

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

LAZARUS ORTEGA,)	
)	CIV. NO. 2: 08-00588 SOM
Plaintiff,)	
)	ORDER GRANTING REIMBURSEMENT
vs.)	FOR U.S. MARSHAL FEES
)	
)	
CSP-SAC PRISON OFFICIALS;)	
WALKER, REYES, WILLIAMSON)	
DEASON, HUTCHINGS, COSTA)	
)	
Defendants.)	
_____)	

ORDER GRANTING REIMBURSEMENT FOR U.S. MARSHAL FEES

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

On November 16, 2009, the court ordered the United States Marshal to serve process upon Deason, Hutchings, Costa, Williams, Reyes, and Walker. The Marshal was directed to attempt to secure a waiver of service before attempting personal service. If a waiver of service was not returned within sixty days, the Marshal was directed to effect personal service 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.

In January 2010, Defendants were mailed a waiver of service form. On March 29, 2010, Walker, Reyes, Williamson, Deason, and Hutchings filed their waivers of service of summons, agreeing to save the cost of service of a summons. Only Costa did not file a waiver of service of summons. On June 18, 2010, the Marshal filed a USM-285 form stating that the Marshal had attempted service on May 17, 2010, but that "nobody [was] there to receive" the summons. The Marshal served Costa on May 25, 2010. The USM-285 form showed a total charge of \$164.00 for effecting personal service on Costa.

Rule 4 of the Federal Rules of Civil Procedure provides, in pertinent part:

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:

(A) the expenses later incurred in making service; and

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

Fed. R. Civ. P. 4(d)(2).

The court finds that Costa was given the opportunity required by Rule 4(d)(2) to waive service and has failed to comply with the request.

Accordingly, IT IS HEREBY ORDERED that:

1. Within fourteen days from the date of this order, Costa shall pay to the United States Marshal the sum of \$164.00, unless within that time he files a written statement showing good cause for his failure to waive service. The court does not intend to extend this fourteen-day period.
2. The Clerk of the Court is directed to serve a copy of this order on the U.S. Marshal.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii June 22, 2010



/s/ Susan Oki Mollway
Susan Oki Mollway
Chief United States District Judge

Ortega v. CSP-SAC Prison Officials et al, 08cv588; ORDER GRANTING REIMBURSEMENT FOR U.S. MARSHAL SERVICE FEES