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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION

STORIX, INC., a California corporation, Plaintiff, v. ANTHONY JOHNSON, JANSTOR TECHNOLOGY, a California corporation, and DOES 1-20, Defendants.	Case No. 37-2015-00028262-CU-BT-CTL Judge: Hon. Randa Trapp **DEFENDANT JOHNSON'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO STRIKE PLAINTIFF'S SAC** Date: October 16, 2016 Time: 11:00AM Dept: C-70

I. INTRODUCTION

Plaintiff wastes no time in alleging that Johnson has engaged in competition with Storix, but the SAC only alleges that Johnson *intended* to compete. They also say Johnson *tried* to destroy Storix' customer and employee relationships, not that he actually did. Again they ignore the fact that harm is a requirement for a cause of action of breach of fiduciary duty.

Plaintiff jumps right to a footnote saying that Johnson sued Storix in a copyright lawsuit and lost, then that Storix was awarded attorney fees due to Johnson's litigation misconduct. Storix sued Johnson for ownership of Johnson's registered copyright. Johnson didn't sue Storix for ownership. He didn't

think he needed to. Plaintiff fails to draw a nexus between Johnson's alleged misconduct regarding a copyright and any allegations against him in this complaint.[1]

Plaintiff tries to rescue this frivolous lawsuit by now saying that they must prevent *further* harm to Storix, when they never claimed any *prior* harm to Storix. And, of course, they insist that Johnson's acts are despicable and his conduct outrageous. Any person of reasonable intelligence can see the hypocrisy in Plaintiff's allegations. The only harm caused to Storix is due to its management paying $2M to corporate attorneys in their attempt to litigate Johnson into bankruptcy, demanding injunctive relief against Johnson for no other purpose than to conceal their unethical conduct and illegal financial dealings.[2]

Storix has paid every penny of company profits for over two years to corporate attorneys, depriving Johnson of any income while forcing him to defend allegations of his intentions and motivations. They spare no expense in restating the same baseless and irrelevant allegations in their Opposition to Johnson's Demurrer and Motion to Strike, further proving their determination to destroy Johnson at any cost to the company.

Johnson never asked the Court to strike allegations because he disagrees with them. He asks the Court to strike them because they are simply conclusions drawn by the Plaintiff without factual basis. Such allegations are irrelevant to any Complaint, much less one demanding such extraordinary relief.

II. DISCUSSION

A. Standard for a Motion to Strike

Plaintiff is correct in saying that "In challenging the sufficiency of the facts alleged in a count of a complaint to constitute a cause of action, a demurrer, rather than a motion to strike, is the better practice." For this reason, Johnson does not challenge herein the sufficiency of the facts alleged.

Irrelevant and redundant matter inserted in a pleading may be stricken by the court. (*See* California Code Civ. Proc. (CCP) §453. A court may strike false, untrue, matters contained in a pleading whenever their falsity or untruthfulness is revealed by facts which are judicially noticed. (CCP§§ 436,

[1] Plaintiff omits that the jury decision is pending appeal as a matter of law, and that the fee award is pending reconsideration after Johnson revealed *Storix's* litigation misconduct, misrepresentation of evidence, and complete fabrication of Johnson's actual testimony.

[2] Until this Opposition, Plaintiff has never alleged that Johnson chased away any employee or strained any customer relationship. Plaintiff cannot now allege broad conclusory facts to support their demands for injunctive relief.

437.) Johnson challenges the relevance as well as the truth of facts of the complaint revealed by judicial notice.

Citing *PH II, Inc. v. Superior Court*, 33 Cal. App. 4th 1680, 1683, 40 Cal. Rptr. 2d 169, 171 (1995): "The motion to strike is widely used to challenge portions of causes of action seeking punitive damages. (See e.g., *Grieves v. Superior Court* (4th Dist.,1984) 157 Cal.App.3d at p. 164, 203; 203 Cal.Rptr. 556.) Its use has also been approved in a case where the face of the complaint failed to state facts showing a ***primary right of the plaintiff*** and a ***primary duty of, or wrong committed by, the defendant***. (*Lodi v. Lodi* (1985) 173 Cal.App.3d 628, 631, 219 Cal.Rptr. 116.)." (emphasis added.)

"A trial court has authority to strike ***sham pleadings***, or those not filed in conformity with its prior ruling. *Lyons v. Wickhorst* (1986) 42 Cal.3d 911, 915, 231 Cal.Rptr. 738, 727 P.2d 1019. (emphasis added.)

B. Johnson's Move to Florida is Proven and Justifies Striking Allegations Falsely Relying on Johnson's California Residency

Johnson asks the Court to strike allegations of events occurring after Johnson moved to Florida. In this instance, Johnson doesn't challenge the truth of the allegations themselves, but the truth of Plaintiff's claim that the events occurred when Johnson was a resident of California.

Whether or not Johnson made a general appearance is not relevant. Storix can't rescue their false material by now claiming they "believed" Johnson lived in California at the time events occurred, when admissible evidence presented clearly shows Plaintiffs knew otherwise. Plaintiff served the original Compliant to Johnson at his Florida residence, then amended the compliant with allegations occurring after that time. Plaintiffs now try to persuade the Court to ignore such a technicality, while repeatedly directing the Courts attention to technicalities that might weigh in favor of continuing this frivolous lawsuit.

Storix lied, and now they're looking for a technicality to permit their lies to be admissible. The Court should strike facts, allegations, and requests for relief that are based on false material.

C. It is Proper for Johnson to Challenge Facts in a Motion to Strike

As stated above, the MTS may be used to strike facts and allegations that are false, irrelevant, or redundant. And "irrelevant" facts include those that are Plaintiff's contentions, deductions and

conclusions of fact and law. Plaintiff misstates statutes which provide for the use of judicially noticeable documents as evidence. Such documents are not limited to the courts own records.

Conclusory allegations *should* be stricken when they are *not* supported by other factual allegations of the complaint. Factual allegations which themselves are conclusory cannot be used to support other conclusions. Even here, Plaintiff tried to say that their claims of "oppression, fraud and malice" are properly supported by their claims of Johnson's "intent".

In typical fashion, Plaintiff misquotes the MTS by saying Johnson claims "That Johnson's conduct did not amount to a breach of fiduciary duty, but rather permissible solicitation by a departing employee, fid. at p. 5:7-25)." Johnson didn't claim his solicitation was permissible, he said there was no solicitation. Storix failed to state facts to the contrary, so now they're trying to put the words in Johnson's mouth.

Johnson's challenges are valid. Storix cannot dictate Johnson's intentions in a Complaint the same way they already did once to a jury. Any such allegations should be stricken before Storix counsel can waste any more of the company's money and the Court's time on irrelevant and insufficient arguments.

D. Storix Did Not Allege Improper Competition

Plaintiff alleged in the Compliant that Johnson's formation of a company, registration of a domain name and registering "ports" amounts to unlawful competition. Plaintiff added to the FAC allegations of Johnson sending an email to some undisclosed "past, current, and/or potential future customers." These irrelevant facts pertaining to punitive damages and injunctive relief were previously stricken by the Court when ruling on the motion to strike the FAC in August 2016, and Plaintiff added nothing to the SAC to support their claim that Johnson is illegally competing with Storix or what even constitutes illegal competition.

Here, Plaintiff says "his arguments are based on disputed factual contentions". Not true. Johnson isn't arguing facts because Plaintiff isn't stating facts, only conclusions of fact. Plaintiff wants the chance to again persuade a jury that Johnson had intentions and motivations he did not, but they must first provide actual facts in their Complaint. Johnson's intentions and motivations are not facts, and are irrelevant and subject to motion to strike at this early stage. Any contentions, deductions and

conclusions unsupported by factual allegations are irrelevant to a cause of action. Plaintiff's complaint, the FAC, the SAC and the hundreds of thousands of dollars of Johnson's own company profits spent on this frivolous lawsuit is nothing but harassment, and Johnson is entitled to demand that the Plaintiff state factual allegations *he can actually answer*.

Plaintiff also ignores the rules as detailed in the MTS regarding Johnson's right to exercise his business judgment. Plaintiff is incorrect that the **business judgment rule (BJR)** is "beyond the scope of a motion to strike." Johnson invoked the business judgment defense in the MTS, which is his first opportunity to do so. Johnson doesn't have to wait for a summary judgment or a trial to invoke the defense, since it's the burden of the Plaintiff to state facts in the complaint sufficient to defeat the business judgment defense.

