

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

FLOYD SCOTT,

Plaintiff,

v.

J. PALMER, et al.,

Defendants.

CASE NO. 1:09-cv-01329-LJO-SKO PC

ORDER DEEMING NOVEMBER 19, 2012,
ORDER GRANTING PLAINTIFF'S MOTION
FOR RECONSIDERATION REISSUED

(Doc. 103)

ORDER DENYING PLAINTIFF'S MOTION
FOR SANCTIONS

(Doc. 112)

I. Defendants' Motion for Reconsideration

Plaintiff Floyd Scott, a state prisoner proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983 on July 29, 2009. This action is currently proceeding against Defendants Palmer, Rivera, and Lopez on Plaintiff's claim that while he was at Kern Valley State Prison in Delano, California, Defendant Palmer used excessive physical force against him and Defendants Rivera and Lopez failed to intervene, in violation of his rights under the Eighth Amendment of the United States Constitution.

On January 11, 2013, Defendants filed a motion for reconsideration of the Court's November 19, 2012, order granting Plaintiff's motion for reconsideration and setting aside the order dismissing part of Plaintiff's excessive force claim as barred by the favorable termination rule. Fed. R. Civ. P. 60(b); *Wilkinson v. Dotson*, 544 U.S. 74, 81-2, 125 S.Ct. 1242 (2005). In their motion for reconsideration, Defendants argued that the order of November 19, 2012, was issued prematurely because, pursuant to Cal. Civ. Proc. § 391.6, the action was stayed until ten days after a ruling on their vexatious litigant motion. (Doc. 109.)

1 Following submission of the motion upon the record, Local Rule 230(l), the Court issued an
2 order on February 21, 2013, in which it granted Defendants' motion for reconsideration but declined
3 to vacate its earlier order, Fed. R. Civ. P. 60(b)(1). (Doc. 116.) The Court provided Defendants with
4 fifteen days within which to file either an opposition or a statement of non-opposition to Plaintiff's
5 motion for reconsideration, provided Plaintiff with fifteen days within which to file a reply if
6 Defendants filed an opposition rather than a statement of non-opposition, and informed the parties
7 that once the motion has been submitted, the Court will determine the appropriate course of action
8 with regard to its existing ruling. On March 8, 2013, Defendants filed a statement of non-opposition
9 to Plaintiff's motion for reconsideration.

10 Plaintiff's motion for reconsideration is now submitted upon the record, and the order
11 granting the motion for reconsideration, filed on November 19, 2012, shall be deemed reissued.

12 **II. Plaintiff's Motion for Sanctions**

13 On February 8, 2013, Plaintiff filed a motion seeking the imposition of sanctions against
14 Defendants' counsel for filing the motion for reconsideration and for filing an opposition to his
15 motion to compel. Local Rule 110, under which Plaintiff seeks sanctions, provides that "[f]ailure
16 of counsel or of a party to comply with these Rules or with any order of the Court may be grounds
17 for imposition by the Court of any and all sanctions authorized by statute or Rule or within the
18 inherent power of the Court."

19 For the reasons set forth in the order filed on February 21, 2013, Defendants' motion for
20 reconsideration was meritorious and they were entitled to an opportunity to file an opposition or a
21 statement of non-opposition to Plaintiff's motion for reconsideration. Fed. R. Civ. P. 60(b)(1).
22 Further, on February 22, 2013, the Court denied Plaintiff's motion to compel as premature.

23 Plaintiff's contention that Defendants' motion for reconsideration and opposition to his
24 motion to compel were frivolous and harassing is without merit. There is no basis for the imposition
25 of sanctions against counsel and Plaintiff's motion is denied.

26 ///

27 ///

28 ///

1 **III. Order**

2 Accordingly, based on the foregoing, it is HEREBY ORDERED that:

- 3 1. Plaintiff's motion for reconsideration is now submitted upon the record and the order
4 granting the motion for reconsideration, filed on November 19, 2012, is HEREBY
5 DEEMED REISSUED; and
6 2. Plaintiff's motion for sanctions, filed on February 8, 2013, is DENIED.

7
8
9 IT IS SO ORDERED.

10 **Dated: March 12, 2013**

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE