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9 **UNITED STATES DISTRICT COURT**
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
11 **OAKLAND DIVISION**

12 THE CENTER FOR INVESTIGATIVE)
13 REPORTING and SHOSHANA WALTER,)
14 Plaintiffs,)

Case No. _____

15 **COMPLAINT FOR INJUNCTIVE**
16 **RELIEF**

17 v.

18 UNITED STATES DEPARTMENT OF)
19 LABOR,)
20 Defendant.)

21 **INTRODUCTION**

22 1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552,
23 for injunctive and other appropriate relief. The Center for Investigative Reporting (“CIR”) and
24 Shoshana Walter (collectively “Plaintiffs”) seek processing and release of agency records requested
25 from Defendant the United States Department of Labor (“DOL”).

26 2. On May 6, 2019, Plaintiffs submitted a FOIA request (“the Request”) to DOL’s Wage
27 and Hour Division (“WHD”) seeking disclosure of “any wage and hour complaints filed against the
28 employer ‘Synanon’ from 1960 through 1989.”

3. On June 24, 2019, DOL denied Plaintiffs’ request in full, providing a *Glomar*

1 response¹ and not asserting any exemption.

2 4. On July 9, 2019, Plaintiffs sent an administrative appeal letter to Defendant.

3 5. On September 10, 2019, DOL sent a response letter to the administrative appeal letter,
4 remanding the Request to WHD.

5 6. To date, Defendant has failed to comply with FOIA's statutory deadlines by not
6 issuing a final determination as to the Request.

7 7. Defendant has improperly issued a *Glomar* response² by failing to assert an
8 accompanying FOIA exemption. It has also waived its right to a *Glomar* response where records
9 have been publicly acknowledged.

10 8. Plaintiffs have exhausted all other administrative remedies.

11 9. The requested records are of significant public interest because they relate directly
12 to Synanon, an organization whose activities have received substantial media attention for decades.
13 *See, e.g.,* Robert Lindsey, *A Changed Synanon the Subject of Inquiry*, N.Y. TIMES, Dec. 10, 1978,
14 [https://www.nytimes.com/1978/12/10/archives/a-changed-synanon-the-subject-of-inquiry-a-](https://www.nytimes.com/1978/12/10/archives/a-changed-synanon-the-subject-of-inquiry-a-changed-synanon-finds.html)
15 [changed-synanon-finds.html](https://www.nytimes.com/1978/12/10/archives/a-changed-synanon-the-subject-of-inquiry-a-changed-synanon-finds.html).

16 10. The requested records (historical labor complaints against Synanon) are of particular
17 interest to Plaintiffs because Synanon has influenced contemporary drug rehabilitation programs,
18
19
20

21 _____
22 ¹ The term "*Glomar* response" originates from the Central Intelligence Agency's ("CIA") refusal to
23 confirm or deny the existence of records in response to a FOIA request relating to the *Hughes*
24 *Glomar Explorer*, a ship used in a classified [CIA] project used to 'to raise a sunken Soviet
25 submarine from the floor of the Pacific Ocean to recover the missiles, codes, and communications
26 for United States military and intelligence experts. *Roth v. U.S. Dep't of Justice*, 642 F.3d 1161,
27 1171 (D.C. Cir. 2011), quoting *Phillippi v. CIA*, 655 F.2d 1325, 1327 (D.C. Cir. 1981). Usually,
28 *Glomar* responses have been reserved for withholding national security and classified records.

² "*Glomar* responses are an exception to the general rule that agencies must acknowledge the
existence of information responsive to a FOIA request and provide specific, non-conclusory
justifications for withholding that information." *Am. Civil Liberties Union v. CIA*, 710 F.3d 422,
426 (D.C. Cir. 2013) (quoting *Roth*, 642 F.3d at 1178).

