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

JAMEL WALKER,

Plaintiff,

No. CIV S-08-3034 WBS KJM P

vs.

JASON ROHER,

Defendant.

ORDER

_____/

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 May 14, 2009, the court ordered the United States Marshal to serve process upon the defendant 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 the 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.

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1 On December 8, 2009, the United States Marshal filed a return of service with a
2 USM-285 form showing total charges of \$148.50 for effecting personal service on defendant
3 Roher. The form shows that a waiver of service form was mailed to the defendant on June 2,
4 2009, and that no response was received.

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

7 (1) An individual, corporation, or association that is subject to
8 service under Rule 4(e), (f), or (h) has a duty to avoid unnecessary
9 expenses of serving the summons. The plaintiff may notify such a
10 defendant that an action has been commenced and request that the
11 defendant waive service of a summons.

12 (2) If a defendant located within the United States fails, without
13 good cause, to sign and return a waiver requested by a plaintiff
14 located within the United States, the court must impose on the
15 defendant:

16 (A) the expenses later incurred in making service. . . .

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

18 The court finds that defendant Roher was given the opportunity required by Rule
19 4(d) to waive service and has failed to comply with the request.

20 Accordingly, IT IS HEREBY ORDERED that:

21 1. Within fourteen days from the date of this order defendant Roher shall pay to
22 the United States Marshal the sum of \$148.50, unless within that time defendant files a written
23 statement showing good cause for his failure to waive service. The court does not intend to
24 extend this fourteen day period.

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

DATED: December 16, 2009.


U.S. MAGISTRATE JUDGE