

1 Paul A. Tyrell (Bar No. 193798)  
E-mail: paul.tyrell@procopio.com  
2 Sean M. Sullivan (Bar No. 254372)  
E-mail: sean.sullivan@procopio.com  
3 PROCOPIO, CORY, HARGREAVES & SAVITCH  
LLP  
4 525 B Street, Suite 2200  
San Diego, CA 92101  
5 Telephone: 619.238.1900  
Facsimile: 619.235.0398

6 Attorneys for Nominal Defendant Storix, Inc.  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN DIEGO - CENTRAL DIVISION

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

12 Plaintiffs,

13 v.

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

17 Defendants.  
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Case No. 37-2015-00034545-CU-BT-CTL

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
NOMINAL DEFENDANT STORIX,  
INC.'S DEMURRER TO COMPLAINT

IMAGED FILE

Date: April 1, 2016  
Time: 9:00 a.m.  
Dept: C-73  
Judge: Hon. Joel R. Wohlfeil

Complaint Filed: October 13, 2015  
Trial Date: Not Yet Set.

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1 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

2 Storix, Inc. (“Storix” or the “Company”) is a nominal defendant in this derivative suit.  
3 However, it is proper for a nominal corporate defendant in a derivative suit to raise certain  
4 defenses, as when the plaintiffs lack standing to sue derivatively for reasons of insufficient  
5 representation or if there is a failure on the plaintiffs’ part to make a demand upon the board of  
6 directors. *See Patrick v. Alacer Corp.*, 167 Cal.App.4th 995, 1006 (2008). Such circumstances  
7 exist here.

8 First, Plaintiffs Anthony Johnson and Robin Sassi cannot adequately represent the interests  
9 of Storix. Johnson is the angry, hostile and disloyal founder of Storix, who has spent the better part  
10 of the past two years waging war against Storix and its management. Johnson’s co-plaintiff Sassi  
11 has actively supported Johnson’s efforts to harm the Company.<sup>1</sup> Given their demonstrated animus  
12 toward Storix and its other shareholders, Johnson and Sassi should be disqualified from suing on  
13 Storix’s behalf, whether such disqualification is to be framed as a lack of standing or as a matter of  
14 equity.

15 Second, in their haste to file the vaguely alleged claims set forth in their Complaint,  
16 Plaintiffs neglected to make a demand upon Storix’s board of directors. Having failed to take that  
17 mandatory first step, and without meaningful allegations of demand futility, Johnson and Sassi lack  
18 standing to pursue this action.

19 For these reasons, Storix respectfully requests that its demurrer be sustained and this  
20 wasteful action be dismissed.

21 **II. PERTINENT FACTUAL BACKGROUND**

22 **A. The Parties**

23 Storix. Storix is a business that develops and sells a software product called “System  
24 Backup Administrator,” aka “SBAdmin.” Complaint at ¶ 1. SBAdmin streamlines the backup and  
25 recovery of computer systems, allowing for “bare metal backup,” i.e., recovery of a backed-up  
26 system on new out-of-the-box computers in the event of a system failure or loss of data. *Id.*

27  
28 <sup>1</sup> Sassi and Johnson are close personal friends and “besties”; Sassi is also the ex-wife of Storix’s President and CEO.

1            Plaintiffs. Plaintiff Johnson founded Storix in 1998 as a sole proprietorship, and  
2 incorporated the Company in 2003. *Id.* at ¶ 12. Johnson is a member of the Company’s board of  
3 directors and a 40% shareholder, but he is no longer an employee or an officer. *Id.* at ¶¶ 2, 13.  
4 Storix is informed that Johnson moved to Florida at some point in 2015. Plaintiff Sassi never  
5 worked for Storix. She obtained her Storix shares (just over 7%) as a result of a property division  
6 stemming from her 2013 divorce from David Huffman, Storix’s current President and CEO. *Id.* at  
7 ¶¶ 3, 23. With help from Johnson, Sassi became a Storix director in February 2015.

8            Individual Defendants. Defendants David Huffman (“Huffman”), Richard Turner  
9 (“Turner”), and Manuel Altamirano (“Altamirano”) are long time employees of Storix; since 2011,  
10 they have also been shareholders and directors. Complaint ¶¶ 4, 5, 7. Defendant David Kinney  
11 (“Kinney”) is a former employee and former director of Storix; Kinney remains a minority  
12 shareholder of Storix. *Id.* ¶ 6. Defendant David Smiljkovich (“Smiljkovich”) is Storix’s Chief  
13 Financial Officer and a former director; he is not a shareholder. *Id.* at ¶ 8. (Collectively, Huffman,  
14 Turner, Altamirano, Kinney and Smiljkovich are referred to herein as “Individual Defendants.”)

