

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

JAN 24 2020

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

ROBERT W. JOHNSON,

Plaintiff-Appellant,

v.

PERFORMANT RECOVERY, INC.; et al.,

Defendants-Appellees.

No. 20-15022

D.C. No. 4:19-cv-05789-SBA
Northern District of California,
Oakland

ORDER

Before: PAEZ, M. SMITH, and N.R. SMITH, Circuit Judges.

A review of the record demonstrates that this court lacks jurisdiction over this appeal because the order challenged in the appeal is not final or appealable. *See* 28 U.S.C. § 1291; *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); *Bird v. Reese*, 875 F.2d 256 (9th Cir. 1989) (order) (order denying a motion for default judgment is not a final appealable order). Consequently, this appeal is dismissed for lack of jurisdiction.

All pending motions are denied as moot.

DISMISSED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

FEB 18 2020

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

ROBERT W. JOHNSON,

Plaintiff - Appellant,

v.

PERFORMANT RECOVERY, INC.; et
al.,

Defendants - Appellees.

No. 20-15022

D.C. No. 4:19-cv-05789-SBA
U.S. District Court for Northern
California, Oakland

MANDATE

The judgment of this Court, entered January 24, 2020, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Rhonda Roberts
Deputy Clerk
Ninth Circuit Rule 27-7

ORIGINAL
FILED
SEP 16 2019

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT W. JOHNSON,

Plaintiff,

v.

PERFORMANT RECOVERY INC. ET AL.,

Defendant.

Case No. 19-cv-05789-SK

**ORDER SETTING INITIAL CASE
MANAGEMENT CONFERENCE
AND ADR DEADLINES**

IT IS HEREBY ORDERED that this action is assigned to the Honorable Sallie Kim .
When serving the complaint or notice of removal, the plaintiff or removing defendant must serve on all other parties a copy of this order, the Notice of Assignment of Case to a United States Magistrate Judge for Trial, and all other documents specified in Civil Local Rule 4-2. Plaintiffs or removing parties must file a consent or declination to proceed before a magistrate judge within 14 days of the filing of the complaint or the removal. All other parties must file a consent or declination within 14 days of appearing in the case. All parties who have made an appearance must file a consent or declination within 7 days of the filing of a dispositive motion or the case will be reassigned to a district court judge. Counsel must comply with the case schedule listed below unless the Court otherwise orders.

IT IS FURTHER ORDERED that this action is assigned to the Alternative Dispute Resolution (ADR) Multi-Option Program governed by ADR Local Rule 3. Counsel and clients shall familiarize themselves with that rule and with the material entitled "Dispute Resolution Procedures in the Northern District of California" on the Court ADR Internet site at <http://www.cand.uscourts.gov/adr>. A limited number of printed copies are available from the Clerk's Office for parties in cases not subject to the court's Electronic Case Filing program (ECF).

IT IS FURTHER ORDERED that plaintiff or removing defendant serve upon all parties

the brochure entitled "Consenting To A Magistrate Judge's Jurisdiction In The Northern District Of California", additional copies of which can be downloaded from the court's Internet website: <http://www.cand.uscourts.gov>.

CASE SCHEDULE – ADR MULTI-OPTION PROGRAM		
Date	Event	Governing Rule
9/16/2019	Complaint Filed	
11/25/2019	*Last day to: • meet and confer re: initial disclosures, early settlement, ADR process selection, and discovery plan	<u>FRCivP 26(f) & ADR L.R.3-5</u>
	• file ADR Certification signed by Parties and Counsel (form available at http://www.cand.uscourts.gov)	<u>Civil L.R. 16-8(b) & ADR L.R. 3-5(b)</u>
12/9/2019	**Last day to file Rule 26(f) Report, complete initial disclosures or state objection in Rule 26(f) Report and file Case Management Statement per Standing Order re Contents of Joint Case Management Statement. (also available at http://www.cand.uscourts.gov)	<u>FRCivP 26(a) (1)</u> <u>Civil L.R. 16-9</u>
12/16/2019	INITIAL CASE MANAGEMENT CONFERENCE (CMC) at 1:30 PM in: Courtroom C, 15th Floor Phillip Burton Federal Building 450 Golden Gate Avenue San Francisco, CA 94102	<u>Civil L.R. 16-10</u>

* If the Initial Case Management Conference is continued, unless otherwise ordered this deadline is continued to 21 days in advance of the Initial Case Management Conference.

** If the Initial Case Management Conference is continued, unless otherwise ordered this deadline is continued to 7 days in advance of the Initial Case Management Conference.

1
2
3
4 **UNITED STATES DISTRICT COURT**
5 **NORTHERN DISTRICT OF CALIFORNIA**
6

7 **STANDING ORDER FOR**
8 **MAGISTRATE JUDGE SALLIE KIM**
9 *(Effective July 11, 2019)*
10

11 Parties shall comply with the procedures in the Federal Rules of Civil or Criminal
12 Procedure, the Northern District of California's Local Rules and General Orders, and this
13 standing order, all of which are available at <http://www.cand.uscourts.gov>. The parties' failure to
14 comply with any of the rules or orders may be grounds for monetary sanctions, dismissal, entry of
15 judgment, or other appropriate sanctions.

16 **CALENDAR DATES AND SCHEDULING**

17 Motions are heard each Monday: civil motions at 9:30 a.m. and criminal motions at 11:00
18 a.m. During the months when Judge Kim is on criminal duty, the Court may move any civil
19 motion to 11:00 a.m. Civil case management and status conferences are heard on Mondays at
20 1:30 p.m. Pretrial conferences are held on Fridays at 1:30 p.m. and trials will begin at 8:30 a.m.
21 on Tuesdays.

22 Parties should notice motions pursuant to the local rules. Parties need not reserve a hearing
23 date, but should confirm the Court's availability by viewing the scheduling notes for Judge Kim on
24 the Northern District of California website at <http://www.cand.uscourts.gov>. The Court may reset
25 hearing dates as the Court's calendar requires. For scheduling questions, please contact Judge
26 Kim's courtroom deputy, Melinda Lozenski at skcrd@cand.uscourts.gov or (415) 522-4158.
27
28

CONSENT CASES

In civil cases randomly assigned to Judge Kim for all purposes, the parties should file their written consent to the assignment of a United States Magistrate Judge for all purposes or their written declination of consent as soon as possible, and in no event later than the deadlines specified in Civil L.R. 73-1(a)(1) and (2).

CHAMBERS COPIES AND PROPOSED ORDERS

Under Civil L.R. 5-1 and 5-2, parties must lodge an extra paper copy of any filing, with the exception of the written consent/declination to the assignment of a United States Magistrate Judge. All chambers copies should bear the ECF filing "stamp" (case number, docket number, date, and ECF page number) along the top of the page. All exhibits shall be clearly separated by tabs. Chambers copies must be marked "Chambers Copy" and submitted to the Clerk's Office in an envelope clearly marked "Magistrate Judge Sallie Kim," and include the case number on the envelope. The chambers copies must be mailed or delivered to chambers according to the deadlines set forth in Civil Local Rule 5-1(e)(7).

Any stipulation or proposed order in a case subject to e-filing should be submitted by email to skpo@cand.uscourts.gov as a word processing attachment on the same day the document is e-filed. This address should only be used for this stated purpose unless otherwise directed by the Court.

MOTIONS FOR SUMMARY JUDGMENT

Absent of a showing of good cause, the Court will address only one motion for summary judgment per side. Separate statements of undisputed facts will not be considered by the Court. Joint statements of undisputed facts are not required, but are helpful if completely agreed upon. If parties submit excerpts of deposition transcripts in support of or opposition to a motion for summary judgment, they shall highlight the relevant portions for ease of reference.

CIVIL CASE MANAGEMENT

No later than seven (7) days prior to the any scheduled case management or status conference, the parties shall file a Joint Case Management Statement in full compliance with the Northern District of California's General Standing Order for civil cases entitled "Contents of

1 Joint Case Management Statement.” The parties shall appropriately caption their filing to read:
2 “Initial Joint Case Management Statement” or “Further Joint Case Management Statement” as
3 appropriate. In cases involving *pro se* litigants, the parties may file separate case management
4 statements.

5 Parties may not stipulate to continue a case management, status, or pretrial conference
6 without Court approval. Each party shall be represented in person at the Case Management
7 Conference by lead trial counsel (or a party if *pro se*), who shall be (1) prepared to address all of
8 the matters referred to in the Northern District of California’s General Standing Order on Joint
9 Case Management Statements; and (2) have full authority to enter stipulations and make
10 admissions pursuant to that order. Permission for a party to attend by telephone may be granted,
11 in the Court’s discretion, upon written request made at least two (2) weeks in advance of the
12 hearing, if the Court determines that good cause exists to excuse personal attendance and that
13 personal attendance is not needed in order to have an effective conference. The facts establishing
14 good cause must be set forth in the request. If the Court grants a party’s request for telephonic
15 appearance, the party shall arrange for the appearance by calling **CourtCall at (888) 882-6878** not
16 later than **3:00 p.m.** the court day prior to the hearing date.

17 All motion hearings, case management, status and pretrial conferences are audio
18 recorded. They are not reported by a court reporter unless counsel requests a court reporter in
19 advance.

20 **CIVIL DISCOVERY**

21 Parties shall propound disclosures and discovery in accordance with Federal Rules of Civil
22 Procedure 26 through 37 and the corresponding Civil Local Rules for the Northern District of
23 California. A copy of the Local Rules is available at the Clerk’s Office and at the Court’s website
24 (<http://www.cand.uscourts.gov>). No exceptions to the limitations established in the Federal and
25 Local Rules shall be permitted except pursuant to stipulation of the parties or order of the Court.

26 If parties believe a protective order is necessary, they shall, where practicable, use one of
27 the model stipulated protective orders (available at <http://cand.uscourts.gov/stipprotectorder>).
28 Parties shall file one of the following with their proposed protective order: (a) a declaration stating

1 that the proposed order is identical to one of the model orders except for the addition of case-
2 identifying information or the elimination of language denoted as optional; (b) a declaration
3 explaining each modification to the model order, along with a redline version comparing the
4 proposed protective order with the model order; or (c) a declaration explaining why use of one of
5 the model orders is not practicable.

6 Meet and confer requirement for discovery disputes. As an initial matter, the parties must
7 comply with Section 9 of the Northern District's Guidelines for Professional Conduct regarding
8 discovery (available at http://cand.uscourts.gov/professional_conduct_guidelines). Prior to filing
9 any discovery-related letter, lead trial counsel for all parties shall meet and confer in person, or
10 telephonically if an in-person conference is not feasible, regarding the discovery dispute(s) in an
11 effort to resolve these matter(s). If unable to resolve all disputes through this procedure, the party
12 seeking Court intervention may file an appropriate joint letter. Upon receipt of the filing, the
13 Court may order the parties to further meet and confer if the nature of the dispute is such that it
14 should be resolved without court intervention.

15 In the rare event that the parties are unable to meet and confer as directed above, or a
16 moving party is unable to obtain the opposing party's portion of a joint letter after the meet and
17 confer session, the moving party shall file a written request for a telephonic conference for the
18 purpose of enforcing the Court's meet and confer requirement, or for the Court to fashion an
19 alternative procedure. The written request shall include a declaration which states any attempt to
20 meet and confer and/or obtain the joint letter, the reasons for the inability to comply with the
21 standing order, and (if possible) three dates and times at which all parties are available for a
22 telephonic conference. The moving party may attach exhibits to the declaration, but the
23 declaration and exhibits combined may not exceed seven pages. The Court will not excuse a
24 party from the requisite in-person or telephonic meeting unless good cause is shown.

25 Joint Letter. After meeting and conferring as set forth above, the parties shall draft and
26 file a jointly signed letter within five (5) business days of the lead trial counsels' meet and confer
27 session that contains the following:
28

- 1 (a) A cover page with the case caption and an attestation that the parties met and
2 conferred in person or telephonically before filing the letter, complied with Section
3 9 of the Northern District's Guidelines for Professional Conduct regarding
4 discovery prior to filing the joint letter, as well as the signature of both parties or
5 counsel;
- 6 (b) A section which sets forth the unresolved dispute and any pertinent factual
7 background, including relevant case management deadlines such as discovery cut-
8 off, pretrial conference and trial dates; and
- 9 (c) With respect to each issue relating to the unresolved dispute, a detailed summary
10 of each party's final substantive position and their final proposed compromise on
11 each issue, including relevant legal authority. This process allows a side-by-side,
12 stand-alone analysis of each disputed issue.

13 The joint letter shall not exceed eight (8) double-spaced pages, excluding the cover page,
14 without leave of Court, and may not be accompanied by exhibits or affidavits other than exact
15 copies of interrogatories, requests for production of documents and/or responses, privilege logs,
16 and relevant deposition testimony. The joint letter must be e-filed under the Civil Events category
17 of "Motions and Related Filings>Motions--General>Discovery Letter Brief." Upon receipt of the
18 joint letter, the Court will determine what future proceedings are necessary.

19 All exhibits to motions and/or discovery dispute letters should be separately filed on ECF.
20 For example, if the motion is Docket No. 30, and the declaration with ten exhibits is Docket No.
21 31, Exhibit A should be filed as Docket No. 31-1, Exhibit B should be Docket No. 31-2, and so
22 on. All exhibits should be filed in a searchable OCR format where possible.

23 Document Responses. In responding to requests for documents and materials under Fed.
24 R. Civ. P. 34, all parties shall affirmatively state, in a written response served on all other parties,
25 the full extent to which they will produce materials and shall, promptly after the production,
26 confirm in writing that they have produced *all* such materials so described that are locatable after a
27 diligent search of *all* locations at which such materials might plausibly exist. It shall not be
28 sufficient to object and/or to state that "responsive" materials will be or have been produced.

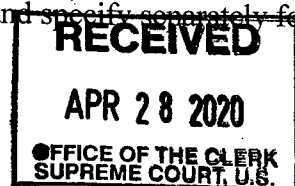
To the maximum extent feasible, all party files and records should be retained and produced in their original form and sequence, including file folders, and the originals should remain available for inspection by any counsel on reasonable notice.

Depositions. Counsel shall consult in advance with opposing counsel to schedule depositions at a mutually convenient time and location. Counsel and parties must comply with Fed.R.Civ.P. 30(d)(1). Speaking objections are prohibited. When privilege is claimed, the witness must answer questions relevant to the existence, extent, or waiver of the privilege, such as the date of the communication, the speaker, and other people who were present to hear the communication, and the subject matter, unless such information is itself privileged.

In emergencies during discovery events (such as depositions), any party may, after exhausting good faith attempts to resolve disputed issues, seek judicial intervention pursuant to Civil L.R. 37-1(b) by contacting the Court through the courtroom deputy. Before calling, the parties must first send a short email describing the nature of the dispute to skcrd@cand.uscourts.gov. If the Court is unavailable, the discovery event shall proceed with objections noted for the record.

Discovery Hearings. In the event that a discovery hearing is ordered, the counsel shall appear *in person*. Permission for a party to attend by telephone may be granted, in the Court's discretion, upon written request made at least two (2) weeks in advance of the hearing should the Court determine that good cause exists to excuse personal attendance and that personal attendance is not needed in order to have an effective discovery hearing. The facts establishing good cause must be set forth in the request.

Privilege Logs. If a party withholds information that is responsive to a discovery request by claiming that it is privileged or otherwise protected from discovery, that party shall promptly prepare and provide a privilege log that is sufficiently detailed and informative for the opposing party to assess whether a document's designation as privileged is justified. See Fed.R.Civ.P. 26(b)(5). The privilege log shall set forth the privilege relied upon and specify separately for each document or for each category of similarly situated documents:



- (a) The title and description of the document, including number of pages or Bates-number range;
- (b) The subject matter addressed in the document;
- (c) The identity and position of its author(s);
- (d) The identity and position of all addressees and recipients;
- (e) The date the document was prepared and, if different, the date(s) on which it was sent to or shared with persons other than its author(s);
- (f) The steps taken to ensure the confidentiality of the communication, including affirmation that no unauthorized persons have received the communication; and
- (g) The specific basis for the claim that the document is privileged or protected. Failure to furnish this information promptly may be deemed a waiver of the privilege or protection.

MOTIONS TO SEAL

Any party who submits a request to file under seal pursuant to Civil Local Rule 79-5 shall include a statement to inform the Court: (1) whether the document, or portion thereof, has been the subject of a previous request to file under seal; and (2) if so, provide the docket numbers of the request and order on the request, and describe whether the request was granted or denied. Parties shall also submit a complete unredacted chambers copy of any brief or supporting papers lodged under seal with all confidential material highlighted.

LESS EXPERIENCED LAWYERS

The Court strongly encourages parties to permit less experienced lawyers to have an important role in hearings and at trial. The Court will extend the time limits for an associate with fewer than five years.

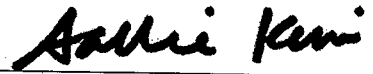
UNREPRESENTED (PRO SE) PARTIES

Parties representing themselves should visit the link titled "Pro Se Litigants" on the Court's homepage, www.cand.uscourts.gov/proselitigants. This section includes the Court's Pro Se Handbook and discusses the Legal Help Center, a free service for

unrepresented parties, where you can speak with an attorney who may be able to provide basic legal help but not representation.

IT IS SO ORDERED.

Dated: July 11, 2019



SALLIE KIM
United States Magistrate Judge

**STANDING ORDER FOR ALL JUDGES
OF THE NORTHERN DISTRICT OF CALIFORNIA**
CONTENTS OF JOINT CASE MANAGEMENT STATEMENT

All judges of the Northern District of California require identical information in Joint Case Management Statements filed pursuant to Civil Local Rule 16-9. The parties must include the following information in their statement which, except in unusually complex cases, should not exceed ten pages:

1. Jurisdiction and Service: The basis for the court's subject matter jurisdiction over plaintiff's claims and defendant's counterclaims, whether any issues exist regarding personal jurisdiction or venue, whether any parties remain to be served, and, if any parties remain to be served, a proposed deadline for service.
2. Facts: A brief chronology of the facts and a statement of the principal factual issues in dispute.
3. Legal Issues: A brief statement, without extended legal argument, of the disputed points of law, including reference to specific statutes and decisions.
4. Motions: All prior and pending motions, their current status, and any anticipated motions.
5. Amendment of Pleadings: The extent to which parties, claims, or defenses are expected to be added or dismissed and a proposed deadline for amending the pleadings.
6. Evidence Preservation: A brief report certifying that the parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored Information ("ESI Guidelines"), and confirming that the parties have met and conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and proportionate steps taken to preserve evidence relevant to the issues reasonably evident in this action. *See ESI Guidelines 2.01 and 2.02, and Checklist for ESI Meet and Confer.*
7. Disclosures: Whether there has been full and timely compliance with the initial disclosure requirements of Fed. R. Civ. P. 26, and a description of the disclosures made.
8. Discovery: Discovery taken to date, if any, the scope of anticipated discovery, any proposed limitations or modifications of the discovery rules, a brief report on whether the parties have considered entering into a stipulated e-discovery order, a proposed discovery plan pursuant to Fed. R. Civ. P. 26(f), and any identified discovery disputes.
9. Class Actions: If a class action, a proposal for how and when the class will be certified, and whether all attorneys of record for the parties have reviewed the Procedural Guidance for Class Action Settlements.
10. Related Cases: Any related cases or proceedings pending before another judge of this court, or before another court or administrative body.
11. Relief: All relief sought through complaint or counterclaim, including the amount of any damages sought and a description of the bases on which damages are calculated. In addition, any party from whom damages are sought must describe the bases on which it contends damages should be calculated if liability is established.

12. Settlement and ADR: Prospects for settlement, ADR efforts to date, and a specific ADR plan for the case, including compliance with ADR L.R. 3-5 and a description of key discovery or motions necessary to position the parties to negotiate a resolution.
13. Consent to Magistrate Judge For All Purposes: Whether **all** parties will consent to have a magistrate judge conduct all further proceedings including trial and entry of judgment. ___ Yes ___ No
14. Other References: Whether the case is suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.
15. Narrowing of Issues: Issues that can be narrowed by agreement or by motion, suggestions to expedite the presentation of evidence at trial (e.g., through summaries or stipulated facts), and any request to bifurcate issues, claims, or defenses.
16. Expedited Trial Procedure: Whether this is the type of case that can be handled under the Expedited Trial Procedure of General Order No. 64 Attachment A. If all parties agree, they shall instead of this Statement, file an executed Agreement for Expedited Trial and a Joint Expedited Case Management Statement, in accordance with General Order No. 64 Attachments B and D.
17. Scheduling: Proposed dates for designation of experts, discovery cutoff, hearing of dispositive motions, pretrial conference and trial.
18. Trial: Whether the case will be tried to a jury or to the court and the expected length of the trial.
19. Disclosure of Non-party Interested Entities or Persons: Whether each party has filed the "Certification of Interested Entities or Persons" required by Civil Local Rule 3-15. In addition, each party must restate in the case management statement the contents of its certification by identifying any persons, firms, partnerships, corporations (including parent corporations) or other entities known by the party to have either: (i) a financial interest in the subject matter in controversy or in a party to the proceeding; or (ii) any other kind of interest that could be substantially affected by the outcome of the proceeding. In any proposed class, collective, or representative action, the required disclosure includes any person or entity that is funding the prosecution of any claim or counterclaim.
20. Professional Conduct: Whether all attorneys of record for the parties have reviewed the Guidelines for Professional Conduct for the Northern District of California.
21. Such other matters as may facilitate the just, speedy and inexpensive disposition of this matter.

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT W. JOHNSON,
Plaintiff,

v.

PERFORMANT RECOVERY INC., et al.,
Defendants.

Case No. 19-cv-05789-SK

**ORDER GRANTING PLAINTIFF'S
APPLICATION TO PROCEED IN
FORMA PAUPERIS**

Regarding Docket No. 2

Plaintiff has filed an application to proceed *in forma pauperis*. Having considered the application and complaint, the Court hereby **GRANTS** Plaintiff's application. The Clerk of Court shall issue the summons. Furthermore, the U.S. Marshal for the Northern District of California shall serve, without prepayment of fees, a copy of the complaint, any amendments or attachments, Plaintiff's affidavit and this order upon Defendants.

The Court advises Plaintiff that the district court has produced a guide for pro se litigants called Representing Yourself in Federal Court: A Handbook for Pro Se Litigants, which provides instructions on how to proceed at every stage of your case, including discovery, motions, and trial. It is available electronically online (<http://cand.uscourts.gov/prosehandbook>) or in hard copy free of charge from the Clerk's Office. The Court further advises Plaintiff that he also may wish to seek assistance from the Legal Help Center. Plaintiff may call the Legal Help Center at 415-782-8982 for a free appointment with an attorney who may be able to provide basic legal help, but not legal representation.

IT IS SO ORDERED.

Dated: September 25, 2019



SALLIE KIM
United States Magistrate Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT W. JOHNSON,

Plaintiffs,

v.

PERFORMANT RECOVERY INC., et al.,

Defendants.

Case No.: 19-cv-05789-SK

CERTIFICATE OF SERVICE

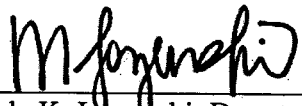
I, the undersigned, hereby certify that:

- (1) I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California; and
- (2) On 9/25/2019, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an interoffice delivery receptacle located in the Clerk's office.

Robert W. Johnson
3345 Fish Avenue, Apt.#1
Bronx, NY 10469

Dated: 9/25/2019

Susan Y. Soong
Clerk, United States District Court

By: 
Melinda K. Lozewski, Deputy Clerk to
the Honorable Sallie Kim

Robert W. Johnson
3345 Fish Avenue, Apt.#1
Bronx, NY 10469

19-cv-05789-SK

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT W. JOHNSON,
Plaintiff,

v.

PERFORMANT RECOVERY INC., et al.,
Defendants.

Case No. 19-cv-05789-SK

ORDER DENYING MOTION

Regarding Docket No. 8

On October 4, 2019, Plaintiff Robert W. Johnson ("Plaintiff") filed a motion captioned "Motion to Submit Evidence for Review & Opinions." It is not clear what type of motion Plaintiff is seeking to bring. To the extent he seeks to file a motion for summary judgment, he shall comply with the Federal Rules of Civil Procedure and the Northern District Local Civil Rules in terms of the required content and procedures for bringing such a motion. The Court DENIES Plaintiff's motion without prejudice to his filing a properly noticed motion.

The Court advises Plaintiff that the district court has produced a guide for pro se litigants called Representing Yourself in Federal Court: A Handbook for Pro Se Litigants, which provides instructions on how to proceed at every stage of your case, including discovery, motions, and trial. It is available electronically online (<http://cand.uscourts.gov/prosehandbook>) or in hard copy free of charge from the Clerk's Office. The Court further advises Plaintiff that he also may wish to seek assistance from the Legal Help Center. Plaintiff may call the Legal Help Center at 415-782-9000, extension 8657, or sign up on the 15th Floor of the Courthouse, Room 2796, for a free

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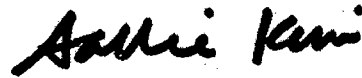
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1 appointment with an attorney who may be able to provide basic legal help, but not legal
2 representation.

3 **IT IS SO ORDERED.**

4 Dated: October 24, 2019



SALLIE KIM
United States Magistrate Judge

United States District Court
Northern District of California

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT W. JOHNSON,
Plaintiff,

v.

PERFORMANT RECOVERY INC., et al.,
Defendants.

Case No. 19-cv-05789-SK

**REFERRAL FOR REASSIGNMENT
AND REPORT AND
RECOMMENDATION REGARDING
MOTION FOR DEFAULT JUDGMENT**

Regarding Docket No. 13

On November 18, 2019, Plaintiff Robert W. Johnson ("Plaintiff") filed a motion for default judgment. For the reasons stated below, the Court reassigns this action to a district judge and recommends that Plaintiff's motion for default judgment be DENIED without prejudice.

Default has not yet been entered pursuant to Fed. R. Civ. P. 55(a). Plaintiff must move for entry of default before the Court may address his motion for default judgment. Additionally, it is not clear when, or even if, Defendants have been served yet. Thus, it is not clear whether Defendants' time to respond to the Plaintiff's complaint has expired. Therefore, the Court recommends that the motion for default judgment be denied as premature. The Court further recommends that the denial be without prejudice to Plaintiff refiling a motion for default judgment after default has been entered.

If Plaintiff moves to, and the Clerk's office does, enter default, there are additional defects with Plaintiff's motion which he may elect to address if he files another motion for default judgment. First, before entering default judgment, a court has "an affirmative duty to look into its jurisdiction over both the subject matter and the parties." *See In re Tuli v. Rep. of Iraq*, 172 F.3d 707, 712 (9th Cir. 1999). Plaintiff alleges a basis for federal subject matter jurisdiction, but he does not allege in his complaint, or address in his motion, whether the Court has personal

1 jurisdiction against each defendant.

2 Second, upon default, the factual allegations of the complaint, except those concerning
3 damages, are deemed to have been admitted by the non-responding party. *Geddes v. United*
4 *Financial Group*, 559 F.2d 557, 560 (9th Cir.1977). However, Plaintiff fails to allege facts in his
5 complaint regarding the conduct of each defendant sufficient to hold each defendant liable for any
6 of his claims.

7 Third, while the allegations in the Complaint are taken as true for purposes of default
8 judgment, courts must make specific findings of fact in assessing the amount of damages. *See*
9 *Fair Hous. of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir. 2002). Plaintiff fails to submit any
10 evidence to support his request for damages.

11 Additionally, the Court notes that Plaintiff's contact information may not be accurate.
12 Mail sent to him by the Court was returned an undeliverable. (Dkt. No. 12.) Northern District
13 Civil Local Rule 3-11(a) requires that "a party proceeding *pro se* whose address changes while an
14 action is pending must promptly file with the Court and serve upon all opposing parties a Notice
15 of Change of Address specifying the new address." Civil Local Rule 3-11(b) authorizes the Court
16 to dismiss a complaint without prejudice when:

17 (1) Mail directed to the attorney or pro se party by the Court has been
18 returned to the Court as not deliverable; and (2) The Court fails to
19 receive within 60 days of this return a written communication from
20 the attorney or pro se party indicating a current address.

21 Plaintiff is DIRECTED to update the Court docket with his current contact information.

22 The Court again advises Plaintiff that the district court has produced a guide for pro se
23 litigants called Representing Yourself in Federal Court: A Handbook for Pro Se Litigants, which
24 provides instructions on how to proceed at every stage of your case, including discovery, motions,
25 and trial. It is available electronically online (<http://cand.uscourts.gov/prosehandbook>) or in hard
26 copy free of charge from the Clerk's Office. The Court further advises Plaintiff that he also may
27 wish to seek assistance from the Legal Help Center. Plaintiff may call the Legal Help Center at
28 415-782-9000, extension 8657, or sign up on the 15th Floor of the Courthouse, Room 2796, for a
free appointment with an attorney who may be able to provide basic legal help, but not legal

representation.

For the foregoing reasons, the Court RECOMMENDS DENYING Plaintiff's motion for default judgment without prejudice as premature. Any party may file objections to this report and recommendation with the District Judge within 14 days of being served a copy. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); N.D. Cal. Civil L.R. 72-3. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. *IBEW Local Trust 595 Trust Funds, v. ACS Controls Corp.*, 2011 WL 1496056, at *3 (N.D. Cal. April 20, 2011).

IT IS SO ORDERED AND RECOMMENDED.

Dated: November 21, 2019



SALLIE KIM
United States Magistrate Judge

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT W. JOHNSON,
Plaintiffs,

v.

PERFORMANT RECOVERY INC., et al.,
Defendants.

Case No.: 19-cv-05789-SK

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that:

- (1) I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California; and
- (2) On 11/21/2019, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an interoffice delivery receptacle located in the Clerk's office.

Robert W. Johnson
3345 Fish Avenue, Apt.#1
Bronx, NY 10469

Dated: 11/21/2019

Susan Y. Soong
Clerk, United States District Court

By: M. Lock
Melinda K. Lock, Deputy Clerk to
the Honorable Sallie Kim

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT W. JOHNSON,
Plaintiff,

v.

PERFORMANT RECOVERY INC., et al.,
Defendants.

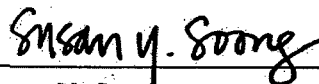
Case No. 19-cv-05789-SK (INT)

ORDER REASSIGNING CASE

IT IS ORDERED that this case has been reassigned using a proportionate, random and blind system pursuant to General Order No. 44 to the Honorable Sandra B. Armstrong in the Oakland division for all further proceedings. Counsel are instructed that all future filings shall bear the initials SBA immediately after the case number.

All hearing and trial dates presently scheduled are vacated. However, existing briefing schedules for motions remain unchanged. Motions must be renoticed for hearing before the judge to whom the case has been reassigned, but the renoticing of the hearing does not affect the prior briefing schedule. Other deadlines such as those for ADR compliance and discovery cutoff also remain unchanged.

Dated: November 22, 2019



Susan Y. Soong
Clerk, United States District Court

A true and correct copy of this order has been served by mail upon any pro se parties.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ROBERT W. JOHNSON,
Plaintiff,

vs.

PERFORMANT RECOVERY INC., et al.,
Defendants.

Case No: 19-cv-05789 SBA

**ORDER 1) DISMISSING
COMPLAINT WITH LEAVE TO
AMEND 2) DENYING MOTION
FOR DEFAULT JUDGMENT, AND
3) DIRECTING PLAINTIFF TO
FILE A NOTICE OF CHANGE OF
ADDRESS**

Plaintiff Robert W. Johnson ("Plaintiff"), proceeding pro se and in forma pauperis ("IFP"), brings the instant action against Defendants Performant Recovery Inc., State of New York Department of Taxation & Finance, New York State Assessment Receivables, and Adam Quintal (collectively, "Defendants"). He alleges federal question jurisdiction under 28 U.S.C. 1331. Pursuant to 28 U.S.C. § 1915(e)(2), the Court DISMISSES the complaint with leave to amend, for the reasons set forth below.

I. BACKGROUND

On September 16, 2019, Plaintiff filed a Complaint, Dkt. 1, along with an application to proceed IFP, Dkt. 2. The 2-page Complaint is quite scant. Under the heading "Statement of Claim," Plaintiff alleges:

Defendants have repeatedly called & mailed threatening letters to Plaintiff concerning an alleged debt. Defendants have no jurisdiction to threaten & garnish Plaintiff's wages. Plaintiff Due Process Rights are being violated & Defendants have failed to disclose reasons for actions taken by Defendants. Defendants have breached consumer affairs rules & conduct. Plaintiff is being discriminated against & are in continuance of collection agency fraud.

Dkt. 1 at 2. No additional substantive allegations are made. Id. Based on the foregoing,

1 Plaintiff brings “Original Proceedings of discriminations [*sic*], due process violations,
2 collection agency fraud, fair debt collection violations, civil rights violations,” and requests
3 as relief “\$100 Billion Dollars for Punitive Damages, \$100 Million Dollars for Future
4 Punitive Damages; Judicial Sanctions, All Relief Deemed Just & Proper by Courts.” Id.

5 On September 25, 2019, Magistrate Judge Sallie Kim—to whom the action was then
6 assigned—summarily granted Plaintiff’s application to proceed IFP. Dkt. 4. On November
7 18, 2019, Plaintiff filed a Motion for Default Judgment, wherein he requests that default
8 judgment be entered because Defendants have failed to answer. Dkt. 13. On November
9 21, 2019 Magistrate Judge Kim issued a Referral for Reassignment and Report and
10 Recommendation (“R&R”) Regarding Motion for Default Judgment. Dkt. 14. In the R&R,
11 Magistrate Judge Kim recommends that the Court deny the motion for default judgment
12 without prejudice on the grounds that default has not yet been entered and Plaintiff fails to
13 show that service was properly effectuated on Defendants. Id. at 1.

14 In the R&R, Magistrate Judge Kim also identifies various other deficiencies in
15 Plaintiff’s pleading and moving papers, including: (1) the failure to plead facts
16 demonstrating that the Court has personal jurisdiction over the Defendants; (2) the failure
17 to plead facts demonstrating Defendants’ liability for his claims; and (3) the failure to
18 provide evidence in support of his request for damages. Id. at 1-2. Magistrate Judge Kim
19 further noted that mail sent to Plaintiff had been returned as undeliverable and ordered him
20 to update his contact information with the Court. Id. at 2.

21 **II. LEGAL STANDARD**

22 A court may authorize the commencement of an action without prepayment of fees
23 by a litigant who demonstrates that he is unable to pay. 28 U.S.C. §1915(a)(1). The Court
24 has a continuing duty to dismiss such an action, however, if it determines that the action
25 “fails to state a claim on which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii); see
26 also Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000) (“It is also clear that section
27 1915(e) not only permits but *requires* a district court to dismiss an in forma pauperis
28 complaint that fails to state a claim.”) (emphasis added).

1 “The standard for determining whether a plaintiff has failed to state a claim upon
 2 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of
 3 Civil Procedure 12(b)(6) standard for failure to state a claim.” Watison v. Carter, 668 F.3d
 4 1108, 1112 (9th Cir. 2012) (citing Lopez, 203 F.3d at 1122). The Court “take[s] as true all
 5 allegations of material fact stated in the complaint and construe[s] them in the light most
 6 favorable to the plaintiff.” Id. (citation omitted). Because Plaintiff is pro se, the Court
 7 construes his pleadings liberally and affords him the benefit of any doubt. Id.

8 “Dismissal under Rule 12(b)(6) is proper when the complaint either (1) lacks a
 9 cognizable legal theory or (2) fails to allege sufficient facts to support a cognizable legal
 10 theory.” Somers v. Apple, Inc., 729 F.3d 953, 959 (9th Cir. 2013). “Rule 12(b)(6) is read
 11 in conjunction with Rule 8(a), which requires not only ‘fair notice of the nature of the
 12 claim, but also grounds on which the claim rests.’” Zixiang Li v. Kerry, 710 F.3d 995, 998-
 13 99 (9th Cir. 2013) (quoting in part Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556 n.3
 14 (2007)). “To survive a motion to dismiss, a complaint must contain sufficient factual
 15 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v.
 16 Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 570).

17 **III. DISCUSSION**

18 Plaintiff’s Complaint fails to state a claim upon which relief may be granted. As
 19 stated above, Rule 8(a) requires “a short and plain statement of the claim showing that the
 20 pleader is entitled to relief.” Fed. R. Civ. P. 8(a). Rule 8(a) requires not only fair notice of
 21 the nature of a claim but also the grounds on which it rests. Twombly, 550 U.S. at 555.

22 Here, the Court is unable to discern the nature of Plaintiff’s claims or the grounds on
 23 which they rest. There are no distinct causes of action alleged. Construing the Complaint
 24 with the utmost liberality, the Court finds that Plaintiff may be alleging a violation of the
 25 Fair Debt Collection Practices Act. Insofar as he challenges any debt collection practice,
 26 however, the Complaint provides insufficient facts to ascertain even the most basic
 27 contours of the claim. For example, Plaintiff fails to allege the date of the events in
 28 question, the nature of the alleged wrong, or the role of each defendant therein. Plaintiff

1 also alleges that his due process rights have been violated and that he has been
2 discriminated against but fails to allege any facts whatsoever to support such claims.

3 “Although a pro se litigant like [Plaintiff] may be entitled to great leeway when the
4 court construes his pleadings, those pleadings nonetheless must meet some minimum
5 threshold in providing a defendant with notice of what it is that it allegedly did wrong.”
6 Brazil v. U.S. Dep’t of Navy, 66 F.3d 193, 199 (9th Cir. 1995). Plaintiff fails to meet this
7 minimum threshold, and thus, the Complaint is DISMISSED pursuant to § 1915(e)(2)(B).
8 Because he is acting pro se, dismissal is with leave to amend. See Lucas v. Dep’t of Corr.,
9 66 F.3d 245, 248 (9th Cir. 1995) (“[A] pro se litigant is entitled to notice of the complaint’s
10 deficiencies and an opportunity to amend prior to dismissal of the action.”).¹

11 IV. CONCLUSION

12 For the reasons stated above, IT IS HEREBY ORDERED THAT:

13 1. Plaintiff’s Complaint is DISMISSED with leave to amend. Plaintiff shall file
14 an amended complaint by no later than **January 13, 2020**. Any amended complaint must
15 clearly delineate Plaintiff’s legal claims, allege facts providing the grounds for each claim,
16 and identify the defendant(s) he maintains are liable for each claim. Although it is not
17 necessary for Plaintiff to cite case law or include legal argument in his pleading, distinct
18 causes of action and the statutes under which they are brought should be specified. Plaintiff
19
20
21

22
23 ¹ As noted above, Magistrate Judge Kim summarily granted Plaintiff’s application to
24 proceed IFP without conducting the requisite screening of the complaint as required by 28
25 U.S.C. § 1915(e)(2). Magistrate Judge Kim later recognized the insufficiency of the
26 Complaint in her R&R. See Dkt. 14 at 2 (“However, Plaintiff fails to allege facts in his
27 complaint regarding the conduct of each defendant sufficient to hold each defendant liable
28 for any of his claims.”). Having now reviewed the Complaint, the Court reconsiders and
rescinds the order authorizing service of the Complaint. See City of Los Angeles v. Santa
Monica Baykeeper, 254 F.3d 882, 889 (9th Cir. 2001) (a district court “possesses the
inherent procedural power to reconsider, rescind, or modify an interlocutory order for cause
seen by it to be sufficient”); Fairbank v. Wunderman Cato Johnson, 212 F.3d 528, 532 (9th
Cir. 2000) (a district court may “revisit prior interlocutory decisions entered by another
judge in the same case if there are cogent reasons or exceptional circumstances”).

1 is warned that the failure to file an amended complaint within the time prescribed may
2 result in the dismissal of the action in its entirety. Fed. R. Civ. P. 41(b).²

3 2. Because the complaint is dismissed, Plaintiff's motion for default judgment is
4 DENIED without prejudice. See Danning v. Lavine, 572 F.2d 1386, 1388 (9th Cir. 1978)
5 (claims that are not well-pleaded cannot support default judgment). The R&R
6 recommending denial of the motion on other grounds is therefore not adopted.

7 3. The order directing the U.S. Marshal for the Northern District of California to
8 complete service without payment of fees is RESCINDED. The Court may order that
9 service be completed upon the filing of an amended complaint that survives screening
10 under 28 U.S.C. § 1915(e)(2)(B). Any defendants who have been served to date need not
11 respond to any amended complaint unless and until the Court issues an order finding that
12 the amended complaint has survived screening under § 1915(e)(2)(B) and setting a deadline
13 for those defendants to respond.

14 5. Finally, the Court notes that mail sent to Plaintiff has been returned to the
15 Court as undeliverable. Dkt. 12. Plaintiff shall file and serve a Notice of Change of
16 Address by no later than **January 13, 2020**. Plaintiff is warned that the failure to provide a
17 current mailing address may result in the dismissal of the action. See N.D. Cal. Civ. L.R.
18 3-11(b); Fed. R. Civ. P. 41(b).


19 6. **PLAINTIFF IS ADVISED THAT THE FAILURE TO COMPLY WITH**
20 **THIS ORDER, INCLUDING THE FAILURE TO TIMELY FILE AN AMENDED**
21 **COMPLAINT AND/OR A NOTICE OF CHANGE OF ADDRESS, MAY RESULT**
22 **IN THE DISMISSAL OF THE ACTION WITHOUT FURTHER NOTICE.**

23
24 ² For guidance on drafting a complaint (and other matters pertinent to this litigation),
25 Plaintiff may obtain a copy of the Handbook for Pro Se Litigants, which is available free of
26 charge from the Clerk's Office and/or available for download on the Court's website at
27 <https://cand.uscourts.gov/pro-se-litigants/>. Plaintiff may also contact the Court's Legal
28 Help Center, which provides information and limited-scope legal assistance to pro se
litigants in civil cases. Additional information regarding the Legal Help Center may be
found at <https://cand.uscourts.gov/about/court-programs/legal-help-desks/>.

1 7. This Order terminates Dockets 13 and 14.

2 IT IS SO ORDERED.

3 Dated: 12/23/2019


SAUNDRA BROWN ARMSTRONG
Senior United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT W. JOHNSON,
Plaintiffs,

v.

PERFORMANT RECOVERY INC., et al.,
Defendants.

Case No.: 19-cv-05789-SBA

CERTIFICATE OF SERVICE

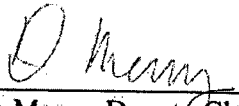
I, the undersigned, hereby certify that:

- (1) I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California; and
- (2) On 12/23/2019, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an interoffice delivery receptacle located in the Clerk's office.

Robert W. Johnson
3345 Fish Avenue, Apt.#1
Bronx, NY 10469

Dated: 12/23/2019

Susan Y. Soong
Clerk, United States District Court

By: 
Doug Merry, Deputy Clerk to
the Honorable Sandra Brown Armstrong