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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE DEJESUS RODRIGUEZ,
Plaintiff,
v.
VERONICA VEGA,
Defendant.

No. 2:15-cv-0158 TLN GGH PS

ORDER

Plaintiff is proceeding pro se and in forma pauperis in this action. This proceeding was referred to this court by E.D. Cal. L.R. 302(c)(21), pursuant to 28 U.S.C. § 636(b)(1).

On February 20, 2015, the court ordered the United States Marshal to serve process upon defendant San Joaquin County Human Services Agency in this case within ninety days. The waiver of service form indicates that this defendant was notified that failure to waive service of summons would result in a requirement that defendant bear costs of such service unless it shows good cause for failure to return the waiver. See Fed. R. Civ. P. 4(d)(1); 28 U.S.C. §566(c).

However, on March 4, 2015, plaintiff filed an amended complaint which did not name San Joaquin County Human Services Agency as a defendant, but named only defendant Vega. (ECF No. 8.) On March 9, 2015, the court screened the first amended complaint, and ordered service on defendant Vega. The order specifically stated, “[t]his action will no longer proceed against defendant San Joaquin County Human Services Agency. (ECF No. 9 at 2.)

1 On August 18, 2015, the United States Marshal filed a return of service with a USM-285
2 form showing total charges of \$185.20 for effecting personal service on defendant San Joaquin
3 County Human Services Agency. (ECF No. 25.) The form shows that a waiver of service form
4 was mailed to this defendant on March 7, 2015, and that no response was received. Personal
5 service was effectuated on August 18, 2015. (ECF No. 24.) The U.S. Marshal has filed a request
6 for reimbursement of costs for personal service.

7 Rule 4(d) of the Federal Rules of Civil Procedure provides, in pertinent part, as 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
 within the United States, the court must impose on the defendant:

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

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

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

16 The U.S. Marshal was initially provided ninety days to effectuate service, which should
17 have been completed on or around May 21, 2015, not almost three months later. Nevertheless, it
18 also appears that plaintiff did not submit the forms for service in accordance with the court's
19 February 20, 2015 or March 9, 2015 orders. In any event, the March 9, 2015 order superseded
20 the earlier service order, and San Joaquin County Human Services Agency was no longer a
21 named defendant at the time the U.S. Marshal served it, over five months later. Although notice
22 of defendant dismissal to the United States Marshal would have been desirable, the court is sure
23 that the Marshal does not desire service of every court order in every case in an abundance of
24 caution just in case the events of a case might have made service unnecessary. The court does not
25 find the Marshal's office at fault for not closely reading the entire (and somewhat confusing)
26 docket, and therefore not being apprised of the dismissal, but on the other hand, former defendant
27 County of San Joaquin etc., knowing that it was a defendant no longer, is not at fault either.
28 Under these circumstances, the court declines to award costs to the U.S. Marshal.

