

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

JESSE WASHINGTON,  
Plaintiff,  
vs.  
J. W. ANDREWS, et al.  
Defendants.

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  
of this Order, the action may be dismissed as to each Defendant not served.  
Fed.R.Civ.P. 4(m).

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

<sup>27</sup> 1The Court also ordered Plaintiff to show cause why the case should not be dismissed  
28 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 On March 1, 2010, the Court ordered Plaintiff to show cause why this case should not  
12 be dismissed without prejudice as to B. Hernandez pursuant to Rule 4(m), Fed.R.Civ.P., by  
13 filing a writing with this Court on or before March 31, 2010. On March 24, 2010, Plaintiff  
14 filed a response in which he asserts that he and the Court are being deceived by CSP-COR  
15 officials asserting they have no forwarding address. Plaintiff requests the Court use its  
16 inherent authority to compel counsel for co-defendants to produce a current address for B.  
17 Hernandez.

18 The notations on the unexecuted return appear to indicate that B. Hernandez does or  
19 did work for the California State Prisons.

20 The Office of the California Attorney General has filed an Answer on behalf of co-  
21 defendants. The Court finds, in order to facilitate service, it is appropriate to have counsel  
22 for co-defendants provide to the Court under seal the last known address of B. Hernandez if  
23 the information is known to him, is in his possession, or is under his control. The Court will  
24 provide the last known address to the United States Marshals Service under seal with  
25 directions to the United States Marshals Service to take adequate measures to preserve  
26 confidentiality. If counsel does not have any information within his possession or control  
27 regarding B. Hernandez' last known address, counsel shall so notify the Court.

28 Accordingly, IT IS ORDERED counsel for co-defendants shall provide to the Court

1 UNDER SEAL the last known address of Defendant B. Hernandez if the information is  
2 known to him, is in his possession, or is under his control. Counsel shall provide this  
3 information within thirty (30) days of this Order. Alternatively, counsel for co-defendants  
4 shall notify the Court within thirty (30) days of this Order that counsel does not possess or  
5 have control over any information regarding the last known address of Defendant B.  
6 Hernandez.

7 DATED this 5th day of April, 2010.

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Cindy K. Jorgenson  
United States District Judge