

UNITED STATES DISTRICT COURT

for the
District of Vermont

Grocery Manufacturers Association, et al.

Plaintiff

v.

Sorrell, et al.

Defendant

Civil Action No. 5:14-cv-117

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: The Kraft Heinz Company, 1 PPG Place, Pittsburgh, PA 15222

(Name of person to whom this subpoena is directed)

Production: **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Exhibit A

Place: Capitol Process Services 6345 Woodlawn Avenue, Verona, PA 15147	Date and Time: 10/23/2015 10:00 am
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Inspection of Premises: **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

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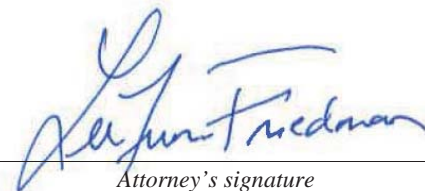
The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing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

Date: 10/07/2015

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)* William H. Sorrell, Peter Shumlin, Tracy Dolan, and James B. Reardon, who issues or requests this subpoena, are:

Lee Turner Friedman, Robbins Russell et al., LLP, (202) 775-4526, lfriedman@robbinsrussell.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises 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. 5:14-cv-117

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 person 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
INSTRUCTIONS

1. In responding to these requests, you shall produce all responsive documents (including those stored electronically), which are in your possession, custody or control, or in the possession, custody or control of your predecessors, successors, parents, subsidiaries, divisions or affiliates, or any of your respective directors, officers, managing agents, agents, employees, attorneys, accountants or other representatives. A document shall be deemed to be within your control if you have the right to secure the document or a copy of the document from another person having possession or custody of the document.

2. All documents shall be produced as they are maintained in the ordinary course of business, and shall be produced in their original folders, binders, covers or containers, or facsimile thereof, i.e., documents maintained electronically shall be produced in the manner in which such documents are stored and retrieved. All documents shall be produced electronically as tagged image file format (“TIFF”) or portable document format (“PDF”) files with extracted text for electronic documents, except that all spreadsheets, including but not limited to those created with Excel software, shall be produced in their native form. Metadata shall be provided for documents that were electronic in their native form.

3. Each page produced is to be marked in the lower right corner with a two- or three-letter abbreviation of the producing entity’s name, followed by an identifying consecutive document control number (bates number).

4. The singular form of a word is to be interpreted as plural and vice versa. The use of a verb in any tense shall be interpreted as the use of the verb in all other tenses whenever appropriate, so as to bring within the scope of this written discovery information that might

otherwise be considered to be beyond its scope. References to “and” and “or” shall be construed disjunctively or conjunctively as necessary to bring within the scope of the requests any documents, communications, or other information that might otherwise be construed to be outside their scope.

5. If you file a proper and timely objection to any portion of a document request, you are requested to answer the remaining portion.

6. If documents are withheld on the ground of privilege, as to each such withheld document state the following information: (a) describe the nature of the document being withheld; (b) state the date of the document; (c) identify the persons who sent and received the original and each copy of the document; (d) state the subject matter of the document; and (e) state the basis that you contend entitles you to withhold the document from production.

7. If only part of a document is protected by any privilege of immunity, the document shall be produced with only the privileged matter redacted.

8. With respect to any category of documents, the production of which you contend is in some way “burdensome” or “oppressive,” please state the specific reasons for that objection.

9. These requests are continuing in nature. You are required to supplement or correct your responses if documents responsive to these requests are located at any time after a response has been provided.

DEFINITIONS

1. The term “concerning” means relating to, referring to, describing, evidencing, reflecting, or constituting, in whatever degree, whether direct or indirect.

2. “Document(s)” means any and all writings and records of every type in your actual or constructive possession, control, or custody, including without limitation all memoranda, emails, correspondence, letters, reports, surveys, notes, diaries, log sheets, ledgers, transcripts, microfilms, computer printouts, work papers, engineering diagrams, mechanical or electrical recordings, video tapes, telephone and telegraphic communications, and all other records, written, electrical, mechanical, electronic or otherwise, including all preliminary and intermediate drafts in addition to the final form. “Documents” shall also refer to each copy of a document that contains handwritten or other notations or that otherwise does not exactly duplicate the original or any other copy, regardless of whether the originals are in your possession, custody, or control. “Documents” shall also refer to any attachment, appendix, or exhibit to any document, whether or not referred to therein.

3. “Food” means articles used for food or drink for humans, chewing gum, or articles used as components or ingredients of any such article.

4. “Genetic engineering” or “GE” includes, but is not limited to, the process by which genetic material has been changed through the application of either (a) in vitro nucleic acid techniques, including recombinant deoxyribonucleic acid (DNA) techniques and the direct injection of nucleic acid into cells or organelles; or (b) fusion of cells (including protoplast fusion) or hybridization techniques that overcome natural physiological, reproductive, or recombination barriers, where the donor cells or protoplasts do not fall within the same taxonomic group, in a way that does not occur by natural multiplication or natural recombination.

5. “GE crops” means agricultural crops at any stage (including seeds) that have been grown from seeds that were changed by genetic engineering, and includes what are commonly referred to as “genetically modified organisms” or “GMOs.”

6. “GE food product” means a food product produced with genetic engineering, or derived in whole or part from GE crops.

7. “GE material” means any components of a food in which any aspect or portion of the component has been produced with genetic engineering or derived in whole or part from GE crops.

8. “Heads of departments” means any scientists, professors, administrators, or other employees formally designated by an academic or research institution as the head of a department, or who are otherwise tasked with management and oversight of the affairs of a particular department.

9. “Label” (noun) means a display of written, printed, or graphic material on a packaged processed food or packaged raw agricultural commodity or any such material affixed to any shelf or bin in which an unpackaged raw agricultural commodity or unpackaged processed food is displayed for retail sale in the State of Vermont.

10. “Label” (verb) means to affix a label to a food product or print packaging for a food product that includes a label.

11. “Non-GE food product” means a food product that was not produced with genetic engineering or derived in any part from GE crops.

12. “Plaintiffs’ experts in this litigation” means Dr. Alan McHughen or any other person that Plaintiffs have retained as an expert witness in connection with the above-captioned action.

13. “Defendants’ experts in this litigation” means Dr. Michael Antoniou, Dr. Charles M. Benbrook, Dr. Jane Kolodinsky, and Dr. Conrad Brunk.

14. “You” and related terms (“your,” “yours,” and the like) refer to Kraft Heinz Company and any of its present or former parents, subsidiaries, divisions or affiliates (foreign or domestic), officers, directors, agents, attorneys, employees, representatives or other persons purporting to act on their behalf.

REQUESTS FOR PRODUCTION

1. All studies, reports, or analyses in Your possession concerning the potential health or safety effects of human or animal consumption of or exposure to GE crops or GE food products, including without limitation animal feeding studies and studies regarding potential toxicity or allergenic effects (whether in vivo or in vitro).

2. All studies, reports, or analyses in Your possession concerning compositional difference between GE crops and traditional crops, including without limitation molecular, biochemical, or structural differences, differences in nutritional content, gene expression or protein levels, and differences regarding the presence or absence of allergens.

3. All studies, reports, or analyses in Your possession concerning the observed or potential environmental effects of GE crops, whether direct or indirect, including without limitation impact on native plant or animal life, genetic homogeneity, biodiversity, and contamination of non-GE or organic crops.

4. All studies, reports, or analyses in Your possession concerning pesticide, herbicide, or insecticide use associated with GE crops, including without limitation studies concerning the health or safety effects of pesticides, herbicides, or insecticides that may be used on or around GE crops, studies concerning the observed or potential environmental effects of

pesticides, herbicides, or insecticides that may be used on or around GE crops, including studies concerning the increase or decrease of the use of pesticides, herbicides, or insecticides as a result of the use of GE crops, and studies concerning any association or correlation of GE crops with pesticide, herbicide, or insecticide resistance.

5. All studies, reports, or analyses in Your possession, including without limitation surveys or consumer complaints, concerning consumer knowledge, awareness or lack of awareness, or confusion about the presence of GE crops or GE material in food products.

6. All studies, reports, or analyses in Your possession, including without limitation surveys or consumer complaints, concerning consumer purchasing habits related to GE food products, including without limitation consumers' preferences for GE food products or non-GE food products.

7. All studies, reports, or analyses in Your possession, including without limitation surveys or consumer complaints, concerning the use of the words "nature," "natural," "naturally," "naturally made," "naturally grown," or "all natural" on food labels or advertisements, including without limitation consumers' perceptions of food labels or advertisements that contain any of those terms, and including without limitation any studies, reports, analyses, or complaints that mention or concern the use of those terms on or in relation to GE food products.

8. All submissions You have made to the U.S. Food and Drug Association or U.S. Department of Agriculture related in any way to the safety of any GE crops or GE food products.

9. All documents and written communications (including email communications), concerning grants, payments, or other remuneration that You have provided to scientists (other than Your employees), colleges, universities or research institutions relating to research,

writings, conferences, presentations, or public comment about GE crops, GE food products, genetics and biotechnology, or herbicides, pesticides, or insecticides that may be used on or around GE crops.

10. All written communications (including email communications) with or concerning scientists (other than Your employees) that You have provided grants to, paid, or otherwise remunerated and that have conducted research on, written about, or spoken publicly about GE crops, GE food products, genetics and biotechnology, or herbicides, pesticides, or insecticides that may be used on or around GE crops.

11. All written communications (including email communications) concerning GE crops, GE food products, genetics and biotechnology, or herbicides, pesticides, or insecticides that may be used on or around GE crops with heads of departments at colleges, universities, or research institutions that You provide grants to, pay, or otherwise remunerate and that conduct research on GE crops, GE food products, genetics and biotechnology, or herbicides, pesticides, or insecticides that may be used on or around GE crops.

12. All non-privileged written communications (including email communications) with or concerning Plaintiffs' experts in this litigation or Defendants' experts in this litigation.