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

MEL TYRONE EDWARD,

No. CIV S-10-0979-JAM-CMK-P

Plaintiff,

vs.

ORDER

D. SWINGLE, et al.,

Defendants.

_____ /

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s motion for default judgment (Doc. 31) against defendant Medina. Because entry of default is a prerequisite to a default judgment, and because the docket does not reflect entry of default as to defendant Medina, the court construes plaintiff’s motion as a motion for entry of default pursuant to Federal Rule of Civil Procedure 55(a).

Plaintiff asserts that default against defendant Medina is appropriate due to his failure to file a response to the complaint. A review of the docket, however, reveals that defendant Medina filed an answer on November 11, 2011. For this reason, default is not appropriate.

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Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's motion for default judgment (Doc. 31) is construed as a request for entry of default; and
2. So construed, plaintiff's request is denied.

DATED: November 21, 2011



CRAIG M. KELLISON
UNITED STATES MAGISTRATE JUDGE