

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

LACEDRIC JOHNSON,

Plaintiff,

No. 2:08-cv-1609 JAM KJN P

vs.

D.K. SISTO, et al.,

Defendants.

ORDER AND

ORDER TO SHOW CAUSE

\_\_\_\_\_ /

Plaintiff is a state prisoner proceeding without counsel and in forma pauperis in this action seeking relief pursuant to 42 U.S.C. § 1983.

On May 24, 2010, the court ordered the United States Marshal to serve process upon defendants in this case. The Marshal was directed to attempt to secure a waiver of service before attempting personal service on defendant. If a waiver of service was not returned within sixty days, the Marshal was directed to effect personal service on such defendant 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 November 30, 2010, the United States Marshal filed a return of service with a  
2 USM-285 form showing total charges of \$140.00 for effecting personal service on defendant  
3 Fleishman on November 22, 2010. The form shows that a waiver of service form was mailed to  
4 the defendant on June 21, 2010, and that no response was received.

5           Rule 4 of the Federal Rules of Civil Procedure provides, in pertinent part, as  
6 follows:

7           An individual, corporation, or association that is subject to service  
8 under subdivision (e), (f), or (h) and that receives notice of an  
9 action in the manner provided in this paragraph has a duty to avoid  
unnecessary costs of serving the summons . . . .

10           If a defendant located within the United States fails to comply with  
11 a request for waiver made by a plaintiff located within the United  
12 States, the court shall impose the costs subsequently incurred in  
effecting service on the defendant unless good cause for the failure  
be shown.

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

14           The court finds that defendant Fleishman was given the opportunity required by  
15 Rule 4(d)(2) to waive service and has failed to comply with the request. Defendant Fleishman is  
16 ordered to reimburse the costs of personal service.

17           In addition, defendant Fleishman, although properly served, has not yet filed a  
18 responsive pleading.

19           Accordingly, IT IS HEREBY ORDERED that:

20           1. Within twenty-one days from the date of this order defendant Fleishman shall  
21 pay to the United States Marshal the sum of \$140.00, unless within that time defendant files a  
22 written statement showing good cause for his failure to waive service. The court does not intend  
23 to extend this twenty-one day period.

24           2. Defendant Fleishman show cause, within twenty-one days from the date of this  
25 order, why default should not be entered against him.

26           3. The Clerk of the Court shall forward a copy of this order to defendant

1 Fleishman at the address the U.S. Marshal personally served defendant Fleishman.<sup>1</sup>

2 4. The Clerk of the Court is directed to serve a copy of this order on the U.S.  
3 Marshal.

4 DATED: January 12, 2011

5   
6 KENDALL J. NEWMAN  
7 UNITED STATES MAGISTRATE JUDGE

7 /john1609.tax

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

\_\_\_\_\_

25 <sup>1</sup> Because personal service is often effected at a confidential address, the Clerk of the Court  
26 shall contact the U.S. Marshal's office to obtain the appropriate address if the address is not reflected  
on the return of service filed by the Marshal.