

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.: 5:12-cv-00785-PSG
)	
Plaintiff,)	ORDER GRANTING DEFENDANT’S
v.)	MOTION TO DISMISS
)	
ULTIMO SOFTWARE SOLUTIONS, INC.,)	(Re: Docket No. 18)
)	
Defendant.)	

Pro se Plaintiff Dongsheng Huang (“Huang”) brings this suit against Defendant Ultimo Software Solutions, Inc. (“Ultimo”). Huang petitions the court to enforce the United States Department of Labor Administrative Review Board’s (“ARB”) March 31, 2011 order, which affirmed the Administrative Law Judge’s (“ALJ”) December 17, 2008 order.¹ Ultimo moves to dismiss Huang’s complaint for failure to state a claim upon which relief may be granted, and on the ground that this court lacks jurisdiction.² On April 9, 2012, Huang filed his opposition,³ and on April 30, 2012, Ultimo filed its reply.⁴ On May 29, 2012, the parties appeared for hearing. Having

¹ See Docket No. 1 (Pl.’s Application for Enforcement).
² See Docket No. 18 (Def.’s Mot. to Dismiss).
³ See Docket No. 22 (Pl.’s Response to Def.’s Mot. to Dismiss).
⁴ See Docket No. 23 (Def.’s Reply).

1 reviewed the papers, and considered the arguments and evidence presented, the court GRANTS
2 Ultimo's motion.

3 I. BACKGROUND

4 On October 16, 2006, and on April 24, 2007, Huang filed an H-1B complaint with the
5 United States Labor Department's Wage and Hour Division.⁵ On January 24, 2008, after
6 conducting an investigation, the Wage and Hour Division issued an Administrator's
7 Determination.⁶ Huang appealed the Administrator's Determination, and on December 17, 2008,
8 the ALJ issued a Decision and Order.⁷ Huang again appealed, and on March 31, 2011, the ARB
9 affirmed.⁸ On April 18, 2011, Huang filed a Motion to Reconsider.⁹ The ARB denied the motion
10 on November 10, 2011.¹⁰

11 On February 1, 2012, at Ultimo's request and as directed by the ALJ's order, the
12 Administrator's Office initiated a computation of interest.¹¹ On February 29, 2012, the
13 Administrator filed a computation of interest with the ALJ, on March 6, 2012, Huang filed an
14 opposition to the ALJ's computation, and on March 20, 2012, Ultimo filed its response to the
15 ALJ's computation.¹² On March 22, 2012, the ALJ issued an order denying Ultimo's request to
16 make monthly installment payments, and denying Huang's objections.¹³ Huang then filed this
17 action to compel Ultimo to make payments.¹⁴

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19 ⁵ See Docket No. 1 (Pl.'s Application for Enforcement) at 2.

20 ⁶ See *id.*

21 ⁷ See *id.*

22 ⁸ See *id.*

23 ⁹ See *id.*

24 ¹⁰ See *id.*

25 ¹¹ See Docket No. 18 (Def.'s Mot. to Dismiss) at 2.

26 ¹² See *id.* at 3.

27 ¹³ See *id.*

28 ¹⁴ See Docket No. 1 (Pl.'s Application for Enforcement).

II. LEGAL STANDARDS

A. Motion to Dismiss Pursuant to Rule 12(b)(6)

A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.”¹⁵ If a plaintiff fails to proffer “enough facts to state a claim to relief that is plausible on its face,” the complaint may be dismissed for failure to state a claim upon which relief may be granted.¹⁶ A claim is facially plausible “when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”¹⁷ Accordingly, under Fed. R. Civ. P. 12(b)(6), which tests the legal sufficiency of the claims alleged in the complaint, “[d]ismissal can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.”¹⁸

On a motion to dismiss, the court must accept all material allegations in the complaint as true and construe them in the light most favorable to the non-moving party.¹⁹ The court’s review is limited to the face of the complaint, materials incorporated into the complaint by reference, and matters of which the court may take judicial notice.²⁰ However, the Court need not accept as true allegations that are conclusory, unwarranted deductions of fact, or unreasonable inferences.²¹ “Dismissal with prejudice and without leave to amend is not appropriate unless it is clear that the complaint could not be saved by amendment.”²²

¹⁵ Fed. R. Civ. P. 8(a)(2).

¹⁶ *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

¹⁷ *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009).

¹⁸ *Balistreri v. Pacifica Police Dep’t.*, 901 F.2d 696, 699 (9th Cir. 1990).

¹⁹ *See Metzler Inv. GMBH v. Corinthian Colls, Inc.*, 540 F.3d 1049, 1061 (9th Cir. 2008).

²⁰ *See id.* at 1061.

²¹ *See Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001); *see also Twombly*, 550 U.S. at 561 (“a wholly conclusory statement of [a] claim” will not survive a motion to dismiss).

²² *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003).

1 **III. DISCUSSION**

2 Ultimo argues that Huang's complaint must be dismissed because there is no final order,
3 and that claims arising under the Administrative Procedures Act ("APA") require a final agency
4 order before becoming reviewable. Ultimo also argues that Huang's request for the court to direct
5 Ultimo to pay Huang directly is improper, and that it should instead pay the Administrator, who in
6 turn will make payments to Huang. Huang responds that the litigation before the Labor Department
7 is at an end, a final order has issued, and all that is left for the court to do is to order Ultimo to pay
8 Huang what he is owed.

9 After considering the arguments, it is clear to the court that it lacks jurisdiction to hear this
10 matter. Under the APA, upon which Huang relies,²³ an agency action is subject to judicial review
11 only when: (1) it is made reviewable by statute; or (2) a final agency order has issued.²⁴ Neither is
12 applicable here. First, the APA does not offer an independent basis for establishing subject matter
13 jurisdiction.²⁵ Second, a final agency order did not issue before Huang filed this suit. Huang filed
14 his complaint seeking enforcement of a final order on February 17, 2012. But the Administrator did
15 not file a computation of interest until February 29, 2012, the parties did not submit motions until
16 March 6 and March 20, 2012, and the ALJ did not issue an order affirming the Administrator's
17 calculations until March 22, 2012. Even as recently as April 25, 2012, Huang continued to seek
18 review of the Administrator's calculations by the ARB.²⁶ Finally, the APA authorizes suit against a
19 government agency, not a private company like Ultimo.²⁷

20 ²³ Huang also cites to Federal Rules of Appellate Procedure 15(b) and 19, but these concern
21 appeals directly to the Federal Circuit Court of Appeals, not enforcement in a federal district court.

22 ²⁴ See 5 U.S.C. § 704.

23 ²⁵ Cf. *Saephan v. Barnhart*, Case No. C 01-02660 SI, 2003 WL 22309450, at *2 (N.D. Cal. Oct. 1,
24 2003) ("It is clear based on these provisions of the Act that the only civil action permitted on any
25 claim arising under title II or title XVI is an action to review 'the final decision of the
26 Commissioner made after a hearing.'") (citing *Califano v. Sanders*, 430 U.S. 99, 108 (1977)).

26 ²⁶ See *Cabaccang v. U.S. Citizenship and Immigration Serv.*, 627 F.3d 1313, 1316 (9th Cir. 2010)
27 ("Where relief is available from an administrative agency, the plaintiff is ordinarily required to
28 pursue that avenue of redress before proceeding to the courts; and until that recourse is exhausted,
suit is premature and must be dismissed.") (citing *Reiter v. Cooper*, 507 U.S. 258, 259 (1993)).

²⁷ See 5 U.S.C. § 704 ("A person suffering legal wrong because of agency action, or adversely
affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to

IV. CONCLUSION

The court GRANTS Ultimo’s motion to dismiss. Because it is clear that no amendment could save Huang’s complaint, this dismissal is without leave to amend.

IT IS SO ORDERED.

Dated: June 5, 2012


PAUL S. GREWAL
United States Magistrate Judge

United States District Court
For the Northern District of California

judicial review thereof. An action in a court of the United States seeking relief other than money damages *and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority* shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party.”) (emphasis added); *Indep. Bankers Ass’n of America v. Nat’l Credit Union Admin.*, 936 F. Supp. 605, 614 (W.D. Wis. 1996) (dismissing action brought under the APA because neither entity was a federal agency subject to review under the APA).