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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 AWI/JLT

ORDER DENYING REQUEST TO CONTINUE
THE EVIDENTIARY HEARING WITHOUT
PREJUDICE (Doc. 57)

ORDER GRANTING REQUEST TO WITHDRAW
MOTION TO FILE UNDER SEAL (Docs. 36, 55)

Recently, the Court set an evidentiary hearing on June 25, 2018 to assist it in evaluating the credibility of the claim that the grievance system was unavailable to the plaintiff (Doc. 51) The plaintiff now seeks a four-month continuance of the hearing to allow him to,

seek subpoenas for inmate witnesses who witnessed Defendant Tyson tell Free that his administrative remedies were still pending and that Free needed to wait to file to the next level remedy until he received a response back which, by prison policy, had to be attached or it wouldn't be accepted at the next higher level. Also, Free must subpoenae prison staff members who can testify that inmates are routinely told that they cannot file to the next level of the administrative remedy process until they have an answer to attach to the current level remedy; as well as inmates who have had administrative remedy appeals denied and returned though they specifically quoted 28 CFR § 542.18 as the reason for not attaching the response below.¹

(Doc. 57) Notably, Mr. Free fails to identify any of the witnesses he wishes to testify at the hearing or what each person is expected to say.

¹ Mr. Free also claims that the hearing needs to wait until he gathers sufficient information to serve Lourdes Mettri. *Id.* However, service on Ms. Mettri does not bear on the issues for the evidentiary hearing.

1 In a separate motion, Mr. Free seeks to withdraw his earlier motion to file his documents under
2 seal (Doc. 36). (Doc. 57) Thus, the Court **ORDERS:**

3 1. The request to continue the evidentiary hearing is **DENIED without prejudice;**

4 2. **Within 10 days**, Mr. Free may file a request to have his inmate-witnesses transported
5 to, or made available for, the evidentiary hearing. To do so, he **SHALL** identify each inmate by name
6 and, if possible, by BOP inmate number, and identify where each is housed. In addition, he **SHALL**
7 describe what he expects each witness to say, why he thinks the witnesses will say this and how he
8 knows that the witnesses will say this, if called to testify;

9 3. **Within 10 days**, Mr. Free may file a request to have BOP Correctional Staff available
10 for testimony. He **SHALL** identify each staff member by name or by other identifying information
11 and describe what he expects each witness to say, why he thinks the witnesses will say this and how he
12 knows that the witnesses will say this, if called to testify;

13 4. The request to withdraw the motion to file documents under seal² (Doc. 57) is
14 **GRANTED;**

15 5. The Court requests the Litigation Coordinator provide Mr. Free a copy of this order as
16 soon as possible. Thus, though the Clerk of the Court will serve Mr. Free by mail, the Clerk is
17 **DIRECTED** also to fax or email this order to the Litigation Coordinator at Mr. Free's place of
18 incarceration for earlier delivery to him.

19
20 IT IS SO ORDERED.

21 Dated: May 31, 2018

/s/ Jennifer L. Thurston
22 UNITED STATES MAGISTRATE JUDGE

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² Consequently, the motion at docket entry 36 should be terminated.