

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 24 2014

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

SETH ABRAHAMS,

Plaintiff-counter-defendant -
Appellant,

v.

HARD DRIVE PRODUCTIONS, INC.,

Defendant-counter-claimant -
Appellee.

No. 13-15889

D.C. No. 3:12-cv-01006-JCS

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Joseph C. Spero, Magistrate Judge, Presiding

Argued and Submitted April 9, 2014
San Francisco, California

Before: SCHROEDER and CALLAHAN, Circuit Judges, and PRATT, Senior
District Judge.**

This is an appeal from the district court's dismissal of the action for lack of
subject matter jurisdiction. We have jurisdiction under 28 U.S.C. § 1291. The

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The Honorable Robert W. Pratt, Senior United States District Judge
for the Southern District of Iowa, sitting by designation.

complaint seeks declaratory relief regarding claims that had been previously dismissed twice, and hence could not now create any justiciable controversy. Fed. R. Civ. P. 41(a)(1)(B); *see Commercial Space Mgmt. Co. v. Boeing Co.*, 193 F.3d 1074, 1076 (9th Cir. 1999) (explaining the “two dismissal rule”).

On appeal, the appellant argues that the action should not have been dismissed because the complaint laid out an additional cause of action of qui tam sufficient to sustain subject matter jurisdiction. A close examination of the complaint reveals no such claim. This is the inevitable conclusion under even the lenient standards of notice pleading, and such lenient standards are no longer applicable. *See Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).

AFFIRMED.