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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT DOURANDISH,
Plaintiff,
v.
PATRICK FITZGERALD, et al.,
Defendants.

Case No. 13-cv-05984-VC

**ORDER GRANTING MOTION TO
DISMISS**

Re: Dkt. Nos. 21, 28

Plaintiff Robert Dourandish has sued Patrick Fitzgerald, Director of the Defense Contract Audit Agency (DCAA), and Chuck Hagel, Secretary of the Department of Defense, alleging various tort and civil rights claims. Dourandish’s claims stem from a contract dispute between his company, Quimba, and the United States Air Force. Dourandish alleges that, in his interactions with the government, the DCAA auditor was negligent, the auditor committed civil rights violations against him, the auditor’s supervisor was negligent, and the DCAA branch manager was negligent. The government has filed a motion to dismiss, which is GRANTED, and the hearing scheduled for June 26, 2014 is VACATED.

Dourandish’s tort claims arise directly from a contract dispute for which an existing action is currently pending in the Court of Federal Claims. *Quimba Software, Inc. v. the United States of America*, Case No. 1:12-cv-00142-MCW. Because Dourandish’s allegations do not exist independently of this contract dispute, and because they arise directly from the contract, the allegations are appropriately classified as contract, not tort, claims. *See, e.g., Woodbury v. United States*, 313 F.2d 291, 295096 (9th Cir. 1963); *Performance Contracting, Inc. v. United States*, 2012

1 WL 3234210 (E.D. Cal. Aug. 6, 2012). Dourandish's claims are thus subject to the Contract
2 Disputes Act, 41 U.S.C. § 7101 *et seq.*, which confers exclusive jurisdiction in the Court of
3 Federal Claims. Therefore, this court does not have jurisdiction to adjudicate the tort claims, and
4 they are therefore dismissed with prejudice, which means that Dourandish may not refile his tort
5 claims in this case.

6 The complaint also includes a "civil rights" claim, in which Dourandish alleges that the
7 DCAA auditor took an aggressive stance toward Dourandish's company because of his ethnicity.
8 This claim is dismissed with leave to amend. First, Dourandish has not pled sufficient facts to
9 support a plausible allegation of ethnicity discrimination. *See Bell Atl. Corp. v. Twombly*, 550 U.S.
10 544, 557 (2007). Second, Dourandish has brought his civil rights claim under the Federal Torts
11 Claim Act, which he cannot do since the Act bars damages claims against the government for
12 alleged constitutional violations. *See FDIC v. Meyer*, 510 U.S. 471, 478 (1994). Finally, on its
13 face, the civil rights claim appears time barred by a two-year statute of limitations. *See, e.g.,*
14 *Maldonado v. Harris*, 370 F.3d 945, 954 (9th Cir. 2004); *Western Center for Journalism v.*
15 *Cederquist*, 235 F.3d 1153, 1156 (9th Cir. 2000).

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18 Although it is unclear whether Dourandish can amend his complaint to cure these defects,
19 because Dourandish is proceeding without a lawyer the court grants him leave to amend his civil
20 rights claim only. If Dourandish believes in good faith that he can file an amended complaint that
21 cures these defects, he may do so within 21 days. Otherwise, dismissal of the entire complaint
22 will be with prejudice.

23
24 For Dourandish's benefit, the court directs his attention to the Handbook for Pro Se
25 Litigants, which is available along with further information on the court's website at
26 <http://cand.uscourts.gov/proselitigants>. Dourandish may also contact the Legal Help Center,
27 Golden Gate Avenue, 15th Floor, Room 2796, Telephone No. 415-782-898 for free legal advice
28 regarding his claims.

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IT IS SO ORDERED.

Dated: June 20, 2014



VINCE CHHABRIA
United States District Judge

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Case No. [13-cv-05984-VC](#)

CERTIFICATE OF SERVICE


I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 6/20/2014, 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 inter-office delivery receptacle located in the Clerk's office.

Robert Dourandish
POB 1476
San Mateo, CA 94401

Dated: 6/20/2014

Richard W. Wieking
Clerk, United States District Court

By: 
Kristen Melen, Deputy Clerk to the
Honorable VINCE CHHABRIA