



1 motion was explicitly recognized by the Ninth Circuit. Albino v. Baca, 747 F.3d 1162, 1170-71  
2 (9th Cir. 2014) (en banc); see also Gibbs v. Carson, No. C-13-0860 THE (PR), 2014 WL 172187,  
3 at \*2-3 (N.D. Cal. Jan. 15, 2014).

4 On December 16, 2024, Defendant filed a motion for summary judgment for Plaintiff's  
5 failure to exhaust the administrative remedies. (ECF No. 26.) The failure to exhaust is an  
6 affirmative defense, and Defendant is entitled to judgment on Plaintiff's claims against her if the  
7 Court determines the claim is unexhausted. Albino, 747 F.3d at 1166. Thus, the pending  
8 exhaustion motion has the potential to bring final resolution to this action, obviating the need for  
9 merits-based discovery. Gibbs, 2014 WL 172187, at \*3. In Albino, the Ninth Circuit recognized  
10 that "[e]xhaustion should be decided, if feasible, before reaching the merits of a prisoner's  
11 claims," and "discovery directed to the merits of the suit" should be left until later. Albino, 747  
12 F.3d at 1170. To the extent that the non-moving party needs specific discovery to address issues  
13 raised in a dispositive motion, the non-moving party may seek redress by Federal Rule of Civil  
14 Procedure 56(d). Albino, 747 F.3d at 1170-71; Wyatt v. Terhune, 315 F.3d 1108, 1115 n.7 (9th  
15 Cir. 2003) (overruled on other grounds by Albino, 747 F.3d at 1168-69).

16 On the basis of good cause, it is HEREBY ORDERED that:

- 17 1. All discovery, not related to exhaustion of the administrative remedies, is stayed  
18 until a final ruling on Defendant's pending motion for summary judgment;
- 19 2. The discovery and dispositive motions deadlines are vacated; and
- 20 3. If necessary, the Court will reset the deadlines following resolution of the pending  
21 motion for summary judgment.

22  
23  
24 IT IS SO ORDERED.

25 Dated: January 7, 2025



26 STANLEY A. BOONE  
27 United States Magistrate Judge  
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