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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 THOMAS GOOLSBY,

12 Plaintiff,

13 vs.

14 FERNANDO GONZALES, et al.,

15 Defendants.
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1:11-cv-00394-LJO-GSA-PC

ORDER GRANTING DEFENDANT'S
MOTION FOR PROTECTIVE ORDER
(Doc. 48.)

ORDER STAYING DISCOVERY, EXCEPT
FOR LIMITED PURPOSE DESCRIBED BY
THIS ORDER, PENDING RESOLUTION
OF DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

18 **I. BACKGROUND**

19 Thomas Goolsby ("Plaintiff") is a state prisoner proceeding pro se and in forma
20 pauperis with this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the
21 Complaint commencing this action on March 8, 2011. (Doc. 1.) This case now proceeds on
22 Plaintiff's First Amended Complaint, filed on September 17, 2012, against defendant T.
23 Steadman ("Defendant") for retaliation in violation of the First Amendment.¹ (Doc. 13.)

24 On August 14, 2014, the court issued a Discovery/Scheduling Order which opened the
25 discovery phase for this action and established a deadline of April 14, 2015 for the parties to
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28 ¹ On April 22, 2013, the court dismissed all remaining claims and defendants from this action based on
Plaintiff's failure to state a claim. (Doc. 17.)

1 complete discovery.² (Doc. 47.) On August 15, 2014, Defendant filed a motion for a
2 protective order staying discovery. (Doc. 48.) Plaintiff has not opposed the motion.

3 **II. MOTION FOR PROTECTIVE ORDER – RULE 26(c)**

4 Rule 26(c)(1) of the Federal Rules of Civil Procedure provides, “A party or any person
5 from whom discovery is sought may move for a protective order in the court where the action
6 is pending. . . The court may, for good cause, issue an order to protect a party or person from
7 annoyance, embarrassment, oppression, or undue burden or expense” Fed. R. Civ. P.
8 26(c)(1). The court has inherent authority to manage the cases before it. Landis v. N. Am. Co.,
9 299 U.S. 248, 254-55 (1936) (“[T]he power to stay proceedings is incidental to the power
10 inherent in every court to control the disposition of the causes on its docket with economy of
11 time and effort for itself, for counsel, and for litigants. How this can best be done calls for the
12 exercise of judgment which must weigh competing interests and maintain an even balance”);
13 Dependable Highway Exp., Inc. v. Navigators Ins. Co., 498 F.3d 1059, 1066 (9th Cir. 2007).
14 Stays of proceeding in federal court, including stays of discovery, are committed to the
15 discretion of the trial court. See, e.g., Jarvis v. Regan, 833 F.2d 149, 155 (9th Cir. 1987).

16 **Defendant’s Motion**

17 Defendant moves for a protective order staying all discovery in this action, except for
18 discovery related to whether Plaintiff has exhausted administrative remedies, until the court
19 rules on Defendant’s motion for summary judgment. Defendant argues that in light of the
20 Ninth Circuit’s early summary-judgment requirement on the issue of exhaustion in Albino v.
21 Baca,³ the court should use its discretion to limit discovery to evidence concerning exhaustion,
22 if necessary, and leave until later, if it becomes necessary, discovery directed to the merits of
23 the case. Defendant argues that in this case, it would be an undue burden and expense for

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25 ² Ordinarily, the Court issues the Discovery/Scheduling Order in this type of case soon after one of the
26 defendants files an answer to the complaint. In this case, Defendant filed an Answer on August 13, 2014, and the
27 court issued the Discovery/Scheduling Order on August 14, 2014. (Docs. 46, 47.) Defendant has noted that he
28 requested, in a footnote to the Answer, that the court defer issuance of the Discovery/Scheduling Order until after
resolution of the motion for summary judgment. (Doc. 46 at 1 fn.1.) Due to its unexpected inclusion within the
body of the Answer, Defendant’s request went unnoticed by the Court.

³ Albino v. Baca, 747 F.3d 1162, 1170 (9th Cir. 2014).

1 Defendant to respond to discovery requests or propound them at this time, since the pending
2 motion for summary judgment for failure to exhaust administrative remedies encompasses all
3 of Plaintiff's claims in this case and, if granted, will result in the dismissal of this case.
4 Defendant requests that the court stay discovery on the underlying merits of the complaint and
5 limit discovery, if any, to the issue of exhaustion of Plaintiff's administrative remedies.

6 **Discussion**

7 Based on Defendant's arguments and a review of Defendant's pending motion for
8 summary judgment, the court finds good cause to grant Defendant's motion for a protective
9 order. See Wood v. McEwen, 644 F.2d 797, 801-02 (9th Cir. 1981). Defendant's motion for
10 summary judgment is based on the ground that Plaintiff failed to exhaust his administrative
11 remedies for all of the claims at issue in this case. Resolution of Defendant's motion for
12 summary judgment may cause discovery to be unnecessary. Plaintiff has not opposed a stay of
13 discovery, and the court does not anticipate a lengthy stay pending resolution of the motion for
14 summary judgment. Therefore, based on the foregoing, Defendant's motion for a protective
15 order staying discovery shall be granted. Except for discovery related to whether Plaintiff
16 failed to exhaust administrative remedies, the parties are precluded from responding to any
17 discovery requests or serving further discovery requests until the stay is lifted. If the parties
18 have been served with discovery requests that do not relate to Plaintiff's exhaustion of
19 administrative remedies, they shall retain the discovery for later consideration after the stay has
20 been lifted.

21 **III. CONCLUSION**

22 Based on the foregoing, IT IS HEREBY ORDERED that:

- 23 1. Defendant's motion for a protective order, filed on August 15, 2014, is
24 GRANTED;
- 25 2. Discovery in this action, which commenced on August 14, 2014, is STAYED,
26 except for discovery related to whether Plaintiff has exhausted administrative
27 remedies, pending resolution of the motion for summary judgment filed by
28 Defendant on August 13, 2014; and

