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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 ADOPTING FINDINGS AND
RECOMMENDATIONS IN FULL, GRANTING
IN PART AND DENYING IN PART
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT, AND STAYING ACTION
PENDING SETTLEMENT CONFERENCE

(Docs. 40 and 69)

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 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.

The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. On February 7, 2012, the Magistrate Judge filed a Findings and Recommendations herein which was served on the parties and which contained notice to the parties that any objections to the Findings and Recommendations were to be filed within thirty days. The parties have not filed timely objections to the Findings and Recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the Court finds the Findings and Recommendations to be supported by the record and by proper analysis.

1 Accordingly, IT IS HEREBY ORDERED that:

- 2 1. The Findings and Recommendations, filed on February 7, 2012, is adopted in full;
- 3 2. Defendants' motion for summary judgment, filed on August 30, 2011, is GRANTED
- 4 in part and DENIED in part as follows:
- 5 a.. Defendants' motion for a finding that Plaintiff's excessive force claim arising
- 6 out of the use of pepper spray is barred by the favorable termination rule is
- 7 GRANTED and the claim is dismissed; and
- 8 b. Defendants' motion for summary judgment on Plaintiff's excessive force
- 9 claim arising out of being kicked and stomped once handcuffed is DENIED;
- 10 and
- 11 3. This action is stayed pending the results of the settlement conference set for April 20,
- 12 2012, before the Honorable Jennifer L. Thurston.

13

14 IT IS SO ORDERED.

15 Dated: March 19, 2012

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