

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 BIOFILMS' CLARIFICATION CONCERNING BIO-TEC'S
MOTION TO QUASH SUBPOENA DUCES TECUM**

Respondent ECM BioFilms hereby submits this clarification following the Court's March 18, 2014 Order on Non-Party Bio-Tec's Motion To Quash Subpoena *Duces Tecum*. On February 25, 2014, after consultation with parties involved, ECM withdrew its Bio-Tec non-party subpoena by email to Mr. Geoff Rieder. *See* Exh. RX-A. Despite that formal withdrawal, Bio-Tec's counsel filed a Motion to Quash on February 28, 2014, certifying that service was perfected by electronic means on attorney Lou Caputo (lcaputo@emord.com), counsel for Respondent. In the accompanying sworn declaration, Mr. Caputo certifies that he did not receive an email from Bio-Tec counsel on February 28th or 29th that would have included Bio-Tec's Motion to Quash. *See* Exh. RX-B. Service was therefore deficient, and ECM had no notice of the Bio-Tec motion that would allow for a timely response, which would have confirmed the aforementioned formal withdrawal of the subpoena. Accordingly, ECM does not seek to reopen the matter presently but does seek to ensure an accurate record.

Respectfully submitted,

/s/ Jonathan W. Emord

Jonathan W. Emord (jemord@emord.com)

EMORD & ASSOCIATES, P.C.

11808 Wolf Run Lane

Clifton, VA 20124

Telephone: 202-466-6937

Facsimile: 202-466-6938

DATED this 18th day of March 2014.

CERTIFICATE OF SERVICE

I hereby certify that on March 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 courtesy copy to the **Office of the Administrative Law Judge**:

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

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

Katherine Johnson (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

One electronic copy to **Counsel for Bio-Tec**:

Geoff D. Rieder
Foster, Rieder, & Jackson, P.C.
201 Third Street, NW, Suite 1500
Albuquerque, NM 87102

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.

DATED: March 18, 2014

/s/ Jonathan W. Emord

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

RESPONDENT
EXHIBIT
RX-A

From: [Lou Caputo](#)
To: [Geoff Rieder \[geoff@frjlaw.com\]](mailto:geoff@frjlaw.com)
Subject: Docket No. 9358, Subpoena to Bio-Tec
Date: Tuesday, February 25, 2014 6:39:03 AM

Hi Geoff,

This email confirms that with this email, ECM formally withdraws its subpoena *duces tecum* to Bio-Tec. If you or your client have any questions, please let me know.

Best,

Lou

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

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**RESPONDENT
EXHIBIT
RX-B**

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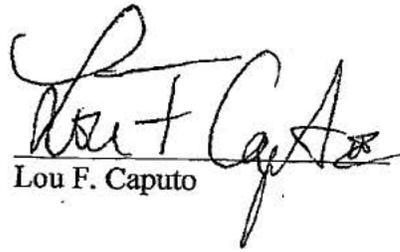
PUBLIC

**DECLARATION OF LOU F. CAPUTO IN SUPPORT OF RESPONDENT ECM
BIOFILMS' CLARIFICATION CONCERNING BIO-TEC'S MOTION TO QUASH
SUBPOENA DUCES TECUM**

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

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 ECM BioFilms' Clarification Concerning Bio-Tec's Motion to Quash Subpoena Duces Tecum.
2. I am employed by the law firm Emord & Associates, P.C., which represents ECM BioFilms in matters before the Federal Trade Commission. I am an attorney of record in the above-captioned case.
3. On February 25, 2014, I emailed notice of Respondent's withdrawal of its subpoena *duces tecum* to Bio-Tec Counsel, Mr. Geoff Rieder.
4. I have received no email from Bio-Tec or Counsel for Bio-Tec that included a Motion to Quash.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 18th day of March, 2014.



Lou F. Caputo