No. 19-72507

In the United States Court of Appeals for the Ninth Circuit

In Re ANTHONY JOHNSON,
Petitioner.

On Petition for a Writ of Mandamus to the U.S. District Court for the Southern District of California in Case No. 3:19-cv-1185-H-BLM (transferred from Case No. 3:19-cv-1185-JLS-JLB)

PETITION FOR WRIT OF MANDAMUS

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INTRODUCTION

Pursuant to the All Writs Act, 28 U.S.C § 1651, and Rule 21 of the Federal Rules of Appellate Procedure, plaintiff and petitioner Anthony Johnson (Johnson) respectfully asks this Court to issue a writ of mandamus directing the district Court Clerk to transfer this case back to the originally assigned judge or to assign the case to a different district court judge. "A court may issue a writ of mandamus under 28 U.S.C. § 1361 only if '(1) the individual's claim is clear and certain; (2) the official's duty is nondiscretionary, ministerial, and so plainly prescribed as to be free from doubt, and (3) no other adequate remedy is available.' *Kildare v. Saenz*, 325 F.3d 1078, 1084 (9th Cir. 2003) (internal citations omitted)." *Johnson v. Reilly*, 349 F.3d 1149, 1153 (9th Cir. 2003); *Benny v. United States Parole Comm'n*, 295 F.3d 977, 898 (9th Cir. 2002); *Barron v. Reich*, 13 F.3d 1370, 1374 (9th Cir. 1994).

Johnson has been denied his only other adequate remedy. Johnson motioned the district court judge, Marilyn L. Huff, to reverse the order improperly transferring the case to her court, or to recuse herself or assign the motion to a different district court judge under 28 U.S.C. Code §§ 144 and 455(a). Judge Huff refused to recuse herself, refused to allow another judge to decide the motion, and refused to reverse the order transferring the case because Johnson's prior copyright action involved the same plaintiff and one of the seven defendants in this case.

The most significant issue pertaining to Judge Huff's inability to be impartial in this case is her past refusal to acknowledge the litigation misconduct and conflict of interest of opposing counsel while awarding them the largest attorney fee award against any individual in a copyright case in U.S. history. That award was based solely on the same false allegations they brought against Johnson in a state lawsuit that Johnson disproved and is now the subject of this malicious prosecution action. No reasonable person would expect Judge Huff to be impartial in deciding a malicious prosecution claim against the same attorneys whose misconduct she refused to acknowledge for years, especially since any ruling in Johnson's favor would substantiate his current and past claims of judicial bias in her court.

RELIEF SOUGHT

Petitioner Anthony Johnson ("Johnson") respectfully requests the Court grant this petition for a writ of mandamus directing the district court to reverse the *Order of Transfer* reassigning the original case (No. 3:19-cv-1185-JLS-JLB) to Hon. Judge Marilyn L. Huff under new case (No. 3:19-cv-1185H-BLM) and transfer the case back to the originally assigned district court judge, Hon. Judge Janis L. Sammartino. In the alternative, Johnson respectfully requests this Court issue a writ of mandamus directing the court clerk to assign the case to a different

district court judge or to have Johnson's motion for recusal under 28 U.S.C. Code § 144 heard and decided by another district court judge.

ISSUES PRESENTED

(1) Whether the district court erred in refusing to reverse an order reassigning this case to her court solely because it involves the same plaintiff and one of the same defendants as a previous case involving unrelated claims decided in a jury trial in December 2015.

(2) Whether the district court judge erred in refusing to recuse herself or to allow another judge to hear a motion to recuse under U.S.C. § 144 based on a finding of inadequate affidavit.

FACTS NECESSARY TO UNDERSTAND THE ISSUES PRESENTED BY THE PETITION

On June 27, 2019, the district court clerk issued a report that this case be transferred to Judge Huff based on the "Low-Number Rule". The order was signed by Judge Huff on July 15, 2019 and Judge Sammartino on July 18, 2019. The transfer order indicates the case was transferred because "The above low-numbered case and the present case appear: (1) to arise from the same or substantially identical transactions, happenings or events; or (2) involve the same or substantially the same parties or property; or; … (4) call for determination of the same or substantially identical questions of law; or … (6) for other reasons would entail unnecessay[sic] duplication of labor if heard by different judges." The order

transferring the case is attached as **Attachment 1** to this Petition (Dkt. No. 4.) Johnson was not notified by the district court and learned of the transfer only after seeing an *ex parte* application filed by opposing counsel on July 31, 2019. (Dkt. No. 5.)

On August 9, 2019, Johnson filed a motion to recuse Judge Huff or reverse the order transferring the case from Judge Sammartino because this case is unrelated to the copyright litigation that terminated in 2015 and involves only one prior defendant. Attached as **Attachment 2** is a copy of the *Motion to Recuse*. (Dkt. No. 16, "Motion".)[1] Attached as **Attachment 3** is a copy of *Johnson's Declaration in Support of Motion to Recuse* ("Johnson Decl. ")[2] Attached as **Attachment 4** is a copy of Judge Huff's order of September 30, 2019 denying the motions. ("Order".)

Judge Huff refused to reverse the case transfer based on the "Low Number Rule" because "the present action was properly assigned to this Court under the low number rule, Civil Local Rule 40.1(e)(2) and (i). The present action and the prior action, Johnson v. Storix, 14-cv-01873-H-BLM, both involve some of 'the

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[1] The attached motion omits duplicative pages that were inadvertently included and noted in a notice of correction filed on 8/20/2019 (Dkt. No. 20) For convenience, the attached motion omits the accompanying attachments.

[2] The court combined the motion, declaration and 147 exhibit pages in a single document. (Dkt. No. 16.) For convenience, Johnson attaches the declaration without the exhibit pages.

same parties.'" (*Id.* at p. 7.) Judge Huff denied Johnson's request to have a different judge rule on his motion to recuse "because Plaintiff's affidavit is based entirely on this Court's judicial rulings, analysis, and opinions made during the course of the prior proceedings, and Plaintiff has failed to set forth an adequate basis for this Court's recusal in the affidavit, his section 144 affidavit is not legally sufficient." (*Id.* at p. 5.)

First, Judge Huff's denial of Johnson's request to reverse the order reassigning the case was improper because there was no notice of related cases and no criteria for transferring the case according to the "Low Number Rule" was met. (Johnson Decl. ¶¶ 29-30; Motion at pp. 4-5.) Judge Huff denied the request to reverse the order solely because one of seven defendants in the current action was a defendant in Johnson's prior copyright infringement action. (Order at p. 8.) The copyright issues are not "pending" since the case was decided by a jury in December 2015. There are no related issues since the copyright action involved only federal copyright law and the current case involves only issues to be decided under California state law. (Johnson Decl. ¶ 28.) No action has been taken regarding the merits of the case, and no prejudice or duplication of effort will occur if the case is transferred back to Judge Sammartino. (Motion at pp. 4-5.)

Next, Judge Huff refused to recuse herself "[b]ecause Plaintiff's allegations of bias stem entirely from this Court's adverse rulings and analysis in the prior

action on the issue of attorney's fees." (Order at p. 4.) The primary ground for the motion was not her adverse rulings, but her refusal to acknowledge any facts contrary to the conclusory assertions of opposing counsel or their litigation misconduct when deciding that Johnson should pay their fees. Most important is that those attorneys are defendants in the current malicious prosecution action due to that very conduct.

Any reasonable person with knowledge of the facts would question Judge Huff's partiality in this case based on clear bias demonstrated by Judge Huff's untenable finding that Johnson should pay the fees of the attorneys whose malicious conduct she refused to acknowledge. To find a reason to do so, she had to ignore material facts and well established law. Judge Huff postponed the decision to award fees until after the Supreme Court's ruled on *Kirtsaeng v. John Wiley & Sons, Inc. (2016)* 136 S. Ct. 1979, then ignored the ruling which virtually eliminated attorney fees against a losing party with a objectively reasonable copyright case.[3] The ruling didn't provide the broad discretion Judge Huff expected, so she based the entire award on three emails she previously found harmless and unrelated to the copyright litigation. (Johnson Decl. ¶¶ 21-22; Motion at pp. 6-7.) Judge Huff refused to acknowledge material facts, blindly accepted

[3] *Johnson v. Storix* is the only case that declined to extend the *Kirtsaeng* decision since it was decided in 2016 as indicated by Westlaw. (*See* Johnson Decl. ¶ 15; Motion at p. 7, fn. 5.)

false contentions of opposing counsel, and ignored their litigation misconduct and conflicts of interest (Motion at pp. 14-16; Johnson Decl. ¶¶ 18-22) when granting the largest attorney fee award against any individual in a copyright case in U.S. history. (Motion at pp. 8; Johnson Decl. ¶ 15.)

On appeal, the Ninth Circuit found the fee award unreasonable and excessive, and Johnson petitioned the Court to remand the decision to a different judge based on Judge Huff's appearance of bias. (Johnson Decl. ¶ 17; Motion at p. 12.) After the Court denied the petition, Judge Huff ignored the factors the Ninth Circuit remanded for reconsideration, reissued the fee award based on the same facts Johnson disproved at the remand hearing, and ignored the state court jury verdict finding against the claim brought against Johnson that remains the basis of her decision. (Johnson Decl. ¶23; Motion at pp. 12-13.) Johnson referred to prior rulings and transcripts of proceedings in his motion – not to demonstrate they were wrong – but to show that Judge Huff knowingly ignored every fact that weighed against awarding fees to the attorneys now being sued for malicious prosecution. (Johnson Decl. ¶¶ 9-14.)

Lastly, Judge Huff refused to allow another judge to hear and rule on the motion to recuse. Judge Huff found that "the Court may consider and deny Plaintiff's motion for recusal without referring the matter to another judge" based on Johnson's failure to provide a "legally sufficient" affidavit. (Motion at p. 7.)

Judge Huff found Johnson's declaration legally insufficient because it didn't allege bias on the basis of an extrajudicial source, ignoring that the finding in the same case she cited, *Liteky v. United States*, 510 U.S. 540 (1994) (Liteky), that an extrajudicial source "is better considered as a significant 'factor,' rather than an unbending requirement." (*Id.* at 554-555.) Johnson's declaration and exhibits demonstrate Judge Huff's repeated refusal to acknowledge any facts contrary to her unyielding determination to punish Johnson with unprecedented attorney fees for any reason she could muster. Johnson informed Judge Huff on remand that the entire basis of her prior fee decision had finally been disproven in state court. (Johnson Decl. ¶¶ 18-21.) Johnson showed Judge Huff that the defendants in this case sued Johnson for years demanding only $3,739 in damages related to the same emails from which she based her $555,000 attorney fee award. (*Id.* ¶¶21-22.) Johnson reminded Judge Huff that the opposing attorneys unlawfully took Storix's funds to fight against the shareholder derivative lawsuit Johnson brought *on Storix behalf*, further proving their litigation misconduct and disproving their contention of Johnson trying to destroy Storix cited throughout her prior orders. (*Id.* ¶¶ 18, 20, 23, 31.)

To preclude Johnson's second appeal, Judge Huff ordered him to post a new bond for nearly $450,000 to cover the new fee award (adding interest from the original judgment) *before* she would release his bond from the reversed judgment.

Judge Huff knew Johnson had to sell his home to afford the first bond. (Johnson Decl. ¶¶ 22-25.) Johnson has no evidence of an extrajudicial source, but Judge Huff's decisions did not stem from facts pertaining to the litigation.

REASONS FOR GRANTING THE WRIT

For unknown reasons, this case was transferred to the one district court judge the defendants knew to be antagonistic toward Johnson and whom Johnson had previously accused of bias. Judge Huff's prior attorney fee award against Johnson was found to be unreasonable and excessive by this Court and her second award was no less unreasonable, thus giving rise to a second appeal that is still pending. Judge Huff nevertheless refuses to return this case to the originating judge, refuses to recuse herself, and refuses to allow another judge to decide Johnson's motion. Having this case heard in Judge Huff's court automatically creates a ground for appeal that will be avoided if the case is heard by another judge.

There was no reason this case should have been transferred to Judge Huff's court, and no reason it should not be transferred back to the originating judge before a ruling on the merits of the case. Judge Huff states that the case was properly transferred to her court on the sole ground that Johnson was a plaintiff in the prior copyright case that also involved one of the same defendants. The "low number rule" was not intended to ensure similar parties will always appear before

the same judge even on different claims and years after a prior case ended. Johnson was prejudiced by this case transfer, and this Court should issue a writ directing that the case be transferred back to Judge Sammartino.

In the alternative, the Court should issue a writ directing the case to be assigned to a different court based on the appearance of bias, or that a different district court judge hear and decide Johnson's recusal motion. The perception of bias is substantial enough to grant Johnson's motion in order to preserve the appearance of fairness and justice. Judge Huff's refusal to allow another judge to decide Johnson's motion only adds to the suspicion of bias. Even more suspicious is the fact that Judge Huff denied Johnson's motion without acknowledging the most significant argument – that the current malicious litigation action is against the same attorneys whose litigation misconduct, conflicts-of-interest, and false representations she repeatedly ignored.

To hear this case, Judge Huff would have to set aside opinions she refused to abandon even after they were rejected by a state court jury. Judge Huff never questioned the honesty or integrity of the defendants, and to do so now would bring her own unprecedented decisions against Johnson into question. Judge Huff cannot be impartial in this case, wherein the same defendants are now being sued for the misconduct she consistently ignored when awarding an unprecedented attorney fee award against Johnson.

It's not unreasonable to think Judge Huff would be invested in Johnson's failure to prove his claims since any decision in his favor would render Judge Huff's decision to award fees against Johnson less tenable. No reasonable person would expect Judge Huff to be impartial under these circumstances, and there's simply no reason for this case to remain in her court. Transferring the case would preserve the appearance of fairness and justice and avoid an unnecessary question of bias as well as a ground for appeal.

Dated: October 2, 2019

Respectfully submitted,

By: *s/Anthony Johnson*
Anthony Johnson
Pro Se Appellant

Form 8. Certificate of Compliance Pursuant to 9th Circuit Rules 28-1.1(f)

I certify that the brief is within the 2,529 words, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6). This brief complies with the length limits permitted by Ninth Circuit Rule 32-2(b).

s/Anthony Johnson
Anthony Johnson
Pro Se Appellant

CERTIFICATE OF SERVICE

Ninth Circuit Case Number: _____

Case Name: In Re Anthony Johnson

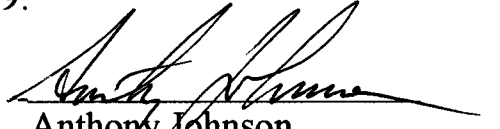
(U.S. District Court for the Southern District of California
Case No. 3:19-cv-1185-H-BLM)

I certify that I served on the person(s) listed below, either by mail or hand delivery, a copy of the **PETITION FOR WRIT OF MANDAMUS** and any attachments:

Marty B. Ready Michael P. McCloskey WILSON ELSER MOSKOWITZ EDELMAN & DICKER, LLP 401 West A Street, Suite 1900 San Diego, CA 92101 Email: marty.ready@wilsonelser.com Email:michael.mccloskey@wilsonelser.com Tel: (619) 881-6431 (Attorney for Defendants Altamirano, Turner, Kinney & Huffman)	Paul A. Tyrell Sean Sullivan PROCOPIO, CORY, HARGREAVES & SAVITCH LLP 525 B Street, Suite 2200 San Diego, CA 92101 Email: paul.tyrell@procopio.com Email: sean.sullivan@procopio.com Tel: (619) 619.238.1900 (Defendants, Attorneys for corporate defendant, Storix, Inc.)

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the U.S. District Court for the Southern District of California by using the appellate CM/ECF system on October 1, 2019.

Executed on October 2, 2019

By: 
Anthony Johnson
Pro Se Appellant

ATTACHMENT 1

ATTACHMENT 1

United States District Court
SOUTHERN DISTRICT OF CALIFORNIA

Anthony Johnson

Plaintiff,

V.

Manuel Altamirano

Defendant.

Case No. 19CV1185-JLS(JLB)

REPORT OF CLERK AND ORDER OF TRANSFER PURSUANT TO "LOW-NUMBER" RULE

FILED
JUL 18 2019
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

REPORT OF CLERK PURSUANT TO LOW NUMBER RULE

Re: "Low-Numbered Case No.: 14CV1873-H(BLM)

Title: Johnson v. Storix, Inc.

Nature of Case: 17:0101 Copyright Infringement (definitions)

The above "low-numbered" case and the present case appear:

- ☒ (1) to arise from the same or substantially identical transactions, happenings or events; or
- ☒ (2) involve the same or substantially the same parties or property; or
- ☐ (3) involve the same patent or trademark or different patents or trademarks covering the same or substantially identical things; or
- ☒ (4) call for determination of the same or substantially identical questions of law; or
- ☐ (5) where a case is refiled within one year of having previously been terminated by the Court; or
- ☒ (6) for other reasons would entail unnecessay duplication of labor if heard by different judges.

New Case #: **19CV1185-H(BLM)**

This case was transferred pursuant to the Low-Number Rule. The related cases have been assigned to the same judge and magistrate judge but they are NOT CONSOLIDATED at this point; all pleadings must still be filed separately in each case.

John Morrill, Clerk of Court,

Dated: 6/27/19

By: s/J. Petersen
J. Petersen, Deputy

ORDER OF TRANSFER PURSUANT TO "LOW-NUMBER" RULE

I hereby consent to transfer of the above-entitled case to my calendar pursuant to Local Rule 40.1, Transfer of Civil Cases under "Low-Number" Rule.

Dated: 7/15/19

Marilyn L. Huff
United States District Judge

It appearing that the above-entitled case is properly transferable in accordance with the provisions of the Low-Number Rule, IT IS HEREBY ORDERED that this case is transferred to the calendar of Judge Marilyn L. Huff and Magistrate Judge Barbara L. Major for all further proceedings.

Dated: 7/18/19

Janis L. Sammartino
United States District Judge

ATTACHMENT 2

ATTACHMENT 2

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Pro Se

NUNC PRO TUNC
Aug 8 2019

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

ANTHONY JOHNSON, an individual,

Plaintiff,

v.

MANUEL ALTAMIRANO, an individual, RICHARD TURNER, an individual, DAVID KINNEY, an individual, DAVID HUFFMAN, an individual, PAUL TYRELL, an individual, SEAN SULLIVAN, an individual, STORIX, INC,. a California Corporation, and DOES 1-5, inclusive,

Defendants.

