IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID POE,	CASE NO. 1:07-cv-00413-AWI-GBC (PC)
Plaintiff,	
v.	ORDER SETTING ASIDE ORDER GRANTING REQUEST FOR REIMBURSEMENT BY USM
SGT. HUCKABAY, et al.,	
Defendants.	(ECF No. 82)
_____ /	

ORDER

Plaintiff David Poe ("plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on Plaintiff's Third Amended Complaint, filed on November 30, 2009. (ECF No. 36.) On April 23, 2010, the Court ordered Plaintiff to provide information to facilitate service of process on Defendants by filling out and submitting to the Court a USM-285 form and a summons for each Defendant to be served. (ECF No. 42.) Plaintiff submitted the required documents on May 13, 2010, and on May 17, 2010, the Court directed the United States Marshal to initiate service on the fourteen Defendants. (ECF Nos. 43 & 44.)

It was necessary to order personal service to effectuate service on Defendant Milam. (ECF No. 70.) Once the summons was returned executed, the USM then requested and was granted, reimbursement pursuant to Federal Rule of Civil Procedure 4(d)(2). (ECF Nos. 71,

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74, & 82.) Defendant Milam filed a declaration stating that he only learned of the lawsuit on July 18, 2011 and that, had he been aware, he would have agreed to a waiver of service. (ECF No. 89.)

Fed. R. Civ. P 4(d) states that if a defendant fails to waive service without good cause, a court must impose the expenses incurred in making service and the expenses, including attorney's fees, of any motion required to collect those services.

Good cause having been shown, the Order granting reimbursement is HEREBY SET ASIDE. The Clerk of the Court is directed to serve a copy of this Order on the United States Marshal.

IT IS SO ORDERED.

Dated: ___September 7, 2011___

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UNITED STATES MAGISTRATE JUDGE