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7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 ROYALTON McCAMEY,

12 Plaintiff,

No. 2:12-cv-0362 JAM AC P

13 vs.

14 CALIFORNIA DEPARTMENT  
15 OF CORRECTIONS, et al.,

ORDER

16 Defendants.  
\_\_\_\_\_ /

17 Plaintiff filed this action as a state prisoner proceeding pro se and seeking relief  
18 pursuant to 42 U.S.C. § 1983. By order filed on December 4, 2012 (Doc. No. 33), this court  
19 directed defendants Drs. Lipson, Malet and Awatani<sup>1</sup> each to reimburse the United States  
20 Marshal within fourteen days for the costs of personal service, absent a written statement  
21 showing good cause for each of these defendant's failure to waive service. See Fed. R. Civ. P.  
22 4(d)(1), (d)(2). The defendants have timely responded to the order to show cause, and have  
23 submitted supporting declarations from counsel and from the litigation coordinator at the prison.  
24 Resp. To Order to Show Cause ("Response"), Doc. No. 34.

25 \_\_\_\_\_  
26 <sup>1</sup> Defendants Malet's and Awatani's names were misspelled by plaintiff and in the court's previous order.

1 Deputy Attorney General Diana N. Chinn declares that defendant Lipson had  
2 requested representation from the Office of the Attorney General on July 5, 2012, and counsel  
3 prepared a waiver of service on his behalf on July 26, 2012. See Response (Doc. No. 34),  
4 Declaration of Diana N. Chinn, ¶¶ 1-3. Ms. Chinn attaches a proof of service indicating the  
5 waiver was mailed to the U.S. Marshal's office on July 27, 2012. Chinn Dec., ¶4, Exhibit A.  
6 Ms. Chinn also declares she had no reason to believe the Marshal's office had not received the  
7 waiver, and only discovered that it had not been received when she filed the motion to dismiss  
8 on defendant Lipson's behalf in August 2012. Chinn Dec., ¶¶ 5-7.

9 It is not entirely clear to the court why, when Deputy Attorney General Chinn did  
10 discover that no waiver of service had been filed on behalf of defendant Lipson at the time of  
11 filing a motion to dismiss on behalf of that defendant, she did not take some additional step to  
12 inform the Marshal's office that a waiver of service had been mailed. On the other hand, the  
13 proof of service does demonstrate that defendant Lipson did not fail to return a signed waiver.

14 As to defendants Malet and Awatani, Ms. Chinn declares that in the motion to  
15 dismiss defendant Lipson, she included a note that defendants Awatani and Malet had not been  
16 served a copy of the summons and complaint and were not represented at that time by the Office  
17 of the Attorney General. Chinn Dec. at ¶ 7; see also, defendant Lipson's Motion to Dismiss  
18 (Doc. No. 14), ft. 1. Ms. Chinn further declares that she did not receive notice that defendants  
19 Awatani and Malet had been served until October 23, 2012, when the Marshal effected personal  
20 service on the DVI litigation coordinator. Id. at ¶ 8. Counsel states that she received the  
21 requests by defendants Awatani and Malet to be represented by the Attorney General's Office on  
22 November 6, 2012, and, on November 20, 2012 filed a motion to dismiss on their behalf. Id. at ¶  
23 9.

24 The declaration of C. Gamble, DVI court litigation coordinator, explains the  
25 customary procedure he follows when a copy of a summons and complaint is received in the  
26 mail. Gamble declares that no one in his office reports receiving copies of the complaint by mail

1 from the Marshal's office for defendants Awatani or Malet before October 23, 2012, when  
2 defendant Gamble was personally served. See Resp., Declaration of C. Gamble. Although  
3 counsel was evidently aware at the time of filing defendant Lipson's motion to dismiss that both  
4 Malet and Awatani were named defendants, the undersigned cannot find in light of the Gamble  
5 declaration that these two defendants were provided an opportunity to waive service of the  
6 summons and complaint as required by Rule 4(d).

7 It is a mystery why the waiver of service mailed on behalf of defendant Lipson  
8 was not received by the U.S. Marshal, and why the complaints and waiver forms mailed to  
9 defendants Malet and Awatani were not received by the institution. Nonetheless, the court finds  
10 on the basis of the record before it that defendants Lipson, Awatani and Malet have shown good  
11 cause to relieve them of the obligation to reimburse the Marshal's costs for personal service.  
12 The request by the U.S. Marshal therefore will be denied.

13 Accordingly, IT IS HEREBY ORDERED that:

14 1. The request by the U.S. Marshal for the court to order reimbursement for the  
15 costs of personal service upon defendants Lipson, Awatani and Malet, filed on October 31, 2012  
16 (Doc. No. 26), pursuant to Fed. R. Civ. P. 4(d)(2), is denied, these defendants having shown  
17 good cause for any failure to waive service by mail; and

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

20 DATED: January 4, 2013.

21   
22 ALLISON CLAIRE  
23 UNITED STATES MAGISTRATE JUDGE  
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