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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TANYA GRACE McDANIEL,

Plaintiff,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

No. 2:15-cv-2627-KJM-EFB PS

FINDINGS AND RECOMMENDATIONS

On August 30, 2017, the court declared plaintiff a “vexatious litigant” as defined under California law and imposed pre-filing restrictions on her.¹ ECF No. 19. On appeal, the U.S. Court of Appeals for the Ninth Circuit vacated that order and remanded the case with instructions “to make explicit substantive findings as to the frivolousness or harassing nature of [plaintiff]’s prior filings and . . . to tailor narrowly the pre-filing order to the abuses.” ECF No. 24 at 3. On August 14, 2018, the district judge referred the matter to the undersigned via minute order. ECF No. 25. As discussed below, the court finds that a pre-filing order is not necessary and therefore recommends that no order issue declaring plaintiff a vexatious litigant.

District courts have the inherent power “to regulate the activities of abuse litigants by imposing carefully tailored restrictions under the appropriate circumstances.” *De Long v.*

¹ The court had previously dismissed plaintiff’s complaint without leave to amend and judgment had been duly entered. ECF Nos. 12, 13.

1 *Hennessey*, 912 F.2d 1144, 1147 (9th Cir. 1990) (discussing requirements for issuing a pre-filing
2 order under the All Writs Act). The issuance of a pre-filing order containing such restrictions is
3 “an extreme remedy that should rarely be used.” *Molski v. Evergreen Dynasty Corp.* 500 F.3d
4 1047, 1057 (9th Cir. 2007). Nonetheless, “[f]lagrant abuse of the judicial process cannot be
5 tolerated because it enables one person to preempt the use of judicial time that properly could be
6 used to consider the meritorious claims of other litigants.” *De Long*, 912 F.2d at 1148.

7 Federal law requires that a court seeking to impose pre-filing restrictions must: (1) give
8 plaintiff adequate notice and an opportunity to oppose entry of a pre-filing order before; (2) the
9 court must present an adequate record for review by listing the case filings that support its order;
10 (3) the court must make substantive findings as to the frivolous or harassing nature of the
11 plaintiff’s actions; and (4) the order must be narrowly tailored to fit the specifics of the plaintiff’s
12 abuses. *De Long*, 912 F.2d at 1147-49.

13 Plaintiff previously filed several cases that were dismissed for failure to state a claim or as
14 frivolous. *See McDaniel v. United States Department of Justice*, No. 2:15-cv-1664-JAM-AC
15 (E.D. Cal. Nov. 20, 2015); *McDaniel v. United States of America*, No. 2:15-cv-0937-MCE-KJN-
16 PS (E.D. Cal. Aug. 11, 2015); *McDaniel v. The Secretariat*, No. 2:15-cv-0828-GEB-CKD PS
17 (E.D. Cal. Aug. 19, 2015); *McDaniel v. United States*, No. 2:15-cv-1113-TLN-AC (E.D. Cal.
18 Aug. 18, 2015); *McDaniel v. Powell*, No. 2:13-cv-2653 MCE-AC (E.D. Cal. July 29, 2015). The
19 court’s records reflect, however, that since the dismissal of this action over three years ago,
20 plaintiff has litigated only one other lawsuit in this court, *McDaniel v. United States*, No. 2:18-cv-
21 2306-JAM-DB (which was transferred to this district from the Northern District of California). In
22 the latter case, plaintiff proceeded pro se and sought leave to proceed in forma pauperis, thereby
23 triggering this court’s duty to screen her complaint. *See* 28 U.S.C. § 1915(e)(2). Upon screening,
24 the court dismissed the action for failure to state a claim and as frivolous and delusional. *See*
25 *McDaniel v. United States*, No. 2:18-cv-2306-JAM-DB (E.D. Cal.) (ECF Nos. 15, 17). Judgment
26 was entered on December 17, 2018, *id.* at ECF No. 18, and plaintiff has not filed in this court
27 since then.

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1 In the event plaintiff files a new action in this court, she must either file an application to
2 proceed in forma pauperis or pay the court’s filing fee. If she seeks leave to proceed in forma
3 pauperis, the court can effectively avoid the unnecessary burdens imposed by a frivolous lawsuit
4 through a screening order. Conversely, should plaintiff commence an action and pay the required
5 filing fee, other sanctions—include monetary sanctions and/or those available under Rule 11—
6 would be available as needed to deter the filing of any frivolous or harassing pleadings. *See*
7 *Ringgold-Lockhart*, 761 F.3d 1057, 1065 (9th Cir. 2014) (“Before entering this broad pre-filing
8 order . . . the district court assuredly should have considered whether imposing sanctions such as
9 costs or fees on the Ringgolds would have been an adequate deterrent.”). For these reasons, it
10 does not appear that pre-filing restrictions for filings in this district are necessary. Plaintiff is
11 cautioned, however, that future frivolous filings in this district may result in summary dismissals
12 without leave to amend, monetary sanctions, and/or the imposition of pre-filing restrictions.

13 Accordingly, it is RECOMMENDED that no pre-filing order or order declaring plaintiff a
14 vexatious litigant be issued.

15 These findings and recommendations are submitted to the United States District Judge
16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
17 after being served with these findings and recommendations, any party may file written
18 objections with the court and serve a copy on all parties. Such a document should be captioned
19 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
20 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*
21 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

22 DATED: March 9, 2021.

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24 EDMUND F. BRENNAN

25 UNITED STATES MAGISTRATE JUDGE
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