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

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8 LOUIS FRANCIS,) 1:06cv0968 AWI DLB
9)
10) ORDER VACATING DECEMBER 9, 2008,
11) DISCOVERY SCHEDULING ORDER
12) (Document 68)
13)
14) ORDER SETTING DATE FOR FILING
15) MOTIONS FOR SUMMARY JUDGMENT:
16) July 1, 2009
17)
18) ORDER DENYING PLAINTIFF'S MOTION
19) FOR DOCUMENT EVALUATION
20) (Document 69)
21)
22)

11 v. 12 FEDERAL BUREAU OF INVESTIGATIONS, 13 14 Defendant.)	
)

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16 Plaintiff Louis Francis (“Plaintiff”) is proceeding pro se and in forma pauperis in this
17 action under the Freedom of Information Act (“FOIA”). On December 9, 2008, the Court issued
18 a Discovery Scheduling Order setting the discovery deadline for June 1, 2009, and the dispositive
19 motion deadline for August 1, 2008.

20 On December 22, 2008, Plaintiff filed a document entitled “Motion for Vaughn v. Rosen
21 Document Evaluation.” In his motion, Plaintiff questions the Court’s Discovery Order in light of
22 the nature of this action. He also requests that the Court review 1157 pages of documents
23 withheld pursuant to the Department of Justice’s November 25, 2008, letter, to determine the
24 sufficiency of Defendant’s response.¹

25 Defendant filed its opposition on January 7, 2009.

27 ¹ Plaintiff attaches a copy of the letter, which indicates that 1408 pages were reviewed. Of those pages,
28 210 were withheld in full, 41 pages were duplicates of material already processed, and 1157 pages were returned to
the FBI.

1 Plaintiff filed his reply on January 20, 2009.

2 A. December 9, 2008, Discovery Scheduling Order

3 Discovery in FOIA actions is not conducted as it is in most other civil cases. Although a
4 district court has authority to grant discovery in a FOIA action, it “is limited because the
5 underlying case revolves around the propriety of revealing certain documents. Accordingly, in
6 these cases courts may allow the government to move for summary judgment before the plaintiff
7 conducts discovery.” Lane v. KOI, 523 F.3d 1128, 1134 (9th Cir. 2008). FOIA actions are
8 generally decided on summary judgment, and after the government has filed its summary
9 judgment motion, discovery may be available to plaintiff relating to the claimed exemptions
10 and/or the adequacy of the search where plaintiff demonstrates evidence of the government’s bad
11 faith. See eg., Carney v. U.S. Dept. of Justice, 19 F.3d 807, 812, 812 (2nd Cir. 1994).

12 Based on the nature of this action, then, the Court VACATES the dates set forth in the
13 December 9, 2008, Discovery Scheduling Order. Dispositive motions SHALL BE FILED by
14 **July 1, 2009**. At the current stage of the proceeding, discovery will not be permitted.

15 B. Plaintiff’s Motion for Document Review

16 Plaintiff requests that this Court conduct a review of exempted documents pursuant to
17 Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973). Plaintiff’s request is premature.

18 In FOIA actions, the Vaughn index is generally filed with the government’s dispositive
19 motion as it provides the information necessary for the Court to evaluate the propriety of the
20 agency’s withholding decisions. King v. U.S. Dept. of Justice, 830 F.2d 210 (D.C. Cir. 1987).
21 Therefore, attempts to compel a Vaughn index prior to the dispositive motion deadline are
22 generally denied as premature. Miscavige v. I.R.S., 2 F.3d 366, 369 (11th Cir. 1993).

23 By this order, the Court has set the dispositive motion deadline for July 1, 2009.
24 Accordingly, Plaintiff’s motion to compel a review under Vaughn, months before the filing
25 deadline, is premature and must be DENIED.

26 IT IS SO ORDERED.

27 **Dated: February 5, 2009**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE