

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Andrews v. Ly

Andrews · No. 1:24-cv-00602-KES-EPG (PC) · Decided March 27, 2025

SUMMARY

The court authorizes Plaintiff Donna Lee Andrews to pursue limited early discovery through a subpoena duces tecum to obtain current address and contact information for Defendant Kelly Vang Ly. The order directs the Clerk to provide subpoena and U.S. Marshals Service forms, sets deadlines for returning the forms and serving Defendant Ly, and warns that failure to serve may result in dismissal.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 27, 2025
DOCKET	1:24-cv-00602-KES-EPG (PC)
DISPOSITION	other
PROCEDURAL POSTURE	In a prisoner civil-rights action under 42 U.S.C. § 1983, the court authorized the unserved plaintiff to pursue limited early third-party discovery by subpoena to obtain the defendant's current address and contact information.
PRECEDENTIAL VALUE	unknown
PARTIES	Donna Lee Andrews v. Kelly Vang Ly

TOPICS

- discovery dispute
- service of process
- civil procedure
- section 1983
- prisoners rights

PRACTICE AREAS

- civil procedure
- prisoner civil rights

QUESTIONS PRESENTED

1. Whether the court should authorize discovery before the parties' Rule 26(f) conference to obtain the current address and contact information of an unserved defendant.

2. Whether the court should authorize issuance of a subpoena duces tecum to CDCR or the defendant's employer for documents needed to identify and serve the defendant.

HOLDINGS

1. A court may authorize discovery before the Rule 26(f) conference when good cause exists, and good cause supported limited early discovery here because Plaintiff needed the defendant's current address and contact information to effect service.
2. The court authorized Plaintiff to issue a subpoena duces tecum to obtain documents from CDCR or the logical employing entity that may identify Defendant Ly's current address and other relevant contact information.

KEY QUOTATIONS

“Although Federal Rule of Civil Procedure 26(d)(1) generally provides that “[a] party may not seek discovery from any source before the parties have conferred as required by Rule 26(f),” a party may do so “when authorized . . . by court order.”” (at 2)

“Here, the Court finds good cause to permit Plaintiff to issue a subpoena duces tecum for the limited purpose of discovery current address and contact information for Defendant Kelly Vang Ly so that this case may proceed.” (at 2)

FACTUAL BACKGROUND

Donna Lee Andrews, a state prisoner proceeding pro se and in forma pauperis, alleged that Kelly Vang Ly failed to provide her with a proper wheelchair, injuring her leg. The claim was found cognizable, but service could not be completed because CDCR would not accept service or disclose Ly's current address. The court therefore permitted limited discovery from CDCR or the relevant correctional facility to obtain Ly's current address and other contact information.

PROCEDURAL HISTORY

Plaintiff filed a § 1983 complaint alleging that Defendant failed to provide her with a proper wheelchair, causing a leg injury. The court found the claim cognizable and ordered service through the court's E-Service pilot program, but the California Department of Corrections and Rehabilitation declined to waive service and refused to provide Defendant's current address. The United States Marshals Service could not complete service, so the court authorized a subpoena duces tecum to obtain information needed to identify and serve Defendant and set deadlines for completing the subpoena forms and serving the summons and complaint.

DISPOSITION

other

CASES CITED

- Malibu Media, LLC v. Doe, 319 F.R.D. 299, 305 (E.D. Cal. 2016)

OPINION

(PC) Andrews v. Ly

PER CURIAM.

1 2 3 4 5 6

7 UNITED STATES DISTRICT COURT

8 EASTERN DISTRICT OF CALIFORNIA

9 DONNA LEE ANDREWS, Case No. 1:24-cv-00602-KES-EPG (PC) 10 Plaintiff, ORDER
AUTHORIZING ISSUANCE OF

11 SUBPOENA DUCES TECUM AND SETTING

v. DEADLINES

12

KELLY VANG LY, AND

13 Defendant ORDER DIRECTING CLERK

14 TO SEND PLAINTIFF A COPY OF FORM

AO 88B AND FORM USM-285

15 Plaintiff Donna Lee Andrews is a state prisoner proceeding pro se and in forma pauperis in 16
this civil rights action filed pursuant to 42 U.S.C. § 1983. 17 Plaintiff Donna Andrews is a state
prisoner proceeding pro se and in forma pauperis in this 18 civil rights action filed pursuant to 42
U.S.C. § 1983. In her complaint, Plaintiff alleged that her 19 leg was injured after defendant failed
to provide her with a proper wheelchair. (ECF No. 12). 20 Following screening, the Court found
Plaintiff's claim cognizable (ECF No. 13 at 1) and ordered 21 service of the complaint under the
Court's E-Service pilot program for civil rights cases by 22 providing copies of relevant
documents electronically to the California Department of Corrections 23 and Rehabilitation
(CDCR) and the California Attorney General's Office (ECF No. 14). 24 In response, the CDCR
timely filed with the Court the "CDCR Notice of Intent to Not 25 Waive Service." (ECF No. 16).
In the Notice, CDCR has identified the defendant as "Kelly Vang 26 Ly" but indicated that
"Defendant does not authorize CDCR to accept service." (Id.) 27 U.S. Marshalls were not able to
serve the defendant because CDCR also refused to provide 28 information regarding defendant's
current address. 1 To proceed against Defendant Ly, Plaintiff must identify and serve this
Defendant. Plaintiff 2 will have an opportunity to seek information to learn Defendant's Ly current
address and contact 3 information. However, it remains Plaintiff's responsibility to serve
Defendant Ly. 4 Although Federal Rule of Civil Procedure 26(d)(1) generally provides that "[a]
party may not seek discovery from any source before the parties have conferred as required by
Rule 26(f)," a 5 party may do so "when authorized . . . by court order." Here, the Court finds good
cause to permit 6 Plaintiff to issue a subpoena duces tecum for the limited purpose of discovery
current address and 7 contact information for Defendant Kelly Vang Ly so that this case may
proceed. See *Malibu 8 Media, LLC v. Doe*, 319 F.R.D. 299, 305 (E.D. Cal. 2016) (noting that a
court may permit, for 9 good cause, early discovery to learn the identities of Doe defendants). 10

Accordingly, the Court will authorize the issuance of a subpoena duces tecum to seek 11 documents from the California Department of Corrections and Rehabilitation. The Clerk of Court 12 is directed to send Plaintiff one copy of form AO 88B and one copy of form USM-285, to be 13 completed by Plaintiff. When completing these subpoena forms, Plaintiff should only request 14 documents that may assist her in identifying current address and other relevant contact 15 information for Defendant Ly. 16 On the AO 88B form, in the section that begins with “To: (Name of person to whom this 17 subpoena is directed),” Plaintiff should identify the person or entity she is seeking the documents 18 from. Because Plaintiff is seeking information about an employee at Central California Women’s 19 Facility, their employer, CCWF, appears to be the logical recipient of the subpoena. 20 In the blank space between the lines starting with “production” and “place,” Plaintiff should 21 identify the documents she is seeking that would assist her in identifying and serving the 22 Defendant Ly, such as any documents related to current home or mailing address of Kelly Vang 23 Ly or other relevant contact information. The “place” and date and “time of the production” boxes refer to the date on which the 24 documents should be produced to the Plaintiff and the address of where the documents should be 25 sent, such as the place of her incarceration or her residence. 26 Plaintiff should not fill out Proof of Service section of the AO 88B form, it will be 27 completed by the U.S. Marshalls after they serve the subpoena. Similarly, Plaintiff should not fill 28 1 | out the section of the USM-285 form that is marked “Space Below for Use of U.S. Marshal Only 2 | — Do Not Write Below this Line.” 3 The “Serve At” Section on the USM-285 form should match “To:” section on the AO 88B 4 | form, providing the name and address of the person or entity to whom subpoena is directed, such 5 | as CCWF. 6 Once Plaintiff has completed and returned forms AO 88B and USM-285, the Court will 7 review the documents and, if they are correctly completed, the Court will direct the United States 8 Marshals Service to serve the subpoena. The Court notes that it may limit Plaintiffs request for 9 production of documents. Plaintiff has 120 days from the date of this order, until July 28, 2025, to serve Defendant Ly with summons and complaint. Failure to file a motion to substitute by this deadline may result in the dismissal of this action. 2 Accordingly, IT IS ORDERED that: 13 1. The Clerk of Court is directed to send Plaintiff one copy of form AO 88B and one copy of form USM-285; 15 2. Plaintiff has 30 days from the date of service of this order to complete and return 16 forms AO 88B and USM-285; and 17 3. Plaintiff has 120 days from the date of this order, until July 28, 2025, to serve 18 Defendant Ly with summons and complaint. Failure to serve Defendant Ly by 19 this deadline may result in the dismissal of this action. 20 > IT IS SO ORDERED. 22 | Dated: _March 27, 2025 [see ey

3 UNITED STATES MAGISTRATE JUDGE

24 25 26 ‘Tf after being served with the subpoena, the California Department of Corrections and Rehabilitation fails 27 | to respond or objects to providing documents, Plaintiff may file a motion to compel. The motion must be 8 filed with the Court and served on the responding person or entity.

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