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

10 STORIX, INC, a California corporation,

11 Respondent, Plaintiff

12 v.

13 ANTHONY JOHNSON, an individual,

14 Petitioner, Defendant

15
16
17 ANTHONY JOHNSON, an individual

18 Cross-Claimant

19 v.

20 DAVID HUFFMAN, an individual;
21 RICHARD TURNER, an individual;
22 MANUEL ALTAMIRANO, an individual;
23 DAVID KINNEY, an individual;
24 DAVID SMILJKOVICH, an individual;

25 Cross-Defendants.

Case No. 37-2015-00028262-CU-BT-CTL

**POINTS AND AUTHORITIES ISO
MOTION FOR WRIT OF MANDATE TO
COMPEL INSPECTION AND COPYING
OF BOOKS, RECORDS AND
DOCUMENTS OF A CALIFORNIA
CORPORATION (CCP §1085)**

IMAGED FILE

Date: September 16, 2016
Time: 11:00 a.m.
Dept. C-70
Judge: Hon. Randa Trapp
Complaint Filed: August 20, 2015
Trial Date: Not set

26 ANTHONY JOHNSON (“Johnson” or “Petitioner”) motions this Court for a peremptory writ of
27 mandate or other extraordinary writ or order to Respondent STORIX, INC (“Storix” or “Respondent”),
28 ordering and directing Respondent immediately to make available to Petitioner and other *current*

1 directors of Storix for inspection and copying all corporate books, records and documents
2 (“Documents”), and make available such Documents to all current directors of Storix from time to time.

3 I. SUMMARY

4 1. The general principle that directors oversee corporate activity and undertake ultimate
5 responsibility for that activity is invariant. Petitioner here seeks nothing other than access to corporate
6 Documents, which the Board has completely and unreasonably refused to provide to him.

7 2. It is not just the absolute right of a director to inspect *and copy* any and all the books and
8 records of any kind, but the fiduciary duty of a director to investigate any allegations of misconduct
9 against other directors.

10 3. In August 2015, Storix, under majority control of Cross-Defendants (the “Board”), filed this
11 **frivolous lawsuit** against Johnson with clearly **malicious intent**. First, they wanted to apply such
12 financial stress that Johnson would abandon his claim to the software he authored and developed for 12
13 years while denying Johnson a position at the company he founded. Secondly, Johnson discovered
14 numerous unethical and illegal actions by the Board prior to, during, and well after disputes between
15 Johnson and the Board arose, but the Board has used the existence of this lawsuit to justify denying
16 Johnson any rights to further investigate.

17 4. In October 2015, Johnson and Robin Sassi (“Sassi”), the only other non-employee shareholder
18 and director of Storix, filed a derivative action (“Derivative Suit”, *Storix v Huffman*, Case No. 37-2015-
19 00034545-CU-BT-CTL) against the Cross-Defendants on Storix’ behalf. Since California statutes only
20 allow a corporation to indemnify directors in proceedings “other than an action by or in the right of the
21 corporation to procure a judgment in its favor” (CA Corp Code 5238(b)), Johnson and Sassi hoped that
22 the lawsuit would prevent the defendants from further abusing their Board majority and use of
23 shareholder profits in their personal and vindictive attacks on Johnson. The Board continued to pay
24 Storix counsel using excessive corporate funds to delay, derail and defeat (without success) the
25 derivative action brought for Storix’ benefit.

26 5. The Board has since made repeated and meritless claims against both Johnson *and Sassi* to
27 deny them any rights as a director to investigate the misconduct alleged in the *Derivative Suit*. They
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1 further justify denying Sassi any rights simply because she “aligned” with Johnson and is the ex-wife of
2 the current CEO.

3 6. The Board has taken exhaustive legal actions to cause extreme financial burden to Johnson,
4 increase their own “majority” shareholder and director control, and limit the rights, access, and even the
5 voices of the “minority”. All such actions were taken solely in effort to protect their positions, conceal
6 their misconduct, and misrepresent the financial and competitive state of the company.

7 7. Johnson believed in early 2016, and is now confident, that the Board has used such significant
8 corporate funds to delay and obstruct all legal options taken by Johnson to end their abuse of control and
9 investigate their misconduct that Storix is now deep in debt and has no further means to produce a
10 competitive product in the future.

11 8. Despite significant evidence of the Board’s misconduct, Petitioner does not attempt to make a
12 case against Cross-Defendants in this motion. Johnson believes this meritless Complaint against him
13 will be dismissed by demurrer prior to this motion being heard, which will also moot the Board’s
14 reasoning for denying Johnson’s inspection rights. However, given the Cross-Defendants willingness to
15 destroy Storix to prevent Johnson from obtaining a usable copy of that evidence or further investigate
16 their suspicious dealings, Johnson requests the Court grant this writ to supplement that ruling and
17 prevent the need of even more legal action.

18 9. Should the Court find merit in the Complaint and overrule the demurrer, Johnson hopes the
19 Court will view this motion for writ independently and grant it on the basis that there is simply no
20 reasonable cause to deny Johnson’s legal rights as a director of Storix.

21 II. FACTUAL BACKGROUND

22 10. In September 2011, due to a medical diagnosis, Johnson gifted 60% of the stock in the
23 company to Cross-Defendants David Huffman, Rich Turner, Manuel Altamirano and David Kinney,
24 who were long-term employees (*Cross-Complaint* ¶12). Johnson resigned as the President, CEO and
25 sole director of Storix (*Johnson Decl.* ¶5) and Cross-Defendants David Huffman, Richard Turner,
26 Manuel Altamirano and David Kinney elected themselves to all director and officer positions. (Johnson
27 Decl. ¶6)
28

1 11. In October 2013, after an unexpected recovery, Johnson returned to Storix to work on a long-
2 term project of improving the company's only software product he authored 14 years earlier and had
3 been sorely neglected since his departure.

4 12. By May 2014, Johnson resigned after he could no longer tolerate the hostile treatment he
5 received from the new management he left in charge. (*Cross-Complaint* ¶¶34-36.)

6 13. Johnson's interests are clearly adverse to those of the Board majority, who have used his
7 shareholder profits to sue him for 2 years. Johnson has never had *interests* adverse to Storix. (*Johnson*
8 *Decl.* ¶7)

9 14. In July 2014, in attempt to force the Board to allow him to improve the software, Johnson
10 *threatened* to withdraw Storix rights to sell his federally-copyrighted software *if he were not permitted*
11 *to manage the software development* as he had successfully for 12 years. (*Johnson Decl.* ¶7.) When the
12 Board responded by claiming ownership of Johnson's software despite the absence of any contract or
13 agreement to transfer his copyright to the corporation, Johnson was forced to file a copyright
14 infringement lawsuit to protect his intellectual property rights ("*Copyright Suit*", Case No. 14-cv-1873 H
15 (BLM)). (*Johnson Decl.* ¶8.)

16 15. By early 2015, Storix became unprofitable for the first time due to the litigation, and the
17 Board ceased distributions to shareholders. The Cross-Defendants continued to pay themselves
18 increased salaries and bonuses, while depriving Johnson and Sassi, the only non-employee shareholders,
19 any further income from Storix. (*Cross-Complaint* ¶56.)

20 **A. Storix Board Continually Denies Access to "Minority" Directors**

21 16. On few occasions where records requests from Petitioner have been responded to, the Board
22 has either provided only partial documents, claims no such documents or information exists when in fact
23 they do, or documents were redacted to such an extent they were rendered meaningless. (*Johnson Decl.*
24 ¶9, Ex. 1; Sassi Decl. ¶¶3-5, Ex. 2-4)

25 17. All attempts to inspect books, records, and other documents of the corporation by Johnson
26 have been shown to be futile since the Board, under the control of its three (3) member majority, refuses
27 access to corporate records to Johnson and Sassi, who they consider "minority" directors, and have
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1 taken extraordinary actions for over a year to improperly and unlawfully deny any and all rights of
2 inspection in attempt to conceal their misconduct. (*Johnson Decl.* ¶10, Ex. 2; *Sassi Decl.* ¶5, Ex. 4.)

3 18. Robin Sassi, the only other non-employee shareholder and director of Storix, has been
4 repeatedly denied the same rights of inspection by the Board because supported Johnson rather than the
5 Board majority. After notifying the Board of her intent to perform an inspection, Sassi and an attorney
6 witness were physically blocked by three of the Board members and not allowed access to Storix
7 premises (*Sassi Decl.* ¶2, Ex. 1.) As with Johnson, information provided Sassi has been summarized
8 and redacted to the extent they are meaningless. (*Sassi Decl.* ¶4, Ex. 3.)

9 **B. Cross-Defendant's Abuse of Legal Process to Deny Johnson's Rights**

10 19. The Board insisted that Johnson sign a *Protective Order* for the *Copyright Suit*, which restricts
11 the use of any confidential Documents obtained in discovery to that case. Johnson signed this PO, not
12 knowing its true intent or the lawsuit they already planned to file against him. The Board then produced
13 over 240,000 emails and attachments which were all marked confidential despite their benign content.
14 The Board since refused to allow Johnson to use the documents previously obtained in any related case.
15 Johnson twice requested that Storix Counsel meet and confer as to stipulations to either: 1) relating this
16 case with the *Derivative Suit*, since both involve the same issues, parties and law firms; 2) lift the
17 Protective Order in the *Copyright Suit* or allowing the use of Documents in these *related cases*; 3) de-
18 designate the confidentiality of discovery documents which clearly would not cause harm to Storix;
19 and/or 4) abandon their argument that Johnson and Sassi intend harm to Storix and allow all directors
20 the same inspection rights. Storix counsel has not responded. (*Johnson Decl.* ¶¶11, Ex. 3.)

21 20. In August 2015, **only hours before the Mandatory Settlement Conference** in the *Copyright*
22 *Suit*, the Board filed this Complaint against Johnson, claiming that Johnson breached his fiduciary duty
23 to Storix by failing to inform the Board that he "intends to illegally complete" with Storix and that he
24 "has and/or will cause harm". (Complaint ¶¶16,20-23,30.) This allegation was based on Johnson
25 forming another company called "*Janstor*" eight (8) months prior, although the Board knew for months
26 that Janstor had never operated or owned any assets and that Johnson had moved to Florida. (*Cross-*
27 *Complaint* ¶55.) Johnson returned home to Florida from that sham settlement conference to discover the
28 Board had already sued him again.

21. In November 2015, David Huffman, CEO, agreed to send Johnson information he requested only if he signed a Non-Disclosure Agreement (NDA) limiting, among other things:

Without the prior written consent of the Disclosing Party, **the Receiving Party shall not use or further disclose said Proprietary Information for any purpose other than as specified in this Agreement.** (bold added)

THE PROPRIETARY INFORMATION IS PROVIDED “AS IS” AND THE RECEIVING PARTY ACKNOWLEDGES THAT NEITHER THE DISCLOSING PARTY NOR ANY OF THE DISCLOSING PARTY’S AFFILIATES MAKES OR HAS MADE ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF THE PROPRIETARY INFORMATION, AND THE DISCLOSING PARTY HEREBY EXPRESSLY DISCLAIMS ANY AND ALL LIABILITY THAT MAY BE BASED ON THE PROPRIETARY INFORMATION, ERRORS THEREIN OR OMISSIONS THEREFROM. (bold added)

Johnson refused to sign the NDA (Johnson Decl. ¶12, Ex. 4), knowing that doing so would permit Cross-Defendants to provide intentionally false information and omissions, that no information could be used for any purpose, and that Cross-Defendants would be released from any liability as a result.

22. On March 14, 2016 this *Storix v Johnson* Complaint (“FAC”) was filed, still without any Board or shareholder discussion or approval, and still without alleging any harm to Storix caused by Johnson, but added that Johnson “*manifest[ed] his intent to directly complete with Storix*” (*Cross-Complaint* ¶47-51). The FAC contains no explanation of this statement. This FAC was filed solely to cause further delay and financial stress on Johnson. Only then did Johnson finally file the Cross-Complaint in this action on April 13, 2016 demanding personal damages irrespective of those caused to Storix and its other shareholders.

23. On July 5, 2016 Defendants filed a **Special Motion to Dismiss (Anti-SLAPP)** against Johnson’s Cross-Complaint. Anti-SLAPP motions are intended to dismiss lawsuits clearly intended to suppress rights to freedom of speech or petition. The Special Motion made no claim that Johnson infringed on their right to free speech, and instead focused on Johnson’s Cross-Complaint by claiming Johnson filed the cross-complaint against them as *individuals* in retaliation for Storix having filed a lawsuit against him. The Cross-Complaint alleges that the Complaint was *malicious litigation*, which is exempt from Anti-SLAPP statutes. Nevertheless, filing the motion placed an automatic stay on any discovery, prevents any amendment to the Cross-Complaint, and forces the burden of proving the merits of the Cross-Complaint on Johnson without opportunity to conduct any discovery. Johnson is informed

1 and believes the Special Motion was filed for no other reason to further prevent Johnson from obtaining
2 evidence of the Board's misconduct as alleged in this Cross-Complaint and in the *Derivative Suit*.

3 **C. Courts Have Dismissed Storix's Claims of Harm Caused By Johnson**

4 24. Plaintiffs and Storix counsel have repeatedly concluded that Johnson cannot be allowed
5 access to any Storix information because he *will* use it to compete and thus harm Storix. A Superior
6 Court decided on August 1, 2016 that such a factual dispute is not cause to deny Johnson's right to
7 represent Storix in the *Derivative Suit*. As such, the same disputed facts should never have been cause
8 for the Board majority, without Court approval, to deny Johnson's rights as a director. **Both the**
9 **defendant's and Storix counsel's demurrers to Johnson's derivative complaint were overruled on**
10 **all causes.** (*Johnson Decl.* ¶13; RJN ¶1, Ex. 1.)

11 25. When Johnson first emailed the Cross-Defendants' unconscionable acts, attaching the
12 *proposed* (but not actual) email, Storix filed and was denied an Ex-Parte TRO and expedited motion for
13 preliminary injunction in Federal Court. (*Johnson Decl.* ¶14; RJN ¶2, Ex. 2.)

14 26. After a less-strongly worded email was actually sent, Storix filed and was also denied a
15 noticed motion for preliminary injunction. The Court noted that "[Storix] is unable to cite harm that has
16 befallen it as a result of Plaintiff's email to customers. Defendant has not satisfied the elements
17 necessary to obtain a preliminary injunction, especially in light of the significant First Amendment
18 issues at Stake." (*Johnson Decl.* ¶14; RJN ¶3, Ex. 3.)

19 27. None months later, still with no new evidence, Storix attempted to influence *this action*
20 by filing another Motion for Further Relief in the same Federal Court on the same grounds. Storix
21 concluded by saying "Given Johnson's stated competitive intentions and his admitted unauthorized
22 possession and use of SBAdmin to create unauthorized derivatives of Storix's copyrighted work, the
23 relief requested by this motion is entirely appropriate and necessary to enforce and give meaning to the
24 judgment and help prevent the irreparable harm to Storix that Johnson seeks to inflict." (*Johnson Decl.*
25 ¶15; RJN ¶4, Ex. 4.)

26 28. On August 29, 2016, the hearing to demurrer to this this Complaint was held. The decision is
27 unknown at the time of the deadline to file this motion. If the Court, as Petitioner expects, dismissed the
28 complaint for failure to state a cause of harm (assuming it does not first rule that Storix was not a valid

Plaintiff), Cross-Defendant directors no longer have grounds (nor did they ever) for denying Johnson or Sassi inspection rights. (RJN ¶7, Ex. 7.)

III. ARGUMENT

A. Good Cause Exists to Grant this Motion

29. The court has the authority to grant this writ under California CCP §1085(a):

A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person.

30. Petitioner has exhausted all other means for 18 months to obtain corporate records afforded him by law, and Petitioner is beneficially interested in this writ, prohibition or other extraordinary relief because Petitioner wishes to fulfill his duty as a director, and save himself, Storix, and the shareholders to whom he owes a fiduciary duty the financial burden of added litigation expense that would undoubtedly result from denial of this motion. This writ must be issued according to CCP §1086:

The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law. It must be issued upon the verified petition of the party beneficially interested.

31. Respondent has a ministerial (non-discretionary) duty to follow the law according to California Corp Code § 1602:

*Every director shall have the **absolute right** at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the corporation of which such person is a director and also of its subsidiary corporations, domestic or foreign. Such inspection by a director may be made in person or by agent or attorney and the right of inspection includes the right to copy and make extracts. [Bold added].*

The California courts have recognized that “[d]irectors occupy a fiduciary relationship to the corporation and its stockholders, and the unqualified right of inspection according to them by [Cal. Code §1602] is manifestly in aid of such principle.” (*Saline v. Superior Ct.*, 122 Cal.Rptr.2d 813,914).

32. The writ of mandamus is designed to provide a remedy where no other remedy exists, to supply defects of justice; and it will issue, to the end that justice be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing such right. (*Drummev v State Board of Funeral Directors & Embalmers* (1939) 13 Cal.2d 75, 87 P2d 848.) Where a party has a clear legal

1 right for which mandamus is the appropriate remedy, the writ should not be withheld because he may
2 be ultimately unsuccessful in gaining the relief sought. (*Lindsay Strathmore Irrigation Dist v Superior*
3 *Court of Tulare County* (1932) 121 Cal.App 606, 9 P2d 579.) A writ is proper and necessary in this
4 circumstance as no other legal remedy exists to prevent Respondents from obstructing Petitioner's rights
5 as a director of Storix afforded him by law.

6 33. Mandamus may be issued to compel the admission of a party to the use and enjoyment of a
7 right from which he is unlawfully precluded (*Stone v Board of Directors* (1941) 47 Cal.App.2d 749,118
8 P2d 866.). Storix is under the control of its Board majority, who are breaking the law by unfairly
9 refusing the rights of the minority to perform their respective duties to the benefit of Storix and its
10 shareholders.

11 34. Although Petitioner's intent behind the inspection is clear, neither as director or even as
12 shareholder need he demonstrate such intent. "A shareholder of a corporation in petitioning for a writ of
13 mandate to compel it to permit an inspection of its books is not required to anticipate and plead the
14 affirmative defenses of the corporation and to show that the application is not a "fishing expedition."
15 [emphasis added] (*Private Investors, Inc. v Homestake Mining Co.* (1936) 11 Cal.App 2d 488, 54 P2d
16 535.)

17 35. The only statutory basis for the Court denying absolute inspection rights to a *current* director
18 of a corporation is: "a court may properly limit a director's inspection rights because the director's
19 loyalties are divided and documents obtained by a director in his or her capacity as a director could be
20 used to advance the director's personal interest in obtaining damages against the corporation." (*Tritek*
21 *Telecom v. Superiour Court*, 169 Cal.App.4th 1385, 1390-1391). "[U]pon a director's request for
22 inspection pursuant to section 1603 in the superior court, the corporation must demonstrate, by
23 evidentiary showing that a protective order is necessary to prevent a tort against the corporation."
24 (*Havlicek v. Coast-to-Coast Analytical Services, Inc.* (1995) 39 Cal.App.4th 1844.) The Board cannot
25 demonstrate the need for a protective order as Johnson is not seeking damages against Storix. Inspection
26 rights may be denied to prevent a tort against the corporation, but not when the intent of the inspection is
27 investigate the misconduct of its directors.

36. Where “the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty...” the petitioner “need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced ...” (*Green v. Obledo*, 29 Cal.3d 126, 144 1981).

IV. CONCLUSION

37. The Board cannot, nor should the Court, impose any restrictions on Petitioner’s rights of inspection because the Board has not proven, or even tried to prove, their allegations of Petitioner’s “intent” to harm Respondent. It is the burden of the Board, comprised of *disinterested* directors, to petition the Court for a Protective Order only after determining that intentional and egregious harm to Storix would result from such an inspection.

38. If such rights are not granted, any further refusal by the Board will result in overwhelming financial burden to Storix, imposing the same discovery process it has already endured at a cost of hundreds of thousands of dollars. Petitioner is informed and strongly believes Respondent will not survive that financial burden.

V. PRAAYER FOR RELIEF

WHEREFORE, Petitioner respectfully prays that:

1. This Court issue its preemptory Writ of Mandate or other extraordinary Writ or Order to the Respondent, ordering and directing Respondent immediately make available on site to Petitioner and all other directors directors, for inspection and copying, all corporate records of Respondent of any kind, or which Petitioner or any other director may request access to from time to time.
2. Respondent reimburse Petitioner for his costs and fees associated with this motion made in performance with his duty as a director of Respondent.
3. For such other and further relief as the Court may deem proper.

Dated: August 22, 2016

/s/ Anthony Johnson
Anthony Johnson
Pro-se