

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

PETER T. HARRELL,
Plaintiff,
v.
MARCI BUTTRAM, et al.,
Defendants.

No. 2:14-CV-00582 KJM AC PS

ORDER

On September 15, 2014, the court ordered defendants Marci Buttram, John Crossland and Clyde Billot (“defendants”) to reimburse the United States Marshals Service (“USM”) for personal service of process under Rule 4(d)(2) of the Federal Rules of Civil Procedure because they failed to waive service, unless they filed written statements showing good cause for their failure to waive. ECF No. 11. On October 6, 2014, defendants filed nearly identical written statements explaining their failure to waive service. ECF Nos. 15–17.

Federal Rule of Civil Procedure 4(d)(1) imposes a duty on defendants “to avoid unnecessary expenses of serving the summons.” Rule 4(d)(2) requires that the court tax costs of service of process on any defendant who fails to show good cause for failing to sign and return a timely waiver of service. Fed. R. Civ. P. 4(d)(2). The Advisory Committee notes to Rule 4(d) provide two examples of when good cause can be established: when a defendant does not receive the request, or when a defendant is insufficiently literate in English to understand it. Fed. R. Civ.

1 P. 4(d) Advisory Committee’s Note (1993 Amendments).

2 In their responses to the court’s order to show cause, defendants state that when they
3 learned that plaintiff initiated this action in February, they understood all disputes would be
4 subject to an arbitration provision in a settlement agreement entered into in a Siskiyou County
5 Superior Court action, and that plaintiff’s instant action therefore would be dismissed. See ECF
6 No. 15 at 3. Defendants explain they “believed that this action had been made moot by reason of
7 the orders of the Superior Court, County of Siskiyou, in case number SC SC CV CV 13-1005,
8 enforcing a previous settlement agreement.” Id. at 1.¹ Defendants do not dispute that they
9 received the waiver form by mail. Rather, they explain that when they “heard that Harrell had
10 filed this federal court case on February 28th, [they] understood that all disputes with Olson and
11 Harrell . . . would be subject to the arbitration provision . . . [and] that is why [they] did not
12 respond to, or file any papers with, this court.” Id. at 3.

13 A belief that an action is unfounded does not constitute good cause for failing to return the
14 waivers. The Advisory Committee Notes to the 1993 Amendments enacting Rule 4(d) clearly
15 state that “it is not a good cause for failure to waive service that the claim is unjust” Fed. R.
16 Civ. P. 4(d) Advisory Committee’s Note (1993 Amendments); accord Double “S” Truck Line,
17 Inc. v. Frozen Food Express, 171 F.R.D. 251, 253 (D. Minn. 1997) (“the commentary to Rule
18 4(d) makes abundantly clear that a defendant’s duty to avoid unnecessary costs of service is not
19 related to the merits of the underlying case”); Estrella v. P.R. Painting Corp., No. CV 06–
20 0717(ADS)(AKT), 2006 WL 3359485, at * 2 (E.D.N.Y. Nov. 20, 2006) (“A belief as to the
21 merits of the underlying action however, such as whether the complaint is unjust or unfounded, is
22 not ‘good cause’ sufficient to excuse failure to execute a waiver request.”); see also Fed. R. Civ.
23 P. 4(d) Advisory Committee’s Note (1993 Amendments) (a finding of “sufficient cause should be
24 rare”). The court will not deny the USM reimbursement on the grounds that defendants believed
25

26 ¹ According to defendants, their neighbor, Kimberly Olson, filed suit against them in state court
27 and plaintiff was somehow involved with the dispute, which ultimately settled. Id. at 2.
28 Defendants state that a judge in a recent 2013 Siskiyou County Superior Court action initiated by
Olson ordered the matters to be resolved through binding arbitration “on January 9, 2014, and
again, after a re-hearing, on July 1st, and August 25th” Id. at 2–3.


1 this action would be dismissed in light of related state court proceedings. Defendants could have
2 easily avoided the costs of personal service if they had returned the waivers of service.

3 However, the court will not award duplicative mileage fees for each defendant. The
4 USM's returns indicate a service fee of \$260.00 for each defendant plus additional mileage
5 charges in the amount of \$101.18. ECF No. 9. Considering the USM served all defendants
6 personally on the same day, the mileage charge will be divided among each defendant, resulting
7 in a mileage charge of \$33.72 each. Accordingly, each defendant will be ordered to pay the
8 USM the total amount of \$293.72.

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. The September 15, 2015 order to show cause, ECF No. 11, is discharged;
- 11 2. Within 14 days from the date of service of this order, defendant Marci Buttram shall
12 pay to the United States Marshal the sum of \$293.72 for effecting personal service on defendant;
- 13 3. Within 14 days from the date of service of this order, defendant John Crossland shall
14 pay to the United States Marshal the sum of \$293.72 for effecting personal service on defendant;
- 15 4. Within 14 days from the date of service of this order, defendant Clyde Billot shall pay
16 to the United States Marshal the sum of \$293.72 for effecting personal service on defendant;
- 17 5. The Clerk of the Court shall serve a copy of this order on defendants Marci Buttram,
18 John Crossland and Clyde Billot using the last known address: 414 Henley Hornbrook Road,
19 Hornbrook, CA 96044; and
- 20 6. The Clerk of the court shall serve a copy of this order on the U.S. Marshal.

21 DATED: October 23, 2014

22 
23 ALLISON CLAIRE
24 UNITED STATES MAGISTRATE JUDGE
25
26
27
28