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

JOHN FREDERICK WHEELER,

CASE NO. 1:09-cv-01772-OWW-SKO

Plaintiff,

**ORDER GRANTING AN EXTENSION OF  
TIME TO FILE AN AMENDED  
COMPLAINT**

v.

HEALTHY SMILES, et. al.,

Defendants.

\_\_\_\_\_ /

Plaintiff John Frederick Wheeler ("Plaintiff") is proceeding *pro se* and *in forma pauperis* with an action for damages and other relief concerning alleged civil rights violations pursuant to 42 U.S.C. § 1983 that he filed on October 8, 2009. (Doc. 1.) On November 17, 2009, the Court screened the complaint pursuant to 28 U.S.C. § 1915(e)(2) and issued an order dismissing the complaint for failure to state a cognizable claim. The Court granted Plaintiff thirty (30) days to amend his complaint. (Doc. 3.) On December 10, 2009, Plaintiff filed an amended civil rights complaint. (Doc. 4.) The First Amended Complaint ("FAC") was screened, but the deficiencies of the original complaint were not cured. On June 18, 2010, the Court again dismissed the complaint granting thirty (30) days leave to amend. (Doc. 6.) Plaintiff did not file an amended complaint.

1 On July 23, 2010, United States Magistrate Judge Sheila K. Oberto issued Findings and  
2 Recommendations that the action be dismissed based on Plaintiff's failure to amend the FAC in  
3 compliance with the Court's June 18, 2010, order. (Doc. 7.) On August 6, 2010, Plaintiff filed  
4 Objections to the Findings and Recommendations stating that he had not timely received the Court's  
5 orders through the mail and requested additional time to amend his complaint. (Doc. 8.) On  
6 September 2, 2010, the Court issued an order granting Plaintiff an additional thirty (30) days to file  
7 an amended complaint. (Doc. 10.)

8 On August 6, 2010, Plaintiff also filed a pleading that was labeled "Second Amended  
9 Complaint." (Doc. 9.) This pleading did not relate to the initial complaint or the FAC in that it did  
10 not arise out of related conduct or transactions set forth in the initial complaint or the FAC. For that  
11 reason, the Court ordered that the "Second Amended Complaint" be stricken, and allowed Plaintiff  
12 to resubmit the pleading to the Court and request that a new case be opened. (Doc. 11.)

13 On September 15, 2010, Plaintiff again filed Objections to the Magistrate Judge's July 23,  
14 2010, Findings and Recommendations. (Doc. 12.) Plaintiff states that the Court misdirected his  
15 "Second Amended Complaint" by filing it in this case under case number 1:09-cv-1772-OWW-SKO.  
16 Plaintiff asserts that he did not include a case number with that pleading because he did not intend  
17 it to be associated with 1:09-cv-1772-OWW-SKO. He states that, as a result of the misfiling, he "has  
18 lost almost 30 days."

19 The stricken pleading has been filed as a new case bearing the caption "John Frederick  
20 Wheeler v. Social Security Administration et. al." with an assigned case number of 1:10-cv-01679-  
21 LJO-JLT.

22 The Court notes that the complaint in this matter still requires amendment. Following his  
23 request for additional time, Plaintiff was granted thirty (30) additional days to amend his complaint  
24 pursuant to the Court's September 2, 2010, order. As of the date of this order, Plaintiff has not yet  
25 filed an amended complaint. As Plaintiff's "Second Amended Complaint" was stricken from this  
26 case and refiled as a new case with a new case number, the Court will provide Plaintiff with  
27 additional time to amend the complaint in this matter. Plaintiff shall have until November 17, 2010,  
28 to file an amended complaint. If Plaintiff again fails to file an amended complaint, the Court will

1 recommend that this action be dismissed for failure to state a claim upon which relief can be granted  
2 and for failure to comply with the Court's order.

3 Accordingly, IT IS HEREBY ORDERED THAT:

- 4 1. Plaintiff shall file an amended complaint on or before November 17, 2010; and
- 5 2. The Clerk of the Court shall serve this order on Plaintiff with a copy of the Court's  
6 June 18, 2010, order screening the complaint (Doc. 6).

7  
8 IT IS SO ORDERED.

9 **Dated:** October 19, 2010

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE