

1 ANTHONY JOHNSON
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7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 ANTHONY JOHNSON, an individual,

12 *Plaintiff,*

13 v.

14 DAVID KINNEY, an individual;
15 RICHARD TURNER, an individual;
16 MANUEL ALTAMIRANO, an individual;
17 DAVID HUFFMAN, an individual; and
18 DAVID SMILJKOVICH, an individual;
19 PAUL TYRELL, an individual;
20 SEAN SULLIVAN, an individual;
21 MARTY READY, an individual;
22 DAVID AVENI, an individual;
23 MICHAEL MCCLOSKEY, an individual;
24 STORIX INC., a California corporation;
25 JUDGE MARILYN HUFF, an individual;
26 JUDGE RANDA TRAPP, an individual;
27 JUDGE KEVIN ENRIGHT, an individual;
28 JUDGE KATHERINE BACAL, an
individual,

Defendants.

Case No. 3:20-CV-01354- TWR-MSB

SECOND AMENDED COMPLAINT
[CORRECTED]

DEMAND FOR JURY TRIAL

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¶
VERIFIED FIRST

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2. This Court has jurisdiction over Johnson’s claims against Judge Marilyn Huff (“Judge Huff”) pursuant to Title 28 U.S. Code § 1331 for claims arising from violations of federal constitutional rights guaranteed by the First and Fifth amendments to the U.S. Constitution and redressable pursuant to *Bivens v. Six Unknown Narcotics Agents*, 403 U.S. 388 (1971).

4. This Court has jurisdiction over Johnson’s claims against defendant Storix Inc. (“Storix”) on the basis of diversity because Johnson resides in a different State than Storix and because Johnson seeks damages in excess of \$75,000.

PARTIES

7. Defendant David Kinney is a citizen of the State of Minnesota and resident of Ramsey County and was at times mentioned herein a citizen of the State of California and resident of San Diego County.

9. Defendants Paul Tyrell and Sean Sullivan are attorneys with the firm of Procopio, Cory, Hargreaves, Savitch, LLP (collectively “Procopio”) and citizens of the State of California and resident of San Diego county.

10. Defendants Marty Ready, David Aveni and Michael McCloskey are attorneys with the firm of Wilson, Elser, Moskowitz, Edelman & Disker, LLP (collectively “Wilson/Elser”) and citizens of the State of California and residents of San Diego County.

11. Defendant Storix is a close corporation organized and existing under the laws of the State of California in 2003, with its principal place of business in San Diego County.

12. Defendant Judge Marilyn Huff (“Judge Huff”) is a judge presiding in the U.S. Court for the Southern District of California and a resident of San Diego County.

13. Defendants Randa Trapp (“Judge Trapp”), Kevin Enright (“Judge Enright”) and Katherine Bacal (“Judge Bacal”) are judges presiding at the Superior Court of California and residents of San Diego County.

STATEMENT OF THE CASE

14. Johnson ~~began doing business as a sole proprietor under the name, Storix Software~~ to market and sell the software (“SBAdmin”) he designed, developed, and registered in his name with the Copyright Office in 1999. Johnson was Storix’s sole shareholder, officer and director until 2011.

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~~15. Storix, Inc. (“Storix”) was incorporated in 2003 to continue the same business under a corporate entity. Storix was formed as an S-corp for taxation purposes so that all company earnings flowed through to the shareholders. Johnson was Storix’s sole shareholder, officer and director until 2011, during which time he paid personal income taxes on all company earnings.~~

16. ~~In June 2011, Johnson announced he had been diagnosed with terminal cancer and would be gifting 60% share of Storix to~~ his long-term employees, David Huffman, Richard Turner, Manuel Altamirano and David Kinney, who hired David Smiljkovich. These defendants since maintained a controlling majority of Storix’s shares, the board of directors, all officer positions, and are hereafter referred to as “Management”.

Deleted: In 2011, Johnson announced that he’d been diagnosed with cancer and given about a 2-year life expectancy. Johnson gifted 60% of Storix to

~~17. As Storix’s sole director, Johnson declared a distribution of all company earnings to be paid to him for the period in which he was the sole shareholder. Storix became indebted to Johnson for all profits during the time he was the only shareholder.~~

1 18. After Johnson began his medical leave, he left the matter of determining the
2 amount owed to him to Management, allowing 20% to remain with Storix until the end of
3 the year to ensure the company had sufficient working capital.

4 19. On September 21, 2011, Johnson returned to Storix's offices to sign documents
5 to: a) issue new stock to defendants Huffman, Turner, Altamirano & Kinney; b) elect the
6 new shareholders to the Storix board; and c) resign from Storix's board of directors and as
7 the company president.

8 20. At the end of 2011, the new board substantially underreported Storix's annual
9 profits and therefore the amount owed to Johnson. The board reported to Johnson that all
10 company profits earned while he was Storix's sole shareholder had been distributed to him.

11 21. In 2013, Johnson unexpectedly returned to Storix with a clean bill of health to
12 improve the SBAdmin software that had been neglected by Management in his absence.
13 Management unreasonably criticized Johnson's work and otherwise antagonized Johnson
14 until he resigned in 2014. Johnson attempted for months to communicate with Management
15 in attempt to resolve their differences, but Management refused to talk and informed him
16 without explanation that he was no longer welcome at Storix.

17 22. In October 2014, Johnson filed a copyright infringement lawsuit against Storix
18 hoping to encourage Management to compromise. (Case No. 3:14-cv-1873, "Copyright
19 Suit".) Management instead instructed Procopio to file a counter-complaint demanding a
20 declaration of ownership of Johnson's copyrights to SBAdmin. The case was assigned to
21 Judge Huff.

22 23. In February 2015, at the next annual shareholder meeting, Johnson used his
23 remaining 40% of stock in Storix to elect himself and another shareholder, Robin Sassi
24 ("Sassi"), to the board of directors. In June, Johnson sold his San Diego home due to the
25 cost of the Copyright Suit and moved to Florida where he purchased another home at less
26 than half the price.

27 24. In August 2015, Management instructed Procopio to file a direct lawsuit against
28 Johnson in California Superior Court alleging that he breached a fiduciary duty to Storix

Deleted: <#>Storix represented to Johnson that all profits earned when he was the company's sole shareholder had been distributed to him. However, while Johnson was on medical leave in 2012, Management changed Storix's accounting method, amended its 2011 tax records, and thereafter instructed Procopio to bring legal actions against Johnson to deny him access to financial records that might have raised his suspicion and afforded him a reasonable opportunity to investigate whether all profits were properly distributed to him. ¶

Deleted: <#>Johnson threatened to withdraw Storix's license to sell SBAdmin if Management would not allow him a position at Storix in which he could protect the integrity of his software without their interference. Procopio sent a letter threatening Johnson with securities fraud for allegedly forcing Management to buy their stock to keep their jobs without informing them that Johnson owned the copyrights to SBAdmin. ¶

Deleted: <#>Storix filed

Deleted: <#>Johnson brought a motion for summary judgment and summary adjudication in the Copyright Suit because Storix possessed no clear and unambiguous written agreement required by the Copyright Act to transfer ownership of SBAdmin. Judge Huff denied the motion, finding that a jury should decide if the words "transferred all assets" in Storix's 2003 Annual Report Johnson signed as its president constituted a transfer of his copyrights. ¶

1 by intending to operate a competing business while serving as a director. (Case No. 37-
2 2015-00028262-CU-BT-CTL, "Direct Suit".) The complaint falsely alleged that Johnson
3 resided in California when they filed the Direct Suit and relevant events therein occurred.
4 The case was assigned to Judge Trapp.

5 25. After the Direct Suit was served to Johnson at his home in Florida, he sent an
6 email to Management threatening to file a shareholder derivative lawsuit on Storix's behalf
7 and to instruct Storix's customers not to buy new copies of SBAdmin until after his
8 copyright ownership was confirmed at summary judgement (hereafter the "2015 email").

9 26. In October 2015, Johnson and Sassi filed a shareholder derivative lawsuit in
10 California Superior Court against Management on Storix's behalf. The complaint alleged
11 various causes of actions pertaining to mismanagement and majority abuse by
12 Management, including their filing the Direct Suit against Johnson without board approval.
13 Johnson funded the lawsuit on Storix's behalf. Wilson/Elser represented Management and
14 sent all their bills Storix to payment, which Management recorded as ordinary business
15 expenses.

16 27. In August 2016, after finding that Johnson transferred his registered copyrights
17 to Storix, Judge Huff heard Storix's motion for attorney fees in the Copyright Suit and their
18 concurrent request for an injunction based on the 2015 email. Judge Huff denied the
19 injunction because Storix could cite no harm but nevertheless awarded Storix \$543,704 in
20 attorney fees based on the same email.

21 28. In September 2016, Procopio filed a fraudulent workplace violence restraining
22 order against Johnson claiming he was stalking and threatening the lives of its employees
23 for years. In the filing, they demanded that Johnson that not be allowed to inspect Storix's
24 records without his attorney present and upon consent of Procopio or a court order. Johnson
25 presented evidence disproving the claims, and the judge dismissed the restraining order
26 with prejudice in its entirety, stating that any threats by Johnson were simply legal threats.

27 29. Two weeks before the hearing on the restraining order, Judge Trapp denied
28 Johnson's the motion for a writ of mandamus to compel Storix to allow all directors the

Deleted: counter claims

Deleted: Procopio filed a motion for an injunction, which Judge Huff denied due to "significant First Amendment Rights at stake."

Deleted: <#>In September 2015, Judge Huff denied summary judgment the Copyright Suit, finding that a jury must decide whether a term in Storix's 2003 Annual Report indicated Johnson's intent to transfer all exclusive and irrevocable copyrights to SBAdmin to Storix. This was the first time ownership of a registered copyright was considered a factual issue. ¶

Deleted: <#>another shareholder, Robin

Deleted: <#>("Sassi"),

Deleted: <#>, which was assigned to Judge Joel Wohlfeil. (Case No. 37-2015-00034545-CU-BT-CTL, "Derivative Suit".)

Deleted: <#>that Storix was harmed by Management filing

Deleted: <#>The case was filed by an attorney since Johnson couldn't represent a corporation, and

Deleted: <#>as defendants,

Deleted: <#>demanded Johnson post a \$50,000 shareholder plaintiff's bond to secure his standing as a derivative plaintiff which Johnson voluntarily paid. Wilson/Elser

Moved (insertion) [1]

Deleted: Judge Huff granted Johnson's motion to stay execution of the judgement only if he posted a supersedeas bond for the full judgment amount knowing Johnson would not be able to afford an attorney to appeal her decisions without selling his home in Florida. Johnson did so and has been living with family in Las Vegas ever since.

1 same rights to inspect Storix's records. Judge Trapp denied the motion based on Procopio's
2 argument that there was a lawsuit against Johnson for competing, there was a restraining
3 order against Johnson, and because of Judge Huff's attorney fee order based on the 2015
4 Email. Although none of the issues had been litigated, Judge Trapp restricted Johnson's
5 access to Storix's records by allowing only Procopio to decide what records to provide.

6 30. In 2017, Judge Ronald Praeger was assigned as a discovery referee in the
7 Derivative Suit. Sassi filed a motion to allow only herself to inspect Storix's financial
8 records. Judge Praeger decided all Sassi's evidence of Procopio interfering and obstructing
9 the Derivative Suit was improperly attached to a reply brief. Although Sassi's motion had
10 nothing to do with Johnson, Judge Praeger recommended that neither Johnson nor Sassi be
11 allowed to inspect Storix's records based on Storix's competition claim against Johnson
12 and Judge Huff's fee order based on the 2015 Email, neither of which had been litigated.

13 31. In January 2018, at a jury trial of the consolidated actions, Storix demanded
14 \$1.25 million in damages from Johnson for "unjust enrichment" for allegedly operating a
15 competing business but presented no evidence at trial to support the claim. Instead,
16 Procopio introduced a new claim in closing arguments that Storix suffered a \$3,739.14
17 "loss of employee productivity" from Johnson's 2015 Email which Johnson had no
18 opportunity to dispute. The jury rejected the \$1.25 million claim of Johnson competing but
19 awarded Storix \$3,739.14 on the loss of productivity claim.

20 32. Minutes before the bench trial on the Derivative Suit, Judge Enright dismissed
21 Johnson as a derivative plaintiff because he couldn't fairly and adequately represent the
22 interests of the Management shareholder based on the \$3,739.14 verdict against him, and
23 generally found in favor of Management on all Storix's derivative claims.

24 33. Following trial, Storix filed another motion for an injunction that included
25 limiting Johnson's rights to inspect company records to only those approved by Storix (i.e.
26 Management). Judge Enright found the motion superfluous because Judge Praeger's
27 discovery order and Judge Trapp's order limiting Johnson's inspection rights as a director

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Throughout the state litigation, Management and Procopio insisted that Johnson and Sassi could have no access to Storix's premises or records because there was a claim against Johnson for competing and Sassi was helping him.

Deleted: <#> and based his decision instead on Judge Huff's fee order which was itself based on the 2015 Email that had never been litigated.

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Deleted: <#>began by saying, "Anthony Johnson (Johnson) founds Storix, gives up control, returns, and tries to destroy Storix" and ended by saying Sassi was "colluding" with him.

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In December 2015, the jury in the Copyright Suit returned a verdict that the 2003 Annual Report constituted an ownership transfer of Johnson's registered copyrights to Storix, constituting the first assignment of exclusive copyrights absent a written agreement. In another unprecedented decision, the jury found that Storix owned all subsequent versions of SBAdmin Johnson created while he was Storix's sole owner because he was a work for hire. Storix cannot enforce its copyrights to SBAdmin because it possesses no written agreement required by the Copyright Office to record the transfer.¶ In August 2016, Judge Huff heard Storix's motion for attorney fees in the Copyright Suit and their concurrent request for an injunction based on the 2015 email. Judge Huff denied the injunction because Storix could cite no harm but nevertheless awarded Storix \$543,704 in attorney fees based on the same email. Judge Huff granted Johnson's motion to stay execution of the judgement only if he posted a supersedeas bond for the full judgment amount knowing Johnson would not be able to afford an attorney to appeal her decisions without selling his home in Florida. Johnson did so and has been living with family in Las Vegas ever since.¶ The Ninth Circuit affirmed the copyright ownership transfer without addressing the question of whether a clear written agreement is required to transfer copyright ownership. However, the panel reversed the attorney's fee award as unreasonable and remanded to Judge Huff for reconsideration.¶ Johnson brought a demurrer to the Direct Suit, arguing that allegations of his "intending" to compete did not constitute a cause of action because it stated no harm, and because the lawsuit must (...)

Moved up [1]: <#>In August 2016, Judge Huff heard Storix's in the Copyright Suit and their concurrent request for an injunction

Deleted: <#>Judge Enright allowed Procopio and Wilson/Elser to sit together at the plaintiff's table at trial, granted their pre-trial (...)

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Deleted: . Sassi remained a derivative plaintiff, so Judge Enright proceeded with the bench trial, but ignored all Johnson's testimony (...)

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1 still stood, thereby allowing Management to continue to deny records to both Johnson and
2 Sassi.

3 34. Following the trial, Johnson finally abandoned his efforts to save Storix from
4 Management's abuse and chose not to reelect himself to the board. Soon thereafter,
5 Johnson obtained a financial record showing that Management converted his Storix
6 retained earnings to their personal equity accounts while he was on medical leave in 2011,
7 Johnson informed Management and Procopio of his finding and demanded payment of the
8 money owed to him. Johnson received no response.

9 35. In February 2021, Storix reported to the IRS that Johnson earned over \$350,000
10 from the company in 2020, but Storix issued no shareholder distributions even though it
11 holds no debt and retained more than sufficient funds to do so. Storix intentionally caused
12 Johnson substantial debt to the IRS while directing his reported income to Management for
13 their personal use. Knowing this would give rise to a new claim, Management instructed
14 Procopio and Wilson/Elser to file joint motions to designate Johnson a vexatious litigant.
15 The Court reserved on the motion.

16 36. This amended complaint contains only a single cause of action and related
17 allegations against Storix because the Court dismissed all other claims with prejudice based
18 on the defendants' motions to dismiss under Rule 12(b)(6) for failure to state a claim.

19 CAUSE OF ACTION

20 COMMON COUNTS

21 Against Storix (Money Had and Received)

22 37. Johnson re-alleges and incorporates by reference all prior paragraphs as though
23 fully set forth herein.

24 38. Storix declared that all profits earned while Johnson was the company's sole
25 shareholder were to be distributed and were therefore Johnson's personal property to which
26 he is fully entitled. Storix took possession and retained substantial money owned to
27 Johnson and is indebted to Johnson for the amount owed.
28

Deleted: ignoring that they were based on the dismissed restraining order, the disproven competition claim, and the 2015 Email.

Deleted: Johnson filed a motion for new trial based on the surprise introduction of the 2015 Email claim, because the Direct Suit was never approved by a disinterested board of Storix, and because the Direct Suit must have been brought as a shareholder derivative action. Johnson also argued that the jury was misled by the irrelevant and misleading "at will employment" instruction that defeated his Cross Complaint. Judge Enright denied the motion without responding to Johnson's arguments. ¶ Johnson opposed Procopio's and Wilson/Elser's separate motions for costs and fees, raising numerous legal arguments including that the \$3,739.14 judgment was based solely on the 2015 Email claim he was afforded no opportunity to dispute, that Management incurred no legal expenses, and that it was unlawful for Management to use Storix funds to pay Procopio to defend against the company's own derivative claims against them. Judge Enright ignored all Johnson's arguments and awarded over \$180,000 in costs and fees for all parties in all consolidated actions, including the \$50,000 bond Johnson posted to secure his standing as a plaintiff in the Derivative Suit. ¶ Johnson could no longer afford an attorney and was therefore *pro se* in all proceedings that followed. Johnson appealed Judge Enright's judgments and orders in the Direct Suit and Cross-Complaint, which is currently pending. (Case No. D075308.) Johnson could not appeal the decisions in the Derivative Suit because Johnson cannot not represent Storix's interests. ¶ Following the state jury trial, Judge Huff heard Storix's motion for attorney fees in the Copyright Case following remand. Johnson showed that the prior \$543,704 fees award was based entirely on the 2015 Email from which Storix claimed only \$3,739 in damage, that the Derivative Suit Johnson funded on Storix's behalf proved he was not trying to harm Storix, and that Procopio was paid millions to unlawfully defend against Storix's own derivative claims. Procopio offered no reply to Johnson's arguments., and Judge Huff acknowledged none of Johnson's facts when simply reducing the fees to \$407,778 to comply with the Ninth Circuit mandate and then adding three years of interest not previously awarded. Judge Huff's order specifically states the fees were awarded to deter Johnson from threatening litigation and sending inappropriate emails. The copyright attorney's fee award remains 4 times larger than any other against an individual in U.S. history. ¶

Deleted: This triggered Storix's obligation to pay Johnson for the copyrights to SBAdmin, so Johnson sent Storix an invoice for the value of the copyrights. Procopio responded that Storix would pay Johnson nothing. ¶

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Deleted: <#>In early 2019, Johnson filed a new lawsuit in California state court against Management for conversion of his retained earnings and for malicious prosecution of the claim again...

Deleted: (California State Law)

Deleted: Count 1: Against Storix (Failure to Compensate for Goods Provided)¶ Johnson re-alleges and incorporates by reference paragraphs 1 through 66 as though fully set forth herein.¶

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Deleted: and misrepresented and concealed the amount owed to Johnson

39. Since September 2011, the Storix board had no authority to supersede the distributions declared by Johnson while he was the sole company director, nor did it have authority to distribute the money owed to Johnson to other shareholders or appropriate it for any other use.

40. Johnson was unable to reasonably discover the money owed because Management misrepresented, concealed and misappropriated the money owed to Johnson. Management thereafter instructed Procopio to bring frivolous legal actions to deny Johnson access to Storix's financial records that might have raised his suspicion and afforded him a reasonable opportunity to investigate whether his distributions were properly paid.

41. In 2018, Johnson discovered and informed Storix of the discrepancy, demanded payment of the amount owed, and was refused payment.

42. Storix is wrongfully withholding money which rightfully belongs to Johnson. Johnson did not give informed consent or otherwise approve of Storix's retention or use of money owed to him.

43. Johnson was harmed by Storix's concealment and unlawful retention of \$475,560 owed to him.

PRAYER FOR RELIEF

44. For general and special damages according to proof at trial;

45. For an unrestricted accounting of Storix, Inc's financials records;

46. For punitive damages according to proof at trial;

47. For pre-judgment interest and costs of suit;

48. For such other and further relief as the Court may deem proper.

CERTIFICATION

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have

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Deleted: Management directed Storix's attorneys to substantially interfere with his rights to financial records as a major shareholder and company director.

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Deleted: <#>For a declaration that Judges Huff, Trapp, Enright and Bacal exhibited clear bias against Johnson, violated his constitutional rights, and otherwise treated Johnson unfairly as a *pro se* litigant; ¶
For injunctive relief under Fed.R.Civ.P. § 60(b) vacating Judge Huff's order to stay proceedings in Case No. 3:19-cv-1185 and all orders therein dismissing Johnson's claims with prejudice, and for an order transferring the case to this court or to the judge originally assigned to the case. ¶
For consideration of the fair value of Plaintiff's copyrights;¶

1 evidentiary support or, if specifically so identified, will likely have evidentiary support
2 after a reasonable opportunity for further investigation or discovery; and (4) the complaint
3 otherwise complies with the requirements of Rule 11.

4 I agree to provide the Clerk's Office with any changes to my address where
5 case-related papers may be served. I understand that my failure to keep a current address
6 on file with the Clerk's Office may result in the dismissal of my case.

7
8 Dated: April 15, 2021

By:

