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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

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|-------------------------|---|---------------------------------------|
| JOHN FREDERICK WHEELER, |) | Case No.: 1:12-cv-01815 - AWI - JLT |
| |) | |
| Plaintiff, |) | ORDER GRANTING PLAINTIFF’S MOTION FOR |
| |) | EXTENSION OF TIME |
| v. |) | |
| |) | (Doc. 5) |
| BARACK OBAMA, et al., |) | |
| |) | FINDINGS AND RECOMMENDATIONS |
| Defendants. |) | DISMISSING THE ACTION FOR PLAINTIFF’S |
| |) | FAILURE TO COMPLY WITH THE COURT’S |
| |) | ORDER AND PRE-FILING RESTRICTIONS |

John Frederick Wheeler (“Plaintiff”) seeks to proceed *pro se* and *in forma pauperis* in this action initiated on November 5, 2012. For the following reasons, the Court recommends the action be **DISMISSED**.

I. Procedural Background

Plaintiff was declared a vexatious litigant by this Court, and pre-filing restrictions have been imposed.¹ Specifically, on September 10, 2012, the Court ordered: “As a pre-filing condition to initiating any new action before the Court, Plaintiff **SHALL** (1) attach a copy of [the vexatious litigant]

¹ The Court may take notice of facts that are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); *United States v. Bernal-Obeso*, 989 F.2d 331, 333 (9th Cir. 1993). The Court’s records are sources whose accuracy cannot reasonably be questioned, and judicial notice may be taken of the records. *Mullis v. United States Bank. Ct.*, 828 F.2d 1385, 1388 n.9 (9th Cir. 1987); *Valerio v. Boise Cascade Corp.*, 80 F.R.D. 626, 635 n. 1 (N.D.Cal.1978), *aff’d*, 645 F.2d 699 (9th Cir. 1981). Therefore, judicial notice is taken of the Court’s records in *Wheeler v. United States*, Case No.1:12-cv-00641-LJO-JLT.

1 Order to his Complaint **and** (2) pay the requisite filing fee.” *Wheeler v. United States*, Case. No. 1:12-
2 cv-00641-LJO-JLT (Doc. 18 at 11). Although Plaintiff now seeks to initiate a new action before the
3 Court, he failed to comply with the Court’s order.

4 On November 19, 2012, the Court issued an order to show cause to demonstrate why the action
5 should not be dismissed for Plaintiff’s failure to comply with the Court’s order, or in the alternative, to
6 comply with the pre-filing conditions ordered by the Court. (Doc. 4). Plaintiff filed his response to the
7 Court’s order on December 3, 2012.² (Doc. 7).

8 In his response, Plaintiff takes issue with the vexatious litigant order. In particular, he
9 complains that it is unfair to impose the requirement that he pay the filing fee given his limited
10 financial resources. However, notably, before Plaintiff was declared vexatious, he filed no fewer than
11 fourteen actions that were frivolous and lacking in merit. *See Wheeler v. United States*, Case No. 1:12-
12 cv-00641 (Doc. 18) (“Order Declaring Plaintiff a Vexatious Litigant and Imposing Pre-Filing
13 Restrictions”). Before this occurred, Plaintiff was warned repeatedly that continuing to file frivolous
14 cases would result in an order declaring him to be vexatious. Despite this warning, Plaintiff continued
15 completely undeterred.

16 Finally, though Plaintiff makes much of the burden of paying the filing fee places on him, he
17 ignores completely, the burden his repeated filing of cases that lack any semblance of merit, places on
18 this Court. He is advised that this District carries the highest weighted caseload per judge of any court
19 in the entire federal system and it cannot allow itself to be hijacked by one litigant who chooses to use
20 the Court’s limited judicial resources as a form of personal entertainment; this cannot and will not be
21 tolerated.

22 **II. Failure to Obey the Court’s Order**

23 The Local Rules, corresponding with Fed. R. Civ. P. 11, provide: “Failure of counsel or of a
24 party to comply with . . . any order of the Court may be grounds for the imposition by the Court of any
25 and all sanctions . . . within the inherent power of the Court.” Local Rule 110. “District courts have
26 inherent power to control their dockets,” and in exercising that power, a court may impose sanctions

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28 ² Plaintiff filed a motion for an extension of time to file his response, requesting the Court consider his response
to the order to show cause as timely. (Doc. 4). Plaintiff’s motion for extension of time is **GRANTED**.

1 including dismissal of an action. *Thompson v. Housing Authority of Los Angeles*, 782 F.2d 829, 831
2 (9th Cir. 1986). A court may dismiss an action, based on a party’s failure to obey a court order. *See*,
3 *e.g. Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with a
4 court order); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (same).

5 **III. Discussion and Analysis**

6 In determining whether to dismiss an action for failure to prosecute and failure to obey a court
7 order, the Court must consider several factors, including: “(1) the public’s interest in expeditious
8 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the
9 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability
10 of less drastic sanctions.” *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986); *see also*
11 *Ferdik*, 963 F.2d at 1260-61; *Thompson*, 782 F.2d at 831.

12 In the case at hand, the public’s interest in expeditiously resolving this litigation and the
13 Court’s interest in managing the docket weigh in favor of dismissal. Plaintiff was declared a vexatious
14 litigant for his frequent filing of unmeritorious claims, which forced the Court to expend its limited
15 judicial resources reviewing his complaints. The risk of prejudice to the defendants also weighs in
16 favor of dismissal, since a presumption of injury arises from the occurrence of unreasonable delay in
17 prosecution of an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

18 Finally, the Court’s warning to Plaintiff that failure to comply with the Court’s orders would
19 result in dismissal satisfies the requirement that the Court consider less drastic measures. *Ferdik*, 963
20 F.2d at 1262; *Henderson*, 779 F.2d at 1424. In the order to show cause, the Court warned that it “may
21 dismiss an action with prejudice, based upon a party’s failure to prosecute an action or failure to obey
22 a court order . . .” (Doc. 4 at 2). Thus, Plaintiff had adequate warning that dismissal would result
23 from his failure to comply with the Court’s order. Given these facts, the Court finds the policy
24 favoring disposition of cases on the merits is outweighed by the factors in favor of dismissal.

25 **IV. Findings and Recommendations**

26 The factors set forth by Ninth Circuit weigh in favor of dismissal of the action. Therefore, the
27 Court is within its discretion to dismiss the action for Plaintiff’s failure to comply with the Court’s
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1 orders and pre-filing restrictions.

2 Accordingly, **IT IS HEREBY RECOMMENDED:**

- 3 1. Plaintiff's Complaint be **DISMISSED without prejudice**; and
- 4 2. The Clerk of Court be **DIRECTED** to close this action.

5 These findings and recommendations are submitted to the United States District Judge
6 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local
7 Rules of Practice for the United States District Court, Eastern District of California. Within 14 days
8 after being served with these findings and recommendations, Plaintiff may file written objections with
9 the court. Such a document should be captioned "Objections to Magistrate Judge's Findings and
10 Recommendations." Plaintiff is advised failure to file objections within the specified time may waive
11 the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

12
13 IT IS SO ORDERED.

14 Dated: December 7, 2012

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE