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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RICHARD ALAN LAWSON,
Plaintiff,
v.
DONALD YOUNGBLOOD, et al.,
Defendants.

Case No. 1:09-cv-00992-LJO-MJS (PC)
**ORDER GRANTING U.S. MARSHALS'
REQUEST FOR REIMBURSEMENT OF
COSTS OF SERVING DEFENDANT
CHANG**
(ECF No. 73)

I. BACKGROUND

On January 11, 2012, the Court ordered the United States Marshals Service (“Marshal”) to serve process upon the Defendants in this case. (ECF No. 26.) 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 by a Defendant within sixty days, the Marshal was directed to effect personal service on the Defendant in accordance with the provisions of Rule 4 of the Federal Rules of Civil Procedure and 28 U.S.C. § 566(c), 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 The Marshal attempted to secure a waiver of service and then attempted personal
2 service on Defendant Chang, Kern County Sheriff Deputy, but was unsuccessful. On
3 September 17, 2012, the Marshal filed a return of service as unexecuted for Defendant
4 Chang. (ECF No. 42.)

5 On October 29, 2012, the Court ordered the Marshal to re-attempt service on
6 Defendant Chang and ordered that if Chang were located and failed to waive service, the
7 costs of personal service would be taxed against him. (ECF No. 53.)

8 On February 10, 2014, the Marshal filed a request for reimbursement of costs for
9 serving Defendant Chang (ECF No. 73) along with an executed return of summons and
10 USM-285 form showing personal service costs of \$71.83. (ECF No. 74.) The USM-285
11 form shows that a waiver of service form was mailed to Defendant Chang on November 5,
12 2012, and that he was personally served on February 4, 2014.

13 Defendant Chang objects to the reimbursement request. He argues that in February
14 or March 2013 he was served by substitution and entered his appearance in the action and
15 thereby rendered waiver of service unnecessary and the costs of subsequent personal
16 service not reimbursable.

17 **II. DISCUSSION**

18 Rule 4 provides that “[a]n individual, corporation, or association that is subject to
19 service under Rule 4(e), (f), or (h) has a duty to avoid unnecessary expenses of serving the
20 summons.” Fed. R. Civ. P. 4(d)(1). “If a defendant located within the United States fails,
21 without good cause, to sign and return a waiver requested by a plaintiff located within the
22 United States, the court must impose on the defendant . . . the expenses later incurred in
23 making service” Fed. R. Civ. P. 4(d)(2)(A).

24 It appears that Defendant Chang was given the opportunity required by Rule 4(d)(1)
25 to waive service, but he failed to return his waiver to the Marshal. Defendant Chang claims
26 he was served by substitution but does not set forth any evidence as to precisely when or
27 how he responded with an act that satisfied the requirement to timely execute the Marshal’s
28 waiver. His appearance by answer filed March 28, 2013 did not satisfy the need to return

1 the Marshal's waiver or show good cause for his failure to do so.

2 The Court finds Defendant Chang failed to sign and return the waiver requested by
3 the Marshal and that costs incurred in effecting service should be imposed upon him.

4 **III. ORDER**

5 For the reasons stated, IT IS HEREBY ORDERED that the request by the U.S.
6 Marshals Service for reimbursement of \$71.83 in costs incurred in serving Defendant
7 Chang (ECF No. 73) is GRANTED.

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15 IT IS SO ORDERED.

16 Dated: March 20, 2014

1s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE