

**U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:21-cv-02784-TSC**

FROST BROWN TODD LLC v. UNITED STATES
DEPARTMENT OF HEALTH AND HUMAN SERVICES et al
Assigned to: Judge Tanya S. Chutkan
Cause: 05:552 Freedom of Information Act

Date Filed: 10/19/2021
Jury Demand: None
Nature of Suit: 895 Freedom of
Information Act
Jurisdiction: U.S. Government Defendant

Plaintiff

FROST BROWN TODD LLC

represented by **Joseph M. Ward**
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V.

Defendant

**UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES**

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Defendant

**CENTERS FOR MEDICARE AND
MEDICAID SERVICES (CMS)**

represented by **B. Kathryn Debrason**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sam Escher
(See above for address)
TERMINATED: 05/16/2023
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Anna Davis Walker
(See above for address)
TERMINATED: 10/31/2022

Joseph F. Carilli , Jr.
(See above for address)
ATTORNEY TO BE NOTICED

Sian Jones
(See above for address)
TERMINATED: 10/31/2022

Date Filed	#	Docket Text
10/19/2021	<u>1</u>	COMPLAINT against UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES (Filing fee \$ 402 receipt number ADCDC-8811103) filed by FROST BROWN TODD LLC. (Attachments: # <u>1</u> Exhibit A - FOIA Request One -

