

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE: ROUNDUP PRODUCTS
LIABILITY LITIGATION

MDL No. 2741

Case No. 16-md-02741-VC

**PLAINTIFFS' REPLY IN SUPPORT OF
MOTION TO COMPEL DEPOSITION OF
JESS ROWLAND**

Date: February 27, 2017

Time: 2:00pm

Ctrm: 4, 17th floor

Hon. Vince Chhabria

This document relates to:

ALL ACTIONS

**PLAINTIFFS' REPLY IN SUPPORT OF MOTION TO COMPEL
DEPOSITION OF JESS ROWLAND**

Introduction

Plaintiffs respectfully submit this reply brief in support of their Motion to Compel the Deposition of Jess Rowland, a private citizen who formerly served as Monsanto's chief "friend" within the EPA, and left EPA mysteriously within days of an "inadvertent" leak and subsequent retraction of an EPA draft report on the safety of glyphosate, that bore Mr. Rowland's signature.

It is not clear whether EPA has substantive opposition to this Motion; the opposition addresses only perceived procedural defects. As explained below, there were no procedural defects in connection with the request to depose Mr. Rowland.¹ Moreover, and of greater importance, it would benefit EPA, and the public as a whole, to learn about a former EPA employee's biases and misconduct and deter such conduct in the future. Further, the Plaintiffs have a pressing need for Mr. Rowland's testimony to confirm his relationship with Monsanto and EPA's substantial role in protecting the Defendant's business, efforts subsequently embodied in government reports consistently cited by Monsanto in this Court and elsewhere.

Importance of Discovery Sought

As stated in the original Motion, the circumstances underlying the relationship between Mr. Rowland and Monsanto are highly suspicious. The exhibits to the original Motion remain under seal, and Plaintiffs will not complicate the record, particularly in light of the Court's comments on sealing, by adding further exhibits under seal here; but Monsanto's production is replete with internal communication emphasizing an emergent need for the EPA Office of Pesticide Programs to release its report as quickly as possible. The unreleased report is mentioned repeatedly in the context of ensuring it is released in time to preempt other potential

¹ If the Court finds that there were procedural defects, Plaintiffs will correct those defects immediately but contend that such corrections should not delay adjudication of the merits of this motion.

actions or inquiries about the dangers of glyphosate. Similarly troubling is that Monsanto knew in advance of it being leaked that the report would be favorable. The document production is also replete, well beyond the exhibits attached to the Motion, with references to in-person meetings with “Jess” and text messages between Rowland and Monsanto employees, showing Rowland straining, and often breaking, ethics and rules to benefit Monsanto’s business.

Marion Copley, D.V.M., a 30-year career EPA scientist and recipient of numerous awards, wrote a letter to Mr. Rowland in March 2013, two years before the public debate about the carcinogenicity of glyphosate began in earnest. Dr. Copley was a senior toxicologist in the EPA’s Health Effects Division, and she worked closely with Mr. Rowland. Diagnosed with terminal cancer, she had to retire for health reasons and passed away in January 2014. Before her death, she voiced her serious concerns to Mr. Rowland about his and EPA’s handling of glyphosate.

Dr. Copley’s dying declaration begins by naming no fewer than fourteen effects of glyphosate known to EPA, all of which are plausible mechanisms of action explaining the increase in lymphoma risk. See Letter dated March 24, 2013 from Dr. Copley to Jess Roland, Exhibit 1. As Dr. Copley notes, “any one of these mechanisms alone listed can cause tumors, but glyphosate causes all of them simultaneously.” *Id.* Dr. Copley noted that glyphosate was previously classified by EPA as a “possible human carcinogen,” and argued that, in accordance with EPA’s knowledge about the chemical, EPA should classify glyphosate as a “probable human carcinogen.” *Id.* Unfortunately, Dr. Copley died less than a year later and before IARC, the following year, reached this very conclusion.

Dr. Copley’s letter points at corruption within EPA; she asks that Mr. Rowland consider her scientific assertions rather than “play your political conniving games with the science to favor

the registrants [pesticide manufacturers].” Dr. Copley confronts Mr. Rowland with allegations that he and Anna Lowit, who still works at EPA, “intimidated staff on CARC and changed HIARC and HASPOC final reports to favor industry.” Dr. Copley’s letter closes with an additional accusation toward Ms. Lowit: **“If anyone in OPP is taking bribes, it is her.”** She requests that Mr. Rowland “for once do the right thing and don’t make decisions based on how it affects your bonus.”

Dr. Copley’s letter, discovered after the filing of this Motion, substantiates many of Plaintiffs’ suspicions regarding EPA’s improper relationship with Monsanto. It highlights the need to take the testimony of Mr. Rowland on these issues now. Plaintiffs have explored the issues as much as they can with party witnesses; indeed, several witnesses acknowledge knowing Mr. Rowland but are unable (or unwilling) to provide any details of his relationship with Monsanto.

Dr. Copley’s dying request was that Mr. Rowland “for once do the right thing and don’t make decisions based on how it affects your bonus. You and Anna Lowit intimidated staff on CARC and changed HIARC and HASPOC final reports to favor industry.”

Service was Proper, Cured or Waived

Turning to the specific procedural defects cited by EPA in its opposition, Plaintiffs respectfully submit they are either inapplicable, have already been cured, or, at worst, would be grounds for a short continuance of this Motion to the next status conference.

EPA states that Plaintiffs have not properly served it with an “unredacted version of the Motion with Exhibits to the EPA” (Opp. at p.4). In fact, the motion and exhibits remain under seal because Defendant has not allowed Plaintiffs to provide an unredacted copy to the Department of Justice, despite Plaintiffs’ repeated requests. Plaintiffs are bound by the

protective order; they cannot provide the unredacted motion to the United States Attorney without violating that agreed order. At the January 27, 2017 status conference, on the subject of the sealing of this Motion, the Court stated:

And the parties, particularly companies, take a completely unreasonable view on what should be confidential and what material would cause them competitive harm. And so I just want to say at the outset, if I see a pattern of frivolous motions to seal, I will start sanctioning people. I'll start sanctioning parties and I will start sanctioning lawyers.

(Transcript at 7:5-10). The Court continued:

Regarding the motion to seal the materials connected to the Rowland deposition, I've reviewed them. It is very difficult for me to imagine a justification for sealing any of those materials; however, I will -- and I will say that often a company will file a motion to seal materials because the company perceives the material as embarrassing. I do not believe in the vast majority of cases that it is appropriate to seal material merely because it might be embarrassing to the company.

(Id. at 12:5-13). In light of the Court's remarks, Plaintiffs requested that Monsanto voluntarily agree the Motion may be unsealed; that request has been made no less than **five** times in the past two weeks. On February 6, 2016, counsel for Monsanto finally replied "We will let you know by COB tomorrow." Yet, as of this filing, no reply has been forthcoming.

Regarding formal service of the Motion on the United States, the government's arguments are belied by the record. The government did, in fact, contact Plaintiffs and objected to the timing and service of the motion, originally noticed for January 27, 2017. In response, the United States and Plaintiffs negotiated and entered into a Stipulation regarding the briefing and hearing; as noted in that document, entered by the Court (Docket No. 119), "Counsel for the government requested until February 8, 2017 to file a response and ... Plaintiffs' counsel agreed

to the request for additional time.... Plaintiffs and the United States have further agreed that, if necessary, a hearing on this Motion shall be held with this Court on February 22, 2017” (now continued by Court to February 27, 2017). Claims of defect in notice or service have been effectively waived by the joint stipulation.

