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

BRYON ANDERSON,
Plaintiff,

vs.

No. CIV. S-10-2833 LKK GGH PS

HERB BENEDICT,
Defendant.

ORDER

_____/

Plaintiff is proceeding pro se and in forma pauperis in this action. This proceeding was referred to this court by Local Rule 302(21), pursuant to 28 U.S.C. § 636(b)(1).

On September 27, 2011, the court ordered the United States Marshal to serve process upon the defendant in this case within ninety days. The waiver of service form indicates that defendant was notified that failure to waive service of summons would result in a requirement that defendant bear costs of such service unless he shows good cause for failure to return the waiver. See Fed. R. Civ. P. 4(d)(1); 28 U.S.C. §566(c).

On January 11, 2012, the United States Marshal filed a return of service with a USM-285 form showing total charges of \$65.20 for effecting personal service on defendant Benedict. The form shows that a waiver of service form was mailed to the defendant on November 4, 2011, and that no response was received.

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

follows:

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

If a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff located within the United States, the court must impose on the defendant: (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.

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

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

Accordingly, IT IS HEREBY ORDERED that:

1. Within fourteen days from the date of this order defendant Benedict shall pay to the United States Marshal the sum of \$65.20, unless within that time defendant files a written statement showing good cause for his failure to waive service. The court does not intend to extend this fourteen day period.

2. The Clerk of the Court is directed to serve a copy of this order on the U.S. Marshal; the Clerk shall serve Benedict at the address listed in the returned summons.

DATED: January 19, 2012

/s/ Gregory G. Hollows
UNITED STATES MAGISTRATE JUDGE

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