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5 Attorney for Plaintiff
San Diego Comprehensive Pain
6 Management Center, Inc.

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8 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
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10 SAN DIEGO COMPREHENSIVE) Case No. **'24CV0531 DMS BGS**
11 PAIN MANAMAGEMENT CENTER,) **COMPLAINT [FOIA]**
INC., a California corporation,)
12 *Plaintiff,*)
13 v.)
14 UNITED STATES DEPARTMENT)
15 OF HEALTH & HUMAN)
SERVICES,)
16 *Defendant.*)
17)

18 Plaintiff San Diego Comprehensive Pain Management Center, Inc., brings this
19 action against Defendant United States Department of Health & Human Services
20 (“HHS”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552
21 (“FOIA”). As grounds therefor, Plaintiff alleges as follows:

22 **JURISDICTION & VENUE**

- 23 1. The Court has jurisdiction over this action pursuant to 5 U.S.C. §
24 552(a)(4)(B) and 28 U.S.C. § 1331.
25 2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e).

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PARTIES

3. Plaintiff San Diego Comprehensive Pain Management Center, Inc. is a California professional medical corporation, a Medicare provider, and does business within San Diego County, California and this District.

4. Defendant United States Department of Health & Human Services (“HHS”) is an agency of the United States Government headquartered at 200 Independence Avenue, SW, Washington, D.C. The Centers for Medicare and Medicaid Services (“CMS”) is a constituent agency of HHS. HHS has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On November 7, 2023, Plaintiff, through the undersigned counsel, sent a FOIA request to HHS via the Web Portal, seeking access to documentation concerning Plaintiff’s Medicare suspension including any written request by the Department of Justice to CMS that the Plaintiff’s Medicare suspension be continued based on an ongoing investigation and anticipated filing of a criminal or civil action.

6. By mail dated November 21, 2023, HHS acknowledged receipt of the request and assigned Plaintiff’s FOIA request the control number 111320237074. Exh. “A” (HHS Corresp., dated Nov. 21, 2023). As of March 20, 2024, the listed “Projected Date of response” and the “Date of Response” each remained listed as “Undetermined.” Exh. “B” (FOIA Portal Report, accessed Mar. 20, 2024).

7. As of the date of this Complaint, Defendant HHS has failed to: (i) determine whether to comply with the request; (ii) notify Plaintiff of any such determination or the reasons therefor; (iii) advise the Plaintiff of the right to appeal any adverse determination; or (iv) produce the requested records or otherwise demonstrate that the requested records are exempt from production.

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COUNT I

(Violation of FOIA, 5 U.S.C. § 552)

8. Plaintiff realleges paragraphs 1 through 7 as if fully stated herein.

9. Defendant is in violation of FOIA.

10. Plaintiff is being irreparably harmed by reason of Defendant's violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply with the law.

11. Plaintiff has no adequate remedy at law.

12. To trigger FOIA's administrative exhaustion requirement, Defendant HHS was required to make a final determination on Plaintiff's requests by December 8, 2023. Because Defendant failed to make a final determination on Plaintiff's requests within the time limits set by FOIA, Plaintiff is deemed to have exhausted its administrative appeal remedies.

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PRAYER

Wherefore, Plaintiff respectfully request that this Court:

(1) order Defendant to conduct searches for any and all records responsive to Plaintiff’s FOIA requests and demonstrate that it has employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff’s FOIA requests;

(2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff’s FOIA requests and *Vaughn* indices of any responsive records withheld under claim of exemption;

(3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff’s FOIA requests;

(4) grant Plaintiff 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

(5) grant Plaintiff such other relief as this Court deems just and proper.

Respectfully submitted,
LAW OFFICES OF MATTHEW D. RIFAT, APC



Dated: March 20, 2024

BY:

Matthew D. Rifat
Attorney for Plaintiff

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EXHIBIT “A”

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop C5-11-06
Baltimore, Maryland 21244-1850



Office of Strategic Operations and Regulatory Affairs / Freedom of Information Group

Request has been assigned: Control Number **111320237074** and PIN **JSQN**

RE: San Diego Comprehensive Pain Management Center

11/21/2023

Matthew Rifat
Law Offices of Matthews D. Rifat, APC
niatthew.rifat@lomdr.com

Dear Mr. Rifat,

This letter is to acknowledge receipt of your Freedom of Information Act (FOIA) (5 U.S.C. § 552) request and to provide you with a tracking number. The Centers for Medicare & Medicaid Services (CMS) received your FOIA request on November 7, 2023.

To check the status of your request as it is being processed, please refer to the CMS FOIA website at <https://foia-request.cms.gov/check-status> and enter the control number and PIN (listed at the top of the page) that has been assigned to your request.

Once we complete our initial analysis of your request, we will initiate a search for responsive records. If, however, we determine that your request needs clarification, we will contact you. Additionally, if our searching units advise us that you have requested a voluminous number of records that requires extensive search, production, and review, we will contact you to discuss options for narrowing the scope to process your request as quickly and efficiently as possible.

Please note that CMS receives a very high volume of FOIA requests. The following unusual circumstances, as defined by 5 USC § 552(a)(6), may affect our ability to fulfill a FOIA request within 20 business days. These include circumstances such as (1) the request requires us to search for and collect records from multiple components and/or field offices; (2) the request involves a voluminous number of records that must be located, compiled, transferred to this office, and reviewed. In addition, given our high volume of requests, and in accordance with federal regulations, our processing policy includes factors such as the date and complexity of the request.

The FOIA assumes that requesters are willing to pay fees up to \$25.00. If estimated fees to process your request exceed \$25.00, we will notify you and may suspend processing until we receive written confirmation that you are willing to pay the estimated fees. Additionally, if the estimated fees exceed \$250.00, the law authorizes us to collect the fees *in advance* of processing the request.

If your request sought a fee waiver or expedited processing, we will send additional communication to provide you with our determination decision(s).

If you are not satisfied with any aspect of the processing and handling of this request, please contact LaNier Turner-Frazier at (410) 786-5353.

You also have the right to seek dispute resolution services from:

Joseph Tripline
CMS FOIA Public Liaison
Centers for Medicare & Medicaid Services
7500 Security Blvd., MS C5-11-06
Baltimore, Maryland 21244-1850
Telephone: (410) 786-5353 fax (443)-380-8871

and/or:

Office of Government Information Services
National Archives and Administration
8601 Adelphi Road – OGIS
College Park, MD 20740-6001

Telephone: 202-741-5770
Toll-Free: 1-877-684-6448
E-mail: ogis@nara.gov
Fax: 202-741-5769

Respectfully,

A handwritten signature in black ink, appearing to read "Emmett Nicholson". The signature is fluid and cursive, with a large initial "E" and "N".

Emmett Nicholson.
Director, Division of FOIA Analysis – C
Freedom of Information Group

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EXHIBIT “B”



Check the Status of Your FOIA Request

Control Number: 111320237074

Date Received: 11/6/2023

Subject: San Diego Comprehensive Pain Management Center

Status of the Request: FOIA request referred to program office(s) for responsive records search and fee estimate

Projected Date of Response: Undetermined

Date of Response: Undetermined

i *What does the status of my request mean?*

FOIA Request Received by Centers for Medicare & Medicaid Services

CMS's Central Office Freedom of Information Group or Office of Program Operations and Local Engagement has received your FOIA or Medicare beneficiary claims (Privacy Act) request for agency records; the request has been entered into CMS's FOIA & Privacy Act request tracking and processing management system.

(Note: CMS's Office of Program Operations and Local Engagement plays an essential role in processing Medicare beneficiary claims requests.)

