

UNITED STATES DISTRICT COURT

for the

Northern District of California

In Re: Roundup Products Liability Litigation

Plaintiff

v.

Monsanto Company, et al.

Defendant

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

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Roger McClellan, Albuquerque, 13701 Quaking Aspen Place N.E., New Mexico, 87111

(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:

Table with 2 columns: Place (Bean and Associates, 201 3rd Street, NW, Albuquerque, New Mexico 87102) and Date and Time (01/07/2019 9:00 am)

The deposition will be recorded by this method: Stenographically, Audiotaped and Videotaped.

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:

Please see attached Exhibit A: Deposition Notice and Attachment A, Documents to Be Produced

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: CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Plaintiffs/ Plaintiffs Steering Committee, who issues or requests this subpoena, are:

Pedram Esfandiary Baum Hedlund Aristei & Goldman, 10940 Wilshire Blvd, 17th Fl, Los Angeles, CA 90024 (310) 207-3233; pefandiary@baumhedlundlaw.com

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).

EXHIBIT 1
WIT: McClellan
DATE: 2/6/19
D. Srebrenick, CRR, CLR

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
\$ _____.

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.

EXHIBIT A

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: ROUNDUP PRODUCTS
LIABILITY LITIGATION

MDL No. 2741
Case No. 16-md-02741-VC

This document relates to:

ALL ACTIONS

**PLAINTIFF'S NOTICE TO TAKE
VIDEOTAPED ORAL DEPOSITION OF
ROGER MCCLELLAN; REQUEST FOR
PRODUCTION OF DOCUMENTS**

Hon. Vince Chhabria

TO: Roger McClellan, 13701 Quaking Aspen Place N.E., Albuquerque, New Mexico, 87111.

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil Procedure, Plaintiff, by and through their undersigned attorneys, will take the deposition of Roger McClellan beginning on Monday, January 7, 2018, at 9:00 a.m. and to continue day to day, Sundays and holidays excepted, until completed. The deposition(s) will be held at the offices of Bean and Associates, 201 3rd Street, NW, Albuquerque, New Mexico 87102. The witness shall produce documents identified in Attachment A attached hereto 30 days following personal service of this request. The deposition will be taken before a person authorized by law to administer oaths, pursuant to Fed. R. Civ. P. 28, and may also be videotaped.

DATED: November 13, 2018

Respectfully submitted,

By: /s/ R. Brent Wisner
R. Brent Wisner, Esq. (SBN: 276023)
rbwisner@baumhedlundlaw.com
BAUM, HEDLUND, ARISTEI, & GOLDMAN, P.C.
10940 Wilshire Boulevard, 17th Floor
Los Angeles, CA 90024
Telephone: (310) 207-3233
Facsimile: (310) 820-7444

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Facsimile: (540) 672-3055

Attorneys for Plaintiffs

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ATTACHMENT "A"

DEFINITIONS

The following definitions are to be used in connection with the documents requested.

A. "Document(s)" shall be understood to include any record or communication which would be a "writing" within the meaning of Rule 1001(1) of the Federal Rules of Evidence, and shall include, without limitation, any and all papers, photographs, films, records, memoranda, books, records, accounts, communications, e-mails, instant messages, writings, letters, telegrams, correspondence, notes of meetings or of conversations or of telephone calls, interoffice memoranda or written communications of any nature, recordings of conversations either in writing or upon any mechanical or electronic or electrical recording devices, notes, accountants' statements or summaries, appraisals, work papers, reports, projects, tabulations, purchase orders, invoices, canceled checks or check stubs, receipts, studies, services, legal opinions, vouchers, minutes of meetings, designs, drawings, manuals, notebooks, work sheets, contracts, agreements, bills of lading, warehouse receipts, time sheets, promissory notes, diaries, desk calendars, circulars, charts, ledgers, schedules, licenses, financial statements, appointment books, payment records, stenographers' notebooks, punch cards, computer data bases and computer printout sheets, articles of incorporation, articles of association, bylaws, minutes, rules, written news, directives, hotel charges, telephone bills, stock transfer books, proposals, prospectuses, offers, orders, logs, and all drafts, revisions, and differing versions of any of the foregoing whether denominated formal, informal or otherwise, as well as all copies of any of the foregoing which differ in any way, including handwritten notations or other written or printed matter of any nature, from the originals, and all other documents or tangible things as those terms are used in Rule 34 of the Federal Rules of Civil Procedure.

B. "All" means "any and all" and the word "any" means "any and all."

The terms "concerning," "relating," and/or "regarding" mean containing, alluding to, responding to, commenting upon, discussing, explaining, mentioning, analyzing, constituting, memorializing, comprising, repeating, incorporating, confirming, listing, evidencing, setting forth, summarizing, or characterizing, either directly or indirectly, in

1 whole or in part.

