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

RONALD E. WALTON,

Plaintiff,

No. CIV S-09-0479 EFB P

vs.

J. BUTLER, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. This action proceeds on the complaint filed February 18, 2009. The United States Marshal (“Marshal”) has requested reimbursement of expenses incurred in personally serving defendants Orum and Sisto. Dckt. Nos. 30, 32.

This court previously ordered the Marshal to serve process upon defendants Orum and Sisto. Dckt. No. 14. The Marshal was directed to attempt to secure a waiver of service before personally serving any defendant. *Id.* However, if a waiver of service was not returned within 60 days as to any defendant, the Marshal was directed to (1) personally serve that defendant without prepayment of costs under Rule 4 of the Federal Rules of Civil Procedure and 28 U.S.C. § 566(c); and (2) file the return of service with evidence of attempts to secure a waiver and costs subsequently incurred in effecting personal service. *Id.*

1 The forms USM-285/Process Receipt and Return filed by the Marshal on November 30,
2 2010, show that the Marshal mailed Orum and Sisto waiver of service forms on March 8, 2010,
3 and subsequently forwarded the waiver of service to one or more addresses for each defendant.
4 Dckt. Nos. 29, 31. The forms each include a notation that the waiver of service was not returned.
5 *Id.* The Marshal was therefore required to complete personal service on each defendant. The
6 forms show total charges for personally serving defendant Orum of \$57.00 and total charges for
7 personally serving defendant Sisto of \$55.50. *Id.*

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

9 An individual . . . that is subject to service under Rule 4(e), (f), or (h) has a duty
10 to avoid unnecessary expenses of serving the summons.

11 . . .

12 If a defendant located within the United States fails, without good cause, to sign
13 and return a waiver requested by a plaintiff located within the United States, the
14 court must impose on the defendant the expenses later incurred in making service
15

16 Fed. R. Civ. P. 4(d)(1)-(2). Thus, the Marshal may be entitled to the costs sought, as it appears
17 that defendants Orum and Sisto were given the opportunity required by Rule 4(d)(2) to waive
18 service but failed to do so.

19 Accordingly, the court hereby ORDERS that:

20 1. Within 14 days from the date of service of this order, defendant Orum shall pay to
21 the United States Marshal the sum of \$57.00, and defendant Sisto shall pay to the United States
22 Marshall the sum of \$55.50, unless within that time Orum or Sisto files a written statement
23 showing good cause for failing to waive service.

24 2. The Clerk of the Court shall serve a copy of this order on the U.S. Marshal.

25 DATED: December 22, 2010.

26 
EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE