

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MAUWAI FARHA,

Plaintiff,

v.

B. SILVA, et al.,

Defendants.

CASE NO. 1:06-cv-00755-OWW-SKO PC

ORDER DENYING REQUEST BY UNITED STATES MARSHAL FOR REIMBURSEMENT OF COSTS

(Doc. 56)

and

ORDER GRANTING MOTION

(Doc. 60)

_____ /

This action is a civil rights lawsuit brought by a state prisoner pursuant to 42 U.S.C. § 1983. On February 22, 2010, the U.S. Marshal submitted a request seeking reimbursement from Defendant B. Silva for service fees. (Doc. #56.) Defendant has filed a motion seeking relief from paying the costs of service. (Doc. #60.)

On June 3, 2009, the Court issued an order directing the U.S. Marshal to serve a summons and a copy of Plaintiff’s complaint on Defendant B. Silva and six (6) other named defendants. Defendant Silva did not execute a waiver service pursuant to Federal Rule of Civil Procedure 4(d). However, Silva made an appearance in this action by filing an answer to Plaintiff’s complaint on November 9, 2009. (Doc. #51.) On February 22, 2010, a “process receipt and return” was filed with the Court indicating that Defendant Silva was personally served on February 4, 2010. (Doc. #58.) The U.S. Marshal seeks reimbursement of \$158.40 in charges related to the service of process.

///

1 Federal Rule of Civil Procedure 4(d) imposes a duty on parties subject to service to avoid
2 unnecessary expenses associated with service. Specifically, Rule 4(d)(2) provides:

3 If a defendant located within the United States fails, without good
4 cause, to sign and return a waiver requested by a plaintiff located
5 within the United States, the court must impose on the defendant:
6 (A) the expenses later incurred in making service; and
7 (B) the reasonable expenses, including attorney's fees, of any motion
8 required to collect those service expenses.

7 Federal Rule of Civil Procedure 4(d)(2).

8 Defendant Silva requests that this Court find that good cause exists for excusing his failure
9 to timely sign and return a waiver of service. Defendant attributes the failure to file a timely service
10 waiver to confusion between Silva and the Office of the Attorney General, who is representing Silva.
11 Defendant Silva also describes the failure to file a timely waiver of service as an “oversight.” (Def.
12 Silva’s Req. for Relief from Paying Costs of Service; Decl. of Grant Lien in Supp. ¶ 7.)

13 Defendant Silva’s attempt at demonstrating good cause is unpersuasive. However, the Court
14 notes that the U.S. Marshal’s service of process was rendered unnecessary when Defendant Silva
15 made an appearance in this action by filing a responsive pleading on November 9, 2009. According
16 to the process receipt and return, Silva was personally served on February 4, 2010, almost three
17 months after Silva waived service by making an appearance in this action. The Court’s June 3, 2009
18 order stated that “[i]n the event that defendants make an appearance in this action by filing an
19 answer, dispositive motion, or other pleading, the U.S. Marshal Service need not personally serve
20 those defendants.” (Order Directing Service by the United States Marshal Service Without
21 Prepayment of Costs 2:23-24.) Therefore, personal service was rendered unnecessary by Silva’s
22 appearance in this action and the request for reimbursement of costs will be denied.

23 Accordingly, it is HEREBY ORDERED that:

- 24 1. The U.S. Marshal’s request for reimbursement of costs related to the service of
25 process on Defendant Silva, filed on February 22, 2010, is DENIED;
- 26 2. Defendant Silva’s motion seeking relief from paying the costs of service, filed on
27 March 19, 2010, is GRANTED; and

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. The Clerk is directed to serve a copy of this order on the United States Marshal,
Sacramento, California.

IT IS SO ORDERED.

Dated: April 26, 2010

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE