

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

STEVE WILHELM,

Plaintiff,

v.

ANTHONY ENENMOH, et al.,

Defendants.

CASE NO. 1:10-CV-01663-LJO-DLB PC

ORDER REQUIRING DEFENDANTS TO REIMBURSE UNITED STATES MARSHALS SERVICE

(DOCS. 39, 42)

_____ /

Plaintiff Steve Wilhelm (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). Plaintiff is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding against Defendants Anthony Enenmoh, J. Walker, Rotman, and G. Miller for deliberate indifference to a serious medical need in violation of the Eighth Amendment.¹ On January 13, 2012 and January 20, 2012, the United States Marshal returned the USM-285 forms and the executed waivers of service. Docs. 38, 40, 41. On January 13, 2012 and January 20, 2012, the Marshal also filed a request for reimbursement for personal service pursuant to Rule 4(d)(2) of the Federal Rules of Civil Procedure. Docs. 39, 42.

Pursuant to Rule 4(d)(2), “If a defendant located within the United States fails, without good cause, to sign and return a waiver [of service] requested by a plaintiff located within the United States, the court must impose on the defendant . . . the expenses later incurred in making

¹ Defendant Rotman has not been served or appeared in this action.

1 service.” Fed. R. Civ. P. 4(d)(2). Here, Defendants Enenmoh, Walker, and Miller appeared in
2 this action by filing an answer but failed to sign and return a waiver of service. The United State
3 Marshal then personally served the three Defendants. There does not appear to be good cause for
4 Defendants’ failure to return a signed waiver of service, in light of the Federal Rules of Civil
5 Procedure and the Court’s September 23, 2011 Order, which explicitly warned Defendants that
6 filing an answer or responsive motion does not relieve them of the requirement of returning a
7 signed waiver. Order ¶ 5, Doc. 25.

8 Accordingly, it is HEREBY ORDERED that Defendants Enenmoh, Walker, and Miller
9 are to reimburse the United State Marshals Service for the expenses of effecting personal service.
10 The reimbursement amount is enumerated on the Marshal’s Memoranda, dated January 13, 2012
11 and January 20, 2012, and docketed at Court Docket Nos. 39 and 42.

12 IT IS SO ORDERED.

13 Dated: March 1, 2012

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE