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

ALTON E. DEAN,

Plaintiff,

No. 2:10-cv-1355 MCE JFM (PC)

vs.

KATHRYN M. GONZALES, 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 July 9, 2012, 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 defendant. 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.

On November 6, 2012, the United States Marshal filed a return of service with a USM-285 form showing total charges of \$55.00 for effecting personal service on defendant

1 Tanya and \$55.00 for effecting personal service on defendant Gonzales. The form shows that a
2 waiver of service form was mailed to the defendants on July 11, 2012, and that no response was
3 received.

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

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

9 If a defendant located within the United States fails, without good
10 cause, to sign and return a waiver requested by a plaintiff located
11 within the United States, the court must impose on the defendant:
12 (A) the expenses later incurred in making service; and
13 (B) the reasonable expenses, including attorney's fees, of any
14 motion required to collect those service expenses.

15 Fed. R. Civ. P. 4(d)(1), (2)(A), (B).

16 The court finds that defendants Tanya and Gonzales were given the opportunity
17 required by Rule 4(d) to waive service and has failed to comply with the request.

18 Accordingly, IT IS HEREBY ORDERED that:

19 1. Within fourteen days from the date of this order defendants Tanya and
20 Gonzales shall each pay to the United States Marshal the sum of \$55.00, unless within that time
21 defendant files a written statement showing good cause for his failure to waive service. The
22 court does not intend to extend this fourteen day period.

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

25 DATED: November 13, 2012.

26 
UNITED STATES MAGISTRATE JUDGE