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

BRENT ALLAN WINTERS,

Plaintiffs,

No. 2:09-cv-0522 JAM KJN PS

v.

DELORES JORDAN, et al.,

Defendants.

ORDER

Presently before the court is a request made by the United States Marshals Service, Civil Division (“Marshal”), for reimbursement of its expenses incurred in connection with effectuating personal service of process on defendant Dewey Harpainter (see Dkt. Nos. 124-25).<sup>1</sup> The Marshal requests a total amount of \$153 pursuant to Federal Rule of Civil Procedure 4(d) on the grounds that Harpainter failed to return the waiver of service form. The court ordered Harpainter to show good cause why he should not be ordered to reimburse the Marshal, and Harpainter filed a timely response to the court’s order. (See Order, Apr. 11, 2012, Dkt. No. 334; Harpainter’s Response, Dkt. No. 337.)

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<sup>1</sup> This case proceeds before the undersigned pursuant to Eastern District of California Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1).

1 In regards to waivers of service, Federal Rule of Civil Procedure 4(d) provides, in  
2 relevant part:

3 **(d) Waiving Service.**

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

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

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

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

16 Fed. R. Civ. P. 4(d)(1), (2).

17 The record reflects that the Marshal mailed a waiver of service form to Harpainter  
18 at the law firm of Armstrong & Associates on December 16, 2009, but that Harpainter did not  
19 return the waiver form. (See Process Receipt & Return at 1, Dkt. No. 124.) Accordingly, the  
20 Marshal assigned the matter for personal service, and effectuated personal service on Harpainter  
21 on or about June 16, 2010, at a cost of \$153. (Id.)

22 Harpainter does not contest the facts regarding personal service of process, except  
23 that he represents that he was personally served on June 18, 2010. (Harpainter's Response ¶ 6.)

24 In regards to the waiver of service form, Harpainter explains that at some point prior to his  
25 appearance in this case, he left the firm of Armstrong & Associates and opened his own law firm;  
26 Harpainter provides no dates in regards to this move. (Id. ¶¶ 4-5.) In any event, Harpainter states  
that he is unaware of any attempts to serve him prior to June 2010, and that mail sent to  
Armstrong & Associates was processed by the clerical staff and distributed through the firm's  
owner. (Id. ¶ 8.)

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