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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CARLOS MANUEL FLORES,

Plaintiff,

v.

C/O CRUZ, et al.,

Defendants.

Case No. 1:15-cv-01184-BAM-PC

ORDER GRANTING DEFENDANT’S
MOTION TO STAY DISCOVERY
(ECF No. 17)

ORDER DENYING PLAINTIFF’S MOTION
TO PROCEED WITH PRETRIAL
DISCOVERY (ECF No. 19), AND
PLAINTIFF’S MOTION TO COMPEL (ECF
No. 22)

Plaintiff’s Opposition to Motion for Summary
Judgment Due: **March 6, 2017**

I. Introduction

Plaintiff is a state prisoner proceeding pro se and in forma pauperis pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff’s claim against Defendant Cruz for excessive force in violation of the Eighth Amendment, and against Defendants Cruz, Gonzales, Custer and Rivera for failure to decontaminate Plaintiff. Plaintiff has consented to magistrate judge jurisdiction, (ECF No. 8), but Defendants have neither consented to nor declined such jurisdiction.

On June 22, 2016, Defendants filed a notice of motion and motion for summary judgment on the grounds that Plaintiff has failed to exhaust his prisoner administrative remedies before bringing this action. (ECF No. 17.) Defendants also requested that, in the interests of judicial economy, the Court stay discovery until it rules on the motion for summary judgment.

1 Defendants argue that the pending summary judgment motion may dispose of the entire action,
2 no further information is required to decide the motion, and the expenditure of resources
3 necessary to respond to discovery request will be needless if the Court grants Defendants'
4 motion for summary judgment on exhaustion grounds. (Id. at 1-2.)

5 On August 8, 2016, Plaintiff filed a motion to proceed with pre-trial discovery, in
6 response to Defendants' motion for summary judgment and motion for stay of discovery. (ECF
7 No. 19.) Plaintiff denies the assertions of the motion for summary judgment, asserting that he
8 submitted or attempted to submit an appeal to the third level of review. Plaintiff further asserts
9 that Defendants only seek to stay discovery to prevent a trial in this matter, and he opposes a stay
10 of discovery in this matter.

11 On September 2, 2016, Plaintiff filed a motion for an order compelling discovery. (ECF
12 No. 22.) Plaintiff seeks an order to compel Defendants to produce personal and work-related
13 emails between them from December 2014 through February 2015. Plaintiff submits an affidavit
14 in support stating that Defendants argument that he failed to exhaust his administrative remedies
15 are false, because he attempted to submit an appeal to the third level of review, but was
16 threatened. The affidavit is signed, but does not contain any statement that Plaintiff declares,
17 certifies, verifies, or states that the contents are true and correct, under penalty of perjury. See 28
18 U.S.C. § 1746 (unsworn declarations under penalty of perjury). Plaintiff argues that discovery
19 should continue in this matter.

20 **II. Discussion**

21 The Court finds good cause for a brief stay of discovery under these circumstances. Fed.
22 R. Civ. P. 26(c). The parties' time and resources are better spent on briefing Defendants' pending
23 motion for summary judgment, rather than causing the parties to expend resources on discovery
24 which may not ultimately be required. Plaintiff will also not be prejudiced by this brief stay.
25 Plaintiff articulated several reasons in his motions why he opposes Defendants' motion for
26 summary judgment, based on evidence and information already in his possession as well as legal
27 arguments. Thus, further discovery is not needed regarding the issues raised in the pending
28 motion for summary judgment, which may resolve the case in its entirety.

1 Plaintiff's motion to compel is also denied. Plaintiff as the moving party is required to
2 inform the Court which discovery requests are the subject of the motion to compel and the
3 responses, if any, so that the Court can evaluate the motion. E.g., Grabek v. Dickinson, No. CIV
4 S-10-2892 GGH P, 2012 WL 113799, at *1 (E.D. Cal. Jan.13, 2012); Womack v. Virga, No.
5 CIV S-11-1030 MCE EFB P, 2011 WL 6703958, at *3 (E.D. Cal. Dec. 21, 2011); Mitchell v.
6 Felker, No. CV 08-119RAJ, 2010 WL 3835765, at *2 (E.D. Cal. Sep.29, 2010). He has failed to
7 meet this burden; it is not clear that this information was even requested of Defendants prior to
8 Plaintiff's motion. Furthermore, Plaintiff's discovery request does not concern matters pertaining
9 to the exhaustion of administrative remedies, and for the reasons explained above, the Court
10 finds a stay on other discovery is appropriate at this time.

11 Although Plaintiff makes some arguments in his filings to Defendants' motion for
12 summary judgment, these filings do not meet the requirements under Federal Rule of Civil
13 Procedure 56 and Local Rule 260(a) in opposition a motion for summary judgment. Plaintiff was
14 provided a *Rand* warning and the Local Rule requirements for opposing the motion with
15 Defendant's June 22, 2016 motion for summary judgment. (ECF No. 17-2). As a pro se litigant,
16 Plaintiff's filings will be liberally construed, Thomas v. Ponder, 611 F.3d 1144, 1150 (9th Cir.
17 2010), but he must nevertheless serve and file an opposition or statement of non-opposition to
18 Defendants' motion.

19 To allow Plaintiff a fair and full opportunity to oppose Defendants' motion for summary
20 judgment, he will be granted an extension of time until **March 6, 2017** to serve and file his
21 opposition or statement of non-opposition to Defendants' motion. Defendants will be permitted
22 to serve and file a reply within seven (7) days after Plaintiff's opposition has been filed in
23 CM/ECF. The motion will be deemed submitted after the time to reply has expired. Local Rule
24 230(l).

25 In the event that the case is not resolved by Defendants' motion for summary judgment,
26 the Court will issue an order lifting the stay of discovery and amending its discovery and
27 scheduling order, as appropriate.

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