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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY *JL* DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RICHARD EDELMAN,
Plaintiff,
v.
UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,
Defendant.

Case No.: 3:15-cv-02750-BEN-BGS

**ORDER GRANTING IN PART
JOINT PROPOSED BRIEFING
SCHEDULE**

Before this Court is the Modified Joint Proposed Briefing Schedule filed by Plaintiff Richard Edelman and Defendant United States Securities and Exchange Commission ("SEC"). (Docket No. 20.) For the reasons set forth below, the Court **GRANTS in part** the parties request for a modified briefing schedule.

BACKGROUND¹

This is an action pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 against the Securities and Exchange Commission ("SEC"). After providing its initial response to Plaintiff's FOIA request, the SEC identified an additional approximately

¹ The following overview of the facts are drawn from the parties' Joint Proposed Briefing Schedule. (Docket No. 19.) The Court is not making findings of fact.

1 44,000 pages that are potentially responsive to the FOIA request, and the timing of how
2 the SEC will process these under FOIA has been the subject of dispute between the
3 parties.

4 The SEC has identified an index to these documents, and the parties agree that
5 production of that index could facilitate either settlement or a narrowing of Plaintiff's
6 FOIA request. The index was provided to the SEC by a third party, Malkin Holdings,
7 Inc. ("Malkin"), subject to a request for confidential treatment.

8 The FOIA includes a statutory exemption for trade secrets and other confidential
9 information. *See* 5 U.S.C. § 552(b)(4) (exemption for "trade secrets and commercial or
10 financial information obtained from a person and privileged or confidential"). The SEC's
11 regulations set forth the agency's procedures for addressing a request for confidentiality.
12 17 C.F.R. § 200.83. The parties agree that the index is subject to Mr. Edelman's FOIA
13 request. Therefore, the SEC's FOIA office requested Malkin to substantiate its request
14 for confidential treatment.

15 On August 16, 2016, the SEC's FOIA office held that the index is not entitled to
16 confidential treatment. Malkin then filed an administrative appeal. On October 31, 2016,
17 the SEC's Office of General Counsel issued a final decision that the index is confidential,
18 and should be withheld pursuant to FOIA's exemption 4, 5 U.S.C. § 552(b)(4).

19 It appears the parties intend to file motions for summary judgment challenging the
20 SEC's Office of General Counsel's determination.² On November 4, 2016, the parties
21 submitted their initial Joint Proposed Briefing Schedule. (Docket No. 19.) On January 6,
22 2017, the parties submitted the instant Modified Joint Proposed briefing schedule,
23 requesting additional time to file their respective briefs.

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26 ² The parties' Joint Proposed Briefing Schedule states their intent "to submit this issue to
27 the District Court for summary judgment." (Docket No. 19.) The Court concludes the
28 parties intend to challenge the determination of the SEC's Office of General Counsel,
rather than independently determine "whether the index is protected." (*Id.*)

1 For good cause shown, the Court **GRANTS in part** the parties' Modified Joint
2 Proposed Briefing schedule. The Court does not agree that such an extensive briefing
3 schedule is warranted. Additionally, the Court advises the parties that, following
4 determination of their motions, this case shall proceed on an expedited schedule.
5 Accordingly, the parties' motions for summary judgment regarding the SEC Office of
6 General Counsel's decision, if any, shall be subject to the following schedule:

7 **January 17, 2017:** Defendant shall make its supplemental production of records to
8 Plaintiff's counsel, and shall do so by email unless technically not feasible.

9 **January 24, 2017:** Defendant shall file its motion for summary judgment as to (1)
10 the 1,442 pages of records that Defendant previously processed under FOIA, and
11 (2) the 97-page index which was provided to the SEC by Malkin Holdings.

12 **February 7, 2017:** Plaintiff shall file his opposition to Defendant's summary
13 judgment motion, and, if desired, file his own motion for summary judgment.

14 **February 14, 2017:** Defendant shall file its reply in support of its motion for
15 summary judgment.

16 **February 21, 2017:** Defendant shall file its opposition to Plaintiff's motion for
17 summary judgment.

18 **February 28, 2017:** Plaintiff shall file his reply brief in support of his motion for
19 summary judgment.

20 The hearing on both of the parties' motions for summary judgment, if any is
21 scheduled for **March 13, 2017 at 10:30 a.m.**

22 **IT IS SO ORDERED.**

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24 DATED: January 2, 2017

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26 HON. ROGER T. BENITEZ
27 United States District Judge
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