1		
2		
3		
4		
5		
6		
7		
8	UNITED STATES DISTRICT COURT	
9	FOR THE EASTERN DISTRICT OF CALIFORNIA	
10		
11	ARMANDO GIL,	No. 2:16-cv-0587 KJN P
12	Plaintiff,	
13	v.	ORDER AND FINDINGS AND RECOMMENDATIONS
14	S. SPAULDING, et al.,	<u>RECOMMENDATIONS</u>
15	Defendants.	
16		
17	Plaintiff is a state prisoner, proceedin	g pro se, in this civil rights action for relief pursuant
18	to 42 U.S.C. § 1983. On May 12, 2017, plaintiff filed a document styled "Objection to	
19	Defendants' Answer to the Complaint Pursua	ant to Federal Rules and Civil Procedure Rule 12."
20	(ECF No. 36.) Plaintiff claims he opposes an	nd objects to the answer on the grounds that it is
21	ambiguous and vague, and requests that the a	answer be dismissed and the court "rule that there be
22	a trial." (ECF No. 36 at 2.) Plaintiff relies of	n Pliscou v. Holtville Unified School Dist., 411 F.
23	Supp. 842, 850 (S.D. Cal. Feb. 13, 1976), cla	aiming the answer "does not provide explicit
24	standards for its enforcement." (ECF No. 36	at 1, 2.) Defendants construe plaintiff's filing as a
25	request to strike the answer, and argue it show	uld be denied because plaintiff does not provide any
26	authority for the requested relief.	
27	////	
28	////	
		1

1	Plaintiff's filing is not entirely clear. However, to the extent plaintiff is attempting to file
2	a reply to defendants' answer, such effort is unavailing. Rule 7(a) of the Federal Rules of Civil
3	Procedure provides:
4	(a) Pleadings. Only these pleadings are allowed:
5	(1) a complaint;
6	(2) an answer to a complaint;
7	
8	(7) if the court orders one, a reply to an answer.
9	Fed. R. Civ. P. 7(a) (emphasis added). The court has not ordered plaintiff to reply to defendants'
10	answer and declines to make such an order.
11	To the extent plaintiff attempts to strike defendants' answer, such attempt is similarly
12	unavailing. Under Federal Rule of Civil Procedure 12(f), the Court may strike "an insufficient
13	defense or any redundant, immaterial, impertinent or scandalous" matter from the pleadings. Id.;
14	Whittlestone, Inc. v. Handi-Craft Co., 618 F.3d 970, 973 (9th Cir. 2010) (same) (citation
15	omitted). Motions to strike are disfavored, "because of the limited importance of pleading in
16	federal practice, and because they are often used as a delaying tactic." <u>Neilson v. Union Bank of</u>
17	<u>Cal., N.A.</u> , 290 F. Supp. 2d 1101, 1152 (C.D. Cal. 2003).
18	Here, plaintiff fails to demonstrate that the court should strike the answer. Plaintiff does
19	not allege that the answer is redundant, immaterial, impertinent, or scandalous. In any event, the
20	court finds that the answer does not meet such criteria. Moreover, the Pliscou case, upon which
21	plaintiff relies, did not address a motion to strike an answer or affirmative defenses. Id., 411 F.
22	Supp. at 842. Rather, in <u>Pliscou</u> , the court addressed a high school student's request for a
23	preliminary injunction enjoining the school district from interfering with the publication of an
24	official student newspaper. Id. Nothing in Pliscou supports a request to strike an answer under
25	Rule 12(f). In his objection, plaintiff mentions a motion to dismiss, but no motion to dismiss has
26	been filed in this action. Plaintiff's complaint was not dismissed for failure to state a claim;
27	rather, defendants have filed an answer, and the court has issued its discovery and scheduling
28	order. If dispositive motions are addressed in plaintiff's favor, the case will be set for trial.
	2

1	Finally, as argued by defendants, plaintiff fails to provide support for his requested relief. Thus,
2	to the extent plaintiff requests the court strike defendants' answer, such request should be denied.
3	Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court is directed to assign
4	a district judge to this case; and
5	IT IS RECOMMENDED that plaintiff's request to strike defendants' answer (ECF No.
6	36) be denied.
7	These findings and recommendations are submitted to the United States District Judge
8	assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within fourteen days
9	after being served with these findings and recommendations, any party may file written
10	objections with the court and serve a copy on all parties. Such a document should be captioned
11	"Objections to Magistrate Judge's Findings and Recommendations." Any response to the
12	objections shall be filed and served within fourteen days after service of the objections. The
13	parties are advised that failure to file objections within the specified time may waive the right to
14	appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).
15	Dated: June 7, 2017
16	Fordall D. Newman
17	KENDALL J. NEWMAN
18	/gil0587.77e UNITED STATES MAGISTRATE JUDGE
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	
	3