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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

THE NEW YORK TIMES COMPANY,  
DANIELLE IVORY, and NATASHA SINGER,

Plaintiffs,

-v-

FOOD AND DRUG ADMINISTRATION,

Defendant.

19 Civ. 5640 (PGG)

**ANSWER**

Defendant the Food and Drug Administration (“FDA” or “Defendant”), by its attorney, Geoffrey S. Berman, United States Attorney for the Southern District of New York, hereby answers the Complaint under the Freedom of Information Act (“FOIA”) of Plaintiffs The New York Times Company (“The Times”), Danielle Ivory, and Natasha Singer upon information and belief as follows:

1. Paragraph 1 consists of Plaintiffs’ characterization of this action to which no response is required.

**PARTIES**

2. Defendant admits that The Times publishes *The New York Times* newspaper and www.nytimes.com, and denies knowledge or information sufficient to form a belief as to the

truth of the remaining allegations in Paragraph 2.

3. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3.

4. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4.

5. Defendant admits that FDA is an agency of the federal government and that FDA possesses certain records responsive to portions of Plaintiffs' FOIA request. Except as so expressly admitted, Defendant otherwise denies the allegations of Paragraph 5.

### **JURISDICTION AND VENUE**

6. Paragraph 6 consists of Plaintiffs' legal conclusions to which no response is required.

7. Paragraph 7 consists of Plaintiffs' legal conclusions to which no response is required.

8. Paragraph 8 consists of Plaintiffs' legal conclusions to which no response is required.

### **FACTS**

9. Defendant admits that, on December 20, 2018, Plaintiff Danielle Ivory submitted a FOIA request to FDA, a copy of which Plaintiffs filed with the Complaint as Exhibit A. The remaining allegations in Paragraph 9 consist of Plaintiffs' characterization and quotation of the December 20, 2018 FOIA request, to which no response is required, and to which Defendant respectfully refers to Exhibit A for its complete and accurate contents.

10. Paragraph 10 consists of Plaintiffs' legal conclusions and Plaintiffs' characterization of their FOIA request to which no response is required. To the extent a response is required, Defendant respectfully refers to Exhibit A for the complete and accurate contents of Plaintiffs' FOIA request, and Defendant respectfully refers to the statute, which speaks for itself and is the best evidence of its content.

11. Defendant admits the allegations in Paragraph 11.

12. Defendant admits the allegations in Paragraph 12.

13. Defendant admits that, between April and June 2019, representatives for The Times communicated with Defendant regarding their FOIA request. The remaining allegations in Paragraph 13 consist of Plaintiffs' characterization of those communications, to which no response is required. To the extent a response is required, Defendant refers to those communications, which Plaintiffs did not attach to the complaint, for their complete and accurate contents.

14. Defendant admits the allegations in Paragraph 14.

### **COUNT I**

15. In response to Paragraph 15, Defendant specifically incorporates by reference its responses to Paragraphs 1 through 14.

16. Defendant admits that it is an agency subject to FOIA. The remaining allegations in Paragraph 16 are conclusions of law to which a response is not required. To the extent a response is required, Defendant respectfully refers to the FOIA statute, which speaks for itself and is the best evidence of its content.

17. Defendant admits that, as of the date of this Answer, FDA has not issued a final determination regarding Plaintiffs' FOIA request. The remaining allegations in Paragraph 17 are conclusions of law to which a response is not required. To the extent a response is required, Defendant respectfully refers to the statute, which speaks for itself and is the best evidence of its content. Defendant denies any allegations inconsistent therewith.

18. Defendant denies that Plaintiffs are entitled to relief.

**REQUEST FOR RELIEF**

19. Paragraph 19 constitutes Plaintiffs' request for relief, to which no response is required. To the extent that a response is required, Defendant denies that Plaintiffs are entitled to the requested relief, or any relief whatsoever.

20. Paragraph 20 constitutes Plaintiffs' request for relief, to which no response is required. To the extent that a response is required, Defendant denies that Plaintiffs are entitled to the requested relief, or any relief whatsoever.

21. Paragraph 21 constitutes Plaintiffs' request for relief, to which no response is required. To the extent that a response is required, Defendant denies that Plaintiffs are entitled to the requested relief, or any relief whatsoever.

22. Paragraph 22 constitutes Plaintiffs' request for relief, to which no response is required. To the extent that a response is required, Defendant denies that Plaintiffs are entitled to the requested relief, or any relief whatsoever.

**DEFENSES**

Any allegations not specifically admitted, denied, or otherwise responded to are hereby denied. In further response to the Complaint, Defendant avers as follows:

**FIRST DEFENSE**

Plaintiffs are not entitled to compel the production of responsive records protected from disclosure by one or more of the exemptions or exclusions to FOIA or the Privacy Act, 5 U.S.C. §§ 552(b), 552a.

**SECOND DEFENSE**

Plaintiffs have failed to state a claim upon which relief may be granted under FOIA.

**THIRD DEFENSE**

Plaintiffs are not entitled to attorneys' fees or costs.

**FOURTH DEFENSE**

The Court lacks subject matter jurisdiction over Plaintiffs' requests for relief that exceed the relief authorized under FOIA, 5 U.S.C. § 552.

**FIFTH DEFENSE**

Defendant is exercising due diligence in processing Plaintiffs' FOIA request, and exceptional circumstances exist that necessitate additional time to process the request.

WHEREFORE, Defendant respectfully requests that the Court: (1) dismiss the Complaint with prejudice; (2) enter judgment in favor of Defendant; and (3) grant such further relief as the Court deems just and proper.

Dated: July 22, 2019  
New York, New York

Respectfully submitted,

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