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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID FLORENCE,  
Plaintiff,  
v.  
A.W. NANGALAMA, et al.,  
Defendants.

No. 2:11-cv-3119 GEB KJN P

ORDER

On March 25, 2014, the Magistrate Judge issued an order charging defendant C. Bakewell for the costs of service of process. On August 15, 2014, defendant Bakewell filed a motion for reconsideration of that order.

Local Rule 303(b), states “rulings by Magistrate Judges . . . shall be final if no reconsideration thereof is sought from the Court within fourteen days . . . from the date of service of the ruling on the parties.” Id.

However, it appears that the March 25, 2014 order was inadvertently not served on defendant Bakewell. Defendant Bakewell first appeared and answered the third amended complaint on August 6, 2014. Accordingly, the court finds defendant’s motion to be timely filed.

“[A] motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law.” 389 Orange Street

1 Partners v. Arnold, 179 F.3d 656, 665 (9th Cir. 1999) (no clear error where district court did not  
2 redesignate a cross-claim as an affirmative defense because party did not raise the issue until after  
3 grant of summary judgment).

4 The Federal Rules of Civil Procedure impose a duty on certain defendants “to avoid  
5 unnecessary costs of serving the summons.” Fed. R. Civ. P. 4(d)(2). That duty is only imposed  
6 on a defendant “that receives notice of an action in the manner provided in this paragraph,” which  
7 is by mailing a notice of the action and a “request that the defendant waive service of a  
8 summons.” Id. If a defendant fails to waive the service of a summons, “the court shall impose  
9 the costs subsequently incurred in effecting service on the defendant unless good cause for the  
10 failure be shown.” Fed. R. Civ. P. 4(d).

11 Defendant Bakewell avers that she was not personally contacted by the Marshal to request  
12 a waiver of service. (ECF No. 51 at 3.) Defendant Bakewell declares that she had no knowledge  
13 of the instant lawsuit or summons until she was personally served on February 25, 2014.

14 Although the Marshal mailed summons and a request for a waiver of service on November 19,  
15 2013, to the California Department of Corrections and Rehabilitation (“CDCR”) and California  
16 State Prison, Sacramento, defendant Bakewell declares that she resigned from the CDCR in  
17 September of 2009, and no one from the CDCR contacted her to advise her of the lawsuit or  
18 service. (ECF No. 51 at 3.)


19 Good cause appearing, defendant Bakewell’s motion for reconsideration is granted, and  
20 the order directing defendant Bakewell to pay the United States Marshal for the costs incurred in  
21 serving process is vacated.

22 Accordingly, IT IS HEREBY ORDERED that:

- 23 1. Defendant Bakewell’s motion for reconsideration is deemed timely filed;  
24 2. Defendant Bakewell’s motion for reconsideration (ECF No. 51) is granted; and  
25 3. The March 25, 2014 order (ECF No. 42) is vacated.

26 Dated: January 15, 2015

27  
28 flor3119.851

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE