

UNITED STATES DISTRICT COURT

Northern District of California

San Francisco Division

EDGAR PERRY,

No. C 13-02369 LB

Plaintiff,

v.

CASHCALL, INC., et al.,

Defendants.

**ORDER DISMISSING WITHOUT
PREJUDICE SECOND AMENDED
COMPLAINT, ALLOWING
PLAINTIFF UNTIL JULY 7, 2014 TO
FILE A THIRD AMENDED
COMPLAINT, AND DENYING
REASSIGNMENT**

[Re: ECF Nos. 86, 91, 92, 95]

The court granted Mr. Perry leave to file a Second Amended Complaint by April 7, 2014 to re-allege his breach of contract claim against CashCall. Amended 3/17/2014 Order, ECF No. 86.¹ On March 28, 2014, Mr. Perry appealed the court's order to the United States Court of Appeals for the Ninth Circuit. Notice of Appeal, ECF No. 87. But on May 21, 2014, the Ninth Circuit panel dismissed his appeal for lack of jurisdiction because the order he challenged (the court's Amended 3/17/2014 Order granting Defendants' motions to dismiss) is not final or appealable. Order of USCA, ECF No. 91.²

¹ Citations are to the Electronic Case File ("ECF") with pin cites to the electronically-generated page numbers at the top of the document.

² This is because an order is not appealable unless it disposes of all claims as to all parties or judgment is entered in compliance with Rule 54, *see* Fed. R. Civ. P. 54(b); *Chacon v. Babcock*, 640

1 In light of Mr. Perry's appeal and the Ninth Circuit's order, and to clarify the required next steps,
2 the court provided Mr. Perry until June 9, 2014 to file a Second Amended Complaint to re-allege his
3 breach of contract claim against CashCall. *See* Order, ECF No. 92. Mr. Perry failed to meet this
4 deadline and filed his Second Amended Complaint on June 11, 2014. *See generally*, Docket;
5 Second Amended Complaint, ECF No. 95. In addition, Mr. Perry failed to limit the Second
6 Amended Complaint to the breach of contract claim against CashCall. *Id.* Rather, Mr. Perry filed a
7 Second Amended Complaint against all four defendants, asserting claims that were previously
8 dismissed by the court with prejudice. *Id.*

9 Mr. Perry also requests that this case be reassigned to a District Court Judge. However, Mr.
10 Perry has already consented to the undersigned's jurisdiction. *See* Motion, ECF No. 94; Consent
11 (Plaintiff), ECF No. 9; Consent (CashCall), ECF No. 13. As such, the Court **DENIES** Mr. Perry's
12 request for reassignment.

13 Because Mr. Perry is a pro se litigant, the court will provide him with one more opportunity to
14 file an amended complaint that complies with the court's March 17, 2014 order. Mr. Perry has until
15 **July 7, 2014** to file a Third Amended Complaint. In that Third Amended Complaint, Mr. Perry may
16 only re-allege his breach of contract claim against CashCall. He may not reallege the claims he
17 brought against the State of California, First Bank, and PFSA, or his TILA claim against CashCall,
18 because the court already dismissed those claims with prejudice. Should Mr. Perry fail to file a
19 Third Amended Complaint timely and in compliance with the above-mentioned directions, the court
20 may dismiss his action for failing to prosecute it.

21 **IT IS SO ORDERED.**

22 Dated: June 16, 2014



23 LAUREL BEELER
24 United States Magistrate Judge

25
26 F.2d 221, 222 (9th Cir. 1981), and the court's Amended 3/17/2014 Order dismissed Mr. Perry's
27 breach of contract claim against CashCall without prejudice and allowed him to file a Second
28 Amended Complaint to re-allege this claim, *see WMX Techs., Inc. v. Miller*, 104 F.3d 1133, 1136
(9th Cir. 1997) (en banc) (dismissal of complaint with leave to amend is not appealable).