

United States District Court
For the Northern District of California

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****E-filed 08/04/2010****

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ECOLOGICAL RIGHTS FOUNDATION,

No. C 10-0121 RS

Plaintiff,

v.

**ORDER DENYING MOTION FOR
SUMMARY JUDGMENT, WITHOUT
PREJUDICE**

PACIFIC GAS AND ELECTRIC
COMPANY

Defendant.

On May 14, 2010, the Court entered a stipulated order permitting plaintiff to file a second amended complaint, and providing that defendant need not file a responsive pleading until such time as plaintiff may file a third amended complaint. The stipulation contemplated that plaintiff would seek leave to file a third amended complaint upon expiration of a 90 day notice period that began running on April 9, 2010. Although that notice period has now expired, plaintiff has not sought leave to file a third amended complaint, nor has it indicated whether it still intends to do so. As matters stand, however, defendant is not presently under an obligation to respond to the second amended complaint. Notwithstanding, on August 3, 2010, plaintiff filed a motion for summary judgment on the first two claims of the second amended complaint. Under these circumstances, the

1 motion is premature, and will be denied on that basis, without prejudice to its renewal once the
2 pleadings are settled. The hearing set for September 9, 2010, is vacated. Plaintiff shall forthwith
3 file a stipulation or a motion for leave to file a third amended complaint, or a notice that it intends to
4 proceed on the second amended complaint. In the event plaintiff files such a notice, defendant shall
5 file a responsive pleading within 20 days of the date the notice is filed.

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7 IT IS SO ORDERED.

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10 Dated: 09/04/2010



RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE