

JURISDICTION AND VENUE

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B).

PARTIES

3. Plaintiff David J. Marck, Esq. (“Mr. Marck”), is a resident of the state of New Jersey and an attorney at the law firm of Sills Cummis & Gross P.C.

4. Plaintiff Sills Cummis & Gross P.C. (“Sills Cummis”) is a law firm headquartered in Newark, New Jersey.

5. Plaintiff Anne Cocchiola (“Ms. Cocchiola”) is a client of Sills Cummis, who is a resident of New Jersey. Ms. Cocchiola is the wife of Mark Cocchiola, who currently resides at Federal Correctional Institution, Otisville – Camp, located in Otisville, New York. The FOIA requests detailed below were made on Ms. Cocchiola’s behalf by Mr. Marck as part of Sills Cummis’ representation of Ms. Cocchiola.

6. Mr. Marck, Sills Cummis and Ms. Cocchiola are collectively referred to as “Plaintiffs.”

7. Defendant HHS is a Department of the Executive Branch of the United States Government, and includes the component agency FDA. HHS and FDA, are both agencies within the meaning of 5 U.S.C. § 552(f). HHS and/or FDA possess documents sought by Plaintiffs.

8. Defendant DOJ is a Department of the Executive Branch of the United States Government, and includes the component agency FBI. DOJ and the FBI, are both agencies within the meaning of 5 U.S.C. § 552(f). DOJ and/or FBI possess documents sought by Plaintiffs.

9. Defendants HHS, FDA, DOJ and FBI are collectively referred to as “Defendants.”

PLAINTIFFS’ FBI FOIA REQUESTS

10. Plaintiffs submitted an initial FOIA request to the FBI on April 16, 2014, that sought records regarding 12 individuals and 18 entities, “all of whom are believe[d] to be related to the investigation, indictment, trial and conviction of Mark Cocchiola in the District of New Jersey” Plaintiffs’ April 16 Request to the FBI is attached to this Complaint as Exhibit “1”.

11. The request sought records for the time period January 1, 1990, until January 29, 2007.

12. The individuals regarding whom records were sought are:

- a. Mark Cocchiola
- b. Jack Gaglio
- c. Paul Lauriero
- d. Robert Quattrone
- e. George Vieira
- f. Paul Zambas
- g. Arthur Christensen
- h. Lawrence Fransen
- i. John Van Sickell
- j. Steven Venechanos

- k. Chris Lotito
- l. Chester DeStefano

13. The entities regarding whom records were sought are:

- a. Suprema Specialties
- b. Whitehall Specialties
- c. A&J Foods, Inc.
- d. Hidden Valley Ranch
- e. Noble JG Cheese
- f. California Goldfield
- g. West Coast Commodities
- h. California Milk Market
- i. Wall Street Cheese
- j. LNN Enterprises
- k. A&J Cheese Company
- l. Lotito Foods
- m. Mrs. Mazzula's Foods
- n. DeStefano Foods
- o. Roma Foods
- p. Piancone Food Service, Inc.
- q. Capri Foods
- r. Marlboro Foods

14. On April 17, 2014, Plaintiffs filed a supplemental FOIA request with the FBI that added a single individual—Steven Fawcett—to the list of persons that were included in the April 16, 2014 request. Plaintiffs' April 17 Supplemental Request is attached to this Complaint as Exhibit "2".

15. On April 23, 2014, the FBI responded to Plaintiffs' FOIA request and stated that no records regarding the individuals named in the request would be produced absent express authorization and consent, proof of death or a

demonstration that the public interest outweighed any person privacy interests. The FBI's April 23 Letter is attached to this Complaint as Exhibit "3".

16. On May 7, 2014, Plaintiffs responded to the FBI's April 23 Letter and stated that they: (1) continued to expect the FBI to produce records regarding the entities listed in their request because no privacy interests apply to such organizations; and (2) sought an extension of time to file an appeal of the FBI's decision to withhold records regarding the individuals on privacy grounds until after Plaintiffs received records regarding the entities. Plaintiffs' May 7 Letter is attached to this Complaint as Exhibit "4".

17. Plaintiffs did not receive a response to either position raised in their May 7 Letter.

18. Plaintiffs received letters from the FBI dated as follows regarding the following entities, denying that the FBI had any documents responsive to Plaintiffs' FOIA request (these responses are attached hereto as Exhibit "5"):

- a. May 12, 2014 – Whitehall Specialties
- b. May 14, 2014 – A&J Foods, Inc.
- c. June 16, 2014 – Hidden Valley Ranch
- d. May 14, 2014 – Noble JG Cheese
- e. May 12, 2014 – California Goldfield
- f. May 13, 2014 – West Coast Commodities
- g. May 12, 2014 – California Milk Market
- h. May 12, 2014 – Wall Street Cheese
- i. May 12, 2014 – LNN Enterprises
- j. May 12, 2014 – Lotito Foods
- k. May 11, 2014 - Mrs. Mazzula's Foods
- l. May 12, 2014 – A&J Cheese Company

19. On June 19, 2014, Plaintiffs received a response from the FBI regarding their request concerning Suprema Specialties that stated: “The material you requested is located in an investigative file which is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A).” After citing directly to 5 U.S.C. § 552(b)(7)(A), the response further stated: “The records responsive to your request are law enforcement records; there is a pending or prospective law enforcement proceeding relevant to these responsive records, and release of the information in these responsive records could reasonably be expected to interfere with enforcement proceedings.” The FBI’s response regarding Suprema Specialties is attached to this Complaint as Exhibit “6”.

20. The FBI failed to respond to Plaintiffs’ requests regarding:

- a. DeStefano Foods
- b. Roma Foods
- c. Piancone Food Service, Inc.
- d. Capri Foods
- e. Marlboro Foods

21. Plaintiffs filed timely appeals of each of the FBI’s refusals to produce records listed in paragraphs 18-19, *supra*. Those appeals are attached to this Complaint as Exhibit “7”.

22. The FBI denied Plaintiffs’ appeals on the following dates regarding the following entities (attached to this Complaint as Exhibit 8):

- a. September 4, 2014 – Suprema Specialties

- b. September 17, 2014 – Whitehall Specialties
- c. August 26, 2014 – A&J Foods, Inc.
- d. August 28, 2014 – Hidden Valley Ranch
- e. September 4, 2014 – Noble JG Cheese
- f. September 17, 2014 – California Goldfield
- g. September 2, 2014 – West Coast Commodities
- h. August 26, 2014 – California Milk Market
- i. August 26, 2014 – Wall Street Cheese
- j. September 17, 2014 – LNN Enterprises
- k. September 23, 2014 – A&J Cheese Company
- l. September 8, 2014 – Lotito Foods
- m. August 14, 2014 – Mrs. Mazzula’s Foods

23. Each of these appeal denials indicated that Plaintiffs were free to challenge the FBI’s ruling via a “lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).” *See* Ex. 8.

24. Plaintiffs have received no records or documents from the FBI regarding any individual or entity listed in their FOIA request.

PLAINTIFFS’ FDA FOIA REQUESTS

25. Plaintiffs submitted an initial FOIA request to the FDA on April 16, 2014, that sought records regarding 12 individuals and 18 entities, “all of whom are believe[d] to be related to the investigation, indictment, trial and conviction of Mark Cocchiola in the District of New Jersey” Plaintiffs’ April 16 Request to the FDA is attached to this Complaint as Exhibit “9”.

26. The request sought records for the time period January 1, 1990, until January 29, 2007.

27. The individuals regarding whom records were sought are:

- a. Mark Cocchiola
- b. Jack Gaglio
- c. Paul Lauriero
- d. Robert Quattrone
- e. George Vieira
- f. Paul Zambas
- g. Arthur Christensen
- h. Lawrence Fransen
- i. John Van Sickell
- j. Steven Venechanos
- k. Chris Lotito
- l. Chester DeStefano

28. The entities regarding whom records were sought are:

- a. Suprema Specialties
- b. Whitehall Specialties
- c. A&J Foods, Inc.
- d. Hidden Valley Ranch
- e. Noble JG Cheese
- f. California Goldfield
- g. West Coast Commodities
- h. California Milk Market
- i. Wall Street Cheese
- j. LNN Enterprises
- k. A&J Cheese Company
- l. Lotito Foods
- m. Mrs. Mazzula's Foods
- n. DeStefano Foods
- o. Roma Foods
- p. Piancone Food Service, Inc.
- q. Capri Foods
- r. Marlboro Foods

29. On April 17, 2014, Plaintiffs filed a supplemental FOIA request with the FDA that added a single individual—Steven Fawcett—to the list of persons

and entities that were included in the April 16, 2014 request. Plaintiffs' April 17 Supplemental Request is attached to this Complaint as Exhibit "10".

30. Under cover of a letter dated October 3, 2014, the FDA produced 481 pages of documents in response to Plaintiffs' request. Those documents included substantial redactions asserting multiple FOIA exemptions. 113 pages of documents were withheld in full under exemptions "(b)(4), (b)(6), (b)(7)(C), and (b)(7)(E)." The cover letter to the FDA's October 3 production is attached to this Complaint as Exhibit "11".

31. The FDA withheld certain other "records that originated with another government component." *See id.*

32. The records produced by the FDA on October 3, 2014, only concerned Suprema Specialties. No records were produced regarding any of the other entities or individuals that records were requested for.

33. On October 16, 2014, Plaintiffs filed a letter requesting additional information from the FDA "regarding the 113 pages which were withheld pursuant to exemptions (b)(4), (b)(6), (b)(7)(C) and (b)(7)(E)." That letter is attached to this Complaint as Exhibit "12".

34. By way of a letter dated November 3, 2014 (attached hereto as Exhibit "13"), the FDA stated the following:

This is a follow-up letter to clarify the search pertaining to your Freedom of Information Act request. A complete search of our

database was conducted on all individuals and entities listed in your FOIA request.

The releasable records located during the search were provided, while other records were referred to their originating agency for review and direct response to you, if applicable.

Certain material has been deleted from the records furnished to you because a preliminary review of the records indicated that the deleted information is not required to be publicly disclosed and that disclosure is not appropriate. FDA has taken this approach to facilitate the process of responding to you.

35. The FDA's November 3 letter further stated that Plaintiffs had 30 days to inform the agency that they would like the agency to "reconsider" redactions or deletions contained in the records produced by the FDA.

36. By way of a letter dated November 4, 2014, Plaintiffs formally appealed the FDA's determination that only 594 pages (the 481 pages produced and the 113 pages withheld) were responsive to Plaintiff's original request. That appeal is attached to this Complaint as Exhibit "14", and states that Plaintiffs were primarily appealing two aspects of the FDA response/production: (1) "the [FDA's] determination that only 594 pages of documents are responsive to these requests;" and (2) "the [FDA's] determination that '7 records contain[] Law Enforcement techniques relating to Law Enforcement databases that were searched during this investigation and are not releasable under exemptions (b)7(E).'"

37. HHS acknowledged receipt of Plaintiffs' appeal by way of a letter dated November 12, 2014, which is attached to this Complaint as Exhibit "15".

38. Mr. Marck had a series of telephone conferences and email exchanges (attached as Exhibit “16”) with Katherine Uhl of the FDA from November 12-19, 2014, regarding the scope of Plaintiffs’ appeals. As a result of those conversations, the FDA sent out additional requests to field offices in New Jersey, Minneapolis and Los Angeles in order to gather inspection records of three of the companies listed in Plaintiffs’ request: Suprema Specialties, Whitehall Specialties and A&J Cheese/Foods, Inc.

39. The FDA Los Angeles Office provided Plaintiffs with a response regarding A&J Cheese, Inc., and A&J Foods, Inc., on November 13, 2014, and stated that they “found no records responsive to your request.” This response is attached as Exhibit “17”.

40. Under cover of a letter dated November 25, 2014, HHS produced 49 pages of inspection records regarding Suprema Specialties. That cover letter is attached as Exhibit “18”. The Suprema Specialties inspection records cover the years 1993-2002.

41. These records, similar to the records produced by the FDA on November 4, 2014, are full of redactions. Some of these redactions border on the absurd and seemingly serve no purpose. For example, on page 2 of the August 23-24, 2000 Inspection (attached as Exhibit “19”), the amount of square feet of Suprema Specialties’ warehouse is redacted. Other instances include redactions of

the type of cheese grating machines used by Suprema Specialties. The basis for these redactions is not noted.

42. Under cover of a letter dated December 10, 2014, HHS produced 32 pages of inspection records regarding Whitehall Specialties. That cover letter is attached as Exhibit “20”. The Whitehall Specialties inspection records only cover the years 2003-2007, even though the records indicate that Whitehall “is a Wisconsin corporation established in 1994.” *See* Exhibit “21”, Page 1 of May 28, 2003 Inspection.

43. Mr. Marck was informed via a telephone call with Katherine Uhl on December 15, 2014 that Plaintiffs’ appeal of the FDA’s production and redactions (which was sent via a letter dated November 4, 2014, *see* Exhibit 15), was “finalized” effective November 20, 2014, following the series of correspondence referenced in Exhibit 16.

44. Pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), HHS/FDA are required to “make a determination with respect to any appeal within twenty days . . . after the receipt of such appeal.”

45. The deadline for HHS/FDA to make a determination regarding Plaintiffs’ appeal lapsed, at the latest, on December 10, 2014, which is 20 days after Plaintiffs’ appeal was “finalized” on November 20, 2014.

46. On December 17, 2014, Mr. Marck was informed via a telephone call with Bill McCabe, a FOIA Analyst with the HHS Division of FOIA Services, that it would take “weeks” or possibly “months” for a determination to be made regarding Plaintiffs’ appeal.

47. Because HHS/FDA have failed to comply with the time limits set forth in 5 U.S.C. § 552(a)(6)(A)(ii), Plaintiffs are deemed to have exhausted any and all administrative remedies with respect to its FOIA request, pursuant to 5 U.S.C. § 552(a)(6)(C).

PLAINTIFFS’ GROUNDS FOR BELIEVING THE FBI IS WRONGFULLY WITHHOLDING RECORDS

48. The basis for the FBI’s response regarding Suprema Specialties is that “there is a pending or prospective law enforcement proceeding relevant responsive to these records, and release of the information in these responsive records could reasonably be expected to interfere with enforcement proceedings.” *See* Ex. 6.

49. Upon information and belief, the FBI’s position is frivolous and asserted in bad faith because all prosecutions of persons involved with Suprema Specialties were concluded in 2008 and Suprema Specialties was wound up by a trustee shortly after it was forced into Chapter 7 bankruptcy in 2002.

PLAINTIFFS’ GROUNDS FOR BELIEVING HHS/FDA ARE WRONGFULLY WITHHOLDING RECORDS

50. According to Exhibit 13, HHS/FDA confirmed that “[a] complete search of our database was conducted on all individuals and entities listed in your FOIA request.”

51. As a result of this “complete search,” HHS/FDA has only produced *investigative* records regarding Suprema Specialties (HHS/FDA has also produced *inspection* records for Suprema Specialties and Whitehall Specialties).

52. Plaintiffs believe that HHS/FDA are withholding further *investigative* records, at a minimum, regarding Whitehall, because a previous FOIA request made during 2013 at the behest of Ms. Cocchiola indicated that at least 137 pages of investigative records regarding Whitehall are in the possession of FDA. A copy of the FDA’s cover letter regarding that production is attached hereto as Exhibit 22.

CAUSES OF ACTION

COUNT 1

(Violation of FOIA, 5 U.S.C. § 552, against DOJ/FBI)

53. Plaintiffs adopt and reallege the allegations contained in all prior paragraphs of the Complaint as if set forth at length herein.

54. DOJ/FBI are unlawfully withholding records requested by Plaintiffs pursuant to 5 U.S.C. § 552.

55. Plaintiffs are being irreparably harmed by reason of DOJ/FBI’s unlawful withholding of records, and Plaintiffs will continue to be irreparably

harméd unless DOJ/FBI are compelled to conform their conduct to the requirements of the law.

WHEREFORE, Plaintiffs respectfully request that the Court order:

- a. DOJ/FBI to conduct a search for any and all records responsive to Plaintiffs' FOIA requests and demonstrate that they employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiffs' request;
- b. DOJ/FBI to produce, by a date certain, any and all non-exempt records responsive to Plaintiffs' FOIA request and a *Vaughn* index of any responsive records withheld under any claim of exemption;
- c. DOJ/FBI to produce, in unredacted form, any records withheld under any 5 U.S.C. § 552(b)(7) exemptions;
- d. Enjoin DOJ/FBI from continuing to withhold any and all non-exempt records responsive to Plaintiffs' FOIA request;
- e. Grant Plaintiffs an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. 552(a)(4)(E); and
- f. Grant Plaintiffs such other relief as the Court deems just and proper.

COUNT 2

(Violation of FOIA, 5 U.S.C. § 552, against HHS/FDA)

56. Plaintiffs adopt and reallege the allegations contained in all prior paragraphs of the Complaint as if set forth at length herein.

57. HHS/FDA are unlawfully withholding and redacting records requested by Plaintiffs pursuant to 5 U.S.C. § 552.

58. Plaintiffs are being irreparably harmed by reason of HHS/FDA's unlawful withholding and redaction of records, and Plaintiffs will continue to be irreparably harmed unless HHS/FDA are compelled to conform their conduct to the requirements of the law.

WHEREFORE, Plaintiffs respectfully request that the Court order:

- a. HHS/FDA to conduct a search for any and all records responsive to Plaintiffs' FOIA requests and demonstrate that they employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiffs' request;
- b. HHS/FDA to produce, by a date certain, any and all non-exempt records responsive to Plaintiffs' FOIA request and a *Vaughn* index of any responsive records withheld under any claim of exemption;
- c. HHS/FDA to produce, in unredacted form, any records withheld under any 5 U.S.C. § 552(b)(7) exemptions;
- d. Enjoin HHS/FDA from continuing to withhold any and all non-exempt records responsive to Plaintiffs' FOIA request;
- e. Grant Plaintiffs an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. 552(a)(4)(E); and
- f. Grant Plaintiffs such other relief as the Court deems just and proper.

Respectfully submitted,

/s/ Jack Wenik

Jack Wenik (D.C. Bar No. 406362)

Sills Cummis & Gross P.C.

One Riverfront Plaza

Newark, NJ 07102

(973) 643-5268

Counsel for Plaintiffs