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

MIKE BAKER,)	Case No.: 1:15-cv-00693-AWI-BAM (PC)
)	
Plaintiff,)	ORDER AMENDING OCTOBER 5, 2017
)	DISCOVERY AND SCHEDULING ORDER
v.)	
)	(ECF No. 36)
S. CACOA, et al.,)	
)	
Defendants.)	
)	
)	
)	

Plaintiff Mike Baker is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

On October 27, 2017, Defendants Cacao, Guizar, Ponce De Leon, Singh, and Vasquez filed a motion for summary judgment for the failure to exhaust administrative remedies. (ECF No. 39.) Defendants also sought a stay of non-exhaustion discovery, (*id*), which was granted on November 20, 2017, (ECF No. 43.)

On November 29, 2017, Plaintiff filed a motion to identify Defendant “Jane Doe” as “D. Osuma.” (ECF No. 44.) On January 3, 2018, the Court granted Plaintiff’s motion, and directed him to submit a second amended complaint to substitute “D. Osuma” for “Jane Doe” in his allegations. (ECF No. 47.) On January 11, 2018, the Court also granted a stay of Defendants’ motion for summary judgment to allow Plaintiff to conduct exhaustion-related discovery. (ECF No. 50.)

1 On January 26, 2018, Plaintiff filed a second amended complaint. (ECF No. 51.) That same
2 day, Defendants filed a notice of withdrawal of their October 27, 2017 motion for summary judgment.
3 (ECF No. 52.) Defendants stated that they would await the Court's screening of the second amended
4 complaint, and would subsequently answer the second amended complaint and re-file their motion for
5 summary judgment. (*Id.*) Defendants also continued to prepare responses to Plaintiff's discovery
6 requests pursuant to the Court's January 11, 2018 order. (*Id.*)

7 On January 30, 2018, the Court directed the Clerk of the Court to terminate Defendants'
8 October 27, 2017 summary judgment motion pursuant to the notice of withdrawal. (ECF No. 53.) That
9 same day, the Court screened the second amended complaint, ordered it filed, and found it appropriate
10 for service on Defendant D. Osuma. (ECF No. 54.) Service on Defendant Osuma is currently
11 underway. (ECF No. 56.)

12 On February 16, 2018, Defendants Cocoa, Guizar, Ponce De Leon, Singh, and Vasquez filed
13 an answer to the second amended complaint.

14 To ensure that this matter continues to move ahead in a timely manner, the Court finds it
15 appropriate to amend the discovery and scheduling order and address the previously instituted stay of
16 discovery. Defendants' summary judgment motion for the failure to exhaust administrative remedies,
17 upon which the discovery stay was predicated, is no longer pending. However, the Court understands
18 that Defendants intend to renew their motion and their request to stay non-exhaustion discovery while
19 the renewed motion is pending. As a result, the Court will set a reasonable deadline for the renewed
20 motion, and will continue the stay of non-exhaustion discovery. If no motion is filed by the new
21 deadline, the stay shall be lifted, and discovery in this matter shall proceed.

22 Accordingly, IT IS HEREBY ORDERED that:

- 23 1. The deadline for Defendants to file their renewed motion for summary judgment under
24 Federal Rule of Civil Procedure 56 for failure to exhaust administrative remedies, is **March 16, 2018**;
- 25 2. All other provisions of the October 5, 2017 discovery and scheduling order remain the
26 same;
- 27 3. Non-exhaustion discovery remains stayed in this action, pending further order of the
28 Court; and

1 4. If Defendants do not file any motion for summary judgment for the failure to exhaust
2 administrative remedies by the deadline set above, the Court shall issue an order lifting the stay of
3 discovery in this matter and amending the remaining deadlines in the October 5, 2017 discovery and
4 scheduling order.

5
6 IT IS SO ORDERED.

7 Dated: February 20, 2018

8 /s/ Barbara A. McAuliffe
9 UNITED STATES MAGISTRATE JUDGE