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

REX CHAPPELL,

Plaintiff,

No. CIV S-10-2676 KJM GGH P

vs.

DUC, 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 January 20, 2012, the court ordered the United States Marshal to serve process upon the defendant 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 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.

On April 27, 2012, the United States Marshal filed a return of service with a USM-285 form showing total charges of \$135.50 for effecting personal service on defendant

1 Strohmaier. The form shows that a waiver of service form was mailed to the defendant on  
2 January 23, 2012, and that no response was received.

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

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

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

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

12 The court finds that defendant Strohmaier was given the opportunity required by  
13 Rule 4(d) to waive service and has failed to comply with the request.

14 Accordingly, IT IS HEREBY ORDERED that:

15 1. Within fourteen days from the date of this order defendant Strohmaier shall  
16 pay to the United States Marshal the sum of \$135.50, unless within that time defendant files a  
17 written statement showing good cause for his failure to waive service. The court does not intend  
18 to extend this fourteen day period.

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

21 DATED: May 3, 2012

22 /s/ Gregory G. Hollows  
23 UNITED STATES MAGISTRATE JUDGE

24 GGH:mp  
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