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6 **UNITED STATES DISTRICT COURT**
7 **EASTERN DISTRICT OF CALIFORNIA**

8 MIKE BAKER,) Case No.: 1:15-cv-00693-AWI-BAM (PC)
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10 Plaintiff,) ORDER REGARDING DEFENDANTS' REQUEST
11 v.) TO STAY NON-EXHAUSTION DISCOVERY,
12 S. CACOA, et al.,) AND PLAINTIFF'S REQUEST FOR
13 Defendants.) MODIFICATION OF THE DISCOVERY AND
14) SCHEDULING ORDER
15) (ECF Nos. 39, 40, 41.)
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16 **I. Introduction**

17 Plaintiff Mike Baker is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil
18 rights action pursuant to 42 U.S.C. § 1983. This matter proceeds on Plaintiff's claims Defendants
19 Ponce De Leon and Vasquez for retaliation in violation of the First Amendment, and against
20 Defendants Cocoa, Ponce De Leon, Guizar, Vasquez, Singh and Jane Doe for deliberate indifference
21 to serious medical needs in violation of the Eighth Amendment, medical malpractice, violations of
22 California Government Code § 845.6, and negligent infliction of emotional distress.

23 Currently before the Court is Defendants' request to stay non-exhaustion discovery, contained
24 in their motion for summary judgment for the failure to exhaust administrative remedies, filed on
25 October 27, 2017. (ECF No. 39) Plaintiff filed an opposition on November 13, 2017, in addition to his
26 own motion to modify the discovery and scheduling order. (ECF No. 40.) Defendants' filed a
27 statement supporting their request for a stay and opposing Plaintiff's modification request, on
28 November 16, 2017. (ECF No. 41.) These motions are deemed submitted. Local Rule 230(l).

1 **II. Defendant's Motion to Stay and Plaintiff's Motion to Modify the Scheduling Order**

2 **A. Arguments**

3 Defendants seek a protective order staying discovery unrelated to the issue of exhaustion
4 pending the outcome of their motion for summary judgment for the failure to exhaust administrative
5 remedies. (ECF No. 39-1, at pp. 15-16.) Defendants argue that success on their motion will dispose of
6 several claims in this action, which will significantly reduce the scope of this case and thus the scope
7 of merits discovery.

8 Plaintiff opposes the request to stay, arguing that the motion for summary judgment has no
9 merit and that a stay will lengthen the litigation here and waste time. Plaintiff states that he has not
10 served any discovery requests, but he intends to serve minimal discovery requests of limited scope.
11 Plaintiff also seeks some unspecified modification of the deadlines in the discovery and scheduling
12 order. (ECF No. 40.)

13 In reply, Defendants renew their request for a stay of non-exhaustion discovery based on their
14 earlier arguments, and oppose Plaintiff's request based on a lack of clarity regarding what
15 modification Plaintiff seeks. (ECF No. 41).

16 **B. Analysis**

17 Courts may issue a protective order staying discovery pending the resolution of potentially
18 dispositive motions. See e.g., Little v. City of Seattle, 863 F.2d 681, 685 (9th Cir. 1988) (no abuse
19 of discretion where district court stayed discovery until issue of immunity was decided on
20 summary judgment). A district court "has broad discretion to stay proceedings as an incident to its
21 power to control its own docket." Clinton v. Jones, 520 U.S. 681, 706 (1997) (citing Landis v. North
22 American Co., 299 U.S. 248, 254 (1936)). The party seeking the stay bears the burden of establishing
23 the need to stay the action. Clinton, 520 U.S. at 708.

24 Here, the Court finds that Defendants have met the burden of showing good cause to stay all
25 non-exhaustion related discovery in this case. Fed. R. Civ. P. 16(b)(4). A stay here will further the
26 goal of efficiency for the courts and litigants by preventing a waste of resources on potentially
27 unnecessary discovery and motion practice. Furthermore, Plaintiff will not be prejudiced by a modest
28 delay in proceeding with non-exhaustion related discovery under the circumstances. Thus, non-

1 exhaustion discovery in this case will be stayed pending the resolution of Defendant's motion for
2 summary judgment. To the extent Plaintiff's intended discovery requests are directed at issues related
3 to the exhaustion of administrative remedies, they are not precluded by this order.

4 The Court does not find good cause to grant Plaintiff's request to modify the discovery and
5 scheduling order. As Defendants argue, it is not clear what deadline Plaintiff seeks to modify, or why
6 additional time is needed.

7 **III. Conclusion and Order**

8 Accordingly, it is HEREBY ORDERED that:

9 1. Defendants' request to stay non-exhaustion discovery pending resolution of motion for
10 summary judgment on issue of exhaustion is granted. As noted above, the parties are not precluded
11 from engaging in discovery related to the issue of exhaustion of administrative remedies;

12 2. Upon the resolution of Defendants' pending motion for summary judgment, the Court
13 will issue an order lifting the stay of non-exhaustion discovery; and

14 3. Plaintiff's motion for modification of the discovery and scheduling order is denied.

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16 IT IS SO ORDERED.

17 Dated: November 17, 2017

/s/ Barbara A. McAuliffe
18 UNITED STATES MAGISTRATE JUDGE
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