

COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

| | | |
|------------------------|---|-----------------------|
| STORIX, INC., |) | |
| |) | |
| Plaintiff/Respondent, |) | |
| vs. |) | FROM SAN DIEGO COUNTY |
| |) | HON. KEVIN A. ENRIGHT |
| |) | |
| ANTHONY JOHNSON, |) | COA NO. D075308 |
| |) | |
| Defendant/ |) | SUPERIOR COURT NO. |
| Cross-Complainant/ |) | 37-2015-00034545- |
| Appellant; |) | CU-BT-CTL |
| |) | |
| DAVID HUFFMAN, et al., |) | |
| |) | |
| Defendants/ |) | |
| Cross-Defendants/ |) | |
| Respondents. |) | |
| |) | |

REPORTER'S TRANSCRIPT ON APPEAL

Monday, February 5, 2018

(Pages 1313 through 1506, Inclusive)

Volume 11

1100 Union Street, Department 904
San Diego, California

Reported By:
Leyla S. Jones
CSR No. 12750

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

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

Hon. Kevin A. Enright

Plaintiffs,

vs.

CASE NO. 37-2015-
00034545-CU-BT-CTL
(Consolidated with
Case Nos.: 37-2016-
00030822-CU-MC-CTL
and 37-2015-
00028262-CU-BT-CTL)

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,

Trial, Day 6

STORIX, INC., a California
corporation;

Nominal Defendant.

AND CONSOLIDATED ACTIONS

TRANSCRIPT OF PROCEEDINGS

(Pages 1313 through 1506, Inclusive)

Volume 11

February 5, 2018

8:52 a.m.

1100 Union Street, Dept. 904
San Diego, California

REPORTED BY:

Leyla S. Jones

CSR No. 12750

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1 SAN DIEGO, CALIFORNIA;

2 MONDAY, FEBRUARY 5, 2018; 8:52 A.M.

3 * * *

4
5 (Outside the presence of the jury.)

6 THE COURT: All right. Good morning.

7 We're outside the presence of the jury. There's a
8 number of exhibits I wanted to address, and the
9 first one is Exhibit 139. I believe I ruled on the
10 objections. And in further review, it's a four-page
11 e-mail from Mr. Johnson.

12 Looking at the last paragraph, I'm inclined
13 to sustain the objection as to the last paragraph,
14 and the objection is 1152. And then I want to ask
15 Mr. King about -- I know we've had discussion with
16 regard to other exhibits about the entirety versus
17 redacting.

18 But I'm inclined to sustain, as I say. So
19 the last paragraph should be redacted. The rest of
20 the objection is overruled. Objections are
21 overruled. But with regard to that, I'm
22 wondering -- and then I'll hear argument with regard
23 to 1152.

24 Thoughts?

25 MR. KING: One second.

26 THE COURT: Yes.

27 MR. KING: So, Your Honor, my preference
28 is, as stated before, that if part of it is

1 objectionable, we'd like to see the whole document
2 excluded. Alternatively, if that's not what the
3 Court's inclined to do, we would request that that
4 paragraph be blacked out.

5 THE COURT: Okay. And just so it's clear,
6 like I said, my ruling previously on 139 stands. I
7 don't think it's subject to 1152, but the last
8 paragraph I think is in a different status and I
9 think is.

10 And so any thoughts?

11 MR. SULLIVAN: Your Honor, I don't think we
12 would object to that, except for the first sentence
13 of the last paragraph.

14 THE COURT: "I'm going to start looking for
15 office space on Monday"?

16 MR. SULLIVAN: Yes.

17 THE COURT: That's fair.

18 MR. KING: I think that goes in with the
19 settlement. I mean, that's -- that's part of the
20 settlement communication.

21 THE COURT: Office space?

22 MR. KING: Yeah. I mean, it was -- it's
23 the -- Mr. Johnson is using the threat of
24 competition as leverage in settlement negotiations,
25 which he can do.

26 THE COURT: I understand. But with regard
27 to the entirety of Exhibit 139, I don't find that
28 subject to 1152. And I -- I think that's talking

1 about the situation. There's frustration. And as
2 he terms it, his "final" final thoughts for you to
3 consider.

4 And so I guess I'm wondering how office
5 space competition goes to 1152, offer to compromise.
6 And again, I read the definition previously on 1152,
7 offer to compromise. Threats or "You better do
8 this" or "Get out," I don't think are --

9 MR. KING: Well --

10 THE COURT: -- humanitarian, as the
11 definition talks about, or more particularly offer
12 to compromise.

13 MR. KING: I understand. My concern about
14 it is this: In any offer to compromise and any time
15 you have a settlement offer, you're going to have
16 two parties. You're going to have one, This is what
17 with we're offering. This is your way out. This is
18 your golden range. And then you're going to have a
19 second part, which is, And if you reject it, this is
20 what we're going to do.

21 And my position on all of these is that you
22 can't separate easily the -- both -- either of those
23 parts, and I think that's what we're trying to do
24 here. And I think that the policy of it to
25 encourage these requires that we extend the
26 protection and the inadmissibility to the entire
27 communication.

28 THE COURT: All right. Other thoughts?

1 MR. SULLIVAN: I agree with Your Honor's
2 initial thoughts that to the extent that it would be
3 considered an offer to compromise, it would have to
4 be necessary and related to the purpose of the
5 litigation that was at issue at the time. There was
6 a copyright infringement lawsuit.

7 I agree the discussion of a license
8 agreement would potentially be within the scope of
9 that, as that's the remedy of relief he can seek as
10 part of a -- being a plaintiff in a copyright
11 litigation. But forensic competition are outside
12 the scope of the remedy he would have been entitled
13 to, so they're not within the realm of what would be
14 considered an offer to compromise supported by the
15 policy under 1152.

16 THE COURT: Mr. McCloskey, any thoughts?

17 MR. MCCLOSKEY: I agree with Mr. Sullivan,
18 Your Honor. I have nothing else to offer.

19 THE COURT: Okay. With regard to this,
20 then, as to the first sentence of the last paragraph
21 on page 4 of Exhibit 139, the objection is overruled
22 for the same reasons that I've said on this and
23 other exhibits. I don't think that fits within
24 1152. And for that reason, the objection is
25 overruled. Starting with, "I told you," et cetera,
26 through the end of the paragraph sustained, and that
27 should be redacted.

28 MR. KING: Your Honor --

1 THE COURT: That last paragraph has not
2 been shown to the jury.

3 MR. KING: Your Honor, if we're going to
4 redact everything after that first sentence, then we
5 would prefer to have no redactions.

6 THE COURT: Okay. Then -- all right. And
7 that's why I asked you and you mentioned that. So
8 no redactions. The ruling I made previously stands
9 with regard to 139. Similarly, 874 --

10 Tom, is the jury here?

11 THE BAILIFF: We're missing three,
12 Your Honor.

13 THE COURT: My understanding is on 874, the
14 second and third paragraphs are verbatim of exhibits
15 previously entered.

16 MR. KING: Second and third pages, I
17 believe.

18 THE COURT: Well, it starts at the bottom
19 of page 1, 9/26 and then 10/6, I believe are just
20 restatements of exhibits already entered, if I'm
21 correct.

22 MR. SULLIVAN: Yes. Exhibit -- or the
23 e-mail that starts 9/26 is the -- I believe it's
24 356.

25 THE COURT: It's the "Buckle up, boys."

26 MR. KING: Yeah, yeah.

27 MR. SULLIVAN: Exhibit 356 has been
28 previously admitted.

1 THE COURT: And then 10/6 is the customer.

2 MR. SULLIVAN: And I believe that's
3 Exhibit 22.

4 THE COURT: Okay. So in looking at new
5 material under 876, I'm looking at page 1, the
6 majority of page 1, and I have a similar ruling and
7 I won't restate it all. But with regard to this,
8 the last sentence of the October 7 e-mail from
9 Mr. Johnson, I have similar thoughts. That should
10 be sustained under 1152.

11 If there is a -- and again, the similarity
12 of -- I mean, the similar position, Mr. King, that
13 you'd just as soon have it all, that's -- I
14 understand and that's fine. But my inclination --

15 MR. KING: We'll go ahead and redact that
16 last sentence.

17 THE COURT: Pardon me?

18 MR. KING: We will go ahead and redact that
19 last sentence.

20 THE COURT: Okay. And, Mr. Sullivan?

21 MR. SULLIVAN: Your Honor, the portion at
22 the end there, "a way to get out of this before you
23 lose your home," that's more consistent with the
24 threats that we discussed before that are not under
25 the scope of the settlement offer to compromise.

26 The purposes and policies supporting that
27 offer, that's a threat to make Mr. Kinney homeless
28 if he did not concede to Mr. Johnson's threats. So

1 I would say that that's outside the scope of -- the
2 settlement communication should not have that.

3 THE COURT: Mr. McCloskey, any thoughts?

4 MR. MCCLOSKEY: I agree with Mr. Sullivan,
5 Your Honor. I have nothing else to add.

6 THE COURT: The difficulty -- and I
7 understand the sentiment. It does fit with threat.
8 But it's, "Call me"; in other words, it's the last
9 sentence of a lengthy e-mail saying to Mr. Kinney --
10 trying to persuade him to change his ways, and he's
11 saying, "Call me."

12 And so I think if we try to parse that
13 sentence, I wonder how we would do it, because the
14 "call me" I think is part of "lose your home." In
15 other words, I'm going to eject you from your house,
16 your home. But I think the first part of that is
17 "call me."

18 And I -- I'm sensitive to what you're
19 saying. But I guess as a practical matter, we can
20 be surgical, but maybe that's two academically
21 surgical, and whatever we end up with, parsing that
22 won't make any sense contextually. That's my
23 thought. I'm sensitive to what you're saying,
24 because it does fit with, Get out and if you don't
25 get out, you're going to lose your home.

26 MR. SULLIVAN: Exactly. And the fact that
27 he's saying, "Call me," but only under the pressure
28 of threats to lose your home and become homeless or

1 to suffer the detriment of an announcement e-mail
2 going out to customers and causing you to lose
3 revenues and having your attorneys gather, it's all
4 part and parcel of the same modus operandi. It's
5 all like, You will talk to me under my conditions
6 and only under those conditions or else you will
7 suffer the harm.

8 And that's not an offer to compromise under
9 1152. That's a, you know, talk to me under force of
10 threat or be harmed. Losing your home is not
11 something that Mr. Johnson would be entitled to as
12 relief in -- as a plaintiff in his case, so I don't
13 see that as in the scope of the 1152 communication.

14 THE COURT: So -- all right. I understand.
15 How would we redact that? I think that, "Or call me
16 and we'll see if there's a way to get you out of
17 this," which I think is 1152. He has a lot of stuff
18 ahead -- in front of that that fit with threats and
19 fit with, you know, you better do this, you better
20 do that. And it's clearly one way, not an offer to
21 negotiate or compromise.

22 MR. SULLIVAN: Well, then, you know, if --
23 if it's going to be redacted, I think it does more
24 harm than good to parse that sentence, and we would
25 just go with redacting the whole sentence. I think
26 the sentiment of threat is apparent throughout that
27 e-mail.

28 THE COURT: And I was going to say that,

1 because not only in this e-mail but in others, it's
2 pretty clear what Mr. Johnson's position is. I
3 mean, it's not like he's mincing words.

4 Mr. King, you want it redacted?

5 MR. KING: I would like it redacted, yes.

6 THE COURT: All right. So as to 874, the
7 document is received in evidence. The objection is
8 overruled with the exception of the last sentence on
9 the first page of the first e-mail starting
10 October -- or dated October 7 from Mr. Johnson. So
11 the sentence "Or call me" is redacted in its
12 entirety, sustained under 1152. There's other
13 rulings I want to make.

14 But, Tom, could you check and see if the
15 jury is out there?

16 (Exhibit 874 received.)

17 THE BAILIFF: They are, Your Honor.

18 THE COURT: They are. Okay. And it
19 relates to -- well, other exhibits. But let's -- I
20 think it can wait. Let's bring the jury in, unless
21 there's anything else.

22 MR. KING: Nothing further.

23 THE COURT: And we're going to continue
24 with Mr. Johnson; is that correct?

25 MR. KING: Yes.

26 THE COURT: And, Mr. Johnson, if you'd be
27 so kind.

28 (Whereupon the jurors enter the courtroom.)

1 THE COURT: Good morning, ladies and
2 gentlemen. Good to see you all again. Hope you had
3 a great three days. Welcome back.

4 And good morning, Mr. Johnson.

5 MR. JOHNSON: Good morning.

6 THE COURT: And, Mr. Johnson, you recall
7 you're still under oath?

8 MR. JOHNSON: I do.

9 THE COURT: Thank you.

10 And, Mr. King?

11 ANTHONY JOHNSON,
12 having been first duly sworn, was examined and
13 testified as follows:

14

15 CROSS-EXAMINATION (Resumed)

16 BY MR. KING:

17 Q. Good morning, Mr. Johnson.

18 A. Good morning.

19 Q. Let's start from the beginning.

20 MR. SULLIVAN: Objection, Your Honor.

21 There's items being shown that are not admitted on
22 the screen.

23 THE COURT: If you can take it down. Thank
24 you.

25 BY MR. KING:

26 Q. Anthony, tell me where you're from.

27 A. I grew up in the Las Vegas area.

28 Q. How did you make it to San Diego?

1 A. I initially moved to Los Angeles area when
2 I had, I guess, my first full-time computer job. I
3 worked there for four years and then moved to Texas
4 to work for IBM for about nine years.

5 And after about nine years, I decided I
6 didn't want to work for a large corporation anymore,
7 so I made plans to move back to L.A., but got
8 sidetracked and moved to San Diego instead. I did
9 not have a job at the time, but had enough savings
10 that I kind of anticipated taking some time to
11 figure out what I wanted to do.

12 Q. How did you end up starting Storix?

13 A. Well -- well, what actually happened is a
14 week before I was leaving Dallas to move to
15 Los Angeles, I got in a very bad car accident and
16 was hospitalized for between three and four weeks.
17 And when I -- this was, of course, after I had
18 already packed up my house -- or apartment, that is,
19 and was getting ready to move.

20 A couple of my family members came down and
21 packed up the house and moved it to San Diego for
22 me, where I had actually already rented an
23 apartment. And when I got out of the hospital, you
24 know, they kind of, you know, helped me in the
25 apartment. At the time I was in a wheelchair for
26 two or three weeks.

27 Q. What does that have to do with Storix?

28 A. Well, because when I moved to San Diego, I

1 wasn't mobile. I wasn't able to look for a job and
2 wasn't sure what it was I was going to do, but I
3 figured I would find about anything I could do to
4 just kind of supplement my income to make it last a
5 bit longer until that decision came around. But
6 since I was pretty much laid up in my apartment for
7 a good eight months or so, I started writing some
8 software.

9 Q. What software did you write?

10 A. Well, when I worked for IBM, I created a
11 product that was called SysBack. And it was a
12 backup product, not very dissimilar to what SB Admin
13 is today, except it was -- it didn't have much of a
14 user interface to it. It didn't -- well, a lot of
15 things that it didn't do.

16 And I decided -- I had worked with a
17 contract with my old IBM colleagues to create a --
18 basically a new product that used some of the
19 SysBack code underneath, and it basically simplified
20 and kind of centralized a lot of the management of
21 the backups on networks. And that became SB Admin,
22 and I sold that product and then provided a license
23 fee to IBM for it. And that was what was referred
24 to as the first version of SB Admin.

25 Q. And about what year was that?

26 A. I began the development in 1998, the same
27 year that I moved. And by nine -- it was released
28 in 1999 at the same time I created the copyright for

1 it.

2 Q. Had you started up any businesses before
3 that or was this your first business?

4 A. Yes and no. It was sort of a business
5 within a business that I actually ran within IBM. I
6 wasn't in a product division in IBM. I was actually
7 in a technical support division. But I was working
8 on a system called AIX, which is IBM's version of
9 Unix, which we've heard before. Unix is
10 different -- flavors of Unix that SB Admin supports.
11 AIX was the first, and that's IBM's version.

12 When I was working in technical support,
13 one of the things that I found that customers were
14 lacking was the ability to do full system recovery.
15 And I started creating tools for their use that
16 became popular, and that came with additional
17 requests for more features until it eventually
18 turned into a product itself that eventually got
19 named SysBack.

20 And so we ended up actually selling the
21 product within the support division. And about the
22 time that I left IBM, which was in 19 -- 1998, that
23 product got moved into the product division, and
24 they started selling it as a -- sort of an add-on
25 to, you know, another storage product that IBM
26 sells.

27 Q. And so how is SB Admin that you developed
28 after IBM -- how did -- what was different about

1 that?

2 A. Well, what was different was, like I said,
3 the product I wrote for IBM was less user friendly.
4 It had a lot of commands that you could run from the
5 command line in order to perform backups and various
6 tasks, and there was a basic menuing facility that
7 was kind of incorporated into IBM's normal system
8 administrator interface.

9 But SB Admin was -- pardon me -- created
10 primarily to kind of centralize all of the
11 management, whereas rather than going to every
12 client system that you're going to back up and every
13 server system and configuring them manually with
14 these demands and then running all the backups from
15 the client and pushing them to the server, I created
16 an interface whereas from one central server and one
17 graphical interface, you were able to configure all
18 of the clients and the servers and configure backup
19 jobs and schedule backups to run and a number of
20 other administrative tasks that could all be done
21 from a central location.

22 Q. You wrote all the code for that?

23 A. Yes.

24 Q. How long did you spend on that?

25 A. Well, that's hard to say. It probably
26 took -- it probably took about a year before the
27 first version came out.

28 Q. How long -- well, you started it in your

1 apartment? Is that what you -- is that what you
2 testified to?

3 A. Yes, yes.

4 Q. How long were you in your apartment before
5 you moved to an actual office?

6 A. Well, shortly after I released the first
7 version of SB Admin, Version -- Version 1, my sister
8 was still helping me out a lot because I wasn't very
9 mobile and kind of needed a little bit of help with
10 things like laundry and so forth. And she actually
11 helped me set up an office. It was just a small
12 office, just the two of us. And, you know, she
13 basically helped get -- helped me with just kind of
14 getting the business end of things up and running
15 and --

16 Q. Which sister was this?

17 A. That's my sister Michelle.

18 Q. Okay.

19 A. And we were in the office. I suppose --
20 I'm sorry. The question was, like, how long -- what
21 was the question again? I'm sorry.

22 Q. So how long were you in the apartment
23 before you got an actual office?

24 A. I would say about a year and a half.

25 Q. Okay. And then after you got an actual
26 office, how long was it before you hired an employee
27 other than your sister? because I don't know if your
28 sister was an employee or not.

1 A. Well, my sister was I guess -- well, she
2 was an employee, I suppose, but that was only for
3 maybe -- I can't remember now -- a three- to
4 six-month period. She was just there to kind of
5 help get the ball rolling, I suppose.

6 Q. Okay. So how long after she left did you
7 hire another employee, your first employee?

8 A. It would come shortly after, but it
9 wasn't -- I didn't need anybody at that point to
10 help with the kind of administrative tasks anymore.
11 It was more I needed to bring someone in to now
12 start learning more about the product and help with
13 the technical support.

14 Q. And who was that first employee you hired?

15 A. I don't remember names, to tell you the
16 truth. I remember one person named Devin. I was
17 pretty green when it came to hiring people and kind
18 of vetting people, and I found the first two people
19 that I brought in.

20 Since I wasn't in a position to, you know,
21 hire highly skilled employees, I was looking to
22 bring people in that were maybe recently graduated
23 from a trade school or something that could kind of
24 grow -- grow with the company. But the first couple
25 of people that I hired I found were actually just
26 job hopping for short periods of time in order to
27 keep their unemployment current.

28 Q. When did you meet David Huffman?

1 A. Well, of course he, you know, answered an
2 ad, I guess. And I brought him in to interview him
3 in 2002, I believe. Yeah, 2002.

4 Q. Okay. And when -- after the interview, you
5 hired him?

6 A. Yes.

7 Q. And at that point in time, how many
8 employees did you have or was it just you and
9 Mr. Huffman?

10 A. It was just Mr. Huffman, and there was one
11 other technical support employee that I had at the
12 time.

13 Q. Okay. And what did you hire Mr. Huffman to
14 do when he first came on?

15 A. It was primary technical support and kind
16 of assisting with some of the research that needed
17 to be done, because I was now expanding from the AIX
18 system that we supported for IBM to the -- to the
19 Linux system, which is another flavor of Unix that
20 was kind of coming about.

21 Q. Was Mr. Huffman hired to program code for
22 SB Admin?

23 A. No.

24 Q. Did you have any understanding of what
25 Mr. Huffman's programming skills were when you hired
26 him?

27 A. I don't -- I'm not aware that he actually
28 had program skills. I'm sure that there was -- that

1 he touched on it, because I think he came from a
2 trade school of some sort and they always touch on
3 it to some degree. I didn't anticipate he had any
4 particular skills in programming.

5 But this -- you know, when I hired
6 people -- you know, I didn't have the resources, as
7 I said, to bring in highly skilled people. So I was
8 really looking for people that looked like, I guess,
9 kind of go-getters that, you know, were anxious to
10 learn and to -- and that I thought would maybe grow
11 with the company. And so I wasn't -- I'm -- it --
12 there was a good chance that he would grow into the
13 programming position if that's where he wanted to
14 go.

15 Q. What, if anything, did you teach him over
16 the course of his employment about programming?

17 A. In the course of his programming? I --

18 Q. No, in the course of his employment.

19 A. Of his employment. Well, he learned about
20 the product that I created. He learned more about,
21 I guess -- I imagine he learned about how the
22 product was used, why it was used, how customers
23 were using it, the needs of the customers, and
24 particularly, I think he started learning a great
25 deal more about Linux, because there was, you know,
26 a lot of -- because of the nature of the product and
27 how it has to kind of integrate with the operating
28 system itself, you know, you really had to learn a

1 little bit more of the inner workings of the
2 operating system to be able to either support it or,
3 you know, provide any help in that area.

4 Q. Did you teach him how to program for
5 SB Admin?

6 A. I wouldn't say that I taught him how to
7 program, no.

8 Q. Okay. Mr. Turner, Rich Turner, how did you
9 meet him?

10 A. Turner was hired shortly after Huffman,
11 just about four or five months later, I think. Same
12 thing, just looking for people that -- and I think
13 Mr. Turner had just come out of a trade school at
14 the time. I think he might have had a position --
15 some sort of technical -- or technical job before
16 that, maybe doing support or something, but not
17 a lot of experience.

18 Q. When you hired Mr. Turner, how many
19 employees did you have?

20 A. I don't know if the first person that I
21 mentioned was still there. He was removed from the
22 company when he was arrested.

23 Q. Okay.

24 A. But that had nothing to do with my
25 business. But -- so I don't know if he came in when
26 the person was there or not, but it soon became just
27 Mr. Huffman, Mr. Turner, and myself.

28 Q. How long was it just the three of you?

1 A. I couldn't say.

2 Q. Who was the next employee that was hired?

3 A. It -- again, it was a long time ago. There
4 hasn't been a lot of people -- there really haven't
5 been many people. I think I brought in a marketing
6 person at one point that didn't work out, wasn't
7 really contributing.

8 Q. Did you hire anyone -- did you hire anyone
9 for sales?

10 A. Well, he was there for, basically, you
11 know, marketing and sales, but that was prior to
12 Mr. Altamirano. This person was there for maybe
13 six months, but he -- one of his big problems was he
14 lived in Murrieta. He didn't want to make the
15 travel.

16 Q. So you decided to hire someone for
17 marketing and sales, hired someone from -- and you
18 hired -- first person from Murrieta didn't work out.
19 And then you met Mr. Altamirano?

20 A. Yes.

21 Q. And you hired him for that position?

22 A. Yes.

23 Q. And for a while, was it just you
24 Mr. Altamirano, Mr. Turner, and Mr. Huffman?

25 A. I think for a period of time, there was.

26 Q. When did you meet Mr. Kinney?

27 A. Kinney was the last -- I think the last
28 person that I've hired, and that was around 2009,

1 maybe.

2 Q. And so --

3 A. Actually, it was earlier than that, because
4 he was there about four years when I left in 2011.

5 Q. So by the time -- 2010, it was you, and
6 then you had Mr. Huffman, Mr. Kinney,
7 Mr. Altamirano, and Mr. Turner working at Storix,
8 correct?

9 A. Yes, and Mr. Altamirano hired another
10 person to come in to help with sales. At the time
11 that I left, he had only been there about three
12 months or so, and I understand that they let him go
13 shortly after I left.

14 Q. In 2010, how many shareholders did Storix
15 have?

16 A. Just one. That would be me.

17 Q. You were the only shareholder from the time
18 Storix was founded until 2010?

19 A. Yes.

20 Q. In 2011, things changed, right?

21 A. Yes.

22 Q. Tell me how they changed.

23 A. Well, it was -- probably started in 2010, I
24 started having some health problems kind of cropping
25 up in different ways, and it took some time. It
26 wasn't until early 2011 before I received a
27 diagnosis. It turned out to be melanoma.

28 And I guess around June of 2011, I got a

1 prognosis and it was that the melanoma had
2 metastasized and was malignant, had expanded into my
3 lymphatic system, and was at that point looking
4 pretty dire.

5 Q. What do you mean "pretty dire"?

6 A. Well, it was in -- I think, around the end
7 of June that I got -- the prognosis was that I was
8 Stage 3C. They're pretty -- they have a lot of data
9 on melanoma, so it's rather more specific than a lot
10 of other things. At that stage, the prognosis was
11 that the average survival rate was about 20 months.

12 Q. So what did you do with respect to Storix
13 after you received your prognosis?

14 A. Well, I was primarily trying to -- trying
15 to put my affairs in order in such a way that
16 basically things and people were taken care of, and
17 my first thought was to base -- to try to find
18 someone to sell the company that would keep it
19 intact.

20 MR. KING: Your Honor, may I approach and
21 show the witness an exhibit?

22 THE COURT: Yes.

23 BY MR. KING:

24 Q. Showing you what is marked as Exhibit 601,
25 could you tell me what that is, Mr. Johnson?

26 A. Yeah. This was an e-mail that I had sent
27 to one -- well, our -- really, our one business
28 partner at that point that was selling the software

1 as an OEM vendor, meaning that they were basically
2 selling it under their own brand.

3 (Exhibit 601 referenced.)

4 BY MR. KING:

5 Q. Okay.

6 A. The company is called Quest. It was
7 formerly called Backbone, and they have since been
8 bought by Dell.

9 MR. KING: Okay. Your Honor, I move to
10 have Exhibit 601 admitted and published.

11 MR. SULLIVAN: I have no objection.

12 MR. MCCLOSKEY: No objection.

13 THE COURT: Received.

14 (Exhibit 601 received.)

15 THE COURT: Do you want the lights dimmed
16 or not?

17 MR. KING: Yeah.

18 BY MR. KING:

19 Q. So looking at the last paragraph, what
20 are -- what are you -- what are you communicating
21 here to Mr. -- Mr. Keiper at Quest?

22 A. I think, as I mentioned at the last part of
23 the paragraph, this was 2011 and this is following
24 the 2008 to 2010 financial crisis in the country.
25 And there was significant layoffs, particularly
26 around 2010, in the IT industry and jobs were very
27 hard to come by.

28 So my primary goal here was to make sure

1 that my employees -- my employees', you know, jobs
2 and incomes were protected in what was a very
3 difficult job market at the time.

4 Q. In other words, you -- so just so I'm
5 clear, you wanted -- you were asking Quest if they
6 wanted to buy Storix?

7 A. Yeah. They were ideally suited for it
8 because they were already selling the product under
9 their own brand.

10 Q. But you were saying, If you do want to buy
11 Storix, you have to keep my employees employed?

12 A. Yes.

13 Q. What was the response?

14 A. I don't recall the specific response, but
15 they turned it down. They weren't interested in
16 purchasing the company. And I -- I think that part
17 of the reason was that they were already under
18 negotiation to sell their company to Dell at the
19 time, so they -- I don't think they could have
20 entered into any agreements if they wanted to.

21 MR. MCCLOSKEY: Objection, Your Honor.
22 Lacks foundation. Calls for speculation. Move to
23 strike.

24 THE COURT: As to the last portion,
25 granted.

26 BY MR. KING:

27 Q. What other options did you explore?

28 A. I -- I contacted a few companies that

1 provided active management -- active management, and
2 these were companies that basically provided skilled
3 professionals and often professionals that were very
4 knowledgeable and had a lot of contacts in the
5 industry -- in our case, the computer storage
6 industry -- and was looking basically for someone to
7 come in to, you know, manage the company.

8 Q. And why not go that route?

9 A. Because I only dealt with two of them or
10 really talked with two of them, and what I found was
11 that their interest was more in ownership or taking
12 control of the company or a large share of the
13 company. And it -- it just evolved into putting
14 them in a position where they could kind of do
15 whatever they wanted with the company as far as sell
16 it, disassemble it, distribute the customer list,
17 and there was -- there was no -- no guarantee that
18 the employees wouldn't be, you know, let go in the
19 process.

20 Q. So what did you end up doing?

21 A. Well, I think, as I said in the e-mail
22 there, that my, you know -- my -- my thought was,
23 you know, if I don't find at least one of those two
24 things, then I would be giving a significant share
25 of the company to the employees themselves and do
26 what I could to kind of get them into a position
27 where they could keep it running themselves.

28 Q. So what did -- so what did you tell your

1 employees when -- you know, after your diagnosis?

2 A. Well, I told them that I -- I think at the
3 same time I told them about my diagnosis and, you
4 know, to kind of give them a reason for, you know,
5 big changes that were coming; that I would be, say,
6 significantly less active in the company since I
7 didn't anticipate having a long time to live and had
8 a lot of bucket list items, I suppose, I wanted to
9 check off and --

10 Q. So set the scene for me. Where did you
11 tell them this?

12 A. Well, I had explained this to David Huffman
13 first.

14 Q. Okay.

15 A. And the reason for that was that, you
16 know -- I think it was after this e-mail was sent
17 and while I was still kind of pursuing other
18 options, David Huffman came into my office and told
19 me that he was planning to leave the company to go
20 back to school full-time.

21 Q. And that was before he heard anything about
22 your diagnosis?

23 A. No. I knew about the diagnosis.

24 Q. Before Mr. Huffman knew about your
25 diagnosis?

26 A. Oh, no, no one knew. In fact, this is the
27 only person that knew about it. To tell you the
28 truth, I didn't tell anybody else even what my

1 reason for leaving was.

2 Q. And so what was your response when
3 Mr. Huffman said he was thinking about leaving?

4 A. Well, I -- I was literally that day, you
5 know, working with one of these firms to try to find
6 active management, and it didn't look like it was
7 going very well. And I had already made the
8 decision that I'm going to find a way to transfer
9 shares to the employees, but I was kind of
10 investigating how to do that.

11 I wasn't quite ready to make an
12 announcement yet, so I told David -- I said, Listen,
13 I understand what you're saying. I get it, but
14 there's change -- there's a change going to happen
15 very soon that I think you might want to change your
16 mind.

17 He was pretty adamant that no, he's made
18 the decision and he's going to do this. But I said,
19 Well, just, you know, give, you know -- I can't
20 remember if I told him at that time or I said, Just,
21 you know, give me a couple of days.

22 You know, I think he came to me on Friday.
23 I think I said, you know, Give me until Monday to,
24 you know, kind of collect my thoughts or put this
25 together and, you know, just keep an open mind and
26 we'll talk about it on Monday.

27 Q. So when Monday came around, what did you
28 tell him?

1 A. Well, I sat him down in my office and I
2 explained to him the situation, and I told him then
3 that I was going to be transferring on -- I think I
4 told him at that point I decided that I was going to
5 give 60 percent of the shares of the company to the
6 employees and that, you know, they would be in a
7 position then to run the company.

8 Q. Did you tell him he needed to do anything
9 in exchange for those shares?

10 A. No. I --

11 Q. At that meeting, at that meeting.

12 A. No.

13 Q. Okay. And how did Mr. Huffman react when
14 you told him that?

15 A. At the time he found it intriguing. He
16 said that he had a decision to make and, you know,
17 it was -- he was weighing his options. I guess he
18 was very interested in going to school, but this was
19 what he -- what he did tell me was that this -- you
20 know, he was going to business school.

21 And, you know, he said something about, you
22 know, given the opportunity, you know, he'd rather
23 get the real-life experience and kind of apply what
24 business studies that he had in this area. So
25 eventually, he -- you know, he told me that he
26 decided that he would stay.

27 Q. Now, before you told the rest of the
28 employees, did you have any one-on-one conversations

1 with any other employee?

2 A. No, I didn't.

3 Q. So tell me about the time you told the rest
4 of the employees. This was in a meeting with all of
5 them, right?

6 A. Yes. I think -- you know, once the
7 decision was made, I pulled everybody together for a
8 meeting in the conference room and sat them down and
9 explained my health situation, that I would be
10 leaving and turning over control, and that I was
11 going to be issuing 60 percent of the shares of the
12 company to those employees.

13 Q. And --

14 A. After --

15 Q. -- did any one of the employees react
16 negatively to that offer? In other words, did any
17 of the employees at that time say, "No, I don't want
18 it"?

19 A. Oh, well, no. I -- I think it was -- there
20 was a lot of information, obviously, that was
21 probably very surprising or shocking, you know, but
22 certainly nobody was opposed to the idea.

23 Q. Now, at some point the plan to transfer the
24 shares just outright kind of modified a little bit;
25 is that right?

26 A. Well, what we had found -- what I found was
27 I probably should have done a lot more research
28 before making that announcement, because I later

1 found that, you know, what I thought I -- I thought
2 I would simply be able to take, you know, my 1,000
3 shares and just give -- split 600 shares amongst the
4 other employees.

5 But the -- as the accountant explained to
6 me -- and eventually another attorney was brought in
7 on the -- on the deal -- was that because I was the
8 sole owner of the company, any gift of shares that I
9 gave them, even if it were my own shares, would be
10 considered by the state and federal tax authority to
11 be -- to be, basically, taxable income.

12 Q. Okay.

13 A. And this created a major tax liability for
14 them by giving -- by my giving them the shares,
15 so --

16 Q. So what did you decide to do as a way to
17 try and mitigate that?

18 A. Well, at the same -- well, basically,
19 around this same time, I actually brought my sister
20 back into the company for a short time.

21 Q. This is Michelle?

22 A. Michelle, yes. She -- she had -- she was
23 right at the time in between jobs. Her husband had
24 just moved to Las Vegas. They were -- she had
25 repairs to do on the home, and they were going to
26 sell it. So she was going to stay behind for a
27 little while, so she offered to come in and help me
28 kind of with my transition, because she has a lot of

1 business experience.

2 And, you know, the reason I say this is
3 that, you know, she was much more involved in this
4 than I was. And by "this," I mean that once we
5 discovered this was going to be --

6 MR. MCCLOSKEY: Objection, Your Honor. The
7 witness is narrating.

8 THE COURT: Sustained.

9 BY MR. KING:

10 Q. So I -- my question is specific. What was
11 the -- what was the next form of proposal for
12 transferring the shares?

13 A. My preface was just getting to that answer,
14 which was once it was decided that this was going to
15 be overly complicated, Michelle got involved in this
16 as well and worked with the accountant and the
17 attorney to come up with an alternative that would
18 be more beneficial to the employees financially.

19 And that was to create a bonus plan, so
20 basically a contractual bonus agreement with the
21 employees so that rather than receiving the stock
22 right away, they would receive 60 percent of all of
23 the profits of the company, which would equate to
24 the same amount of money. But rather than get the
25 stock right away, I would transfer the stock to them
26 in my trust.

27 Q. Okay.

28 A. And by transferring it in the trust, it

1 would not be taxable because it was -- you know, it
2 had to be over \$5 million or something before it
3 became taxable. So this would have been a much more
4 beneficial solution to them and --

5 Q. So after you told the employees about this
6 new kind of form for doing the transfer, what was
7 the reaction?

8 A. Well, we had a meeting to discuss it, and I
9 kind of showed them the numbers, and they were going
10 to save a tremendous amount of money by not having
11 to pay these taxes. So I didn't really get any
12 reaction from them other than, Okay.

13 But after we left the meeting, David
14 Huffman pulled me aside and said that he thought I
15 was kind of reneging on the deal and he wanted the
16 stock or he was going to leave.

17 MR. KING: Your Honor, may I approach and
18 show the witness an exhibit?

19 THE COURT: Yes.

20 MR. MCCLOSKEY: Your Honor, may we have an
21 exhibit number?

22 MR. KING: 774.

23 (Exhibit 774 referenced.)

24 BY MR. KING:

25 Q. Mr. Johnson, I'm showing you an exhibit
26 marked 774. Do you recognize this?

27 A. It's multi parts. If I could just take one
28 second.

1 Yes. This is -- well, this is an e-mail
2 forward from David Huffman to Robin Sassi. It looks
3 like he's forwarding an e-mail from my sister where
4 she's asking him to review some information that was
5 provided by Gary Armstrong -- and this was the
6 attorney we brought in on the transfer -- where they
7 were discussing --

8 THE COURT: I think he's answered the
9 question. If you could take down what's on the
10 screen right now until the exhibit has been
11 admitted.

12 MR. KING: So, Your Honor, we'd move to
13 have Exhibit 774 --

14 MR. MCCLOSKEY: I'd like to look at it,
15 Your Honor. Can I see it?

16 MR. KING: Yeah, absolutely. It's not in
17 your binder?

18 MR. MCCLOSKEY: It's not in there.

19 We object on the basis of two privileges,
20 Your Honor. Marital to begin with, and then
21 attorney-client as well.

22 THE COURT: I don't have 774.

23 MR. SULLIVAN: And further objection on
24 foundation, Your Honor.

25 THE COURT: As to that, sustained.

26 So, Mr. King, as to the foundation
27 objection, it's a two-page document. I'm seeing
28 three different e-mails. So as to foundation,

1 sustained.

2 MR. KING: Okay. All right.

3 BY MR. KING:

4 Q. Mr. Johnson, after there was objection from
5 Mr. Huffman about doing the employee bonus plan,
6 what eventually did you end up deciding to do?

7 A. Well, Mr. Huffman's rejection I took rather
8 personally, because it was specific to his not
9 trusting that I would give them the stock, and I
10 would.

11 MR. MCCLOSKEY: Objection, Your Honor. The
12 witness is narrating.

13 THE WITNESS: Sorry.

14 THE COURT: Sustained.

15 BY MR. KING:

16 Q. So --

17 A. So I --

18 THE COURT: No.

19 THE WITNESS: I'm sorry. I'll answer the
20 question.

21 BY MR. KING:

22 Q. So the question is: What did you decide to
23 do instead of the employee bonus plan after
24 Mr. Huffman said, I don't want to do it?

25 A. I was at that point frustrated and I told
26 my sister, who was working at the company and had
27 been working on the whole bonus plan stock transfer
28 issue with the attorneys and all of that --

1 MR. MCCLOSKEY: Objection, Your Honor. The
2 witness does an end run around the objections we
3 just had to these documents. He's telling now about
4 his sister talking to attorneys.

5 THE WITNESS: That was --

6 THE COURT: Sustained. Next question.

7 BY MR. KING:

8 Q. So --

9 A. I asked my sister to --

10 THE COURT: No, no, no.

11 THE WITNESS: Answer the question?

12 THE COURT: We have to go question, answer.

13 THE WITNESS: I'm sorry.

14 THE COURT: So question?

15 BY MR. KING:

16 Q. So we're just talking about instead of the
17 employee bonus, how was the transaction structured
18 after you learned of Mr. Huffman's objection?

19 A. I told my sister to handle it. Okay.

20 Q. What did that mean for the transaction?

21 A. It meant -- I told her that it's going to
22 have to be a stock transfer, and I -- I didn't want
23 to deal with it anymore. This had taken three
24 months already out of my life, and I was done. And
25 I told --

26 MR. SULLIVAN: Objection. Narrative,
27 Your Honor.

28 THE WITNESS: -- her to --

1 THE COURT: Sustained.

2 MR. MCCLOSKEY: Move to strike.

3 THE COURT: I think he answered the
4 question.

5 BY MR. KING:

6 Q. So you told your sister to handle it. What
7 did your sister come up with for a way to get the
8 transfer done?

9 A. Well, she and the attorney had come
10 together, came up with --

11 MR. MCCLOSKEY: Objection, Your Honor.
12 Move to strike. That's nonresponsive. He just said
13 the attorney and him came together.

14 THE COURT: Just the ground of the
15 objection, please.

16 MR. SULLIVAN: Lacks foundation.

17 THE COURT: Sustained.

18 MR. MCCLOSKEY: Privilege.

19 THE COURT: Granted.

20 BY MR. KING:

21 Q. What did your sister tell you she came up
22 with or she decided to do with whoever else she was
23 working after you told her to figure it out?

24 MR. MCCLOSKEY: Objection. That calls for
25 hearsay, Your Honor.

26 THE COURT: Sustained.

27 BY MR. KING:

28 Q. What ended up happening with the transfer?

1 How was the transfer structured?

2 A. I'm sorry. The objections are a bit
3 confusing. Because I -- I received most of this
4 information in e-mail forwards.

5 Q. I'm just asking -- you know how the
6 transfer was eventually structured, correct?

7 A. Yes.

8 Q. How were they structured?

9 A. It was decided that the -- these gentlemen
10 would be offered an opportunity to take what is
11 called an 83(b) tax election. This enabled them to
12 receive the stock in a compensatory manner such that
13 they would not have to pay employment taxes on it,
14 although they would pay income taxes on it. The
15 difference would be that rather than reporting this
16 as income at the end of the year with their annual
17 taxes, which would cost them a great deal more
18 because now their entire income for the year --

19 MR. SULLIVAN: Objection, Your Honor.
20 Improper opinion.

21 MR. MCCLOSKEY: And the witness is
22 narrating.

23 THE COURT: Sustained.

24 BY MR. KING:

25 Q. So we'll be very specific on this. Was
26 there -- the stock was eventually transferred to the
27 employees, correct?

28 A. Yes.

1 Q. Okay. And was it -- and how was it
2 transferred?

3 A. It was decided that rather than my giving
4 them my shares, it would be easier for the company
5 to issue new shares so that I would retain
6 40 percent and new shares equivalent to 60 percent
7 would be issued to the employees.

8 Q. Okay. Now, at the time you decided to
9 transfer it that way, how many people were on the
10 board?

11 A. One.

12 Q. Who was that person?

13 A. Me.

14 Q. And you were also the president of Storix,
15 right?

16 A. Yes, yes.

17 Q. Now, in conjunction with this transfer,
18 were you also going to step down?

19 A. From the board and as president and CEO,
20 yes.

21 Q. And were you going to continue to receive
22 some sort of compensation or payment from Storix
23 after you stepped down?

24 MR. SULLIVAN: Objection. Leading.

25 THE COURT: Sustained.

26 BY MR. KING:

27 Q. After the transfer, what were you going to
28 receive from Storix, if anything?

1 A. I would -- I reduced my salary from 175- to
2 5 -- thousand -- to 50,000 and continued receiving
3 that so that I could, at least on paper, remain an
4 employee in order to keep my group insurance,
5 because under my condition, I would not be able to
6 receive individual health insurance anymore.

7 Q. If any of the employees you were -- who
8 were becoming 60 percent owners had told you that
9 they were going to cancel your health insurance
10 after the transfer, would you have gone through with
11 the transfer?

12 MR. SULLIVAN: Objection, Your Honor.
13 Lacks foundation. Calls for speculation.

14 MR. MCCLOSKEY: It's hypothetical as well,
15 Your Honor.

16 THE COURT: Overruled.

17 THE WITNESS: It would have been
18 unfathomable for them to refuse that, given that --
19 what they were receiving in return. So I can't --

20 MR. MCCLOSKEY: Objection, Your Honor.

21 THE WITNESS: -- not sure I can answer the
22 question.

23 MR. MCCLOSKEY: Move to strike as
24 nonresponsive.

25 THE COURT: Granted.

26 BY MR. KING:

27 Q. So this is -- so pay attention to the
28 question.

1 If the employees had told you that they
2 were going to cancel your health insurance after
3 they received the transfer of 60 percent of that
4 stock, would you have transferred that stock?

5 A. Certainly not.

6 Q. Did any of the employees -- well, did --
7 the employees, when they got that transfer, did they
8 know that you -- the company was going to be paying
9 you \$50,000 a year and continuing to provide you
10 with health insurance?

11 MR. MCCLOSKEY: Objection, Your Honor.
12 That lacks foundation. Calls for speculation.

13 THE COURT: Sustained.

14 BY MR. KING:

15 Q. So just so I'm clear, after the transfer,
16 the company was going to continue paying you \$50,000
17 on payroll?

18 A. Yes.

19 Q. And was going to continue to provide you
20 with health insurance, correct?

21 A. Yes.

22 Q. Did the employees know about that before
23 they received their stock?

24 MR. MCCLOSKEY: Objection, Your Honor.
25 Lacks foundation. Calls for speculation.

26 THE COURT: Sustained.

27 BY MR. KING:

28 Q. Did you tell the employees about that

1 before you received your stock -- before they
2 received their stock?

3 A. I believe so.

4 Q. Did any of the employees object to you
5 continuing to receive that?

6 A. No.

7 Q. Did you tell the employees that there was
8 going to be an end date on when those payments would
9 stop?

10 MR. MCCLOSKEY: Objection, Your Honor.
11 Leading.

12 THE COURT: Sustained.

13 BY MR. KING:

14 Q. When, if at all, were those payments
15 scheduled to end?

16 A. When I died.

17 Q. Now, what was your role, if anything, at
18 Storix after you stepped down as president?

19 A. We -- part of the -- it's hard to call it
20 an agreement, because it wasn't so much contractual.
21 The understanding, I should say, was that I would
22 be -- I would make myself available when I was able
23 and available to assist in any way that I could.

24 Q. Why?

25 A. Well, first, I wanted, obviously, to make
26 sure that they were successful, that the company
27 remained successful. And I was still a 40 percent
28 owner of the company, and, you know, that was

1 worthwhile to me to make sure the company was
2 sustained.

3 Q. After you stepped down, did you continue
4 coming to work every day?

5 A. No.

6 Q. Did you continue coming to work at all?

7 A. Yes.

8 Q. How often?

9 A. I would come in to kind of check in
10 periodically to see how things were going when they
11 were having their typical Monday morning meetings,
12 and I was asked to assist with a few projects here
13 and there that sometimes were a week and sometimes
14 took as much as maybe six weeks or so on a project.

15 Q. What was the first project you were asked
16 to assist with after you stepped down as president?

17 A. If I recall, I think the first thing that I
18 was asked to assist with was the -- was called SEO.
19 It has to do with facing -- basically getting good
20 Web search rankings with your website when people
21 are doing Web searches.

22 Q. So when you say SEO, you mean search engine
23 optimization?

24 A. Yes.

25 Q. Tell me about what you did in that project.

26 A. We were using Google Adwords, which is a
27 service with Google for paid advertising. And it's
28 somewhat complicated on how you arrange your Web

1 pages, the content of your Web pages.

2 Q. Who, if anyone, asked you to undertake that
3 project?

4 A. Mr. Huffman.

5 Q. What did he tell you?

6 A. He told me that some changes were made to
7 the website and what we were paying, which --
8 about -- was about \$8,000 a year in Web ads on
9 Google -- for Google, had increased to \$50,000 a
10 year.

11 Q. And the work that he wanted you to do to
12 update that, did that require you to come to the
13 office?

14 A. It was more convenient for me. I don't
15 think I had to, but I did.

16 Q. Did you have a big office when you came in
17 to do that?

18 A. No. I had sort of a half of a cubicle, I
19 suppose. I just had a workstation, one computer,
20 and a chair and a small desk.

21 Q. If you stood up and stretched your arms
22 out, could you touch both sides of the cubicle?

23 A. Yes.

24 Q. How long did that project last?

25 A. I really don't remember. I -- I spent some
26 time and put quite a bit of detail into it. But as
27 far as how long it took, I basically produced a
28 report for Mr. Huffman that had some details as to

1 what had kind of gone wrong, some things that could
2 be -- a couple of alternatives on how he could
3 change things to kind of get it back to where it
4 was.

5 Q. Okay. What was the next project you did?

6 MR. MCCLOSKEY: Objection, Your Honor.
7 Vague as to time.

8 THE COURT: Overruled.

9 THE WITNESS: I believe we're probably
10 around early 2013 now, maybe -- maybe later in 2012.
11 Give me a moment, because I'm trying to think of
12 kind of the order of things.

13 They had told me that, you know, they
14 wanted to produce a new version of the software and
15 they were lacking any features, I guess, that were
16 more visible to the customer. And they were looking
17 for me to do some enhancements to the -- the
18 interface to make it, I guess, you know, more --
19 more visible to the customer that there were changes
20 worthy of a new version, I guess.

21 BY MR. KING:

22 Q. And where did you work on that project?

23 A. At the office.

24 Q. Same cubicle?

25 A. At the time, I think so.

26 Q. How long did that take?

27 A. There were a number of kind of pieces to it
28 that occurred. I was probably there a couple of

1 months.

2 Q. Anyone help you with that?

3 A. I would provide changes to the software and
4 other -- and integrate them with the -- whatever
5 testing release that they were working with, and
6 others would usually, you know, help test them.

7 Q. Anyone complain about your programming at
8 that point?

9 A. Not at that time, except that -- except
10 there was one exception, because there was one
11 program that I worked on that -- it's -- it was a --
12 kind of an underlying command in the product that
13 just accumulates a list of files to be backed up.
14 It's sort of a pre-backup process where it just
15 comes up with a list of files to back up. And I
16 made some changes to that to make it run much faster
17 or more efficiently. And in the process, I made a
18 change to the way you call the command by adding --

19 MR. MCCLOSKEY: Objection, Your Honor. The
20 witness is narrating.

21 THE COURT: Sustained.

22 BY MR. KING:

23 Q. There was some objection to the change
24 of -- the little change you made in the process you
25 were just describing, correct?

26 A. Yes.

27 Q. Was that the only objection?

28 A. As far as I know, yes.

1 Q. And what -- was this part of an update to
2 the software?

3 A. It was when they were wanting to release a
4 new version. That would be 8.1.

5 Q. Now, I'm going to kind of shift gears and
6 go back in time a little bit.

7 Back when you left in 2011, you had --
8 what, if anything, did you ask your sister to do to
9 be involved -- sorry. What if anything, did you ask
10 your sister, Michelle, to do with Storix after you
11 stepped down?

12 A. I guess her role was, you know, primarily
13 just to take over the administrative tasks that I
14 did as far as billing, accounts receivable, you
15 know, the bookkeeping end of things. But also --
16 because I -- because I did everything myself prior
17 to that, and now there were potentially new and
18 different people that were going to be working on
19 this.

20 It was more a matter of kind of organizing
21 some of the things that I had done into more formal
22 processes and to take doc -- you know, paperwork
23 that I threw in a file cabinet and scan it in and
24 keep it all electronically.

25 Q. Why her?

26 A. Well, there were a lot of reasons. Because
27 it was -- it was good timing in that -- you know,
28 for her. It was also a temporary position that we

1 anticipated might go for a year while she was still
2 remaining in -- she was planning on moving with her
3 husband to San -- to Las Vegas. He was already
4 there. So it was convenient for her to have this
5 temporary position.

6 She also had a lot of -- a lot of business
7 experience in a lot of different areas, not
8 necessarily all, but I know she's a very quick
9 learner and a very quick researcher. And obviously,
10 it gave me the opportunity, I guess, to, you know,
11 exit a little earlier without having to do all of
12 that skill transfer myself.

13 Q. Okay. So -- and then she ended up -- her
14 position was temporary, you said?

15 A. Yes.

16 Q. When did she end up leaving?

17 A. I believe she ended up leaving two or three
18 months before the year that she anticipated being
19 there.

20 Q. So after nine months, approximately?

21 A. Roughly, yeah, I think so.

22 Q. Now, during the time that you were gone,
23 2011 and 2012, did any of the defendants ever send
24 you an e-mail?

25 A. I don't think -- I don't think so, unless
26 maybe in the case of that SEO project. I think that
27 after I got engaged in that, Huffman and I may have
28 exchanged some e-mails, but I don't know of any

1 others.

2 Q. Did any of the defendants contact you to
3 check in and see how you were doing?

4 A. No.

5 Q. Did they ever contact you after you
6 returned from any of your vacations?

7 A. Well, I wouldn't call it a vacation, but I
8 went on a three-month trip to Africa to do some
9 charity work. And after I was gone for three
10 months, I was contacted by Huffman to say, Hey, we
11 want to have a dinner to welcome you back from your
12 trip.

13 Q. And did you have a welcome-back meal with
14 Mr. Huffman and the others?

15 A. We did.

16 Q. And was it shortly after that that you
17 started doing these projects?

18 A. Yeah. That was -- the point of, I think,
19 the meal was to engage me and -- on other projects.

20 Q. Why do you say that?

21 A. Well, because that's when they asked me to
22 do it.

23 Q. Yeah, but why do you say that was the point
24 of the meal?

25 A. Because I -- I hadn't heard from them in
26 many months. I didn't anticipate -- well, I mean,
27 when I received the e-mail, it seemed rather odd
28 that -- it just was a little out of place to welcome

1 me back from a trip. I kind of -- I mean, I knew
2 they were going to be asking me to do something,
3 so -- and I didn't mind.

4 Q. How did you know that?

5 A. Because that's -- the only time that they
6 spoke with me was when they needed me to do
7 something.

8 Q. And was that correct then? I mean, did
9 they, in fact, ask you to do something at that meal?

10 A. Well, at the end of the meal, if -- there
11 was sort of a little bit of discomfort. You know,
12 Huffman was getting a little squirrely as we were
13 getting toward the end of the meal.

14 So I -- you know, I anticipated what was
15 coming, and I made a comment about, Now that I'm
16 back from this, you know, I have to figure out what
17 else to do now, you know.

18 And Huffman of course said, Hey, well, if
19 you're bored, we've got work to do.

20 I was throwing him a bone and he bit, and
21 so I did -- I didn't mind. I knew, you know, what
22 they were going to ask.

23 Q. Did you mind getting back involved?

24 A. No. No, not at all.

25 Q. At some point in 2013 you found out your
26 health improved, right?

27 A. Yes.

28 Q. What did the doctor tell you, that you were

1 getting better?

2 A. Well, I'll try to answer the question
3 without narrating, because it's not a simple answer.
4 Effectively, my symptoms had not continued to
5 progress as expected. And by the end of about
6 18 months, I was told that I was essentially clear
7 of the melanoma.

8 Q. No more tumors?

9 A. No more tumors. It was anticipated that at
10 my stage that I would be continually having tumors
11 cropping up and, you know, keep dealing with them
12 until there's just -- until they crop up somewhere
13 where you can't.

14 Q. But you're one of the rare cases where they
15 just stopped cropping up?

16 A. Very rare, yes. About -- I was told about
17 a 3 percent --

18 MR. SULLIVAN: Objection. Improper
19 opinion.

20 THE COURT: Sustained.

21 BY MR. KING:

22 Q. After you found out your health improved,
23 did you make an announcement at all?

24 A. I made it known in a number of ways, I
25 suppose. You know, I don't know an announcement,
26 per se. I mean, I announced on Facebook, I suppose,
27 that my health had improved. But I spoke to
28 different people. I don't remember specific

1 conversations, but I think I made it known.

2 Q. Okay.

3 THE COURT: Is this a good time for our
4 morning recess?

5 MR. KING: It is a good time.

6 THE COURT: All right. Ladies and
7 gentlemen, we'll take our morning recess. And just
8 so you know, today we're going to recess at 11:45
9 for scheduling reasons and then resume at 1:30. So
10 remember the admonition and have a great break here,
11 and we'll see you back in 15 minutes. Thank you.

12 (Whereupon the jurors exit the courtroom.)

13 (Brief recess.)

14 (Whereupon the jurors enter the courtroom.)

15 THE COURT: Welcome back, ladies and
16 gentlemen.

17 Mr. King.

18 BY MR. KING:

19 Q. At some point you returned on a more
20 regular basis to work at Storix in 2013?

21 A. Yes.

22 Q. When you returned to work at the company
23 around that time, what, if any, discussion was there
24 about you having a management or decision-making
25 role?

26 A. I wouldn't call it a discussion.

27 Mr. Huffman -- I was probably involved in the
28 project for some time already when Mr. Huffman

1 approached me and asked me what my intentions were,
2 did I anticipate coming back to the company
3 full-time, and did I -- was I expecting my old
4 salary back.

5 Q. And what did -- and what did you say in
6 response?

7 A. I -- I said that I wasn't prepared to make
8 a permanent or a long-term commitment at this time,
9 but I'd revisit the issue, I guess, after I
10 completed this project, which was still many months
11 of work.

12 Q. Was Mr. Huffman offering you the chance to
13 come back in a decision-making role?

14 A. Well, it sounded like it by the fact
15 that -- well, he was asking me if I was wanting to
16 come back to -- I'm trying to -- trying to remember
17 the words or at least paraphrase them properly. He
18 asked me if -- he effectively was asking me if I
19 wanted my old job back.

20 Q. And this was, you described, after you
21 started in on this project that you were working on
22 at the time. Tell me about that project.

23 A. Well, the project was going to be to create
24 a new version of the product, understanding that
25 when I left the company, Version 7 was available,
26 specifically release 7.2. After I left the company,
27 they began working on a new version, which became
28 Version 8.1.

1 Q. Okay.

2 A. Okay. At the time I came back, they were
3 now working on release 8.2, release being the second
4 number. Okay. I was working on a new version,
5 which would be called -- which would be 9.1. And
6 more specifically, it was -- the primary goal of
7 this version was to increase -- well, dramatically
8 improve the network security of the product.

9 Q. Were you asked to work on Version 8.2 with
10 them?

11 A. No. There might have been a time or two
12 when they asked for some advice on something, but I
13 wasn't involved really, to my knowledge, in any way
14 on 8.2.

15 Q. You were only asked to work on Version 9.1?

16 A. It -- I guess we kind of collectively
17 decided that I would work on a separate version.

18 Q. And who decided exactly what you would be
19 doing on 9.1?

20 A. You might have to rephrase the question as
21 to what you mean by "decided."

22 Q. What was your scope of work on 9.1?

23 A. My scope of work was -- basically, I
24 defined the scope of work by basically doing, you
25 know, research into the needs of updating the --
26 what was -- what was considered obsolete security
27 standards of the software and basically how to go
28 about doing that.

1 MR. KING: Your Honor, may I approach?

2 THE COURT: Yes.

3 BY MR. KING:

4 Q. Take a look at Exhibit 189. Mr. Johnson,
5 can you tell me what Exhibit 189 is?

6 A. This is a document that's about 35 pages
7 called "SB Admin Security Enhancements."

8 (Exhibit 189 referenced.)

9 BY MR. KING:

10 Q. Did you write this document?

11 A. I did.

12 Q. And is this your scope of work that you
13 were going to be doing on Version 9.1?

14 A. Yeah, this is a detailed design document of
15 exactly how I was going to do it.

16 Q. Did you share this document with the other
17 defendants?

18 A. Yes, yes.

19 Q. Did you share it with them before you
20 started work on it?

21 A. Yes.

22 Q. Did any of the defendants say any -- have
23 any objection to the scope of work you described?

24 A. Not at the time, no.

25 Q. About what time did you show this design
26 document to the defendants?

27 A. It's hard to nail down a time frame. It
28 could have been around October/November of 2013, the

1 first version anyway. There were slight
2 modifications along the way.

3 MR. KING: Your Honor, I move to have
4 Exhibit 189 in evidence.

5 MR. SULLIVAN: Objection. Foundation.
6 Improper opinion. Hearsay. And Storix's motion in
7 limine on technical details.

8 THE COURT: Response as to the latter?

9 MR. KING: Not too much technical detail in
10 there, especially because none of these were
11 actually implemented in Storix software.

12 THE COURT: Were not?

13 MR. KING: Were not.

14 MR. SULLIVAN: Your Honor, it's a 35-page
15 document providing technical details of both prior
16 versions and proposed versions of the software.

17 THE COURT: Absent further foundation and
18 relative to that motion, sustained at this point.

19 BY MR. KING:

20 Q. Mr. Johnson, we heard testimony from
21 Mr. Huffman and Mr. Turner that the work you did on
22 Version 9.1 went beyond the scope that you described
23 in Exhibit 189.

24 Can you tell me where your scope -- where
25 the work on Version 9.1 exceeded the scope you
26 described on 189, if at all?

27 MR. SULLIVAN: Objection. Misstates prior
28 testimony.

1 THE COURT: Overruled.

2 THE WITNESS: I'm not sure what Mr. Huffman
3 was referring to except for one specific example,
4 which was actually incorrect, because the only
5 example he provided was that I had modularized the
6 code. I don't -- I won't go into a big explanation
7 of what that means, but it's just sort of
8 reorganizing things, you know, to be a little bit
9 neater and more efficient within the code.

10 But that -- what he's referring to is
11 actually something that I did with the software
12 after I left Storix in May of 2014. It was not part
13 of the 9.1 project or any part of the project plan.

14 BY MR. KING:

15 Q. So as far as you're aware, there's nothing
16 that you did on Version 9.1 while you were at Storix
17 that exceeded the scope in that design document?

18 A. I wouldn't say that entirely. One thing
19 that I did do is as I was making changes for
20 Version 9.1, which really required a code change
21 throughout virtually all of the product, I also at
22 the same time added some sort of code tracing and
23 debugging facility into it so that as I was making
24 changes both for this and for all time in the
25 future, I had the ability to, you know, very easily,
26 you know, trace what was going on in the code and
27 much more quickly isolate problems, debug, and fix
28 them. So that was, you know, generally something

1 that you would do -- that's the kind of project you
2 would do when you were engaged in --

3 MR. MCCLOSKEY: Objection, Your Honor. The
4 witness is narrating.

5 THE COURT: Sustained.

6 BY MR. KING:

7 Q. So other than that, did you -- is there
8 anything else you're aware of where your work on 9.1
9 went beyond the scope you described in Exhibit 189?

10 A. Other than the ordinary course of code
11 cleanup, I would say no.

12 Q. Who else at Storix was helping you with the
13 Version 9.1 updates?

14 A. No one.

15 Q. Why?

16 A. They were working on -- concurrently on
17 their release 8.2. And other company activities
18 were happening, such as moving into new offices and
19 some other tasks involved in that. And why not?
20 I -- I can't really say why not.

21 Q. Did you ask if anyone wanted to be involved
22 on your work on 9.1?

23 A. I suggested in a meeting once that, you
24 know, at least in part, someone should probably work
25 with me, you know, at some stage to learn what it
26 was that I was doing.

27 Q. And what was the response to your
28 suggestion?

1 A. That they were all too busy on their
2 project and they didn't have time for it.

3 Q. Did anyone ask you to help out with
4 Version 8.2 that the other employees were working
5 on?

6 A. Well, I think -- as I said, I think that
7 there was perhaps, you know, a question or two that
8 came my way on -- you know, for advice, but it was
9 never anything extensive. I didn't do, to my
10 knowledge, any work -- any programming work on 8.2.

11 Q. Did you offer to contribute any of the
12 stuff you were working on in Version 9.1 to the
13 Version 8.2 that the other employees were working
14 on?

15 A. Not Version 8.2, no.

16 Q. Tell me what you -- tell me what you did
17 offer.

18 A. Well, Version -- this Version 9.1 was a
19 very complicated project involving many pieces, and
20 some of these pieces could be kind of isolated and
21 done, you know, in parts.

22 I suggested at one meeting that -- that it
23 might be advisable to take the first part of the
24 project that I completed and actually release it as
25 a Version 8.3. Rather than going straight from 8.2
26 to 9.1, we could release it as a 8.3, which would
27 mean less -- it would make it easier to test things
28 in part, release it in part, rather than kind of

1 throw, you know, the -- everything at the customer
2 at one time. So --

3 Q. How was that offer received?

4 MR. SULLIVAN: Objection. Vague.

5 THE COURT: Overruled.

6 THE WITNESS: Turner got very angry when I
7 suggested that, Mr. Turner. And I didn't quite
8 understand why, because I -- it seemed like a
9 reasonable suggestion. So I -- I really don't know
10 why that -- you know, I guess don't know why that
11 was until he got on the stand yesterday and
12 testified that I was trying to get my changes into
13 Version 8.2, which was not true at all. I wasn't
14 suggesting they change anything with --

15 MR. MCCLOSKEY: Objection, Your Honor. The
16 witness is narrating.

17 THE COURT: Sustained.

18 BY MR. KING:

19 Q. Were you trying to change what they were
20 working on with 8.2?

21 A. Not in any way.

22 Q. How did you feel about your place on the
23 team at that point?

24 A. I was never made aware of any team. I
25 don't know that the word was ever used at the time
26 that I was working there, that there was a team of
27 any kind.

28 Q. What do you mean? I mean, you're working

1 with a bunch of employees together at the same
2 office. You didn't feel like you were a team?

3 A. I know I wasn't a team. I was working
4 entirely independent, and no one was working with me
5 and no one wanted to.

6 Q. But you were invited to all the same
7 discussions and meetings as all these other guys,
8 right?

9 A. No, not at all.

10 Q. Why do you say that?

11 A. Well, they had Monday morning meetings
12 typically. And I started coming to those to, you
13 know, just try to show a little bit more support,
14 but, you know, not necessarily trying to intrude.
15 Often the meetings were canceled and I was told that
16 an e-mail went out, but I never received the e-mail.
17 So -- in fact, I never received an e-mail that was
18 sent to what they referred to as the team.

19 Q. Before you came back to work on
20 Version 9.1, what, if anything, had the defendants
21 told you about their plans to buy out your shares?

22 A. Oh, there was no -- I was not aware of any
23 such plan.

24 Q. What, if anything, had the defendants told
25 you about their plans to propose all the
26 shareholders sign a buy-sell agreement?

27 MR. MCCLOSKEY: Objection, Your Honor.
28 Assumes facts not in evidence.

1 THE COURT: Sustained.

2 BY MR. KING:

3 Q. What, if anything, did the defendants tell
4 you about a potential buy-sell agreement before you
5 came back to work on Version 9.1?

6 A. There was no mention.

7 Q. What, if anything, did the defendants tell
8 you about Storix getting a loan for the purpose of
9 buying your shares before you came back to work --

10 MR. MCCLOSKEY: Objection.

11 BY MR. KING:

12 Q. -- on Version 9.1?

13 MR. MCCLOSKEY: I'm sorry. Assumes facts
14 not in evidence.

15 THE COURT: Sustained.

16 BY MR. KING:

17 Q. What, if anything, did the defendants tell
18 you about buying out your shares before you came
19 back to work at Storix on Version 9.1?

20 A. There was no discussion.

21 Q. What, if anything, would you have done
22 differently had you known in February 2013 that
23 Defendants were looking for a loan to buy out your
24 shares?

25 MR. MCCLOSKEY: Objection, Your Honor.
26 Assumes facts not in evidence. And as a result,
27 calls for speculation.

28 THE COURT: Sustained.

1 BY MR. KING:

2 Q. What, if anything, would you have done
3 differently had you known that Defendants were
4 looking at entering a buy-sell agreement before you
5 came back to work at Storix?

6 MR. MCCLOSKEY: Objection, Your Honor.
7 That assumes facts not in evidence and calls for
8 speculation.

9 THE COURT: Sustained.

10 BY MR. KING:

11 Q. If you had known someone -- one of the
12 defendants had told you -- said, "We are looking at
13 getting a loan to buy your 40 percent shares," would
14 you have come back to work for -- at Storix in 2013?

15 MR. MCCLOSKEY: Objection, Your Honor.
16 Assumes facts not in evidence. Calls for a
17 hypothetical.

18 THE COURT: Sustained.

19 MR. KING: May I approach, Your Honor?

20 THE COURT: Pardon?

21 MR. KING: May I approach the witness?

22 THE COURT: Yes.

23 BY MR. KING:

24 Q. Taking a look at Exhibit 124. Have you
25 seen this document before, Mr. Johnson?

26 A. Yes.

27 (Exhibit 124 referenced.)

28

1 BY MR. KING:

2 Q. Where did you see it?

3 A. This was a document that was produced in
4 the discovery during the copyright litigation.

5 Q. Who produced that document?

6 A. Storix.

7 Q. What is the document you're looking at?

8 A. It is a chain of e-mails between David
9 Smiljkovich, the defendant, who is the former CFO of
10 Storix, and a woman at Wells Fargo bank.

11 Q. Had you ever seen this document before?

12 A. Not prior to it being produced in that
13 discovery.

14 Q. If you had seen this document before -- if
15 you had seen this document before you started
16 working at Storix in 2013, would you have agreed to
17 come back and work on Version 9.1?

18 A. Definitely not.

19 Q. Why not?

20 A. Because it became clear to me -- and this
21 was for the first time and about a year into the
22 copyright litigation that I first discovered why we
23 were in litigation, and the -- the clear intent here
24 was that --

25 MR. MCCLOSKEY: Objection, Your Honor.
26 That calls for speculation. Lacks foundation.

27 THE COURT: Sustained.

28 THE WITNESS: Um.

1 THE COURT: No.

2 Next question.

3 THE WITNESS: Why would I have not --

4 THE COURT: No.

5 Question.

6 THE WITNESS: Sorry.

7 BY MR. KING:

8 Q. What did you learn from Exhibit 124?

9 A. I learned that during the entire time that
10 I was working on the Version 9.1 changes, which was
11 about nine months into a year-long project, the
12 defendants were simultaneously attempting to --
13 well, they were -- they were devising a plan to
14 force me to buy -- to sell the remaining shares I
15 had of Storix to the company.

16 MR. KING: Your Honor, I move to have
17 Exhibit 124 admitted into evidence.

18 MR. MCCLOSKEY: Objection, Your Honor. It
19 lacks foundation and it's hearsay as well.

20 THE COURT: Sustained.

21 BY MR. KING:

22 Q. Now, at some point after the -- at some
23 point while you were working on Version 9.1, the
24 defendants finished their Version 8.2, right?

25 A. Correct.

26 Q. And at that point were they ready to help
27 you on 9.1?

28 A. No.

1 Q. Why not?

2 MR. MCCLOSKEY: Objection, Your Honor.
3 Calls for speculation.

4 THE COURT: Sustained.

5 BY MR. KING:

6 Q. Why did -- why did they -- what did they
7 tell you as far as why they were not able to help
8 you on 9.1?

9 MR. MCCLOSKEY: Objection, Your Honor.
10 Assumes facts not in evidence.

11 THE COURT: Sustained.

12 BY MR. KING:

13 Q. Did you ask Defendants to help you on
14 Version 9.1 after they finished 8.2?

15 A. I asked at various times whether they were
16 prepared to start at least looking at what I was
17 doing.

18 Q. And what did they tell you in response?

19 A. They had several excuses over the course of
20 several months, beginning with that the offices were
21 moving to a new location, that they ran in --
22 customers were running into problems with
23 Version 8.2 that they had to take time to fix.

24 There were about three weeks where, you
25 know, all the technical staff was busy working on
26 problems with the new phone system and reconfiguring
27 the network in the new office, just various -- it
28 just seemed like excuses.

1 Q. Eventually, they did take a look at what
2 you'd done on Version 9.1?

3 A. Yes.

4 Q. And what did they -- what did they say?

5 A. There's a lot of -- there's a lot of answer
6 to that. I'm -- you know, they said that it didn't
7 work; that I wasn't testing it enough; that it
8 didn't do what anybody wanted; that no customer
9 would want to use it. I mean, the list goes on.

10 Q. Why didn't it work?

11 A. Well, first of all, it -- we were about
12 four months away from release, so not all of the
13 things in the design were completed yet.

14 Q. Okay.

15 A. Okay. So they were provide -- I provided
16 them basically a list of those things that were
17 working and ready to test and those that weren't.
18 But before they wanted to start testing things, they
19 wanted me to take all of the changes that they had
20 made for Version 8.2, which was done simultaneously
21 with my work, and apply the changes that they made
22 for 8.2 to my Version 9.1.

23 Q. Just so I'm clear, when you did
24 Version 9.1, Version 8.2 wasn't ready yet, right?

25 A. Correct.

26 Q. So you built 9.1 on top of what?

27 A. Well, there -- you always start -- we're
28 about -- we were all working on updates to the

1 software, but they were working on one release of an
2 update. I was working on a separate version, but we
3 both started with the same base, which were --

4 Q. What was the base?

5 A. That was Version 8.1.

6 Q. Okay. And so after you finished with 9.1
7 with 8.1 as the base, they asked you to merge it
8 with their 8.2 they did?

9 MR. MCCLOSKEY: Objection. Leading,
10 Your Honor.

11 THE COURT: Sustained.

12 BY MR. KING:

13 Q. What did they ask you as far as merging the
14 software, if anything?

15 A. They asked me to take all of the changes
16 that they made from Version 8.1 to their Version 8
17 dot -- or release 8.2 and apply those changes to my
18 Version 9.1.

19 Q. And what happened when you did that merger?

20 A. Much of the things that were working before
21 weren't working anymore in my version.

22 Q. Did you know why they weren't working?

23 A. Yes.

24 Q. Why?

25 A. It's a rather -- a little bit of a
26 complicated answer.

27 Q. Give me the 30-second version.

28 A. The -- the method that they went about of

1 making their changes was extremely haphazard. And
2 they did what we commonly refer to as a lot of hard
3 coding, which means they were -- rather than --
4 rather than changing the design of the software to
5 accomplish what they needed to do, they would
6 circumvent the design of the software by making
7 exceptions to the rules.

8 And those exceptions were very numerous and
9 when applied to my version, which did have some
10 design changes to it, I anticipated it would be a
11 pretty smooth transition, but it -- it was quite a
12 mess, actually.

13 Q. Did you ask them for help in making your
14 Version 9.1 compatible with their Version 8.2?

15 A. I'm not sure I understand the question as
16 far as compatible with 8.2. I think the -- it was
17 more an issue of trying to get the changes that they
18 made to work with my Version 9.1.

19 Q. Okay. And did you ask them for help with
20 that?

21 A. Well, Rich Turner first approached me to
22 say -- you know, he wanted to see what we had and
23 they would begin testing it. When they began
24 testing it, they started seeing a lot of the
25 problems, but I tried to fix as -- much of it before
26 I gave it to them. But when I did give it to them,
27 I said, Look --

28 MR. MCCLOSKEY: Objection, Your Honor.

1 Nonresponsive. The witness is narrating.

2 THE COURT: Sustained.

3 BY MR. KING:

4 Q. At first, you approached -- you gave the
5 software to Rich Turner and said, "All right. It's
6 ready for testing." Fair statement?

7 A. No.

8 Q. All right. Tell me what happened.

9 A. At some point while I was continuing my
10 work on Version 9.1, Richard Turner said to me,
11 "Okay. We're ready to see what you have."

12 Q. Okay. And then what did you do?

13 A. I was in the middle of a lot of changes. I
14 was primarily trying to work through the problems we
15 just discussed.

16 Q. Okay.

17 A. And I told them that I needed time, you
18 know, to work out some things that I hadn't finished
19 yet.

20 Q. Okay.

21 A. And it took a couple of weeks.

22 Q. And after those couple weeks, what did you
23 do?

24 A. It wasn't all completed, but at least I had
25 parts of the product done to where I gave it to them
26 and said, Well, here -- here's what I have finished
27 that you can test with. Here's some other things to
28 avoid for the moment, because I'm still working on

1 it and so forth, but that they should avoid using
2 this new feature that they added in Version 8.2
3 because it was still problematic and I would need
4 their help in resolving it because I didn't quite
5 understand what they were doing there.

6 Q. And what did you expect the -- Mr. Turner
7 and the other people on the development team to do?

8 A. To -- well, to begin testing those things
9 that, you know, were ready for testing in my opinion
10 and report back to me any problems they had and --
11 so I could fix them, or in some cases, they could --
12 you know, if it's easy enough to do, find and fix
13 them themselves.

14 Q. Why did you expect that was going to be the
15 case? Why did you expect it was going to be --
16 transpire the way you described?

