

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION**

KEVIN FOLTA, Ph.D.,

Plaintiff,

CASE NO.: 1:17-cv-246-MW-GRJ

v.

**THE NEW YORK TIMES
COMPANY, and ERIC LIPTON,**

Defendant.

**NOTICE OF INTENT TO ISSUE SUBPOENAS
TO PRODUCE DOCUMENTS OR INFORMATION**

Pursuant to Federal Rule of Civil Procedure 45(a)(4), the plaintiff, Kevin Folta, Ph.D., provides notice of his intent to issue the attached subpoenas to the following non-parties: Gary Ruskin, Stacy Malkan, and Carey Gillam.

Respectfully submitted,

Dated: December 18, 2017

/s/ Bryan D. Hull

James J. Evangelista, Esquire

Florida Bar No.: 600725

Bryan D. Hull, Esq.

Florida Bar No.: 20969

BUSH ROSS, P.A.

1801 N. Highland Avenue

Tampa, FL 33602

Phone (813) 224-9255

Facsimile (813) 223-9620

Primary E-mail: jevangelista@bushross.com

bhull@bushross.com

Secondary E-mail: osmith@bushross.com;
jlantz@bushross.com

and

James E. Beasley, Jr., Esquire
Pennsylvania Bar No.: 83282
Lane R. Jubb, Jr., Esquire
Pennsylvania Bar No.: 319272
THE BEASLEY LAW FIRM, LLC
1125 Walnut Street
Philadelphia, PA 19107
Phone (215) 592-1000
Facsimile (215) 592-8360
Primary E-Mail:
Jim.Beasley@BeasleyFirm.com
Janet.volpe@beasleyfirm.com
Secondary E-Mail:
Lane.Jubb@beasleyfirm.com

Attorneys for Plaintiff KEVIN FOLTA, PhD.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 18, 2017, the foregoing was served on Gregg D. Thomas, Carol Jean LoCicero, and Mark R. Caramanica at the following email addresses:

gthomas@tlolawfirm.com
carol.locicero@tlolawfirm.com
mcaramanica@tlolawfirm.com
abeene@tlolawfirm.com
tgilley@tlolawfirm.com

/s/ Bryan D. Hull
Attorney

UNITED STATES DISTRICT COURT

for the

Northern District of Florida

Kevin Folta, Ph.D.

Plaintiff

v.

The New York Times Company and Eric Lipton

Defendant

Civil Action No. 1:17-cv-00246-MW-GRJ

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Gary Ruskin, U.S. Right to Know, 4096 Piedmont Ave., #963, Oakland, CA 94611-5221

(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:

Place: Verifext, 101 Montgomery St. Suite 450, San Francisco, CA 94104	Date and Time: 01/15/2018 9:00 am
--	--------------------------------------

The deposition will be recorded by this method: Court Reporter

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

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

Date: 12/18/2017

CLERK OF COURT

OR

Lane R. Jubb, Jr.

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)* Kevin Folta, Ph.D.,
Lane R. Jubb, Jr., Esquire, The Beasley Firm, LLC, 1125 Walnut St., Phila., PA 19107, lane.jubb@beasleyfirm.com
(215) 592-1000

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. 1:17-cv-00246-MW-GRJ

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

Definitions:

1. **"USRTK"** shall refer to the organization known as "U.S. Right to Know" and/or the agents, servants and/or employees of "U.S. Right to Know," and any of its attorneys, agents, employees, parent, subsidiary or affiliated corporations and/or any entity or person acting or purporting to act on its behalf.
2. **"Document"** or **"documents"** shall have the same definition as set forth in the Federal Rules of Civil Procedure and shall include all written, printed, electronic, transmitted, or recorded matter and/or thing of any kind, including the originals and all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise, including, without limitations, correspondence, memoranda, notes, diaries, calendars, statistics, letters, email, telegraphs, minutes, agendas, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice and intra-office communications, offers, notations or any sort of conversation, bulletins, computer information, computer printouts, computer hard drives, computer disks, tapes, drives or other electronic means of storage, teletypes, telefax, invoices, tape recording of voicemail messages, worksheets and all drafts, alterations, modifications, changes and amendments of any of the foregoing, graphic or manual records or representations of any kind, including, without limitations, photographs, charts, graphs, microfiche, microfilm, videotape, audiotape, records, motion pictures, and electronic, mechanical or electric records or representations of any kind, including, without limitation, tapes, back up tapes, cassettes, disks and recordings.
3. **"Related to"** (or any of its forms) means concerning, reflecting, constituting, representing, supporting, contradicting, referring to, relevant to, containing information about, stating, describing, analyzing, noting, embodying, containing, mentioning, studying, recording, discussing, evaluating or in any way or manner being logically, legally or factually connected.
4. **"All"** shall have its plain meaning and shall also mean "every," "any," "each," "every" or other individual or inclusive term and vice versa.

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:*

- (1) All correspondence, including emails, voicemails, and text messages, between USRTK and The New York Times Company from January, 2013 to Present;
- (2) All public record requests directed to The University of Florida and the documents you received in response thereto;

- (3) All correspondence, including emails, voicemails, and text messages, between USRTK and Charles Benbrook;
- (4) All tweets by you and USRTK related to the 5 September 2017 New York Times article titled, "*Food Industry Enlisted Academics in G.M.O. Lobbying War, Emails, Show;*"
- (5) All peer-reviewed literature, published prior to September, 2015, which you contend supports the position that "G.M.O." food presents an increased risk of harm to consumers compared to "non-G.M.O." food;
- (6) All documents that you contend show "the food industry's efforts to manipulate scientists into advancing pro-genetically-modified propaganda" as stated by you and quoted in <https://www.wired.com/2015/02/anti-gmo-activist-seeks-expose-emails-food-scientists/>;
- (7) All documents that you contend show "the agri-chemical industry has spent \$100 million dollars in a massive public relations campaign" as stated by you and quoted in <https://www.wired.com/2015/02/anti-gmo-activist-seeks-expose-emails-food-scientists/>;
- (8) All documents you reviewed prior to January, 2015, that you contend provided support to your article, "*Seedy Business: What Big Food is Hiding with its GMO PR Campaign*," <http://usrtk.org/gmo/seedy-business/>, by Gary Ruskin;
- (9) Your entire file, including witness statements, literature, correspondence, and notes, related to your article, "*Seedy Business: What Big Food is Hiding with its GMO PR Campaign*," <http://usrtk.org/gmo/seedy-business/>, by Gary Ruskin;
- (10) All correspondence and documents related to your support for Proposition 37: Genetically Engineered Foods. Mandatory Labeling in California; and
- (11) All documents you provided to The New York Times and Eric Lipton prior related to any public record request in 2015.

UNITED STATES DISTRICT COURT
for the
Northern District of Florida

Kevin Folta, Ph.D.)	
<i>Plaintiff</i>)	
v.)	Civil Action No. 1:17-cv-00246-MW-GRJ
The New York Times Company and Eric Lipton)	
<i>Defendant</i>)	

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Stacy Malkan, U.S. Right to Know, 4096 Piedmont Ave., #963, Oakland, CA 94611-5221

(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:

Place: Veritext, 101 Montgomery St. Suite 450, San Francisco, CA 94104	Date and Time: 01/15/2018 12:00 pm
--	---------------------------------------

The deposition will be recorded by this method: Court Reporter

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

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

Date: 12/18/2017

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) Kevin Folta, Ph.D.,
_____, who issues or requests this subpoena, are:
Lane R. Jubb, Jr., Esquire, The Beasley Firm, LLC, 1125 Walnut St., Phila., PA 19107, lane.jubb@beasleyfirm.com

(215) 592-1000

Notice to the person who issues or requests this subpoena

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Civil Action No. 1:17-cv-00246-MW-GRJ

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);
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- (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:

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(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
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(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.

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2. **"Document"** or **"documents"** shall have the same definition as set forth in the Federal Rules of Civil Procedure and shall include all written, printed, electronic, transmitted, or recorded matter and/or thing of any kind, including the originals and all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise, including, without limitations, correspondence, memoranda, notes, diaries, calendars, statistics, letters, email, telegraphs, minutes, agendas, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice and intra-office communications, offers, notations or any sort of conversation, bulletins, computer information, computer printouts, computer hard drives, computer disks, tapes, drives or other electronic means of storage, teletypes, telefax, invoices, tape recording of voicemail messages, worksheets and all drafts, alterations, modifications, changes and amendments of any of the foregoing, graphic or manual records or representations of any kind, including, without limitations, photographs, charts, graphs, microfiche, microfilm, videotape, audiotape, records, motion pictures, and electronic, mechanical or electric records or representations of any kind, including, without limitation, tapes, back up tapes, cassettes, disks and recordings.
3. **"Related to"** (or any of its forms) means concerning, reflecting, constituting, representing, supporting, contradicting, referring to, relevant to, containing information about, stating, describing, analyzing, noting, embodying, containing, mentioning, studying, recording, discussing, evaluating or in any way or manner being logically, legally or factually connected.
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- (1) All correspondence, including emails, voicemails, and text messages, between USRTK and The New York Times Company, its agents, employees, staff, editors, writers, researchers, and journalists, including but not limited to Eric Lipton from January, 2013 to Present;

- (2) All public record requests directed to The University of Florida and the documents you received in response thereto;
- (3) All correspondence, including emails, voicemails, and text messages, between USRTK and Charles Benbrook;
- (4) All tweets by you and USRTK related to the 5 September 2017 New York Times article titled, "*Food Industry Enlisted Academics in G.M.O. Lobbying War, Emails, Show;*"
- (5) All peer-reviewed literature, published prior to September, 2015, which you contend supports the position that "G.M.O." food presents an increased risk of harm to consumers compared to "non-G.M.O." food;
- (6) All documents you reviewed prior to January, 2015, that you contend provided support to USRTK article, "*Seedy Business: What Big Food is Hiding with its GMO PR Campaign,*" <http://usrtk.org/gmo/seedy-business/>, by Gary Ruskin;
- (7) Your entire file, including witness statements, literature, correspondence, and notes, related to USRTK article, "*Seedy Business: What Big Food is Hiding with its GMO PR Campaign,*" <http://usrtk.org/gmo/seedy-business/>, by Gary Ruskin;
- (8) All correspondence and documents related to your support for Proposition 37: Genetically Engineered Foods. Mandatory Labeling in California; and
- (9) All documents you provided to The New York Times and Eric Lipton prior related to any public record request in 2015.

UNITED STATES DISTRICT COURT

for the

Northern District of Florida

Kevin Folta, Ph.D.

Plaintiff

v.

The New York Times Company and Eric Lipton

Defendant

Civil Action No. 1:17-cv-00246-MW-GRJ

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(Name of person to whom this subpoena is directed)

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Date: 12/18/2017

CLERK OF COURT

OR


Attorney's signature

Signature of Clerk or Deputy Clerk

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Kevin Folta, Ph.D.,
, who issues or requests this subpoena, are:
Lane R. Jubb, Jr., Esquire, The Beasley Firm, LLC, 1125 Walnut St., Phila., PA 19107, lane.jubb@beasleyfirm.com

(215) 592-1000

Notice to the person who issues or requests this subpoena

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(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

Definitions:

1. **"USRTK"** shall refer to the organization known as "U.S. Right to Know" and/or the agents, servants and/or employees of "U.S. Right to Know," and any of its attorneys, agents, employees, parent, subsidiary or affiliated corporations and/or any entity or person acting or purporting to act on its behalf.
2. **"Document"** or **"documents"** shall have the same definition as set forth in the Federal Rules of Civil Procedure and shall include all written, printed, electronic, transmitted, or recorded matter and/or thing of any kind, including the originals and all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise, including, without limitations, correspondence, memoranda, notes, diaries, calendars, statistics, letters, email, telegraphs, minutes, agendas, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice and intra-office communications, offers, notations or any sort of conversation, bulletins, computer information, computer printouts, computer hard drives, computer disks, tapes, drives or other electronic means of storage, teletypes, telefax, invoices, tape recording of voicemail messages, worksheets and all drafts, alterations, modifications, changes and amendments of any of the foregoing, graphic or manual records or representations of any kind, including, without limitations, photographs, charts, graphs, microfiche, microfilm, videotape, audiotape, records, motion pictures, and electronic, mechanical or electric records or representations of any kind, including, without limitation, tapes, back up tapes, cassettes, disks and recordings.
3. **"Related to"** (or any of its forms) means concerning, reflecting, constituting, representing, supporting, contradicting, referring to, relevant to, containing information about, stating, describing, analyzing, noting, embodying, containing, mentioning, studying, recording, discussing, evaluating or in any way or manner being logically, legally or factually connected.
4. **"All"** shall have its plain meaning and shall also mean "every," "any," "each," "every" or other individual or inclusive term and vice versa.

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:*

- (1) All correspondence, including emails, voicemails, and text messages, between USRTK and The New York Times Company, its agents, employees, staff, editors, writers, researchers, and journalists, including but not limited to Eric Lipton from January, 2013 to Present;

- (2) All public record requests directed to The University of Florida and the documents you received in response thereto;
- (3) All correspondence, including emails, voicemails, and text messages, between USRTK and Charles Benbrook;
- (4) All tweets by you and USRTK related to the 5 September 2017 New York Times article titled, *"Food Industry Enlisted Academics in G.M.O. Lobbying War, Emails, Show;"*
- (5) All peer-reviewed literature, published prior to September, 2015, which you contend supports the position that "G.M.O." food presents an increased risk of harm to consumers compared to "non-G.M.O." food;
- (6) All documents you reviewed prior to January, 2015, that you contend provided support to USRTK article, *"Seedy Business: What Big Food is Hiding with its GMO PR Campaign,"* <http://usrtk.org/gmo/seedy-business/>, by Gary Ruskin;
- (7) Your entire file, including witness statements, literature, correspondence, and notes, related to USRTK article, *Seedy Business: What Big Food is Hiding with its GMO PR Campaign,* <http://usrtk.org/gmo/seedy-business/>, by Gary Ruskin;
- (8) Your entire file, including witness statements, literature, correspondence, and notes, related to USRTK article *"The True Inside Story of How a College Professor Sells Out to Monsanto,"* <https://www.alternet.org/food/true-inside-story-how-college-professor-sells-out-monsanto> by Carey Gillam; and
- (9) All documents you provided to The New York Times and Eric Lipton prior related to any public record request in 2015.