

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT E. BARRETT,

Plaintiff,

v.

MATTHEW CATE, et al.,

Defendants.

Case No. 1:09-cv-01741 LJO JLT (PC)

ORDER TO SHOW CAUSE WHY  
DEFENDANT MCGINNIS SHOULD NOT  
BE DISMISSED

\_\_\_\_\_ /

On February 25, 2011, the United States Marshal returned the process directed to Defendant McGinnis unserved. (Doc. 21.) The Court therefore ordered Plaintiff to provide further information on where Defendant McGinnis could be served. (Doc. 22.) In response, on April 22, 2011, Plaintiff filed a motion for assistance from the California Department of Corrections and Rehabilitation in locating Defendant McGinnis. (Doc. 30.) The Court granted the motion on June 1, 2011. (Doc. 35.) However, as of the date of this order, there has been no indication that the Legal Affairs Division has been able to locate Defendant McGinnis.

In addition, on June 6, 2011, counsel for Defendants filed a declaration outlining Defendants' attempts at identifying and locating Defendant McGinnis. (Doc. 37.) According to the declaration, counsel personally spoke with the current Chief Medical Officer of California Medical Facility, and the Chief Medical Officer indicated that there has been no medical provider named McGinnis at the facility since 1993. (Id. at ¶ 5.) Further, counsel has reviewed Plaintiff's medical records and has been unable

1 to find any medical record containing the name McGinnis. (Id. at ¶ 8.)

2 In light of the foregoing, it appears that Plaintiff has misidentified this defendant. Accordingly,  
3 it is **HEREBY ORDERED** that within twenty-one days of the date of this order, Plaintiff shall show  
4 cause in writing why Defendant McGinnis should not be dismissed pursuant to Federal Rule of Civil  
5 Procedure 4(m).

6  
7 IT IS SO ORDERED.

8 Dated: September 23, 2011

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28