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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRIAN S. SEEFELDT,

Plaintiff,

No. 2:08-cv-0232-JFM (PC)

vs.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, et al.,

Defendants.

ORDER TO SHOW CAUSE

_____/

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this action seeking relief pursuant to 42 U.S.C. § 1983.

On March 27, 2009, the court ordered the United States Marshal to serve process on, inter alia, defendants Dr. Hirschler, Dr. Newman, Dr. Mendosa, Dr. Fox, and R. Russel. The Marshal was directed to attempt to secure a waiver of service before attempting personal service on defendants. If a waiver of service was not returned within sixty days, the Marshal was directed to effect personal service on the defendants 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 On October 15, 2009, the United States Marshal filed returns of service with
2 USM-285 forms showing total charges of \$344.67 for effecting personal service on the foregoing
3 defendants, and requested reimbursement of those costs. By order filed November 12, 2009,
4 defendants Hirschler, Newman, Mendosa, Fox, and Russel were directed to, within fourteen
5 days, pay collectively to the United States Marshal the costs of personal service unless within
6 that time they filed a written statement showing good cause for their failure to waive service.

7 On November 24, 2009, defendants Hirschler, Newman, Mendosa, Fox, and
8 Russel filed a response to the November 12, 2009 order in which they request relief from the
9 order to pay the costs of service. Defendants' request is predicated on their representation,
10 supported by a declaration of Deputy Attorney General Megan R. O'Carroll, that in April 2009,
11 the Litigation Coordinator at Deuel Vocational Institution forwarded the five requests for waiver
12 of service sent by the United States Marshal to these defendants to the Office of the Attorney
13 General together with a request for representation of these defendants. The Attorney General's
14 Office has no record of receiving these documents, and Deputy Attorney General Carroll was not
15 aware until October 12, 2009 that the United States Marshal had sent requests for waivers of
16 service to these defendants, or that the defendants had requested representation from the Office
17 of the Attorney General.

18 While defendants' response may provide a basis for some discussion between
19 defendants, the Litigation Coordinator at Deuel Vocational Institution, and the Office of the
20 Attorney General concerning payment of the costs of service, it does not show good cause for
21 relief from the court's order.

22 Accordingly, IT IS HEREBY ORDERED that the request of defendants Hirschler,
23 Newman, Mendosa, Fox, and Russel for relief from this court's November 12, 2009 order is

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1 denied. Full payment of \$344.67 shall be tendered to the United States Marshal within ten days
2 from the date of this order.

3 DATED: December 1, 2009.

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6 UNITED STATES MAGISTRATE JUDGE

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