

ORIGINAL

PUBLIC

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



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

DOCKET NO. 9358

**SECOND REVISED SCHEDULING ORDER**

Pursuant to the Commission's April 8, 2014 Order Rescheduling Hearing Date, which rescheduled the evidentiary hearing to begin at 10:00 a.m. on August 5, 2014, and the April 1, 2014 Order on Complaint Counsel's Motion to Certify Scheduling Issues to the Commission and Request for Interim Relief, the dates in the April 1, 2014 Revised Scheduling Order are further revised as follows:

- April 11, 2014 - Deadline for issuing document requests, interrogatories and subpoenas *duces tecum*, except for discovery for purposes of authenticity and admissibility of exhibits.
- April 23, 2014 - Complaint Counsel provides expert witness list.
- April 30, 2014 - Respondent's Counsel provides expert witness list.
- May 7, 2014 - Deadline for issuing requests for admissions, except for requests for admissions for purposes of authenticity and admissibility of exhibits.
- May 21, 2014 - Close of discovery, other than discovery permitted under Rule 3.24(a)(4), depositions of experts, and discovery for purposes of authenticity and admissibility of exhibits.
- June 4, 2014 - Deadline for Complaint Counsel to provide expert witness reports.
- June 11, 2014 - Complaint Counsel provides to Respondent's Counsel its final proposed witness and exhibit lists, including depositions or

designated portions thereof, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Complaint Counsel's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.

Complaint Counsel serves courtesy copies on ALJ of its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.

- June 18, 2014 - Deadline for Respondent's Counsel to provide expert witness reports. Respondent's expert report shall include (without limitation) rebuttal, if any, to Complaint Counsel's expert witness report(s).
  
- June 25, 2014 - Respondent's Counsel provides to Complaint Counsel its final proposed witness and exhibit lists, including depositions or designated portions thereof, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Respondent's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.  

Respondent's Counsel serves courtesy copies on ALJ its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.
  
- June 26, 2014 - Parties that intend to offer confidential materials of an opposing party or non-party as evidence at the hearing must provide notice to the opposing party or non-party, pursuant to 16 C.F.R. § 3.45(b). See Additional Provision 7.
  
- June 30, 2014 - Complaint Counsel to identify rebuttal expert(s) and provide rebuttal expert report(s). Any such reports are to be limited to rebuttal of matters set forth in Respondent's expert reports. If material outside the scope of fair rebuttal is presented, Respondent will have the right to seek appropriate relief (such as striking Complaint Counsel's rebuttal expert reports or seeking leave to submit surrebuttal expert reports on behalf of Respondent).
  
- June 30, 2014 - Exchange deposition transcript counter-designations.
  
- July 2, 2014 - Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.

- July 8, 2014 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- July 9, 2014 - Deadline for filing motions *in limine* to preclude admission of evidence. *See* Additional Provision 9.
- July 11, 2014 - Deadline for filing motions for *in camera* treatment of proposed expert related exhibits.
- July 15, 2014 - Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- July 16, 2014 - Deadline for filing responses to motions *in limine* to preclude admissions of evidence.
- July 18, 2014 - Exchange and serve courtesy copy on ALJ objections to final proposed witness lists and exhibit lists.
- July 18, 2014 - Exchange objections to the designated testimony to be presented by deposition and counter-designations.
- July 18, 2014 - Deadline for filing responses to motions for *in camera* treatment of proposed expert related exhibits.
- July 21, 2014 - Complaint Counsel files pretrial brief supported by legal authority.
- July 25, 2014 - Exchange proposed stipulations of law, facts, and authenticity.
- July 28, 2014 - Respondent's Counsel files pretrial brief supported by legal authority.
- July 30, 2014 - File final stipulations of law, facts, and authenticity. Any subsequent stipulations may be offered as agreed by the parties.
- July 31, 2014 - Final prehearing conference to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

The parties are to meet and confer prior to the conference regarding trial logistics and proposed stipulations of law, facts, and authenticity of exhibits and any designated deposition testimony. To the extent the parties stipulate to certain issues, the parties shall prepare a Joint Exhibit which lists the agreed stipulations.

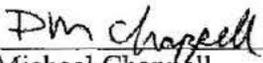
Counsel may present any objections to the final proposed witness lists and exhibits, including to any designated deposition

testimony. Trial exhibits will be admitted or excluded to the extent practicable. To the extent the parties agree to the admission of each other's exhibits, the parties shall prepare a Joint Exhibit which lists the exhibits to which neither side objects. Any Joint Exhibit will be signed by each party. (Do not include a signature line for the ALJ.)

August 5, 2014 - Commencement of Hearing, to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

All Additional Provisions to the November 21, 2013 Scheduling Order remain in effect.

ORDERED:

  
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D. Michael Chappell  
Chief Administrative Law Judge

Date: April 10, 2014