

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER LIPSEY, JR.,  
  
Plaintiff,  
  
v.  
  
M. KALIL, et al.,  
  
Defendants.

No. 2:17-cv-1429 TLN AC P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983.

On June 27, 2021,<sup>1</sup> plaintiff filed a motion for sanctions. ECF No. 46. The motion requests that the court (1) sanction defendants for failing to participate in discovery in good faith and (2) compel defendants to respond to his discovery requests. Id. Defendants oppose the motion, ECF No. 47, and neither party has provided a copy of plaintiff’s discovery requests. On August 27, 2021, the date discovery closed, defendants filed a motion for summary judgment on the ground that plaintiff did not exhaust his administrative remedies prior to filing the complaint. ECF No. 49. They also filed a motion to stay discovery and vacate the deadlines for discovery

---

<sup>1</sup> Since plaintiff is a prisoner proceeding pro se, he is afforded the benefit of the prison mailbox rule. Houston v. Lack, 487 U.S. 266, 276 (1988) (establishing rule that a prisoner’s court document is deemed filed on the date the prisoner delivered the document to prison officials for mailing).

1 and dispositive motions while the exhaustion motion is pending. ECF No. 50.

2 Because neither party has provided a copy of plaintiff's discovery requests, the court is  
3 unable to determine whether any of the discovery plaintiff seeks relates to the administrative  
4 appeals process.<sup>2</sup> However, none of the requests referenced by plaintiff in his motion appear to  
5 relate to the grievance process, and it appears that defendants have attached copies of all of the  
6 appeals submitted by plaintiff from October 1, 2016, through the filing of the first amended  
7 complaint as exhibits to their summary-judgment motion. Defendants' motion to vacate the  
8 discovery and dispositive motions deadlines and stay discovery pending the resolution of their  
9 motion for summary judgment will therefore be granted, except as to the limited exception  
10 outlined below. Plaintiff's pending motion for sanctions and to compel discovery will also be  
11 vacated without prejudice to renewal, if necessary, upon resolution of defendants' motion for  
12 summary judgment.

13 If any of the discovery responses plaintiff sought to compel were related to exhaustion, are  
14 necessary for plaintiff to defend against the motion for summary judgment, **and** have not been  
15 satisfied by the exhibits to the motion for summary judgment, plaintiff may file a motion to  
16 compel those responses. Any such motion must specifically identify the discovery requests at  
17 issue by either providing copies of the requests and responses or reproducing the requests and  
18 responses in the motion.

19 Accordingly, IT IS HEREBY ORDERED that:

20 1. Plaintiff's motion for sanctions, ECF No. 46, is VACATED without prejudice to  
21 renewal, if necessary, upon resolution of defendants' motion for summary judgment.

22 2. Defendants' motion to vacate the discovery and dispositive motions deadlines and stay  
23 discovery, ECF No.50, is GRANTED except to the extent that plaintiff may seek to compel  
24 responses to discovery related to the exhaustion of his administrative remedies.

25 ///

26 \_\_\_\_\_  
27 <sup>2</sup> Defendants' opposition to the motion includes a letter to plaintiff which indicates he requested  
28 and was provided copies of the regulations relating to the administrative appeals process. ECF  
No. 47 at 4.

1           3. Within fourteen days of the service of this order, plaintiff may file a motion to compel  
2 responses to discovery requests related to the exhaustion of his administrative remedies as set  
3 forth above. Discovery is otherwise STAYED pending the resolution of defendants' motion for  
4 summary judgment

5           4. The August 27, 2021 discovery deadline and November 18, 2021 dispositive motions  
6 deadline are VACATED and will be reset, as necessary, upon resolution of defendants' motion  
7 for summary judgment.

8 DATED: September 10, 2021

9   
10 ALLISON CLAIRE  
11 UNITED STATES MAGISTRATE JUDGE  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28