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

ROBERT E. BARRETT,

Plaintiff,

vs.

MATTHEW CATE, et al.,

Defendants.

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

FINDINGS AND RECOMMENDATION  
DISMISSING PLAINTIFF’S CLAIMS AS  
TO DEFENDANT MCGINNIS

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On September 23, 2011 the Court ordered Plaintiff to show cause why Defendant McGinnis should not be dismissed from the action. (Doc. 42). As noted in the Court’s order, Defendant McGinnis was unserved, had not been located, and it appeared that Plaintiff had misidentified this defendant. Id. On October 3, 2011 Plaintiff responded to the Court’s order and indicated that he had erroneously named Defendant McGinnis in his complaint and that any “allegations made against “McGinnis” [were] to be construed as allegations against Defendant McGuinness.” (Doc. 43).

Accordingly, it is **HEREBY RECOMMENDED** that all claims as to Defendant McGinnis be **DISMISSED** and Defendant McGinnis is terminated from this action.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B). Within fourteen (14) days after being served with these findings and recommendations, any party may file written objections with the Court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate

1 Judge's Findings and Recommendations." Any reply to the objections shall be served and filed within  
2 seven (7) days after service of the objections. The parties are forewarned that the Court does not  
3 anticipate granting extensions of time for this purpose. In addition, the parties are advised that failure  
4 to file objections within the specified time may waive the right to appeal the District Court's order. See  
5 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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IT IS SO ORDERED.

Dated: October 5, 2011

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE