

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

ORIGINAL

PUBLIC DOCUMENT

RESPONDENT'S OBJECTIONS TO COMPLAINT COUNSEL'S FINAL PROPOSED WITNESS LIST

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 witnesses separately through oral or written motions to exclude or limit testimony to the extent permissible under this Court's Scheduling Order, or as this Court shall permit during the hearing. ECM preserves all objections made by motions previously before this Court or pending decision. ECM reserves the right to amend, supplement, modify, or withdraw any of its objections made herein. ECM further reserves its right to make appropriate objections to documents offered with limited admissibility, or to object to witness-sponsored exhibits offered for purposes as yet unknown to ECM. ECM hereby reserves the right to make objections to testimony or documents on grounds of: irrelevance; unreliable hearsay; lack of materiality; prejudice that overcomes

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 on the dates of the hearing. ECM objects particularly to the use of deposition testimony where, due to Complaint Counsel's excessive and oppressive discovery schedule, ECM was not able to represent itself or perform a suitable investigation of the deponent. Complaint Counsel performed over 19 fact depositions, most of which included ECM customers or competitors in varying locations across North America (including Hawaii, New York, Connecticut, California, Ohio, New Mexico, etc.). For almost every such fact deposition, ECM was limited by cost and availability of counsel to telephonic appearances. In some cases, ECM was only able to send a corporate representative. Restricted to long-distance appearances, ECM was limited in its ability to examine those witnesses. For instance, ECM was limited in its ability to review documents presented to the witnesses during Complaint Counsel's in-person examinations. ECM counsel was further limited in its ability to explore relevant documents with those witnesses through long-distance channels. Despite those limitations, many of the customer witnesses are reasonably major elements in Complaint Counsel's case, particularly to the extent Complaint Counsel would rely on them to establish the materiality and veracity of ECM's claims made to customers. Moreover, those depositions were conducted for discovery purposes, and, so, ECM lacked the same interest in defending or participating in those proceedings as it would when the testimony is offered for specific purposes at hearing. Thus, for certain witnesses (identified below), reliance solely on transcript testimony is highly prejudicial, as it would deprive ECM of a meaningful opportunity to cross-examine essential witnesses on core elements

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 Procedure¹ 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 was "unavailable." *See, e.g., Frechette v. Welch*, 621 F.2d 11 (1st Cir. 1980); *G. E. J. Corp. v. Uranium Aire, Inc.*, 311 F.2d 749, 755 (9th Cir. 1962) ("Depositions may only be used where the witness is unavailable or where exceptional circumstances necessitate their use. Rule 26(d) contemplates such use and was not intended to permit depositions to substitute at the trial for the witness himself."); *Salsman v. Witt*, 466 F.2d 76 (10th Cir. 1972) ("[t]he various restrictions imposed by Rule 32(a)(3) upon the use of depositions at trial make it clear that there has been no change in the established principle that testimony by depositions is less desirable than oral testimony and should ordinarily be used as a substitute only if the witness be unavailable to testify in person") (collecting authority); Wright and Miller, *Federal Practice and Procedure, Civil*: § 2142. Furthermore, Rule 3.43(b) (16 C.F.R. § 3.43) contemplates the exclusion of evidence, including deposition transcripts, where the probative value is substantially outweighed by the danger of unfair prejudice. Here, having Complaint Counsel prove core elements of its case against ECM through deposition testimony is substantially prejudicial, and unfairly so because Complaint Counsel has the means to procure live testimony of all such witnesses.

¹ 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 seeks to elicit 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. Sinclair concerning statements or documents that would not otherwise be admissible independently.
- d. ECM objects to Mr. Sinclair's testimony or questioning 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 Mr. Sinclair.
- e. ECM objects to the use of repetitive, cumulative, or redundant evidence in the examination of Mr. Sinclair.

2. Kenneth C. Sullivan, ECM

- a. ECM moves to limit the scope of Mr. Sullivan's testimony to matters or information as to which he has direct personal knowledge.
- b. ECM objects to questioning or an examination of Mr. Sullivan that seeks to elicit 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. Sullivan concerning statements or documents that would not otherwise be admissible independently.
- d. ECM objects to Mr. Sullivan's testimony or questioning 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 Mr. Sullivan.

3. Thomas Nealis, ECM

- a. ECM moves to limit the scope of Mr. Nealis's testimony to matters or information as to which he has direct personal knowledge.

- b. ECM objects to questioning or an examination of Mr. Nealis that seeks to elicit 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's testimony or questioning 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 Mr. Nealis.
- f. ECM objects to Mr. Nealis's specification or title as the ECM Director of Sales, to the extent that title would imply the witness possesses, or should possess, knowledge beyond that obtained or provided him in the ordinary course of business based on his actual responsibilities.

4. Alan Poje

- a. ECM moves to limit the scope of Mr. Poje's testimony to matters or information as to which he has direct personal knowledge.
- b. ECM objects to questioning or an examination of Mr. Poje that seeks to elicit 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. Poje concerning statements or documents that would not otherwise be admissible independently.
- d. ECM objects to Mr. Poje's testimony or questioning 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 Mr. Poje.
- f. ECM objects to Mr. Poje's specification or title as the ECM Regulatory Specialist, to the extent that title would imply the witness possesses, or should possess, knowledge beyond that obtained or provided him in the ordinary course of business based on his actual responsibilities.

5. Stephen Joseph, 3M Company

- 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 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.
- 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 the relevance of this witness's testimony, particularly testimony concerning the efficacy or utility of ECM's additive technology offered by a witness with a limited universe of factual information.
- g. ECM objects to this witness's testimony to the extent that it involves the presentation of needlessly redundant and cumulative information.
- 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.

6. Ramy Samuels, A.N.S. Plastics Corp.

- 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 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.
- 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 the relevance of this witness's testimony, particularly testimony concerning the efficacy or utility of ECM's additive technology offered by a witness with a limited universe of factual information.

- 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 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.
- 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 the relevance of this witness's testimony, particularly testimony concerning the efficacy or utility of ECM's additive technology offered by a witness with a limited universe of factual information.
- g. ECM objects to this witness's testimony to the extent that it involves the presentation of needlessly redundant and cumulative information.

8. Donald Kizer, D&W Fine Pack

- 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 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.
- 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 the relevance of this witness's testimony, particularly testimony concerning the efficacy or utility of ECM's additive technology offered by a witness with a limited universe of factual information.
- g. ECM objects to this witness's testimony to the extent that it involves the presentation of needlessly redundant and cumulative information.
- 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.

9. Ashley Leiti, D&W Fine Pack

- a. ECM moves to limit the scope of the witness's testimony to matters or information as to which she has direct personal knowledge.
- 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.
- 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 the relevance of this witness's testimony, particularly testimony concerning the efficacy or utility of ECM's additive technology offered by a witness with a limited universe of factual information.
- g. ECM objects to this witness's testimony to the extent that it involves the presentation of needlessly redundant and cumulative information.
- 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.

10. Frank Santana, Down to Earth

- 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 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.
- 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 the relevance of this witness's testimony, particularly testimony concerning the efficacy or utility of ECM's additive technology offered by a witness with a limited universe of factual information.
- g. ECM objects to this witness's testimony to the extent that it involves the presentation of needlessly redundant and cumulative information.
- 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.

11. George Collins, Eagle Film Extruders 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 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.
- 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 the relevance of this witness's testimony, particularly testimony concerning the efficacy or utility of ECM's additive technology offered by a witness with a limited universe of factual information.

- g. ECM objects to this witness's testimony to the extent that it involves the 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 personal knowledge.
- 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.
- 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 the relevance of this witness's testimony, particularly testimony concerning the efficacy or utility of ECM's additive technology offered by a witness with a limited universe of factual information.
- g. ECM objects to this witness's testimony to the extent that it involves the presentation of needlessly redundant and cumulative information.

13. James Blood, Free-Flow Packaging International, 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 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.
- 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 the relevance of this witness's testimony, particularly testimony concerning the efficacy or utility of ECM's additive technology offered by a witness with a limited universe of factual information.
- g. ECM objects to this witness's testimony to the extent that it involves the presentation of needlessly redundant and cumulative information.
- 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.

14. Adrian Hong, Island Plastic Bags, 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 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.
- 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 the relevance of this witness's testimony, particularly testimony concerning the efficacy or utility of ECM's additive technology offered by a witness with a limited universe of factual information.
- g. ECM objects to this witness's testimony to the extent that it involves the presentation of needlessly redundant and cumulative information.
- 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.

15. Annette Gormly, Kappus Plastic Company, Inc.

- a. ECM moves to limit the scope of the witness's testimony to matters or information as to which she has direct personal knowledge.

- 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.
- 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 the relevance of this witness's testimony, particularly testimony concerning the efficacy or utility of ECM's additive technology offered by a witness with a limited universe of factual information.
- g. ECM objects to this witness's testimony to the extent that it involves the presentation of needlessly redundant and cumulative information.

16. James Bean, Quest 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 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.
- 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 the relevance of this witness's testimony, particularly testimony concerning the efficacy or utility of ECM's additive technology offered by a witness with a limited universe of factual information.
- g. ECM objects to this witness's testimony to the extent that it involves the presentation of needlessly redundant and cumulative information.

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

18. Alyssa Ullman, Northeast Laboratories, Inc.

- a. ECM moves to limit the scope of the witness's testimony to matters or information as to which she 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 independently.
- d. ECM objects to the testimony of this witness to the extent she is held out, or represented to be, the person at Northeast Laboratories with the most knowledge or information concerning the scientific issues raised by Northeast Lab's procedures or protocols.
- e. 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.

- 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.
- 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.

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

20. Tadahisa Iwata, Elsevier

- 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 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.
- 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 the relevance of this witness's testimony, particularly testimony concerning the efficacy or utility of ECM's additive technology, or testing performed on ECM's technology, offered by a witness with a substantially limited universe of factual information.
- g. ECM objects to this witness's testimony to the extent that it involves the presentation of needlessly redundant and cumulative information.

21. John Aiken, FTC

- 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 of the witness using statements or documents that would not otherwise be admissible independently.
- c. ECM objects to the use of repetitive, cumulative, or redundant evidence in the examination of this witness, and to the extent that it involves the presentation of needlessly redundant and cumulative information generally.

22. William Burton, FTC

- 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 of the witness using statements or documents that would not otherwise be admissible independently.
- c. ECM objects to the use of repetitive, cumulative, or redundant evidence in the examination of this witness, and to the extent that it involves the presentation of needlessly redundant and cumulative information generally.

23. David Hendrickson, FTC

- 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 of the witness using statements or documents that would not otherwise be admissible independently.
- c. ECM objects to the use of repetitive, cumulative, or redundant evidence in the examination of this witness, and to the extent that it involves the presentation of needlessly redundant and cumulative information generally.

24. Mary Jo Vantusko, FTC

- 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 of the witness using statements or documents that would not otherwise be admissible independently.
- c. ECM objects to the use of repetitive, cumulative, or redundant evidence in the examination of this witness, and to the extent that it involves the presentation of needlessly redundant and cumulative information generally.

25. Dr. Steven McCarthy

- a. ECM objects to Dr. McCarthy's testimony as an expert witness in this matter because he lacks the requisite training, education, or experience sufficient to guide this Court in all areas to which he is held out as an expert.
- b. ECM objects to Dr. McCarthy's testimony as an expert witness because he lacks the objectivity and impartiality necessary to guide this Court in areas to which he is held out as an expert.
- c. ECM objects to Dr. McCarthy's testimony as an expert witness because his direct personal financial stake in the outcome of this litigation renders his opinions untrustworthy and unreliable.
- d. ECM moves to limit or exclude Dr. McCarthy's testimony on grounds that his opinion is not credible or reliable.
- e. ECM objects to Dr. McCarthy's testimony on grounds that portions of his testimony are not based on facts or data experts in the field would reasonably rely on.
- f. ECM preserves all appropriate objections with respect to this expert's testimony, including but not limited to, all written and oral motions that may be offered in response to, or in anticipation of, this expert's opinions offered at the hearing.

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 sufficient to 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 objectivity and impartiality necessary to guide this Court in areas to which he is held out as an expert.
- c. ECM moves to limit or exclude Dr. Frederick's testimony on grounds that his opinion is not credible or reliable.
- d. ECM objects to Dr. Frederick's testimony on grounds that portions of his testimony are not based on facts or data experts in the field would reasonably rely on.
- e. ECM objects to Dr. Frederick's testimony because work he performed for Complaint Counsel (e.g., consumer surveys) were the product of unreliable principles and methods, and Dr. Frederick did not reliably apply scientific principles and methods to the facts presented.
- f. ECM preserves all appropriate objections with respect to this expert's testimony, including but not limited to, all written and oral motions that may be offered in response to, or in anticipation of, this expert's opinions offered at the hearing.

27. Dr. Thabet Tolaymet

- a. ECM objects to Dr. Tolaymet's testimony as an expert witness in this matter because he lacks the requisite training, education, or experience sufficient to guide this Court in all areas to which he is held out as an expert.
- b. ECM moves to limit or exclude Dr. Tolaymet's testimony on grounds that his opinion is not credible or reliable.
- c. ECM objects to Dr. Tolaymet's testimony on grounds that portions of his testimony are not based on facts or data experts in the field would reasonably rely on.
- d. ECM objects to Dr. Tolaymet's testimony because conclusions and opinions were derived from unreliable principles and methods, and Dr. Tolaymet did not reliably apply scientific principles and methods to the facts presented.
- e. ECM preserves all appropriate objections with respect to this expert's testimony, including but not limited to, all written and oral motions that may be offered in response to, or in anticipation of, this expert's opinions offered at the hearing.

Dated: July 18, 2014

Respectfully submitted,

/s/ Jonathan W. Emord
Jonathan W. Emord (jemord@emord.com)
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Clifton, VA 20124
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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 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
Division of Enforcement
Bureau of Consumer Protection
Federal Trade Commission
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Elisa Jillson
Division of Enforcement
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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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