

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 ANTHONY JOHNSON,

12 Plaintiff,

13 v.

14 DAVID KINNEY, et al.,

15 Defendants.
16
17
18
19

Case No.: 20-cv-1354-JO-MSB

**ORDER DENYING MOTION TO
DECLARE PLAINTIFF A
VEXATIOUS LITIGANT AND
GRANTING MOTION TO DISMISS
AND DENYING AS MOOT MOTION
FOR ENTRY OF PARTIAL
JUDGMENT**

20
21 Defendant Storix, Inc. filed a motion for an order declaring Plaintiff Anthony
22 Johnson a vexatious litigant and a motion to dismiss under Rule 12(b)(6). Plaintiff filed a
23 motion for entry of partial judgment under Rule 54(b), to immediately appeal his
24 previously dismissed claims. On February 16, 2022, the Court held oral argument.

25 For the reasons stated on the record during oral argument, the Court grants the
26 parties' requests that the Court take judicial notice under Fed. R. Evid. 201, denies without
27 prejudice the motion to declare Plaintiff a vexatious litigant [Dkt. 28], and denies as moot
28 Plaintiff's motion for entry of partial judgment [Dkt. 61]. For the following reasons, the

1 Court grants the motion to dismiss Plaintiff's common count for money had and received
2 [Dkt. 49] as duplicative of Plaintiff's claim in an earlier filed case and, in the alternative,
3 as barred by claim preclusion.

4 I. FACTUAL AND PROCEDURAL BACKGROUND

5 A. Litigation History

6 The litigation history between Plaintiff Anthony Johnson, Defendant Storix, Inc.,
7 and individual shareholders and directors of Storix is lengthy, with multiple cases in state
8 and federal courts. The Court took judicial notice of multiple complaints and filings in
9 lawsuits between Storix, Plaintiff, and other related parties.

10 Prior to filing this case, Plaintiff sued Storix for copyright infringement in federal
11 court in 2014, and Storix counterclaimed for declaratory judgment. *Johnson v. Storix*, Case
12 no. 3:14-cv-1873-H-BLM.¹ In 2015, Storix filed in state court a claim for breach of
13 fiduciary duty against Plaintiff, and Plaintiff later cross-complained against five individual
14 Storix shareholders, directors, or officers—David Huffman, Richard Turner, Manuel
15 Altamirano, David Kinney, and David Smilkovich—alleging claims for breach of fiduciary
16 duty, civil conspiracy, and fraud. *Storix v. Johnson*, Case no. 37-2015-28262-CU-BT-
17 CTL. Later the same year, Plaintiff filed a shareholder derivative action in state court on
18 behalf of Storix against the same individual defendants for claims of breach of fiduciary
19 duty, abuse of control, corporate waste, and accounting. *Johnson v. Huffman*, Case no. 37-
20 2015-34545-CU-BT-CTL.

21 B. Most Recent Federal Case Filed By Plaintiff Johnson

22 Most recently, Plaintiff filed an earlier case in this Court on June 24, 2019, *Johnson*
23 *v. Altamirano*, Case no. 3:19-cv-1185 (S.D. Cal.) ("*Altamirano*"), which was ultimately
24

25
26 ¹ Pursuant to Fed. R. Evid. 201, the Court also takes judicial notice of the dockets and all filings in the related cases
27 filed in this Court: *Johnson v. Storix*, Case no. 3:14-cv-1873-H-BLM, and *Johnson v. Altamirano*, Case no. 3:19-
28 cv-1185-H-BLM, including the state court pleadings, filings, and appeals filed as part of the record in those two
federal cases.

1 assigned to U.S. District Judge Marilyn Huff.² In *Altamirano*, Plaintiff alleged diversity
2 jurisdiction and pled state law claims against (1) Storix; (2) Storix shareholders and
3 directors Manuel Altamirano, David Kinney, David Huffman, and Richard Turner (there,
4 alleged as “Partner-Defendants”);³ and (3) two attorneys for Storix, Sean Sullivan and Paul
5 Tyrell. Plaintiff alleged that from 2003–2011, he was the sole shareholder, officer, and
6 director of Storix and that, prior to taking medical leave in September 2011, he agreed to
7 issue 1500 new shares of Storix to Partner-Defendants, reducing Plaintiff’s ownership of
8 Storix to 40%. Dkt. 49-4 at 111, ¶¶ 10–12.

9 In *Altamirano*, Plaintiff alleged, among other state causes of action, a California
10 claim for conversion against Partner-Defendants as follows:

11 Johnson was owed all undistributed profits of Storix earned prior to
12 Partner-Defendants became [sic] shareholders, and such money is
13 personal property of Johnson. Partner-Defendants substantially
14 interfered with Johnson’s property by knowingly and intentionally
15 taking possession of the money Johnson was entitled to, preventing
16 Johnson’s access to the money or records pertaining to it, using the
17 money for their personal benefit, and refusing to return Johnson’s
18 money after he discovered the conversion and demanded it be returned
19 to him.

20 Dkt. 49-4 at 121, ¶ 50.

21 Plaintiff alleged in *Altamirano* that he “was harmed by the conversion of \$475,560
22 owed to him,” as a result of the alleged wrongful conduct. *Id.* at 121, ¶ 52. Plaintiff sought
23 “general and special damages against all defendants [including Storix and Partner-

24 ² A thorough litigation history between the parties is found at *Johnson v. Altamirano*, Case no. 3:19-cv-1185-H-
25 BLM (S.D. Cal. Jun 8, 2021), at Dkt. 113 at 2–8.

26 ³ Plaintiff alleged in *Altamirano* “[b]ecause defendants Altamirano, Turner, Kinney and Huffman, unless otherwise
27 stated, are shareholder/partners of Plaintiff in the business of Storix and knowingly conspired to initiate, continue
28 or otherwise commit certain wrongful acts alleged below, they are hereafter collectively referred to as ‘Partner-
Defendants’.” Dkt. 49-4 at 110, ¶ 4.

1 Defendants], jointly and severally” and “recovery of Storix’s earnings owed to Johnson.”
2 *Id.* at 125, ¶¶ 72, 74.

3 On June 8, 2021, the district court in *Altamirano* dismissed with prejudice two
4 claims on grounds of *res judicata*, because Plaintiff’s claim for conversion was barred by
5 his prior accounting claim in the state court action and his claim for breach of fiduciary
6 duty was barred by his prior claim for breach of fiduciary duty in state court. *Altamirano*
7 Dkt. 113 at 12–20. The judgment in *Altamirano* is currently pending on appeal, and
8 briefing is filed. *See Johnson v. Altamirano*, Case no. 21-55614 (9th Cir. filed June 14,
9 2021).

10 **C. The Instant Federal Court Case**

11 On July 16, 2020, during a stay in the pending *Altamirano* case, Plaintiff filed his
12 original complaint here, against (1) Storix; (2) five Storix directors, officers, or
13 shareholders: David Kinney, David Huffman, Manuel Altamirano, Richard Turner, and
14 David Smiljkovich; (3) various attorneys and judges who had been involved in Plaintiff’s
15 prior cases, including Storix’s counsel of record and Judge Huff. Plaintiff originally
16 alleged federal civil rights violations against all Defendants and two California common
17 count claims against Storix. U.S. District Judge Todd Robinson, then assigned to this case,
18 dismissed the civil rights claims against all Defendants and the California claim against
19 Storix for *quantum valebant*. Dkt. 44 at 69, 79–82.

20 In the operative Second Amended Complaint (“SAC”), filed on April 15, 2021,
21 Plaintiff brought a single California common count for money had and received and named
22 Storix as the sole Defendant to that count. Dkt. 46. Plaintiff alleged that while he was
23 originally “Storix’s sole shareholder, officer, and director,” SAC at ¶ 14, on September 21,
24 2011, he gifted a 60% share of the company to his long-term employees, David Huffman,
25 Richard Turner, Manuel Altamirano, and David Kinney [*Altamirano’s* Partner-
26 Defendants] and turned over control of the company to them. SAC at ¶ 16, 19. On that
27 day, new shareholders Huffman, Turner, Altamirano, and Kinney were elected to the Storix
28 board, and Johnson resigned as Board Member and President. SAC at ¶ 19. Plaintiff

1 alleged that, since then, the *Altamirano* Partner-Defendants owned 60% of Storix and
2 “maintained a controlling majority of Storix’s shares, the board of directors [and] all officer
3 positions.” SAC at ¶ 16.

4 Prior to transferring any Storix shares, Plaintiff “declared a distribution of all
5 company earnings to be paid to him for the period in which he was the sole shareholder.
6 Storix became indebted to [him] for all profits during the time he was the only shareholder.”
7 SAC at ¶ 17. Plaintiff alleged that he was denied the profits that he had declared prior to
8 transfer of ownership because “[a]t the end of 2011, the new board [Partner-Defendants
9 Huffman, Turner, Altamirano, and Kinney] substantially underreported Storix’s annual
10 profits” and falsely “reported to Johnson that all company profits earned while he was
11 Storix’s sole shareholder had been distributed to him.” SAC at ¶¶ 19–20.

12 Plaintiff pled his common count for money had and received against Storix as
13 follows:

14 Storix declared that all profits earned while Johnson was the company’s sole
15 shareholder were to be distributed and were therefore Johnson’s personal
16 property to which he is fully entitled. Storix took possession and retained
17 substantial money owned [sic] to Johnson and is indebted to Johnson for the
18 amount owed. [] Since September 2011, the Storix board had no authority to
19 supersede the distributions declared by Johnson while he was the sole
company director, nor did it have authority to distribute the money owed to
Johnson to other shareholders or appropriate it for any other use.

20 SAC at ¶¶ 38–39.

21 Plaintiff alleged that he “was harmed by Storix’s concealment and unlawful
22 retention of \$475,560 owed to him,” SAC at ¶ 43, the same amount of money that Plaintiff
23 sought in his *Altamirano* conversion claim from Partner-Defendants. Dkt. 49-4 at 121,
24 ¶ 52.

25 Defendant Storix moved to dismiss the SAC on multiple grounds, including because
26 the remaining count in the SAC is duplicative of the conversion count in *Altamirano*. At
27 the time Defendant filed its motion to dismiss, the *Altamirano* court had not yet dismissed
28 the conversion claim with prejudice on grounds of *res judicata*.

II. ANALYSIS

A. Legal Standard

When reviewing a motion to dismiss under Rule 12(b)(6), the allegations of material fact in plaintiff's complaint are taken as true and construed in the light most favorable to the plaintiff. *See Parks Sch. of Bus., Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). “[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007)). Where, as here, Plaintiff proceeds *pro se*, the Court liberally construes the complaint's allegations. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Hebbe v. Pliler*, 627 F.3d 338, 341–42 (9th Cir. 2010). “Determining whether a complaint states a plausible claim for relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Iqbal*, 556 U.S. at 678. In reviewing a motion to dismiss, courts may look to judicially noticeable facts, *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994), and need not accept as true allegations that contradict judicially noticed facts. *Schwartz v. United States*, 234 F.3d 428, 435 (9th Cir. 2000).

B. Duplicative Claims or Impermissible Claim Splitting

The Court examines whether Plaintiff's SAC should be dismissed because it is duplicative of his earlier filed conversion claim in *Altamirano*. The claim splitting doctrine gives courts discretion to dismiss a duplicative second case with prejudice to prevent piecemeal litigation. *Adams v. Cal. Dep't of Health Servs.*, 487 F.3d 684, 694 (9th Cir. 2007), *overruled on other grounds by Taylor v. Sturgell*, 553 U.S. 880 (2008). A plaintiff generally may not file a second complaint and “maintain two separate actions involving the same subject matter at the same time in the same court and against the same defendant.” *Id.* at 688 (citation omitted).

As the *Adams* court explained, to “determine whether a suit is duplicative, [courts] borrow from the test for claim preclusion.” *Id.* A second case is duplicative of one previously filed by the party where “the causes of action and relief sought, as well as the parties or privies to the action, are the same.” *Id.* at 689. To determine whether the causes

1 of action should have been brought in the same action, federal courts apply four factors,
2 the last of which is the most important:

3 (1) whether rights or interests established in the prior judgment would be
4 destroyed or impaired by prosecution of the second action; (2) whether
5 substantially the same evidence is presented in the two actions; (3) whether
6 the two suits involve infringement of the same right; and (4) whether the two
suits arise out of the same transactional nucleus of facts.

7 *Id.* (citing *Costantini v. Trans World Airlines*, 681 F.2d 1199, 1201–02 (9th Cir.
8 1982)).

9 Even liberally construing a *pro se* plaintiff’s complaint, as courts must under Fed.
10 R. Civ. P. 12(b)(6), a district court does not err in dismissing a duplicative complaint where
11 the *Adams* test is satisfied. *See Patten v. Clark*, 623 Fed. App’x. 889, 890 (9th Cir. 2015).

12 **1. Causes of Action Are the Same**

13 Plaintiff’s allegations demonstrate a common transactional nucleus of facts between
14 the instant cause of action and his cause of action for conversion in *Altamirano*. Both
15 complaints alleged that Plaintiff took actions as a sole shareholder that entitled him to
16 Storix’s undistributed profits. SAC at ¶ 17; Dkt. 49-4 at 111, ¶¶ 11–12; *id.* at 121,
17 ¶ 50. Both complaints alleged that, after Plaintiff passed majority ownership of Storix to
18 Partner-Defendants in 2011, Partner-Defendants took actions to deprive Plaintiff of
19 Storix’s undistributed profits. Dkt. 49-4 at 113, ¶ 19; *id.* at 121, ¶ 50; SAC at ¶¶ 17, 20,
20 37–39.

21 The shared nucleus of facts in both cases forms one “convenient trial unit” that rests
22 on substantially the same evidence. *Adams*, 487 F.3d at 690. Both the *Altamirano*
23 conversion count and the instant claim require (1) proof of Johnson’s entitlement to
24 undistributed profits, whether drawn from corporate documents, accounting records, or
25 employee testimony, and (2) the actions taken by Storix and Partner-Defendants regarding
26 this money. The fact that the two claims are styled differently does not change the fact that
27 the “claims in both complaints relate to the same set of facts.” *Id.*

1 Plaintiff's *Altamirano* conversion claim and the instant action also share a common
2 nexus of the same impacted rights and requested relief, supporting a finding that the claims
3 are duplicative. *See id.* at 690–91. Both complaints alleged that Storix retained
4 undistributed profits after Plaintiff's transfer of majority ownership in 2011. Dkt. 49-4 at
5 121, ¶ 50; *id.* at 125, ¶ 74; SAC at ¶¶ 18–20, 42–43. Both complaints sought relief in the
6 amount of \$475,560. Dkt. 49-4 at 121, ¶ 52; SAC at ¶ 43. As pled, Plaintiff's conversion
7 claim in *Altamirano* and his claim in this case seek to vindicate the same right in the same
8 dollar amount from Storix's profit. Dkt. 49-4 at 111, ¶ 12; *id.* at 121, ¶ 52; SAC at ¶¶ 19,
9 20, 38.

10 Finally, the Court examines whether the rights or interests established in *Altamirano*
11 would be destroyed or impaired by prosecution of Plaintiff's cause here. *See Adams*, 487
12 F.3d at 689 (quotation omitted). In *Altamirano*, Partner-Defendants obtained a dismissal
13 of Plaintiff's conversion claim on *res judicata* grounds. If this case were to proceed,
14 Partner-Defendants would be deprived of the benefit of that judgment in their favor and
15 have to defend this action involving substantially the same transactional facts, rights, and
16 requested relief.

17 **2. Privity Exists Between the Parties**

18 Finally, in determining whether a previous suit should bar this action as duplicative,
19 the Court must consider whether the parties to the two suits are the same, and if not,
20 whether privity exists between the different parties. “Even when the parties are not
21 identical, privity may exist if there is substantial identity between parties, that is, when
22 there is sufficient commonality of interest.” *Tahoe-Sierra Pres. Council, Inc. v. Tahoe*
23 *Reg'l Planning Agency*, 322 F.3d 1064, 1081 (9th Cir. 2003) (internal quotation omitted).
24 Federal courts deem several relationships sufficiently close to find privity, even to bind a
25 non-party, including one “whose interests were represented adequately by a party in the
26 original action” or “where there is substantial identity between” the party and the nonparty.
27 *Id.* at 1082 (quoting *In re Schimmels*, 127 F.3d 875, 881 (9th Cir. 1997)). “When a person
28 owns most or all of the shares in a corporation and controls the affairs of the corporation,

1 it is presumed that in any litigation involving that corporation the individual has sufficient
2 commonality of interest.” *In re Gottheiner*, 703 F.2d 1136, 1140 (9th Cir. 1983).

3 Here, the Court does not seek to bind a non-party to a prior suit. Plaintiff Johnson
4 is identical in both lawsuits, and at the original filing of each lawsuit, Storix and Partner-
5 Defendants were named parties in both cases. There, however, Plaintiff named Partner-
6 Defendants in the conversion claim, and here, Plaintiff names Storix in the substantially
7 identical common count. Thus, the Court examines whether there is substantial identity
8 between Partner-Defendants in *Altamirano* and Storix here such that they can be deemed
9 in privity.

10 The facts alleged by Plaintiff demonstrate sufficient commonality of interest
11 between the company and its Partner-Defendants to find that privity exists. During the
12 time periods at issue in both actions, the Court can presume commonality of interest from
13 Partner-Defendants’ significant ownership and control of the company: Partner-
14 Defendants “retained a collective majority of Storix’s outstanding shares, the majority of
15 Storix board seats, all officer positions, and have maintained sole possession and exclusive
16 control of all accounts and records of Storix.” Dkt. 49-4 at 117, ¶ 32; *In re Gottheiner*, 703
17 F.2d at 1140. Furthermore, as Plaintiff alleged in *Altamirano*, the wrongful acts by the
18 company were those of Partner-Defendants: “[e]very act and decision of Storix relevant to
19 this action was exclusive [sic] that of Partner-Defendants.” Dkt. 49-4 at 117, ¶ 32
20 (emphasis added). As there is no material distinction between the wrongful acts that
21 Plaintiff alleged against Partner-Defendants and Storix, these two defendants have a
22 sufficient commonality of interest in defending the instant claim for money had and
23 received.⁴

24
25
26
27 ⁴ The Court notes that David Huffman, a Partner-Defendant, appeared at oral argument as Storix’s party
28 representative.

1 Plaintiff argues that this court's dismissal on duplicative claims ground would be
2 inappropriate because the *Altamirano* judgment is pending on appeal.⁵ As set forth in
3 *Adams*, however, a final decision is not a requirement for a duplicative claims analysis.
4 487 F.3d at 689.

5 **C. *Res Judicata* in the Alternative**

6 When the instant Rule 12(b)(6) motion to dismiss was filed on April 29, 2021, the
7 court in *Altamirano* had not yet decided Plaintiff's conversion claim was barred by *res*
8 *judicata*. Since then, the court in *Altamirano* dismissed with prejudice Plaintiff's
9 conversion claim and entered final judgment. Because there is now a final judgment in the
10 earlier filed *Altamirano* case, the Court also conducts a *res judicata* analysis in the
11 alternative.

12 To determine the claim-preclusive effect of the federal diversity court's dismissal
13 with prejudice of Plaintiff's state conversion claim, this Court must apply the law of the
14 State in which the *Altamirano* court sits, California. *Semtek Int'l, Inc. v. Lockheed Martin*
15 *Corp.*, 531 U.S. 497, 508 (2001) (holding that "federal common law governs the claim-
16 preclusive effect of a dismissal by a federal court sitting in diversity" and "adopting, as the
17 federally prescribed rule of decision, the law that would be applied by state courts in the
18 State in which the federal diversity court sits"); *see also Gustafson v. U.S. Bank N.A.*, 618
19 Fed. App'x 921, 922 (9th Cir. 2015).

20 In California, "res judicata, or claim preclusion, prevents relitigation of the same
21 cause of action in a second suit between the same parties or parties in privity with them."
22

23
24 ⁵ "Under California law, . . . a judgment is not final for purposes of *res judicata* during the pendency of
25 and until the resolution of an appeal." *Sosa v. DirecTV, Inc.*, 437 F.3d 923, 928 (9th Cir. 2006) (quoting *Eichman*
26 *v. Fotomat Corp.*, 759 F.2d 1434, 1439 (9th Cir. 1985); *Nathanson v. Hecker*, 99 Cal. App. 4th 1158, 1163 n.1
27 (2002). A federal district court's dismissal of Plaintiff's conversion claim, however, is final for *res judicata*
28 purposes even with the appeal pending. *See Sosa*, 437 F.3d at 928. However, the Court declines to reach
Defendant's *res judicata* challenge to the SAC on grounds that a prior state claim for accounting bars both Plaintiff's
conversion and money had and received claims. The issue is before the Court of Appeals, *Johnson v. Altamirano*,
Case no. 21-55614 (9th Cir. filed June 14, 2021), at Dkt. 8, 24. In the event of remand, the earlier filed case in this
district should review any remaining issues.

1 *Mycogen Corp. v. Monsanto Co.*, 28 Cal. 4th 888, 896 (2002); *see also Samara v. Matar*,
2 5 Cal. 5th 322, 327 (2018) (addressing the preclusive effects of claims addressed by trial
3 court judgment but not addressed on appeal). Claim preclusion bars a second suit with
4 (1) the same cause of action (2) between the same parties or their privies (3) after a final
5 judgment on the merits in the first suit. *See DKN Holdings LLC v. Faerber*, 61 Cal. 4th
6 813, 824 (2015); *Mycogen Corp.*, 28 Cal. 4th at 896.

