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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GARRISON S. JOHNSON,
Plaintiff,
v.
CATE, et al.,
Defendants.

Case No. 1:10-cv-02348-LJO-MJS (PC)

**ORDER PROVIDING DEFENDANT
DORAN WITH THE OPPORTUNITY TO
SHOW GOOD CAUSE FOR FAILING TO
WAIVE SERVICE**

(ECF No. 35)

Plaintiff Garrison S. Johnson is a state prisoner proceeding pro se in this civil rights action on December 16, 2010 pursuant to 42 U.S.C. § 1983. This matter proceeds against Defendant Doran for violation of Plaintiff's rights under the Fourteenth Amendment Equal Protection Clause.

The Court ordered Plaintiff, who is not proceeding in forma pauperis, to serve process upon Defendant by not later than April 22, 2013. (ECF Nos. 13, 19, 24, 27.) Plaintiff was instructed he could serve Defendant by requesting a waiver of service, Fed. R. Civ. P. 4(d)(1), and that if Defendant failed to return the waiver of service form, then Plaintiff must effect personal service. (ECF No. 13.)

Plaintiff caused Defendant to be personally served by process server on March 14, 2013. (ECF No. 26.)

On August 12, 2013, Plaintiff filed a motion to recover the forty dollar (\$40.00) cost of personal service on grounds Defendant failed to provide waiver of service as required by

1 Federal Rules of Civil Procedure 4(d)(2). Plaintiff claims in his motion he requested waiver
2 of service in the manner provided by Rule 4(d)(2) but that Defendant did not return a
3 waiver, necessitating personal service. Defendant has not responded to the motion and the
4 time for doing so has expired. Local Rule 230(I).

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

11 It appears that Defendant was given the opportunity required by Rule 4(d)(1) to
12 waive service, but he failed to sign and return his waiver. The Court shall provide
13 Defendant with the opportunity to show good cause for failing to waive service. If Defendant
14 either fails to respond to this order or responds but fails to show good cause, the costs
15 incurred in effecting service shall be imposed on Defendant.

16 Accordingly, IT IS HEREBY ORDERED that:

- 17 1. Defendant Doran may, within thirty (30) days from the date of this
18 order, show good cause for failing to waive service; and
- 19 2. If Defendant either fails to respond to this order or responds but fails to
20 show good cause, the Court shall impose upon Defendant Doran the costs incurred in
21 effecting service.

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24 IT IS SO ORDERED.

25 Dated: September 10, 2013

26 /s/ Michael J. Seng
27 UNITED STATES MAGISTRATE JUDGE
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