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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT RODRIGUEZ, <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> OFFICER TUSHNET, <p style="text-align: center;">Defendant.</p>	CASE NO. 1:11-CV-01371 LJO DLB ORDER DENYING UNITED STATES MARSHAL’S REQUEST FOR REIMBURSEMENT (Doc. 17)
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I. Procedural History

Plaintiff is a county jail inmate proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. The United States Marshal (“Marshal”) was directed to serve process on Defendant Officer Tushnet pursuant to Federal Rule of Civil Procedure 4. Doc. 10. Pending before the Court is the Marshal’s request for reimbursement of costs for effecting personal service on Defendant Tushnet. Doc. 17. On January 25, 2012, Defendant filed his response to the Marshal’s request. Doc. 19.

II. Discussion

Rule 4(d) of the Federal Rules of Civil Procedure provides in part:

An individual, corporation, or association that is subject to service under Rule 4(e), (f), or (h) has a duty to avoid unnecessary expenses of serving the summons

If a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff located within the United States, the court must impose on the defendant . . . the expenses later incurred in making service.

Here, the Marshal requests that the Court impose costs on Defendant for his failure to

1 avoid unnecessary expenses.

2 On January 13, 2012, the Marshal filed a USM-285 form indicating that a Waiver of
3 Service form was mailed to Defendant Tushnet on October 14, 2011. Personal service was
4 effected on January 4, 2012 with costs of \$61.12.

5 Defendant Tushnet contends that he appeared in this action on November 10, 2011, by
6 filing an answer. *See* Answer Doc. 12. Defendant contends that the Marshal unnecessarily
7 duplicated service after Defendant had already appeared in the matter. Pursuant to the Court's
8 order directing the United States Marshal to effect service, "[i]n the event that defendant makes
9 an appearance in this action by filing an answer, dispositive motion, or other pleading, the U.S.
10 Marshal[']s Service need not personally serve that defendant." *See* October 4, 2011 Order ¶ 6,
11 Doc. 10. Accordingly, the Court will not impose costs of personal service on Defendant
12 Tushnet.

13 **III. Conclusion And Order**

14 Based on the foregoing, it is HEREBY ORDERED that the United States Marshal's
15 request for reimbursement filed on January 13, 2012 is DENIED.

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18 IT IS SO ORDERED.

19 **Dated: January 26, 2012**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE