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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ROBERTO A. SOTELO,

CASE NO. 1:08-cv-01342-LJO-SKO

Plaintiff,

ORDER DIRECTING SERVICE BY THE
UNITED STATES MARSHALS SERVICE
WITHOUT PREPAYMENT OF COSTS

v.

T. BIRRING, et al.,

(Docs. 85 and 86)

Defendants.

Pursuant to 28 U.S.C. § 1915(d), Federal Rule of Civil Procedure 4(c)(3), and California Civil Procedure Code § 410.10, it is HEREBY ORDERED that:

1. The Clerk of the Court is directed to forward the following documents to the United States Marshals Service:
 - (1) One completed and issued summons;
 - (2) One completed USM-285 form;
 - (3) One copy of the second amended complaint filed on March 22, 2012, plus an extra copy for the Marshals Service; and
 - (4) One copy of this order, plus an extra copy for the Marshals Service.
2. Within **ten (10) days** from the date of this order, the Marshals Service is directed to notify the following defendant of the commencement of this action and to request a waiver of service in accordance with the provisions of Fed. R. Civ. P. 4(d) and 28 U.S.C. § 566(c):

BARRY J. GREEN, PHYSICIAN ASSISTANT

- 1 3. The Marshals Service shall file the returned waiver of service, or the request for
2 waiver of service if returned as undelivered, as soon as it is received.
- 3 4. If the waiver of service is not returned by the defendant within **thirty (30) days** of
4 the date of mailing the request for waiver, the Marshals Service shall:
- 5 a. Personally serve process and a copy of this order upon the defendant pursuant
6 to Rule 4 of the Federal Rules of Civil Procedure and 28 U.S.C. § 566(c).
- 7 b. Within ten days after personal service is effected, the Marshals Service shall
8 file the return of service for the defendant, along with evidence of any
9 attempts to secure a waiver of service of process and of the costs
10 subsequently incurred in effecting service on said defendant. Said costs shall
11 be enumerated on the USM-285 form and shall include the costs incurred by
12 the Marshals Service for photocopying additional copies of the summons and
13 complaint and for preparing new USM-285 forms, if required. **Costs of
14 service will be taxed against the personally served defendant in
15 accordance with the provisions of Fed. R. Civ. P. 4(d)(2).**
- 16 5. **If defendant waives service, he is required to return the signed waiver to the
17 Marshals Service. The filing of an answer or a responsive motion does not
18 relieve defendant of this requirement, and the failure to return the signed
19 waiver may subject defendant to an order to pay the costs of service pursuant
20 to Fed. R. Civ. P. 4(d)(2).**
- 21 6. In the event that defendant either waives service or is personally served, defendant
22 is required to reply to the complaint. 42 U.S.C. § 1997e(g)(2).

23
24 IT IS SO ORDERED.

25 **Dated: April 4, 2012**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE