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IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

MICHAEL BRIM, et. al.,

CASE NO. 5:10-cv-05341 EJD

Plaintiff(s),

**ORDER GRANTING DEFENDANTS'
 MOTION TO DISMISS**

v.

JON VINCENT, et. al.,

[Docket Item No(s). 25, 28]

Defendant(s).

Within the above-entitled action, Defendants Jon Vincent and Keepcash.com (“Defendants”) move to dismiss the Second Amended Complaint (“SAC”) filed by Plaintiffs Michael Brim and BF Ads (“Plaintiffs”) pursuant to Federal Rule of Civil Procedure 12(b)(6). See Docket Item Nos. 25, 28. Plaintiffs concede the defects in the SAC in a Statement of Non-Opposition (see Docket Item No. 32), notably filed after the time allowed for the briefing of this motion. See Civ. L. R. 7-3(b). Finding merit in Defendants’ arguments and contentions, the motion to dismiss will be granted.

Defendants request the court allow them leave to amend the SAC in order to allege a new theory of liability. Having reviewed this action in its entirety, however, the court has determined the amendment proposed by Plaintiffs would not cure the deficiencies in their pleadings, which mainly arise from a failure to provide necessary facts rather than a cognizable legal theory. Moreover, the court notes that Plaintiffs have had two previous opportunities to plead sufficient claims but have failed to do so. Under these circumstances, the court finds that allowing further amendment would be futile since Plaintiff has already twice amended the original complaint without success.

1 Accordingly, leave to amend will not allowed. See Allen v. City of Beverly Hills, 911 F.2d 367,
2 373-74 (9th Cir. 1990).

3 **ORDER**

4 Based on the foregoing:

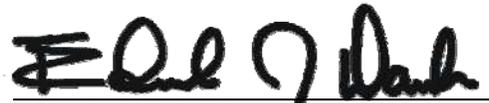
5 1. The hearing scheduled for September 30, 2011, is VACATED pursuant to Civil Local
6 Rule 7-1(b);

7 2. Defendants' Motion to Dismiss is GRANTED WITHOUT LEAVE TO AMEND for
8 the reasons stated above; and

9 3. As this Order effectively resolves this action in its entirety, the Clerk shall close this
10 file upon entry of the ensuing judgment.

11 **IT IS SO ORDERED.**

12
13 Dated: September 27, 2011


EDWARD J. DAVILA
United States District Judge