The rule operates as both a procedural guide for litigants and a substantive rule of law. As a rule of evidence, it creates a "presumption that in making a business decision, the directors of a corporation acted on an informed basis [i.e., with due care], in good faith and the honest belief that the action taken was in the best interest of the company." *Cede & Co. v. Technicolor*, 634 A.2d 346 (Del. 1993) (quoting *Aronson v. Lewis*, 473 A.2d 805, 812 (Del. 1984). A plaintiff wishing to challenge a board's action bears the burden of proving that the board, in making the disputed decision, breached one or more of its fiduciary duties of good faith, loyalty, or due care. (*Id* at 361.) If a plaintiff is unable to meet this burden, the business judgment rule applies to protect the directors, effectively precluding the courts from interjecting themselves into the corporate dealings. (*Id*.)

Allegations may be stricken as an exercise of business judgment at the discretion of the Court, and Johnson is entitled to equal opportunity to apprise the Court of the facts.

E. Storix Alleges No Despicable Conduct Warranting Exemplary Damages

This Court properly struck all allegations related to punitive damages in the hearing to demurrer the FAC in August. The Plaintiff was granted leave to amend based on their claim that "new information" was discovered. Plaintiff added no new information to the SAC.

Plaintiff attempts to create a factual dispute when claiming that Johnson demanded customers "cease any further payment to Storix in relation to [use of SBAdmin] and refrain from downloading any further copies." They do so by omitting that Johnson was warning customers of potential copyright

issues expected to be resolved within the month, and that the version they were in possession of exposed them to serious data breaches due to security vulnerabilities, which he said would also be resolved as soon as the copyright issue was resolved. A decision to protect Storix customers from hazardous exposure is a decision protected by the **business judgment rule**, and Plaintiff bears the burden of proving such action was with malicious intent or actually caused harm to Storix. Plaintiff's partial quote, taken out of context, does nothing to show such intent or harm and thus does not contribute to their claims that Johnson breached a fiduciary duty to Storix. The factual allegation is thus irrelevant.

Plaintiff repeatedly claims that Johnson "directed threats to non-shareholder employees of Storix" (SAC ¶ 18), but doesn't say what threat was made. Again they quote only a partial statement from a lengthy email saying "you and the other innocent employees are about to lose your jobs." (SAC ¶ 18.) Plaintiff provides no facts to support their contention that this was a threat to the employee. Plaintiff does not state that the employee actually felt threatened, that the employee left the company, that the company was harmed, or what harm he caused. Plaintiff's tactics for stating partial quotes out of context do not afford Johnson sufficient facts with which to answer such an allegation. The factual allegation is thus irrelevant.

Plaintiff's added to the SAC a single ludicrous allegation that Johnson "stole" a copy of the software in 2014. (SAC ¶ 20). Plaintiff was so desperate to make some "new" claim of wrong-doing which occurred before Johnson moved to Florida that they chose a benign event which occurred more than two years ago. Johnson not an officer or director at the time, and Storix had made no claim of ownership of the software at the time. Plaintiff never raised the issue of Johnson "stealing" a *copy* of the software he wrote until now, but somehow this suddenly rises to a level of "oppression, fraud and malice" (SAC ¶ 19, 31) and supports their contention of both fact and law that Johnson intends to "illegally compete". The factual allegation is thus irrelevant.

Plaintiff claims Johnson "broadcast[ed] false statements about Storix, Inc.'s products and disparage[d] Storix, Inc.'s management". (SAC ¶ 28.) Again, Plaintiff provides no facts to support this broad contention. Johnson cannot answer to such a broad and conclusive allegation. As such, the allegations are irrelevant.

The Court can exercise its discretion in striking false and irrelevant matter, and Johnson hopes the Court will reasonably interpret Plaintiffs' claim as a clearly desperate attempt to continue this frivolous complaint for no other purpose than to deliberately harass and financially harm Johnson.

F. Injunctive Relief is Improper Because Plaintiff Has Not Shown a Potential of Irreparable Harm

Plaintiff restated in the SAC the same factual allegations from the FAC, still misconstruing the intent and context of an email. Storix has referred to the target of this email in other pleadings as "undisclosed recipients", "a previously outdated customer list", "past, present and/or potential future customers" and now "an unknown number of Storix customers". Plaintiff can't even decide who saw the email, much less how Storix was harmed by it. Plaintiff again ignores the rulings of a federal court, as detailed in the MTS and judicially noticed Orders of their first two attempts at injunctive relief, indicating that Plaintiff themselves admitted it suffered no harm as a result of the email, and that an injunction on the basis of this email would raise issues of Johnson's First Amendment rights. That was over a year ago, yet Storix is still attempting to get an injunction, now in State court, to protect Storix from some unknown irreparable harm that has never manifested.

Plaintiff tries desperately to justify their complete mischaracterization of one email by concluding in each of their bullet points Johnson's alleged (1) "intent" (2) "desire" (3) "hatred" and (4) "belief". Plaintiff states in the Opposition "It is apparent that Johnson will continue his campaign to harm Storix' reputation and relationships and to bully its management and shareholders" and that Johnson "will continue bad-mouthing the company and threatening its employees". Even if the Court considered Plaintiffs' conclusion that Johnson intended to cause harm to Storix, there are no allegations of Johnson "bullying" anyone, "bad-mouthing" the company, and their contention that Johnson threatened an employee can be clearly disproven by examining the actual content of the email containing Plaintiffs' partial quote. Johnson provides the email as evidence, most importantly to prove the date of the email, but also to allow the Court to search its contents for any statements which can be reasonably interpreted as a threat. The Court doesn't need to draw any factual conclusions in doing so.

Plaintiff attempts to defend their one weak added allegation in the SAC by saying "Johnson had no right to abscond with Storix's confidential property in order to seek to compete with the company

and potentially disclose that information to unauthorized third parties." They refer, of course, to Johnson taking home a *copy* of the software code in May 2014 – code he first authored in 1998 and continuously improved for over 15 years. The SAC refers to this action as "stealing", but for unknown reasons this has suddenly, after more than two years, risen to despicable conduct warranting an injunction to prevent some unknown future harm. Johnson has had the software he developed in his personal possession for 17 years.

Plaintiff contends that Johnson formed a business in February 2015 (SAC ¶14), nine (9) months after he apparently "absconded" with Storix' software, but didn't file this action against Johnson until August 2015. Storix didn't file the Complaint against Johnson for actually competing with Storix, they filed the Complaint against Johnson for allegedly failing to *disclose* to Storix that he *intended* to compete. IN The SAC they now claim that Johnson "manifest[ed] his intent to directly complete with Storix" (SAC ¶ 17), still without stating any facts to support that contention. If Johnson had formed a competing business that harmed Storix, Plaintiff could easily have stated facts to show that this competing business had a functioning website, advertised a competing product, or that Johnson diverted business from Storix to himself. Plaintiff states no facts to support their conclusion that Johnson completed with his own company, that Storix was harmed in any way, and any such broad allegations are irrelevant.

Plaintiff has sought an injunction three times before and a restraining order twice. Most were based on the *existence* of this complaint, and the final was a ***Workplace Violence Restraining Order*** heard by another State civil court on September 26. The Plaintiffs submitted declarations that were so outrageous, and entirely disproven by Johnson's written response, that Storix counsel didn't argue a single allegation. Instead, they accused Johnson of having three lawsuits *against Storix* and lying about *gifting* stock to his employees. The court noted that the Plaintiffs made no mention of a threat of violence and denied the restraining order with prejudice.

Even if the Court were to accept every one of Plaintiffs accusations and deductions as true, there are no facts to support any continued "campaign" warranting injunctive relief. This Court has already dismissed all allegations regarding both punitive damages and injunctive relief, and this SAC added

nothing to justify either. If anything, the nature of this compliant and the undue effort of this Opposition show that Johnson, not Storix, should be awarded both.

V. CONCLUSION

Plaintiffs' have clearly exhausted every effort and caused massive expense to Storix to prevent Johnson, or anyone who supports him, from seeing the company's financial records. For two and a half years, the officers and directors have used their majority positions and Storix funds to try to bankrupt Johnson by litigation while using Storix funds to shield themselves from all personal legal costs.

There is no reason to believe that the defects of this SAC can be cured by amendment. Plaintiffs claimed they could cure previous defects in the allegations of their FAC with new information, but provided no new information.[3] A motion to strike may be used attack allegations of meritless complaints, and this MTS has done so. Plaintiff's should not be allowed to invent any new allegations, and this SAC should be dismissed with prejudice.

DATED: October 6, 2016

/s/ Anthony Johnson
ANTHONY JOHNSON
Self-Represented

[3] Plaintiff requests leave to amend again, saying "Storix should be allowed to add specific causes for trade secret misappropriation [of trade secrets]." Storix has had over a year to state facts to support their meritless accusations, and the court does not abuse its discretion in putting an end to their abuse of process.