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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CLIFTON HUTCHINS JR.,
Plaintiff,
v.
BILL LOCKYER, et al.,
Defendants.

CASE NO. 1:15-cv-01537-DAD-MJS(PC)
**ORDER GRANTING DEFENDANT'S
MOTION TO STAY DISCOVERY**
(ECF No. 42)

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. The action proceeds on Plaintiff's medical indifference and retaliation claims against Defendant Johal. (ECF No. 39.)

Before the Court is the Defendant's March 6, 2018 motion to stay merits-based discovery, filed in conjunction with Defendant's motion for summary judgment for failure to exhaust administrative remedies. (ECF No. 42; see also ECF No. 41.) Plaintiff filed no opposition and the time for doing so has passed.

Defendant requests that the Court stay all discovery in this matter, except that pertaining to exhaustion, until the Court rules on Defendant's motion for summary

1 judgment.

2 The Court is vested with broad discretion to manage discovery. Dichter-Mad
3 Family Partners, LLP v. U.S., 709 F.3d 749, 751 (9th Cir. 2013) (per curiam); Hunt v.
4 Cnty. of Orange, 672 F.3d 606, 616 (9th Cir. 2012); Survivor Media, Inc. v. Survivor
5 Prods., 406 F.3d 625, 635 (9th Cir. 2005); Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir.
6 2002). Pursuant to Rule 26(c)(1), the Court may, for good cause, issue a
7 protective order forbidding or limiting discovery. The avoidance of undue burden or
8 expense is grounds for the issuance of a protective order, Fed. R. Civ. P. 26(c), and a
9 stay of discovery pending resolution of potentially dispositive issues furthers the goal of
10 efficiency for the courts and the litigants. Little v. City of Seattle, 863 F.2d 681, 685 (9th
11 Cir. 1988) (stay of discovery pending resolution of immunity issue).

12 The propriety of delaying discovery on the merits of the plaintiff's claims pending
13 resolution of an exhaustion motion was explicitly recognized by the Ninth Circuit. Albino
14 v. Baca, 747 F.3d 1162, 1170–71 (9th Cir. 2014) (en banc), cert. denied, 135 S.Ct. 403
15 (2014); see also Gibbs v. Carson, No. C–13–0860 THE (PR), 2014 WL 172187, at *2–3
16 (N.D. Cal. Jan. 15, 2014). The failure to exhaust is an affirmative defense, and
17 Defendant is entitled to move for judgment on the issue. Albino, 747 F.3d at 1166.

18 The Court finds that judicial economy is best served by staying discovery until
19 after the Court rules on Defendants' pending motion (ECF No. 41) for summary
20 judgment for failure to exhaust available administrative remedies. Plaintiff does not
21 oppose the stay. Accordingly, this motion is GRANTED.

22 IT IS SO ORDERED.

23
24 Dated: April 10, 2018

/s/ Michael J. Seng
25 UNITED STATES MAGISTRATE JUDGE