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

FLORENCIO VALLEJO,  
Plaintiff,  
v.  
KATHLEEN ALLISON, et al.,  
Defendants.

Case No. 1:10-cv-02352-AWI-SKO PC  
ORDER DENYING MOTION FOR ENTRY  
OF DEFAULT OR OTHER SANCTION,  
WITH PREJUDICE  
(Doc. 25)

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Plaintiff Florencio Vallejo, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on December 17, 2010. This action is proceeding on Plaintiff's amended complaint, filed on January 3, 2012, against Defendant Gray for acting with deliberate indifference to Plaintiff's medical needs, in violation of the Eighth Amendment.

On July 10, 2013, Plaintiff filed a motion seeking entry of default or other sanction against Defendant for failing to file a reply to his opposition to Defendant's motion to dismiss. In addition to the fact that Defendant has been granted a second extension of time to file a reply, the filing of a reply is optional and the election not to reply cannot support the entry of default or any other sanction. Fed. R. Civ. P. 55; *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 767, 100 S.Ct. 2455 (1980) (to be sanctionable under the Court's inherent power, the conduct must have constituted, or been tantamount to, bad faith); Local Rule 230(l).

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Accordingly, Plaintiff's motion for the entry of default or other sanction against Defendant is HEREBY ORDERED DENIED, with prejudice.

IT IS SO ORDERED.

Dated: July 16, 2013

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE