



1 On August 4, 2016, Defendants filed a motion to dismiss on the grounds that the complaint  
2 against these Defendants was barred by the statute of limitations. The motion to dismiss is fully  
3 briefed and is pending review before the Court. Because Defendants filed a motion to dismiss rather  
4 than an answer, no discovery or scheduling order has been issued.

5 However, Plaintiff has served one set of interrogatories on each Defendant (Cosby and Valley).  
6 Defendants seek a protective order to allow them to defer responding to the interrogatories  
7 served by Plaintiff. The Court is vested with broad discretion to manage discovery. Dichter-Mad  
8 Family Partners, LLP v. U.S., 709 F.3d 749, 751 (9th Cir. 2013) (per curiam); Hunt, 672 F.3d at 616;  
9 Survivor Media, Inc. v. Survivor Prods., 406 F.3d 625, 635 (9th Cir. 2005); Hallett v. Morgan, 296  
10 F.3d 732, 751 (9th Cir. 2002). Pursuant to Rule 26(c)(1), the Court may, for good cause, issue a  
11 protective order forbidding or limiting discovery. The avoidance of undue burden or expense is  
12 grounds for the issuance of a protective order, Fed. R. Civ. P. 26(c), and a stay of discovery pending  
13 resolution of potentially dispositive issues furthers the goal of efficiency for the courts and the  
14 litigants, Little v. City of Seattle, 863 F.2d 681, 685 (9th Cir. 1988) (stay of discovery pending  
15 resolution of immunity issue). The propriety of delaying discovery on the merits of the plaintiff's  
16 claims pending resolution of an exhaustion motion was explicitly recognized by the Ninth Circuit.

17 The statute of limitations is an affirmative defense, and a claim may be dismissed under Rule  
18 12(b)(6) on the ground that it is barred by the applicable statute of limitations when "the running of the  
19 statute is apparent on the face of the complaint." Von Saher v. Norton Simon Museum of Art at  
20 Pasadena, 592 F.3d 954, 969 (9th Cir. 2010) (quoting Huynh v. Chase Manhattan Bank, 465 F.3d 992,  
21 1003-04 (9th Cir. 2006). The Ninth Circuit Court of Appeals has not announced a clear standard in  
22 which to evaluate a request to stay discovery pending a potentially dispositive motion. However,  
23 federal district courts, including this court, have applied a two-part test to determine a request for a  
24 stay. Lowery v. F.A.A., No. CIV.S 93-1352 EJJ/GGH, 1994 WL 912632, at \*3 (E.D. Cal. 1994).  
25 First, the pending motion must be potentially dispositive of the entire case, or at least dispositive on  
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27 district court of jurisdiction); see also Nascimento v. Dummer, 508 F.3d 905 (9th Cir. 2007) ("When a Notice of Appeal is  
28 defective in that it refers to a non-appealable interlocutory order, it does not transfer jurisdiction to the appellate court, and  
so the ordinary rule that the district court cannot act until the mandate has issued on the appeal does not apply.")

1 the issue at which discovery is aimed. Id. Second, the court must determine whether the pending,  
2 potentially dispositive motion can be decided absent additional discovery. If the moving part satisfies  
3 these two prongs, the Court may issue a protective order.

4 Here, Defendants satisfy both requirements. First, their motion to dismiss, if meritorious, will  
5 dispose of the entire case. Second, there is no argument that the motion dismiss to dismiss cannot be  
6 decided absent additional discovery, and Plaintiff has filed an opposition to Defendants' motion.  
7 Accordingly, Defendants' motion for a protective order staying discovery is granted and Defendants  
8 are relieved of their obligation to file a response to Plaintiff's interrogatories. If Defendants' motion  
9 to dismiss is denied, the Court will set a deadline for Defendants to respond to Plaintiff's discovery  
10 requests.

11 Based on the foregoing, Defendants' request for a protective order staying discovery is  
12 GRANTED, pending final resolution of the motion to dismiss.

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14 IT IS SO ORDERED.

15 Dated: November 2, 2016



UNITED STATES MAGISTRATE JUDGE