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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA
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10 JESSE WASHINGTON,

11 Plaintiff,

12 vs.

13 J. W. ANDREWS, et al.

14 Defendants.
15

No. 1:07-CV-886-CKJ

ORDER

16 On May 21, 2009, this Court ordered that Defendants were required to file an answer
17 and set forth a procedure for service of Defendants. On June 25, 2009, the Summons were
18 returned unexecuted as to Defendants C. Lopez and B. Hernandez. On August 13, 2009, this
19 Court issued an Order regarding additional service attempts on Defendants C. Lopez and B.
20 Hernandez. Additionally, the Court stated:

21 If Plaintiff does not either obtain a waiver of service of the summons or complete
22 service of the Summons and Complaint on a Defendant within 120 days of the filing
23 of this Order, the action may be dismissed as to each Defendant not served.
24 Fed.R.Civ.P. 4(m).

25 August 13, 2009, Order, p. 2. On December 17, this Court ordered Plaintiff to show cause
26 why this case should not be dismissed without prejudice as to B. Hernandez.¹ Plaintiff
27 responded to the order to show cause by referring to correspondence to the Attorney

28 ¹The Court also ordered Plaintiff to show cause why the case should not be dismissed
as to C. Lopez. The Court subsequently dismissed C. Lopez.

1 General's Office seeking a waiver of service as to B. Hernandez. On February 9, 2010, this
2 Court issued an Order directing the U.S. Marshal's Office to file a Summons Returned
3 Executed, a Summons Returned Unexecuted, a Waiver of Service Returned Executed, or a
4 status report as to the service of B. Hernandez.

5 On February 22, 2010, the Summons for B. Hernandez was returned unexecuted. The
6 return includes a September 21, 2009, notation, "per KVSP not employed NO FWD
7 LOCATION[.]" an October 25, 2009, notation, "FWD TO CSP CORCORAN[.]" and a
8 February 1, 2010, notation, "waiver not ret'd, assigned personal svc, fwd fresno." The return
9 also includes a February 9, 2010, notation, "Refused by Anthony Lane (Lit coord)[.]" says
10 person not at prison[.]"

11 As the Court previously advised Plaintiff, service must timely be completed:

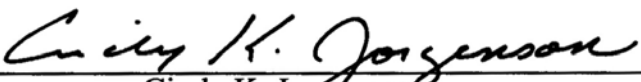
12 If a defendant is not served within 120 days after the complaint is filed, the court –
13 on motion or on its own after notice to the plaintiff – must dismiss the action without
14 prejudice against that defendant or order that service be made within a specified time.
But if the plaintiff shows good cause for the failure, the court must extend the time
for service for an appropriate period. . . .

15 Fed.R.Civ.P. 4(m). Service upon B. Hernandez has not been completed in the time set forth
16 by the Court.

17 Accordingly, IT IS ORDERED:

- 18 1. Plaintiff is hereby **ORDERED TO SHOW CAUSE** why this case should not
19 be **DISMISSED WITHOUT PREJUDICE** as to B. Hernandez pursuant to
20 Rule 4(m), Fed.R.Civ.P., by filing a writing with this Court **on or before**
21 **March 31, 2010.**
- 22 2. This case shall be dismissed without prejudice as to B. Hernandez, **without**
23 **further notice**, should Plaintiff fail to timely comply with this Order.

24 DATED this 26th day of February, 2010.

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27 
28 Cindy K. Jorgenson
United States District Judge