IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

THE STEELE LAW FIRM, LLC **2345 Grand Blvd. Suite 750** **Kansas City, MO 64108** **Plaintiff.** **v.** **UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES ("DHSS")** **7500 Security Blvd.** **Baltimore, MD 21244** **and** **CENTERS FOR MEDICARE AND MEDICAID SERVICES ("CMS")** **7500 Security Blvd.** **Baltimore, MD 21244** **Defendants.**	**Case No.: 4:18-cv-00275-GAF**

FIRST AMENDED COMPLAINT

COMES NOW Plaintiff The Steele Law Firm, LLC ("Plaintiff") and files this action against the United States Department of Health and Human Services and Centers for Medicare and Medicaid Services (collectively "defendants") pursuant to the Freedom on Information Act, 5 U.S.C. § 552 ("FOIA") to compel disclosure and ***certification*** of defendants' electronic data containing the expected number of direct care nursing hours for skilled nursing homes in 2014 and 2015 wrongfully withheld by defendants.

1. Pursuant to Federal Rule of Civil Procedure 15(a), Plaintiff files this First Amended Complaint as a matter of right to correct clerical errors in the initial filing.

Preliminary Statement

2. Nursing home facilities play a vital role in American healthcare and increasingly are responsible for providing daily care for the country's aging population. Due to dementia, Alzheimer's and other mentally and physically debilitating conditions, a significant portion of the nursing home population is unable not only to care for themselves but also to manage, and scrutinize, the care they receive. Reports abound of fragile nursing home residents who do not receive the care they need and are supposed to get, and are left in deplorable conditions: those who are not turned in their beds and consequently develop bedsores; those who are left in urine-soaked or otherwise soiled garments; those whose bodies atrophy from lack of movement. Such conditions not only degrade nursing home residents, but threaten their health and ultimately even their lives.

3. Elder care advocates seek to uncover, and remedy, these conditions in a variety of ways. One objective means of doing so is through analysis of the Minimum Data Set assessments ("MDS assessments") that must be filed with the Centers for Medicare and Medicaid Services by all certified Medicare and Medicaid nursing homes nationwide. These assessments, which must be submitted on a frequent periodic basis for each and every resident in a facility, contain date-specific assessments of the condition of, the care required by, and the care provided to each resident.

4. CMS established a precedent for the use of MDS assessments in determining the workload of nursing homes and the impact of this workload on the capacity of staff to deliver basic care to nursing home residents.[1]

5. CMS reported to Congress that the amount of staffing required to meet the care needs of residents is a function of the aggregate quantity of the basic care services identified in the MDS assessments of a nursing home's patient population.

6. Plaintiff is a lawfirm who represents nursing home residents across the country who have been injured or endangered as a result of nursing homes' understaffing.

7. Plaintiff requested FOIA disclosure and ***certification*** of defendants' expected staffing levels for skilled nursing homes in 2014 and 2015 to facilitate its analysis of (1) whether particular nursing homes have been appropriately staffed to provide adequate care to their resident populations; (2) the magnitude of a particular nursing home's understaffing based on its unique workload and staffing in comparison to state and national data; (3) whether CMS is adequately enforcing its existing regulations and requirements with respect to such institutions, and (4) whether additional resources need to be provided to CMS to ensure that such conditions are not allowed to continue to endanger nursing home populations.

[1] *See* Phase II Report to Congress, *Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes* (2001); https://phinational.org/resource/report-to-congress-appropriateness-of-minimum-nurse-staffing-ratios-in-nursing-homes-phase-ii-volume-i/.

Background

8. Americans are spending more and more money each year on nursing home care and continuing care retirement homes. Since 1960, the total amount spent has grown steadily from $811 *million* to a staggering $162 *billion* in 2016.[2]

9. The federal government estimates that public and private spending on long-term nursing care could exceed $350 billion by 2050.[3]

10. This increase in cost is directly driven by the country's aging population. In 2005, there were 36,790,113 Americans aged 65 and older.[4] By 2014, that number had grown to 46,243,211, and the number of Americans aged 85 and over increased by 21 percent from 5,095,938 in 2005 to 6,162,231.[5]

11. In 2015, there were more than 15,000 nursing homes in the United States, nearly 11,000 of which are operated on a for-profit basis.[6] By the end of 2014, more than 1.4 million Americans resided in nursing homes.[7]

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[2] *See* CENTER FOR MEDICARE & MEDICAID SERVICES, "National Health Expenditures by type of service and source of funds, CY 1960-2016", *available at* https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsHistorical.html.

[3] *See* Statement of David M. Walker, Comptroller General of the United States, Testimony Before the Special Committee on Aging, U.S. Senate, "Aging Baby Boom Generation Will Increase Demand and Burden on Federal and State Budgets" (March 21, 2002), *available at* https://www.gao.gov/new.items/d02544t.pdf.

[4] *See* CENTER FOR MEDICARE & MEDICAID SERVICES, "Nursing Home Data Compendium 2015 Edition", at 39, *available at* https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandComplianc/Downloads/nursinghomedatacompendium_508-2015.pdf (the "Data Compendium").

[5] *Id.*

[6] *Id.* at 1, 31.

[7] *Id.* at 2, 199.

12. Persons admitted to a skilled nursing facility have limitations caused by physical deterioration, cognitive decline, the onset or exacerbation of an acute or chronic illness or condition, and other related factors. They need nursing care, medical treatment, and rehabilitation to maintain functional status, increase functional status, or live safely from day to day. Many such residents are elderly, disabled, confined to their wheelchairs or beds, or unable to rise from a bed or chair independently, and unable to groom, feed, toilet or clean themselves.

13. Virtually all residents require staff assistance with at least one Activity of Daily Living ("ADL"). Activities of daily living are those that able-bodied persons often take for granted, and include daily activities such as (1) turning over in bed, (2) getting out of bed, (3) getting dressed, (4) eating, and (5) using the bathroom.[8]

14. A resident has a "severe ADL impairment" if she needs to rely on staff assistance for at least four of the five ADLs. The level of assistance can vary from needing supervision and encouragement—which often takes as much time as physical assistance—to total physical dependence, sometimes requiring multiple staff members.

15. The number of residents with severe ADL impairments has been increasing year over year; by 2014, over 63 percent of nursing home residents had a severe ADL impairment.[9] Put simply, nursing home residents require more care than ever before.

16. Consequently, many nursing home residents rely upon nursing home staff for not only skilled nursing care and treatment, but also assistance with ADL activities (herein "Basic Care"), including:

[8] *Id.* at 5, 207.

[9] *Id.* at 156, 207.

a. toileting assistance;

b. incontinence care and changing of wet and soiled clothing and linen;

c. assistance transferring to and from bed and wheelchair;

d. assistance with dressing and personal hygiene;

e. assistance with bathing;

f. assistance with turning and repositioning residents in a bed or chair;

g. feeding assistance; and

h. exercises/passive range of motion ("ROM") exercises.

17. The specific level of Basic Care assistance that is needed, and that is provided, to each resident is captured at the time of admission, at periodic intervals prescribed by CMS, and upon any significant change in conditions, in an assessment tool known as Minimum Data Set Resident Assessment and Care Screenings, the current version of which is referred to as Minimum Data Set 3.0 ("MDS 3.0"). Such reports are prepared pursuant to congressional and agency mandate. *See* 42 U.S.C. § 13956i-3 ("Requirements for, and assuring quality of care in, skilled nursing facilities") and 42 U.S.C. § 1396r ("Requirements for nursing facilities") (establishing requirements relating to the provision of services, including quality of life, quality assessment and assurance, residents' assessment, and the use of such data in developing, reviewing and revising residents' plans of care); and 42 C.F.R. § 483.35 ("Nursing services") (requiring facilities to "have sufficient nursing staff with the appropriate competencies and skills sets to provide nursing and related services to assure resident safety and attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and

individual plans of care and considering the number, acuity and diagnoses of the facility's resident population in accordance with the facility assessment required at § 483.70(e).").

18. Defendant CMS describes Minimum Data Set 3.0 Public Reports as follows:

> The Minimum Data Set (MDS) is part of the federally mandated process for clinical assessment of all residents in Medicare and Medicaid certified nursing homes. This process provides a comprehensive assessment of each resident's functional capabilities and helps nursing home staff identify health problems. Care Area Assessments (CAAs) are part of this process, and provide the foundation upon which a resident's individual care plan is formulated. MDS assessments are completed for all residents in certified nursing homes, regardless of source of payment for the individual resident. MDS assessments are required for residents on admission to the nursing facility, periodically, and on discharge. All assessments are completed within specific guidelines and timeframes. In most cases, participants in the assessment process are licensed health care professionals employed by the nursing home. MDS information is transmitted electronically by nursing homes to the national MDS database at CMS.[10]

19. Nursing homes must complete and certify the accuracy of every MDS, listing the Basic Care required by and provided to each nursing home resident on a daily basis. The importance of this MDS data is evident from the fact that not only must nursing homes certify that it is accurate and truthful, they must also acknowledge that the assessment information is used as a basis for payment from government-funded healthcare programs and that the submission of false information can lead to substantial criminal, civil and/or administrative penalties.

20. Every resident in a skilled nursing facility is assigned a Resource Utilization Group ("RUG") category regardless of payor status, i.e., private pay, Medicare, or Medicaid.

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[10] CENTERS FOR MEDICARE & MEDICAID SERVICES, *Minimum Data Set 3.0 Public Reports*, https://www.cms.gov/Research-Statistics-Data-and-Systems/Computer-Data-and-Systems/Minimum-Data-Set-3-0-Public-Reports/index.html (Nov. 11, 2012 1:22 PM).

21. The MDS generates each resident's RUG category.

22. The higher the RUG category the more help and nursing time the resident needs.

23. Put another way, RUG categories are like the rungs of a ladder. People who need very little nursing care are slotted at the very bottom rungs of the ladder. Towards the top of the ladder are the individuals that require the most nursing care.

24. CMS uses the number of residents for each RUG category in a nursing home to calculate its expected staffing level.

25. Indeed, CMS conducted a time study over a three-year period that determined the number of RN, LPN, and CNA minutes each RUG category required per day.

26. In other words, CMS has looked at all these RUG categories – or different rungs of the ladder – and determined how much time it takes to care for somebody at each one of those rungs.

27. In fact, CMS' expected staffing hours/minutes are calculated by adding the nursing time in minutes contained in the CMS Time Study for each resident's RUG category

28. Each RUG category requires a certain HPPD for registered nurses, licensed practical nurses, and aides. This system applies to all residents, no matter their pay source.

29. CMS publishes these expected staffing numbers on the Internet for anyone to review at https://data.medicare.gov/data/archives/nursing-home-compare..

30. The data indicates that many nursing facilities have chronic problems with understaffing. Understaffing has a very human cost, not only to the dignity of nursing home residents but to their basic safety and well-being. For example, it can lead to:

a. Failing to regularly provide toileting, incontinence care and basic hygiene care, and leaving dependent residents in dirty diapers, dirty clothes and dirty beds for hours at a time;

b. Failing to timely respond to call lights rung by residents, leaving residents to soil themselves while waiting for assistance, or falling while attempting to walk to the bathroom unaided;

c. Failing to reposition bed-bound and immobile residents, causing these residents to remain in the same position for hours at a time, which can result in painful and infection-prone pressure sores;

d. Failing to undertake ROM exercises, such as moving joints and limbs, and assisting vulnerable residents who can walk and exercise, causing lost mobility, leaving residents less independent;

e. Failing to wash and bathe dependent residents;

f. Failing to get residents up, dressed, and out of bed; and

g. Failing to assist dependent residents with meals, causing these residents to miss designated mealtimes, leading to weight loss and dehydration.

31. Nursing facilities are paid based on the expectation that this Basic Care is being provided to residents. In reality, not only are many facilities paid for work that goes undone, their staffing practices cost residents their dignity and comfort and jeopardize their safety and, sometimes, their very lives. The failure to provide Basic Care violates the law and the promises that nursing home facilities make to families. It also degrades residents and increases their risk of serious negative health consequences.

32. Proper care simply cannot be provided to nursing home residents unless there is an adequate number of properly trained staff, especially in homes where many of the residents have four or more ADLs.

33. In 2014, HHS's Office of Inspector General ("OIG") published a report indicating that an estimated 22 percent of Medicare beneficiaries experienced "adverse events" during their nursing home stays, with an additional 11 percent experiencing "temporary harm events" during their stays.[11] According to physician reviews, some 59 percent of these adverse events and temporary harm events were clearly or likely preventable.[12] The OIG concluded that Medicare spent an estimated $2.8 billion on hospitalizations associated with adverse events in 2011.[13]

34. The root of virtually all preventable adverse events in nursing homes is related to insufficient staffing. In 2000-2001, CMS and principal investigator Dr. John Schnelle studied what happens to the delivery of Basic Care when the nurse aide-to-resident ratios are increased or decreased in nursing homes with various ADL workloads. The workloads studied were determined based on resident MDS acuity data—which are the same type of acuity documents at issue in this case. MDS reports provide detailed information both as to what ADL care a resident needs assistance with and what levels of ADL support the nursing home claims to have provided.[14]

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[11] DEPARTMENT OF HEALTH AND HUMAN SERVICES OFFICE OF INSPECTOR GENERAL, "Adverse Events in Skilled Nursing Facilities: National Incidence Among Medicare Beneficiaries", February 2014, *available* at https://oig.hhs.gov/oei/reports/oei-06-11-00370.pdf, at 17, 20.

[12] *Id.* at 22.

[13] *Id.* at 26.

[14] *See* "Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes," Dec. 2001, *available at* https://www.justice.gov/sites/default/files/elderjustice/legacy/2015/07/12/Appropriateness_of_Minimum_Nurse_Staffing_Ratios_in_Nursing_Homes.pdf.

35. The General Accounting Office also has concluded that quality care is more dependent on staffing levels than spending levels.[15] So too have the Coalition of Geriatric Nursing Organizations and other expert authorities.[16]

36. To test the correct levels of staffing needed to meet acuity and ultimately hold skilled nursing facilities responsible ***through civil litigation*** for adverse events resulting from understaffing, Plaintiff and other advocates for the elderly require access to ***certified copies*** of the publicly available expected staffing levels for skilled nursing homes in 2014 and 2015.

37. Put simply, Plaintiff requires certified copies of the expected staffing levels in order to utilize the data in court cases.

38. Indeed, Subpoena Duces Tecum's for the requested data directed to Defendants are not enforceable in state court actions.

39. Therefore, the only way to authentic the requested data for use in state court cases enforcing the rights of the elderly is through defendants' certification of the otherwise publicly available information.

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[15] General Accounting Office, "Nursing Homes: Quality of Care More Related to Staffing than Spending", June 13, 2002, *available at* https://www.gao.gov/assets/100/91315.pdf.

[16] *See* THE COALITION OF GERIATRIC NURSING ORGANIZATION, "Nursing Staffing Requirements to Meet the Demands of Today's Long Term Care Consumer Recommendations from the Coalition of Geriatric Nursing Organizations", *available at* https://hign.org/sites/hartford/files/policy/partnerships/cgno/CGNO%20Nurse%20Staffing%20seven%20orgs_2014.pdf.

40. Indeed, CMS' own Freedom of Information Act (FOIA) Policy and Procedural Instructions contemplate the need for certified copies of data.

> CMS currently charges $10.00, as of September 2011, to certify that records are "true copies". CMS will only certify records as true copies that have not left the agency's chain of custody. To further explain the definition of chain of custody as pertaining to CMS, CMS' Medicare contractors and state survey agencies are considered to be an extension of the agency while performing activities in support of the Federal Medicare program and under Section 1864 of the Social Security Act. Therefore, this allows CMS to certify records held or generated by these entities which relate to these specific federally mandated agency responsibilities, and are provided directly by those contractors and authorized agents to CMS within this chain.

41. Nothing in CMS' Policy and Procedural Instructions contemplates withholding ***certified*** copies of data because uncertified copies may otherwise be available online.

Parties

42. Plaintiff The Steele Law Firm, LLC, is a Missouri limited liability company located at 2345 Grand Blvd., Suite 750, Kansas City, Missouri. In the course of representing clients across the country regarding matters of nursing home abuse and neglect, it has from time to time filed FOIA requests with CMS.

43. Defendant HHS is an agency of the United States Government and is headquartered at 200 Independence Ave., SW, Washington, DC 20201. HHS is an agency within the meaning of 5 U.S.C. § 552(f)(1). Upon information and belief, HHS has possession, custody and control of the records whose disclosure Plaintiff seeks to compel.

44. Defendant CMS is a subdivision of HHS, and is headquartered at 7500 Security Blvd., Baltimore, MD 21244. CMS is an agency within the meaning of 5 U.S.C. § 552(f)(1). Upon information and belief, CMS has possession, custody and control of the records whose disclosure Plaintiff seek to compel.

Jurisdiction

45. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B), and 28 U.S.C. § 1331. Declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202. *See also* Fed. R. Civ. P. 65.

Venue

46. Venue in the United States District Court for the Western District of Missouri is proper under 5 U.S.C. § 552(a)(4)(B), and under 28 U.S.C. § 1391(e).

Facts

47. As part of its investigation into potential claims of elder abuse, Plaintiff sent two FOIA requests seeking certified copies of certain of defendants' expected staffing data for skilled nursing facilities for the years 2014, 2015, and 2016 by e-mail correspondence sent to FOIA_Request@cms.hhs.gov and dated December 20, 2017.

48. The request for 2014 data stated: "Under the Freedom of Information Act, 5 U.S.C. subsection 552, I am requesting access to the "Staffing_2014.zip (12/31/2014, Zip File, 1653 KB)" excel spreadsheet found at https://data.medicare.gov/data/archives/nursing-home-compare." The request for 2014 data is attached as Exhibit A.

49. The request for 2015 data stated: Under the Freedom of Information Act, 5 U.S.C. subsection 552, I am requesting access to the "Staffing_2015.zip (12/31/2015, Zip File, 1655 KB)" excel spreadsheet found athttps://data.medicare.gov/data/archives/nursing-home-compare. The request for 2015 data is attached as Exhibit B.

50. The request for 2016 data stated: "Under the Freedom of Information Act, 5 U.S.C. subsection 552, I am requesting access to the "Staffing_2016.zip (12/31/2016, Zip File, 1648 KB)" excel spreadsheet found at https://data.medicare.gov/data/archives/nursing-home-compare." The request for 2016 data is attached as Exhibit C.

51. In the request for the 2016 data, Plaintiff stated: "I am aware that copies of some of these documents are available online. However, I need certified copies of these documents. Thus, I am requesting that CMS certify these records as they are being used in a court case, case number 16CV822 - Dolores Garrison, Individually, and Claudia Nohlgemuth as Administrator of the Estate of Eva Higgins v. Leisure Terrace, LLC, et al., Douglas County District Court, Douglas County, Kansas.

52. In the requests for the 2014 and 2015 data, Plaintiff stated: "I am aware that copies of some of these documents are available online. However, I need certified copies of these documents. Thus, I am requesting that CMS certify these records as they are being used in a court case, case number 16CY-CV02696 - Mary L. Wantland v. Excelsior Springs Nursing and Rehab et al, pending the Clay County Circuit Court, Clay County, Missouri."

53. By letters dated December 22, 2017, CMS acknowledged receipt of Plaintiff's FOIA requests for the 2014 and 2015 data sets, and provided a Control Number and PIN that had been assigned to each request. The letter acknowledging receipt of the request for 2014 data is attached as Exhibit D. The letter acknowledging receipt of the request for 2015 data is attached as Exhibit E.

54. By letter dated, February 6, 2018, CMS provided ***certified records*** in response to Plaintiff's request for 2016 data, attached as Exhibit F:

> This letter is in response to your Freedom of Information Act (5 U.S.C. § 552) request of 12/20/2017 which you sent to the Centers for Medicare & Medicaid Services (CMS). Within your correspondence you requested a certified copy of the Staftmg_2016.zip file.
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> Our agency initiated a search for records falling within the scope of your request, and located 2666 pages of responsive documents. We are releasing these certified documents to you in their entirety, without deletions.

55. However, by letters dated, February 20, 2018, CMS denied the FOIA requests for the 2014 and 2015 data sets stating: "After a search of CMS' Center for Clinical Standards and Quality (CCSQ), I have been informed by CCSQ that the requested information is available at the website listed below: https://data.medicare.gov/data/archives/nursinghome-compare." The denial letter for the 2014 data is attached as Exhibit G, while the denial letter for the 2015 data is attached as Exhibit H.

56. On February 27, 2018, Plaintiff filed two administrative appeals regarding the denial of access to the 2014 and 2015 data sets. The appeal regarding 2014 data is attached as Exhibit I, and the appeal regarding the 2015 data is attached as Exhibit J.

57. On March 13, 2018, CMS acknowledged receipt of the appeal for the 2014 data, attached as Exhibit K.

58. On March 13, 2018, CMS acknowledged receipt of the appeal for the 2015 data, attached as Exhibit L.

59. In violation of its statutory obligation to rule on that appeal within twenty (20) business days, or if properly extended, thirty (30) business days, see 5 U.S.C. §552(a)(6)(A)(ii) and (B)(i), as of the date of the filing of this action CMS neither sought an extension pursuant to 5 U.S.C. §552(a)(6)(A)(ii) and (B)(i) nor ruled on Plaintiff's appeal.

60. Plaintiff has exhausted its administrative remedies.

Plaintiff's FOIA Public Interest in Obtaining the Requested Records

61. Disclosure and certification of the requested records will serve the interests of nursing home residents across the United States by allowing Plaintiff and other members of the public to objectively determine whether members of this vulnerable population are receiving proper care or, due to staffing inadequacies, are being exposed to conditions that endanger and degrade them.

62. Specifically, disclosure and certification of the requested records will serve the interests of nursing home residents across the United States by allowing Plaintiff and other members of the public to hold skilled nursing homes accountable for injuries sustained due to understaffing through civil litigation.

63. Disclosure will also serve the public interest by allowing the public to understand whether CMS is adequately ensuring that nursing homes are in compliance with Medicare and Medicaid requirements, whether CMS is adequately pursuing enforcement actions against those nursing homes that are in violation of the federal requirements, whether it is adequately enforcing its own regulations (e.g., 42 C.F.R. § 483.35) and applicable statutes (e.g., 42 U.S.C. §§ 1395i-3 and 1396r), and whether it needs to take additional actions to fulfill its statutory duties.

COUNT I – FOIA VIOLATION
(FAILURE TO DISCLOSE)

64. Plaintiff realleges all allegations contained in paragraphs 1 through 63 as if repeated herein.

65. The Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(a)(3)(A), requires that "... each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place and fees (if any), and procedures to be followed, shall make the records promptly available to any person."

66. Plaintiff's FOIA requests reasonably describe the requested records, and were made in accordance with published agency rules. Further, the requested expected staffing data is easily reproducible and certifiable in the format requested by Plaintiff.

67. Defendants refusal, or failure, to disclose the requested records to Plaintiff violated FOIA, 5 U.S.C. § 552(a)(3)(A), and applicable agency regulations promulgated thereunder.

68. Injunctive relief is authorized under 5 U.S.C. § 552(a)(4)(B) to enjoin defendants from unlawfully withholding agency records, and to order the disclosure and certification of all records improperly withheld.

COUNT II – FOIA VIOLATION
(FAILURE TO TIMELY RESPOND)

69. Plaintiff realleges paragraphs 1 through 68 as if repeated herein.

70. FOIA requires that an agency respond to a valid request within twenty (20) business days or, in "unusual circumstances", within thirty (30) business days. 5 U.S.C. §552(a)(6)(A)-(B). *See also* 42 CFR §§401.136(b), 401.140(b)(1) (CMS rules implementing FOIA time limits).

71. Defendants violated Section 552(a)(6)(A)-(B) and their own rules because they failed, within the time period required by the Act and the rules, to (a) disclose the requested records or (b) provide written responses to Plaintiff's FOIA requests indicating with adequate specificity whether all, or particular parts, of the requested records would be disclosed, the ground(s) for withholding any parts of the requested records, and the time within which records would be disclosed.

COUNT III – FOIA VIOLATION
(FAILURE TO DISCLOSE IN REQUESTED FORMAT)

72. Plaintiff realleges paragraphs 1 through 71 as if repeated herein.

73. The Freedom of Information Act, 5 U.S.C. § 552(a)(3)(B), requires that a federal agency "shall provide the record in any form or format requested by the person if the record is easily reproducible by the agency in that form or format."

74. The expected staffing data is easily reproducible and certifiable in the format requested by Plaintiff.

75. In refusing to disclose and certify the requested records in the format requested by Plaintiff, Defendants violated FOIA, 5 U.S.C. § 552(a)(3)(B).

REQUESTED RELIEF

1. Order CMS to immediately process Plaintiff's FOIA requests;

2. Order CMS to promptly disclose to Plaintiff all of the requested records with ***certification***;

3. Award Plaintiff its costs and reasonable attorney fees incurred in this action, pursuant to 5 U.S.C. §552(a)(4)(E); and

4. Grant Plaintiff such other relief as the Court may deem appropriate.

Respectfully submitted,

THE STEELE LAW FIRM

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