1 whose unlawful labor practices have been covered by CIR and other media outlets. *See* Amy Julia
2 Harris & Shoshana Walter, *She said she'd free them from addiction. She turned them into her*
3 *personal servants.*, REVEAL, May 21, 2018, [https://www.revealnews.org/article/drug-users-got-](https://www.revealnews.org/article/drug-users-got-exploited-disabled-patients-got-hurt-one-woman-benefited-from-it-all/)
4 [exploited-disabled-patients-got-hurt-one-woman-benefited-from-it-all/](https://www.revealnews.org/article/drug-users-got-exploited-disabled-patients-got-hurt-one-woman-benefited-from-it-all/); Maria Szalavitz, *The*
5 *Addiction Treatment and Rehab Industries Need to Clean Up Their Act*, PACIFIC MAG., Oct. 14,
6 2016, [https://psmag.com/news/the-addiction-treatment-and-rehab-industries-need-to-clean-up-](https://psmag.com/news/the-addiction-treatment-and-rehab-industries-need-to-clean-up-their-act)
7 [their-act](https://psmag.com/news/the-addiction-treatment-and-rehab-industries-need-to-clean-up-their-act) (updated June 14, 2017).

8
9 11. Plaintiffs now ask the Court for an injunction finding the agency waived its *Glomar*
10 objection, which was improperly asserted and requiring DOL to promptly release the records.

11 JURISDICTION

12 12. The Court has subject matter jurisdiction over this action and personal jurisdiction
13 over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(C)(i). This Court also has
14 jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1436, and 5 U.S.C. §§ 701–706.

15 VENUE AND INTRADISTRICT ASSIGNMENT

16
17 13. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1391(e) and 1402.
18 Plaintiff CIR has its principal place of business in this district. Plaintiff Shoshana Walter is domiciled
19 in this district.

20 14. Assignment to the Oakland Division is proper pursuant to Local Rules 3-2(c) and (d)
21 because a substantial portion of the events giving rise to this action occurred in Alameda County,
22 where Plaintiff CIR's principal place of business is located and most actions in this case occurred.

23 PARTIES

24
25 15. Plaintiff CIR publishes *Reveal*, an online news site, at revealnews.org, and *Reveal*, a
26 weekly public radio show with approximately 1 million listeners per week. Founded in 1977 as the
27 first non-profit investigative news organization, CIR has received multiple awards for its reporting.

1 CIR is a non-profit established under the laws of the State of California, with its primary office in
2 Emeryville, California.

3 16. Plaintiff Shoshana Walter is a staff reporter for *Reveal* and an employee of CIR.

4 17. Defendant DOL is a department of the executive branch of the U.S. government and
5 an “agency” within the meaning of 5 U.S.C. § 552(f)(1). WHD is a component of DOL. DOL has
6 its headquarters in Washington, D.C., and offices all over the country, including in Oakland and San
7 Francisco, California. WHD also has a regional office in San Francisco, California.

8 **FACTUAL BACKGROUND**

9
10 18. WHD is the component of DOL responsible for “administering and enforcing laws
11 that establish minimally acceptable standards for wages and working conditions.” WHD, *Fact Sheet:*
12 *Basic Information*, https://www.dol.gov/whd/regs/compliance/whd_fs.pdf.

13 19. WHD’s stated mission is “to promote and achieve compliance with labor standards
14 to protect and enhance the welfare of the Nation's workforce.” WHD, *About Us*,
15 <https://www.dol.gov/whd/about/mission/whdmiss.htm>. As part of its mandate, WHD conducts
16 employer investigations, many of which are prompted by complaints from employees or third parties.
17 WHD, *Fact Sheet #44: Visits to Employers*,
18 <https://www.dol.gov/whd/regs/compliance/whdfs44.htm>.

19
20 20. Synanon was founded in 1958 as a non-profit organization, and initially offered drug
21 rehabilitation programs at several locations in California and in other states. Matt Novak, *Synanon's*
22 *Sober Utopia: How a Drug Rehab Program Became a Violent Cult*, GIZMODO, Apr. 15, 2014,
23 [https://paleofuture.gizmodo.com/synanons-sober-utopia-how-a-drug-rehab-program-became-](https://paleofuture.gizmodo.com/synanons-sober-utopia-how-a-drug-rehab-program-became-1562665776)
24 [1562665776](https://paleofuture.gizmodo.com/synanons-sober-utopia-how-a-drug-rehab-program-became-1562665776).

25
26 21. Federal government agencies have publicly acknowledged investigations into
27 Synanon’s labor practices over many decades. In 1974, Synanon sought recognition from the
28

1 Internal Revenue Service (“IRS”) as a religious organization, and in 1980, changed its name to The
2 Synanon Church. *Synanon Church v. Comm’r*, 57 T.C.M. (CCH) 602 (T.C. 1989). The IRS revoked
3 Synanon’s tax-exempt status in 1989 after the organization conceded to the IRS that many of its
4 employees were “serving without compensation.” *Id.*

5 22. In 1989, the U.S. Tax Court ordered Synanon to pay retroactive taxes, affirming that
6 it no longer operated as a nonprofit. *Synanon Church v. U.S.*, 557 F. Supp. 1329, 1331 (D.D.C.
7 1983) (“determined that it was not operated exclusively for any exempt purpose and that its net
8 earnings inured to the benefit of private individuals.”). The court listed irregularities in Synanon’s
9 compensation scheme: “Most individuals who had lived and worked in Synanon for more than three
10 years received a monthly salary which averaged \$34 per month,” including during the calendar year
11 where Synanon’s executive committee elected to give founder “[Charles] Dederich \$500,000 cash
12 immediately as a pre-retirement bonus.” *Id.*

13
14
15 23. Synanon officials were also indicted by a federal grand jury on criminal conspiracy
16 charges in 1985. *U.S. v. Benjamin*, CR-F-86-1-REC, 1986 WL 15568, at *1 (E.D. Cal. Nov. 4,
17 1986). The indictment cited, in part, “the diversion of Synanon money into private hands, salaries,
18 and bonuses” as the criminal activities alleged. Merrill Hartson, *Indictment Charges Nine Former,*
19 *Present Synanon Members with Conspiracy*, AP NEWS, Oct. 2, 1985,
20 <https://www.apnews.com/339b83c13262b0fd7e3d774f527791ea>.

21
22 24. Additionally, the Federal Communications Commission (“FCC”) noted that Synanon
23 claimed the “Department of Labor investigation of Synanon labor practices had been staged” but its
24 ruling suggested that comment was without merit. *In Re Application of Am. Broad. Companies, Inc.*
25 *for Renewal of License of Station KGO-TV S.F., Cal.*, 90 F.C.C.2d 395, 397 (F.C.C. 1982).

26
27 25. Two WHD investigators have also confirmed to CIR that WHD received complaints
28 about Synanon’s labor practices.

1 qualifies as a “representative of the news media” and that the records are not sought for commercial
2 use. 5 U.S.C. § 552(a)(4)(A)(ii).

3 31. Plaintiffs also sought expedited processing of the Request on the grounds that Ms.
4 Walter is a “person primarily engaged in disseminating information” and there is a “compelling
5 need” for these records in order to “inform the public concerning actual or alleged Federal
6 Government activity.” 5 U.S.C. § 552(a)(6)(E)(v).

7 32. Specifically, Ms. Walter requested “records of any wage and hour complaints filed
8 against the employer ‘Synanon’ from 1960 through 1989.” Ms. Walter further requested “any
9 response by the [DOL] to this complaint, including . . . correspondence with the complainant(s),
10 internal correspondence about the case(s), case notes, and investigative reports.” *See* Exhibit A.

11 33. On May 7, 2019, Ms. Walter received an e-mail response from DOL acknowledging
12 the Request and assigning it tracking number 877627. A true and correct copy of that email is
13 attached as Exhibit B.
14

15 34. On June 24, 2019, Ms. Walter received a response letter to the Request from the
16 Washington, D.C. office of WHD, signed by Genise Coleman (“the Denial”). A true and correct
17 copy of the Denial is attached as Exhibit C.
18

19 35. The Denial consisted of a “*Glomar* response,” and no responsive records were
20 disclosed. WHD indicated that the agency “can neither confirm nor deny that we do or did maintain
21 the records you requested,” and that “[a]s such, we are providing a *Glomar* response[.]” *Id.*

22 36. The Denial also denied Ms. Walter’s request for a fee waiver as moot. Since “[t]he
23 processing costs incurred did not exceed the chargeable minimum,” no processing fees were
24 assessed. *Id.*
25

26 37. The Denial further denied Ms. Walter’s request for expedited processing, stating that
27 her “justification does not meet the . . . threshold” set forth in 29 C.F.R. 70.25(d)(1). *Id.*
28

1 38. On July 2, 2019, Plaintiffs sent an administrative appeal letter (hereinafter “the
2 Administrative Appeal”) to DOL regarding the Request. A true and correct copy of that letter
3 without attachments is attached as Exhibit D.

4 39. In the Administrative Appeal, Plaintiffs stated that the *Glomar* response provided by
5 WHD was improper for two reasons. First, Plaintiffs explained that courts only permit an agency to
6 issue a *Glomar* response where a FOIA exemption “applies in the first instance.” *Id.* But in this
7 case, the Denial “did not provide a justified reason for withholding and did not cite a single FOIA
8 exemption.” Exhibit D. Since WHD failed to assert *any* FOIA exemption in the Denial, a *Glomar*
9 response is inappropriate. Second, Plaintiffs explained that once “the existence or nonexistence of
10 requested records has been officially and publicly disclosed” by a federal agency, a *Glomar* response
11 is no longer justified. *Id.* (citation omitted). Plaintiffs pointed out that “at least two federal agencies
12 have publicly acknowledged investigations into Synanon’s business practices, including allegations
13 that the organization profited off of unpaid labor.” *Id.* Because federal agencies have publicly
14 acknowledged the existence of these records, WHD may not issue a *Glomar* response.
15

16 40. On September 10, 2019, DOL sent Plaintiffs a response letter from the Washington,
17 D.C. office of the DOL signed by Raymond Mitten, Jr., acknowledging the Administrative Appeal
18 and remanding it to WHD (“the Remand”). A true and correct copy of the Remand is attached as
19 Exhibit E. The Remand explained: “WHD’s use of the *Glomar* response was improper because
20 WHD did not identify a relevant FOIA exemption under which confirming or denying the records’
21 existence would cause any cognizable harm.” *Id.* The Remand further specified that WHD would
22 reply directly to Plaintiffs with its supplemental decision. *Id.*
23

24 41. To date, WHD has failed to issue a response as per the Remand.
25

26 42. More than 20 working days have passed since Plaintiffs submitted the Request on
27 May 6, 2019; sent the Administrative Appeal on July 2, 2019; and received the Remand from DOL
28

1 on September 10, 2019.

2 43. DOL has failed to comply with FOIA, 5 U.S.C. § 552(a)(6)(A)(i) and (ii),
3 respectively, which require that an agency make determinations with respect to a request and an
4 administrative appeal within 20 business days.

5 44. Having exhausted all administrative remedies, Plaintiffs now seek injunctive relief.

6
7 **CAUSE OF ACTION**

8 **Violation of Freedom of Information Act**

9 45. Plaintiffs repeat and reallege paragraphs 1-44.

10 46. DOL is subject to FOIA and must therefore release in response to a FOIA request any
11 disclosable records in its possession and provide a lawful reason for withholding any materials as to
12 which it is claiming an exemption.

13 47. DOL has no lawful basis for declining to acknowledge the existence of the records
14 requested by Plaintiffs under FOIA.

15 48. DOL has improperly delayed the Request which warranted expedited processing.

16 49. DOL has failed to act on Plaintiffs' request and appeal within the 20 business days
17 required by FOIA. *See* 5 U.S.C. § 552(a)(6)(A)(i) and (ii). Accordingly, Plaintiffs are deemed to
18 have exhausted their administrative remedies under FOIA.

19 50. Plaintiffs are entitled to declaratory and injunctive relief compelling the expedited
20 release and disclosure of the requested records.

21
22 **REQUESTED RELIEF**

23 WHEREFORE, Plaintiffs prays that this Court:

24 1. Declare that Defendant DOL violated FOIA by failing to provide requested records
25 in response to Plaintiffs' FOIA request, improperly issuing a *Glomar* response, and failing to notify
26 Plaintiffs of a final determination as to the request and appeal;
27
28

1 2. Declare that the documents sought by their FOIA request, as described in the
2 foregoing paragraphs, are public under 5 U.S.C. § 552 and must be disclosed;

3 3. Order Defendant DOL to expeditiously provide the requested documents to Plaintiffs
4 within 20 business days of the Court's order;

5 4. Award Plaintiffs the costs of this proceeding, including reasonable attorneys' fees, as
6 expressly permitted by FOIA; and

7 5. Grant Plaintiffs such other and further relief as this Court may deem just and proper.
8

9
10 DATED: November 11, 2019

Respectfully submitted,

11 By: 

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