

United States District Court  
For the Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DONGSHENG HUANG,	)	Case No.: C 12-0785 PSG
	)	
Plaintiff,	)	<b>ORDER DENYING MOTION FOR</b>
v.	)	<b>RECONSIDERATION</b>
	)	
ULTIMO SOFTWARE SOLUTIONS, INC.,	)	
	)	
Defendant.	)	

On June 5, 2012, this court entered an order dismissing the claims brought by Plaintiff Dongsheng Huang (“Plaintiff”) against Defendant Ultimo Software Solutions, Inc. (“Defendant”) for lack of subject matter jurisdiction.<sup>1</sup> On June 7, 2012, Plaintiff requested leave to file a motion for reconsideration of the court’s June 5 order,<sup>2</sup> and on September 18, 2012, Plaintiff withdrew his leave request and indicated he was moving for an amended judgment under Fed. R. Civ. P. 59(e).<sup>3</sup> A final judgment has not been entered, and so the court construes Plaintiff’s motion as a motion for reconsideration.<sup>4</sup>

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<sup>1</sup> See Docket No. 28.

<sup>2</sup> See Docket Nos. 29, 30.

<sup>3</sup> See Docket No. 32.

<sup>4</sup> See *Vasquez v. Select Portfolio Servs., Inc.*, Case No. C 11-06183 HRL, 2012 WL 2838902, at \*1 (N.D. Cal. July 10, 2012).

ORDER

1 For leave to file a motion for reconsideration, Plaintiff must show one of three situations  
2 that justify revisiting the court’s earlier order: (1) “the district court is presented with newly-  
3 discovered evidence”; (2) “there is an intervening change in controlling law”; or (3) “the district  
4 court committed clear error or made a decision that was manifestly unjust.”<sup>5</sup> It is the last reason  
5 that provides the basis for Plaintiff’s motion.

6 Plaintiff argues that the court erred by mistakenly presuming there was no final order in the  
7 agency action, by failing to consider other grounds for subject matter jurisdiction, and by  
8 dismissing the case with prejudice. Because the court finds Plaintiff fails to allege any manifest  
9 error in the court’s subject matter jurisdiction determination, it will not discuss Plaintiff’s other  
10 arguments.

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12 In the underlying case, Plaintiff sought to enforce a judgment rendered by the Department  
13 of Labor (“DOL”) against Defendant awarding Plaintiff back pay and other damages.<sup>6</sup> Plaintiff  
14 specifically sought to have this court order Defendant to pay the damages directly to him<sup>7</sup> in  
15 contravention to the DOL’s policy that damages must be paid to the agency’s administrator, who  
16 then disburses the funds.<sup>8</sup>

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18 In the June 5 order, the court dismissed Plaintiff’s claims for lack of subject matter  
19 jurisdiction.<sup>9</sup> The court noted that Plaintiff relied on the Administrative Procedures Act (“APA”),  
20 which subjects an agency decision to review only when the decision is (1) reviewable by statute or  
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22  
23 <sup>5</sup> See *Johnson v. U.S. Dep’t of Treasury*, Case No. C 11-06684 WHA, 2012 WL 5269620, at \*1  
24 (N.D. Cal. Oct. 24, 2012).

25 <sup>6</sup> See Docket No. 1.

26 <sup>7</sup> See *id.*

27 <sup>8</sup> See 20 C.F.R. § 655.810(a) (“[T]he Administrator shall assess and oversee the payment of back  
28 wages or fringe benefits to any H-1B nonimmigrant who has not been paid or provided fringe  
benefits as required.”).

<sup>9</sup> See Docket No. 28.

1 (2) a final agency order has been issued.<sup>10</sup> The court also noted that the APA allows suits only  
2 against the agency, and not private actors.<sup>11</sup> Noting that Defendant was a private company not  
3 subject to the APA, that no final order was issued by the DOL, and that no statute made the non-  
4 final decision reviewable, the court determined it lacked subject matter jurisdiction to hear  
5 Plaintiff's claims.<sup>12</sup>

6 Plaintiff appears to concede that the APA does not provide jurisdiction, and so he points to  
7 various other statutes and regulations and argues that they provide the court with federal question  
8 jurisdiction over this case pursuant to 28 U.S.C. § 1331.<sup>13</sup> None of the statutes or regulations,  
9 however, provides causes of action that would allow the court to exercise jurisdiction. For  
10 example, 20 C.F.R. § 655.850 describes the transfer of an administrative record from an  
11 administrative agency to a district court if a complaint regarding an agency decision is filed with  
12 the district court. Nothing in the regulation states a cause of action. Likewise, none of the other  
13 statutes or regulations Plaintiff suggests state claims, let alone causes of action matching his  
14 allegations. Plaintiff has failed to show how the court manifestly erred in its determination that it  
15 has no subject matter jurisdiction over his claim.  
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18 Accordingly, Plaintiff's motion for leave to file a motion for reconsideration is DENIED.  
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20 Dated: November 20, 2012

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22 

23 PAUL S. GREWAL  
24 United States Magistrate Judge

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26 <sup>10</sup> See *id.*; see also 5 U.S.C. § 704.

27 <sup>11</sup> See Docket No. 28; see also 5 U.S.C. § 704.

28 <sup>12</sup> See Docket No. 28.

<sup>13</sup> See Docket No. 29.