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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 are: (1) defendant Medina’s “Notice of Waiver of Answer” pursuant to 42 U.S.C. § 1997e(g) (Doc. 30); and (2) the United States Marshal’s request for reimbursement of service costs (Doc. 34).

42 U.S.C. § 1997e(g)(1) provides that a defendant in a prisoner civil rights action may waive the right to reply to the complaint. Section 1997e(g)(2), however, allows the court to require a response to the complaint where it has found that the plaintiff has a reasonable opportunity to prevail on the merits. Such is the case here. As outlined in the court’s May 17, 2011, order, plaintiff has a reasonable opportunity to prevail against defendant Medina. On June 16, 2011, the court directed the United States Marshal to serve the complaint and ordered

1 defendants to file a response to the complaint pursuant to Federal Rule of Civil Procedure 12(a).
2 In light of this procedural history, the court will disregard defendant Medina's notice of waiver of
3 answer because the court has already directed defendant Medina to respond to the complaint.

4 The United States Marshal has requested reimbursement of the costs of service on
5 defendant Medina. Defendant Medina will be directed to show cause in writing why this request
6 should not be granted.

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. Defendant Medina's "Notice of Waiver of Answer" (Doc. 30) is
9 disregarded;
- 10 2. Defendant Medina shall file a response to the complaint within 30 days of
11 the date of this order; and
- 12 3. Defendant Medina shall show cause in writing, within 30 days of the date
13 of this order, why the United States Marshal's request (Doc. 34) should not be granted.

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15 DATED: December 8, 2011

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17 **CRAIG M. KELLISON**
18 UNITED STATES MAGISTRATE JUDGE
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