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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
10 FRESNO DIVISION

11 **DAVON E. MCCOY,**

12 Plaintiff,

13 v.

14 **R. SPIDLE, et al.,**

15 Defendants.  
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Case No. 1:07-cv-00198-DCB

**ORDER**

17 Plaintiff, a prisoner, proceeds pro se under 28 U.S.C. § 1915(d). On June 24, 2008, the  
18 Court issued an Order directing the United States Marshal to re-service the Plaintiff's Complaint  
19 and Summons on Defendant McNamara. For the second time, on December 16, 2008, the  
20 Marshal sent a request to the Office of Legal Affairs (OLA) for service information on Defendant  
21 McNamara. On December 18, 2008, the OLA responded that it was unable to locate Defendant  
22 McNamara. Rule 4(m) of the Federal Rules of Civil Procedure provides that a defendant must be  
23 served within 120 days of the filing of the Complaint, or the Court must dismiss the action  
24 without prejudice against that defendant or order that service be made within a specified time.  
25 Upon a showing of good cause, the Court may extend the time for service for an appropriate  
26 period.

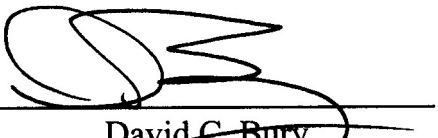
27 **Accordingly,**

28 **IT IS ORDERED** that this action shall be dismissed without prejudice as to Defendant

1 McNamara unless the Plaintiff can show good cause for the lack of service and an extension of  
2 time to time to complete service, and an appropriate period of time for the extension.

3 **IT IS FURTHER ORDERED** that the Plaintiff has 20 days from the filing date of this  
4 Order to file a written memorandum to show good cause for an extension of time to serve  
5 Defendant McNamara.

6 DATED this 8<sup>th</sup> day of January, 2009.

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10 David C. Bury  
11 United States District Judge  
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