

PUBLIC DOCUMENT

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGE



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

**MOTION TO QUASH AND/OR LIMIT SUBPOENA DUCES TECUM
AND FOR AN AWARD OF EXPENSES**

I. INTRODUCTION

Third Party O.W.S. Inc. ("O.W.S.") moves the Court to quash or limit the subpoena *duces tecum* ("Subpoena") served by ECM BioFilms, Inc. ("ECM") ("Exhibit 1") to the extent the Subpoena is unduly burdensome, would require unreasonable time and expense to comply with, requests irrelevant information and seeks confidential and proprietary, and in many instances competitive, information owned by and under the control of O.W.S.'s customers. By doing so, ECM is attempting to shift costs and burdens, as well as business risk, away from itself and onto O.W.S. ECM knows to which of its customers it sold additives or gave samples, and can directly subpoena or obtain information from them. O.W.S also seeks an award of its expenses.

II. BACKGROUND

O.W.S. is an independent testing company that tests various types of plastic for biodegradability. Affidavit of Richard Tillinger ("Tillinger Aff.") ("Exhibit 2"), ¶ 3. From 2007

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to the present—the demanded production timeframe—O.W.S. tested the biodegradability of hundreds of products and materials for over one hundred customers. *Id.*, ¶ 4.

ECM sells plastic additives (“ECM Additives”), sometimes added to conventional plastics to create “ECM Plastics.” Some conventional plastics that O.W.S. tests might contain ECM Additives, but O.W.S. only knows if the product contains an ECM Additive if the customer includes that information. *Id.*, ¶¶ 3, 5 and 6. Several of O.W.S.’s customers are competitors of ECM for additives; many more are competitors for biodegradable materials. *Id.*, ¶ 7.

O.W.S.’s customers include manufacturers testing their products, manufacturers testing their competitors’ products, trade organizations, and attorneys testing their clients’ products. *Id.* The vast majority of O.W.S.’s customers require strict confidentiality. *Id.*, ¶ 8. O.W.S. affirmatively represents to its customers in its Terms and Conditions that it will treat their information as “strictly confidential.” *Id.* Information concerning O.W.S.’s attorney customers is privileged. *Id.* O.W.S. customers, not O.W.S., own the testing information. *Id.*, ¶ 9. O.W.S. vehemently protects its customers’ confidential and proprietary information, which is critical to gaining and maintaining the trust of its customers. *Id.*, ¶ 8. O.W.S. has even refused to distribute information to third parties concerning ECM’s own test results for this very reason. *Id.*

While O.W.S. has attempted to resolve this dispute, and ECM has narrowed or eliminated some of the requests, other objectionable requests remain. O.W.S. has already spent thousands in legal fees and consulting time opposing ECM’s broad requests and gathering documents. *Id.*, ¶ 14. It should not be required to spend more or to jeopardize its own business.

III. ARGUMENT

A. General Objections.

Rather than repeat each of the following in response to various Requests, O.W.S. will set forth the following, and merely make reference to them in the Specific Objections.

“Relevance”—the Subpoena requests irrelevant information—including test results—concerning O.W.S. customers other than ECM. This information is completely unrelated to ECM and cannot be expected to yield information relevant to the allegations of the Complaint regarding false advertising, to the FTC’s proposed relief, or to ECM’s defenses. 16 C.F.R. 3.31(c)(1).

“Confidentiality”—the Subpoena seeks confidential and proprietary information regarding O.W.S. customers, many of whom are competitors of ECM. O.W.S. owes strict contractual duties of non-disclosure and confidentiality to each such customer, and, in the case of testing done for O.W.S.’s attorney customers, that information is protected by the work product privilege. *Tillinger Aff*, ¶ 8. This information is not within the control of O.W.S. but is instead owned and controlled by the customers. *Id.*, ¶ 9. Requiring O.W.S. to produce its customers’ information, even under the Protective Order, places O.W.S. in the untenable position of being in breach of contract and violating the trust and confidence of its own customers. *Id.*, ¶ 8. The Protective Order is insufficient to protect this information, especially that of ECM’s competitors, or to protect O.W.S.’s business interests, which will be irreparably harmed if required to respond as demanded. This point is particularly important given that ECM could have gone directly to its Additives customers, but did not. In fact, ECM has attempted to limit Complaint Counsel’s discovery requests to its customers. *See ECM’s Feb. 21, 2014, Motion for Protective Order*,

“Burden”—to the extent the Subpoena seeks information concerning O.W.S. customers other than ECM, that information is obtainable from other sources that are more convenient, less expensive and less burdensome—those customers. 16 C.F.R. 3.31(2)(i). For O.W.S. to identify responsive documents in several categories would be a seemingly insurmountable task. For example, O.W.S. has no way to reasonably search customer records to discern whether another customer's material contained an ECM Additive or related to ECM. Tillinger Aff., ¶ 6. If O.W.S. were required to produce those documents, to fully comply it would have to: (1) search all of its records for communications that positively state ECM Additives were tested, (2) review each test it has performed to exclude tests which the customer conclusively stated did not contain ECM Additives, (3) contact every other customer for every test performed to inquire whether their test contained ECM Additives, and (4) for each test that contained ECM Additives, examine that customer's confidentiality agreement, obtain the customer's consent and/or allow them to intervene. *Id.*, ¶ 6. This is an unduly burdensome task—that information is irrelevant, and ECM can obtain those documents directly from the customers it sells the ECM Additives to, who can then directly object or decide to produce their own information.

B. Request for Costs.

A subpoenaed party is only expected to bear reasonable costs. *See In Re Int'l. Tel. & Tel. Corp.*, No. 9000, 1981 FTC LEXIS 75, 97 F.T.C. 202, * 3. To determine whether expenses are reasonable, the Court should consider the costs of compliance in relation to the size and resources of the subpoenaed party. *Id.*

O.W.S.'s business operations consist of only two people: one consultant and one employee. Tillinger Aff., ¶ 10. Any time spent by them in complying with the Subpoena impacts O.W.S.'s ability to operate. O.W.S.'s average annual revenue over the last three years was approximately \$698,000, and its average annual profit approximately \$11,000. *Id.*, ¶ 11.

O.W.S. has already incurred significant costs as a direct result of the Subpoena and will continue to do so. As of the filing of this Motion, O.W.S. has incurred legal fees of approximately \$19,000 and already spent approximately 60 hours, at a cost of approximately \$5,500, responding to the Subpoena—already eliminating O.W.S.'s 2014 profit. *Id.*, ¶ 14.

O.W.S. informed ECM that responding to the Subpoena would impose a burden on it with little or no relevance to this case. *See* Statement of Christine M. Haaker (“Haaker Stmt.”) (“Exhibit 3”).¹ ECM made these *exact* objections to document requests from the FTC. *See* Respondent's Opposition to Complaint Counsel's Motion to Compel. ECM therein accused the FTC of conducting a “fishing expedition” (*Id.*, 7). Yet, here, ECM could not identify any documents that O.W.S. has that will be helpful to its defense. Haaker Stmt., p. 4.

ECM is a party to this proceeding—O.W.S. is not. *See AF holdings LLC v. Does*, 286 F.R.D. 39 (D. D.C. 2012) (test for “undue burden” in responding to subpoena requires court to be sensitive to costs imposed on third-parties). O.W.S. does not compete in ECM’s industry and has absolutely no stake in the outcome of this Proceeding. ECM has had ample time to pursue discovery directly from its customers who purchased ECM Additives. 16 C.F.R. 3.31(2)(ii). The expenses and burden to O.W.S.’s business interests and of searching for and producing such a wide range of documents far outweighs any benefit. 16 C.F.R. 3.31(2)(iii).

O.W.S. believes the expenses it has been forced to incur are unreasonable and seeks payment for such expenses from ECM. At minimum, O.W.S. requests that ECM be ordered to pay for all additional expenses it will incur if this Motion, or any portion thereof, is denied.

C. Specific Objections to Requests.

¹ While some requests have been limited by agreement (Haaker Stmt.), the Subpoena originally requested confidential information completely unrelated to ECM. ECM had no basis to request that information, and any costs incurred as a result by O.W.S. are unreasonable.

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1. All documents and correspondence concerning ECM BioFilms, Inc., Robert Sinclair, and/or ECM BioFilms Master Batch Pellets.

O.W.S. is searching for and producing documents that are not customer specific and that generically reference ECM, Mr. Sinclair and/or the ECM Master Batch Pellets, however, O.W.S. objects to further production as follows:

First, Relevance.

Second, Confidentiality.

Third, Burden.

O.W.S. requests that this Request be limited to exclude documents concerning O.W.S. customers other than ECM, and to only include documents concerning ECM that are non-customer specific (not confidential) to the extent readily located.

3. All correspondence between O.W.S. and any member, employee, representative, or officer of the United States Federal Trade Commission.

O.W.S. is searching for and producing documents readily identifiable as correspondence with the FTC that may regard ECM, however, O.W.S. objects to further production as follows:

First, Relevance.

Second, this Request is unduly burdensome. O.W.S. does not know the name, identity, or even words to search for to know whether correspondence has been with a "member, employee, representative, or officer" of the FTC.

O.W.S. requests that the Court limit this Request to those documents where O.W.S. knowingly corresponded with the FTC in regard to ECM.

4. All correspondence between O.W.S. and any member, employee, and/or representative of the Biodegradable Products Institute ("BPI").

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O.W.S. is searching for and producing correspondence that is not customer specific and that relates generally to the BPI, however, O.W.S. objects to further production as follows:

O.W.S. interacts with the BPI on three levels:

O.W.S. deals with BPI on behalf of O.W.S. customers regarding requests for certification of customers' own products. *Id.*, ¶ 12. BPI administers a certification mark for compostable products; many O.W.S. customers seek this certification. *Id.* Communications with the BPI in this capacity can include confidential and proprietary information such as material or product formulations, product construction, manufacturing techniques, testing results, and marketing plans. *Id.*, ¶ 12. These discussions are unrelated to ECM and the Proceeding.

O.W.S. participates—along with one representative of the BPI—on subcommittee D20.96 of the American Society for Testing and Materials (“ASTM”). *Id.* Robert Sinclair (“Mr. Sinclair”) of ECM is also on this committee and has access to communications related thereto. *Id.*

Finally, because some of O.W.S.’s customers are members of the BPI, technically every correspondence between O.W.S. and those members is responsive to this Request. *Id.* Likely hundreds of correspondence exist in the normal course of O.W.S.’s business with such customers in their own commercial capacities, not in their capacity as members of BPI. *Id.*, ¶ 4.

With this backdrop, O.W.S. objects for the following reasons:

First, Relevance.

Second, Confidentiality. This Request seeks communications between O.W.S. and the BPI on behalf of O.W.S. customers, as well as communications between O.W.S. and any customer that happens to be a member of the BPI.

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Third, this Request is unduly burdensome. As written, this Request seeks literally every communication between O.W.S. and any of its customers that happens to be a member of the BPI. The vast majority—if not all—of these communications are completely unrelated to ECM. *Id.*, ¶ 6. The burden and expense far outweighs those documents' likely benefit.

Fourth, this Request seeks documents that are obtainable from a less burdensome source—Mr. Sinclair of ECM, who is on ASTM subcommittee D20.96. *Id.*, ¶ 12.

O.W.S. requests that the Court limit this Request to only correspondence between O.W.S. and known employees of the BPI in regard to the work of BPI to the extent the correspondence directly pertains to ECM itself, and to exclude O.W.S.'s customers' correspondence and such customers' BPI certification efforts.

5. **(By Agreement, rephrased): Since January 1, 2010, all documents concerning any test or report (including any notes and raw data) performed or written to the biodegradability of plastic products under ASTM standards D5511 and D5526 for ECM and/or a plastic product containing the ECM additive.**

O.W.S. objects as follows:

First, Relevance.

Second, Confidentiality.

Third, Burden. Testing under these ASTM standards constitutes a significant amount of O.W.S.'s business. *Tillinger Aff.*, ¶ 13. Compliance would require O.W.S. to search for and produce other customers' documents. *Id.*, ¶ 6. In addition, O.W.S. would have to notify each of its customers of this production to obtain permission or allow the customer to object. *Id.*, ¶ 8. The burden and expense involved in identifying and producing all responsive documents far outweighs those documents' likely benefit.

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For these reasons, O.W.S. requests that the Court limit this Request to include only responsive tests performed for ECM.

6. **All documents concerning the education, training, experience, and employee evaluations of Mr. Bruno de Wilde.**
8. **All documents concerning the education, training, experience, and employee evaluations of Mr. Richard Tillinger.**

These Requests seek entirely irrelevant documents. Neither Mr. De Wilde, Mr. Tillinger nor O.W.S. are parties to or witnesses in this Proceeding, nor are they on trial. Requesting this information, particularly evaluations, under these circumstances is entirely improper.

O.W.S. requests that this Court quash these Requests.

10. **(By Agreement, rephrased:) “Since January 1, 2010, all documents and correspondence concerning any amendments, vote(s); and/or ‘negatives’ related to ASTM standard D5511 and D5526.”**

First, Relevance.

Second, Burden. The burden of producing responsive documents far outweighs their expected benefit.

Finally, this Request seeks documents that are obtainable from a less burdensome source—Mr. Sinclair of ECM. Mr. Sinclair is on the same ASTM subcommittee as O.W.S. Tillinger Aff., ¶ 12.

O.W.S. requests that this Court quash this Request.

C. Objections to ECM’s Subpoena Instructions.

Instruction C requires a complete copy of each document to be produced, regardless of relevance. In light of the fact that most of the requested information is completely irrelevant and highly sensitive, O.W.S. requests that this Court strike this instruction and allow O.W.S. to produce only those portions of documents that relate to ECM's testing of ECM’s own products.

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Instruction L seeks to improperly require answers to interrogatories in regard to documents withheld for privilege. O.W.S. will comply with the 16 C.F.R. 3.38A, and accordingly, requests that this Court strike this instruction.

IV. CONCLUSION

ECM issued the Subpoena to O.W.S. in what appears to be an effort to harass and harm O.W.S. and/or O.W.S. customers, and to avoid the expense and burden of going directly to its own customers for the information. For the foregoing reasons, O.W.S. requests that this Court quash and/or limit the Requests of Subpoena and award O.W.S. its expenses.

Respectfully submitted,

/s/Christine M. Haaker

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Attorneys for Third-Party O.W.S. Inc.

CERTIFICATE OF SERVICE AND CERTIFICATE OF ELECTRONIC FILING

I hereby certify that on March 12, 2014, I caused a true and correct copy of the paper original of the foregoing Motion to Quash and/or Limit Subpoena Duces Tecum and for an Award of Expenses to be filed and served as follows:

On electronic copy via the FTC E-Filing System and one electronic courtesy copy to the **Office of the Secretary:**

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW, Room H-159
Washington, DC 20580
Email: secretary@ftc.gov

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

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

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

Jonathan W. Emord
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One electronic copy to **Counsel for the Claimant:**

Jonathan Cohen
Division of Enforcement
Bureau of Consumer Protection
Federal Trade Commission
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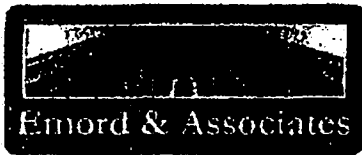
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I further certify that I possess a paper copy of the signed original of the foregoing document that is available for review by the parties and the adjudicator.

/s/Christine M. Haaker
Christine M. Haaker (#0063225)
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1050 SEVENTEENTH STREET, N.W.
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(202) 466-6937 | FAX (202) 466-6938

February 13, 2014

Lou F. Caputo, Esq.
602.388.8901
lcaputo@emord.com

VIA UPS

Organic Waste Systems, Inc.
7155 Five Mile Road
Cincinnati, OH 45230


Re: *In the Matter of ECM BioFilms, Inc., Docket No. 9358*

Dear Sir or Madam:

Pursuant to the Federal Trade Commission's Rules of Practice, please find enclosed Respondent ECM BioFilms, Inc.'s subpoena *duces tecum* to O.W.S. This subpoena requests the production of documents and other materials. Included with the subpoena is Schedule A, which describes the instructions and specific requests of Respondent and a copy of the Protective Order issued in this matter.

Please provide all requested documents no later than February 28, 2014. We welcome you to contact us with questions.

Sincerely,


Jonathan W. Emord
Peter A. Arhangelsky
Lou F. Caputo

Exhibit

1



SUBPOENA DUCES TECUM

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

1. TO General Counsel and/or other Executive for Organic Waste Systems 7155 Five Mile Road Cincinnati, OH 45230	2. FROM UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION
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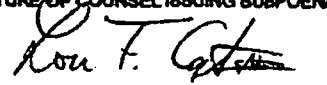
This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in item 5, and at the request of Counsel listed in item 9, in the proceeding described in item 6.

3. PLACE OF PRODUCTION Emord & Associates, P.C. 3210 S. Gilbert Road, Suite 4 Chandler, AZ 85286	4. MATERIAL WILL BE PRODUCED TO Peter Arhangelsky 5. DATE AND TIME OF PRODUCTION February 28, 2014, 5:00 PM EST
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6. SUBJECT OF PROCEEDING In the matter of ECM BioFilms, Inc., Docket No. 9358

7. MATERIAL TO BE PRODUCED See Attached Schedule A for description of all documents and materials.

8. ADMINISTRATIVE LAW JUDGE Chief Administrative Law Judge D. Michael Chappell Federal Trade Commission Washington, D.C. 20580	9. COUNSEL AND PARTY ISSUING SUBPOENA Jonathan W. Emord, Peter Arhangelsky, Lou Caputo Emord & Associates, P.C. for Respondent ECM BioFilms, Inc.
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DATE SIGNED 2/13/14	SIGNATURE OF COUNSEL ISSUING SUBPOENA 
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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 9, 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 9 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 9.

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

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

**SCHEDULE "A" TO SUBPOENA DUCES TECUM DIRECTED TO
ORGANIC WASTE SYSTEMS, INC. (UNITED STATES HQ)
INSTRUCTIONS**

- A. Unless otherwise specified, the time period covered by a numbered request shall be limited to the time period extending from January 1, 2007 until the present date, unless differently stated therein.
- B. Documents must be delivered to Counsel for Respondent at the following address:

Emord & Associates, P.C.,
3210 South Gilbert Road, Suite 4
Chandler, AZ 85286
- C. A complete copy of each document should be submitted even if only a portion of the document is within the terms of the numbered request. The document shall not be edited, cut or expunged and shall include all covering letters and memoranda, transmittal slips, appendices, tables or other attachments.
- D. All information submitted shall be clearly and precisely identified as to the numbered request(s) to which it is responsive. Pages in the submission should be numbered consecutively, and each page should be marked with a unique "Bates" document tracking number.
- E. Documents covered by these numbered requests are those which are in your possession or under your actual or constructive custody or control, whether or not such documents were received from or disseminated to any other person or entity, including attorneys, accountants, directors, officers and employees.
- F. Documents that may be responsive to more than one numbered request need not be submitted more than once. However, your response should indicate, for each document submitted, each numbered request to which the document is responsive. Identification shall be by the Bates number if the documents(s) were so numbered when submitted or by author and subject matter if not so numbered.
- G. If any of the documentary materials requested in these numbered requests are available in machine-readable form (such as floppy or hard disks, drums, core storage, magnetic tapes or punch cards), state the form in which it is available and describe the type of computer or other machinery required to read the documents involved. If the information requested is stored in a computer or a file or record generated by a computer, indicate whether you have an existing program that will print the information in readable form and state the name, title, business address and telephone number of each person who is familiar with the program.
- H. All objections to these numbered requests, or to any individual request, must be raised in the initial response or otherwise waived.

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- I. The Federal Trade Commission's Rules of Practice describes withholding requested material responsive to a subpoena under Rule 3.38A. For your convenience, Rule 3.38A states:

(a) Any person withholding material responsive to a subpoena issued pursuant to §3.34 or §3.36, written interrogatories requested pursuant to §3.35, a request for production or access pursuant to §3.37, or any other request for the production of materials under this part, shall assert a claim of privilege or any similar claim not later than the date set for production of the material. Such person shall, if so directed in the subpoena or other request for production, submit, together with such claim, a schedule which describes the nature of the documents, communications, or tangible things not produced or disclosed - and does so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim. The schedule need not describe any material outside the scope of the duty to search set forth in §3.31(c)(2) except to the extent that the Administrative Law Judge has authorized additional discovery as provided in that paragraph.

(b) A person withholding material for reasons described in §3.38A(a) shall comply with the requirements of that subsection in lieu of filing a motion to limit or quash compulsory process.

- J. The Federal Trade Commission's Rules of Practice describes motions to quash and/or limit subpoenas under Rule 3.34(c). For your convenience, Rule 3.34 states in relevant part:

(c) *Motions to quash; limitation on subpoenas.* Any motion by the subject of a subpoena to limit or quash the subpoena shall be filed within the earlier of 10 days after service thereof or the time for compliance therewith. Such motions shall set forth all assertions of privilege or other factual and legal objections to the subpoena, including all appropriate arguments, affidavits and other supporting documentation, and shall include the statement required by §3.22(g). Nothing in paragraphs (a) and (b) of this section authorizes the issuance of subpoenas except in accordance with §§3.31(c)(2) and 3.36.

- K. Some documents that you are requested to provide may be confidential. In the Protective Order dated October 22, 2013, Chief Administrative Law Judge D. Michael Chappell ordered that a party conducting discovery from third parties shall provide such third parties a copy of the Protective Order so as to inform third parties of his, her, or its rights. See ALJ Protective Order at 2, ¶4. Accordingly, a copy of the Protective Order is attached with this subpoena.
- L. If any requested material is withheld based on a claim of privilege, submit together with such claim a schedule of the items withheld. For each item withheld, the schedule should state: (a) the item's type, title, specific subject matter and date; (b) the names, addresses, positions and organizations of all authors or recipients of the item; and (c) the specific grounds for

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claiming that the item is privileged. If only part of a responsive document is privileged, all non-privileged portions of the document must be submitted.

DESCRIPTION OF DOCUMENTS REQUESTED

Please produce the original or copies of the following documents (the term "documents" shall include all records, books of account, worksheets, checks, instructions, specifications, manuals, reports, books, periodicals, pamphlets, publications, raw and refined data, memoranda, graphs, drawings, notes, lab books, advertisements, list studies, meeting minutes, working papers, transcripts, magnetic tapes or discs, punch cards, computer printouts, letters, correspondence¹, agreements, drafts of agreements, telegrams, email, drafts, proposals, employee records, customer records, log files recommendations, and any other data recorded in readable and/or retrievable form, whether typed, handwritten, reproduced, magnetically recorded, coded, or in any other ay made readable or retrievable):

1. All documents concerning² ECM BioFilms, Inc.³
2. All correspondence between O.W.S. and any employee, representative, or distributor of ECM BioFilms, Inc.
3. All documents sent or received by OWS employees making reference to ECM BioFilms, Robert Sinclair, or ECM BioFilms Master Batch Pellets

¹ The term "correspondence" is intended, used, and defined in its broadest sense allowable under the FTC Rules of Practice. Such term includes, but is not limited to embrace emails, documents appended to emails, reports and any other written or electronic document of any kind that is communicated from the subpoena recipient or its agents to any and all other persons and entities.

² The term "concerning" is intended, used, and defined in its broadest sense allowable under the FTC Rules of Practice and should be considered to be synonymous with regarding, relating to, mentioning, discussing, referencing, implicating, explaining, or about the documents subject to any and all individual requests in this subpoena.

³ ECM BioFilms Inc. is an American corporation with its principal place of business at Victoria Place – Suite 225, 100 South Park Place, Painesville, Ohio 44077, United States.

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4. All documents concerning Gary Plastic Packaging Corporation⁴ (GPPC) and/or any test or report (including any and all notes and raw data) performed or written for GPPC, including, but not limited to, "Study GLH-2: Review of Several Documents, Reports and Statements on Biodegradation of ECM Masterbatch Pellets."

5. All documents concerning any test or report (including any and all notes and raw data) performed or written about a product or substance containing any product of ECM BioFilms, Inc., including "ECM Masterbatch Pellets."

6. All documents concerning any test or report (including any and all notes and raw data) performed or written about products or substances claims to be biodegradable.

7. All correspondence between O.W.S. and any employee or representative or officer of GPPC.

8. All correspondence between O.W.S. and any member, employee, representative, or officer of the United States Federal Trade Commission.

9. All documents concerning the education, training, and experience of Mr. Bruno de Wilde.

10. A list of all tests and reports authored by Mr. de Wilde.

11. All employee evaluations of Mr. de Wilde.

12. All documents written or authored by Mr. de Wilde concerning biodegradable plastics.

13. All documents concerning the education, training, and experience of Mr. Richard Tillinger.

14. All employee evaluations of Mr. Tillinger.

⁴ Gary Plastic Packaging is an American company located at 1340 Viele Avenue, Bronx, NY 10474, United States.

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15. A list of all tests and reports authored by Mr. Tillinger.
16. All documents written or authored by Mr. Tillinger concerning biodegradable plastics.
17. All documents concerning or related to any version of the American Society of Testing and Materials' ("ASTM") testing methods D5511 and D5526.

INSTRUCTIONS FOR COMPLIANCE BY DELIVERY OF DOCUMENTS

If documents are delivered by hand, overnight delivery service, certified mail, or any other means your response shall be accompanied by an affidavit, executed by you that provides:

The names, addresses, positions, and organizations of all persons whose files were searched and all persons who participated in or supervised the collection of the documents⁵, and a brief description of the nature of the work that each person performed in connection with the collecting the documents.

A statement that the search was complete and that responsive documents are being produced.

A statement as to whether the documents were made at or near the time of the occurrence of the matters set forth in such documents, kept in the course of your regularly conducted business, whether it was your regular practice to make and keep such documents, and the custodian of records and/or other executive(s) and/or employees of O.W.S who have knowledge of such matters, can authenticate the documents and materials produced, and who can testify to such matters.

A statement as to whether any document called for by the subpoena has been misplaced, lost or destroyed. If any document has been misplaced, lost, or destroyed, identify: type of documents the date (or approximate date) of the documents, subject matter of the documents, all persons to whom it was addressed, circulated, or shown; its date of destruction, or when it was lost or misplaced; the reason it was destroyed, lost or misplaced; and the custodian of the documents on the date of its destruction, loss, or misplacement.

⁵ "Document" and "documents" as used in this Attachment are defined in this subpoena's "Description of Documents Requested" section.

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A declaration that states:

I declare (or certify, verify, or state) under penalty of perjury that the forgoing is true and correct.

Executed on [date].

[Signature of party executing the declaration]

Respectfully submitted,

/s/ Jonathan W. Emord

Jonathan W. Emord, Esq.
EMORD & ASSOCIATES, P.C.
11808 Wolf Rune Lane
Clifton, VA 20124
Ph: 202-466-6937
Fx: 202-466-6938
Em: jemord@emord.com
Counsel to ECM BioFilms, Inc.

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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES


In the Matter of
ECM BioFilms, Inc.,
a corporation, also d/b/a
Enviroplastics International,
Respondent.

DOCKET NO. 9358

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:


D. Michael Chappell
Chief Administrative Law Judge

Date: October 22, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

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6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9358" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9358" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

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10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

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

STATE OF OHIO)
) SS:
COUNTY OF MONTGOMERY)

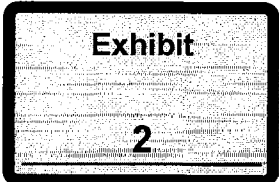
I, Richard Tillinger, affiant herein, after first being duly cautioned and sworn, state as follows:

1. From November, 1991, through December, 2004, I was employed full time at O.W.S. Inc. ("O.W.S.") as a manager. I have been a contractor for O.W.S. from December, 2004, to the present. I am in possession of the majority of O.W.S.'s business records, including what records it has regarding O.W.S.'s customers and testing, as well as other records that O.W.S. keeps in the ordinary course of business.

2. I have personal knowledge of and am competent to testify as to all matters stated in this affidavit.

3. O.W.S. is an independent testing company that tests various types of material for biodegradability. Some of the conventional plastics that O.W.S. tests might contain additives. Some of the conventional plastics that O.W.S. tests that might contain additives might contain ECM BioFilms, Inc.'s ("ECM") Master Batch Pellets ("ECM Additive").

4. Since 2007, O.W.S. has performed hundreds of tests for over one hundred customers.



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5. When a customer submits material to O.W.S. to test, O.W.S. only knows as much about the material as the customer willingly divulges. As a result, O.W.S. often tests material without knowing what the material is, including whether the material is a biopolymer plastic or a conventional plastic.

6. Of the conventional plastics that it tests, O.W.S. may or may not know that the material it is testing contains an additive. Even if O.W.S. knows that a conventional plastic contains an additive, it may or may not know whether it is an ECM Additive. O.W.S. has no way to identify whether a given product contained an ECM Additive or is related to ECM in any way unless this information is divulged by the customer. O.W.S. does not know what is in any ECM product and thus cannot deduce from its test reports whether any given material contains ECM Additives. If O.W.S. were required to produce every document submitted by any customer relating to ECM or ECM Additives, in order to fully comply it would have to: (1) search all of its records for communications that positively state ECM Additives were in the material tested, (2) review each of the hundreds of tests that it has performed in the relevant timeframe in order to exclude tests in which the customer conclusively stated that the material did not contain ECM Additives, (3) contact every other customer for every other test performed in the relevant timeframe to inquire whether samples submitted by that customer contained ECM Additives, and (4) for each test that contained ECM Additives, examine that customer's confidentiality agreement, obtain the customer's consent and/or allow them to intervene. To O.W.S.'s knowledge, very few tests concern ECM.

7. O.W.S.'s customers include, but are not limited to, manufacturers testing their own products, manufacturers testing their competitors' products, trade organizations, and

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attorneys testing their clients' products. Several of O.W.S.'s customers are competitors of ECM in regards to additives, while many more are competitors in the biodegradable materials industry.

8. The majority of O.W.S.'s customers require strict confidentiality, through confidentiality agreements or otherwise. Information concerning O.W.S.'s attorney customers is privileged. O.W.S. vehemently protects its customers' confidential information, and has refused to distribute information concerning ECM's test results for this reason. O.W.S.'s affirmatively represents to its customers in its Terms and Conditions: "Confidentiality Statement. The Testing Facility will treat strictly confidential all relevant information on the samples disclosed by the Sponsor as well as all results obtained in executing the Test."

9. O.W.S. does not own information concerning its customers' tests—that information belongs to the customers.

10. O.W.S.'s regular business operations consist of only myself, as a consultant, and one O.W.S. employee.

11. O.W.S.'s annual revenue over the last three years (2011, 2012 and 2013) was approximately \$698,000. O.W.S.'s annual profit over the same time period was approximately \$11,000.

12. O.W.S. deals with the Biodegradable Products Institute ("BPI") on behalf of O.W.S. customers regarding requests for certification of the customers' own products. BPI administers a certification mark for compostable products, and many O.W.S. customers seek this certification. Communications with the BPI in this capacity can include confidential and proprietary information such as material or product formulations, product construction, manufacturing techniques, testing results, and marketing plans. O.W.S. also participates, along with a representative of the BPI, on subcommittee D20.96 of the American Society for Testing

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and Materials ("ASTM"). Robert Sinclair of ECM is also on this subcommittee. While some O.W.S. customers are members of the BPI, O.W.S. is not.

13. Testing under ASTM standards D5511 and D5526 constitutes a significant amount of O.W.S.'s business.

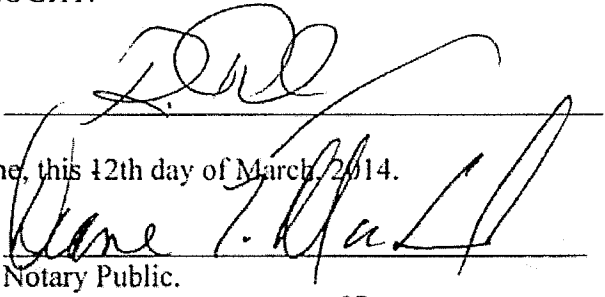
14. As of the filing of the Motion to Quash or Limit Subpoena ("Motion"), O.W.S. has collectively spent approximately 60 hours at an internal cost to O.W.S. of approximately \$5,500 searching for responsive documents and meeting with counsel in regard to opposing the Subpoena, document collection, and production. As of the filing of the Motion, O.W.S. has incurred approximately \$19,000 in legal fees.

15. The Subpoena has and continues to place extensive burdens on O.W.S.

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FURTHER AFFIANT SAYETH NAUGHT.

Sworn to and subscribed by me, this 12th day of March, 2014.


Notary Public.

DIANE E. MacLEOD
NOTARY PUBLIC - STATE OF OHIO
MY COMMISSION EXPIRES 11-24-18

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of

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

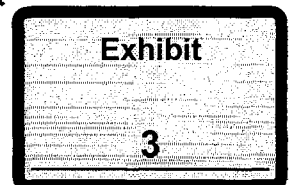
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) Docket No. 9358
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**STATEMENT REGARDING MEET AND CONFER PURSUANT TO 16 C.F.R. § 3.22(g)
AND ADDITIONAL PROVISION 4 OF THE SCHEDULING ORDER**

I, Christine M. Haaker, counsel for non-party O.W.S. Inc. ("O.W.S.") respectfully submit this Statement pursuant to 16 C.F.R. 3.22(g). Prior to filing the Motion to Quash the Subpoena ("Motion") served on O.W.S. by ECM BioFilms, Inc. ("ECM"), I met and conferred with counsel for ECM in a good faith effort to resolve the issues raised by the motion via written correspondence and telephone. We have been unable to reach an agreement.

On or about February 13, 2014, ECM attempted to serve a subpoena to "Organic Waste Systems, Inc." at 7155 Five Mile Rd., Cincinnati, OH 45230 (the "Ineffective Subpoena"). A copy of the Ineffective Subpoena is attached as "Exhibit A.") No entity named Organic Waste Systems, Inc. exists at that address.

In any event, O.W.S. became aware of the Ineffective Subpoena on February 27, 2014, I notified ECM's counsel of the Ineffective Subpoena and that no entity named Organic Waste Systems, Inc. exists at the address at which it was served. (See "Exhibit B.") As a professional courtesy, I agreed to accept service of a subpoena on behalf of O.W.S. if that was the party ECM intended to serve. I also informed ECM's counsel that the Ineffective Subpoena sought



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information that was irrelevant and/or confidential and proprietary and asked—should ECM eventually serve a subpoena to O.W.S.—that ECM consider narrowing the scope of the requests.

Id. Also on February 27, 2014, I spoke to counsel for ECM on the telephone. During this conversation, I again relayed my concerns about ECM seeking irrelevant and confidential material and gave suggestions on how to narrow the scope of the requests.

On February 28, 2014, ECM served the subpoena currently at issue (“Subpoena”) on O.W.S. by emailing a copy of it to me. (*See* “Exhibit C.”) While the Subpoena omitted a few requests from the Ineffective Subpoena, it added additional requested documents and still sought burdensome production and confidential information regarding O.W.S.’s customers that has no relevance to ECM. For example, the Subpoena added Request No. 4, which actually makes it significantly more broad and invasive than the Ineffective Subpoena.

On March 6, 2014, I emailed Lou Caputo (“Mr. Caputo”)¹, one of ECM’s counsel, to inform him that the Subpoena was still too broad, sought information already in the possession of ECM, was unduly burdensome and expensive to comply with, and sought confidential information from O.W.S.’s customers that is unrelated to this case. (*See* Exhibit D.”) I requested that we discuss these issues. *Id.* On March 7, 2014, I sent Mr. Caputo detailed objections (“March 7, 2014 Objections”) to each request and, again, requested that we discuss them. (*See* “Exhibit E.”).

In the March 7, 2010 Objections, I again informed Mr. Caputo that the Subpoena sought test results of O.W.S. customers other than ECM, that information regarding those tests are the customer’s property and not O.W.S.’s, that the confidentiality of O.W.S.’s customers is absolutely critical to its business, and that O.W.S. performs hundreds of tests a year and has no

¹ When Mr. Caputo emailed the Subpoena to me at 7:15 p.m. on Friday, February 28, 2014, he indicated he would be traveling but checking his email. Therefore, I emailed rather than telephoning him.

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reasonable way to identify which tests contain ECM (and in many cases, may not even know which tests contain ECM). *Id.* I also informed Mr. Caputo that compliance with the subpoena would require O.W.S.—a non-party with no stake in this action—to search through hundreds of tests in order to identify responsive documents and individually contact each customer whose testing involved ECM to either obtain their permission to produce the documents or allow them the chance to intervene. I requested that Mr. Caputo limit the Subpoena—to the extent it sought information from O.W.S. concerning its customers—to information concerning ECM’s testing of its own products. I did not hear back from Mr. Caputo.

On March 10, 2014, I asked Mr. Caputo to respond to my March 7, 2014 Objections. (*See* “Exhibit F.”) Later that day, Mr. Caputo emailed me general responses to those objections. (*See* “Exhibit G.”) Mr. Caputo agreed to eliminate Requests Number 2, 7, and 9. *Id.* Mr. Caputo also agreed to limit the time frame for Requests No. 4, 5 and 10, and limited Request No. 5 to tests or reports concerning ECM and/or a plastic product containing the ECM additive. *Id.* Even with these limitations, the Subpoena continues to be burdensome and to seek confidential information of and owned by O.W.S.’s other customers.

On March 11, 2014, at 1:00 p.m. EST, I met and conferred with Mr. Caputo via telephone. My associate, Jeremy Smith, was also present. While we discussed each remaining Request individually, I expressed that O.W.S.’s main concerns encompass multiple requests (Nos. 1, 4, 5, and 10) and are that: (1) the Subpoena seeks confidential information of O.W.S. customers and that production of those documents would harm O.W.S.’s relationship with those customers, and (2) that even if the Subpoena were limited to information concerning other customers’ tests that relate to ECM (for example, materials submitted by other customers for

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testing that contain ECM Additives), searching for those documents would be incredibly burdensome.

I explained that O.W.S. tests hundreds of products a year, that many of these tests do not concern ECM, and that O.W.S. may or may not know whether a test concerns ECM. I explained that, in order to produce documents concerning customers other than ECM that relate to ECM or the ECM Additive, O.W.S. would have to: (1) search communications regarding every one of the hundreds of tests it has performed in the relevant time frame; (2) discern each of the customers with such tests are covered by a confidentiality agreement, (3) review the confidentiality agreement for requirements; (4) individually contact each customer in accordance with the specific terms of their confidentiality agreement to obtain permission to produce their documents or to allow the customer the chance to object; and (5) review and redact those responsive documents. I informed Mr. Caputo that O.W.S. is a small company and such an extensive and expensive task has the potential to substantially injure O.W.S.'s relationship with its customers and costs O.W.S. significant amounts in comparison to its revenues and profits.

For these reasons, I again requested that O.W.S. only be required to produce documents concerning ECM testing of ECM products, and not be required to produce documents concerning tests for other customers, whether or not they relate to ECM. Mr. Caputo said he would take this Request to his client.

To avoid such a monumental search I also asked Mr. Caputo if he could identify any specific customers or specific documents that he thought would be helpful. He could not. I asked him what exactly he was looking for and what information he hoped to receive from O.W.S. that he thought would be helpful or relevant to his client's case. He told me that he did not know what he was looking for, and that he thought the broad range of documents requested

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in the Subpoena would be relevant because O.W.S. has been mentioned by other parties in discovery.

I asked to limit Request Number 3 to communications with the Federal Trade Commission concerning ECM or their Green Guides. Mr. Caputo said he would take this request to his client.

I asked to limit Request Number. 4 to communications with members of the BPI where those members were acting in their capacity as members of the BPI. I further asked to limit this Request to exclude communications that also involved Robert Sinclair ("Mr. Sinclair"). Mr. Caputo said he would take these requests to his client.

I asked to limit Requests 6 and 8 to documents constituting an already-existing resume or curriculum vitae for Bruno De Wilde and Richard Tillinger or biography material perhaps submitted for a speaking engagement, and to exclude a comprehensive list of training, experience, or employee evaluations. Mr. Caputo said he would take this Request to his client.

I asked to limit Request Number 10 to documents that Mr. Sinclair did not have access to. Mr. Caputo said he would take this Request to his client. As of the filing of this Motion, I have not received a response to these requests to limit.

Despite these aforementioned good faith efforts, I have been unable to reach agreement with counsel for ECM regarding the issues set forth in the Motion.

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Dated: March 12, 2014



Christine M. Haaker (#0063225)
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Austin Landing I
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Miamisburg OH 45342
Dayton, Ohio 45401-8801
Telephone: (937) 443-6822
Facsimile: (937) 443-6635
E-mail: Christine.Haaker@Thompsonhine.com

Attorney for Third-Party O.W.S. Inc.

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A Professional Corporation

WASHINGTON | VIRGINIA | PHOENIX

11808 WOLF RUN LANE
CLIFTON, VA 20124

3210 S. GILBERT ROAD
SUITE 4
CHANDLER, AZ 85286
(602) 388-8899 | FAX (602) 393-4361

1050 SEVENTEENTH STREET, N.W.
SUITE 600
WASHINGTON, D.C. 20036
(202) 466-6937 | FAX (202) 466-6938

February 13, 2014

Lou F. Caputo, Esq.
602.388.8901
lcaputo@emord.com

VIA UPS

Organic Waste Systems, Inc.
7155 Five Mile Road
Cincinnati, OH 45230

Re: *In the Matter of ECM BioFilms, Inc., Docket No. 9358*

Dear Sir or Madam:

Pursuant to the Federal Trade Commission's Rules of Practice, please find enclosed Respondent ECM BioFilms, Inc.'s subpoena *duces tecum* to O.W.S. This subpoena requests the production of documents and other materials. Included with the subpoena is Schedule A, which describes the instructions and specific requests of Respondent and a copy of the Protective Order issued in this matter.

Please provide all requested documents no later than February 28, 2014. We welcome you to contact us with questions.

Sincerely,

Jonathan W. Emord
Peter A. Arhangelsky
Lou F. Caputo

EXHIBIT

A



SUBPOENA DUCES TECUM

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

<p>1. TO General Counsel and/or other Executive for Organic Waste Systems 7155 Five Mile Road Cincinnati, OH 45230</p>	<p>2. FROM UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

<p>3. PLACE OF PRODUCTION Emord & Associates, P.C. 3210 S. Gilbert Road, Suite 4 Chandler, AZ 85286</p>	<p>4. MATERIAL WILL BE PRODUCED TO Peter Arhangelsky</p> <hr/> <p>5. DATE AND TIME OF PRODUCTION February 28, 2014, 5:00 PM EST</p>
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6. SUBJECT OF PROCEEDING
 In the matter of ECM BioFilms, Inc., Docket No. 9358

7. MATERIAL TO BE PRODUCED
 See Attached Schedule A for description of all documents and materials.

<p>8. ADMINISTRATIVE LAW JUDGE Chief Administrative Law Judge D. Michael Chappell Federal Trade Commission Washington, D.C. 20580</p>	<p>9. COUNSEL AND PARTY ISSUING SUBPOENA Jonathan W. Emord, Peter Arhangelsky, Lou Caputo Emord & Associates, P.C. for Respondent ECM BioFilms, Inc.</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>DATE SIGNED 2/13/14</p>	<p>SIGNATURE OF COUNSEL ISSUING SUBPOENA </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 9, 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 9 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 9.

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

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

**SCHEDULE "A" TO SUBPOENA DUCES TECUM DIRECTED TO
ORGANIC WASTE SYSTEMS, INC. (UNITED STATES HQ)
INSTRUCTIONS**

- A. Unless otherwise specified, the time period covered by a numbered request shall be limited to the time period extending from January 1, 2007 until the present date, unless differently stated therein.
- B. Documents must be delivered to Counsel for Respondent at the following address:

Ernord & Associates, P.C.,
3210 South Gilbert Road, Suite 4
Chandler, AZ 85286
- C. A complete copy of each document should be submitted even if only a portion of the document is within the terms of the numbered request. The document shall not be edited, cut or expunged and shall include all covering letters and memoranda, transmittal slips, appendices, tables or other attachments.
- D. All information submitted shall be clearly and precisely identified as to the numbered request(s) to which it is responsive. Pages in the submission should be numbered consecutively, and each page should be marked with a unique "Bates" document tracking number.
- E. Documents covered by these numbered requests are those which are in your possession or under your actual or constructive custody or control, whether or not such documents were received from or disseminated to any other person or entity, including attorneys, accountants, directors, officers and employees.
- F. Documents that may be responsive to more than one numbered request need not be submitted more than once. However, your response should indicate, for each document submitted, each numbered request to which the document is responsive. Identification shall be by the Bates number if the documents(s) were so numbered when submitted or by author and subject matter if not so numbered.
- G. If any of the documentary materials requested in these numbered requests are available in machine-readable form (such as floppy or hard disks, drums, core storage, magnetic tapes or punch cards), state the form in which it is available and describe the type of computer or other machinery required to read the documents involved. If the information requested is stored in a computer or a file or record generated by a computer, indicate whether you have an existing program that will print the information in readable form and state the name, title, business address and telephone number of each person who is familiar with the program.
- H. All objections to these numbered requests, or to any individual request, must be raised in the initial response or otherwise waived.

PUBLIC DOCUMENT

- I. The Federal Trade Commission's Rules of Practice describes withholding requested material responsive to a subpoena under Rule 3.38A. For your convenience, Rule 3.38A states:

(a) Any person withholding material responsive to a subpoena issued pursuant to §3.34 or §3.36, written interrogatories requested pursuant to §3.35, a request for production or access pursuant to §3.37, or any other request for the production of materials under this part, shall assert a claim of privilege or any similar claim not later than the date set for production of the material. Such person shall, if so directed in the subpoena or other request for production, submit, together with such claim, a schedule which describes the nature of the documents, communications, or tangible things not produced or disclosed - and does so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim. The schedule need not describe any material outside the scope of the duty to search set forth in §3.31(c)(2) except to the extent that the Administrative Law Judge has authorized additional discovery as provided in that paragraph.

(b) A person withholding material for reasons described in §3.38A(a) shall comply with the requirements of that subsection in lieu of filing a motion to limit or quash compulsory process.

- J. The Federal Trade Commission's Rules of Practice describes motions to quash and/or limit subpoenas under Rule 3.34(c). For your convenience, Rule 3.34 states in relevant part:

(c) *Motions to quash; limitation on subpoenas.* Any motion by the subject of a subpoena to limit or quash the subpoena shall be filed within the earlier of 10 days after service thereof or the time for compliance therewith. Such motions shall set forth all assertions of privilege or other factual and legal objections to the subpoena, including all appropriate arguments, affidavits and other supporting documentation, and shall include the statement required by §3.22(g). Nothing in paragraphs (a) and (b) of this section authorizes the issuance of subpoenas except in accordance with §§3.31(c)(2) and 3.36.

- K. Some documents that you are requested to provide may be confidential. In the Protective Order dated October 22, 2013, Chief Administrative Law Judge D. Michael Chappell ordered that a party conducting discovery from third parties shall provide such third parties a copy of the Protective Order so as to inform third parties of his, her, or its rights. See ALJ Protective Order at 2, ¶4. Accordingly, a copy of the Protective Order is attached with this subpoena.
- L. If any requested material is withheld based on a claim of privilege, submit together with such claim a schedule of the items withheld. For each item withheld, the schedule should state: (a) the item's type, title, specific subject matter and date; (b) the names, addresses, positions and organizations of all authors or recipients of the item; and (c) the specific grounds for

claiming that the item is privileged. If only part of a responsive document is privileged, all non-privileged portions of the document must be submitted.

DESCRIPTION OF DOCUMENTS REQUESTED

Please produce the original or copies of the following documents (the term "documents" shall include all records, books of account, worksheets, checks, instructions, specifications, manuals, reports, books, periodicals, pamphlets, publications, raw and refined data, memoranda, graphs, drawings, notes, lab books, advertisements, list studies, meeting minutes, working papers, transcripts, magnetic tapes or discs, punch cards, computer printouts, letters, correspondence¹, agreements, drafts of agreements, telegrams, email, drafts, proposals, employee records, customer records, log files recommendations, and any other data recorded in readable and/or retrievable form, whether typed, handwritten, reproduced, magnetically recorded, coded, or in any other way made readable or retrievable):

1. All documents concerning² ECM BioFilms, Inc.³
2. All correspondence between O.W.S. and any employee, representative, or distributor of ECM BioFilms, Inc.
3. All documents sent or received by OWS employees making reference to ECM BioFilms, Robert Sinclair, or ECM BioFilms Master Batch Pellets

¹ The term "correspondence" is intended, used, and defined in its broadest sense allowable under the FTC Rules of Practice. Such term includes, but is not limited to embrace emails, documents appended to emails, reports and any other written or electronic document of any kind that is communicated from the subpoena recipient or its agents to any and all other persons and entities.

² The term "concerning" is intended, used, and defined in its broadest sense allowable under the FTC Rules of Practice and should be considered to be synonymous with regarding, relating to, mentioning, discussing, referencing, implicating, explaining, or about the documents subject to any and all individual requests in this subpoena.

³ ECM BioFilms Inc. is an American corporation with its principal place of business at Victoria Place – Suite 225, 100 South Park Place, Painesville, Ohio 44077, United States.

PUBLIC DOCUMENT

4. All documents concerning Gary Plastic Packaging Corporation⁴ (GPPC) and/or any test or report (including any and all notes and raw data) performed or written for GPPC, including, but not limited to, "Study GLH-2: Review of Several Documents, Reports and Statements on Biodegradation of ECM Masterbatch Pellets."
5. All documents concerning any test or report (including any and all notes and raw data) performed or written about a product or substance containing any product of ECM BioFilms, Inc., including "ECM Masterbatch Pellets."
6. All documents concerning any test or report (including any and all notes and raw data) performed or written about products or substances claims to be biodegradable.
7. All correspondence between O.W.S. and any employee or representative or officer of GPPC.
8. All correspondence between O.W.S. and any member, employee, representative, or officer of the United States Federal Trade Commission.
9. All documents concerning the education, training, and experience of Mr. Bruno de Wilde.
10. A list of all tests and reports authored by Mr. de Wilde.
11. All employee evaluations of Mr. de Wilde.
12. All documents written or authored by Mr. de Wilde concerning biodegradable plastics.
13. All documents concerning the education, training, and experience of Mr. Richard Tillinger.
14. All employee evaluations of Mr. Tillinger.

⁴ Gary Plastic Packaging is an American company located at 1340 Viele Avenue, Bronx, NY 10474, United States.

PUBLIC DOCUMENT

15. A list of all tests and reports authored by Mr. Tillinger.
16. All documents written or authored by Mr. Tillinger concerning biodegradable plastics.
17. All documents concerning or related to any version of the American Society of Testing and Materials' ("ASTM") testing methods D5511 and D5526.

INSTRUCTIONS FOR COMPLIANCE BY DELIVERY OF DOCUMENTS

If documents are delivered by hand, overnight delivery service, certified mail, or any other means your response shall be accompanied by an affidavit, executed by you that provides:

The names, addresses, positions, and organizations of all persons whose files were searched and all persons who participated in or supervised the collection of the documents⁵, and a brief description of the nature of the work that each person performed in connection with the collecting the documents.

A statement that the search was complete and that responsive documents are being produced.

A statement as to whether the documents were made at or near the time of the occurrence of the matters set forth in such documents, kept in the course of your regularly conducted business, whether it was your regular practice to make and keep such documents, and the custodian of records and/or other executive(s) and/or employees of O.W.S who have knowledge of such matters, can authenticate the documents and materials produced, and who can testify to such matters.

A statement as to whether any document called for by the subpoena has been misplaced, lost or destroyed. If any document has been misplaced, lost, or destroyed, identify: type of documents the date (or approximate date) of the documents, subject matter of the documents, all persons to whom it was addressed, circulated, or shown; its date of destruction, or when it was lost or misplaced; the reason it was destroyed, lost or misplaced; and the custodian of the documents on the date of its destruction, loss, or misplacement.

⁵ "Document" and "documents" as used in this Attachment are defined in this subpoena's "Description of Documents Requested" section.

PUBLIC DOCUMENT

A declaration that states:

I declare (or certify, verify, or state) under penalty of perjury that the forgoing is true and correct.

Executed on [date].

[Signature of party executing the declaration]

Respectfully submitted,

/s/ Jonathan W. Emord

Jonathan W. Emord, Esq.
EMORD & ASSOCIATES, P.C.
11808 Wolf Rune Lane
Clifton, VA 20124
Ph: 202-466-6937
Fx: 202-466-6938
Em: jemord@emord.com
Counsel to ECM BioFilms, Inc.

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of)
)
)

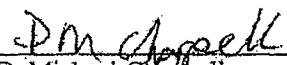
ECM BioFilms, Inc.,)
a corporation, also d/b/a)
Enviroplastics International,)
Respondent.)
)

DOCKET NO. 9358

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: October 22, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

PUBLIC DOCUMENT

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL - FTC Docket No. 9358" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL - FTC Docket No. 9358" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

PUBLIC DOCUMENT

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.



ATLANTA

CLEVELAND

DAYTON

WASHINGTON, D.C.

CINCINNATI

COLUMBUS

NEW YORK

February 27, 2014

Via Electronic Mail

Jonathan W. Emord
Peter A. Arhangelski
Lou F. Caputo
3210 S. Silbert Rd., Suite 4
Chandler, AZ 85286

RE: *In the Matter of ECM BioFilms, Inc.*, Federal Trade Commission Docket No. 9358

Mr. Emord:

Please be advised that our firm represents O.W.S. Inc. ("O.W.S."). A subpoena addressed to Organic Waste Systems, Inc. was delivered to 7155 Five Mile Rd., Cincinnati, OH 45230 (the "Subpoena") in regard to the above-captioned case. A copy of that Subpoena is attached for your reference.

Service of the Subpoena is ineffective. No entity named Organic Waste Systems, Inc. exists at the address to which the Subpoena was delivered. Organic Waste Systems, Inc., is a recently formed (October 31, 2013) corporation that exists under the laws of California.

In the event that you intended to serve the Subpoena to O.W.S., and ultimately decide to serve a subpoena on O.W.S, our firm will accept service on behalf of O.W.S. and work with you in regard to any necessary production. However, if you intend to serve a subpoena on O.W.S. similar to the Subpoena, to streamline the process and avoid potential issues in advance, we ask that you reconsider the breadth of the requests. As written, the Subpoena requests in several instances information that is completely unrelated to ECM BioFilms, Inc., as well as information that in all likelihood is confidential and proprietary to the recipient as well as the recipient's customers, which may be subject to confidentiality and non-disclosure agreements.

Please feel free to contact me if you have any questions or if you would like to discuss this matter.

Sincerely,

Christine Haaker

Christine.Haaker@ThompsonHine.com 937.443.6635 (facsimile) 937.443.6822 (telephone)

770500.2

THOMPSON HINE LLP
ATTORNEYS AT LAW

Austin Landing I
10050 Innovation Drive
Suite 400
Dayton, Ohio 45342-4934

www.ThompsonHine.com
Phone: 937.443.6600
Fax: 937.443.6635

EXHIBIT

B

PUBLIC DOCUMENT

THOMPSON
HINE

Enclosures



A Professional Corporation

WASHINGTON | VIRGINIA | PHOENIX

11808 WOLF RUN LANE
CLIFTON, VA 20124

3210 S. GILBERT ROAD
SUITE 4
CHANDLER, AZ 85286
(602) 388-8899 | FAX (602) 393-4361

1050 SEVENTEENTH STREET, N.W.
SUITE 600
WASHINGTON, D.C. 20036
(202) 466-6937 | FAX (202) 466-6938

February 28, 2014

Lou F. Caputo, Esq.
602.388.8901
lcaputo@emord.com

VIA EMAIL

Christine Haaker, Counsel to
O.W.S, Inc.
(e): Christine.Haaker@thompsonhine.com

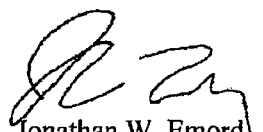
Re: In the Matter of ECM BioFilms, Inc., Docket No. 9358

Dear Ms. Haaker:

We understand that you represent O.W.S., Inc. and have agreed to accept service on behalf of O.W.S., Inc. Pursuant to the Federal Trade Commission's Rules of Practice, please find enclosed Respondent ECM BioFilms, Inc.'s amended subpoena *duces tecum* to O.W.S. This subpoena requests the production of documents and other materials. Included with the subpoena is Schedule A, which describes the instructions and specific requests of Respondent and a copy of the Protective Order issued in this matter.

Please provide all requested documents no later than March 14, 2014. We welcome you to contact us with questions.

Sincerely,



Jonathan W. Emord
Peter A. Arhangelsky
Lou F. Caputo

EXHIBIT

C



SUBPOENA DUCES TECUM

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

<p>1. TO</p> <p>O.W.S., Inc. C/O Counsel, Ms. Christine Haaker</p>	<p>2. FROM</p> <p style="text-align: center;">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
-------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

<p>3. PLACE OF PRODUCTION</p> <p>Emord & Associates, P.C. 3210 S. Gilbert Road, Suite 4 Chandler, AZ 85286</p>	<p>4. MATERIAL WILL BE PRODUCED TO</p> <p>Peter Arhangelsky</p>
<p>5. DATE AND TIME OF PRODUCTION</p> <p>March 14, 2014, 5:00 PM EST</p>	

6. SUBJECT OF PROCEEDING

In the matter of ECM BioFilms, Inc., Docket No. 9358

7. MATERIAL TO BE PRODUCED

See Attached Schedule A for description of all documents and materials.

<p>8. ADMINISTRATIVE LAW JUDGE</p> <p>Chief Administrative Law Judge D. Michael Chappell Federal Trade Commission Washington, D.C. 20580</p>	<p>9. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p>Jonathan W. Emord, Peter Arhangelsky, Lou Caputo Emord & Associates, P.C. for Respondent ECM BioFilms, Inc.</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>DATE SIGNED</p> <p>2/28/14</p>	<p>SIGNATURE OF COUNSEL ISSUING SUBPOENA</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 9, 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 9 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 9.

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.

SCHEDULE "A" TO SUBPOENA DUCES TECUM DIRECTED TO

O.W.S., INC.

INSTRUCTIONS

- A. Unless otherwise specified, the time period covered by a numbered request shall be limited to the time period extending from January 1, 2007 until the present date, unless differently stated therein.
- B. Documents must be delivered to Counsel for Respondent at the following address:

Emord & Associates, P.C.,
3210 South Gilbert Road, Suite 4
Chandler, AZ 85286
- C. A complete copy of each document should be submitted even if only a portion of the document is within the terms of the numbered request. The document shall not be edited, cut or expunged and shall include all covering letters and memoranda, transmittal slips, appendices, tables or other attachments.
- D. All information submitted shall be clearly and precisely identified as to the numbered request(s) to which it is responsive. Pages in the submission should be numbered consecutively, and each page should be marked with a unique "Bates" document tracking number.
- E. Documents covered by these numbered requests are those which are in your possession or under your actual or constructive custody or control, whether or not such documents were received from or disseminated to any other person or entity, including attorneys, accountants, directors, officers and employees.
- F. Documents that may be responsive to more than one numbered request need not be submitted more than once. However, your response should indicate, for each document submitted, each numbered request to which the document is responsive. Identification shall be by the Bates number if the documents(s) were so numbered when submitted or by author and subject matter if not so numbered.
- G. If any of the documentary materials requested in these numbered requests are available in machine-readable form (such as floppy or hard disks, drums, core storage, magnetic tapes or punch cards), state the form in which it is available and describe the type of computer or other machinery required to read the documents involved. If the information requested is stored in a computer or a file or record generated by a computer, indicate whether you have an existing program that will print the information in readable form and state the name, title, business address and telephone number of each person who is familiar with the program.
- H. All objections to these numbered requests, or to any individual request, must be raised in the initial response or otherwise waived.

- I. The Federal Trade Commission's Rules of Practice describes withholding requested material responsive to a subpoena under Rule 3.38A. For your convenience, Rule 3.38A states:

(a) Any person withholding material responsive to a subpoena issued pursuant to §3.34 or §3.36, written interrogatories requested pursuant to §3.35, a request for production or access pursuant to §3.37, or any other request for the production of materials under this part, shall assert a claim of privilege or any similar claim not later than the date set for production of the material. Such person shall, if so directed in the subpoena or other request for production, submit, together with such claim, a schedule which describes the nature of the documents, communications, or tangible things not produced or disclosed - and does so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim. The schedule need not describe any material outside the scope of the duty to search set forth in §3.31(c)(2) except to the extent that the Administrative Law Judge has authorized additional discovery as provided in that paragraph.

(b) A person withholding material for reasons described in §3.38A(a) shall comply with the requirements of that subsection in lieu of filing a motion to limit or quash compulsory process.

- J. The Federal Trade Commission's Rules of Practice describes motions to quash and/or limit subpoenas under Rule 3.34(c). For your convenience, Rule 3.34 states in relevant part:

(c) *Motions to quash; limitation on subpoenas.* Any motion by the subject of a subpoena to limit or quash the subpoena shall be filed within the earlier of 10 days after service thereof or the time for compliance therewith. Such motions shall set forth all assertions of privilege or other factual and legal objections to the subpoena, including all appropriate arguments, affidavits and other supporting documentation, and shall include the statement required by §3.22(g). Nothing in paragraphs (a) and (b) of this section authorizes the issuance of subpoenas except in accordance with §§3.31(c)(2) and 3.36.

- K. Some documents that you are requested to provide may be confidential. In the Protective Order dated October 22, 2013, Chief Administrative Law Judge D. Michael Chappell ordered that a party conducting discovery from third parties shall provide such third parties a copy of the Protective Order so as to inform third parties of his, her, or its rights. *See* ALJ Protective Order at 2, ¶4. Accordingly, a copy of the Protective Order is attached with this subpoena.
- L. If any requested material is withheld based on a claim of privilege, submit together with such claim a schedule of the items withheld. For each item withheld, the schedule should state: (a) the item's type, title, specific subject matter and date; (b) the names, addresses, positions and organizations of all authors or recipients of the item; and (c) the specific grounds for

claiming that the item is privileged. If only part of a responsive document is privileged, all non-privileged portions of the document must be submitted.

DESCRIPTION OF DOCUMENTS REQUESTED

Please produce the original or copies of the following documents (the term "documents" shall include all records, books of account, worksheets, checks, instructions, specifications, manuals, reports, books, periodicals, pamphlets, publications, raw and refined data, memoranda, graphs, drawings, notes, lab books, advertisements, list studies, meeting minutes, working papers, transcripts, magnetic tapes or discs, punch cards, computer printouts, letters, correspondence¹, agreements, drafts of agreements, telegrams, email, drafts, proposals, employee records, customer records, log files recommendations, and any other data recorded in readable and/or retrievable form, whether typed, handwritten, reproduced, magnetically recorded, coded, or in any other ay made readable or retrievable):

1. All documents and correspondence concerning² ECM BioFilms, Inc.,³ Robert Sinclair, and/or ECM BioFilms Master BatchPellets
2. All documents and correspondence concerning any test or report (including any and all notes and raw data) performed or written for Gary Plastic Packaging Corporation⁴

¹ The term "correspondence" is intended, used, and defined in its broadest sense allowable under the FTC Rules of Practice. Such term includes, but is not limited to embrace emails, documents appended to emails, reports and any other written or electronic document of any kind that is communicated from the subpoena recipient or its agents to any and all other persons and entities.

² The term "concerning" is intended, used, and defined in its broadest sense allowable under the FTC Rules of Practice and should be considered to be synonymous with regarding, relating to, mentioning, discussing, referencing, implicating, explaining, or about the documents subject to any and all individual requests in this subpoena.

³ ECM BioFilms Inc. is an American corporation with its principal place of business at Victoria Place – Suite 225, 100 South Park Place, Painesville, Ohio 44077, United States.

⁴ Gary Plastic Packaging is an American company located at 1340 Viele Avenue, Bronx, NY 10474, United States.

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(GPPC) including, but not limited to, "Study GLH-2: Review of Several Documents, Reports and Statements on Biodegradation of ECM MasterBatch Pellets."

3. All correspondence between O.W.S. and any member, employee, representative, or officer of the United States Federal Trade Commission.

4. All correspondence between O.W.S. and any member, employee, and/or representative of the Biodegradable Products Institute ("BPI").

5. All documents concerning any test or report (including any and all notes and raw data) performed or written related to the biodegradability of plastic products under ASTM standards D5511, D5526, and D5338 or equivalent standard.

6. All documents concerning the education, training, experience, and employee evaluations of Mr. Bruno de Wilde.

7. All documents written or authored by Mr. de Wilde concerning plastic products claiming to be biodegradable with the use of an additive product, including, but not limited to ECM's additive (MasterBatch Pellets).

8. All documents concerning the education, training, experience, and employee evaluations of Mr. Richard Tillinger.

9. All documents, including tests and reports, written or authored by Mr. Tillinger concerning plastic products claiming to be biodegradable with the use of an additive product, including, but not limited to ECM's additive (MasterBatch Pellets).

10. All documents and correspondence concerning any amendments, vote(s), and/or "negatives" related to ASTM standards D5511, D5526, and D5338.

INSTRUCTIONS FOR COMPLIANCE BY DELIVERY OF DOCUMENTS

If documents are delivered by hand, overnight delivery service, certified mail, or any other means your response shall be accompanied by an affidavit, executed by you that provides:

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The names, addresses, positions, and organizations of all persons whose files were searched and all persons who participated in or supervised the collection of the documents⁵, and a brief description of the nature of the work that each person performed in connection with the collecting the documents.

A statement that the search was complete and that responsive documents are being produced.

A statement as to whether the documents were made at or near the time of the occurrence of the matters set forth in such documents, kept in the course of your regularly conducted business, whether it was your regular practice to make and keep such documents, and the custodian of records and/or other executive(s) and/or employees of O.W.S. who have knowledge of such matters, can authenticate the documents and materials produced, and who can testify to such matters.

A statement as to whether any document called for by the subpoena has been misplaced, lost or destroyed. If any document has been misplaced, lost, or destroyed, identify: type of documents the date (or approximate date) of the documents, subject matter of the documents, all persons to whom it was addressed, circulated, or shown; its date of destruction, or when it was lost or misplaced; the reason it was destroyed, lost or misplaced; and the custodian of the documents on the date of its destruction, loss, or misplacement.

A declaration that states:

I declare (or certify, verify, or state) under penalty of perjury that the forgoing is true and correct.

Executed on [date].

[Signature of party executing the declaration]

Respectfully submitted,

/s/ Jonathan W. Emord

Jonathan W. Emord, Esq.
EMORD & ASSOCIATES, P.C.
11808 Wolf Rune Lane
Clifton, VA 20124

⁵ "Document" and "documents" as used in this Attachment are defined in this subpoena's "Description of Documents Requested" section.

PUBLIC DOCUMENT

Ph: 202-466-6937
Fx: 202-466-6938
Em: jemord@emord.com
Counsel to ECM BioFilms, Inc.

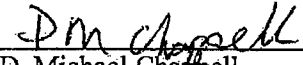
UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of)	
)	
ECM BioFilms, Inc.,)	DOCKET NO. 9358
a corporation, also d/b/a)	
Enviroplastics International,)	
Respondent.)	

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: October 22, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9358" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9358" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

PUBLIC DOCUMENT

Smith, Jeremy

From: Haaker, Christine
Sent: Thursday, March 06, 2014 11:50 AM
To: Lou Caputo
Cc: Peter Arhangelsky
Subject: RE: O.W.S. Subpoena Duces Tecum

Importance: High

Expires: Tuesday, September 02, 2014 12:00 AM

Lou,

We have major issues with the Subpoena. In many ways, I am hoping inadvertently, you have drastically gone well beyond even the scope of the prior subpoena. For example, No. 5 would involve hundreds of customers and thousands of unrelated products, subject to confidentiality agreements. I have to tell you, this Subpoena seems to telegraph a clear intent to harass and tortiously interfere with the business of my client. I understand you are out of the office, but we need to discuss. When would be a good time?

Best,

Christine

From: Lou Caputo [mailto:LCaputo@emord.com]
Sent: Friday, February 28, 2014 7:15 PM
To: Haaker, Christine
Cc: Peter Arhangelsky
Subject: O.W.S. Subpoena Duces Tecum

Hi Christine,

As we discussed, please find attached our amended subpoena to O.W.S., Inc. I will be out of the office all of next week, however, I will be periodically checking my email. Please let me know of any questions concerning the subpoena and I will be happy to discuss.

Thank you very much,

Lou

Lou Caputo | EMORD & ASSOCIATES, P.C. | 3210 S. Gilbert Rd., Ste 4 | Chandler, AZ 85286 Firm: (602) 388-8901 | Facsimile: (602) 393-4361 | 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.

EXHIBIT

D



ATLANTA

CLEVELAND

DAYTON

WASHINGTON, D.C.

CINCINNATI

COLUMBUS

NEW YORK

March 7, 2014

Via Electronic Mail

Lou F. Caputo
3210 S. Silbert Rd., Suite 4
Chandler, AZ 85286

RE: *In the Matter of ECM BioFilms, Inc.*, Federal Trade Commission Docket No. 9358
(the "Proceeding")

Dear Lou:

As you know, I contacted you on February 27, 2014 in regard to a subpoena purportedly served on "Organic Waste Systems, Inc." and that was improperly delivered to 7155 Five Mile Rd., Cincinnati, OH 45230. I offered that if you intended to serve a subpoena on my client, O.W.S. Inc. ("O.W.S."), I would accept service. I asked that if you did intend to serve a similar subpoena on O.W.S. that you consider narrowing the Requests. Following your receipt of the email, you telephoned me and we discussed why several of the subpoena Requests were objectionable. As indicated, my client has no interest in the Proceeding and in all ways intends to be cooperative to the extent Requests are reasonable.

Last Friday evening, February 28, 2014, you sent a revised subpoena to me for O.W.S. via electronic mail (the "Subpoena"). While I appreciate your cooperation and willingness to discuss the Requests, and that you did make some revisions, you have also expanded the Subpoena's scope, making it more broad in many respects. I hope that we can cooperatively work to narrow the Subpoena Requests and will do my best to elaborate reasons therefore herein in the hope that we can avoid motion practice.

General Information

O.W.S. is an independent testing company that serves hundreds of clients and processes thousands of tests of materials and products. The vast majority of O.W.S.'s clients require strict confidentiality. O.W.S. does not own the testing information, it is the information of the customers. Many of these customers are competitors of your client.

The market for testing the biodegradation of plastic materials and products is very small. O.W.S. has a strong reputation in this market and is trusted by its customers. This strong reputation and

Christine.Haaker@ThompsonHine.com 937.443.6635 (facsimile) 937.443.6822 (telephone)

THOMPSON HINE LLP
ATTORNEYS AT LAW

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Suite 400
Dayton, Ohio 45342-4934

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Phone: 937.443.6600
Fax: 937.443.6635

EXHIBIT

E



March 7, 2014

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the trust placed in O.W.S. by its customers are based on and exist, in large part, because of O.W.S.'s strict adherence to the protection of its customers' confidential and proprietary business information and data. O.W.S. actively markets its services to customers and potential customers by assuring them that the customer owns the data and that their data is protected. In fact, O.W.S. has exercised this policy on multiple occasions to protect *your client's* own data. If O.W.S. were compelled to reveal customer information against the customer's will, *even under the protective order*, that disclosure of customers' proprietary and confidential information would significantly damage the reputation of O.W.S. in the marketplace, and would cause irreparable harm to and possibly destroy its business with North American customers. This cannot be emphasized strongly enough. O.W.S.'s business critically depends on the trust its customers place in O.W.S., and that trust will be broken by revealing their information. We ask that you consider this information as you review the objections and concerns set forth below.

Instructions

We have the following concerns with your "Instructions":

- **C:** This Instruction requires that if a document contains a portion that is responsive and a portion that is not, the entire document should nonetheless be wholly produced without redaction. We could not agree to this. For example, if an email discussed ECM BioFilms, Inc. ("ECM") in one paragraph but contained five other paragraphs that had absolutely nothing to do with ECM, we would redact the other non-responsive paragraphs, indicating to you such redactions. Will you agree to this procedure?
- **D and F:** These Instructions require the correlation of documents to each Request. We will attempt to comply, however, to the extent documents correlate to repeated Requests, we believe that this Instruction would be overly burdensome to a third party. Will you agree with our approach?
- **E:** This Instruction expressly seeks production of documents to and from attorneys. A Request specifically directed to seeking attorney-client privileged documents is in and of itself objectionable at the outset and seems directed to invading privilege. Unless a document is directly responsive to a Request, is not otherwise objectionable and is being withheld solely for privilege, we will not log it on a privilege log. Pursuant to 16 CFR 3.31(c)(2), we will not review nor log any documents generated in the process of the prior subpoena or this Subpoena. Will you agree with our approach?
- **H:** This Instruction seeks to deem any objection not raised in O.W.S.'s initial response—this letter, for example—waived. O.W.S. hereby expressly reserves the right to make any and all timely objections in compliance with the Commission's Rules.

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HINE

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- **L:** This Instruction seeks to require what are essentially answers to interrogatories in regard to documents withheld for privilege. O.W.S. will comply with the requirements of the Commission's Rules, no more.

