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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHN WORTHINGTON,

Plaintiff,

v.

LEON E. PANETTA, in His Official
Capacity as Secretary of Defense for the
United States Department of Defense, et
al.,

Defendants.

CASE NO. C11-5916BHS

ORDER DENYING MOTIONS
WITHOUT PREJUDICE

This matter comes before the Court on Defendants Jerry Kosierowski, Timothy J. Lowenberg, and Leon E. Panetta’s (“Federal Defendants”) motion to strike initial deadlines (Dkt. 12) and Plaintiff John Worthington’s (“Worthington”) motion to file administrative record (Dkt. 13). The Court has reviewed the briefs filed in support of and in opposition to the motions and the remainder of the file and hereby denies the motions without prejudice for the reasons stated herein.

I. PROCEDURAL HISTORY

On November 8, 2011, Worthington filed a complaint against the Federal Defendants, Christine Gregoire, and Robert M. McKenna. Dkt. 1. Worthington asserts three causes of action, two of which are judicial reviews of agency actions and the other being a declaratory judgment and injunction. *Id.*

1 On November 10, 2011, the Court issued an order regarding initial disclosures, a
2 joint status report, and an initial discovery conference. Dkt. 4. The order set deadlines
3 for each of these requirements. *Id.*

4 On January 24, 2012, the Federal Defendants filed a motion to strike the initial
5 deadlines, disclosures, and conference. Dkt. 12. On February 2, 2012, Worthington
6 responded and included a motion for an order requiring the Federal Defendants to file an
7 administrative record on his first cause of action. Dkt. 13. On February 10, 2012, the
8 Federal Defendants replied to their motion. Dkt. 15. On February 13, 2012, the Federal
9 Defendants responded to Worthington's motion. Dkt. 16. On February 17, 2012,
10 Worthington replied to his motion. Dkt. 17.

11 II. DISCUSSION

12 In their response to Worthington's motion, the Federal Defendants contend that
13 Worthington's first cause of action is jurisdictionally deficient. Dkt. 16 at 6-11.
14 Worthington counters that he consents to the Court dismissing his motion without
15 prejudice so that the Federal Defendants can present their jurisdictional arguments in a
16 properly briefed dispositive motion. The Court agrees with Worthington's proposal.
17 Therefore, the Court denies without prejudice Worthington's motion.

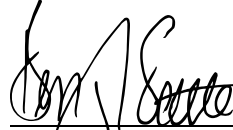
18 With regard to the Federal Defendants' motion, the Court will strike the initial
19 deadlines pending a dispositive motion. The Federal Defendants must file a dispositive
20 motion no later than March 22, 2012 or seek an extension from the Court. After ruling on
21 the dispositive issues, the Court will address the need for discovery in this action. The
22 Court is not persuaded at this time that Rule 26 is inapplicable to this proceeding.
23 Therefore, the Court also denies without prejudice the Federal Defendants' motion.

24 III. ORDER

25 Therefore, it is hereby **ORDERED** that Federal Defendants' motion to strike
26 initial deadlines (Dkt. 12) and Worthington's motion to file administrative record (Dkt.
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1 13) are **DENIED without prejudice**. The Federal Defendants must file a dispositive
2 motion no later than March 22, 2012.

3 DATED this 6th day of March, 2012.

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6 BENJAMIN H. SETTLE
7 United States District Judge
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