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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION

11
12 VICTORIA LAW,

13 Plaintiff,

14 v.

15 FEDERAL BUREAU OF PRISONS,

16 Defendant.

) Case No. 3:24-CV-06628-YGR

) **DEFENDANT’S OPPOSITION TO**
) **PLAINTIFF’S MOTION FOR JUDGMENT ON**
) **THE PLEADINGS AND FOR DECLARATORY**
) **JUDGMENT**

) Date: September 30, 2025

) Time: 2:00 p.m.

) Courtroom: 1

1 **I. INTRODUCTION**

2 Plaintiff Victoria Law filed a 25-page brief (“Plaintiff’s Brief, ECF 45-1) in support of her
3 separate 3-page motion for judgment on the pleadings and under the Declaratory Judgment Act
4 (“Plaintiff’s Motion”, ECF 45).¹ Plaintiff seeks an order regarding the pace of document productions
5 and the format of the releases, seemingly asking this Court to require that all documents be identified
6 and released within 30 days. These are issues the Court referred to Magistrate Judge Tse, and Judge Tse
7 has ruled on these issues. Plaintiff did not timely file objections to Judge Tse’s order, and cannot avoid
8 that failure with the present motion. Defendant has been complying with Judge Tse’s order, and thus the
9 claim that Defendant is violating the law is incorrect.

10 Plaintiff generally fails to cite FOIA cases involving a motion for judgment on the pleadings or
11 under the Declaratory Judgment Act, and instead relies on summary judgement decisions or other cases
12 off the mark. Plaintiff is not entitled to relief in this motion. Judge Tse remains available to address the
13 pace of document productions and the format of releases, just as this Court presumably intended by
14 referring those matters to Judge Tse. The handful of issues that Judge Tse did not address raised by
15 Plaintiff lack merit. The Court should deny Plaintiff’s motion.

16 **II. BACKGROUND**

17 Plaintiff filed suit on September 20, 2024, alleging that Defendant is withholding records
18 regarding a FOIA request that includes 50 categories of records, many with subparts of between two and
19 fourteen subparts. ECF No. 1-1, pgs. 26-31 of 85. The categories of documents requested by Plaintiff
20 include immigration, health, and mental health records of inmates. *Id.* Defendant needs to redact details
21 to protect the privacy of former inmates who presumably would not want their immigration, health, and
22 mental health records made public through FOIA.

23 On January 30, 2025, the Court referred the parties to Magistrate Judge Tse for discovery. ECF
24 No. 29. After receiving the first discovery letter brief, Judge Tse denied the letter brief. ECF No. 32.
25 The parties then filed discovery letter briefs about the monthly release schedule and about the format of
26 the documents released by BOP. ECF Nos. 33 & 34. Judge Tse held a hearing to address the two letter
27

28 ¹ Civil Local Rule 7-2(b) dictates that these filings should have been included in a single filing.

1 briefs on May 12, 2025. ECF NO. 37. On May 22, 2025, the parties filed a joint status report. ECF No.
2 39. On May 27, 2025, Judge Tse held a second discovery hearing to address the two letter briefs. ECF
3 No. 41.

4 On May 30, 2025, Judge Tse issued a discovery order regarding the two letter briefs. ECF No.
5 42. Judge Tse ordered Defendant to process 1,000 pages per month, and to make a release at the end of
6 each month beginning on June 30, 2025. *Id.* As to Plaintiff’s argument that Defendant should release
7 records in their native format with metadata preserved, Judge Tse found that the issue was not ripe for
8 decision. *Id.* Judge Tse held that “the parties are ordered to meet and confer further on this issue as
9 processing and production continue. If disputes remain after thorough meet and confer efforts, then the
10 parties may again raise this issue for the Court in a joint discovery letter.” *Id.*

11 Defendant has complied with Judge Tse’s order, and Plaintiff does not argue otherwise in her
12 motion.

13 III. ARGUMENT

14 A. Plaintiff Cannot Ask This Court to Decide the Matters Judge Tse Determined.

15 Plaintiff’s motion asks the Court to require Defendant to search for and produce all responsive
16 documents within 30 days in Plaintiff’s preferred format. Plaintiff’s Brief at 1:27-2:22. However, the
17 Court referred the parties to Magistrate Judge Tse “for discovery including document production
18 issues.” ECF No. 29. The parties filed discovery letter briefs about the monthly release schedule and
19 about the format of the documents released by BOP. ECF Nos. 33 & 34. Judge Tse held two hearing to
20 address the two letter briefs. ECF NO. 37 & 41. On May 30, 2025, Judge Tse issued a discovery order
21 regarding the two letter briefs. ECF No. 42. Judge Tse ordered Defendant to process 1,000 pages per
22 month, and to make a release at the end of each month beginning on June 30, 2025. *Id.* As to Plaintiff’s
23 argument that Defendant should release records in their native format with metadata preserved, Judge
24 Tse found that the issue was not ripe for decision. *Id.* Judge Tse held that “the parties are ordered to
25 meet and confer further on this issue as processing and production continue. If disputes remain after
26 thorough meet and confer efforts, then the parties may again raise this issue for the Court in a joint
27 discovery letter.” *Id.*

1 Plaintiff seeks to burden this Court with a motion covering the issues that Judge Tse decided.
2 Plaintiff failed to follow the process for seeking review of Judge Tse’s discovery order. Civil Local
3 Rule 72-2, titled “Motion for Relief from Nondispositive Pretrial Order of Magistrate Judge” provides
4 that “[a]ny objection filed pursuant to Fed. R. Civ. P. 72(a) and 28 U.S.C. § 636(b)(1)(A) must be made
5 as a “Motion for Relief from Nondispositive Pretrial Order of Magistrate Judge.”” Plaintiff cannot ask
6 this Court to revisit issues decided by Judge Tse by means of the motion Plaintiff filed.

7 Moreover, Plaintiff is unable to challenge Judge Tse’s discovery order at this time because Rule
8 72(a) requires that objections to a nondispositive pretrial order must be served and filed within 14 days
9 of being served with the order. To have timely objected to Judge Tse’s May 30, 2025 discovery order,
10 Plaintiff would have had to file objections by June 13, 2025. Plaintiff did not do so, and that failure
11 forecloses relief under Rule 72(a). *See* Fed. R. Civ. P. 72(a) (“A party may not assign as error a defect in
12 the order not timely objected to.”); *Baker v. Ensign*, No. 11-CV-2060-BAS WVG, 2014 WL 4055353, at
13 *6 (S.D. Cal. Aug. 14, 2014) (holding an untimely Rule 72(a) objection did not entitle the objecting
14 party to relief under a Rule 60(b) motion and also relief was not warranted on the merits).

15 In particular, the following arguments made in Plaintiff’s Brief are within the scope of the
16 Court’s reference of discovery matters to Judge Tse and that were addressed by his discovery order: (1)
17 all of the arguments about the pace of the release of records and (2) allegations about the format of the
18 releases in respect to native format and metadata.

19 Plaintiff’s arguments about the pace of release of records are ones she makes several times:
20 Allegation that BOP Failed to Make Records Promptly Available; Plaintiff’s Brief at 11:1-12:10, (2)
21 Allegation that BOP Failed to Fulfill its Expedited Processing Obligations; Plaintiff’s Brief at 12:12-
22 13:12; (3) Allegation that BOP Failed to Process the Request “As Soon as Practicable”, Plaintiff’s Brief
23 at 19:19-20:14; (4) Allegation that BOP Cannot Establish Exceptional Circumstances Allowing the
24 Court to Retain Jurisdiction and Allow the Agency More Time, Plaintiff’s Brief at 20:16-24:8. All of
25 these issues were presented to Judge Tse in the letter briefs or at one of the hearings. ECF No. 33.

26 Plaintiff’s arguments about the format of the releases are part of another argument. *See*
27 Plaintiff’s Brief at 18:9-16. Again, these arguments were presented in a letter brief to Judge Tse. ECF
28 No. 34. Judge Tse found that the issue was not ripe, but ordered the parties to meet and confer and raise

1 it again in another letter brief. This is not an issue the Court needs to address.

2 **B. Plaintiff's Motion for Judgment on the Pleadings Should be Denied.**

3 After the pleadings are closed but early enough not to delay trial, any party may move for
4 judgment on the pleadings. Fed. R. Civ. P. 12(c). "A dismissal on the pleadings for failure to state a
5 claim is proper only if 'the movant clearly establishes that no material issue of fact remains to be
6 resolved and that he is entitled to judgment as a matter of law.'" *McGlinchy v. Shell Chem. Co.*, 845
7 F.2d 802, 810 (9th Cir. 1988) (quoting *Doleman v. Meiji Mut. Life Ins. Co.*, 727 F.2d 1480, 1482 (9th
8 Cir. 1984)). The standard applied to Rule 12(c) motions is fundamentally similar to that applied to Rule
9 12(b)(6) motions; "[a]ll allegations of fact by the party opposing the motion are accepted as true."
10 *McGlinchy*, 845 F.2d at 810. "A plaintiff is not entitled to judgment on the pleadings when the answer
11 raises issues of fact that, if proved, would defeat recovery. Similarly, if the defendant raises an
12 affirmative defense in his answer it will usually bar judgment on the pleadings." *Gen. Conference Corp.*
13 *of Seventh Day Adventists v. Seventh Day Adventist Congregational Church*, 887 F.2d 228, 230 (9th Cir.
14 1989).

15 Because Rule 12(c) motions can end the case, district courts often hesitate to grant them, lest
16 they wrongly deprive a litigant "a full and fair hearing on the merits." *Haller v. Advanced Indus.*
17 *Comput. Inc.*, 13 F. Supp. 3d 1027, 1029 (D. Ariz. 2014) (quoting *Carrasco v. Fiore Enters.*, 985 F.
18 Supp. 931, 934 (D. Ariz. 1997)). As one federal court of appeals has put it, "the party seeking judgment
19 on the pleadings shoulders a heavy burden of justification." *Dist. No. 1, Pac. Coast Dist., Marine Eng'rs*
20 *Beneficial Ass'n, AFL-CIO v. Liberty Mar. Corp.*, 933 F.3d 751, 760 (D.C. Cir. 2019); *see also Calamco*
21 *v. J. R. Simplot Co.*, No. 21-1201, 2023 WL 4239107, at *3 (E.D. Cal. June 28, 2023) (citing *Haller* and
22 *Dist. No. 1.*, and denying motion).

23 A district court generally may not consider materials outside the pleadings in deciding a motion
24 under Rule 12(c), and if such materials are presented to the court and not excluded, the motion must be
25 treated as a motion for summary judgment under Rule 56. *See* Fed. R. Civ. P. 12(d) ("If, on a motion
26 under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the
27 court, the motion must be treated as one for summary judgment under Rule 56."); *Hal Roach Studios,*
28 *Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1550 (9th Cir. 1989) (reversing grant of judgment on the

1 pleadings where district court relied on declaration and document submitted by moving party).

2 **1. Plaintiff is Not Entitled to Judgment on the Pleadings About an Adequate**
3 **Search.**

4 Defendant has denied that it has failed to perform an adequate search for records in its Answer,
5 and that is fatal to Plaintiff's motion for judgment on the pleadings on this issue. Plaintiff's claim is
6 nonsensical, as well, since Defendant could not be releasing documents each month if it had not
7 previously searched for responsive records.

8 Defendant's Answer, which was filed on November 27, 2024, admitted that a screenshot
9 attached as an exhibit to Plaintiff's Complaint "reflects that the Status of Plaintiff's FOIA request "on
10 September 17, 2024, at 9:09a.m was "Document Search." Answer, ECF No. 16, ¶ 38. In addition, in
11 Paragraph 60 of Defendant's Answer, Defendant "denies, however, that it has not made any
12 determination as to: 1. The scope of records it intends to produce; 2. The scope of the records it intends
13 to withhold; 3. The reasoning and exclusions/exemptions argued for the withholding of any documents,
14 as these subjects have already been discussed in some detail with counsel for Plaintiff." In Paragraph 61
15 of the Answer, Defendant "denies the allegations of Paragraph 61 that it has failed to make "reasonable
16 efforts" in conducting a search for records."

17 Moreover, the only case Plaintiff cites on this point is *Zemansky v. EPA*, 767 F.2d. 569 (9th Cir.
18 1985), which is a case that affirmed summary judgment for a defendant agency on the issue of the
19 adequacy of its search for records. An agency can demonstrate the adequacy of its search through
20 "reasonably detailed, nonconclusory affidavits submitted in good faith." *Id.* at 571. Affidavits submitted
21 by an agency to demonstrate the adequacy of its response are presumed to be in good faith. *Ground*
22 *Saucer Watch, Inc. v. CIA*, 692 F.2d 770, 771 (D.C. Cir.1981). The time for an agency to establish that
23 it performed an adequate search is on summary judgment with declarations or affidavits.

24 **2. Plaintiff is Not Entitled to Judgment on the Pleadings About a Determination**

25 In Paragraph 39 of Defendant's Answer, Defendant admits that it had not "communicated a
26 determination letter" regarding Plaintiff's FOIA Request. In Paragraph 60 of Defendant's Answer,
27 however, Defendant "denies, however, that it has not made any determination as to: 1. The scope of
28 records it intends to produce; 2. The scope of the records it intends to withhold; 3. The reasoning and

1 exclusions/exemptions argued for the withholding of any documents, as these subjects have already been
 2 discussed in some detail with counsel for Plaintiff.” Defendant also denied Plaintiff’s allegations that
 3 Defendant violated FOIA by failing to provide a determination. Answer, ¶¶ 53-56. Moreover, as
 4 Defendant explained in one of its letter briefs: “each document production includes a determination
 5 letter identifying the portion of the request the records are responsive to; the total number of pages
 6 processed, released in full, released in part, withheld in full, identified as duplicative; and the
 7 exemptions applied.” ECF No. 31, p. 5 (citing Declaration of Kara Christenson, ¶ 9).

8 Plaintiff relies on *Citizens for Resp. & Ethics in Washington v. Fed. Election Comm'n*, 711 F.3d
 9 180 (D.C. Cir. 2013), and no other case on this point. This case delineates the requirements for a
 10 determination letter, but the holding is that the failure to communicate a determination means the
 11 Plaintiff is deemed to have exhausted its administrative appeal remedies and its suit may proceed.

12 To all of this, the FEC's overarching retort is that it would be “a practical
 13 impossibility for agencies to process all [FOIA] requests completely
 14 within twenty days.” FEC Br. 34. **We agree entirely with the FEC on
 15 this point. We are intimately familiar with the difficulty that FOIA
 16 requests pose for executive and independent agencies.** But contrary to
 17 the FEC's suggestion, our reading of the statute recognizes and
 18 accommodates that reality. As our opinion today emphasizes, the 20–
 19 working–day period (actually 30 working days with the unusual
 20 circumstances provision) is the relevant timeline that the agency must
 21 adhere to if it wants to trigger the exhaustion requirement before suit can
 22 be filed. The unusual circumstances and exceptional circumstances
 23 provisions allow agencies to deal with broad, time-consuming requests (or
 24 justifiable agency backlogs) and to take longer than 20 working days to do
 25 so. **To reiterate, if the agency does not adhere to FOIA's explicit
 26 timelines, the “penalty” is that the agency cannot rely on the
 27 administrative exhaustion requirement to keep cases from getting into
 28 court.**

21 *Id.* at 189-90. (emphasis added).

22 Plaintiff has been proceeding with her lawsuit. Defendant did not allege that Plaintiff had failed
 23 to exhaust her administrative remedies. As a result, Plaintiff’s request for entry of judgment on this
 24 point is moot, and even if not, should be denied on the merits given that Defendant denies it violated
 25 FOIA on this point.

26 **3. Plaintiff is Not Entitled to Judgment on the Pleadings About Producing 27 Documents.**

28 As noted above, Plaintiff is not entitled to Judgment on the Pleadings regarding the production

1 of records. Defendant is producing records each month pursuant to Judge Tse’s order, and thus is
2 producing documents in compliance with FOIA. All of the arguments Plaintiff makes to the contrary
3 were raised with Judge Tse in letter briefs and oral argument. Moreover, Plaintiff is not entitled to
4 judgment on the pleadings on this point because Defendant denied Plaintiff’s allegations that it is
5 wrongfully withholding records. Answer, ¶¶ 69-73.

6 Judge Tse’s order that Defendant process 1000 pages per month is well within the range from
7 other cases in this district. *See, e.g., Swords to Plowshares v. U.S. Dep’t of Veterans Affairs*, No. 3:20-
8 cv-07146-JSC, ECF No. 31 (March 19, 2021) (600 pages); *USRTK v. U.S. Dep’t of Education*, No. 20-
9 cv-09117-DMR, ECF No. 21 (750 pages); *Cohodes v. U.S. Dep’t of Justice et al.*, 3:20-cv-4015, ECF
10 No. 78 (500 pages); *Center for Gender and Refugee Studies and Al Otro Lano, Inc. v. U.S. Customs and*
11 *Border Production*, 3:24-cv-1601-TLT (parties agreed that the agency in that case would “process 1200
12 documents per month, beginning in January 2025.” ECF No. 30 (11/25/24 Stipulation to Continue
13 Briefing Schedule for Motion for Judgment on the Pleadings and Response to Court’s Inquiries)).