FOIA Request Referred to Program Office(s) for Responsive Records Search and Fee Estimate

Processing of your FOIA or Privacy Act request is underway. Your request has been shared with the appropriate division (program office) within CMS to initiate the records search. If you submitted a request for Medicare beneficiary records, your request will be sent to one of CMS's Medicare Administrative Contractors (MACs) for a records search. In some instances, your request may need to be sent to multiple program offices and/or MACs, which can result in additional time needed to complete the full search. Depending on the type of requester and volume of the request, CMS may need to generate a fee estimate prior to proceeding with fully processing your request.

See <https://www.archives.gov/files/ogis/assets/fees-at-a-glance-chart.pdf>.

Fee Estimate and Direct Reply to Requester

Your request is in the same status as noted above; however, one of CMS's program offices (most often the Office of Program Operations and Local Engagement) or one of CMS's Medicare Administrative Contractors is authorized to release records directly to you without the need for CMS's Freedom of Information Group's review and FOIA disclosure analysis of records prior to release.

Request Processing Suspended - Pending Information From Requester

Processing your FOIA request may be suspended for two reasons:

- Clarification may be needed for your request in order for CMS to complete an efficient and targeted search for responsive records.
- An advance payment fee may have been assessed in order to continue processing your current request.

Interim Disclosure Determination Issued - Final Determination Pending

Part of your FOIA request has been processed; a portion of CMS agency records has been reviewed by a FOIA analyst and either a partial or full interim records release has been determined and issued, or a full denial of records reviewed thus far has been determined per FOIA statute exemptions. The remainder of your request is continuing to be processed.

Responsive Records Returned to the FOIA Office for Review and Disclosure Analysis

The CMS program office(s) assigned to your request has completed their search for responsive records and returned them to CMS's Freedom of Information Group for review and FOIA disclosure analysis.

(Note: if your request was assigned to multiple program offices for search, the request may still be pending records production or response from other program offices.)

Disclosure Analysis of Responsive Records in Progress

Agency records produced by the program office(s) have been received by CMS's Freedom of Information Group, the case has been assigned to a FOIA analyst, and disclosure analysis of responsive records has begun.

Disclosure Decision Pending

A FOIA analyst has completed the disclosure analysis of agency records and

made a disclosure determination to issue either a partial or full release of records, or a full denial based on FOIA statute exemptions. Release or response is pending final review and approval from CMS's Freedom of Information Group leadership.

CMS has received your FOIA appeal request in response to a perceived adverse determination or failure to produce agency records; the appeal is under initial review or currently in appeal proceedings.

Appeal Case Closed

An appeal determination has been made and a final response has been sent; additional records may have been released as well. Both the original FOIA request and subsequent appeal are now closed.

Disclosure Decision Issued - Case Closed

Your FOIA request has been fully processed and a disclosure decision issued; either a partial or full set of agency records has been released or a full denial of records response has been issued per FOIA statute exemptions. Your FOIA request is now completed and closed.

Case Closed

Your FOIA request has been reviewed and closed administratively for one of several reasons:

- CMS does not possess any records responsive to your request.
- Your request was withdrawn or a Continued Interest Letter was sent to you and no response was received.
- Requested records were not reasonably described and a clarification response was not received by CMS.
- All records in CMS's possession were referred to another agency for their review and release determination.
- Your request was not an actual FOIA request as defined by the FOIA statute, or it was imperfect and CMS did not receive a response from you to perfect the request in order to be submitted under FOIA.
- The records you requested are not CMS agency records.
- CMS's FOIA tracking and processing system received your request more than once and other request(s) were closed as a duplicate(s).
- If you submitted multiple FOIA requests, they may have been consolidated (with your permission) into fewer requests or a single request; therefore, other requests entered into CMS's FOIA tracking and processing system were closed.
- CMS's Freedom of Information Group was unable to contact you with questions and answers necessary to fully process your request as originally submitted.



Centers for Medicare & Medicaid Services

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