All counsel registered for ECF in the Northern District of California consent to electronic service of all e-filed papers. *See e.g. E & J Gallo Winery v. Encana Energy Servs., Inc.*, No. CV-F-03-5412 AWILJO, 2005 WL 6408198, at *37 (E.D. Cal. July 5, 2005) (rejecting party’s argument that emailing a notice of deposition was improper where attorney was registered ECF user under analogous Eastern District of California rules.): <https://ecf.cand.uscourts.gov/cand/faq/general/service.htm>. Manual service is required only for unregistered counsel and pro se litigants. *Id.* Although Assistant U.S. Attorney Norris had not yet appeared in the case at time of service, she was a registered ECF user in the Northern District of California. To the extent that emailing the motion constituted improper service, the Court may still overlook the procedural defect and rule on the substance of the motion where the party acknowledges receipt of the email service and there is no prejudice.” *E&J Gallo* 2005 WL 6408198 at * 38. (Regarding the effects of e-mail service, “Defendants neither formally objected to Mr. Anderssen's February 17, 2005 deposition nor sought a protective order and such failure is commensurate to waiver of notice objections... the key issue is defense counsel's actions on February 16, 2005 to address Mr. Anderssen's deposition.").

The Issue is Ripe for Decision

EPA also argues that the Touhy process has not been fully satisfied. This too is belied by the applicable law, as well as the specific dealings between the Plaintiffs and the EPA. The undersigned counsel complied fully with the applicable regulations, as directed by the EPA’s in-

house counsel. On October 4, 2016, Mark Stilp, Esq., counsel for EPA, provided counsel with the Touhy regulations and stated that additional information was needed “to make a decision and provide a response that properly follows the Agency’s ‘Touhy’ Regulations.” Mr. Stilp further stated “the Agency needs additional information and/or a formal written request **(OK to send by email)**”. See email chain between Timothy Litzenburg and Mark Stilp, attached as Exhibit 2. Now, four months later, the United States’ claim that Plaintiffs did not “formally” follow these regulations is wrong and indeed was waived by EPA’s attorney. *Id.*

Further, it is not required that a subpoena be served for this issue to be ripe for decision. The regulation at issue states “this subpart sets forth procedures to be followed when an EPA employee **is requested or subpoenaed to provide testimony.**” See Exhibit 2. Based on the regulation, coupled with the Agency’s negotiations with counsel in this instance, formal issuance and service of a subpoena was not required here. This is confirmed by the decision in *U.S. ex re. Lewis v. Walker*, 2009 WL 2611522 (M.D.Ga. 2009), where the District Court decided whether a “motion to compel [testimony by EPA employee] is improper because there is presently no pending federal subpoena as to [the witness.]” The court’s ruling was that, given that the EPA followed the “procedures that apply when an employee is subpoenaed” and “contends that the denial was a ‘final agency decision’”, there was no requirement for the issuance of a subpoena. According to the court, “the lack of a pending federal subpoena is not fatal to the present motion to compel.” *Id.* The relevant circumstances in this instance are identical. Nevertheless, at the time of this filing, a subpoena has been executed and is being served upon Mr. Rowland and EPA. See Exhibit 3.

The cases cited by EPA highlighting procedural defects are inapposite. In *Lopez v. Chertoff*, 2009 WL 1575209 (E.D.Cal. 2009), the Court denied a motion to compel because the

litigant had not stated “the nature and relevance of the official information sought,” an undisputed *sine qua non* of the Touhy regulations. In the instant case, the United States cannot credibly argue that the Plaintiffs failed to state the nature and relevance of the official information sought, nor any other requirement of its *Touhy* regulations.

No Separate Action Required nor Appropriate

Finally, EPA asserts that “it is well settled that the proper avenue for review of an agency action is through filing a separate APA action.” See Opposition at p.6. That is not accurate. For example, in *Lewis*, the court held that a direct APA action is only necessary when the court hearing the controversy does not have jurisdiction to compel the testimony, such as a state court action that seeks the testimony of employees of federal agencies. *Lewis* held that “the Court sees no reason why it cannot decide as part of the presently pending qui tam action whether the EPA properly declined to permit testimony of its employee.” In granting the motion to compel the agency’s employee’s testimony, the court explained that the EPA employee “likely possesses information that is relevant to [movant’s] claims.”

