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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

PAUL FREE,

 Plaintiff,

 v.

DR. NADER PEIKER, et al.,

 Defendants.

Case No.: 1:17-cv-00159 AWIJLT

ORDER WITHDRAWING FINDINGS AND
RECOMMENDATION (Doc. 45)

ORDER SETTING EVIDENTIARY HEARING

ORDER DENYING MOTION FOR SANCTIONS
(Doc. 50)

ORDER DENYING MOTION FOR
CLARIFICATION (Doc. 47)

The Court¹ issued Findings and Recommendations to deny the motion for summary judgment based upon a dispute of fact as to whether the administrative process had been rendered unavailable to the plaintiff. (Doc. 45) The Court refused to set an evidentiary hearing because the defendants had not requested it but indicated if they wished one, they could seek it in their objections. Id. at 13. The defendants have now done so. (Doc. 49)

While the motion was under consideration, the Court stayed all “pending”² discovery except for that which may be issued by the plaintiff to discover a service address for defendant Mettri. (Docs. 40, 44) In doing so, the Court stated, “The Court cannot assist Plaintiff in prosecuting his case nor can the Court instruct him on law or procedure. Plaintiff may seek Defendant Mettri’s whereabouts

¹ Judge Seng issued this determination before his retirement.
² In the order, the Court stated that any responses to discovery requests would not be due until 30 days after the Court ruled on the motion for summary judgment. (Doc. 40 at 2)

1 through the discovery process or, if unsuccessful in that endeavor, may seek a subpoena duces tecum
2 requiring the Bureau of Prisons to provide information regarding Ms. Mettri. The Court will not issue
3 a subpoena unless and until Plaintiff has demonstrated he has exhausted other efforts to locate Ms.
4 Mettri.” (Doc. 44 at 2) Though plaintiff seeks an order from the Court requiring the BOP to either
5 produce the defendant’s address or to accept service for this defendant, neither of these requests are
6 proper discovery. It is the plaintiff’s obligation to make discovery efforts through the mechanisms set
7 forth in the Federal Rules of Civil Procedure, not to simply request the Court the orders he believes the
8 Court should issue. Once he does that, the Court will consider issuing a subpoena upon proper
9 application. Therefore, the Court **ORDERS**:

- 10 1. The Findings and Recommendations (Doc. 45) are **WITHDRAWN**;
- 11 2. The Court sets an evidentiary hearing on **June 25, 2018** at 8:30 a.m. at the United
12 States Courthouse, located at 510 19th Street, Bakersfield, CA 93301;
- 13 3. Because responses to pending discovery are not yet due, the request for sanctions (Doc.
14 50) is **DENIED**;
- 15 4. The motion for clarification (Doc. 47) is **DENIED**.

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17 IT IS SO ORDERED.

18 Dated: May 9, 2018

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

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