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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHN FREDERICK WHEELER,

CASE NO. 1:09-cv-1772-OWW-SKO

Plaintiff,

**ORDER STRIKING LODGED
DOCUMENT**

v.

HEALTHY SMILES, et al.,

(Docket No. 9)

Defendant.

On August 6, 2010, Plaintiff submitted a document to the Court entitled "Complaint for Violations of United States Constitution." The document bears the case number assigned to this case. The document was lodged but not filed, and it appears on the docket as Doc. No. 9 entitled "Second Amended Complaint." This document alleges causes of action against entirely different defendants and involves entirely unrelated conduct, transactions, or occurrences than those set forth in either the initial Complaint or the First Amended Complaint. Thus, this document does not relate back to the initial Complaint pursuant to Federal Rule of Civil Procedure 15(c), and it does not qualify as a Second Amended Complaint in this matter. *See generally Williams v. Boeing Co.*, 517 F.3d 1120, 1133 (9th Cir. 2008) (to relate back to initial pleading, allegations of amended complaint must arise out of conduct, transaction, or occurrence set out – or attempted to be set out – in initial pleading).

1 If Plaintiff wishes to proceed with his "Complaint for Violations of the United States
2 Constitution," he may resubmit this document to the Court and request that a new case may be
3 opened. If he elects to do so, Plaintiff will be required to either pay the filing fee for opening a new
4 case, or he must file a motion to proceed *in forma pauperis* in that action.

5 Accordingly, the Court HEREBY ORDERS that:

- 6 1. The "Second Amended Complaint" filed at Doc. No. 9 is STRICKEN; and
- 7 2. The Clerk of Court is directed to return Doc. No. 9 to Plaintiff.

8
9 IT IS SO ORDERED.

10 **Dated: September 2, 2010**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE