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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JEAN-PIERRE K. THOMAS,

Plaintiff,

v.

BONILLA, et al.,

Defendants.

CASE NO. 1:08-CV-00689-LJO-DLB PC

ORDER GRANTING DEFENDANT
BONILLA’S MOTION TO SET ASIDE
ADMISSIONS

(DOC. 78)

_____ /

I. Background

Plaintiff Jean-Pierre K. Thomas (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). Plaintiff is proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding against Defendants Bonilla and Garcia for violation of the Eighth Amendment. Pending before the Court is Defendant Bonilla’s motion to set aside his admissions, filed August 2, 2011. Doc. 78. Plaintiff filed an opposition to this motion on August 16, 2011. Doc. 81. Defendant filed a reply on August 25, 2011. Doc. 83. The matter is submitted pursuant to Local Rule 230(l).

II. Motion

On August 3, 2010, the Court issued an order regarding Plaintiff’s January 19, 2010 motion to compel. Order, Doc. 41. Plaintiff’s motion was granted in part, insofar as Defendant Bonilla had failed to timely respond to Plaintiff’s request for admissions and thus the admissions

1 were self-effectuating pursuant to Rule 36(a) of the Federal Rules of Civil Procedure.¹ Order
2 2:1-10. The Court informed Defendants that relief is possible pursuant to Rule 36(b). *Id.* at
3 2:10-16. Defendant Bonilla now moves to withdraw the admissions and to provide a late
4 response.

5 Pursuant to Rule 36(b) of the Federal Rules of Civil Procedure,

6 A matter admitted under this rule is conclusively established unless the court, on
7 motion, permits the admission to be withdrawn or amended. Subject to Rule
8 16(e), the court may permit withdrawal or amendment if it would promote the
9 presentation of the merits of the action and if the court is not persuaded that it
would prejudice the requesting party in maintaining or defending the action on the
merits. An admission under this rule is not an admission for any other purpose and
cannot be used against the party in any other proceeding.

10 Defendant contends that 1) none of Plaintiff's admissions address the core issues in this
11 action, and 2) setting aside the admissions will promote the presentation of the case on its
12 merits. Def.'s Mot. 4:5-21. Plaintiff contends that Defendant and Defendants' counsel
13 failed to timely respond to Plaintiff's request for admissions on several occasions. Pl.'s
14 Opp'n.

15 The admissions were:

16 Admission No. 1: ADMIT that while you were a correctional officer at Kern Valley
17 State Prison on October 5, 2006 that you and officer M. Garcia
18 slammed plaintiff down on the ground twice while he was
handcuffed causing half of his skin to come off his forehead by B
Facility 2 building SHU yard and a little ways from it.

19 Admission No. 2: ADMIT that while you were a correctional officer at Kern Valley
20 State Prison on October 5, 2006 you seen Plaintiff with half the
skin off his forehead and some skin off of his nose and or so forth.

21 Admission No. 3: ADMIT that while you were a correctional officer at Kern Valley
22 State Prison on October 5, 2006 that you, officer M. Garcia, and
23 officer Fernandes approached Plaintiff while he was in the B
Facility clinic. At that time officer Garcia asked Plaintiff how you
24 want to handle it. Plaintiff said you tell me officer Garcia motioned
25 to Plaintiff's head saying for him to say he got that while trying to
26 get up and he then wouldn't write him a bad 115 but he was going
to AdSeg. At that time Plaintiff you said you slammed me. Office
M. Garcia then backed up looking at prisoners in the holding cage
as if he had witnesses. At this time you said you were going to say

27
28 ¹ The August 3, 2010 Order inadvertently stated that Plaintiff's motion to compel was
denied, when it had only been denied in part.

1 Plaintiff kicked you and you, Officer M. Garcia, and Officer
2 Fernandes walked off.

3 Defendant has provided his late responses. Def.'s Mot. 3:11-4:3; *see* Ex. B, Doc. 29. The Court
4 will examine each prong as it relates to the admissions.

5 **A. Promotion Of Presentation Of The Merits**

6 If upholding the admission would eliminate presentation of the merits of the action, then
7 allowing withdrawal of the admission would promote the presentation of the merits and satisfy
8 the first prong of the test. Fed. R. Civ. P. 36(b); *see Conlon v. United States*, 474 F.3d 616, 622
9 (9th Cir. 2007) (citing *Hadley v. United States*, 45 F.3d 1345, 1348 (9th Cir. 1995)). Here,
10 Plaintiff's admissions, if upheld, would indicate that Defendants used excessive force on
11 Plaintiff. Thus, allowing the withdrawal of the admission would promote the presentation of the
12 merits, which supports Defendant Bonilla's motion as to the first prong.

13 **B. Prejudice To Requesting Party**

14 If the requesting party would be prejudiced such that he could not maintain the action on
15 its merits, then the motion to withdraw the admission cannot be granted. Fed. R. Civ. P. 36(b).
16 The second prong inquiry should focus on the prejudice that the non-moving party would face at
17 trial. *Conlon*, 474 at 623. Reliance on a deemed admission in preparing a summary judgment
18 motion, however, does not constitute prejudice. *Id.* at 624.

19 The Court recently denied Plaintiff's motion for summary judgment on the grounds that it
20 failed to comply with Local Rule 260(a) and Federal Rule of Civil Procedure 56(c). Doc. 89.
21 Plaintiff's motion relied upon the admissions from Defendant Bonilla as support. Reliance on
22 admissions for summary judgment motions does not constitute prejudice to Plaintiff presenting
23 the merits of his action under Rule 36(b) if those admissions are later withdrawn. Discovery
24 remains open in this action, as the discovery cut-off date for all parties is January 13, 2012.
25 Thus, Defendant Bonilla has also satisfied the second prong.

26 **III. Conclusion And Order**

27 Defendant Bonilla has satisfied both of the required prongs for withdrawing admissions
28 and filing untimely responses. Accordingly, the Court will grant Defendant's motion.

1 Based on the foregoing, it is HEREBY ORDERED that:

- 2 1. Defendant Bonilla's motion to set aside his admissions, filed August 2, 2011, is
3 GRANTED;
- 4 2. Defendant Bonilla's admissions to Plaintiff's Requests for Admissions Nos. 1, 2,
5 and 3 are withdrawn; and
- 6 3. Defendant Bonilla's untimely responses are substituted as his responses to
7 Plaintiff's Requests For Admissions Nos. 1, 2, and 3.

8 IT IS SO ORDERED.

9 **Dated: September 28, 2011**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE

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