

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 08/26/2016

TIME: 11:00:00 AM

DEPT: C-70

JUDICIAL OFFICER PRESIDING: Randa Trapp

CLERK: Anthony Shirley

REPORTER/ERM: Lois Mason Thompson CSR# 3685

BAILIFF/COURT ATTENDANT: S. Parriott

CASE NO: **37-2015-00028262-CU-BT-CTL** CASE INIT.DATE: 08/20/2015

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

CASE CATEGORY: Civil - Unlimited CASE TYPE: Business Tort

EVENT TYPE: Demurrer / Motion to Strike

MOVING PARTY: Anthony Johnson

CAUSAL DOCUMENT/DATE FILED: Demurrer, 04/13/2016

APPEARANCES

Sean M Gaffney, counsel, present for Plaintiff(s).

Anthony Johnson, self represented Cross - Complainant, present.

The Court hears oral argument and MODIFIES AND CONFIRMS the tentative ruling as follows:

(1) DEMURRER TO PLAINTIFF'S FIRST AMENDED COMPLAINT by defendant Anthony Johnson is OVERRULED.

(2) MOTION TO STRIKE PORTIONS OF PLAINTIFF'S FIRST AMENDED COMPLAINT by defendant Anthony Johnson is GRANTED in part and DENIED in part.

In ruling on a Demurrer or Motion to Strike, the court cannot consider facts outside the pleadings unless judicial notice has been requested and granted. Therefore, the court has not considered declarations submitted with the reply and any evidence attached to the declarations. **The court grants defendant's request for judicial notice that various pleadings were filed in other court cases.**

The Demurrer and Motion to Strike are brought by defendant Anthony Johnson, who is in pro per. Defendant Janstor Technologies is an alleged California corporation and unrepresented. Mr. Johnson cannot appear on behalf of the corporation. The court thus has not considered arguments made by Mr. Johnson on behalf of the corporation.

The Demurrer is overruled because there are sufficient facts pled to support the claims for breach of fiduciary duty and aiding/abetting breach of fiduciary duty. (See, *Berg & Berg Enterprises, LLC v. Boyle* (2009) 178 Cal.App.4th 1020, 1037; *Bancroft-Whitney Co. v. Glen* (1966) 64 Cal.2d 327, 347 **disapproved of by *Frantz v. Johnson* (2000) 116 Nev. 455**)

The Demurrer based on standing is overruled as **defendant has not shown this is a shareholder**

derivative lawsuit. (See, *Jones v. H. F. Ahmanson & Co.* (1969) 1 Cal.3d 93, 106–07)

The Motion to Strike is granted as to punitive damages and injunctive relief as there are insufficient facts pled to support this relief. The Motion to Strike is denied as to allegations that Johnson is a citizen of California, as the argument relies on extrinsic evidence that cannot be considered in a Motion to Strike.

Leave to amend is granted. Plaintiff may file an amended complaint within ten days. Any Demurrer and/or Motion to Strike shall be heard on October 14, 2016. Defendant shall comply with CCP § 430.41.

IT IS SO ORDERED.

Randa Trapp

Judge Randa Trapp