		2018-05-21 LTR to CMS re FOIA, # <u>2</u> Exhibit B – FOIA Request Two – 2018-05-21 LTR to CMS re Attestations and Compliance, # <u>3</u> Exhibit C – FOIA Request Three – 2018-05-21 LTR to CMS re Data Accuracy, # <u>4</u> Exhibit D – FOIA Request Four – 2018-05-21 LTR to CMS re Medicare Managed Care Manual, # <u>5</u> Exhibit E – FOIA Request Five – 2018-05-21 LTR to CMS re Overpayment Rule, # <u>6</u> Exhibit F – FOIA Request Six – 2018-05-21 LTR to CMS re Retrospective Chart Reviews, # <u>7</u> Exhibit G – 2018-05-23 CMA acknowledgement, # <u>8</u> Exhibit H – 2018-05-24 CMS acknowledgement, # <u>9</u> Exhibit I – 2018-06-22 Letter from CMS requiring advanced payment, # <u>10</u> Exhibit J – 2018-07-20 Response to CMS Fee Demand, # <u>11</u> Exhibit K – 2018-07-25 CMS Response, # <u>12</u> Exhibit L – 2018-08-09 Agreement to tender fee, # <u>13</u> Exhibit M – 2018-08-14 LTR 2 CMS transmitting payment, # <u>14</u> Exhibit N – 2018-09-18 RE FOIA Advance Paym, # <u>15</u> Exhibit O – 2018-09-22 RE FOIA Advance payment, # <u>16</u> Exhibit P – 2019-03-19 LTR from CMS re FOIA Request Control No. 052220187048 Interim 1 Response, # <u>17</u> Exhibit Q – 2019-04-25 LTR to CMS re Responses for Control Number 052220187048, # <u>18</u> Exhibit R – 2019-07-12 LTR to CMS re ongoing deficiencies, # <u>19</u> Exhibit S – 2019-07-18 LTR from CMS re FOIA Requests Interim 2 Response, # <u>20</u> Exhibit T – 2019-07-31 LTR to CMS re Second Interim Response Deficiencies, # <u>21</u> Exhibit U – 2019-08-22 LTR from CMS re FOIA Requests – Interim 3 Response, # <u>22</u> Exhibit V – 2019-09-30 Ltr to H. Gilmore at CMS re Third Interim Response, # <u>23</u> Exhibit W – 2019-10-15 LTR from CMS re FOIA Requests – Interim 4 Response, # <u>24</u> Exhibit X – 2020-01-23 LTR from CMS re FOIA Requests – Interim 5 Response, # <u>25</u> Exhibit Y – 2020-03-26 LTR from CMS re FOIA request – Interim 6 Response, # <u>26</u> Exhibit Z – 2021-02-17 Continued Interest Letter Emailed, # <u>27</u> Exhibit AA 2021-02-17 Signed Continued Letter of Interest FOIA Request, # <u>28</u> Exhibit BB – 2021-09-02 LTR to CMS re Continued Response Deficiencies, # <u>29</u> Exhibit CC – 2021-09-16 LTR from CMS – Interim 7 Response, # <u>30</u> Civil Cover Sheet, # <u>31</u> Summons)(Ward, Joseph) (Entered: 10/19/2021)
10/19/2021	<u>2</u>	NOTICE of Appearance by Joseph M. Ward on behalf of FROST BROWN TODD LLC (Ward, Joseph) (Entered: 10/19/2021)
10/20/2021		NOTICE OF ERROR re <u>1</u> Complaint; emailed to jward@fbtlaw.com, cc'd 2 associated attorneys -- The PDF file you docketed contained errors: 1. Noncompliance with LCvR 5.1(c). Please file an errata correcting the initiating pleading to include the name & full residence address of each party using the event Errata., 2. Missing summonses–government. When naming a government agent or agency as a defendant, you must supply a summons for each defendant & two additional summonses for the U.S. Attorney & U.S. Attorney General. Please submit using the event Request for Summons to Issue., 3. COMPLIANCE DEADLINE is by close of business today. This case will not proceed any further until all errors are satisfied. (znmng,) (Entered: 10/20/2021)
10/20/2021	<u>3</u>	NOTICE of Appearance by Yugo Nagashima on behalf of FROST BROWN TODD LLC (Nagashima, Yugo) (Entered: 10/20/2021)
10/20/2021	<u>4</u>	ERRATA by FROST BROWN TODD LLC. (Ward, Joseph) (Entered: 10/20/2021)
10/20/2021	<u>5</u>	REQUEST FOR SUMMONS TO ISSUE filed by FROST BROWN TODD LLC.(Ward, Joseph) (Entered: 10/20/2021)
10/20/2021	<u>6</u>	LCvR 26.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by FROST BROWN TODD LLC (Ward, Joseph) (Entered: 10/20/2021)
10/25/2021		Case Assigned to Judge Tanya S. Chutkan. (znmng) (Entered: 10/25/2021)
10/25/2021	<u>7</u>	SUMMONS (3) Issued Electronically as to CENTERS FOR MEDICARE AND MEDICAID SERVICES, U.S. Attorney and U.S. Attorney General (Attachment: # <u>1</u> Notice and Consent)(znmng) (Entered: 10/25/2021)
10/26/2021		RESOLVED.....NOTICE of Provisional/Government Not Certified Status re <u>2</u> NOTICE of Appearance by Joseph M. Ward on behalf of FROST BROWN TODD LLC (Ward, Joseph). Your attorney renewal/government certification has not been received. As a result, your membership with the U.S. District & Bankruptcy Courts for the District of Columbia is not in good standing, and you are not permitted to file. Pursuant to Local

		<p>Civil Rule 83.9, you must immediately correct your membership status by following the appropriate instructions on this page of our website: https://www.dcd.uscourts.gov/attorney-admissions-and-renewal-information.</p> <p>Please be advised that the presiding judge in this case has been notified that you are currently not in good standing to file in this court. Renewal Due by 11/2/2021. (znmw) Modified on 10/28/2021 (znmw). (Entered: 10/26/2021)</p>
11/29/2021	<u>9</u>	NOTICE of Appearance by Anna Davis Walker on behalf of CENTERS FOR MEDICARE AND MEDICAID SERVICES, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES (Walker, Anna) (Entered: 11/29/2021)
11/29/2021	<u>10</u>	First MOTION for Extension of Time to File Answer <i>or Otherwise Respond (Partially Opposed)</i> by CENTERS FOR MEDICARE AND MEDICAID SERVICES, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Attachments: # <u>1</u> Text of Proposed Order)(Walker, Anna) (Entered: 11/29/2021)
11/30/2021		MINUTE ORDER: Granting <u>10</u> Motion for Extension of Time to Answer. Defendants shall answer or otherwise respond to the Complaint by 1/21/22. Signed by Judge Tanya S. Chutkan on 11/30/21. (DJS) (Entered: 11/30/2021)
11/30/2021		Set/Reset Deadline: Defendants shall answer or otherwise respond to the Complaint by 1/21/2022. (jth) (Entered: 11/30/2021)
01/21/2022	<u>11</u>	Partial MOTION to Dismiss by CENTERS FOR MEDICARE AND MEDICAID SERVICES, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Text of Proposed Order)(Walker, Anna) (Entered: 01/21/2022)
02/01/2022	<u>12</u>	Unopposed MOTION for Extension of Time to File Response/Reply as to <u>11</u> Partial MOTION to Dismiss by FROST BROWN TODD LLC. (Attachments: # <u>1</u> Text of Proposed Order)(Nagashima, Yugo) (Entered: 02/01/2022)
02/07/2022		MINUTE ORDER: Granting Plaintiff's <u>12</u> Motion for Extension of Time to Respond to Defendants' Partial Motion to Dismiss. Plaintiff's response due 2/18/22. Signed by Judge Tanya S. Chutkan on 2/7/22. (DJS) (Entered: 02/07/2022)
02/11/2022		Set/Reset Deadlines: Response due by 2/18/2022. (tb) (Entered: 02/11/2022)
02/18/2022	<u>13</u>	RESPONSE re <u>11</u> Partial MOTION to Dismiss filed by FROST BROWN TODD LLC. (Nagashima, Yugo) (Entered: 02/18/2022)
02/22/2022	<u>14</u>	MOTION for Extension of Time to File Response/Reply as to <u>11</u> Partial MOTION to Dismiss by CENTERS FOR MEDICARE AND MEDICAID SERVICES, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Attachments: # <u>1</u> Text of Proposed Order)(Walker, Anna) (Entered: 02/22/2022)
02/22/2022		MINUTE ORDER: Granting Unopposed <u>14</u> Motion for Extension of Deadlines. Defendant's Reply due March 11, 2022. Signed by Judge Tanya S. Chutkan on 2/22/22. (DJS) (Entered: 02/22/2022)
02/24/2022		Set/Reset Deadlines: Reply due by 3/11/2022. (tb) (Entered: 02/24/2022)
03/11/2022	<u>15</u>	REPLY to opposition to motion re <u>11</u> Partial MOTION to Dismiss filed by CENTERS FOR MEDICARE AND MEDICAID SERVICES, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Walker, Anna) (Entered: 03/11/2022)
04/19/2022	<u>16</u>	NOTICE of Appearance by Sian Jones on behalf of All Defendants (Jones, Sian) (Entered: 04/19/2022)
10/31/2022	<u>17</u>	NOTICE OF SUBSTITUTION OF COUNSEL by Sam Escher on behalf of All Defendants Substituting for attorney Sian Jones and Anna Walker (Escher, Sam) (Entered: 10/31/2022)
11/10/2022	<u>18</u>	NOTICE OF SUPPLEMENTAL AUTHORITY by FROST BROWN TODD LLC (Attachments: # <u>1</u> Exhibit A – Kaiser Complaint, # <u>2</u> Exhibit B – Schulte Article, # <u>3</u> Exhibit C – Kaiser Stipulated Dismissal)(Nagashima, Yugo) (Entered: 11/10/2022)

11/10/2022	<u>19</u>	MOTION to Take Judicial Notice by FROST BROWN TODD LLC. (See Docket Entry <u>18</u> to view document) (zjm) (Entered: 11/10/2022)
11/22/2022	<u>20</u>	RESPONSE re 19 MOTION to Take Judicial Notice filed by CENTERS FOR MEDICARE AND MEDICAID SERVICES (CMS), UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Escher, Sam) (Entered: 11/22/2022)
11/29/2022	<u>21</u>	REPLY re <u>18</u> and 19 <i>in Support of Plaintiffs Notice of Supplemental Authority and Motion for Court to Take Judicial Notice</i> filed by FROST BROWN TODD LLC. (Nagashima, Yugo) Modified to add links on 11/29/2022 (znmw). (Entered: 11/29/2022)
01/18/2023		MINUTE ORDER: Plaintiff's 19 Motion to Take Judicial Notice is hereby GRANTED, and the court takes notice of the existence of the <i>Henry J. Kaiser Family Foundation dba Kaiser Health News v. U.S. Centers for Medicare and Medicaid Services et al</i> , 3:19-CV-06130, (N.D. Cal. Sept. 26, 2019) lawsuit and its settlement, pursuant to Federal Rule of Evidence 201(b)(2). This ruling shall not be construed as opining on the merits of Plaintiff's action or Defendants' Partial Motion to Dismiss. The court will issue a decision on Defendants' partial motion to dismiss in due course. Signed by Judge Tanya S. Chutkan on 1/18/2023. (lca) (Entered: 01/18/2023)
05/16/2023	<u>22</u>	NOTICE OF SUBSTITUTION OF COUNSEL by B. Kathryn Debrason on behalf of CENTERS FOR MEDICARE AND MEDICAID SERVICES (CMS), UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES Substituting for attorney Sam Escher (Debrason, B. Kathryn) (Entered: 05/16/2023)
10/31/2023	<u>23</u>	NOTICE of Appearance by Joseph F. Carilli, Jr on behalf of All Defendants (Carilli, Joseph) (Entered: 10/31/2023)
02/05/2024	<u>24</u>	MEMORANDUM OPINION re <u>11</u> Partial Motion to Dismiss. Signed by Judge Tanya S. Chutkan on 2/5/24. (lce) (Entered: 02/05/2024)
02/05/2024	<u>25</u>	ORDER GRANTING in part and DENYING in part <u>11</u> Partial Motion to Dismiss. Signed by Judge Tanya S. Chutkan on 2/5/24. (lce) (Entered: 02/05/2024)
02/05/2024		MINUTE ORDER: On or before March 11, 2024, the parties shall confer and file a joint status report proposing a path forward in this case, including whether the parties intend to move into discovery and, if so, their availability for a scheduling conference. The status report shall be accompanied by a proposed order. Signed by Judge Tanya S. Chutkan on 2/5/24. (lce) (Entered: 02/05/2024)
03/11/2024	<u>26</u>	Joint STATUS REPORT by CENTERS FOR MEDICARE AND MEDICAID SERVICES (CMS), UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Debrason, B.) (Entered: 03/11/2024)
03/12/2024		MINUTE ORDER: Upon consideration of <u>26</u> Joint Status Report, the parties shall confer and file another joint status report on or before May 10, 2024, and every 60 days thereafter, providing the court with an update on the settlement discussions and, if applicable, proposing a schedule for further proceedings in this matter. To the extent the parties suggest a change in the status quo, the status report shall be accompanied by a proposed order. Signed by Judge Tanya S. Chutkan on 3/12/24. (lce) (Entered: 03/12/2024)
05/10/2024	<u>27</u>	Second STATUS REPORT (<i>Joint</i>) by FROST BROWN TODD LLC. (Nagashima, Yugo) (Entered: 05/10/2024)
07/09/2024	<u>28</u>	Joint STATUS REPORT by CENTERS FOR MEDICARE AND MEDICAID SERVICES (CMS), UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Carilli, Joseph) (Entered: 07/09/2024)
09/06/2024	<u>29</u>	Joint STATUS REPORT <i>Fourth</i> by FROST BROWN TODD LLC. (Ward, Joseph) (Entered: 09/06/2024)
09/09/2024	<u>30</u>	NOTICE OF SUBSTITUTION OF COUNSEL by Nolan Jackson on behalf of FROST BROWN TODD LLC Substituting for attorney Jean Paul Yugo Nagashima (Jackson, Nolan) (Entered: 09/09/2024)