2 The term “including” means “including, but not limited to.”

3 The term “communication” means and refers to every method and manner of
4 transmitting or receiving data, opinions, thoughts, inquiries, representations and other
5 information, whether orally, in writing, electronically, or otherwise, between two or more
6 persons or entities. Communications include drafts and other written information
7 intended for communicating to another person, even if not ultimately transmitted to or
8 received by another person.

9 “Monsanto” means Defendant Monsanto Company and includes its respective
10 affiliated corporations, parents, subsidiaries, divisions, subdivisions, managers, directors,
11 officers, employees, agents, representatives, as well as its predecessors in interest or
12 name.

13 If not expressly stated, “control” means in your possession, custody, or control and
14 under your direction, and includes in the possession, custody or control of those under the
15 direction of your employee(s), subordinate(s), counsel, accountant(s), consultant(s),
16 expert(s), parent(s) or affiliated corporation(s), and any person(s) purporting to act on
17 your behalf.

18 The singular should be deemed to include the plural, and the masculine gender to
19 include the feminine or neuter, where the context or circumstances so require or permit.
20 The past tense includes the present tense where the clear meaning is not distorted by
21 change of tense.

22 The words “and” and “or” shall, where the circumstances so permit, be construed
23 either conjunctively or disjunctively to bring within the scope of these document requests
24 any information which might otherwise be construed to be outside their scope.

25 “Medical Literature” shall mean the common sense definition and shall include all
26 abstracts, summaries, articles, literature, letters to the author or other written commentary,
27 whether peer reviewed or not.

28 “Glyphosate-Based Formulations” (“GBFs”) refers to the chemical glyphosate and

1 all formulations of Monsanto's Roundup products that contain glyphosate, surfactants,
2 adjuvants, and inert ingredients, including, but not limited to, Roundup Concentrate
3 Poison Ivy and Tough Brush Killer 1, Roundup Custom Herbicide, Roundup D-Pak
4 herbicide, Roundup Dry Concentrate, Roundup Export Herbicide, Roundup Fence & Hard
5 Edger 1, Roundup Garden Foam Weed & Grass Killer, Roundup Grass and Weed Killer,
6 Roundup Herbicide, Roundup Original 2k herbicide, Roundup Original II Herbicide,
7 Roundup Pro Concentrate, Roundup Prodry Herbicide, Roundup Promax, Roundup Quik
8 Stik Grass and Weed Killer, Roundup Quikpro Herbicide, Roundup Rainfast Concentrate
9 Weed & Grass Killer, Roundup Rainfast Super Concentrate Weed & Grass Killer,
10 Roundup Ready-to- Use Extended Control Weed & Grass Killer 1 Plus Weed Preventer,
11 Roundup Ready-to-Use Weed & Grass Killer, Roundup Ready-to-Use Weed and Grass
12 Killer 2, Roundup Ultra Dry, Roundup Ultra Herbicide, Roundup Ultramax, Roundup VM
13 Herbicide, Roundup Weed & Grass Killer Concentrate, Roundup Weed & Grass Killer
14 Concentrate Plus, Roundup Weed & Grass killer Ready-to-Use Plus, Roundup Weed &
15 Grass Killer Super Concentrate, Roundup Weed & Grass Killer1 Ready-to-Use, Roundup
16 WSD Water Soluble Dry Herbicide Deploy Dry Herbicide, or any other glyphosate-based
17 formulations developed, designed, distributed, licensed, manufactured, marketed or sold
18 by Monsanto Company.

19 "AMPA" shall mean aminomethylphosphonic acid and refers to a metabolite of
20 glyphosate.

21 "Test" or "Testing" shall mean and refer to any kind of test as the term is
22 understood and defined, shall be construed broadly, and includes examinations,
23 experiments, trials, test, scientific analysis, examination, inspection, investigation or other
24 activity in which data or information is acquired for the purpose of analysis or
25 understanding. The term shall include, without limitation, tests which were contemplated
26 or proposed but never undertaken or completed, and tests which are completed, ongoing
27 or still in progress. The term includes "study" as defined herein. Any Request for
28 information concerning a test or testing shall be construed as including, without limitation,

1 the following: The protocol for the conduct of the tests, the statement or description of the
2 conditions under which the test was conducted, documents requesting the test and
3 documents indicating how, why and when the testing shall be performed; documents
4 containing the original raw test data, the written test report, and all attachments thereto;
5 the test specifications including any criteria, including pass-fail criteria, and any summary,
6 abstract, recommendation, charts, abstract, analysis, compilation, evaluation or
7 interpretation and any video or audio. This definition includes all tests, or testing,
8 regardless of whether the activity or conduct took place inside the United States or not.

9 "Study" or "Studies" shall mean and refer to any kind of research, inquiry, analysis
10 or test as the terms are understood and defined, shall be construed broadly, and include,
11 without limitation, any investigation or other activity in which data and information are
12 gathered for analysis, reporting or understanding, regardless of the original intention of
13 the study. The term shall include any study, including, without limitation, studies which
14 are completed, ongoing or still in progress, and shall include all responsive studies,
15 whether the activity took place in the United States or not.

16 **DOCUMENTS AND THINGS TO BE PRODUCED**

17 NOTICE IS FURTHER GIVEN that the Deponent shall produce the following documents
18 and tangible things within thirty (30) days of service of this Notice of Deposition to Pedram
19 Esfandiary, Esq., at 10940 Wilshire Blvd., 17th Floor, Los Angeles, CA 90024. As an alternative,
20 Undersigned will accept electronic service or will come to a reasonable place most convenient to
21 the Deponent to either pick up the documents or to make copies.

22 With respect to any documents withheld for privilege, please provide a privilege log in
23 compliance with Fed. R. Civ. Pro. 26(b)(5). With respect to each requested Document that has
24 been lost, destroyed, or otherwise disposed of since its preparation or receipt, please provide the
25 following information separately as to each such Document: (a) A general description of the
26 subject matter, author(s), sender(s), recipient(s), date; (b) The identity of each person who has
27 received a copy or had an opportunity to receive a copy thereof; (c) The last custodian of the
28 Document or copies thereof; and (d) The full particulars or circumstances whereby the Document

1 was disposed of, destroyed, or otherwise lost.

- 2 1. All agreements and contracts between YOU and Monsanto;
- 3 2. All invoices from You to Monsanto;
- 4 3. All communications and documents related to unrestricted research grants from Monsanto to
- 5 You;
- 6 4. All communications and documents related to unrestricted research grants from Monsanto to
- 7 Critical Reviews in Toxicology;
- 8 5. All communications and documents related to peer-review reports for Monsanto-sponsored
- 9 and / or authored manuscripts related to the potential adverse human health effects of GBFs,
- 10 AMPA, and / or surfactants for GBFs published in Critical Reviews in Toxicology during
- 11 your tenure at the journal;
- 12 6. All communications with Monsanto related to GBFs, AMPA, and / or surfactants for GBFs;
- 13 7. All communications with Intertek, Inc related to GBFs, AMPA, and / or surfactants for GBFs;
- 14 8. All communications with Dr. Larry Kier related to GBFs, AMPA, and / or surfactants for
- 15 GBFs;
- 16 9. All communications with Wallace Hayes related to GBFs, AMPA and /or surfactants for
- 17 GBFs;
- 18 10. All communications with Ashley Roberts related to GBFs, AMPA, and / or surfactants for
- 19 GBFs;
- 20 11. All medical literature, studies, journal articles, tests and / or scientific analyses authored and /
- 21 or conducted by You related to the potential adverse human health effects of GBFs, AMPA,
- 22 and / or surfactants for GBFs. This request includes drafts;
- 23 12. All communications with Monsanto related to the documents in Request No. 9;
- 24 13. All documents and communications related to Williams, et al., *A Review of the Carcinogenic*
- 25 *Potential of Glyphosate by Four Independent Expert Panels and comparison to the IARC*
- 26 *Assessment* 46 Crit. Rev. Toxicol. 3-20 (2016), including all documents and communications
- 27 related to the four contemporaneously published companion papers by the expert panel
- 28 organized by Intertek, Inc (“Intertek Expert Panel”). This request includes drafts;

- 1 14. All communications with any of the authors of Williams, et al., *A Review of the Carcinogenic*
2 *Potential of Glyphosate by Four Independent Expert Panels and comparison to the IARC*
3 *Assessment* 46 Crit. Rev. Toxicol. 3-20 (2016), including all communications with any of the
4 authors of the four companion papers by the Intertek Expert Panel, related to GBFs, AMPA,
5 and /or surfactants for GBFs;
- 6 15. All communications with Taylor & Francis regarding the 2017 ethical investigation into the
7 publication of the five manuscripts by the Intertek Expert Panel;
- 8 16. All communications and documents related to the three corrigenda and “expression of
9 concern” published in Critical Reviews in Toxicology on September 26, 2018 regarding the
10 five manuscripts by the Intertek Expert Panel;
- 11 17. Communications and documents related to any medical literature, studies, journal articles,
12 tests, and / or scientific analyses related to the potential adverse human health effects of
13 GBFs, AMPA, and / or surfactants for GBFs for which You were involved with the peer-
14 review process. This request includes drafts;
- 15 18. All communications related to the de-classified internal Monsanto documents dubbed the
16 “Monsanto Papers”;
- 17 19. Documents relied on or reviewed to prepare for this Deposition.

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