UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

LAWRENCE CHRISTOPHER SMITH,

Plaintiff,

V.

D. GOSS, et al.,

Defendants.

Case No.: 1:10-cv-01814-LJO-JLT (PC)

ORDER STAYING DISCOVERY

(Doc. 79)

Plaintiff Lawrence Christopher Smith ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff is proceeding on the following cognizable claims in the Third Amended Complaint: under the First Amendment for retaliation against Defendants Lt. Goss, Lt. Gallagher, and Officer Langler; under the Eighth Amendment for deliberate indifference to his serious medical condition against PA Byers and Lt. Gallagher; and for his claim of a violation of his right to due process against Lt. Goss. (Docs. 31, 42, 47.)

On July 22, 2014, Defendants Gallagher and Goss filed a motion for summary judgment per Albino v. Baca, No. 10-55702, 2014 WL 1317141, at *1 (9th Cir. Apr. 3, 2014) (en banc), asserting the affirmative defense that Plaintiff failed to exhaust his available administrative remedies prior to filing this action. (Doc. 69.)

On August 18, 2014, Defendants filed a motion for a protective order to stay of discovery

pending resolution of their motion for summary judgment. (Doc. 79.) It is of note, that having been notified of his requirements to oppose the motion for summary judgment, the same day that Defendants filed their motion to stay discovery, Plaintiff filed an opposition rather than request postponement of consideration of Defendants' motion to conduct further discovery on the exhaustion issue under Rule 56(d) of the Federal Rules of Civil Procedure. (Docs. 80-82.)

Accordingly, it is HEREBY ORDERED, that the motion for discovery to be stayed pending resolution of motion for summary judgment for failure to exhaust, filed by Defendants Gallagher and Goss on August 18, 2014 (Doc. 79), is **GRANTED** and all discovery is **STAYED** in this action pending the resolution of the motion.

IT IS SO ORDERED.

Dated: August 20, 2014 /s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE