

1 Michael P. McCloskey, Esq. (SBN 106051)
Marty B. Ready, Esq. (SBN 239135)
2 **WILSON, ELSER, MOSKOWITZ,**
EDELMAN & DICKER LLP
3 401 West A Street, Suite 1900
San Diego, CA 92101
4 Telephone: (619) 321-6200
Facsimile: (619) 321-6201
5 E-mail: michael.mccloskey@wilsonelser.com
marty.ready@wilsonelser.com

6 Attorneys for Defendants,
7 Manuel Altamirano, Richard Turner, David Kinney and David Huffman

8
9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 ANTHONY JOHNSON, an individual,)

12 Plaintiff,)

13 vs.)

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

18 Defendants.)
19

Case No. 19CV1185-H-BLM

**DEFENDANTS' REPLY IN
SUPPORT OF MOTION FOR STAY
OF PROCEEDINGS PENDING
STATE COURT APPEAL**

Hearing Date: February 3, 2020
Hearing Time: 10:30 a.m.

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

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

20
21 Defendants Manuel Altamirano, Richard Turner, David Kinney, and David
22 Huffman (collectively, "Defendants") hereby submit their reply in support of their
23 request the Court stay the above-captioned action pending resolution by the
24 California Fourth District Court of Appeal of the appeal in *Anthony Johnson v. David*
25 *Huffman, Richard Turner, Manuel Altamirano, David Kinney, and David*
26 *Smiljkovich*, Case No. D075308, which involves the same parties to this action and
27 the same factual and legal issues.

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1 **I. INTRODUCTION**

2 In opposition to Defendants' motion for a stay, Plaintiff Anthony Johnson's
3 ("Johnson") sole argument against a stay is that *res judicata* does not apply because
4 the State Court Action does not involve the same claims or issues. (Opposition, p. 2.)
5 This argument, however, misses the point of Defendants' request. Johnson is
6 litigious and his willingness to file meritless complaint after complaint and appeal
7 any adverse order or ruling is the type of piecemeal litigation the doctrine of *res*
8 *judicata* was designed to address.

9 In this action, Johnson has two remaining claims: 1) breach of fiduciary duty;
10 and 2) conversion. The first claim, breach of fiduciary duty, is the same cause of
11 action Johnson asserted against these very same Defendants in the Derivative and
12 Direct Suits, which are now pending on appeal. The second claim, conversion, is
13 also a claim Johnson litigated against these Defendants or should have brought in the
14 Derivative and Direct Suits. In the interest of judicial economy and the orderly
15 course of justice, a stay is warranted where the State Court Action satisfies all but
16 one of the *Nordhorn* factors – a final judgment on the merits. Defendants
17 respectfully request the Court stay this action pending resolution of the State Court
18 Action.

19 **II. DISCUSSION**

20 One of the primary policies behind the doctrine of *res judicata* is precluding
21 "piecemeal litigation by splitting a single cause of action or re-litigation of the same
22 cause of action on a different legal theory or for different relief." *Weikel v. TCW*
23 *Realty Fund II Holding Co.*, 55 Cal.App.4th 1234, 1245 (1997). To accomplish this
24 policy, *res judicata* acts as a bar to all causes of action that were previously litigated
25 or that could have been litigated. *Allied Fire Protection v. Diede Construction, Inc.*,
26 127 Cal.App.4th 150, 155 (2005). Johnson's two remaining claims against
27 Defendants before this Court were previously litigated or could have been litigated in
28 the State Court Action and should be barred by the doctrine of *res judicata*. A stay is

1 therefore warranted to adhere to the policy considerations behind the doctrine of *res*
2 *judicata* as well as narrowing and simplification of the issues pending before this
3 Court.

