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7 UNITED STATES DISTRICT COURT  
8 EASTERN DISTRICT OF CALIFORNIA  
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10 KELVIN FELTON,

11 Plaintiff,

12 vs.

13 J. LOPEZ, et al.,

14 Defendants.  
15

1:12-cv-01066-AWI-GSA-PC

ORDER DENYING MOTION TO FIND  
DEFENDANT IN CONTEMPT OF  
COURT  
(Doc. 26.)

16 **I. BACKGROUND**

17 Kelvin Felton ("Plaintiff") is a state prisoner proceeding pro se in this civil rights action  
18 pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on June 29,  
19 2012. (Doc. 1.) On April 19, 2013, Plaintiff filed the First Amended Complaint which awaits  
20 the court's requisite screening. (Doc. 22.)

21 On May 3, 2013, Plaintiff filed a motion for the court to find defendant J. Lopez in  
22 contempt of court under 18 U.S.C. § 401. (Doc. 26.)

23 **II. CONTEMPT OF COURT – 18 U.S.C. § 401**

24 The Court has statutory authority pursuant to 18 U.S.C. § 401 to impose sanctions for  
25 contempt of its authority, including: "(1) Misbehavior of any person in its presence or so near  
26 thereto as to obstruct the administration of justice; (2) Misbehavior of any of its officers in their  
27 official transaction, and (3) Disobedience or resistance to its lawful writ, process, order, rule  
28 decree, or command." 18 U.S.C. § 401.

1           **A.     Plaintiff's Motion**

2           Plaintiff requests the court to find defendant J. Lopez, housing officer at the prison  
3 where Plaintiff is incarcerated, in civil contempt of court because he continues to harass  
4 Plaintiff. Plaintiff alleges that on April 24, 2013, defendant J. Lopez was seen retrieving  
5 Plaintiff's legal materials from Plaintiff's bed area, and Lopez did not leave a receipt or make  
6 an entry in the log book. Plaintiff alleges that defendant J. Lopez, who has received a copy of  
7 the original Complaint in this action, has been very disrespectful towards Plaintiff and has  
8 attempted to impede Plaintiff's access to the library. Plaintiff also alleges that defendant J.  
9 Lopez has removed legal documents critical to Plaintiff's case from Plaintiff's possession, and  
10 removed Plaintiff's form 602 appeals from the locked box in which they were placed. Plaintiff  
11 requests the court to find Lopez in civil contempt because Lopez's actions were witnessed by at  
12 least two inmates who are afraid of reprisal.

13           **B.     Discussion**

14           Plaintiff's allegations of conduct by defendant J. Lopez do not constitute contempt of  
15 court within the meaning of 18 U.S.C. § 401. Moreover, the court lacks jurisdiction to issue the  
16 order sought by Plaintiff, because the court does not yet have before it an actual case or  
17 controversy, nor does the court have jurisdiction over any of the defendants in this action.<sup>1</sup> See  
18 Zepeda v. United States Immigration Service, 753 F.2d 719, 727 (9th Cir. 1985).

19           **III.    CONCLUSION.**

20           Based on the foregoing, it is HEREBY ORDERED that Plaintiff's motion to find  
21 defendant J. Lopez in contempt of court is DENIED.

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25           IT IS SO ORDERED.

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27           <sup>1</sup>Plaintiff claims that defendant J. Lopez has received a copy of the original Complaint in this action.  
28 However, the court record contains no evidence that any of the defendants have been served with process or  
appeared in this action. Service of process shall no proceed until after the court has completed the screening  
process.

Dated: October 2, 2013

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE

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