2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 EASTERN DISTRICT OF CALIFORNIA 9 10 11 L.H., Jr., Case No.: 1:12-cv-00022 - JLT 12 Plaintiff, ORDER TO PLAINTIFF TO SHOW CAUSE WHY THE ACTION SHOULD NOT BE DISMISSED 13 v. 14 COMMISSIONER OF SOCIAL SECURITY, 15 Defendant. 16 17 Plaintiff seeks judicial review of the administrative decision denying his claim for Social 18 Security benefits. However, there are indications in the record that Plaintiff is a minor who is not 19 represented by a guardian ad litem. 20 The capacity of a litigant is determined by "the law of the state where the court is located." 21 Fed. R. Civ. P. 17(b). Under California law, a minor "shall appear either by a guardian or conservator 22 of the estate or by a guardian ad litem appointed by the court in which the action or proceeding is 23 pending, or by the judge in each case." Cal. Code of Civ. P. § 372. Consequently, a minor cannot 24 maintain an action on his own. However, a minor may appear as a litigant if represented by a guardian

ad litem. Fed. R. Civ. P. 17(c). The Local Rules instruct:

1

25

26

27

28

or on behalf of a minor . . . the attorney representing the minor...shall present (1) appropriate evidence of a representative for the minor or incompetent person under state law or (2) a motion for the appointment of a guardian ad litem by the Court.

Upon commencement of an action or upon initial appearance in defense of an action by

Local Rule 202(a). Here, Plaintiff's counsel has not provided evidence that Plaintiff has a representative, and no motion has been filed with the court for the appointment of a guardian. Therefore, it appears Plaintiff lacks the capacity to prosecute this action. Accordingly, Plaintiff is **ORDERED** to show cause within 21 days why the action should not be dismissed for Plaintiff's lack of capacity, or in the alternative, to file a motion for the appointment of a guardian ad litem. IT IS SO ORDERED. /s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE Dated: **May 2, 2012**