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8 **United States District Court**
9 **Central District of California**

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11 JOHN W. SIGLER,

12 Plaintiff,

13 v.

14 U.S. DEPARTMENT OF HEALTH &
15 HUMAN SERVICES,

16 Defendant.

Case No 2:18-cv-00683-ODW (JCx)

**ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT [20]**

17 **I. INTRODUCTION**

18 This matter is before the Court on Defendant U.S. Department of Health and
19 Human Services's ("HHS") Motion for Summary Judgment ("Motion") on *pro se*
20 Plaintiff John W. Sigler's ("Sigler") Complaint pursuant to the Freedom of
21 Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.* (ECF No. 20.) For the reasons that
22 follow, the Court **GRANTS** HHS's Motion.¹

23 **II. BACKGROUND**

24 The parties agree on all material facts. On May 10, 2017, Sigler submitted a
25 FOIA request to HHS seeking correspondence records related to Sigler's 2016 and
26 2017 Health Insurance Portability and Accountability Act ("HIPAA") complaints
27

28 ¹ Having carefully considered the papers filed in connection with the motion, the Court deemed the matters appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

1 against his former health insurance provider, HealthPointe Medical Group (“HMG”).²
2 (HHS Separate Statement of Uncontroverted Facts (“SUF”) 1, ECF No. 20-1.) As the
3 Office of Civil Rights (“OCR”) investigated Sigler’s HIPAA complaints, HHS’s
4 FOIA office forwarded Sigler’s FOIA request to OCR to search for responsive
5 records. (SUF 5.)

6 OCR maintains records organized by OCR transaction number, regarding
7 complaint investigations for HIPAA enforcement in the Program Information
8 Management System (“PIMS”). (SUF 6–8.) HHS thus determined that it was
9 reasonably likely that all records responsive to Sigler’s FOIA request would be
10 located in a search of PIMS. (SUF 9.) OCR searched PIMS for records responsive to
11 Sigler’s FOIA request by targeting the OCR transaction numbers Sigler provided.
12 (SUF 10.) OCR identified records relating to Sigler’s 2016 HIPAA complaint and, in
13 June 2017, HHS released those documents to Sigler after applying FOIA exemptions
14 to three pages. (SUF 11–12; Decl. of Michael S. Marquis³ (“Marquis Decl.”) ¶ 14,
15 ECF No. 20-3.) Documents pertaining to Sigler’s 2017 HIPAA complaint were not
16 included in this release because OCR was continuing to investigate the matter.
17 (SUF 13.)

18 In September 2017, Sigler filed an administrative appeal contending HHS was
19 withholding documents related to the 2017 HIPAA complaint. He also re-filed his
20 original FOIA request. (SUF 14–15.) In October 2017, HHS sent Sigler an

21 ² Sigler disputes whether HHS sent a formal acknowledgment letter of his initial FOIA request
22 (SUF 3) on the basis that Sigler does not have such a letter in his records (*see* Pl.’s Statement of
23 Genuine Issues of Material Fact (“SGI”) 3, ECF No. 22). However, whether HHS sent a letter and
24 whether Sigler currently possesses one are two distinct questions, neither of which is material to the
disposition of this Motion. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *see also*
5 U.S.C. § 552(b).

25 ³ Sigler contends that Mr. Marquis lacks personal knowledge concerning the FOIA letters and
26 responses because Mr. Marquis did not sign the letters. However, Mr. Marquis makes his
27 declaration based on his personal knowledge and information available to him in his official capacity
28 managing FOIA request searches and responses. (Marquis Decl. ¶¶ 1–3.) Generally, “[a]n affidavit
from an agency employee responsible for supervising a FOIA search is all that is needed to satisfy”
the personal knowledge requirement of Federal Rule of Civil Procedure 56(e). *Lahr v. Nat’l Transp.*
Safety Bd., 569 F.3d 964, 990 (9th Cir. 2009).

