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3 **UNITED STATES DISTRICT COURT**
4 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

5 **VINCENT JOHNSON,**

6 **Plaintiff,**

7 **v.**

8 **A. MOLINA, et al.,**

9 **Defendants.**

1:13-cv-00647 LJO DLB PC

**MEMORANDUM DECISION AND
ORDER DENYING DEFENDANTS'
REQUEST FOR RECONSIDERATION
OF MAGISTRATE JUDGE'S RULING
RE: REQUEST FOR STAY OF
DISCOVERY (Doc. 32)**

10
11 **I. INTRODUCTION**

12 Plaintiff Vincent Johnson ("Plaintiff"), a state prisoner proceeding pro se and in forma pauperis,
13 filed this civil rights action on May 3, 2013. Doc. 1. On February 3, 2014, the Magistrate Judge found
14 that the complaint stated a cognizable Eighth Amendment excessive force claim against Defendants A.
15 Molina, D. Aguinaga, J. Hernandez, and R. Ramirez ("Defendants"). Doc. 10.

16 On April 25, 2014, the Magistrate Judge issued a Discovery and Scheduling order, requiring the
17 parties to exchange initial disclosures by June 9, 2014. Doc. 16. On May 2, 2014, Defendants moved for
18 reconsideration of the initial disclosure requirement, arguing, among other things, that the Discovery and
19 Scheduling order, similar versions of which have been issued in numerous cases, constituted an
20 improper attempt to modify Federal Rule of Civil Procedure 26(a)(1)(B)(iv)'s exemption from the initial
21 disclosure requirement for actions "brought without an attorney by a person in the custody of the United
22 States, a state, or a state subdivision." Doc. 17 at 2-3. On May 30, 2014, this Court denied the motion
23 for reconsideration and simultaneously extended the deadline for filing initial disclosures by ordering
24 the parties to do so "within thirty (30) days of service" of the order denying Defendants' first motion for
25 reconsideration. Doc. 28.

26 On June 30, 2014, Defendants filed a motion for summary judgment based upon exhaustion,

1 along with a request to stay all discovery pending resolution of the summary judgment motion. Docs. 29
2 & 30. The Magistrate Judge denied the request for a stay. Doc. 31.

3 **II. ANALYSIS**

4 For nondispositive pretrial matters, a party may seek reconsideration of a magistrate judge's
5 order by the district judge. Fed. R. Civ. P. 72(a); E.D. Cal. Local Rule 303(c). The district judge must
6 modify or set aside any part of the order that is clearly erroneous or contrary to law. Fed. R. Civ. P.
7 72(a).

8 Defendants first argue that the Magistrate Judge erred by "concl[uding] that Defendants delayed
9 in requesting a stay 'until expiration of the time to serve initial disclosures.'" Doc. 32 at 3 (citing Doc.
10 31 at 2). Defendants presume that the Magistrate Judge concluded that the stay request was untimely and
11 relied upon that conclusion to deny their motion for a stay. Doc. 32 at 3. Defendants are correct that the
12 stay request was timely filed,¹ but the Magistrate Judge did not find otherwise or rely upon a finding that
13 the stay request was untimely. Rather, the Magistrate Judge merely pointed out, correctly, that
14 Defendants waited until close to the expiration of the period for exchanging initial disclosures to file
15 their request for a stay of all discovery.

16 The Magistrate Judge also noted the fact that Defendants requested reconsideration of the initial
17 Discovery and Scheduling Order, despite the fact that similar initial disclosure requirements have been
18 upheld on numerous other occasions. Doc. 31 at 2. Defendants presume that the Magistrate Judge
19 considered the motion for reconsideration to be an "improper delay." Doc. 32 at 3 (emphasis added).
20 But, no suggestion of impropriety is made in the Magistrate Judge's ruling, which merely concludes that
21 the reconsideration motion contributed to delay. Doc. 31 at 2.

22 At the heart of the Magistrate Judge's ruling is the legitimate concern that discovery may reveal
23 documents relevant to the motion for summary judgment in addition to those attached thereto by
24

25 ¹ This Court's May 30, 2014 Order afforded the parties 30 days from service of that Order to exchange initial disclosures.
26 Doc. 28. Defendants request for a stay, filed June 30, 2014, was filed within the 30 day window, especially in light of the
three day grace period afforded by Fed. R. Civ. P. 6(d).

1 Defendants. This Court believes the Magistrate Judge acted within its discretion to warn Defendants that
2 their motion for summary judgment may be denied on procedural grounds if discovery is completely
3 stayed. The Magistrate Judge possesses “wide discretion in controlling discovery.” *Little v. City of*
4 *Seattle*, 863, F.2d 681, 685 (9th Cir. 1989). Defendants have pointed to no clear error in the Magistrate
5 Judge’s reasoning or conclusions.

6 **III. CONCLUSION AND ORDER**

7 For the reasons set forth above, the motion for reconsideration is DENIED.

8
9 IT IS SO ORDERED.

10 Dated: July 21, 2014

/s/ Lawrence J. O’Neill
11 UNITED STATES DISTRICT JUDGE