



1 **I.**

2 **DISCUSSION**

3 **A. Plaintiff’s Motion to Stay Discovery**

4 Plaintiff moves for a stay of discovery until prison officials return his legal property.

5 Plaintiff filed an opposition to Defendant’s exhaustion-related motion for summary judgment  
6 on October 6, 2016 and argues that the cancellation and rejection of his appeals rendered the  
7 administrative process unavailable. (Opp’n at 2-3, ECF No. 55.) Although Plaintiff contends that his  
8 legal property was confiscated, Plaintiff fails to demonstrate what documents are necessary to oppose  
9 Defendant’s pending motion for summary judgment for failure to exhaust the administrative remedies  
10 or how the documents submitted by Defendant’s are not sufficient to resolve the motion. (See Def.’s  
11 Mot. Summ. J., Attach. Exs., ECF No. 52.) Accordingly, Plaintiff’s motion to stay discovery is  
12 DENIED.

13 **B. Plaintiff’s Motion for in Camera Hearing**

14 Plaintiff seeks in camera review for the Court to determine “whether alleged confidential  
15 information is actually confidential and even if it is whether it must have parts redacted and the rest  
16 produced per discover[y].” (Mot. at 1, ECF No. 57.)

17 To the extent Plaintiff is seeking to compel Defendant to provide further responses to  
18 discovery by way of a motion to compel, Plaintiff’s motion is procedurally defective. If the  
19 responding party objects to a discovery request, the party moving to compel bears the burden of  
20 demonstrating why the objections are not justified. Grabek v. Dickinson, No. CIV S-10-2892 GGH P,  
21 2012 WL 113799, at \*1 (E.D. Cal. Jan. 13, 2012); Womack, 2011 WL 6703958, at \*3; Mitchell v.  
22 Felker, No. CV 08-119RAJ, 2010 WL 3835765, at \*2 (E.D. Cal. Sep. 29, 2010); Ellis v. Cambra, No.  
23 1:02-cv-05646-AWI-SMS PC, 2008 WL 860523, at \*4 (E.D. Cal. Mar. 27, 2008). This requires the  
24 moving party to inform the Court which discovery requests are the subject of the motion to compel,  
25 and, for each disputed response, why the information sought is relevant and why the responding  
26 party’s objections are not meritorious. Grabek, 2012 WL 113799, at \*1; Womack, 2011 WL 6703958,  
27 at \*3; Mitchell, 2010 WL 3835765, at \*2; Ellis, 2008 WL 860523, at \*4.

1 Plaintiff's motion is procedurally defective because he failed to attach the discovery requests at  
2 issue or Defendant's responses which he contends are inadequate. As previously noted, the moving  
3 party bears the burden of informing the court which discovery requests are the subject of the motion to  
4 compel, which responses are disputed, why the defendant's responses are deficient or its objections  
5 not justified, and why the information sought is relevant to the prosecution of the action. See Christ v.  
6 Blackwell, No. CIV-S-10-0760, 2011 WL 3847165, at \*2 (E.D. Cal. Aug. 30, 2011); Ellis v. Cambra,  
7 No. 1:02-CV-05646, 2008 WL 860523, at \*4 (E.D. Cal. Mar. 27, 2008). To satisfy the burden,  
8 Plaintiff must provide a copy of the propounded request, as well as the disputed responses, and  
9 objections. Roberts v. Cate, No. 2:08-cv-2624, 2011 WL 4405821, at \*1 (E.D. Cal. Sept. 22, 2011);  
10 Nelson v. Runnels, No. CIV S-06-1289, 2009 WL 211052, at \*8 (E.D. Cal. Jan. 28, 2009).

11 Accordingly, Plaintiff's motion for an in camera review hearing and/or motion to compel is DENIED.

12 **C. Defendant's Motion to Modify the Discovery and Scheduling Order**

13 The Court is vested with broad discretion to manage discovery. Dichter-Mad Family Partners,  
14 LLP v. U.S., 709 F.3d 749, 751 (9th Cir. 2013) (per curiam); Hunt v. Cnty of Orange, 672 F.3d 606,  
15 616 (9th Cir. 2012); Surfvivor Media, Inc. v. Survivor Prods., 406 F.3d 625, 635 (9th Cir. 2005);  
16 Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002). Pursuant to Rule 26(c)(1), the Court may, for  
17 good cause, issue a protective order forbidding or limiting discovery. The avoidance of undue burden  
18 or expense is grounds for the issuance of a protective order, Fed. R. Civ. P. 26(c), and a stay of  
19 discovery pending resolution of potentially dispositive issues furthers the goal of efficiency for the  
20 courts and the litigants, Little v. City of Seattle, 863 F.2d 681, 685 (9th Cir. 1988) (stay of discovery  
21 pending resolution of immunity issue). The propriety of delaying discovery on the merits of the  
22 plaintiff's claims pending resolution of an exhaustion motion was explicitly recognized by the Ninth  
23 Circuit. Albino v. Baca, 747 F.3d 1162, 1170-71 (9th Cir. 2014) (en banc), *cert. denied*, 135 S.Ct. 403  
24 (2014); *see also* Gibbs v. Carson, No. C-13-0860 THE (PR), 2014 WL 172187, at \*2-3 (N.D. Cal. Jan.  
25 15, 2014).

26 The failure to exhaust is an affirmative defense, and Defendants are entitled to judgment on  
27 Plaintiff's claims against them if the Court determines the claims are unexhausted. Albino, 747 F.3d  
28 at 1166. Thus, the pending exhaustion motion has the potential to bring final resolution to this action,

1 obviating the need for merits-based discovery. Gibbs, 2014 WL 172187, at \*3. In Albino, the Ninth  
2 Circuit recognized that “[e]xhaustion should be decided, if feasible, before reaching the merits of a  
3 prisoner’s claims,” and “discovery directed to the merits of the suit” should be left until later. Albino,  
4 747 F.3d at 1170.

5 To the extent that the non-moving party needs specific discovery to address issues raised in a  
6 dispositive motion, the non-moving party is entitled to seek redress. Fed. R. Civ. P. 56(d); Albino,  
7 747 F.3d at 1170-71; Wyatt v. Terhune, 315 F.3d 1108, 1115 n.7 (9th Cir. 2003) (overruled on other  
8 grounds by Albino, 747 F.3d at 1168-69). Here, however, Plaintiff’s opposition makes no showing  
9 that in order to oppose the exhaustion motion, he needs specific discovery that (1) is relevant to the  
10 issue of exhaustion and (2) he reasonably believes exists that is not already provided by way of  
11 exhibits attached to Defendant’s motion.<sup>1</sup> To the contrary, Plaintiff’s opposition merely evidences a  
12 blanket desire to obtain unspecified documentation. The mere desire to continue with discovery does  
13 not suffice to avert the issuance of a protective order pending resolution of a dispositive motion raising  
14 the issue of exhaustion. Therefore, Defendant is entitled to the stay of discovery.

## 15 II.

### 16 ORDER

17 Based on the foregoing, it is HEREBY ORDERED that:

- 18 1. Plaintiff’s motion to stay discovery is DENIED;
- 19 2. Plaintiff’s motion for an in camera review hearing is DENIED; and
- 20 3. Defendant’s motion to modify the discovery and scheduling order is GRANTED, and  
21 all merit-based discovery is STAYED pending resolution of Defendant’s exhaustion-

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23 <sup>1</sup> Rule 56(d) provides that “[i]f a nonmovant shows by affidavit or declaration that, for specified  
24 reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering  
25 the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3)  
26 issue any other appropriate order.” Fed. R. Civ. P. 56(d). In seeking relief under Rule 56(d), Plaintiff  
27 bears the burden of specifically identifying relevant information, where there is some basis for  
28 believing that the information actually exists, and demonstrating that the evidence sought actually  
exists and that it would prevent summary judgment. Blough v. Holland Realty, Inc., 574 F.3d 1084,  
1091 n.5 (9th Cir. 2009) (quotation marks and citation omitted); Getz v. Boeing Co., 654 F.3d 852,  
867-68 (9th Cir. 2011); Tatum v. City and Cnty. of San Francisco, 441 F.3d 1090, 1100-01 (9th Cir.  
2006).

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related motion for summary judgment, the discovery and dispositive motion deadlines are VACATED and a new scheduling order will issue, if necessary, after the motion is resolved.

IT IS SO ORDERED.

Dated: October 17, 2016

  
UNITED STATES MAGISTRATE JUDGE