

1 First, Plaintiff argues that Martinez's Answer was not timely. On August 18,
2 2009, this Court granted a Rule 60 motion for reconsideration in Plaintiff's favor, which
3 revived the claims against Martinez. (Doc. No. 95.) The Order did not, however,
4 specify the time in which Martinez had to file an Answer. It could be argued that
5 Martinez had sixty days because he had originally executed a waiver of service. See Fed.
6 R. Civ. P. 12(a)(1)(A)(ii). The actual determination, however, was rendered moot
7 when Plaintiff filed the First Amended Complaint ("FAC") on November 19, 2009.
8 (Doc. No. 105.) See Hal Roach Studios v. Richard Feiner & Co., 896 F.2d 1542, 1546
9 (9th Cir. 1990).

10 Typically, Martinez's responsive pleading would have been due November 30,
11 2009. See FED. R. CIV. P. 15(a)(3) (2009) (superseded Dec 1, 2009) (the amended rule
12 extends from 10 to 14 days the period to respond to an amended pleading). Martinez
13 did not file his Answer until December 10, 2009. (Doc. No. 108.)

14 Martinez asserts that he was not required to file an Answer until after the Court
15 had screened the FAC pursuant to 28 U.S.C. § 1915A(a). Although not required,
16 Defendants chose to file their Answer for several reasons, one of which was to
17 streamline the proceedings by preventing the Court from having to conduct an
18 unnecessary screening of the FAC. (Doc. No. 120 at 6.) Having reviewed the moving
19 papers, the Court agrees that Martinez was not required to file a responsive pleading in
20 accordance with Rule 15 due to the nature of this proceeding, and thus, his Answer was
21 not untimely.²

22 Second, Plaintiff claims that Martinez's answers are "non-responsive" and that
23 they do not "admit or deny" the allegations of the FAC. (Doc. No. 115 at 2.) However,
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25 ² The Court agrees with Plaintiff that the applicability of 28 U.S.C. § 1915A and
26 42 U.S.C. § 1997e(g)(1) is somewhat vague as applied to Plaintiff's amended complaint.
27 The Court has given Martinez the benefit of the doubt in this situation because this
28 Court could have been more clear in regards to ordering the responsive pleading, and
because Defendants' argument in regards to judicial economy is appreciated. Similarly,
the Court gave Plaintiff the benefit of the doubt in regards to the timeliness of the filing
of the instant motion. (See note 1.)

1 Rule 8(b)(5) clearly states: “[a] party that lacks knowledge or information sufficient to
2 form a belief about the truth of an allegation must so state, and the statement has the
3 effect of a denial.” Therefore, having reviewed the Answer, the Court finds that
4 Martinez’s answers are legitimate denials based on a lack of information.

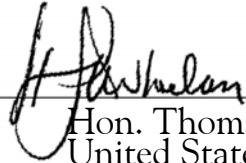
5 Lastly, Plaintiff argues that Martinez’s Answer should be stricken because his
6 denials are a “complete duplicate” of the answer to the original complaint filed by the
7 other named defendants. Having reviewed the Answer, the Court concludes this
8 challenge lacks merit for the same reason as stated above regarding Rule 8(b)(5).

9 In sum, having reviewed the moving papers, the Court finds that Plaintiff has not
10 shown he is entitled to the drastic remedy available under Rule 12(f) in regards to
11 Maritnez’s Answer. See FED. R. CIV. P. 12(f).

12 As such, Plaintiff’s motion to strike is **DENIED**. (Doc. No. 115.)

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14 **IT IS SO ORDERED.**

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16 DATED: July 14, 2010

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19 Hon. Thomas J. Whelan
20 United States District Judge
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