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3 UNITED STATES DISTRICT COURT  
4 NORTHERN DISTRICT OF CALIFORNIA  
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7 AO VENTURES, LLC,

8 Plaintiff,

9 v.

10 ARMANDO GUTIERREZ, et al.,

11 Defendants.

Case No. 12-04625 JCS

**AMENDED ORDER RE MOTIONS TO  
DISMISS [Docket Nos. 15, 22]<sup>1</sup>**

12  
13 **I. INTRODUCTION**

14 Plaintiff AO Ventures, LLC (“AO Ventures”) alleges in its complaint that it entered into an  
15 agreement with Defendant Armando Gutierrez for the purchase of the domain name  
16 StudyingAbroad.com (“the Domain Name”) for the amount of \$14,500. Complaint, ¶ 14. Instead  
17 of transferring the Domain Name to AO Ventures, Plaintiff alleges, Gutierrez transferred it to  
18 Defendant CEA Global Education (“CEA”). On the basis of these allegations, AO ventures  
19 asserts claims for breach of contract, specific performance and fraud against Gutierrez and for  
20 intentional interference with contract against CEA. Plaintiff alleges that there is federal subject  
21 matter jurisdiction under 28 U.S.C. § 1332(a) on the basis that there is complete diversity of  
22 citizenship and the amount in controversy exceeds \$75,000.

23 Gutierrez brings a motion to dismiss (“Gutierrez Motion”) asserting that: 1) there is no  
24 personal jurisdiction over Gutierrez, who is a resident of Florida; 2) there is no subject matter  
25 jurisdiction because it is apparent to a legal certainty that the amount-in-controversy requirement  
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27  
28 <sup>1</sup> The Court amends its previous order to reflect that dismissal of Plaintiff’s complaint is *without*  
prejudice.

1           Second, Plaintiff offers no basis from which to conclude that either the development costs  
2 or the costs of retaining an expert were incurred as a result of Defendant's failure to transfer the  
3 Domain Name to Plaintiff. Indeed, all but two months of the development expenditures  
4 (approximately \$10,000 based on Plaintiff's estimate of \$5,000 a month) were incurred *after*  
5 Gutierrez allegedly cancelled the transaction, on May 17, 2012. *See* Complaint, ¶ 19. Similarly,  
6 the Alexander Declaration does not state that *any* of the costs to retain the expert were incurred  
7 before the alleged breach. Because consequential damages resulting from a breach of contract  
8 must be reasonably foreseeable at the time the contract was entered, *see 999 v. CIT Corp.*, 776  
9 F.2d 866, 872 (9th Cir. 1985), this evidence is not sufficient to counter the evidence presented by  
10 Gutierrez as to the amount in controversy.

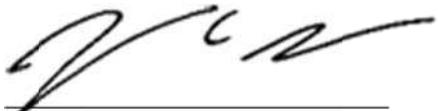
11           Based on the evidence presented by the parties, it is apparent to a legal certainty that the  
12 \$75,000 amount-in-controversy requirement is not met in this case.

### 13 **III. CONCLUSION**

14           For the reasons stated above, the Gutierrez Motion is GRANTED. The Court dismisses this  
15 action, in its entirety, without prejudice for lack of subject matter jurisdiction. Because the Court  
16 finds based on the evidence presented by the parties that this deficiency cannot be cured, Plaintiff  
17 shall not be permitted to file an amended complaint. The Clerk is instructed to close the file in  
18 this case.

19           IT IS SO ORDERED

20           Dated: December 18, 2012

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22 \_\_\_\_\_  
23 Joseph C. Spero  
24 United States Magistrate Judge  
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