

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMONT L. CALHOUN,
Plaintiff,
v.
M. GOMEZ, et al.,
Defendants.

No. 2:12-cv-2856-GEB-EFB P

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. The U.S. Marshal has requested reimbursement of expenses incurred in personally serving defendant Gomez. ECF No. 32.

This court previously ordered the Marshal to serve process upon defendant Gomez. ECF No. 21. The Marshal was directed to attempt to secure a waiver of service before personally serving any defendant. *Id.* ¶ 2. However, if a waiver of service was not returned within 60 days as to any defendant, the Marshal was directed to (1) personally serve that defendant without prepayment of costs under Rule 4 of the Federal Rules of Civil Procedure and 28 U.S.C. § 566(c); and (2) file the return of service with evidence of attempts to secure a waiver and costs subsequently incurred in effecting personal service. *Id.* ¶ 5.

The form USM-285/Process Receipt and Return filed by the Marshal shows that the Marshal mailed defendant a waiver of service on December 19, 2013. ECF No. 31. There is no

1 indication on the form showing that the waiver of service was returned. *Id.* If it was not returned,
2 the Marshal was required to complete personal service on defendant. The form shows the total
3 charges for personally serving defendant was \$192.16. *Id.*

4 Rule 4 of the Federal Rules of Civil Procedure provides, in pertinent part:

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

7 . . .

8 If a defendant located within the United States fails, without good cause, to sign
9 and return a waiver requested by a plaintiff located within the United States, the
10 court must impose on the defendant the expenses later incurred in making service

11

12 Fed. R. Civ. P. 4(d)(1)-(2). Thus, the Marshal may be entitled to the costs sought, as it appears
13 that defendant was given the opportunity required by Rule 4(d)(2) to waive service but failed to
14 do so.

15 Accordingly, the court hereby ORDERS that:

- 16 1. Within 14 days from the date of service of this order, defendant Gomez shall pay to the
17 United States Marshal the sum listed above, unless within that time he files a written
18 statement showing good cause for failing to waive service.
- 19 2. The Clerk of the Court shall also serve a copy of this order on the U.S. Marshal.

20 DATED: May 20, 2014.

21 

22 EDMUND F. BRENNAN
23 UNITED STATES MAGISTRATE JUDGE
24
25
26
27
28