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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

GRANT HOLYOAK, et al., Plaintiffs, vs. UNITED STATES OF AMERICA, et al., Defendants.	No. CV 08-8168-PHX-MHM **ORDER**

Currently before the Court is Plaintiffs' Motion to Strike "Impertinent Matter Contained In Defendants' Motion to Dismiss and Alternative Motion for Summary Judgment." (Dkt. #13). Plaintiffs request that the Court strike certain allegations or statements made in Defendants' Motion to Dismiss pursuant to Rule 12(f) of the Federal Rules of Civil Procedure. (Dkt. #14).

Rule 12(f) provides in pertinent part that "the court may order stricken from any *pleading* . . . any redundant, immaterial, impertinent, or scandalous matter." Fed.R.Civ.P. 12(f) (emphasis added). Rule 7 defines "pleadings" generally as complaints and answers. See Fed.R.Civ.P. 7(a). Thus, "Rule 12(f) cannot serve as the procedural vehicle for striking language contained in motion papers." Parker v. CMRE Financial Services, Inc., 2007 WL 3276322, at *4 (S.D. Cal. 2007) (citing Sidney-Vinstein v. A.H. Robins Co.,

697 F.2d 880, 885-86 (9th Cir. 1983) ("Under the express language of the rule, only pleadings are subject to motions to strike.")).

In addition, Plaintiffs' Motion to Strike is untimely. Rule 12(f) requires the motion be made by the objecting party *before* responding to the offending pleading. Fed.R.Civ.P. 12(f)(2).

Furthermore, "[m]otions to strike are a drastic remedy and generally disfavored." Macquarie Group Ltd. v. Pacific Corporate Group, LLC, 2009 WL 539928, at *3 (S.D. Cal. 2009) (citing 5C Wright & A. Miller, Federal Practice and Procedure § 1380 (3d ed. 2004)).

In any event, the statements cited to the Court by Plaintiffs on pages 1 and 2 of their Brief are not immaterial, impertinent, or scandalous. They are merely statements of counsel. And although arguments and statements of counsel, conclusory or otherwise, "are not evidence and do not create issues of material fact," Barcamerica Int'l USA Trust v. Tyfield Importers, Inc., 289 F.3d 589, 593 n. 4 (9th Cir. 2002), such statements in and of themselves are not impertinent.

Accordingly,

IT IS HEREBY ORDERED that Plaintiffs' Motion to Strike is DENIED. (Dkt. #13).

DATED this 20th day of May, 2009.

Mary H. Murguia
United States District Judge