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

DEANGELO CLAY,

Plaintiff,

No. CIV S-09-2899 CKD P

vs.

J. WALKER, et al.,

Defendants.

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 August 5, 2011, 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 the defendants. If a waiver of service was not returned within sixty days, the Marshal was directed to effect personal service on the defendants 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 November 21, 2011, the United States Marshal filed a return of service with a  
2 USM-285 form showing total charges of \$55.00 for effecting personal service on defendant  
3 McIntyre. The form shows that a waiver of service form was mailed to the defendant on August  
4 8, 2011, and that no response was received.

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

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

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

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

14 The court finds that defendant McIntyre was given the opportunity required by  
15 Rule 4(d)(2) to waive service and has failed to comply with the request.

16 Accordingly, IT IS HEREBY ORDERED that:

17 1. Within fourteen days from the date of this order defendant McIntyre shall pay  
18 to the United States Marshal the sum of \$55.00, unless within that time defendant files a written  
19 statement showing good cause for his failure to waive service.

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

22 Dated: December 1, 2011

23   
24 CAROLYN K. DELANEY  
25 UNITED STATES MAGISTRATE JUDGE

26 /mp  
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