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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ANTHONY JOHNSON,

Plaintiff,

v.

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

Defendants.

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

ORDER:

(1) GRANTING IN PART AND DENYING IN PART DEFENDANTS ALTAMIRANO, HUFFMAN, KINNEY, AND TURNER’S MOTION TO DISMISS;

[Doc. No. 30.]

(2) GRANTING DEFENDANTS STORIX, TYRELL, AND SULLIVAN’S MOTIONS TO DISMISS WITH PREJUDICE;

[Doc. Nos. 31, 32.]

(3) GRANTING IN PART AND DENYING IN PART DEFENDANTS ALTAMIRANO, HUFFMAN, KINNEY, AND TURNER’S ANTI-SLAPP MOTION TO STRIKE;

[Doc. No. 29.]

**(4) GRANTING DEFENDANTS
TYRELL AND SULLIVAN’S ANTI-
SLAPP MOTION TO STRIKE; AND**

[Doc. No. 33.]

**(5) DENYING DEFENDANTS
ALTAMIRANO, HUFFMAN,
KINNEY, AND TURNER’S MOTION
FOR AN UNDERTAKING UNDER
CAL. CIV. PROC. CODE § 1030**

[Doc. No. 28.]

On August 29, 2019, Defendants Manuel Altamirano, David Huffman, David Kinney, and Richard Turner filed a motion to dismiss Plaintiff Anthony Johnson’s complaint pursuant to Federal Rule of Civil Procedure 12(b)(6); an anti-SLAPP motion to strike pursuant to California Code of Civil Procedure § 425.16; and a motion for an order requiring Plaintiff to comply with a statutory undertaking pursuant to California Code of Civil Procedure § 1030. (Doc. Nos. 28, 29, 30.) On August 30, 2019, Defendants Paul Tyrell and Sean Sullivan filed a motion to dismiss Plaintiff’s complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) and an anti-SLAPP motion to strike pursuant to California Code of Civil Procedure § 425.16. (Doc. Nos. 32, 33.) On August 30, 2019, Defendant Storix Inc. filed a motion to dismiss Plaintiff’s complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). (Doc. No. 31.) On September 17, 2019, Plaintiff filed his responses in oppositions to Defendants’ motions. (Doc. Nos. 39, 40, 41, 42, 43, 44.) On September 30, 2019, Defendants filed their replies. (Doc. Nos. 53, 54, 55, 56, 57, 58.) On October 1, 2019, the Court took the matters under submission. (Doc. No. 59.)

On October 9, 2019, the Court requested supplemental briefing on the issue of *res judicata* as to Plaintiff’s claim for conversion. (Doc. No. 62.) On October 25, 2019, Defendants Altamirano, Huffman, Kinney, and Turner filed their opening supplemental brief. (Doc. No. 66.) On November 7, 2019, Plaintiff filed his responsive supplemental

1 brief. (Doc. No. 67.) On November 15, 2019, Defendants Altamirano, Huffman, Kinney,
2 and Turner filed their reply supplemental brief. (Doc. No. 69.) For the reasons below, the
3 Court: (1) grants in part and denies in part Defendants Altamirano, Huffman, Kinney, and
4 Turner’s motion to dismiss; (2) grants Defendants Storix, Tyrell, and Sullivan’s motions
5 to dismiss; (3) grants in part and denies in part Defendants Altamirano, Huffman, Kinney,
6 Turner’s motions to strike; (4) grants Defendants Tyrell and Sullivan’s motion to strike;
7 and (5) denies Altamirano, Huffman, Kinney, and Turner’s motion for a statutory
8 undertaking.

9 **Background**

10 **I. The Prior Federal Action**

11 On August 8, 2014, Anthony Johnson – the Plaintiff in this action – filed a complaint
12 in federal court, Case No. 14-cv-1873-H-BLM, against Storix – one of the defendants in
13 this action – alleging claims for: (1) federal copyright infringement under the Copyright
14 Act of 1976, 17 U.S.C. § 101, *et seq.*; (2) contributory copyright infringement; and (3)
15 vicarious copyright infringement.¹ (Doc. No. 34-2, RJN Ex. 1.) On September 19, 2014,
16 Storix filed an answer to Johnson’s complaint and counterclaims for: (1) a declaratory
17 judgment of non-infringement; and a declaratory judgment that it is the owner of the
18 copyrights at issue. (Id. Ex. 2.)

19 The action was tried before a jury beginning on December 8, 2015. (Doc. No. 34-2,
20 RJN Ex. 3 at 1.) On December 15, 2015, the jury returned a verdict that was in favor of
21 Storix on all causes of action. (Id. at 2.) Specifically, in the verdict, the jury found that
22 “Storix, Inc. proved by a preponderance of the evidence that Anthony Johnson’s copyright
23

24 ¹ In deciding the present motions, the Court takes judicial notice of the filings from the prior federal
25 action and the state court actions submitted by the parties. See United States v. Black, 482 F.3d 1035,
26 1041 (9th Cir. 2007) (A district court “may take notice of proceedings in other courts, both within and
27 without the federal judicial system, if those proceedings have a direct relation to matters at issue.”);
28 Vasserman v. Henry Mayo Newhall Mem’l Hosp., 65 F. Supp. 3d 932, 942–43 (C.D. Cal. 2014) (“Court
orders and filings are proper subjects of judicial notice.”); ScriptsAmerica, Inc. v. Ironridge Glob. LLC,
56 F. Supp. 3d 1121, 1136 (C.D. Cal. 2014) (“It is well established that federal courts may take judicial
notice of related state court orders and proceedings.”).

1 infringement claim against Storix, Inc. is barred because Anthony Johnson transferred
2 ownership of all pre-incorporation copyrights, including SBAdmin Version 1.3, in writing
3 from himself to Storix, Inc.” (Id.) On November 16, 2016, the Court entered an amended
4 judgment incorporating the jury’s verdict “in favor of Defendant and Counter-Claimant
5 Storix, and against Plaintiff Anthony Johnson.” (Id. at 3.)

6 Johnson appealed the Court’s judgment to the United States Court of Appeals for
7 the Ninth Circuit. On December 19, 2017, the Ninth Circuit affirmed in part, reversed in
8 part, and remanded for further proceedings. Johnson v. Storix, Inc., 716 F. App’x 628, 632
9 (9th Cir. 2017), cert. denied, 139 S. Ct. 76 (2018). In the decision, the Ninth Circuit
10 affirmed the jury’s verdict on liability, as well as the Court’s decision to award Storix
11 attorneys’ fees. Id. at 631. However, the Ninth Circuit held that the fees awarded were
12 “unreasonable,” and remanded with instructions for the Court “to reconsider the amount.”
13 Id. at 632.

14 On August 7, 2018, after issuing an order awarding attorneys’ fees on remand, the
15 Court entered a second amended judgment in the action. (Doc. No. 34-2, RJN Ex. 6.) On
16 August 14, 2018, Plaintiff appealed the Court’s second amended judgment to the Ninth
17 Circuit. Johnson v. Storix, Inc., No. 14-cv-01873-H-BLM, Docket No. 304 (S.D. Cal. Aug.
18 14, 2018). Plaintiff’s appeal of the amount of attorneys’ fees is currently pending before
19 the Ninth Circuit. See Johnson v. Storix, Inc., No. 18-56106 (9th Cir., filed Aug. 16, 2018).

20 **II. The State Court Actions**

21 On August 20, 2015, Storix filed a complaint in state court, Case No. 37-2015-
22 28262-CU-BT-CTL, against Anthony Johnson and Janstor Technology, alleging claims
23 for: (1) breach of fiduciary duty against Johnson; and (2) aiding and abetting breach of
24 fiduciary duty against Janstor. (Doc. No. 34-2, RJN Ex. 8.) On October 13, 2015, Anthony
25 Johnson along with Robin Sassi filed a derivative complaint on behalf of Storix in state
26 court, Case No. 37-2015-34545-CU-BT-CTL, against David Huffman, Richard Turner,
27 Manuel Altamirano, David Kinney, and David Smiljkovich, alleging claims for: (1) breach
28 of fiduciary duty; (2) abuse of control; (3) corporate waste; and (4) an accounting. (Doc.

1 No. 34-3, RJN Ex. 14.) The two actions were subsequently consolidated by the state court.

2 On March 14, 2016, Storix filed a first amended complaint in Case No. 37-2015-
3 28262, alleging the same two causes of action. (Doc. No. 34-2, RJN Ex. 9.) On April 13,
4 2016, Johnson filed a cross-complaint in Case No. 37-2015-28262 against David Huffman,
5 Richard Turner, Manuel Altamirano, David Kinney, and David Smiljkovich, alleging
6 claims for: (1) breach of fiduciary duty; (2) civil conspiracy; and (3) fraud. (Id. Ex. 13.)
7 On June 2, 2016, Johnson and Sassi filed a first amended complaint in the derivative action,
8 alleging the same four causes of action. (Doc. No. 34-3, RJN Ex. 15.) On September 6,
9 2016, Storix filed a second amended complaint in Case No. 37-2015-28262, alleging the
10 same two causes of action for: (1) breach of fiduciary duty against Johnson; and (2) aiding
11 and abetting breach of fiduciary duty against Janstor. (Doc. No. 34-2, RJN Ex. 11.)

12 Following a jury trial, on February 20, 2018, a jury returned a verdict in Case No.
13 37-2015-28262 in favor of Storix and against Johnson on Storix's claim for breach of
14 fiduciary duty and against Johnson on all of his cross-claims. (Doc. No. 34-4, RJN Ex.
15 17.) Specifically, in the verdict, the jury found that "Anthony Johnson breach[ed] his duty
16 of loyalty by knowingly acting against Storix, Inc.'s interests while serving on the Board
17 of Directors of Storix, Inc." (Id. at 1.) In addition, the jury award Storix \$3,739.14 "as a
18 result of Anthony Johnson's acts or conduct in breach of a fiduciary duty or duties owed
19 to Storix, Inc." (Id. at 2.)

20 On May 16, 2018, after a bench trial, the state court issued a decision and order on
21 the claims in the derivative action, finding in favor of the defendants and against the
22 plaintiff on all four causes of action. (Doc. No. 34-4, RJN Ex. 20.) On September 12,
23 2018, the state court entered a consolidated judgment in the two actions as follows: (1)
24 "[i]n favor of plaintiff Storix, Inc. and against Defendant Anthony Johnson on Storix Inc's
25 complaint for breach of fiduciary duty;" (2) "Cross-Complainant Anthony Johnson shall
26 take nothing from Cross-Defendants David Huffman, Richard Turner, Manuel Altamirano,
27 David Kinney, and David Smiljkovich, or any of them, on the Cross-Complaint filed in
28 Case No. 37-2015-00028262-CU-BT-CTL;" (3) Plaintiffs Anthony Johnson and Robin

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