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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BARRY LOUIS LAMON,
Plaintiff,
v.
MAURICE JUNIOUS, et al.,
Defendants.

Case No. 1:09-cv-00484-SAB (PC)
ORDER REQUIRING DEFENDANT M.
TALISMAN TO FILE A RESPONSE TO THE
MARSHAL’S REQUEST FOR
REIMBURSEMENT OF COSTS OF SERVICE
(ECF No. 51)

Plaintiff is a prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Following remand from the Ninth Circuit, this action is proceeding on Plaintiff’s first amended complaint against Defendants Maguass, Talisman, Cohen, Barda, and Osborne for retaliation in violation of the First Amendment. (ECF No. 31.) On March 5, 2013, an order issued directing the United States Marshal (“Marshal”) to serve process upon the defendants in this action. (ECF No. 39.) The Marshal was directed to attempt to secure a waiver of service before attempting personal service on the defendants. If a waiver of service was not returned within sixty days, the Marshal was directed to effect personal service on the defendants in accordance with the provisions of Rule 4 of the Federal Rule of Civil Procedure, without prepayment of costs, and to file the return of service with evidence of any attempt to secure a waiver of service and with evidence of all costs subsequently incurred in effecting personal service.

1 On July 15, 2013, the Marshal filed a request for a court order requiring Defendant M.
2 Talisman to reimburse the costs incurred by the Marshal for personal service (“Marshal’s
3 Request”), pursuant to Rule 4(d)(2) of the Federal Rules of Civil Procedure. (ECF No. 51.) The
4 United States Marshal also filed a return of service with a USM-285 form showing total charges
5 of \$141.10 for effecting personal service on Defendant Talisman. The form shows that a waiver
6 of service was mailed to Defendant Talisman on March 12, 2013. Having received no response
7 personal service was assigned on May 14, 2013. The complaint was served on May 21, 2013.
8 (ECF No. 52.)

9 Rule 4(d)(1) of the Federal Rules of Civil Procedure provides in part that an individual
10 “that is subject to service under Rule 4(e), (f), or (h) has a duty to avoid unnecessary expenses of
11 serving the summons.”

12 If a defendant located within the United States fails, without good
13 cause, to sign and return a waiver requested by a plaintiff located
14 within the United States, the court must impose on the defendant:

15 (A) the expenses later incurred in making service. . . .

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

17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. Within twenty days from the date of service of this order, Defendant Talisman
19 shall file a written response to the Marshal’s Request, filed on July 15, 2013; and
- 20 2. Defendant’s failure to comply with this order shall result in an order requiring
21 Defendant Talisman to reimburse the Marshal for costs of personal service.

22
23 IT IS SO ORDERED.

24 Dated: July 16, 2013

25 /s/ Barbara A. McAuliffe
26 UNITED STATES MAGISTRATE JUDGE