

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of

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

Docket No. 9358

PUBLIC



**Complaint Counsel's Opposition to Respondent's Motion to Compel  
Expert Response to Subpoenas *Duces Tecum***

The Court should deny Respondent's "motion to compel"<sup>1</sup> Complaint Counsel's experts to respond to defective and burdensome subpoenas. ECM's subpoenas are improper for three reasons. First, they are procedurally flawed, "issued" without the seal of the Secretary of the Federal Trade Commission directly to Complaint Counsel's experts, in an impermissible attempt to circumvent the expert discovery timeline and procedures in the Commission's Rules and this Court's Scheduling Order. Second, their demands well exceed the scope of permissible expert discovery. Third, demanding invasive, duplicative, and irrelevant information, they impose a substantial burden on Complaint Counsel's experts that outweighs the benefit to ECM. For these reasons, Respondent's motion should be denied.

**Factual Background**

Complaint Counsel has retained three experts in this matter: Dr. Stephen McCarthy, an expert in polymer science with more than 30 years of experience studying the biodegradability of

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<sup>1</sup> ECM attempted to move to compel a subpoena response under Rules 3.31 and 3.38. This is improper, because neither rule provides a mechanism for subpoena enforcement. "A request to enforce a subpoena must be presented by a properly supported motion in accordance with Rule 3.22 and, ultimately, be resolved by a Federal Court." *See In re Phoebe Putney Health Sys.*, No. 9348, 2013 FTC LEXIS 82 (F.T.C. May 30, 2013) (citing Rule 3.22(c),(d),(g); 3.38(c)).

plastics and other features of polymers; Dr. Thabet Tolaymat, an environmental engineer with the United States Environmental Protection Agency and an expert on landfills; and Dr. Shane Frederick, a professor at Yale University's School of Marketing with expertise on marketing and consumer decision-making. Dr. McCarthy and Dr. Tolaymat will testify that ECM's marketing claims are false and misleading because plastics treated with the ECM additive do not biodegrade in nine months to five years, and do not biodegrade in a landfill. They will further testify that no competent and reliable scientific evidence supports ECM's specious claims. Dr. Frederick will testify regarding consumer perception of biodegradable marketing claims and ECM's biodegradability claims.

On April 7, 2014, ECM attempted to impede these experts' work on their reports by serving lengthy, invasive subpoenas, which demanded a response on the same day that expert reports were due.<sup>2</sup> These specifications—unlimited by date—sought, among other things, detailed personal financial information,<sup>3</sup> obviously irrelevant information,<sup>4</sup> duplicative information,<sup>5</sup> and information ECM could readily obtain elsewhere.<sup>6</sup> CCX-A:1, A:2, A:3.

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<sup>2</sup> The Scheduling Order in effect at the time (Apr. 1, 2014) called for Complaint Counsel's experts to submit their expert reports on April 25. ECM's subpoenas would have required Complaint Counsel's experts to conduct extensive document searches at the same time that they were balancing professional responsibilities and expert-report drafting.

<sup>3</sup> For example, specification 20 of the subpoena to Dr. McCarthy demanded "[a]ll documents revealing shares of stock or ownership interests held by you in any company." CCX-A:1 at 6.

<sup>4</sup> For example, specifications 8 and 9 direct to Dr. McCarthy demanded "all patents invented and/or owned by you" and "all pending patents invented and/or sought by you." CCX-A:1 at 4.

<sup>5</sup> For example, specifications 15, 16, 17, and 23 in the subpoena to Dr. McCarthy demanded documents that ECM already received from subpoenas to the Biodegradable Products Institute, Dr. Ramani Narayan, O.W.S., Inc., Dr. Frederic Michel, among others. CCX-A:1 at 6-7.

Complaint Counsel advised ECM that serving subpoenas to Complaint Counsel's experts—rather than following the expert discovery procedures and timeline in this Court's Scheduling Order—was improper. Johnson Decl., CCX-A at ¶ 2. Complaint Counsel also informed ECM that its demands exceeded the scope of permissible expert discovery and were unduly burdensome. *Id.*

ECM responded by narrowing its specifications slightly. CCX-A:4, A:5, A:6. But, even narrowed, ECM's demands remained invasive, duplicative, and overbroad—so much so that responding to the subpoenas' demands would require more than 20 hours for each expert. McCarthy Decl., CCX-A:7 at ¶ 4-9; Tolaymet Decl., A:8 at ¶ 3-6; Frederick Decl., A:9 at ¶ 3-6. Complaint Counsel served its responses and objections to the subpoenas on April 25, and ECM moved to compel the experts' response.

#### Argument

ECM's "motion to compel" should be denied for three reasons. First, ECM is not entitled to expert discovery via flawed subpoenas. Second, ECM is not entitled to discover information beyond the scope of the Commission's rules, as defined in the Court's opinions in *Dura Lube*<sup>7</sup> and *Basic Research*.<sup>8</sup> Third, the burden of the intrusive, duplicative, and overbroad subpoena demands outweighs their probative value.

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<sup>6</sup> Specification 10 in the subpoena to Dr. Tolaymat, CCX-A:2 at 4, demanded all correspondence with Dr. Morton Barlaz, ECM's own expert, CCX-A:19.

<sup>7</sup> *In re Dura Lube*, No. 9292, 1999 FTC LEXIS 254, at \*6-\*10 (F.T.C. Dec. 15, 1999).

<sup>8</sup> *In the Matter of Basic Research*, No. 9318, 2004 FTC LEXIS 237, \*5-\*9 (F.T.C. Dec. 9, 2004).

**A. ECM Is Not Entitled To Early Expert Discovery Via Third-Party Subpoenas.**

Even if validly issued,<sup>9</sup> ECM's third-party subpoenas are not proper vehicles for expert discovery. *See* RX-D at 2 n. 3 (collecting cases limiting subpoenas to testifying experts). ECM should have availed itself of the party discovery mechanisms in the Commission's Rules and this Court's Scheduling Order. *See* Rule 3.31A and Scheduling Order, ¶ 19 (providing for expert discovery via disclosures, specific document production, reports, and depositions). ECM will receive expert reports and disclosures on June 4, and will have ample opportunity to attempt to bolster its bias theories then. ECM will receive this information well before expert depositions (scheduled to begin at the end of June), when ECM will have seven hours each to question the experts about their purported bias.<sup>10</sup>

**B. ECM Is Not Entitled To Expert Discovery Beyond the Scope of the Commission's Rules.**

ECM subpoenaed documents well beyond the scope of discovery under Rule 3.31A. Specifically, Rule 3.31A(c) provides for discovery of certain categories of information related to testifying experts (compensation, qualifications, and basis of opinions), and the Scheduling Order requires the parties to disclose:

materials fully describing or identifying the background and qualifications of the expert, all publications authored by the expert within the preceding ten years, and

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<sup>9</sup> ECM did not obtain a seal from the Office of the Secretary, so the subpoena form is facially invalid. This is not a trivial defect. Without the seal, a subpoena is not a "form provided by the Secretary" within the meaning of 16 C.F.R. 3.34(a). The seal is the only mechanism by which the Commission and a subpoena recipient can distinguish an enforceable subpoena from a form simply copied from the Secretary's website.

<sup>10</sup> If parties could issue third-party subpoenas to each other's experts, the parties could effectively impede both fact discovery and expert-report development. Counsel would be compelled to address the experts' subpoena response (to ensure no production of work product) instead of focusing on crucial fact discovery. Indeed, the timing of ECM's subpoenas suggests that they may have been calculated to achieve this end.

all prior cases in which the expert has testified or has been deposed within the preceding four years.

Scheduling Order, ¶ 19. This Court has also explained that parties are entitled to discover whether the expert has taken a prior inconsistent position in another litigation. *See Basic Research*, No. 9318, 2004 FTC LEXIS 237, \*5-\*9 (citing *Dura Lube*, No. 9292, 1999 FTC LEXIS 254, at \*6-\*9).

The Commission's rules thus contemplate discovery of a circumscribed universe of information. Simply citing bias does not give parties *carte blanche* to discover "information regarding everything the experts have worked on during the course of their entire careers, including every publication, presentation, study, patent, and paid employment." *Basic Research*, No. 9318, 2004 FTC LEXIS 237, \*8 (rejecting party's attempt to discover such information). *Accord Behler v. Hanlon*, 199 F.R.D. 553, 561 (D. Md. 2001) (refusing to allow discovery of the expert's income, a "listing of all insurance companies with whom he is affiliated, as well as a listing of all cases in which he has provided expert services," because even with latitude to explore bias, such demands were "overkill").

On June 4, ECM will receive the experts' reports along with information about their qualifications, compensation, publications, involvement in litigation. This information will satisfy many subpoena specifications in the timeframe and manner contemplated by Rule 3.31A and the Scheduling Order.<sup>11</sup> The remaining information demanded is precisely the sort of "everything" else that this Court in *Basic Research* put outside the scope of expert discovery (and that the *Behler* court properly dubbed "overkill").

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<sup>11</sup> Specifically, this information will satisfy, in relevant part, specifications 2, 14, 15, and 19 in the subpoena to Dr. McCarthy, CCX-A:4 at 3-7; specifications 2, 6, 7, 9, and 10 in the subpoena to Dr. Tolaymat, CCX-A:5 at 3-4; and specifications 2, 6, 7, 9, and 10 in the subpoena to Dr. Frederick, CCX-A:6 at 3-4.

### C. The Burden of ECM's Demands Outweighs Their Minimal Probative Value

Even when discovery is otherwise permissible, Rule 3.31(d) authorizes the Administrative Law Judge “to deny discovery or make any other order which justice requires to protect a party or other person from annoyance, embarrassment, oppression, or undue burden or expense . . . .” Rule 3.31(d). In assessing discovery disputes, the Court considers the “totality of the circumstances, weighing the value of the material sought against the burden of providing it and taking into account society’s interest in furthering the truth-seeking function.” *In the Matter of LabMD, Inc.*, No. 9357, 2014 WL 1100693, at \*8 (F.T.C. March 10, 2014) (quotations omitted).

ECM’s subpoenas call for costly fishing expeditions that would substantially burden the experts while adducing little information of probative value. Indeed, the demands are so overbroad that they would largely show that these experts are active in publishing and participating in their respective fields (a fact equally discoverable from the experts’ *curricula vitae*). To respond to ECM’s overbroad demands, each expert would have to undertake a costly, time-consuming search for responsive records that would impede his ability to perform professional activities unrelated to this case. CCX-A:7 at ¶ 4-9, A:8 at ¶ 3-6, A:9 at ¶ 3-6.

Cost is not the only—or even the primary—issue. Many of the subpoena specifications are highly invasive. For example, the subpoena to Dr. Frederick contains the following demand:

Regardless of the date, if you have ever been a defendant or a plaintiff in a legal proceeding, copies of all complaints, answers, motions, and transcripts (deposition, hearing and trial) involving you in your professional capacity, along with all orders issued by the courts in those proceedings.

CCX:A-6 at 5 (No. 12). This demand would require Dr. Frederick to produce, for example, all litigation papers related to an employment discrimination lawsuit he filed. Such information is

clearly irrelevant to the claims and defenses in this case, and would be harassing and embarrassing to Dr. Frederick.

In addition, these intrusive subpoenas call for personal financial information. For example, the subpoena to Dr. McCarthy demands “all documents revealing shares of stock or ownership interests held by you in any company that sells, manufactures, or markets plastics, biodegradable technologies, and/or compostable technologies.” CCX:A-4 at 6 (No. 16). The subpoenas to Dr. Tolaymat and Dr. Frederick similarly demand “[a] listing” of stocks held in “any company associated with plastics” or other technologies. CCX:A-5 at 4 (No. 8); CCX-A:6 at 4 (No. 8). **Thousands** of companies sell plastic products and nearly every company in the world is arguably “associated with plastics.” Because of this massive over-breadth, these experts would be required to disclose substantial personal financial information, such as information about index funds in their retirement portfolios, with no bearing on the substance of this matter.

The subpoenas also probe the experts’ relationships with their employers. For example, the subpoena to Dr. Frederick calls for all contracts with Yale University “concerning conflicts of interest and/or supplemental employment” and “[a]ll conflict of interest forms or agreements signed by you.” CCX-A:6 at 4-5 (Nos. 3, 11). The subpoenas to Dr. McCarthy and Dr. Tolaymat contain similar provisions regarding the EPA and the University of Massachusetts. See CCX-A:4 at 7 (No. 20); CCX-A:5 at 5 (No. 12). These demands invade the experts’ employment relationships even though there is no plausible connection to this case.<sup>12</sup>

This burden is particularly unsupportable because ECM can obtain (or has already obtained) many of the documents through less burdensome means. Indeed, ECM requires our

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<sup>12</sup> Indeed, as the *Behler* court found, 199 F.R.D. at 561, each demand for financial information, generalized affiliations, and career-long expert testimony are “overkill.” See CCX-A:4 at 4-7 (No. 3, 6-9, 16, 17, 22, 23); CCX-A:5 at 4-5 (No. 8, 13-14); CCX-A:6 at 4-5 (No. 8, 12-14).

experts to search their files for documents that were already produced (if they existed) in response to ECM's prior discovery subpoenas regarding BPI, Dr. Narayan, Dr. Michel, ASTM, and O.W.S.<sup>13</sup> See CCX-A:10 – 18 (ECM subpoenas to various entities and individuals). ECM also demands that Complaint Counsel's expert (Dr. Tolaymat) produce copies of correspondence with ECM's own expert, Dr. Barlaz. CCX-A:5 at 5 (No. 11). Clearly, the less burdensome approach would be to ask Dr. Barlaz to provide the documents.


ECM claims to explore bias, but the subpoena demands that go beyond the scope of June 4's disclosures are simply burdensome—and even harassing. Accordingly, the Court should deny ECM's invalid "motion to compel."

**Conclusion**

For the foregoing reasons, the Court should deny Respondent's motion to compel expert response to subpoena *duces tecum*.

Dated: May 28, 2014

Respectfully submitted,

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

<sup>13</sup> CCX-A:4 at 6-7 (Nos. 11-13, 18, 21); CCX-A:5 at 4 (Nos. 3-5); CCX-A:6 at 4 (Nos. 4-5).



**CERTIFICATE OF SERVICE**

I hereby certify that on May 28, 2014, I caused a true and correct copy of the foregoing to be served as follows:

One electronic copy to the **Office of the Secretary**, and one copy through the FTC's e-filing system (although Complaint Counsel received an error message when attempting to file):

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

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

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

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

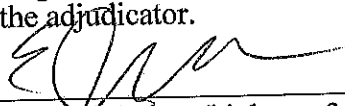
Jonathan W. Emord  
Emord & Associates, P.C.  
11808 Wolf Run Lane  
Clifton, VA 20124  
Email: [jemord@emord.com](mailto:jemord@emord.com)

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

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

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.

Date: May 28, 2014

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

# **Complaint Counsel Exhibit A**

## **CCX-A**

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

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

**DECLARATION OF KATHERINE JOHNSON IN SUPPORT OF COMPLAINT COUNSEL’S OPPOSITION TO RESPONDENT’S MOTION TO COMPEL**

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

1. I am over 18 years of age, and I am a citizen of the United States. I am employed by the Federal Trade Commission (“FTC”) as an attorney in the Division of Enforcement in the Bureau of Consumer Protection. I am an attorney of record in the above-captioned matter, and I have personal knowledge of the facts set forth herein.

2. Complaint Counsel advised ECM that serving subpoenas to Complaint Counsel’s experts—rather than following the expert discovery procedures and timeline in this Court’s Scheduling Order—was improper. Complaint Counsel also informed ECM that its demands exceeded the scope of permissible expert discovery and were unduly burdensome.

3. Attachment 1 hereto is a true and correct copy of the original subpoena Respondent issued to Dr. Stephen McCarthy.

4. Attachment 2 hereto is a true and correct copy of the original subpoena Respondent issued to Dr. Thabet Tolaymat.

5. Attachment 3 hereto is a true and correct copy of the original subpoena Respondent issued to Dr. Shane Frederick.

6. Attachment 4 hereto is a true and correct copy of the revised subpoena Respondent issued to Dr. Stephen McCarthy.

7. Attachment 5 hereto is a true and correct copy the revised subpoena Respondent issued to Dr. Thabet Tolaymat.

8. Attachment 6 hereto is a true and correct copy of the revised subpoena Respondent issued to Dr. Shane Frederick.

9. Attachment 7 hereto is a true and correct copy of the Declaration of Dr. Stephen McCarthy in Support of Complaint Counsel’s Opposition to Respondent’s Motion to Compel.

10. Attachment 8 hereto is a true and correct copy of the Declaration of Dr. Thabet Tolaymat in Support of Complaint Counsel’s Opposition to Respondent’s Motion to Compel.

11. Attachment 9 hereto is a true and correct copy of the Declaration of Dr. Shane Frederick in Support of Complaint Counsel's Opposition to Respondent's Motion to Compel.

12. Attachment 10 hereto is a true and correct copy of the subpoena Respondent issued to ASTM International.

13. Attachment 11 hereto is a true and correct copy of the subpoena Respondent issued to Biodegradable Products Institute.

14. Attachment 12 hereto is a true and correct copy of the subpoena Respondent issued to Michigan State University.

15. Attachment 13 hereto is a true and correct copy of the subpoena Respondent issued to Eddie Gomez.

16. Attachment 14 hereto is a true and correct copy of the subpoena issued to Dr. Frederick Michel.

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17. Attachment 15 hereto is a true and correct copy of the subpoena Respondent issued to Dr. Ramani Narayan.

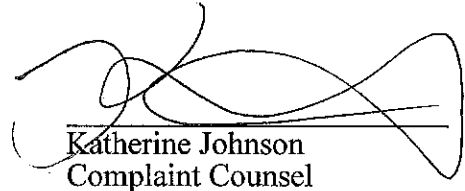
18. Attachment 16 hereto is a true and correct copy of the supplemental subpoena Respondent issued to Dr. Ramani Narayan.

19. Attachment 17 hereto is a true and correct copy of the subpoena Respondent issued to O.W.S., Inc.

20. Attachment 18 hereto is a true and correct copy of the amended subpoena Respondent issued to O.W.S., Inc.

21. Attachment 19 hereto is a true and correct copy of Respondent's preliminary expert witness list identifying, among others, Dr. Morton Barlaz.

Executed this 28th day of May, 2014 in Washington, D.C.

  
Katherine Johnson  
Complaint Counsel

**Complaint Counsel  
Exhibit A  
Attachment 1**

**CCX-A:1**



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

April 7, 2014

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

**VIA UPS**

Dr. Stephen McCarthy, PhD  
Dept. of Plastics Engineering  
University of Massachusetts Lowell  
One University Avenue, Office, Ball 207  
Lowell, MA 01854

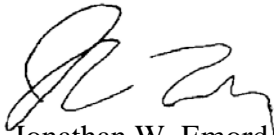
*Re: In the Matter of ECM BioFilms, Inc., Docket No. 9358*

Dear Dr. McCarthy:

Pursuant to the Federal Trade Commission's Rules of Practice, please find enclosed Respondent ECM BioFilms, Inc.'s subpoena *duces tecum*. This subpoena requests that you produce 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 April 25, 2014. We welcome you to contact us with questions.

Sincerely,



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



# 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<br/>Dr. Stephen McCarthy<br/>Dept. of Plastics Engineering<br/>University of Massachusetts Lowell<br/>One University Avenue, Office, Ball 207<br/>Lowell, MA 01854</p> | <p>2. FROM<br/><br/><b>UNITED STATES OF AMERICA<br/>FEDERAL TRADE COMMISSION</b></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<br/><br/>Emord &amp; Associates, P.C.<br/>3210 South Gilbert Road, Suite 4<br/>Chandler, AZ 85286</p> | <p>4. MATERIAL WILL BE PRODUCED TO<br/>Peter Arhangelsky</p> <hr/> <p>5. DATE AND TIME OF PRODUCTION<br/>April 25, 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<br/><br/>Chief Administrative Law Judge<br/>D. Michael Chappell<br/><br/>Federal Trade Commission<br/>Washington, D.C. 20580</p> | <p>9. COUNSEL AND PARTY ISSUING SUBPOENA<br/>Jonathan W. Emord, Peter Arhangelsky, Lou<br/>Caputo<br/>Emord &amp; Associates, P.C. for Respondent,<br/>ECM BioFilms, Inc.</p> |
|---|---|

|                                      |  |
|--------------------------------------|--|
| <p>DATE SIGNED<br/>April 7, 2014</p> | <p>SIGNATURE OF COUNSEL ISSUING SUBPOENA<br/></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****DR. STEPHEN MCCARTHY****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. Documents that were responsive to, and produced in accordance with, the original subpoena *duces tecum* sent to you on February 13, 2014 need not be submitted again. However, your supplemental response should indicate, for each document s previously 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.
- H. 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.

- I. All objections to these numbered requests, or to any individual request, must be raised in the initial response or otherwise waived.
- J. 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.

- K. 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.

- L. 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.

M. 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, correspondence<sup>1</sup>, 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 that concern ECM BioFilms, Inc., any past and present employee or principal of ECM, and/or the ECM additive.
2. All documents, materials, correspondence, forms, marketing material, and testing used or referenced to form any and all opinions you may offer in this case.

---

<sup>1</sup> 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, 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.

3. Regardless of the date, all correspondence, contracts, retainers, engagement letters between you and any public or private firm that manufactures and/or produces biodegradable and/or compostable products.

4. Regardless of the date, all reports, analyses, assessments, tests, summaries, and conclusions issued to any public or private firm that manufactures and/or produces biodegradable and/or compostable products.

5. Regardless of the date, all correspondence, contracts, retainers, engagement letters between you and any public or private firm that manufactures and/or produces a product or substance in competition with biodegradable plastics.

6. Regardless of the date, all reports, analyses, assessments, tests, summaries, and conclusions issued to any public or private firm that manufactures and/or produces a product or substance in competition with biodegradable plastics.

7. Regardless of the date, all correspondence, contracts, retainers, and/or agreements with the University of Massachusetts, Lowell (“Umass”) concerning research, funding, or grants related to biodegradable plastics or polymers.

8. Regardless of the date, all patents invented and/or owned by you.

9. Regardless of the date, all pending patents invented and/or sought by you.

10. All licensing or royalty agreements involving or concerning your patents or intellectual property related to biodegradable and compostable products).

11. Copies of the following contract and grant support, all correspondence and proposals concerning such contracts and grants, and sources of funding for same:

- a. Metabolix, “Development of Novel of Biodegradable Materials, \$1,500,196

- b. NSF Center for Biodegradable Polymer Research, \$1,200,000 Industrial Members (8/93-present), Principal Investigator
  - c. Polymer Degradation Research Center, \$475,000, Industrial Members (8/89-8/93)
  - d. Digital, "Plastics Materials Research", \$458,706
  - e. Metabolix Inc., Performance of PHA Derived Chemicals and Polyols in Polyurethane, \$141,465
  - f. 3M, "Composting Research", \$155,000
  - g. Warner Lambert, "Biodegradable Polymer Research", \$116,591
  - h. National Science Foundation, "Biodegradable Polymer Research Center", \$110,000 (8/93-8/95)
  - i. Department of the Army, "Polymer Degradation Research", \$104,000
  - j. Institute for Plastics Innovation, "Injection Molding Research", \$75,000
  - k. Massachusetts Centers of Excellence, "Institute for Plastics Innovation", \$75,000
  - l. Metabolix Inc., Performance of Polyhydroxyalkanoate Derived Chemicals and Polyols in Polyurethane, \$71,465
  - m. Battelle, "Biodegradable Packaging Development", \$59,865
  - n. DuPont Corian, \$50,000
  - o. Invista, "Evaluation of Plasticizers", \$ 28,000
  - p. Massachusetts Centers of Excellence, "Polymer Degradation Research", \$25,000
12. All documents and materials concerning your appointment or nomination of any position, title, or role with the BioEnvironmental Polymer Society and/or the Society of Plastics Engineering.

13. All documents concerning any testing or product evaluations involving biodegradable and/or compostable plastics in which you participated on behalf of, or as a member of, the BioEnvironmental Polymer Society and/or the Society of Plastics Engineers.
14. All documents and materials that formed the basis of your nominations and/or awards from the BioEnvironmental Polymer Society, including, but not limited to, the 2008 Jim Hammar Memorial Service Award.
15. All correspondence between you and any employee and/or consultant of the Biodegradable Products Institute (“BPI”).
16. All correspondence with Dr. Ramani Narayan.
17. All correspondence with any employee or contracting employee of O.W.S., Inc. related to biodegradable plastics.
18. All correspondence with any employee and/or representative of the Federal Trade Commission concerning biodegradable plastics.
19. All correspondence with any witness, person, and/or consultant used to help form any opinion you have in this case.
20. All documents revealing shares of stock or ownership interests held by you in any company.
21. All documents revealing consultant positions, executive or corporate positions, or financial arrangements between you and any company, university, or other financial institution concerning work or employment related to biodegradable plastics or polymers.
22. All correspondence between you and any private company concerning plastics, biodegradation, ECM BioFilms, and any other company involved in the manufacture of biodegradable products.

23. All documents and correspondence between you and the authors of the article Gómez, EF, Michel Jr., FC. “Biodegradability of conventional and bio-based plastics and natural fiber composites during composting, anaerobic digestion and long-term soil incubation” Polymer Degradation and Stability. Vol. 98 (December 2013): 2583-2591.

24. Copies of all scientific publications concerning biodegradable and/or compostable polymers that you have authored.

25. Copies of all papers and/or presentations concerning biodegradable and/or compostable plastics that you have delivered or presented.

26. All documents revealing awards, bonuses, stock options, or other accolades bestowed upon you and all correspondence associated with each, for work you performed with biodegradable polymers.

27. All conflict of interest forms or agreements completed or signed by you.

28. All documents concerning ASTM, including, but not limited to, correspondence in which you presented a proposal, voted on a proposal, or opposed a proposal then undergoing active consideration by the ASTM.

29. Regardless of the date, if you have ever been a defendant or a plaintiff in a legal proceeding, copies of all complaints, answers, motions, and deposition, hearing and trial transcripts involving you from that proceeding along with all orders issued by the courts in those proceedings.

30. Regardless of the date, if you have ever served as an expert in any other proceeding, copies of all expert reports and testimony given by you in those proceedings.

**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 documents<sup>2</sup>, 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 the University of Massachusetts, Lowell 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,

---

<sup>2</sup> “Document” and “documents” as used in this Attachment are defined in this subpoena’s “Description of Documents Requested” section.

/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](mailto:jemord@emord.com)  
Counsel to ECM BioFilms, Inc.



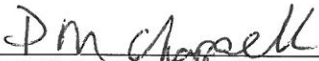
UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

|                               |   |                 |
|-------------------------------|---|-----------------|
| _____                         | ) |                 |
| 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.

**Complaint Counsel  
Exhibit A  
Attachment 2**

**CCX-A:2**



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

April 7, 2014

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

**VIA UPS**

Dr. Thabet Tolaymet PhD  
Environmental Protection Agency  
26 Martin Luther King Drive  
Cincinnati, OH 45268

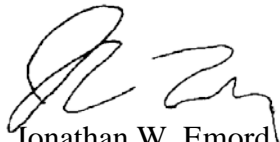
*Re: In the Matter of ECM BioFilms, Inc., Docket No. 9358*

Dear Dr. Tolaymet:

Pursuant to the Federal Trade Commission's Rules of Practice, please find enclosed Respondent ECM BioFilms, Inc.'s subpoena *duces tecum*. This subpoena requests that you produce 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 April 25, 2014. We welcome you to contact us with questions.

Sincerely,



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



# 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<br/>Dr. Thabet Tolaymet<br/>Environmental Protection Agency<br/>26 Martin Luther King Drive<br/>Cincinnati, OH 45268</p> | <p>2. FROM<br/><br/><b>UNITED STATES OF AMERICA<br/>FEDERAL TRADE COMMISSION</b></p> |
|---|--|

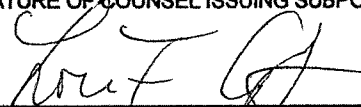
This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

|   |  |
|---|--|
| <p>3. PLACE OF PRODUCTION<br/><br/>Emord &amp; Associates, P.C.<br/>3210 South Gilbert Road, Suite 4<br/>Chandler, AZ 85286</p> | <p>4. MATERIAL WILL BE PRODUCED TO<br/>Peter Arhangelsky</p> <hr/> <p>5. DATE AND TIME OF PRODUCTION<br/>April 25, 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<br/><br/>Chief Administrative Law Judge<br/>D. Michael Chappell<br/><br/>Federal Trade Commission<br/>Washington, D.C. 20580</p> | <p>9. COUNSEL AND PARTY ISSUING SUBPOENA<br/>Jonathan W. Emord, Peter Arhangelsky, Lou Caputo<br/>Emord &amp; Associates, P.C. for Respondent,<br/>ECM BioFilms, Inc.</p> |
|---|---|

|                                      |  |
|--------------------------------------|--|
| <p>DATE SIGNED<br/>April 7, 2014</p> | <p>SIGNATURE OF COUNSEL ISSUING SUBPOENA<br/></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**

**DR. THABET TOLAYMET**

**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. Documents that were responsive to, and produced in accordance with, the original subpoena *duces tecum* sent to you on February 13, 2014 need not be submitted again. However, your supplemental response should indicate, for each document s previously 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.
- H. 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.

- I. All objections to these numbered requests, or to any individual request, must be raised in the initial response or otherwise waived.
- J. 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.

- K. 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.

- L. 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.

M. 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, correspondence<sup>1</sup>, 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 that concern ECM BioFilms, Inc., any past and present employee or principal of ECM, and/or the ECM additive.
2. All documents, materials, correspondence, forms, marketing material, and testing used or referenced to form any and all opinions you may offer in this case.
3. All correspondence with any employee and/or consultant of the Biodegradable Products Institute ("BPI").

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<sup>1</sup> 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.

4. All correspondence with Dr. Ramani Narayan.
5. All correspondence with any employee or contracting employee of O.W.S., Inc.
6. All correspondence between you and any member, employee, representative, or officer of the United States Federal Trade Commission.
7. All correspondence with any witness, person, and/or consultant used to help form any opinion you have in this case.
8. All documents revealing shares of stock or ownership interests held by you in any company.
9. Regardless of the date, copies of all papers, articles, and publications authored or co-authored by you that concern municipal solid waste landfills, bioreactor landfills, waste containment performance, construction and demolition waste landfills, transport of environmental pollutants, and biodegradable products, and/or that may help form your opinions and conclusions in this case.
10. Regardless of the date, all correspondence between you and Dr. Morton Barlaz.
11. Regardless of the date, all conflict of interest forms or agreements signed by you.
12. Regardless of the date, if you have ever been a defendant or a plaintiff in a legal proceeding, copies of all complaints, answers, motions, and deposition, hearing and trial transcripts involving you from that proceeding along with all orders issued by the courts in those proceedings.
13. Regardless of the date, if you have ever served as an expert in any other proceeding, copies of all expert reports and testimony given by you in those proceedings.

**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 documents<sup>2</sup>, 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 the Environmental Protection Agency 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,

---

<sup>2</sup> “Document” and “documents” as used in this Attachment are defined in this subpoena’s “Description of Documents Requested” section.

/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](mailto:jemord@emord.com)  
Counsel to ECM BioFilms, Inc.

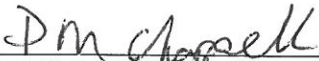
UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

|                               |   |                 |
|-------------------------------|---|-----------------|
| _____                         | ) |                 |
| 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.

**Complaint Counsel  
Exhibit A  
Attachment 3**

**CCX-A:3**



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

April 7, 2014

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

**VIA UPS**

Dr. Shane Frederick, PhD  
Yale University  
Yale School of Management  
52 Hillhouse Ave, Room 116  
New Haven, CT 06511

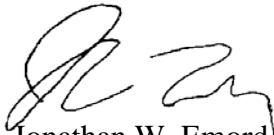
*Re: In the Matter of ECM BioFilms, Inc., Docket No. 9358*

Dear Dr. Frederick:

Pursuant to the Federal Trade Commission's Rules of Practice, please find enclosed Respondent ECM BioFilms, Inc.'s subpoena *duces tecum*. This subpoena requests that you produce 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 April 25, 2014. We welcome you to contact us with questions.

Sincerely,



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



# 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<br/>Dr. Shane Frederick<br/>Yale University<br/>Yale School of Management<br/>52 Hillhouse Ave, Room 116<br/>New Haven, CT 06511</p> | <p>2. FROM<br/><br/><b>UNITED STATES OF AMERICA<br/>FEDERAL TRADE COMMISSION</b></p> |
|---|--|

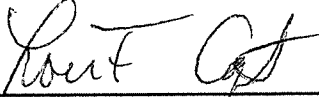
This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

|   |  |
|---|--|
| <p>3. PLACE OF PRODUCTION<br/><br/>Emord &amp; Associates, P.C.<br/>3210 South Gilbert Road, Suite 4<br/>Chandler, AZ 85286</p> | <p>4. MATERIAL WILL BE PRODUCED TO<br/>Peter Arhangelsky</p> <hr/> <p>5. DATE AND TIME OF PRODUCTION<br/>April 25, 2014, 5:00 PM EST</p> |
|---|--|

|  |
|--|
| <p>6. SUBJECT OF PROCEEDING<br/>In the matter of ECM BioFilms, Inc., Docket No. 9358</p> |
|--|

|   |
|---|
| <p>7. MATERIAL TO BE PRODUCED<br/>See Attached Schedule A for description of all documents and materials.</p> |
|---|

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

|                                      |  |
|--------------------------------------|--|
| <p>DATE SIGNED<br/>April 7, 2014</p> | <p>SIGNATURE OF COUNSEL ISSUING SUBPOENA<br/></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****DR. SHANE FREDERICK****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. Documents that were responsive to, and produced in accordance with, the original subpoena *duces tecum* sent to you on February 13, 2014 need not be submitted again. However, your supplemental response should indicate, for each document s previously 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.
- H. 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.

- I. All objections to these numbered requests, or to any individual request, must be raised in the initial response or otherwise waived.
- J. 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.

- K. 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.

- L. 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.

M. 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, correspondence<sup>1</sup>, 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 that concern ECM BioFilms, Inc., any past and present employee or principal of ECM, and/or the ECM additive.
2. All documents, materials, correspondence, forms, marketing material, and testing used or referenced to form any and all opinions you may offer in this case.
3. Regardless of the date, all contracts, retainers, and/or agreements with Yale University.

---

<sup>1</sup> 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.

4. All correspondence with any employee and/or consultant of the Biodegradable Products Institute (“BPI”).
5. All correspondence with Dr. Ramani Narayan.
6. All correspondence with any employee or contracting employee of O.W.S., Inc.
7. All correspondence with the American Chemistry Council.
8. All correspondence with APCO Insight.
9. All correspondence between you and any member, employee, representative, or officer of the United States Federal Trade Commission.
10. All correspondence with any witness, person, and/or consultant used to help form any opinion you have in this case.
11. All documents revealing shares of stock or ownership interests held by you in any company.
12. All documents revealing consultant positions, executive or corporate positions, or financial arrangements between you and any company, university, or other financial institution concerning work or employment related to consumer perception.
13. Since January 1, 1999, copies of all papers, articles, dissertations, and publications authored by you that concern consumer perception and/or that may help form your opinions and conclusions in this case.
14. All conflict of interest forms or agreements signed by you.
15. Regardless of the date, if you have ever been a defendant or a plaintiff in a legal proceeding, copies of all complaints, answers, motions, and deposition, hearing and trial transcripts involving you from that proceeding along with all orders issued by the courts in those proceedings.



16. Regardless of the date, if you have ever served as an expert in any other proceeding, copies of all expert reports and testimony given by you in those proceedings.

### **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 documents<sup>2</sup>, 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 Yale University 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].

---

<sup>2</sup> “Document” and “documents” as used in this Attachment are defined in this subpoena’s “Description of Documents Requested” section.

[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](mailto:jemord@emord.com)  
Counsel to ECM BioFilms, Inc.

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

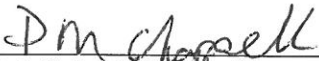
\_\_\_\_\_  
In the Matter of )  
 )  
 )  
ECM BioFilms, Inc., )  
 )  
 a corporation, also d/b/a )  
 )  
 Enviroplastics International, )  
 )  
 Respondent. )  
\_\_\_\_\_

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.

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.

**Complaint Counsel  
Exhibit A  
Attachment 4**

**CCX-A:4**

**SCHEDULE "A" TO SUBPOENA DUCES TECUM DIRECTED TO****DR. STEPHEN MCCARTHY****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. Documents that were responsive to, and produced in accordance with, the original subpoena *duces tecum* sent to you on February 13, 2014 need not be submitted again. However, your supplemental response should indicate, for each document s previously 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.
- H. 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.

- I. All objections to these numbered requests, or to any individual request, must be raised in the initial response or otherwise waived.
- J. 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.

- K. 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.

- L. 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.

M. 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, correspondence<sup>1</sup>, 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 received or possessed before you were engaged as an expert (consulting or testifying) in FTC Docket No. 9358 that concern ECM BioFilms, Inc., any past and present employee or principal of ECM, and/or the ECM additive.

2. All documents, materials, correspondence, forms, marketing material, and testing used or referenced to form any and all opinions you may offer in this case. Production of all

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<sup>1</sup> 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, 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.

responsive materials should be submitted in accordance with the Commission's Rules of Practice and the ALJ's Scheduling Order in this matter.

3. All contracts, retainers, or engagement letters between you and any public or private firm that manufactures and/or produces biodegradable and/or compostable products.

4. All reports, analyses, assessments, tests, data, summaries, and conclusions issued to any public or private firm that manufactures and/or produces biodegradable and/or compostable products concerning the biodegradability of plastics manufactured by those companies.

5. All correspondence between you and any firm that manufactures and/or produces a product or substance in competition generally with other biodegradable plastic products (to wit, ECM's additive) concerning the biodegradability of plastics manufactured with plastic additives.

6. All correspondence and sections of contracts, retainers, and/or agreements with the University of Massachusetts, Lowell ("Umass") concerning funding (including research grants) of research related to biodegradable plastics or polymers.

7. All your pending or existing patents that involve or relate to plastics and or biodegradable and compostable substances, products, and technologies, including those patents for which you are the assignor.

8. All licensing or royalty agreements involving or concerning patents identified *supra* in response to Request 7, and all such agreements involving intellectual property related to biodegradable and compostable products.

9. Copies of all contracts, grant documents (including proposals) for the following research projects you were involved in:

- a. Metabolix, "Development of Novel of Biodegradable Materials, \$1,500,196

- b. NSF Center for Biodegradable Polymer Research, \$1,200,000 Industrial Members (8/93-present), Principal Investigator
  - c. Polymer Degradation Research Center, \$475,000, Industrial Members (8/89-8/93)
  - d. Digital, "Plastics Materials Research", \$458,706
  - e. Metabolix Inc., Performance of PHA Derived Chemicals and Polyols in Polyurethane, \$141,465
  - f. 3M, "Composting Research", \$155,000
  - g. Warner Lambert, "Biodegradable Polymer Research", \$116,591
  - h. National Science Foundation, "Biodegradable Polymer Research Center", \$110,000 (8/93-8/95)
  - i. Department of the Army, "Polymer Degradation Research", \$104,000
  - j. Institute for Plastics Innovation, "Injection Molding Research", \$75,000
  - k. Massachusetts Centers of Excellence, "Institute for Plastics Innovation", \$75,000
  - l. Metabolix Inc., Performance of Polyhydroxyalkanoate Derived Chemicals and Polyols in Polyurethane, \$71,465
  - m. Battelle, "Biodegradable Packaging Development", \$59,865
  - n. DuPont Corian, \$50,000
  - o. Invista, "Evaluation of Plasticizers", \$ 28,000
  - p. Massachusetts Centers of Excellence, "Polymer Degradation Research", \$25,000
10. All documents concerning any testing or product evaluations involving biodegradable and/or compostable plastics in which you participated on behalf of, or as a member of, the BioEnvironmental Polymer Society and/or the Society of Plastics Engineers.

11. All correspondence between you and any employee and/or consultant of the Biodegradable Products Institute (“BPI”).
12. All correspondence with Dr. Ramani Narayan.
13. All correspondence with any employee or contracting employee of O.W.S., Inc. related to biodegradable plastics.
14. All correspondence (not subject to attorney client or work-product privilege and received before engagement as an expert in FTC Docket No. 9358) with any employee and/or representative of the Federal Trade Commission concerning biodegradable plastics.
15. All correspondence with any witness, person, and/or consultant used to help form any opinion you have in this case. Production of all responsive materials should be submitted in accordance with the Commission’s Rules of Practice and the ALJ’s Scheduling Order in this matter.
16. All documents revealing shares of stock or ownership interests held by you in any company that sells, manufactures, or markets plastics, biodegradable technologies, and/or compostable technologies.
17. A listing of all consultant, executive, or corporate positions you held concerning work or employment related to the biodegradability of plastics over the past ten years.
18. All documents and correspondence between you and the authors of the article Gómez, EF, Michel Jr., FC. “Biodegradability of conventional and bio-based plastics and natural fiber composites during composting, anaerobic digestion and long-term soil incubation” Polymer Degradation and Stability. Vol. 98 (December 2013): 2583-2591.

19. Copies of all scientific publications, papers, or presentations that you authored concerning the rate or extent of biodegradable (including compostable) polymers when measured in a laboratory environment or *in situ*.

20. All conflict of interest forms or agreements completed or signed by you in association with your work at the Umass, or as a testifying witness in this case.

21. All documents concerning ASTM, including correspondence, in which you presented a proposal, voted on a proposal, or opposed a proposal concerning biodegradable plastics standards or test methods.

22. If you have ever served as an expert in any other proceeding involving the Federal Trade Commission, copies of all expert reports and testimony given by you in those proceedings. Production of all responsive materials should be submitted in accordance with the Commission's Rules of Practice and the ALJ's Scheduling Order in this matter.

23. If you have ever served as an expert in any other legal proceeding involving plastics technologies, produce copies of all expert reports and testimony given by you in those proceedings. Production of all responsive materials should be submitted in accordance with the Commission's Rules of Practice and the ALJ's Scheduling Order in this matter.

**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 documents<sup>2</sup>, 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 the University of Massachusetts, Lowell 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,

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<sup>2</sup> “Document” and “documents” as used in this Attachment are defined in this subpoena’s “Description of Documents Requested” section.

/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](mailto:jemord@emord.com)  
Counsel to ECM BioFilms, Inc.



**Complaint Counsel  
Exhibit A  
Attachment 5**

**CCX-A:5**

**SCHEDULE “A” TO SUBPOENA DUCES TECUM DIRECTED TO**

**DR. THABET TOLAYMET**

**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. Documents that were responsive to, and produced in accordance with, the original subpoena *duces tecum* sent to you on February 13, 2014 need not be submitted again. However, your supplemental response should indicate, for each document s previously 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.
- H. 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.

- I. All objections to these numbered requests, or to any individual request, must be raised in the initial response or otherwise waived.
- J. 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.

- K. 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.

- L. 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.

M. 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, correspondence<sup>1</sup>, 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 received or possessed before engagement as an expert (consulting or testifying) in FTC Docket No. 9358 that concern ECM BioFilms, Inc., any past and present employee or principal of ECM, and/or the ECM additive.

2. All documents, materials, correspondence, forms, marketing material, and testing used or referenced to form any and all opinions you may offer in this case. Production of all

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<sup>1</sup> 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.

responsive materials should be submitted in accordance with the Commission's Rules of Practice and the ALJ's Scheduling Order in this matter.

3. All correspondence with any employee and/or consultant of the Biodegradable Products Institute ("BPI").

4. All correspondence with Dr. Ramani Narayan.

5. All correspondence with any employee or contracting employee of O.W.S., Inc. related to biodegradable plastics.

6. All correspondence (not subject to attorney client or work-product privilege and received before engagement as an expert in FTC Docket No. 9358) between you and any member, employee, representative, or officer of the United States Federal Trade Commission.

7. All correspondence with any witness, person, and/or consultant used to help form any opinion you have in this case. Production of all responsive materials should be submitted in accordance with the Commission's Rules of Practice and the ALJ's Scheduling Order in this matter.

8. A listing of all shares of stock or ownership interests held by you in any company associated with plastics, biodegradable products or technologies, and/or compostable products or technologies.

9. Copies of all papers, articles, and publications that you authored or co-authored concerning the rates of biodegradation of landfilled waste, including municipal solid waste landfills, bioreactor landfills, and commercial composters.

10. Copies of all papers, articles, and publications that you authored or co-authored concerning the anaerobic or aerobic biodegradability of plastic polymers.

11. All correspondence between you and Dr. Morton Barlaz concerning rates of biodegradation in landfills.
12. All conflict of interest forms or agreements signed by you in association with your employment with the Environmental Protection Agency, or in association with this case.
13. If you have ever served as an expert in any other proceeding involving the Federal Trade Commission, copies of all expert reports and testimony given by you in those proceedings. Production of all responsive materials should be submitted in accordance with the Commission's Rules of Practice and the ALJ's Scheduling Order in this matter.
14. If you have ever served as an expert in any other legal proceeding involving environmental claims or technologies, produce copies of all expert reports and testimony given by you in those proceedings. Production of all responsive materials should be submitted in accordance with the Commission's Rules of Practice and the ALJ's Scheduling Order in this matter.

**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 documents<sup>2</sup>, 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 the Environmental Protection Agency 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]

---

<sup>2</sup> “Document” and “documents” as used in this Attachment are defined in this subpoena’s “Description of Documents Requested” section.

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](mailto:jemord@emord.com)  
Counsel to ECM BioFilms, Inc.



**Complaint Counsel  
Exhibit A  
Attachment 6**

**CCX-A:6**

**SCHEDULE "A" TO SUBPOENA DUCES TECUM DIRECTED TO****DR. SHANE FREDERICK****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. Documents that were responsive to, and produced in accordance with, the original subpoena *duces tecum* sent to you on February 13, 2014 need not be submitted again. However, your supplemental response should indicate, for each document s previously 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.
- H. 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.

- I. All objections to these numbered requests, or to any individual request, must be raised in the initial response or otherwise waived.
- J. 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.

- K. 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.

- L. 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.

M. 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, correspondence<sup>1</sup>, 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 received or possessed before engagement as an expert (consulting or testifying) in FTC Docket No. 9358 that concern ECM BioFilms, Inc., any past and present employee or principal of ECM, and/or the ECM additive.

2. All documents, materials, correspondence, forms, marketing material, and testing used or referenced to form any and all opinions you may offer in this case. Production of all

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<sup>1</sup> 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.

responsive materials should be submitted in accordance with the Commission's Rules of Practice and the ALJ's Scheduling Order in this matter.

3. Regardless of the date, all sections of contracts, retainers, and/or agreements with Yale University concerning conflicts of interest and/or supplemental employment (such as consultation services in litigation).

4. All correspondence with any employee and/or consultant of the Biodegradable Products Institute ("BPI").

5. All correspondence with Dr. Ramani Narayan.

6. All correspondence (not subject to attorney client or work-product privilege and exchanged before engagement as an expert in FTC Docket No. 9358) between you and any member, employee, representative, or officer of the United States Federal Trade Commission.

7. All correspondence with any witness, person, and/or consultant used to help form any opinion you have in this case. Production of all responsive materials should be submitted in accordance with the Commission's Rules of Practice and the ALJ's Scheduling Order in this matter.

8. A listing of all shares of stock or ownership interests held by you in any company associated with plastics, biodegradable products or technologies, and/or compostable products or technologies.

9. All documents, including papers, articles, dissertations, and publications that you authored, co-authored, or contributed to that concerned work related to marketing research (including consumer perception) of trade consumers, e.g., corporate entities, distributors, wholesalers, etc., as opposed to end-consumers.

10. Since January 1, 1999, copies of all papers, articles, dissertations, and publications authored by you that concern consumer perception that may help form your opinions and conclusions in this case. Production of all responsive materials should be submitted in accordance with the Commission's Rules of Practice and the ALJ's Scheduling Order in this matter.

11. All conflict of interest forms or agreements signed by you.

12. Regardless of the date, if you have ever been a defendant or a plaintiff in a legal proceeding, copies of all complaints, answers, motions, and transcripts (deposition, hearing and trial) involving you in your professional capacity, along with all orders issued by the courts in those proceedings.

13. If you have ever served as an expert in any other proceeding involving the Federal Trade Commission, copies of all expert reports and testimony given by you in those proceedings. Production of all responsive materials should be submitted in accordance with the Commission's Rules of Practice and the ALJ's Scheduling Order in this matter.

14. If you have ever served as an expert in any other legal proceeding involving environmental claims, produce copies of all expert reports and testimony given by you in those proceedings. Production of all responsive materials should be submitted in accordance with the Commission's Rules of Practice and the ALJ's Scheduling Order in this matter.

**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 documents<sup>2</sup>, 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 Yale University 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,

---

<sup>2</sup> “Document” and “documents” as used in this Attachment are defined in this subpoena’s “Description of Documents Requested” section.

/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](mailto:jemord@emord.com)  
Counsel to ECM BioFilms, Inc.



**Complaint Counsel  
Exhibit A  
Attachment 7**

**CCX-A:7**

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

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

**DECLARATION OF DR. STEPHEN MCCARTHY IN OPPOSITION TO  
RESPONDENT’S MOTION TO ENFORCE SUBPOENA**

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

1. I am over 18 years of age, and I am a citizen of the United States. I have personal knowledge of the facts stated herein.

2. I am a Professor of Plastics Engineering at the University of Massachusetts Lowell (the “University”) where I teach graduate level courses in Plastics Engineering, including the “Mechanical Behavior of Polymers” and “Polymers and the Environment.” In addition, I am the Director of the University’s Biodegradable Polymer Research Center, where I orchestrate research on biodegradable polymers. I am the Principal Investigator for studies on plastics engineering and polymer research. My research has led to numerous patents. I am an inventor on seven patents related to polymers or plastics engineering. Complaint Counsel engaged me to provide expert analysis and testimony in the above-captioned matter.

3. Based upon my education, training, and experience, I consider myself an expert in the fields of plastics engineering, polymer science, and biodegradable polymers. Thus, most of the documents in my possession over the past 20 years touch on some aspect of biodegradable plastics.

4. I received and reviewed a copy of the Revised Subpoena Respondent ECM Biofilms, Inc. (“ECM”) issued to me. My records are extremely extensive, and searching them for potentially responsive material would substantially burden my ability to conduct my regular

professional activities, including research. Searching my files also substantially burden my ability to support Complaint Counsel, and to provide the Court with expert opinion and analysis.

5. Many of my records are stored in hard copy form and consist of, among other things, draft articles and other materials related to my research. I have four, three-foot wide three-drawer cabinets filled with pages of hard copy documents.

6. I also have many electronic documents, which include e-mail, draft articles, presentations, memoranda, and other materials related to biodegradable plastics. I have electronic files both on my work computer and my personal laptop.

7. Many of these materials will have to be segregated and marked confidential because they relate to work performed for private research grants.

8. Some of the documents requested, *e.g.*, conflict of interest forms and grant contracts, are not in my possession, but reside with the University. Others are publicly available on the University's website, such as the University's Intellectual Property Policy, which governs the distribution of income generated from commercialization of intellectual property deriving from the licensing of University-owned intellectual property.

9. Even assuming that I find ways to review materials efficiently, eliminate certain materials from the review, and implement other time-saving measures, I estimate that reviewing my files for potentially responsive materials would take approximately three 8-hour days, if not more.

EXECUTED: May 28, 2014

in Tel Aviv, Israel.

/s/ Stephen McCarthy  
Stephen McCarthy, Ph.D.

**Complaint Counsel  
Exhibit A  
Attachment 8**

**CCX-A:8**

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

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

Docket No. 9358  
PUBLIC DOCUMENT

**DECLARATION OF THABET TOLAYMAT IN OPPOSITION TO RESPONDENT'S  
MOTION TO ENFORCE SUBPOENA**

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

1. I am over 18 years of age, and I am a citizen of the United States. I have personal knowledge of the facts stated herein.

2. I am an Environmental Engineer at the U.S. Environmental Protection Agency's ("EPA") Office of Research and Development ("ORD"), where I have worked since 2003. From October 2012 to October 2013, I was the Acting Associate National Program Director for Emerging Materials and Sustainability under the Chemical Safety for Sustainability Research Program at EPA. Currently, I am the Project Lead for Sustainable Materials and Waste Management at ORD. Complaint Counsel engaged me to provide expert analysis and testimony in the above-captioned matter.

3. I received and reviewed a copy of the Revised Subpoena Respondent ECM Biofilms, Inc. ("ECM") issued to me. My records are extremely extensive, and searching them for potentially responsive material would substantially burden my ability to conduct my regular professional activities, including research. Searching my files also substantially burden my ability to support Complaint Counsel, and to provide the Court with expert opinion and analysis.

4. Many of my records are stored in hard copy form and consist of, among other things, draft articles and other materials related to my research and work at EPA. Some of my

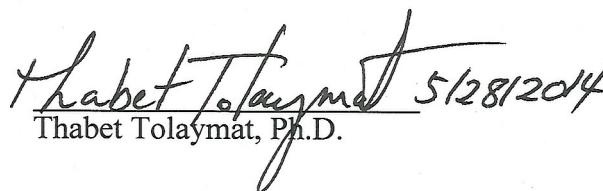
hard copy documents are stored at the EPA's long term storage facility and 4 full filing cabinets in my office.

5. I also have many electronic documents, which include e-mail, draft articles, memoranda, and other materials related to my research and work at EPA. My current e-mail is stored on my EPA Microsoft Outlook account. However, before January 19, 2013, EPA used the Lotus Notes e-mail program. Accordingly, I may also responsive e-mail responsive on my old EPA Lotus Notes account, and I would need to request unlocking my account from EPA to access and search my old e-mail account. Based on a review of my computer's storage, I have approximately 100 gigabytes of potentially responsive data.

6. Even assuming that I would work with counsel to find ways to review materials efficiently, eliminate certain materials from the review, and implement other time-saving measures, I estimate that reviewing my files for potentially responsive materials would take approximately one week. Because many of my files are located on restricted government computers at EPA, I would have to conduct any search for responsive records during regular business hours, which would significantly impair my ability to perform my professional responsibilities.

EXECUTED:

in Cincinnati, Ohio.

 5/28/2014  
Thabet Tolaymat, Ph.D.

**Complaint Counsel  
Exhibit A  
Attachment 9**

**CCX-A:9**

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

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

**DECLARATION OF SHANE FREDERICK IN OPPOSITION TO RESPONDENT'S  
MOTION TO ENFORCE SUBPOENA**

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

1. I am over 18 years of age, and I am a citizen of the United States. I have personal knowledge of the facts stated herein.

2. I am a Professor of Marketing at Yale University, where I have taught since 2008. Previously, from 2002 through 2007, I was a Professor at Massachusetts Institute of Technology. Complaint Counsel engaged me to provide expert analysis and testimony in the above-captioned matter.

3. I received and reviewed a copy of the Revised Subpoena Respondent ECM Biofilms, Inc. ("ECM") issued to me. My records are extremely extensive, and searching them for potentially responsive material would substantially burden my ability to conduct my regular professional activities, including teaching and research. Searching my files also substantially burden my ability to support Complaint Counsel, and to provide the Court with expert opinion and analysis.


4. Many of my records are stored in hard copy form. Among many things, these records include survey responses, draft articles, and other materials related to my research and teaching. I have between 110,000 and 120,000 pages of hard copy documents spread between a basement storage facility at Yale, various file drawers in my office, and my personal residence. Several students I supervise also may have possibly responsive materials.



5. Most of my documents, however, are maintained electronically. These documents include, among many things, draft articles, correspondence with other faculty regarding substantive matters, materials related to courses, and other communications or documents germane to my research concerning consumer behavior. Based on a review of my computer's storage, I have approximately 25 gigabytes of potentially responsive data.

6. Even assuming that I would work with counsel to find ways to review materials efficiently, eliminate certain materials from the review, and implement other time-saving measures, I estimate that reviewing my files for potentially responsive materials would take between forty and sixty hours.

EXECUTED: 5/23/2014  
in New Haven, Connecticut.

  
Shane Frederick, Ph.D.

**Complaint Counsel  
Exhibit A  
Attachment 10**

**CCX-A:10**



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

January 24, 2014

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

**VIA UPS**

Mr. James A. Thomas, ASTM President  
ASTM International  
100 Barr Harbor Drive  
West Conshohocken, PA 19428

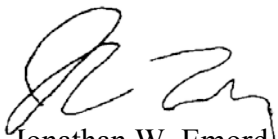
*Re: In the Matter of ECM BioFilms, Inc., Docket No. 9358*

Dear Mr. Thomas:

Pursuant to the Federal Trade Commission's Rules of Practice, please find enclosed Respondent ECM BioFilms, Inc.'s subpoena *duces tecum* to ASTM International. 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 3. We welcome you to contact us with questions.

Sincerely,



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



# 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)

|  |   |
|--|---|
| <b>1. TO</b><br><br>ASTM International<br>100 Barr Harbor Drive<br>West Conshohocken, PA 19428 | <b>2. FROM</b><br><br><p style="text-align: center;"><b>UNITED STATES OF AMERICA<br/>FEDERAL TRADE COMMISSION</b></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.

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

|   |
|---|
| <b>6. SUBJECT OF PROCEEDING</b><br><br>In the matter of ECM BioFilms, Inc., Docket No. 9358 |
|---|

|  |
|--|
| <b>7. MATERIAL TO BE PRODUCED</b><br><br>See Attached Schedule A for description of all documents and materials. |
|--|

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

|                                     |  |
|-------------------------------------|--|
| <b>DATE SIGNED</b><br><br>1/24/2014 | <b>SIGNATURE OF COUNSEL ISSUING SUBPOENA</b><br><br> |
|-------------------------------------|--|

### 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 ASTM  
INTERNATIONAL ("ASTM")**

- 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, correspondence<sup>1</sup>, 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 concerning<sup>2</sup> or related to the development, adoption, and promulgation of ASTM D5511, including but not limited to:
  - a. Documents that concern and/or relate to the amendment of any provision contained in ASTM D5511, Section 1 enacted on and/or introduced or before January 1, 1994.
  - b. Correspondence with any employee, representative, associate, contractor, person, or any other individual working with or on behalf of the Federal Trade Commission concerning Section 1 of ASTM D5511-11 and ASTM D5511-12.

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<sup>1</sup> 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.

<sup>2</sup> 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.

- c. Documents that concern and/or relate to Section 13.3 and Section 13.4 contained in Section 13 of ASTM D5511-11 and ASTM D5511-12, including explanations or discussions of how, why, and under what circumstances Section 13.3 and Section 13.4 were created and included in any version or reproduction of ASTM D5511.
  - d. Correspondence with any employee, representative, associate, contractor, person, or any other individual working with or on behalf of the Federal Trade Commission concerning Section 13.3 and Section 13.4 of ASTM D5511-12.
  - e. Documents that concern and or relate to Section 14.1.3 and Section 14.1.4 of ASTM D5511-11 and ASTM D5511-12. Production must include how, why, and under what circumstances Section 14.1.3 and Section 14.1.4 were created and included in ASTM D5511-11 and ASTM D5511-12.
  - f. Correspondence with any employee, representative, associate, contractor, person, or any other individual working with or on behalf of the Federal Trade Commission concerning Section 14.1.3 and Section 14.1.4 of ASTM D5511-12.
2. All documents concerning or related to the adoption, promulgation, revision, or amendment of ASTM D5526, enacted on and/or introduced or before January 1, 1994, as follows:
    - a. Correspondence with any employee, representative, associate, contractor, person, or any other individual working with or on behalf of the Federal Trade Commission concerning Section 1 of ASTM D5526-94 and ASTM D5526-12 and revisions of those versions.



- b. Documents that concern and/or relate to the amendment of any provision contained in ASTM D5526, Section 5 enacted on and/or introduced on or about January 1, 1994.
    - c. Correspondence with any employee, representative, associate, contractor, person, or any other individual working with or on behalf of the Federal Trade Commission concerning Section 5 of ASTM D5526-94 and ASTM D5526-12 and any revisions of those versions.
    - d. Documents that concern and/or relate to Section 14.1.3 and Section 14.1.4 of ASTM D5511-11 and ASTM D5511-12. Production must include how, why, and under what circumstances Section 14.1.3 and Section 14.1.4 were created and included in ASTM D5511-11 and ASTM D5511-12.
    - e. Correspondence with any employee, representative, associate, contractor, person, or any other individual working with or on behalf of the Federal Trade Commission concerning Section 14.1.3 and Section 14.1.4 of ASTM D5511-12.
3. Regardless of the date on which such documents were created, documents concerning or related to the definition of “biologically active landfill,” “biologically inactive landfill” as the terms are used in any and all versions and reproductions of ASTM D5511 and D5526.
4. Regardless of the date on which such documents were created, documents concerning or related to how ASTM creates and organizes its committees, including:
  - a. All documents concerning how individuals are chosen, assigned, volunteered, elected, and/or transferred to a committee.

- b. All documents concerning or related to the creation, organization, and rules of operation for ASTM committee D20
  - c. All documents concerning or related to the creation, organization, and rules of operation for ASTM committee D20.92
  - d. All documents concerning or related to the creation, organization, and rules of operation for ASTM committee D20.96
  - e. All documents concerning or related to Dr. Ramani Narayan.
5. All documents concerning any and all discussion of the term “additive products” that may be included in a plastic product as they concern and or relate to any ASTM standard.
6. All documents concerning, relating to, or describing correspondence between any and all ASTM members and any and all individuals associated or acting on behalf of or with the Federal Trade Commission.

**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 documents<sup>3</sup>, 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 and 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 BPI who have knowledge of such matters 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.

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](mailto:jemord@emord.com)  
Counsel to ECM BioFilms, Inc.

---

<sup>3</sup> “Document” and “documents” as used in this Attachment are defined in this subpoena’s “Description of Documents Requested” section.

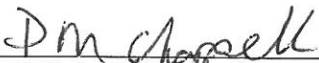
UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

\_\_\_\_\_)  
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.

**Complaint Counsel  
Exhibit A  
Attachment 11**

**CCX-A:11**





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

January 24, 2014

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

**VIA UPS**

Mr. Steve Mojo, Executive Director  
Biodegradable Products Institute  
331 West 57<sup>th</sup> Street, Suite 415  
New York, NY 10019


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

Dear Mr. Mojo:

Pursuant to the Federal Trade Commission's Rules of Practice, please find enclosed Respondent ECM BioFilms, Inc.'s subpoena *duces tecum* to Biodegradable Products Institute. 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; Attachment A, which is referenced in Respondent's requests; and a copy of the Protective Order issued in this matter.

Please provide all requested documents no later than March 3. We welcome you to contact us with questions.

Sincerely,



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



## 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>Biodegradable Products Institute<br/>331 West 57th Street, Suite 415<br/>New York, NY 10019</p> | <p>2. FROM</p> <p style="text-align: center;"><b>UNITED STATES OF AMERICA<br/>FEDERAL TRADE COMMISSION</b></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 &amp; Associates, P.C.<br/>3210 South Gilbert Road, Suite 4<br/>Chandler, AZ 85286</p> | <p>4. MATERIAL WILL BE PRODUCED TO</p> <p>Peter Arhangelsky</p> <hr/> <p>5. DATE AND TIME OF PRODUCTION</p> <p>March 3, 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<br/>D. Michael Chappell</p> <p>Federal Trade Commission<br/>Washington, D.C. 20580</p> | <p>9. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p>Jonathan W. Emord, Peter Arhangelsky<br/>Emord &amp; Associates, P.C. for Respondent,<br/>ECM BioFilms, Inc.</p> |
|---|--|

|                                     |  |
|-------------------------------------|--|
| <p>DATE SIGNED</p> <p>1/24/2014</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  
BIODEGRADABLE PRODUCTS INSTITUTE ("BPI")**

**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, correspondence<sup>1</sup>, 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 concerning<sup>2</sup> the biodegradability of plastics generally and in Municipal Solid Waste Landfills in particular whether or not in the presence of other biodegradable material.
2. All documents concerning ECM BioFilms, Inc.
3. All correspondence from any BPI employee, member, representative, BPI Executive Director Steve Mojo, or Dr. Ramani Narayan, of or concerning ECM BioFilms, Inc. or any of ECM's employees, officers, and representatives.

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<sup>1</sup> 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.

<sup>2</sup> 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.

4. All documents concerning the Federal Trade Commission's ("FTC") "Revised Green Guides" published in October 2012

5. All correspondence between any BPI employee, member, representative of BPI, BPI Executive Director Steve Mojo, or Dr. Ramani Narayan, of, concerning, to, or from the Federal Trade Commission or any Federal Trade Commission employee or agent.

6. All documents concerning or related to any version of the American Society of Testing and Materials' ("ASTM") testing methods D5511 and D5526.

7. All correspondence between any BPI employee, member, or representative and the American Chemistry Council ("ACC").

8. All documents concerning the study performed in 2006 by APCO Insight ("APCO Study") for the ACC concerning public perception of the term "biodegradable" and related topics.

9. All documents concerning or supporting the following statement from the BPI website: "The key point is that only a portion of the additive will biodegrade and there is no data to show that the remaining 95 to 99% of the plastic package will also biodegrade." *See* Attachment A (BPI webpage: "Background on Biodegradable Additives" at 2.<sup>3</sup>

10. All documents concerning or supporting the following statement from the BPI website: "Extrapolation of test data should not be a basis for meeting these criteria." *See* Attachment A at 4

11. All documents specifically identifying sources for the following statement and of, concerning or supporting the following statement, from the BPI website: "Further, based on a study by the American Chemistry Council, when consumers see the word 'biodegradable' on a

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<sup>3</sup> Available at <http://tinylink.net/070xo> (last checked January 21, 2014).

package, they believe that the package will completely disappear in 12 to 18 months...” *See* Attachment A at 3.

12. All documents concerning or related to the definition of “biologically active landfill,” “biologically inactive landfill” as the terms are used in any and all versions and reproductions of ASTM 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 documents<sup>4</sup>, 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 and 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 BPI who have knowledge of such matters 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.

---

<sup>4</sup> “Document” and “documents” as used in this Attachment are defined in this subpoena’s “Description of Documents Requested” section.

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](mailto:jemord@emord.com)  
Counsel to ECM BioFilms, Inc.





## Background on Biodegradable Additives

This document summarizes the Biodegradable Products Institute's comments on the use of additives to promote "biodegradation" in traditional polymers, such as PE, PP, PS and PVC.

### Background

There are a number of manufacturers who claim that when their products are mixed at 1-5% concentrations with traditional polymers, the resultant formulation/s become "biodegradable". Further, these manufacturers maintain that their additives will make polymers "biodegradable" in aerobic environments (such as composting and litter), as well as anaerobic environments (typically found in landfills).

Today, these additives fall into two broad classes , "oxo-biodegradables" and "additives with organic materials":

1. **Oxo-biodegradables:** These consist of transition metals (some of which are regulated) that theoretically foster oxidation and chain scission in plastics when exposed to heat, air and/or light. Based over 20 analyses over the past 4 years by the BPI, these metals include but are not limited to cobalt, manganese, magnesium, iron and zinc. The theory behind chain scission is that it is supposed to shorten the polymer chains to the point where they can be consumed by microorganisms found in the disposal environment and used as a food source.

Research has shown that moisture retards the oxidation process, delaying the potential onset of biodegradation. In addition, for landfills, no data has been presented to support complete biodegradation in anaerobic environments.

Testing has shown that in arid climates with sunlight and high heat, oxo-biodegradable additives will accelerate the fragmentation of traditional polymers. Data has shown that at high temperatures in conjunction with UV in arid conditions, that fragmentation can be achieved in 2 to 3 months. However, **fragmentation is not a sign of "biodegradation"** and there is no data to show how long these plastic fragments will persist in the soils or marine environments. Further, data has also shown that moisture will retard this fragmentation process for months or longer.

From a practical perspective, this means that a plastic bag that is littered in the desert will probably fragment in a few months. Yet, these fragments will persist for years or longer. Moreover, if the same bag is littered in a cold, dark wet forest, it is unlikely that the bag will fragment for months or years.

EPI (EPI Environmental Technologies), Wells/Bioxo, Addiflex, Symphony are some of the suppliers of oxo-biodegradable additives. However, some converters using these additives do not cite specific manufacturers. Rather, they may say that they are using “oxo-biodegradable” concentrates or additives.

- 2. Additives with Organic Materials:** In this class of materials, some portion of the additive itself will biodegrade and generate carbon dioxide or methane. The biodegradable portion of the additive pellets can be natural materials, such as cellulose and starch or it can consist of resins, which are known to biodegrade, such as EVA or PVOH. The key point is that only a portion of the additive will biodegrade and there is no data to show that the remaining 95 to 99% of the plastic package will also biodegrade. In some ways, this class of additives is similar to the original “biodegradable plastics” where the starch would biodegrade and the remaining plastic just fragmented.

Based on data that the BPI has reviewed, manufacturers with this type of technology include (but are not limited to) ECM BioFilms, Bio-Tec Environmental's EcoPure, BioBatch, Green Films and Good Earth.

### **Latest Labeling Developments:**

Claims by additive suppliers are difficult to interpret, as they typically quote a variety of ASTM tests and other documents.

Given the increasing level of claims, (many of which are unsupported), the State of California has decided to step in, by passing 2 pieces of legislation. These pertain to plastic bags and foodservice items (both paper and plastic) and became effective in January, 2009. The impact of this legislation is to make the use of the labels “biodegradable” and “degradable” more rigorous. Further, in order to use the term “compostable” plastic bags and foodservice items must meet either ASTM D6400 or D6868.

- ASTM D6400: Standard Specification for Compostable Plastics
- ASTM D6868: Standard Specification for Biodegradable Plastics Used as Coatings on Paper and Other Compostable Substrates

Additionally, the Federal Trade Commission (FTC) requires that prior to making any unqualified “biodegradable” claims, that suppliers have scientific data to prove:

- 1) That the entire product (not just the additive) will biodegrade into elements found in nature;
- 2) In a short period time after customary disposal (which is landfilling for most plastics).

Additionally on June 9, 2009, the FTC found that Kmart's claims of biodegradability of paper plates was misleading. Further, they questioned the ability of any materials to biodegrade in a landfill.

*"Mr. Davis of the F.T.C. raised doubts. "Maybe a piece of produce could be labeled biodegradable if it's customarily disposed of through composting," he said, "but the statistics show that most household trash goes to landfills. So even a piece of produce might not biodegrade" in a reasonable period of time, he explained."*

Source: <http://greeninc.blogs.nytimes.com/2009/06/11/ftc-sends-stern-warning-on-biodegradable-marketing-claims/?scp=3&sq=biodegradable%20ftc&st=Search>

Further, based on a study by the American Chemistry Council, when consumers see the word "biodegradable" on a package, they believe that the package will completely disappear in 12 to 18 months, no matter where it is thrown away (either in landfills, streams or as litter). Consumers think nothing will be left at the end of the process.

### **Science of Biodegradation:**

Biodegradation takes place when microorganisms utilize carbon substrates to extract chemical energy that drives their life processes. The carbon substrates become "food", which microorganisms use to sustain themselves. Under aerobic conditions, the carbon is biologically oxidized to carbon dioxide inside the cell releasing energy that is harnessed by the microorganisms for its life processes. Under anaerobic conditions, CO<sub>2</sub> + Methane are produced. Thus, a measure of the rate and amount of CO<sub>2</sub> or CO<sub>2</sub>+CH<sub>4</sub> evolved as a function of total carbon input to the process is a direct measure of the amount of carbon substrate being utilized by the microorganism (percent biodegradation). This forms the basis for various National (ASTM, EN) and international (ISO) standards for measuring biodegradability or microbial utilization of chemicals, and biodegradable plastics

### **Recommendations for purchasing and packaging professionals**

Given consumer expectations, the FTC's direction and new California legislation, the BPI recommends that organizations wishing to use "biodegradable additives" ask the suppliers for the "scientific data" to address the following questions:

- 1) For "compostable" products, does the entire application (film or package) meet all the requirements of ASTM D6400 or ASTM D6868?
- 2) For "marine biodegradable", does the entire application (film or package) meet all the requirements of ASTM 7081?
- 3) There are no ASTM specifications that dictate the overall level of biodegradation that must be achieved to make other "biodegradable" claims. However, the BPI recommends that the supplier demonstrate that 90% of the entire plastic film or package (not just the additive) be converted to carbon dioxide under aerobic conditions (like soil burial) or carbon dioxide and methane under anaerobic conditions (as in an anaerobic digester, or a landfill) based upon weight and carbon content

relative to the positive control using the following internationally recognized test methods as shown below:

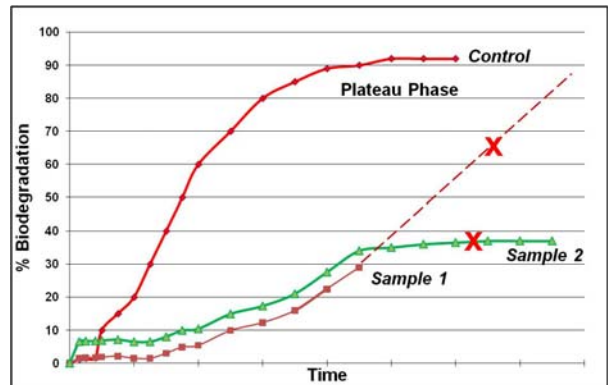
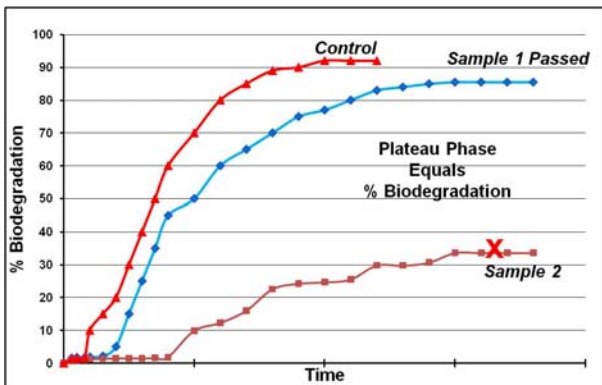
| Claim   | Appropriate Test Methods               | Recommended Pass/Fail Threshold  | Time Limit   |
|---|--|--|--------------|
| "Biodegradable" or "Biodegrades in a Landfill" (anaerobic environment)                  | ASTM D5526 or ASTM D5511 or ASTM D6776 | Based on correspondence to the BPI from the FTC, it is likely that any unqualified "biodegradable" claim will be judged as deceptive, regardless of the testing data.<br><a href="http://www.ftc.gov/os/adjpro/d9336/091218dynaletter.pdf">http://www.ftc.gov/os/adjpro/d9336/091218dynaletter.pdf</a> |              |
| <b>"Biodegrades in landfills" claims are not recommended given recent FTC findings.</b> |  |  |              |
| "Biodegrades in Soils" or as Litter<br>Aerobic environment                              | ASTM D5988                             | 90% conversion of test materials carbon to carbon dioxide relative to the positive control in the test   | 12-18 months |

Note: Only one of the test methods needs to be used to verify the "biodegrades" or landfill claims.

The 90% threshold relative to the positive control will insure that the entire plastic product can be consumed by the microbes (i.e. biodegraded) with no persistent residues. Additionally, the following conditions must be met:

- The positive control shall reach a minimum of 70% biodegradation as specified in the test method.
- Both the test and control samples must reach plateaus during the test. These plateaus represent the maximum level of biodegradation achieved.
- Extrapolation of test data should not be a basis for meeting these criteria.
- Test samples should not be subjected to "pre-conditioning" to promote or accelerate oxidation or degradation (such as high heat under dry conditions for long periods of time), especially for landfill claims.
- Manufacturers shall make all test reports available for review by interested parties.

Below are 2 charts the depict examples of what is expected when data is presented.



**Comments on Biodegradation in Landfills**

Manufacturers should understand that biodegradation that takes place in landfills can generate fugitive methane emissions which contribute to greenhouse gas production and climate change. Methane is 25 times more powerful as a greenhouse gas than carbon dioxide.

Additionally, the US Federal Trade Commission ruled on June 9, 2009 that “biodegradable” claims on paper plates were misleading, as noted earlier in this document. This direction was reinforced in a letter to the BPI in December, 2010, which stated it is likely that any unqualified “biodegradable” claim will be judged as deceptive, regardless of the testing data. The complete letter can be found at the link below:

<http://www.ftc.gov/os/adjpro/d9336/091218dynaletter.pdf>

For these reasons, the BPI supports the diversion from landfills of all potentially “biodegradable” materials.

**Where to turn if you have questions:**

The BPI will be happy to review and comment on any data provided to buyers, or packaging professionals by additive suppliers. (email: [info@bpiworld.org](mailto:info@bpiworld.org)).

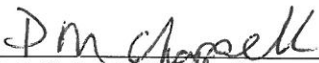
UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

|                               |   |                 |
|-------------------------------|---|-----------------|
| _____                         | ) |                 |
| 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.

**Complaint Counsel  
Exhibit A  
Attachment 12**

**CCX-A:12**



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 UPS**

Dr. Eva Almenar  
School of Packaging  
Michigan State University  
130 Packaging Building  
East Lansing, MI 48824

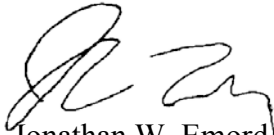
*Re: In the Matter of ECM BioFilms, Inc., Docket No. 9358*

Dear Dr. Almenar:

Pursuant to the Federal Trade Commission's Rules of Practice, please find enclosed Respondent ECM BioFilms, Inc.'s subpoena *duces tecum*. 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 17, 2014. We welcome you to contact us with questions.

Sincerely,



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



# 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)

|   |   |
|---|---|
| <b>1. TO</b><br>Dr. Eva Almenar<br>School of Packaging<br>Michigan State University<br>130 Packaging Building<br>East Lansing, MI 48824 | <b>2. FROM</b><br><br><p style="text-align: center;"><b>UNITED STATES OF AMERICA<br/>FEDERAL TRADE COMMISSION</b></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.

|  |   |
|--|---|
| <b>3. PLACE OF PRODUCTION</b><br><br>Emord & Associates, P.C.<br>3210 S. Gilbert Road, Suite 4<br>Chandler, AZ 85286 | <b>4. MATERIAL WILL BE PRODUCED TO</b><br>Peter Arhangelsky<br><br><b>5. DATE AND TIME OF PRODUCTION</b><br>March 17, 2014, 5:00 PM EST |
|--|---|

|   |
|---|
| <b>6. SUBJECT OF PROCEEDING</b><br>In the matter of ECM BioFilms, Inc., Docket No. 9358 |
|---|

|  |
|--|
| <b>7. MATERIAL TO BE PRODUCED</b><br>See Attached Schedule A for description of all documents and materials. |
|--|

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

|                               |   |
|-------------------------------|---|
| <b>DATE SIGNED</b><br>2/28/14 | <b>SIGNATURE OF COUNSEL ISSUING SUBPOENA</b><br> |
|-------------------------------|---|

### 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**

**DR. EVA ALMENAR**

**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, correspondence<sup>1</sup>, 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 concerning Michigan State University's ("MSU's") conflict of interest policies and requirements for faculty effective March 25, 2010.
2. All documents concerning your determination that there existed a conflict of interest as explained in your email to Ron Thompson, dated between March 23-25, 2010, concerning analysis and certification of biodegradable products.
3. All correspondence concerning any conflict of interest as explained in your email to Ron Thompson, dated between March 23-25, 2010, concerning analysis and certification of biodegradable products.

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<sup>1</sup> 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.

4. All documents concerning<sup>2</sup> ECM BioFilms, Inc.
5. All documents sent or received by you and any other employee of MSU making reference to ECM BioFilms, Robert Sinclair, or ECM BioFilms MasterBatch Pellets.
6. All documents concerning any test or report (including any and all notes, drafts, and raw data) performed or written about a product or substance containing any product of ECM BioFilms, Inc., including “ECM MasterBatch Pellets.”
7. All correspondence involving you and/or Dr. Ramani Narayan concerning:
  - Biodegradable products and/or substances
  - Articles, reports, and any versions, drafts, or notes concerning biodegradable products
  - ECM BioFilms
  - The Biodegradable Products Institute (“BPI”).
  - The Federal Trade Commission
  - All findings of conflict of interest related to Dr. Ramani Narayan
8. All correspondence between you and the BPI.
9. All correspondence between any employee, representative, and/or officer of MSU and the BPI.
10. All correspondence between you and any employee of Johnsonville Sausage, LLC.
11. All correspondence between any employee, representative, and/or officer of MSU and Johnsonville Sausage, LLC.

---

<sup>2</sup> 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.



12. All correspondence between you and the Federal Trade Commission.
13. All correspondence between any employee, representative, and/or officer of MSU and the Federal Trade Commission.

### **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 documents<sup>3</sup>, 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 the Michigan State University 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].

---

<sup>3</sup> “Document” and “documents” as used in this Attachment are defined in this subpoena’s “Description of Documents Requested” section.

[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](mailto:jemord@emord.com)  
Counsel to ECM BioFilms, Inc.

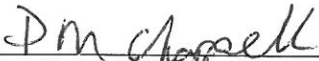
UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

|                               |   |                 |
|-------------------------------|---|-----------------|
| _____                         | ) |                 |
| 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.

**Complaint Counsel  
Exhibit A  
Attachment 13**

**CCX-A:13**



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 UPS**

Eddie F. Gómez  
Ohio State University  
207 Hayden Hall  
1680 Madison Avenue  
Wooster, Ohio 44691

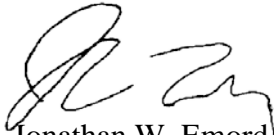
*Re: In the Matter of ECM BioFilms, Inc., Docket No. 9358*

Dear Mr. Gómez:

Pursuant to the Federal Trade Commission's Rules of Practice, please find enclosed Respondent ECM BioFilms, Inc.'s subpoena *duces tecum*. 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 17, 2014. We welcome you to contact us with questions.

Sincerely,



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





# 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)

|   |   |
|---|---|
| <b>1. TO</b><br>Eddie F Gómez<br>Ohio State University<br>207 Hayden Hall<br>1680 Madison Avenue<br>Wooster, Ohio 44691 | <b>2. FROM</b><br><br><b>UNITED STATES OF AMERICA<br/> FEDERAL TRADE COMMISSION</b> |
|---|---|


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.

|  |   |
|--|---|
| <b>3. PLACE OF PRODUCTION</b><br><br>Emord & Associates, P.C.<br>3210 S. Gilbert Road, Suite 4<br>Chandler, AZ 85286 | <b>4. MATERIAL WILL BE PRODUCED TO</b><br>Peter Arhangelsky<br><br><b>5. DATE AND TIME OF PRODUCTION</b><br>March 17, 2014, 5:00 PM EST |
|--|---|

|   |
|---|
| <b>6. SUBJECT OF PROCEEDING</b><br>In the matter of ECM BioFilms, Inc., Docket No. 9358 |
|---|

|  |
|--|
| <b>7. MATERIAL TO BE PRODUCED</b><br>See Attached Schedule A for description of all documents and materials. |
|--|

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

|                               |   |
|-------------------------------|---|
| <b>DATE SIGNED</b><br>2/28/14 | <b>SIGNATURE OF COUNSEL ISSUING SUBPOENA</b><br> |
|-------------------------------|---|

## 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**

**EDDIE F. GÓMEZ**

**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, correspondence<sup>1</sup>, 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 concerning<sup>2</sup> ECM BioFilms, Inc.
2. All correspondence between you and ECM BioFilms, Inc.
3. All documents sent or received by you making reference to ECM BioFilms,

Robert Sinclair, or ECM BioFilms MasterBatch Pellets.

---

<sup>1</sup> 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.

<sup>2</sup> 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.

4. 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.”

5. All documents concerning the article, Gómez, EF, Michel Jr., FC. “Biodegradability of conventional and bio-based plastics and natural fiber composites during composting, anaerobic digestion and long-term soil incubation” Polymer Degradation and Stability. Vol. 98 (December 2013): 2583-2591.

6. All drafts and notes concerning the article, Gómez, EF, Michel Jr., FC. “Biodegradability of conventional and bio-based plastics and natural fiber composites during composting, anaerobic digestion and long-term soil incubation” Polymer Degradation and Stability. Vol. 98 (December 2013): 2583-2591.

7. All documents concerning the involvement of any and all individuals with the article, Gómez, EF, Michel Jr., FC. “Biodegradability of conventional and bio-based plastics and natural fiber composites during composting, anaerobic digestion and long-term soil incubation” Polymer Degradation and Stability. Vol. 98 (December 2013): 2583-2591, and/or the tests and procedures described in such article.

8. All documents concerning the actual tests and procedures (including any and all notes, drafts, protocols, identity and sources of the ECM additives received and used, and all raw data) described in “Gómez, EF, Michel Jr., FC. “Biodegradability of conventional and bio-based plastics and natural fiber composites during composting, anaerobic digestion and long-term soil incubation” Polymer Degradation and Stability. Vol. 98 (December 2013): 2583-2591.

9. Reserve samples of all plastics allegedly containing the ECM additive that are referenced in the article, “Gómez, EF, Michel Jr., FC. “Biodegradability of conventional and bio-

based plastics and natural fiber composites during composting, anaerobic digestion and long-term soil incubation” Polymer Degradation and Stability. Vol. 98 (December 2013): 2583-2591.

10. All documents specifically concerning all funding and sources of funding for the article, Gómez, EF, Michel Jr., FC. “Biodegradability of conventional and bio-based plastics and natural fiber composites during composting, anaerobic digestion and long-term soil incubation” Polymer Degradation and Stability. Vol. 98 (December 2013): 2583-2591.

11. All documents and correspondence concerning Ohio State University’s knowledge and/or approval of the article, Gómez, EF, Michel Jr., FC. “Biodegradability of conventional and bio-based plastics and natural fiber composites during composting, anaerobic digestion and long-term soil incubation” Polymer Degradation and Stability. Vol. 98 (December 2013): 2583-2591.

12. All documents concerning any presentations, official discussions, lectures, interviews and/or publications in which the article Gómez, EF, Michel Jr., FC. “Biodegradability of conventional and bio-based plastics and natural fiber composites during composting, anaerobic digestion and long-term soil incubation” Polymer Degradation and Stability. Vol. 98 (December 2013): 2583-2591 was discussed.

13. All documents concerning any other test, article, report, and/or project involving ASTM International standards D5511, and D5526.

14. All correspondence between you and Frederick C Michel Jr. concerning biodegradable products; biodegradable plastic products; compostable products; compostable plastic products; ECM BioFilms; ECM additives and/or plastic products allegedly containing ECM additives; Dr. Ramani Narayan; all versions of ASTM D5511, D5526, D5338, D6400; and/or Biodegradable Products Institute (“BPI”).

15. All documents concerning Dr. Ramani Narayan.
16. All correspondence between you and Dr. Ramani Narayan.
17. All documents concerning the BPI.
18. All correspondence between you and the BPI.
19. All correspondence between you and any member, employee, or representative of ASTM International.
20. All correspondence between you and any member, employee, representative, or officer of the United States Federal Trade Commission.
21. All documents concerning your education, training, and experience, including a list of all current and pending articles and written works that you have authored or co-authored.

### **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 documents<sup>3</sup>, 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 Ohio State University who have knowledge of such matters, can authenticate the documents and materials produced, and who can testify to such matters.

---

<sup>3</sup> “Document” and “documents” as used in this Attachment are defined in this subpoena’s “Description of Documents Requested” section.

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



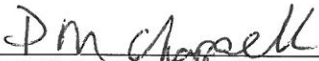
UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

|                               |   |                 |
|-------------------------------|---|-----------------|
| _____                         | ) |                 |
| 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.

**Complaint Counsel  
Exhibit A  
Attachment 14**

**CCX-A:14**



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 UPS**

Frederick C Michel Jr.  
Ohio State University  
207 Hayden Hall  
1680 Madison Avenue  
Wooster, Ohio 44691

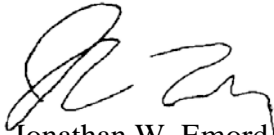
*Re: In the Matter of ECM BioFilms, Inc., Docket No. 9358*

Dear Mr. Michel:

Pursuant to the Federal Trade Commission's Rules of Practice, please find enclosed Respondent ECM BioFilms, Inc.'s subpoena *duces tecum*. 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 17, 2014. We welcome you to contact us with questions.

Sincerely,



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



# 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

Frederick C Michel Jr.  
Ohio State University  
207 Hayden Hall  
1680 Madison Avenue  
Wooster, Ohio 44691

2. FROM

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

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

March 17, 2014, 5:00 PM EST

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.

DATE SIGNED

2/28/14

SIGNATURE OF COUNSEL ISSUING SUBPOENA

## 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**

**FREDERICK C MICHEL JR.**

**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, correspondence<sup>1</sup>, 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 concerning<sup>2</sup> ECM BioFilms, Inc.
2. All correspondence between you and ECM BioFilms, Inc.
3. All documents sent or received by you making reference to ECM BioFilms,

Robert Sinclair, or ECM BioFilms Master Batch Pellets.

---

<sup>1</sup> 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.

<sup>2</sup> 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.

4. 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.”

5. All documents concerning the article, Gómez, EF, Michel Jr., FC. “Biodegradability of conventional and bio-based plastics and natural fiber composites during composting, anaerobic digestion and long-term soil incubation” Polymer Degradation and Stability. Vol. 98 (December 2013): 2583-2591.

6. All drafts and notes concerning the article, Gómez, EF, Michel Jr., FC. “Biodegradability of conventional and bio-based plastics and natural fiber composites during composting, anaerobic digestion and long-term soil incubation” Polymer Degradation and Stability. Vol. 98 (December 2013): 2583-2591.

7. All documents concerning the involvement of any and all individuals with the article, Gómez, EF, Michel Jr., FC. “Biodegradability of conventional and bio-based plastics and natural fiber composites during composting, anaerobic digestion and long-term soil incubation” Polymer Degradation and Stability. Vol. 98 (December 2013): 2583-2591, and/or the tests and procedures described in such article.

8. All documents concerning the actual tests and procedures (including any and all notes, drafts, protocols, identity and sources of the ECM additives received and used, and all raw data) described in “Gómez, EF, Michel Jr., FC. “Biodegradability of conventional and bio-based plastics and natural fiber composites during composting, anaerobic digestion and long-term soil incubation” Polymer Degradation and Stability. Vol. 98 (December 2013): 2583-2591.

9. Reserve samples of all plastics allegedly containing the ECM additive that are referenced in the article, “Gómez, EF, Michel Jr., FC. “Biodegradability of conventional and bio-

based plastics and natural fiber composites during composting, anaerobic digestion and long-term soil incubation” Polymer Degradation and Stability. Vol. 98 (December 2013): 2583-2591.

10. All documents specifically concerning all funding and sources of funding for the article, Gómez, EF, Michel Jr., FC. “Biodegradability of conventional and bio-based plastics and natural fiber composites during composting, anaerobic digestion and long-term soil incubation” Polymer Degradation and Stability. Vol. 98 (December 2013): 2583-2591.

11. All documents and correspondence concerning Ohio State University’s knowledge and/or approval of the article, Gómez, EF, Michel Jr., FC. “Biodegradability of conventional and bio-based plastics and natural fiber composites during composting, anaerobic digestion and long-term soil incubation” Polymer Degradation and Stability. Vol. 98 (December 2013): 2583-2591.

12. All documents concerning any presentations, official discussions, lectures, interviews and/or publications in which the article Gómez, EF, Michel Jr., FC. “Biodegradability of conventional and bio-based plastics and natural fiber composites during composting, anaerobic digestion and long-term soil incubation” Polymer Degradation and Stability. Vol. 98 (December 2013): 2583-2591 was discussed.

13. All documents concerning any other test, article, report, and/or project involving all versions of ASTM International standard D5511.

14. All correspondence between you and Eddie F. Gómez concerning biodegradable products; biodegradable plastic products; compostable products; compostable plastic products; ECM BioFilms; ECM additives and/or plastic products allegedly containing ECM additives; Dr. Ramani Narayan; all versions of ASTM D5511, D5526, D5338, D6400; and/or Biodegradable Products Institute (“BPI”).

15. All documents concerning Dr. Ramani Narayan.
16. All correspondence between you and Dr. Ramani Narayan.
17. All documents concerning the BPI.
18. All correspondence between you and the BPI.
19. All correspondence between you and any member, employee, or representative of ASTM International.
20. All correspondence between you and any member, employee, representative, or officer of the United States Federal Trade Commission.
21. All documents concerning your education, training, and experience, including a list of all current and pending articles and written works that you have authored or co-authored.

### **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 documents<sup>3</sup>, 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 Ohio State University who have knowledge of such matters, can authenticate the documents and materials produced, and who can testify to such matters.

---

<sup>3</sup> “Document” and “documents” as used in this Attachment are defined in this subpoena’s “Description of Documents Requested” section.

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

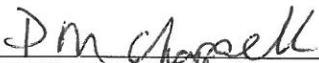
UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

\_\_\_\_\_) )  
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.

**Complaint Counsel  
Exhibit A  
Attachment 15**

**CCX-A:15**



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**

Dr. Ramani Narayan  
2527 Engineering Building / C-10 Engineering Research Complex  
Michigan State University  
East Lansing, MI 48824  
(e) [narayan@msu.org](mailto:narayan@msu.org)

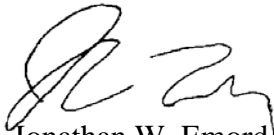
*Re: In the Matter of ECM BioFilms, Inc., Docket No. 9358*

Dear Dr. Narayan:

Pursuant to the Federal Trade Commission's Rules of Practice, please find enclosed Respondent ECM BioFilms, Inc.'s subpoena *duces tecum*. This subpoena requests that you produce 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



# 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<br/>Dr. Ramani Narayan, Ph.D<br/>2527 Engineering Bldg. / C-10 Complex<br/>Michigan State University<br/>East Lansing, MI 48824</p>   | <p>2. FROM<br/><br/><b>UNITED STATES OF AMERICA<br/>FEDERAL TRADE COMMISSION</b></p>   |
| <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> |  |
| <p>3. PLACE OF PRODUCTION<br/><br/>Emord &amp; Associates, P.C.<br/>3210 South Gilbert Road, Suite 4<br/>Chandler, AZ 85286</p>  | <p>4. MATERIAL WILL BE PRODUCED TO<br/>Peter Arhangelsky</p> <p>5. DATE AND TIME OF PRODUCTION<br/>February 28, 2014, 5:00 PM EST</p>  |
| <p>6. SUBJECT OF PROCEEDING<br/>In the matter of ECM BioFilms, Inc., Docket No. 9358</p>   |  |
| <p>7. MATERIAL TO BE PRODUCED<br/>See Attached Schedule A for description of all documents and materials.</p>  |  |
| <p>8. ADMINISTRATIVE LAW JUDGE<br/><br/>Chief Administrative Law Judge<br/>D. Michael Chappell<br/><br/>Federal Trade Commission<br/>Washington, D.C. 20580</p>  | <p>9. COUNSEL AND PARTY ISSUING SUBPOENA<br/><br/>Jonathan W. Emord, Peter Arhangelsky, Lou Caputo<br/>Emord &amp; Associates, P.C. for Respondent,<br/>ECM BioFilms, Inc.</p> |
| <p>DATE SIGNED<br/>2/13/14</p>   | <p>SIGNATURE OF COUNSEL ISSUING SUBPOENA<br/><i>Lou F. Caputo</i></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**

**DR. RAMANI NARAYAN**

**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, correspondence<sup>1</sup>, 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 document in your possession concerning<sup>2</sup> the biodegradability of plastics generally and in Municipal Solid Waste Landfills in particular whether or not in the presence of other biodegradable material.
2. Regardless of the date of such document, all documents concerning ECM BioFilms, Inc.

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<sup>1</sup> 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.

<sup>2</sup> 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. Regardless of the date of such correspondence, all correspondence between you and any member, employee, representative, or officer of ECM BioFilms, Inc.
4. Regardless of the date of such correspondence, all correspondence between you and any BPI employee, member, representative, of or concerning ECM BioFilms, Inc. or any of ECM's employees, officers, and representatives.
5. All documents concerning the Federal Trade Commission's ("FTC") "Revised Green Guides" published in October 2012.
6. All correspondence between you and the Federal Trade Commission or any Federal Trade Commission employee or agent.
7. All documents concerning or related to any version of the American Society of Testing and Materials' ("ASTM") testing methods D5511 and D5526.
8. All documents concerning or related to any amendment or proposed amendment of any version of ASTM D5511 and D5526.
9. All documents concerning or related to ASTM committees and subcommittees D20, D20.92, D20.96.
10. All documents concerning any comments and/or "negatives" associated with any version of ASTM D5511 and D5526.
11. All correspondence between you ASTM International or any employee or representative of ASTM International concerning testing methods D5511 and D5526, and all committees and subcommittees that are associated with, work on, relate to, or concern testing methods D5511 and D5526.

