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

ARIEL BALTHROPE,

Plaintiff,

No. 2:10-cv-3003-JAM-JFM (PS)

vs.

SACRAMENTO COUNTY OF  
HEALTH AND HUMAN SERVICES,  
et al.,

Defendants.

ORDER

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Plaintiff is proceeding pro se and in forma pauperis in this action seeking relief pursuant to 42 U.S.C. § 1983.

On May 25, 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 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.

1           On August 22, 2011, the United States Marshal filed a return of service with a  
2 USM-285 form showing total charges of \$56.02 for effecting personal service on defendant  
3 “Sacramento County Department of Health and Human Services.” The form shows that a waiver  
4 of service form was mailed to the defendant on June 3, 2011, and that no response was received.  
5 However, review of the docket shows that County of Sacramento (erroneously sued as County of  
6 Sacramento Department of Health and Human Services / Child Protective Services) appeared in  
7 this action by filing an answer on July 21, 2011.

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

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

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

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

17           Defendant’s answer notwithstanding, the court finds that defendant was given the  
18 opportunity required by Rule 4(d)(2) to waive service and has failed to comply with the request.

19           Accordingly, IT IS HEREBY ORDERED that:

20           1. Within fourteen days from the date of this order defendant County of  
21 Sacramento shall pay to the United States Marshal the sum of \$56.02, unless within that time  
22 defendant files a written statement showing good cause for its failure to waive service. The  
23 court does not intend to extend this fourteen day period.

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

Marshal.

DATED: November 7, 2011.

  
UNITED STATES MAGISTRATE JUDGE

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