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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

REX CHAPPELL,
Plaintiff,
v.
OFFICER FLEMING, et al.,
Defendants.

No. 2:12-cv-0234 MCE AC P

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 April 11, 2013, the court ordered the United States Marshal to serve process upon defendant A. Murphy 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 July 18, 2013, the United States Marshal filed a return of service with a USM-285 form showing total charges of \$74.78 for effecting personal service on defendant A. Murphy. The form shows that a waiver of service form was mailed to the defendant on April 24, 2013, and

1 that no response was received.

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

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

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

7 (A) the expenses later incurred in making service; and

8 (B) the reasonable expenses, including attorney's fees, of any
9 motion required to collect those service expenses.

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

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

13 Accordingly, IT IS HEREBY ORDERED that:

14 1. Within fourteen days from the date of this order defendant A. Murphy shall pay to the
15 United States Marshal the sum of \$74.78, unless within that time defendant files a written
16 statement showing good cause for his failure to waive service. The court does not intend to
17 extend this fourteen day period.

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

19 DATED: August 6, 2013

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ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE

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