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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

EMERY I. FRANKLIN,

Plaintiff,

vs.

UNITED STATES,

Defendant.

CASE No. 1:10-cv-00142-LJO-MJS (PC)

ORDER SUA SPONTE STRIKING
LETTERS TO THE JUDGE

(ECF No. 40, 42)

ORDER DENYING AS MOOT
DEFENDANT'S MOTION TO STRIKE
LETTERS TO THE JUDGE

(ECF No. 43)

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I. PROCEDURAL HISTORY

On January 20, 2010, Plaintiff Emery Franklin, a federal prisoner proceeding pro se and in forma pauperis, filed this civil action pursuant to the Federal Tort Claims Act ("FTCA"). (Compl., ECF No. 1.) Plaintiff consented to Magistrate Judge jurisdiction. (Consent, EFC Nos. 5, 34.) Defendant declined Magistrate Judge jurisdiction. (Decline, ECF No. 29.)

Defendants have answered the Second Amended Complaint. (Answer, ECF No. 22.) On May 1, 2012, the Court issued its Discovery and Scheduling Order (Disc.

1 & Sch. Order, ECF No. 24) providing a November 1, 2012 deadline to amend
2 pleadings, a discovery cut-off of January 1, 2013, and a dispositive motion deadline of
3 March 11, 2013. On November 2, 2012 and November 5, 2012, Plaintiff filed Letters to
4 the Judge (“Letters”) appearing to request discovery relief to include appointment of
5 counsel. (Req. for Disc. Relief, ECF Nos. 42 and 40 respectively.)

6 On November 16, 2012, Defendant filed a motion to strike the Letters on
7 grounds of improper *ex parte* communication. (Mot. Strike, ECF No. 43.)

8 **II. LEGAL STANDARDS**

9 Rule 12(f) provides that the court may strike from a pleading “an insufficient
10 defense, or any redundant, immaterial, impertinent, or scandalous matter.” Fed. R.
11 Civ. P. 12(f). Rule 12(f) is limited to striking from a pleading only those specific matters
12 which are provided for in the rule. Whittlestone, Inc. v. Handi-Craft Co., 618 F.3d 970,
13 974–75 (9th Cir. 2010).

14 The decision to grant or deny a motion to strike is vested in the trial judge's
15 sound discretion. Talbot v. Robert Matthews Distrib. Co., 961 F.2d 654, 664–65 (7th
16 Cir. 1992), citing Alvarado-Morales v. Digital Equip. Corp., 843 F.2d 613, 618 (1st Cir.
17 1988).

18 “The Federal Rules of Civil Procedure do not provide for a motion to strike
19 documents or portions of documents other than pleadings. Instead, trial courts make
20 use of their inherent power to control their dockets, Anthony v. BTR Auto. Sealing
21 Sys., 339 F.3d 506, 516 (6th Cir. 2003), when determining whether to strike
22 documents or portions of documents.” Zep Inc. v. Midwest Motor Supply Co., 726
23 F.Supp.2d 818, 822 (S.D. Ohio 2010).

24 “Any documents filed in a civil rights action in which the defendants are not
25 represented by the California State Attorney General must include a certificate of
26 service stating that a copy of the document was served on the opposing party. Fed. R.

1 Civ. P. 5; Local Rule 135 (modified). A document submitted without the required proof
2 of service will be stricken.” (First Informational Order, ECF No. 3 at ¶ 4.)

3 **III. ANALYSIS**

4 The Letters shall be stricken by the Court sua sponte.

5 Plaintiff was required to include with each Letter request for discovery relief a
6 certificate of service stating that a copy of the document was served on the
7 Defendant. Plaintiff failed to do so.

8 Plaintiff is advised that any request for discovery relief must comply with the
9 Discovery and Scheduling Order and the rules and requirements cited therein. (Disc. &
10 Sch. Order, ECF No. 24 at ¶ 5.) Plaintiff’s Letters do not so comply. They fail to
11 identify any pending discovery request or motion or deadline as to which relief is
12 sought. Plaintiff does not identify the specific relief desired. He provides no legal or
13 factual basis for such relief. He provides no basis for reconsidering the Court’s
14 November 1, 2012 Order Denying Motion for Appointment of Counsel (Order Denying
15 Mot., ECF No. 39), or any new grounds for appointing counsel. Fed. R. Civ. P.
16 60(b)(6); Local Rule 230(j).

17 Defendant’s motion to strike the Letters (ECF No. 43) shall be denied as moot.
18 The Court has sua sponte stricken the Letters for the reasons above.

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1 **IV. ORDER**

2 Accordingly, it is HEREBY ORDERED THAT:

- 3 1. The Court sua sponte strikes the Letters requesting discovery relief (ECF
4 No. 40, 42) without prejudice to Plaintiff filing any desired discovery
5 motion in a manner compliant with the Discovery and Scheduling Order
6 and the rules and requirements cited therein, and
7 2. Defendants motion to strike the Letters (ECF No. 43) is DENIED as
8 moot.

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11 IT IS SO ORDERED.

12 Dated: November 27, 2012

/s/ Michael J. Seng
13 UNITED STATES MAGISTRATE JUDGE