

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION  
Civil Action No.: 7:23-CV-897**

IN RE:

CAMP LEJEUNE WATER LITIGATION

This Document Relates to:

ALL CASES

**DECLARATION OF ROBIN L. GREENWALD**

I, Robin L. Greenwald, declare pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct under penalty of perjury:

1. I am an attorney at Weitz & Luxenberg, P.C. and serve on the Plaintiffs' Leadership Group as Co-Lead Counsel for Plaintiffs. I submit this declaration in support of Plaintiffs' Leadership Group Opposition to United States' Motion to Prevent the Deposition of Dr. Christopher Portier. I submit this declaration based upon my personal knowledge of the facts stated in this declaration, and if called to testify, I could and would competently testify to the matters stated herein.

2. Exhibit 1 is the Notice of Deposition to Dr. Christopher Portier dated May 10, 2024.

3. Exhibit 2 is the Subpoena of David A. Savitz, Ph.D. to Testify at a Deposition in a Civil Action dated May 13, 2024.

4. Exhibit 3 is the letter signed by Dr. Portier dated October 22, 2010.

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

Dated: May 30, 2024

/s/ Robin L. Greenwald  
Robin L. Greenwald  
(admitted *pro hac vice*)  
Weitz & Luxenberg, P.C.  
700 Broadway  
New York, NY 10003  
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*Co-Lead Counsel for Plaintiffs*

# EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION  
No. 7:23-CV-897

IN RE: )  
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CAMP LEJEUNE WATER LITIGATION )  
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This Document Relates to: )  
ALL CASES )  
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**PLAINTIFFS' NOTICE OF RULE 30(b)(1) INDIVIDUAL DEPOSITION NOTICE**  
**DE BENE ESSE**

TO: Defendant United States of America  
c/o Adam Bain, U.S. Department of Justice  
P.O. Box 340, Ben Franklin Station  
Washington, D.C. 20044

**PLEASE TAKE NOTICE** that pursuant to Federal Rules of Civil Procedure 30(b)(1) and 26, the stenographic and video-recorded *de bene esse* deposition of the following witness will be taken as set forth below, and thereafter by adjournment until the same shall be completed:

**WITNESS:** Dennis Portier  
**DATE and TIME:** May 28, 2024 at a time to be determined.  
**LOCATION:** Domodossola, Italy at a location to be determined.  
**MANNER OF TAKING:** In-Person

This deposition will be taken before an officer authorized by law to take depositions and will continue from day to day until completed. The deposition will be recorded via stenographic transcription and videotape for purposes of discovery and use at trial.

Deponent(s) who are parties, are required by this notice to be present for their depositions. The deponent agreed to appear in person.

You are invited to attend and take such part as is fit and proper.

Respectfully submitted this 10th day of May 2024.

/s/ J. Edward Bell, III

J. Edward Bell, III (admitted *pro hac vice*)  
Bell Legal Group, LLC  
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/s/ Elizabeth J. Cabraser

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/s/ Robin L. Greenwald

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*Co-Lead Counsel for Plaintiffs*

/s/ Mona Lisa Wallace

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*Co-Lead Counsel for Plaintiffs*

/s/ Zina Bash

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*Co-Lead Counsel for Plaintiffs and  
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/s/ W. Michael Dowling

W. Michael Dowling (NC Bar No. 42790)  
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*Co-Lead Counsel for Plaintiffs*

/s/ James A. Roberts, III

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*Co-Lead Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Notice of Videotaped Deposition to General Anthony Zinni was sent to Counsel for Defendant on the 10th day of May 2024, by electronic mail at the following electronic mail address: adam.bain@usdoj.gov.

*/s/ J. Edward Bell, III*  
J. Edward Bell, III  
*Lead Counsel for Plaintiffs*

# EXHIBIT 2

UNITED STATES DISTRICT COURT

for the

Eastern District of North Carolina

Camp Lejeune Water Litigation

Plaintiff

v.

United States of America

Defendant

Civil Action No. 7:23-cv-897

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: David A. Savitz, Ph.D.

(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 promptly confer in good faith with the party serving this subpoena about the following matters, or those set forth in an attachment, and you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about these matters:

Table with 2 columns: Place (100 Middle Street, East Tower, 6th Floor, Portland, Maine 04101) and Date and Time (06/10/2024 9:00 am)

The deposition will be recorded by this method: Stenographer and videographer

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:

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: 05/13/2024

CLERK OF COURT

OR

/s/ Adam Bain

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) The United States of America, who issues or requests this subpoena, are: Adam Bain, adam.bain@usdoj.gov, 202-616-4209; and Elizabeth K. Platt, elizabeth.k.platt@usdoj.gov, 202-305-5871

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. 7:23-cv-897

**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 3



Centers for Disease Control  
and Prevention (CDC)  
Atlanta, GA 30341-3724

October 22, 2010

Mr. Donald R. Schregardus  
Deputy Assistant Secretary of the Navy  
Environment  
1000 Nay Pentagon  
Washington, D.C. 20350-1000

Lt. General Frank A. Panter  
Deputy Commandant, Installations and Logistics  
3000 Marine Corps, Pentagon, Room 4E516  
Washington, D.C. 20350-3000

Dear Mr. Schregardus and Lt. General Panter:

I recently met with Senator Kay Hagan (D-NC) regarding our work on the potential for health effects from exposure to contaminated drinking water at Marine Corp Base Camp Lejeune (Camp Lejeune). During our conversation, it became evident that there was still some confusion regarding the position of the ATSDR regarding the 2009 National Research Council (NRC) report, *Contaminated Water Supplies at Camp Lejeune – Assessing Potential Health Effects*. Because of our collaboration and joint concern regarding exposures to military personnel, their families and others at Camp Lejeune, I wanted to be certain you understood our position regarding this report. This letter is intended to clarify our position and to provide a brief explanation on how we reached this position.

There is one constraint and five conclusions in the NRC report that are essential to the issue of whether harm may be expected in populations exposed to Camp Lejeune contaminated drinking water. These relate to:

1. the contaminants and health outcomes considered by the NRC;
2. the dose-response assessment used by the NRC;
3. the water modeling for Tarawa Terrace published by the ATSDR;
4. the use of alternative modeling strategies;
5. the need for detailed statistical analysis plans;
6. the utility of the epidemiological studies proposed by the ATSDR.



I will address each of these issues in sequence.

The NRC report only focused on tetrachloroethylene (PCE) and trichloroethylene (TCE), without considering other drinking water contaminants at Camp Lejeune such as benzene, vinyl chloride and mixtures of volatile organic compounds (VOCs). As noted in the very recent International Agency for Research on Cancer (IARC) Monograph Volume 100, benzene causes acute myelogenous leukemia and is associated with other leukemias. The National Toxicology Program (NTP) Report on Carcinogens (ROC) reaches the same conclusion. Both reports reach a similar conclusion for vinyl chloride with regard to liver tumors. Both the IARC and the NTP label benzene and vinyl chloride as "known human carcinogens". The failure of the NRC Committee to consider these contaminants may lead one to conclude that the NRC findings of "*limited/suggestive evidence of an association*" pertains to all contaminants in the drinking water at Camp Lejeune. This conclusion would be incorrect based upon the evidence of the occurrence of these other exposures in Camp Lejeune drinking water. Thus, the review of cancer risks by the NRC was incomplete and only partially addressed concerns at Camp Lejeune. Finally, the NRC conclusions for PCE and TCE differ from the NTP and IARC which classify these chemicals as "probable human carcinogens" (IARC) or "reasonably anticipated to be a human carcinogen" (NTP) with various cancers including most notably kidney tumors.

Thus, let me be perfectly clear; there was undoubtedly a hazard associated with drinking the contaminated water at Camp Lejeune. The epidemiological studies and the associated exposure modeling will hopefully help us to decide on the level of risk associated with this hazard.

Although the availability of definitive reviews on other health endpoints besides cancer is limited, another shortcoming of the NRC review pertains to other health outcomes including adverse birth outcomes and immunotoxicity. In deciding what needed to be done to evaluate the potential health effects at Camp Lejeune, the ATSDR has taken all contaminants and all health outcomes into account and is acting accordingly.

ATSDR has studied the NRC report regarding the remaining issues. The use of the "lowest observed adverse effect level" (LOAEL) from animal studies without consideration of the uncertainties inherent in the LOAEL and the appropriateness of the use of this metric for assessing genotoxic cancer risks is a major shortcoming of the NRC report. Most regulatory agencies would either address the uncertainty in the LOAEL through the use of multiplicative factors to reduce the acceptable exposure or use an entirely different metric, such as the slope of the dose-response curve or a confidence bound around this curve, to arrive at values for comparison against environmental exposures. By doing neither, the NRC report suggests a much wider difference between exposure and effect

than would normally be derived. In determining potential risks in order to develop power calculations for our epidemiological investigations, the ATSDR used the slope of the dose-response curve.

ATSDR disagrees with the NRC Committee's conclusion that the results of the water modeling for Tarawa Terrace were not sufficiently reliable to do dose characterization in the epidemiological studies. Modeling of the movement of contaminants through sub-surface water is a well established area of science and has been used on multiple occasions to address exposures in communities throughout the United States [reference: Anderson, MP. 1979. Using models to simulate the movement of contaminants through ground water flow systems. *Critical Reviews in Environmental Control*, 9(2): 97-156.] The state-of-the-art modeling being conducted by ATSDR shows sufficient concordance between the modeled PCE results and the actual measurements of PCE in the finished water at Tarawa Terrace to conclude that one could characterize exposure into several different groups. This conclusion is critical to the future epidemiological studies since it allows ATSDR to separate highly exposed individuals from individuals exposed to moderate and/or low exposures from the drinking water thus limiting exposure misclassification and the resulting bias in the direction of no effect on the study populations. Without these different classifications, ATSDR would need to rely on a simple grouping of exposed versus unexposed, severely limiting the utility of the epidemiological evaluations.

ATSDR agrees with the NRC report that, due to the complexity of the situation at Hadnot Point, alternative modeling strategies should be considered. We have addressed this issue in the current modeling activities and are moving forward with a strategy that will yield sufficiently reliable estimates for this complex exposure scenario.

ATSDR also agrees with the NRC recommendation that detailed plans for the statistical analyses should be and have been developed by ATSDR for the re-analysis of the adverse pregnancy outcome study and the birth defect/childhood cancer case-control study. ATSDR disagrees with the NRC that these studies should be completed as soon as possible; data analysis will not proceed until the drinking water modeling has been completed and is available for both Hadnot Point and Tarawa Terrace.

ATSDR disagrees with the NRC report's conclusion that the mortality study and the health survey/morbidity study lack sufficient statistical power and would be so limited by biases that they would not produce useful scientific information or be definitive. In the June 2008 ATSDR report *Assessment of the Feasibility of Conducting Future Epidemiologic Studies at USMC Base Camp Lejeune*, statistical power calculations were presented showing that the studies would have sufficient power for the cancers of interest, in particular, cancers associated with benzene, vinyl chloride, TCE or PCE exposure such as kidney cancer, non-



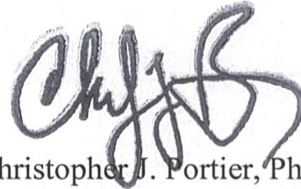
Page 4 - Mr. Donald R. Schregardus and Lt. General Frank A. Panter

Hodgkin's lymphoma, leukemias, liver cancer, and esophageal cancer. Moreover, ATSDR emphasized that the studies would use standard research methodologies to minimize biases.

ATSDR is proceeding with the USMC Camp Lejeune Mortality Study and the Health Survey. ATSDR will establish a panel of experts to recommend adequate participation rates and consider potential biases in using the health survey for the follow-up morbidity study. We appreciate your financial support for these studies and your cooperation in the Data Discovery Technical Working Group. We are currently working on a request for additional FY 2011 funding requirements which should be completed soon.

Thank you again for your support.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Portier', written in a cursive style.

Christopher J. Portier, Ph.D.  
Director, National Center for  
Environmental Health, and  
Agency for Toxic Substances and  
Disease Registry

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cc:

CAP Members

CDC Washington

Mr. Bradley Flohr, Veterans Administration

Dr. Terry Walters, Veterans Administration