IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CENTER FOR FOOD SAFETY, 660 Pennsylvania Ave SE #402 Washington, DC 20003 *Plaintiff,* v. FOOD AND DRUG ADMINISTRATION, 10903 New Hampshire Ave Silver Spring, Maryland 20993-0002 *Defendant.*	Case No. 21-1271 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

INTRODUCTION

1. The Center for Food Safety (CFS)—a nonprofit public interest and environmental advocacy organization working to protect public health and the environment—brings this civil action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, challenging Defendant Food and Drug Administration's (FDA) failure and refusal to provide records to CFS in response to the request for records submitted on January 15, 2021, for which there are no applicable exemptions under FOIA.

2. Since its inception in 1997, CFS has closely monitored FDA's decision-making process in regards to its regulatory authority over genetically engineered (GE) organisms, including gene-edited animals, which could adversely affect human health, animal welfare, and the environment. As part of this oversight and advocacy strategy, CFS has submitted requests for records to FDA regarding both FDA's regulatory oversight of gene-edited animals, and communications between FDA and United States Department of Agriculture (USDA) concerning the potential transfer of regulatory power from FDA to USDA for gene-edited animals under FOIA, 5 U.S.C. § 552(a)-(m). The goal of the request was to open the operations and activities of the government to public scrutiny and contribute significantly to the public's understanding of the agency's actions.

3. CFS filed the disputed FOIA request with FDA to gain a better understanding of FDA's analytic process, conclusions, and generally held knowledge concerning the safety of gene-edited animals, as well as USDA's fitness to oversee a comprehensive regulatory strategy and specifically the legality and the potential health repercussions of relaxing oversight of certain genetically altered products.

4. Although FOIA requires FDA to release responsive records "promptly," FDA failed to comply with FOIA's statutory deadlines with respect to CFS's request. Consequently, FDA has improperly withheld responsive records, depriving CFS of its statutory right to obtain records containing crucial information concerning the nature of FDA's control over the regulation of gene-edited animals, and FDA's discussions with USDA over the transfer of that regulatory power as well as the reasons for FDA's refusal to agree to do so.

5. FDA is also violating FOIA by failing to conduct an adequate search for responsive records, and by failing to provide CFS with both an initial determination as to the scope of the records to be produced or withheld, and an estimated date by which the agency's search will be complete.

6. FDA's unlawful withholding of public records undermines FOIA's basic purpose of government transparency. Because prompt access to these records is necessary to effectuate FOIA's purpose, CFS respectfully asks this Court to enjoin FDA from withholding requested records, order FDA to release improperly withheld records, and grant declaratory relief.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

8. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

9. Declaratory relief is appropriate under 28 U.S.C. § 2201.

10. Injunctive relief is appropriate under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 2202.

PARTIES

11. Plaintiff CFS is a national 501(c)(3) nonprofit public interest and environmental advocacy organization that empowers people, supports farmers, and protects the environment. CFS is a membership-based nonprofit organization with over 970,000 members that works to address the impacts of the food system on public health, animal welfare, and the environment. CFS often uses information requests to challenge government abuses and corporate wrongdoing, advocate for policy change, and educate the public about the harms of industrial agriculture. Through nearly two decades of involvement in public interest and environmental litigation and policymaking as it relates to food, CFS has demonstrated its ability to take technical information provided by government agencies and distill it into a format that is accessible to the public. CFS employs science and policy experts who have analyzed FOIA, federal environmental laws, and environmental and scientific reports for their entire careers. CFS puts out reports on a range of food and agriculture topics, including GE organisms—such as GE foods, crops, animals, insects, and viruses—as well as other topics that tend to be difficult for the layperson to understand without professional assistance. CFS has been engaged in ongoing efforts to educate our members and the public about the ongoing harms of GE organisms, including gene-edited animals, to human health, animal welfare, and the environment. CFS and its members are harmed by FDA's violations of FOIA, as such violations preclude CFS from gaining a full understanding of the decision-making process regarding the underlying agency actions, and prevent CFS from disseminating information to the public concerning FDA's oversight and regulatory power over gene-edited animals.

12. Defendant FDA is an agency of the United States Government within the Department of Health and Human Services. FDA is in possession and control of the records that CFS seeks, and is an "agency" within the meaning of 5 U.S.C. § 552(f)(1). FDA is responsible for the oversight of gene-edited animals. Thus, FDA is the "agency" that has control and possession of the requested "record[s]." 5 U.S.C. § 552(f)(2).

STATUTORY BACKGROUND

13. The basic purpose of FOIA is to promote government transparency and public oversight of agency action. *See, e.g., Dep't of Air Force v. Rose*, 425 U.S. 352, 360-61 (1976) (noting that "disclosure, not secrecy is the dominant objective of the Act"). The statute effectuates this objective by establishing the public's right "to pierce the veil of administrative secrecy" and access all federal agency records, *id.*, unless such records may be withheld pursuant to one of nine, narrowly construed exemptions. *See* 5 U.S.C. § 552(b)(1)-(9).

14. FOIA imposes stringent deadlines on federal agencies with regard to making initial determinations in response to FOIA requests. Within twenty working days of receiving a FOIA request, an agency must determine whether it will release the requested records, and must notify the requester of its determination, the reasons for its decision, and the requester's right to appeal an adverse decision to the head of the agency. *Id.* § 552(a)(6)(A).

15. Congress has specified certain limited instances in which federal agencies may extend this twenty-working-day deadline. First, an agency may toll the deadline to seek additional information or clarification from a requester, but that tolling period ends when the agency receives such information or clarification. *Id.* § 552(a)(6)(A)(ii). Second, in "unusual circumstances" an agency may extend the deadline no more than ten additional working days by providing written

notice to the requester that sets forth the circumstances justifying the extension. *Id.* § 552(a)(6)(B)(i).

16. FOIA requires that an initial determination under 5 U.S.C. § 552(a)(6)(A) "must be more than just an initial statement that the agency will generally comply with a FOIA request and will produce non-exempt documents and claim exemptions in the future." *Citizens for Responsibility & Ethics in Wash. v. Fed. Election Comm'n (CREW)*, 711 F.3d 180, 188 (D.C. Cir. 2013).

17. If an agency does not comply with "FOIA's explicit timelines [for making an initial determination], the penalty is that the agency cannot rely on the administrative exhaustion requirement to keep cases [out of] court." *Id.* at 190-91; *see also* 5 U.S.C. § 552(a)(6)(C)(i) (stating that if an agency fails to respond within the applicable time limits under FOIA, the requester "shall be deemed to have exhausted his administrative remedies."). The requester thus has "immediate recourse to the courts to compel the agency's response to [her] FOIA request[s]." *Oglesby v. Dep't of Army*, 920 F.2d 57, 64 (D.C. Cir. 1990).

18. For a determination to "trigger the administrative exhaustion requirement," the agency must complete "at least" three substantive requirements: "(1) gather and review the documents; (2) determine and communicate the scope of the documents it intends to produce and withhold, and the reasons for withholding any documents; and (3) inform the requester that it can appeal whatever portion of the 'determination' is adverse." *CREW*, 711 F.3d at 188; *see also Oglesby*, 920 F.2d at 67 (finding that an agency's response did not trigger the exhaustion requirement because "merely inform[ing] [the requester] that he could call the agency for further information…did not qualify as notice of…right to appeal").

19. With regard to production of responsive records, "FOIA requires that the agency make the records 'promptly available,' which depending on the circumstances typically would mean within days or a few weeks of a 'determination,' not months or years." *CREW*, 711 F.3d at 188 (citing 5 U.S.C. § 552(a)(3)(A), (6)(C)(i)); *see also Payne Enterprises, Inc. v. United States*, 837 F.2d 486, 494 (D.C. Cir. 1988) (holding that "unreasonable delays in disclosing non-exempt documents violate the intent and purpose of the FOIA, and the courts have a duty to prevent these abuses.").

20. FOIA also requires that the agency provide requestors "information about the status of a request…including…an estimated date on which the agency will complete action on the request." 5 U.S.C. § 552(a)(7)(B)(ii).

21. In addition, FOIA provides a waiver for fees associated with the procurement of documents subject to FOIA requests. FOIA requires agencies to waive fees "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." *Id.* § 552(a)(4)(A)(iii).

22. FOIA further requires each agency to "make reasonable efforts to search for [responsive] records," *id.* § 552(a)(3)(C)-(D), in a manner that is "reasonably calculated to uncover *all* relevant documents." *Weisberg v. DOJ*, 705 F.2d 1344, 1351 (D.C. Cir. 1983) (emphasis added); *see also Oglesby*, 920 F.2d at 68 (An "agency cannot limit its search to only one record system if there are others that are likely to turn up the information requested.").

23. Similarly, "if an agency has reason to know that certain places may contain responsive documents," the agency is required to search those places. *Valencia-Lucena v. U.S. Coast*

Guard, 180 F.3d 321, 327 (D.C. Cir. 1999); *Pub. Emps. for Env't Resp. v. EPA*, 314 F. Supp. 3d 68, 75 (D.D.C. 2018) (holding that "if an agency has reason to know that certain places may contain responsive documents, it is obligated…to search" under FOIA).

24. An agency bears the burden to demonstrate with reasonable detail that the "search terms and type of search performed" was likely to uncover *all* responsive records. *Oglesby*, 920 F.2d at 68; *Steinberg v. DOJ*, 23 F.3d 548, 552 (D.C. Cir. 1994) (holding that an agency must provide affidavits explaining "what records were searched, by whom, and through what process" to satisfy the agency's burden); *Int'l Couns. Bureau v. DOD*, 101 F. Supp. 3d 48, 51 (D.D.C. 2015). ("Conclusory statements that the agency has reviewed relevant files are insufficient.").

25. The agency must also demonstrate that the scope of the agency's search was adequate. When tailoring the scope of the search, "an agency also has a duty to construe a FOIA request liberally." *Nation Mag., Wash. Bureau v. U.S. Customs Serv.*, 71 F.3d 885, 890 (D.C. Cir. 1995). FOIA's requirement that "a request for disclosure specify 'identifiable records' calls for 'a reasonable description'" allowing agency personnel to locate the records sought, but cannot "be used as a method of withholding records." *Bristol-Myers Co. v. FTC*, 424 F.2d 935, 938 (D.C. Cir. 1970); *Yagman v. Pompeo*, 868 F.3d 1075, 1079 (9th Cir. 2017) (holding that the scope of a request is clear if it provides "*some* reasonable description" of the requested records, such as times, dates, locations, types of documents, or types of information) (emphasis in original); *see also Shapiro v. CIA*, 170 F. Supp. 3d 147, 155 (D.D.C. 2016) (holding that the "reasonable-description requirement" under FOIA, "does not doom requests that *precisely* describe the records sought, even if compliance might overwhelm an agency's response team") (emphasis in original).

26. After an agency identifies a responsive record, the agency must disclose the entire record "as a unit," unless a statutory exemption allows the agency "to redact specific information within [the record]." *Am. Immigr. Law. Ass'n v. Exec. Off. for Immigr. Rev.*, 830 F.3d 667, 677 (D.C. Cir. 2016); *see also* 5 U.S.C. § 552(a)(3)(A), (d). The agency may not "redact particular information within the responsive record on the basis that the information is non-responsive." *Am. Immigr. Law. Ass'n*, 830 F.3d at 678.

27. In certain limited instances, an agency may withhold records or portions of records pursuant to nine specific exemptions. 5 U.S.C. § 552(b). These exemptions "were explicitly made exclusive" and "must be narrowly construed" in keeping with FOIA's presumption in favor of disclosure. *Milner v. Dep't of Navy*, 562 U.S. 562, 566 (2011).

28. An agency can only withhold information in a responsive record "if the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in [FOIA]" or "disclosure is prohibited by law." 5 U.S.C. § 552(a)(8)(A).

29. FOIA places the burden on the agency to prove that it may withhold responsive records or portions of records from a requester. *Id.* § 552(a)(4)(B). In order to satisfy this burden, the agency must submit affidavits that "describe the documents and the justifications for nondisclosure with reasonably specific detail," and "demonstrate that the information withheld logically falls within the claimed exemption." *Int'l Couns. Bureau v. U.S. Dep't of Def.*, 657 F. Supp. 2d 33, 38 (D.D.C. 2009). An agency fails to satisfy this burden if its affidavit is refuted "by contrary evidence in the record" or "by evidence of agency bad faith." *Id.*

30. Moreover, if information contained in a document falls within one of FOIA's enumerated exemptions, an agency may not simply withhold the entire document. *See Jud. Watch,*

Inc. v. HHS, 27 F. Supp. 2d 240, 246 (D.D.C. 1998) (observing that courts must "make specific findings as to the extent to which nonexempt responsive material might be 'segregated' from exempt materials and released") (citing *Krikorian v. Dep't of State*, 984 F.2d 461, 466 (D.C. Cir. 1993)). An agency is required to take reasonable steps to segregate and disclose *all* reasonably segregable portions of a withheld document. *See Krikorian*, 984 F.2d at 466 (holding that "the 'segregability' requirement applies to all documents and all exemptions in the FOIA."); 5 U.S.C. § 552(a)(8)(A)(ii).

31. If an agency cannot adequately justify withholding records in full or in part, FOIA provides this Court jurisdiction "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B).

32. Finally, this Court also "has the authority to oversee and supervise the agency's progress in responding to the request." *Seavey v. DOJ*, 266 F. Supp. 3d 241, 244 (D.D.C. 2017) (citing *CREW*, 711 F.3d at 189); *see also Clemente v. FBI*, 71 F. Supp. 3d 262, 269 (D.D.C. 2014) (a court "may use its equitable powers to require the agency to process documents according to a court-imposed timeline.").

FACTUAL BACKGROUND

33. CFS, through its GE Campaign, works to protect human health, animal welfare, and the environment from the adverse impacts associated with the creation and use of GE organisms, including gene-edited animals.

34. On January 15, 2021, CFS submitted a FOIA request to FDA, seeking:

(1) "Any and all documents," from January 1, 2015 to present, related to communications between FDA and United States Department of Agriculture

(USDA) related to the potential transfer of regulatory power over gene-edited animals from FDA to USDA.

(2) "Any and all documents," from January 1, 2015 to present, related to FDA and FDA Commissioner Stephen Hahn's refusal to sign a Memorandum of Understanding regarding the transfer of regulatory power over gene-edited animals from FDA to USDA.

Agency FOIA Tracking Number 2021-407 (January 15, 2021 FOIA Request). CFS explained that release of the requested records was in the public's best interest because disclosure would significantly contribute to public understanding of the operations or activities of government, and because obtaining the information was of no commercial interest to CFS.

35. An initial determination on the January 15, 2021 FOIA Request was due by February 16, 2021, twenty working days after the date CFS submitted the request.

36. On January 19, 2021, FDA sent an email acknowledging the receipt of CFS's January 15, 2021 FOIA Request, and assigned the request Tracking Number 2021-407.

37. CFS emailed FDA on February 19, 2021, stating "CFS submitted this FOIA request [2021-407] on January 15, 2021. According to the requirements of FOIA, 5 U.S.C. § 552(a)(6)(A)(i), CFS expects an initial determination from the agency within twenty working days from receipt of the request. In addition, [CFS] ask[s] that the agency provide an estimated completion date as required by FOIA, 5 USC § 552(a)(7)(B)(ii)."

38. On February 22, 2021, FDA responded to CFS's February 19, 2021 email, stating that CFS's request was open to the Office of the Secretariat, OC.

39. In addition, on February 22, 2021, FDA emailed CFS responding to CFS's February 19, 2021 email stating:

> [FDA is] required to process requests on a first in, first out basis. [CFS's] request is in [FDA's] queue and will be processed in the order it was received. There are a

> large number of requests ahead of [CFS's] request. The current anticipated wait time for non-expedited requests is 18-24 months from the date of receipt. Please note that currently [FDA has] an unprecedented volume of requests in our office due to COVID. This may cause some delays in responses.

40. Three months, twenty-two days have passed since CFS submitted its January 15, 2021 FOIA Request to FDA, and the agency has not provided an initial determination in response to the January 15, 2021 FOIA Request, supplied an estimated date of completion, or produced any responsive records. FDA has failed to provide a determination describing the scope of the records it intends to produce or withhold, the reasons for withholding any records, or informed CFS that it may appeal any specific adverse determination within the relevant time period in 5 U.S.C. § 552(a)(6)(A)(i) or 5 U.S.C. § 552(a)(6)(B).

41. CFS is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

42. As of the date of this complaint, CFS has received no further communications from FDA.

43. None of FOIA's nine exemptions to the statute's disclosure mandate apply to the records that are responsive to the January 15, 2021 FOIA Request.

44. CFS has been required to expend resources to prosecute this action.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF:

VIOLATION OF THE FREEDOM OF INFORMATION ACT

Failure to Comply with FOIA's Mandatory Determination Deadline for CFS's FOIA Request

45. Plaintiff realleges and incorporates by reference the allegations made in all preceding paragraphs.

46. FDA violated FOIA by failing to make a determination on CFS's January 15, 2021 FOIA Request, Tracking Number 2021-407. 5 U.S.C. § 552(a)(6).

47. CFS has a statutory right to receive a determination within the congressionally mandated deadline of twenty working days. *Id.*

48. Nearly four months have passed since CFS filed the January 15, 2021 FOIA Request. To date, FDA has not provided a determination, notwithstanding the requirement of 5 U.S.C. § 552(a)(6)(A) of an agency response within twenty working days detailing the scope of the records the agency intends to produce and withhold, the reasons for making that determination, and an explanation of the process by which a requester can administratively appeal that determination.

49. Even accounting for a ten-working-day extension, FDA has still failed to meet the deadline by which an initial determination is required.

50. FDA's failure to make an initial determination with regard to the January 15, 2021 FOIA Request, thus unlawfully delaying its response beyond the deadline that FOIA mandates, has prejudiced CFS's ability to timely obtain public records. *Id.* § 552(a)(6)(A)(i).

51. As such, CFS has exhausted the applicable administrative remedies with respect to the January 15, 2021 FOIA Request pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

52. Due to the nature of CFS's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to FDA in the foreseeable future.

53. CFS's organizational activities will be adversely affected if FDA continues to violate FOIA by failing to disclose responsive records as it has in this case.

54. Unless enjoined and made subject to a declaration of CFS's legal rights by this Court, FDA will continue to violate CFS's rights to receive public records under FOIA.

55. CFS is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. *Id.* § 552(a)(4)(E).

SECOND CLAIM FOR RELIEF:

VIOLATION OF THE FREEDOM OF INFORMATION ACT

Failure to Conduct an Adequate Search for Responsive Records to CFS's FOIA Request

56. Plaintiff realleges and incorporates by reference the allegations made in all preceding paragraphs.

57. FDA violated FOIA by failing to conduct an adequate search for responsive records pursuant to 5 U.S.C. § 552(a)(3)(C)-(D).

58. CFS has a statutory right to have FDA process its January 15, 2021 FOIA Request, Tracking Number 2021-407, in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3)(C)-(D).

59. FDA violated CFS's right when it unlawfully failed to undertake a search that is reasonably calculated to locate all records that are responsive to the January 15, 2021 FOIA Request, thus prejudicing CFS's ability to timely obtain public records.

60. CFS has exhausted the applicable administrative remedies with respect to the January 15, 2021 FOIA Request pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

61. Due to the nature of CFS's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to FDA in the foreseeable future.

62. CFS's organizational activities will be adversely affected if FDA continues to violate FOIA by failing to disclose responsive records as it has in this case.

63. Unless enjoined and made subject to a declaration of CFS's legal rights by this Court, FDA will continue to violate CFS's rights to receive public records under FOIA.

64. CFS is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. *Id.* § 552(a)(4)(E).

THIRD CLAIM FOR RELIEF:

VIOLATION OF THE FREEDOM OF INFORMATION ACT

Failure to Disclose All Responsive Records to CFS's FOIA Request

65. Plaintiff realleges and incorporates by reference the allegations made in all preceding paragraphs.

66. FDA violated FOIA by failing to promptly disclose records that are responsive to CFS's January 15, 2021 FOIA Request, Tracking Number 2021-407. 5 U.S.C. § 552(a)(4)(B).

67. CFS has a statutory right to the records it seeks, and there are no applicable exemptions under FOIA that provide a legal basis for FDA to withhold these records from CFS. *See id.* § 552(b)(1)-(9).

68. To date, FDA has not provided any records requested by CFS in the January 15, 2021 FOIA Request, notwithstanding the requirement of 5 U.S.C. § 552(a)(3)(A) and 5 U.S.C. § 552(a)(6)(C) to make agency records "promptly available."

69. As such, FDA is wrongfully withholding disclosure of information sought by CFS, information to which it is entitled and for which no valid disclosure exemption has been claimed. FDA's unlawful withholding prejudices CFS's ability to timely obtain public records.

70. CFS has exhausted the applicable administrative remedies with respect to the January 15, 2021 FOIA Request pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

71. Due to the nature of CFS's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to FDA in the foreseeable future.

72. CFS's organizational activities will be adversely affected if FDA continues to violate FOIA by failing to disclose responsive records as it has in this case.

73. Unless enjoined and made subject to a declaration of CFS's legal rights by this Court, FDA will continue to violate CFS's rights to receive public records under FOIA.

74. CFS is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. *Id.* § 552(a)(4)(E).

FOURTH CLAIM FOR RELIEF:

VIOLATION OF THE FREEDOM OF INFORMATION ACT

Failure to Provide Reasonably Segregable Portions of Any Lawfully Exempt Records to CFS's FOIA Request

75. Plaintiff realleges and incorporates by reference the allegations made in all preceding paragraphs.

76. FDA violated FOIA by failing to take reasonable steps to segregate and release nonexempt portions of lawfully exempt records in response to the January 15, 2021 FOIA Request, Tracking Number 2021-407. 5 U.S.C. § 552(a)(8)(A)(ii)(II).

77. CFS has a statutory right to any reasonably segregable portion of a record that contains information that is subject to any of FOIA's exemptions. *Id.*

78. To date, FDA has failed to disclose any records to CFS, including nonexempt information that could be reasonably segregated and released in response to the January 15, 2021 FOIA Request, thus prejudicing CFS's ability to timely obtain public records.

79. CFS has exhausted the applicable administrative remedies with respect to the January 15, 2021 FOIA Request pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

80. Due to the nature of CFS's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to FDA in the foreseeable future.

81. CFS's organizational activities will be adversely affected if FDA continues to violate FOIA by failing to disclose responsive records as it has in this case.

82. Unless enjoined and made subject to a declaration of CFS's legal rights by this Court, FDA will continue to violate CFS's rights to receive public records under FOIA.

83. CFS is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. *Id.* § 552(a)(4)(E).

FIFTH CLAIM FOR RELIEF:

VIOLATION OF THE FREEDOM OF INFORMATION ACT

Failure to Provide an Estimated Date of Completion as Required by FOIA for CFS's FOIA Request

84. Plaintiff realleges and incorporates by reference the allegations made in all preceding paragraphs.

85. FDA violated FOIA by failing to provide CFS with an estimated date of completion as required by 5 U.S.C. § 552(a)(7)(A)-(B).

86. CFS has a statutory right to have FDA process its January 15, 2021 FOIA Request, Tracking Number 2021-407, in a manner which complies with FOIA. FDA has violated Plaintiff's

rights in this regard by its failure to provide an adequate estimated completion date for its response to the January 15, 2021 FOIA Request as required by FOIA. 5 U.S.C. § 552(a)(7)(A)-(B).

87. FDA's failure to inform CFS of an estimated completion date for the January 15, 2021 FOIA Request has prejudiced CFS's ability to timely obtain public records.

88. CFS has exhausted the applicable administrative remedies with respect to the January 15, 2021 FOIA Request pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

89. Due to the nature of CFS's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to FDA in the foreseeable future.

90. CFS's organizational activities will be adversely affected if FDA continues to violate FOIA by failing to disclose responsive records as it has in this case.

91. Unless enjoined and made subject to a declaration of CFS's legal rights by this Court, FDA will continue to violate CFS's rights to receive public records under FOIA.

92. CFS is entitled to reasonable costs of litigation, including attorney fees, pursuant to FOIA. *Id.* § 552(a)(4)(E).

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests this Court:

1. Declare that Defendant violated the Freedom of Information Act by failing to lawfully satisfy Plaintiff's January 15, 2021 FOIA Request;

2. Declare that Defendant failed to make and communicate an initial determination regarding Plaintiff's January 15, 2021 FOIA Request;

3. Declare that Defendant failed to conduct an adequate search for agency records responsive to Plaintiff's January 15, 2021 FOIA Request;

4. Declare that Defendant unduly delayed actual production of records responsive to Plaintiff's January 15, 2021 FOIA Request;

5. Declare that Defendant unlawfully failed to provide reasonably segregable portions of records which may be lawfully subject to a FOIA exemption to Plaintiff's January 15, 2021 FOIA Request;

6. Declare that Defendant unlawfully failed to provide Plaintiff with an estimated date of completion as to the search and production of Plaintiff's January 15, 2021 FOIA Request;

7. Order Defendant to provide a lawful initial determination on Plaintiff's January 15, 2021 FOIA Request;

8. Order Defendant to conduct searches that are reasonably calculated to locate all records responsive to Plaintiff's January 15, 2021 FOIA Request using search methods reasonably likely to lead to discovery of all responsive records;

9. Order Defendant to produce, by a date certain, any and all nonexempt responsive records or segregable portion of the records and a *Vaughn* index of any responsive records or portion of responsive records withheld under a claim of exemption, at no cost to Plaintiff;

10. Enjoin Defendant from continuing to withhold any and all nonexempt responsive records or segregable portion of the records;

11. Retain jurisdiction of this action to ensure the processing of Plaintiff's FOIA request and that no agency records or portion of the records are improperly withheld;

12. Award Plaintiff its costs and reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E) or 28 U.S.C. § 2412; and

13. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted this 7th day of May, 2021.

CENTER FOR FOOD SAFETY,

/s/ George A. Kimbrell

GEORGE A. KIMBRELL (WA 36050)
Center for Food Safety
2009 NE Alberta Street, Suite 207
Portland, Oregon 97211
(971) 271-7372
Email: gkimbrell@centerforfoodsafety.org

VICTORIA A. YUNDT (*Pro Hac Vice* Pending)
Center for Food Safety
303 Sacramento Street, 2nd Floor
San Francisco, CA 94111
T: (415) 826-2770 / F: (415) 826-0507
Email: tyundt@centerforfoodsafety.org

Counsel for Plaintiff