Case No. 3:19-cv-1185-H-BLM

PLAINTIFF'S MOTION TO RECUSE

Judge: Marilyn L. Huff
Complaint Filed: June 24, 2019

[28 U.S.C. Section 144 and 28 U.S.C Section 455(a)]

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

MOTION TO RECUSE

Pursuant to 28 U.S.C. §§ 144 and 455(a), self-represented plaintiff, Anthony Johnson ("Johnson"), moves to recuse the assigned judge, Hon. Marilyn L. Huff, from this case. This motion is both timely and sufficiently supported by affidavit – *Declaration of Anthony Johnson in Support of Motion to Recuse* concurrently filed herewith. As such, and pursuant to 28 U.S.C. § 144, Johnson requests that Judge Huff proceed no further on this motion or in this action and that another district court judge for the Federal District Court for the Southern District of California be assigned to hear and decide this motion.

This case involves various torts and malicious prosecution committed by majority shareholders and corporate counsel of Storix, Inc. The case strictly involves matters of California state law but was brought under diversity jurisdiction because Johnson is an out-of-state plaintiff. The case was originally assigned to Hon. Judge Janis L. Sammartino under case number 3:19-cv-1185-JLS-JLB but was transferred to Judge Huff by the court clerk before any action was taken in the case, and without notifying Johnson of the transfer.

For the reasons described below, this action should be reassigned to a judge who does not hold bias or prejudice against Johnson or favoritism toward the attorney defendants in this case.

I. AUTHORITIES

A party may petition the district court to recuse the assigned judge under two different statutes. A party may allege bias of a district court judge pursuant to 28 U.S.C. § 144 and seek to have a neutral district court judge determine whether such bias exists. Also, a party may move to have a district court judge recused pursuant to 28 U.S.C. § 455, by establishing that the judge's impartiality might reasonably be questioned. Here, Johnson moves to recuse Judge Huff pursuant to both statutes. Nevertheless, the standard for recusal under both statutes is the same. *United States v. Studley,* 783 F.2d 934, 939 (9th Cir. 1986).

The question is whether a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned. *Id.* (quoting *Mayes v. Leipziger*, 729 F.2d 605, 607 (9th Cir. 1984)). Thus, on review, a court does not have to conclude that actual bias exists, but rather that a judge's impartiality might reasonably be questioned. This standard is similar to that which the Ninth Circuit applies when considering whether to order that a case be reassigned when claims of bias by the district judge are raised on appeal.

For reassignment, the relevant question is whether circumstances establish that "to a reasonable outside observer . . . reassignment 'to maintain the appearance of justice' is necessary." *Nat.l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1045-46 (9th Cir. 2015) (quoting *United States v. Kyle*, 734 F.3d 956, 966–67 (9th Cir. 2013). Although recusal often requires extrajudicial evidence, a party can establish a proper basis for recusal without such evidence where on-the-record statements demonstrate a "deep- seated . . . antagonism that would make fair judgment impossible." *Liteky v. United States*, 510 U.S. 540, 554-55 (1994).

II. ARGUMENT

A. This Motion is Timely and Proper

Johnson seeks no strategic gain from this motion. The new case itself does not question Judge Huff's prior rulings, raise any issues, nor rely on any underlying facts relevant to the prior copyright case. The copyright case involved a federal question of copyright ownership, while the instant lawsuit involves different defendants and various tort claims that must be substantially resolved by California law.[1]

1. The Motion To Recuse Is Well-Supported By Affidavit and an Established Public Record.

[1] Defendants' own litigation conduct and insistence that Johnson post yet another $160,000 plaintiff's bond induced Johnson to dismiss the state case and refile in federal court under diversity jurisdiction.

A distinction between 28 U.S.C § 144 and 28 U.S.C. § 455(a) can be found in certain prerequisites imposed by section 144. Section 144 requires that the motion be supported by a "sufficient affidavit" and provides for a neutral judge's review of a recusal motion and the allegations of bias. An affidavit is considered "sufficient" when the affidavit "specifically alleges facts that fairly support the contention that the judge exhibits bias or prejudice directed toward a party." *United States v. Sibla*, 624 F.2d 864, 868 (9th Cir. 1980) (citations omitted).[2] The affidavit that accompanies this motion is sufficient to support Johnson's motion pursuant to 28 U.S.C. § 144. (*See Declaration of Plaintiff Anthony Johnson in Support of Motion to Recuse* filed concurrently with this motion.) This motion and its supporting affidavit sufficiently allege facts that support the contention that Judge Huff exhibits bias or prejudice toward Johnson making a fair judgment impossible.

2. This Motion Was Timely Filed.

When analyzing the "timeliness" component of the analysis, the Ninth Circuit has imposed no strict timeframe within which a recusal motion must be filed. *Preston v. United States*, 923 F.2d 731, 732-33 (9th Cir. 1991). At the center of the analysis, the court must give consideration to whether the motion would result in a waste of judicial resources and whether the motion is a result of a party merely

[2] Although the *Sibla* court included a requirement that the bias or prejudice "[stem] from an extrajudicial source," *id.*, the Supreme Court has subsequently clarified that this is not always the case, *Liteky v. United States*, 510 U.S. 540, 554-55 (1994). Where on-the-record statements demonstrate a "deep-seated . . . antagonism that would make fair judgment impossible," recusal is appropriate. *Id.* at 555. *Liteky* specifically holds that the absence of an extrajudicial source does not necessarily preclude recusal, and that what had been considered the "extrajudicial source doctrine," is better considered as a significant "factor," rather than an unbending requirement. *Id.* at 554-55. The Court stated that, although judicial rulings *alone* almost never constitute a valid basis for recusal, comments or opinions expressed by a judge are a different matter. *Id.* at 555. Although such judicial remarks *ordinarily* do not support a bias challenge, they *will* do so if they "reveal such a high degree of favoritism or antagonism as to make fair judgment impossible." *Id.*

seeking some strategic gain. *Id.* at 733. Thus, where a motion to recuse comes after the judge has spent significant judicial resources and time or after an adverse decision has been rendered, such a recusal motion is necessarily untimely.

Here, the district court clerk issued a report that this case be transferred to Judge Huff based on the "Low-Number Rule".[3] Judge Sammartino signed the order transferring the case on July 18, 2019, but Johnson was not notified by the district court. (Johnson Decl. at ¶ 28.) Johnson learned of the transfer on July 31, 2019 when the opposing counsel referenced Judge Huff and the new case number in an *ex parte* application to extend the deadline to answer. (*Id.*)[4] Johnson brings this motion at the earliest opportunity and before any court has acted in this case. Thus, this motion and its supporting affidavit are timely.

3. Granting This Motion Will Cause No Prejudice or Added Burden on the Court

The clerk's transfer order indicates this case was transferred to Judge Huff based on her having presided in a copyright infringement lawsuit between Johnson and Storix, Inc. ("Storix"), case number 3:14-cv-11873-H-BLM, that was decided by a jury in December 2015. The transfer order indicates "The above low-numbered case and the present case appear: (1) to arise from the same or substantially identical transactions, happenings or events; or (2) involve the same or substantially the same parties or property; or; ... (4) call for determination of the same or substantially identical questions of law; or ... (6) for other reasons would entail unnecessay[sic] duplication of labor if heard by different judges." None of these criteria actually apply because the claims of the two lawsuits are unrelated and the prior lawsuit named only Storix as the sole defendant out of seven defendants in the current action, and Storix was only named as a defendant because its

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[3] For convenience, **Attachment 1** contains the order transferring the case.

[4] Johnson has opposed the motion to extend the deadline to answer since all parties have been aware of these claims since January 2019.

management/defendants insisted that only Storix can be held liable for their actions. (Johnson Decl. ¶ 27.) The prior lawsuit dealt entirely with federal issues of copyright ownership and infringement, whereas the current lawsuit deals entirely with issues of California tort law and malicious prosecution of a state lawsuit unrelated to the federal copyright dispute.

Particularly since no action has been taken in this case and no issues have yet to be determined on the merits, there is no reason any party would be prejudiced by having the case transferred to a different judge. Furthermore, the court has not yet expended any judicial resources and there will be no duplication of efforts since the underlying facts and issues are entirely different.

B. Judge Huff Should Not Preside Over This Case Because a Reasonable Person With Knowledge of All the Circumstances Would Conclude That Judge Huff Holds a Personal Bias or Prejudice Against Johnson.

Judge Huff tried the prior copyright infringement case Johnson brought against defendant Storix, Inc. to enforce his registered copyrights. In December 2015, Judge Huff adopted a jury finding that Johnson *intended* to transfer his copyright ownership to Storix, Inc. upon its formation and thereby granted Storix ownership the software Johnson created and developed for over 15 years. (Johnson Decl. ¶ 8.) Johnson exhausted all efforts to appeal the decision and makes no effort to do so here. Nor does Johnson attempt to have Judge Huff recused because of a bad ruling. However, her unyielding determination to continue punishing Johnson years after she effectively gave his entire company and his life's work to his former employees *for free* raises the reasonable question of whether Judge Huff can now be impartial in a case against the same individuals and attorneys that have ever since been the sole beneficiaries of Johnson's life's work.

Judge Huff should be recused from this case because her bias or prejudice against Johnson, as demonstrated below, makes fair judgment impossible.

1. Judge Huff's opinion of Johnson took an unexpected turn after the Supreme Court issued a ruling that didn't support an award of attorney fees against Johnson.

Two months after the jury trial, Judge Huff held the first hearing on attorney fees. At the time, Judge Huff took no issue with Johnson's motivation not found any need for deterrence and even rejected Storix counsel's attempts to draw attention to Johnson's emails she refused to consider at the summary judgment hearing a few months earlier:

> *THE COURT:* ... **Motivation, that's mixed on both sides**. This is his baby. This is his life, and he believed in his own view that there wasn't -- sometimes rewriting history is what people do, and he believed that there wasn't a sufficient memorandum of transfer.

(Johnson Decl. ¶ 9, Ex. A, p. 38; bold added.)

> *MR. SKALE:* The one factor I think the Court seemed to be focusing on -- and correct me if I'm wrong, please, your Honor, is the motivation factor. You note it --
> *THE COURT:* I don't think I'm focusing on that. I just say, oh, there's -- there's a variety of factors, and **the motivation I think cuts both ways**.

(Johnson Decl. ¶ 9, Ex. A, p. 46; bold added.)

> *MR. Tyrell:* ... But **in terms of this deterrence issue**, it's not just how he responded to the discovery. It's -- it's the entirety of his behavior. Mr. Johnson is still reaching out to Storix employees and directing them to delete evidence. He hasn't learned his lesson, and he needs to be deterred. Now, this issue of compensation --
> *THE COURT:* **But that's not related to this case.**
> *MR. TYRELL:* Well, your Honor, he -- he's still claiming that he owns the copyright. He's still instructing the employees to delete evidence. All of the behaviors, all of the misconduct and the inappropriate behaviors, he hasn't learned his lesson. Deterrence is still appropriate. And on that issue, your Honor --
> *THE COURT:* **So I don't think that's the point --**
> *MR. TYRELL:* But, your Honor, the –
> *THE COURT:* **-- of fees.**

(Johnson Decl. ¶ 9, Ex. A, p. 61; bold added.) Judge Huff further recognized the

tragic circumstances that resulted in his former employees – the Management Defendants in this case – taking advantage of Johnson:

> THE COURT: … And under the equitable circumstances of the case, I guess we say don't look a gift horse in the mouth or whatever the other sayings are. It's a pretty sympathetic case for the Plaintiff saying he developed it. He had it. He had tragic circumstances in his life. He didn't give it away to his sister, which he could have. Instead, he gave it to his employees, and now lost majority control of the company.

(Johnson Decl. ¶9, Ex. A at p. 31.)

Judge Huff allowed further briefing following a pending a Supreme Court decision in *Kirtsaeng v. John Wiley & Sons, Inc. (2016)* 136 S. Ct. 1979 (Kirtsaeng).[5] Without explanation, six months later, Judge Huff's entire opinion of Johnson unexpectedly changed. (Johnson Decl. ¶ 12.) The *Kirtsaeng* decision virtually eliminated attorney fees in copyright cases where a losing party had an "objectively reasonable" position absent "litigation misconduct" or "overaggressive assertion of copyright claims". (*Kirtsaeng* at 1989; Attachment 2 at p. 8.) Judge Huff had already found Johnson's copyright claim to be objectively reasonable – a factor *Kirstaeng* requires be given "substantial weight" in order to "encourage parties with strong legal positions to stand on their rights." (*Id.* at 1986; Attachment 2 at p. 7.) But Judge Huff ignored the substance of the *Kirtsaeng* ruling and awarded **$555,118.64** in fees against Johnson based entirely on the *same emails* she previously found irrelevant. (Johnson Decl. ¶ 9, Ex. F.)

Judge Huff was repeatedly made aware that the Management Defendants directed the Attorney Defendants in this case to file a frivolous lawsuit against Johnson *on the morning of the mandatory settlement conference* in the copyright

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[5] Johnson requests judicial notice of the *Kirtsaeng* decision from the Westlaw site (2016 WL 3343758) that includes a "KeyCite" flagging *Johnson v. STORIX, INC.*, No. 16-55439 (9th Cir. Dec. 19, 2017) as the only case declining to extend the *Kirtsaeng* decision. For convenience, the Westlaw record is attached as **Exhibit B**.

case to impose added financial burden on Johnson. (Johnson Decl. ¶ 22, Ex. I at pp. 36-37.) She was also aware that Johnson responded by threatening and eventually filing a shareholder derivative suit *on Storix's behalf* to try to end their abuse – despite Storix's own attorneys – the Attorney Defendants in this case –defending the Management Defendants against the company's claims. (Johnson Decl. ¶ 22, Ex. I at pp. 9, 33-34, 45-46.) But, rather than acknowledge any of these facts, Judge Huff imposed an historic attorney fee award against Johnson based on Storix counsel's assertion that Johnson only claimed ownership of the software *he created* and *registered in his name* for 15 years in order to destroy the company *he founded.* (Johnson Decl. ¶ 13, Ex. C at p. 3, ¶ 13, Ex. E at pp. 6 & 7, ¶ 23, Ex. J at p. 15.)

Whether or not Judge Huff was correct in finding that Johnson's intent to transfer ownership of all his copyrights to Storix amounted to an actual transfer is immaterial. What is relevant is Judge Huff's stated sympathy for Johnson's circumstances in stark contrast to her forcing Johnson to pay "Storix" attorney fees that would never have been incurred had its Management Defendants not decided to take *for free* everything Johnson spent a lifetime creating.

The fee award against Johnson was based on nothing more than a few emails that had nothing to do with the copyright issues, pertained to different litigation, and resulted in no attorney fees.[6] Judge Huff nevertheless awarded the defendants in the instant case (i.e. "Storix") four times the largest attorney fee award against any author of a creative work in U.S. history. (Johnson Decl. ¶ 15.) Even if such an unprecedented fee award doesn't prove actual bias, any reasonable person with knowledge of the entire facts would question Judge Huff's impartiality.

[6] The attorney fee award is currently pending second appeal in Ninth Circuit Case number 18-56106 largely based on these factors.

2. Judge Huff made unwarranted and unsupported comments about Johnson's character and intentions and refused to acknowledge any evidence to the contrary.

Judge Huff showed increasing disdain for Johnson after the copyright trial even though Johnson took no action contrary to the court's ruling and was not seen in Judge Huff's court again until the remand hearing. Judge Huff's post-trial orders all centered around a couple of angry emails Johnson sent to his former employees in response to their having used Storix to file a frivolous lawsuit alleging that Johnson was operating a "secret" competing business.

One email contained a single "F-word" that Judge Huff found so offensive it became the focus of Johnson's character rather than evidence of his efforts to save the integrity of his software and his company from financial ruin. Judge Huff's recollection of Johnson's words became increasingly exaggerated as the post-trial hearings progressed: "The **vulgar** language that came out *in some of the documents* was not helpful for him. Pretty sad." (Johnson Decl. ¶ 9, Ex. A at p. 33; emphasis added.) "[T]here was some **vulgar** stuff going back and forth, and -- He might have taken it a step too far." (*Id.* at p. 47; emphasis added.) Judge Huff denied Johnson's motion for new trial in part because, "Defendant Storix provided additional evidence *in support of its position*, including Plaintiff Johnson's **vulgar** email correspondence." (Johnson Decl. ¶ 10, Ex. B at p. 6; emphasis added.) Johnson's email was inflammatory, but that one word wasn't even used in a vulgar fashion. Despite Johnson's repeated efforts, Judge Huff refused to acknowledge the event that triggered the email.

At trial, Storix counsel badgered Johnson on the stand over a statement he made in an email to an attorney regarding the number of years Storix had been in

business. An exhausted and frustrated Johnson finally said he "lied", believing it to be a benign issue.[7] Judge Huff accepted Storix's fabrication of Johnson's trial testimony despite Johnson's repeated efforts to set the record straight. The order denying Johnson's new trial motion referred to "his admissions to having lied to a third party when he sought to sell Storix, Inc." (Johnson Decl. ¶ 10, Ex. B at p. 6.) At the hearings for attorney fees: "It's saying to -- it's lying to third parties." (*Id.* at p. 27), "it was quite telling on cross examination when he disassembled and said 'All right. I admit it. I lied.'" (Johnson Decl. ¶ 12, Ex. D at p. 15.) "It's all of his behavior after. It's saying to -- it's lying to third parties. … It's admitting on the stand that he lied to people." (*Id.* at p. 27.) In Johnson's motion for reconsideration, he provided a transcript of the *actual trial testimony* proving Storix's counsel intentionally misconstrued Johnson's statement. (Johnson Decl. ¶ 26, Ex. M at pp. 6-7.) Judge Huff nevertheless stated in her order denying the motion, "At trial, Johnson admitted a lie. … The Court does not agree that the lie was misconstrued." (Johnson Decl. ¶ 11, Ex. C at p. 15.) Even two years later, Judge Huff's order on remand states, "When confronted at trial with the representations he made to third parties when he sought to sell Storix, Inc., Plaintiff Johnson stated, 'Yeah, and I lied. I admit it. I lied.'" (Johnson Decl. ¶ 23, Ex. J at p. 15.) The alleged "lie" had nothing to do with efforts to sell Storix, wasn't made to any potential buyer, nor did it misleading anyone in any way.

After the Management Defendants filed the frivolous state lawsuit against Johnson, he sent an email to one of them saying, "As I mentioned, this [threat of a shareholder derivative lawsuit] was a last resort, but if I wait until Oct 30, the MSJ will be decided and Storix will ***close its doors*** … To try to avoid that, the only alternative is for you and everyone else to forfeit their shares and leave." (Johnson

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[7] Johnson said the company had been in business 12 years, but Storix insisted Johnson was lying because Storix had only been *incorporated* for 8 years.

Decl. ¶ 17, Ex. H at p. 10.) Judge Huff knew Johnson's email threatened to bring a lawsuit against the individuals *on Storix's behalf*, but interpreted those three words in for the next three years as: "Plaintiff Johnson demonstrated that his motives [in bringing the copyright suit] were not merely to secure a copyright infringement judgment, but also to wrest control of the company from its majority shareholders and to force the company to '***close its doors***'." (Johnson Decl. ¶ 13, Ex. C at p. 3, ¶ 13, Ex. E at pp. 6 & 7, ¶ 23, Ex. J at p. 15; emphasis added.)

Judge Huff cited another portion of Johnson's email: "Only then your name will be removed from the derivative[ ]action, giving you some hope of keeping your homes and perhaps finding other jobs" (Johnson Decl. ¶ 11, Ex. C at p. 3) as "threatening the company's directors with the loss of their homes." (*Id.* at p. 5.) Johnson begged Judge Huff to consider her opinion at the remand hearing:

> "My threatening, this is something the Court noted several times, that I threatened them with the loss of their homes, but I guess I would ask the Court to actually look at the -- the actual statements regarding homes, and informing them that, you know, let's get out -- let's get everyone out of this before you end up losing your homes was effectively the statement, but they had already taken my home. I – you know, a beautiful home in San Diego that I loved dearly that I had to sell because of this. So, you know, if nothing else, that should be a wash."

(Johnson Decl. ¶ 22, Ex. I at p. 63.)

Judge Huff noted twice in her fee order following the hearing that "It was also inappropriate for Plaintiff Johnson to threaten Defendant Storix's directors with the loss of their homes while he was telling the customers to stop paying Storix to undermine the company." (Johnson Decl. ¶ 23, Ex. J at pp. 3 & 6.) Judge Huff reiterated in the order that "an award of reasonable attorney fees to Storix is justified in light of Johnson's unreasonable and inappropriate litigation conduct." (*Id.* at p. 9.) But Judge Huff has never referenced any conduct other than three emails Johnson sent clearly to try and convince his former employees to stop using his company to destroy him.

No reasonable person would believe Judge Huff was impartial after she imposed $555,118 of attorney fees on Johnson for simply lashing out at the Management Defendants in the instant case after what they've done to him. Judge Huff knew Johnson gave 60% of his company to the Management Defendants *for free* after he was diagnosed with terminal cancer, and that the copyright litigation was prompted by their having forced him out of the company after he unexpectedly recovered. (Johnson Decl. ¶¶ 3-4.) The Management Defendants got everything they wanted, taking not only Johnson's entire life's work but also his *entire company* as a direct result of Judge Huff's scathing account of Johnson's character in her rulings.

The Ninth Circuit found the attorney fee award excessive and unreasonable, but that made no difference to Judge Huff. No matter what evidence Johnson showed that her opinions of him were unfounded and that his opposing party was lying to her, she simply refused to acknowledge the Management Defendants or Attorney Defendants were anything less than exemplary. There is no reason to expect Judge Huff can now set aside the opinions she previously refused to abandon now that those whose character she never questioned are now defendants.

3. After the fee award was reversed, Judge Huff ignored facts and circumstances proving the fees were unwarranted.

The Ninth Circuit reversed the fee award as "excessive" and "unreasonable", noting the relative financial strength of Johnson, *pro se*, against a company, and remanded for reconsideration. (Johnson Decl. ¶ 22, Ex. I at pp. 7-8.) Based on the contempt Judge Huff exhibited toward Johnson in the post-trial hearings, Johnson filed a motion with the Ninth Circuit to reassign and remand the decision to a different district court judge. (Johnson Decl. ¶ H, Ex. H.) The Ninth Circuit summarily denied Johnson's petition.

At the remand hearing, Judge Huff refused to acknowledge any facts or circumstance that warranted any reduction of attorney fees and reissued her prior order with a 25% discount only to "comply with the Ninth Circuit's directive to

reduce the award." (Johnson Decl. ¶ 23, Ex. J at p. 11.) Judge Huff acknowledged Johnson was still a 40% owner of Storix, but gave no consideration to the fact that the Management Defendants used his entire income to litigate against him in both the copyright and state court lawsuits. (Johnson Decl. ¶ 22, Ex. I at pp. 7 & 8.) Johnson showed that Storix's claim against him in State court, demanding almost $1.3 million in "unjust enrichment", was flatly rejected by a jury and Storix obtained a mere $3,739 Storix in total damages as a result of the same emails from which her prior fee award was based. (*Id.* at p. 43.) Johnson begged Judge Huff to consider the shareholder derivative suit he filed "*to try and save the company from this waste and mismanagement, and I paid for that myself on behalf of the company. Is that not evidence that I was not trying to destroy the company?*" (*Id.* at pp. 45-46.) Judge Huff nevertheless reissued her prior ruling based on the same emails, still accusing him of trying to destroy Storix, and still granting Storix a massive award of $419,193. (Johnson Decl. ¶ 24, Ex. J at p. 3.)

Johnson's is now only three times the largest attorney fee award against any individual in U.S. history, but also the only fee award since *Kirtsaeng* against any party with an objectively reasonable case, and the only case that declined to extend the *Kirtsaeng* Supreme Court decision. (Johnson Decl. ¶ 15; Attachment 2.) Judge Huff's refusal to abandon prior opinions despite any evidence to the contrary makes her recusal necessary.

4. Knowing Johnson Was Financially Devastated by Her Rulings, Judge Huff Imposed Even More Unnecessary Burden

In the amended judgment, Judge Huff added three years of interest from the date of the original judgment that was not previously awarded. (Johnson Decl. ¶ 24, Ex. K at p. 3.) After Johnson filed notice of the second appeal, he petitioned Judge Huff to release the difference between the first and second judgments from his prior supersedeas bond. Knowing Johnson had already sold his house to afford the first bond and was forced to live with in Las Vegas with family (Johnson Decl. ¶ 22, Ex.

I at pp. 13-14, 65), Judge Huff nonetheless ordered that, for Johnson to obtain any relief from the *reversed* judgment, he had to post a second bond for the new judgment amount, and only then "the Court will release his first bond **after the second bond has been posted**." (Johnson Decl. ¶ 25, Ex. L at p. 2; bold in original.)

Judge Huff's determination to financially destroy Johnson was evidenced by one unprecedented decision after another. Judge Huff will not explain why Johnson should be the sole exception to the *Kirtsaeng* decision or how the purpose of the Copyright Act is served by awarding Storix attorney fees for claiming ownership of a copyright it paid nothing for – especially when Johnson is the only person with the skills to build on it. (Johnson Decl. ¶ 4.) Johnson would never have tried to protect the integrity of his software if he had any idea the punishment Judge Huff would inflict on him after effectively invalidating his 1999 U.S. Copyright registration.

5. Judge Huff Refused to Acknowledge the Litigation Misconduct of Storix's Attorneys – The Same Attorneys Who Are Now Defendants in the Current Lawsuit

Johnson's every effort to draw the court's attention to his "side of the story" only resulted in increasingly contemptuous and exaggerated comments by Judge Huff regarding Johnson's character and his perceived motivation to "destroy Storix". Judge Huff never made any mention of the misconduct of the Storix's attorneys, their false statements and intentionally misquoted testimony, or any other action they took that would normally result in severe sanctions. Instead, she simply recited their assertions about Johnson, ignored any facts to the contrary, then punished Johnson with a $555,000 fee award – **to be given to Storix's attorneys** – because he threatened State court litigation against the majority shareholders and directors they support.

Judge Huff was reminded that Storix's counsel filed the State court action against Johnson on the morning of the mandatory settlement conference in the copyright case. (Johnson Decl. ¶ 22, Ex. I at pp. 36-37.) She was also aware Storix

obtained nothing after a jury rejected their $1.3 million claim that Johnson was operating a "secret" competing business in California *after* he moved to Florida. (Johnson Decl. ¶ 22, Ex. I at p. 43.) Johnson testified that Storix, after 3 ½ years suing him for competing, was awarded only the exact amount demanded as a result of Johnson's customer email – **$3,739.14**. That is the same email Judge Huff found warranted a $555,000 attorney fee award against Johnson despite it having nothing to do with the copyright litigation. (*Id.* at pp. 41-43.)

For years, the Attorney Defendants were free to do anything to Johnson while Judge Huff turned a blind eye, and Judge Huff supplied them the orders they needed to continue litigating against Johnson in State court without cause. No judge ever questioned Judge Huff's conclusion that Johnson tried to compete with or otherwise destroy Storix, thereby rejecting all Johnson's efforts to dismiss the complaint for lack of any evidence, instead denying Johnson any access to his own company and records needed to fully prove his claims or defenses and allowing the Attorney Defendants to be paid all Storix profits otherwise owed to Johnson. After 3 ½ years, Johnson finally disproved their $1.3 million claim to a jury that rejected their theory that Johnson was "unjustly enriched" by his alleged competing business.

The current lawsuit involves substantial claims against the Attorney Defendants and the Management Defendants for filing and continuing the frivolous and malicious lawsuit against Johnson in State court for years, and for *illegally* defending against the shareholder derivative lawsuit Johnson brought on Storix's behalf – all while taking millions of dollars from Storix what was otherwise owed to Johnson. Judge Huff accepted everything the Attorney Defendants said about Johnson without question and awarded historic attorney fees against Johnson based on *their* interpretation of his motives and intentions extracted from a few sentences in three emails.

Judge Huff never questioned the honesty or integrity of the Attorney Defendants, and to do so now would bring her own unprecedented decisions against

Johnson into question. Judge Huff cannot be impartial in the current case where the same Attorney Defendants are now being sued by Johnson for the misconduct she refused to acknowledge while insisting they be awarded fees against Johnson for *his* "inappropriate conduct". (Johnson Decl. ¶ 23, Ex. J at p. 9.) It's not unreasonable to think Judge Huff would be invested in Johnson's failure to prove his claims since Johnson's success in proving the lies and other unethical conduct of the Attorney Defendants alleged in this complaint would also render Judge Huff's basis for ordering Johnson to pay attorney fees to those same attorneys untenable.

No reasonable person with knowledge of the entire facts and circumstances would expect Judge Huff to be impartial under these circumstances, and it would be unjust and improper for Judge Huff not to recuse herself.

III. CONCLUSION

It was improper to assign this case to Judge Huff given that the issues and claims are unrelated to the copyright litigation and Johnson's prior efforts to have any further decisions removed from her court. Pursuant to 28 U.S.C. § 455, Judge Huff should recuse herself from this case given her stated contempt for Johnson and reasonable interest in seeing Johnson's claims against the defendants in this case dismissed. Otherwise, pursuant to 28 U.S.C. § 144, a neutral district court judge should determine whether such bias exists, if Judge Huff's impartiality might reasonably be questioned, or if reassignment is necessary to maintain the appearance of fairness and justice.

DATED: August 6, 2019

Respectfully submitted,

By:

ANTHONY JOHNSON, In Pro Per

ATTACHMENT 3

ATTACHMENT 3

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Pro Se

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

ANTHONY JOHNSON, an individual,

Plaintiff,

v.

MANUEL ALTAMIRANO, an individual, RICHARD TURNER, an individual, DAVID KINNEY, an individual, DAVID HUFFMAN, an individual, PAUL TYRELL, an individual, SEAN SULLIVAN, an individual, STORIX, INC., a California Corporation, and DOES 1-5, inclusive,

Defendants.

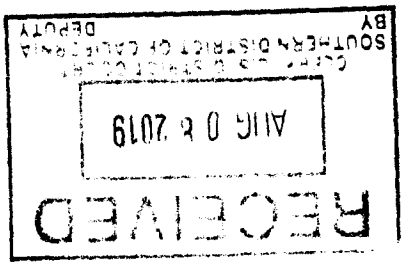
Case No. 3:19-cv-01185-H-BLS

DECLARATION OF PLAINTIFF ANTHONY JOHNSON IN SUPPORT OF MOTION TO RECUSE

Judge: Marylyn L. Huff
Complaint Filed: June 24, 2019

I, Anthony Johnson, declare:

1. I am represented *pro se* in the above-captioned matter. I have personal knowledge of the facts set forth below. With the exception of those matters stated on information and belief, and as to those matters, I believe them to be true. If called as a witness, I could and would testify to the truth thereof.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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY
DEPUTY

General Facts

2. I am the founder of Storix Software, a sole proprietorship created to market and sell the software ("SBAdmin") I designed, created and copyrighted in my name in 1999. In 2003, I incorporated defendant Storix, Inc. to sell the software under a corporate entity.

3. In 2011, I was diagnosed with terminal cancer, and issued a 60% of the share in Storix to my long-term employees, defendants Manuel Altamirano, Richard Turner, David Kinney and David Huffman (hereafter "Management Defendants", who thereafter combined their 52% shares in Storix to assume control of Storix, its board majority, all officer positions of Storix. The Management Defendants paid nothing for their shares of Storix which, upon information and belief, were valued at over $2 million.

4. In 2013, I was unexpectedly cleared of cancer and returned to Storix to improve the SBAdmin software that had grown obsolete in my absence. As I neared the end of a year-long project to improve the network security of the software, I was forced out of the company due to unreasonable and unwarranted hostility created by my former employees. There have been no new releases of SBAdmin, nor any notable improvements to the software, since February 2014.

5. In February 2015, the only non-defendant Storix shareholder, Robin Sassi ("Sassi"), and I combined our 48% share of Storix to elect ourselves to two of the five board seats of Storix. Shortly thereafter I formed a company called "Janstor" (in name only) which never operated, had no telephone number or web site, owned no assets, and never announced its existence or marketed any product.

6. Janstor's listed address was that of my house in San Diego, which I had to sell in June 2015 due to the crippling cost of the copyright litigation. I moved to Florida in July 2015 after purchasing a home with about 1/3 the equity obtained from the sale of my San Diego home. Before moving to Florida, I filed for dissolution of Janstor.

The Copyright Lawsuit

7. I filed the copyright infringement lawsuit against Storix in July 2015 after the Management Defendants locked me out and refused to allow me any access to the company or my own software. The litigation was not intended to harm Storix, but to enforce my rights provided under the Copyright Act to protect the integrity of my works, and to encourage the Management Defendants to reconsider their decision to force me out of the company. I never expected the Management Defendants would choose instead to defend the lawsuit by claiming ownership of my registered copyright, which I firmly believed they had no chance of achieving.

8. In December 2015, the jury was instructed that a copyright ownership transfer may be accomplished by a preponderance of evidence that I *intended* to transfer ownership to Storix, which may include any document "*reflecting* on a transfer of assets broad enough to include a copyright." Judge Huff adopted the jury's finding that I transferred all ownership rights to Storix upon its formation in 2003.

9. At the post-trial hearing on Storix's demand for attorney fees, Judge Huff rejected the emails Storix's attorney introduced as irrelevant to fees and unrelated to this case. Attached as **Exhibit A** is a true and correct copy of relevant portions of the reporter's transcript of the hearing on February 23, 2016.

10. Attached as **Exhibit B** is a true and correct copy of the *Order Denying Plaintiff's Motion for New Trial* dated February 23, 2016.

11. Attached as **Exhibit C** is a true and correct copy of the *Order Denying Plaintiff's Motion for Reconsideration* dated October 13, 2016.

12. At the hearing on fees following the *Kirtsaeng* decision, Judge Huff surprisingly reversed her prior opinion of my motivation and found a need for deterrence based on the emails she previously found irrelevant and unrelated to the case at the February hearing. Attached as **Exhibit D** is a true and correct copy of relevant portions of the reporter's transcript of the hearing on August 15, 2016.

13. Attached as **Exhibit E** is a true and correct copy of the *Order Granting*

in Part and Denying in Part Defendant's Motion for Attorney Fees and Costs dated August 17, 2016 showing the basis of Judge Huff's decision.

14. Attached as **Exhibit F** is a true and correct copy of the *Amended Judgment in Favor of Storix, Inc.* dated November 16, 2016 showing the attorney fee award of $555,118.64.

15. On information and belief, the ruling in my case remains the only ownership transfer of a registered copyright (other than by common-law) in the absence of a clear written agreement required by the 1976 Copyright Act. On further information and belief, the attorney fee award against me was almost four times larger than any fee award against an author of a creative work in U.S. history, the only award against any party with an objectively reasonable case since the 2016 *Kirtsaeng v. Wiley* Supreme Court Decision, and the only copyright attorney fee ruling that has refused to extend the *Kirtsaeng* decision.

16. Attached as **Exhibit G** is a true and correct copy of the *Ninth Circuit Memorandum* in Ninth Circuit case number 16-55439, dated December 19, 2017, affirming in part, reversing in part, and remanding the attorney fee award for reconsideration.

17. Attached as **Exhibit H** is a true and correct copy of a *Motion for Reassignment on Remand to a Different District Court Judge* in Ninth Circuit case number 16-55439 dated December 26, 2017 in Ninth Circuit case number 16-55439. The petition was summarily denied.

The Concurrent State Court Litigation

18. On July 20, 2015, on the morning of a mandatory settlement conference in the copyright litigation, Management Defendants directed Procopio attorneys Paul Tyrell and Sean Sullivan (hereafter "Attorney Defendants") to file a lawsuit against me in Storix's name claiming that I formed Janstor with *intent* to compete with Storix while I served on Storix's board. All defendants in this case knew I moved to Florida prior to their filing the lawsuit, which was served on me at my Florida address, but

stated in the complaint that I resided in San Diego.

19. Janstor was not formed to compete with Storix. No evidence has ever been produced that I ever competed with Storix in any way or obtained any financial benefit related to Storix or the SBAdmin software since the Management Defendants force me out of the company in 2014.

20. Soon after all defendants in the current case brought the direct lawsuit against me in Storix's name, Robin Sassi and I filed a shareholder derivative lawsuit (case, no. 37-2015-000345435-CU-BT-CTL) against the Management Defendants for damages Storix incurred as a result of their abuse of control , wasteful spending and general mismanagement. I alone funded the lawsuit for almost four years, seeking only relief for Storix's benefit. At every stage of the litigation in the shareholder derivative suit, the Attorney Defendants acted to interfere and obstruct the litigation on the defendants' behalf and against the interests of Storix.

21. At 10-day jury trial, Attorney Defendants joined the Management Defendants' counsel to prosecute Storix's complaint against me and to defend the Management Defendants against both my cross-claims and all shareholder derivative claims I brought on Storix's behalf. The only relief obtained in any of the consolidated actions was a $3,739 judgment against me on Storix's claim (introduced in closing arguments) for "lost employee productivity" Storix allegedly suffered as a result of an email I sent to a few of Storix's customers 3 years earlier.

The Copyright Attorney Fee Award After Remand

22. Contrary to undisputed evidence I presented at the remand hearing, Judge Huff's opinion that I filed the copyright suit to destroy Storix did not change. I testified that I was still funding the shareholder derivative for Storix's sole benefit and that a state court jury found against Storix on its $1.3 million claim that I was competing and/or intending to compete with Storix. I also argued that Storix obtained only a $3,739 judgment against me for "lost employee productivity" related to the customer email from which Judge Huff based her prior attorney fee award against

me. I further argued that the email was unrelated to the copyright issues and resulted in no attorney fees. Judge Huff was aware I had to sell my Florida home and was living with family in Las Vegas due to the supersedeas bond imposed on me to stay execution of the first attorney fee award pending appeal. Attached as **Exhibit I** is a true and correct copy of relevant portions of the reporter's transcript of the remand hearing that occurred on August 6, 2018 showing Judge Huff's awareness of the facts presented in this section.

23. Judge Huff ignored the factors suggested by the Ninth Circuit as well as all arguments, testimony and evidence I provided at the remand hearing when deciding to apply a 25% discount to the prior award only to comply with the Ninth Circuit mandate to reduce the award, and then added interest not previously awarded from the date of the original award. The resulting amended judgment was based entirely on the same facts stated in the original order. Attached as **Exhibit J** is a true and correct copy of the *Order Awarding Attorneys' Fees on Remand* dated August 7, 2018 (attachment of prior orders excluded) showing the basis of the fee award on remand.

24. Attached as **Exhibit K** is a true and correct copy of the *Second Amended Judgment in Favor of Storix, Inc.* dated August 7, 2018 showing the fee award on remand of $419,192.64 plus interest from the date of the first fee award.

25. After I filed a notice of appeal of the new attorney fee award, I motioned the court to again stay execution and release the difference between the first and second judgments from my existing bond. Judge Huff ordered me to pay a second supersedeas bond for the new judgment amount *before* she would release the bond from the reversed judgment. Attached as **Exhibit L** is a true and correct copy of the *Order Granting Motion to Conditionally Stay Execution of the Second Amended Judgment* dated August 29, 2018.

26. Attached as **Exhibit M** is a true and correct copy of relevant portions of Plaintiff Anthony Johnson's Motion for Reconsideration dated September 14, 2016

that cited trial testimony showing my words were misconstrued by Storix's counsel in subsequent hearings.

The Instant Lawsuit

27. The above-captioned instant lawsuit was not filed for improper purposes, and was filed under federal diversity jurisdiction because defendants' counsel deprived me the right to amend my complaint, refused to allow me to dismiss substantial claims, and filed a motion demanding another $160,000 bond against me as an out-of-state plaintiff. For these reasons *alone*, the State case was voluntarily dismissed and refiled in this Federal court.

28. This lawsuit does not involve any issues of the prior copyright litigation, does not bring to question its rulings, and does not rely on the same facts or evidence in the copyright case. This lawsuit involves only one of the same defendants – Storix, Inc., which was only named as a defendant after the case was refiled in federal court because the Management Defendants insisted that Storix is liable for their actions.

29. Although the docket for this lawsuit shows the case was reassigned to Judge Huff by "*ORDER OF TRANSFER PURSUANT TO LOW NUMBER RULE*" (Dkt. # 4) on July 18, 2019 and "All non-registered users served via U.S. Mail Service", I received nothing in the mail informing me of the reassignment. I was only made aware of the reassignment after receiving a copy of the *Defendants' Joint Ex Parte Application For an Order Extending Time to Respond to Complaint*, dated July 31, 2019, which indicated Judge Huff as the presiding judge. I immediately checked the court's docket and thereby discovered the case was reassigned to Judge Huff.

30. There was no notice of related cases filed in this action, and the claims and parties substantially differ between this and the copyright lawsuit referenced in the transfer order that there was no reason the court clerk to notice any relation or need to reassign the case to Judge Huff.

Misconduct of the Attorney Defendants

31. Judge Huff adopted nearly every assertion of the Attorney Defendants

about my character, intentions and credibility without question, refused to acknowledge any evidence or testimony to the contrary, and awarded them unprecedented fees against me based solely on their assertions that have been repeatedly disproven.

32. I do not believe Huff can impartially hear a case involving a malicious prosecution claim against the Attorney Defendants after she turned a blind eye to their misconduct in the litigation that is now the basis of the malicious prosecution claim, as well as the final ruling in the lawsuit they brought against me that disproves Judge Huff's basis for awarding attorney's fees against me in the copyright case.

33. Based on information and belief, between January 2015 and September 2017, Mr. Tyrell, Mr. Sullivan, and the law firm of Procopio, Cory, Hargreaves & Savitch were paid about $1.5 million in fees by Storix to litigate against me in matters unrelated to the copyright action. Every action taken by Tyrell and Sullivan was for the exclusive benefit of the Management Defendants, and Storix has never derived any benefit from their actions.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 6th day of August, 2019 in Las Vegas, Nevada.

Respectfully submitted,

ANTHONY JOHNSON,
In Pro Per

INDEX OF EXHIBITS

ATTACHMENT 4

ATTACHMENT 4

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ANTHONY JOHNSON, Plaintiff, v. MANUEL ALTAMIRANO, et al., Defendants.	Case No.: 3:19-cv-01185-H-BLM **ORDER DENYING PLAINTIFF'S MOTION TO RECUSE** [Doc. No. 16.]

On August 9, 2019, Plaintiff Anthony Johnson, a *pro se* litigant, filed a motion to recuse the assigned judge from this case pursuant to 28 U.S.C. §§ 144 and 455(a). (Doc. No. 16.) On August 9, 2019, the Court took Plaintiff's motion to recuse under submission and issued a briefing schedule for the motion. (Doc. No. 17.) On September 16, 2019, Defendants filed responses in opposition to Plaintiff's motion to recuse. (Doc. Nos. 37, 38.) On September 23, 2019, Plaintiff filed his replies. (Doc. Nos. 48, 50.) For the reasons below, the Court denies Plaintiff's motion for recusal.

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Background

On June 24, 2019, Plaintiff Johnson filed a complaint against Defendants Manuel Altamirano, Richard Turner, David Kinney, David Huffman, Paul Tyrell, Sean Sullivan, and Storix, Inc., alleging causes of action for: (1) malicious prosecution; (2) breach of fiduciary duty; (3) conversion; (4) economic interference; (5) breach of contract; (6) rescission; and (7) indemnification. (Doc. No. 1, Compl.) On July 18, 2019, pursuant to Civil Local Rule 40.1(e) and (i) (the "low number rule"), the Clerk of Court transferred the case to this Court. (Doc. No. 4.) By the present motion, Plaintiff moves pursuant to 28 U.S.C. §§ 144 and 455(a) to recuse the assigned judge from this case. (Doc. No. 16 at 1.)[1]

Discussion

I. 28 U.S.C. §§ 144 and 455

A. Legal Standards

A request for the recusal of an assigned judge is governed by 28 U.S.C. §§ 144 and 455. Section 144 provides: "Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding." 28 U.S.C. § 144. Section 455(a) provides: "Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a).

"'The substantive standard for recusal under 28 U.S.C. § 144 and 28 U.S.C. § 455 is the same: Whether a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned.'" United States v. McTiernan, 695 F.3d 882, 891 (9th Cir. 2012) (quoting United States v. Hernandez, 109 F.3d 1450, 1453 (9th Cir. 1997) (per curiam)); accord United States v. Carey, 929 F.3d 1092, 1104

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[1] The briefing in support of Plaintiff's motion to recuse begins on CM/ECF stamped page 19 of Docket Entry No. 16. (See Doc. No. 20 at 2.)

(9th Cir. 2019). "Under § 455(a), impartiality must be 'evaluated on an objective basis, so that what matters is not the reality of bias or prejudice but its appearance.'" Carey, 929 F.3d at 1104 (quoting Liteky v. United States, 510 U.S. 540, 548 (1994)); see Yagman v. Republic Ins., 987 F.2d 622, 626 (9th Cir. 1993) ("[R]ecusal will be justified either by actual bias or the appearance of bias."). "Disqualification under § 455(a) is necessarily fact-driven and may turn on subtleties in the particular case." United States v. Holland, 519 F.3d 909, 913 (9th Cir. 2008)

The Ninth Circuit has explained that a judge reviewing a motion to recuse "should also bear in mind that § 455(a) is limited by the 'extrajudicial source' factor which generally requires as the basis for recusal something other than rulings, opinions formed or statements made by the judge during the course of trial." Holland, 519 F.3d at 913–14 (citing Liteky, 510 U.S. at 554–56). "Put differently, the judge's conduct during the proceedings should not, except in the 'rarest of circumstances' form the sole basis for recusal under § 455(a)." Id. (footnote omitted); see Liteky, 510 U.S. at 555 ("[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion."); see also Toscano v. McLean, No. 16-CV-06800-EMC, 2018 WL 732341, at *2 (N.D. Cal. Feb. 6, 2018) ("It is well-established that actions taken by a judge during the normal course of proceedings are not proper grounds for disqualification." (citing United States v. Scholl, 166 F.3d 964, 977 (9th Cir. 1999)). A district court's determination of a motion to recuse is reviewed for abuse of discretion. See Yagman, 987 F.2d at 626; United States v. Wilkerson, 208 F.3d 794, 797 (9th Cir. 2000).

B. Analysis

In attempting to establish a basis for this Court's recusal, Plaintiff fails to identify any extrajudicial source for the alleged bias. (See Doc. No. 16 at 5-16; Doc. No. 48 at 3-4; Doc. No. 50 at 2-3.) Rather, Plaintiff only relies on this Court's prior rulings and analysis in Johnson v. Storix, 14-cv-01873-H-BLM, specifically the Court's rulings and analysis on the issue of attorney's fees including the Court's award of attorney's fees against Plaintiff. (See id.) Plaintiff argues that the analyses underlying the Court's imposition and

calculation of attorney's fees in the prior action were faulty, and Plaintiff further argues that in light of these purportedly faulty analyses, a reasonable person would conclude that the Court's impartiality might reasonably be questioned. (See id.) But this is not an adequate basis for recusal.

Because Plaintiff's allegations of bias stem entirely from this Court's adverse rulings and analysis in the prior action on the issue of attorney's fees, Plaintiff has failed to provide an adequate basis for recusal. See United States v. Johnson, 610 F.3d 1138, 1148 (9th Cir. 2010) ("[The district court]'s dismissal of the defendants' prior civil case, his order of sanctions against their attorney, his award of costs and fees to the civil defendants, and his referral of the matter to the U.S. Attorney's Office were judicial actions that will not serve as bases for recusal absent unusual circumstances not present here. Adverse findings do not equate to bias." (citation omitted)); Leslie v. Grupo ICA, 198 F.3d 1152, 1160 (9th Cir. 1999) ("[Plaintiff]'s allegations stem entirely from the district court judge's adverse rulings. That is not an adequate basis for recusal."); Scholl, 166 F.3d at 978 ("[The district judge]'s judicial rulings and efforts at trial administration are an inadequate basis for disqualification.").

Plaintiff notes that in certain circumstances a party can establish a proper basis for recusal without extrajudicial evidence, citing the Supreme Court's decision in Liteky v. United States, 510 U.S. 540, 548 (1994). (Doc. No. 16 at 2, 3 n.2.) In Liteky, the Supreme Court explained:

> First, judicial rulings alone almost never constitute a valid basis for a bias or partiality motion. In and of themselves (i.e., apart from surrounding comments or accompanying opinion), they cannot possibly show reliance upon an extrajudicial source; and can only in the rarest circumstances evidence the degree of favoritism or antagonism required (as discussed below) when no extrajudicial source is involved. Almost invariably, they are proper grounds for appeal, not for recusal. Second, opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. Thus, judicial remarks during the

> course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge. They may do so if they reveal an opinion that derives from an extrajudicial source; and they will do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible. . . . *Not* establishing bias or partiality, however, are expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display. A judge's ordinary efforts at courtroom administration—even a stern and short-tempered judge's ordinary efforts at courtroom administration—remain immune.

510 U.S. at 555–56 (emphasis in original).

In this passage, the Supreme Court explains that "judicial rulings" and "opinions formed by the judge on the basis of facts introduced or events occurring in the course" of the proceedings almost never constitute a valid basis for a motion to recuse. Id. at 555. Here, Plaintiff's motion to recuse is based entirely on this Court's judicial rulings, analysis, and opinions made during the course of the prior proceedings. In Liteky, the Supreme Court noted an exception to this general rule in explaining that judicial opinions might constitute a valid basis for recusal if "they display a deep-seated favoritism or antagonism that would make fair judgment impossible." 510 U.S. at 555. But the Supreme Court clarified that "judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge." Id. The rulings and opinions by this Court in the prior proceedings identified by Plaintiff in his motion to recuse fall well short of the "deep-seated favoritism or antagonism" standard set forth by the Supreme Court in Liteky. At best, the rulings and analysis made during the prior proceedings with respect to the fee award could be characterized as adverse to Plaintiff. This is insufficient to provide an adequate basis for recusal. See Liteky, 510 U.S. at 555–56; Johnson, 610 F.3d at 1148.

In sum, Plaintiff has failed to set forth an adequate basis for this Court's recusal in this action. As a result, the Court, exercising its sound discretion, denies Plaintiff's motion for recusal under 28 U.S.C. §§ 144 and 455. See Liteky, 510 U.S. at 556 (affirming the

denial of a motion to recuse where the motion was based entirely on "judicial rulings, routine trial administration efforts, and ordinary admonishments (whether or not legally supportable) to counsel and to witnesses"); Johnson, 610 F.3d at 1148 (affirming the denial of a motion to recuse where the motion was based entirely on the district judge's "judicial actions," including "his award of costs and fees" against the movant in a prior civil action); Leslie, 198 F.3d at 1160 (affirming the denial of a motion to recuse where the motion was based entirely on "the district court judge's adverse rulings").

Plaintiff argues that, pursuant to 28 U.S.C. § 144, a neutral district court judge should determine whether bias exists and decide his motion for recusal. (Doc. No. 16 at 16.) Section 144 provides: "Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding." 28 U.S.C. § 144. "Nonetheless, Section 144 permits a challenged judge to rule on the legal sufficiency of the challenger's affidavit and does not require a judge to assign a recusal motion to another judge for hearing where the affidavit is insufficient." Arunachalam v. Pazuniak, No. 14-CV-05051-JST, 2015 WL 12839126, at *1 (N.D. Cal. Feb. 9, 2015); see United States v. Azhocar, 581 F.2d 735, 738 (9th Cir. 1978); ("[T]he judge against whom an affidavit of bias is filed may pass on its legal sufficiency." (citing Berger v. United States, 255 U.S. 22, 32-34 (1922))). Indeed, the Ninth Circuit "ha[s] held repeatedly that the challenged judge himself should rule on the legal sufficiency of a recusal motion in the first instance." United States v. Studley, 783 F.2d 934, 940 (9th Cir. 1986). "Only after the legal sufficiency of the affidavit is determined does it become the duty of the judge to 'proceed no further' in the case." Azhocar, 581 F.2d at 738.

Here, because Plaintiff's affidavit is based entirely on this Court's judicial rulings, analysis, and opinions made during the course of the prior proceedings, and Plaintiff has failed to set forth an adequate basis for this Court's recusal in the affidavit, his section 144 affidavit is not legally sufficient. See United States v. Sibla, 624 F.2d 864, 868 (9th Cir.

1980) ("An affidavit filed pursuant to that section is not legally sufficient unless it specifically alleges facts that fairly support the contention that the judge exhibits bias or prejudice directed toward a party that stems from an extrajudicial source."); Liteky, 510 U.S. at 556. As such, the Court may consider and deny Plaintiff's motion for recusal without referring the matter to another judge. See Azhocar, 581 F.2d at 738; Studley, 783 F.2d at 940; Arunachalam, 2015 WL 12839126, at *1.

II. The Low Number Rule

In his motion, Plaintiff also contends that the case was improperly transferred to this Judge under the low number rule, Civil Local Rule 40.1(e). (Doc. No. 16 at 4, 16; Doc. No. 48 at 4-5; Doc. No. 50 at 3.) Civil Local Rule 40.1 governs the assignment of civil cases in this district. Civil Local Rule 40.1(i) provides: "In order to avoid unnecessary duplication of judicial effort, all pending civil actions and proceedings, which are determined to be related to any other pending civil action or proceeding pursuant to the criteria set forth in Civil Local Rule 40.1.e will be assigned to the district and magistrate judge to whom the lowest numbered case was assigned."

Civil Local Rule 40.1(e) provides the criteria for transfer pursuant the low number rule. Under Civil Local Rule 40.1(e), the Clerk of Court considers whether the cases (1) arise from the same or substantially identical transactions, happenings, or events; or (2) involve the same or substantially the same parties or property, or (3) involve the same patent or the same trademark; or (4) call for determination of the same or substantially identical questions of law; or (5) where a case is refiled within one year of having previously been terminated by the Court; or (6) for other reasons would entail substantial duplication of labor if heard by different judges. Under Civil Local Rule 40.1(h), any order for transfer of a case under the low number rule requires the signatures of the both judges concerned with the proposed transfer.

Here, the present action was properly assigned to this Court under the low number rule, Civil Local Rule 40.1(e)(2) and (i). The present action and the prior action, Johnson v. Storix, 14-cv-01873-H-BLM, both involve some of "the same parties." (Compare Doc.

No. 1 with Johnson, 14-cv-01873-H-BLM, Docket Entry No. 1 (S.D. Cal., filed Aug. 8, 2014).) Plaintiff Anthony Johnson is the plaintiff in both actions, and Defendant Storix Inc. is a defendant in both actions.[2] (Id.) As a result, the Court rejects Plaintiff's challenge to the assignment of the present case to this Court under the low number rule.

Conclusion

For the reasons above, the Court denies Plaintiff's motion for recusal.

IT IS SO ORDERED.

DATED: September 30, 2019

MARILYN L. HUFF, District Judge
UNITED STATES DISTRICT COURT

[2] The Court acknowledges that the complaint in the present action names additional defendants that were not named as defendants in Case No. 14-cv-1873. Nonetheless, the two actions still involve some identical parties, Plaintiff Johnson and Defendant Storix.