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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

BRENT ADLER,  
Plaintiff,  
v.  
F. GONZALEZ, et al.,  
Defendants.

CASE NO. 1:11-cv-1915-LJO-MJS (PC)  
**ORDER (1) VACATING DISCOVERY  
STAY (ECF No. 57), AND (2) MODIFYING  
DISCOVERY AND SCHEDULING ORDER  
(ECF No. 18)**  
**AMENDED:**  
Discovery Cut-Off: **February 6, 2015**  
Dispositive Motion Deadline: **April 10, 2015**

Plaintiff is a former state prisoner who initiated this civil rights action pro se and in forma pauperis on November 17, 2011. (ECF No. 1.) Plaintiff since has been released from prison and obtained counsel. (ECF Nos. 36 & 51.) This action proceeds against Defendants Negrete, Zanchi, Carrasco, Holland, Gonzalez, Steadman, Bryant, Schuyler, Lundy, Stainer, and Does Nos. 1, 2, 4, 5, and 6 on Plaintiff's First Amendment freedom of religion claim. (ECF Nos. 37, 38, 59, 62).

The Court dismissed Plaintiff's initial complaint for failure to state a claim, but gave leave to amend. (ECF No. 7.) Plaintiff filed an amended complaint (ECF No. 8), which the Court found stated a cognizable First Amendment Claim, but did not address RLUIPA (ECF No. 12). While service was pending, Plaintiff filed a motion for

1 reconsideration of the Court's screening order, arguing that he also alleged a cognizable  
2 RLUIPA claim. (ECF No. 16.) Defendants waived service and answered the complaint.  
3 (ECF No. 17 & 20.) The Court issued a discovery and scheduling order, setting June 18,  
4 2013 as the discovery cut-off, and August 29, 2013 as the dispositive motion deadline.  
5 (ECF No. 18.) Thereafter, Defendants filed motions to dismiss. (ECF Nos. 29 & 30.)

6 On February 4, 2013, the Court granted Plaintiff's motion for reconsideration,  
7 vacated its prior screening order, struck Defendants' motions to dismiss, and ordered  
8 Defendants to file an amended responsive pleading within thirty days of the Court's  
9 forthcoming amended screening order. (ECF No. 32.) On March 8, 2013, Defendants  
10 filed a motion to stay discovery until the issuance of the amended screening order. (ECF  
11 No. 34.)

12 The Court issued an amended screening order on August 16, 2013. (ECF No.  
13 38.) On September 16, 2013, Defendants filed an unenumerated Rule 12(b) motion to  
14 dismiss based on Plaintiff's failure to exhaust his administrative remedies. (ECF No. 39.)  
15 On September 30, 2013, the Court stayed discovery pending resolution of the motion to  
16 dismiss. (ECF No. 40.)

17 While the motion to dismiss was pending, the United State court of Appeals for  
18 the Ninth Circuit ruled in Albino v. Baca, 747 F.3d 1162 (9th Cir. 2014), that an  
19 unenumerated Rule 12(b) motion is no longer the proper procedural device for raising  
20 the issue of exhaustion. On June 9, 2014, Defendants moved to convert their motion into  
21 a motion for summary judgment. (ECF No. 46.) On June 20, 2014, the Court denied  
22 Defendants' motion to dismiss without prejudice based on Albino, vacated the discovery  
23 stay, denied Defendants' request to convert, and ordered Defendants to file a responsive  
24 pleading or motion within thirty days. (ECF No. 47.)

25 On July 3, 2014, Plaintiff moved to extend the discovery cut-off. (ECF No. 48.) On  
26 July 21, 2014, Defendants moved to dismiss Plaintiff's RLUIPA claims and his claims  
27 against Defendant Holmstrom under Rule 12(b)(6). They also sought partial summary  
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1 judgment on several of Plaintiff's First Amendment claims for failure to exhaust. (ECF  
2 No. 49.) Simultaneously, Defendants sought to stay discovery pending resolution of their  
3 motions. (ECF No. 50.)

4 On September 30, 2014, the Court denied Plaintiff's motion to extend the  
5 discovery cut-off as premature and granted Defendants' motion to stay discovery. (ECF  
6 No. 57.) On October 14, 2014, the undersigned issued findings and recommendations to  
7 grant Defendants' motion for partial summary judgment and motion to dismiss. (ECF No.  
8 59.) The District Judge assigned to the case adopted the findings and recommendations  
9 on November 4, 2014. (ECF No. 62.)

10 Inasmuch as Defendants' motion to dismiss and motion for summary judgment  
11 have been resolved, the discovery stay imposed on September 30, 2014 (ECF No. 57),  
12 is HEREBY VACATED. Additionally, the discovery cut-off is HEREBY EXTENDED to  
13 February 6, 2015. The deadline for filing dispositive motions is HEREBY EXTENDED to  
14 April 10, 2015.

15  
16 IT IS SO ORDERED.

17 Dated: November 5, 2014

*/s/ Michael J. Seng*  
18 UNITED STATES MAGISTRATE JUDGE