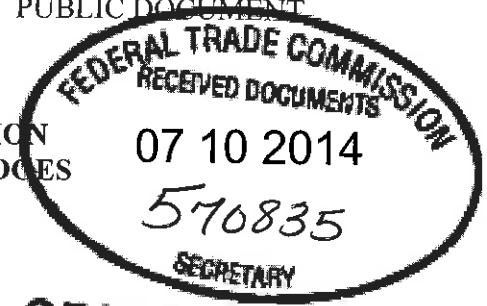


UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF THE ADMINISTRATIVE LAW JUDGES  
Washington, D.C.



In the Matter of

ECM BioFilms, Inc.,  
a corporation, also d/b/a  
Enviroplastics International,

Respondent.

Docket No. 9358

**ORIGINAL**

PUBLIC

RESPONDENT ECM BIOFILM'S OPPOSITION TO COMPLAINT COUNSEL'S  
MOTION FOR LEAVE TO TAKE THE DEPOSITION OF ALAN JOHNSON

Respondent ECM BioFilms hereby opposes Complaint Counsel's Motion for Leave to Take the Deposition of Alan Johnson ("Motion"). This Court should not permit yet another extension of fact discovery so close to the date of hearing and beyond the already liberally extended deadline for fact discovery. In addition, Complaint Counsel is seeking to depose a fact witness from a company they themselves listed months ago and whose representative they have already deposed. Complaint Counsel offers no sound justification for its dilatory conduct and certainly not the justification required for such a late request to change the discovery calendar in ways that conflict with deadlines in the third Revised Scheduling Order. Complaint Counsel's requested deposition not only conflicts with deadlines established in the third Revised Scheduling Order, it exposes ECM to considerable hardship as it prepares for the hearing that begins in less than 30 days, and it burdens independent third parties without requisite proof of necessity, such as its inability to conduct the desired deposition earlier and within the time limits established in the Scheduling Order.

**BACKGROUND**

Northeast Labs (“NE Labs”) is a testing laboratory located in Berlin, Connecticut. It offers a variety of testing services, including biodegradation testing under ASTM standards.<sup>1</sup> NE Labs was listed on Complaint Counsel’s preliminary witness list, and in Complaint Counsel’s Final Proposed Witness List. *See* Exhs. C & D. On May 9, 2014, Complaint Counsel took the deposition of NE Labs at the U.S. Attorney’s Office in New Haven, Connecticut.<sup>2</sup> NE Labs has performed a number of tests on plastics that included the ECM additive, revealing substantial plastic biodegradation, which tests will be introduced as hearing exhibits. Alan Johnson is the Laboratory Director at NE Labs. Mr. Johnson is the person who makes scientific decisions concerning the testing protocols.<sup>3</sup> He is the most knowledgeable person at NE Labs to answer questions concerning scientific issues related to testing.<sup>4</sup> ECM Biofilms listed Alan Johnson on its Final Proposed Witness List. ECM produced its Final Proposed Witness List on June 25, 2014, listing Alan Johnson in place of the original corporate designee, Alyssa Ullmann.<sup>5</sup>

NE Labs’ Rule 3.33(c)(1) corporate designee for the May 9, 2014 deposition was Alyssa Ullmann, the granddaughter of the late William W. Ullmann, Ph.D., who founded the company and worked alongside Alan Johnson for years. Alyssa Ullmann has no scientific background.<sup>6</sup> She has a high school education, and attends school for accounting.<sup>7</sup> She is a lab technician at

---

<sup>1</sup> Exh. A, Ullmann Tr, at 101.

<sup>2</sup> *See* Exh. B (Complaint Counsel’s subpoena *ad testificandum*).

<sup>3</sup> Ullman Tr. at 129 (Exh. A).

<sup>4</sup> *Id.* at 130.

<sup>5</sup> *See* Exh. C (ECM’s Final Proposed Witness List).

<sup>6</sup> *Id.* at 11-13.

<sup>7</sup> *Id.* at 12-13.

NE Labs who performs biodegradation studies at Alan Johnson's direction.<sup>8</sup> Throughout her short deposition, she explained that she lacked fundamental information concerning the methods by which NE Labs performs its biodegradation testing, or the scientific reasons supporting same. Note well that in her testimony Ms. Ullmann identified Alan Johnson as the man in the know at NE Labs.<sup>9</sup> Yet, despite that fact, from May 9 to the present, Complaint Counsel has sat upon its hands and not sought to depose Mr. Johnson until now. Complaint Counsel has no one but itself to blame for the delay, and neither this Court nor its party opponent should be forced to bear the burden of a change in the Scheduling Order just one month before hearing and 20 days before the final prehearing conference.

To be sure, there are many fact witnesses that ECM might have deposed were resources unlimited and the calendar more liberal, but ECM does not have that luxury and neither does Complaint Counsel. Allowing Complaint Counsel an extraordinary concession now is to the distinct prejudice of ECM unless the entire fact discovery calendar were reopened and the hearing postponed, which would require Commission intervention.

### ARGUMENT

This Court has the power to limit discovery that is “unreasonably cumulative or duplicative,” or where “[t]he party seeking discovery had ample opportunity by discovery in the action to obtain the information sought...” *See* 16 C.F.R. § 3.31(c)(2)(i)-(ii). Furthermore, the Court should limit discovery where the “burden and expense of the proposed discovery on a

---

<sup>8</sup> *Id.* at 11-13; *Id.* at 127 (explaining that A. Ullmann would defer to trained scientist, and she “would just type everything”); *Id.* at 129 (explaining that A. Johnson is Ms. Ullmann’s boss, and that he is the person who makes scientific decisions).

<sup>9</sup> *See* Ullman Tr. at 10-13, 127-29 (Exh. A).

party or third party outweigh its likely benefit.” *See* 16 C.F.R. § 3.31(c)(2)(iii); *see also* 16 C.F.R. § 3.33(b) (stating that the ALJ may preclude a deposition where the “value of the deposition would be outweighed by the considerations in Rule 3.43); 16 C.F.R. § 3.43(b) (stating that evidence should be precluded based on considerations of undue delay, waste of time, or needless presentation of cumulative evidence). There is no extraordinary reason for extending the fact discovery deadlines yet again and at this late hour, and Complaint Counsel’s proposed deposition would result in substantial burdens for ECM.

Complaint Counsel’s own dilatory pursuit of evidence and late identification of experts is a fault of its own and ought not be condoned through extraordinary extensions of the schedule in a case that has already involved Commission intervention to perform an extraordinary extension of the hearing deadline. The cost of Complaint Counsel’s erratic, meandering and ill-timed discovery practice has been considerable.<sup>10</sup> Complaint Counsel has already performed **nineteen** (19) fact depositions of testing laboratories and ECM customers all over the country, in Hawaii, California, New York, Ohio, and the District of Columbia, to name a few.<sup>11</sup> Those depositions included the following persons and entities:

- Northeast Labs (May 9, 2014)
- BER Plastics (May 8, 2014)
- D&W Fine Pack, LLC (May 5, 2014)

---

<sup>10</sup> The transcripts alone in this case have cost over \$1,000 per document. Other costs include attorney fees, costs of travel and lodging, and document costs. Perhaps the biggest cost, however, is the loss of time and resources during the final pretrial phase of this case when multiple deadlines arrive each week.

<sup>11</sup> By contrast, to eliminate extraordinary burden, the Federal Rules of Civil Procedure generally prohibit a party from seeking more than ten (10) depositions. *See* Fed. R. Civ. Pro 30(a)(2)(A)(i). Parties seeking to expand that number must justify the *necessity* of each deposition. *See, e.g., Archer Daniels Midland Co. v. Aon Risk Services, Inc. of Minnesota*, 187 F.R.D. 578, 586 (D.Minn. 1999) (collecting cases).

- Down to Earth (Apr. 29, 2014)
- Eagle File Extruders (May 14, 2014)
- Eden Labs (May 19, 2014)
- Elsevier (May 30, 2014)
- Flexible Plastics (May 15, 2014)
- Island Plastic Bags (April 28, 2014)
- Kappus Plastic Company (May 6, 2014)
- Quest Plastics (May 7, 2014)
- 3M Corporation (May 16, 2014)
- ANS Plastic (May 5, 2014)
- FP International (May 1, 2014)
- Timothy Barber, Ph.D. (May 7, 2014)
- Thomas Nealis, ECM Employee (March 5, 2014)
- Alan Poje, former ECM Employee (March 6, 2014)
- Robert Sinclair, ECM President (February 18, 2014)
- Kenneth Sullivan, ECM Officer (February 20, 2014)

Each of the foregoing depositions were noticed and conducted by Complaint Counsel. Also, the parties will soon have taken eight (8) additional expert depositions.<sup>12</sup> The mere cost of those depositions has been significantly burdensome for ECM. Put simply, enough is enough. Fact discovery should be rendered final and complete so the parties can work through the remaining

---

<sup>12</sup> That number may increase by at least one if the court permits Complaint Counsel to add a new expert without notice. ECM has filed a motion to exclude Dr. Michel, based on Complaint Counsel's contumacious failure to abide by the Court's scheduling order. That motion remains pending.

events in this case without having to supplement filings or move deadlines any further.<sup>13</sup> The earliest time available for Mr. Johnson's deposition may well be the week of July 23rd, which falls after many significant pretrial deadlines in this case, and just one week before the final Pretrial Conference.<sup>14</sup>

Despite the added burden, the parties already agreed to extend the period for expert discovery to accommodate two expert witness depositions after the deadline in the Scheduling Order, during the week of July 14th.<sup>15</sup> Moreover, Complaint Counsel just introduced a new expert witness last week.<sup>16</sup> If this Court permits Complaint Counsel to add an expert despite Complaint Counsel's discovery abuses, ECM will be required to participate in multiple depositions far beyond the date this Court would have closed discovery on July 2, 2014 and perilously close to the July 29 prehearing conference and the August 5 commencement of the hearing.

The burdens of these depositions are not limited to parties in this case. Through its instant Motion, Complaint Counsel would force NE Labs, an independent third party, into yet another deposition, and that could be followed by live testimony in Washington, D.C. It would do so despite the fact that Complaint Counsel has been on notice since May 9 that Alan Johnson was the principal at NE Labs with requisite knowledge.<sup>17</sup> From its Motion, Complaint Counsel does not seem to have assessed whether Mr. Johnson would be available for a deposition any

---

<sup>13</sup> The parties were forced to schedule two of ECM's experts for depositions the week of July 14th because, with the number of experts involved and the witnesses' schedules, completing all expert discovery within the deadline was nearly impossible.

<sup>14</sup> That assumes that Mr. Johnson is even available.

<sup>15</sup> See Exh. F (Email concerning deposition scheduling).

<sup>16</sup> That disclosure and use of a new expert is subject to a now pending motion to exclude for violations of the Scheduling Order in this case.

<sup>17</sup> See, e.g., Ullmann Tr. at 10-13, 127-29 (Exh. A).

time this month, or whether the burden of another day trip to New Haven, CT would negatively impact NE Lab's business. This instant request is excessive, which in fact characterizes Complaint Counsel's prosecution to date.<sup>18</sup>

Complaint Counsel has had ample opportunity to perform this discovery in a timely fashion without prejudicing ECM. Since May 9, 2014, following the first NE Labs deposition, Complaint Counsel knew that Alyssa Ullmann was an uninformed witness who could not address the scientific issues raised by Complaint Counsel in that deposition. She is a lab technician who follows directions from the "lab director," Mr. Alan Johnson.<sup>19</sup> She has no scientific background. However most of NE Lab's tests reveal that ECM's product resulted in substantial biodegradation under the D5511 test protocol. In an effort to diminish ECM's supportive science, Complaint Counsel's experts have testified, unconvincingly, that laboratory error may have resulted in those repeated, positive test results.<sup>20</sup>

In a similar situation, during a separate deposition of ECM's customer FP International, the corporate designee testified that another individual, Rod Alire, possessed better knowledge of FP's testing protocols. Complaint Counsel declared its intent to perform a follow-up deposition of Mr. Alire. The parties ultimately entered a stipulation that would avoid the deposition, provided ECM agreed not to call Mr. Alire as a witness at the hearing.<sup>21</sup> Likewise with NE Labs, Complaint Counsel knew that Alan Johnson was the more informed witness; they just

---

<sup>18</sup> In prior motions before this Court, ECM has explained Complaint Counsel's blunderbuss approach to discovery which ultimately forced ECM to search and deliver more than 116,000 pages of responsive correspondence with customers, marketing, and all other manner of marginally relevant files. On July 8, 2014, Complaint Counsel filed yet another motion to compel documents from ECM's files, this time demanding information never before known to ECM or its counsel. ECM will of course oppose that motion separately.

<sup>19</sup> Ullmann Tr. at 11-13, 129 (Exh. A).

<sup>20</sup> See Tolaymat Tr. Excerpt, at 210-213 (Exh. G).

<sup>21</sup> See Exh. E (Stipulation Concerning Rod Alire).

failed to proceed with diligence and then, at the 11th hour after the deadline, they expect the Court and ECM to accede to another deposition on the eve of the hearing; nothing could be more disruptive and unjustified given the circumstances. Indeed, given the aggressive and comprehensive deposition schedule in this case, the only reasonable inference is that Complaint Counsel chose to avoid Alan Johnson's follow-up deposition because that decision suited their strategy at the time. ECM should not now suffer from Complaint Counsel's sudden *volte face* to pursue a discovery lead it neglected earlier.

For the foregoing reasons, therefore, ECM requests that this Court deny Complaint Counsel's motion.

Respectfully submitted,

/s/ Jonathan W. Emord  
Jonathan W. Emord (jemord@emord.com)  
EMORD & ASSOCIATES, P.C.  
11808 Wolf Run Lane  
Clifton, VA 20124  
Telephone: 202-466-6937  
Facsimile: 202-466-6938

DATED: July 9, 2014.



**CERTIFICATE OF SERVICE**

I hereby certify that on July 9, 2014, I caused a true and correct copy of the foregoing to be served as follows:

One electronic copy to the **Office of the Secretary** through the e-filing system:

Donald S. Clark, Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Room H-113  
Washington, DC 20580  
Email: [secretary@ftc.gov](mailto:secretary@ftc.gov)

One electronic courtesy copy to the **Office of the Administrative Law Judge**:

The Honorable D. Michael Chappell  
Administrative Law Judge  
600 Pennsylvania Ave., NW, Room H-110  
Washington, DC 20580

One electronic copy to **Counsel for Complainant**:

Katherine Johnson  
Division of Enforcement  
Bureau of Consumer Protection  
Federal Trade Commission  
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Mail stop M-8102B  
Washington, D.C. 20580  
Email: [kjohnson3@ftc.gov](mailto:kjohnson3@ftc.gov)

Elisa Jillson  
Division of Enforcement  
Bureau of Consumer Protection  
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Arturo Decastro  
Division of Enforcement  
Bureau of Consumer Protection  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Mail stop M-8102B  
Washington, D.C. 20580  
Email: [adecastro@ftc.gov](mailto:adecastro@ftc.gov)

I certify that I retain a paper copy of the signed original of the foregoing document that is available for review by the parties and adjudicator consistent with the Commission's Rules.

Respectfully submitted,



---

Jonathan W. Emord (jemord@emord.com)  
EMORD & ASSOCIATES, P.C.  
11808 Wolf Run Lane  
Clifton, VA 20124  
Telephone: 202-466-6937  
Facsimile: 202-466-6938

DATED: July 9, 2014

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF THE ADMINISTRATIVE LAW JUDGES  
Washington, D.C.**

**In the Matter of**

**ECM BioFilms, Inc.,  
a corporation, also d/b/a  
Enviroplastics International,**

**Respondent.**

**Docket No. 9358**

**PUBLIC**

**DECLARATION OF PETER A. ARHANGELSKY  
IN SUPPORT OF RESPONDENT ECM BIOFILM'S OPPOSITION TO COMPLAINT  
COUNSEL'S MOTION FOR LEAVE TO TAKE THE DEPOSITION OF ALAN  
JOHNSON**

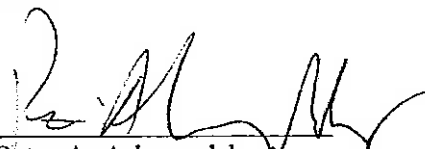
In accordance with 28 U.S.C. § 1746, I declare under the penalty of perjury that the following is true and correct:

1. I am over 18 years of age, and I am a citizen of the United States. I am employed as an attorney with Emord & Associates, P.C., which represents ECM BioFilms in this matter. I am an attorney of record in the above-captioned matter, and I have personal knowledge of the facts set forth herein.

2. The following exhibits, which are attached as Exhibits to the above-captioned motion, are true and correct copies of files received by ECM or in ECM's possession:

- Exh. A. Excerpts of A. Ullmann Deposition Testimony (May 9, 2015)
- Exh. B. Complaint Counsel's Subpoena to Northeast Labs
- Exh. C. Complaint Counsel's Final Proposed Witness List
- Exh. D. Complaint Counsel's Preliminary Witness List
- Exh. E. Joint Motion Concerning the Testimony of Rod Alire
- Exh. F. Email correspondence between counsel re deposition scheduling (May 2014)
- Exh. G. Excerpts of T. Tolaymat Deposition Testimony (June 24, 2014)

Executed this 9th day of July, 2014 in Chandler, Arizona.



Peter A. Archangelsky  
Counsel to ECM Biofilms

# Respondent's Exhibit A

**In the Matter of:**

**ECM BioFilms, Inc., et al.**

*May 9, 2014*  
*Alyssa Ullmann*

**Condensed Transcript with Word Index**



**For The Record, Inc.**  
**(301) 870-8025 - [www.ftrinc.net](http://www.ftrinc.net) - (800) 921-5555**

1

1 -----x  
 2  
 3 IN THE MATTER OF :  
 4 ECM BIOFILMS, INC., a corporation, :  
 5 Also d/b/a ENVIROPLASTICS INTERNATIONAL, :  
 6 -----x  
 7  
 8 DEPOSITION OF: ALYSSA ULLMANN  
 9 DATE: MAY 9, 2014  
 10 HELD AT: U.S. ATTORNEY'S OFFICE  
 11 157 CHURCH STREET  
 12 25TH FLOOR  
 13 NEW HAVEN, CONNECTICUT  
 14  
 15  
 16  
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(All exhibits marked during the deposition were taken by the court reporter and placed in the original transcript.)

2

APPEARANCES:

1 REPRESENTING THE FEDERAL TRADE COMMISSION:  
 2  
 3 FEDERAL TRADE COMMISSION  
 4 BUREAU OF CONSUMER PROTECTION  
 5 601 NEW JERSEY AVENUE, NW  
 6 WASHINGTON, D.C. 20001  
 7 (202) 326-2506  
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 17 CHANDLER, ARIZONA 85286  
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 19 By: PETER ARHANGELSKY, ESQUIRE  
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 21 (VIA SPEAKERPHONE)  
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 24  
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 SUITE #4  
 BERLIN, CONNECTICUT 06037  
 (860) 828-5026  
 By: GARRETT JOHNSON, ESQUIRE  
 garrettjohnson@gmail.com

4

STIPULATIONS

1  
 2  
 3 It is stipulated by the Attorneys for the  
 4 Plaintiff and the Defendant that all objections are  
 5 reserved until the time of trial, except those  
 6 objections as are directed to the form of the  
 7 question.  
 8  
 9 It is stipulated and agreed between counsel  
 10 for the parties that the proof of the authority of the  
 11 Commissioner before whom this deposition is taken is  
 12 waived.  
 13  
 14 It is further stipulated that any defects in  
 15 the Notice are waived.  
 16  
 17 It is further stipulated that the reading and  
 18 signing of the deposition transcript by the witness is  
 19 waived.  
 20  
 21  
 22  
 23  
 24  
 25

5

1 (The deposition commenced at 9:21 a.m.)  
 2 COURT REPORTER: Peter, did you want  
 3 a copy of this transcript?  
 4 MR. ARHANGELSKY: Take it under  
 5 advisement. I'll get back to you on that. Most  
 6 likely, but what kind of copy we want is yet to be  
 7 determined.  
 8 COURT REPORTER: Could I have your  
 9 phone number?  
 10 MR. ARHANGELSKY: I'm sorry?  
 11 COURT REPORTER: Could I have your  
 12 phone number?  
 13 MR. ARHANGELSKY: (602) 334-4416.  
 14 COURT REPORTER: And your e-mail  
 15 address, please?  
 16 MR. ARHANGELSKY: It's  
 17 parhangelsky@emord.com.  
 18 ALYSSA ULLMAN, Deponent, having first been  
 19 duly sworn, deposes and states as follows:  
 20 MS. ULLMANN: Alyssa Ullmann, 30  
 21 Great Meadow Lane, Avon, Connecticut, 06001,  
 22 A-L-Y-S-S-A, U-L-L-M-A-N-N.  
 23 MS. JOHNSON: Hi, Ms. Ullmann. I'm  
 24 Katherine Johnson. I represent complaint counsel in  
 25 this case. This is the ECM BioFilms matter. It's

7

1 A. Okay.  
 2 Q. Also, if you nod your head or give some  
 3 other non-oral response, the court reporter won't be  
 4 able to record it, so yes, no. Do you understand? Is  
 5 that clear?  
 6 A. Yes.  
 7 Q. Do you understand that you're here today  
 8 to represent Northeast Laboratories?  
 9 A. Yes.  
 10 Q. And you are coming in response to a  
 11 subpoena that was issued in this case?  
 12 A. Yes.  
 13 Q. Let the record reflect that I'm going to  
 14 mark a copy of the subpoena as NEL 1, and I'm going to  
 15 give a copy to the court reporter and then a copy for  
 16 you, Ms. Ullmann.  
 17 A. Thank you.  
 18 Q. And a copy for you, Mr. Johnson.  
 19 A. Thank you.  
 20 Q. Peter, did you hear?  
 21 MR. ARHANGELSKY: Thank you very  
 22 much.  
 23 (Exhibit NEL 1, marked for  
 24 identification.)  
 25 Q. Is this a copy of the subpoena that you

6

1 docket number 9358. Before I begin I'm just going to  
 2 have all counsel make their appearance for the record.  
 3 MR. ARHANGELSKY: Thank you. Peter  
 4 Arhangelsky for the respondent, ECM BioFilms.  
 5 MR. JOHNSON: Garrett Johnson  
 6 representing Northeast Labs and Ms. Ullmann.  
 7 DIRECT EXAMINATION BY MS. JOHNSON:  
 8 Q. Ms. Ullmann, have you ever been deposed  
 9 before?  
 10 A. I have not.  
 11 Q. Have you ever been a witness at trial?  
 12 A. I have not.  
 13 Q. So I am just going to go over a few sort  
 14 of instructions, ground rules that hopefully will make  
 15 this a little bit easier. The court reporter here is  
 16 going to be recording everything that we say, so just  
 17 try to speak clearly so that she can understand. If  
 18 we talk over each other, she is not going to be able  
 19 to type, so just wait for me to finish asking my  
 20 question and then answer.  
 21 If you don't understand my question,  
 22 let me know. I will try to repeat it or rephrase it  
 23 or I will have the court reporter read it back to you.  
 24 And if you answer a question, I'm going to assume you  
 25 understood what the question was.

8

1 received?  
 2 A. Yes.  
 3 Q. Did you -- can you just flip forward to --  
 4 there's a section called deposition topics?  
 5 A. Oh yeah.  
 6 Q. Just take a moment. Have you prepared --  
 7 are you prepared today to testify about each one of  
 8 these topics? You can take a look and take a minute  
 9 to review them.  
 10 A. Yes.  
 11 Q. Are you prepared to testify accurately and  
 12 truthfully about all these topics?  
 13 A. Yes.  
 14 Q. You took an oath?  
 15 A. Yeah.  
 16 Q. Do you understand what that means?  
 17 A. Yes.  
 18 Q. What does that mean?  
 19 A. To tell the truth, nothing but the truth.  
 20 Q. What did you do to prepare for this  
 21 deposition?  
 22 A. I sat down with our lab director as well  
 23 as Garrett, and we went through this stuff. We went  
 24 over all the testing that we did that we have on  
 25 record that included ECM's additive.



9

11

1 Q. And when you say you sat down with the lab  
 2 director, who is that?  
 3 A. Alan Johnson.  
 4 Q. And then you also sat down with Mr.  
 5 Johnson?  
 6 A. Yes.  
 7 Q. Is there a relationship between --  
 8 A. Yeah. The lab director is his father.  
 9 Q. Does the lab director have a degree?  
 10 A. Yes, he does.  
 11 Q. Do you know what that degree is?  
 12 A. I don't know what his degree is.  
 13 Q. You don't. Do you know if it's a Master's  
 14 degree?  
 15 A. I do not know exactly.  
 16 Q. Would you know if it was a Ph.D.? Do you  
 17 call him Dr. Johnson?  
 18 A. No, it's not a Ph.D.  
 19 Q. Do you know what his degree is in?  
 20 A. I would guess either chemistry or biology.  
 21 Q. What else did you do to prepare for this  
 22 deposition today?  
 23 A. I went through e-mails with the people who  
 24 were listed on this such as Robert Sinclair.  
 25 Q. You received, and when I say you, I mean

1 is whether you were the person responsible for  
 2 gathering the documents that were responsive to the  
 3 subpoena. When I mean responsive -- when I say  
 4 responsive, I mean that responded to the specific  
 5 requests that were made.  
 6 A. Both Garrett and I did. Sorry.  
 7 Q. My fault. I need to be more clear. So  
 8 you and Garrett were the only two who went through the  
 9 documents. How did you conduct the search of those  
 10 documents?  
 11 A. Everything is saved on our computer in a  
 12 certain file, and I did a search for everything with  
 13 ECM in the title or in the documents.  
 14 Q. Is it possible that you would have run  
 15 tests on a plastic, and it wouldn't have reflected  
 16 that it contained the ECM additive?  
 17 MR. ARHANGELSKY: Objection.  
 18 A. We do a lot of tests, and we do not ask  
 19 them to give us what additive they use. We only put  
 20 that on the document if they give us that information.  
 21 Q. So it's possible that there are tests out  
 22 there?  
 23 A. It's possible, but we would not know.  
 24 Q. Also wanted to mention if you need to take  
 25 a break, just let me know, and we can take a break.

10

12

1 Northeast Labs received a subpoena from the Respondent  
 2 in this case to produce documents; is that correct?  
 3 A. Correct.  
 4 Q. Did you uncover any additional documents  
 5 that were responsive to that subpoena when you were  
 6 preparing for this deposition?  
 7 A. What do you mean?  
 8 Q. Did you find any e-mails with Mr. Sinclair  
 9 that were not produced?  
 10 A. No.  
 11 Q. Did you find any other tests that were not  
 12 produced?  
 13 A. No.  
 14 Q. Were you the one who prepared the  
 15 documents that were responsive to the ECM's document  
 16 subpoena?  
 17 A. Did I send like --  
 18 Q. Did you prepare? Did you --  
 19 A. Would that be the reports that we sent?  
 20 Q. Yes.  
 21 A. They were in different timeframes, all the  
 22 reports, so I prepared some of them. I did not  
 23 prepare all of them.  
 24 Q. Maybe let me ask the question again,  
 25 because I don't know if you understood. My question

1 A. Okay.  
 2 Q. If I have asked a question, just answer  
 3 the question before we take a break. How did you  
 4 prepare for the deposition today?  
 5 A. How did I prepare? I just sat down with  
 6 Garrett and Alan like I mentioned earlier, and we just  
 7 talked about it and looked through the documents that  
 8 we had.  
 9 Q. And did you talk with anybody else other  
 10 than Alan, Alan Johnson and Garrett Johnson?  
 11 A. I did not.  
 12 Q. Ms. Ullmann, what is your role at  
 13 Northeast Labs?  
 14 A. I handle all of the projects that come in  
 15 for the biodegradation testing. I help set up the  
 16 testing for the biodegradation. I do most of the  
 17 reports for the biodegradation testing, handle all the  
 18 phone calls, e-mails.  
 19 Q. And what's your background your,  
 20 educational background?  
 21 A. I'm still in school for accounting.  
 22 Q. When you say school, what level?  
 23 A. I have -- I take classes online, so I am  
 24 getting my Bachelor's.  
 25 Q. Do you have any other degrees?

1 A. No.  
 2 **Q. Do you have a degree in science?**  
 3 A. I do not.  
 4 **Q. So when you say you set up the testing,**  
 5 **what does that mean?**  
 6 A. When we set up the testing, we take all of  
 7 the samples that we get in and everything's labeled.  
 8 We take those and we cut them up and put them into  
 9 triplicates. We set them into the incubators and with  
 10 all the equipment that goes with that to run  
 11 everything. So we put them in an inoculum. We add a  
 12 culture to that.  
 13 **Q. Who owns Northeast Labs?**  
 14 A. Alan Johnson does right now.  
 15 **Q. How long has he owned the lab?**  
 16 A. The lab was actually co-owned by him and  
 17 my grandfather, Dr. William Ullmann, until I believe  
 18 last year it all went to Alan.  
 19 **Q. And so now Alan Johnson owns the lab**  
 20 **solely?**  
 21 A. Yes.  
 22 **Q. He doesn't have any other partners?**  
 23 A. No.  
 24 **Q. Besides Alan Johnson, who is the lab**  
 25 **director, and you -- what's your title?**

1 **Q. So you named Alan Johnson, Elizabeth**  
 2 **Wilde, and yourself are the three people who are**  
 3 **involved in the biodegradation studies?**  
 4 A. Right.  
 5 **Q. Is there anybody else who is involved in**  
 6 **the biodegradation studies?**  
 7 A. My grandfather started all of the  
 8 biodegradation studies, so Alan actually took over  
 9 when my grandfather passed away.  
 10 **Q. And when did your grandfather pass away?**  
 11 A. He passed away in 2011.  
 12 **Q. Prior to that was he running the tests?**  
 13 A. He was the main person doing everything,  
 14 yes, and I was basically just an assistant helping.  
 15 **Q. But now your responsibilities are broader?**  
 16 A. Correct.  
 17 **Q. Let the record reflect I'm going to mark a**  
 18 **copy of a few Web pages from the Northeast Lab's Web**  
 19 **site as NEL 2.**  
 20 (Exhibit NEL 2, marked for  
 21 identification.)  
 22 **Q. Ms. Ullmann, do you recognize this**  
 23 **document?**  
 24 A. Yes, I do.  
 25 **Q. And what is it?**

1 A. Project manager, biodegradation studies.  
 2 **Q. What are the other employees?**  
 3 A. There are -- do you want me to name them  
 4 all?  
 5 **Q. Yes, unless it's like fifty.**  
 6 A. There's Kathy Fagan. She's a  
 7 receptionist. There's Larissa Johnson. She does all  
 8 the book work, accounting. There is Melanie LaRose.  
 9 She's a microbiologist supervisor. There is Laurie  
 10 Howe. She's a microbiologist supervisor. There is  
 11 Michelle. I don't know how to say her last name.  
 12 She's a tech down in micro. There is Ryan Picard. He  
 13 does a lot of pharmaceutical testing. There is Kelly  
 14 Ullmann. She does -- she's the chemistry supervisor.  
 15 There is Elizabeth Wilde. She helps with the  
 16 biodegradation setups.  
 17 Then there is Jack Truhan. He's a  
 18 courier, and there is also Rich. I don't know his  
 19 last name. He's also a courier, and I think that's  
 20 everyone. Oh, there is Elijah Yopp. He's an  
 21 assistant in the lab. There is Courtney Apell. She's  
 22 also a lab assistant. There's Al Reigins. He --  
 23 **Q. I'm going to object to --**  
 24 MR. JOHNSON: That's fine.  
 25 A. I don't know his title.

1 A. Our Web site printout.  
 2 **Q. On the first page it identifies a number**  
 3 **of licenses and certifications. I just want to go**  
 4 **through them. Are you familiar with all the licenses**  
 5 **and certifications that the lab has?**  
 6 A. I'm not 100 percent familiar with all of  
 7 them, no.  
 8 **Q. Did you understand that that was one of**  
 9 **the topics identified in the deposition notice?**  
 10 A. I do, and we do have a copy of everything.  
 11 **Q. So you brought a copy of all of the**  
 12 **certifications and licenses?**  
 13 A. Yes.  
 14 **Q. Do you understand how each one is achieved**  
 15 **or earned or obtained?**  
 16 A. I do not go through and do all of that  
 17 stuff, so I do not know how that is all obtained.  
 18 **Q. Do you know who would know that**  
 19 **information?**  
 20 A. I would guess Alan Johnson since he's now  
 21 owner of the lab.  
 22 **Q. Do you know which licenses and**  
 23 **certifications are required by Federal law or State**  
 24 **law for the lab to operate?**  
 25 A. The FDA, USDA.

Tr. Pages 16 through 125  
intentionally omitted

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1 **Q. Why not just weigh it?**

2 A. Well, when you weigh it, there is going to  
3 be -- you can't always get a sample completely clean  
4 of the stuff that is in there. There is always going  
5 to be bacteria and stuff in the sample, especially if  
6 you have a foam piece. Even like if you try to clean  
7 any type of sample, it takes a long time to clean and  
8 dry, and you have to redo the process so many times.

9 **Q. So it's just easier to send it out and  
10 have the molecular weight loss analysis done?**

11 A. People -- we don't ever get requests to  
12 weigh the sample after.

13 **Q. You're not going to school to become a  
14 scientist?**

15 A. No.

16 **Q. After spending so many years in the lab  
17 you decided you would rather do accounting?**

18 A. Right. Well, I started working when I was  
19 16 there as a part-time bottle washer, so I have kind  
20 of grown up there.

21 **Q. When you're going through the list of all  
22 of the employees, it sounded like there is a lot of  
23 people who are related; is that right?**

24 A. There is -- well, his dad owns it, so his  
25 wife and him work there. My cousin works there

1 **Q. Right. I just have a few questions, and I  
2 apologize if we have covered this before, but can you  
3 explain again your or for the first time your  
4 educational background?**

5 A. Yeah. I'm going to school for accounting.  
6 I have worked at the lab since I was 16, so that's the  
7 reason why I'm doing what I do there.

8 **Q. Would that have been when you were in high  
9 school you began work?**

10 A. I started working there when I was 16. I  
11 was doing bottom of the totem pole bottle washing and  
12 when I was 18 -- I mean, this was all part time. So  
13 when I was 18, I started, 18 or 19 I started helping  
14 my grandfather with the biodegradation studies on and  
15 off. So I have been doing all the biodegradation  
16 stuff since then, like setting up the tests and  
17 putting reports together, that kind of stuff.

18 **Q. At that time when you were working with  
19 your grandfather, would it be fair to say he made all  
20 the scientific decisions with respect to the tests and  
21 protocols?**

22 A. Yes. He did everything. He wrote up the  
23 reports. I would just type everything. He did all  
24 the calculations.

25 **Q. Did you attend college or higher education**

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1 because my grandfather started it. That's really the  
2 only -- yeah, it's a family-run business.

3 **Q. What does -- what does Garrett Johnson do?**

4 A. He does -- I don't even know what you -- I  
5 think he sets up the schedule for all the sample  
6 pick-ups, drop-offs. I know he does reports. He  
7 doesn't do anything related to actual testing.

8 **Q. When you say reports, what kind of  
9 reports?**

10 A. For like different like -- like maybe he  
11 types reports for like water testing or ...

12 **Q. But he doesn't do anything with the  
13 biodegradation studies?**

14 A. No.

15 **Q. Alright. I think I'm done. So I will  
16 pass the witness to Mr. Arhangelsky.**

17 **CROSS-EXAMINATION BY MR. ARHANGELSKY:**

18 **Q. Okay, thank you. Ms. Ullmann, let me just  
19 -- I guess I haven't explained myself. I'm Peter  
20 Arhangelsky. I represent ECM BioFilms. I think  
21 you've spoken with our offices before. I don't think  
22 I have spoken to you before; is that right?**

23 A. Yeah, I think I talked to one person.  
24 Garrett's done most of the communication back and  
25 forth.

1 **after high school?**

2 A. Yep. I'm currently doing classes.

3 **Q. How old are you right now?**

4 A. I'm 24.

5 **Q. And how far do you have to go in your  
6 degree program?**

7 A. I don't know exactly. I have always been  
8 on and off with taking classes. I don't know how many  
9 exactly more classes I need.

10 **Q. Have you taken any science classes in  
11 college, university?**

12 A. I have. I have taken -- I have only  
13 taking one science class. It was a biology class, I  
14 believe, probably back in 2008.

15 **Q. Now, you testified before that you weren't  
16 certain of Alan Johnson's scientific credentials; is  
17 that right?**

18 A. Right. I don't know exactly everything.  
19 He has a degree. I believe. I didn't study his  
20 curriculum vitae.

21 **Q. How long has he been employed or worked  
22 for Northeast Labs?**

23 A. A very long time. I couldn't give you a  
24 certain amount of time. He was partners with my  
25 grandfather from when he was younger, but I don't know

32 (Pages 125 to 128)

For The Record, Inc.

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Page 7 of 9

Exh. A

1 the exact amount of time.

2 **Q. On the reports he lists himself as a**  
3 **laboratory director. Can you explain to me what that**  
4 **position means to you? What's his job qualifications,**  
5 **description?**

6 A. He oversees everything. He would be the  
7 person that you would go to for any questions or  
8 problems. He's the owner of the entire business so he  
9 directs -- he's the highest person up there.

10 **Q. So is he now the person that makes**  
11 **decisions concerning the scientific issues related to**  
12 **testing protocols?**

13 A. Correct.

14 **Q. Would you call him your boss?**

15 A. Yes.

16 **Q. When you received complaint counsel's**  
17 **subpoena to testify, who did you talk to about who**  
18 **would come today to testify on behalf of Northeast**  
19 **Labs?**

20 A. Like who did I talk to that was -- the  
21 only person that I have talked to about this whole  
22 thing has been Garrett and Alan.

23 **Q. Did you talk with Garrett and Alan about**  
24 **the best person to come and answer questions**  
25 **concerning the deposition topics and complaint**

1 **they written?**

2 A. I do a lot of conversations through e-mail  
3 when a customer calls, too, and -- well, I mean, we do  
4 get a lot of inquiries through the Web site, so we  
5 usually e-mail back and forth. I do talk on the phone  
6 to people, but a lot of everything is -- most  
7 everything is done through e-mail.

8 **Q. Have you produced most of those e-mails to**  
9 **either ECM or complaint counsel in response to the**  
10 **subpoena?**

11 A. I don't think I have e-mailed anyone in  
12 response to -- the ones -- I mean the, e-mails that  
13 are from me that they sent, those are from me, but I  
14 haven't been the one to e-mail them to whoever got  
15 like -- Garrett has been the one who has been talking  
16 to everyone.

17 **Q. Who prepared your response to ECM's**  
18 **subpoena for documents?**

19 A. Garrett Johnson.

20 **Q. Do you have any awareness of what he**  
21 **looked for in preparing that response?**

22 A. He looked for everything that had ECM in  
23 the documentation, in the e-mails. It was a  
24 certificate with ECM.

25 **Q. You mentioned you only keep certain**

1 **counsel's subpoena?**

2 A. Yeah. They decided I was, because I  
3 handle all of the clients, and I put their reports  
4 together, and I have been doing the biodegradation  
5 stuff the longest so ...

6 **Q. Would you say that or let me ask -- strike**  
7 **that. Who is the most knowledgeable person in**  
8 **Northeast Labs to answer questions concerning the**  
9 **scientific issues and the tests and protocols?**

10 A. That would be -- scientific issues would  
11 be Alan Johnson.

12 **Q. When you've -- we discussed before these**  
13 **studies that ran beyond 30 days. Who makes the**  
14 **decision whether the test will ultimately run beyond**  
15 **30 or 45 days?**

16 A. If the clients ask us to run them longer,  
17 so we do.

18 **Q. Does that ever come at your suggestion or**  
19 **is that solely coming from the client saying I want to**  
20 **run this out longer?**

21 A. I have suggested to run it longer to more  
22 of a better, like so you can say you saw more  
23 degradation in a certain amount of time.

24 **Q. And in these conversations you have verbal**  
25 **conversations or are they e-mail conversations? Are**

1 **records past a year. Would you happen to have**  
2 **electronic records beyond a year?**

3 A. We have everything electronically from the  
4 beginning of whenever the computers, they have been  
5 using computers.

6 **Q. Would that include the Excel workbooks you**  
7 **testified about earlier?**

8 A. Yeah. We have lots and lots of Excel  
9 sheets with all the gas readings on it.

10 **Q. And those Excel -- so you would have the**  
11 **workbooks for the tests that we have discussed here**  
12 **today?**

13 A. We should, unless my grandfather -- when  
14 he did all of this, I believe he did everything on  
15 paper, because, I mean, he was 80 something years old,  
16 doesn't know how to use a computer.

17 **Q. To the extent they ever existed or would**  
18 **have existed, would you still have the e-mail**  
19 **correspondence between the parties who commissioned**  
20 **these tests that we discussed today?**

21 A. I have -- I don't delete e-mails with  
22 clients, so everything on my e-mail address should be  
23 there unless they delete certain e-mails after a  
24 certain amount of time.

25 **Q. Is that information that you just spoke**

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1 of, is that information that you would be willing to  
2 produce to complaint counsel or ECM BioFilms in this  
3 matter under the subpoenas we have issued?

4 A. Yeah, I believe we did send -- we sent  
5 every e-mail that we had that had ECM in the subject  
6 and in my e-mails.

7 Q. Is it your understanding that the  
8 subpoenas were only limited to information that  
9 specifically mentioned ECM?

10 A. Right. We only sent stuff with ECM in it.

11 Q. Is that the only information that you were  
12 asked to produce to Garrett when he discussed the  
13 production documents?

14 A. Yes.

15 Q. Give me just a minute here. You know, I  
16 think that's going to do it for us. I would just make  
17 one point on the record that I think I'm aware that  
18 the witness has brought some files today to the  
19 deposition, and I would just request that we be made  
20 to have a copy of those, Katherine, if that's at all  
21 possible.

22 MS. JOHNSON: I will. I will do it  
23 first thing next week. I don't think I will be able  
24 to do it today, because I will be traveling back to  
25 D.C., but I do have a copy of the documents that they

1 CERTIFICATE OF REPORTER  
2 I, Jacqueline V. McCauley, a Notary Public  
3 duly commissioned and qualified in and for the State  
4 of Connecticut, do hereby certify that pursuant to  
5 Notice, there came before me, on the 9th day of May,  
6 2014 at 9:21 a.m., the following named person, to wit:  
7 ALYSSA ULLMANN, who was by me duly sworn to testify to  
8 the truth and nothing but the truth; that she was  
9 thereupon carefully examined upon her oath and her  
10 examination reduced to writing under my supervision;  
11 that this deposition is a true record of the testimony  
12 given by the witness.

13 I further certify that I am neither attorney  
14 nor counsel for, nor related to, nor employed by any  
15 of the parties to the action in which this deposition  
16 is taken, and further, that I am not a relative or  
17 employee of any attorney or counsel employed by the  
18 parties hereto, or financially interested in the  
19 action.

20 IN WITNESS WHEREOF, I have hereunto set my hand  
21 and affixed my seal this 18th day of May, 2014.

22  
23 Jacqueline V. McCauley  
24 Notary Public  
25 My Commission expires: 5/31/2014

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1 produced at the deposition, and I will produce those  
2 to you guys as soon as I can.

3 MR. ARHANGELSKY: Okay, thank you.  
4 We have nothing further.

5 MS. JOHNSON: Okay. I guess we're  
6 off the record then.

7 (Whereupon, this deposition was  
8 concluded at 1:25 p.m.)  
9  
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25

# Respondent's Exhibit B



United States of America  
FEDERAL TRADE COMMISSION

Katherine Johnson  
600 Pennsylvania Ave. NW, M-8102B  
Washington, DC 20580  
(202) 326-2185; kjohnson3@ftc.gov

Elisa Jillson  
600 Pennsylvania Ave. NW, M-8102B  
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Jonathan Cohen  
600 Pennsylvania Ave. NW, M-8102B  
Washington, DC 20580  
(202) 326-2551; jcohen2@ftc.gov

April 30, 2014

**VIA EMAIL AND FEDERAL EXPRESS**

Northeast Laboratories, Inc.  
c/o Garrett W. Johnson, Esq.  
129 Mill Street  
Berlin, CT 06037

**Re: *In the Matter of ECM BioFilms, Inc, Dkt. No. 9358 – Deposition Subpoena***

Dear Mr. Johnson:

As you know, the FTC has initiated the above-referenced administrative proceeding against ECM BioFilms. This letter notifies you that we have subpoenaed the deposition testimony of a corporate designee (a person at your company who can testify on the company's behalf) for **Friday, May 9, 2014** at the **United States Attorney's New Haven Office**, located at Connecticut Financial Center, 157 Church Street, Floor 25, New Haven, CT 06510. The deposition will begin at **9:00 A.M.** before an officer authorized to take depositions. See FTC Rules of Practice, 16 C.F.R. §§ 3.33(c)(1) & 3.34(a).

Enclosed please find the subpoena, which contains the instructions for where and when your corporate designee must appear. The designee must be prepared to testify as to matters known or reasonably available to Northeast Laboratories, Inc. ("Northeast Labs") regarding the topics listed in the attached schedule. See *id.* § 3.33(c)(1). Your designee has a legal obligation to review all information known or reasonably available to Northeast Labs regarding these topics, so that he or she can respond knowledgeably to questions on Northeast Labs' behalf.

Please call me at (202) 326-2185 if you have any questions.



Sincerely,

*Katherine Johnson*

Katherine Johnson  
Complaint Counsel

EKJ

Enclosures



# SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and  
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

<p>1. TO</p> <p>Northeast Laboratories, Inc. c/o Garrett W. Johnson, Esq. 129 Mill Street Berlin, CT 06037</p>	<p>2. FROM</p> <p style="text-align: center;"><b>UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</b></p>
--	--

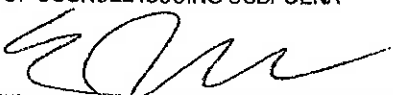
This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

<p>3. PLACE OF DEPOSITION</p> <p><i>United States Attorney - New Haven Office Connecticut Financial Center 157 Church St., Floor 25 New Haven, CT 06510</i></p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p>Complaint Counsel and other designated counsel</p> <hr/> <p>5. DATE AND TIME OF DEPOSITION</p> <p style="text-align: center;"><i>May 9, 2014 at 9:00 A.M.</i></p>
---	---

6. SUBJECT OF PROCEEDING

In re: ECM Biofilms, Inc., Docket No. 9358

<p>7. ADMINISTRATIVE LAW JUDGE</p> <p>The Honorable D. Michael Chappell</p> <p style="text-align: center;">Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p>Complaint Counsel Katherine Johnson (202) 326-2185 Jonathan Cohen (202) 326-2551 Elisa Jillson (202) 326-3001</p>
--	---

<p>DATE SIGNED</p> <p style="text-align: center;"><i>4/30/2014</i></p>	<p>SIGNATURE OF COUNSEL ISSUING SUBPOENA</p> <p style="text-align: center;"></p>
--	--

**GENERAL INSTRUCTIONS**

**APPEARANCE**

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

**MOTION TO LIMIT OR QUASH**

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

**TRAVEL EXPENSES**

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

**RETURN OF SERVICE**

*I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)*

- in person.*
- by registered mail.*
- by leaving copy at principal office or place of business, to wit:*

Fed Ex, per FTC Rule 4.4(a)(2)

*on the person named herein on:*

4/30/2014  
(Month, day, and year)

Elisa Jillson  
(Name of person making service)

Attorney  
(Official title)

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of	)	
ECM BioFilms, Inc.,	)	Docket No. 9358
a corporation, also d/b/a	)	
Envioplastics International	)	

**COMPLAINT COUNSEL'S NOTICE OF RULE 3.33(c)(1) DEPOSITION**

To: Northeast Laboratories, Inc.

**DEFINITIONS**

- A. **"Communication"** includes, but is not limited to, any transmittal, exchange, transfer, or dissemination of information, regardless of the means by which it was accomplished, and includes all communications, whether written or oral.
- B. **"ECM"** shall mean ECM Biofilms, Inc., including without limitation, its agents, employees, officers, or anyone else acting on its behalf.
- C. **"ECM Additive"** means any plastic additive directly or indirectly sold or distributed by ECM Biofilms, Inc.
- D. **"ECM Certificate"** means any certificate provided to you by ECM that represents that any plastic or product containing the ECM Additive is biodegradable.
- E. **"ECM Logo"** means any logo provided to you by ECM that references biodegradability.
- F. **"ECM Plastic"** means any product that contains the ECM Additive.
- G. **"Include"** and **"including"** mean "without limitation," or "including but not limited to," so as to avoid excluding any documents or information that might otherwise be construed to be within the scope of any specification.
- H. **"You"** and **"Your"** means Northeast Laboratories, Inc., along with any affiliates, successors, predecessors, entities You acquired, entities You control, and entities whose information You control.

**INSTRUCTIONS**

- A. **Protective Order:** On October 22, 2013, the Court entered an order governing discovery material in this matter. A copy of the Protective Order is attached hereto as **Exhibit A** with instructions on the handling of confidential information.
- B. **Petitions to Limit or Quash:** Pursuant to Commission Rule of Practice 3.34(c), any motion to limit or quash this subpoena must be filed within ten days of service hereof.

## DEPOSITION TOPICS

PLEASE TAKE NOTICE that Complaint Counsel will depose Northeast Laboratories, Inc. ("Company"), upon oral examination, pursuant to Rules §§ 3.33(c)(1) and 3.34(a), as to the matters set forth below.

1. Your testing, assessment, or evaluation of the alleged biodegradability of the ECM Additive or ECM Plastic, including, but not limited to:
  - a. Every aspect of the testing procedures, protocols, and methodologies used to perform testing, assessment, or evaluation of any ECM Additive or ECM Plastic, including specifics as to how the tests, assessments, or evaluations were performed, the source of the test specimens, source and cultivation of inoculum, temperature, moisture, or other test conditions for each test performed.
  - b. The results of all testing, assessments, or evaluations conducted by You on any ECM Additive or ECM Plastic.
  - c. The conclusions drawn from the results of all testing, assessments, or evaluations conducted by You on any ECM Additive or ECM Plastic.
  - d. The reports prepared by You on the testing, assessment, or evaluation of any ECM Additive or ECM Plastic.
  - e. The process by which You decided to recommend a particular testing procedure, protocol, or methodology used to perform testing on any ECM Additive or ECM Plastic.
2. Your qualifications to conduct testing, assessment, or evaluation of the alleged biodegradability of the ECM Additive or ECM Plastic.
3. All of Your quality control measures, policies, and procedures.
4. All of Your laboratory instrumentation and laboratory equipment validations, maintenance and calibrations.
5. All local, State, and Federal regulatory requirements, inspections, and accreditations, registrations, licenses, and certifications required or held by You.
6. Any audit conducted by anyone and the results of such audits.
7. Your Communications regarding the ECM Additive, the alleged biodegradability of ECM Plastic, and the biodegradability (or lack thereof) of plastics, including, without limitation, (a) Communications with any ECM employee, (b) internal Communications, and (c) Communications with third parties such as ECM customers, ECM users, ECM competitors, trade groups interested in additives and/or plastic.

8. Your knowledge of, involvement in, or interaction with, in any, the Plastics Environmental Council and any other industry trade or interest group related to plastics, biodegradability of plastics, or additives.

9. Your knowledge of and involvement, if any, in ASTM International (f/k/a the American Society for Testing and Materials) ("ASTM"), and any other efforts to set, establish, or modify industry or legal standards for the evaluation of the biodegradability of plastic.

10. Your knowledge of ASTM standards used to evaluate (a) the alleged biodegradability of plastic; and (b) biodegradability in a landfill.

11. Your knowledge, if any, of documents, materials, or other information that calls into question the scientific tests conducted by You, or the results or conclusions of those tests.

12. Your knowledge, if any, of documents, materials, or other information that calls into question the scientific tests conducted by anyone else on the ECM Additive or ECM Plastic, or the results or conclusions of those tests.

13. Your knowledge, if any, of any potential bias or conflict of interest of any of the following:

- a. Dr. Ramani Narayan
- b. Biodegradable Products Institute
- c. Dr. Frederick Michel
- d. Robert Sinclair
- e. Dr. Morton Barlaz
- f. Dr. Stephen McCarthy
- g. Dr. Timothy Barber
- h. Dr. Ryan Burnette

14. Your document retention policies, practices, and procedures.

15. Your response to the subpoenas *duces tecum* issued to You in the above-captioned action.

16. Your Communications with ECM's attorneys and Robert Sinclair.

**CERTIFICATE OF SERVICE**

I hereby certify that on April 30, 2014, I caused a true and correct copy of the foregoing document to be served by email to **Counsel for the Respondent**:

Jonathan W. Emord  
Emord & Associates, P.C.  
11808 Wolf Run Lane  
Clifton, VA 20124  
Email: [jemord@emord.com](mailto:jemord@emord.com)

Peter Arhangelsky  
Emord & Associates, P.C.  
3210 S. Gilbert Road, Suite 4  
Chandler, AZ 85286  
Email: [parhangelsky@emord.com](mailto:parhangelsky@emord.com)

Lou Caputo  
Emord & Associates, P.C.  
3210 S. Gilbert Road, Suite 4  
Chandler, AZ 85286  
Email: [lcaputo@emord.com](mailto:lcaputo@emord.com)

Dated: April 30, 2014

Respectfully submitted,



Katherine Johnson ([kjohnson3@ftc.gov](mailto:kjohnson3@ftc.gov))  
Jonathan Cohen ([jcohen2@ftc.gov](mailto:jcohen2@ftc.gov))  
Elisa Jillson ([ejillson@ftc.gov](mailto:ejillson@ftc.gov))  
Federal Trade Commission  
600 Pennsylvania Ave., N.W. M-8102B  
Washington, DC 20580  
Phone: 202-326-2185; -2551; -3001  
Fax: 202-326-2551

# Respondent's Exhibit C



UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of	)	
	)	
ECM BioFilms, Inc.,	)	Docket No. 9358
a corporation, also d/b/a	)	
Enviroplastics International	)	

**COMPLAINT COUNSEL'S FINAL PROPOSED WITNESS LIST**

Pursuant to the Court's Third Revised Scheduling Order, dated May 22, 2014, Complaint Counsel hereby provides its Final Proposed Witness List to Respondent ECM BioFilms, Inc. ("ECM" or "Respondent"). This list identifies the witnesses who may testify for Complaint Counsel at the hearing in this action by deposition and/or investigational hearing transcript, affidavit, declaration, or orally by live witness.

Subject to the limitations in the Scheduling Order and Third Revised Scheduling Order entered in this action, Complaint Counsel reserves the right:

- A. To present testimony by deposition and/or investigational hearing transcript, affidavit, declaration, or orally by live witness, from the custodian of records of any party or non-party from whom documents or records have been obtained—specifically including, but not limited to, those parties and non-parties listed below—to the extent necessary to demonstrate the authenticity or admissibility of documents in the event a stipulation cannot be reached concerning the authentication or admissibility of such documents;
- B. To present testimony by deposition and/or investigational hearing transcript, affidavit, declaration, or orally by live witness, from persons listed below and any

- other person that Respondent identifies as a potential witness in this action;
- C. To amend this Final Proposed Witness List to be consistent with the Court's ruling on any pending motions, including any motions *in limine* filed in this matter;
  - D. To question the persons listed below about any topics that are the subjects of testimony by witnesses to be called by Respondent;
  - E. Not to present testimony by deposition and/or investigational hearing transcript, affidavit, declaration, or orally by live witness, from any of the persons listed below;
  - F. To question any person listed below about any other topics that the person testified about at his or her deposition or investigational hearing, or about any matter that is discussed in any documents to which the person had access and which are designated as exhibits by either party or which have been produced since the person's deposition was taken;
  - G. To present testimony by deposition and/or investigational hearing transcript, affidavit, declaration, or orally by live witness, from any persons, regardless whether they are listed below, to rebut the testimony of witnesses proffered by Respondent;
  - H. For any individual listed below as being associated with a corporation, government agency, or other non-party entity, to substitute a witness designated by the associated non-party entity; and
  - I. To supplement this Final Proposed Witness List in light of Respondent's Final Proposed Witness List and Exhibit List, or as circumstances may warrant.

Subject to these reservations of rights, Complaint Counsel's Final Proposed Witness List is as follows:

Current and Former ECM Employees

**1. Robert Sinclair, ECM President, in his individual capacity and as ECM designee**

Mr. Sinclair will testify about ECM's advertising and products, including but not limited to ECM's distribution and sales channels; financial information; customer base; communications with prospective customers, customers, former customers, ASTM, testing facilities, scientists studying the purported biodegradability of plastics, Plastics Environmental Council, and other parties regarding the ECM additive and purported biodegradability of plastic; ECM's claims of biodegradability of plastics treated with the ECM additive; ECM's substantiation for those claims; other testing regarding the ECM additive and the alleged biodegradability of plastic; facts alleged in the Complaint; any other issues addressed in his deposition (in his personal capacity and as a corporate representative of ECM); any documents introduced into evidence by Respondent or Complaint Counsel as to which he has knowledge; or any other matters as to which he has knowledge that are relevant to the allegations of the Complaint, Respondent's affirmative defenses, or the proposed relief.

**2. Kenneth C. Sullivan, Jr., ECM Chief Financial Officer**

Mr. Sullivan will testify about ECM's advertising and products, including but not limited to ECM's distribution and sales channels; financial information; customer base; any other issues addressed in his deposition; any documents introduced into evidence by Respondent or Complaint Counsel as to which he has knowledge; or any other matters as to which he has knowledge that are relevant to the allegations of the Complaint, Respondent's affirmative defenses, or the proposed relief.

**3. Thomas Nealis, ECM Director of Sales**

Mr. Nealis will testify about ECM's advertising and products, including but not limited to ECM's distribution and sales channels; customer base; communications with prospective customers, customers, former customers, ASTM, testing facilities, scientists studying the purported biodegradability of plastics, Plastics Environmental Council, and other parties regarding the ECM additive and purported biodegradability of plastic; ECM's claims of biodegradability of plastics treated with the ECM additive; ECM's substantiation for those claims; other testing regarding the ECM additive and the alleged biodegradability of plastic; facts alleged in the Complaint; any other issues addressed in his deposition; any documents introduced into evidence by Respondent or Complaint Counsel as to which he has knowledge; or any other matters as to which he has knowledge that are relevant to the allegations of the Complaint, Respondent's affirmative defenses, or the proposed relief.

**4. Alan Poje, former ECM Regulatory Specialist**

Mr. Poje will testify about ECM's advertising and products, including but not limited to ECM's distribution and sales channels; customer base; communications with prospective customers, customers, former customers, ASTM, testing facilities, scientists studying the purported biodegradability of plastics, Plastics Environmental Council, and other parties regarding the ECM additive and purported biodegradability of plastic; ECM's claims of biodegradability of plastics treated with the ECM additive; ECM's substantiation for those claims; other testing regarding the ECM additive and the alleged biodegradability of plastic; facts alleged in the Complaint; any other issues addressed in his deposition; any documents introduced into evidence by Respondent or Complaint Counsel as to which he has knowledge; or

any other matters as to which he has knowledge that are relevant to the allegations of the Complaint, Respondent's affirmative defenses, or the proposed relief.

ECM Customers

**5. Stephen Joseph, 3M Company ("3M") Staff Scientist, as 3M's designee**

Mr. Joseph will testify regarding 3M's relationship with ECM and understanding of ECM's product, claims, and testing, including, but not limited to, 3M's purchase of ECM additive; reasons for this purchase; 3M's testing of the ECM additive; 3M's evaluation of ECM's claims; 3M's evaluation of ECM's substantiation for those claims; 3M's understanding of ECM's claims and substantiation for those claims; 3M's resources and ability to test and evaluate ECM's claims and substantiation; 3M's use and understanding of the ECM Certificate of Biodegradability, the ECM logo, and other ECM promotional materials; any other issues addressed in his deposition; any documents introduced into evidence by Respondent or Complaint Counsel as to which he has knowledge; or any other matters as to which he has knowledge that are relevant to the allegations of the Complaint, Respondent's affirmative defenses, or the proposed relief.

**6. Ramy Samuels, A.N.S. Plastics Corp. ("ANS") Vice President, ANS's designee**

Mr. Samuels will testify regarding ANS's relationship with ECM and understanding of ECM's product, claims, and testing, including, but not limited to, ANS's purchase of ECM additive; reasons for this purchase; ANS's understanding of ECM's claims and substantiation for those claims; ANS's resources and ability to test and evaluate ECM's claims and substantiation; ANS's use and understanding of the ECM Certificate of Biodegradability, the ECM logo, and other ECM promotional material; ANS's understanding of how its customers used ECM promotional materials and products made with the ECM additive; any other issues addressed in

his deposition; any documents introduced into evidence by Respondent or Complaint Counsel as to which he has knowledge; or any other matters as to which he has knowledge that are relevant to the allegations of the Complaint, Respondent's affirmative defenses, or the proposed relief.

**7. Robert Ringley, BER Plastics, Inc. ("BER") Vice President, as BER's designee**

Mr. Ringley will testify regarding BER's relationship with ECM and understanding of ECM's product, claims, and testing, including, but not limited to, BER's purchase of ECM additive; reasons for this purchase; BER's understanding of ECM's claims and substantiation for those claims; BER's resources and ability to test and evaluate ECM's claims and substantiation; BER's use and understanding of the ECM Certificate of Biodegradability, the ECM logo, and other ECM promotional material; BER's understanding of how its customers used ECM promotional materials and products made with the ECM additive; any other issues addressed in his deposition; any documents introduced into evidence by Respondent or Complaint Counsel as to which he has knowledge; or any other matters as to which he has knowledge that are relevant to the allegations of the Complaint, Respondent's affirmative defenses, or the proposed relief.

**8. Donald Kizer, D&W Fine Pack, LLC ("D&W") Purchasing Manager, as D&W's designee**

Mr. Kizer will testify regarding D&W's relationship with ECM and understanding of ECM's product, claims, and testing, including, but not limited to, D&W's purchase of ECM additive; reasons for this purchase; D&W's resources and ability to test and evaluate ECM's claims and substantiation; any other issues addressed in his deposition; any documents introduced into evidence by Respondent or Complaint Counsel as to which he has knowledge; or any other matters as to which he has knowledge that are relevant to the allegations of the Complaint, Respondent's affirmative defenses, or the proposed relief.

**9. Ashley Leiti, D&W Fine Pack, LLC Southeastern National Accounts Manager, as D&W's designee**

Ms. Leiti will testify regarding D&W's relationship with ECM and understanding of ECM's product, claims, and testing, including, but not limited to, D&W's purchase of ECM additive; reasons for this purchase; D&W's understanding of ECM's claims and substantiation for those claims; D&W's use and understanding of the ECM Certificate of Biodegradability, the ECM logo, and other ECM promotional material; D&W's understanding of how its customers used ECM promotional materials and products made with the ECM additive; any other issues addressed in her deposition; any documents introduced into evidence by Respondent or Complaint Counsel as to which she has knowledge; or any other matters as to which she has knowledge that are relevant to the allegations of the Complaint, Respondent's affirmative defenses, or the proposed relief.

**10. Frank Santana, Down To Earth All Vegetarian Organic & Natural ("Down To Earth") Marketing Director, as Down To Earth's designee**

Mr. Santana will testify regarding Down To Earth's relationship with ECM and understanding of ECM's product, claims, and testing, including, but not limited to, Down To Earth's purchase of plastic bags containing the ECM additive; reasons for this purchase; Down To Earth's understanding of ECM's claims and substantiation for those claims; Down To Earth's resources and ability to test and evaluate ECM's claims and substantiation; Down To Earth's use and understanding of the ECM Certificate of Biodegradability, the ECM logo, and other ECM promotional material; any other issues addressed in his deposition; any documents introduced into evidence by Respondent or Complaint Counsel as to which he has knowledge; or any other matters as to which he has knowledge that are relevant to the allegations of the Complaint, Respondent's affirmative defenses, or the proposed relief.

**11. George Collins, Eagle Film Extruders Inc. (“Eagle”) President, as Eagle’s designee**

Mr. Collins will testify regarding Eagle’s relationship with ECM and understanding of ECM’s product, claims, and testing, including, but not limited to, Eagle’s purchase of ECM additive; reasons for this purchase; Eagle’s understanding of ECM’s claims and substantiation for those claims; Eagle’s resources and ability to test and evaluate ECM’s claims and substantiation; Eagle’s use and understanding of the ECM Certificate of Biodegradability, the ECM logo, and other ECM promotional material; Eagle’s understanding of how its customers used ECM promotional materials and products made with the ECM additive; any other issues addressed in his deposition; any documents introduced into evidence by Respondent or Complaint Counsel as to which he has knowledge; or any other matters as to which he has knowledge that are relevant to the allegations of the Complaint, Respondent’s affirmative defenses, or the proposed relief.

**12. David Sandry, Flexible Plastics, Inc. (“Flexible”) Vice President, as Flexible’s designee**

Mr. Sandry will testify regarding Flexible’s relationship with ECM and understanding of ECM’s product, claims, and testing, including, but not limited to, Flexible’s purchase of ECM additive; reasons for this purchase; Flexible’s understanding of ECM’s claims and substantiation for those claims; Flexible’s resources and ability to test and evaluate ECM’s claims and substantiation; Flexible’s use and understanding of the ECM Certificate of Biodegradability, the ECM logo, and other ECM promotional material; Flexible’s understanding of how its customers used ECM promotional materials and products made with the ECM additive; any other issues addressed in his deposition; any documents introduced into evidence by Respondent or Complaint Counsel as to which he has knowledge; or any other matters as to which he has



knowledge that are relevant to the allegations of the Complaint, Respondent's affirmative defenses, or the proposed relief.

**13. James Blood, Free-Flow Packaging International, Inc. ("FP") General Counsel, as FP's designee**

Mr. Blood will testify regarding FP's relationship with ECM and understanding of ECM's product, claims, and testing, including, but not limited to, FP's purchase of ECM additive; reasons for this purchase; FP's understanding of ECM's claims and substantiation for those claims; FP's resources and ability to test and evaluate ECM's claims and substantiation; FP's use and understanding of the ECM Certificate of Biodegradability, the ECM logo, and other ECM promotional material; FP's understanding of how its customers used ECM promotional materials and products made with the ECM additive; any other issues addressed in his deposition; any documents introduced into evidence by Respondent or Complaint Counsel as to which he has knowledge; or any other matters as to which he has knowledge that are relevant to the allegations of the Complaint, Respondent's affirmative defenses, or the proposed relief.

**14. Adrian Hong, Island Plastic Bags, Inc. ("Island Plastic Bags") General Manager, as Island Plastic Bags' designee**

Mr. Hong will testify regarding Island Plastic Bags' relationship with ECM and understanding of ECM's product, claims, and testing, including, but not limited to, Island Plastic Bags' purchase of ECM additive; reasons for this purchase; Island Plastic Bags' understanding of ECM's claims and substantiation for those claims; Island Plastic Bags' resources and ability to test and evaluate ECM's claims and substantiation; Island Plastic Bags' use and understanding of the ECM Certificate of Biodegradability, the ECM logo, and other ECM promotional material; Island Plastic Bags' understanding of how its customers (and their customers) used ECM promotional materials and products made with the ECM additive; any other issues addressed in

his deposition; any documents introduced into evidence by Respondent or Complaint Counsel as to which he has knowledge; or any other matters as to which he has knowledge that are relevant to the allegations of the Complaint, Respondent's affirmative defenses, or the proposed relief.

**15. Annette Gormly, Kappus Plastic Company, Inc. ("Kappus") Vice President, as Kappus' designee**

Ms. Gormly will testify regarding Kappus' relationship with ECM and understanding of ECM's product, claims, and testing, including, but not limited to, Kappus' purchase of ECM additive; reasons for this purchase; Kappus' understanding of ECM's claims and substantiation for those claims; Kappus' resources and ability to test and evaluate ECM's claims and substantiation; Kappus' use and understanding of the ECM Certificate of Biodegradability, the ECM logo, and other ECM promotional material; Kappus' understanding of how its customers used ECM promotional materials and products made with the ECM additive; any other issues addressed in her deposition; any documents introduced into evidence by Respondent or Complaint Counsel as to which she has knowledge; or any other matters as to which she has knowledge that are relevant to the allegations of the Complaint, Respondent's affirmative defenses, or the proposed relief.

**16. James Bean, Quest Plastics, Inc. ("Quest") President and Chief Executive Officer, as Quest's designee**

Mr. Bean will testify regarding Quest's relationship with ECM and understanding of ECM's product, claims, and testing, including, but not limited to, Quest's purchase of ECM additive; reasons for this purchase; Quest's understanding of ECM's claims and substantiation for those claims; Quest's resources and ability to test and evaluate ECM's claims and substantiation; Quest's use and understanding of the ECM Certificate of Biodegradability, the ECM logo, and other ECM promotional material; Quest's understanding of how its customers

used ECM promotional materials and products made with the ECM additive; any other issues addressed in his deposition; any documents introduced into evidence by Respondent or Complaint Counsel as to which he has knowledge; or any other matters as to which he has knowledge that are relevant to the allegations of the Complaint, Respondent's affirmative defenses, or the proposed relief.

Individuals and Laboratories Associated with Scientific Review or Literature

**17. Thomas Poth, Eden Research Laboratory ("Eden") Lab Director, as Eden's designee**

Mr. Poth will testify regarding Eden's relationship and communications with ECM, ECM's employees, ECM's customers, and other parties interested in the alleged biodegradability of plastic; Eden's testing and evaluation of plastic that purportedly contains the ECM additive; Eden's testing facilities, resources, procedures, protocols, certifications; Eden's training and supervision of its laboratory employees; the qualifications of Eden's employees; Eden's knowledge of, use of, and departure from ASTM testing standards; Eden's financial interest in testing the purported biodegradability of plastic; any other issues addressed in his deposition; any documents introduced into evidence by Respondent or Complaint Counsel as to which he has knowledge; or any other matters as to which he has knowledge that are relevant to the allegations of the Complaint, Respondent's affirmative defenses, or the proposed relief.

**18. Alyssa Ullman, Northeast Laboratories, Inc. ("Northeast") Biodegradation Studies employee, as Northeast's designee**

Ms. Ullman will testify regarding Northeast's relationship and communications with ECM, ECM's employees, ECM's customers, and other parties interested in the alleged biodegradability of plastic; Northeast's testing and evaluation of plastic that purportedly contains the ECM additive; Northeast's testing facilities, resources, procedures, protocols, certifications;

Northeast's training and supervision of its laboratory employees; the qualifications of Northeast's employees; Northeast's knowledge of, use of, and departure from ASTM testing standards; Northeast's financial interest in testing the purported biodegradability of plastic; any other issues addressed in her deposition; any documents introduced into evidence by Respondent or Complaint Counsel as to which she has knowledge; or any other matters as to which she has knowledge that are relevant to the allegations of the Complaint, Respondent's affirmative defenses, or the proposed relief.

**19. Timothy Barber, Principal at Environ International Corp. ("Environ")**

Dr. Barber will testify regarding his relationship and communications with ECM, ECM's employees, ECM's customers, and other parties interested in the alleged biodegradability of plastic; his testing and evaluation of plastic that purportedly contains the ECM additive; his testing facilities, resources, procedures, protocols, and certifications; his training and supervision of its laboratory employees; the qualifications of personnel involved in his testing of plastics; his knowledge of, use of, and departure from ASTM testing standards; his financial interest in testing the purported biodegradability of plastic; any other issues addressed in his deposition; any documents introduced into evidence by Respondent or Complaint Counsel as to which he has knowledge; or any other matters as to which he has knowledge that are relevant to the allegations of the Complaint, Respondent's affirmative defenses, or the proposed relief.

**20. Tadahisa Iwata, Professor of Polymer Chemistry at the University of Tokyo and Editor for Journal of Polymer Degradation and Stability published by Elsevier Inc. ("Elsevier"), as Elsevier's designee**

Professor Iwata will testify regarding the review and evaluation of the article entitled "Biodegradability of conventional and bio-based plastics and natural fiber composites during composting, anaerobic digestion and long-term soil incubation," written by Eddie F. Gomez and

Frederick C. Michel, Jr., and published by the Journal of Polymer Degradation and Stability, an Elsevier publication, including, but not limited to, conflict-of-interest checking performed on the article's authors. Professor Iwata will also testify as to any other issues addressed in his deposition; any documents introduced into evidence by Respondent or Complaint Counsel as to which he has knowledge; or any other matters as to which he has knowledge that are relevant to the allegations of the Complaint, Respondent's affirmative defenses, or the proposed relief.

Current and Former FTC Employees

21. **John Aiken, Investigator, Federal Trade Commission, Bureau of Consumer Protection, Division of Marketing Practices (formerly of the Division of Enforcement)**

Mr. Aiken will testify regarding the admissibility of certain website and webpage captures produced by Complaint Counsel in this action.

22. **William Burton, former Investigator, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement**

Mr. Burton will testify regarding the admissibility of certain website and webpage captures produced by Complaint Counsel in this action.

23. **David Hendrickson, Investigator, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement**

Mr. Hendrickson will testify regarding the admissibility of certain website and webpage captures produced by Complaint Counsel in this action.

24. **Mary Jo Vantusko, Investigator, Federal Trade Commission, East Central Region**

Ms. Vantusko will testify about photographs she took of various products at ECM's office in Painesville, Ohio.

### Expert Witnesses

#### **25. Steven McCarthy, Ph.D.**

Dr. McCarthy is a Professor of Plastics Engineering at the University of Massachusetts Lowell (the "University"). He teaches graduate level courses in plastics engineering, including the "Mechanical Behavior of Polymers" and "Polymers and the Environment." In addition, he is the Director of the University's Biodegradable Polymer Research Center, where he orchestrates research on biodegradable polymers. He is also the Principal Investigator for studies on plastics engineering and polymer research. Dr. McCarthy has more than three decades of experience studying both the chemical and mechanical behavior of polymers, including the biodegradability of polymers used to form conventional, commercial-grade plastics.

Dr. McCarthy will testify, from his perspective as an expert in the fields of plastics engineering, polymer science, and biodegradable polymers, about whether plastic products manufactured with the ECM additive: (1) are biodegradable; (2) will completely breakdown and decompose into elements found in nature in most landfills within 5 years; and (3) will completely breakdown and decompose into elements found in any disposal environment at an appreciably faster rate and extent than conventional plastics without the ECM additives.

#### **26. Shane Frederick, Ph.D.**

Dr. Frederick is a Professor of Marketing at Yale University. His research focuses on the area of judgment and decision-making: the study of factors that affect attitudes, preferences and behavior of consumers. In addition, he has taught courses in consumer behavior, behavioral economics, and marketing, and he has both studied and published extensively concerning judgment and decision-making, with a focus on the role of cognitive abilities on preferences, preference measurement, and cognitive biases.

Dr. Frederick will testify, from his perspective as an expert in the fields of marketing and consumer decision-making, about his analysis and/or performance of studies concerning consumers' perception of biodegradable marketing claims and ECM's biodegradability claims.

**27. Thabet Tolyamet, Ph.D.**

Dr. Tolyamet is an Environmental Engineer and researcher in the field of solid waste management at the U.S. Environmental Protection Agency's Office of Research and Development. His research focuses on solid waste management, bioreactor landfills, waste containment performance, construction and demolition of waste landfills, and the fate and transport of environmental pollutants. A significant part of his education, training, and experience has involved conducting and evaluating tests that purport to show biodegradation and/or replicate landfill conditions.

Dr. Tolyamet will testify, from his perspective as an expert in the field of landfill design and management, about whether plastic products manufactured with ECM's additive will completely biodegrade in five years or less under ordinary U.S. landfill disposal conditions, and whether ECM testing data are not competent and reliable scientific evidence that ECM Plastics will biodegrade in five years or less in most landfills.

Dated: June 11, 2014

Respectfully submitted,



Katherine Johnson (kjohanson3@ftc.gov)  
Jonathan Cohen (jcohen2@ftc.gov)  
Elisa Jillson (ejillson@ftc.gov)  
Federal Trade Commission  
600 Pennsylvania Ave., N.W. M-8102B  
Washington, DC 20580  
Phone: 202-326-2185; -2551; -3001  
Fax: 202-326-2551

**CERTIFICATE OF SERVICE**

I hereby certify that on June 11, 2014, I caused a true and correct copy of the paper original of the foregoing Complaint Counsel's Final Proposed Witness List to ECM BioFilms, Inc. to be served as follows:

One electronic copy to **Counsel for the Respondent:**

Jonathan W. Emord  
Emord & Associates, P.C.  
11808 Wolf Run Lane  
Clifton, VA 20124  
Email: jemord@emord.com

Peter Arhangelsky  
Emord & Associates, P.C.  
3210 S. Gilbert Road, Suite 4  
Chandler, AZ 85286  
Email: parhangelsky@emord.com

Lou Caputo  
Emord & Associates, P.C.  
3210 S. Gilbert Road, Suite 4  
Chandler, AZ 85286  
Email: [lcaputo@emord.com](mailto:lcaputo@emord.com)

I further certify that I possess a paper copy of the signed original of the foregoing document that is available for review by the parties and the adjudicator.

Dated: June 11, 2014

Respectfully submitted,



Katherine Johnson (kjohnson3@ftc.gov)  
Jonathan Cohen (jcohen2@ftc.gov)  
Elisa Jillson (ejillson@ftc.gov)  
Federal Trade Commission  
600 Pennsylvania Ave., N.W. M-8102B  
Washington, DC 20580  
Phone: 202-326-2185; -2551; -3001  
Fax: 202-326-2551



# Respondent's Exhibit D

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of	)	
	)	
ECM BioFilms, Inc.,	)	Docket No. 9358
a corporation, also d/b/a	)	
Envioplastics International	)	
	)	

**COMPLAINT COUNSEL'S PRELIMINARY WITNESS LIST**

Pursuant to the Court's Scheduling Order, Complaint Counsel hereby submits its Preliminary Witness List identifying individuals who may testify in Complaint Counsel's case-in-chief (excluding expert witnesses, rebuttal witnesses and rebuttal expert witnesses) and a brief description of their proposed testimony. This list is based upon the information reasonably available to Complaint Counsel at this time.

Significantly, Respondent's failure to comply with either its Initial Disclosure obligations or Complaint Counsel's discovery requests prevents Complaint Counsel from providing a complete list or fully detailing the subjects upon which potential witnesses may testify. Among other things, Respondent did not provide its customer list to Complaint Counsel until late yesterday and still has not complied with a majority of Complaint Counsel's document requests (including the most important requests). Respondent's failures have substantially limited the information reasonably available to Complaint Counsel, and we reserve the right to amend this list as more information becomes available.<sup>1</sup>

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<sup>1</sup> Where Complaint Counsel understands that the potential witness is represented, we will provide contact information.

**Complaint Counsel's Preliminary Witness List  
In the Matter of ECM Biofilms, Inc., Docket No. 9358**

1. Robert Sinclair, ECM Biofilms, Inc.

Counsel for ECM Biofilms, Inc.  
Jonathan W. Emord  
Emord & Associates, P.C.  
11808 Wolf Run Lane  
Clifton, VA 20124  
Email: jemord@emord.com

Proposed Testimony: We anticipate that this witness will testify about ECM Biofilms, Inc. ("ECM")'s products, distribution and sales channels, financial information, customer base, customer communications, interactions with ASTM and scientific testing facilities, claims of biodegradability of plastics treated with ECM products, and substantiation for those claims.

2. Thomas Nealis, ECM Biofilms, Inc.

Counsel for ECM Biofilms, Inc.  
Jonathan W. Emord  
Emord & Associates, P.C.  
11808 Wolf Run Lane  
Clifton, VA 20124  
Email: jemord@emord.com

Proposed Testimony: We anticipate that this witness will testify about ECM's products, distribution and sales channels, financial information, customer base, customer communications, claims of biodegradability of plastics treated with ECM products, and substantiation for those claims.

3. Ken Sullivan, ECM Biofilms, Inc.

Counsel for ECM Biofilms, Inc.  
Jonathan W. Emord  
Emord & Associates, P.C.  
11808 Wolf Run Lane  
Clifton, VA 20124  
Email: jemord@emord.com

Proposed Testimony: We anticipate that this witness will testify about ECM's products, distribution and sales channels, financial information, customer base, customer communications, claims of biodegradability of plastics treated with ECM products, and substantiation for those claims.

4. Scott A. Fletcher, ECM Biofilms, Inc.

Counsel for ECM Biofilms, Inc.  
Jonathan W. Emord  
Emord & Associates, P.C.  
11808 Wolf Run Lane  
Clifton, VA 20124  
Email: jemord@emord.com

Proposed Testimony: We anticipate that this witness will testify about ECM's products, distribution and sales channels, customer base, customer communications, claims of biodegradability of plastics treated with ECM products, and substantiation for those claims.

5. Michelle R. Leicher, ECM Biofilms, Inc.

Counsel for ECM Biofilms, Inc.  
Jonathan W. Emord  
Emord & Associates, P.C.  
11808 Wolf Run Lane  
Clifton, VA 20124  
Email: jemord@emord.com

Proposed Testimony: We anticipate that this witness will testify about ECM's products, distribution and sales channels, customer base, customer communications, claims of biodegradability of plastics treated with ECM products, and substantiation for those claims.

6. Kristen A. Marineau, ECM Biofilms, Inc.

Counsel for ECM Biofilms, Inc.  
Jonathan W. Emord  
Emord & Associates, P.C.  
11808 Wolf Run Lane  
Clifton, VA 20124  
Email: jemord@emord.com

Proposed Testimony: We anticipate that this witness will testify about ECM's products, distribution and sales channels, customer base, customer communications, claims of biodegradability of plastics treated with ECM products, and substantiation for those claims.

7. Vesna Barnjak, Former Employee of ECM Biofilms, Inc.

Proposed Testimony: We anticipate that this witness will testify about ECM's products, distribution and sales channels, customer base, customer communications, claims of biodegradability of plastics treated with ECM products, and substantiation for those claims.

8. Elizabeth M. Eberly, Former Employee of ECM Biofilms, Inc.

Proposed Testimony: We anticipate that this witness will testify about ECM's products, distribution and sales channels, customer base, customer communications, claims of biodegradability of plastics treated with ECM products, and substantiation for those claims.

9. Chessa C. Gottron, Former Employee of ECM Biofilms, Inc.

Proposed Testimony: We anticipate that this witness will testify about ECM's products, distribution and sales channels, customer base, customer communications, claims of biodegradability of plastics treated with ECM products, and substantiation for those claims.

10. Anne C. Hassoldt-Fenoff, Former Employee of ECM Biofilms, Inc.

Proposed Testimony: We anticipate that this witness will testify about ECM's products, distribution and sales channels, customer base, customer communications, claims of biodegradability of plastics treated with ECM products, and substantiation for those claims.

11. Kristen M. Isabel, Former Employee of ECM Biofilms, Inc.

Proposed Testimony: We anticipate that this witness will testify about ECM's products, distribution and sales channels, customer base, customer communications, claims of biodegradability of plastics treated with ECM products, and substantiation for those claims.

12. Michelle L. Johnson, Former Employee of ECM Biofilms, Inc.

Proposed Testimony: We anticipate that this witness will testify about ECM's products, distribution and sales channels, customer base, customer communications, claims of biodegradability of plastics treated with ECM products, and substantiation for those claims.

13. Michael J. Montesanto, Former Employee of ECM Biofilms, Inc.

Proposed Testimony: We anticipate that this witness will testify about ECM's products, distribution and sales channels, customer base, customer communications, claims of biodegradability of plastics treated with ECM products, and substantiation for those claims.

14. Janet Morcillo, Former Employee of ECM Biofilms, Inc.

Proposed Testimony: We anticipate that this witness will testify about ECM's products, distribution and sales channels, customer base, customer communications, claims of biodegradability of plastics treated with ECM products, and substantiation for those claims.

15. Jamie S. Morton, Former Employee of ECM Biofilms, Inc.

Proposed Testimony: We anticipate that this witness will testify about ECM's products, distribution and sales channels, customer base, customer communications, claims of biodegradability of plastics treated with ECM products, and substantiation for those claims.

16. Alan C. Poje, Former Employee of ECM Biofilms, Inc.

Proposed Testimony: We anticipate that this witness will testify about ECM's products, distribution and sales channels, customer base, customer communications, claims of biodegradability of plastics treated with ECM products, and substantiation for those claims.

17. Edwin J. Senter, Former Employee of ECM Biofilms, Inc.

Proposed Testimony: We anticipate that this witness will testify about ECM's products, distribution and sales channels, customer base, customer communications, claims of biodegradability of plastics treated with ECM products, and substantiation for those claims.

18. Kathryn M. Stuber, Former Employee of ECM Biofilms, Inc.

Proposed Testimony: We anticipate that this witness will testify about ECM's products, distribution and sales channels, customer base, customer communications, claims of biodegradability of plastics treated with ECM products, and substantiation for those claims.

19. Jean A. Sweigert, Former Employee of ECM Biofilms, Inc.

Proposed Testimony: We anticipate that this witness will testify about ECM's products, distribution and sales channels, customer base, customer communications, claims of biodegradability of plastics treated with ECM products, and substantiation for those claims.

20. Stacy Adams, Former Employee of ECM Biofilms, Inc.

Proposed Testimony: We anticipate that this witness will testify about ECM's products, distribution and sales channels, customer base, customer communications, claims of biodegradability of plastics treated with ECM products, and substantiation for those claims.

21. Debra K. Browning, Former Employee of ECM Biofilms, Inc.

Proposed Testimony: We anticipate that this witness will testify about ECM's products, distribution and sales channels, customer base, customer communications, claims of biodegradability of plastics treated with ECM products, and substantiation for those claims.

22. Kelly A. Dean, Former Employee of ECM Biofilms, Inc.

Proposed Testimony: We anticipate that this witness will testify about ECM's products, distribution and sales channels, customer base, customer communications, claims of biodegradability of plastics treated with ECM products, and substantiation for those claims.

23. Anjie Kacperski, Former Employee of ECM Biofilms, Inc.

Proposed Testimony: We anticipate that this witness will testify about ECM's products, distribution and sales channels, customer base, customer communications, claims of biodegradability of plastics treated with ECM products, and substantiation for those claims.

24. Brenda L. Peters, Former Employee of ECM Biofilms, Inc.

Proposed Testimony: We anticipate that this witness will testify about ECM's products, distribution and sales channels, customer base, customer communications, claims of biodegradability of plastics treated with ECM products, and substantiation for those claims.

25. Annet A. Retofsky, Former Employee of ECM Biofilms, Inc.

Proposed Testimony: We anticipate that this witness will testify about ECM's products, distribution and sales channels, customer base, customer communications, claims of biodegradability of plastics treated with ECM products, and substantiation for those claims.

26. All current and former employees of ECM Biofilms, Inc.

Proposed Testimony: We anticipate that these witnesses will testify about ECM's products, distribution and sales channels, customer base, customer communications, claims of biodegradability of plastics treated with ECM products, and substantiation for those claims.

27. All persons identified in ECM's redacted document production on December 27, 2013 (Bates no. ECM-FTC-648-1859).

Proposed Testimony: We anticipate that these witnesses will testify about ECM's products, distribution and sales channels, customer base, customer communications, claims of biodegradability of plastics treated with ECM products, and substantiation for those claims, or regarding their purchase of ECM Additive, their use of the Certificate of Biodegradability, their use of the ECM logo, and their understanding of ECM's claims of biodegradability.

28. Representatives of entities identified in ECM's redacted document production on December 27, 2013 (Bates no. ECM-FTC-648-1859).

Proposed Testimony: We anticipate that these witnesses will testify about ECM's products, distribution and sales channels, customer base, customer communications, claims of biodegradability of plastics treated with ECM products, and substantiation for those claims, or regarding their purchase of ECM Additive, their use of the Certificate of Biodegradability, their use of the ECM logo, and their understanding of ECM's claims of biodegradability.

29. Representatives of ECM's prospective customers.

Proposed Testimony: We anticipate that these witnesses will testify regarding their purchase of ECM Additive, their use of the Certificate of Biodegradability, their use of the ECM logo, their understanding of ECM's claims of biodegradability, and their understanding of ECM's claims that it had substantiation for its biodegradable claims.

30. Representatives of ECM's current customers.

Proposed Testimony: We anticipate that these witnesses will testify regarding their purchase of ECM Additive, their use of the Certificate of Biodegradability, their use of the ECM logo, and their understanding of ECM's claims of biodegradability, and their understanding of ECM's claims that it had substantiation for its biodegradable claims.

31. Jewel Vuong and/or representative of American Plastics Manufacturing, Inc.

Mark S. Leen  
Inslee, Best, Doezie & Ryder, PS  
Symetra Financial Center, Suite 1900  
777 108th Ave. Northeast  
Bellevue, WA 98004  
(425) 450-4219

Proposed Testimony: We anticipate that this witness will testify regarding their purchase of ECM Additive, their use of the Certificate of Biodegradability, their use of the ECM logo, and their understanding of ECM's claims of biodegradability, and their understanding of ECM's claims that it had substantiation for its biodegradable claims.

32. Rickard J. Locke and/or representative of MacNeill Engineering Company, Inc.

Kerry Timber  
Sunstein Kann Murphy & Timber LLP  
125 Summer St.  
Boston, MA 02110-1618  
Tel: (617) 443-9292, ext. 223

Proposed Testimony: We anticipate that this witness will testify regarding their purchase of ECM Additive, their use of the Certificate of Biodegradability, their use of the ECM logo, and their understanding of ECM's claims of biodegradability, and their understanding of ECM's claims that it had substantiation for its biodegradable claims.

33. Timothy R. Barber and/or Representative of Environ International Corp.

Proposed Testimony: We anticipate that this witness will testify regarding ECM's claims of biodegradability and the substantiation for such claims.

34. Timothy R. Barber and/or Representative of ChemRisk

Proposed Testimony: We anticipate that this witness will testify regarding ECM's claims of biodegradability and the substantiation for such claims.

35. Richard Tillinger, O.W.S. Inc.

Proposed Testimony: We anticipate that this witness will testify regarding ECM's claims of biodegradability and the substantiation for such claims.

36. Bruno De Wilde, O.W.S. Inc.

Proposed Testimony: We anticipate that this witness will testify regarding ECM's claims of biodegradability and the substantiation for such claims.

37. Patrick F. Riley, O.W.S. Inc.

Proposed Testimony: We anticipate that this witness will testify regarding ECM's claims of biodegradability and the substantiation for such claims.

38. Representative of O.W.S. Inc.

Proposed Testimony: We anticipate that this witness will testify regarding ECM's claims of biodegradability and the substantiation for such claims.

39. Mike Spilde, University of New Mexico

Proposed Testimony: We anticipate that this witness will testify regarding ECM's claims of biodegradability and the substantiation for such claims.

40. Morton Litt, Case Western Reserve University

Proposed Testimony: We anticipate that this witness will testify regarding ECM's claims of biodegradability and the substantiation for such claims.



41. Paul J. Kappus, BIOPVC, Inc.  
Proposed Testimony: We anticipate that this witness will testify regarding ECM's claims of biodegradability and the substantiation for such claims.
42. Ramani Narayan, Michigan State University  
Proposed Testimony: We anticipate that this witness will testify regarding ECM's claims of biodegradability and the substantiation for such claims.
43. Representative of Microtech Research, Inc.  
Proposed Testimony: We anticipate that this witness will testify regarding ECM's claims of biodegradability and the substantiation for such claims.
44. John Lake and/or Representative of Bio-Tec Environmental LLC  
Proposed Testimony: We anticipate that this witness will testify regarding ECM's claims of biodegradability and the substantiation for such claims.
45. William W. Ulman, Northeast Laboratories, Inc.  
Proposed Testimony: We anticipate that this witness will testify regarding ECM's claims of biodegradability and the substantiation for such claims.
46. Garrett W. Johnson, Northeast Laboratories, Inc.  
Proposed Testimony: We anticipate that this witness will testify regarding ECM's claims of biodegradability and the substantiation for such claims.
47. Representative of Northeast Laboratories, Inc.  
Proposed Testimony: We anticipate that this witness will testify regarding ECM's claims of biodegradability and the substantiation for such claims.
48. Thomas Poth and/or Representative of Eden Research Laboratory  
Proposed Testimony: We anticipate that this witness will testify regarding ECM's claims of biodegradability and the substantiation for such claims.
49. Morton A. Barlaz, North Carolina State University  
Proposed Testimony: We anticipate that this witness will testify regarding ECM's claims of biodegradability and the substantiation for such claims.
50. Representative of ASTM International  
Proposed Testimony: We anticipate that this witness will testify regarding ASTM standards, ECM's claims of biodegradability, and the substantiation for such claims.

51. Any individual associated with scientific testing that ECM contends substantiates its claims.

Proposed Testimony: We anticipate that this witness will testify regarding ECM's claims of biodegradability and the substantiation for such claims.

52. The representative of any entity associated with scientific testing that ECM contends substantiates its claims.

Proposed Testimony: We anticipate that this witness will testify regarding ECM's claims of biodegradability and the substantiation for such claims.

53. Ranajit Sahu

Kelley Drye  
Washington Harbour, Suite 4000  
3050 K Street, NW  
Washington, DC 20007  
(202) 342-8588

Proposed Testimony: We anticipate that this witness will testify regarding ECM's claims of biodegradability and the substantiation for such claims.

54. Charles Lancelot, Plastics Environmental Council

Proposed Testimony: We anticipate that this witness will testify regarding ECM's claims of biodegradability and the substantiation for such claims.

55. Clifford Moriyama, Plastics Environmental Council

Proposed Testimony: We anticipate that this witness will testify regarding ECM's claims of biodegradability and the substantiation for such claims.

56. Representative of Plastics Environmental Council

Proposed Testimony: We anticipate that this witness will testify regarding ECM's claims of biodegradability and the substantiation for such claims.

57. Mark Benson or Representative of APCO Insight

Judith S. Sapier  
Senior Vice President, General Counsel, Secretary  
APCO Insight  
700 12th Street NW, Suite 800  
Washington, DC  
(202) 779-1000

Proposed Testimony: We anticipate that this witness will testify regarding consumer perception of biodegradability claims.

58. Keith Christman or Representative of American Chemistry Council

Karen Schmidt  
Assistant General Counsel  
American Chemistry Council  
1300 Wilson Boulevard  
Arlington, VA 22209

Proposed Testimony: We anticipate that this witness will testify regarding consumer perception of biodegradability claims.

59. Representative of Synovate (acquired by Ipsos)

Proposed Testimony: We anticipate that this witness will testify regarding consumer perception of biodegradability claims.

60. John Aiken, Investigator, Federal Trade Commission

Complaint Counsel

Proposed Testimony: Authentication of exhibits.

61. William Burton, Investigator, Federal Trade Commission (retired)

Complaint Counsel

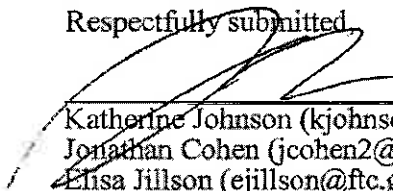
Proposed Testimony: Authentication of exhibits.

62. Representative of The National Advertising Division of the Council of Better Business Bureaus, Inc.

Proposed Testimony: We anticipate that this witness will testify regarding complaints and challenges filed against ECM or customers of ECM; any investigation and outcomes of those complaints and challenges, including any analysis of ECM's substantiation materials; resulting case reports; and authentication of exhibits.

Dated: January 17, 2014

Respectfully submitted,



Katherine Johnson (kjohnson3@ftc.gov)  
Jonathan Cohen (jcohen2@ftc.gov)  
Elisa Jillson (ejillson@ftc.gov)  
Federal Trade Commission  
600 Pennsylvania Ave., N.W. M-8102B  
Washington, DC 20580  
Phone: 202-326-2185; -2551; -3001  
Fax: 202-326-2551

**CERTIFICATE OF SERVICE**

I hereby certify that on January 17, 2014, I caused a true and correct copy of the paper original of the foregoing Complaint Counsel's Preliminary Witness List to ECM BioFilms, Inc. to be served as follows:

One electronic copy to **Counsel for the Respondent:**

Jonathan W. Emord  
Emord & Associates, P.C.  
11808 Wolf Run Lane  
Clifton, VA 20124  
Email: jemord@cmord.com

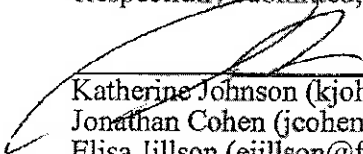
Peter Arhangelsky  
Emord & Associates, P.C.  
3210 S. Gilbert Road, Suite 4  
Chandler, AZ 85286  
Email: parhangelsky@cmord.com

Lou Caputo  
Emord & Associates, P.C.  
3210 S. Gilbert Road, Suite 4  
Chandler, AZ 85286  
Email: lcaputo@emord.com

I further certify that I possess a paper copy of the signed original of the foregoing document that is available for review by the parties and the adjudicator.

Dated: January 17, 2014

Respectfully submitted,

  
Katherine Johnson (kjohnson3@ftc.gov)  
Jonathan Cohen (jcohen2@ftc.gov)  
Elisa Jillson (ejillson@ftc.gov)  
Federal Trade Commission  
600 Pennsylvania Ave., N.W. M-8102B  
Washington, DC 20580  
Phone: 202-326-2185; -2551; -3001  
Fax: 202-326-2551

# Respondent's Exhibit E

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of )  
)  
)

ECM BioFilms, Inc., )  
a corporation, also d/b/a )  
Envioplastics International )

Docket No. 9358

PUBLIC DOCUMENT

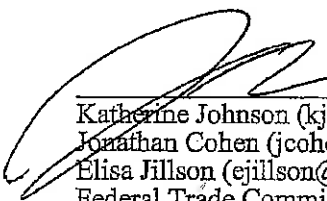
**JOINT MOTION FOR ENTRY OF AN ORDER EXCLUDING  
ROD ALIRE AS A WITNESS**

Complaint Counsel conferred with Respondent ECM Biofilms, Inc. ("ECM") regarding Compliant Counsel's intent to depose Mr. Rod Alire pursuant to Rule 3.33. In consideration of Complaint Counsel's agreement not to depose Mr. Alire, ECM agrees not to call Mr. Alire at trial. Complaint Counsel and ECM further stipulate and agree that Mr. Alire will not testify at trial, even in rebuttal. Subject to the Court's instructions,<sup>1</sup> the parties respectfully request that the Court enter the proposed order memorializing their stipulation.

Dated: May ~~10~~, 2014

LS

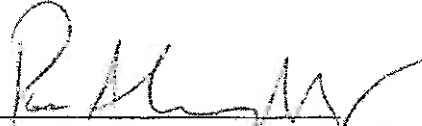
Respectfully submitted,



Katherine Johnson (kjohnson3@ftc.gov)  
Jonathan Cohen (jcohen2@ftc.gov)  
Elisa Jillson (ejillson@ftc.gov)  
Federal Trade Commission  
600 Pennsylvania Ave., N.W. M-8102B  
Washington, DC 20580  
Phone: 202-326-2185; -2551; -3001  
Fax: 202-326-2551

And

<sup>1</sup> The parties are uncertain regarding how the Court would prefer them to approach stipulations regarding testimony, as opposed to stipulations regarding documentary evidence.



Jonathan W. Emord (jemord@emord.com)  
Peter A. Arhangelsky  
(parhangelsky@emord.com)  
Lou F. Caputo (lcaputo@emord.com)  
Emord & Associates, P.C.  
11808 Wolf Run Lane, Clifton, VA 20124  
Phone: (202) 388-8899  
Fax: (202) 466-6938

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of  ECM BioFilms, Inc., a corporation, also d/b/a Enviroplastics International	) ) ) ) ) ) ) ) ) )	Docket No. 9358  PUBLIC DOCUMENT
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**[PROPOSED] ORDER EXCLUDING ROD ALIRE AS A WITNESS**

This matter having come before the Chief Administrative Law Judge on May 12, 2014, upon a Joint Motion for Entry of an Order Excluding Rod Alire as a Witness, it is hereby

**ORDERED** that:

1. The Joint Motion is **GRANTED**;
2. Pursuant to the parties' stipulation, it is hereby **ORDERED** that Mr. Rod Alire will not testify at trial, even in rebuttal.

ORDERED:

\_\_\_\_\_  
D. Michael Chappell  
Chief Administrative Law Judge



**CERTIFICATE OF SERVICE**

I hereby certify that on May 10, 2014, I caused a true and correct copy of the foregoing document to be served as follows: *IS*

One electronic courtesy copy to the **Office of the Secretary:**

Donald S. Clark, Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Room H-159  
Washington, DC 20580  
Email: [secretary@ftc.gov](mailto:secretary@ftc.gov)

One electronic and one paper courtesy copy to the **Office of the Administrative Law Judge:**

The Honorable D. Michael Chappell  
Administrative Law Judge  
600 Pennsylvania Ave., NW, Room H-110  
Washington, DC 20580

One electronic copy to **Counsel for the Respondent:**

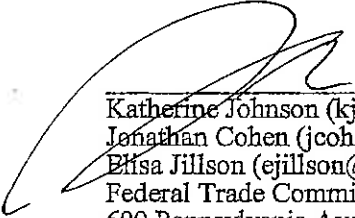
Jonathan W. Emord  
Emord & Associates, P.C.  
11808 Wolf Run Lane  
Clifton, VA 20124  
Email: [jemord@emord.com](mailto:jemord@emord.com)

Peter Arhangelsky  
Emord & Associates, P.C.  
3210 S. Gilbert Road, Suite 4  
Chandler, AZ 85286  
Email: [parhangelsky@emord.com](mailto:parhangelsky@emord.com)

Lou Caputo  
Emord & Associates, P.C.  
3210 S. Gilbert Road, Suite 4  
Chandler, AZ 85286  
Email: [lcaputo@emord.com](mailto:lcaputo@emord.com)

Date: May 10, 2014

*IS*



Katherine Johnson ([kjohnson3@ftc.gov](mailto:kjohnson3@ftc.gov))  
Jonathan Cohen ([jcohen2@ftc.gov](mailto:jcohen2@ftc.gov))  
Elisa Jillson ([ejillson@ftc.gov](mailto:ejillson@ftc.gov))  
Federal Trade Commission  
600 Pennsylvania Ave., N.W. M-8102B  
Washington, DC 20580  
Phone: 202-326-2185; -2551; -3001  
Fax: 202-326-2551

# Respondent's Exhibit F

## Eric Awerbuch

---

**From:** Cohen, Jonathan <jcohen2@ftc.gov>  
**Sent:** Wednesday, May 21, 2014 11:48 AM  
**To:** Peter Arhangelsky  
**Cc:** Johnson, Katherine; Jillson, Elisa; Lou Caputo; Jonathan Emord  
**Subject:** RE: ECM Biofilms, No. 9358

Peter,

The EPA can host in Cincinnati.

Are we all set?

### Jonathan Cohen

Enforcement Division | Bureau of Consumer Protection | Federal Trade Commission  
600 Pennsylvania Avenue, N.W., M-8102B Washington, D.C. 20580  
(202) 326-2551 | jcohen2@ftc.gov

---

**From:** Peter Arhangelsky [mailto:PArhangelsky@emord.com]  
**Sent:** Wednesday, May 21, 2014 12:52 PM  
**To:** Cohen, Jonathan  
**Cc:** Johnson, Katherine; Jillson, Elisa; Lou Caputo; Jonathan Emord  
**Subject:** RE: ECM Biofilms, No. 9358

Jonathan,

Thank you for your flexibility. We need to identify locations for our depositions of your asserted experts. We propose the FTC building at 400 7th Street for Dr. McCarthy on June 27th. Given the government's resources, we ask that you identify a suitable location for your experts in Cincinnati and Connecticut. Because we need to serve our Notices of Deposition soon, we may need to designate your experts' local offices until further notice. Please advise.

Thanks,

**Peter A. Arhangelsky, Esq.** | EMORD & ASSOCIATES, P.C. | 3210 S. Gilbert Rd., Ste 4 | Chandler, AZ 85286  
Firm: (602) 388-8899 | Direct: (602) 334-4416 | Facsimile: (602) 393-4361 | [www.emord.com](http://www.emord.com)

**NOTICE:** This is a confidential communication intended for the recipient listed above. The content of this communication is protected from disclosure by the attorney-client privilege and the work product doctrine. If you are not the intended recipient, you should treat this communication as strictly confidential and provide it to the person intended. Duplication or distribution of this communication is prohibited by the sender. If this communication has been sent to you in error, please notify the sender and then immediately destroy the document.

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**From:** Cohen, Jonathan [mailto:jcohen2@ftc.gov]  
**Sent:** Monday, May 19, 2014 7:38 PM  
**To:** Peter Arhangelsky  
**Cc:** Johnson, Katherine; Jillson, Elisa; Lou Caputo; Jonathan Emord  
**Subject:** RE: ECM Biofilms, No. 9358

Per the below.

**Jonathan Cohen**

Enforcement Division | Bureau of Consumer Protection | Federal Trade Commission  
600 Pennsylvania Avenue, N.W., M-8102B Washington, D.C. 20580  
(202) 326-2551 | [jcohen2@ftc.gov](mailto:jcohen2@ftc.gov)

---

**From:** Cohen, Jonathan  
**Sent:** Monday, May 19, 2014 3:52 PM  
**To:** 'Peter Arhangelsky'  
**Cc:** Johnson, Katherine; Jillson, Elisa; 'Lou Caputo'; 'Jonathan Emord'  
**Subject:** RE: ECM Biofilms, No. 9358

Peter,

We accept this compromise schedule, which is what you most recently proposed:

- June 23: Frederick (New Haven, CT)
- June 24: Tolymat (Cincinnati, OH)
- June 27: McCarthy (Washington, D.C.)
- June 30: Sahu (Los Angeles, CA)
- July 1: Stewart (Los Angeles, CA)
- July 2: Burnette (Washington, D.C.)
- July 14: Barlaz (Raleigh, NC)
- July 15: Volokh (Atlanta, GA) (10:00 AM start/ECM guarantees a full day)

**Jonathan Cohen**

Enforcement Division | Bureau of Consumer Protection | Federal Trade Commission  
600 Pennsylvania Avenue, N.W., M-8102B Washington, D.C. 20580  
(202) 326-2551 | [jcohen2@ftc.gov](mailto:jcohen2@ftc.gov)

---

**From:** Peter Arhangelsky [<mailto:PARhangelsky@emord.com>]  
**Sent:** Friday, May 16, 2014 12:34 PM  
**To:** Cohen, Jonathan  
**Cc:** Johnson, Katherine; Jillson, Elisa; Lou Caputo; Jonathan Emord  
**Subject:** RE: ECM Biofilms, No. 9358

Jonathan,

I think the schedule unnecessarily burdens ECM because it would require excessive travel. Your proposal separates the California depositions, which would require two separate trips to California instead of one. You have also scheduled Dr. Sahu on a date we did not say he was available. He is not available the week of July 14th, so his date will need to change. We have no objection to scheduling Burnette for July 2nd, thus separating the Washington, D.C. pair, and preventing witness depositions out of order. We are counter-proposing the following dates (swapping Barlaz with Sahu):

- June 23: Frederick (New Haven, CT)
- June 24: Tolymat (Cincinnati, OH)
- June 27: McCarthy (Washington, D.C.)

June 30: Sahu (Los Angeles, CA)  
July 1: Stewart (Los Angeles, CA)  
July 2: Burnette (Washington, D.C.)  
July 14: Barlaz (Raleigh, NC)  
July 15 or 16: Volokh (Atlanta, GA) (10:00 AM start as long as ECM guarantees a full day)

We think this is a reasonable compromise. You would have a full day with Volokh, although a July 16th date might make more sense given the flights available. I am available to discuss today if necessary.

Thanks,

Peter

**Peter A. Arhangelsky, Esq.** | EMORD & ASSOCIATES, P.C. | 3210 S. Gilbert Rd., Ste 4 | Chandler, AZ 85286  
Firm: (602) 388-8899 | Direct: (602) 334-4416 | Facsimile: (602) 393-4361 | [www.emord.com](http://www.emord.com)

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**From:** Cohen, Jonathan [<mailto:jcohen2@ftc.gov>]  
**Sent:** Thursday, May 15, 2014 3:47 PM  
**To:** Peter Arhangelsky  
**Cc:** Johnson, Katherine; Jillson, Elisa; Lou Caputo; Jonathan Emord  
**Subject:** RE: ECM Biofilms, No. 9358

Peter,

This isn't perfect, but it accommodates your scheduling issues, as well as scheduling issues on our end. With respect to our experts, we should be able to make rooms available locally for all three depositions, but I'll need until next week to confirm that (it's very likely). Please let me know if we have an agreement.

June 23: Frederick (New Haven, CT)  
June 24: Tolymat (Cincinnati, OH)  
June 27: McCarthy (Washington, D.C.)  
June 30: Barlaz (Raleigh, NC)  
July 1: Stewart (Los Angeles, CA)  
July 2: Burnette (Washington, D.C.)  
July 14: Sahu (Los Angeles, CA)  
July 15: Volokh (Atlanta, GA) (10:00 AM start as long as ECM guarantees a full day)

**Jonathan Cohen**  
Enforcement Division | Bureau of Consumer Protection | Federal Trade Commission  
600 Pennsylvania Avenue, N.W., M-8102B Washington, D.C. 20580

---

**From:** Peter Arhangelsky [<mailto:PArhangelsky@emord.com>]  
**Sent:** Thursday, May 15, 2014 5:46 PM  
**To:** Cohen, Jonathan  
**Cc:** Johnson, Katherine; Jillson, Elisa; Lou Caputo; Jonathan Emord  
**Subject:** RE: ECM Biofilms, No. 9358

Jonathan,

Per our conversation this afternoon, ECM proposes the following deposition schedule:

- June 23: Frederick (New Haven, CT)
- June 24: Tolymat (Cincinnati, OH)
- June 26: Burnette (Washington, D.C.)
- June 27: McCarthy (Washington, D.C.)
- June 30: Sahu (Los Angeles, CA)
- July 1: Stewart (Los Angeles, CA)
- July 14: Barlaz (Raleigh, NC)
- July 16 (or July 15): Volokh (Atlanta, GA)

With respect to your witnesses, please let us know if we can designate a local office in New Haven, Cincinnati, and Washington, D.C. Although Dr. Volokh is available on July 15th, we would prefer July 16th to eliminate potential travel issues.

Let me know if we need to discuss this further.

Thanks,

**Peter A. Arhangelsky, Esq.** | **EMORD & ASSOCIATES, P.C.** | 3210 S. Gilbert Rd., Ste 4 | Chandler, AZ 85286  
Firm: (602) 388-8899 | Direct: (602) 334-4416 | Facsimile: (602) 393-4361 | [www.emord.com](http://www.emord.com)

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**From:** Cohen, Jonathan [<mailto:jcohen2@ftc.gov>]  
**Sent:** Thursday, May 15, 2014 1:07 PM  
**To:** Peter Arhangelsky  
**Cc:** Jonathan Emord; Lou Caputo; Jillson, Elisa; Johnson, Katherine; Decastro, Arturo  
**Subject:** ECM Biofilms, No. 9358

We've provided ECM with proposed dates for our experts, and when ECM responded with a request that we provide different dates for our experts within a 12-day period ECM selected, we accommodated that request in less than a day. However, with respect to the dates for ECM's experts that we proposed several days ago, we

haven't heard anything back. Accordingly, we're noticing them per the attached document. Of course, we're still willing to negotiate the schedule.

I'll give you a call regarding the *Colplast* materials in about an hour.

**Jonathan Cohen**

Enforcement Division | Bureau of Consumer Protection | Federal Trade Commission  
600 Pennsylvania Avenue, N.W., M-8102B Washington, D.C. 20580  
(202) 326-2551 | [jcohen2@ftc.gov](mailto:jcohen2@ftc.gov)

---

**From:** Cohen, Jonathan

**Sent:** Wednesday, May 14, 2014 11:21 AM

**To:** 'Peter Arhangelsky'

**Cc:** 'Jonathan Emord'; 'Lou Caputo'; Jillson, Elisa; Johnson, Katherine; Cohen, Jonathan; Decastro, Arturo

**Subject:** RE: Expert Deposition Schedule

Peter,

Per your request, we revise the proposal as follows:

June 23: Frederick (New Haven, CT)  
June 24: Tolymat (Cincinnati, OH)  
June 27: McCarthy (Washington, D.C.)  
July 9 – Burnette (Washington, DC)  
July 10 – Stewart (Los Angeles, CA)  
July 11 – Sahu (Los Angeles, CA)  
July 15 – Volokh (Atlanta, GA)  
July 16 – Barlaz (Raleigh, NC)

Accordingly, this accomodates ECM's request that we provide dates for our experts between June 16 and June 27. Please confirm the rest of the schedule, or let us know when you'll be able to do so, as we'd like to begin making arrangements.

Best,

**Jonathan Cohen**

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600 Pennsylvania Avenue, N.W., M-8102B Washington, D.C. 20580  
(202) 326-2551 | [jcohen2@ftc.gov](mailto:jcohen2@ftc.gov)

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**From:** Peter Arhangelsky [<mailto:PARhangelsky@emord.com>]

**Sent:** Tuesday, May 13, 2014 2:21 PM

**To:** Cohen, Jonathan

**Cc:** Jonathan Emord; Lou Caputo; Jillson, Elisa; Johnson, Katherine

**Subject:** RE: Expert Deposition Schedule

Jonathan,

Thanks for your proposal. We will discuss the schedule with our experts and report back shortly. Having discussed this with our team, we have conflicts the first week of July which will require changes to the proposed schedule. Please inform us when your experts are available between June 16-27. We will need to schedule your experts during that window in June.

Best,

**Peter A. Arhangelsky, Esq. | EMORD & ASSOCIATES, P.C. | 3210 S. Gilbert Rd., Ste 4 | Chandler, AZ 85286**  
Firm: (602) 388-8899 | Direct: (602) 334-4416 | Facsimile: (602) 393-4361 | [www.emord.com](http://www.emord.com)

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**From:** Cohen, Jonathan [<mailto:jcohen2@ftc.gov>]  
**Sent:** Tuesday, May 13, 2014 11:43 AM  
**To:** Peter Arhangelsky; Lou Caputo; Jonathan Emord  
**Cc:** Jillson, Elisa; Johnson, Katherine; Decastro, Arturo  
**Subject:** RE: Expert Deposition Schedule

Peter,

One change with respect to the dates we propose for your experts:

July 2 – McCarthy (Washington, DC)  
July 3 – Thabet (Cincinnati, OH)  
July 8 – Frederick (New Haven, CT)  
July 9 – Burnette (Washington, DC)  
July 10 – Stewart (Los Angeles, CA)  
July 11 – Sahu (Los Angeles, CA)  
July 15 – Volokh (Atlanta, GA)  
**July 16 – Barlaz (Raleigh, NC)**

**Jonathan Cohen**

Enforcement Division | Bureau of Consumer Protection | Federal Trade Commission  
600 Pennsylvania Avenue, N.W., M-8102B Washington, D.C. 20580  
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**From:** Cohen, Jonathan  
**Sent:** Monday, May 12, 2014 5:43 PM  
**To:** 'Peter Arhangelsky'; 'Lou Caputo'; 'Jonathan Emord'  
**Cc:** Jillson, Elisa; Johnson, Katherine; Decastro, Arturo  
**Subject:** ECM: Expert Deposition Schedule

Peter,

Per our call, we have cleared dates with our experts. Based on those dates, we propose the following overall schedule:

July 2 – McCarthy (Washington, DC)  
July 3 – Thabet (Cincinnati, OH)  
July 8 – Frederick (New Haven, CT)  
July 9 – Burnette (Washington, DC)



July 10 – Stewart (Los Angeles, CA)  
July 11 – Sahu (Los Angeles, CA)  
July 14 – Barlaz (Raleigh, NC)  
July 15 – Volokh (Atlanta, GA)

Please let us know whether this works. Hopefully, getting this set soon will make the process easier on everyone.

Thanks,

**Jonathan Cohen**

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(202) 326-2551 | [jcohen2@ftc.gov](mailto:jcohen2@ftc.gov)

# Respondent's Exhibit G

1 UNITED STATES OF AMERICA  
2 BEFORE THE FEDERAL TRADE COMMISSION

3 ~~~~~

4  
5 In the Matter of: )  
6 ECM BioFilms, Inc., ) Docket No. 9358  
7 a corporation, also d/b/a )  
8 Enviroplastics International.)

9  
10 ~~~~~

11 Deposition of  
12 THABET M. TOLAYMAT, Ph.D.

13  
14 TRANSCRIPT CONFIDENTIAL  
15 PURSUANT TO PROTECTIVE ORDER

16  
17 June 24, 2014  
18 8:26 a.m.

19  
20 Taken at:  
21 US Environmental Protection Agency  
22 26 Martin Luther King Drive West  
23 Cincinnati, Ohio 45268

24  
25 Caryl L. Blevins, RPR, CRR, Notary Public

Tolaymat, Ph.D.

ECM BioFilms, Inc., et al.

6/24/2014

1	EXAMINATION CONDUCTED	PAGE
2	BY MR. ARHANGELSKY:.....	11
3		
4	EXHIBITS MARKED	
5	(Thereupon, Tolaymat Deposition	13
6	Exhibit 1, complaint counsel's	
7	supplemental expert witness list,	
8	was marked for purposes of	
9	identification.).....	
10	(Thereupon, Tolaymat Deposition	13
11	Exhibit 2, Dr. Tolaymat's curriculum	
12	vitae, was marked for purposes of	
13	identification.).....	
14	(Thereupon, Tolaymat Deposition	17
15	Exhibit 3, 6/24/14 expert report of	
16	Dr. Thabet Tolaymat, summary and	
17	conclusions, was marked for purposes	
18	of identification.).....	
19	(Thereupon, Tolaymat Deposition	84
20	Exhibit 4A, article titled	
21	Performance of North American	
22	Bioreactor Landfills. I: Leachate	
23	Hydrology and Waste Settlement, was	
24	marked for purposes of	
25	identification.).....	

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Pages 2 through 209  
intentionally omitted

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ECM BioFilms, Inc., et al.

6/24/2014

1 Q. We were talking about your point that  
2 the D5511 study cannot distinguish between what is  
3 biodegraded from the additive versus what is  
4 biodegraded from the plastic.

5 A. That is correct.

6 Q. This study shows fifty percent  
7 biodegradation.

8 A. Okay. So if D5511 is carried out  
9 correctly, it will not be able to distinguish  
10 between the additive and without additive.

11 Q. Which is why?

12 A. Because it does not -- it can't tell  
13 you whether the material, the additive by itself,  
14 would decompose and how much gas will be generated  
15 from the additive by itself.

16 Q. I think I'm going to ask it again  
17 because I'm not sure I've received an answer to  
18 the question: What accounts for the extra  
19 forty-nine percent -- almost forty-nine percent of  
20 biodegradation in this study?

21 MR. DECASTRO: Objection. Asked and  
22 answered.

23 THE WITNESS: The way the test was  
24 conducted, I believe the process by which the  
25 process was conducted, based on my review of the

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6/24/2014

1 documents that was provided to me, leads me to  
2 believe -- leads me to question the results in  
3 this study.

4 BY MR. ARHANGELSKY:

5 Q. What specifically leads you to  
6 question the results of this study?

7 A. Number one, we talked -- and I don't  
8 want to repeat for the third time, but I will.  
9 The ASTM method is a gross estimate. You are  
10 using very inaccurate scientific measurements, and  
11 what happens when you start using inaccurate  
12 scientific measurements to make precise small  
13 measurements, you are compounding your error.  
14 That's number one.

15 Number two, I reviewed the Northeast  
16 Laboratory testimony with regards to the way they  
17 conducted this test, and it leaves a lot to be  
18 desired in terms of quality control and quality  
19 assurance.

20 You know, the test was carried out in  
21 paint cans and the inoculum was replaced  
22 approximately every six months, but, you know, we  
23 look at the paint can, and if we see any  
24 degradation of the can, we replace it.

25 What type of scientific study is

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1 that? Basically, you're leaving it up to an  
2 untrained person to make a scientific decision and  
3 judgment on whether something has to be changed in  
4 the experimental design.

5 Q. Was the testimony, in your opinion,  
6 that they changed the paint can when the paint can  
7 showed signs of degradation?

8 A. That's what I understood from the  
9 testimony, yes.

10 Q. And your understanding was, what,  
11 that they used a metal paint can?

12 A. They didn't say. They said paint  
13 can.

14 Q. Okay. So you're attributing, then,  
15 the increase in biodegradation in this to sloppy  
16 methodology?

17 A. Yes.

18 Q. And specifically the use of a paint  
19 can and the replacement of the inoculum?

20 A. Yes.

21 Q. Anything else?

22 A. Whatever -- yeah.

23 Q. There was a control used in this  
24 test, was there not?

25 A. Yes. Uh-hum.

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1 Q. Do you have any doubts that the  
2 control was not proper?

3 A. Yes.

4 Q. You do have doubts that the control  
5 was not proper?

6 A. Uh-hum.

7 Q. What are your specific factual bases  
8 to think that the control was not a proper  
9 control?

10 A. Similarly, the experiment as a whole  
11 was conducted, in my opinion, in substandard  
12 conditions.

13 Q. I didn't ask the question about the  
14 test as a whole. Specifically with regard to the  
15 negative control, do you have any factual basis to  
16 suggest that the negative control was not a proper  
17 negative control?

18 A. The negative control was evaluated in  
19 a similar fashion that the test material was  
20 evaluated, and once their -- the data --  
21 sloppiness gets into the data, the whole data, the  
22 whole experiment, gets into question.

23 Q. I think the question was, is there a  
24 factual basis to suspect that the negative control  
25 itself was not a true negative control?

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1 MR. DECASTRO: Objection. Vague.

2 THE WITNESS: The negative control,  
3 they called it a negative control. Based on my  
4 review of the document, it is a negative control,  
5 so no.

6 BY MR. ARHANGELSKY:

7 Q. The experiment was conducted  
8 alongside a negative control, right?

9 A. That is correct.

10 Q. So if there were errors in  
11 methodology that were present in the test, would  
12 you expect to see those in the control as well?

13 MR. DECASTRO: Objection. Asked and  
14 answered.

15 THE WITNESS: Would you expect them  
16 to be seen in the control? Potentially, but you  
17 have to realize the numbers that we are reading,  
18 and let me go back and take a look -- we are  
19 reading -- and it's amazing that we could read --  
20 on a thousand ML graduated cylinder, we can read a  
21 measurement of two MLs. That is the amount of  
22 measurements these -- you know, these employees  
23 are reading.

24 A thousand ML, you're reading two MLs  
25 (indicating), but the issue of one reading is not

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1 a problem. The compounding factor that you're  
2 reading this two MLs or ten MLs or eight MLs or  
3 three MLs over a period of three years, nine  
4 hundred days, that provides a huge margin of  
5 error.

6 That would make this report --  
7 whether the positive control is -- negative  
8 control is a negative control or not, provides a  
9 huge uncertainty with regards to the validity of  
10 the results.

11 BY MR. ARHANGELSKY:

12 Q. You said a huge margin of error. Did  
13 you calculate a margin of error for this test?

14 A. No.

15 Q. Do you know if the raw data was  
16 available to you for this specific test?

17 A. Do I? No, but I'm assuming the  
18 spreadsheets are here.

19 Q. Do you know if this test was run in  
20 triplicates?

21 A. Yes.

22 Q. Did you perform any statistical  
23 analysis of the triplicate data before arriving at  
24 your conclusion here right now that the test was  
25 unreliable?

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