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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

ROBERT BENYAMINI,  
Plaintiff,

vs.

DEBBIE MANJUANO, et al.,  
Defendants.

1:06-cv-01096-AWI-GSA-PC

ORDER DENYING PLAINTIFF’S MOTION  
FOR ENTRY OF DEFAULT AND DEFAULT  
JUDGMENT AGAINST DEFENDANT  
MANDUJANO AS MOOT, WITH PREJUDICE  
(Doc. 215.)

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**I. BACKGROUND**

Robert Benyamini (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. This action now proceeds on the Third Amended Complaint, filed on May 23, 2008, against defendants Mandujano,<sup>1</sup> Wilcox, Wilkerson, and O’Grady (“Defendants”), on Plaintiff’s Eighth Amendment claims for adverse conditions of confinement (Docs. 1, 35.) On October 29, 2012, Plaintiff filed a motion for entry of default and default judgment against defendant Mandujano. (Doc. 215.)

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<sup>1</sup>In the Third Amended Complaint, Plaintiff spelled this defendants last name as Manjuano. (Doc. 35.) Defendant spells her last name as Mandujano. (Doc. 79.) The Court uses defendant’s spelling. However, the case title assigned at case opening shall not be changed.

1 **II. PLAINTIFF’S MOTION**

2 Plaintiff requests entry of default and default judgment, pursuant to Federal Rule of Civil  
3 Procedure 55, against defendant Debbie Mandujano, based on Mandujano’s failure to answer or  
4 otherwise defend in this action.

5 Plaintiff’s motion is moot because this issue was conclusively decided in this action by prior  
6 court orders. Plaintiff filed four prior motions requesting entry of default or default judgment against  
7 defendant Mandujano, all which were denied by the Court for lack of evidence or meritorious  
8 argument that defendant Mandujano failed to answer the complaint in a timely manner or otherwise  
9 failed to defend in this action. (Docs. 66, 67, 83, 120, 169, 177, 194, 198.) The Court has previously  
10 found that defendant Mandujano’s answer to the complaint, filed on December 16, 2010, is  
11 conclusive evidence that defendant Mandujano has appeared in this action and is actively defending  
12 against Plaintiff’s claims, resolving any issues of default under Rule 55 against this defendant in this  
13 action. (Docs. 120, 177, 198.) Therefore, Plaintiff’s motion, filed on October 29, 2012, shall be  
14 denied as moot, with prejudice.

15 **III. CONCLUSION**

16 Based on the foregoing, IT IS HEREBY ORDERED that:

- 17 1. Plaintiff’s request for entry of default and default judgment against defendant Debbie  
18 Mandujano, filed on October 29, 2012, is DENIED as moot, with prejudice; and  
19 2. The Court shall not consider any further motions for entry of default or default  
20 judgment against defendant Mandujano in this action, or motions for reconsideration  
21 of prior orders denying such motions.

22  
23 IT IS SO ORDERED.

24 **Dated: October 31, 2012**

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE