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13 UNITED STATES DISTRICT COURT

14 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

15 ANTHONY JOHNSON, an individual,
16 Plaintiff,

17 v.

18 MANUEL ALTAMIRANO, an individual,
19 RICHARD TURNER, an individual,
20 DAVID KINNEY, an individual, DAVID
21 HUFFMAN, an individual, PAUL
22 TYRELL, an individual, SEAN
23 SULLIVAN, an individual, STORIX, INC.,
24 a California corporation, and DOES 1-5,
25 inclusive,

26 Defendants.

Case No. 19-cv-01185 H (BLM)

OPPOSITION OF DEFENDANTS
STORIX, INC., PAUL TYRELL &
SEAN SULLIVAN TO PLAINTIFF
ANTHONY JOHNSON’S
MOTION FOR ENTRY OF
PARTIAL FINAL JUDGMENT
UNDER RULE 54(B) OR
CERTIFICATION UNDER 28
U.S.C. § 1292

Complaint Filed: June 24, 2019
Judge: Hon. Marilyn L. Huff
Court: Courtroom 15A

Hearing Date: January 21, 2020
Hearing Time: 10:30 AM

27 **I. INTRODUCTION**

28 Defendants Paul Tyrell, Sean Sullivan and Storix (collectively, “Responding Defendants”) hereby oppose Plaintiff Anthony Johnson’s (“Johnson”) Motion For

1 Entry Of Partial Final Judgment Under Rule 54(B) Or Certification Under 28 U.S.C.
2 § 1292.

3 II. DISCUSSION

4 Johnson has not articulated a seriously important reason justifying certifying
5 this Court's December 2, 2019 Order ("Order") for appeal.¹ Certifying the Order
6 will not serve the just, speedy, and inexpensive determination of this action. To the
7 contrary, certifying the Order will result in increased litigation expense because
8 Johnson has demonstrated his appetite for multiple appeals to the Ninth Circuit on
9 any issue appealable. Responding Defendants would be forced to litigate this appeal,
10 while the remaining defendants litigate the trial court proceedings, and the eventual
11 appeal of any judgment/order resulting from the remaining breach of fiduciary duty
12 and conversion claims. Responding Defendants therefore respectfully request the
13 Court deny Johnson's motion.

14 Rule 54(b) "applies where the district court has entered a final judgment as to
15 particular claims or parties, yet that judgment is not immediately appealable because
16 other issues in the case remain unresolved." *James v. Price Stern Sloan, Inc.*, 283
17 F.3d 1064, 1068 n. 6 (9th Cir. 2002) (citations omitted). Rule 54(b) requires a two-
18 step process: (1) the court determines whether the challenged order is a final
19 judgment; and (2) the court determines whether there is any just reason for delay.
20 *Curtiss-Wright Corp. v. Gen. Elec. Corp.*, 446 U.S. 1, 7-10, 100 S.Ct. 1460, 64
21 L.Ed.2d 1 (1980) ("Plainly, sound judicial administration does not require that Rule
22 54(b) requests be granted routinely."). The Ninth Circuit has held that, "[a]bsent a
23 seriously important reason, both the spirit of Rule 1 and the interests of judicial
24 administration counsel against certifying claims or related issues in remaining claims
25 that are based on interlocking facts, in a routine case, that will likely lead to
26 successive appeals." *Wood v. GCC Bend, LLC*, 422F.3d 873, 883-84 (9th Cir. 2005)

27 ¹ Johnson's request under 28 U.S.C. § 1292 as to the denial of his motion to stay is
28 so intertwined with the Court's December 2, 2019 Order that separate treatment is
not warranted.

1 (citing Fed.R.Civ.P. 1, which “mandates construing the rest of the rules “to secure
2 the just, speedy, and inexpensive determination of every action”).

3 The proceedings before this Court are not new. As the Court is aware, Johnson
4 is simply repackaging claims and issues already litigated to judgment before this
5 Court in the copyright litigation and before a state court of this jurisdiction in a
6 consolidated action. Both of these matters are now pending on appeal. To permit
7 Johnson to appeal the Order now (and presumably later) would only compound the
8 expense and just and speedy determination of the litigation between all defendants
9 and Johnson. The claims subject to the Order are based on facts intertwined with the
10 remaining claims against defendants other than Responding Defendants (who have
11 been dismissed) and will undoubtedly result in successive appeals. Without
12 belaboring the point, because Johnson has not identified a seriously important reason
13 for certifying the Order, Responding Defendants request his motion be denied.

14 III. CONCLUSION

15 The orderly judicial administration of this matter strongly favors denial of
16 Johnson’s motion. Responding Defendants have already been unfairly burdened by
17 the litigation instituted by Johnson, and will be even more so if he is allowed to
18 pursue it in piecemeal fashion. The certifying of the Order for appeal would only
19 compound that burden. Accordingly, no seriously important reason justifies
20 Johnson’s request. The motion should be denied.

21 DATED: January 7, 2020

22 PROCOPIO, CORY, HARGREAVES &
23 SAVITCH LLP

24 By: s/ Sean M. Sullivan
25 Paul A. Tyrell
26 Sean M. Sullivan
27 Attorneys for Defendants Storix, Inc.,
28 Paul Tyrell, and Sean Sullivan

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CERTIFICATE OF SERVICE

I hereby certify that on Tuesday, January 07, 2020, I electronically filed the foregoing through this Court’s electronic transmission facilities via the Notice of Electronic Filing (NEF) and hyperlink, to the parties and/or counsel who are determined this date to be registered CM/ECF Users set forth in the service list obtained from this Court on the Electronic Mail Notice List.

s/ Sean M. Sullivan
Sean M. Sullivan