

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION



Washington, D.C.

591026

In the Matter of

Docket No. 9358

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

PUBLIC DOCUMENT

Respondent.

In accord with the Court's Third Revised Scheduling Order (May 22, 2014), ECM Biofilms ("ECM") hereby respectfully submits its objections to Complaint Counsel's Final Proposed Witness List.

GENERAL OBJECTIONS

ECM hereby reserves its right to submit appropriate objections to fact and expert

[Redacted content]

probative value; unfair prejudice; confusion of the issues; misleadingness; undue delay, waste of time, or needless presentation of cumulative evidence; and/or unreliability of third party records.

ECM objects to the presentation of testimony by deposition transcript for individuals or designees that are available to testify in person at the hearing, or have not been shown to be

unavailable to testify in person. ECM objects to the presentation of testimony by deposition transcript for individuals or designees that are available to testify in person at the hearing, or have not been shown to be

unavailable to testify in person. ECM objects to the presentation of testimony by deposition transcript for individuals or designees that are available to testify in person at the hearing, or have not been shown to be

unavailable to testify in person. ECM objects to the presentation of testimony by deposition transcript for individuals or designees that are available to testify in person at the hearing, or have not been shown to be

unavailable to testify in person. ECM objects to the presentation of testimony by deposition transcript for individuals or designees that are available to testify in person at the hearing, or have not been shown to be

unavailable to testify in person. ECM objects to the presentation of testimony by deposition transcript for individuals or designees that are available to testify in person at the hearing, or have not been shown to be

unavailable to testify in person. ECM objects to the presentation of testimony by deposition transcript for individuals or designees that are available to testify in person at the hearing, or have not been shown to be

unavailable to testify in person. ECM objects to the presentation of testimony by deposition transcript for individuals or designees that are available to testify in person at the hearing, or have not been shown to be

unavailable to testify in person. ECM objects to the presentation of testimony by deposition transcript for individuals or designees that are available to testify in person at the hearing, or have not been shown to be

testimony where, due to Complaint Counsel's excessive and oppressive discovery schedule,

of Complaint Counsel’s case, to which Complaint Counsel bears the burden of proof. *See, e.g., In the Matter of Novartis Corp., et al.*, 127 F.T.C. 580, 685 (1999) (Complaint Counsel must prove that claims are material to customer purchasing decisions).

To protect the integrity of the judicial process, Rule 32 of the Federal Rules of Civil Procedure<sup>1</sup> limit the admissibility of deposition testimony unless the witness is deemed unavailable under FRCP 32(a)(4). Federal Courts have thus found clear error where a party admits transcript testimony for substantive purposes without first establishing that a witness

[REDACTED]

<sup>1</sup> Rules 3.33 and 3.43 of the FTC are modeled closely after the Federal Rules of Civil Procedure.

**ECM'S OBJECTIONS AND CONTENTIONS AS TO INDIVIDUALLY  
NAMED WITNESSES:**

**1. Robert Sinclair, ECM**

a. ECM moves to limit the scope of Mr. Sinclair's testimony to matters or

information as to which he has direct personal knowledge.

b. ECM objects to questioning or an examination of Mr. Sinclair that would

[REDACTED]

information that invades privilege, or concerns trade secret or privileged

[REDACTED]

b. ECM objects to questioning or an examination of Mr. Nealis concerning the following information:

[REDACTED]

information that invades privilege, or concerns trade secret or privileged information concerning or about ECM's Additive Technology.

c. ECM objects to questioning of Mr. Nealis concerning statements or documents that would not otherwise be admissible independently.

d. ECM objects to Mr. Nealis being asked the following questions:

[REDACTED]

5. [REDACTED]

[REDACTED]

- b. ECM objects to questioning or an examination of this witness that seeks to elicit information that invades privilege, or concerns trade secret or privileged information concerning or about ECM's Additive Technology, if known or possessed by the witness.

[REDACTED]

would not otherwise be admissible independently.

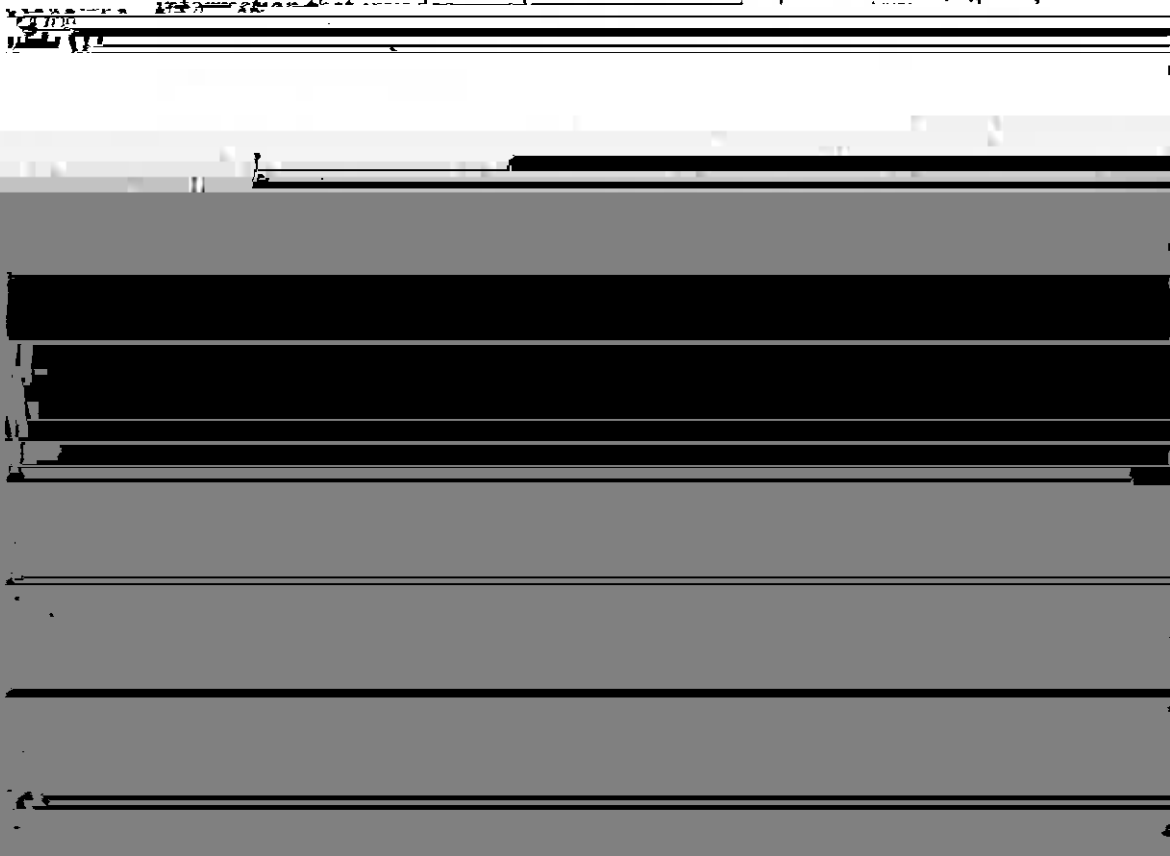
- d. ECM objects to this witness's testimony concerning third parties' development,

[REDACTED]

- g. ECM objects to this witness's testimony to the extent that it involves the presentation of needlessly redundant and cumulative information.

**7. Robert Ringley, BER Plastics, Inc.**

- a. ECM moves to limit the scope of the witness's testimony to matters or information as to which he has direct personal knowledge.
- b. ECM objects to questioning or an examination of this witness that seeks to elicit



information concerning or about ECM's Additive Technology, if known or possessed by the witness.

- c. ECM objects to questioning of the witness using statements or documents that would not otherwise be admissible independently.
- d. ECM objects to this witness's testimony concerning third parties' development, review, assessment, authorship, commission, or creation of testing or promotional claims for the ECM additive technology because it lacks a proper foundation, is hearsay, and is beyond the personal knowledge of the witness.
- e. ECM objects to the use of repetitive, cumulative, or redundant evidence in the examination of this witness.

e. ECM objects to the use of repetitive, cumulative, or redundant evidence in the

[REDACTED]

examination of this witness.

f. ECM objects to the relevance of [REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

h. ECM objects to questioning or an examination of this witness that seeks to elicit

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

information that includes evidence concerning to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

presentation of needlessly redundant and cumulative information.

**12. David Sandry, Flexible Plastics, Inc.**

- a. ECM moves to limit the scope of the witness's testimony to matters or information, as to which he has direct responsibility.

[REDACTED]



- b. ECM objects to questioning or an examination of this witness that seeks to elicit information that invades privilege, or concerns trade secret or privileged information concerning or about ECM's Additive Technology, if known or possessed by the witness.
- c. ECM objects to questioning of the witness using statements or documents that would not otherwise be admissible independently.

[REDACTED]

[REDACTED]

review, assessment, authorship, commission, or creation of testing or promotional claims for the ECM additive technology because it lacks a proper foundation. is

**17. Thomas Poth, Eden Research Laboratory**

- a. ECM moves to limit the scope of the witness's testimony to matters or information as to which he has personal knowledge or experience.
- b. ECM objects to questioning or an examination of this witness that seeks to elicit information that invades privilege, or concerns trade secret or privileged

---

information concerning or about ECM's Additive Technology, if known or possessed by the witness.

- c. ECM objects to questioning of the witness using statements or documents that would not otherwise be admissible independent of

- 
- d. ECM objects to this witness's testimony concerning third parties' development, review, assessment, authorship, commission, or creation of testing or promotional claims for the ECM additive technology because it lacks a proper foundation, is hearsay, and is beyond the personal knowledge of the witness.

- e. ECM objects to the use of repetitive, cumulative, or redundant evidence in the examination of this witness.

- f. ECM objects to this witness's testimony that...

claims for the ECM additive technology because it lacks a proper foundation, is hearsay, and is beyond the personal knowledge of the witness.

- f. ECM objects to the use of repetitive, cumulative, or redundant evidence in the examination of this witness.
- g. ECM objects to this witness's testimony to the extent that it involves the presentation of needlessly redundant and cumulative information

[REDACTED]

- h. ECM objects to this witness's testimony to the extent presented solely through deposition transcripts, as set forth more fully in ECM's general objections above.

**19. Timothy Barber, Environ International Corp.**

ECM moves to limit the scope of the witness's testimony to the extent that it involves the presentation of needlessly redundant and cumulative information

[REDACTED]

[REDACTED]

would not otherwise be admissible independently.

- d. ECM objects to this witness's testimony concerning third parties' development, review, assessment, authorship, commission, or creation of testing or promotional claims for the ECM additive technology because it lacks a proper foundation, is hearsay, and is beyond the personal knowledge of the witness.

[REDACTED]





26. Dr. Shane Frederick

- a. ECM objects to Dr. Frederick's testimony as an expert witness in this matter because he lacks the requisite training, education, or experience in ECM.

[REDACTED]

guide this Court in all areas to which he is held out as an expert.

- b. ECM objects to Dr. Frederick's testimony as an expert witness because he lacks the requisite training, education, or experience in ECM.

[REDACTED]

Dated: July 18, 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  
Email: [jemord@emord.com](mailto:jemord@emord.com)

CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2014, I caused a true and correct copy of the foregoing to be served as follows:

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

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

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

[REDACTED]

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

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

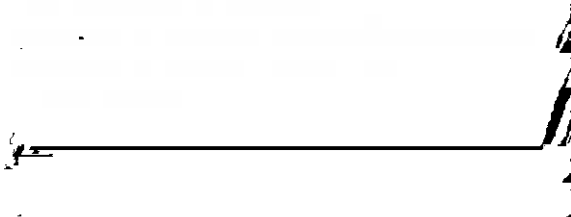
Katherine Johnson  
Division of Enforcement  
Bureau of Consumer Protection

Elisa Jillson  
Division of Enforcement  
Bureau of Consumer Protection

[REDACTED]

Respectfully submitted,

*/s/ Joseph W. ...*



DATED: July 18, 2014