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

Willie D. Randle,)	No. CV 1-08-00845-JAT
Plaintiff,)	ORDER
vs.)	
L.V. Franklin, et al.,)	
Defendants.)	

As the Court noted in the Order of October 5, 2009, four Defendants remain in this case: Correctional Officer L.V. Franklin, Correctional Officer J. Nicholas, Correctional Control Officer L. Phillips, and Correctional Sergeant B. Sather. Defendant Franklin has answered (doc. #24). Defendant Phillips was served and his answer is not yet due (doc. #29).

The certificates of service came back unexecuted for Defendants Nicholas and Sather. With respect to Defendant Nicholas, the notes state: "1/28/10 per facility not employed/cdc locator none in database" (doc. #28). With respect to Defendant Sather, the notes state, "12/21/09 per facility not employed; 1/28/10 per cdc locator none" (doc. #27).

Plaintiff's complaint alleges that both Defendant Nicholas and Defendant Sather were witnesses to the incident with Defendant Franklin. Accordingly, the Court will seek assistance from counsel from Defendant Franklin, to provide current addresses, under seal, for Defendants Nicholas and Sather so that Plaintiff can serve them. If counsel does not have or is unable to obtain such addresses, counsel shall file a notice advising the Court that such

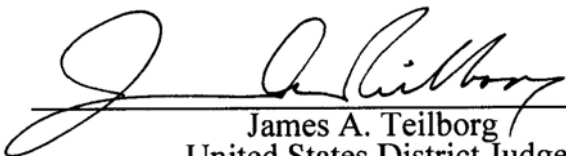
1 information is not available. However, if counsel represents that Defendants Nicholas and
2 Sather cannot be located, counsel will be bound by such representation and both Defendant
3 Franklin and Defendant Phillips will not be permitted to use the testimony of Defendant
4 Nicholas or Defendant Sather in support of any motion to dismiss, motion for summary
5 judgment or at trial.

6 Accordingly,

7 **IT IS ORDERED** that by February 23, 2010, counsel for Defendant Franklin shall
8 either file a current address (a physical address, not a p.o. box) for Defendant Sather and
9 Defendant Nicholas, under seal, or file a notice that such address is not available. If an
10 address for either or both Defendants is provided under seal, the Clerk of the Court shall
11 forward a copy of this Order to the Marshals, with the sealed address(es), and the Marshals
12 shall complete service consistent with this Court's order of October 26, 2009.

13 **IT IS FURTHER ORDERED** that, consistent with this Court's order of October 5,
14 2009, the Clerk of the Court shall "terminate" J. Castro Phillips as a defendant in the docket
15 of this case.

16 DATED this 2nd day of February, 2010.

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21 James A. Teilborg
22 United States District Judge
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