7 **1. Causes of Action Are the Same**

8 California law requires that courts conduct a primary rights analysis to determine
9 whether two causes of action are the same. *Boeken v. Philip Morris USA, Inc.*, 48 Cal. 4th
10 788, 797 (2010); *see also Hi-Desert Med. Ctr. v. Douglas*, 239 Cal. App. 4th 717, 733–34
11 (2015). “[U]nder the primary rights theory, the determinative factor is the harm suffered.
12 When two actions involving the same parties seek compensation for the same harm, they
13 generally involve the same primary right.” *Boeken*, 48 Cal. 4th at 798. “[T]he significant
14 factor guiding the application of the doctrine is whether the ‘cause of action’ is for invasion
15 of a single primary right; whether the same facts are involved in both suits is not
16 conclusive.” *Franceschi v. Franchise Tax Bd.*, 1 Cal. App. 5th 247, 258 (2016). The
17 primary rights doctrine “also precludes litigation of claims that could have been brought in
18 the prior action but were not.” *Id.*; *Mycogen Corp.*, 28 Cal. 4th at 897.

19 Based on the above analysis that Plaintiff’s claim in this case and the *Altamirano*
20 case share a common transactional nucleus, seek vindication of the same right, and request
21 the same relief, the Court concludes that the same primary right was involved in both suits
22 for *res judicata* purposes.

23 **2. Parties or Privies Are the Same**

24 California claim preclusion law requires that the parties or their privies are the same.
25 Under California’s claim preclusion analysis, “privity requires the sharing of ‘an identity
26 or community of interest,’ with ‘adequate representation’ of that interest in the first suit,
27 and circumstances such that the nonparty ‘should reasonably have expected to be bound’
28

1 by the first suit.” *Cal Sierra Dev., Inc. v. George Reed, Inc.*, 14 Cal. App. 5th 663, 672–
2 73 (2017) (quoting *DKN Holdings, LLC*, 61 Cal. 4th at 826).

3 As explained in the privity analysis above, the Court finds that the Plaintiff is
4 identical in both cases and that Storix and Partner-Defendants share a commonality of
5 interest with regard to defending Plaintiff’s claims against Storix in the instant matter.

6 **3. Judgment on the Merits Is Final**

7 Finally, for *res judicata* to bar the instant action, the ruling on Plaintiff’s *Altamirano*
8 conversion claim must constitute a final judgment on the merits. First, under both
9 California and federal law, “dismissal with prejudice is considered a judgment on the
10 merits preventing subsequent litigation between the parties on the dismissed claim.” *Kim*
11 *v. Reins Int’l California, Inc.*, 9 Cal. 5th 73, 91 (2020); *Goddard v. Security Title Ins. &*
12 *Guar. Co.*, 14 Cal. 2d 47, 52 (1939); *see also Semtek Int’l, Inc.*, 531 U.S. at 504–06.
13 Federal district court judgments, unlike California state court judgments, are final for
14 purposes of *res judicata* during the pendency of an appeal. *Sosa*, 437 F.3d at 928 (citing
15 *Calhoun v. Franchise Tax Bd.*, 20 Cal. 3d 881, 887 (1978)). Here, the *Altamirano* court
16 dismissed Plaintiff’s earlier filed conversion claim with prejudice on June 8, 2021.
17 Although *Altamirano* is pending on appeal, the district court’s order is a final judgment on
18 the merits for purposes of *res judicata*.

19 For the above reasons, the Court concludes that, in the alternative, *res judicata* bars
20 Plaintiff’s claim for money had and received against Storix.

21 **III. CONCLUSION**

22 For the reasons above, the Court GRANTS the motion to dismiss [Dkt. 49] and
23 dismisses with prejudice Plaintiff’s Second Amended Complaint. The Court concludes
24 that the instant case is duplicative of the previous conversion claim. Alternatively, the case
25 is precluded by the dismissal with prejudice of Plaintiff’s conversion claim in *Altamirano*.
26 The Court declines to reach Defendant’s other grounds for dismissal. In the event the

27 //

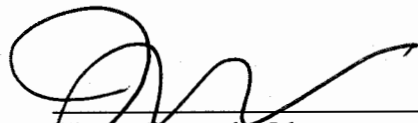
28

1 earlier *Altamirano* case is remanded to the district court, that court is the appropriate forum
2 to decide any remaining issues.

3 For the reasons stated on the record during oral argument, the Court DENIES
4 without prejudice the motion to declare Plaintiff a vexatious litigant [Dkt. 28]. In light of
5 the dismissal and for the reasons stated during oral argument, the Court DENIES AS
6 MOOT the motion for entry of partial judgment [Dkt. 61].

7
8 **IT IS SO ORDERED.**

9
10 Dated: 3/29/22



Hon. Jinsook Ohta
United States District Judge