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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

AMERANTH, INC.,

Plaintiff,

v.

DOMINO'S PIZZA, INC. and
DOMINO'S PIZZA, LLC

Defendants.

Case No.: 12cv0733 DMS (WVG)

**ORDER DENYING AMERANTH’S
MOTION FOR
RECONSIDERATION, OR IN THE
ALTERNATIVE, REQUEST FOR
CERTIFICATION OF
INTERLOCUTORY APPEAL**

This case comes before the Court on Ameranth’s motion for reconsideration or, in the alternative, for certification for interlocutory appeal, of this Court’s February 5, 2021 Order Granting in Part Defendants’ Second Renewed Motion to Declare This Case Exceptional and Award Attorneys Fees and Non-Taxable Costs. Defendants filed an opposition to the motion, and Plaintiff filed a reply.

“Reconsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law.” *School Dist. No. 1J, Multnomah County, Oregon v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). Ameranth argues reconsideration is warranted here “to correct multiple manifest errors of law and fact upon

1 which the Order is based in order to prevent serious injustice,” (Mem. of P. & A. in Supp.
2 of Mot. at 1), which the Court construes as a “clear error” argument.

3 To prevail on this argument, Ameranth must show there is a “definite and firm
4 conviction that a mistake has been committed[.]” *Latman v. Burdette*, 366 F.3d 774, 781
5 (9th Cir. 2004) (citing *In re Banks*, 263 F.3d 862, 869 (9th Cir. 2001)). Ameranth identifies
6 numerous instances of alleged “clear error” in the Court’s Order, from the Court’s analysis
7 of the Pizza Hut settlement and the Menusoft vacatur to whether Ameranth reassessed its
8 case after the Federal Circuit’s decision in *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229,
9 1245 (Fed. Cir. 2016). The Court has reviewed and considered each of those arguments,
10 but disagrees with Ameranth that there was any “clear error” in the Court’s Order.
11 Accordingly, the Court denies Ameranth’s motion for reconsideration.

12 Next, Ameranth moves the Court, in conclusory fashion, to certify the Order for
13 interlocutory appeal pursuant to 28 U.S.C. § 1292(b). This section states:

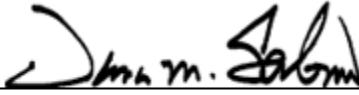
14 When a district judge, in making in a civil action an order not otherwise
15 appealable under this section, shall be of the opinion that such order involves
16 a controlling question of law as to which there is substantial ground for
17 difference of opinion and that an immediate appeal from the order may
18 materially advance the ultimate termination of the litigation, he shall so state
19 in writing in such order.

19 28 U.S.C. § 1292(b). “Both the legislative history of Section 1292(b) and the case law
20 emphasize that . . . courts should only grant interlocutory appeals under rare
21 circumstances.” *Fujitsu Ltd. v. Tellabs, Inc.*, 539 Fed. App’x 1005, 1006 (Fed. Cir. 2013).
22 Here, Ameranth identifies three “critical legal questions” for the Federal Circuit, on which
23 the Court’s conclusions are allegedly “in tension with other legal authority[.]” and argues
24 the Federal Circuit’s resolution of these questions “will advance [the] ultimate
25 determination of this action.” (Mem. of P. & A. in Supp. of Mot. at 24-25.) However, the
26 Court disagrees with these arguments. In particular, the Court disagrees with Ameranth’s
27 assertion that interlocutory review of the exceptional case ruling will “materially advance
28 the ultimate termination” of this litigation. On the contrary, this case is effectively

1 concluded, save for the Court's determination of the amount of fees to be awarded. Under
2 these circumstances, the requirements for interlocutory appeal are not met. Accordingly,
3 the Court denies Ameranth's motion for certification of the Order for interlocutory review.

4 **IT IS SO ORDERED.**

5 Dated: May 10, 2021

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8 Hon. Dana M. Sabraw, Chief Judge
9 United States District Court
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