15            **B. Storix’s Ownership Transition in 2011**

16            In September 2011, Johnson resigned his officer and director positions. *Id.* Before  
17 stepping down, Johnson decided to transfer management and operational responsibilities of Storix  
18 to the then-employees, Huffman, Turner, Altamirano, and Kinney. *Id.* at ¶ 14. To entice them to  
19 remain with Storix, take over its management, and provide Johnson with a continued source of  
20 income through salary and distributions, Johnson caused Storix to grant new shares to Huffman,  
21 Turner, Altamirano and Kinney. *Id.* Those employees received a combined 60% ownership of  
22 Storix shares, while Johnson maintained ownership of 40%. *Id.*

23            Also in 2011, Huffman, Turner, Altamirano and Kinney were elected directors, and  
24 Huffman became President/CEO. *Id.* at ¶ 4, 14. Johnson remained on the books as an employee  
25 and continued receiving medical plan coverage and a reduced salary while he attended to his health  
26 and personal matters. *Id.* at ¶ 14.

27  
28

1           **C.     Johnson’s Failed Copyright Lawsuit and Other Disloyal Conduct**

2           Johnson returned to Storix to work on a possible future release of SBAdmin, but didn’t feel  
3 like he was getting enough recognition for his work, so in May 2014, he quit. *Id.* at ¶¶ 19, 20.

4           In July 2014, Johnson sent a letter to Storix, claiming for the first time that he individually  
5 owned the copyright to SBAdmin. *Id.* at ¶ 21. A month later he sued Storix in the United States  
6 District Court for the Southern District of California, accusing Storix of a copyright infringement,  
7 claiming that when he formed Storix in 2003, he did not transfer copyright ownership to the  
8 company. Declaration of Paul Tyrell (“Tyrell Decl.”) at ¶ 3.<sup>2</sup> He made those allegations despite  
9 the fact that he himself had repeatedly asserted, in writing, that Storix owned the copyrights to  
10 SBAdmin. *Id.*

11           Storix had no choice but to vigorously defend against Johnson’s copyright infringement  
12 claim. The case went to trial in December 2015, resulting in a unanimous jury verdict in favor of  
13 Storix and against Johnson. *Id.* at Ex. 1. On February 23, 2016, the District Court (Hon. Judge  
14 Huff) denied Johnson’s motion for a new trial. *Id.* at ¶ 4, Ex. 2. Storix has filed a motion for an  
15 award of attorneys’ fees and costs as the prevailing party under the Copyright Act. *Id.* at ¶ 5.

16           **D.     Improper Behavior by Johnson and Sassi in Connection with and During the**  
17           **Copyright Action**

18           During the copyright litigation, and after Johnson was elected to Storix’s board of directors,  
19 Storix learned that within days after his election Johnson was preparing to launch a competing  
20 company based on an unauthorized version of SBAdmin which Johnson apparently modified after  
21 resigning his employment. Tyrell Decl. ¶6.<sup>3</sup> Moreover, Johnson and the company that he formed  
22 to compete with Storix, Janstor Technology (“Janstor”), registered two “network port<sup>4</sup>” numbers  
23 with the Internet Assigned Numbers Authority, an affirmative act indicating that the Janstor

24 \_\_\_\_\_  
25 <sup>2</sup> In February 2015, while the copyright infringement action was pending, Johnson and Sassi voted themselves onto  
26 Storix’s board of directors; they remain directors today, along with Huffman, Turner, and Altamirano. Compl. at ¶ 25.

27 <sup>3</sup> Although these facts expand on the complaint in this action, they reveal Plaintiffs’ conflicted status and inability to  
28 represent the Company’s interest as derivative plaintiffs. Many of those facts have also been detailed in pleadings and  
orders in the copyright action litigation that are subject to judicial notice. *See Larson v. UHS of Rancho Springs, Inc.*,  
230 Cal.App.4th 336, 344 (2014).

<sup>4</sup> Network port numbers are necessary for products like SBAdmin to function.

1 product would function like, and would compete with, SBAdmin. *Id.* The fact that Johnson and  
2 his company registered two port numbers is highly indicative that Janstor was preparing to offer  
3 software that would directly compete against Storix. *Id.*

4 It is not mere speculation that Johnson intended to compete against Storix. Indeed, just a  
5 few weeks after voting himself onto Storix's board of directors, Johnson admitted in an email to his  
6 friend, in which he was detailing his plans to force the company out of business through litigation  
7 and/or compete with Storix, that "so as not to waste any more time depending on how this goes, I  
8 recently acquired domain names, filed for new corporation, and re-branded the software under the  
9 new name." *See* Tyrell Decl. at ¶ 6, Ex. 3.

10 In response to the developments, Storix filed suit against Johnson in San Diego Superior  
11 Court (Case No. 37-2015-00028262-CU-BT-CTL [Hon. Judge Trapp]) seeking injunctive relief  
12 and damages arising from Johnson's operation of a business in direct competition with Storix and  
13 other breaches of fiduciary duty. *Id.* at ¶ 7. That breach of fiduciary duty action is still pending.  
14 *Id.* The timing and nature of this derivative suit suggest it was filed by Johnson in response to the  
15 litigation instituted by Storix and to apply pressure on Storix in the weeks leading up to the  
16 copyright trial.

17 Sassi's hostility toward Storix and her alignment with Johnson are well documented. For  
18 example, Sassi served as Johnson's "mole" early on in the copyright case against Storix, eliciting  
19 information from Storix under the guise of being an interested (and aligned) shareholder, and then  
20 feeding any information she acquired regarding Storix's strategies and case assessments directly  
21 back to Johnson.<sup>5</sup> Tyrell Decl. at ¶ 8. After her covert operation was uncovered, Sassi's support  
22 for Johnson continued and she even testified at trial in an effort to help Johnson's case. *Id.*  
23 Numerous text messages between Sassi and Johnson (produced by Sassi in response to a subpoena)  
24 prove her clandestine activities and her loyalty to Johnson. *Id.*, Ex. 5.

25 Even after Storix's victory in the copyright litigation, Sassi and Johnson have continued  
26 their efforts to undermine the Company's interests. Johnson recently emailed a non-shareholder

27 \_\_\_\_\_  
28 <sup>5</sup> Sassi also exploited her friendship with Storix's CFO (a longtime friend of the family) to obtain information she  
thought would benefit Johnson in his suit and negotiations against Storix.



1 employee of Storix to threaten that if he did not serve as Johnson's mole, Johnson would not  
2 protect the employee's job once Johnson regained company control. Tyrell Decl. at ¶ 9. He also  
3 confirmed he possessed a "marketable" competing product that he intended to deploy, and directed  
4 the employee to "delete" the email to erase any trace of their communication. *Id.* For her part,  
5 Sassi recently divulged confidential and sensitive company financial information to unapproved  
6 third parties and then refused to provide information to the Company concerning the disclosure.  
7 *Id.* at ¶ 10.

### 8 **E. The Nature of Plaintiffs' Derivative Claims**

9 Plaintiffs' Complaint does not explain how Storix will benefit from this derivative action  
10 purportedly brought for Storix's benefit. Rather, the Complaint vaguely alleges an assortment of  
11 criticisms regarding the conduct of certain meetings and business decisions. It appears that  
12 Plaintiffs' claims are primarily based on the following allegations:

- 13 • Individual Defendants failed to make marketable updates to SBAdmin since taking  
14 control of Storix management in 2011, and failed to adequately incorporate Johnson's  
15 alleged improvements in 2014, which he contends addressed supposed security issues with  
16 SBAdmin. Compl. at ¶¶ 14-17, 19-20.
- 17 • Individual Defendants engaged in corporate waste by increasing their own salaries, and  
18 by hiring defendant Smiljkovich to serve as CFO of the company, a position for which  
19 Plaintiffs assert he is unqualified. *Id.* at ¶¶ 17-18, 24. Johnson also suggests Storix spent  
20 resources in connection with "frivolous lawsuits" (*id.* at ¶ 17), apparently criticizing the  
21 company for defending against the copyright infringement action—i.e., *the action filed by*  
22 *Johnson himself, which resulted in a complete victory for Storix.*
- 23 • Individual Defendants are conducting board and shareholder meetings in ways that  
24 Plaintiffs find objectionable and somehow preventing Plaintiffs (who own less than 50% of  
25 Storix's shares) from controlling the Company. *Id.* at ¶¶ 22, 26-30.
- 26 • Individual Defendants failed to provide financial information to Plaintiffs. *Id.* at ¶ 30.

1 These facts are alleged as the basis for Plaintiffs' derivative claims for breach of fiduciary  
2 duty, abuse of control, waste, and an accounting, although it is not at all clear how Plaintiffs'  
3 believe the alleged acts have injured Storix or how this action is intended to benefit Storix.

### 4 **III. DISCUSSION**

5 Derivative suits are subject to abuse, and are contrary to the corporate governance principal  
6 that decisions about whether the Corporation should sue should be made by the board of directors.  
7 *See Donner Management Co. v. Shaffer*, 142 Cal.App.4th 1296, 1305 (2006). This is just such a  
8 case. Even though derivative claims are, generally speaking, meant to benefit the corporation, a  
9 nominal defendant corporation "may assert defenses contesting the plaintiff's right or decision to  
10 bring suit, such as asserting the shareholder plaintiff's lack of standing." *Patrick v. Alacer Corp.*,  
11 167 Cal.App.4th 995, 1005 (2008); *In re CNET Networks*, 483 F.Supp.2d 947, 949 (N.D. Cal.  
12 2007)(nominal defendant corporation's motion to dismiss derivative claims granted where plaintiff  
13 lacked standing due to his failure to make a pre-suit demand).

#### 14 **A. Plaintiffs Cannot Adequately Represent the Interests of the Company**

15 Plaintiffs are disqualified from bringing their derivative claims because they cannot fairly  
16 and adequately represent the interests of the Company and all of its shareholders.

17 It is axiomatic that a derivative plaintiff is not suing for his or her own benefit, but rather  
18 for the benefit of the corporation and its shareholders. As a result, the derivative plaintiff assumes  
19 a fiduciary duty to the other shareholders, and must serve their interests. *See Heckman v.*  
20 *Ahmanson*, 168 Cal.App.3d 119, 128-29 (1985). The California Supreme Court has expressly  
21 rejected the notion that Corporations Code section 800 does not require that a derivative plaintiff  
22 fairly and adequately represents the interests of the Company. *See Grosset v. Wenaas*, 42 Cal.4th  
23 1100, 1115 n.10 (2008).<sup>6</sup> Here, Plaintiffs cannot serve as fair and adequate representatives of  
24 Storix and the other shareholders for several reasons.

25  
26  
27 <sup>6</sup> The Court may notice allegations and pleadings from other lawsuits involving the parties. *See Larson v. UHS of*  
28 *Rancho Springs, Inc.*, 230 Cal.App.4th 336, 344 (2014) (judicially noticing allegations in plaintiff's prior, voluntarily  
dismissed lawsuit against same defendants).

1 First, Johnson is involved in two other separate lawsuits *against* Storix, one of which he  
2 initiated *and lost* at trial. As noted above, Johnson sued Storix for copyright infringement in  
3 August 2014 in the United States District Court for the Southern District of California, claiming he  
4 individually owned the copyright to SBAdmin. Tyrell Decl., ¶ 3. After a contentious year and a  
5 half of litigation, Storix soundly defeated Johnson when a jury rejected his claims and found that  
6 Storix owned all rights to SBAdmin, and all works Johnson created during employment as “works  
7 for hire.” *Id.* It was a complete and total victory for Storix. Since the verdict, Johnson’s motion  
8 for new trial has been denied, and Storix has a pending motion for recovery of attorneys’ fees and  
9 costs. *Id.* at ¶¶ 4-5.

10 The fact that Johnson sought to directly compete with Storix, and that he intended to use  
11 Storix’s own software to compete against Storix further demonstrates that Johnson cannot fairly  
12 and adequately represent the interests of the Company. A plaintiff who is in litigation against a  
13 corporation has a direct conflict of interest that disqualifies him from bringing derivative claims on  
14 the same corporation’s behalf. *See, e.g., Zarowitz v. Bank America Corp.*, 866 F.2d 1164, 1165-66  
15 (9th Cir. 1988). Rather, “a plaintiff breaches the duty to fairly and adequately represent the other  
16 shareholders when he uses the derivative action as leverage to achieve his own personal  
17 objectives.” *Heckmann v. Ahmanson*, 168 Cal.App.3d 119, 131 (1985).<sup>7</sup> Because Johnson is in  
18 multiple direct lawsuits against Storix, and is clearly pursuing his own individual interests, he has  
19 an irreconcilable conflict of interest that bars him from bringing the derivative claims.

