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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

OBIE L. CRISP, III,
Plaintiff,
v.
WASCO STATE PRISON, et al.,
Defendants.

Case No. 1:13-cv-01899-AWI-SKO (PC)
ORDER MODIFYING SCHEDULING ORDER
STAYING ACTION OTHER THAN THAT
RELATED TO THE ISSUE OF EXHAUSTION
AND DEFENDANTS’ MOTION FOR SUMMARY
JUDGMENT
(Doc. 35)

I. Background

Plaintiff, Obie Lee Crisp, III, a state prisoner proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on November 22, 2013 (Doc. 1) and is proceeding on claims of deliberate indifference to his serious medical needs and violation of the Americans with Disabilities Act (“ADA”) and Rehabilitation Act (“RA”).

On December 28, 2015, Defendants filed a motion for summary judgment based on Plaintiff’s failure to exhaust available administrative remedies prior to filing suit. (Doc. 34.) Concurrently therewith, Defendants file a motion for protective order seeking to stay all discovery in this action other than that related to Plaintiff’s exhaustion efforts. (Doc. 35.) While the time for Plaintiff to file an opposition has not yet lapsed, Plaintiff will not be prejudiced by the consideration of Defendants’ motion since Plaintiff may engage in discovery on the issue of exhaustion, and full discovery will be re-opened and a new Discovery and Scheduling Order will

1 issue if the exhaustion issue is not dispositive.

2 **II. Modification of Scheduling Order**

3 A party seeking leave of court to amend the schedule of a case must satisfy Federal Rule
4 of Civil Procedure¹ 16(b)'s "good cause" standard. The good cause standard of Rule 16(b)
5 focuses primarily on the diligence of the moving party, *id.*, and the reasons for seeking
6 modification, *C.F. ex rel. Farnan v. Capistrano Unified Sch. Dist.*, 654 F.3d 975, 984 (9th
7 Cir.2011). If the party seeking to amend the scheduling order fails to show due diligence, the
8 inquiry should end and the court should not grant the motion to modify. *Zivkovic v. Southern*
9 *California Edison, Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002).

10 Here, Defendants have exercised due diligence. The Discovery and Scheduling Order
11 issued in this case on December 18, 2015. (Doc. 30.) On December 28, 2015, Defendants file
12 their motion for summary judgment based on Plaintiff's asserted failure to exhaust administrative
13 remedies prior to filing suit. (Doc. 34.) That same date, Defendants filed their motion for
14 protective order seeking to stay all discovery in this action other than that related to Plaintiff's
15 exhaustion efforts. (Doc. 35.)

16 **III. Stay of Proceedings**

17 A district court has the inherent power to stay its proceedings, or any portion thereof.
18 This power to stay is "incidental to the power inherent in every court to control the disposition of
19 the causes on its docket with economy of time and effort for itself, for counsel, and for litigants."
20 *Landis v. North American Co.*, 299 U.S. 248, 254 (1936); *see also Gold v. Johns-Manville Sales*
21 *Corp.*, 723 F.2d 1068, 1077 (3d Cir.1983) (holding that the power to stay proceedings comes
22 from the power of every court to manage the cases on its docket and to ensure a fair and efficient
23 adjudication of the matter at hand). This is best accomplished by the "exercise of judgment,
24 which must weigh competing interests and maintain an even balance." *Landis*, 299 U.S. at 254–
25 55. In determining whether a stay is warranted, courts consider the potential prejudice to the non-
26 moving party; the hardship or inequity to the moving party if the action is not stayed; and the
27 judicial resources that would be saved by simplifying the case or avoiding duplicative litigation if

28 ¹ The Federal Rules of Civil Procedure will hereinafter be referred to as "Rule *." Any reference to other statutory
authorities shall so indicate.

1 the case before the court is stayed. *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir.1962). The
2 Ninth Circuit “has sustained or authorized in principle *Landis* stays on several occasions.”
3 *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir.2005).

4 If Defendants’ motion for summary judgment on Plaintiff’s exhaustion efforts is granted,
5 a large portion of this case will be dismissed. As such, it is reasonable to stay discovery other
6 than that related to Plaintiff’s exhaustion efforts until Defendants motion for summary judgment
7 is ruled on.

8 **IV. Order**

9 Accordingly, it is HEREBY ORDERED that Defendants’ motion for protective order to
10 modify the Discovery and Scheduling Order to stay all discovery other than as it relates to
11 Plaintiff’s exhaustion efforts, filed on December 28, 2015 (Doc. 35), is GRANTED and the
12 Discovery and Scheduling Order is MODIFIED. All current deadlines are vacated and discovery
13 in this action is stayed other than that related to Plaintiff’s exhaustion efforts.

14 IT IS SO ORDERED.

15 Dated: January 14, 2016

16 /s/ Sheila K. Oberto
17 UNITED STATES MAGISTRATE JUDGE
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