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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ECOLOGICAL RIGHTS FOUNDATION,
Plaintiff,
v.
FEDERAL EMERGENCY
MANAGEMENT AGENCY,
Defendant.

Case No. [16-cv-05254-MEJ](#)
**ORDER RE: CROSS-MOTIONS FOR
SUMMARY JUDGMENT**
Re: Dkt. Nos. 42, 46

Pending before the Court are the parties' cross-motions for summary judgment. EcoRights Mot., Dkt. No. 42; FEMA Mot., Dkt. No. 46. The parties argued their motions on May 11, 2017. Based on the record in this case, the position of the parties, and the relevant legal authority, the Court **ORDERS** the following:

- (1) No later than May 25, 2017, FEMA shall provide to EcoRights a complete, corrected production of responsive documents that is consecutively Bates-labeled and that indicates the request(s) to which particular documents are responsive. FEMA shall file a notice when it has complied with this paragraph.
- (2) No later than May 25, 2017, FEMA shall file a declaration explaining the basis for the apparent discrepancy between its position that all responsive documents that are not being withheld pursuant to Exceptions 5 and 6 have been produced, and the responses of the third party agencies to which FEMA referred documents for review.
- (3) No later than June 8, 2017, FEMA shall file a declaration from a person having personal knowledge of FEMA's efforts to ensure it has not withheld segregable information. The declaration shall provide a more complete description of FEMA's efforts than is currently offered by Mr. Neuschaefer in his declaration, for example, by describing FEMA's process for evaluating

1 whether responsive information should be withheld, and its quality-control efforts to ensure its
2 redactions are narrowly-tailored.

3 (4) No later than June 15, 2017, FEMA shall file a revised Vaughn Index that refers to the
4 new Bates-labeled production and offers particularized descriptions sufficient to show the
5 exceptions FEMA invokes apply to each document withheld or redacted. *See Yonemoto v. Dep't*
6 *of Veterans Affairs*, 686 F.3d 681, 695 (9th Cir. 2012), *overruled on other grounds by Animal*
7 *Legal Defense Fund v. U.S. FDA*, 836 F.3d 987 (9th Cir. 2016). By this date, FEMA shall
8 produce any additional documents it has determined are not properly withheld after this revision
9 and/or file a declaration confirming it is not withholding any responsive documents other than
10 those listed in its revised Vaughn Index.

11 (5) After reviewing the revised Vaughn Index, EcoRights shall file either a declaration
12 challenging specific entries and concisely indicating the basis for the challenges, or a notice
13 indicating it does not challenge the revised Vaughn Index.

14 (6) The Court notes EcoRights' argument that FEMA has failed to comply with the
15 parties' settlement agreement. The Court encourages the parties to meet and confer on this issue
16 before resorting to motion practice.

17 The parties' cross-motions otherwise are under submission.

18 **IT IS SO ORDERED.**

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20 Dated: May 11, 2017

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MARIA-ELENA JAMES
United States Magistrate Judge