 know, a good contributor within six months. And
9 that's going to take a lot of money. And honestly,
10 I was running out of money and I wasn't -- and I
11 didn't have any income. So how am I going to do
12 this?

13 I -- you know, it was just a matter of
14 trying desperately to salvage whatever might be left
15 of Storix when this ended. And I couldn't see any
16 end in sight, so there's naturally a lot that led to
17 the time frame in which -- you all have heard the
18 "Buckle up, boys" e-mail, but that came much later.

19 I mean -- so there were certainly a -- you
20 know, the company was clearly getting itself into
21 trouble. And by the time we got that point, that --

22 MR. MCCLOSKEY: Objection, Your Honor.

23 THE WITNESS: -- trouble was --

24 MR. MCCLOSKEY: -- we have narration again.
25 Move to strike.

26 THE COURT: Sustained. Granted as to the
27 last part.

28

1 BY MR. KING:

2 Q. Anthony, did you want Storix to fail?

3 A. I don't know how many -- I did everything I
4 could possibly do or think of to try to prevent that
5 from happening, every -- but yet everything that I
6 tried to do to save the company was twisted around
7 to say, Look, he's trying to destroy the company.
8 And I get sued for it, so I end up doing more damage
9 to the company by trying to help it, because of the
10 kickback that I'm getting.

11 Q. Did you want Storix to fail so you could
12 start up Janstor after it failed?

13 A. I absolutely hated the idea of starting a
14 new company. Okay. Having a company that -- it
15 might be considered a new company. But to have a
16 company that could simply buy up the assets and take
17 over the employees and the operations of another
18 company to keep running, you know, that was
19 certainly ideal.

20 And I've said repeatedly for many years, I
21 hate running a company. They -- I mean, the
22 defendants know it. I've said it throughout the
23 copyright trial and everything else. I -- and they
24 asked me themselves if I wanted to come in and run
25 the company again --

26 MR. MCCLOSKEY: Objection, Your Honor.

27 THE WITNESS: -- and I said no.

28 MR. MCCLOSKEY: Narrative again. Move to

1 strike.

2 THE COURT: I think he's answered the
3 question. Is this a good time to take our evening
4 recess?

5 MR. KING: I believe it is.

6 THE COURT: Ladies and gentlemen, have a
7 great next three days. Enjoy. Remember the
8 admonition, and we'll see you back at 9 o'clock on
9 Monday, February 5. Thank you.

10 (Whereupon the jurors exit the courtroom.)

11 THE COURT: Thanks, Mr. Johnson. You can
12 step down.

13 We're outside the presence ever the jury.
14 So what I'd like -- let's do this. Let's resume at
15 8:50 -- in other words, ten minutes before 9:00 --
16 on Monday. We need to talk about a few of these
17 exhibits that the Court has reserved on.

18 MR. KING: Okay.

19 MR. MCCLOSKEY: Can we also talk about
20 Mr. Johnson's testimony? because I think this is
21 what's going to happen the next day, Your Honor. I
22 am not happy about interrupting testimony. I'm not
23 happy about making objections to narration. But if
24 Mr. King asks a question, "What day is today?" and
25 then he just goes on about his life story,
26 Your Honor, I'm going to make the objection.

27 THE COURT: Understood. We can -- I think
28 the answer is more question and answer for

1 everybody, but we can talk about that more.

2 And have a great three days. During the
3 three days, I'd ask that you continue to meet and
4 confer. We've gone down the road farther with
5 regard to jury instructions and special verdict. Do
6 you want the packet of jury instructions I have in
7 chambers to do that, or are you good to go? In
8 other words, so you know what's posted.

9 MR. KING: I think there's going to be some
10 stuff that we probably want to have some more input
11 on.

12 THE COURT: Okay. But do you need the
13 packet that you --

14 MR. KING: We don't need the packet.

15 THE COURT: Okay. But if you can continue,
16 because I want it narrowed. Okay?

17 MR. KING: Okay.

18 THE COURT: Thank you. Have a great three
19 days. We'll see you on Monday, 8:50.

20 MR. MCCLOSKEY: Thank you, Your Honor.

21 (The proceedings concluded at 4:31 p.m.)

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1 STATE OF CALIFORNIA)
2 COUNTY OF SAN DIEGO)

3

4 I, Leyla S. Jones, a Certified Shorthand
5 Reporter, do hereby certify:

6 That prior to being examined, the witness
7 in the foregoing proceedings was by me duly sworn to
8 testify to the truth, the whole truth, and nothing
9 but the truth;

10 That said proceedings were taken before me
11 at the time and place therein set forth and were
12 taken down by me in shorthand and thereafter
13 transcribed into typewriting under my direction and
14 supervision;

15 I further certify that I am neither counsel
16 for, nor related to, any party to said proceedings,
17 nor in any way interested in the outcome thereof.

18 In witness whereof, I have hereunto
19 subscribed my name.

20

21 Dated: January 16, 2019

22

23 
24 _____
Leyla S. Jones
25 CSR No. 12750

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27

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