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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

11 DONGSHENG HUANG,

12 Plaintiff,

13 v.

14 ULTIMO SOFTWARE SOLUTIONS, INC.,

15 Defendant.

) Case No.: C 12-0785 PSG

) **ORDER RE DESIGNATION OF**  
) **TRANSCRIPTS FOR APPEAL**

16 On November 26, 2012, Plaintiff Dongsheng Huang (“Plaintiff”) appealed an order from  
17 this court dismissing his claims against Defendant Ultimo Software Solutions, Inc. (“Defendant”).<sup>1</sup>  
18 Plaintiff did not designate the transcript of the hearing on the motion to dismiss,<sup>2</sup> but Defendant  
19 apparently requested the transcript for the record on appeal.<sup>3</sup> Plaintiff asserts that the transcript  
20 from the hearing is unnecessary to the appeal and objects to having to pay for the transcript and so  
21 seeks an order from the court requiring Defendant to pay for the hearing transcript.<sup>4</sup> Defendant has  
22 not filed a response.  
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25 <sup>1</sup> See Docket No. 34.

26 <sup>2</sup> See Docket No. 39.

27 <sup>3</sup> See Docket No. 38; *see also* Docket No. 28 (order granting Defendant’s motion to dismiss);  
28 Docket No. 27 (hearing regarding motion to dismiss).

<sup>4</sup> See Docket No. 38.

ORDER

Pursuant to Ninth Circuit Rule 10-3.1(f), “[i]f appellee notifies appellant that additional portions of the transcript are required . . . appellant shall make arrangements with the court reporter to pay for these additional portions unless appellant certifies that they are unnecessary to the appeal and explains why not.” If the appellant makes such a certification, the court “shall determine which party shall pay for which portions of the transcript.”

Here, Plaintiff asserts that because the hearing merely repeated the arguments in the parties’ papers regarding the motion to dismiss, the transcript is unnecessary on appeal and Defendant should be responsible for payment for the transcript.<sup>5</sup> The court has reviewed the transcript from the hearing and compared it to the parties’ papers regarding Defendant’s motion to dismiss.<sup>6</sup> The court agrees with Plaintiff that the topics covered in the hearing are the same as the topics covered in the parties’ papers. The court therefore agrees that the transcript from the hearing is not necessary on appeal.<sup>7</sup>

Because the court has determined that the transcript of the hearing is unnecessary on appeal, the cost of including the transcript properly is ascribed to Defendant. Defendant therefore shall pay the court reporter for the copy of the transcript included on appeal.

**IT IS SO ORDERED.**

Dated: February 13, 2013

  
PAUL S. GREWAL  
United States Magistrate Judge

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<sup>5</sup> See Docket No. 38.

<sup>6</sup> See Docket No. 39 (transcript of hearing); Docket No. 18 (Defendant’s motion to dismiss); Docket No. 22 (Plaintiff’s opposition); Docket No. 23 (Defendant’s reply).

<sup>7</sup> Cf. *Fidelity Nat. Financial, Inc. v. Friedman*, Case No. CIV 03-1222-PHX-RCP (DKD), 2008 WL 4838706, at \*2 (D. Ariz. Nov. 6, 2008) (noting that transcript of hearing before magistrate judge was unnecessary on appeal where arguments at hearing were fully covered by arguments in papers before district court judge adopting magistrate judge’s report and recommendation).