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5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF CALIFORNIA**
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8 ROBERTO A. SOTELO,

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

9 Plaintiff,

ORDER DENYING STIPULATION AND
REQUEST FOR ORDER TO SET ASIDE
ENTRY OF DEFAULT, WITHOUT
PREJUDICE

10 v.

11 T. BIRRING, et al.,

(Docs. 118 and 120)

12 Defendants.
13 _____/

14 Plaintiff Roberto A. Sotelo, a state prisoner proceeding in forma pauperis, filed this civil
15 rights action pursuant to 42 U.S.C. § 1983 on September 10, 2008. This action is proceeding on
16 Plaintiff's second amended complaint, filed March 22, 2012, against Defendant Green for acting
17 with deliberate indifference to Plaintiff's medical needs, in violation of the Eighth Amendment.

18 On December 31, 2012, Plaintiff requested entry of default against Defendant Green and on
19 January 3, 2013, default was entered by the Clerk of the Court. Fed. R. Civ. P. 55(a). On January
20 22, 2013, Plaintiff and Defendant filed a stipulation and request for the issuance of an order (1)
21 setting aside the entry of default, (2) requiring Defendant to reimburse Plaintiff's counsel for the
22 costs incurred in locating and serving Defendant, and (3) directing Defendant to file an answer
23 within twenty-one days.

24 The Court has broad discretion to set aside default for good cause shown. Fed. R. Civ. P.
25 55(c); *O'Connor v. State of Nevada*, 27 F.3d 357, 364 (9th Cir. 1994). Here, however, no cause has
26 been shown. The parties may not file a bare stipulation to set aside the entry of default against
27 Defendant. Defendant is required to file a motion making the requisite showing, to which Plaintiff
28 may file a statement of non-opposition if he chooses. Fed. R. Civ. P. 55(c); Local Rule 230.

1 Accordingly, the stipulation and request for an order setting aside entry of default is
2 HEREBY DENIED, without prejudice to the filing of a motion to set aside entry of default.

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4 IT IS SO ORDERED.

5 Dated: January 23, 2013 /s/ Lawrence J. O'Neill
6 UNITED STATES DISTRICT JUDGE