

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

**MINUTE ORDER**

DATE: 06/09/2017

TIME: 09:00:00 AM

DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil

CLERK: Juanita Cerda

REPORTER/ERM: Joanne Castro CSR# 6944

BAILIFF/COURT ATTENDANT: R. Camberos

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

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

CASE CATEGORY: Civil - Unlimited CASE TYPE: Business Tort

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**EVENT TYPE:** Summary Judgment / Summary Adjudication (Civil)

**MOVING PARTY:** Robin Sassi, Anthony Johnson

**CAUSAL DOCUMENT/DATE FILED:** Motion for Summary Judgment and/or Adjudication, 03/24/2017

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**APPEARANCES**

Bernard F King, III, counsel, present for Defendant,Plaintiff(s).

Paul A Tyrell, counsel, present for Defendant,Plaintiff(s).

Marty Ready, specially appearing for counsel Michael P McCloskey, present for Defendant,Cross - Defendant,Plaintiff(s).

Anthony Johnson, self represented Cross - Complainant, present telephonically.

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The Court hears oral argument and confirms the tentative ruling as follows:

The Motion (ROA # 328) of Defendant Anthony Johnson ("Defendant") to seal certain evidence submitted by Defendant in support of his Motion for Summary Judgment or in the alternative, Motion for Summary Adjudication, filed March 24, 2017, on the grounds that the evidence consists of Storix's confidential information, the secrecy of which is required to be preserved, and for which an overriding interest overcoming the right of public access to the record exists and would be prejudiced unless the least restrictive, narrowly-tailored requested sealing is granted, is GRANTED, the specific findings of which to seal Exh's "6 and 11" are consistent with the findings set forth in Rule 2.550(d).

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The Motion (ROA # 327) of Defendant Anthony Johnson ("Johnson" or "Defendant"), pursuant to Code of Civ. Proc. 437c and 437c(f)(1), for summary judgment of the Second Amended Complaint ("SAC") in consolidated case number 2015-00028262, or in the alternative, summary adjudication of issues in favor of Defendant, on the grounds that no triable issues of material fact exist and Defendant is entitled to judgment as a matter of law as to Plaintiff STORIX, INC.'s first cause of action for breach of fiduciary duty and second cause of action for aiding and abetting breach of fiduciary duty, is DENIED.

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**Whether the Alleged Breach Caused Damage**

Defendant argues that he did not cause Plaintiff any harm because he never operated a competing business, or competed in any other way with Storix. Johnson's single email to Storix clients did not cause any harm and Johnson did not threaten Storix employees. Even assuming undisputed facts exist supporting these contentions, summary adjudication of either cause of action would be improper. Both causes of action seek compensatory damages (SAC at ¶¶ 26 and 36), and injunctive relief enjoining Johnson from future interference with Storix operations and future use of Storix proprietary information in competition with Storix (SAC at ¶¶ 27-30, 37 and 39). Thus, Defendant's contentions, even if true, do not address the injunctive relief and would not dispose of an entire cause of action. Summary adjudication is denied on this basis and the Court does not reach the merits of Defendant's position.

**Plaintiff's Standing to Prosecute this Action**

Defendant argues that the prosecution of this action was never authorized by the Storix Board of Directors such that Storix has no standing to bring this suit. A corporation is a legal entity that is distinct from its shareholders. Grosset v. Wenaas (2008) 42 Cal. 4th 1100, 1108. The authority to manage the business and affairs of a corporation is vested in its board of directors, not in its shareholders. Id. (citing Corp. Code 300(a)). This includes the authority to commence, defend, and control legal actions on behalf of the corporation. Id. Defendant's Separate statement fact number 11 is disputed. Plaintiff submits evidence that a majority of the then directors of Storix approved of this legal action. This action was initiated on August 20, 2015. Plaintiff's "Exhibit R" is a declaration attesting to the fact that three board members authorized this lawsuit on the date it was filed. Also, paragraph 11 of the declaration of David Smiljkovich states that on May 15, 2017 a majority of the current board of directors (including Smiljkovich) voted in favor of ratifying the August 2015 approval of this action. It is disputed whether this ratification and authorization is sufficient.

Plaintiff's objections (ROA # 365, 370) to Defendant's Separate Statement of Undisputed Material Facts, are OVERRULED.

Parties waive notice.



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Judge Joel R. Wohlfeil