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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BRETT PASSINEAU,
Plaintiff,
vs.
W. OXBORROW, et al.,
Defendants.

1:12-cv-01894-LJO-GSA-PC
ORDER REQUIRING DEFENDANTS
RODRIGUEZ, OXBORROW, AND
CANTU TO FILE RESPONSES
TO THE MARSHAL'S REQUESTS
FOR REIMBURSEMENT OF COSTS
OF SERVICE
(Docs. 25, 26, 27.)

TWENTY DAY DEADLINE

ORDER FOR CLERK TO SERVE A
COPY OF THIS ORDER ON THE
MARSHALS SERVICE

I. BACKGROUND

Brett Passineau ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. The case now proceeds on the original Complaint filed by Plaintiff on November 19, 2012, against defendants Correctional Officer (C/O) E. Cantu, C/O R. Rodriguez, and Sergeant (Sgt.) W. Oxborrow for use of excessive force, and against defendant C/O E. Cantu for failure to protect, in violation of the Eighth Amendment.¹ (Doc. 1.)

¹ On November 21, 2013, the court dismissed all other claims and defendants from this action, based on Plaintiff's failure to state a claim under § 1983. (Doc. 15.)

1 On October 17, 2013, the Court entered an order directing the United States Marshal
2 ("Marshal") to serve process upon the defendants in this action. (Doc. 14.) On December 24,
3 2013, defendants Rodriguez, Oxborrow, and Cantu ("Defendants") filed an Answer to the
4 Complaint. (Doc. 16.) On February 7, 2014, the Marshal filed returns of service executed as to
5 Defendants. (Docs. 22, 23, 24.)

6 On February 7, 2014, the Marshal filed requests for court orders requiring each of the
7 Defendants to reimburse the costs incurred by the Marshal for personal service ("Marshal's
8 Request"), pursuant to Rule 4(d)(2) of the Federal Rules of Civil Procedure. (Docs. 25, 26, 27.)
9 None of the Defendants have filed an opposition.

10 **II. DISCUSSION**

11 Rule 4(d)(2) of the Federal Rules of Civil Procedure provides:

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; and
- 16 (B) the reasonable expenses, including attorney's fees, of any
17 motion required to collect those service expenses.

18 Fed. R. Civ. P. 4(d)(2). The Court's order of October 17, 2013, which was served upon each of
19 the Defendants at the time they were served with the Complaint, provides that "[t]he filing of
20 an answer or a responsive pleading does not relieve defendants of [the] requirement [to return
21 signed waivers to the Marshals Service], and the failure to return the signed waivers may
22 subject defendants to an order to pay the costs of service pursuant to Fed. R. Civ. P. 4(d)(2)."
(Doc. 14 ¶5.)

23 The Marshal has requested the court to impose costs on each of the Defendants for their
24 failure to avoid unnecessary costs. The Marshal's USM-285 forms filed on February 7, 2014
25 indicate that waiver of service forms were mailed to defendants Rodriguez, Oxborrow, and
26 Cantu on October 28, 2013, and no signed waivers were returned. (Docs. 22, 23, 24.) Personal
27 service was executed upon Defendants on January 13, 2014, with costs of \$84.79 for each of
28 the three Defendants. Id.

