

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

PUBLIC

**RESPONDENT'S MOTION FOR *IN CAMERA* TREATMENT OF CERTAIN  
PROPOSED TRIAL EXHIBITS**

Pursuant to Rule 3.45(b) of the Commission's Rules of Practice, Respondent ECM BioFilms, Inc. (ECM) hereby seeks *in camera* treatment of various documents that have been designated as potential exhibits for trial.<sup>1</sup>

**INTRODUCTION**

On June 11, 2014, Complaint Counsel provided ECM with its final proposed exhibit list, containing over 800 proposed exhibits. On June 25, 2014, ECM provided Complaint Counsel with its own exhibit list, containing over 450 exhibits. ECM has carefully reviewed these exhibits to determine whether they contain confidential and sensitive information that should be subject to *in camera* treatment. While it would be ECM's preference that the majority of these documents be subject to such treatment, ECM understands that only those documents for which public exposure would likely result in a clear and defined serious injury, or documents containing sensitive personal information, can be subject to *in camera* treatment. To that end, ECM respectfully requests that this Court grant *in camera* treatment to a total of 37 proposed

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<sup>1</sup> In accordance with Rule 3.45(e), ECM submits contemporaneously with this Motion all of the confidential exhibits identified below to the Office of the Administrative Law Judge.

exhibits. As explained below and in the Affidavit of Robert Sinclair, attached as Exhibit A, all 37 of these documents contain truly confidential information, such as customer lists, financial information, personal information, and business strategy.

### **LEGAL STANDARD**

Upon motion, this Court may order that material, or portions thereof, offered into evidence be subject to *in camera* treatment. 16 C.F.R. § 3.45(b). In order to designate material for in camera treatment, this Court must find that public disclosure of such material “will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment or after finding that the material constitutes sensitive personal information.” *Id.* “The showing may consist of extrinsic evidence or, in certain instances, may be inferred from the nature of the documents themselves.” *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184 (Mar. 14, 1961).

In determining whether to grant in camera treatment of certain material, this Court weighs the six factors first articulated in *Bristol-Myers*:

(1) the extent to which the information is known outside of his business; (2) the extent to which it is known by employees and others involved in his business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and to his competitors; (5) the amount of effort or money expended by him in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

*Matter of Bristol-Myers Co.*, 90 F.T.C. 455 (Nov. 11, 1977). The Commission has since explained that “serious injury” can mean “[t]he likely loss of business advantages.” *Hoechst Marion Roussel, Inc.*, 200 F.T.C. LEXIS at \*6. In sum, “[a] party must make a clear showing that the information concerned is sufficiently secret and sufficiently material to their business

that disclosure would result in serious complete injury.” *In the Matter of Polypore Int’l, Inc.*, 2011 WL 668505 (Feb. 11, 2011) (citation omitted).

**ARGUMENT**

Throughout this litigation, ECM has produced over 116,000 documents to Complaint Counsel. Initially, ECM marked all of these products as “confidential.” The 37 documents<sup>2</sup> ECM requests *in camera* treatment for amounts to less than 0.03% of all documents produced by ECM. All 37 of these documents contain either information that will either likely result in a serious and clearly defined injury to ECM, or material consisting sensitive personal information. *See* Exhibit A.

ECM is a small company with six employees that competes in a competitive plastics market. *See* Exhibit A. It sells additives that render plastic materials biodegradable. *See* Exhibit A. ECM faces intense market competition from companies selling competing technologies each trying to elevate their methods of dealing with the issues and disparaging other solutions. *See* Exhibit A. ECM also faces intense competition within the biodegradable additives sector. *See* Exhibit A.

ECM customers have shown that they are willing to purchase products from ECM competitors who FTC has not targeted. *See* Exhibit A. It is very easy for these customers who use products like the ECM additive to switch to a competitor’s product. *See* Exhibit A. [REDACTED]

[REDACTED]

[REDACTED]

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<sup>2</sup> While the list below only contains 32 numbered paragraphs, there are 37 individual exhibits contained within those 32 paragraphs.

**IN CAMERA TREATMENT SHOULD BE GRANTED FOR THE FOLLOWING  
PROPOSED EXHIBITS**

1. RX-84. This potential exhibit is an e-mail correspondence between ECM and 3M which discusses 3M's concerns regarding trade secrets. ECM requests that this exhibit remain confidential until 8/1/2017.
2. RX-82. This potential exhibit is an e-mail correspondence between ECM and Alchemy Additives which discusses ECM's payment options, shipping arrangements, and terms of offering quotes on purchases. ECM requests that this exhibit remain confidential until 8/1/2017.
3. RX-132. This potential exhibit is an e-mail correspondence between ECM and Multiplast Systems Inc., which contains specific pricing of the ECM additive. ECM requests that this exhibit remain confidential until 8/1/2017.
4. RX-330 and RX-331. These potential exhibits are ECM's pricing sheets. ECM requests that these exhibits remain confidential until 8/1/2017.
5. CCX-234. This potential exhibit is a list of ECM's international customers and ECM's sales to these customers by Year 2009–2013. ECM requests that this exhibit remain confidential until 8/1/2019.
6. CCX-322. This potential exhibit contains specific pricing information of the ECM additive. ECM requests that this exhibit remain confidential until 8/1/2017.
7. CCX-392. This potential exhibit contains specific pricing information of the ECM additive. ECM requests that this exhibit remain confidential until 8/1/2017.
8. CCX-395. This potential exhibit contains specific information on the amount of money spent by IMEX Vinyl Packaging in deciding whether to use the ECM additive. ECM requests that this exhibit remain confidential until 8/1/2017.

9. RX-130. This potential exhibit contains a discussion and negotiation between ECM and a potential distributor for ECM's product. ECM requests that this exhibit remain confidential until 8/1/2019.
10. RX-134. This potential exhibit contains a discussion of ECM's customer's advertising strategies. ECM requests that this exhibit remain confidential until 8/1/2017.
11. CCX-305. This potential exhibit contains an e-mail from ECM to FabriTRAK systems, Inc. wherein ECM explicitly mentions the size of its customer's order. ECM requests that this exhibit remain confidential until 8/1/2017.
12. CCX-307. This potential exhibits contain an e-mail correspondence between Down to Earth and ECM which discusses advertisement strategy and specific manufacturing processes. ECM requests that this exhibit remain confidential until 8/1/2017.
13. CCX-568. This potential exhibit contains information from FP International discussing FP International's customers and their orders of products manufactured with ECM additive. ECM requests that this exhibit remain confidential until 8/1/2017.
14. CCX-676. This potential exhibit contains a discussion between ECM and one of its distributors on how to obtain specific types of customers. ECM requests that this exhibit remain confidential until 8/1/2017.
15. CCX-184. This potential exhibit includes a discussion by Italcom S.r.L. relating to their defense against the action brought by AGCM. ECM requests that this exhibit remain confidential until 8/1/2017.
16. RX-106. This potential exhibit is an e-mail from FP International containing FP International's thoughts and analyses surrounding an action by the National Advertising Division of the Better Business bureau. ECM requests that this exhibit remain confidential until 8/1/2019.

17. CCX-216. This potential exhibit is an e-mail from ECM detailing litigation strategy that ECM suggests for Colplast. ECM requests that this exhibit remain confidential until 8/1/2017.

18. CCX-408. This potential exhibit contains ordering information, payment information, and other sensitive information regarding the contacts between American Plastic Mfg. Inc. and ECM. ECM requests that this exhibit remain confidential until 8/1/2017.

19. CCX-410. This potential exhibit contains ordering information, payment information, and other sensitive information regarding the contacts between Bio-Tec Environmental, LLC and ECM. ECM requests that this exhibit remain confidential until 8/1/2017.

20. CCX-413. This potential exhibit contains ordering information, payment information, ordering terms, and other sensitive information regarding the contacts between EcoSmart Plastics and ECM. ECM requests that this exhibit remain confidential until 8/1/2017.

21. CCX-414. This potential exhibit contains ordering information, payment information, personal cell phone numbers, specific ordering terms, and other sensitive information regarding the contacts between Hi-De Liners, LLC and ECM. ECM requests that this exhibit remain confidential until 8/1/2017.

22. CCX-416. This potential exhibit contains ordering information, payment information, personal cell phone numbers, specific ordering terms, and other sensitive information regarding the contacts between Hi-De Liners, LLC. and ECM. ECM requests that this exhibit remain confidential until 8/1/2017.

23. CCX-417. This potential exhibit contains ordering information, payment information, specific ordering terms, and other sensitive information regarding the contacts between Myers Industries Lawn and Garden and ECM. ECM requests that this exhibit remain confidential until 8/1/2017.

24. CCX-418. This potential exhibit contains ordering information, payment information, specific ordering terms, and other sensitive information regarding the contacts between PolyFusion LLC and ECM. ECM requests that this exhibit remain confidential until 8/1/2017.
25. CCX-419. This potential exhibit contains ordering information, payment information, specific ordering terms, shipping costs, cell phone numbers, UPS account numbers, and other sensitive information regarding the contacts between Sealed Air Corporation and ECM. ECM requests that this exhibit remain confidential until 8/1/2019.
26. CCX-420. This potential exhibit contains ordering information, payment information, specific ordering terms including amounts and costs, and other sensitive information regarding the contacts between Automated Packaging Systems Group and ECM. ECM requests that this exhibit remain confidential until 8/1/2017.
27. CCX-421. This potential exhibit contains ordering information, payment information, specific ordering terms including amounts, and other sensitive information regarding the contacts between Bemis PPD and ECM. ECM requests that this exhibit remain confidential until 8/1/2017.
28. CCX-422. This potential exhibit contains ordering information, payment information, specific ordering terms including amounts and prices, and other sensitive information regarding the contacts between Shields Bag and Printing Company and ECM. ECM requests that this exhibit remain confidential until 8/1/2017.
29. CCX-423. This potential exhibit contains ordering information, payment information, specific ordering terms including amounts and prices, and other sensitive information regarding the contacts between Westchem, Inc. and ECM. ECM requests that this exhibit remain confidential until 8/1/2017.

30. CCX-429. This potential exhibit contains ordering information, payment information, specific ordering terms including amounts and prices, a UPS account number, and other sensitive information regarding the contacts between Contempo Card Company and ECM. ECM requests that this exhibit remain confidential until 8/1/2019.

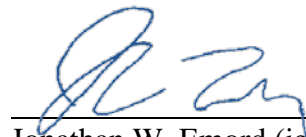
31. CCX-647. This potential exhibit contains ordering information, payment information, cell phone numbers, and other sensitive information regarding the contacts between Geneva Watch Group and ECM. ECM requests that this exhibit remain confidential until 8/1/2017.

32. CCX-813; CCX-816; CCX-818; CCX-819; CCX-820. These potential exhibits are the deposition transcripts of ECM employees and executives Robert Sinclair, Kenneth Sullivan, Alan Poje, and Thomas Nealis. These transcripts contain confidential information related to sales, customers, and other sensitive and personal information. ECM requests that this exhibit remain confidential until 8/1/2019.

**RELIEF**

For the foregoing reasons and the reasons stated in Exhibit A, ECM respectfully requests this Court grant in Camera treatment to those exhibits list above.

Respectfully submitted,



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Jonathan W. Emord (jemord@emord.com)  
EMORD & ASSOCIATES, P.C.  
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Telephone: 202-466-6937  
Facsimile: 202-466-6938

DATED: July 10, 2014



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

In the Matter of

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

Respondent.

Docket No. 9358

PUBLIC

**[PROPOSED] ORDER GRANTING RESPONDENT ECM BIOFILMS, INC.'S MOTION  
FOR *IN CAMERA* TREATMENT OF PROPOSED TRIAL EXHIBITS**

This matter having come before the Administrative Law Judge on July \_\_\_\_, 2014, upon a Motion for *In Camera* Treatment (“Motion”) filed by Respondent ECM BioFilms, Inc. (“ECM”) pursuant to Commission Rule 3.45(b), for an Order to grant *in camera* treatment to specific proposed trial exhibits.

Having considered ECM’s Motion and all supporting and opposing submissions, and for good cause appearing, it is hereby ORDERED that ECM’s Motion is GRANTED; it is ORDERED that all of the documents identified by ECM for *in camera* treatment shall be treated as such.

ORDERED:

Date:

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

**CERTIFICATE OF SERVICE**

I hereby certify that on July 10, 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 FTC's e-filing system:

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

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

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

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

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

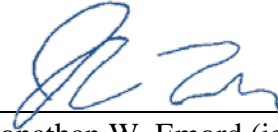
Elisa Jillson  
Division of Enforcement  
Bureau of Consumer Protection  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Mail stop M-8102B  
Washington, D.C. 20580  
Email: [ejillson@ftc.gov](mailto:ejillson@ftc.gov)

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

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

Respectfully submitted,



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Telephone: 202-466-6937  
Facsimile: 202-466-6938

DATED: Thursday, July 10, 2014

# Respondent's Exhibit A

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.

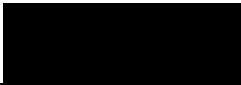
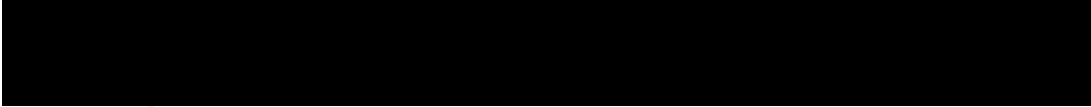
Docket No. 9358

PRIVATE

AFFIDAVIT OF ROBERT SINCLAIR

I, Robert Sinclair, declare under penalty of perjury that the following is true and correct to the best of my knowledge, information, and belief:

1. I am over the age of eighteen years and I make this affidavit on personal knowledge of its contents and in further support of Respondent's Motion for *In Camera* Treatment of Certain Proposed Trial Exhibits.
2. I am the President and CEO of ECM BioFilms, Inc.
3. Throughout this litigation, ECM has produced over 116,000 documents to Complaint Counsel. Initially, ECM marked all of these products as "confidential."
4. Given FTC's standard for granting *in camera* treatment, ECM now requests *in camera* treatment for only 37 of those documents produced by ECM and identified by either ECM or Complaint Counsel as potential trial exhibits. The 37 documents ECM requests *in camera* treatment for amounts to less than 0.03% of all documents produced by ECM.
5. All 37 of these documents contain information that will either likely result in a serious and clearly defined injury to ECM, or material consisting sensitive personal information.

6. ECM is a small company with six employees that competes in a competitive plastics market. It sells additives that render plastic materials biodegradable.
7. Though plastics in one form or another have been used for thousands of years, the vast majority of the kinds, uses and production of plastic materials have only been in the last seventy years and the quantities increase every year. Of all that plastic being produced, the vast majority of it will remain intact and substantially unchanged from the day they left the factory for hundreds or thousands of years or more. Due to this fact, in the last twenty years or so a number of different technologies have emerged to change this end-of-life scenario including, but not limited to, photodegradable, oxodegradable and biodegradable additives to the otherwise not degradable plastics and alternative plastic resins with other end-of-life properties to replace the nondegradable plastic resin currently primarily in use. ECM faces intense market competition from companies selling competing technologies each trying to elevate their methods of dealing with the issues and disparaging other solutions. ECM also faces intense competition within the biodegradable additives sector.
8. ECM customers have shown that they are willing to purchase products from ECM competitors who FTC has not targeted. It is very easy for these customers who use products like the ECM additive to switch to a competitor's product.   

9. Therefore, for the specific reasons given below, the following documents would likely result in a serious and clearly defined injury to ECM:

- a. RX-84. This potential exhibit is an e-mail correspondence between ECM and 3M which discusses 3M's concerns regarding trade secrets. ECM requests that this exhibit remain confidential until 8/1/2017.
- b. RX-82. This potential exhibit is an e-mail correspondence between ECM and Alchemy Additives which discusses ECM's payment options, shipping arrangements, and terms of offering quotes on purchases. ECM requests that this exhibit remain confidential until 8/1/2017.
- c. RX-132. This potential exhibit is an e-mail correspondence between ECM and Multiplast Systems Inc., which contains specific pricing of the ECM additive. ECM requests that this exhibit remain confidential until 8/1/2017.
- d. RX-330 and RX-331. These potential exhibits are ECM's pricing sheets. ECM requests that these exhibits remain confidential until 8/1/2017.
- e. CCX-234. This potential exhibit is a list of ECM's international customers and ECM's sales to these customers by Year 2009–2013. ECM requests that this exhibit remain confidential until 8/1/2019.
- f. CCX-322. This potential exhibit contains specific pricing information of the ECM additive. ECM requests that this exhibit remain confidential until 8/1/2017.
- g. CCX-392. This potential exhibit contains specific pricing information of the ECM additive. ECM requests that this exhibit remain confidential until 8/1/2017.
- h. CCX-395. This potential exhibit contains specific information on the amount of money spent by IMEX Vinyl Packaging in deciding whether to use the ECM additive. ECM requests that this exhibit remain confidential until 8/1/2017.

- i. RX-130. This potential exhibit contains a discussion and negotiation between ECM and a potential distributor for ECM's product. ECM requests that this exhibit remain confidential until 8/1/2019.
  - j. RX-134. This potential exhibit contains a discussion of ECM's customer's advertising strategies. ECM requests that this exhibit remain confidential until 8/1/2017.
  - k. CCX-305. This potential exhibit contains an e-mail from ECM to FabriTRAK systems, Inc. wherein ECM explicitly mentions the size of its customer's order. ECM requests that this exhibit remain confidential until 8/1/2017.
  - l. CCX-307. This potential exhibits contain an e-mail correspondence between Down to Earth and ECM which discusses advertisement strategy and specific manufacturing processes. ECM requests that this exhibit remain confidential until 8/1/2017.
  - m. CCX-568. This potential exhibit contains information from FP International discussing FP International's customers and their orders of products manufactured with ECM additive. ECM requests that this exhibit remain confidential until 8/1/2017.
  - n. CCX-676. This potential exhibit contains a discussion between ECM and one of its distributors on how to obtain specific types of customers. ECM requests that this exhibit remain confidential until 8/1/2017.
10. In addition, the following documents contain sensitive personal information, in addition to any information that would likely result in a serious and clearly defined injury to ECM:



- a. CCX-184. This potential exhibit includes a discussion by Italcom S.r.L. relating to their defense against the action brought by AGCM. ECM requests that this exhibit remain confidential until 8/1/2017.
- b. RX-106. This potential exhibit is an e-mail from FP International containing FP International's thoughts and analyses surrounding an action by the National Advertising Division of the Better Business bureau. ECM requests that this exhibit remain confidential until 8/1/2019.
- c. CCX-216. This potential exhibit is an e-mail from ECM detailing litigation strategy that ECM suggests for Colplast. ECM requests that this exhibit remain confidential until 8/1/2017.
- d. CCX-408. This potential exhibit contains ordering information, payment information, and other sensitive information regarding the contacts between American Plastic Mfg. Inc. and ECM. ECM requests that this exhibit remain confidential until 8/1/2017.
- e. CCX-410. This potential exhibit contains ordering information, payment information, and other sensitive information regarding the contacts between Bio-Tec Environmental, LLC and ECM. ECM requests that this exhibit remain confidential until 8/1/2017.
- f. CCX-413. This potential exhibit contains ordering information, payment information, ordering terms, and other sensitive information regarding the contacts between EcoSmart Plastics and ECM. ECM requests that this exhibit remain confidential until 8/1/2017.

- g. CCX-414. This potential exhibit contains ordering information, payment information, personal cell phone numbers, specific ordering terms, and other sensitive information regarding the contacts between Hi-De Liners, LLC and ECM. ECM requests that this exhibit remain confidential until 8/1/2017.
- h. CCX-416. This potential exhibit contains ordering information, payment information, personal cell phone numbers, specific ordering terms, and other sensitive information regarding the contacts between Hi-De Liners, LLC. and ECM. ECM requests that this exhibit remain confidential until 8/1/2017.
- i. CCX-417. This potential exhibit contains ordering information, payment information, specific ordering terms, and other sensitive information regarding the contacts between Myers Industries Lawn and Garden and ECM. ECM requests that this exhibit remain confidential until 8/1/2017.
- j. CCX-418. This potential exhibit contains ordering information, payment information, specific ordering terms, and other sensitive information regarding the contacts between PolyFusion LLC and ECM. ECM requests that this exhibit remain confidential until 8/1/2017.
- k. CCX-419. This potential exhibit contains ordering information, payment information, specific ordering terms, shipping costs, cell phone numbers, UPS account numbers, and other sensitive information regarding the contacts between Sealed Air Corporation and ECM. ECM requests that this exhibit remain confidential until 8/1/2019.
- l. CCX-420. This potential exhibit contains ordering information, payment information, specific ordering terms including amounts and costs, and other

sensitive information regarding the contacts between Automated Packaging Systems Group and ECM. ECM requests that this exhibit remain confidential until 8/1/2017.


- m. CCX-421. This potential exhibit contains ordering information, payment information, specific ordering terms including amounts, and other sensitive information regarding the contacts between Bemis PPD and ECM. ECM requests that this exhibit remain confidential until 8/1/2017.
- n. CCX-422. This potential exhibit contains ordering information, payment information, specific ordering terms including amounts and prices, and other sensitive information regarding the contacts between Shields Bag and Printing Company and ECM. ECM requests that this exhibit remain confidential until 8/1/2017.
- o. CCX-423. This potential exhibit contains ordering information, payment information, specific ordering terms including amounts and prices, and other sensitive information regarding the contacts between Westchem, Inc. and ECM. ECM requests that this exhibit remain confidential until 8/1/2017.
- p. CCX-429. This potential exhibit contains ordering information, payment information, specific ordering terms including amounts and prices, a UPS account number, and other sensitive information regarding the contacts between Contempo Card Company and ECM. ECM requests that this exhibit remain confidential until 8/1/2019.
- q. CCX-647. This potential exhibit contains ordering information, payment information, cell phone numbers, and other sensitive information regarding the

contacts between Geneva Watch Group and ECM. ECM requests that this exhibit remain confidential until 8/1/2017.

- r. CCX-813; CCX-816; CCX-818; CCX-819; CCX-820. These potential exhibits are the deposition transcripts of ECM employees and executives Robert Sinclair, Kenneth Sullivan, Alan Poje, and Thomas Nealis. These transcripts contain confidential information related to sales, customers, and other sensitive and personal information. ECM requests that this exhibit remain confidential until 8/1/2019.

11. For the foregoing reasons, ECM believes that each document specifically identified above deserves *in camera* treatment.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 8th day of July, 2014.

  
Robert Sinclair

# Respondent's Exhibit B

