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13 UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF CALIFORNIA

15 DENNIS D. MURPHY,

16 Plaintiff,

17 vs.

18 UNITED STATES DEPARTMENT OF
19 AGRICULTURE; TOM VILSACK, in his
20 official capacity as Secretary of the Department
21 of Agriculture; UNITED STATES FOREST
22 SERVICE; THOMAS TIDWELL, in his official
23 capacity as Chief of the United States Forest
24 Service,

25 Defendants.

Case No:

**COMPLAINT FOR DECLARATORY
RELIEF, INJUNCTIVE RELIEF, AND
ATTORNEYS' FEES AND COSTS**

**[FREEDOM OF INFORMATION ACT,
5 U.S.C. § 552(a)(4)(B), (E)]**

Case No. _____

INTRODUCTION

A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.

James Madison, letter to W. T. Berry (Aug. 4, 1822), *in* 9 The Writings of James Madison, comprising his Public Papers and his Private Correspondence, including his numerous letters and documents now for the first time printed, 1819-1836, at 103 (Gaillard Hunt, ed., 1910), *available at* http://files.libertyfund.org/files/1940/1356.09_Bk.pdf.

* * *

1. Plaintiff Dennis D. Murphy is a renowned conservation biologist and author and editor of United States Forest Service (“Forest Service”) technical publications and assessments; he also holds a special use permit from the Forest Service for a residence he maintains at Upper Echo Lake, south of Lake Tahoe in the Sierra Nevada mountains of California. In light of the Forest Service’s Upper Echo Lake Hazardous Fuels Reduction Project (“Project”) and in furtherance of his interests in the Project area, Dr Murphy, through his attorney of record at Nossaman, submitted a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to the Forest Service on September 18, 2014 (the “FOIA Request”), attached hereto as **Exhibit 1** and incorporated herein by this reference.

2. The Forest Service acknowledged receipt of the FOIA Request by way of an e-mail dated September 18, 2014. *See* **Exhibit 2** attached hereto and incorporated herein by this reference.

3. The FOIA Request seeks specific public records to or from two expressly identified Forest Service officials directly involved in the approval process for the Project.

4. On September 24, 2014, the Forest Service sent a denial of the fee waiver request made by Dr. Murphy in connection with the FOIA Request. *See* **Exhibit 3** attached hereto and incorporated herein by this reference.

5. Dr. Murphy appealed the denial of fee waiver (hereinafter “Fee Appeal”) by letter dated and submitted on October 17, 2014. *See* **Exhibit 4** attached hereto and incorporated

1 herein by this reference. The Forest Service granted Dr. Murphy's Fee Appeal thereby
2 reversing itself and granting a fee waiver, by letter dated January 6, 2015. *See Exhibit 5*
3 attached hereto and incorporated herein by this reference.

4 6. More than seven months after Dr. Murphy filed the FOIA Request, the Forest
5 Service issued a response. *See Exhibit 6* attached hereto and incorporated herein by this
6 reference. The agency found and produced 539 pages of responsive records: 217 pages were
7 withheld entirely and thus produced as blank, other than the notation that they were withheld;
8 134 pages were withheld in part; and 188 pages were disclosed.

9 7. Two days later, by letter dated and submitted April 9, 2015, Dr. Murphy filed a
10 second appeal (hereinafter "Formal Appeal"). *See Exhibit 7* attached hereto and incorporated
11 herein by this reference. The Forest Service acknowledged receipt of the Formal Appeal by e-
12 mail dated April 10, 2015.

13 8. As of the date of filing this Complaint, more than eight months after filing the
14 Formal Appeal, and more than 15 months after submitting the FOIA Request, the Forest
15 Service has failed to act on the Formal Appeal. Thus, the agency has violated and continues to
16 violate the mandatory requirement in FOIA that it reach a determination on a Formal Appeal
17 within 20 workdays of receiving it.

18 9. Through Nossaman, Dr. Murphy has made multiple, good faith attempts to convince
19 the Forest Service to respond to the appeal, but to no avail. By this action, Dr. Murphy seeks to
20 compel the Forest Service to fulfill its legal obligation under FOIA to furnish all records
21 responsive to the FOIA Request.

22 10. The public records sought are of vital importance. The Project apparently was
23 justified in the first instance based on false information regarding wildfire risk in the Project
24 area, and there is evidence that agency personnel turned a blind eye to potential adverse
25 environmental effects of the Project during its approval process. Without access to the public
26 records relating to the Project, neither Dr. Murphy nor the public at large may assess the
27 agency's conduct and the true impacts of the Project.

28

JURISDICTION AND VENUE

1
2 11. The Court has jurisdiction over this action pursuant to the Freedom of Information
3 Act, 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331 (federal question). Dr. Murphy filed an
4 administrative appeal pursuant to 7 C.F.R. § 1.14 before bringing this action. *See Exhibit 7.*
5 Defendant Forest Service did not provide a determination of the Formal Appeal within the 20-
6 workday limit provided by law, and, as of the date of filing this Complaint, still has not
7 provided a determination of the Formal Appeal. Thus, Plaintiff exhausted his administrative
8 remedies.

9 12. Pursuant to 5 U.S.C. § 552(a)(4)(B), this Court is authorized to grant injunctive
10 relief ordering the Defendants to respond to the FOIA Request. An actual controversy exists
11 between the parties within the meaning of 28 U.S.C. § 2201. Thus, this Court also may grant
12 declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

13 13. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) (suit may be brought
14 in the District where a substantial part of the activities that are the subject of the action are
15 situated) and 5 U.S.C. § 552(a)(4)(B) (“[T]he district court of the United States in the district in
16 which the complainant resides, or has his principal place of business, or in which the agency
17 records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from
18 withholding agency records and to order the production of any agency records improperly
19 withheld from the complainant.”).

20 **PARTIES**

21 14. Plaintiff Dr. Murphy is a renowned conservation biologist. He has an undergraduate
22 degree in entomology from the University of California, Berkeley, and a doctoral degree in
23 biological sciences from Stanford University, where he studied under Professor Paul Ehrlich.
24 Further, Dr. Murphy is a Pew Scholar in Conservation and the Environment, recipient of the
25 California Governor’s Leadership Award in Economics and the Environment, and an Adjunct
26 Research Professor in Biology at the University of Nevada, Reno.

27 15. Dr. Murphy is past president of the Society for Conservation Biology. He has
28 served on the Board on Environmental Studies and Toxicology and the Water Science and

1 Technology Board at the National Research Council, the action agency for the National
2 Academy of Sciences. He has also served on three committees under that organization: the
3 Committee on Hydrology, Ecology, and Fishes of the Klamath River, the Committee on
4 Endangered and Threatened Species in the Platte River Basin, and the Committee on Scientific
5 Issues in the Endangered Species Act. He is currently co-chair of the Independent Science
6 Advisory Panel on endangered species and federal operations of the six dams on the Missouri
7 River.

8 16. Dr. Murphy has testified on ten occasions in front of United States Senate and
9 House of Representatives committees and subcommittees on issues related to implementation of
10 the Endangered Species Act. Additionally, he has petitioned the U.S. Fish and Wildlife Service
11 for the listing of eleven species.

12 17. Dr. Murphy has expertise in conservation planning for a wide variety of vertebrates
13 and invertebrates in California and elsewhere in the West. He has served federal and state
14 governments in science-driven regional conservation planning efforts targeting northern spotted
15 owls (*Strix occidentalis caurina*), California gnatcatchers (*Polioptila californica*), bighorn
16 sheep (*Ovis canadensis*), desert tortoise (*Gopherus agassizii*), and a host of other listed species.
17 In addition, he has led or been involved with the development of adaptive management
18 strategies for protected lands in six western states, in planning efforts that have included
19 numerous species that inhabit the Project area and the habitats that support those species, and
20 species that are related to and have similar ecological attributes as those known to inhabit the
21 project area – including mountain and Sierra Nevada yellow-legged frogs (*Rana boylei*, *Rana*
22 *muscosa*, and *Rana sierrae*), red-legged frogs (*Rana aurora* and *Rana draytonii*), and
23 Amargosa (*Anaxyrus nelsoni*), arroyo (*Anaxyrus californicus*), and western (*Anaxyrus boreas*)
24 toads.

25 18. Every year since his birth, Dr. Murphy has visited the Project area. He holds a
26 special use permit from the Forest Service for a residence he maintains in the Project area. His
27 father and grandfather maintained a residence in the Project area before him; his son has visited
28

1 the area on multiple occasions each year of his life. Dr. Murphy has visited the Project area
2 over 500 times in his lifetime and has concrete plans to continue doing so in the future.

3 19. Dr. Murphy enjoys the environmental integrity and beauty of the Project area. He
4 regularly recreates in and studies the ecology of the area. He is intimately familiar with the
5 local ecosystem, including the resident animals and plants and the habitats that support them.
6 Dr. Murphy derives significant use and enjoyment from the aesthetic, recreational, and
7 conservation benefits derived from the natural, near-wilderness state of the Lower and Upper
8 Echo Lakes and the alpine landscape that surrounds them.

9 20. Dr. Murphy has also conducted research in the Lake Tahoe basin, including the
10 Project area, in his capacity as a conservation biologist. Further, Dr. Murphy is the lead editor
11 of the two-volume *Lake Tahoe Watershed Assessment* prepared for the Forest Service, a
12 presidential deliverable from the first ever Lake Tahoe Summit, which was published in 2000,
13 and the *Proceedings of the Sierra Nevada Science Symposium*, the Forest Service's synthesis of
14 the state of the environmental science for the mountain range, published in 2004, and was a key
15 contributor to the Forest Service's 2010 volume, *An Integrated Science Plan for the Lake Tahoe*
16 *Basin*.

17 21. Defendant United States Department of Agriculture is a department of the United
18 States Government, established by statute.

19 22. Defendant Tom Vilsack is the Secretary of the Department of Agriculture.

20 23. Defendant United States Forest Service is a department of the United States
21 Government, established by statute.

22 24. Defendant Thomas Tidwell is the Chief of the United States Forest Service.

23 25. The Forest Service's violations of FOIA have impeded Dr. Murphy's ability to
24 understand the factual basis for the Project. If the relief herein requested is granted, then his
25 right to the requested public records will be vindicated, the knowledge gained from those public
26 records is likely to add to the fund of information that citizens may use in making vital political
27 choices regarding management of Forest Service lands in the Lake Tahoe Basin Management
28

1 Unit, and the information can assist Dr. Murphy in his efforts to assess and mitigate the harm to
2 his aesthetic, conservation, and recreational interests in the Project area.

3 **LEGAL BACKGROUND**

4 26. In Public Law 110-175, § 2, Dec. 31, 2007, 121 Stat. 2524, Congress found that

5 (1) The Freedom of Information Act was signed into law on July
6 4, 1966, because the American people believe that -- (A) our
7 constitutional democracy, our system of self-government, and our
8 commitment to popular sovereignty depends upon the consent of
9 the governed; (B) such consent is not meaningful unless it is
10 informed consent; and (C) as Justice Black noted in his
11 concurring opinion in *Barr v. Matteo* (360 U.S. 564 (1959)), ‘The
12 effective functioning of a free government like ours depends
13 largely on the force of an informed public opinion. This calls for
14 the widest possible understanding of the quality of government
15 service rendered by all elective or appointed public officials or
16 employees.’

17 (2) the American people firmly believe that our system of
18 government must itself be governed by a presumption of
19 openness;

20 (3) the Freedom of Information Act establishes a ‘strong
21 presumption in favor of disclosure’ as noted by the United States
22 Supreme Court in *United States Department of State v. Ray* (502
23 U.S. 164 (1991)), a presumption that applies to all agencies
24 governed by that Act; [and]

25 (4) ‘disclosure, not secrecy, is the dominant objective of the Act,’
26 as noted by the United States Supreme Court in *Department of*
27 *Air Force v. Rose* (425 U.S. 352 (1976)).

28 Pub. L. No. 110-175, § 2, Dec. 31, 2007, 121 Stat. 2524.

29 27. Congress enacted FOIA in 1966 “‘to improve public access to information held by
30 government agencies.’” *Natural Resources Defense Council, Inc. v. U.S. Env’tl. Prot. Agency*,
31 581 F. Supp. 2d 491, 496 (S.D.N.Y. 2008) (quoting *Pierce & Stevens Chem. Corp. v. U.S.*
32 *Consumer Prod. Safety Comm’n*, 585 F.2d 1382, 1384 (2d Cir. 1978)). The act “‘expresses a
33 public policy in favor of disclosure so that the public might see what activities federal agencies
34 are engaged in.’” *Id.* (quoting *A. Michael’s Piano, Inc. v. F.T.C.*, 18 F.3d 138, 143 (2d Cir.
35 1994)). FOIA is intended to “ensure an informed citizenry, vital to the functioning of a
36 democratic society, needed to check against corruption and to hold the governors accountable to
37 the governed.” *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). To this end,

1 FOIA requires a federal agency to disclose records in its possession unless they fall under one
2 of nine enumerated and exclusive exemptions. 5 U.S.C. § 552(a)(3), (b); *see also Dep't of the*
3 *Air Force v. Rose*, 425 U.S. 352, 361 (1976).

4 28. FOIA provides that but for certain exceptions not applicable here:

5 [E]ach agency, upon any request for records which (i) reasonably
6 describes such records and (ii) is made in accordance with
7 published rules stating the time, place, fees (if any), and
procedures to be followed, shall make the records promptly
available to any person.

8 5 U.S.C. § 552(a)(3)(A).

9 29. "Agency records" are materials that the agency either created or obtained that are in
10 the agency's control at the time the FOIA request is made; "control" means that "the materials
11 came into the agency's possession in the legitimate conduct of its official duties." *Or. Natural*
12 *Desert Ass'n v. Gutierrez*, 409 F. Supp. 2d 1237, 1243 (D. Or. 2006) (citing *United States*
13 *Dep't of Justice v. Tax Analysts*, 492 U.S. 136, 145 (1989) for the proposition that "district
14 court opinions and orders filed in civil tax cases and contained in the case files of the
15 Department of Justice Tax Division were agency records under FOIA").

16 30. In responding to a FOIA request, the producing agency "shall provide the record in
17 any form or format requested by the person if the record is readily reproducible by the agency
18 in that form or format." 5 U.S.C. § 552(a)(3)(B).

19 31. Under FOIA, "an agency shall make reasonable efforts to search for the records in
20 electronic form or format, except when such efforts would significantly interfere with the
21 operation of the agency's automated information system" and "the term 'search' means to
22 review, manually or by automated means, agency records for the purpose of locating those
23 records which are responsive to a request." *Id.* § 552(a)(3)(C)-(D).

24 32. Under the statute, the agency is required to respond to a FOIA request within 20
25 business days, excluding Saturdays, Sundays, and legal holidays. 5 U.S.C. 552(a)(6)(A)(i).
26 Failure to respond in a reasonable timeframe is itself a violation of law. *Or. Natural Desert*
27 *Ass'n v. Gutierrez*, 409 F. Supp. 2d at 1248 (holding that "an untimely response is a violation of
28

1 FOIA, regardless of the final outcome of the request”); *Gilmore v. United States Dep’t of*
2 *Energy*, 33 F. Supp. 2d 1184, 1188 (N.D. Cal. 1998) (same).

3 33. “An agency shall not assess search fees . . . under this subparagraph if the agency
4 fails to comply with [the 20-workday time limit], [or] if no unusual or exceptional
5 circumstances . . . apply to the processing of the request.” 5 U.S.C. § 552(a)(4)(A)(viii).

6 34. If a requesting party believes that the agency has improperly withheld all or part of
7 the responsive agency records within its control, or that the agency has failed to respond to all
8 aspects of its request, it must ordinarily file an administrative appeal before it may bring an
9 action in federal court. 5 U.S.C. § 552(a)(4)(B), (6).

10 35. However, if an agency fails to respond within the 20-workday time limits set forth
11 in 5 U.S.C. § 552(a)(6), a person making a FOIA request is deemed to have exhausted its
12 administrative remedies. 5 U.S.C. § 552(a)(6)(c)(i).

13 36. If the agency does not respond to a FOIA appeal within 20 workdays, the FOIA
14 appellant has the right to file an action to enforce its FOIA rights in district court. 5 U.S.C.
15 § 552(a)(6)(A)(ii).

16 37. FOIA places the burden of justifying a FOIA denial on the agency, not the person
17 who requests the records. 5 U.S.C. § 552(a)(4)(B). “The burden is on the agency to
18 demonstrate, not the requester to disprove, that the materials sought are not ‘agency records’ or
19 have not been ‘improperly withheld.’” *United States Dep’t of Justice v. Tax Analysts*, 492 U.S.
20 at 142 n.3.

21 38. FOIA provides: “The court may assess against the United States reasonable attorney
22 fees and other litigation costs reasonably incurred in any case under this section in which the
23 complainant has substantially prevailed.” 5 U.S.C. § 552(a)(4)(E). For purposes of FOIA, a
24 plaintiff has substantially prevailed “if the complainant has obtained relief through either [¶] a
25 judicial order, or an enforceable written agreement or consent decree; or [¶] (II) a voluntary or
26 unilateral change in position by the agency, if the complainant’s claim is not insubstantial.” *Id.*
27 § 552(a)(4)(E)(ii)(I)-(II).

28

1 39. Moreover, FOIA provides that

2 Whenever the court orders the production of any agency records
3 improperly withheld from the complainant and assesses against
4 the United States reasonable attorney fees and other litigation
5 costs, and the court additionally issues a written finding that the
6 circumstances surrounding the withholding raise questions
7 whether agency personnel acted arbitrarily or capriciously with
8 respect to the withholding, *the Special Counsel shall promptly
9 initiate a proceeding to determine whether disciplinary action is
10 warranted against the officer or employee who was primarily
11 responsible for the withholding.* The Special Counsel, after
12 investigation and consideration of the evidence submitted, shall
13 submit his findings and recommendations to the administrative
14 authority of the agency concerned and shall send copies of the
15 findings and recommendations to the officer or employee or his
16 representative. The administrative authority shall take the
17 corrective action that the Special Counsel recommends.

18 5 U.S.C. § 552(a)(4)(F)(i) (emphasis added).

19 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

20 40. On September 18, 2014, Dr. Murphy through his counsel of record at Nossaman,
21 requested that the Forest Service produce the following records:

- 22 ▪ All e-mail, including all attachments, sent by or received by Nancy Gibson
23 pertaining to the Upper Echo Lake Hazardous Fuels Reduction Project.
- 24 ▪ All e-mail, including all attachments, sent by or received by Sarah Muskopf
25 pertaining to the Upper Echo Lake Hazardous Fuels Reduction Project.

26 *See Exhibit 1.*

27 41. That same day, the Forest Service sent an e-mail indicating that it received the FOIA
28 Request. *See Exhibit 2.*

42. On September 24, 2014, Regional Forester Randy Moore of the Forest Service sent
a denial of the fee waiver request made by Dr. Murphy in connection with the FOIA Request.

See Exhibit 3.

43. Dr. Murphy appealed the denial of fee waiver by letter dated and submitted on
October 17, 2014. *See Exhibit 4.* The Forest Service granted Dr. Murphy's Fee Appeal
thereby reversing itself and granting a fee waiver, by letter dated January 6, 2015, signed by
Andria Weeks. *See Exhibit 5.*

1 44. More than seven months after Dr. Murphy filed the FOIA Request, Regional
2 Forester Randy Moore of the Forest Service issued a response. *See Exhibit 6*. The agency
3 found and produced 539 pages of responsive records: 217 pages were withheld entirely and thus
4 produced as blank pages other than the notation they were withheld; 134 pages were withheld in
5 part; and 188 pages were disclosed.

6 45. Two days later, by letter dated and submitted April 9, 2015, Dr. Murphy filed the
7 Formal Appeal. *See Exhibit 7*. The Forest Service acknowledged receipt of the Formal Appeal
8 with an e-mail dated April 10, 2015.

9 46. The Forest Service did not reach a determination on the Formal Appeal within the
10 20 working days provided by FOIA. 5 U.S.C. § 552(a)(6)(A)(ii).

11 47. Indeed, the Forest Service has not responded to the Formal Appeal in the eight
12 months since it was filed.

13 48. Through counsel, Dr. Murphy e-mailed the Forest Service's Government
14 Information Specialist, Sandra Dover, on multiple occasions since filing the Formal Appeal to
15 request a response to the Formal Appeal. Though Ms. Dover responded to those e-mails, she
16 never sought additional time to respond to the appeal beyond the timeframe established by
17 FOIA, or provided a time estimate for completion of the response.

18 49. Having received no response to the Formal Appeal, Plaintiff now brings this action
19 seeking declaratory and injunctive relief, as well as the litigation costs and attorneys' fees
20 incurred in this litigation to compel production of the responsive records.

21 **CLAIM FOR RELIEF**

22 **Failure to Timely Respond to Formal Appeal in Violation of the**
23 **Freedom of Information Act**

24 50. Paragraphs 1 through 49 are realleged and incorporated as if fully set forth herein.

25 51. Plaintiff filed the Formal Appeal on April 9, 2015, but Defendant Forest Service did
26 not provide a determination within the 20 workdays as provided by law. Thus, Plaintiff has
27 exhausted his administrative remedies.

28

1 52. Defendants failed to act on any of Plaintiff's multiple communications seeking a
2 decision on its Formal Appeal.

3 53. Defendants have no valid legal basis for failing to reach a determination on the
4 Formal Appeal within the time provided by law, and have asserted no justification or
5 explanation for their refusal to do so.

6 54. Plaintiff is entitled to injunctive relief under 5 U.S.C. § 552(a)(4)(B) for
7 Defendants' failure to timely respond to its Formal Appeal. *Or. Natural Desert Ass'n v.*
8 *Gutierrez*, 409 F. Supp. 2d at 1248 (holding that "an untimely response is a violation of FOIA,
9 regardless of the final outcome of the request"); *Gilmore v. United States Dep't of Energy*, 33 F.
10 Supp. 2d at 1188 (same).

11 55. An actual controversy exists between the parties within the meaning of 28 U.S.C.
12 § 2201. Thus, this Court may grant declaratory and injunctive relief pursuant to 28 U.S.C.
13 §§ 2201 and 2202.

14 56. Granting Plaintiff's request for relief will serve the public's vital interests in
15 transparent and truthful agency decision-making. It will also lead to better-informed and well-
16 guided Forest Service decision-making with respect to the Project and in the Project area.

17 57. Therefore, Plaintiff is also entitled to their costs of suit and attorneys' fees under
18 both 5 U.S.C. § 552(a)(4)(E) and 28 U.S.C. § 2412.

19 **Prayer for Relief:**

20 WHEREFORE, Plaintiff respectfully request that the Court enter judgment as follows:

21 1) Declare that Defendants have violated the Freedom of Information Act by failing
22 to respond to the Formal Appeal within the time required by law;

23 2) Declare that Defendants have acted arbitrarily and capriciously in refusing to
24 produce all records responsive to the FOIA Request without any reasonable basis in law and in
25 violation of FOIA and their own regulations that implement FOIA;

26 3) Order Defendants to produce all records responsive to the FOIA Request within
27 20 days of issuance of the injunction at a reasonable cost to reproduce the records;

28

1 4) In the alternative, to the extent that any records responsive to the FOIA Request
2 are withheld, in whole or in part, on the basis of privilege or other statutory exemption, the
3 Court should order Defendants to furnish such records to the Court for an in camera inspection
4 for the Court’s determination as to whether all or portions of such records may be exempt from
5 public disclosure pursuant to 5 U.S.C. § 552(a)(4)(B), and, after such in camera inspection, the
6 Court should direct Defendants to furnish to Nossaman a copy of such records, or all portions
7 thereof subject to permissive or mandatory disclosure;

8 5) Prohibit Defendants from charging any search fee to locate the agency records
9 responsive to the FOIA Request that it failed to produce within the time limit imposed by 5
10 U.S.C. § 552(a)(6) (*see* 5 U.S.C. § 552(a)(4)(A)(viii));

11 6) Retain jurisdiction over this matter until such time as Defendants have fully
12 complied with the requirements of FOIA;

13 7) Award Plaintiff his costs of litigation and attorneys’ fees under FOIA, 5 U.S.C.
14 § 552(a)(4)(E);

15 8) Award Plaintiff his costs and reasonable attorneys’ fees and expenses pursuant to
16 the Equal Access to Justice Act, 28 U.S.C. § 2412; and

17 9) Grant such other further relief, including injunctive relief, as the Court may
18 deem just and proper.

19 Dated: January 5, 2016

NOSSAMAN LLP
PAUL S. WEILAND
BENJAMIN Z. RUBIN
ASHLEY J. REMILLARD

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21
22 By: /s/ Paul S. Weiland

23 Attorneys for Plaintiff Dennis D. Murphy
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