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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CENTRAL DISTRICT

ANTHONY JOHNSON and ROBIN SASSI, derivatively on behalf of STORIX, INC., a California corporation,

Plaintiffs,

vs.

DAVID HUFFMAN, an individual; RICHARD TURNER, an individual; MANUEL ALTAMIRANO, an individual; DAVID KINNEY, an individual; DAVID SMILJKOVICH, an individual; and DOES 1-20,

Defendants,

STORIX, INC., a California corporation;

Nominal Defendant.

AND CONSOLIDATED ACTIONS

Lead Case No.: 37-2015-00034545-CU-BT-CTL
(Consolidated with Case No.: 37-2016-00030822-CU-MC-CTL and 37-2015-00028262-CU-BT-CTL)

IMAGED FILE

MEMORANDUM IN SUPPORT OF MOTION FOR A PRELIMINARY INJUNCTION

Assigned for all Purposes to
The Honorable Joel R. Wohlfeil
Department C-73

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I
INTRODUCTION

Plaintiffs Robin Sassi and Anthony Johnson hereby move to enjoin Storix, Inc., ("Storix") from continuing, in contravention of the bylaws, to advance the defense costs that defendants David Huffman, David Kinney, David Smiljkovich, Richard Turner, and Manuel Altamirano ("defendants") have incurred and will incur in defending against the claims made against them in this consolidated action.

Plaintiffs' motion should be granted because defendants have no mandatory right to advancement and advancement in this case has not been approved by a majority of the disinterested shareholders. Without an injunction, Storix will continue to waste large amounts of corporate funds that would otherwise be available to be paid to each shareholder proportionally. Instead, these funds are being devoted entirely to the personal benefit of the defendants, to the prejudice of plaintiffs' rights as shareholders. Moreover, waiting until after trial to remedy this abuse will render any judgment ineffectual as defendants will have by then taken a benefit to which they are not entitled.

Alternatively, if there is a mandatory right to advancement, plaintiffs request that Storix be ordered to advance plaintiff Johnson's defense costs he has incurred and will incur in defendant against Storix' complaint against him for breach of fiduciary duty.

II
BACKGROUND

In October 2015, plaintiffs filed this derivative lawsuit against the defendants, who are the controlling officers and directors of Storix. Plaintiffs' lawsuit alleges defendants breached their fiduciary duties, abused their power, and committed waste of corporate assets by a series of wrongful acts, including:

- Using corporate funds to pay for solely personal expenses, e.g. cell phones, meals, etc.
- Failing to make critical updates to and fix security vulnerabilities in the company's software.

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- Improperly increasing the number of directors without shareholder approval.
- Manipulating shareholder votes to retain control of the corporation.
- Approving amendments to the corporate bylaws by counting the votes of directors who had a material financial interest in the amendments.
- Approving a shareholder agreement between Storix and all shareholders, excluding Johnson and Sassi, by counting the votes of directors who had a material financial interest in the agreement.

(Declaration of Anthony Johnson "Johnson decl.," ¶¶ 3-14.)

Shortly after filing the derivative action, plaintiffs were told that Storix was not paying the defendants' litigation costs. (Johnson decl., ¶ 17.) However, in 2016 plaintiffs discovered evidence that Storix was indeed paying for their defense costs. (Johnson decl., ¶¶ 19-20.) Thus, in November 2016, plaintiffs filed a motion to appoint a receiver based on, in part, the defendants' unauthorized use of corporate funds for their own personal defense. (Johnson decl., ¶ 21.) In the receiver motion, Johnson and Sassi argued the individual defendants were breaching their fiduciary duties by using Storix funds to pay for their defense costs without board approval. (Johnson decl., ¶ 21, Ex. 1, Plaintiff's Receiver Motion, pp. 11-12.) In opposition to plaintiffs' motion, Storix countered that "board approval is just one of several methods by which indemnification can be authorized" and argued that "[w]here the nature of the underlying action is such that a quorum of disinterested directors cannot be obtained, for example, indemnification may be authorized by the corporation's independent legal counsel in a written opinion. (Cal. Corp. Code§ 317(e)(2).)." (Johnson decl., ¶ 22, Ex. 3, Storix Opposition to Receiver Motion, p. 11.) Citing to the declaration of David Smiljkovich[1], it

[1] In support of Storix' opposition to Johnson and Sassi's receiver motion, David Smiljkovich submitted a declaration stating the following facts in defense of Storix' decision to advance defense costs: (1) the Management defendants each signed an undertaking; and (2) Storix engaged independent legal counsel (an attorney with a firm that is not otherwise involved in any litigation matters for Storix) to obtain counsel regarding the propriety of advancing such expenses. (Ex. 4, Smiljkovich decl. ISO Opp. to Receiver Motion, ¶ 11.) On January 23, 2017, Smiljkovich again defended the advancement of defense costs with a nearly identical declaration in opposition to plaintiffs' subsequent limited receiver motion. (Ex. 5, Smiljkovich decl. ISO Opp. to Limited Receiver Motion, ¶ 13.)

argued that advancement was proper because "Storix was advised by independent legal counsel in connection with the advancement of such fees" and noted that "[t]o avoid any argument that Storix's litigation counsel might be biased against Johnson, Storix engaged separate independent corporate counsel to advise on the issue." (Johnson decl., ¶ 22-24, Ex. 3, Storix Opposition to Receiver Motion, p. 11.)

On December 16, 2016, the Court denied plaintiffs' receiver motion without prejudice. (Johnson decl., ¶ 25.) Plaintiffs then moved to appoint a limited receiver on January 4, 2017, and this limited request (the "limited receiver motion") was set for hearing as a noticed motion on February 3, 2017. (Johnson decl., ¶ 26, Ex. 7, Plaintiffs' Motion for Limited Receiver, pp. 1-11; Ex. 11, Order Appointing Referee, p.1.) Plaintiffs' motion again argued that without proper approval from the board of directors, the individual defendants had no authority to pay their personal attorneys with corporate money. In response, Storix again cited Section 317, subdivision (e)(2) and claimed the payments were proper because (1) the defendants provided undertakings and (2) Storix retained independent counsel to provide an opinion on the advancement of litigation expenses. (Johnson decl., ¶ 26, Ex. 8, Storix Opp. to Limited Receiver Motion, pp. 14:21-15:16.) Although the request for a limited receiver was denied, the Court on its own motion appointed a discovery referee to resolve plaintiffs' requests for corporate records. (Ex. 11, Order Appointing Referee, pp. 1-2.) Thereafter, plaintiffs again requested Storix produce the Independent Counsel opinion cited in its opposition to the receiver motions. (Ex. 12, King decl., ¶ 3; Johnson decl., ¶ 13.) Several weeks later, Storix advised plaintiffs that it would not disclose the Independent Counsel opinion on the grounds that it was protected by the attorney-client privilege and disclaimed that its decision to advance defense costs was not based on this opinion. (Ex. 16, King decl. ¶ 4.) Plaintiffs then filed a motion with the Referee to compel Storix to produce the Independent Counsel opinion. On July 24, 2017, the Referee denied plaintiffs' motion and sustained Storix' attorney-client privilege objection. (Ex. 16, King decl. ¶ 5.)

III
LEGAL STANDARDS

(a) An injunction may be granted in the following cases:

> (1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.
>
> (2) When it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action.
>
> (3) When it appears, during the litigation, that a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual.

* * *

(Code Civ. Proc., § 526, subds. (a)–(a)(3).)

Courts routinely grant preliminary injunctive relief to stop a director's unauthorized or unlawful use of corporate funds to pay personal litigation costs. (*Havens v. Attar* (Del. Ch. Jan. 30, 1997) 22 Del. J. Corp. L. 1230, 1254-1258, No. 15134, 1997 Del. Ch. LEXIS 12 [enjoining advancement approved in breach of directors' fiduciary duties]; *Johnson v. Couturier* (9th Cir. 2009) 572 F.3d 1067, 1078-1081 [enjoining corporation from advancing defense costs to corporate directors accused of breaching ERISA fiduciary duties]; *Allergia, Inc. v. Bouboulis* (S.D.Cal. Jan. 19, 2017) Case No. 14-CV-1566 JLS (RBB) [advancement denied where by-laws incorporated limitations from indemnity clause].)

IV
ARGUMENT

A. Plaintiffs Will Prevail on Their Claim that Advancement Without Approval from the Disinterested Directors Violates the Bylaws

1. The 2015 Bylaw Amendments Do Not Apply and Advancement Is Improper Under the Pre-2015 Bylaws

a. The 2015 Bylaw Amendments Were Not Approved by A Disinterested Board Majority

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Every iteration of the Storix bylaws strictly limits interested director transactions to those that satisfy two specific criteria: (1) the Board of Directors must know about the director's interest; and (2) "the Board of Directors shall authorize, approve or ratify such contract or transaction by the vote (not counting the vote of any such director) of a majority of a quorum." (Ex. 6, Bylaws (2003), Art. III, § 12(b), p. 7.) Each of the individual defendants had a material financial interest in approving these bylaw amendments for (at least) two reasons. First, defendants Huffman, Kinney, Altamirano, and Turner needed to enact these amendments (namely the new Article X rights of first refusal) in order to protect the shareholder agreement between Storix and all of its shareholders except Johnson and Sassi.

Second, each defendant had a material financial interest in adding advancement rights and removing the requirement that indemnity be approved by a neutral arbitrator if a disinterested board majority is unavailable. (Ex. 6, Bylaws (2003), Art. X, p. 13.) By the time the Board voted on the amended bylaws, Defendants had been using Storix funds to pay their cell phone bills and other personal expenses for almost three years. One year earlier, they were focused on squeezing Johnson out of the business and nearly succeeded in forcing Johnson to sell his 40 percent stake in the company. In October 2014, Defendants increased the number of directors from four to five without notice or approval from the shareholders as required by the Corporations Code. After the shareholders cast their votes for directors in February 2015, and while they were tabulating the votes, Defendants decided they did not like the results. Before they announced the winners, Defendants cancelled Kinney's original votes and instructed him to submit a second ballot that (not surprisingly) reversed what would have been a victory for Johnson and Sassi's slate of three candidates. Within two months, Defendants Huffman, Kinney, Altamirano, and Turner prepared a shareholder agreement between themselves and Storix, and which specifically excluded Johnson and Sassi. (Ex. 14.) Since the unlawful addition of a fifth board seat in October, Johnson had repeatedly complained about Huffman, Altamirano, and Turner breaching their duties to Storix and its shareholders, and abusing their control for their own personal advantage. Having brazenly ignored corporate procedures, the

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company's own bylaws, and their fiduciary duties as directors, Defendants knew that legal action to stop this abuse was inevitable. Thus, Huffman, Altamirano, and Turner approved the expanded advancement rights and repealed the limits on indemnity in the May 18, 2015 bylaw amendments. Despite each having a material financial interest in these changes, and contrary to the Storix bylaws, Defendants Huffman, Altamirano, and Turner counted their own votes in favor of the amendments and asserted that it passed by a vote of 3 to 2. (Ex. 13, May 18, 2015 Minutes.) Without approval from a disinterested majority of the board, these bylaw amendments violated the plain language of Storix' bylaws and cannot be enforced.

b. The Post-2015 Bylaws Do Not Apply to Advancement on Causes of Action Accruing Under the Original Bylaws

Even if the 2015 Bylaw Amendments could be upheld, they limit the new indemnification and advancement rights to claims accruing after these amendments were adopted:

> No indemnification or advance shall be made under this Article XI - , except where such indemnification or advance is mandated by law or the order, judgment or decree of any court of competent jurisdiction, in any circumstance where it appears:
>
> (a) That it would be inconsistent with a provision of the Articles of Incorporation, these bylaws, a resolution of the shareholders or an agreement in effect at the time of the accrual of the alleged cause of the action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification

(Ex. 2, Storix 2015 Bylaws, Art. XI, § 6(a), p. 21.)

Thus, "no indemnification or advance shall be made… in any circumstance where it appears that it would be inconsistent with a provision of … these bylaws… in effect at the time of the accrual of the alleged cause of the action asserted in the proceeding in which the expenses were incurred or other amounts were paid." Because plaintiffs' claims accrued prior to the 2015 bylaw amendments, advancement under these new provisions would be inconsistent with the bylaws in effect at the time of accrual and is therefore prohibited.

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2. Even If The 2015 Bylaw Amendments Applied Defendants Have Not Established a Right to Advancement or Indemnity

The disputed 2015 amendments expanded indemnity rights and added a new right to advancement. Article IX, Section 3 of the bylaws require the Corporation to advance defense costs in actions "for which indemnification is required pursuant to Section 1," or for all other cases "if otherwise authorized by the Board of Directors." (Ex. 2, Storix By-Laws, p. 20.)[2]

a. Advancement Has Not Been Authorized by the Board of Directors

The amended bylaws permit advancement of defense costs when authorized by the Board of Directors. (Ex. 2, Storix 2015 By-Laws, p. 20.) However, the Board of Directors has not authorized advancement and given the material financial interest each of the defendant-directors has on this issue, approval by a disinterested majority of directors is impossible. (Ex. 2, Storix 2015 By-Laws, p. 10, § 13(b) [interested director transactions must be approved by disinterested majority of board]; *Havens v. Attar*, (Del. Ch. Jan. 30, 1997) 22 Del. J. Corp. L. 1230, at pp. 1254-1258, No. 15134, 1997 Del. Ch. LEXIS 12 [After the minority stockholders filed the litigation, the majority directors voted to advance themselves expenses; court found directors breached their fiduciary duties in approving advancement and enjoined further use of corporate funds for litigation expenses].)

b. Indemnification Is Not Required for the Claims Pending in This Action

The amended bylaws require Storix to advance defense costs in actions "for which indemnification is required pursuant to Section 1." (Ex. 2, Storix By-Laws, p. 20.) Section 1 requires Storix to indemnify its directors "in the manner permitted by the [Corporations]

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[2] In May 2015, the defendants adopted the current by-laws which (among other things) provided for advancement in Article IX (dealing with indemnity) as follows: "Section 3 - Payment of Expenses in Advance. Expenses and attorney fees incurred in defending any civil or criminal action or proceeding for which indemnification is required pursuant to Section 1 - , or if otherwise authorized by the Board of Directors, shall be paid by the Corporation in advance of the final disposition of such action proceeding upon receipt of an undertaking by or on behalf of the indemnified party to repay such amount if it shall ultimately be determined that the indemnified party is not entitled to be indemnified as authorized in this Article XI - ." (Ex. 2 at p. 20.) Plaintiffs dispute Storix' and the Management defendants' claim that the current by-laws have been properly approved.

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Code."[3] (Ex. 2, Storix By-Laws, p.19.)[4] Corporations Code section 317 sets forth the conditions and circumstances that require indemnification. Thus, indemnification is required if the director accused of wrongdoing is successful on the merits in defense of the proceeding. (*Groth Bros. Oldsmobile, Inc. v. Gallagher* (2002) 97 Cal.App.4th 60, 73; Corp. Code, § 317, subd. (d) [The defendant "shall be indemnified against expenses actually and reasonably incurred" in defense of the proceeding.].) Here, indemnification is not required under Corporations Code section 317, subdivision (d), because the action is still pending and defendants have not prevailed on the merits (nor will they).

For pending cases and cases resolved before a final judgment, corporations may also provide indemnity rights in the bylaws. However, indemnification is not <u>required</u> for these cases unless and until there is a determination the director "acted in good faith, in a manner the [director] believed to be in the best interests of the corporation and its shareholders." (Corp. Code, § 317, subd. (b) & (c).) Section 317, subdivision (e), requires this determination be made by either:

> (1) A majority vote of a quorum consisting of directors who are not parties to such proceeding.
> (2) If such a quorum of directors is not obtainable, by independent legal counsel in a written opinion.
> (3) Approval of the shareholders (Section 153), with the shares owned by the person to be indemnified not being entitled to vote thereon[; or]
> (4) The court in which the proceeding is or was pending upon application made by the corporation or the agent or the attorney or other person rendering services in connection with the defense, whether or not the application by the agent, attorney or other person is opposed by the corporation.

(Corp. Code, § 317, subds. (e)(1)–(4).)

Here, indemnification is not required under Section 317, subdivision (e)(1) or (e)(3), because the required determination has not been made by a "majority vote of a quorum

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[3] Even when the by-laws do not incorporate the Corporations Code, corporations "may not provide for indemnification… as to circumstances in which indemnity is expressly prohibited by Section 317." (Corp. Code, § 204, subd. (a)(11).)

[4] "Section l - Indemnification of Directors: The Corporation shall, to the maximum extent and in the manner permitted by the Code, indemnify each of its directors against expenses (as defined in Section 3l7(a) of the Code), judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding (as defined in Section 317(a) of the Code), arising by reason of the fact that such person is or was a director of the Corporation." (Ex. 2 p. 19.)

consisting of directors who are not parties to such proceeding" or by approval of the shareholder excluding "the shares owned by the person to be indemnified." (Johnson decl., ¶29.) Similarly, indemnification is not required by Section 317, subdivision (e)(4), because the Court has not determined the defendants acted in good faith and in Storix' best interests. (Corp. Code, § 317, subd. (b), (c) & (e)(4).)

Thus, under the Corporations Code, indemnification could only be required for pending claims in this proceeding if (1) a quorum consisting of directors who are not parties to such proceeding is not obtainable, and (2) independent legal counsel determines in a written opinion that defendants "acted in good faith, in a manner [they] believed to be in the best interests of the corporation and its shareholders." (Corp. Code, § 317, subd. (b), (c) & (e)(2).) Because all of the directors are parties to this consolidated action, an independent quorum is unobtainable. However, there is no evidence of a written opinion from independent legal counsel determining defendants acted in good faith and in Storix' best interests.

In opposition to plaintiffs' prior motions to appoint a receiver, Storix hinted that it has obtained such an opinion but the only evidence it offered was this vaguely worded paragraph in the declaration of David Smiljkovich:

> Storix has advanced certain expenses incurred by the individuals named as defendants in the derivative action filed by Johnson and Sassi. Each of those individual defendants has undertaken to repay such advances in the event it is ultimately determined they are not entitled to indemnification. Further, Storix engaged independent legal counsel (an attorney with a firm that is not otherwise involved in any litigation matters for Storix) to obtain counsel regarding the propriety of advancing such expenses.

(Ex. 4, Smiljkovich decl. ISO Opp. to Receiver Motion, ¶ 11; Ex. 5, Smiljkovich decl. ISO Opp. to Limited Receiver Motion, ¶ 13.)

This single paragraph falls woefully short of establishing compliance with Section 317, subdivision (e)(2). First, testimony regarding the contents of a writing is inadmissible under the best evidence rule (Evid. Code, § 1523), and if offered to prove the truth of the matter stated, is inadmissible hearsay. (Evid. Code, § 1200.)

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Second, Mr. Smiljkovich does not even say independent counsel provided a written opinion or made a determination regarding defendants' good faith conduct. He merely states that "Storix engaged independent legal counsel… to obtain counsel regarding the propriety of advancing such expenses." The Code clearly requires independent counsel (1) make a determination the director has met the applicable standard of conduct (e.g. good faith and in the best interests of the corporation), and (2) that this shall be made in a written opinion. (Corp. Code, § 317, subd. (e)(2).) There is no evidence either of these requirements were satisfied for any of the claims against defendants in this action.

Third, the declaration only refers to "expenses incurred by the individuals named as defendants in the derivative action" and says Storix only obtained independent counsel "regarding the propriety of advancing *such expenses*." (emphasis added) This suggests independent counsel only addressed expenses in the derivative action and offered no opinion (much less the written opinion required by the Code) regarding expenses in the other consolidated claims against defendants. This is supported by the revelation that defendants did not sign undertakings on Johnson's personal cross-claims in the Janstor suit until April 4, 2017, and have produced no undertakings with respect to the assault claims.

Finally, if there is a written opinion from independent counsel that might satisfy the criteria Section 317, subdivision (e)(2), defendants (as controlling officers of Storix) have rebuffed plaintiffs' requests for a copy, claiming that any such written opinion is a privileged attorney-client communication between Storix and its counsel. After repeated requests, plaintiffs brought a motion to compel production of this written opinion. On July 24, 2017 Referee Prager sustained Storix' attorney-client privilege objection and denied plaintiffs' motion. With discovery cut-off on October 20 and trial call scheduled for November 17, it would be patently unfair for defendants to invoke the privilege to block discovery, only to waive the privilege at the last minute and rely on an undisclosed written opinion to justify the hundreds of thousands of Storix dollars defendants have diverted for their own personal litigation expenses. Such gamesmanship should not be tolerated, and the Court should preclude

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the defendants from introducing any documents previously withheld as privileged. (*A & M Records, Inc. v. Heilman* (1977) 75 Cal.App.3d 554, 566 [discovery statute was intended to take the "game element" out of trial preparation and do away with surprise at trial; to accomplish that purpose, court was compelled to prevent a litigant claiming privilege against self-incrimination in discovery and then waiving the privilege at trial; "[a] litigant cannot be permitted to blow hot and cold in this manner"]; *In re Marriage of Hoffmeister* (1984) 161 Cal.App.3d 1163, 1171 ["No reason appears why the same cannot be done where relevant evidence sought to be discovered at deposition is withheld on the basis of the attorney-client privilege. … In short, the trial court had the power to preclude at the hearing the use of any evidence withheld from appellant at deposition as well as the related documents belatedly filed."].)

3. Advancement Is Improper Because Undertakings Were Not Signed Prior to the Advancement, If At all

Advancement is further improper because the defendants' undertakings were not signed until after Storix began paying their defense costs. With respect to Johnson's individual shareholder claims, the undertakings were not signed until April 2017. And with respect to the assault case, no undertakings were ever signed! (Johnson decl., ¶30, Ex. 15.)

B. Allowing This Unauthorized Advancement Poses a Substantial Risk of Irreparable Harm to Storix and Plaintiffs, and the Balance of Equities Favors Injunctive Relief

Without injunctive relief, defendants will continue to enrich themselves with corporate money that should rightly be distributed to the shareholders. Moreover, there is no evidence defendants will be able to repay the vast sums being advanced if and when they do not prevail on their defense. This works substantial prejudice to Storix and plaintiffs, who do enjoy the same personal benefits. As stated by the court in *Havens v. Attar*, this situation is particularly suited for injunctive relief:

> In this unusual case, the extent of the harm threatened to plaintiffs increases with each passing day as defendants are advanced monies to defend against plaintiffs' action. Even preparation for a permanent injunction hearing increases the amount of damage

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that may be inflicted upon the plaintiffs if defendants are advanced expenses which they are later required, but find themselves unable, to repay. The harm threatened to defendants by a preliminary injunction denying advancement is limited to the interest on the expenses that will accrue pending a permanent injunction hearing. Defendants are not faced with the prospect of losing their right to indemnification. Plaintiffs are faced with the threat that HCI will not be able to recover the full amount of expenses advanced if defendants are found not to be entitled to indemnification and are unable to repay the corporation for expenses previously advanced.

(*Havens v. Attar*, (Del. Ch. Jan. 30, 1997) 22 Del. J. Corp. L. 1230, at pp. 1254-1258, No. 15134, 1997 Del. Ch. LEXIS 12.)

For the same reasons stated in *Havens*, the threat of irreparable harm to Storix and plaintiffs requires a preliminary injunction in this case.

C. Alternatively, Johnson Should Be Granted the Same Advancement Rights as the Defendants

In the alternative, if the Court finds the defendants have a mandatory right of advancement, that right should apply equally to all directors. In that event, fairness demands that the Cour order Storix to advance Johnson's costs in defending against Storix' claims in the Janstor suit.

V CONCLUSION

For the foregoing reasons, plaintiffs' motion for a preliminary injunction should be granted.

DATED: August 23, 2017

Respectfully submitted,

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By: ______________________

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PROOF OF SERVICE

I, Bernard F. King III, declare that:

I am over the age of 18 years and not a party to the action; I work in the County of San Diego, California where the mailing occurs, and my business address is 1455 Frazee Road, Suite 500, San Diego, CA 92108.

I further declare that I am familiar with the business practice for sending electronic email, pursuant to which practice I served the foregoing MEMORANDUM IN SUPPORT OF MOTION FOR A PRELIMINARY INJUNCTION by electronic mail sent to the e-mail addresses of counsel listed below:

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

Executed on August 23, 2017, at San Diego, California.

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