

agencies' responses and disseminates both its findings and the requested records to the American public to inform them about "what their government is up to."

4. Defendant U.S. Department of Health and Human Services is an agency of the U.S. Government and is headquartered at 200 Independence Avenue, S.W., Washington, DC 20201. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On May 28, 2020, Plaintiff sent a FOIA request to the Indian Health Service, a component of Defendant U.S. Department of Health and Human Services, seeking access to the following:

Any and all records regarding, concerning, or related to the contract awarded to Zach Fuentes LLC for KN95 masks in April 2020. For purposes of clarification, this contract is identified by award number FY20-NAO-COVID19-PROFORMA KN95.

This request includes, but is not limited to, any and all records of communication between any official, employee, or representative of the Indian Health Service and any other individual or entity regarding the contract, as well as any and all records regarding the quality of the masks provided under the contract.

The request was sent by email to Indian Health Service's FOIA email address, IHSFOIAMailbox@ihs.gov.

6. By letter dated June 9, 2020, Defendant acknowledged receipt of the request and indicated that the request had been assigned Case No. 20-117.

7. As of the date of this Complaint, the Indian Health Service has failed to: (i) determine whether to comply with the request; (ii) notify Plaintiff of any such determination or the reasons therefor; (iii) advise 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.

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 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 was required to make a final determination on Plaintiff's request by July 8, 2020 at the latest. Because Defendant failed to make a final determination on Plaintiff's request within the time limits set by FOIA, Plaintiff is deemed to have exhausted its administrative appeal remedies.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant to conduct a search for any and all responsive records to Plaintiff's FOIA request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA request; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA request and a *Vaughn* index 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 request; (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 the Court deems just and proper.

Dated: August 6, 2020

Respectfully submitted,

/s/ Paul J. Orfanedes

PAUL J. ORFANEDES

D.C. Bar No. 429716

JUDICIAL WATCH, INC.

425 Third Street SW, Suite 800

Washington, DC 20024

Tel: (202) 646-5172

Fax: (202) 646-5199

Email: porfanedes@judicialwatch.org

Attorney for Plaintiff