The Requests

- 1. All documents and correspondence concerning ECM BioFilms, Inc., Robert Sinclair, and/or ECM BioFilms Master Batch Pellets.**

This Request is very broad and unduly burdensome to even search for. Further, the Request does not appear to be limited to the subject matter of the Proceeding, which I understand to relate to the question of whether ECM additives and ECM plastics advertised as biodegradable are in fact biodegradable. To this end, you should know that O.W.S. has not performed tests for ECM since approximately 2000. While a product submitted by an O.W.S. customer for testing could contain an ECM additive, O.W.S. may or may not be told this by the customer. O.W.S. conducts thousands of tests for hundreds of customers and has no way to reasonably search customer records to pull out information regarding whether a customer's product being tested contained an ECM additive or related in some way to ECM.

This Request may also involve confidential and proprietary information of O.W.S. and of O.W.S. customers, many of which are competitors of your client, which would have no bearing on the Proceeding. O.W.S. would also, in all likelihood, owe strict contractual duties of non-disclosure and confidentiality to such customers, placing O.W.S. in an untenable position of being in breach of contract and violating the trust and confidence of its clients. Further, the testing information is the customers' property, not O.W.S.'s to disclose. Disclosure could only serve to harm O.W.S. and not serve to support any claim or defense in the Proceeding. Moreover, some of our customers are attorneys who hire O.W.S. for privileged and confidential testing, subject to the work product doctrine. O.W.S. has no right or ability to violate its agreement with such customers, whose testing may relate to competitors of your client. Even the disclosure of a mention of ECM by such customers would violate the competitive rights of those customers.

O.W.S. has no problem producing documents in which ECM, Robert Sinclair, and/or ECM BioFilms Master Batch Pellets are discussed in non-confidential/protected communications that are not customer specific, to the extent they can be readily located. O.W.S. cannot produce documents in breach of customer contracts and confidences, or in violation of privileges not held by O.W.S., but by the customers. Nor can O.W.S. feasibly contact every such customer to either obtain permission to produce under the Protective Order or to allow such customers to intervene.

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To try to even go through all customer documents to determine whether they could be responsive at the outset is an insurmountable task.

You should know that O.W.S. has received documents that suggest that ECM or someone advocating for ECM appears to have taken old O.W.S. test reports for ECM and altered them to change the conclusions. We will produce these documents assuming this Request is not otherwise limited or deleted.

Will you agree to limit this Request to exclude documents concerning O.W.S. customers other than ECM and to limit this Request to documents concerning ECM, Mr. Sinclair and or the Master Batch Pellets that are non-customer specific (not confidential) to the extent readily located?

2. **All documents and correspondence concerning any test or report (including any and all notes and raw data) performed or written for Gary Plastic Packaging Corporation (GPPC) including, but not limited to, "Study GLH-2: Review of Several Documents, Reports and Statements on Biodegradation of ECM MasterBatch Pellets."**

This Request also does not appear to be limited to the subject matter of the Proceeding. Because this Request may also involve confidential and proprietary information of GPPC, we have contacted GPPC and understand that GPPC has already produced this information to you in this Proceeding. Therefore, this Request appears to also be repetitive of information you have already directly obtained. O.W.S. would not have anything more than GPPC on this issue.

Will you agree to withdraw this Request?

3. **All correspondence between O.W.S. and any member, employee, representative, or officer of the United States Federal Trade Commission.**

This Request also does not appear to be limited to the subject matter of the Proceeding. Because this Request may also involve confidential and proprietary information of GPPC, we have contacted GPPC and understand that GPPC has already produced this information to you in this Proceeding. Therefore, this Request appears to also be repetitive of information you have already directly obtained. O.W.S. would not have anything more than GPPC on this issue.

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Will you agree to withdraw this Request?

4. **All correspondence between O.W.S. and any member, employee, and/or representative of the Biodegradable Products Institute ("BPI").**

This is a new Request that was not even alluded to in the prior subpoena.

This Request is very broad and unduly burdensome to even search for. Further, the Request does not appear to be limited to the subject matter of the Proceeding. This Request may also involve confidential and proprietary information of O.W.S. and of customers, many of which are competitors of your client, which would have no bearing on the Proceeding. Further, the testing information is the customers' property, not O.W.S.'s to disclose. O.W.S. would also, in all likelihood, owe strict contractual duties of non-disclosure and confidentiality to such customers, placing O.W.S. in an untenable position of being in breach of contract and violating the trust and confidence of its clients. This could only serve to harm O.W.S. and not serve to support any claim or defense in the Proceeding. Moreover, some O.W.S. customers are attorneys who hire O.W.S. for privileged and confidential testing, subject to the work product doctrine. O.W.S. has no right or ability to violate its agreement with such customers, whose testing may relate to competitors of your client.

Some background is in order. O.W.S. deals with the BPI on three separate levels. On one level, O.W.S. deals with the BPI *on behalf of O.W.S. customers* in regard to such customers' Request for certification of their own products. The BPI administers a certification mark (logo) for compostable products. Many O.W.S. customers seek this certification. Often, all or part of the testing the customer submits for certification has been performed by O.W.S. Communications with the BPI on behalf of O.W.S. customers involve confidential and proprietary information belonging to the customers, many of whom are direct competitors of your client. This confidential and proprietary information can include, but is not limited to, material or product formulations, product construction, manufacturing techniques, testing results, and marketing plans. These discussions relate to the customers' own products and are unrelated to ECM and unrelated to the Proceeding in any way.

On a second level, O.W.S. participates, along with one representative of the BPI, on subcommittee D20.96 of the American Society for Testing and Materials ("ASTM"). Mr. Sinclair also participates on this subcommittee and is fully aware of these activities and the business of the subcommittee, and has full access to communications related thereto.

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Finally, on a third level, some O.W.S. customers are members of the BPI. The BPI is, according to their website (www.bpiworld.org), a not-for-profit association of individuals and groups from government, industry and academia. Their stated purpose is to “educate manufacturers, legislators and consumers about the importance of scientifically based standards for compostable materials which biodegrade in large composting facilities.” The BPI’s website currently lists 147 members. O.W.S. is not a member of the BPI, but, as stated, some of O.W.S.’s customers are members. Thousands of correspondence documents exist between O.W.S. and these customers in the normal course of O.W.S.’s business with such customers in their own commercial capacities, not in their capacity as members of BPI. This correspondence has nothing whatsoever to do with your client or the Proceeding. The membership of those customers in the BPI is merely coincidental to the existence of the documents. These customers are competitors of ECM and the documents contain confidential or proprietary information including, but not be limited to, material or products formulations, product construction, manufacturing techniques, testing results, and marketing plans.

O.W.S. will not search for or produce documents merely because the source or recipient of the document may be a member of the BPI. O.W.S., however, will search for and produce responsive correspondence with employees of BPI to the extent the documents pertain to ECM.

Will you agree to this limitation?

- 5. All documents concerning any test or report (including any and all notes and raw data) performed or written related to the biodegradability of plastic products under ASTM standards D5511, D5526, and D5338 or equivalent standard.**

This Request is very broad and unduly burdensome to even search for, literally encompassing approximately 98% of O.W.S.’s business. Further, the Request does not appear to be limited to the subject matter of the Proceeding. This Request involves confidential and proprietary communications with customers, many of whom are competitors of your client, which would have no bearing on the Proceeding. O.W.S. also owes, in most cases, strict contractual duties of non-disclosure and confidentiality to such customers, placing O.W.S. in an untenable position of being in breach of contract and violating the trust and confidence of its clients. Further, the testing information is the customers’ property, not O.W.S.’s to disclose. Disclosure could only serve to harm O.W.S. and not serve to support any claim or defense in the Proceeding. Moreover, some O.W.S. customers are attorneys who hire O.W.S. for privileged and confidential testing, subject to the work product doctrine. O.W.S. has no right or ability to violate its agreement with such customers, whose testing may relate to competitors of your client.



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Production of documents in response to this Request would cause irreparable harm to the reputation of O.W.S. and tortiously interfere with the relationship between O.W.S. and its customers.

Again, some background information is in order. This Request literally seeks information related to hundreds of customers and thousands of tests on products wholly unrelated in any way to your client. As you know, 16 CFR 3.31(c)(1) allows discovery only when it is "reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent." The Proceeding relates only to ECM's products and ECM's marketing of those products. The Proceeding does not deal with any other company's product. Furthermore, nowhere in *Answer and Affirmative Defenses of Respondent EEM Biofilms, Inc.*; *Respondent's Answers to Complaint Counsel's First Request for Admissions*; or *Respondent's Supplemental Answers to Complaint Counsel's First Request for Admissions ECM Biofilms, Inc.*; did ECM raise any issue regarding other companies' products.

Producing documents in response to this Request would cause O.W.S. to violate customer confidentiality, proprietary, and non-disclosure agreements. Given that in most cases, these O.W.S. customers are direct competitors of ECM, this Request appears to be directed at obtaining a competitive advantage for ECM, causing harm to O.W.S. customers and, therefore, harm to the relationships between O.W.S. and its customers.

O.W.S. will provide any responsive tests for ECM. Otherwise, ECM must narrow this Request and identify what it is actually looking for. If there is testing for a particular product/customer, ECM should go directly to that customer for such information. Will you agree to eliminate or rephrase this Request?

6. All documents concerning the education, training, experience, and employee evaluations of Mr. Bruno de Wilde [sic].

Neither Mr. Bruno De Wilde nor O.W.S. is a party to the Proceeding. Neither are on trial. This Request for information regarding his education, training, experience and employee evaluations is not in any way related to the scope of the Proceeding and will not lead to any information relevant to any claim or defense in the Proceeding. Moreover, this Request clearly seeks information, at least in part, that would be confidential to Mr. De Wilde. We cannot determine any valid basis for the information Requested.

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However, to the extent O.W.S. has a biography or a CV for Mr. De Wilde, O.W.S. will produce it. Will you agree to so limit the Request?

7. **All documents written or authored by Mr. de Wilde [sic] concerning plastic products claiming to be biodegradable with the use of an additive product, including, but not limited to ECM's additive (MasterBatch Pellets).**

This Request is very broad and unduly burdensome to even search for. The words "written or authored by" are incredibly broad and could include every email, every test, and every comment Mr. De Wilde ever made in the context of O.W.S. Further, the Request is not limited to the subject matter of the Proceeding. This Request may also involve confidential and proprietary communications with customers, some of which are competitors of your client, which would have no bearing on the Proceeding. O.W.S. would also, in all likelihood, owe strict contractual duties of non-disclosure and confidentiality to such customers, placing O.W.S. in an untenable position of being in breach of contract and violating the trust and confidence of its clients. This could only serve to harm O.W.S. and not serve to support any claim or defense in the Proceeding. Moreover, some of our customers are attorneys who hire O.W.S. for privileged and confidential testing, subject to the work product doctrine. O.W.S. has no right or ability to violate its agreement with such customers, whose testing may relate to competitors of your client. Production of documents in response to this Request would cause irreparable harm to the reputation of O.W.S. and tortiously interfere with the relationship between O.W.S. and its customers.

As you are aware, 16 CFR 3.31(c)(1) allows discovery only when it is "reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent." The Proceeding relates only to ECM's products and ECM's marketing of those products. The Proceeding does not deal with any other company's product. Furthermore, nowhere in *Answer and Affirmative Defenses of Respondent EEM Biofilms, Inc.*; *Respondent's Answers to Complaint Counsel's First Request for Admissions*; or *Respondent's Supplemental Answers to Complaint Counsel's First Request for Admissions ECM Biofilms, Inc.*; did ECM raise any issue regarding other companies' products.

Producing documents in response to this Request would cause O.W.S. to violate customer confidentiality, proprietary, and non-disclosure agreements. Given that in most cases, these O.W.S. customers are direct competitors of ECM, this Request appears to be directed at obtaining a competitive advantage for ECM, causing harm to O.W.S. customers and, therefore, harm to the relationships between O.W.S. its customers.

THOMPSON
HINE

March 7, 2014

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If you are seeking presentations or published materials of Mr. De Wilde, to the extent they relate to ECM, O.W.S. will produce them. Otherwise, ECM must narrow this Request and identify what it is actually looking for. Will you agree to eliminate or rephrase this Request?

8. All documents concerning the education, training, experience, and employee evaluations of Mr. Richard Tillinger.

Neither Mr. Tillinger nor O.W.S. is a party to the Proceeding. Neither are on trial. This Request for information regarding his education, training, experience and employee evaluations is not in any way related to the scope of the Proceeding and will not lead to any information relevant to any claim or defense in the Proceeding. Moreover, this Request clearly seeks information, at least in part, that would be confidential to Mr. Tillinger. We cannot determine any valid basis for the information Requested.

However, to the extent O.W.S. has a biography or a CV for Mr. Tillinger, O.W.S. will produce it. Will you agree to so limit the Request?

9. All documents, including tests and reports, written or authored by Mr. Tillinger concerning plastic products claiming to be biodegradable with the use of an additive product, including, but not limited to ECM's additive (MasterBatch Pellets).

This Request is very broad and unduly burdensome to even search for. The words "written or authored by" are incredibly broad and could include every email, every test, and every comment Mr. Tillinger ever made in the context of O.W.S. Further, the Request is not limited to the subject matter of the Proceeding. This Request may also involve confidential and proprietary communications with customers, some of which are competitors of your client, which would have no bearing on the Proceeding. O.W.S. would also, in all likelihood, owe strict contractual duties of non-disclosure and confidentiality to such customers, placing O.W.S. in an untenable position of being in breach of contract and violating the trust and confidence of its clients. This could only serve to harm O.W.S. and not serve to support any claim or defense in the Proceeding. Moreover, some of our customers are attorneys who hire O.W.S. for privileged and confidential testing, subject to the work product doctrine. O.W.S. has no right or ability to violate its agreement with such customers, whose testing may relate to competitors of your client. Production of documents in response to this Request would cause irreparable harm to the reputation of O.W.S. and tortiously interfere with the relationship between O.W.S. and its customers.

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March 7, 2014

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If you are seeking presentations or published materials of Mr. Tillinger, to the extent they relate to ECM, O.W.S. will produce them. Otherwise, ECM must narrow this Request and identify what it is actually looking for. Will you agree to eliminate or rephrase this Request?

10. All documents and correspondence concerning any amendments, vote(s), and/or "negatives" related to ASTM standards D5511, D5526, and D5338.

This Request is very broad and unduly burdensome. Further, the Request is not limited to the subject matter of the Proceeding. Mr. Sinclair himself is involved in these amendments, votes and/or "negatives." There is no reason that O.W.S. should be burdened with providing information to ECM well within its reach, particularly given that Mr. Sinclair is on the ASTM subcommittee and would have received similar information.

Will you agree to eliminate this Request?

Protective Order

Because a number of our issues with the Requests relate to the confidential and proprietary information of O.W.S. and/or its customers, we would like to address the inadequacy of the Protective Order attached to the Subpoena. As explained, many of the documents Requested by the Subpoena contain sensitive and confidential information of O.W.S. customers, many of whom are direct competitors of ECM, such as material or products formulations, product construction, manufacturing techniques, testing results, and marketing plans. O.W.S. customers and O.W.S. would be harmed by the release of this information. The Protective Order does not consider the specific nature of O.W.S.'s business, the crucial relationships between O.W.S. and its customers and the trust on which those relationships are built, or how those relationships would be harmed by releasing customer information, *even under the standard Protective Order*. In any event, the Protective Order would not serve to excuse the complete lack of relevance of the Requested documents to the Proceeding.

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Expenses

Even if the scope of the Subpoena Requests are narrowed considerably, O.W.S. will still incur significant costs in complying with the Subpoena. In addition to the labor involved in searching, compiling, and marking documents, O.W.S. has already and will continue to incur significant legal costs as a direct result of the Subpoena.

While a subpoenaed party may be expected to absorb some reasonable costs, unreasonable costs, particularly in relation to the size of the company, are to be borne by the party and the party's counsel issuing the subpoena according to the Commission. O.W.S. is a relatively small company, and the effort to comply will pull people away from the conduct of business for its customers. This will delay the performance of testing and perhaps cause customers to go elsewhere for their testing, thereby significantly harming revenues from that testing. Furthermore, legal fees alone to respond to this Subpoena will amount to a significant percentage of total annual revenues for O.W.S. In addition, there will be the cost of the manpower required to search company records for documents relevant to the Subpoena. These costs of legal fees, time and expense of personnel, and potential lost business might possibly reduce the company to losing money in 2014. O.W.S., if forced to respond to any overly burdensome Requests, will seek payment of expenses to do so.

Conclusion

O.W.S. does not sell products in ECM's industry. O.W.S. has no interest in the Proceeding and will not be affected by the outcome of the Proceeding, regardless of that outcome. To the extent that ECM seeks information regarding ECM's customers' products that utilize ECM additives and testing thereof, ECM should obtain that information directly from ECM's customers. Moreover, O.W.S. cannot be made into some involuntary form of expert for ECM. From the scope of the Subpoena Requests, the only conclusions we can come to, as I said in my email yesterday, are that ECM's intent is to harass, burden and harm O.W.S. for some reason in this process and/or achieve competitive information and thereby competitive advantage. For the reasons set forth herein, we ask that you agree to withdraw and/or modify the Requests as stated.

I sent an email to you yesterday asking to discuss these issues and have not heard back from you. Given that the deadline for filing a Motion is fast approaching, can you please contact me as soon as possible? If you can discuss this weekend, please send me an email and we can arrange a time.

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March 7, 2014
Page -12-

Sincerely,



Christine Haaker

cc: Jonathan W. Emord (via Electronic Mail)
Peter A. Arhangelski (via Electronic Mail)

PUBLIC DOCUMENT

Smith, Jeremy

From: Haaker, Christine
Sent: Monday, March 10, 2014 5:22 PM
To: lcaputo@emord.com
Cc: jemord@emord.com; parhangelsky@emord.com; Smith, Jeremy
Subject: RE: In the Matter of ECM BioFilms, Inc.

Importance: High

Expires: Saturday, September 06, 2014 12:00 AM

Counsel,

Can you please respond to my email and letter from Friday?

Thank you.

Christine

Christine M. Haaker | Partner | **Thompson Hine LLP**
10050 Innovation Drive, Suite 400 | Dayton, Ohio 45342
Office: 937.443.6822 | **Mobile:** 937.609.8418
Fax: 937.443.6635 | **Email:** Christine.Haaker@ThompsonHine.com
Web: <http://www.ThompsonHine.com>

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From: McPherson, Mari
Sent: Friday, March 07, 2014 5:23 PM
To: lcaputo@emord.com
Cc: jemord@emord.com; parhangelsky@emord.com; Haaker, Christine
Subject: In the Matter of ECM BioFilms, Inc.

Please see the attached from Christine Haaker.

Mari McPherson, Secretary | Thompson Hine LLP
Austin Landing I
Suite 400
10050 Innovation Drive

EXHIBIT

F

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Dayton, Ohio 45342-4934

Office: 937.331.6099 | Fax: 937.443.6910



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Smith, Jeremy

From: Haaker, Christine
Sent: Monday, March 10, 2014 6:47 PM
To: Lou Caputo
Cc: Peter Arhangelsky; Smith, Jeremy
Subject: RE: Docket No. 9358, Third-Party Subpoea To O.W.S.

Expires: Saturday, September 06, 2014 12:00 AM

Lou,

Thank you for your response. I have not reviewed it in full yet but will. I would like to speak on this in the morning if you are available? Please give me a time. I thought we had a productive call the last time we spoke and perhaps we will be able to work out our issues. The most important issue for my client is that its business cannot be harmed in this process. Divulging its customers' testing information will result in loss of business. O.W.S. is firmly convinced of this, therefore production of its customers' information is out of the question. If there are specific customers that I can get to quickly with requests that they consent to disclosure, that may change things. The timing here is an issue with our Motion having to be filed by Wednesday. Also, you mention 3/24 below. Are you expecting production 3/24 or 3/14?

I look forward to speaking with you in the morning.

Best,

Christine

From: Lou Caputo [mailto:LCaputo@emord.com]
Sent: Monday, March 10, 2014 6:39 PM
To: Haaker, Christine
Cc: Peter Arhangelsky
Subject: Docket No. 9358, Third-Party Subpoea To O.W.S.

EXHIBIT

G

Hi Christine,

Thank you for your letter. We appreciate your comments concerning the OWS subpoena. We respond as follows.

The FTC has challenged whether certain ASTM standards, particularly D5511 or D5526, are viable methods for demonstrating real-world biodegradability in plastics. The FTC's Complaint alone has engendered an exceptionally broad scope of what may be considered relevant topics and information. The FTC has used OWS documents (commissioned by third parties) against ECM in this proceeding. OWS has apparently prepared (or assisted in the preparation of) promotional materials designed to discredit or challenge ECM's marketing claims. The information sought in ECM's subpoena of OWS is calculated to lead to the adduction of relevant evidence in this case and, as such, ECM has a right to that information.

You make several general points in your letter. You state that searching for information will be overly burdensome to O.W.S. You explain that certain responsive materials are confidential. You reference documents that may be altered and seemingly ascribe malicious and fraudulent intent onto ECM and/or any representative or advocate without specificity or examples of proof. We are very concerned with those allegations that lack any foundation or explanation, and ECM disputes to the fullest extent each such statement or suggestion. You further allege that ECM seeks a competitive advantage through its subpoena schedule. We find this allegation highly dubious considering that it presupposes that ECM somehow wanted, invited, and/or planned for the federal government to launch an unparalleled attack on ECM. ECM is the respondent in this action, not a civil plaintiff. The information it requests in the subpoena is relevant to its defense against FTC allegations. ECM therefore has a right to that information under 16 C.F.R. 3.31(c) and

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3.34, and will promptly seek an order compelling your response and, if necessary, for sanctions unless the information we seek is supplied in accordance with the subpoena.

In light of your concerns about scope and burden, we propose the following changes to provide relief without compromising the provision of information needed in ECM's defense:

Instructions:

C: This instruction stands.

D: To expedite disclosure, O.W.S. need not list which documents are responsive to a certain request.

E: We do not seek documents protected by the attorney-client privilege.

Request No. 1: This request stands.

Request No. 2: This request is eliminated.

Request No. 3: This request stands.

Request No. 4: This request stands, however, the temporal limitation is reduced to documents that were created on or after January 1, 2010. FTC agents have spoken directly with BPI members about material issues present in this case. Among other reasons, this request is relevant to investigating the relationship and association between O.W.S. and the BPI as well as investigating bias.

Request No. 5: This Request is rephrased as follows:

"Since January 1, 2010, all documents concerning any test or report (including any notes and raw data) performed or written to the biodegradability of plastic products under ASTM standards D5511 and D5526 for ECM and/or a plastic product containing the ECM additive."

Request No. 6: This request stands.

Request No. 7: This request is eliminated.

Request No. 8: This request stands.

Request No. 9: This request is eliminated.

Request No. 10: This request is rephrased as follows:

"Since January 1, 2010, all documents and correspondence concerning any amendments, vote(s); and/or 'negatives' related to ASTM standard D5511 and D5526."

We understand that O.W.S. has concerns about confidentiality. The FTC's Rules contemplate disclosure by third-parties of information that is considered confidential, and the Rules and the ALJ's Protective Order also provides mechanisms for protecting sensitive material if material disclosed is confidential. We have sent you a copy of the protective order; and I include another copy with this email for convenience. Please follow all requirements and directions of the ALJ in his Protective Order, which ECM will abide by to the fullest extent.

I welcome discussing this matter further but full production must be received on or before March 24, 2014. Please let me know of a convenient time for us to speak by phone.

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Sincerely,

Lou

Lou Caputo | EMORD & ASSOCIATES, P.C. | 3210 S. Gilbert Rd., Ste 4 | Chandler, AZ 85286 Firm: (602) 388-8901 |
Facsimile: (602) 393-4361 | www.emord.com

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Smith, Jeremy

From: Lou Caputo <LCaputo@emord.com>
Sent: Monday, March 10, 2014 6:53 PM
To: Haaker, Christine
Cc: Peter Arhangelsky; Smith, Jeremy
Subject: RE: Docket No. 9358, Third-Party Subponea To O.W.S.

Hi Christine,

I am happy to speak tomorrow any time after 12:00 PM EST, just let me know a time that works best for you. As to the timing of production, we are offering to extend the due date to March 24 to give O.W.S. additional time to respond.

Thanks,

Lou

Lou Caputo | EMORD & ASSOCIATES, P.C. | 3210 S. Gilbert Rd., Ste 4 | Chandler, AZ 85286 Firm: (602) 388-8901 | Facsimile: (602) 393-4361 | www.emord.com

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From: Haaker, Christine [mailto:Christine.Haaker@thompsonhine.com]
Sent: Monday, March 10, 2014 3:47 PM
To: Lou Caputo
Cc: Peter Arhangelsky; Smith, Jeremy
Subject: RE: Docket No. 9358, Third-Party Subponea To O.W.S.

Lou,

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Lou

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