20 Plaintiff Sassi is similarly conflicted as she has been assisting Johnson in his efforts to harm  
21 the Company, obtaining Storix’s strategic information and leaking that information to Johnson to  
22 help him in the copyright action against Storix, advising him in connection with his discovery  
23 responses in the copyright action,<sup>8</sup> and otherwise demonstrating loyalty to Johnson and disloyalty  
24 to Storix.

25 \_\_\_\_\_  
26 <sup>7</sup> The fact that this issue is presented in the context of a demurrer should not prevent the Court from looking beyond the  
27 pleadings in adjudging Plaintiffs’ inability to adequately represent the Company’s interests. *See, e.g., Hornreich v.*  
*Plant Industries, Inc.*, 535 F.2d 550, 552 (9th Cir.1976) (“In determining the adequacy of appellant as a representative  
of other shareholders, the court was entitled to rely not only upon the pleadings, but also the affidavits submitted by the  
parties relating information of direct consequence to the issue before the court.”).

28 <sup>8</sup> Sassi is an attorney, but she does not represent Johnson and was not his lawyer in the copyright action; rather, she was

1 Sassi's allegiance to Johnson and demonstrated vindictiveness towards Storix and its other  
2 shareholders shows that she, like Johnson, cannot fairly and adequately serve as a derivative  
3 plaintiff on Storix's behalf. *See, e.g., Davis v. Corned, Inc.*, 619 F.2d 588, 593-594 (6th Cir. 1980).

4 Neither Johnson nor Sassi can fairly and adequately represent the interests of Storix or its  
5 other shareholders. Thus, their derivative claims will not benefit the Company or its shareholders,  
6 and the demurrer may be sustained on this independent ground.

7 **B. Plaintiffs Lack Standing Because They Failed Adequately to Plead Demand**  
8 **Futility**

9 As a precondition for bringing a derivative suit on a corporation's behalf, a plaintiff must  
10 establish either that he/she made a demand on the board of directors to act on the corporation's  
11 behalf, which the board wrongfully refused, or that such a demand would have been futile. Cal.  
12 Corp. Code § 800(b). Failure to comply with this demand requirement deprives the plaintiff of  
13 standing to pursue his claims. *Shields v. Singleton*, 15 Cal.App.4th 1611, 1618 (1993). The  
14 purpose of the requirement is to "encourage intracorporate resolution of disputes and to protect the  
15 managerial freedom of those to whom the responsibility of running the business is delegated... ." *Id.*  
16 at 1619. The requirement also is designed as another safeguard against abusive derivative  
17 claims. *See Bader v. Anderson*, 179 Cal.App.4th 775, 790 (2009).

18 A plaintiff who asserts that demand would have been futile must satisfy a high burden. As  
19 one court noted, "the bar is high, the standards are stringent, and the situations where demand will  
20 be excused are rare." *Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust ex rel. Fed. Nat.*  
21 *Mortgage Ass'n v. Raines*, 534 F.3d 779, 782-83 (D.C. Cir. 2008). The plaintiff also must allege  
22 demand futility "with particularity." Cal. Corp. Code § 800(b). The test for demand futility is  
23 whether the facts show a reasonable doubt that (1) the directors are disinterested and independent,  
24 and (2) the challenged transaction was otherwise the product of a valid exercise of business  
25 judgment. *See Oakland Raiders v. National Football League*, 93 Cal.App.4th 572, 587 (2001). If  
26 a plaintiff fails to satisfy the first prong there is a presumption that the board's actions were the

27  
28 apparently giving him friendly advice to assist him in his case against Storix.

1 product of a valid exercise of business judgment. *Charter Twp. of Clinton Police & Fire Ret. Sys.*  
2 *v. Martin*, 219 Cal.App.4th 924, 935 (2013).

3 General allegations that the directors were involved in, or approved of the wrongdoing, or  
4 that the directors face the threat of personal liability for approving the transaction, are not  
5 sufficient. *See Bader*, 179 Cal.App.4th at 790. Instead, “the court must be apprised of *facts*  
6 *specific to each director* from which it can conclude that that particular director could or could not  
7 be expected to fairly evaluate the claims of the shareholder plaintiff.” *Shields*, 15 Cal.App.4th at  
8 1622 (emphasis added).

9 Here, Plaintiffs admit they did not make a demand on the Board. *See Compl.* at ¶ 37. As a  
10 result, Plaintiffs must plead facts specific to each director with particularity, showing that demand  
11 would be futile. Plaintiffs’ Complaint makes no effort to satisfy this standing requirement.  
12 Plaintiffs’ only allegation regarding demand futility is as follows:

13 “Plaintiffs did not demand action from the Board of Directors (the  
14 ‘Board’) of the Company in prosecuting this action, because any such  
15 effort would have been futile. Three out of five directors on the Board  
16 have committed the wrongs alleged herein to occur. Plaintiffs’ repeated  
17 requests to the majority for change have fallen on deaf ears. Because the  
18 majority of the board members are engaged in the wrongdoing  
19 complained of herein, and any Board action requires majority consent, a  
demand for action by Plaintiffs from the Board would be futile.

20 Demand is therefore excused as the majority of the Board are not  
21 disinterested.”

22 *Id.* at ¶¶ 37-38. Moreover, the rest of the Complaint similarly fails to allege facts showing that  
23 each of the current directors were not disinterested, or that Individual Defendants could not have  
24 validly exercised their business judgment related to the transactions at issue.

25 Throughout the Complaint, virtually every allegation is asserted generically as to all  
26 “Defendants,” without any of the particular facts necessary to support demand futility. Generic  
27 allegations that the directors were involved in the wrongdoing are insufficient to establish demand  
28 futility. *See Shields*, 15 Cal.App.4th at 1622. The Complaint does not satisfy the demand futility  
requirement, and as a result Plaintiffs lack standing to assert their derivative claims and cannot

1 show that the Complaint as currently pled will benefit the Company or its shareholders.  
2 Accordingly, the demurrer should be sustained as to the entire Complaint.

3 **C. Plaintiffs' Claims Will Not Benefit the Corporation**

4 A successful derivative action is meant to benefit the corporation only; "the shareholders  
5 derive no benefit except the indirect benefit resulting from a realization upon the corporation's  
6 assets." *Grosset v. Wenaas*, 42 Cal.4th 1100, 1108 (2008) (internal quotation omitted). Here, none  
7 of the allegations pled in the Complaint support any claim that will benefit the corporation.

8 Plaintiffs cannot demonstrate that this lawsuit will benefit the Corporation or its  
9 shareholders. As discussed above, many of the corporate actions that Plaintiffs' challenge are  
10 Company decisions that cannot serve as the basis of a derivative claim. None of the other  
11 allegations would benefit the Company or its other shareholders even if they somehow were true.  
12 For example, Plaintiffs claim that they were denied access to certain financial information. *See*,  
13 e.g., Compl. at ¶ 30. However, that allegation is merely one seeking to benefit her as an individual  
14 shareholder, not for the benefit of the Company. Thus, Plaintiffs cannot establish that Storix and  
15 its other shareholders will obtain any benefit if such claims succeed.

16 Moreover, this action will likely harm Storix and its other shareholders because of the  
17 considerable disruption to Storix's business and the strain on its finances that such a lawsuit will  
18 cause, particularly if this action ultimately requires the company to indemnify the Individual  
19 Defendants. Storix is a small company with few employees. It has just endured more than a year  
20 and a half of defending against and defeating Johnson's baseless copyright claims in the District  
21 Court. The time and financial resources Storix will likely incur in connection with the instant  
22 action and the inevitable distraction will further harm the Company and limit its ability to grow its  
23 business.

24 **IV. CONCLUSION**

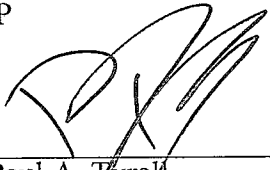
25 This demurrer should be sustained because Plaintiffs Sassi and Johnson lack standing and  
26 are not proper derivative plaintiffs due to their open hostility to Storix and their demonstrated  
27 willingness to act contrary to Storix's interest to further their own anger-fueled agenda. Because  
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the latter issue cannot possibly be cured by amendment, this demurrer should be sustained without  
leave to amend.

DATED: February 29, 2016

PROCOPIO, CORY, HARGREAVES & SAVITCH  
LLP



By:

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Paul A. Tyrell  
Sean M. Sullivan  
Attorneys for Storix, Inc.