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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

JOHN I. MCALLISTER,

CASE NO. 1:06-cv-00082-OWW-SKO PC

Plaintiff,

ORDER TO SHOW CAUSE WHY DECEASED  
DEFENDANT SHOULD NOT BE DISMISSED

v.

J.E. GUNJA, et al.,

Defendants.

Plaintiff John I. McAllister (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On March 12, 2009, the Court issued an order directing the U.S. Marshal to serve Defendants with a summons and a copy of Plaintiff’s complaint. (Doc. #18.) On April 29, 2009, a summons was returned unexecuted as to Defendant R. Boister. (Doc. #20.) The U.S. Marshal indicated that Defendant Boister is deceased. Plaintiff has not moved to substitute Boister’s estate as a party. Nor has Plaintiff provided the name and address of the representative for service on the estate.

Federal Rule of Civil Procedure 25(a)(1) provides:

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent’s successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Plaintiff has not filed a motion for substitution within the ninety (90) day deadline set forth in Rule 25(a)(1).

1           Accordingly, Plaintiff is HEREBY ORDERED TO SHOW CAUSE within **thirty (30) days**  
2 why Defendant Boister should not be dismissed from this action pursuant to Federal Rule of Civil  
3 Procedure 25(a)(1).

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5 IT IS SO ORDERED.

6 **Dated: May 24, 2010**

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE

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