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

ANTHONY JOHNSON,
Plaintiff,
v.
MANUEL ALTAMIRANO, et al.,
Defendants.

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

**ORDER SETTING BRIEFING
SCHEDULE ON THE ISSUE OF *RES
JUDICATA* AS TO PLAINTIFF'S
CLAIM FOR CONVERSION**

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

1 in oppositions to Defendants’ motions. (Doc. Nos. 39, 40, 41, 42, 43, 44.) On September
2 30, 2019, Defendants filed their replies. (Doc. Nos. 53, 54, 55, 56, 57, 58.)

3 In their Rule 12(b)(6) motion to dismiss, Defendants Manuel Altamirano, David
4 Huffman, David Kinney, and Richard Turner argue that Plaintiff’s claim for conversion
5 should be dismissed as barred by the applicable statute of limitations. (Doc. No. 30-1 at 9-
6 11.) In response, Plaintiff argues that his conversion claim is not barred by the statute of
7 limitations because he did not discover the alleged conversion until December 2018. (Doc.
8 No. 40 at 13-14.) See Bennett v. Hibernia Bank, 47 Cal. 2d 540, 561 (1956). Although
9 the Defendants raise the issue of *res judicata* as to other claims in Plaintiff’s complaint
10 based on the prior federal and state court judgments that have been entered in prior actions
11 between the parties, they do not raise the issue of *res judicata* as to Plaintiff’s claim for
12 conversion.

13 In the complaint, Plaintiff alleges a cause of action for conversion against
14 Defendants Altamirano, Turner, Kinney, and Huffman. (Doc. No. 1, Compl. ¶¶ 49-53.) In
15 support of this claim, Plaintiff alleges: “In December 2018, Johnson obtained information
16 showing that Partner-Defendants converted almost half a million dollars of Storix’s profits
17 earned when Johnson was a sole shareholder to their personal equity accounts. While
18 Johnson was on medical leave in 2011-2013, Partner-Defendants changed the company’s
19 accounting method, amended tax filings, and thereafter directed Attorney-Defendants to
20 prevent Johnson from accessing financial records which would have raised his suspicions
21 and provided a reasonable opportunity for Johnson to discover this fact earlier.” (Id. ¶ 30.)

22 The Court notes that in the prior state court derivative action, Plaintiff brought a
23 claim for an accounting against Defendants Altamirano, Turner, Kinney, and Huffman.¹
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26 ¹ The Court may take judicial notice of the filings from the prior state court action submitted by the
27 parties. See United States v. Black, 482 F.3d 1035, 1041 (9th Cir. 2007) (A district court “may take
28 notice of proceedings in other courts, both within and without the federal judicial system, if those
proceedings have a direct relation to matters at issue.”); 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)

1 (Doc. No. 34-3, Ex. 15 ¶¶ 163-67.) In support of this claim, Plaintiff alleged: “Defendants
2 are solely in absolute possession and control of Storix’ financial documents, and have
3 refused to provide those documents after numerous reasonable requests by Plaintiffs
4 therefor, instead providing only portions and summaries of the information contained in
5 those documents at their sole discretion.” (Id. ¶ 164.) “Defendants have engaged in self-
6 dealing and corporate waste as described above, misappropriating funds that belong to
7 Storix and its shareholders, and have willfully acted to conceal such facts.” (Id. ¶ 165.)

8 On September 16, 2016, the state court granted Plaintiff’s writ of mandate to compel the
9 inspection and copying of the books, records and documents of Storix. (Doc. No. 30-3,
10 RJN Ex. 5 (“The court will allow Johnson to inspect and copy corporate records from 2014
11 to the present at his expense.”).)

12 Following a bench trial, on May 16, 2018, the state court issued an order and decision
13 finding “that plaintiff has failed to meet the burden of proof on the four causes of action
14 alleged in the First Amended Derivative Complaint[, including plaintiff’s claim for an
15 accounting]. Accordingly, the Court finds in favor of the defendants and against plaintiff.”
16 (Doc. No. 34-4, Ex. 20 at 3.) On September 12, 2018, the state court entered a judgment
17 in the consolidated actions in favor of defendants and against plaintiff on all four causes of
18 action alleged in the First Amended Derivative Complaint. (Id. Ex. 22 at 7-8.)

19 In light of this, the Court requests that the parties brief the issue of whether Plaintiff’s
20 current claim for conversion is barred by *res judicata*, whether by claim preclusion or issue
21 preclusion, in light of the prior state court judgment. In determining the preclusive effect
22 of a prior state court judgment, federal courts are required to apply the preclusion law of
23 the state in which the judgment was rendered, here California. See Migra v. Warren City
24 Sch. Dist. Bd. of Educ., 465 U.S. 75, 81 (1984); White v. City of Pasadena, 671 F.3d 918,
25 926 (9th Cir. 2012).

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28 (“It is well established that federal courts may take judicial notice of related state court orders and proceedings.”).

1 Under California law, “[t]he doctrine of *res judicata* precludes the relitigation of
2 certain matters which have been resolved in a prior proceeding under certain
3 circumstances.” Brinton v. Bankers Pension Servs., Inc., 76 Cal. App. 4th 550, 556 (1999);
4 accord Rippon v. Bowen, 160 Cal. App. 4th 1308, 1318 (2008), as modified (Mar. 19,
5 2008). The rule is “is intended to preserve the integrity of the judicial system, promote
6 judicial economy, and protect litigants from harassment by vexatious litigation.”
7 Vandenberg v. Superior Court, 21 Cal. 4th 815, 829 (1999); see also Bernhard v. Bank of
8 Am. Nat. Tr. & Sav. Ass’n, 19 Cal. 2d 807, 811 (1942) (“The rule is based upon the sound
9 public policy of limiting litigation by preventing a party who has had one fair trial on an
10 issue from again drawing it into controversy. The doctrine also serves to protect persons
11 from being twice vexed for the same cause.”).

12 Under California law, the doctrine of *res judicata* “has two aspects.” Brinton, 76
13 Cal. App. 4th at 556; see DKN Holdings LLC v. Faerber, 61 Cal. 4th 813, 823 (2015).
14 “*Res judicata*, or claim preclusion, prevents relitigation of the same cause of action in a
15 second suit between the same parties or parties in privity with them. Collateral estoppel,
16 or issue preclusion, ‘precludes relitigation of issues argued and decided in prior
17 proceedings.’” Mycogen Corp. v. Monsanto Co., 28 Cal. 4th 888, 896 (2002). “Claim
18 preclusion arises if a second suit involves: (1) the same cause of action (2) between the
19 same parties (3) after a final judgment on the merits in the first suit.” DKN Holdings, 61
20 Cal. 4th at 824. “[I]ssue preclusion applies: (1) after final adjudication (2) of an identical
21 issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against
22 one who was a party in the first suit or one in privity with that party.” Id. at 825.

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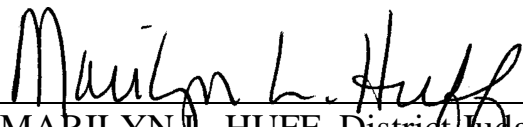
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1 A district court can appropriately raise the issue of *res judicata sua sponte* provided
2 that the court allows the parties the opportunity to submit briefing on the issue. See State
3 of Nev. Employees Ass'n, Inc. v. Keating, 903 F.2d 1223, 1225 (9th Cir. 1990);
4 Headwaters Inc. v. U.S. Forest Serv., 399 F.3d 1047, 1055 (9th Cir. 2005); Hawkins v.
5 Risley, 984 F.2d 321, 324 (9th Cir. 1993). As such, the Court orders Defendants to file a
6 brief by **October 25, 2019**, addressing whether Plaintiff's current claim for conversion is
7 barred by *res judicata*, whether by claim preclusion or issue preclusion, in light of the prior
8 state court judgment. Plaintiff may file an opposition brief by **November 8, 2019**.
9 Defendants may file a reply on **November 15, 2019**.

10 **IT IS SO ORDERED.**

11 DATED: October 9, 2019

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14 MARILYN L. HUFF, District Judge
15 UNITED STATES DISTRICT COURT
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