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

MICHAEL CONTRERAZ aka
LOFOFORA EVA CONTRERAZ,

1:06-cv-01817-LJO-SMS-PC

Plaintiff,

ORDER DENYING REQUEST BY
UNITED STATES MARSHAL FOR
REIMBURSEMENT OF COSTS
BY DEFENDANT RODRIGUEZ

vs.

STOCKBRIDGE, et al.,

(Doc. 34.)

Defendants.

_____ /

I. BACKGROUND

Plaintiff, Michael Contreras aka Lofofora Eva Contreras ("Plaintiff"), is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the complaint commencing this action on December 24, 2006. (Doc. 1.) On February 3, 2009, Plaintiff filed an amended complaint. (Doc. 17.) On May 8, 2009, the Court issued an order for this action to proceed on Plaintiff's amended complaint against defendants C/O Davis, C/O Carlos, C/ O Stockbridge, Sgt. Franco, and Lt. Rodriguez. (Doc. 18.) On January 13, 2009, the Court ordered the United States Marshal ("Marshal") to serve process upon the defendants in this action. (Doc. 20.) On December 31, 2009, the Marshal filed a USM-285 form indicating that on November 20, 2009, personal service was executed upon defendant Lieutenant Rodriguez ("Defendant"). (Doc. 34.)

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1 On December 31, 2009, the Marshal filed a request for a court order requiring Defendant to
2 reimburse the costs incurred by the Marshal for personal service, pursuant to Rule 4(d)(2) of the Federal
3 Rules of Civil Procedure. (Doc. 34.) On February 4, 2010, the Court ordered Defendant to file a
4 response to the Marshal's request. (Doc. 39.) On February 24, 2010, Defendant filed a response
5 opposing the Marshal's request. (Doc. 50.)

6 **II. DISCUSSION**

7 Rule 4(d)(2) of the Federal Rules of Civil Procedure provides in part:

8 An individual, corporation, or association that is subject to service under
9 subdivision (e), (f), or (h) and that receives notice of an action in the
10 manner provided in this paragraph has a duty to avoid unnecessary costs
of serving the summons

11 If a defendant located within the United States fails to comply with a
12 request for waiver made by a plaintiff located within the United States,
the court shall impose the costs subsequently incurred in effecting service
on the defendant unless good cause for the failure be shown.

13 Fed. R. Civ. P. 4(d)(2).

14 The Marshal requests the Court to impose costs on Defendant for his failure to avoid unnecessary
15 costs. On December 31, 2009, the Marshal filed a USM-285 form indicating that a Waiver of Service
16 form was mailed to Defendant on June 18, 2009, and no response was received. (Doc. 34.) Personal
17 service was executed upon Defendant on November 20, 2009, with costs of \$171.60. Id.

18 Defendant argues that the Marshal's request for costs is unwarranted because there was no need
19 for the Marshal to effect personal service upon Defendant. Defendant Rodriguez appeared in this action
20 on August 17, 2009, by filing a motion to dismiss pursuant to Rule 12(b) . (Doc. 22.) Defendant argues
21 that because he waived service by filing a responsive pleading on August 17, 2009, there was no need
22 for the Marshal to effect personal service upon him on November 20, 2009.

23 The Court agrees that the Marshal's request for costs is unwarranted. The Court's order of June
24 1, 2009, which directed the Marshal to serve process in this action, provided that, "In the event that
25 defendants make an appearance in this action by filing an answer, dispositive motion, or other pleading,
26 the U.S. Marshal Service need not personally serve those defendants." (Doc. 20 at 2 ¶6.) Because
27 Defendant filed a dispositive motion, the Marshal did not need to personally serve him, and the request
28

1 for reimbursement of costs is unwarranted.¹ Therefore, the Court shall deny the Marshal's request for
2 reimbursement.

3 **III. CONCLUSION**

4 Based on the foregoing, IT IS HEREBY ORDERED that:

- 5 1. The Marshal's request for reimbursement for costs of personal service upon defendant
6 Lieutenant Rodriguez, filed on December 31, 2009, is DENIED; and
7 2. The Clerk is DIRECTED to serve a copy of this order on the United States Marshal,
8 Sacramento, California.

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10 IT IS SO ORDERED.

11 **Dated: March 1, 2010**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE

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¹The court's electronic docket, which is accessible to the Marshal, shows whether a defendant has made an appearance in an action.