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

KATHLYN A. RHODES,

Plaintiff,

No. 2:09-cv-00489 MCE KJN PS

vs.

PLACER COUNTY, et al.,

ORDER

Defendants.

_____ /

On February 10, 2010, and February 19, 2010, the United States Marshal’s Office filed a memorandum seeking reimbursement for service of process fees pursuant to Federal Rule of Civil Procedure 4(d)(2). (Dkt. Nos. 40, 42.) Under that Rule, if a defendant 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 the expenses incurred in effecting service. Fed. R. Civ. Proc. 4(d)(2)(A).

The United States Marshal’s office indicates that it mailed service of process to defendants Thomas J. Platina and American Medical Response on October 29, 2009. (Dkt. Nos. 39, 43.) There is no evidence in the record that either of these defendants returned or executed a waiver. As a result, the Marshal effectuated personal service on defendant Thomas J. Platina on February 8, 2010, and defendant American Medical Response on February 9, 2010. Id. The

1 Marshal has indicated that it incurred a total of \$57.20 in costs related to personal service on
2 defendant Thomas J. Platina and \$68.50 in costs related to personal service on defendant
3 American Medical Response. Id.

4 The Marshal is entitled to the costs sought. Federal Rule of Civil Procedure 4(d)
5 provides, in relevant part:

6 **(d) Waiving Service.**

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

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

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

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

18 Fed. R. Civ. P. 4(d)(1), (2). The undersigned finds that defendants Thomas J. Platina and
19 American Medical Response were given an opportunity to waive service as provided in Rule
20 4(d)(2), but failed to do so.

21 For the foregoing reasons, IT IS HEREBY ORDERED that:

22 1. Within 14 days of the date of service of this order, defendant Thomas J. Platina
23 shall either pay to the United States Marshals Service the sum of \$57.20 or, alternatively, file
24 with the court a written statement showing good cause for failing to waive service. Payment
25 should be mailed to: U.S. Marshal's Service, 501 I Street, Suite 5600, Sacramento, California
26 95814. The Clerk of Court shall serve a copy of this order on the United States Marshals


1 Service.

2 2. Within 14 days of the date of service of this order, defendant American
3 Medical Response shall either pay to the United States Marshals Service the sum of \$68.50 or,
4 alternatively, file with the court a written statement showing good cause for failing to waive
5 service. Payment should be mailed to: U.S. Marshal's Service, 501 I Street, Suite 5600,
6 Sacramento, California 95814. The Clerk of Court shall serve a copy of this order on the United
7 States Marshals Service.

8 **IT IS SO ORDERED**

9 DATED: April 12, 2010

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE