

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 01/04/2019

TIME: 10:30:00 AM

DEPT: 904

JUDICIAL OFFICER PRESIDING: Kevin A. Enright

CLERK: Robin Smith

REPORTER/ERM: Keren Guevara CSR# 12478

BAILIFF/COURT ATTENDANT: Tom Neal

CASE NO: **37-2015-00034545-CU-BT-CTL** CASE INIT.DATE: 10/13/2015

CASE TITLE: **Johnson vs. HUFFMAN [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Business Tort

EVENT TYPE: Motion Hearing (Civil)

MOVING PARTY: DAVID HUFFMAN, David Smiljkovich, Richard Turner, David Kinney, Manuel Altamirano

CAUSAL DOCUMENT/DATE FILED: Motion for Attorney Fees, 11/19/2018

APPEARANCES

David Aveni, counsel, present for individuals Huffman, et al.

Sean Sullivan, counsel, present for Storix, Inc.

Anthony Johnson, self represented, present telephonically.

The Court hears oral argument and confirms the tentative ruling as follows:

David Huffman, Richard Turner, Manuel Altamirano, David Kinney, and David Smiljkovich's (collectively "Defendants") motion for attorney fees is granted.

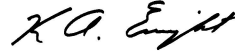
A defendant who prevails in a derivative suit may obtain reasonable attorney fees from a bond posted under Corporations Code section 800. (*Donner Mgmt. Co. v. Schaffer* (2006) 142 Cal. App. 4th 1296, 1309.) Prevailing party status is determined in the trial court's discretion **based on practical considerations.** (*Id.* at 1310.) The defendant seeking attorney fees is not required to prove that the derivative suit was frivolous, and where the bond was posted voluntarily, the defendant is also not required to show that there is no reasonable possibility that the suit would benefit the corporation or its shareholders. (*Id.* at 1305, 1309.)

Anthony Johnson ("Johnson") and Robbi Sassi ("Sassi") filed a derivative complaint on behalf of Storix, Inc. ("Storix") against Defendants. Johnson voluntarily posted a bond in the amount of \$50,000.00 pursuant to Corporations Code section 800, **the court found that Johnson lacked standing**, and after a bench trial the court determined that Sassi failed to meet her burden of proof. Accordingly, Defendants are the prevailing party and are therefore entitled to reasonable attorney fees from the bond.

The only party that opposed the motion was Johnson and the court finds that his opposition lacks merit.

There was no objection to the hourly rates charged or the overall time spent, and the court finds that the hourly rates were reasonable and that it was reasonable for Defendants to incur attorney fees in excess of \$50,000.00 in defending against the derivative suit. Defendants are therefore awarded \$50,000.00 in attorney fees, payable from the bond posted by Johnson. Defendants are ordered to distribute this award to Storix as reimbursement for attorney fees that were advanced by Storix.

IT IS SO ORDERED.



Judge Kevin A. Enright