1 acknowledgement letter of the appeal and assigned Sigler’s re-filed FOIA request a
2 tracking number. (SUF 16–17.) However, HHS closed the second request in January
3 2018 after discovering it was a duplicate of the first. (SUF 18; *see also* Marquis Decl.
4 ¶ 20.) Also, in January 2018, HHS notified Sigler that OCR had conducted an
5 additional search for records responsive to his 2017 HIPAA Complaint and HHS
6 would review and process those records. (SUF 19–21; Marquis Decl. ¶¶ 22–25.)

7 HHS provided Sigler with supplemental responses in February 2018, October
8 2018, and November 2018. (SUF 21–26.) With each supplemental release, HHS
9 reviewed and re-processed the responsive documents and reduced the withheld
10 material. (SUF 21–26.) The final supplemental release resulted in 308 pages,
11 consisting of 212 pages released in full, 9 pages with partial redactions, and 87 pages
12 withheld entirely. (Marquis Decl. Ex. 10; *id.* ¶¶ 26–27.)⁴

13 On January 26, 2018, before HHS provided Sigler with its supplemental
14 responses, Sigler filed the Complaint in this action. (*See* Compl., ECF No. 1.)
15 Through his Complaint, Sigler asserts that HHS improperly withheld documents
16 responsive to his FOIA request. (Compl. ¶ 1.) He filed the FOIA request “to obtain
17 the status of the OCR HIPAA violation investigation.” (Compl. ¶ 19.) Sigler alleges
18 that HHS “purposely failed to conclude the investigation for the sole purpose of
19 denying the Plaintiff access to the documentation.” (Compl. ¶ 20.)

20 HHS moves for summary judgment on the basis that it conducted an adequate
21 search for records responsive to Sigler’s FOIA request and properly withheld
22 exempted information pursuant to FOIA Exemptions 4, 5, 6, 7(C), and 7(E), 5 U.S.C.
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24 ⁴ The parties do not dispute that, in October 2017, HHS released 193 pages in their entirety, 8 pages
25 with partial redactions, and 107 pages withheld entirely. (SUF 24.) They also do not dispute that
26 the November 2017 supplemental release removed an exemption from twenty pages and recoded one
27 prior withholding as Exemptions 6(b) and 7(C). (SUF 26–27; Marquis Decl. ¶ 27.) After careful
28 review of the *Vaughn* Index and the 308 pages released (Marquis Decl. Ex. 10), the Court finds this
resulted in a total of 212 pages released in full, 9 pages partially redacted, and 87 pages entirely
withheld. Although the parties do not clarify the results of this supplemental modification in the
moving or opposition papers, the *Vaughn* Index and Marquis Declaration are consistent on this point.

1 §§ 552(b)(4), (5), (6), (7)(C), (7)(E). (Mot. 1, ECF No. 21-1.).⁵

2 III. LEGAL STANDARD

3 As is true in most FOIA cases, the material facts here are not in dispute. The
4 only disputes are whether HHS: (1) properly determined that certain documents
5 responsive to Sigler’s FOIA request fall within Exemption 7(E); and (2) disclosed all
6 reasonably segregable, nonexempt material. *See* 5 U.S.C. §§ 552(b), (7)(C); (*see*
7 *generally* Opp’n, ECF No. 23). These disputes are properly resolved on a motion for
8 summary judgment. *See* Fed. R. Civ. P. 56(a) (summary judgment is appropriate “if
9 the movant shows that there is no genuine dispute as to any material fact and the
10 movant is entitled to judgment as a matter of law”).

11 “Most FOIA cases are resolved by the district court on summary judgment, with
12 the district court entering judgment as a matter of law.” *Animal Legal Def. Fund v.*
13 *FDA*, 836 F.3d 987, 989 (9th Cir. 2016) (en banc); *see also Cameranesi v. Dep’t of*
14 *Def.*, 856 F.3d 626, 636 (9th Cir. 2017) (“We have now overruled [the] FOIA-specific
15 summary judgment standard, and instead apply our usual summary judgment
16 standard.”). Summary judgment is appropriate only if, after viewing the evidence in
17 the light most favorable to the non-moving party, there are no genuine disputes of
18 material fact and the moving party is entitled to judgment as a matter of law.
19 *Anderson*, 477 U.S. at 248. However, “if there are genuine issues of material fact in a
20 FOIA case, the district court should proceed to a bench trial or adversary hearing.”
21 *Animal Legal Def. Fund*, 836 F.3d at 990. The district’s court’s review of the
22 agency’s decision is *de novo* and the agency bears the burden of persuasion. 5 U.S.C.
23 § 552(a)(4)(B).

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26 ⁵ Although both parties initially expressed the intent to file cross-motions for summary judgment,
27 Sigler did not file a motion. (*See* Joint Report 17–18, ECF No. 17.) As such, Sigler’s “Reply”
28 constitutes an impermissible sur-reply to HHS’s Motion. *See* L.R. 7-10 (“Absent prior written order
of the Court, the opposing party shall not file a response to the reply.”). Accordingly, the Court **does**
not consider Sigler’s “Reply.” (ECF No. 33.)

IV. DISCUSSION

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2 “The basic purpose of FOIA is to ensure an informed citizenry, vital to the
3 functioning of a democratic society, needed to check against corruption and to hold
4 the governors accountable to the governed.” *NLRB v. Robbins Tire & Rubber Co.*,
5 437 U.S. 214, 242 (1978). The Act “was not intended to function as a private
6 discovery tool.” *Id.*

7 “Upon request, FOIA mandates disclosure of records held by a federal agency
8 unless the documents fall within enumerated exemptions.” *Dep’t of Interior v.*
9 *Klamath Water Users Protective Ass’n*, 532 U.S. 1, 7 (2001) (internal citations
10 omitted); *see* 5 U.S.C. § 552(b). The Act provides nine, narrowly construed
11 exemptions, “reflect[ing] a recognition that ‘legitimate governmental and private
12 interests could be harmed by release of certain types of information.’” *Am. Civil*
13 *Liberties Union of N. Cal. v. U.S. Dep’t of Justice (“ACLU-NC”)*, 880 F.3d 473, 483
14 (9th Cir. 2018) (quoting *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 152
15 (1989)). An agency may withhold only exempted information and must provide all
16 “reasonably segregable” portions of that record to the requester. 5 U.S.C. § 552(b).

17 The agency bears the burden to justify withholding under FOIA’s exemptions
18 and “establish that all reasonably segregable portions of a document have been
19 segregated and disclosed.” *Hamdan v. U.S. Dep’t of Justice*, 797 F.3d 759, 779 (9th
20 Cir. 2015) (quoting *Pac. Fisheries, Inc. v. United States*, 539 F.3d 1143, 1148 (9th
21 Cir. 2008)). “The agency can meet this burden by providing the district court with a
22 reasonably detailed description of the withheld material and alleging facts sufficient to
23 establish an exemption.”⁶ *Id.* (internal quotation marks omitted).

24 An agency’s declarations are given substantial weight regarding the application
25 of a FOIA exemption and are not required “to ‘specify . . . objections [to disclosure] in
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27 ⁶ “Government agencies must submit an affidavit pursuant to *Vaughn [v. Rosen]*, 484 F.2d 820
28 [(D.C. Cir. 1973)], identifying the documents withheld, the FOIA exemptions claimed, and a
particularized explanation of why each document falls within the claimed exemption.” *Lahr*, 569
F.3d at 986 (internal quotation marks omitted); *see also ACLU-NC*, 880 F.3d at 491 n.6.

1 such detail as to compromise the secrecy of the information.” *Bowen v. FDA*, 925
2 F.2d 1225, 1227 (9th Cir. 1991) (first alteration in original) (quoting *Lewis v. IRS*, 823
3 F.2d 375, 378 (9th Cir. 1987)); *see also Shannahan v. IRS*, 672 F.3d 1142, 1148 (9th
4 Cir. 2012) (“We accord substantial weight to an agency’s declarations . . .”).
5 “Agency affidavits that are sufficiently detailed are presumed to be made in good faith
6 and may be taken at face value.” *Hamdan*, 797 F.3d at 779. Thus, where an agency’s
7 declarations “contain reasonably detailed descriptions of the documents and allege
8 facts sufficient to establish an exemption, the district court need look no further.”
9 *Lewis*, 823 F.2d at 378 (citation and internal quotation marks omitted).

10 **A. FOIA REQUEST**

11 HHS moves for summary judgment on the basis that it conducted an adequate
12 search for documents responsive to Sigler’s request, appropriately applied FOIA
13 Exemptions 4, 5, 6, 7(C), and 7(E), and reasonably segregated and disclosed any
14 nonexempt material. (Mot. 1.) Sigler does not challenge the adequacy of HHS’s
15 search or the application of Exemptions 4, 5, 6, or 7(C). Rather, Sigler contends that
16 HHS improperly withheld sixty-three pages under Exemption 7(E) and did not
17 reasonably segregate and disclose nonexempt material. (*See Opp’n* 17–20; SGI 25.)

18 *1. Adequate Search*

19 “FOIA requires an agency responding to a request to demonstrate that it has
20 conducted a search reasonably calculated to uncover all relevant documents. This
21 showing may be made by reasonably detailed, nonconclusory affidavits submitted in
22 good faith.” *Lahr*, 569 F.3d at 986 (citation and internal quotation marks omitted).
23 Plaintiffs are “entitled to a reasonable search for records, not a perfect one.” *Hamdan*,
24 797 F.3d at 772.

25 HHS contends its search was reasonably calculated to locate the relevant
26 documents. (Mot. 5–6.) Sigler raises no genuine dispute of material fact regarding
27 the adequacy of HHS’s search. (*See generally Opp’n*; SGI 4–10 (undisputed).) HHS
28 supported the adequacy of its search with the Marquis Declaration, which explained

1 that: (1) the FOIA office forwarded Sigler’s request to OCR as the investigating
2 agency; (2) OCR maintains records having to do with complaints in PIMS and
3 organized by OCR transaction number; (3) Sigler requested records related to his
4 HIPAA complaints, which had been assigned OCR transaction numbers; and (4) OCR
5 conducted records searches of PIMS using the transaction numbers Sigler provided.
6 These undisputed facts demonstrate that HHS conducted a search “reasonably
7 calculated to uncover all relevant documents” relating to the investigation of Sigler’s
8 HIPAA complaints. Accordingly, HHS is entitled to summary judgment on this issue.

9 2. *Exemptions 4, 5, 6, and 7(C)*

10 HHS contends it properly withheld certain information under FOIA Exemptions
11 4, 5, 6, 7(C), and 7(E). (Mot. 6–7; Marquis Decl. ¶ 26.) Sigler raises no genuine
12 dispute of material fact and does not challenge HHS’s application of FOIA
13 Exemptions 4, 5, 6, and 7(C). (*See generally* Opp’n; SGI 25–27 (disputing only
14 SUF 25 as to Exemption 7(E) and segregability).)

15 HHS applied Exemption 4 to twenty-one pages. (Mot. 7; Marquis Decl. Ex. 10
16 (“*Vaughn* Index”) 3, ECF No. 20-13.) Exemption 4 exempts from disclosure “trade
17 secrets and commercial or financial information obtained from a person and privileged
18 or confidential.” 5 U.S.C. § 552(b)(4). HHS withheld twenty-one pages pursuant to
19 Exemption 4 “consist[ing] of confidential commercial information” provided by HMG
20 and relating to HMG’s internal policies. (Mot. 7.) HHS submitted a *Vaughn* index
21 explaining the documents were withheld because they constituted “confidential,
22 commercial information obtained from HMG” and “release would impair HHS’s
23 ability to obtain these types of internal policies in the future.” (*Vaughn* Index 3.) The
24 *Vaughn* Index further described the documents’ contents as “HMG’s internal training
25 policies [11 pages]” and “list[s] of HMG employees and whether they have completed
26 training course [6 and 4 pages].” (*Vaughn* Index 3.) The Marquis Declaration also
27 explained that the withheld documents were confidential, commercial internal
28 policies, not available to the public. (*See* Marquis Decl. ¶¶ 31–34.) As such, HHS has

1 met its burden to justify the Exemption 4 withholdings. *See Hamdan*, 797 F.3d at 772
2 (noting an agency can meet its burden by providing reasonably detailed descriptions
3 of withheld material and facts sufficient to establish the exemption).

4 HHS applied Exemption 5 to portions of one document consisting of two pages.
5 (Mot. 8–9.) Exemption 5 exempts disclosures of “inter-agency or intra-agency
6 memorandums or letters that would not be available by law to a party other than an
7 agency in litigation with the agency.” 5 U.S.C. § 552(b)(5). This exemption
8 encompasses communications from government contractors and consultants. *See*
9 *Klamath*, 532 U.S. at 9–10. HHS withheld portions of two pages of an email
10 exchange between OCR employees and an OCR contractor “regarding the handling
11 and status of a complaint and interpretations of what that status means.” (Mot. 9.)
12 Mr. Marquis explained the redacted portions are exempted under the deliberative
13 process privilege, as a “predecisional, deliberative, intra-agency discussion” regarding
14 an OCR complaint. (*See* Marquis Decl. ¶¶ 35–37.) The *Vaughn* Index describes the
15 portions of the documents redacted and the reasoning for application of the
16 Exemption, consistent with the above. (*Vaughn* Index 2.) Accordingly, HHS has met
17 its burden to justify the Exemption 5 withholdings.

18 HHS applied Exemption 6 to portions of seven pages and Exemption 7(C) to
19 portions of six of those seven pages. (Mot. 9–11; *see Vaughn* Index 1–3.)
20 Exemption 6 exempts from disclosure “personnel and medical files and similar files
21 the disclosure of which would constitute a clearly unwarranted invasion of personal
22 privacy.” 5 U.S.C. § 552(b)(6). Exemption 7(C) exempts from disclosure “records or
23 information compiled for law enforcement purposes, but only to the extent that the
24 production . . . could reasonably be expected to constitute an unwarranted invasion of
25 personal privacy.” *Id.* § 552(b)(7)(C). “[T]o determine whether a record is properly
26 withheld [under Exemptions 6 and 7(C)], [courts] must balance the privacy interest
27 protected by the exemptions against the public interest in government openness that
28 would be served by disclosure.” *Lahr*, 569 F.3d at 973 (citing *Nat’l Archives &*

1 *Records Admin. v. Favish*, 541 U.S. 157, 171 (2004)).

2 HHS applied targeted redactions under Exemptions 6 and 7(C) to portions of
3 seven pages, to withhold “notes by OCR investigator from a telephone interview”;
4 “name[s] of employee[s] at HMG” who received information from OCR or were
5 referenced in investigation emails; the “email address of employee at HMG”; and the
6 “phone number of congressional staffer.” (*Vaughn* Index 1–3.) The Court agrees
7 with HHS that disclosure of this identifying information, the names and contact
8 information of individuals who provided information to OCR, can reasonably be
9 expected to constitute an “unwarranted invasion of personal privacy.” 5 U.S.C.
10 § 552(b)(6), (7)(C). (*See also* Marquis Decl. ¶¶ 38–40.) Further, disclosure of this
11 personal identifying information sheds no light on HHS’s “performance of its
12 statutory duties.” *Lahr*, 569 F.3d at 974 (“[T]he *only* relevant public interest in the
13 FOIA balancing analysis is the extent to which disclosure of the information sought
14 would shed light on an agency’s performance of its statutory duties or otherwise let
15 citizens know what their government is up to.”) Finally, Sigler does not challenge
16 these withholdings and has not shown that the interest in disclosure is a “significant
17 one, an interest more specific than having the information for its own sake” or that
18 disclosure is likely to advance such an interest. *See id.*; (*see generally* Opp’n).
19 Accordingly, HHS has met its burden to justify the Exemptions 6 and 7(C)
20 withholdings.

21 HHS provided a reasonably detailed description of the withheld material and
22 alleged facts sufficient to establish each of the above exemptions. As such, HHS has
23 satisfied its burden to justify the withholdings under FOIA Exemptions 4, 5, 6, and
24 7(C) and the Court grants summary judgment as to these exemptions.

25 3. *Exemption 7(E)*

26 HHS applied Exemption 7(E) to sixty-six pages. (Mot. 12.) Sigler challenges
27 HHS’s withholding of sixty-three of those pages, specifically those identified as
28 “HMG’s response to data request.” (Opp’n 18.) “Exemption 7(E) protects records

1 compiled for law enforcement purposes from disclosure if those records ‘would
2 disclose techniques and procedures for law enforcement investigations or
3 prosecutions, or would disclose guidelines for law enforcement investigations or
4 prosecutions if such disclosure could reasonably be expected to risk circumvention of
5 the law.’” *Hamdan*, 797 F.3d at 777 (quoting 5 U.S.C. § 552(b)(7)(E)).

6 Under Exemption 7(E), HHS withheld pages consisting of the investigative
7 “[d]ata request sent to HMG” and “HMG’s response to data request.” (*Vaughn* Index
8 2–3.) Sigler argues that the *Vaughn* Index and Marquis Declaration are insufficient
9 because they are vague and inadequate. (Opp’n 18.) However, in the *Vaughn* Index,
10 Marquis Declaration, and HHS’s moving papers, HHS describes the documents
11 withheld, identifies the exemption claimed, and explains that the documents fall
12 within Exemption 7(E) because they reflect procedures and techniques used during the
13 investigation of HIPAA complaints. *See Lahr*, 569 F.3d at 989 (listing requirements
14 for a *Vaughn* Index); (*see Vaughn* Index 2, 3; Marquis Decl. ¶¶ 39, 41; Reply 3–4,
15 ECF No. 32).

16 Further, the *Vaughn* Index explains that information was withheld under 7(E)
17 because it “includes information on types of questions asked and documents requested
18 by OCR investigators during the course of an investigation” and “[r]elease of this
19 information would enable entities named in complaints to interfere with OCR’s
20 complaint investigation and information collection.” (*Vaughn* Index 3.) Mr. Marquis
21 explained that “[f]ailure to protect [the] techniques and procedures [that OCR used
22 during the investigation of Sigler’s HIPAA complaints] would allow those entities
23 being investigated to circumvent the law by revealing the types of questions and
24 information that OCR uses in an investigation.” (Marquis Decl. ¶ 41.) Thus, HHS’s
25 supporting declarations provide sufficient facts and reasoning to establish the
26 exemption. *See Bowen*, 925 F.2d at 1227 (discussing that an agency may describe the
27 general nature of the investigative technique and need not disclose full details).

28

1 Sigler also challenges the veracity and good faith of the Marquis Declaration.
2 (Opp’n 13–15.) Sigler argues that Marquis’s Declaration must be disregarded entirely
3 because Marquis states HHS sent Sigler a letter in May 2017 (Marquis Decl. ¶ 9;
4 SUF 3), but Sigler does not have this letter in his records (Opp’n 13–15; SGI 3; Decl.
5 of John. W. Sigler—Formal Acknowledgement Letter, ECF No. 24). Sigler does not
6 challenge any other statements in the Marquis Declaration but argues that the Court
7 should impute falsehood to the entire declaration. (See Opp’n 13–15.) “Affidavits
8 submitted by an agency to demonstrate the adequacy of its FOIA response are
9 presumed to be in good faith.” *Hamdan*, 797 F.3d at 772. After a careful and
10 searching review of all materials submitted by both parties, the Court finds no reason
11 to doubt HHS’s and Mr. Marquis’s good faith. “As the Supreme Court cautioned in a
12 case involving FOIA, government misconduct is ‘easy to allege and hard to disprove,
13 so courts must insist on a meaningful evidentiary showing.’” *Id.* (quoting *Nat’l*
14 *Archives*, 541 U.S. at 175). Sigler has made no such meaningful showing here.

15 As the Court concludes that HHS appropriately withheld information pursuant
16 to Exemption 7(E), the Court grants summary judgment as to this exemption.

17 4. Reasonably Segregated

18 HHS contends it has reasonably segregated and released all nonexempt
19 material. (Mot. 12–13.) Sigler disagrees. (Opp’n 19–20.) Under the FOIA, any
20 “reasonably segregable portion of a record shall be provided to any person requesting
21 such record after deletion of the portions which are exempt under this subsection.”
22 5 U.S.C. § 552(b). “The district court may rely on an agency’s declaration in making
23 its segregability determination. Agency affidavits that are sufficiently detailed are
24 presumed to be made in good faith and may be taken at face value.” *Hamdan*, 797
25 F.3d at 779 (citing *Pac. Fisheries*, 539 F.3d at 1148 and *Hunt v. CIA*, 981 F.2d 1116,
26 1119 (9th Cir. 1992)).

27 HHS has met its burden “to establish that all reasonably segregable portions of
28 a document have been segregated and disclosed.” *Pac. Fisheries*, 539 F.3d at 1148.

1 HHS released non-exempt documents and, where redactions were required, narrowly
2 targeted those redactions to omit only the exempt information. The documents that
3 HHS withheld in their entirety were commercial information under Exemption 4 and
4 investigative procedures and techniques for law enforcement purposes under
5 Exemption 7(E), which HHS asserts have no segregable parts. (Mot. 13.) The
6 Marquis Declaration further explains why the documents at issue are exempt, what
7 information was withheld, and that “[a]ll reasonably segregable non-exempt
8 information was segregated and released.” (Marquis Decl. ¶¶ 29–42.)

9 The case of *Hamdan v. U.S. Department of Justice* is instructive. 797 F.3d at
10 778–81. There, the Ninth Circuit provided guidance regarding the sufficiency of a
11 segregability analysis by comparing declarations from three agencies: the State
12 Department, the Federal Bureau of Investigation (“FBI”), and the Defense Intelligence
13 Agency (“DIA”). *Id.* The court found the State Department’s declarations more than
14 sufficient; they were highly detailed, identified each document individually, and
15 provided an individualized explanation for the material being withheld. *Id.* at 780.
16 Although less “robust,” the court found the FBI’s declarations sufficiently detailed to
17 be taken at face value. The court explained the FBI’s declarations were sufficient
18 because they “provide specific reasons why the disclosure of information would be
19 harmful” and “specifically state[] that no reasonably segregable nonexempt portions
20 were withheld.” *Id.* The court noted the FBI declarations were “supported by the
21 partially redacted documents that the FBI produced” demonstrating that the FBI
22 released what it could after redacting “the bare minimum of information.” *Id.* In
23 contrast, the court found the DIA declarations “lack sufficient detail to allow the
24 district court to determine that the claimed exemptions apply throughout all of the
25 documents.” *Id.* at 781. The DIA withheld documents in their entirety, where the
26 documents varied in length and classification, but were withheld for the same reason.
27 Further, the DIA’s declarations were self-contradictory and the DIA failed to indicate
28 that it “considered releasing reasonably segregable information.” *Id.* The court

1 determined that it the DIA’s declarations could not be taken at face value. *Id.*

