

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge Raymond P. Moore**

Civil case no. 11-cv-02381-RM-KLM

SALVADOR MAGLUTA,

Plaintiff,

v.

UNITED STATES FEDERAL BUREAU OF PRISONS,  
AMBER NELSON, Acting Regional Director of the North Central Region,  
CHARLES DANIELS, Warden at USP Florence,  
MONICA S. WETZEL, Former Warden at FDC Miami,  
LOUIS MILUSNIC, Assistant Warden at USP Florence,  
JOHNSON (FNU), Assistant Warden at USP Florence,  
G.T. KAPUSTA, Former Assistant Warden at FDC Miami,  
BANUELOS (FNU), Lieutenant at USP Florence,  
T. JAVERNICK, Case Manager Coordinator (CMC) at Florence Federal Complex,  
ANDY FENLON, Counselor at ADX Florence,  
MASSEY (FNU), Officer at USP Florence,  
DUVAL (FNU), Officer at USP Florence,  
STEGAL (FNU), Officer at USP Florence, and  
JOHN DOES 1-9 TO BE IDENTIFIED LATER,

Defendants.

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**ORDER RE:**

- (1) PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER (ECF NO. 108);**
- (2) DEFENDANTS' MOTION TO STRIKE DOCKET NUMBER 108 (ECF NO. 111);**
- (3) PLAINTIFF'S INFORMATION FOR TEMPORARY RESTRAINING ORDER AND SECOND VERIFIED COMPLAINT FOR DECLARATIVE RELIEF, TEMPORARY, AND/OR PERMANENT INJUNCTION (ECF NOS. 112 & 113); AND**
- (4) DEFENDANTS' MOTION TO STRIKE DOCKET NUMBERS 112 & 113 (ECF NO. 115)**

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THIS MATTER comes before the Court on the following filings: (1) Plaintiff's *pro se* Motion for Preliminary Injunction and Temporary Restraining Order (ECF No. 108); (2)

Defendants' Motion to Strike Docket Number 108 (ECF No. 111); (3) Plaintiff's Information for Temporary Restraining Order and Second Verified Complaint for Declarative Relief, Temporary, and/or Permanent Injunction (ECF Nos. 112 & 113); and (4) Defendants' Motion to Strike Docket Numbers 112 and 113 (ECF No. 115).

On September 12, 2011, Plaintiff filed this action asserting various claims against Defendants. On April 4, 2013, Plaintiff filed a Motion for Preliminary Injunction and Temporary Restraining Order (ECF No. 101) and Judge Brimmer, who the case was then before, set a hearing on that motion for April 15, 2013. On April 9, 2013, the parties filed a Joint Motion requesting Judge Brimmer to stay the case for 60 days and to vacate the April 15, 2013 hearing. By Minute Order dated April 10, 2013, Judge Brimmer granted the Joint Motion, vacated the April 15, 2013 hearing, and stayed the case until June 10, 2013.

During the period in which the case was stayed, and without filing any motion requesting a lift or modification of the stay, Plaintiff filed two motions ("Motions"). First, Plaintiff, appearing *pro se*, filed a motion for preliminary injunction and temporary restraining order. (ECF No. 108.) Next, Plaintiff, through counsel, filed a motion for temporary restraining order. (ECF Nos. 112 & 113.) In response, Defendants filed Motions to Strike arguing Plaintiff's filings violate the Federal Rules of Civil Procedure, the Court's Local Rules, and the Court's stay order.

The Court agrees Plaintiff's Motions improperly violate the stay order. During the stay period, Plaintiff was represented by two lawyers from two different law firms, neither of whom

sought relief from the stay or responded to Defendants' Motions to Strike to address why Plaintiff's Motions should be permitted in light of the stay order. Instead, Plaintiff, again appearing *pro se*, responded to Defendants' first Motion to Strike.

The Court finds Plaintiff's Motions should be stricken. Rule 12(f) of the Federal Rules of Civil Procedures allows for the striking from a pleading any redundant, immaterial, impertinent, or scandalous matter. Plaintiff's Motions are not pleadings but the Court concludes that the relief is nonetheless appropriate under the Court's inherent power to impose order, respect and compliance with lawful mandates. *See, e.g., Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 841 (10<sup>th</sup> Cir. 2005); *LaFleur v. Teen Help*, 342 F.3d 1145, 1149 (10<sup>th</sup> Cir. 2003). Plaintiff is not, however, barred from seeking the relief requested in his Motions as his initial Motion for Preliminary Injunction and Temporary Restraining Order filed April 4, 2013 remains pending. Accordingly, it is

ORDERED that Plaintiff's Motion for Preliminary Injunction and Temporary Restraining Order (ECF No. 108) is hereby STRICKEN; it is

FURTHER ORDERED that Plaintiff's Information for Temporary Restraining Order and Second Verified Complaint for Declarative Relief, Temporary, and/or Permanent Injunction (ECF Nos. 112 & 113) are hereby STRICKEN; and it is

FURTHER ORDERED that Defendants' Motion to Strike Document 108 (ECF No. 111) and Motion to Strike Documents 112 and 113 (ECF No. 115) are hereby GRANTED for the reasons stated in this Order.

DATED this 19th day of July, 2013.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Raymond P. Moore", written over a horizontal line.

RAYMOND P. MOORE  
United States District Judge