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

JAMES K. GOLDSMITH,

Plaintiff,

No. 2:10-cv-1995 KJN P

vs.

L. DAVIS, 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 February 10, 2011, the court ordered the United States Marshal to serve process upon defendants in this case. The Marshal was directed to attempt to secure a waiver of service before attempting personal service on any defendant. If a waiver of service was not returned within sixty days, the Marshal was directed to effect personal service on the 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 July 11, 2011, the United States Marshal filed a return of service with a USM-
2 285 form, showing total charges of \$81.52, for effecting personal service on defendant Davis.
3 The form (Dkt. No. 22) shows that a waiver of service form was mailed to the defendant on
4 February 24, 2011, but that no response was received until July 13, 2011 (Dkt. No. 23), after
5 personal service.

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
11 unnecessary costs of serving the summons

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

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

18 The court finds that defendant Davis was given the opportunity required by Rule
19 4(d)(2) to timely waive service, and failed to comply with the request.

20 Accordingly, IT IS HEREBY ORDERED that:

21 1. Within fourteen days from the date of this order, defendant Davis shall pay to
22 the United States Marshal the sum of \$81.52, unless within that time defendant files a written
23 statement showing good cause for his failure to timely waive service. The court does not intend
24 to extend this fourteen-day period.

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

DATED: August 19, 2011


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE