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

11 ANTHONY JOHNSON, an individual, )  
12 Plaintiff, )

13 vs. )

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

19 Defendants. )  
20

Case No. 19CV1185-H-BLM

**DEFENDANTS' FURTHER  
BRIEFING ON THE EFFECT OF  
THE FINALITY OF STATE COURT  
APPEAL D075308 ON THE STAY  
AND THIS COURT'S ORDER AT  
ECF NO. 73**

Judge: Hon. Marilyn L. Huff  
Dept.: Courtroom 15A

Complaint Filed: June 24, 2019  
Trial Date: Not Set

21  
22 Defendants Manuel Altamirano, Richard Turner, David Kinney, and David  
23 Huffman (collectively, "Defendants") hereby submit further briefing, as requested by  
24 the Court, on the effect, if any, of the California Court of Appeal's December 31,  
25 2020 opinion and April 22, 2021 remittitur on the Court's stay of this action and the  
26 Court's December 2, 2019 order.

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1 **I. INTRODUCTION**

2 As the Court is fully aware, this case represents one in a long line of actions  
3 filed against Defendants by Plaintiff Anthony Johnson (“Johnson”) over the past  
4 seven years. These cases, however, are not distinct in their factual basis, but rather,  
5 all arise from the same transactional nucleus of facts, which is either: 1) the transfer  
6 of ownership of the copyrights to SBAdmin from Johnson to Storix<sup>1</sup>; or 2) the  
7 management and control of Storix after Johnson transferred 60% of the corporation’s  
8 stock to Defendants<sup>2</sup>. A complete procedural history of Johnsons’ lawsuits against  
9 Defendants and Storix (including the attorneys representing them)<sup>3</sup> is set forth in the  
10 Court’s April 26, 2021 Order. (See Doc. No. 107, pp. 1-7.) It is the second nucleus of  
11 operative facts relevant to the two remaining causes of action in this matter, i.e.  
12 breach of fiduciary duty and conversion.

13 Because the present action arose from the same nucleus of operative facts  
14 litigated by Johnson in the Consolidated Action, Defendants filed a motion to dismiss  
15 asserting the doctrine of *res judicata*, among others, as a basis to dismiss Johnson’s  
16 claims for breach of fiduciary duty and conversion. (Doc. Nos. 30, 54, 66, 69.) On  
17 December 2, 2019, the Court issued its order, granting in part and denying in part,  
18 Defendants’ motion to dismiss. (Doc. No. 73.) In the order, the Court dismissed with  
19 prejudice all causes of action asserted by Johnson against Defendants except the  
20 claims for breach of fiduciary duty and conversion. (*Id.* at 40.) The Court declined to  
21 dismiss the breach of fiduciary duty and conversion claims on *res judicata* grounds

22 \_\_\_\_\_  
23 <sup>1</sup> Johnson litigated a copyright infringement action against Storix culminating in a December 15, 2015  
24 unanimous jury verdict in favor of Storix on all causes of action. (See U.S. District Court for the  
Southern District of California, Case No. 14-cv-1873-H-BLM; Doc. No. 34-2, RJN Ex. 3 at 2.) All  
appellate review was exhausted June 29, 2020. *Johnson v. Storix*, No. 19-1244 (U.S. Jun. 29, 2020).

25 <sup>2</sup> Johnson litigated a consolidated action, which included causes of action for breach of fiduciary duty,  
26 abuse of control, corporate waste, accounting, civil conspiracy, and fraud culminating in a September  
27 12, 2018 consolidated judgment in favor of Storix and Defendants on all causes of action  
28 (“Consolidated Action”). (See San Diego Superior Court Lead Case No. 37-2015-34545-CU-BT-CTL;  
Doc. No. 34-4, RJN Ex. 22.) All appellate review was exhausted April 22, 2021. *Storix, Inc. v. Johnson*,  
No. D075308 (Cal. App., filed Dec. 10, 2018) (docket).

<sup>3</sup> As referenced at footnote 3 of Doc. No. 107, Defendants also note that Johnson amended his July 16,  
2020 complaint on July 21, 2020 to add Wilson Elser attorneys, and current counsel for Defendants in  
this matter, Marty B. Ready, Michael P. McCloskey<sub>2</sub>, and David J. Aveni.

1 because the Consolidated Action was not yet final due to Johnson’s appeal of the  
2 judgment. (*Id.* at 29, 32.) The Court also noted in its December 2, 2019 Order that  
3 “[t]he Court’s denial of Defendants’ motion to dismiss Plaintiff’s claim for breach of  
4 fiduciary duty as barred by *res judicata* is without prejudice to Defendants raising  
5 their *res judicata* defense at a later stage in the proceedings once the state court  
6 judgment has become final.” (Doc. No. 73 at 29, fn. 7.) As a result of the pending  
7 appeal in the Consolidated Action, Defendants requested, and the Court granted, a  
8 stay of this action for six months pending the state court appeal. (Doc. Nos. 78, 88.)  
9 Because the appeal remained pending at the conclusion of the initial six month stay,  
10 Defendants requested, and the Court granted, a continued stay of this action for an  
11 additional six months. (Doc. Nos. 93, 97.)

12 During the second six-month stay of this action, the California Court of  
13 Appeal issued its opinion on December 31, 2020. On April 22, 2021, the California  
14 Court of Appeal issued its remittitur. On April 26, 2021, this Court issued an Order  
15 Requesting Additional Briefing on the effect, if any, of the California Court of  
16 Appeal’s December 31, 2020 opinion and April 22, 2021 remittitur on the Court’s  
17 stay of this action and the Court’s December 2, 2019 order. (Doc. No. 107.)  
18 Defendants address, in turn, the two points raised by the Court.

19 In sum, this matter should no longer be stayed now that the appeal of the  
20 Consolidated Action is complete. And finally, the Court should exercise its authority  
21 to revisit Defendants’ *res judicata* defense as to the breach of fiduciary duty and  
22 conversion claims now that the final judgment requirement has been satisfied.

## 23 **II. DISCUSSION**

### 24 **A. The Purpose For The Stay Has Been Satisfied**

25 Defendants requested a stay of this action specifically to allow the  
26 Consolidated Action to become final for purposes of *res judicata*, which would  
27 preserve judicial resources and narrow, if not completely resolve, the remaining  
28 issues and claims before this Court. As of April 22, 2021, the Consolidated Action is

1 now final and the purpose of the stay has been satisfied. Defendants are not opposed  
2 to lifting the stay and the action proceeding.

3 **B. The Court Should Exercise Its Authority And Reconsider Its Prior**  
4 **December 2, 2019 Order Now That Defendants Have Satisfied All**  
5 **Requirements Necessary To Assert *Res Judicata***

6 The Court requested this briefing to understand the effect of the California  
7 Court of Appeal’s December 31, 2020 opinion and April 22, 2021 remittitur on the  
8 Court’s December 2, 2019 order. In the December 2, 2019 order, the Court declined  
9 to dismiss Johnson’s breach of fiduciary duty and conversion claim as barred by the  
10 doctrine of *res judicata* because there was no final judgment under California law.  
11 As of April 22, 2021, the judgment in the Consolidated Action is now final because  
12 the California Court of Appeal issued its decision and the California Supreme Court  
13 denied Johnson’s petition for review. *See Sosa v. DIRECTV, Inc.*, 437 F.3d 923, 928  
14 (9<sup>th</sup> Cir. 2006) (under California law, a judgment becomes final for purposes of *res*  
15 *judicata* once “there has been a decision on appeal as well as denial of review by the  
16 California Supreme Court.”).

17 Under California law, the doctrine of *res judicata* or claim preclusion applies  
18 when a second suit involves: “(1) the same cause of action (2) between the same  
19 parties (3) after a final judgment on the merits in the first suit.” *DKN Holdings LLC*  
20 *v. Faerber*, 61 Cal.4<sup>th</sup> 813, 824 (2015). “Issue preclusion applies: (1) after final  
21 adjudication (2) of an identical issue (3) actually litigated and necessarily decided in  
22 the first suit and (4) asserted against one who was a party in the first suit or one in  
23 privity with that party. *Id.* at 825. A judgment becomes final for purposes of *res*  
24 *judicata* once an appeal of the judgment is resolved. *Sosa*, 437 F.3d at 928.

25 Here, Defendants have satisfied the requirements for the application of *res*  
26 *judicata* as to the two remaining claims in this matter – breach of fiduciary duty and  
27 conversion. As fully briefed in Defendants Fed. R. Civ. Proc. 12(b)(6) motion (Doc.  
28 Nos. 30, 54), Johnson’s breach of fiduciary duty claim is barred by the doctrine of

1 *res judicata* for all the reasons set forth in Defendants’ motion. (See Doc. No. 30 at  
2 8-9; Doc. No. 54 at 3.) Similarly, Johnson’s conversion claim is barred by the  
3 doctrine of *res judicata* for all the reasons set forth in Defendants’ further briefing in  
4 support of Defendants’ Fed. R. Civ. Proc. 12(b)(6) motion. (See Doc. Nos. 66, 69.) In  
5 ruling on Defendants’ Fed. R. Civ. Proc. 12(b)(6) motion, the Court declined to  
6 dismiss Plaintiff’s claim for breach of fiduciary duty and conversion because, at that  
7 time, there was no final judgment for purposes of *res judicata* under California law.  
8 (See Doc. No. 73 at 29, 32.) The Court, however, invited Defendants’ to revisit “their  
9 *res judicata* defense at a later stage in the proceedings” once the state court judgment  
10 has become final.” (*Id.* at 29, fn. 7.) As discussed above, the state court judgment is  
11 now final in light of the California Court of Appeal’s December 31, 2020 opinion  
12 and April 22, 2021 remittitur. Pursuant to the Court’s authority, Defendants  
13 respectfully request the Court reconsider its December 2, 2019 Order now that the  
14 state court judgment is final. See *United States v. Smith*, 389 F.3d 944, 948 (9<sup>th</sup> Cir.  
15 2004) (“a district court may reconsider its prior rulings so long as it retains  
16 jurisdiction over the case.”); see also *City of Los Angeles v. Santa Monica*  
17 *Baykeeper*, 254 F.3d 882, 888 (9<sup>th</sup> Cir. 2001) (“[a]ll rulings of a trial court are subject  
18 to revision at any time before the entry of judgment.”).

19 **III. CONCLUSION**

20 For the foregoing reasons, Defendants respectfully submit the stay of this  
21 action should be lifted and the Court should reconsider its December 2, 2019 order in  
22 light of the state court judgment becoming final for purposes of *res judicata*.

23 Dated: May 10, 2021

**WILSON, ELSER, MOSKOWITZ,  
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24  
25 /s/ Marty B. Ready  
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