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

SCOTT MASSIE,

Plaintiff,

No. 2:12-cv-0525 KJN P

vs.

ARIK AMAYA, et al.,

Defendants.

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 May 29, 2012, the court ordered the United States Marshal to serve process upon the defendant 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.

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1 On November 2, 2012, the United States Marshal filed a return of service with a
2 USM-285 form showing total charges of \$255.72 for effecting personal service on defendant
3 Arik Amaya, and \$255.72 for effecting personal service on defendant John Zufall. The form
4 shows that a waiver of service form was mailed to these defendants on June 11, 2012, and that no
5 response was received.

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

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

10 If a defendant located within the United States fails, without good
11 cause, to sign and return a waiver requested by a plaintiff located
12 within the United States, the court must impose on the defendant:
13 (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.

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

15 The court finds that defendants Arik Amaya and John Zufall were given the
16 opportunity required by Rule 4(d) to waive service and has failed to comply with the request.

17 Accordingly, IT IS HEREBY ORDERED that:

18 1. Within fourteen days from the date of this order defendants Arik Amaya and
19 John Zufall shall each pay to the United States Marshal the sum of \$255.72, unless within that
20 time defendant files a written statement showing good cause for his failure to waive service. The
21 court does not intend to extend this fourteen day period.

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

24 DATED: February 1, 2013

25 
KENDALL J. NEWMAN
26 UNITED STATES MAGISTRATE JUDGE