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

PLAINTIFFS' LEADERSHIP GROUP OPPOSITION TO UNITED STATES' MOTION TO PREVENT THE DEPOSITION OF DR. CHRISTOPHER PORTIER

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR), in its role as the lead governmental agency on impacts to human health caused by hazardous exposures, conducted multiple health studies concluding that exposure to the water at Camp Lejeune is associated with increased rates of numerous cancers and neurological diseases such as non-Hodgkin lymphoma, bladder cancer, and Parkinson's disease. Dr. Portier was the Director of the ATSDR while the agency performed water modeling and health studies for Camp Lejeune, and he oversaw and was involved in that work; his testimony is front and center to this litigation. But the government's litigation strategy is to disavow its own agency's studies. Instead, the government's opportunistic litigation strategy is to embrace a report by a private entity, the National Academy of Sciences' (NAS) National Research Council (NRC), which criticized elements of the ATSDR's studies.

In response to the NRC, Dr. Christopher Portier, in his capacity as Director of the ATSDR, took it upon himself to issue a letter in October 2010 that defended the ATSDR's health studies and corrected the NRC's errors about the same. Self-evidently, Dr. Portier is an important witness – his testimony may go to the heart of the government's main defense.

Perhaps it is predictable that the government's motion for protective order seeks to prevent Dr. Portier's deposition. *See* D.E. 211–213. Dr. Portier has volunteered to testify. The Plaintiffs' Leadership Group (PLG) is committed to taking all reasonable steps, at its own expense, to ensure that the deposition is conducted consistent with all applicable international laws. Seemingly, the government's only cause for concern is that it will be forced to pay for a plane ticket and lodging. Given that Dr. Portier will provide highly relevant testimony that is critical to the PLG's ability to rebut the government's defense in this litigation, the government's motion should be denied.

Factual Background

On May 10, 2024, the PLG noticed the deposition of Dr. Portier pursuant to Federal Rules of Civil Procedure 30(b)(1) and 26. *See* Exhibit 1. The deposition was to be taken on May 28, 2024 in Domodossola, Italy "at a location to be determined." *Id.* Dr. Portier, an American citizen, is the former ATSDR Director and volunteered to be deposed without a subpoena. Unfortunately, Dr. Portier – due to health constraints – must remain within 2 hours of the hospital near his home in Switzerland and is thus unable to travel long distances to be deposed.

When Dr. Portier became ATSDR Director, the NAS's[1] NRC,[2] at the request of the U.S. Department of the Navy, had "convened the Committee on Contaminated Drinking Water at Camp Lejeune," and created a report (2009 NRC Report) which "focuse[d] on what scientific evidence can say about the causal relationship of past exposures and health outcomes." *Id.* at ix–x. The Committee's charge was narrowly defined and consisted of the following three tasks:

> One was to review the scientific evidence about the kinds of adverse health effects that could occur after exposure to TCE, PCE, and other contaminants. The second was to evaluate studies that were performed or that are under way on former residents of the base and to consider how useful it will be to conduct additional studies. The third element was to identify scientific considerations that could help the Navy set priorities on future activities.

Id. at 1. The 2009 NRC Report was, in many respects, skeptical of the epidemiological and toxicological studies relating to common Camp Lejeune diseases, as well as the water-modeling historical reconstruction conducted by the ATSDR for Tarawa Terrace.

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[1] The NAS is a "private, nonprofit, self-perpetuating society of distinguished scholars engaged in scientific and engineering research, dedicated to the furtherance of science and technology and to their use for the general welfare," whose mandate is "to advise the federal government on scientific and technical matters." NRC, *Contaminated Water Supplies at Camp Lejeune: Assessing Potential Health Effects* (Nat'l Academies Press 2009), *available at* https://nap.nationalacademies.org/download/12618 [hereinafter 2009 NRC Report].

[2] The NRC was organized by the NAS in 1916 "to associate the broad community of science and technology with the Academy's purposes of furthering knowledge and advising the federal government. . . . [NRC] is administered jointly by both [NAS] and the Institute of Medicine." *Id.*

As a matter of background, the ATSDR is "a federal public health agency of the U.S Department of Health and Humans Services,"[3] the "lead Agency . . . for implementing the health-related provisions of CERCLA," and "charged under the Superfund Act to assess the presence and nature of health hazards at specific Superfund sites," such as Camp Lejeune.[4] For decades, the ATSDR has been involved in producing governmental studies and reports on the contaminated water at Camp Lejeune. This work includes conducting a historical reconstruction of the contaminant levels present at Camp Lejeune prior to 1987 because, owing to the government's failures, "[l]ittle data exists about how chemicals have affected the base's water in the past."[5] At the time that the 2009 NRC Report was released, the ATSDR had only completed its water-modeling historical reconstruction for Tarawa Terrace; the historical reconstruction for Hadnot Point was not yet complete.

Although the ATSDR – *the lead agency* of the U.S. government tasked with evaluating the health effects of toxic exposures – has spoken numerous times on the exposures to, and health effects associated with, the Camp Lejeune contaminated water, the government has made clear that its defense in this litigation will center around discrediting and disavowing the work of its own agency. Instead, the government intends to hang its hat on the 2009 NRC Report, written by a non-governmental, private company and operating under a narrow charge, to support its defenses. The government has therefore made the 2009 NRC Report not only relevant, but front and center in

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[3] ATSDR, *Agency for Toxic Substances and Disease Registry* (last reviewed May 21, 2024), *available at* https://www.atsdr.cdc.gov/index.html.

[4] Fed. Register, *Agency for Toxic Substances and Disease Registry*, *available at* https://www.federalregister.gov/agencies/agency-for-toxic-substances-and-disease-registry#:~:text=As%20the%20lead%20Agency%20within,illnesses%20that%20result%20from%20such.

[5] ATSDR, *Water Modeling (FAQs)* (last reviewed Jan. 16, 2014), *available at* https://www.atsdr.cdc.gov/sites/lejeune/faq_water.html.

this litigation by rejecting its own ATSDR findings and embracing the NRC's work. The government's intended reliance on the 2009 NRC Report is highlighted by its recently-issued subpoena for purposes of deposing Dr. David Savitz, Chair of the NRC Committee on Contaminated Drinking Water at Camp Lejeune that drafted the 2009 NRC Report. *See* Exhibit 2.

That Dr. Portier – as ATSDR Director following release of the 2009 NRC Report and when the ATSDR was assessing the scope of contamination and health outcomes from Marines' exposure to the contaminants – has highly relevant knowledge of the both the ATSDR and the NRC's involvement in Camp Lejeune matters is indisputable. In fact, in October 2010, Dr. Portier wrote and signed, as ATSDR Director, a letter to the Navy to clear up "confusion regarding the position of the ATSDR regarding the [2009 NRC Report]," "[b]ecause of [the Navy and ATSDR's] collaboration and joint concern regarding exposures to military personnel, their families and others at Camp Lejeune." Exhibit 3, at 1. His letter, highly critical of the 2009 NRC Report, devoted pages to explaining the shortcomings of the NRC's approach and conclusions and unequivocally stated his position: "***Thus, let me be perfectly clear; there was undoubtedly a hazard associated with drinking the contaminated water at Camp Lejeune.***" *Id.* at 2 (emphasis added). It is thus no surprise that the government now goes to great lengths to prevent Dr. Portier's testimony here.

Legal Standard

Federal Rule of Civil Procedure 26(c) provides that a "party or any person from whom discovery is sought may move for a protective order," and the "court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." FED. R. CIV. P. 26(c). "The party seeking a protective order bears the burden of showing 'good cause.'" *Talbot for R.T. v. Kohl's Dep't Stores, Inc.*, No. 7:08-CV-129-BO, 2010 WL 11622807, at *2 (E.D.N.C. Feb. 3, 2010).

Argument

I. The Government Failed to Carry Its Burden to Prove That a Protective Order Should Be Entered.

Where a party moves for a protective order under Rule 26 – as the government has done here – it "must make a particular request and a specific demonstration of facts in support of the request as opposed to conclusory or speculative statements about the need for a protective order and the harm which would be suffered without one[,] . . . preferably made by affidavits from knowledgeable persons . . . ." *Id.* at *3 (citations omitted) (denying plaintiffs' motion for protective order where plaintiffs "only submitted an affidavit from . . . an interested party in this litigation"). The government's motion falls woefully short of this standard, containing musings, without factual support, devoid of any reason why Dr. Portier's deposition is not relevant. Indeed, the government ***assumes*** – without providing any affidavit from a non-interested party with knowledge or any other specific facts – that Dr. Portier "had little firsthand involvement in the ATSDR Camp Lejeune studies," D.E. 212, at 5, and his testimony is thus supposedly irrelevant. In place of a "particular request and a specific demonstration of facts in support of the request," the government's motion makes only "conclusory [and] speculative statements about the need for a protective order," *Talbot*, 2010 WL 11622807, at *3, and thus fails to meet its burden for a protective order.

II. Dr. Portier's Testimony Is Highly Relevant.

Dr. Portier's testimony as former ATSDR Director is unquestionably relevant – particularly given the government's intended reliance on the 2009 NRC Report in this case.[6] The government

[6] The United States submits that it has standing under Rule 26(c) to seek a protective order to prevent the deposition of non-party Dr. Portier because it claims that its "own interests would be jeopardized if this deposition were to move forward." D.E. 212, at 3. Plaintiff notes that the government cites only two out-of-circuit cases in support of its argument for standing, both of which address the ability of a party to move for a protective order where a third party is ***subpoenaed***. Here, Dr. Portier's deposition was noticed *without* a subpoena because Dr. Portier is

makes the curious argument that "before the depositions of the two key scientists involved in the ATSDR's Camp Lejeune studies [Dr. Frank Bove and Morris Maslia] have occurred it is unclear what, if any, relevant information Dr. Portier will have to add." D.E. 212, at 5. The government's relevance arguments ring hollow when it is the *government* who places the ATSDR's conclusions in dispute, when it is the *government* who disclaims the findings and conclusions of its own agency, when it is the *government* who places the 2009 NRC Report at the center of its defense, and when Dr. Portier was the decisionmaker of the ATSDR at relevant times. *See, e.g.*, D.E. 50, at 1–2 (U.S. Answer to Master Compl.) ("The United States denies the allegations . . . to the extent that they imply that the extent of contamination is 'undisputed and well-documented,' because the ATSDR's determination was based on conservative, health protective models . . . .").

Even setting aside Dr. Portier's position as the former ATSDR Director – which the government erroneously claims means he has "little firsthand involvement in the ATSDR Camp Lejeune studies," D.E. 212, at 5 – Dr. Portier wrote and signed a letter detailing the ATSDR's position on the 2009 NRC Report and refuting the NRC Committee's conclusions and methodology. It is unclear how the government can argue that Dr. Portier's testimony is irrelevant, or that the deposition testimony of Dr. Frank Bove and Morris Maslia (two ATSDR scientists) should come first, *see* D.E. 212, at 5–6, when it is Dr. Portier's name – and not Dr. Bove's or Mr.

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a *willing witness*; thus, the cases the government cites are factually distinguishable. *Cf. G.K. Las Vegas Ltd. P'ship v. Simon Prop. Grp., Inc.*, No. 2:04-CV-01199-DAE-GWF, 2007 WL 119148, at *3–4 (D. Nev. Jan. 9, 2007) (stating that "[a] party can, however, move for a protective order ***in regard to a subpoena issued to a non-party*** if it believes its own interest is jeopardized by discovery sought from a third party," and noting that "[i]n this case, some . . . of the non-party tenants ***have objected to the subpoenas***" (emphasis added)); *Auto-Owners Ins. Co. v. Se. Floating Docks, Inc.*, 231 F.R.D. 426, 429–430 (M.D. Fla. 2005) (***denying*** Defendant's motion to quash subpoenas and finding that "Defendants [] have made no showing of undue burden," but granting motion for protective order only "as to the financial information sought by the subpoenas").

Maslia's name – on that letter, which was written by, and only by, Dr. Portier.[7] ***Indeed***, the government's suggestion that the letter may be based on the opinions of Dr. Bove and Mr. Maslia, without an iota of proof, instead of Dr. Portier is belied by the fact that Dr. Portier's letter is ***written in the first person***. *See* Exhibit 3, at 1 ("***I*** recently met with Senator Kay Hagan (D-NC) regarding our work on the potential for health effects from health effects from exposure to contaminated drinking water at Marine Corp Base Camp Lejeune . . . ***I*** wanted to be certain you understood our position regarding this report." (emphasis added)); *see also* U.S. Dep't Health & Human Servs., ATSDR, *Camp Lejeune Community Assistance Panel* (Apr. 2, 2012), *available at* https://www.atsdr.cdc.gov/sites/lejeune/docs/captranscript_04_12.pdf (Dr. Portier speaking at the Camp Lejeune CAP meeting about ATSDR's water modeling).

