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

JOHN FRANCIS,

Plaintiff,

No. 2:09-cv-0640 JAM KJN P

vs.

MATTHEW CATE, et al.,

Defendants.

ORDER

_____ /

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 October 6, 2009, the court ordered the United States Marshal to serve process upon the defendants in this case. The Marshal was directed to attempt to secure a waiver of service before attempting personal service on defendants. If a waiver of service was not returned by a defendant within sixty days, the Marshal was directed to effect personal service on that 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 \$350.26 for effecting personal service on defendants
3 A. Pomazal, D.O., and Jeremy Riker, P.A. on November 25, 2009. The form shows that a
4 waiver of service form was mailed to these defendants on August 12, 2009, and that no response
5 was received.

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

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

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

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

15 The court finds that defendants A. Pomazal, D.O., and Jeremy Riker, P.A. were
16 given the opportunity required by Rule 4(d)(2) to waive service and has failed to comply with the
17 request.

18 Accordingly, IT IS HEREBY ORDERED that:

19 1. Within fourteen days from the date of this order defendants A. Pomazal, D.O.,
20 and Jeremy Riker, P.A., shall pay to the United States Marshal the sum of \$175.13 each, unless
21 within that time each defendant files a written statement showing good cause for his failure to
22 waive service. The court does not intend to extend this fourteen day period.

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24 ////

25 ////

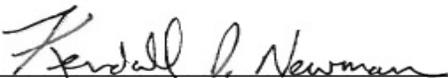
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2. The Clerk of the Court is directed to serve a copy of this order on the U.S.

Marshal.

DATED: July 7, 2010


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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