17 A. Well, because at least prior to my leaving
18 in 2011, that's how we worked as a team.

19 Q. What actually happened?

20 A. That's really a lot of -- where a lot of
21 the hostility began.

22 Q. What do you mean?

23 A. That -- there was so much that it's hard --
24 it's hard to put into, you know, a concise
25 statement. But they ultimately didn't -- they
26 thought -- I'm not sure why. Mr. Turner said that
27 there were too many bugs, it wasn't ready for
28 testing, and I had to do the testing myself before I

1 gave it to them to test. That was the first of many
2 problems, I suppose.

3 Q. Did they offer to help you in some way, or
4 did -- or was it simply fix it yourself and come
5 back when it's better?

6 A. I don't think Mr. Turner or Mr. Huffman had
7 ever actually seen or tried to use it themselves,
8 but they had a new support person that was with the
9 company about three months and he was running
10 through some testing and reporting to me some
11 problems. They weren't significant.

12 And I would fix those problems and
13 basically post those problems to what we call a
14 repository, where others can then, you know,
15 download and continue, you know, with whatever the
16 latest version was. But Mr. Turner kept complaining
17 that I wasn't -- I had to have everything fixed
18 before I could make -- before I could put any code
19 changes into the repository, I had to have
20 everything fixed.

21 Q. Is that the only thing he complained about?

22 A. No.

23 Q. What else did he complain about?

24 A. I know that at one point he complained that
25 as I was making code changes -- this was entirely
26 working on my own -- I was, you know, making code
27 changes and posting them to this repository, not so
28 much that other people could take it and use it,

1 because they weren't doing so, but that by posting
2 changes incrementally to the repository, it keeps
3 track of all the changes you made. And if you need
4 to, you can back something out or go back and look
5 at what change you made at what point. And one of
6 the things that you do when you post things to a
7 repository is you typically put in --

8 Q. Okay. So what did Mr. Turner complain
9 about it? I know you're getting to it. I just need
10 you to tell me.

11 A. I'm sorry. I tend to answer things
12 backwards.

13 He was complaining that I wasn't putting
14 enough comments in when I was posting my changes to
15 the repository describing all the changes that I was
16 making.

17 Q. Is that true?

18 A. For the most part, no. But occasionally, I
19 would make changes that were not relevant to anyone
20 but me, particularly if I was making multiple
21 iterations of changes to the same code.

22 Q. Okay.

23 A. Because no one else was looking at it yet.
24 And by the time anyone did look at it, those changes
25 would be irrelevant.

26 Q. In other words, by the time it was ready
27 for someone to look at it, there would be a comment
28 there explaining what the change was?

1 A. Oh, yeah. They would understand,
2 of course, what the overall changes were. They
3 didn't need to know every incremental change I made
4 to the code to get there.

5 Q. What did you understand Mr. Turner was mad
6 about then?

7 A. Mr. Turner was mad about everything. I
8 honestly -- I just couldn't -- I -- nothing that I
9 did he agreed with. Everything I did was wrong.
10 You know, he -- this was such a ridiculous
11 complaint. Because the moment he said -- said that
12 to me, I started making comments on everything that
13 I did and I -- and without fail, never did, but he's
14 continued complaining about it ever since that I
15 never do that.

16 But the moment he told me that, I started
17 putting in these comments, as unnecessary as it was,
18 every single time, without fail, but he never
19 stopped complaining that I never comment in my code.
20 You know, so that was just another example.

21 Q. What, if anything, did Mr. Turner tell you
22 about a password on the Version 9.1?

23 A. I would say it was about halfway through
24 the project, I suppose, as far as development goes
25 and just -- and went to one of these Monday morning
26 meetings to update everybody on what I was working
27 on. This was shortly after I completed the design
28 document that detailed exactly how I was going to do

1 everything.

2 I presented that to them, and initially,
3 they were fine with it. But then when I came back
4 after actually beginning the programming and
5 Mr. Turner decided that he didn't want any passwords
6 to be added to the software that -- he said that
7 this was too much of an inconvenience on the
8 customers. He didn't want me to be putting in
9 any -- any change that would require any -- the
10 customer to do something that they didn't have to do
11 before.

12 Q. Wait, wait, wait. You -- this -- this
13 was -- the password thing was something that you had
14 described in your design document before you started
15 work on this?

16 A. Yes.

17 MR. MCCLOSKEY: Objection. Leading.

18 THE WITNESS: Yes.

19 THE COURT: Sustained.

20 BY MR. KING:

21 Q. Where did you first -- where did you first
22 notify the defendants, if at all, about this
23 password requirement?

24 A. It was all detailed in the design document.

25 Q. What objections, if any, did Mr. Turner
26 have when you showed him the design document?

27 A. There were none.

28 Q. How long was it that you were working on

1 Version 9.1 until Mr. Turner raised an objection
2 about this password issue?

3 A. I was working on Version 9.1 for several
4 months before completing the design document, and it
5 was several months after beginning the programming
6 based on a design document that he complained about
7 the -- using a password.

8 Q. Was -- was -- removing the password, was
9 that an easy fix?

10 A. It was an impossibility.

11 Q. In other words, what was the point of you
12 doing all this work if you were going to remove the
13 password?

14 A. Mr. Turner's complaint was that each
15 client's system that you're going to back up -- and
16 we referred to them as clients, the system you're
17 going to back up -- when you configure within the
18 software that as a client to be backed up, you would
19 assign a password to it. And this -- that was added
20 to this design document.

21 His complaint was that he didn't want the
22 customer to have to enter a password for each client
23 when they configured it. Mr. Kinney then suggested
24 that we have a global password that -- or we'll call
25 it a group password so that all the clients in the
26 group -- client, computers, or systems in the group
27 would all use the same password.

28 I -- I didn't like that idea because it

1 actually lessened the security from what we had
2 before, but I nevertheless -- Richard Turner seemed
3 to agree that that was an acceptable solution.

4 So I altered the design and also updated
5 the design document, and I created a group password
6 option so that when the customers -- customers could
7 simply choose a single option. They said I want
8 this pass -- this group password to apply to all
9 clients, or I can assign a different password to
10 every client. And that was then added to the design
11 document, distributed, and I probably took about an
12 extra three weeks or so getting that -- that change
13 made.

14 Q. So after that, you never heard anything
15 again from Mr. Turner on the password issue, right?

16 A. No. I heard about it again, but it was
17 several months later.

18 Q. Okay. I'm starting to get the sequence.
19 You're saying that before you started the
20 programming, you did the design document, right?

21 A. Yes.

22 Q. And then after the design document came out
23 and everyone looked at it, Mr. Kinney said, Let's
24 put in a global password instead of an individual
25 client password?

26 A. That wasn't until after Richard Turner
27 later complained about the password, but that was
28 Mr. Kinney's ultimate solution.

1 Q. And that was after you already started
2 coding or working on the software?

3 A. Yes, sometime later.

4 Q. And after you implemented the global
5 password solution, what did you hear from Mr. Turner
6 about the password?

7 A. It wasn't until several months later
8 that -- and at this point where Mr. Turner said,
9 Okay, we're ready to now start looking at the
10 software and testing it, that suddenly became a
11 major problem again.

12 Q. When you say that became a major problem,
13 what do you mean? What did Mr. Turner say that made
14 you believe that?

15 A. He -- Mr. Turner said that despite the
16 changes that I made to the -- that he seemed to
17 approve would satisfy -- satisfy his need, I could
18 not -- I -- that he would not allow any change to
19 the software that required a password, period.

20 Q. Okay. So after first approving and saying
21 you can do a password for each system and then after
22 approving a global password, now Mr. Turner said,
23 I'm not approving anything to have any password?

24 A. It was actually even more specific than
25 that.

26 Q. What did he say?

27 A. I asked Mr. Turner -- well, Mr. Turner said
28 he didn't want there to be any change to the

1 software where the customer had to do anything
2 different. My response was -- and I can almost
3 quote it -- "Rich, are you telling me that you won't
4 allow me to make any change to the software that a
5 customer can actually see?" And he said yes.

6 Q. If that's -- if that was the goal, what
7 would that have meant for Version 9.1 updates that
8 you were doing?

9 A. Well, obviously, they would never -- I
10 mean, I can't imagine anything new ever getting
11 released. I mean, I was just -- I didn't know how
12 to -- I was stunned. I didn't know how to respond
13 to that. And immediately after saying that, he
14 ended the meeting and walked away, so I was just
15 kind of -- I don't know. I wouldn't know what to do
16 or say.

17 Q. How did that comment make you feel about
18 the work you had been doing for the past seven
19 months?

20 A. I was -- I was -- it was -- I was so
21 confused. I was just -- I was just so confused.
22 There was so much I didn't understand. Okay. This
23 was not the Richard Turner that I knew. Okay. What
24 he was saying and the things that he -- the demands
25 he was making and it was -- it was just -- not just
26 unreasonable, but completely irrational and I knew
27 it.

28 And I looked to David Huffman many of the

1 times when these things were being said, but David
2 never said anything, but just sort of had this
3 almost satisfied look on his face.

4 And I looked to David Kinney, and David
5 Kinney was always -- he would always just kind of,
6 you know, look down, like, you know, I -- he wasn't
7 paying attention. I mean, this wasn't -- this was
8 just -- it was just so irrational and so
9 unreasonable that it clearly wasn't about passwords.
10 Mr. Turner put passwords in his own software. So I
11 don't know why -- what was going on.

12 Q. Okay. When you say Mr. Huffman had a
13 satisfied look on his face, were you having these
14 conversations in front of Mr. Huffman?

15 A. Oh, yeah. These conversations always
16 happened at sort of a technical staff meeting.

17 Q. Is this different than the Monday meeting?

18 A. Well, on Monday, they would have a meeting
19 with the full staff, which included the sales staff.
20 And then the sales staff would go away, and they
21 would have a technical meeting.

22 Q. And so all of these -- all of these kind of
23 disputes you're talking about with Mr. Turner,
24 they're all occurring at these technical staff
25 meetings. Fair statement?

26 A. Yes, I think so.

27 Q. And you said Mr. Huffman had a satisfied
28 look on his face. Why do you say that? What did

1 you see?

2 A. Because I was looking to someone,
3 particularly Mr. Huffman, to say, you know, This
4 makes no sense. What's happening here?

5 But, you know, like I said, it was just --
6 he just had this look on his face like -- like, Boy,
7 good for you, Rich. You really told him off. And
8 I --

9 Q. Was he smiling?

10 A. Kind of a bit of a smirk, I guess, if --
11 you know, I guess that's what I would call it. He
12 just -- he didn't intervene or say anything, at
13 least not at that point, not until things got really
14 out of control and, you know --

15 Q. What was the next thing that happened?

16 A. Again, at a staff meeting -- I had again
17 been just working as hard as I could, as fast as I
18 could, to try to -- you know, to get any problems
19 resolved to -- so that -- you know, to cut down on
20 Mr. Turner's complaints about my not testing things
21 enough before I give it to them to test.

22 And, you know, it was -- it -- you know, at
23 another staff meeting, I -- you know, Rich was
24 complaining about me not testing enough before I was
25 testing things, and yet they had this other person
26 kind of testing things and reporting bugs to me,
27 which I was fixing. And I was posting, you know --
28 you know, I would post them to the repository so

1 that he could test those changes, but Rich was
2 complaining that I was posting changes to the
3 repository without everything being fixed yet.

4 And my response to that was, you know,
5 Rich, I'm making changes to 150,000 lines of code
6 across the entire product. I can't do it all at one
7 time. Okay. I need -- and if somebody has a
8 problem with something, I need to be able to post
9 that fix and let him work with that.

10 But the way the repository was, you kind of
11 had to commit everything you're working on at once.
12 So those things that weren't working before, I would
13 post changes and those things would still not be
14 working. And Rich wanted everything working before
15 I posted any changes.

16 Q. And he wanted you to fix it?

17 A. Yes.

18 Q. Was there anyone else at Storix that had
19 the capability to fix it?

20 A. There were areas I was working in that no
21 one else could have -- there were other things that
22 if they took the time to look at it, could probably
23 have been much more helpful.

24 Q. Did you expect them to provide you more
25 help in putting the -- fixing the problems that were
26 uncovered in Version 9.1?

27 A. I wasn't really getting any -- much of any
28 help, and I was expecting quite a bit since they had

1 nothing else to do at that point.

2 Q. We heard from -- I believe it was
3 Mr. Turner and Mr. Huffman that before they became
4 60 percent owners in stock -- the defendants became
5 60 percent owners of Storix that Mr. Turner and
6 Mr. Huffman were sort of the cleanup crew after you
7 would do most of the major coding.

8 Do you recall that testimony?

9 A. Yes.

10 Q. Was that an accurate characterization of
11 the working relationship before you left in 2011?

12 A. Well, I don't know that "cleanup crew" is a
13 very good description, because it kind of implies
14 that I demolished everything before they had to come
15 and clean it up, you know.

16 Q. Okay. But as far as the description of you
17 doing the major coding and they kind of -- Huffman
18 and Turner kind of being in charge of fixing and
19 cleaning up the stuff that you did, is that a fair
20 description?

21 A. I think it was a -- kind of a fair
22 description. It's not like I just wrote code and
23 gave it to them but never actually did any testing
24 at all.

25 Q. Okay. So when you came back in 2013, were
26 you expecting that it was just going to be like
27 before, that Anthony, the boss, gets to tell
28 Mr. Huffman and Mr. Turner what to do?

1 A. No, not at all.

2 Q. What were you expecting?

3 A. Well, I -- no one talked to me about any
4 environmental changes to the way things worked.
5 Nobody told me that there were any new policies or
6 anything of that sort. And when I came back to
7 work, I was working on the code all by myself, as I
8 often did before.

9 So I -- I had no reason not to think that
10 as I was making changes to code and at least
11 releasing it to them in stages to test in stages
12 that they would do it the same way that they did
13 before.

14 Q. And were you expecting that the people that
15 would be doing the kind of testing and reporting --
16 "cleaning up," we'll use -- were you expecting those
17 people would still be Mr. Huffman and Turner, or
18 were you expecting it was just going to be someone?

19 A. I didn't have an expectation of who it
20 would be, but there were only -- I mean, it was only
21 Mr. Kinney, Mr. Turner, Mr. Huffman, and then this
22 one new person that -- you know, at the company.
23 But most of the bugs that were reported to me came
24 from this new person that had only been at the
25 company for three months, I think.

26 Q. Did you ever approach Mr. Huffman
27 one-on-one to complain about what -- how difficult
28 the environment was before you -- while you were

1 working at Storix in 2014?

2 A. Mr. Huffman was present during all of these
3 difficulties, so I didn't approach him separately.

4 Q. Did you ever have any discussions with
5 Mr. Huffman about these issues in 2014?

6 A. When I sent a resignation letter, I did.

7 Q. Tell me -- was there something that
8 preceded the resignation letter that sparked you to
9 send it?

10 A. Yeah. I think it was the final Monday
11 meeting when after all the efforts that I made to
12 try to really bend over backwards to do everything
13 that -- that Mr. Turner kept demanding, I made all
14 of the -- I was doing all of the code changes in
15 large bulk and testing it as best I could before
16 submitting it.

17 You know, they had even created a new level
18 to this repository to which they called the sandbox
19 where I could post changes to this without having to
20 have all of the changes --

21 MR. MCCLOSKEY: Objection, Your Honor.
22 Narrative.

23 THE WITNESS: -- done, but --

24 THE COURT: Sustained.

25 THE WITNESS: Sorry. I --

26 BY MR. KING:

27 Q. Hold on, hold on, hold on.

28 Tell me specifically what happened at this

1 last Monday meeting before you sent your
2 resignation.

3 A. All of the things that I had done to try to
4 bend over backwards to meet their demands they were
5 still complaining about.

6 Q. What specifically did they say at this
7 meeting?

8 A. After repeating most of the things that
9 they said before, Mr. Turner said that base -- he
10 said that because there was still the need for a
11 password, one password that you put in one time when
12 you install the software, that no customer would
13 ever use this.

14 He said, I don't know anything about what
15 customers want, because I don't take customer calls.
16 And he said that -- you know, that no one was going
17 to use this if it required a password and he would
18 not allow it to be released.

19 And I looked to David Huffman and David
20 Huffman said, You know, Anthony, nobody asked for
21 any of this anyway.

22 Q. Was that true?

23 A. No.

24 Q. What did you do right after Mr. Huffman
25 said that?

26 A. I left. I just left.

27 Q. You mean you walked out of the room or you
28 left the office?

1 A. I -- I don't remember exactly. I don't --
2 I don't think I had any response to that. I was --
3 I had -- I had just no response to it. I think I
4 left at that point, and I think I left the office
5 and I just -- I didn't return for a couple days.

6 Q. What did you interpret Mr. Huffman to mean
7 when he said no one asked for that anyway?

8 A. That the last nine or ten months worth of
9 work that I did was for nothing.

10 Q. Did you come back to the office that day?

11 A. No.

12 Q. Did Mr. Huffman attempt to call you that
13 day?

14 A. No.

15 Q. Did Mr. Turner attempt to call you that
16 day?

17 A. No.

18 Q. Did you come back the next day?

19 A. No.

20 Q. Either Mr. Huffman or Mr. Turner attempt to
21 call you the following day?

22 A. No one tried to call, no.

23 Q. Anyone try and contact you one way or the
24 other, e-mail, text, anything?

25 A. I don't believe so. I think I might have
26 gotten a quick text from either Mr. Turner or
27 Mr. Kinney saying, "Are you coming in today?" And I
28 replied no. That was the second day.

1 Q. When you decided to make these employees
2 60 percent owners of Storix, is this what you
3 expected?

4 A. Certainly not.

5 Q. What did you expect?

6 A. Well, I expected that I was going to die in
7 two years. Okay. So obviously, that changed.

8 The question is what did I expect. I
9 expected that, you know -- I basically gave, on
10 average, 15 percent of my company to my four
11 long-term employees, effectively making them
12 partners.

13 And even though I wasn't expected to return
14 for a long project and I wouldn't have taken on such
15 a long project if I had not been, you know -- if my
16 health hadn't changed, I would have expected to have
17 been treated like a partner, possibly even a senior
18 partner, given that I still had twice the shares of
19 anyone else. But instead, I just -- I was just not
20 welcome. I was not -- it seemed like they were
21 taking advantage of my skills to do --

22 MR. MCCLOSKEY: Objection, Your Honor. The
23 witness is narrating.

24 THE COURT: Sustained.

25 BY MR. KING:

26 Q. Why did you think they were taking
27 advantage of you?

28 A. They weren't -- they weren't getting a lot

1 done on their own. There wasn't -- there wasn't
2 a lot of change happening with the software. What
3 was being done was taking a very long time and
4 didn't -- and didn't create a lot of marketable
5 change and --

6 Q. But how are they taking advantage of you on
7 Version 9.1? They didn't even want the software.

8 A. They did want the software.

9 Q. How do you know that?

10 A. Well, there were several -- several things
11 to tell me that, one of -- one of which involved
12 David Huffman literally screaming at me after I had
13 left the company because he was angry that I didn't
14 finish all of the 9.1 changes before I left and that
15 I knew that the company was dependent on that and
16 how dare I leave the company without finishing it.

17 Q. These are the changes that Mr. Turner --
18 neither Mr. Turner nor Mr. Huffman were willing to
19 help you out on, right?

20 MR. SULLIVAN: Objection. Leading.

21 THE COURT: Sustained.

22 BY MR. KING:

23 Q. Let's take a look at your resignation
24 letter -- your resignation e-mail, Exhibit 116,
25 which is already in evidence.

26 MR. MCCLOSKEY: Your Honor, 116 is not in
27 evidence.

28 MR. KING: Oh.

1 THE COURT: Correct.

2 MR. KING: Oh, I'm sorry about that. My
3 bad.

4 MR. SULLIVAN: 138.

5 MR. KING: 138 is the version.

6 MR. SULLIVAN: Right.

7 MR. KING: All right. Let's do 138.

8 THE CLERK: Let me know when she's ready.

9 MR. KING: Are you ready, Robin?

10 MS. SASSI: Yes.

11 THE COURT: Okay.

12 BY MR. KING:

13 Q. This is your resignation letter, correct?

14 A. Yes.

15 Q. You say you no longer feel there is
16 opportunity for me at Storix that provides a
17 position of trust or respect given my experience,
18 knowledge, and qualifications.

19 What -- what position did you expect you
20 would have?

21 A. I wasn't expecting, you know, a formal
22 title of any kind. And as I'd always said, I was
23 going to let them run the company however they felt.
24 But I -- I mean, not only was I expecting that I
25 would still have a role in their product
26 development, that they, you know, kept asking me to
27 come back to do just that. So my role was, you
28 know, as a product developer. But seeing that I --

1 no one was more knowledgeable on the product than I
2 was --

3 MR. MCCLOSKEY: Objection, Your Honor.
4 Nonresponsive. The witness is narrating.

5 THE COURT: Sustained.

6 BY MR. KING:

7 Q. What role were you expecting to have in
8 terms of software development?

9 A. I'd always been the lead developer. I
10 expected that I would still be the lead developer.

11 Q. But, Mr. Johnson, Mr. Turner and
12 Mr. Huffman testified and then you also testified
13 that when they came and asked you if you wanted a
14 decision-making role or controlling role on software
15 development, you said no?

16 A. I'm not sure that's entirely true. It
17 wasn't so much a decision-making role on the
18 software development. I think it was more of a
19 decision-making role in the company. But
20 nevertheless, it wasn't a decision-making role in
21 the software that I was looking for. It was --
22 well, certainly, a major participation. And I
23 expected that given my knowledge and experience that
24 my -- that my opinion of how the software should be
25 developed would be respected.

26 Q. And you feel it wasn't?

27 A. It most certainly wasn't.

28 Q. You go on to say, "While I have no issues,

1 nor attempted to intervene in any way, with the
2 company operations, it's no secret I disagree with
3 basic policy, progress and vision regarding the
4 software."

5 You weren't attempting to intervene in the
6 company operations?

7 A. No. In no way did I ever try to do that.

8 Q. Now, it's no secret that they were doing
9 things a little bit differently or some of it
10 differently, you know, in terms of the process and
11 the procedure for software development, right?

12 A. No. I wasn't aware that they were doing
13 anything differently than we had before.

14 Q. I guess what I'm getting at is that why --
15 why was your -- your disagreement, why was it more
16 than just Mr. Johnson comes back to the company and
17 doesn't like the way the new management is running
18 things?

19 A. Because I didn't have any disagreement with
20 the way the new management was running things. I
21 had disagreement with the -- just -- the way I was
22 being disrespected, and it just felt abusive. It
23 felt irrational and it seemed that they were just
24 looking for reasons to complain about me that just,
25 frankly, made no sense.

26 Q. Mr. Johnson, you gave them 60 percent of
27 your company, correct?

28 A. Yes.

1 Q. Why shouldn't they be able to exclude you
2 from the company if they want?

3 A. Well, we may not have had a detailed
4 written agreement to any effect, but there was
5 certainly a -- I would certainly hope, an
6 understanding that I didn't -- that I retain
7 40 percent of the company, not that -- and I
8 continued to offer my help wherever I could, that I
9 was -- I should be entitled to a job at the company
10 that I founded and working on the software that I
11 wrote. I don't see why there -- why anybody would
12 disagree that that was a reasonable assumption.

13 Q. The second paragraph, you say, "I sincerely
14 hope to see Storix succeed, as I continue to have a
15 financial stake, but I don't feel I can contribute
16 in this environment."

17 What was the environment you're referring
18 to?

19 A. The hostile environment that led to my --

20 MR. SULLIVAN: Objection, Your Honor.

21 Motion in limine.

22 MR. MCCLOSKEY: Motion in Limine Number 13.

23 THE COURT: Sustained.

24 BY MR. KING:

25 Q. What about the environment made you feel
26 like you could not contribute?

27 A. I'm not sure -- pardon me -- what I can say
28 that doesn't exceed that objection, because I'm not

1 sure what it is.

2 I was treated horribly. I just -- you
3 know, I was treat -- I was completely disrespected,
4 cast aside, you know, set to work on something that
5 was of -- of huge importance. But as I was getting
6 closer and closer to completing the project, the
7 hostility became unbearable.

8 THE COURT: Let me ask. Is this a good
9 time for our recess?

10 MR. KING: It is.

11 THE COURT: All right. Ladies and
12 gentlemen, we'll take our recess at this time.
13 We'll be in recess until 1:30. Remember the
14 admonition. Have a great lunch. Thank you.

15 (Whereupon the jurors exit the courtroom.)

16 (Afternoon recess taken from 11:44 to 1:41 p.m.)

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1 SAN DIEGO, CALIFORNIA;

2 MONDAY, FEBRUARY 5, 2018; 1:41 P.M.

3
4 THE COURT: Good afternoon. Thank you for
5 your patience.

6 And let's bring in the jury, please.

7 Mr. Johnson, if you'd be so kind. Thank
8 you.

9 (Whereupon the jurors enter the courtroom.)

10 THE COURT: Good afternoon. Thank you very
11 much for your patience this afternoon, ladies and
12 gentlemen. And the candy there in front of [Juror
13 No. 12] is not just for [Juror No. 12]. Or it was
14 in front of [Juror No. 10] now, but she passed it
15 away. That's courtesy of our courtroom staff and
16 it's for you. So feel free to take it and pass it
17 amongst yourselves.

18 UNIDENTIFIED JUROR: Thank you.

19 THE COURT: You're welcome.

20 All right. And continuing, Mr. King.

21 MR. KING: May I approach the witness and
22 show him a couple exhibits?

23 THE COURT: Yes.

24 BY MR. KING:

25 Q. So, Mr. Johnson, when we left we were
26 talking about your resignation e-mail. And if you
27 turn to Exhibits 117 and 118, I believe these are
28 the responses to your resignation e-mail from

1 Mr. Huffman on 117 and Mr. Turner on 118.

2 MR. KING: Your Honor, I believe 118 is
3 already in evidence. We're moving for 117 in
4 evidence.

5 (Exhibit 117 referenced.)

6 THE COURT: Any objection?

7 MR. MCCLOSKEY: 118 is in evidence,
8 Your Honor.

9 THE COURT: Yes.

10 MR. MCCLOSKEY: 117 is not.

11 MR. SULLIVAN: I believe it's already been
12 entered under a different number.

13 MR. MCCLOSKEY: Yeah, it's a different
14 number.

15 THE COURT: Which number? Do we know?

16 MR. MCCLOSKEY: It's 196, Your Honor.

17 THE COURT: All right. Why don't we use --
18 I think we have enough exhibits without duplication.
19 Is it all right if we use 196?

20 MR. KING: That's fine. I just thought it
21 might be easier because they're right next to each
22 other, so --

23 THE COURT: That's fine. We'll use 117.
24 We'll admit it. But then we're going to delete one
25 or the other with counsels' discussion. All right.
26 Go ahead.

27 (Exhibit 117 received.)

28 MR. KING: Robin, if we could pull up 117.

1 BY MR. KING:

2 Q. Mr. Johnson, this is the e-mail you
3 received from Mr. Huffman in response to your
4 resignation, correct?

5 A. Correct.

6 Q. Same day, right?

7 A. Yes.

8 Q. Did you receive any other communication
9 from Mr. Huffman that day?

10 A. No.

11 Q. Mr. Huffman says in this e-mail that we
12 developed our own culture within the company to
13 survive, the third paragraph.

14 MR. KING: Scroll down a little bit.

15 BY MR. KING:

16 Q. See that?

17 A. Yes.

18 Q. Was the culture they developed any
19 different than the culture you had before you left?

20 A. I wasn't made aware of anything.

21 Q. It talks about that this has produced a
22 team mentality where mutual respect reigns.

23 Do you agree with that?

24 A. I thought we had more of a team mentality
25 before.

26 MR. KING: Robin, if you could scroll down.
27 Next page, the paragraph that starts, "We welcomed."
28

1 BY MR. KING:

2 Q. He says, "We welcomed your help with the
3 software and recognize what a tremendous asset you
4 are." And then the next paragraph he says, "Just to
5 be clear, we want and need you here. However, we
6 want you to join the team as it now works."

7 When you resigned -- when you sent that
8 resignation letter in -- earlier that day, did you
9 expect your resignation to be permanent?

10 A. I was hoping it wouldn't be.

11 Q. Are some of the things that Mr. Huffman
12 says in this e-mail later that day some of the
13 things you were hoping you'd hear from him?

14 MR. MCCLOSKEY: Objection, Your Honor.
15 Leading.

16 THE COURT: Sustained.

17 BY MR. KING:

18 Q. What, if anything, did you expect from
19 Mr. Huffman after the response to your resignation?

20 A. I was expecting him to respond to the
21 issues I raised in my resignation letter, I guess.

22 Q. And you believe he didn't respond to those?

23 A. I saw nothing in here that responded to
24 that.

25 Q. Can you take a look at Exhibit 118. This
26 is Mr. Turner's e-mail to you the same day, on
27 May 8.

28 Did Mr. Turner respond to any of the

1 concerns you raised in your resignation letter?

2 A. No.

3 Q. Were -- these letters that you received or
4 e-mails that you received from Mr. Turner and
5 Mr. Huffman, were they consistent with what you
6 heard from them earlier that week?

7 A. No. I would say we -- earlier that week
8 was two days earlier, when I left after a very big
9 argument in the office that I think I described
10 earlier. And none of this -- this was not very --
11 well, this is kind of out of character with where
12 they left things.

13 Q. How were these e-mails from Mr. Huffman and
14 Mr. Turner different from what you heard on that
15 previous Monday?

16 A. I don't know how to describe it, other than
17 I got the impression that they were trying to
18 document something, because it was just too far
19 removed from what had been going on and what finally
20 escalated into my resignation.

21 Q. In the beginning of the third paragraph,
22 Mr. Turner in his e-mail says, "I honestly listen,
23 respect, and value your opinion with relation to
24 software more than anyone on the planet."

25 Is that consistent with what he told you on
26 Monday?

27 A. It wasn't consistent with the way he had
28 responded to me my whole duration of the time that I

1 was working on Version 9.1.

2 Q. He says, "Everything I know and have
3 learned was from you." Is that a fair statement?

4 A. Well, I don't know about everything --
5 about everything, but I know he learned a great deal
6 from me on the technical aspect of what we did.

7 Q. He says he doesn't get -- he says his
8 feeling is that he doesn't get the same level of
9 respect from you.

10 Do you agree with that?

11 A. If in the past he had that feeling, then I
12 would -- and expressed that to me, I would be
13 somewhat mortified and try to rectify that
14 situation. But the events leading up to my
15 resignation, he showed no respect for me at all. So
16 that's not consistent with the recent events,
17 certainly.

18 Q. What did you do after you read these
19 e-mails from Mr. Turner and Mr. Huffman?

20 A. I took a little time to absorb it. This
21 is -- you know, in my resignation, I said that I
22 would continue working on the software at home to
23 avoid any further confrontation. Mr. Kinney asked
24 me to come back into the office in -- you know,
25 during a time when Mr. Huffman and Mr. Turner were
26 going to be out of the office to work with him, and
27 I did so, but I remained working in the office after
28 they returned.

1 MR. KING: Your Honor, may I approach?

2 THE COURT: Yes.

3 BY MR. KING:

4 Q. Mr. Kinney sent you an e-mail as well
5 about -- about your resignation, didn't he?

6 A. He mentioned my resignation in an e-mail
7 that actually had to do with a technical question.

8 Q. Take a look at Exhibit 85.

9 (Exhibit 85 referenced.)

10 BY MR. KING:

11 Q. Do you recognize this e-mail?

12 A. I do.

13 Q. What is this?

14 A. It is an e-mail exchange between myself and
15 David Kinney regarding some questions that he had
16 about the Version 9 software changes I was made -- I
17 had made during the time that I was trying to
18 provide some guidance on, you know, them kind of
19 taking over from that point.

20 MR. KING: Your Honor, I move to submit
21 Exhibit 85 into evidence.

22 MR. SULLIVAN: No objection, Your Honor.

23 MR. MCCLOSKEY: No objection, Your Honor.

24 THE COURT: Received.

25 (Exhibit 85 received.)

26 BY MR. KING:

27 Q. This e-mail from Mr. Kinney to you is dated
28 May 16, 2014. This is eight days after your

1 resignation e-mail, correct?

2 A. Yes.

3 Q. And at this point in time, have you left
4 the company for good or where -- what are you doing
5 with relation to Storix?

6 A. My resignation letter, as you said, was on
7 the 8th, and I said there that I would spend the
8 next two weeks working on the software at home to
9 avoid any personal confrontations.

10 Q. Okay. And Mr. Kinney has some questions
11 about your Version 9?

12 A. Yes.

13 Q. Before this e-mail, had Mr. Kinney asked
14 you any questions about Version 9?

15 A. Well, before this e-mail, I guess he --
16 I -- and before my resignation, I think that he had
17 some questions on Version 9 that we were back and
18 forth with.

19 Q. Then he goes on.

20 MR. KING: Robin, if you can scroll down to
21 the --

22 BY MR. KING:

23 Q. He says, "To switch gears a bit, I
24 apologize for any role I have in your decision to
25 leave the company."

26 What role did Mr. Kinney have in your
27 decision to leave the company, if any?

28 A. I don't know that his role was direct. I

1 think it was just more passive.

2 Q. Who had a direct role in your decision to
3 leave the company?

4 A. Most directly, it was Mr. Huffman and
5 Mr. Turner.

6 Q. What do you mean when you say Mr. Kinney's
7 role was indirect?

8 A. Mr. Kinney is the -- the third technical
9 person on the team other than Mr. Turner,
10 Mr. Huffman, and I guess myself, although I wasn't
11 technically on the team. Mr. Kinney had a rather
12 passive role. And as these arguments were taking
13 place, he kind of disassociated and -- in places
14 where he certainly could have taken part and
15 provided an opinion. I felt a little abandoned.

16 Q. What did you expect Mr. Kinney to do
17 differently?

18 A. Well, he has spoken up before. And, you
19 know, like when we discussed the whole password
20 issue, he was the one that suggested the alternative
21 that Rich was willing to accept. And even though I
22 didn't particularly like the idea, I did it anyway
23 because I wanted to smooth things over. So, you
24 know, he had -- he certainly had an opinion and he
25 had a contribution. But I think when things get
26 heated, he kind of disappeared.

27 Q. When was your last day working for Storix?

28 A. It was the 22nd of May.

1 Q. And when were you taken off payroll?

2 A. May 31st or June 1st.

3 Q. After the 22nd -- on the 22nd, did anyone
4 at the company wish you farewell and say good-bye?

5 A. No. I was working in the office that last
6 week, and no one spoke to me and -- at all about the
7 resignation or my leaving.

8 Q. Did you see Mr. Turner in the office that
9 week?

10 A. Yes.

11 Q. Did you have any conversations with him?

12 A. He came to me once to ask a technical
13 question.

14 Q. Did he say anything about reasons for your
15 resignation?

16 A. No. No.

17 Q. Did you see Mr. Huffman in the office that
18 week?

19 A. Yes.

20 Q. Did he say anything about the reasons for
21 your resignation when you saw him?

22 A. Not the reasons, no.

23 Q. Did he say anything at all to you?

24 A. I raised the question with him the day
25 before I was to leave, and I suggested to him that
26 if they were going to finish this project, or even
27 without the project, you know, they were going to be
28 in need of a strong programmer, particularly with

1 network programming skills. And I reminded him that
2 I was leaving on Thursday, which was either the next
3 day or two days away.

4 Q. What did -- what was his response?

5 A. His response was that SB Admin is good
6 enough the way it is and we'd rather focus on other
7 types of business.

8 Q. What, if anything, did he say about
9 finishing your updates to Version 9.1?

10 A. The impression that I got from the
11 statement was he didn't care about that anymore.

12 MR. MCCLOSKEY: Objection, Your Honor.
13 Nonresponsive. Move to strike.

14 THE COURT: Granted.

15 BY MR. KING:

16 Q. What, if anything, did Mr. Huffman say
17 during that conversation about finishing your
18 updates on Version 9.1?

19 A. Well, the statement that he thought
20 SB Admin was good enough the way it was I think told
21 the story that he didn't intend to pursue it.

22 Q. You wrote an e-mail that's already been
23 admitted into evidence on May 27th, titled "Final
24 Thoughts."

25 Do you recall writing this e-mail? It's
26 Exhibit 28.

27 THE CLERK: Sorry?

28 MR. KING: Twenty-eight.

1 THE CLERK: Thank you.

2 BY MR. KING:

3 Q. And it looks like you had sent an e-mail
4 originally in, and then had to send -- send a
5 subsequent e-mail with a paragraph that you left
6 out?

7 A. Yes, I recognize this.

8 Q. And that's that -- that paragraph that you
9 left out is the one that appears right there, right
10 below this one, correct?

11 A. Yes.

12 MR. KING: Robin, if you'd scroll down.

13 BY MR. KING:

14 Q. Did you feel that you had not completely
15 explained all of your reasons prior to sending this
16 e-mail?

17 A. No, I hadn't completely explained the
18 reasons. I think I was elaborating on my
19 resignation and the issues I noted there.

20 Q. Take a look at the paragraph beginning with
21 "You've done great at managing a company with strict
22 policies and procedures."

23 Did you mean that?

24 A. I suppose I did.

25 Q. What did they not do great?

26 A. Well, they weren't improving the software.
27 And their strict policies and procedures were --
28 really limited their ability to produce any

1 improvements to the software, you know, at any
2 reasonable rate.

3 MR. KING: Robin, if you'd go down to the
4 next paragraph.

5 BY MR. KING:

6 Q. It starts off -- you say, "You
7 enthusiastically supported my adding SSL into the
8 product until I actually did it."

9 "SSL," what does that stand for?

10 A. That is the Version 9 primary changes to
11 the software, security of the software, particularly
12 the network security.

13 Q. And at this point you believed that they
14 didn't actually want it?

15 MR. MCCLOSKEY: Objection. Leading.

16 THE COURT: Sustained.

17 BY MR. KING:

18 Q. What, if anything, did you believe about
19 their desire for the 9.1 updates at the time you
20 wrote this e-mail?

21 A. I believed they wanted it and needed it
22 very much.

23 Q. Now, you just testified before we went to
24 lunch that before your resignation, they told you
25 that, in so many words, they didn't want those
26 updates.

27 How do you reconcile what you just said
28 with your prior testimony?

1 A. Actually, what I said was they told me that
2 no one ever asked for it. No one ever said they
3 needed it. They were actually speaking in reference
4 to the customers. But nevertheless, I think that
5 was being -- they were stating it as their own
6 opinion, but I knew that not to be true.

7 Q. Why?

8 A. Why did I believe it not to be true?

9 Q. You said you didn't just believe it. You
10 said you knew it not to be true.

11 A. Well, we knew for quite some time, even
12 before, you know, my diagnosis and leaving in '11 --
13 in 2011 that there were security vulnerabilities in
14 the software. We knew that it was an issue that
15 needed to be addressed and one that was on -- you
16 know, that was a top priority for me and certainly
17 expressed and some of the issues that they brought
18 up to me, that they claimed customers had reported
19 this being an issue.

20 And I had planned back in 2010 to undergo
21 this as a -- as a priority. But because my health
22 problems that I began to have that persisted for
23 some time, I couldn't commit to that long-term a
24 project.

25 Q. So if you're so sure they wanted this
26 update, what is it that they -- what is it that you
27 believe they did not want?

28 A. They didn't -- they didn't want me to own

1 stock in the company anymore.

2 MR. MCCLOSKEY: Objection, Your Honor.

3 Move to strike. That's speculative.

4 THE COURT: Sustained. Granted.

5 BY MR. KING:

6 Q. How did the defendants respond to this
7 e-mail that you sent on May 27th?

8 A. I received an e-mail from Mr. Huffman that
9 simply -- that basically said, I guess, So be it.
10 We'll send you a resignation letter -- I mean a
11 separation agreement.

12 Q. Take a look at Exhibit 197, which I believe
13 is already in evidence.

14 A. I'm sorry. I got a lot of things to move
15 around here. Okay.

16 Q. Your e-mail on May 27th was several pages,
17 correct?

18 A. Yes.

19 Q. And this is Mr. Huffman's response?

20 A. Yes.

21 Q. Did Mr. Huffman offer any other response to
22 your e-mail on May 27th?

23 A. No. After this e-mail, I had not had a
24 conversation with him for about a year.

25 Q. At this point how did you feel?

26 A. I felt like I was -- that my efforts to
27 kind of keep the door open to discuss the issues, to
28 elicit some sort of a response to, you know, how I

1 felt I was treated and, you know, how just degrading
2 this was for me and he shut the door.

3 Q. What was the next you heard -- the next
4 correspondence you had with any of the other
5 defendants?

6 A. I received a separation agreement from
7 David Smiljkovich.

8 Q. And after the separation agreement, what
9 was the next correspondence you had?

10 A. I asked David Smiljkovich to send me, I
11 think, a copy of the company bylaws and --

12 Q. What, if any, correspondence did you have
13 with Mr. Altamirano?

14 A. Oh, well, I -- I don't recall if
15 Mr. Altamirano -- I'm sorry -- Altamirano sent me an
16 initial e-mail before or after this date, but it was
17 somewhat -- somewhat similar to the first ones,
18 saying he regretted --

19 Q. If you could turn to Exhibit 121.

20 (Exhibit 121 referenced.)

21 BY MR. KING:

22 Q. Do you recognize this document?

23 A. Yes.

24 Q. Is it an e-mail chain between yourself and
25 Mr. Altamirano?

26 A. Yes. If you'll give me just a moment.
27 Pardon me if I back up through the e-mails and read
28 it in order.

1 Okay. Yes. Manuel Altamirano responded to
2 my e-mail when I, I guess, detailed my reasons for
3 leaving on May 29th.

4 MR. KING: Your Honor, I'd like to move
5 Exhibit 121 into evidence.

6 MR. SULLIVAN: No objection, Your Honor.

7 MR. MCCLOSKEY: No objection, Your Honor.

8 THE COURT: Received.

9 (Exhibit 121 received.)

10 BY MR. KING:

11 Q. What does Mr. Altamirano say in his e-mail?

12 A. Well, his e-mail begins on the second page.
13 It -- would you like me to read it?

14 Q. Yes.

15 A. Okay. No matter what, I always -- I'm
16 always going to have a connection to you. You were
17 my boss for many years and we managed to experience
18 a few great times together. Like any relationship,
19 a business relationship takes work from all
20 involved. We can go around pointing faults all day
21 long, but that never works, right? Communication
22 and commitment is the key. I'm not sure where
23 things end up in the future, but I won't hold any
24 grudges. Let's just make -- let's just make -- I
25 really think he meant to put "sure." Let's just
26 make sure we all learn how to do this better. Until
27 then, enjoy the fruits of your labor.

28 Q. Now, did you continue having back-and-forth

1 with Mr. Altamirano over the course of the next few
2 weeks?

3 A. I did, yes.

4 Q. And we'll get to some of that. But in the
5 meantime, you mentioned that you had a communication
6 with Mr. David Smiljkovich. What was that?

7 A. I had -- I had asked Mr. Smiljkovich to
8 send me a copy of the bylaws of the company. I
9 don't recall exactly why I wanted to look at them,
10 but he responded with something other than bylaws.

11 MR. KING: Your Honor, if I may approach?

12 THE COURT: Yes.

13 BY MR. KING:

14 Q. How did you ask him? Did you call him?
15 Did you write to him?

16 A. I believe I sent him an e-mail. I don't
17 think I would have called.

18 MR. MCCLOSKEY: Your Honor, as counsel is
19 handing Mr. Johnson the notebook, any way to get an
20 exhibit number so we can be prepared by the time he
21 talks?

22 MR. KING: It's Exhibit 337.

23 (Exhibit 337 referenced.)

24 BY MR. KING:

25 Q. Can you tell me what Exhibit 337 is,
26 Mr. Johnson?

27 A. Give me a moment, because it's, again, an
28 e-mail chain, so I want to make sure I read it in

1 the -- the order.

2 Well, it begins on June 12th, 2014, from
3 Mr. Smiljkovich, "I'm sorry I missed your call." So
4 it could be that I called his number and left a
5 message.

6 MR. KING: Move to -- Your Honor, move to
7 submit Exhibit 337 into evidence.

8 MR. SULLIVAN: No objection, Your Honor.

9 MR. MCCLOSKEY: No objection.

10 THE COURT: Received.

11 (Exhibit 337 received.)

12 BY MR. KING:

13 Q. So if we could go about on the bottom, the
14 start of the conversation. It looks like it is on
15 June 12th. And that's Mr. Smiljkovich responding to
16 your call, correct?

17 A. Yes.

18 Q. And your call, you testified, was just
19 asking about the bylaws and the minutes?

20 A. No. I just asked for the bylaws.

21 Q. What did you think was strange about
22 Mr. Smiljkovich's response?

23 A. Well, it was clear -- I guess it was --
24 seemed to me that he was concerned about perhaps my
25 reasons for wanting to see the bylaws, because the
26 response was somewhat defensive in providing me
27 a lot of information about things I did not know
28 about.

1 Q. At this point in time -- well, in his -- in
2 the second paragraph of his e-mail, starting on the
3 third sentence, it starts with "In my personal
4 experience" --

5 A. Yes.

6 Q. There's a paragraph that starts with "Here
7 is the situation." And then the third sentence
8 starts with "In my personal experience." He says,
9 "Most nonpublic corporations have a succession plan
10 in place to address various scenarios that would
11 affect company ownership."

12 Did you have any idea what he was talking
13 about?

14 A. I was starting to understand.

15 Q. At the time you had only asked for copies
16 of the bylaws?

17 A. Yes.

18 Q. Did you have any idea why he was talking
19 about succession plan?

20 A. Not specifically. I knew what it was. I
21 just didn't know why this was suddenly an issue.

22 Q. Okay.

23 MR. KING: If you can go up, Robin.

24 BY MR. KING:

25 Q. In your response, you say, "I assumed this
26 to be a change in the bylaws. It doesn't come as a
27 surprise." And so you say, "I don't need a
28 certified copy. Just an e-mail attachment would be

1 appreciated."

2 You're still -- it seemed like you're still
3 on relatively good terms with Mr. Smiljkovich. Fair
4 statement?

5 A. Well, I guess I -- I didn't really know
6 Mr. Smiljkovich.

7 Q. So you had no reason to be -- there's
8 nothing -- there's no reason -- you really didn't
9 bear any unusual animosity towards anyone at this
10 point?

11 A. Any animosity towards Mr. Smiljkovich?

12 Q. Towards Mr. Smiljkovich or any of the
13 defendants.

14 A. Well, animosity, no. I mean, suspicion,
15 maybe, but not animosity.

16 MR. KING: And if you'd go up, Robin.

17 BY MR. KING:

18 Q. Mr. Smiljkovich says, "That's not a
19 problem. I'm happy to get you whatever you need."
20 And then the second paragraph, he says, "By the way,
21 if we end up hiring a new person in the next few
22 weeks, we'll be a set of keys short. Would you mind
23 dropping by or sending us your set?"

24 He responds at the top, It's no problem. I
25 only have a single building key. If I'm out, I'll
26 drop it by tomorrow. Otherwise, I'll drop it in the
27 mail.

28 Did you -- at this point, had you heard

1 anything about Storix hiring a new person or is this
2 the first you'd ever heard of it?

3 A. Not until the -- the June 12th response
4 when he said I -- he missed my call.

5 Q. Now, at some point later in June 2014,
6 what, if anything, did you learn about this new
7 person they hired?

8 A. That they were moving him from Texas to
9 take over my role.

10 Q. How did you learn that?

11 A. There was another e-mail that I don't
12 recall if it was from Smiljkovich or a communication
13 between Manuel and myself that said that the new
14 person started today.

15 Q. How did you know what the new person was
16 doing?

17 A. I don't recall the details of what that
18 said. But Mr. Smiljkovich's e-mail says that, you
19 know, they -- he was on another call at the time,
20 and then our software engineer candidate arrived.
21 So clearly, they were interviewing software
22 engineering candidates.

23 Q. Are you talking about Mr. Smiljkovich's
24 earlier -- the first e-mail we looked at?

25 A. Yeah, the first part of it when he -- he
26 said he missed my call.

27 Q. How did you react when you heard that a new
28 software engineer was being hired at Storix?

1 A. Well, when I left the company or a
2 couple -- a day or two before I left the company, I
3 talked to Mr. Huffman and he indicated to me that
4 he --

5 MR. MCCLOSKEY: Objection, Your Honor.
6 This is nonresponsive. The witness is narrating.

7 THE COURT: Sustained.

8 BY MR. KING:

9 Q. When you learned that they were hiring a
10 new software engineer, how did you react to that
11 news?

12 A. It was surprising, because I was led to
13 believe they weren't going to.

14 Q. Your belief at this point was that they did
15 not want to finish the work that you started?

16 A. I wasn't -- well, that's hard to say. I
17 can't say that was my belief. It was what I -- it
18 was effectively what I was told or led to believe,
19 and not those words. They were told it wasn't
20 needed. Nobody wanted it.

21 But I knew that not to be true and I knew
22 it was opposite of everything that had led up to
23 that for -- you know, and even conversations we had
24 had for years.

25 Q. So did -- did the hiring of a new software
26 engineer contradict what you'd been told by
27 Mr. Huffman?

28 A. Yes.

1 Q. How?

2 A. Because I strongly -- I literally said the
3 words, I strongly suggest that you get a -- a
4 software designer in here that, you know, has
5 knowledge, particularly in the network security,
6 that, you know, can both complete this project and
7 go on from there.

8 Q. When you learned that they were actually
9 bringing someone in -- sorry. You had -- you
10 previously made a suggestion to hire a software
11 engineer to Mr. Turner -- Mr. Huffman, right?

12 A. Yes, as I was on my way out.

13 Q. And your testimony was that Mr. Huffman
14 said, Not necessary?

15 A. Yes.

16 Q. Now you find out he's hiring one, and now
17 how does that change how you feel about leaving?

18 A. Well, it was -- what impacted me the most
19 was that it happened so quickly. Within a month of
20 my leaving, a person they hired from Texas was
21 already starting work. So my feeling was -- I mean,
22 I had a pretty strong feeling before, obviously,
23 they wanted to get rid of me. And this kind of
24 confirmed that they had no intention of keeping me
25 there.

26 Q. Did you communicate your concerns with any
27 of the defendants?

28 A. I did when I -- I began having phone

1 conversations with Manuel Altamirano.

2 Q. You told him about your concerns about
3 Mr. Hawkins as a software engineer -- a software
4 engineer being hired at Storix?

5 MR. SULLIVAN: Objection.

6 THE WITNESS: I did, yes.

7 I'm sorry.

8 MR. SULLIVAN: Leading.

9 THE COURT: Leading, did you say?

10 MR. SULLIVAN: Yes. Leading, Your Honor.

11 THE COURT: Sustained.

12 BY MR. KING:

13 Q. What, if anything, did you tell
14 Mr. Altamirano in these conversations? What did you
15 tell Mr. Altamirano in these conversations?

16 A. I think the conversation began with the
17 fact that I was having some serious concerns based
18 on a number of events that had basically occurred,
19 you know, as I was leaving and after I left on
20 May 22nd.

21 And this was a particular concern, that
22 this software programmer had been brought in to do
23 exactly what they told me they didn't need. And
24 I -- and I told him that, you know, my -- my sister
25 had previously expressed to me her concern that
26 David Huffman was trying --

27 MR. MCCLOSKEY: Objection, Your Honor.
28 This calls for hearsay. It's beyond --

1 THE COURT: Sustained.

2 THE WITNESS: I was concerned --

3 THE COURT: No. Wait for a question.

4 THE WITNESS: I'm sorry. Please.

5 BY MR. KING:

6 Q. Did you ask Mr. Altamirano to communicate
7 anything to the defendants?

8 A. Yes.

9 Q. What did you ask him to do?

10 A. I asked Mr. Altamirano to help me in
11 opening a dialogue with any or all of the defendants
12 to try to -- to try to open a dialogue to figure out
13 what had gone wrong here. There were still too many
14 things I didn't understand, and I was hoping -- and
15 I was asking him to -- both to help me understand it
16 from what -- from what he knew, and to try to open a
17 dialogue with the other defendants in order to try
18 to resolve our differences and find a way to work
19 together again.

20 Q. Did you ask Mr. Altamirano to tell the
21 defendants that you demanded your job back?

22 A. No. At the time I was just trying to
23 get -- most of the conversation had to do with my
24 trying to understand what he knew, because I did not
25 understand what happened here. I did not understand
26 what all of the hostility was about.

27 And -- and now there's other things
28 happening that are making me question motives, and I

1 was trying to get him to explain to me what he knew,
2 because he wasn't part of the technical team. He
3 wasn't part of the -- I guess the arguments that
4 were going on. And so I --

5 Q. So what specifically did you ask him to
6 communicate to the defendants about that you wanted
7 to sit down and discuss?

8 A. I wanted to discuss -- well, both --
9 whatever issues it was that we needed to resolve so
10 that we could find a way to work together again.

11 Q. And this was in a phone conversation when
12 you had this with Mr. Altamirano, correct?

13 A. Yes. We had many phone conversations.

14 Q. The next day or shortly later after that,
15 he called you back to discuss how the defendants
16 responded?

17 MR. MCCLOSKEY: Objection, Your Honor.
18 This is leading.

19 THE COURT: Sustained.

20 BY MR. KING:

21 Q. What happened after the phone conversation
22 with Mr. Altamirano?

23 A. He told me that he discussed my proposal to
24 sit down and discuss the issues with the other
25 defendants and they said no.

26 Q. What specifically were the words that
27 Mr. Altamirano used to communicate the defendants'
28 response to your proposal?

1 A. He said, "They don't want you back."

2 Q. "They don't want you back"?

3 A. "They don't want you back."

4 Q. Was that consistent with what you heard
5 from Mr. Turner and Mr. Huffman on May 8?

6 A. No.

7 Q. In your communications with Mr. Altamirano,
8 did you communicate -- did you tell him to
9 communicate that you wanted to put certain
10 conditions on coming back?

11 A. No. I only communicated that I wanted to
12 talk.

13 Q. If you can turn to the next exhibit in your
14 binder. It's Exhibit 338.

15 (Exhibit 338 referenced.)

16 BY MR. KING:

17 Q. Do you recognize this document?

18 A. Yes.

19 Q. What is this?

20 A. After one of our phone conversations where
21 Manuel had asked me to tell me what conditions were
22 necessary for me to come back, this was my response
23 to him.

24 Q. Hold on. Hold on. There's two e-mails?

25 A. Yes.

26 Q. Okay. Do you recognize both of those
27 e-mails?

28 A. I do, yes.

1 Q. And are those e-mails that you sent to
2 Mr. Altamirano?

3 A. Yes, they are.

4 MR. KING: Your Honor, I'd like to move
5 Exhibit 338 into evidence.

6 MR. MCCLOSKEY: No objection, Your Honor.

7 MR. SULLIVAN: No objection, Your Honor.

8 THE COURT: Received.

9 (Exhibit 338 received.)

10 MR. KING: Robin, if you can scroll down to
11 the first e-mail. So go back up and -- yeah, right
12 there.

13 BY MR. KING:

14 Q. This e-mail you sent to Manuel on July 16,
15 2014, at 12:10 p.m.?

16 A. Yes.

17 Q. You say, "I apologize for getting a bit
18 worked up during our conversation yesterday. After
19 hearing that you had shared our prior talks with
20 David and Rich and that they were not interested in
21 any compromise, it brought back a lot of anxiety
22 around the reprehensible way I was treated."

23 The conversation that you're referring to,
24 is that the conversation with Manuel where he told
25 you they don't want you back?

26 A. Yes.

27 Q. Prior to this e-mail, had you said anything
28 to any of the defendants about threatening to take

1 away the copyright for SB Admin?

2 A. I had no conversations with any of the
3 defendants other than Manuel in these e-mails since
4 I left on May 22nd.

5 Q. Prior to the conversation that you
6 referenced in this e-mail to Manuel, had he ever
7 said as a -- had you ever said that you wanted to
8 come back and you -- under certain specific
9 conditions?

10 A. No.

11 Q. Had you ever said that you wanted to come
12 back and you wanted Mr. Huffman to step down as
13 president prior to that conversation you referred to
14 on July 16?

15 A. No.

16 Q. But when you heard that they don't want you
17 back, things changed. What changed?

18 A. Well, that was about the third time that he
19 told me they didn't want me back, that I was not
20 welcome. Okay?

21 Q. That was the third time?

22 A. Well, I had been communicating with him --
23 with Manuel Altamirano on -- you know, prior to this
24 e-mail chain, it was all phone conversations. I
25 think it took place over about six weeks.

26 Q. It was all phone conversations?

27 A. Yes. And it was all about trying to find a
28 way to get these guys to talk to me or any other

1 compromise that we could find, you know, but it --
2 the last conversation we had was just a final, "No,
3 they do not want you back."

4 Q. The first time you heard that they didn't
5 want you back, what was your reaction?

6 A. "Why?" I just -- I was literal -- I mean,
7 I was practically begging him repeatedly to just
8 explain to me why, what did I do.

9 Q. The second conversation you had where he
10 said they don't want you back, what was your
11 response to that?

12 A. You know, it was pretty much the same
13 thing. And, you know, he even said he was getting
14 annoyed with me because I was just repeating myself.
15 Like, why? Why won't they do this? Why can't
16 anyone talk to me? Why -- and, you know, it just
17 went nowhere.

18 Q. And then this e-mail is after the third
19 conversation?

20 A. Yeah. I'm trying -- I'm sorry. There's
21 two e-mails, and I have to --

22 Q. Yeah. Be really --

23 A. -- remember which one's which.

24 Yes. Yeah, it was a -- essentially a final
25 no at this point. And I -- we were still on the
26 phone, and I was frustrated and I -- I don't think I
27 lashed out at Manuel himself. But I was obviously
28 ranting, I suppose, so I apologized for getting

1 worked up.

2 Q. Is this what you expected would happen when
3 you invited Defendants to become co-owners in Storix
4 with you?

5 A. Certainly not.

6 MR. KING: Robin, if you'd go down to the
7 second half of this e-mail.

8 BY MR. KING:

9 Q. You say, So here's the situation. I own
10 the legal copyright to the original software, not
11 Storix, and that you'd never transfer that asset to
12 Storix.

13 And then the next paragraph, you say, So
14 I'm telling you this in an informal manner rather
15 than surprising David with a letter from my
16 attorney.

17 Is this the first time you had told anyone
18 at Storix that you believed you were the copyright
19 owner of SB Admin?

20 A. I don't know if it's the first time I told
21 anyone that I was the copyright owner. It's the
22 first time that I had threatened to use my copyright
23 ownership as leverage.

24 Q. And if we can go up to the top -- the
25 e-mail at the top of this exhibit, later e-mail,
26 this is your e-mail. It's about -- about an hour or
27 so later. It says, "Thanks for the call."

28 So there's a call between you and

1 Mr. Altamirano between these two e-mails, correct?

2 A. Yes.

3 Q. What did he say in that call?

4 A. Obviously, I raised a concern, which was
5 what I hoped to do. And he called me to say that he
6 was -- they were going to have a powwow, I guess,
7 and discuss the issue and he was hoping we could
8 come to a resolution.

9 And -- but more specifically, he said -- in
10 regards to my coming back to the company, you know,
11 he was asking me for any, you know, particular
12 conditions at this point for my coming back to the
13 company.

14 Q. So in your second sentence, it says, As you
15 asked, I'd like to be more specific on exactly what
16 changes I want to see in the management, but then
17 that's not my goal.

18 This is the first time you've communicated
19 any conditions on your return to Storix, correct?

20 A. Correct.

21 Q. What was their response?

22 A. I'm sorry. Whose response?

23 Q. Any of the defendants. Did they respond to
24 you?

25 A. Yes. Manuel Altamirano called me and he
26 simply said, "They said no."

27 Q. So he said -- he first said they don't want
28 you back. And then after you threatened the

1 copyright, they said, Give us your conditions. And
2 after that, they said no. Fair statement?

3 A. Yes.

4 Q. Can you turn to Exhibit 340, which I
5 believe is already in evidence.

6 A. I'm sorry. Did you ask a question?

7 Q. Could you take a look at 340 in your --

8 A. Yes, I have it.

9 MR. KING: Robin, if you could put that up.

10 BY MR. KING:

11 Q. This is your e-mail on July 20, 2014, to
12 Mr. Huffman, right?

13 A. Correct.

14 Q. In the second paragraph, first sentence,
15 you say, "Since you were informed that I was
16 prepared to take legal action and chose not to talk
17 to me, I'm copying board members and shareholders on
18 this note."

19 Why do you say Mr. Huffman chose not to
20 talk to you?

21 A. Because he didn't.

22 Q. You go on to describe starting, "Three
23 years ago, I said I would let you run the business
24 and I would not interfere. And I didn't. I came
25 back to Storix with a new attitude and motivation,
26 but I was never made part of your team."

27 You say, "I was expected to work alone and
28 do everything myself." Is that true?

1 A. Yes.

2 Q. Is this e-mail an accurate summary of some
3 of the issues you were experiencing before you
4 resigned?

5 A. Well, to answer the question with total
6 accuracy, I would have to read it in detail, but I
7 can say that this was a last-ditch effort to try to
8 open a dialogue before this came to legal action.
9 So I can't imagine that I would have been attempting
10 to inflame anyone at this point.

11 Whether I was tactful enough, I can't say.
12 I'm not well known for that. But I tried to let
13 them know in as clear and concise a way as I can
14 that this is about to turn very serious, and I --
15 that was my intent.

16 Q. If you can turn to the last paragraph of
17 this e-mail. You say, [as read] "I gave up
18 everything to people I trusted and never gained the
19 respect or appreciation I think I deserve. Perhaps
20 that was my own fault in the past, but I didn't
21 deserve this and I no longer feel bound by any
22 former promises."

23 Why did you no longer feel bound?

24 A. Well, the former promises that I was
25 referring to -- and this goes more to, I think, the
26 conversations between Manuel and myself -- is where
27 I said I'm not going to interfere in the business.
28 Obviously, if I am forced to file a lawsuit in order

1 to enforce my rights to the software I wrote, that's
2 going to interfere with the business.

3 Q. But why did you no longer feel bound to
4 that promise that you'd no longer interfere?

5 A. Because they clearly were not bound to any
6 promises that I made and were -- had just utterly
7 and completely destroyed, you know, any -- or just
8 ignored or destroyed any trust that I had in them
9 and had -- I mean, the things that they had done
10 here clearly were in no -- certainly, unexpected and
11 not -- not reasonable or rational given the
12 situation and the position that I put them in.

13 Q. These promises that you talk about, they go
14 both ways. Is that what you're saying?

15 A. Well, of course, yes.

16 Q. Where's the written document that describes
17 each one of these promises and obligations that
18 everyone has to do in order to be -- to be acting
19 properly?

20 A. There is no document of that type of
21 detail.

22 Q. So there's no document that says you
23 promised not to interfere with the business? Is
24 that what you're telling me?

25 A. I don't think so, no.

26 Q. So where do these obligations come from?

27 A. Just trust, I suppose. I mean, I thought
28 these were my friends in 2011, and I thought I could

1 trust my friends. And what I came back to in 2013
2 were not my friends, and I can't trust them anymore.
3 I mean, look at what they're doing to me.

4 Q. So after this e-mail, that really -- that
5 then begins the start of copyright litigation,
6 right?

7 MR. MCCLOSKEY: Objection. Leading.

8 THE COURT: Sustained.

9 BY MR. KING:

10 Q. What -- what happened with respect to the
11 copyright litigation, if anything, after this
12 e-mail?

13 A. I got no response to this e-mail.

14 Q. What was the next thing -- the next
15 communication you had with the defendants?

16 A. I wasn't entirely sure they were taking me
17 seriously yet, so I engaged an attorney to send a
18 cease and desist letter to the company.

19 Q. And how did they respond?

20 A. They responded by hiring Procopio, which is
21 Storix's counsel, a different attorney at the time,
22 although I think Mr. Sullivan was second counsel.
23 The attorney, however --

24 Q. Hold on. Hold on.

25 What was their response?

26 A. The response was that because I simply
27 decided I didn't want to work anymore and forced my
28 company -- forced my employees to buy stock in my

1 company in order to keep their jobs, but did not
2 disclose to them that the company didn't own the
3 software when they bought their shares that they
4 were going to sue me for security fraud.

5 Q. Well, first let me ask you this: Was it
6 true you forced the employees to buy stock in your
7 company to keep their jobs?

8 A. They were given the stock for free, and
9 they weren't even forced to take it for free.

10 Q. What happened after that letter?

11 A. We filed the copyright lawsuit.

12 Q. When you say "we," you meant you?

13 A. I meant, yes, I -- my attorney that I had
14 then hired filed the suit.

15 Q. Who did you file the lawsuit against?

16 A. Against Storix.

17 Q. And then how did Storix respond to that
18 lawsuit?

19 A. They filed a counterclaim.

20 THE COURT: Before we get there, is this a
21 good time for our recess?

22 MR. KING: It is a perfect time.

23 THE COURT: All right. Ladies and
24 gentlemen, we'll take our afternoon recess.

25 Fifteen minutes, please. Remember the admonition.

26 (Whereupon the jurors exit the courtroom.)

27 (Brief recess.)

28 (Whereupon the jurors enter the courtroom.)

1 THE COURT: All right. We're all back.

2 Mr. King.

3 BY MR. KING:

4 Q. Mr. Johnson, before we left, we talked
5 about events -- everything that led up to the
6 copyright lawsuit --

7 A. Yes.

8 Q. -- litigation.

9 Why not just step away, remain a 40 percent
10 shareholder, and let them do what they want with the
11 business? Why did you feel you had to file the
12 copyright lawsuit?

13 A. Well, the primary reason was that the
14 software was my creation. It was 15 years of my
15 life. It was being sorely neglected. I founded the
16 company to sell the software. And the company
17 profits were declining year over year since I left,
18 which meant my income, which I now needed to depend
19 on, was declining year over year. And with no end
20 in sight as to when any updates or improvements
21 would be made to the software, I didn't -- I didn't
22 expect that was going to stop.

23 Q. So after you filed the copyright
24 litigation, you met -- or actually, after you
25 left -- well, let me -- just foundation.

26 When did you first meet Robin Sassi?

27 A. Well, Robin Sassi was at one point married
28 to David Huffman. And I think we had only met in

1 passing in the office before, so nothing more than
2 a, you know, "Hello. How are you?"

3 But outside of that, it was just -- after I
4 left the company and I had my initial conversations
5 with Manuel Altamirano, I decide -- I decided to
6 contact Robin, because I knew that she had acquired
7 a certain percentage of Dave Huffman's shares in
8 their divorce settlement.

9 And I was hoping that if her shares that
10 she received were 10 percent or more, then -- then I
11 could offer to purchase her shares, in which case I
12 would have a majority share of the company and avoid
13 any more of this.

14 Q. Did you offer to purchase her shares?

15 A. I did. Well, yes and no.

16 Q. What was her response to your offer?

17 A. I correct my answer. I didn't offer to
18 purchase her shares, because she told me that she
19 had only 8.7 percent of the shares and it wouldn't
20 have helped any.

21 Q. After the copyright litigation began, did
22 you continue to communicate with Ms. Sassi?

23 A. I did, yes.

24 Q. Did she tell you what her view was on the
25 dispute between you and the defendants?

26 A. There were a lot of disputes I -- disputes
27 of different natures between me and the defendants.

28 Q. Did she, in general, take your side?

1 A. She -- she definitely did take my side, I
2 guess, on pretty much all of the issues, I suppose.

3 Q. And in early 2015, you and Robin decided to
4 seek election to the board, correct?

5 A. Yes.

6 Q. Tell me what your plan was.

7 A. Well, the defendants had recently increased
8 the board size from four to five, which meant that
9 any three board members would have a majority. With
10 my 40 percent share alone, if there had been four
11 board members, I would have had 50 percent of the
12 board. But with three members, I would have -- I
13 mean -- I'm sorry.

14 With a five-member board, I -- the best I
15 could do was to put two members on a five-member
16 board. However, with Ms. Sharey -- I'm sorry. With
17 Ms. Sassi's shares, we had approximately 48 percent
18 and the other defendants had 52 percent.

19 Q. How did that enable you to get three of the
20 five board seats?

21 A. Well, you'd kind of have to do the math,
22 because certainly -- I mean, first of all, I had a
23 short -- at a shareholder meeting, you elect the
24 board and this happens once a year and you vote your
25 shares. Everyone doesn't get a vote. They get a
26 vote for each share that they own.

27 Q. Okay. So I'm going to ask -- we've already
28 admitted Exhibit 633. Ask Robin to put it up on the

1 screen.

2 Now, in early 2015, there was a --
3 originally a shareholder meeting scheduled sometime
4 for January, right?

5 A. Yes.

6 Q. And what happened with the originally
7 scheduled shareholder meeting?

8 A. Well, it was canceled. It was -- it was
9 canceled, I believe, in part based on a conversation
10 that I did have with three of the defendants.

11 Q. Why do you believe that?

12 A. Because -- well, it went very well. I
13 mean, I spent --

14 Q. Okay. Okay. So you had a good
15 conversation with three of the defendants, and --
16 and then you get -- you find out that the
17 shareholder meeting for that year is going to be
18 postponed, correct?

19 A. Yes. Well, the shareholder meeting was
20 scheduled for the -- the next day or perhaps the day
21 after. Thirty minutes after I had the meeting with
22 these individuals, the shareholder meeting was
23 canceled, which was a very promising sign.

24 MR. KING: Now, Robin, if you can scroll
25 down here, which is Exhibit 633 that we looked at.

26 BY MR. KING:

27 Q. This is the unanimous consent to the
28 nomination of five directors.

1 Do you see that?

2 A. Yes.

3 Q. Tell me how this document related to your
4 and Ms. Sassi's plan to have three board -- three
5 directors on the board?

6 A. Well, Ms. Sassi and I, you know, had become
7 friends. This -- we're taking about a period of
8 about six months now that had gone by from the time
9 I met her during the Manuel e-mails up to this point
10 in time. We'd become friends, but we make no secret
11 now of the fact that we concealed our friendship.

12 Q. Okay. I'm asking this document right here.
13 How does this document play -- relate to your plan
14 to elect three members to the board of directors?

15 A. Okay. The fact that the defendants did not
16 know that Robin and I were communicating was an
17 important factor in this.

18 Q. Okay.

19 A. The nominees there included four of the
20 defendants and myself. They included myself,
21 because, first of all, I indicated that I planned to
22 nominate myself as a director. And with 40 percent
23 share, I'm going to be a director if I so choose,
24 okay, a bona fide member of the board.

25 Q. Okay. So what did the significance of them
26 having four other directors mean to you?

27 A. The other four -- the other four directors
28 that are named there tell me that those -- well,

1 that the remaining shareholders other than
2 Ms. Sassi, who hold 52 percent of the board -- I'm
3 sorry -- two -- 52 percent of the shares of the
4 company, were planning to split their votes between
5 those four candidates.

6 Q. Okay. So what did that -- how did that
7 lead to your plan to try and elect a slate of three
8 directors?

9 A. Ms. Sassi and I, if we combined our
10 42 percent of the shares --

11 Q. 48 percent.

12 A. I'm sorry. 48 percent of the shares and
13 elected a third director and split our votes three
14 ways, then the other defendants, having split their
15 votes four ways, would actually only -- our three
16 candidates would have the three highest number of
17 votes, and two of their four candidates would have
18 the other two seats if you do the math.

19 Q. Got it.

20 A. We're assuming that they're going to split
21 their votes four ways, and we certainly led them
22 to -- and I don't lie. I led them to believe that I
23 was going to simply nominate myself with my votes,
24 and they didn't know that we -- that Robin and I
25 were friends. So Robin introduced a third
26 candidate.

27 Q. Okay. So now let's go to the meeting.
28 February 12th, 2015, right?

1 A. Yes.

2 Q. Where is the meeting taking place?

3 A. At the offices of Procopio -- the law
4 offices of Procopio.

5 Q. And you and Ms. Sassi attend the meeting,
6 correct?

7 A. Yes. We came in separately.

8 Q. Okay. Ms. Sassi brought someone else with
9 her, you say. Who was that person?

10 A. Well, that person actually was a friend of
11 mine, a softball buddy that actually owned his own
12 business.

13 Q. What was his name?

14 A. Jeff Harding.

15 Q. All the defendant shareholders, they
16 appeared, correct?

17 A. Yes.

18 Q. And the point of the meeting was to elect
19 directors for the board?

20 A. It was to elect -- it's an annual
21 shareholder meeting in which you elect the board of
22 directors for the -- the next year.

23 Q. So what happened?

24 A. Well, Mr. Smiljkovich, who was the CFO of
25 the company, also a defendant, he was serving as the
26 inspector of elections. And the inspector of
27 elections is -- his responsibility is to, you know,
28 ensure the fairness and integrity of the vote and to

1 tally the votes and report the results and, you
2 know, validate proxies, anything necessary like
3 that.

4 Q. So what happened? Was there a vote?

5 A. There -- well, the vote began.

6 Q. How did it begin? Did they pass out
7 ballots?

8 A. They passed out ballots.

9 Q. Okay. Ballots made of -- paper ballots,
10 right?

11 A. Yes.

12 Q. Okay. And instructions were for everyone
13 to write down the number of votes they had to
14 allocate to the candidates they wanted to vote for,
15 correct?

16 MR. SULLIVAN: Objection. Leading,
17 Your Honor.

18 THE COURT: Treat it as foundational.
19 Overruled.

20 THE WITNESS: Based on -- based on the
21 shares of each shareholder, the shareholders in
22 attendance were given a ballot in which they voted
23 their shares to whatever candidates, and they could
24 split those shares across whichever candidates they
25 choose.

26 BY MR. KING:

27 Q. And who did you split your shares between?

28 A. I -- oh, I have to think exactly how I did

1 this, but I -- I can only say Robin and I split our
2 42 percent shares --

3 Q. 48 percent.

4 A. I'm sorry. Again I said 42. 48 percent
5 shares equally across myself, herself, and Jeff
6 Harding.

7 Q. Okay. Now, after you got done filling out
8 your ballot, what did you do?

9 A. Well, we passed them in to Mr. Smiljkovich.

10 Q. You passed your ballot in to
11 Mr. Smiljkovich?

12 A. Yes.

13 Q. Did you just hand it to him?

14 A. Hand it to him?

15 Q. Hand it.

16 A. Yes.

17 Q. And you saw other shareholders do that too?

18 A. I saw all of the shareholders do that.

19 Q. Then what happened?

20 A. Then Manuel Altamirano, who was sitting
21 down the table -- I guess down the table from me, he
22 suddenly spoke up and said to Mr. Smiljkovich, who
23 was about to count the votes, "Wait a minute. I
24 need to talk to you outside."

25 Q. Then what happened?

26 A. Well, my copyright attorney was there with
27 us as well.

28 Q. Mr. Gary Eastman?

1 A. Mr. Gary Eastman, yes.

2 Q. Okay.

3 A. And he --

4 Q. So wait. What happened with Mr. Altamirano
5 and Mr. Smiljkovich after Mr. Altamirano stood up
6 and said this to Mr. Smiljkovich?

7 A. They left the room and they went outside
8 the room while we waited.

9 Q. What happened while they were outside the
10 room that you could see?

11 A. You know, I could see -- well, I was
12 sitting directly across from David Huffman on the
13 long end of the table. Okay. And I know that
14 Mr. Turner was -- positioned his -- to his left and
15 Mr. Kinney to his left.

16 And all of a sudden, the three of them kept
17 kind of grouping together and chatting about
18 something. And then I see -- I see them kind of
19 like all of a sudden scribbling numbers or
20 scribbling something down, doing cal -- it looked
21 like they were doing calculations.

22 Q. Then what happened?

23 A. Then Mr. Altamirano and Mr. Smiljkovich
24 returned back in the room and --

25 Q. What did they say when they came back in,
26 if anything?

27 A. I don't think they said anything.
28 Mr. Smiljkovich went back to his side of the table,

1 which was to my left, and --

2 Q. Then what happened?

3 A. And Mr. Kinney sat back down next to
4 Mr. Altamirano -- I'm sorry. Mr. Altamirano sat
5 back down next to Mr. Kinney. And Mr. Kinney
6 suddenly said to David Smiljkovich, you know, "Hold
7 on. I need a new ballot."

8 Q. Did he say why?

9 A. I don't think he did.

10 Q. What did Mr. Smiljkovich do?

11 A. He handed him a new ballot and asked for
12 his old ballot back.

13 Q. What did he do with the old ballot?

14 A. Well, actually, he had -- let me correct
15 that. Mr. Kinney asked to get his ballot back
16 first, and so Mr. Smiljkovich gave Kinney his ballot
17 back. And then after he looked at it, he said, "I
18 made a mistake. I need a new ballot." So
19 Mr. Smiljkovich handed him a new ballot and took
20 Mr. Kinney's old ballot back and tore it up.

21 Q. Mr. Smiljkovich tore up the old ballot?

22 A. Yes.

23 Q. You saw that?

24 A. He tore it two ways and left it on the
25 desk.

26 Q. You saw him do that?

27 A. Everyone saw him do that.

28 Q. What happened after Mr. Smiljkovich tore up

1 the ballot?

2 A. Well, my attorney was objecting to this
3 happening, because he objected to their -- to the
4 inspector of elections leaving the room to speak
5 with a candidate in the middle of the vote without
6 closing the election first -- first. And then --

7 Q. What did you hear Mr. Eastman say in
8 response to Mr. Smiljkovich tearing up the ballot?

9 MR. MCCLOSKEY: Objection. That's hearsay.

10 THE COURT: Just a minute. Sustained.

11 THE WITNESS: Okay.

12 THE COURT: Just a minute.

13 THE WITNESS: Sure.

14 BY MR. KING:

15 Q. Did you hear anyone at that meeting object
16 to the tearing up of the ballot?

17 A. I don't even --

18 MR. MCCLOSKEY: Objection to the extent
19 that it calls for hearsay, Your Honor. This could
20 be backdooring it.

21 THE COURT: On hearsay, any response?

22 MR. KING: It's not intended for the truth
23 of the matter asserted. It's intended for the
24 effect on (inaudible).

25 THE COURT: Intended for the effect on?

26 MR. KING: For the effect on the witness.

27 MR. SULLIVAN: That's irrelevant.

28 THE COURT: For this witness?

1 MR. KING: Yes, and on Mr. Smiljkovich.

2 THE COURT: Response?

3 MR. MCCLOSKEY: That's irrelevant. In
4 fact, on that witness or on Mr. Smiljkovich,
5 Your Honor, it is irrelevant.

6 THE COURT: I'm inclined to sustain unless
7 there's anything else. In other words, I think it's
8 for the truth of the matter. So sustained.

9 BY MR. KING:

10 Q. Did you voice any objection yourself?

11 A. I -- I voiced it to my attorney, and my
12 attorney voiced the objection, I guess, on my
13 behalf.

14 MR. MCCLOSKEY: Objection, Your Honor.
15 Move to strike.

16 THE COURT: Granted.

17 BY MR. KING:

18 Q. Did you make a request for -- to
19 Mr. Smiljkovich that he preserve the ballot?

20 A. Not to Mr. Smiljkovich, because
21 Mr. Smiljkovich had given the ballots to the
22 secretary of the meeting.

23 Q. Who was the secretary of the meeting?

24 A. Well, the acting secretary of the meeting,
25 his name is Bryce Allen (phonetic), and he's a
26 former attorney at Procopio.

27 Q. Okay. And how did you know Mr. Allen was
28 the secretary at the meeting?

1 A. Because -- well, they announced at the
2 beginning of the meeting that he would be acting as
3 secretary and that he would be taking notes for the
4 minutes of the meeting.

5 Q. Did Mr. Smiljkovich ever indicate that he
6 would preserve a copy of the ballots that he had
7 torn up?

8 A. As I said, he -- at the request of my
9 attorney, he handed --

10 MR. MCCLOSKEY: Objection, Your Honor.
11 Move to strike.

12 THE COURT: Granted.

13 THE WITNESS: Mr. Smiljkovich --

14 THE COURT: No. No.

15 THE WITNESS: I'm sorry.

16 BY MR. KING:

17 Q. What did Mr. Smiljkovich say, if anything,
18 about preserving the ballots that he had ripped up?

19 A. He didn't say anything.

20 Q. At any point in time after the meeting did
21 you request to inspect those ballots?

22 A. I'm sorry. I'm having difficulty because
23 I'm being objected to for narrating, but then we're
24 missing stuff that I --

25 Q. So --

26 A. Where I'm at --

27 Q. So let's just finish up with the meeting.
28 What else happened at the meeting?

1 A. Mr. Smiljkovich gave all of the ballots to
2 Bryce Allen, the acting secretary, who was asked to
3 preserve the ballots of the meeting.

4 MR. MCCLOSKEY: Objection, Your Honor.
5 Move to strike.

6 THE COURT: Granted.

7 THE WITNESS: Mr. Allen --

8 THE COURT: No, no. Wait for the next
9 question.

10 THE WITNESS: Okay.

11 BY MR. KING:

12 Q. Why didn't you make a request that
13 Mr. Smiljkovich preserve the ballots at that
14 meeting?

15 A. Because I asked my attorney to make the
16 request.

17 MR. MCCLOSKEY: Objection, Your Honor.
18 Move to strike.

19 THE WITNESS: I don't know how else to
20 answer it.

21 MR. KING: Your Honor, that's a different
22 scenario. It's not for the truth of the matter.

23 THE COURT: Overruled. Denied.

24 BY MR. KING:

25 Q. You can go ahead and answer.

26 A. Could you repeat the question?

27 THE COURT: I think he already answered.
28 Next question.

1 BY MR. KING:

2 Q. After your -- after your attorney requested
3 to Mr. Smiljkovich --

4 MR. MCCLOSKEY: Objection, Your Honor.
5 Move to strike the question.

6 THE COURT: That's granted.

7 BY MR. KING:

8 Q. Okay. After Mr. Smiljkovich handed the
9 torn-up ballots to Mr. Allen, what was the next
10 thing that happened at that shareholder meeting?

11 A. Mr. Allen put both the completed ballots
12 and the torn-up ballots into an envelope, and I
13 asked him to be sure to preserve those ballots.

14 Q. Did he respond to you?

15 A. That he would do so.

16 MR. SULLIVAN: Objection, Your Honor.
17 Hearsay.

18 THE COURT: Sustained.

19 BY MR. KING:

20 Q. Did anything else happen at that
21 shareholder meeting? Let me ask you this: After --

22 A. I'm sorry. I'm a little thrown because,
23 you know, obviously, I can't -- I haven't been able
24 to talk about much.

25 MR. MCCLOSKEY: Objection. No question
26 pending, Your Honor.

27 THE COURT: Granted.

28

1 BY MR. KING:

2 Q. After Mr. Kinney filled out a new ballot,
3 who -- did Mr. Smiljkovich tally the votes?

4 A. Yes, yes. I'm sorry. Then Mr. --

5 Q. Hold on. Who ended up winning the election
6 to the five board of director seats?

7 A. It was three of the defendants, Mr. --
8 Mr. Huffman, Mr. Altamirano, and Mr. Turner.

9 Q. Who were the other two directors?

10 A. Myself and Robin Sassi.

11 Q. And you believe that something that
12 occurred during that meeting -- there was some
13 misconduct at that meeting. Is that a fair
14 statement?

15 A. Yes.

16 Q. If there was some misconduct in that
17 election, how did it damage you?

18 A. Well, it damaged everyone, myself more than
19 others, obviously, because had -- had the original
20 votes been tallied without the change --

21 MR. MCCLOSKEY: Objection, Your Honor.
22 He's speculating. Calls for -- lacks foundation.

23 THE COURT: Sustained.

24 THE WITNESS: Had --

25 THE COURT: No.

26 THE WITNESS: I'm sorry. I apologize.

27 BY MR. KING:

28 Q. I'm going to move on. I'm going to talk

1 about -- briefly about some of the Janstor issues
2 that we discussed last week before we go to lunch.
3 We had looked at documents that said you formed the
4 Janstor corporation the day after you were elected
5 to the board of directors.

6 Do you recall that?

7 A. I believe so.

8 Q. Why did you form Janstor Technology
9 corporation the day after that election?

10 A. Because the defendants remained in control
11 of Storix.

12 Q. And what does that -- how does that relate
13 to Janstor Technology?

14 A. As I mentioned previously, Janstor was
15 formed because of the fear based on actions that had
16 taken place that Storix would likely collapse under
17 the litigation of the copyright suit and the just
18 ongoing neglect of the software and so forth.

19 Q. Why not file -- or why not form Janstor
20 before that board of director election?

21 A. Because we believed that if we had been
22 able to take over the board with our three seats,
23 that we could have ended the copyright litigation
24 since the copyright ownership wouldn't have been
25 really relevant at this point. The software would
26 have been improved and their -- all litigation would
27 have ended three years ago.

28 Q. Storix's counsel spent considerable time

1 talking about port numbers and your application for
2 port numbers. I don't want to go back over a lot of
3 this, but I want to be clear.

4 If you -- what we talked about last week
5 was that in applying for these port numbers that you
6 made up a character, Berg, to help convince someone
7 at IANA that they should issue port numbers.

8 Do you recall that general discussion?

9 A. Yes.

10 Q. Okay. Now, were you -- were you
11 misrepresenting some fact about your application
12 that -- that caused them then to issue those port
13 numbers?

14 A. No. I was clarifying an issue that I had
15 previously inadvertently confused.

16 Q. Did the statements that the character Berg
17 made -- were those statements at all untrue?

18 A. No. They were accurate and concise and --
19 and answered all of the questions that had -- I had
20 caused confusion over.

21 Q. You were embarrassed by having caused the
22 confusion?

23 MR. MCCLOSKEY: Objection. That's leading.

24 THE COURT: Sustained.

25 BY MR. KING:

26 Q. Why did you create this character Berg
27 instead of just telling the truth, that --

28 A. Because this -- this conversation had gone

1 back and forth, and it was -- it was just becoming
2 just a very -- it was just becoming more confusing.
3 And I was on the verge of giving up and just not
4 registering port numbers. They weren't necessary,
5 particularly.

6 And I figured just one last shot. Let's
7 just have somebody else explain it to her that knows
8 more about this than me, and he was much more
9 concise and clear on the issue than I was and
10 problem solved.

11 Q. Storix asked you about the date you filed
12 your request to dissolve Janstor.

13 Do you recall that?

14 A. Yes.

15 Q. And they showed that you filed the request
16 that was on file with the Secretary of State after
17 Janstor litigation had been filed, right?

18 A. Yes.

19 Q. Was that the first request for dissolution
20 you filed with the Secretary of State?

21 A. No.

22 Q. What was the first request?

23 A. The first request I -- I was a bit confused
24 over whether I served it in June or July or filed it
25 in June or July, because it was quite some time ago.
26 But I had a recollection of having filed it when I
27 was still in San Diego, and yet I had a vague
28 recollection of filing it when I was in Florida.

1 And I moved to Florida between June and July, so I
2 was very confused as to when I filed it.

3 And when he showed me the September filing
4 that I had never seen before, I guess, other than
5 when I filled it out and sent it in -- I had no
6 recollection of it -- but suddenly, it made sense.
7 I filed the form in June before I left San Diego
8 and, apparently, filed a corrected form in September
9 after I moved to Florida.

10 Q. What was incorrect about your first form?

11 A. My first form was -- it was -- it was -- I
12 don't know -- a form that you would normally use to
13 dissolve a corporation that lists its assets and its
14 shareholders. And I guess it is a complicated
15 process of making sure when it's dissolved, any
16 remaining assets are distributed the way they need
17 to be.

18 Q. So why did you file a second form?

19 A. The -- I don't recall if I got a -- I think
20 I got a phone call from someone that --

21 Q. Someone with who?

22 A. Someone with the Secretary of State.

23 Q. What did they tell you?

24 A. They told me that based on the fact that I
25 had kept filling out zeros and "not applicable" all
26 over the form, they said, "Well, did the company
27 have any assets?" It did not. Did it have a bank
28 account? It did not. Okay. It didn't operate. It

1 didn't do anything. It was just formed. It didn't
2 do anything.

3 They said, "Well, this is not uncommon.
4 Just file the short form, which is specifically for
5 corporations that don't have any assets."

6 And so I filed the short form and just
7 forgot about it.

8 Q. You filed the short form, and that's what
9 eventually dissolved the corporation?

10 A. Eventually. I think it took about a year
11 before it actually -- maybe not that long. It -- it
12 took several months before it actually showed up
13 as --

14 Q. Okay.

15 A. -- dissolved.

16 Q. So let me ask you. If the corporation was
17 not formed for any wrongful purpose in terms of
18 competing with the company, why did you want to
19 dissolve it?

20 A. Because I was moving to Florida and it was
21 a California corporation.

22 Q. Okay. Why not start up a Florida
23 corporation?

24 A. Because by that time, they won the
25 shareholder -- they won the board majority. They
26 were going to litigate the company into bankruptcy,
27 but it was clearly going to take some time. And it
28 didn't -- just didn't see any -- any point in trying

1 to prepare for the worst anymore, because it was
2 dragging on endlessly.

3 Q. And you were on the board of directors when
4 Janstor corp -- when the Janstor lawsuit was filed,
5 right?

6 A. Yes.

7 Q. And did anyone at Storix ever inform you
8 about the intention to file the Janstor lawsuit
9 before it was filed?

10 A. No.

11 Q. Did you ever discuss the potential of the
12 Janstor lawsuit at any board of director meeting?

13 A. I didn't know there was a potential.

14 Q. Did you receive any request for written
15 unanimous consent to file that on behalf of Storix?

16 A. No.

17 Q. Any one of the defendants ever come to you
18 and say, "Anthony, what's up with this Janstor
19 corporation?"

20 A. No.

21 Q. Did you ever receive any written notice
22 there was going to be a board meeting or anything
23 regarding Janstor was going to be discussed?

24 A. No.

25 Q. Has Janstor ever sold anything?

26 A. No.

27 Q. Has Janstor ever gotten a bank account?

28 A. No.

1 Q. Janstor ever done any advertising?

2 A. No.

3 Q. Janstor ever had any employees?

4 A. No.

5 Q. Janstor ever paid any employee?

6 A. No.

7 Q. Has Janstor done anything to compete with
8 Storix?

9 A. No.

10 MR. SULLIVAN: Objection. Calls for a
11 legal conclusion.

12 THE COURT: Sustained.

13 BY MR. KING:

14 Q. After the February of 2015 board of
15 director meeting, there was further board of
16 director meetings in 2015. We looked at one that
17 occurred on April 13th, 2015.

18 Do you recall that meeting?

19 A. Yes.

20 Q. And what do you recall was discussed at
21 that meeting?

22 A. The -- one was a proposal for a shareholder
23 agreement that would take place between the company
24 and the four shareholder defendants. The second
25 issue was the potential formation of a committee
26 to -- to investigate a employee stock option plan.

27 MR. KING: Your Honor, may I show the
28 witness an exhibit?

1 THE COURT: Yes.

2 MR. KING: 516.

3 MR. MCCLOSKEY: What is it?

4 MR. KING: 516.

5 516 has been admitted, right? Okay.

6 Robin, can you put 516 up there.

7 (Exhibit 516 referenced.)

8 BY MR. KING:

9 Q. This is the meeting you attended on that
10 day, right?

11 A. This is the notice of the meeting, yes.

12 MR. KING: Scroll down, Robin, to the
13 minutes. Actually -- yeah, keep going.

14 BY MR. KING:

15 Q. So one of the things that was presented at
16 this meeting that we looked at was the shareholder
17 agreement.

18 Did you have an opportunity to express your
19 opinion on whether or not the company should enter
20 into that shareholder agreement at that meeting?

21 A. I need to be clear on which meeting.
22 I've -- I was given an opinion -- I was given the
23 opportunity to request that my attorney speak and
24 give his opinion.

25 Q. Okay. And is that your attorney's opinion
26 right there summarized on Paragraph Number 6?

27 A. I've read it before and I don't take issue
28 with it. No, that -- that's correct.

1 Q. Okay. Now, if you turn to the next
2 exhibit, Exhibit 517, in your binder, can you tell
3 me what Exhibit 517 is?

4 A. This is a notice of the next special
5 meeting of the board of directors to take place on
6 May 18th.

7 (Exhibit 517 referenced.)

8 BY MR. KING:

9 Q. And are there minutes attached to that
10 notice as well?

11 A. Yes, there are.

12 Q. And are those the minutes from that
13 meeting?

14 A. They appear to be.

15 MR. KING: Your Honor, I'd like to move
16 Exhibit 517 into evidence.

17 MR. SULLIVAN: No objection, Your Honor.

18 MR. MCCLOSKEY: No objection, Your Honor.

19 THE COURT: Received.

20 (Exhibit 517 received.)

21 MR. KING: And if we could go to the
22 minutes portion of this document, Robin. So
23 start -- stop right here.

24 BY MR. KING:

25 Q. Do you see this is the -- this is the --
26 these are the minutes, Mr. Johnson?

27 A. Yes.

28 Q. And the -- Number 5, it says shareholder

1 agreement was introduced, and then there's a motion
2 to accept the shareholder agreement and it passed.

3 How did you vote on that?

4 A. I voted against it.

5 Q. And how many people voted for it?

6 A. Unfortunately, Ms. Sassi was unable to
7 attend this meeting, so there were four of us. I
8 think the three that voted for it were David
9 Huffman, Rich Turner, and Manuel Altamirano.

10 Q. Now, it talks about a period of discussion.
11 During this period of discussion, were you able to
12 express your opinion at the board meeting on this
13 item?

14 A. I very much -- well, in the -- I was only
15 entitled to three minutes to speak on any topic,
16 seeing that the first item of discussion was to vote
17 on a code of conduct, which limited my ability to
18 speak to three minutes. So my primary goal there --
19 I had many issues with the bylaw --

20 MR. MCCLOSKEY: Objection, Your Honor.
21 Narrating here.

22 THE COURT: Sustained.

23 THE WITNESS: Okay.

24 BY MR. KING:

25 Q. So my question is: Did you have an
26 opportunity to express your opinion on this
27 shareholder agreement at that meeting?

28 A. I had had an opin -- time to express some

1 of my opinion.

2 Q. And what was your opinion?

3 A. Most notably that because this was a
4 shareholder agreement between the company and four
5 shareholders and those four shareholders were not
6 entitled to vote on a transaction to which they were
7 a party to --

8 Q. Okay.

9 A. -- therefore, my vote was the only valid
10 vote and it was a nay.

11 Q. Okay. Now, we saw a previous exhibit that
12 your attorney had requested that a -- a shareholder
13 agreement that -- that did not -- that included all
14 shareholders, not just -- all shareholders except
15 for you and Ms. Sassi.

16 Do you recall that?

17 A. Yes.

18 Q. Okay. Did -- the shareholder agreement
19 that was voted on and approved at this meeting, did
20 that include you and Ms. Sassi?

21 A. It did not.

22 Q. Did anyone offer you the opportunity to
23 become a party to that shareholder agreement prior
24 to approval of this meeting?

25 A. No.

26 Q. Even if -- let me ask -- let me ask this:
27 If you were offered an opportunity to become a
28 shareholder or to become a party to the shareholder

1 agreement, would you still have had any objection to
2 it?

3 A. I can't answer it as of that time because
4 too many -- too many facts and situations have
5 changed. I would have -- I would have, if given the
6 time to do so, spent more time on that particular
7 issue.

8 Q. The bylaw amendments, did you have any
9 objection to those that were proposed and voted on?

10 A. Very many.

11 Q. What were your objections?

12 A. Again, with the limited speaking time that
13 I had, I voiced some legal -- legal objections to
14 the board of directors altering bylaws that affect
15 shareholder rights without the shareholders'
16 approval; the board of directors passing bylaws that
17 give themselves additional rights while restrict --
18 actually, rights to the majority of directors while
19 restricting the rights of minority directors; and
20 allowing themselves to -- even as shareholders, to
21 hold a majority vote to pass motions or actions
22 without even informing the minority until after the
23 action has been taken. That's about all I had time
24 to speak with, but --

25 Q. And how did the defendants respond to your
26 objections?

27 A. There was no -- no response, and they just
28 voted to approve it.

1 Q. I want to go to -- let me go to -- take a
2 look at Exhibit 21.

3 After these were approved, the Janstor suit
4 was filed in August of 2015. Exhibit 21, which has
5 been admitted, that was your e-mail to the
6 defendants on September 26, 2015?

7 THE CLERK: Did you say 21?

8 MR. KING: Yes.

9 THE CLERK: It was not admitted.

10 MR. KING: I'm sorry. Okay. Robin, can
11 you do 356?

12 BY MR. KING:

13 Q. This is the "Buckle up, boys" e-mail that
14 we looked at last week. Do you recall this?

15 A. Yes.

16 Q. Now, tell me what caused you to send this
17 e-mail. And I know this -- this one might be --
18 this one might involve several things. So if there
19 are a number of things that caused you to send this
20 e-mail, list those and we'll go -- tackle them each
21 one by one. Okay?

22 A. There are many things that caused me to
23 send this e-mail.

24 Q. Okay. Start with Number 1. We'll do a
25 quick list.

26 A. Number 1, they cheated the shareholder
27 election, okay, only a few months earlier.
28 Number 2, they passed shareholder agreements and new

1 bylaws that gave them rights that Ms. Sassi and I
2 did not get.

3 Q. Okay.

4 A. Number 3, I found out the copyright -- this
5 is during a period in which the copyright litigation
6 was still going on. I found out in the copyright
7 discovery that the entire time I had been working on
8 my Version 9, the defendants had been enacting a
9 plan to force me to give up my remaining shares of
10 the company. And this -- I learned about this only
11 a year into the -- you know, now -- now a year into
12 the copyright litigation.

13 I had just flown -- I had -- well, first of
14 all, I had to sell my San Diego house because I
15 could no longer afford the litigation or afford --
16 at least afford to get through the litigation
17 anymore. I needed to raise the cash. So I sold my
18 house -- I meant my house in San Diego -- and moved
19 to Florida, where I bought a home there for about a
20 third of the price, which gave me enough cash, which
21 I had hoped would be enough to get through the
22 litigation.

23 I then flew from San Diego -- I'm sorry --
24 from Florida back to San Diego to attend a
25 settlement conference in the copyright case.
26 Needless to say, there was no settlement, because
27 again, no one would speak to me or see me.

28 And I went back to Florida to get -- to

1 find out that I had just been served another
2 lawsuit, which was filed three hours before the
3 settlement conference started.

4 Q. What was that lawsuit?

5 A. That was the Janstor lawsuit.

6 Q. Okay.

7 A. And I --

8 Q. I've got four on my list right now. Is
9 there a fifth? Were there any other additional
10 reasons?

11 A. There are probably many others. One of --
12 the most important one is that I had also discovered
13 that the company was now -- as I expected, was now
14 losing money. But I had no idea --

15 Q. How did you discover that?

16 A. Well, I discovered that in the quarterly
17 shareholder meeting. I don't know if it was a June
18 meeting, because this is now in September.
19 Actually, it was -- I think it may have been a third
20 quarter report that I had seen only days earlier,
21 and it showed that the company was now I think
22 approaching \$600,000 in debt.

23 Q. Okay.

24 A. I -- I knew -- I knew this was going to
25 happen if I couldn't get them off the board, and now
26 it's happening.

27 MR. MCCLOSKEY: Objection, Your Honor. The
28 witness is narrating.

1 THE COURT: Overruled.

2 You may continue.

3 BY MR. KING:

4 Q. So --

5 A. Everything --

6 Q. So let me just -- let me just make sure I'm
7 clear.

8 A. Sure.

9 Q. Shortly before that e-mail, you had -- you
10 had received information that said the company was
11 losing money?

12 A. Yes. It was bleeding rather badly.

13 Q. How many times quarterly -- you know, on a
14 quarterly basis the company reports revenue -- had
15 you seen numbers where the company showed a loss for
16 that quarter?

17 MR. MCCLOSKEY: Objection, Your Honor.
18 That violates the best evidence rule.

19 THE COURT: Overruled.

20 THE WITNESS: The company had never lost
21 money up until at least the time the copyright suit
22 was filed through the end of 2014. It -- I -- I
23 knew in 2015 that the company was almost out of cash
24 at the first quarter, and this made -- made taking
25 over the board rather --

26 BY MR. KING:

27 Q. Okay. So what I'm getting at is was -- the
28 information you got in 2015 that the company was

1 losing money, was that the first time in your
2 experience with the company that you had ever seen
3 the company lose money?

4 A. Yes. Yes, it was.

5 Q. Is there a sixth reason that went into the
6 "Buckle up, boys" e-mail?

7 A. I've forgotten where I left off, to be
8 honest.

9 Q. So we've got your -- your concerns about
10 being treated unfairly by the shareholder agreements
11 and bylaws; your concerns about what happened at the
12 last shareholder meeting election; your concerns
13 that the defendants were -- had attempted to take
14 your shares when you were working at the company in
15 2014; the fact that they filed the Janstor lawsuit
16 against you; the fact that the company was losing
17 money.

18 Is there anything else that went into this?

19 A. To be honest, I'm a little overwhelmed
20 right now. This is -- it's taking me back and I'm
21 getting a little -- a little frustrated at the
22 moment.

23 Q. Okay.

24 A. I -- you know, I --

25 MR. KING: Your Honor, may I approach so I
26 can show the witness the exhibit so he can take a
27 look at it?

28 THE COURT: Yes.

1 BY MR. KING:

2 Q. This is the e-mail, correct, Mr. Johnson?

3 A. This is the e-mail that you were --

4 Q. Yeah.

5 A. -- starting to display?

6 Q. Yep.

7 A. Yes.

8 Q. Now, at the time all these concerns that
9 you just mentioned -- you just discussed -- and I'm
10 not -- and I realize there might be some others that
11 may not come to mind right now.

12 At the time, what did you -- what action
13 did you want to take about these concerns?

14 A. Well, I think what I've been reminded
15 about, looking at it here a little closer, is that
16 one of my frustrations, which I mentioned earlier,
17 was their having filed the Janstor suit and not only
18 done it during -- I mean, literally three hours
19 before a settlement conference, but that they were
20 filing it against me as a director by my own
21 company, which I knew was completely improper. I
22 mean, I --

23 MR. SULLIVAN: Objection, Your Honor.
24 Improper legal opinion.

25 THE WITNESS: I was, I suppose, expecting
26 that.

27 THE COURT: Sustained.
28

1 BY MR. KING:

2 Q. You believed it was improper?

3 A. I knew it was improper.

4 MR. SULLIVAN: Same objection, Your Honor.

5 THE COURT: Same ruling.

6 BY MR. KING:

7 Q. What did you believe was the proper way the
8 Janstor suit should have been filed?

9 MR. SULLIVAN: Objection. Calls for a
10 legal opinion.

11 THE COURT: Sustained.

12 BY MR. KING:

13 Q. What did you want to do about the concerns
14 you had that you listed, including the Janstor suit?
15 What action did you want to take?

16 A. I wanted to take action to try to protect
17 the company from them doing any more damage than
18 they have already done.

19 Q. So what did -- what specifically did -- do
20 you mean by that?

21 A. Ms. Sassi and I got together and decided to
22 file a shareholder suit on behalf of the company in
23 order to prevent the defendants from doing any more
24 damage to the company in their attack on me. Now,
25 I'm not claiming any more damages for myself, but
26 we're trying to protect the company. But
27 nevertheless, the company is being damaged because
28 of all of their efforts to destroy me.

1 MR. MCCLOSKEY: Objection, Your Honor.
2 Motion to strike. Motion in limine.

3 THE COURT: As to the last portion,
4 granted.

5 BY MR. KING:

6 Q. How does this "Buckle up, boys" e-mail
7 relate to the shareholder action you were
8 describing?

9 A. Needless to say, I -- with everything that
10 had happened, probably within the last 30 days, I
11 wasn't exactly in my most tactful state of mind.

12 Q. Okay. I understand that.

13 A. Okay.

14 Q. My question is not --

15 A. Okay. And --

16 Q. My question is: How does this relate to
17 the actual shareholder action you described?

18 A. I was conveying to them in as strong a
19 words as I could muster that if they did not -- if
20 this did not end immediately and they did not leave
21 the company, then -- then this shareholder
22 derivative suit would be filed against them, in
23 which case they would not be able to use the company
24 in their defense the way they have ever since.

25 MR. MCCLOSKEY: Objection, Your Honor.
26 Motion to strike. Motion in limine.

27 THE COURT: Granted as to the last portion.

28

1 MR. KING: Robin, if you could scroll down
2 to the paragraph that starts "First of all."

3 BY MR. KING:

4 Q. Those are the -- you say, "First of all, I
5 have over a dozen indefensible allegations against
6 you."

7 Those allegations are -- did those include
8 some of the things we just listed?

9 A. Some of them, yes.

10 Q. Okay. And those -- you intended to assert
11 those in the shareholder action with Ms. Sassi?

12 A. Yes, and they have been.

13 MR. MCCLOSKEY: Objection, Your Honor.
14 Motion to strike.

15 THE COURT: Granted.

16 BY MR. KING:

17 Q. So why not just file the action without
18 sending this e-mail? Why send them the e-mail
19 first?

20 A. For the same reason that I -- I sent
21 e-mails and plead -- and pleaded with them before,
22 you know, not to make me file the copyright action.
23 The last thing I wanted was another lawsuit. And,
24 you know, I know they can't be reasoned with, so
25 yeah, I resorted to threats. And that was -- this
26 was a threat. I don't deny it.

27 Q. A threat to what?

28 A. A threat -- a threat to file the

1 shareholder lawsuit against them if they didn't get
2 out. And I only needed one of them to accept that
3 offer and all of this would be over.

4 Q. Did you intend to hurt the company? Did
5 you intend to hurt Storix with this e-mail?

6 A. I don't see -- no, of course not.

7 Q. Did you ever intend to hurt Storix?

8 A. I never intended to hurt Storix.

9 Q. How does this e-mail help Storix?

10 A. It doesn't. Well, it -- well, it didn't
11 because it didn't work.

12 Q. Okay. How was it your -- how did you
13 envision that this e-mail would help Storix or could
14 help Storix?

15 A. My threat, I believe, was not just to file
16 the derivative claims -- I'm sorry -- the
17 shareholder claims against them, but to also expose
18 the despicable things that they had been doing now
19 for a year and a half and hoping that one of them
20 would see enough reason to -- to say, "What can we
21 do end this?" What -- you know, just one of them.

22 Q. When you say just one -- you just needed
23 one of them, why?

24 A. Because with any one of them, we would have
25 had the shareholder votes we needed to end all of
26 this.

27 Q. And how was that in the best interest of
28 Storix?

1 A. Well, they have spent 3 1/2 million dollars
2 on litigation since this time. So obviously, that
3 would have been a benefit to Storix.

4 MR. MCCLOSKEY: Objection, Your Honor.
5 Motion to strike. Motion in limine.

6 THE COURT: Granted.

7 THE REPORTER: As to the whole answer,
8 Your Honor?

9 THE COURT: Yes.

10 BY MR. KING:

11 Q. I want to take a look at Exhibit 22, I
12 believe. Let me show you that.

13 MR. KING: Robin, if we can pull up
14 Exhibit 22.

15 BY MR. KING:

16 Q. Now, you alluded to this in the "Buckle up,
17 boys" e-mail. But this is not about any shareholder
18 lawsuit, right?

19 A. No.

20 Q. What is -- what is the reason or the
21 purpose behind this e-mail?

22 A. Well, this is a toned down version of the
23 e-mail that I attached to this "Buckle up, boys"
24 e-mail that I told the defendants that I was
25 threatening to send to everyone in the world, I
26 suppose, to expose the things that they had been
27 doing.

28 Q. Did anyone tell you to file this e-mail --

1 send this e-mail?

2 A. Pardon me?

3 Q. Did anyone tell you to send this e-mail?

4 A. Well, my attorney suggested --

5 MR. SULLIVAN: Objection, Your Honor.

6 Hearsay.

7 THE COURT: Sustained.

8 BY MR. KING:

9 Q. Just to be clear, this e-mail is October 6,
10 2015, right?

11 A. Yes.

12 Q. This is still in the middle of the
13 copyright litigation?

14 A. Yes.

15 Q. And at the time -- this is before the
16 copyright trial, correct?

17 A. It was three weeks before the motion for
18 summary judgment in the -- in the --

19 Q. Which is also before the trial, correct?

20 A. Yes.

21 Q. What was your belief at the time about how
22 the copyright litigation would turn out?

23 A. I was entirely convinced beyond any doubt
24 in my mind that Storix would have no chance at
25 becoming the first company in the history of the
26 1976 copyright act to --

27 MR. MCCLOSKEY: Objection, Your Honor.

28 Calls for a legal conclusion. Lacks foundation.

1 Entirely speculative.

2 THE COURT: Granted.

3 BY MR. KING:

4 Q. Without going into the reasons, what did
5 you believe about your -- about how the copyright
6 litigation would turn out at this point?

7 A. I believed with 100 percent certainty that
8 my ownership in the copyright to the software that I
9 registered federally in 1999 was still mine.

10 Q. You believed you would win the litigation?

11 A. I -- I wasn't the only one.

12 Q. Did you believe you would win the
13 litigation?

14 A. I --

15 Q. Is that a yes?

16 A. Yes.

17 Q. Okay. How did -- now, you recognize now
18 that your belief was wrong. You lost that
19 litigation. You don't deny that, right?

20 A. I don't deny that we lost at trial.

21 Q. Okay. You don't deny that you appealed the
22 litigation and the appellate court has issued a
23 ruling affirming the trial -- affirming the jury's
24 verdict, correct?

25 A. They didn't confirm the jury verdict. They
26 confirmed that the judge had the authority to give
27 the verdict to the jury to make.

28 Q. You don't deny that the decision has not

1 been reversed on appeal, correct?

2 A. No, but it is also not --

3 Q. You're not challenging that right now,
4 correct?

5 A. I am, yes.

6 Q. Sorry. But not in this case.

7 A. Pardon me?

8 Q. You're not challenging the copyright in
9 this case, right?

10 A. You mean in this case in this room?

11 Q. Yes.

12 A. No, of course not. No, I'm not challenging
13 the fact that they did win. They did win the
14 ownership of the copyright.

15 Q. Okay. But at the time when you believed
16 that you were going to win, you sent this e-mail,
17 right?

18 A. Correct.

19 Q. How did that belief in the strength of your
20 case impact your decision to send this e-mail?

21 A. I'm sorry. Did I lose the exhibit number?
22 Can you help me again?

23 Q. Sure.

24 MR. KING: Your Honor, may I approach?

25 THE WITNESS: Oh, I don't have it,
26 actually.

27 THE COURT: Twenty-two.

28 THE WITNESS: I don't have -- I don't need

1 to worry about it.

2 BY MR. KING:

3 Q. How did -- your belief at the time in the
4 strength of your case, how did it impact your
5 decision to send this e-mail?

6 A. I believed at the time I sent this e-mail
7 that it would -- well, primarily, I wanted Storix
8 management, the defendants, to be informed that
9 despite their effort, you know, their -- I mean,
10 they filed a restraining order to try to prevent me
11 from sending it and it was denied.

12 So I felt, first of all, that I needed to
13 follow through, to some extent at least, on my
14 threat, rather than it, you know, be ignored, as
15 every other. But I was concerned, first of all,
16 that they were not going to update the security to
17 the software. And customers needed to be informed
18 that there were known security vulnerabilities in
19 the software that the defendants were well aware of
20 and --

21 Q. Did your e-mail actually inform them of
22 that?

23 A. Yes. Well --

24 Q. So -- point to where.

25 A. I'm sorry. It's kind of small lettering,
26 so it's hard to skim. Yes, in the -- you'll need to
27 go down to about the fifth paragraph, "No new
28 programmers were hired." And I said, "Working alone

1 for nine months on major enhancements to address
2 known security vulnerabilities and increase the
3 network security."

4 I made other reference to the fact that
5 these -- in the last paragraph, "The security
6 enhancements to the software have been completed,
7 along with much more."

8 Unfortunately, you know, effectively, I'm
9 informing a small set of customers -- potential
10 customers that I sent this out to that there are
11 vulnerabilities in the software. Those
12 vulnerabilities had been fixed. This copyright
13 decision of -- in confirming my ownership is going
14 to be made in three weeks. I was anticipating that
15 at least.

16 And when that happened, if the defendants
17 were to have received a couple of phone calls from
18 customers saying, "There's vulnerabilities in the
19 software. When are we getting them fixed?" well,
20 what will their answer be? The person who owns the
21 software is Anthony Johnson. Anthony Johnson fixed
22 these vulnerabilities in the software --

23 MR. MCCLOSKEY: Objection, Your Honor.

24 THE WITNESS: -- but we won't give him a
25 job.

26 MR. MCCLOSKEY: The witness is narrating.
27 We're talking about security vulnerabilities.

28 THE COURT: Sustained.

1 BY MR. KING:

2 Q. How did you get the names of the people --
3 of the customers to send this to and their e-mail
4 addresses? How did you get that?

5 A. David Huffman had sent out an e-mail that
6 had a link on it where he had created a Google map
7 where he imported a bunch of customer data, and I
8 just kind of grabbed some e-mail addresses out of --
9 out of that list.

10 Q. Is this publicly accessible information?

11 A. It was.

12 Q. Did you need a password to access that
13 information?

14 A. No. You -- you needed the link. But, you
15 know, who knows who the e-mail could have gone to or
16 who could have seen it. So anyone who had seen the
17 e-mail or forwarded it to anyone, it was anyone --

18 MR. MCCLOSKEY: Objection, Your Honor. The
19 witness is narrating again.

20 THE COURT: Sustained.

21 BY MR. KING:

22 Q. How many customers did you send this e-mail
23 to?

24 A. You know, I -- I don't remember. It's hard
25 for me to even put a real range to it. I would say
26 because of the address it was sent to and the way it
27 was sent, it would have been limited to, I would
28 say, around 50.

1 Q. Now, you -- let's see. In the first
2 paragraph that we see up there on the screen, the
3 last sentence of that, you write, "However, I must
4 demand you cease any further payment to Storix in
5 relation to this software and refrain from
6 downloading any further copies."

7 Why did you tell that to the customers you
8 sent this to?

9 A. Well, because, first of all, I'm informing
10 them that I'm the copyright owner. I also told them
11 that if they have the software, they're welcome to
12 keep using it. But I also intended in three weeks'
13 time, once my ownership was confirmed and whatever
14 else happened to get one of these guys to finally
15 stop suing me and end this stuff, that I could
16 easily retract the e-mail and say, "It's all good.
17 And by the way, here's the security software that I
18 promised you."

19 Q. How is that in the best interest of Storix?

20 A. Well, the alternative is and has been that
21 the security hasn't been updated and there hasn't
22 been a new release of the software in four years.

23 Q. If you could turn to Exhibit 23 in that
24 binder, which I believe has also been admitted.
25 This is the third e-mail that we looked at
26 yesterday. Mr. Bonert.

27 What was the purpose behind this e-mail?

28 A. Well, by this time -- well, things were

1 looking pretty dire for Storix from my perspective,
2 and the debt that they were in was in pretty
3 crippling shape. They clearly were not going to
4 update the software. They were not going to work
5 with me.

6 The copyright trial did -- certainly didn't
7 go my way and Storix was confirmed as the owner of
8 the copyright, which then gave the majority of the
9 board of directors the right to never update the
10 software.

11 MR. KING: Your Honor, may I approach and
12 show the witness some exhibits?

13 THE COURT: Yes.

14 BY MR. KING:

15 Q. Now, prior to January '16 -- in January of
16 that year, you had a shareholders meeting, correct?

17 A. Yes.

18 Q. And the exhibits I'm going to show are 820,
19 631 and 785. This is Exhibit 820. Do you recognize
20 this exhibit?

21 A. I'm going to need a minute. Yes, I recall
22 this.

23 (Exhibit 820 referenced.)

24 (Exhibit 631 referenced.)

25 (Exhibit 785 referenced.)

26 BY MR. KING:

27 Q. What is this?

28 A. This is an e-mail that I sent to David

1 Huffman where I believe I attached a spreadsheet
2 that I created having to do with the financial
3 trends of the company over the years.

4 Q. What was the date of this e-mail?

5 A. January 14th, 2016.

6 MR. KING: Your Honor, I move to admit
7 Exhibit 820.

8 MR. MCCLOSKEY: Your Honor, it's
9 unaccompanied by the spreadsheet.

10 MR. KING: Just the e-mail.

11 MR. MCCLOSKEY: It's hard for me to assess
12 its admissibility or whether it's worthy --

13 THE COURT: Let's do this.

14 MR. MCCLOSKEY: -- of objection absent
15 seeing the spreadsheet.

16 THE COURT: But is there an objection? Not
17 an objection?

18 MR. MCCLOSKEY: I object because I don't
19 have the document in front of me, Your Honor.
20 There's a --

21 THE COURT: He's doing only the e-mail, not
22 the spreadsheet.

23 MR. MCCLOSKEY: But the whole e-mail is
24 about the spreadsheet, Your Honor.

25 THE COURT: Okay. Let's take our afternoon
26 recess. We'll be in recess until 9 o'clock tomorrow
27 morning. Have a great evening. Remember the
28 admonition. Thank you.

1 (Whereupon the jurors exit the courtroom.)

2 THE COURT: We're outside the presence of
3 the jury. There's a number of things, and we need
4 to be on the record.

5 First is I have a jury note. "I am trying
6 to understand the original driver/intent of the
7 bylaw amendment. I'm not clear on whether it was in
8 response to Robin Sassi getting Storix shares
9 (related to David Huffman's divorce). When was
10 Ms. Sassi awarded Storix shares date?"

11 So that's one thing. Then Exhibit 141, as
12 I recall, we had a discussion that we were going to
13 admit that exhibit subject to motion in limine
14 Number 6 of the defendants, and I think everyone was
15 in agreement. I'm wondering if that's been done in
16 terms of the redactions relative to the Court
17 granting that motion.

18 MR. SULLIVAN: We do have a redacted copy.
19 We'll bring the hard copies tomorrow.

20 THE COURT: Okay. Is there any objection
21 to its admission? The clerk is wondering whether
22 it's been admitted or not. And I think, as I
23 recall, I admitted it subject to the redactions.

24 MR. SULLIVAN: I believe that was the
25 ruling.

26 THE COURT: But my clerk has it not in, and
27 I want to make sure we're all on the same page.

28 MR. KING: As soon as I see the redactions,

1 I can tell you whether or not we have any further
2 objection.

3 THE COURT: Okay. Let's do that tomorrow
4 morning. And then on scheduling -- and I know,
5 Mr. King, you're in examination. It's not meant
6 just because you're in examination now.

7 But I fear we have woefully miscalculated
8 on when this case is going to the jury, and that
9 leaves the Court with a number of options. I can
10 keep, at every break, pleading with you, talking
11 with you, berating you, whatever it takes.

12 But we are now -- and I expected
13 Mr. Johnson, along with Mr. Huffman, to be probably
14 lengthy witnesses, but we're in Examination 2 of 3
15 before we even get to recross and redirect. And I
16 have -- I expected Mr. Johnson to go the rest of the
17 day, but we only have two more days of testimony
18 before we plan to argue on Thursday. Now, maybe
19 we've figured out that that's dreamland, but no
20 one's communicated that to me. And I'd like to know
21 what remains.

22 In looking at the witness list, it looks
23 like we have a lot that remains, including two
24 experts. And maybe they're not going to be lengthy,
25 but I fear the worst.

26 Remember, [Juror No. 6] is only paid ten
27 days, and I assured her that that's probably going
28 to be fine, didn't know for sure. But the way it's

1 going, I expect her to be excused at some point.
2 And if she's -- if we're going to go the rest of the
3 month, we should excuse her now instead of abusing
4 her and going ten days.

5 And then we are down to two alternates, but
6 the -- both alternates and all 12 remaining jurors
7 expect this case to go to the jury, because I told
8 them so, the week of the 13th and I think I said
9 early. There may be a second phase, and I think
10 we're on the verge of abusing the jury and I'm the
11 one that steps in to prevent that.

12 So I have alternatives. I can mistry it.
13 I don't want to do that. I can set time limits from
14 here on out. I don't want to do that. I can ask
15 you to and beseech you to prune your own tree. I
16 think it's getting fairly repetitious. I think
17 a lot of the questions are very specific; answers,
18 not so much. A lot of motions to strike granted or
19 portions thereof.

20 And I think the jury -- more importantly
21 than anything I've just said, I think it's dragging.
22 I think we are in danger of losing the jury. When
23 it drags, minds wander. And so that's not doing any
24 service to any of your respective clients.

25 I know it's hard fought. But I would ask
26 that you listen to me and think about it, and then
27 we can look at alternatives. I'm not interested in
28 anyone not having their fair day. You get your fair

1 day. We're trying three lawsuits. But something is
2 going terribly wrong, unless I'm -- I misunderstood
3 everyone at the outset.

4 But this case is not going to get to the
5 jury anytime soon. It won't be this week and I fear
6 it won't be next week, and then we're going to lose
7 jurors. And then we're going to have angry jurors.
8 And angry jurors don't decide it on whatever the
9 exhibit says, whatever the witness says. They
10 decide it because they're angry. And that's a
11 disservice, I think, to everyone. It doesn't help
12 one side. It doesn't help the other.

13 So I'll stop talking, because I know I'm
14 talking quite a bit, but listen to what I'm saying
15 and take it to heart. I'm the one watching the
16 jury. And I know you're all watching the jury,
17 but -- and I think, fortunately, we have a good
18 jury. Let's not abuse them.

19 My main issue is there's no way we're
20 arguing Thursday at the rate we're going. And,
21 okay, maybe Tuesday. I don't see that happening.
22 Okay. Maybe Wednesday, Valentine's Day. I don't
23 see that happening unless these witnesses are not
24 going to be called.

25 I think the jury has a lot of information.
26 We've been at this now for a while. They -- I think
27 they have the understanding that the parties are
28 frustrated with each other and maybe angry with each

1 other and here's all the reasons why. I think they
2 pretty much have those reasons. That's my view.

3 So I promised I'd stop talking. Thoughts?
4 Am I wrong? Are we going to argue on Thursday?

5 MR. MCCLOSKEY: We're not going to argue on
6 Thursday, Your Honor. You're not wrong. I think
7 you're dead on. We need to get our act together and
8 prune this case.

9 THE COURT: Just get in and get out. From
10 a lawyer point of view, you know what you need. And
11 I'm not --

12 I know, Mr. King, I'm talking while you're
13 doing your examination. I'm talking to everyone.

14 But get in and get out. They have heard
15 a lot and they're a good jury, I think. But we
16 don't -- we don't want to drag. We don't want to
17 bore them. We don't want to make them angry. We
18 don't want to have them looking at me like, Who's in
19 charge of this? Why, Judge, are you allowing them
20 to do this? And then they won't decide it based on
21 the facts and the law. They'll decide it because
22 they're angry.

23 And I've had cases like that, and that's
24 not -- that does no one a service of any kind.
25 A lot of money spent, a lot of emotions, and then an
26 angry jury decides. And that's not really the way
27 we would expect the adversary system of justice in
28 our country to work, at least not well.

1 So other thoughts? So here's another
2 thought, homework assignment. Go back tonight and
3 write down how much time you think you need -- I
4 know you can't control the other side or how the
5 other side's witness answers or doesn't answer
6 questions. I get that.

7 But you say, I'm in charge. I ask the
8 questions. So no one's going to talk unless there's
9 a question asked, and no one's going to talk beyond
10 the scope of the question. So you figure out how
11 much time I'm going to spend with this witness.

12 So I would say, "Mr. King, how much longer
13 with Mr. Johnson? Mr. McCloskey, how much time are
14 you going to spend with Mr. Johnson?" And then
15 there might be recross and there might be redirect,
16 and there might be recross. Calculate all that out,
17 even though I know you don't know well how to do the
18 recross and redirect, because you don't know exactly
19 what's coming, but I suspect you have a fair idea.
20 And then do it for each witness, and then we're
21 going to do the math and we're going to see where we
22 end up.

23 And at a minimum, I need to tell them the
24 good news is we're really ahead of schedule, or the
25 bad news is we're really behind and here's what I
26 think now, because we're having this discussion. We
27 don't leave them in the dark and say, "By the way,
28 it's going to last another month."

1 So do the homework tonight, how much time I
2 need. And I would suggest you prune your own tree,
3 get in, get out. They have heard it. They have
4 seen these e-mails. They have seen them a lot. But
5 everyone -- you know, I mean, we're not even in to
6 Mr. McCloskey yet. So the way we're going, I mean,
7 we might be -- so please do that math and then give
8 it to me tomorrow. We'll look and see where we are.

9 The alternative then becomes time limits.
10 I'm not saying I'm going to do that, but I'm asking
11 for your help in keeping the jury tuned in to
12 deciding this case based on the way the lawyers want
13 the case decided. So I'm asking for your help.

14 So other thoughts?

15 MR. MCCLOSKEY: We'll get it done,
16 Your Honor.

17 MR. SULLIVAN: Certainly.

18 THE COURT: Make sense?

19 MR. KING: It does.

20 THE COURT: All right. So thank you.
21 Enough said.

22 Now, there was an objection relative to the
23 last exhibit and -- so, Mr. King, I'm taking you
24 want to admit the e-mail without the spreadsheet?

25 Mr. McCloskey, you want it with the
26 spreadsheet?

27 MR. MCCLOSKEY: Yes, Your Honor.

28 MR. KING: This is their exhibit.

1 THE COURT: So thoughts? Why don't you do
2 this. It's late. I want to give Leyla a break.
3 Meet and confer. Come back tomorrow morning. We'll
4 talk about it. And then if I need to rule, I'll
5 rule. Okay?

6 MR. KING: Okay.

7 THE COURT: Thank you. We're in recess.

8 (The proceedings concluded at 4:41 p.m.)

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1 STATE OF CALIFORNIA)
)
2 COUNTY OF SAN DIEGO)

3
4 I, Leyla S. Jones, a Certified Shorthand
5 Reporter, do hereby certify:

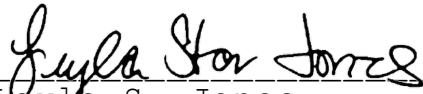
6 That prior to being examined, the witness
7 in the foregoing proceedings was by me duly sworn to
8 testify to the truth, the whole truth, and nothing
9 but the truth;

10 That said proceedings were taken before me
11 at the time and place therein set forth and were
12 taken down by me in shorthand and thereafter
13 transcribed into typewriting under my direction and
14 supervision;

15 I further certify that I am neither counsel
16 for, nor related to, any party to said proceedings,
17 nor in any way interested in the outcome thereof.

18 In witness whereof, I have hereunto
19 subscribed my name.

20
21 Dated: June 16, 2019

22
23 
24 Leyla S. Jones
CSR No. 12750