Despite the overwhelming relevance of Dr. Portier's testimony, for the PLG to defeat the instant motion, his testimony need only have "some relevance," and "[w]hile Rule 26 does not define what is deemed relevant for purposes of the rule, relevance has been 'broadly construed to encompass "***any possibility*** that the information sought ***may be relevant*** to the claim or defense of any party."'" *Allegood v. Graham*, No. 5:17-CV-282-FL, 2018 WL 4305766, at *2, 4 (E.D.N.C. Sept. 10, 2018) (Jones, J.) (emphasis added, citations omitted) (denying in part motion to quash subpoenas).[8] Dr. Portier's testimony is dually relevant: he was both the ATSDR Director while the ATSDR was working on Camp Lejeune studies and reports, *and* he evaluated the 2009 NRC Report (the very report the government intends to rely on in its defense) and wrote a letter to the Navy disagreeing with it.

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[7] What's more, that the government omits mention of its upcoming deposition of Dr. Savitz is undoubtedly not an oversight, as it well knows that notice establishes Dr. Portier's relevance.

[8] Notably, the government seems to agree that once the depositions of Dr. Bove and Mr. Maslia are taken, Dr. Portier's testimony may be relevant. *See* D.E. 212, at 6 n.1.

III. <u>The Government Would Not Be Unduly Burdened by Dr. Portier's Deposition, and the Benefit of Deposing Him Outweighs Any Possible Burden.</u>

The government makes the hollow argument that the "burden and expense of proceeding with this deposition in Italy at this time far outweighs any possible benefit." D.E. 212, at 3. Its assertion of "significant travel and lodging expenses," *id.* at 4, is laughable when the government has conducted 98 plaintiff depositions and taken (or scheduled) 120 additional discovery plaintiff fact-witness depositions, covering travel to 26 states across the country, and has taken (or has scheduled) approximately 148 treating physician depositions. Moreover, the PLG is confident that the government can easily acquire any necessary passports, clearance, and/or visas – just as the PLG would be required to do.[9] These administrative checkboxes are not hurdles that warrant depriving the Plaintiffs of discovery critical to refuting the government's defenses in this case.[10]

Moreover, the government cites but misapplies the Fed. R. Civ. P. 26(b)(1) factors for the scope of discovery. Here, (1) Dr. Portier's testimony is unquestionably relevant, *see supra* Section II; (2) Dr. Portier's testimony is critical to understanding the pitfalls of the 2009 NRC Report, which the government places at the center of its defense; (3) Dr. Portier's opinions would relate to *all* cases under the Camp Lejeune Justice Act, so the amount in controversy is significant;[11] (4) it is the ***government**, not PLG*, that has far greater access to government-related information; (5) the government has significant resources; (6) Dr. Portier's testimony is critical to resolving questions of causation and exposure; and (7) the burden on the government to travel to Italy does not outweigh the benefit of Dr. Portier's testimony, especially as it can appear at the deposition via

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[9] The PLG suggested that the government can attend remotely should it choose to cost-save.

[10] Moreover, the government's argument that Dr. Portier's testimony is likely to be "duplicative of other testimony," D.E. 212, at 6, is unsupported and ignores that he served a different role than either Dr. Bove or Mr. Maslia – neither of whom issued criticisms of the 2009 NRC Report and both of whom had access to far less information across multiple federal agencies than Dr. Portier.

[11] Of course, that Dr. Portier's testimony will be available for use in all Camp Lejeune Justice Act trials also makes the time and effort to obtain it highly proportional.

Zoom.[12] Importantly, Dr. Portier volunteered to be deposed without need for compulsory process such as a subpoena, which should counsel in favor of the relevance of his deposition outweighing any burden. *See Allegood*, 2018 WL 4305766, at *3 ("In the context of evaluating subpoenas issued to third parties, a court 'will give extra consideration to the objections of a non-party, non-fact witness in weighing burdensomeness versus relevance." (internal citations omitted)).

Finally, the government's suggestion that PLG can rely on Dr. Portier's testimony before Congress, rather than depose him in this litigation, is mistaken. If that were the standard, then certainly the government would not be entitled to take Dr. Savitz's deposition, as the government has his full multi-hundred-page report. What's more, the government well knows that Congressional testimony does not equate with deposition or trial testimony, either in scope, breadth, or the PLG's intended focus: to support the claims of hundreds of thousands of Plaintiffs in this litigation harmed by government's actions and about which Dr. Portier has vital information.

IV. <u>The PLG Is Cognizant of and Will Comply with All Applicable Law.</u>

In a last-ditch attempt to prevent Dr. Portier from giving testimony that will undermine its defense, the government expends 2.5 pages of its motion on the PLG's obligations to comply with Italian law. ***To be clear, the PLG wholly intends to comply with all applicable law in conducting Dr. Portier's deposition, and it so informed the government during the meet and confer.*** Indeed, the PLG has made clear to the government that (1) the Portier deposition will comply with all laws, or it won't be conducted, and (2) the PLG will take the burden upon itself to ensure that all Italian laws are satisfied. The government misrepresents the PLG's intent.

[12] PLG counsel represented to government counsel during the parties' meet and confer that she would take the deposition in a different room than Dr. Portier if the government opts to appear at the deposition remotely; thus, there is zero expense or other burden on the government if it selects that option. Its burden and expense arguments are a smokescreen.

The government correctly identifies that Italy and the United States are parties to the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, Mar. 18, 1970, 23 U.S.T. 2555, T.I.A.S No. 7444 (Hague Evidence Convention). But its motion flat-out misrepresents the PLG's intentions and the PLG's representations made during the parties' meet and confer on the issue of compliance with foreign law in taking Dr. Portier's deposition. What's more, the government selectively quotes or summarizes passages from Articles 15 and 17 of Chapter II of the Hague Evidence Convention to bring confusion to an issue that is not in dispute: the PLG will comply with Italian law regarding the Portier deposition.[13] The government's detour into what is required of the PLG under Italian law does not speak to any undue burden *on the United States;* the government's arguments related to Italian law should be summarily ignored.[14]

Conclusion

For the foregoing reasons, the PLG respectfully requests that this Court deny the United States' motion for a protective order and permit the deposition of Dr. Portier to go forward once the proper international procedures are determined.

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[13] The government also misrepresents the PLG's statement that "Dr. Portier has been deposed in other cases in Italy without following the consular depositions procedure." D.E. 212, at 7. Such a statement makes it seem as if the depositions of Dr. Portier in Italy in other litigations have occurred in violation of Italian law; but the PLG made no such representation and merely noted that the fact that these depositions of Dr. Portier *have occurred* in Italy means that the process *is possible, whatever the requirements of that process might be.* In any event, PLG counsel were not counsel in the litigation where Dr. Portier was deposed in Italy (and said so in the meet and confer). Any suggestion that PLG counsel have *previously* defied Italian law by themselves deposing Dr. Portier or anyone else in Italy is misrepresentative.

[14] The government's motion also boldly misrepresents the PLG's intention to take Dr. Portier's deposition pursuant to, and in violation of, Article 15 of the Hague Evidence Convention. Its citation to an email from May 19, 2024, D.E. 212, Ex. 3, – ***before*** the Parties' May 20, 2024 meet and confer – ***ignores*** that at the end of the meet and confer, PLG-counsel stated that the PLG would look more into Articles 15–17 of the Hague Evidence Convention and the government's position on Italian law. And since the meet and confer, the PLG has been doing exactly that.

Date: May 30, 2024

Respectfully Submitted

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CERTIFICATE OF SERVICE

I, J. Edward Bell, III, hereby certify that the foregoing document was electronically filed on the Court's CM/ECF system on this date, and that all counsel of record will be served with notice of the said filing via the CM/ECF system.

This the 30th day of May, 2024.

/s/ J. Edward Bell, III
J. Edward Bell, III

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

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EXHIBIT 1

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

IN RE:	)
	)
CAMP LEJEUNE WATER LITIGATION	)
	)
This Document Relates to:	)
ALL CASES	)
	)

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
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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:

Place:	Date and Time:
100 Middle Street East Tower, 6th Floor Portland, Maine 04101	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.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

EXHIBIT 3

DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

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 myologenous 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-

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,

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

cc:
CAP Members
CDC Washington
Mr. Bradley Flohr, Veterans Administration
Dr. Terry Walters, Veterans Administration