14 Judge Tse’s order and these cases also show that the proper way to address the pace of releasing
15 records is by stipulation or court order, not by seeking a motion for judgment on the pleadings.

16 **C. The Court Should Deny Plaintiff’s Motion for Declaratory Judgement.**

17 The Declaratory Judgment Act provides that “[i]n a case of actual controversy within its
18 jurisdiction, except [specified tax, bankruptcy, anti-dumping or free trade cases] any court of the United
19 States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any
20 interested party seeking such declaration, whether or not further relief is or could be sought.” 28 U.S.C.
21 § 2201(a).

22 Under the Act, a district court has the “unique and substantial discretion” to decide whether to
23 issue a declaratory judgment. *Wilton v. Seven Falls Co.*, 515 U.S. 277, 286 (1995). The Act states that
24 “courts *may* declare the rights and other legal relations of any interested party seeking such declaration.”
25 28 U.S.C. § 2201(a) (emphasis added). Therefore, a district court is under no compulsion to exercise its
26 jurisdiction. *Brillhart v. Excess Ins. Co. of America*, 316 U.S. 491, 494 (1942).

27 Given that Plaintiff’s complaint is about the alleged withholding of records, the
28 “comprehensiveness of FOIA” forecloses any claims purportedly brought also under the Declaratory

1 Judgment Act. *Isiwele v. United States Dep't of Health & Hum. Servs.*, 85 F. Supp. 3d 337, 352
2 (D.D.C. 2015) (granting motion to dismiss Declaratory Judgment Act cause of action, among others, in a
3 FOIA case). This should be the end of the Court's inquiry into the Declaratory Judgment Act.

4 **1. Plaintiff is Not Entitled to Declaratory Judgment on a Pattern and Practice of FOIA**
5 **violations.**

6 Plaintiff's argument is just a repackaging of the arguments about Defendant's alleged failure to
7 make a determination, as well as arguments alleging that Defendant has failed to produce documents
8 quickly enough and then arguments about the format of the releases of documents. *See* Plaintiff's Brief
9 at 15:8-18:22. Plaintiff's arguments fail for the same reasons discussed in this brief.

10 **2. Plaintiff is Not Entitled to Declaratory Judgment As to Document Productions.**

11 Plaintiff is not entitled to an order pursuant to the Declaratory Judgment Act regarding the
12 production of records. Defendant is producing records each month pursuant to Judge Tse's order, and
13 thus is producing documents in compliance with FOIA. All of the arguments Plaintiff makes to the
14 contrary were raised with Judge Tse in letter briefs and oral argument, and Judge Tse already spent the
15 time to review declarations and evidence submitted by the parties and held two discovery hearings. The
16 Court should decline Plaintiff's effort to require the Court to undertake the same burdens.

17 **3. Plaintiff is Not Entitled to Declaratory Judgement That She Is Entitled to Attorney's**
18 **Fees.**

19 Plaintiff baldly states in her motion that "Plaintiff is entitled to attorney's fees and litigation costs
20 incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E)." Plaintiff's Motion at 2:23-24. An award of
21 fees and costs under FOIA is not automatic. Rather, FOIA plaintiffs "must present convincing *evidence*
22 that they are both *eligible for* an award of attorney's fees and that they are *entitled to* such an award."
23 *Rosenfeld v. U.S. DOJ*, 903 F. Supp. 2d 859, 865 (N.D. Cal. 2012) (cleaned up) (emphasis added).

24 Plaintiff has submitted neither evidence nor legal briefing in support of her requested relief, and
25 thus the Court cannot grant Plaintiff relief on this point. Plaintiff does not even address the issue in her
26 brief.

1 **IV. CONCLUSION**

2 Defendant respectfully requests that the Court deny Plaintiff's motion. Judge Tse has carefully
3 considered the parties briefs and held two hearings; he resolved the pace at which Defendant must
4 release records to Plaintiff, and he stands ready to consider the format of the release of documents once
5 the parties meet and confer sufficiently about that issue. The other issues Plaintiff raises lack merit.

6 Dated: September 2, 2025

7 Respectfully submitted,

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10 */s/ Michael T. Pyle*

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