

EXHIBIT A

IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT IN
AND FOR BROWARD COUNTY

CASE NO.:

HUMAN RIGHTS DEFENSE CENTER,
a not-for-profit corporation,

**IMMEDIATE HEARING REQUESTED
PURSUANT TO FLA. STAT. § 119.11(1)**

Plaintiff,

vs.

CENTURION OF FLORIDA, LLC; and
MHM HEALTH PROFESSIONALS, LLC.

Defendants.

**COMPLAINT AND PETITION FOR
WRIT OF MANDAMUS**

1. Plaintiff, HUMAN RIGHTS DEFENSE CENTER (“HRDC” or “Plaintiff”), brings this action against Defendants CENTURION OF FLORIDA, LLC (“Centurion”) and MHM HEALTH PROFESSIONALS, LLC (“MHM”) (collectively “Defendants”) to enforce Florida’s Public Records Law.

I. JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to Article V, Section 5(b) of the Florida Constitution and Section 119.11, Florida Statutes.

3. Venue is appropriate in Broward County pursuant to Fla. Stat. § 47.051, as both Defendants’ Registered Agents are located within the county.

II. PARTIES

4. The Human Rights Defense Center is a not-for-profit charitable organization recognized under § 501(c)(3) of the Internal Revenue Code, incorporated in the state of Washington and with principal offices in Lake Worth, Florida.

5. Defendant Centurion of Florida, LLC is a subsidiary of Centene Corporation,¹ principally located in Virginia and registered in the state of Florida. Centurion contracted with the Florida Department of Corrections (“FDOC”) to provide medical care to prisoners from 2016 to the present. When providing medical care for prisoners committed to FDOC, the Defendant stands in the shoes of the FDOC and is a public agency under Florida’s Public Records Act, Section 119.011(2), Florida Statutes.

6. Defendant MHM Health Professionals, LLC is a wholly-owned subsidiary of MHM Services, Inc., which itself is also wholly-owned by Centene Corporation.² MHM Health Professionals, LLC is responsible for the provision of staffing services related to Centurion’s contract with FDOC.

III. FACTS

A. Plaintiff’s Background and Mission

7. For more than 29 years, HRDC’s mission has been public education, advocacy and outreach on behalf of, and for the purpose of assisting, prisoners who seek legal redress for infringements of their constitutionally guaranteed and other basic human rights. HRDC’s mission, if realized, has a salutary effect on public safety.

8. To accomplish its mission, HRDC publishes and distributes books, magazines, and other information containing news and analysis about prisons, jails and other detention

¹ See Olivia Hitchcock, *Man dies three years into life sentence for Wellington-area murder*, The Palm Beach Post (Sept. 20, 2019), <https://www.palmbeachpost.com/news/20190920/man-dies-three-years-into-life-sentence-for-wellington-area-murder> (last accessed: Dec. 6, 2019).

² Centene acquired MHM Services, Inc. in April 2018. Under the terms of this agreement, Centene also acquired 49% of Centurion—a “correctional healthcare services joint venture between Centene and MHM [Services, Inc.]”. See Form 10-K Annual Report SEC filing of Centene, <https://investors.centene.com/node/23816/html> (last accessed: Dec. 6, 2019).

facilities, prisoners' rights, court rulings, management of prison facilities, prison conditions, and other matters pertaining to the rights and/or interests of incarcerated individuals.

9. HRDC publishes and distributes an award-winning monthly magazine titled *Prison Legal News: Dedicated to Protecting Human Rights*, which contains news and analysis about prisons, jails, and other detention facilities, prisoners' rights, court opinions, management of prison facilities, prison conditions, and other matters pertaining to the rights and/or interests of incarcerated individuals. HRDC also publishes and distributes *Criminal Legal News*, which is focused on criminal law and procedure and policing issues, as well as dozens of different books about the criminal justice system, legal reference books, and self-help books of interest to prisoners.

10. In furtherance of its mission, and to facilitate its reporting on issues pertaining to the criminal justice system and incarceration, HRDC routinely requests access to public records from municipal, state, and federal agencies across the country, as well as from the private entities employed by, contracting with, or acting as agents on behalf of municipal, state, and federal authorities.

B. Centurion's Contract with the State

11. On January 29, 2016, Centurion contracted with the state of Florida to provide medical services to prisoners incarcerated within FDOC prison facilities, beginning on February 1, 2016.

12. In return for these services, the state originally agreed to compensate Centurion up to \$267,968,000 annually. In 2018 the contract was renewed, providing for revenues of \$1.5 billion to Centurion under terms which guarantee it a profit.³

³ Drew Wilson, *DOC says aging inmates, mental health are driving up health care costs*, Florida Politics (Feb. 13, 2019), <https://floridapolitics.com/archives/288246-doc-says-aging-inmates-> (footnote continued)

13. As part of the contract, Centurion agreed to, *inter alia*, “keep and maintain public records required by the Department in order to perform the service” and “upon request from the Department's custodian of public records, provide the Department with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.” A copy of the contract between Centurion and FDOC, as amended, is attached to this Complaint as Exhibit 1.

14. Centurion has subcontracted with MHM to provide medical services due under the Contract with FDOC.

C. HRDC’s Public Records Requests to Defendants, FDOC, and FDMS

15. Dr. Jose Rafael Rodriguez, M.D. is the Chief Health Officer at the Lowell Correctional Institution and the Florida Women’s Reception Center, two prisons run by FDOC. Dr. Rodriguez is an employee of Centurion and/or MHM.

16. On or about August 1, 2019, the Human Rights Defense Center (“HRDC”) requested certain public records from Centurion. HRDC requested copies of the following:

- 1) The personnel file for Dr. Jose Rafael Rodriguez, M.D., (“Dr. Rodriguez”) Medical Director – Chief Health Officer at Lowell Correctional Institution (Main and Annex) and Florida Women’s Reception Center; and
- 2) [All records showing any disciplinary history for Dr. Rodriguez that exist and are not contained within Request 1 (i.e. personnel file). This includes, but is not limited to, any past investigations into Dr. Rodriguez, any reports generated by those investigations, and any and all documentation regarding disciplinary actions that have been taken against Dr. Rodriguez.

A copy of the request is attached to this Complaint as Exhibit 2.

mental-health-are-driving-up-health-care-costs (last accessed: Dec. 6, 2019).

17. On or about August 21, 2019, having received no response from Centurion, HRDC sent a Notice of Non-Compliance with Public Records Request (“Notice”) to the Florida Department of Corrections, the Florida Department of Management Services (“FDMS”),⁴ and to Centurion. A copy of that Notice is also attached to this Complaint as Exhibit 3.

18. On or about August 22, 2019, HRDC received a response from Centurion’s Associate General Counsel, Aynsley Harrow Mull, indicating that:

- 1) “Centurion of Florida does not employ, nor has it employed, Dr. Rodriguez and is not the proper custodian of his personnel file.”
- 2) “Centurion of Florida maintains a subcontract with an affiliate, MHM Health Professionals, LLC, for the provision of staffing services related to its contract with the Florida Department of Corrections.”
- 3) “MHM Health Professionals employs Dr. Rodriguez and is the proper custodian of his personnel file.”
- 4) “To the extent [HRDC’s] request could be applied to MHM Health Professionals, MHM Health Professionals does not meet the definition of an ‘agency’ to whom the Public Records Law applies[;]” and
- 5) “[E]ven If MHM Health Professionals was construed to be an ‘agency,’ its personnel files are not ‘public records’ within the meaning of the Public Records Law because such documents are not ‘made or received pursuant to law or ordinance or in connection with the transaction of official business by an agency.’”

A copy of this response is attached to this Complaint as Exhibit 4.

19. On or about September 25, 2019, HRDC made an identical public records request to MHM, which prompted a similar response from a different Associate General Counsel for Centurion, Brett T. Lane, on October 2. A copy of that request and MHM’s response is attached to this Complaint as Composite Exhibit 5.

⁴ The FDMS is the business arm of the state. It supports other state agencies engaged in business with private contractors. As part of this role, it administers the contracts held by corporations running private prison facilities on behalf of FDOC.

20. On or about October 16, 2019, HRDC sent Notices of Centurion and MHM's Non-Compliance with Plaintiff's public records requests to FDOC, FDMS, as well as to Centurion and MHM's counsel. Copies of each of these Notices are attached to this Complaint as Composite Exhibit 6.

21. To date, neither Centurion nor MHM has provided any documents in response to HRDC's public records request.

IV. CLAIMS

22. HRDC re-alleges and incorporates the allegations of Paragraphs 1 through 21 of the Complaint as if fully set forth herein.

23. The constitutional right of access to public records applies to "any public body, officer, or employee of the state, or persons acting on their behalf . . ." Art. I, § 24, Fla. Const.; *see also* § 119.011(2), Fla. Stat.

Count I – Unlawful Withholding of Public Records (Against Defendant Centurion)

24. By its own actions, and as reflected in FDOC's contract with Centurion, FDOC delegated to Centurion its duty to create, receive, and maintain public records in relation to the Contract, and Centurion was acting on behalf of the FDOC as the custodian of the public records at issue. Therefore, Centurion is an "agency" pursuant to Section 119.011(2), Florida Statutes, and has an obligation to provide access to any non-exempt public records for which it has assumed the role of custodian.

25. As Medical Director at a state prison, Dr. Rodriguez's personnel file and his disciplinary history are public records—and matters of great public importance—in that they created as part of Centurion's transaction of official business on behalf of FDOC, that of providing medical services.

26. No public records law exemption exists or has been asserted that would prevent the inspection or copying of the records requested by HRDC. Centurion cannot evade Florida's Public Records Act and avoid the custodial responsibilities it assumed from the FDOC by subcontracting with MHM and claiming that MHM is the proper custodian of personnel file in order to evade and delay production of records.

27. Centurion's refusal and consequent delay in providing the requested records is unreasonable and unjustified and amounts to an unlawful refusal to provide the records.

28. Centurion has failed and refused to provide the requested records. This failure to provide the requested records is unlawful as it violates Article I, Section 24(a) of the Florida Constitution and Florida's Public Records Act.

**Count II – Unlawful Withholding of Public Records
(Against Defendant MHM)**

29. As the entity that Centurion has tasked with employing Dr. Rodriguez and maintaining the requested records, MHM is also an agency pursuant to Section 119.011(2), Florida Statutes: MHM shares Centurion's obligation to provide access to any non-exempt public records for which it has assumed the role of custodian on behalf of—and at the behest of—Centurion.

30. As stated *infra*, contrary to MHM's assertion, the records requested by HRDC are public records as defined by Florida's Constitution and by statute, as well as in the case law. This is notwithstanding that—and, in fact, because—MHM maintains Dr. Rodriguez's personnel file on behalf of Centurion.

31. Just as there is no public records exemption available to Centurion that would prevent the inspection or copying of the records requested by HRDC, there is equally no exemption applicable to prevent MHM's production of the records.

32. MHM's refusal and consequent delay in providing the requested records is unreasonable and unjustified and amounts to an unlawful refusal to provide the records.

33. MHM has failed and refused to provide the requested records. This failure to provide the requested records is unlawful as it violates Article I, Section 24(a) of the Florida Constitution and Florida's Public Records Act.

Attorneys' Fees

34. Section § 119.0701(4) of the Public Records Act provides:

- a) If a civil action is filed against a contractor to compel production of public records relating to a public agency's contract for services, the court shall assess and award against the contractor the reasonable costs of enforcement, including reasonable attorney fees, if:
 1. The court determines that the contractor unlawfully refused to comply with the public records request within a reasonable time; and
 2. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the contractor has not complied with the request, to the public agency and to the contractor.

35. HRDC provided written notice of its public record request to FDOC, FDMS, Centurion, and MHM at least 8 business days prior to filing this action.

36. HRDC's counsel has been actively involved in this matter.

37. HRDC is obligated to pay attorneys' fees for both its in-house and any outside counsel to be retained in relation to this matter.

Expedited Hearing

38. Section 119.11(1) of the Public Records Act provides that courts are to set immediate hearings in actions to enforce its provisions and are to give such cases priority over other pending cases. *Salvador v. Fennelly*, 593 So. 2d 1091, 1094 (Fla. 4th DCA 1992) (recognizing the importance of the statutory provision for immediate hearings in Public Records Act cases because "time can be an important element in the right of access to public records").

39. As the Florida Supreme Court has recognized: “News delayed is news denied.” *State ex. Rel. Miami Herald Publ’g Co. v. McIntosh*, 340 So. 2d 904, 910 (Fla. 1976). Therefore, HRDC requests an immediate hearing and that this case be given priority over other pending cases.

Relief Requested

WHEREFORE, Plaintiff HRDC requests that this Court:

- a. Set and hold an immediate hearing pursuant to Section 119.11 of the Public Records Act;
- b. Find that the requested records are public records subject to disclosure under the Public Records Act to which no valid exemption applies;
- c. Find that Centurion and MHM have a duty to provide access to non-exempt public records;
- d. Find that Centurion and MHM’s delay in producing the non-exempt responsive records was unjustified;
- e. Find that Centurion and MHM unlawfully refused to permit access to the records at issue in violation of the Public Records Act and Article I, Section 24 of the Florida Constitution;
- f. Order Centurion and MHM to permit access to the records requested by HRDC without further delay;
- g. Award HRDC its reasonable attorneys’ fees, costs, and expenses incurred in this action against Defendants jointly and severally, as provided in Section 119.12, Florida Statutes; and
- h. Award HRDC such other and further relief as the Court deems necessary and appropriate.

Respectfully Submitted,

/s/ Masimba Mutamba

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