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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**
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11 ANTHONY JOHNSON, an individual,

12 *Plaintiff,*

13 vs.

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

21 *Defendants.*

Case No. 3:19-cv-1185-H-BLM

**PLAINTIFF’S OPPOSITION TO
DEFENDANTS’ MOTION TO STAY
PROCEEDINGS**

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

22
23 Plaintiff Anthony Johnson (“Johnson”) hereby submits this Opposition to the
24 motion of defendants Manuel Altamirano, Richard Turner, David Kinney and David
25 Huffman (collectively “Defendants”) to stay proceedings in the above-titled action
26 pending resolution of an unrelated State Court Action.

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1 **I. INTRODUCTION**

2 Defendants assert that this case should be stayed pending resolution of the
3 appeal of a California Superior Court case, no. 37-2019-0034545-CU-BT-CTL
4 (“State Action”), because the “precise issues” to be determined on appeal are to be
5 decided in this action. As such, Defendants assert that resolution of the State Action
6 in their favor will have preclusive effect on Johnson’s current claims. Just as Johnson
7 argued in opposition to Defendants’ numerous duplicative past motions, Defendants
8 have not and cannot identify any claims or issues litigated in the State Action
9 identical to those in this action. As such, there are no issues pending appeal that bear
10 on this litigation, and thus no reason to stay these proceedings.

11 **II. ARGUMENT**

12 **A. No Stay is Warranted Because No Identical Claims or Issues in**
13 **this Lawsuit Were Decided in the State Court Action**

14 Defendants delayed answering Johnson’s claims for six months by broadly
15 asserting a defense of *res judicata*, and now insist that a further delay of these
16 proceedings is warranted because they intend to assert the same defense after the
17 appeal of the State Action is decided. Yet, Defendants again broadly assert *res*
18 *judicata* without identifying any prior claims or issues relevant to this action.

19 *Res judicata* does not apply to Johnson’s claims because no *specific* claims or
20 issues were previously litigated and decided. This Court dismissed with prejudice all
21 but two causes of action against the Defendants. The first remaining claim is that:

22 “Partner-Defendants breached their duty to Johnson by using Storix's
23 profits otherwise owed to Johnson for their personal benefit, including all
24 monies paid to their personal attorneys and corporate [counsel] to facilitate,
25 conceal and defend their tortious conduct unrelated to their duties of agents
26 of Storix, by enlisting Attorney-Defendants to advise and assist Partner-
27 Defendants in perpetuating and protecting their dominance and control, and
by directing Attorney-Defendants to obstruct, interfere and otherwise
defend against claims in the Derivative Suit brought on Storix's behalf.”

28 (Complaint ¶ 46.) The second remaining claim is that:

1 “Partner-Defendants substantially interfered with Johnson's property by
2 knowingly and intentionally taking possession of the money Johnson was
3 entitled to, preventing Johnson's access to the money or records pertaining
4 to it, using the money for their personal benefit, and refusing to return
5 Johnson's money after he discovered the conversion and demanded it be
6 returned to him.”

(Complaint ¶ 50.)

7 Rather than respond to Johnson’s repeated argument that Defendants cannot
8 identify any identical claims or issues in the State Action, Defendants broadly refer to
9 “whether Defendants breached a fiduciary duty to Plaintiff and whether Defendants
10 engaged in acts to Plaintiff s monetary detriment.” (Motion at p. 4.) Neither “breach
11 of fiduciary duty” or “engaging in acts” are specific claims. To find otherwise would
12 allow Defendants to forever breach any fiduciary duty or engage in any act to
13 Johnson’s detriment despite being an entirely different act causing different damage.

14 There was no prior claim against Defendants for using Storix’s funds and
15 counsel to perpetuate and protect their dominance and control or to interfere and
16 defend the derivative claims. Nor was there a claim that Defendants converted money
17 owed to Johnson for their personal use. Notably, Defendants “concealed the
18 conversion” and “acted to prevent Johnson from discovering the conversion”
19 throughout the entire State Action. Their fraudulent acts prevented Johnson from
20 discovering the conversion until *after* the prior litigation concluded.

21 Lastly, Defendants’ argument that they will suffer “substantial hardship” if a
22 stay is not granted is absurd. Despite being sued in this very lawsuit for unlawfully
23 using Johnson’s 40% share of Storix’s profits for acts “unrelated to their duties of
24 agents of Storix” and for their personal benefit (Complaint ¶ 46), they brazenly self-
25 approved having Storix pay all their defense costs in this action as well. Defendants
26 benefit at Johnson’s (and Storix’s) expense from every act they take to prolong this
27 litigation, just as they did in all prior litigation.

1 **III. CONCLUSION**

2 No claims or issues raised in this action were previously litigated or decided.
3 There are no issues in the pending State Court appeal that have any bearing on this
4 case. Importantly, Johnson is not appealing the consolidated shareholder derivative
5 action.

6 There is no cause for this Court to delay these proceedings. Since there are no
7 claims or issues in past litigation that bear on the current claims, Johnson requests the
8 Court deny Defendants' motion to stay and issue a final decision as to Johnson's
9 remaining claims to preclude Defendants from wasting any more time reasserting the
10 same untenable *res judicata* defense.

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12 DATED: January 6, 2020

Respectfully submitted,

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14 By: 
15 ANTHONY JOHNSON (In Pro Per)
16 Email: flydiversd@gmail.com
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CERTIFICATE OF SERVICE

I, Anthony Johnson, declare that:

I am over the age of 18 and am a self-represented party to the foregoing action. I am familiar with the business practice for electronic filing and service through the court's CM/EFF system, pursuant to which practice I served the foregoing:

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO
STAY PROCEEDINGS

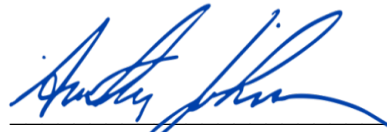
by electronic filing and sending to the e-mail addresses of counsel and unrepresented parties listed below:

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I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on January 6, 2020 at Las Vegas, Nevada.


Anthony Johnson