12. Since January 1, 2006, all documents concerning the study performed in 2006 by APCO Insight (“APCO Study”) for the American Chemistry Council concerning public perception of the term “biodegradable” and related topics.

13. All documents concerning the theory that it is scientifically invalid and/or inaccurate and/or improper to extrapolate from results obtained from tests modeled after or following ASTM D5511 and/or 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 documents<sup>3</sup>, 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 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

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<sup>3</sup> “Document” and “documents” as used in this Attachment are defined in this subpoena’s “Description of Documents Requested” section.

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

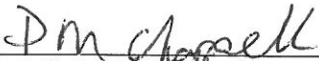
UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

\_\_\_\_\_)  
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.

**Complaint Counsel  
Exhibit A  
Attachment 16**

**CCX-A:16**





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 UPS**

Dr. Ramani Narayan  
2527 Engineering Building / C-10 Engineering Research Complex  
Michigan State University  
East Lansing, MI 48824

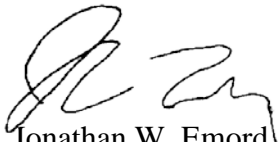
*Re: In the Matter of ECM BioFilms, Inc., Docket No. 9358*

Dear Dr. Narayan:

Pursuant to the Federal Trade Commission's Rules of Practice, please find enclosed Respondent ECM BioFilms, Inc.'s subpoena *duces tecum*. This subpoena requests that you produce 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 17, 2014. We welcome you to contact us with questions.

Sincerely,



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



# 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>Dr. Ramani Narayan, Ph.D<br/>2527 Engineering Bldg. / C-10 Complex<br/>Michigan State University<br/>East Lansing, MI 48824</p>  | <p>2. FROM</p> <p style="text-align: center;"><b>UNITED STATES OF AMERICA<br/>FEDERAL TRADE COMMISSION</b></p>   |
| <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> |  |
| <p>3. PLACE OF PRODUCTION</p> <p>Emord &amp; Associates, P.C.<br/>3210 South Gilbert Road, Suite 4<br/>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 17, 2014, 5:00 PM EST</p>   |  |
| <p>6. SUBJECT OF PROCEEDING</p> <p>In the matter of ECM BioFilms, Inc., Docket No. 9358</p>  |  |
| <p>7. MATERIAL TO BE PRODUCED</p> <p>See Attached Schedule A for description of all documents and materials.</p>   |  |
| <p>8. ADMINISTRATIVE LAW JUDGE</p> <p>Chief Administrative Law Judge<br/>D. Michael Chappell<br/><br/>Federal Trade Commission<br/>Washington, D.C. 20580</p>  | <p>9. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p>Jonathan W. Emord, Peter Arhangelsky, Lou Caputo<br/>Emord &amp; Associates, P.C. for Respondent,<br/>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 SUPPLEMENTAL SUBPOENA DUCES TECUM DIRECTED  
TO**

**DR. RAMANI NARAYAN**

**INSTRUCTIONS**

- A. Unless otherwise specified, the time period covered by a numbered request shall be limited to the time period extending from January 1, 1998 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. Documents that were responsive to, and produced in accordance with, the original subpoena *duces tecum* sent to you on February 13, 2014 need not be submitted again. However, your supplemental response should indicate, for each document s previously 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.
- H. 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.

- I. All objections to these numbered requests, or to any individual request, must be raised in the initial response or otherwise waived.
- J. 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.

- K. 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.

- L. 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.

- M. 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, correspondence<sup>1</sup>, 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. Regardless of the date, all contracts, retainers, engagement letters between you and any public or private firm.
2. Regardless of the date, all contracts, retainers, and/or agreements with Michigan State University ("MSU").

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<sup>1</sup> 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.

3. All documents concerning all grants with which you are involved and/or associated with, including, but not limited to the source of all funding for said grants.
4. Regardless of the date, all contracts, retainers, and/or engagement letters between you and the Biodegradable Products Institute (“BPI”).
5. All documents revealing shares of stock or ownership interests held by you in any company.
6. All documents revealing consultancies, officer or director positions, and financial arrangements between you and any company, university, or other financial institution.
7. All correspondence between you and any private company concerning plastics, biodegradation, ECM BioFilms, and any other company involved in the manufacture of biodegradable products
8. All documents and correspondence between you and the authors of the article Gómez, EF, Michel Jr., FC. “Biodegradability of conventional and bio-based plastics and natural fiber composites during composting, anaerobic digestion and long-term soil incubation” Polymer Degradation and Stability. Vol. 98 (December 2013): 2583-2591.
9. All scientific publications authored by you.
10. All papers delivered by you at speaking events
11. All documents revealing awards, bonuses, stock options, or other accolades bestowed upon you and all correspondence associated with each.
12. All correspondence in which you presented a proposal, voted on a proposal, or opposed a proposal then undergoing active consideration by the ASTM.

**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 documents<sup>2</sup>, 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 Michigan State University 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,

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<sup>2</sup> “Document” and “documents” as used in this Attachment are defined in this subpoena’s “Description of Documents Requested” section.

/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](mailto:jemord@emord.com)  
Counsel to ECM BioFilms, Inc.



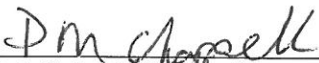
UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

\_\_\_\_\_)  
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.

**Complaint Counsel  
Exhibit A  
Attachment 17**

**CCX-A:17**



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



# 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<br/>General Counsel and/or other Executive for<br/>Organic Waste Systems<br/>7155 Five Mile Road<br/>Cincinnati, OH 45230</p>   | <p>2. FROM<br/><br/><b>UNITED STATES OF AMERICA<br/>FEDERAL TRADE COMMISSION</b></p>  |
| <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> |   |
| <p>3. PLACE OF PRODUCTION<br/><br/>Emord &amp; Associates, P.C.<br/>3210 S. Gilbert Road, Suite 4<br/>Chandler, AZ 85286</p>   | <p>4. MATERIAL WILL BE PRODUCED TO<br/>Peter Arhangelsky</p> <p>5. DATE AND TIME OF PRODUCTION<br/>February 28, 2014, 5:00 PM EST</p> |
| <p>6. SUBJECT OF PROCEEDING<br/>In the matter of ECM BioFilms, Inc., Docket No. 9358</p>   |   |

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.

DATE SIGNED

2/13/14

SIGNATURE OF COUNSEL ISSUING SUBPOENA

*Lou F. Caputo*

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  
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.



- 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, correspondence<sup>1</sup>, 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 concerning<sup>2</sup> ECM BioFilms, Inc.<sup>3</sup>
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

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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. All documents concerning Gary Plastic Packaging Corporation<sup>4</sup> (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.

---

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

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 documents<sup>5</sup>, 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.

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

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](mailto:jemord@emord.com)  
Counsel to ECM BioFilms, Inc.

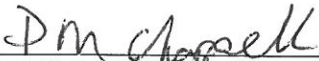
UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

\_\_\_\_\_)  
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.

**Complaint Counsel  
Exhibit A  
Attachment 18**

**CCX-A:18**



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](mailto:Christine.Haaker@thompsonhine.com)

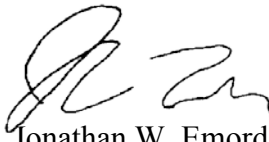
*Re: In the Matter of ECM BioFilms, Inc., Docket No. 9358*

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



# 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.<br/>C/O Counsel, Ms. Christine Haaker</p> | <p>2. FROM</p> <p>UNITED STATES OF AMERICA<br/>FEDERAL TRADE COMMISSION</p> |
|--|---|

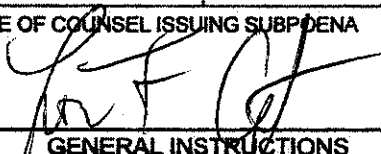
This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

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

|   |
|---|
| <p>6. SUBJECT OF PROCEEDING</p> <p>In the matter of ECM BioFilms, Inc., Docket No. 9358</p> |
|---|

|  |
|--|
| <p>7. MATERIAL TO BE PRODUCED</p> <p>See Attached Schedule A for description of all documents and materials.</p> |
|--|

|  |   |
|--|---|
| <p>8. ADMINISTRATIVE LAW JUDGE</p> <p>Chief Administrative Law Judge<br/>D. Michael Chappell<br/>Federal Trade Commission<br/>Washington, D.C. 20580</p> | <p>9. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p>Jonathan W. Emord, Peter Arhangelsky, Lou Caputo<br/>Emord &amp; Associates, P.C. for Respondent<br/>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, correspondence<sup>1</sup>, 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 and correspondence concerning<sup>2</sup> ECM BioFilms, Inc.,<sup>3</sup> Robert Sinclair, and/or ECM BioFilms Master Batch Pellets
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<sup>4</sup>

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

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

(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:



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 documents<sup>5</sup>, 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

---

<sup>5</sup> “Document” and “documents” as used in this Attachment are defined in this subpoena’s “Description of Documents Requested” section.

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

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

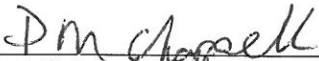
\_\_\_\_\_  
In the Matter of )  
 )  
 )  
ECM BioFilms, Inc., )  
 a corporation, also d/b/a )  
 )  
Enviroplastics International, )  
 Respondent. )  
\_\_\_\_\_

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.

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.

**Complaint Counsel  
Exhibit A  
Attachment 19**

**CCX-A:19**

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

**In the Matter of**

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

**Respondent.**

**Docket No. 9358**

**RESPONDENT ECM BIOFILM'S EXPERT WITNESS LIST**

Respondent ECM BioFilms, Inc. ("ECM"), pursuant to the Court's November 21, 2013 Scheduling Order, hereby identifies those experts upon whom Respondent may call to testify in response to Complaint Counsel's case-in-chief, in defense of Respondent generally, or in support of Respondent's affirmative defenses.

**1. Dr. Ranajit Sahu, Ph.D.**

311 North Story Place  
Alhambra, CA 91801

Dr. Sahu's anticipated testimony will be described in his expert report, which Respondent will produce to Complaint Counsel by the date set in the Court's Scheduling Order. The general subject matter of his anticipated testimony includes, but is not limited to, biodegradation of plastic polymers with and without ECM's additive; ASTM testing protocols and standards; and an evaluation of science related to, and ECM's substantiation for, ECM's biodegradability claims.

**2. Dr. Ryan N. Burnette, Ph.D.**

Alliance Biosciences  
9011 Arboretum Parkway, Suite 310  
Richmond, VA 23236

Dr. Burnette's anticipated testimony will be described in his expert report, which Respondent will produce to Complaint Counsel by the date set in the Court's Scheduling Order. The general subject matter of his anticipated testimony includes, but is not limited to, biodegradation of organic and inorganic matter, including plastic polymers;



microbiological metabolism, life cycles, colonization, and procreation in laboratory and environmental biota; testing protocols and standards; biochemical principles involved in plastics degradation; and an evaluation of Respondent's substantiation.

**3. Dr. David W. Stewart, Ph.D.**

Loyola Marymount University  
College of Business Administration  
1 LMU Drive  
Los Angeles, CA 90045

Dr. Stewart's anticipated testimony will be described in his expert report, which Respondent will produce to Complaint Counsel by the date set in the Court's Scheduling Order. The general subject matter of his anticipated testimony includes, but is not limited to, consumer perception of biodegradable marketing claims and Respondent's biodegradability claims; materiality of Respondent's biodegradable marketing claims; and the Federal Trade Commission's reliance on consumer perception data in the field of biodegradable marketing claims.

**4. Dr. Morton A. Barlaz, Ph.D., P.E.**

North Carolina State University  
Dept. of Civil, Construction & Environmental Engineering  
Campus Box 7908  
Raleigh, NC 27695-7908

Dr. Barlaz's anticipated testimony will be described in his expert report, which Respondent will produce to Complaint Counsel by the date set in the Court's Scheduling Order. The general subject matter of his anticipated testimony includes, but is not limited to, biodegradation of municipal solid waste under specific landfill conditions; conditions in various categories of municipal solid waste landfills, biodigestors, and bioreactors; and waste composition.

**5. Dr. Alexander Volokh, Ph.D., J.D.**

Emory Law School  
1301 Clifton Rd.  
Atlanta, GA 30322

Dr. Volokh's anticipated testimony will be described in his expert report, which Respondent will produce to Complaint Counsel by the date set forth in the Court's Scheduling Order. The general subject matter of his anticipated testimony includes, but is not limited to, the nature, extent, and importance of conflicts of interest present; the nature and extent of economic damages suffered by ECM; the materiality and economic significance of ECM's marketing claims.

DATED: March 12, 2014

Respectfully submitted,

/s/ Jonathan W. Emord

Jonathan W. Emord (jemord@emord.com)

EMORD & ASSOCIATES, P.C.

11808 Wolf Run Lane

Clifton, VA 20124

Telephone: 202-466-6937

Facsimile: 202-466-6938

**CERTIFICATE OF SERVICE**

I hereby certify that on March 12, 2014, I caused a true and correct copy of the foregoing Respondent's Expert Witness List to be served on Complaint Counsel as follows:

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

Katherine Johnson (kjohnson3@ftc.gov)  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Mail stop M-8102B  
Washington, D.C. 20580

Elisa Jillson (ejillson@ftc.gov)  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Mail stop M-8102B  
Washington, D.C. 20580

Jonathan Cohen (jcohen2@ftc.gov)  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Mail stop M-8102B  
Washington, D.C. 20580

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

DATED: March 12, 2014

/s/ Jonathan W. Emord  
Jonathan W. Emord  
EMORD & ASSOCIATES, P.C.  
11808 Wolf Run Lane  
Clifton, VA 20124  
Telephone: 202-466-6937