2 Here, the HHS declarations most closely resemble the FBI’s declarations
3 described in *Hamdan*. HHS withheld information by targeting specific redactions
4 where possible and releasing the remainder of the non-exempt document; for example,
5 when applying Exemptions 6 and 7(C). HHS explained why the information withheld
6 was exempt. Finally, like the FBI in *Hamdan*, HHS specifically states that “[a]ll
7 reasonably segregable non-exempt information was segregated and released.”
8 (Marquis Decl. ¶ 42.) Although declarations more closely resembling the State
9 Department declarations in *Hamdan* may be preferred, HHS has carried its burden to
10 provide sufficiently detailed information to allow the Court to take HHS’s
11 declarations at face value. Accordingly, the Court finds that HHS segregated and
12 released all reasonably segregable, nonexempt information and grants HHS summary
13 judgment as to segregability.

14 **B. ADDITIONAL MATTERS**

15 *1. Meet and Confer*

16 Sigler contends the Court should deny HHS’s Motion outright because HHS
17 failed to meet and confer pursuant to Local Rule 7-3. (Opp’n 9.) Local Rule 7-3
18 requires counsel or parties contemplating motion practice to “contact opposing
19 counsel to discuss thoroughly, preferably in person, the substance of the contemplated
20 motion and any potential resolution.” C.D. Cal. L.R. 7-3. The parties met and
21 conferred regarding the Rule 26f Joint Report, discussing at that time that HHS and
22 Sigler both anticipated filing a motion for summary judgment and the issues in
23 dispute. (*See* Decl. of Matthew J. Barragan ¶ 3, ECF No. 20-2; Joint Report 17–18.)
24 The Court finds the parties conference regarding the Joint Report sufficient under the
25 circumstances and declines to deny HHS’s Motion on this basis.

26 *2. Discovery*

27 Sigler requests that summary judgment be denied or deferred to allow him to
28 take discovery. (Opp’n 10–12.) District courts typically resolve actions to enforce

1 FOIA on summary judgment. *See, e.g., Lane v. Dep't of Interior*, 523 F.3d 1128,
2 1134 (9th Cir. 2008). As the issue in a FOIA case is whether one party will disclose
3 documents to the other, “courts may allow the government to move for summary
4 judgment before the plaintiff conducts discovery.” *Id.* Accordingly, discovery is only
5 appropriate where “an agency has not taken adequate steps to uncover responsive
6 documents,” and discovery requests will be denied “where an agency’s declarations
7 are reasonably detailed, submitted in good faith, and the court is satisfied that no
8 factual dispute exists.” *Lawyers’ Comm. for Civil Rights of San Francisco Bay Area*
9 *v. U.S. Dep’t of the Treasury*, 534 F. Supp. 2d 1126, 1132 (N.D. Cal. 2008). The
10 Court previously denied Sigler’s request to conduct discovery, noting that he may
11 renew his request in his opposition to HHS’s motion for summary judgment if he “still
12 contends that HHS has not met its burden in establishing it effectively searched for”
13 responsive documents. (*See* Suppl. Order Setting Briefing Schedule 2–3, ECF
14 No. 19.) First, Sigler does not challenge the adequacy of HHS’s search. (*See*
15 *generally* Opp’n.) Second, as discussed, the Court finds HHS’s search adequate and
16 its declarations reasonably detailed and in good faith. Third, there are no genuine
17 disputes of material fact here. (*See* SGI.) Thus, discovery is not warranted.

18 V. CONCLUSION

19 For the reasons discussed above, the Court finds that no genuine disputes of
20 material fact exist and the Motion and supporting materials entitle HHS to summary
21 judgment as a matter of law. Accordingly, the Court **GRANTS** HHS’s Motion for
22 Summary Judgment. (ECF No. 20.) The Court will issue Judgment.

23 **IT IS SO ORDERED.**

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25 September 30, 2019

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OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE