

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE: PET FOOD PRODUCTS
LIABILITY LITIGATION

Civil Action No. 07-2867 (NLH)

MDL Docket No. 1850

ALL CASES

NOTICE OF ISSUANCE OF SUBPOENA TO DR. GEORGE P. McCABE

TO: All Parties on the attached list, by their counsel of record:

PLEASE TAKE NOTICE that, pursuant to Federal Rule of Civil Procedure 45, Plaintiffs have issued for service a subpoena for deposition and duces tecum on Dr. George P. McCabe, requiring deposition testimony and production of documents described on Exhibit A to the subpoena. The subpoena is attached to this notice.

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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of November, 2007, a true and correct copy of the foregoing instrument was served on the following counsel by facsimile and mail:

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Mark J. Tamlyn, Esq.
 WEXLER TORISEVA WALLACE LLP

SAO88 (Rev. 12/06) Subpoena in a Civil Case

**Issued by the
UNITED STATES DISTRICT COURT**

Southern

DISTRICT OF

Indiana

In re: Pet Food Products Liability Litigation

SUBPOENA IN A CIVIL CASE

V.

This Document Relates to All Cases

Case Number:¹

George P. McCabe, Ph.D.
Purdue University

07-2867

MDL Docket No. 1850

TO: Mathematical Sciences Building
150 N. University Street
West Lafayette, IN 47907-2067

District of New Jersey

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION 1 Indiana Square, Suite 2425, Indianapolis, Indiana 46204	DATE AND TIME 11/23/2007 10:00 am
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YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

See Exhibit A, attached hereto.

PLACE 1 Indiana Square, Suite 2425, Indianapolis, Indiana 46204	DATE AND TIME 11/23/2007 9:00 am
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YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) <i>fa Plaintiff</i>	DATE 11/20/07
--	------------------

ISSUING OFFICER'S NAME, ADDRESS, AND PHONE NUMBER

Mark J. Tamblyn, Wexler Toriseva Wallace LLP, 1610 Arden Way, Suite 290, Sacramento, California 95815
(916) 568-1100

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

¹ If action is pending in district other than district of issuance, state district under case number.

AO88 (Rev. 12/06) Subpoena in a Civil Case

PROOF OF SERVICE

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____ DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

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

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena 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 to quash, the person from whom discovery is sought must show that the information sought 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) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that 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 and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

EXHIBIT A

DEFINITION AND INSTRUCTIONS

1. "You" and "Your" means George P. McCabe, Ph.D., including your agents, assistants, employees and representatives.
2. "Declaration" means the Declaration of Dr. George P. McCabe in Support of Del Monte's Motion, filed on November 16, 2007 in the matter *In re: Pet Food Products Liability Litigation*, Case No. 07-2867, MDL Docket No. 1850.
3. "Defendant" means Del Monte Foods Company, its counsel, any other Defendant named in the actions pending in the matter *In re: Pet Food Products Liability Litigation*, Case No. 07-2867, MDL Docket No. 1850, and its counsel.
4. "Document(s)" is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a), including any electronically stored information, email or electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of the term.
5. These requests are continuing requests, and to the extent that at any time after these requests are responded to the responding party becomes aware of or acquires additional documents or information responsive to these requests, such documents or information shall be produced promptly.
6. A request for any document shall be deemed to include, in addition to the document itself, a request for any transmittal sheets and cover letters accompanying the requested document, exhibits and attachments to the document and enclosures sent with the document.
7. In the event that You object to any document request on the grounds of privilege or work product, a statement shall be provided as to each document which includes:

- a. the name of the author of the document;
- b. the name of the recipient of the document;
- c. the names of the persons to whom copies were sent;
- d. the job title of every individual named in (a), (b), and (c) above;
- e. the date the document was created, sent, and received;
- f. the location of the document;
- g. the custodian of the document;
- h. a brief description of the nature and subject matter of the document; and
- i. a statement of the privilege asserted and each and every fact or basis upon which a privilege is claimed or on which the document is otherwise withheld.

8. Notwithstanding the assertion of any objection to production, if a document contains non-objectionable or non-privileged matter, please produce that document, redacting that portion for which the objection is asserted, provided that the identification requested in paragraphs (h) and (i) above are furnished.

9. If documents responsive to a particular request no longer exist but are known to have existed, state the circumstances under which the documents were lost or destroyed.

10. To the extent documents requested herein have already been produced in this action, they need not be produced again.

DOCUMENTS REQUESTED

1. All documents and information furnished to You by Defendant, Defendant's counsel or any other person in connection with Your work in this case.

2. All documents and information relied upon by You in connection with Your work in this case.

3. All other documents and information reviewed and/or considered by You received from any party or such party's counsel in connection with Your work in this case.
4. All data sets relied upon by You in connection with Your work in this case.
5. All workpapers relied upon, considered, reviewed or used by You in connection with Your work in this case.
6. All reference works or treatises considered by You in connection with Your work in this case.
7. All exhibits, charts or other demonstrative materials used or intended to be used or submitted in connection with the Declaration or Your testimony in this case.
8. Copies of all prior testimony, affidavits, declarations and reports given by You.
9. All letters of engagement concerning Your retention by Defendant and/or Defendant's counsel in this action not previously produced.
10. Documents sufficient to show payments to You by Defendant and/or Defendant's counsel.