4 **A. Johnson’s Breach of Fiduciary Duty Claim was Previously Litigated**

5 Johnson’s sole breach of fiduciary duty claim is based on the allegation
6 Defendants’ breach of their fiduciary duty harmed Johnson “by the loss of Johnson’s
7 40% of Storix’s profits used to pay Partner-Defendants and Storix’s counsel for acts
8 committed solely for Partner-Defendants’ benefit.” (Doc. No. 1, ¶ 47.) The alleged
9 breach of fiduciary duty included “unfairly denying Johnson benefits of Storix that
10 Partner-Defendants afforded themselves... [and] using Storix’s profits otherwise
11 owed to Johnson for their personal benefit, including all monies paid to their personal
12 attorneys.” (Doc. No. 1, ¶ 46.) But Johnson already litigated breach of fiduciary
13 duty against these Defendants in the Direct and Derivative Suits. For example,
14 Johnson alleges in the Direct Suit Defendants breached their fiduciary duties and the
15 harm he suffered was “by...loss of money in defending a suit;” and “harmed by
16 being denied distributions from Storix profits, as all profits were spent instead in
17 litigation.” (Doc. No. 30-3, RJN, Ex. 3, ¶¶ 62 – 64.) Similarly, this very same claim
18 was litigated in the Derivative Suit where Johnson contended “defendants improperly
19 advanced defense fees and costs to themselves.” (ECF No. 30-3, RJN, Ex. 1, Ex. A,
20 p. 3.) For Johnson to now assert Defendants have failed to identify any prior claims
21 or issues in the State Court Action relevant under the doctrine of *res judicata* ignores
22 the realities of his own pleadings. Because allowing Johnson to move forward in this
23 litigation with claims and issues already litigated would result in piecemeal litigation,
24 a stay is warranted.

25 **B. Johnson’s Conversion Claim is Barred by *Res Judicata***

26 Johnson’s conversion claim is also barred by the doctrine of *res judicata*.
27 Johnson alleges “that Partner-Defendants converted almost half a million dollars of
28 Storix’s profits earned when Johnson was a sole shareholder to their personal equity

1 accounts.” (Doc. No. 1, ¶ 30.) The amounts Johnson alleges were converted, and to
2 which he is allegedly entitled to, were earned prior to September 2011 when
3 Defendants became shareholders of Storix. Here, however, Johnson is seeking to re-
4 litigate the same claim previously litigated in the Derivative and Direct Suits.

5 In the Derivative Suit, Johnson, by way of his accounting claim, sought relief
6 from the state court to determine the “amount of money due from Defendants to
7 Plaintiffs.” (Doc. No. 29-3, Ex. 5, ¶ 166.) The accounting cause of action alleged
8 Defendants “engaged in self-dealing and corporate waste as described above,
9 misappropriating funds that belonged to Storix and its shareholders.” (*Id.* ¶ 165.)
10 Additionally, Johnson alleged in his accounting claim that Defendants refused his
11 access to Storix’s financial documents. (*Id.* ¶ 164.) These same facts form the basis
12 of Johnson’s conversion claim. Specifically, Johnson is alleging he was denied
13 access to Storix’s financials, which would have alerted him to an amount of money
14 allegedly owed to him. Johnson is therefore seeking to re-litigate that which was
15 already decided on the merits in the Derivative Suit.

16 Moreover, the same transactional nucleus of facts were at issue in the State
17 Court Action. The consolidated matters before the state court involved the actions of
18 Defendants when they took over Storix, Inc. upon Johnson’s medical diagnosis in
19 2011. From that point forward, the acts and/or omissions of Defendants were
20 extensively litigated on the merits to final judgment in the Direct and Derivative
21 Suits. As a result, Johnson’s claims involving an alleged conversion are the same as
22 those previously litigated or those that should have been litigated in the State Court
23 Action. Johnson is simply re-litigating and repackaging issues under new theories
24 because of his displeasure with the judgment rendered on the merits in state court.
25 The litigious efforts of Johnson against Defendants should not be rewarded. This
26 type of piecemeal litigation favors a stay pending the final resolution of the State
27 Court Action.

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1 **III. CONCLUSION**

2 A stay of this action is warranted where Defendants have demonstrated the
3 resolution of the State Court Action will significantly, if not completely, narrow and
4 simplify the issues pending before this Court. Defendants respectfully request the
5 Court grant their Motion for Stay Proceedings in the above-titled action, pending the
6 resolution of the State Court Action.

7 Dated: January 21, 2020

**WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP**

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9
10 By: /s/ Marty B. Ready
11 Michael P. McCloskey, Esq.
12 Marty B. Ready, Esq.
13 Attorneys for Defendant
14 Manuel Altamirano, Richard Turner,
15 David Kinnev and David Huffman
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