The subject is discussed exhaustively in *Ceroni v. 4Front Engineered Solutions, Inc.*(793 F.Supp.2d 1268)(D. Colorado 2011), the court held that a separate APA action is unnecessary and inappropriate when the request pertains to an existing federal action (citing *Watts v. Securities and Exchange Comm.*, 482 F.3d 501, 508 (D.C.Cir.2007); *Linder v. Calero–Portocarrero*, 251 F.3d 178, 181 (D.C.Cir.2001); *United States Environmental Protection Agency v. General Electric*, 197 F.3d 592, 599 (2d Cir.1999); *Johnson v. Folino*, 528 F.Supp.2d 548 (E.D.Penn.2007); all holding same).

Conclusion:

Plaintiffs have multiple bases to compel the testimony of Mr. Rowland, a former employee of the EPA who was subject to undue and untoward influence by Monsanto. Mr. Rowland operated under Monsanto's influence to cause EPA's position and publications to support Monsanto's business. Thus, and for all the foregoing reasons, Plaintiffs' Motion to Compel the Deposition of Jess Rowland should be granted.,

DATED: February 10, 2017

Respectfully submitted,

/s Robin Greenwald, Michael Miller and

Aimee Wagstaff

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 10, 2017 I electronically filed this Opposition using the CM/ECF system which will send a notification of such filing to counsel of record.

/s/ Michael Miller

DECLARATION

I, Michael Miller, declare:

1. I am a member of of the executive committee of MDL 2741. I make this declaration in relation to Motion to Compel Deposition of Jess Rowland. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would competently testify thereto.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 10th day of February 2017

/s/ Michael Miller

Jess,

Since I left the Agency with cancer, I have studied the tumor process extensively and I have some mechanism comments which may be very valuable to CARC based on my decades of pathology experience. I'll pick one chemical to demonstrate my points.

Glyphosate was originally designed as a chelating agent and I strongly believe that is the identical process involved in its tumor formation, which is highly supported by the literature.

- Chelators inhibit apoptosis, the process by which our bodies kill tumor cells
- Chelators are endocrine disruptors, involved in tumorigenesis
- Glyphosate induces lymphocyte proliferation
- Glyphosate induces free radical formation
- Chelators inhibit free radical scavenging enzymes requiring Zn, Mn or Cu for activity (i.e. SODs)
- Chelators bind zinc, necessary for immune system function
- Glyphosate is genotoxic, a key cancer mechanism
- Chelators inhibit DNA repair enzymes requiring metal cofactors
- Chelators bind Ca, Zn, Mg, etc to make foods deficient for these essential nutrients
- Chelators bind calcium necessary for calcineurin-mediated immune response
- Chelators often damage the kidneys or pancreas, as glyphosate does, a mechanism to tumor formation
- Kidney/pancreas damage can lead to clinical chemistry changes to favor tumor growth
- Glyphosate kills bacteria in the gut and the gastrointestinal system is 80% of the immune system
- Chelators suppress the immune system making the body susceptible to tumors

Previously, CARC concluded that glyphosate was a "possible human carcinogen". The kidney pathology in the animal studies would lead to tumors with other mechanisms listed above. Any one of these mechanisms alone listed can cause tumors, but glyphosate causes all of them simultaneously. It is essentially certain that glyphosate causes cancer. With all of the evidence listed above, the CARC category should be changed to "probable human carcinogen". Blood cells are most exposed to chelators, if any study shows proliferation of lymphocytes, then that is confirmatory that glyphosate is a carcinogen.

Jess, you and I have argued many times on CARC. You often argued about topics outside of your knowledge, which is unethical. Your trivial MS degree from 1971 Nebraska is far outdated, thus CARC science is 10 years behind the literature in mechanisms. For once in your life, listen to me and don't play your political conniving games with the science to favor the registrants. For once do the right thing and don't make decisions based on how it affects your bonus. You and Anna Lowit intimidated staff on CARC and changed HIARC and HASPOC final reports to favor industry. Chelators clearly disrupt calcium signaling, a key signaling pathway in all cells and mediates tumor progression. Greg Ackerman is supposed to be our expert on mechanisms, but he never mentioned any of these concepts at CARC and when I tried to discuss it with him he put me off. Is Greg playing your political games as well, incompetent or does he have some conflict of interest of some kind? Your Nebraska colleague took industry funding, he clearly has a conflict of interest. Just promise me not to ever let Anna on the CARC committee, her decisions don't make rational sense. If anyone in OPP is taking bribes, it is her.

I have cancer and I don't want these serious issues in HED to go unaddressed before I go to my grave. I have done my duty.

Marion Copley
March 4, 2013

Timothy Litzenburg

From: Stilp, Mark <Stilp.Mark@epa.gov>
Sent: Tuesday, October 04, 2016 3:20 PM
To: Timothy Litzenburg
Subject: Testimony from EPA / Jess Rowland

Timothy-

After sending an email to you this morning, I re-reviewed your original request (pasting below) and determined that the Agency needs additional information and/or a formal written request (OK to send by email) from you before making a decision and providing a formal response.

To make a decision and provide a response that properly follows the Agency's "Touhy" Regulations (also pasting below), the Agency needs information such as:

- Name, case number, jurisdiction etc. of underlying case(s),
- Form of testimony being requested (discovery depo vs. trial depo? in person?),
- Proposed date, time, location and duration of depo
- Subject matter/scope of depo, and (as noted in the email I sent to you this morning),
- Explanation as to why voluntarily participating in the depo is clearly in EPA's interest.

Please feel free to give me a call with any questions or concerns. Thanks.

-Mark Stilp

Mark Stilp | Attorney-Adviser | Office of General Counsel | U.S. Environmental Protection Agency | 1200 Pennsylvania Ave. NW | Washington, DC 20460 | mail code: 2377A | office: 202.564.4845 | cell: 202.839.1889

Your Original Request:

From: Timothy Litzenburg <TLitzenburg@MillerFirmLLC.com>
Date: August 10, 2016 at 2:58:01 PM EDT
To: "'blake.wendy@epa.gov'" <blake.wendy@epa.gov>
Cc: Jeffrey Travers <JTravers@millerfirmllc.com>
Subject: Deposition of Jess Rowland

Ms. Blake,

Good afternoon. I represent about a thousand people with non Hodgkin lymphoma which developed after exposure to Monsanto's Roundup. You are surely aware of the "accidental" release of the "final" report by CARC on this chemical earlier in the year, and Jess Rowland's retirement from EPA several days after that. We need to take the deposition of Mr. Rowland regarding the particulars of his relationship with Monsanto and his work on this chemical. Please secure for us the necessary permissions, so we can do this quietly and at a convenient time and location; I believe the deposition will happen regardless, but would prefer we do it by agreement, thanks.

Timothy

EPA Regulations:

§ 2.401 Scope and purpose.

This subpart sets forth procedures to be followed when an EPA employee is requested or subpoenaed to provide testimony concerning information acquired in the course of performing official duties or because of the employee's official status. (In such cases, employees must state for the record that their testimony does not necessarily represent the official position of EPA. If they are called to state the official position of EPA, they should ascertain that position before appearing.) These procedures also apply to subpoenas duces tecum for any document in the possession of EPA and to requests for certification of copies of documents.

(a) These procedures apply to:

- (1) State court proceedings (including grand jury proceedings);
- (2) Federal civil proceedings, except where the United States, EPA or another Federal agency is a party; and
- (3) State and local legislative and administrative proceedings.

(b) These procedures do not apply:

- (1) To matters which are not related to EPA;
- (2) To Congressional requests or subpoenas for testimony or documents;
- (3) Where employees provide expert witness services as approved outside activities in accordance with 40 CFR part 3, subpart E (in such cases, employees must state for the record that the testimony represents their own views and does not necessarily represent the official position of EPA);
- (4) Where employees voluntarily testify as private citizens with respect to environmental matters (in such cases, employees must state for the record that the testimony represents their own views and does not necessarily represent the official position of EPA).

(c) The purpose of this subpart is to ensure that employees' official time is used only for official purposes, to maintain the impartiality of EPA among private litigants, to ensure that public funds are not used for private purposes and to establish procedures for approving testimony or production of documents when clearly in the interests of EPA.

§ 2.402 Policy on presentation of testimony and production of documents.

(a) With the approval of the cognizant Assistant Administrator, Office Director, Staff Office Director or Regional Administrator or his designee, EPA employees (as defined in 40 CFR 3.102 (a) and (b)) may testify at the request of another Federal agency, or, where it is in the interests of EPA, at the request of a State or local government or State legislative committee.

(b) Except as permitted by paragraph (a) of this section, no EPA employee may provide testimony or produce documents in any proceeding to which this subpart applies concerning information acquired in the course of performing official duties or because of the employee's official relationship with EPA, unless authorized by the General Counsel or his designee under §§ 2.403 through 2.406.

§ 2.403 Procedures when voluntary testimony is requested.

A request for testimony by an EPA employee under § 2.402(b) must be in writing and must state the nature of the requested testimony and the reasons why the testimony would be in the interests of EPA. Such requests are immediately sent to the General Counsel or his designee (or, in the case of employees in the Office of Inspector General, the Inspector General or his designee) with the recommendations of the employee's supervisors. The General Counsel or his designee, in consultation with the appropriate Assistant Administrator, Regional Administrator, or Staff Office Director (or, in the case of employees in the Office of Inspector General, the Inspector General or his designee),

determines whether compliance with the request would clearly be in the interests of EPA and responds as soon as practicable.

§ 2.404 Procedures when an employee is subpoenaed.

(a) Copies of subpoenas must immediately be sent to the General Counsel or his designee with the recommendations of the employee's supervisors. The General Counsel or his designee, in consultation with the appropriate Assistant Administrator, Regional Administrator or Staff Office Director, determines whether compliance with the subpoena would clearly be in the interests of EPA and responds as soon as practicable.

(b) If the General Counsel or his designee denies approval to comply with the subpoena, or if he has not acted by the return date, the employee must appear at the stated time and place (unless advised by the General Counsel or his designee that the subpoena was not validly issued or served or that the subpoena has been withdrawn), produce a copy of these regulations and respectfully refuse to provide any testimony or produce any documents. *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

(c) Where employees in the Office of Inspector General are subpoenaed, the Inspector General or his designee makes the determination under paragraphs (a) and (b) of this section in consultation with the General Counsel.

(d) The General Counsel will request the assistance of the Department of Justice or a U.S. Attorney where necessary to represent the interests of the Agency and the employee.

§ 2.405 Subpoenas duces tecum.

Subpoenas duces tecum for documents or other materials are treated the same as subpoenas for testimony. Unless the General Counsel or his designee, in consultation with the appropriate Assistant Administrator, Regional Administrator or Staff Office Director (or, as to employees in the Office of Inspector General, the Inspector General) determines that compliance with the subpoena is clearly in the interests of EPA, the employee must appear at the stated time and place (unless advised by the General Counsel or his designee that the subpoena was not validly issued or served or that the subpoena has been withdrawn) and respectfully refuse to produce the subpoenaed materials. However, where a subpoena duces tecum is essentially a written request for documents, the requested documents will be provided or denied in accordance with subparts A and B of this part where approval to respond to the subpoena has not been granted.

§ 2.406 Requests for authenticated copies of EPA documents.

Requests for authenticated copies of EPA documents for purposes of admissibility under 28 U.S.C. 1733 and Rule 44 of the Federal Rules of Civil Procedure will be granted for documents which would otherwise be released pursuant to subpart A. For purposes of Rule 44 the person having legal custody of the record is the cognizant Assistant Administrator, Regional Administrator, Staff Office Director or Office Director or his designee. The advice of the Office of General Counsel should be obtained concerning the proper form of authentication.

Mark Stilp | Attorney-Adviser | Office of General Counsel | U.S. Environmental Protection Agency | 1200 Pennsylvania Ave. NW | Washington, DC 20460 | mail code: 2377A | office: 202.564.4845 | cell: 202.839.1889

From: Stilp, Mark
Sent: Tuesday, October 04, 2016 10:02 AM
To: 'TLitzenburg@millerfirmllc.com' <TLitzenburg@millerfirmllc.com>
Subject: Voicemail follow up regarding Jess Rowland Testimony

Hi Timothy-

I received a voicemail from you a few weeks ago about your request for testimony from former EPA employee Jess Rowland. I apologize for the delay in getting back to you. I was out of the country the past two weeks.

I continue to work on getting a response to your request.

When we spoke on the phone, you explained why, in your opinion, this testimony would be in the Agency's best interest. Will you respond to this email and put that explanation in writing for me?

Thanks.

-Mark Stilp

Mark Stilp | Attorney-Adviser | Office of General Counsel | U.S. Environmental Protection Agency | 1200 Pennsylvania Ave. NW | Washington, DC 20460 | mail code: 2377A | office: 202.564.4845 | cell: 202.839.1889

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To: tlitzenburg@millerfirmllc.com

Message Score: 15

High (60): **Pass**

From: stilp.mark@epa.gov

My Spam Blocking Level: Medium

Medium (75): **Pass**

Low (90): **Pass**

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This message was delivered because the content filter score did not exceed your filter level.

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

In Re: Roundup Products Liability Litigation

Plaintiff

v.

Monsanto Company

Defendant

Civil Action No. 3:16-md-02741-VC

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Jesudoss Rowland

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment: See Attachment A

Table with 2 columns: Place (The Hotel At Arundel Preserve, 7795 Arundel Mills Blvd, Hanover, MD 21076) and Date and Time (03/28/2017 9:00 am)

The deposition will be recorded by this method: videotaped and stenographer

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: See Attachment A.

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 02/10/2016

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Handwritten signature of attorney

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Plaintiffs in this Multi-District Litigation, who issues or requests this subpoena, are:

Michael J. Miller, 108 Railroad Avenue, Orange, VA 22960, mmiller@millerfirmllc.com, 540-672-4224

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:16-md-02741-VC

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ 40.58.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

- (i)** is a party or a party's officer; or
- (ii)** is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i)** At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i)** fails to allow a reasonable time to comply;
- (ii)** requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv)** subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii)** ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i)** expressly make the claim; and
- (ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: ROUNDUP PRODUCTS LIABILITY LITIGATION	MDL No. 2741 Case No. 16-md-02741-VC
This document relates to all cases	Subpoena for Jesudoss Rowland Attachment A.

ATTACHMENT A TO SUBPOENA FOR JESUDOSS ROWLAND

The Deposition Will Cover the Following Topics:

1. Mr. Rowland's time on the Cancer Assessment Review Committee within the EPA's Office of Pesticide Programs (OPP), focusing generally on Communications with Monsanto employees, Monsanto ex-employees, lobbyists, or other agents or contractors (including trade groups to which Monsanto belongs), whether written, verbal or in person.
2. Mr. Rowland's contacts with anyone at the Agency for Toxic Substances and Diseases Registry, the National Toxicology Program, or the EPA's office of Research and Development concerning glyphosate.
3. Mr. Rowland's contacts with anyone involved in the IARC meetings or monograph concerning glyphosate
4. Mr. Rowland's involvement with the creation of the CARC glyphosate memo on carcinogenicity dated October 1, 2015 and the circumstances around the "inadvertent release" and subsequent retraction of that report in or around April and May 2016.
5. Mr. Rowland's departure from EPA in or around May 2016 and subsequent activities working for or communicating with the chemical industry.

Request for Production of Documents:

The Plaintiffs request that seven days prior to the deposition, Mr. Rowland provide documents relating to the five deposition topics listed above that are in Mr. Rowland's personal files and were created or received outside of official EPA channels, including but not limited to emails, notes, memos, audio recordings, video recordings, text messages, instant messaging, and letters

Plaintiffs request documents reflecting payments from the chemical industry to Mr. Rowland or his immediate family members.

Plaintiffs request the production of the following emails. Email dated July 14, 2016 sent to Jack Housenger entitle “FQPA Violations in OPP;” and Email dated May 18, 2015 titled “FQPA or Misconduct” sent to Bill Jordan and Stephen Dapson.