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\*\*E-Filed 3/29/10\*\*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

VITALY G. MARCHENKO,  
Plaintiff,  
v.  
JOHN MCHUGH, Secretary of the Army,  
Defendant.

Case Number C 09-3673 JF (PVT)  
ORDER<sup>1</sup> SETTING HEARING ON  
ORDER TO SHOW CAUSE WHY  
THE ACTION SHOULD NOT BE  
DISMISSED WITHOUT PREJUDICE  
FOR FAILURE TO PROSECUTE

The Court has been informed that Plaintiff may be deceased. On January 14, 2010, the Court issued an order directing Plaintiff or his heir or successor to inform the Court whether the action would be pursued and to show cause why the action should not be dismissed for failure to prosecute. It is unclear from the record whether that order was served upon Plaintiff, who has proceeding in this action *pro se*. Accordingly, the Clerk of the Court shall serve Plaintiff with

<sup>1</sup> This disposition is not designated for publication in the official reports.

1 the order of January 14 and the instant order. A hearing on the Order to Show Cause is  
2 HEREBY SET for April 23, 2010 at 10:30 a.m. If no one appears on behalf of Plaintiff, the  
3 action will be dismissed without prejudice for failure to prosecute.

4 IT IS SO ORDERED.

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8 Dated: 3/26/2010

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11 JEREMY FOGEL  
12 United States District Judge  
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26 Case No. C 09-3673 JF (PVT)  
27 ORDER SETTING HEARING ON ORDER TO SHOW CAUSE  
28 (JFLC2)

1 Copies of this order have been served upon the following persons:

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3 Vitaly G Marchenko  
4 9633 Sunland Place  
5 Sunland, CA 91040

6 Claire T. Cormier    [claire.cormier@usdoj.gov](mailto:claire.cormier@usdoj.gov)

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27 Case No. C 09-3673 JF (PVT)  
28 ORDER SETTING HEARING ON ORDER TO SHOW CAUSE  
(JFLC2)