



HOY | CHRISSINGER  
KIMMEL | VALLAS  
ATTORNEYS AND COUNSELORS AT LAW

Wednesday, September 2, 2015

Suresh Patel  
Julia Murray  
Chemetall North America  
675 Central Avenue  
New Providence, NJ 07974

suresh.patel@chemetall.com  
julia.murray@chemetall.com  
Registered Mail, Return Receipt Requested  
7010 3090 0000 5044 1495

Re: Metalast branding and specifications

Dear Mr. Patel and Ms. Murray,

We represent David M. Semas and Metalast International, Inc. In 1994, Mr. Semas incorporated Metalast International, Inc. Mr. Semas initially registered Metalast trademarks, and later assigned the marks to Metalast International, Inc.

In July 2014, Chemeon Surface Technology, LLC fka Metalast Surface Technology, LLC fka D&M-MI, LLC ("Chemeon") commenced litigation against Semas and Metalast International, Inc. to assert that it owned the various word marks, logos, and other trademarks associated with the Metalast brand. Following mediation in January 2015, Semas, Metalast International, Inc., Chemeon and its owners (Dean and Madylon Meiling) entered into a settlement agreement. The settlement judge recited the terms on the record as follows:

That there is a trademark regarding the name Metalast.  
There is a dispute regarding ownership. That dispute has been resolved as follows:

[Chemeon], through the Meilings will continue to use the mark for 90 days following entry of the order approving the settlement by Judge Beesley, if he does approve it. At the end of that 90-day period, [Chemeon], the Meilings, and any other entity in which the Meilings have an interest, **will no longer be able to use the name Metalast in any fashion or manner whatsoever.** Following that 90 days, the mark will be owned by Mr. and Mrs. Semas, or any entity in which they choose to transfer the mark.

("Settlement Agreement"). The Settlement Agreement was approved by Judge Beesley on March 11, 2015. Hence, the 90-day period in the Settlement Agreement expired on or before June 10, 2015.

The Settlement Agreement, and the judicial approval, are public documents, available online. Furthermore, in March 25, 2015 email correspondence to Ms. Murray, Semas advised that, "as of June 9th, 2015, [Metalast International, Inc.] will have the legal and exclusive ownership to the METALAST USPTO registered trademark, name and brand in the global market place free from any time of limitation or restriction." Therefore, before June 10, 2015, Chemetall was on notice that Chemeon and its distributors had no right to use the Metalast brand without license.

After June 9, 2015, Chemeon began referring to itself as "formerly Metalast" and offered its products as "formerly Metalast." This was obviously communicated to Chemetall, which advised its sales force and Chemeon as follows:

Dear Chemetall team,

Please review the email below related to "METALAST" name change, it will be CHEMEON Surface Technology starting June 1, 2015 for Chemetall. Stay tuned for more info from Justin/I/Gary related to this change. Our business will continue "as usual" until the name change process is completed.

FYI -- All name change associated to our Navy license is complete and the DoD QPD is in the process of reflecting the CHEMEON name associated to our TCP-HF suite of products. The labeling and our TDS sheets and MSDS sheets always will refer to "formerly Metalast TCP-HF...etc...)

We have separately verified that, since June 9, 2015, Chemeon has marketed its products as "formerly Metalast." Chemeon has taken this step without first establishing its legal right to do so. On June 3, 2015, Chemeon initiated litigation seeking a decree that its use of the phrase "formerly Metalast" is a fair use that does infringe on the Metalast trademark, and that Chemeon has a First Amendment right to violate the plain terms of the Settlement Agreement. *Chemeon Surface Technology, LLC v. Metalast International, Inc.*, Case No. 3:15-cv-00294 (US District Court, District of Nevada, Northern Division).

Semas and Metalast International, Inc. dispute Chemeon's contentions, and have filed pleadings and briefs which, in my judgment, refute Chemeon's legal theories. As of this writing, the courts have not validated Chemeon's arguments or established any right of Chemeon to refer to itself or its products as "formerly Metalast." I also note that Chemeon's legal theories are tied to Chemeon's claimed

legal history, and would likely not be available to third parties. In other words, even if Chemeon prevails in its suit, this would not establish any right by Chemetall to market its goods as "formerly Metalast."

On September 1, 2015, Chemeon published a news release that states, among other things:

All QPD/QPL Mil-Spec product certifications for CHEMEON's products remain intact and in force in all respects (chemical composition, formulation, manufacturing plants, quality control, etc.), and these products remain available for purchase via their corresponding National Stock Numbers (NSN).

Similarly, by June 9, 2015, CHEMEON also changed its word mark prefacing its exclusive and proprietary blend of chemistries, technical services, R&D, and training classes to "CHEMEON" from its former mark, "Metalast." CHEMEON retains its original US Government CAGE Code (71D40) and DUNs Code (079199866).

For CHEMEON's prime contractors, military partners, and others that need further documentation of the Company's product name changes in order to amend specifications to reflect the CHEMEON name and mark, you are invited to provide us with an "amendment letter" that memorializes the name changes and warrants the product's Mil-Spec, QPD/QPL approval status.

As a result, CHEMEON™ products and services should be identified as such – that is, CHEMEON products and services -- rather than referring to them as "Metalast" products or services. In the interest of preventing confusion and providing historical accuracy:

**CHEMEON will, at least for now, most prominently mark its products and services with the CHEMEON name and mark along with historical clarification that the company or mark, as applicable, was "formerly Metalast"; and**

**CHEMEON asks that its distributors, customers, and users use our new labeling and identifications of our products and services as provided by CHEMEON.**



The press release incorrectly states that Chemeon previously "owned" the "Metalast" mark. The public record demonstrates that Chemeon was never the registered owner of the mark, and no court has ruled otherwise. Furthermore, the publication is misleading because it fails to disclose that Chemeon's legal contention is disputed and unresolved in pending litigation. Indeed, the press release does not even disclose that any relevant litigation is pending.

The press release urges Chemeon customers to amend procurement specifications to change "Metalast" to "Chemeon." Semas and Metalast International, Inc. will contend that any attempt by Chemeon or any other party urging others to remove "Metalast" from procurement specifications constitutes trademark dilution, unfair trade practices, and other torts.

Metalast International, Inc. does not authorize Chemetall to market, label, or deliver any products denoted "formerly Metalast." Marketing or delivering products designated as "formerly Metalast," or selling parts treated with a product that does not originate with Metalast International Inc., may violate procurement regulations, procure specifications, and QLP/ QPD requirements, subjecting all in the chain of distribution to liability to the customers. Publishing technical data sheets or safety data sheets denoting products as "formerly Metalast" may violate OSHA or other labeling regulations. Metalast International, Inc. does not accept any such liability, and will seek indemnity from any party who exposes it to liability for the improper marketing and labeling of chemical products that do not originate with the owner of the Metalast brand.

Therefore, Metalast International, Inc. hereby demands that Chemetall desist from publishing any marketing materials, TDS, SDS, or other publications that describe any of its products as "formerly Metalast." Chemetall is free, of course, to avail itself of any procurement regulations or specifications that allow a supplier to seek approval and substitution of an "as equal" to a specified Metalast product. But we contend that Chemetall has no right to bypass that procedure by simply referring to its products as "formerly Metalast."

Clearly, Chemetall is engaged in transactions at the heart of the pending litigation between Chemeon and Metalast International, Inc. You may expect subpoenas for documents and testimony. We intend to seek immediate discovery of documents in these categories:

1. All written communications with Chemeon and memoranda of unwritten communications with Chemeon;

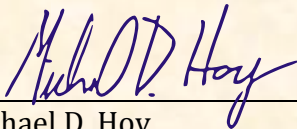
2. All business records of transactions with Chemeon;
3. All Technical Data Sheets and Safety Data Sheets published by Chemetall for any products labeled "formerly Metalast;"
4. All written communications with Chemetall customers regarding "formerly Metalast" products' compliance with procurement specifications, QPL specifications, or QPD specifications; and
5. All reports of findings or concern by Chemetall's customers' process auditors.

You are hereby notified that the destruction of any of these records, and any other records which you reasonably believe could be relevant to the ongoing disputes, could be deemed a violation of your legal obligations.

I invite your response to this letter. If you elect to engage legal counsel in this matter, please do not respond to me directly; instead, please ask your lawyers to contact me.

Very truly yours,

HOY CHRISSINGER KIMMEL VALLAS, PC

A handwritten signature in blue ink, reading "Michael D. Hoy", is written over a horizontal line.

Michael D. Hoy  
mhoy@nevadalaw.com  
(775) 785-3471 (direct)

Michael D. Hoy (NV Bar 2723)  
HOY CHRISSINGER KIMMEL VALLAS, PC  
50 West Liberty Street, Suite 840  
Reno, Nevada 89501  
(775) 786-8000  
mhoy@nevadalaw.com

Attorneys for: Defendants and Counterclaimants

**United States District Court  
District of Nevada**

CHEMEON SURFACE TECHNOLOGY, LLC, a  
Nevada limited liability company,

Plaintiff,

vs.

METALAST INTERNATIONAL, INC., a Nevada  
corporation; METALAST, INC., a Nevada  
corporation; SIERRA DORADO, INC., a  
Nevada corporation; DAVID M. SEMAS;  
GREG D. SEMAS; and WENDI SEMAS-FAURIA,

Defendants.

DAVID M. SEMAS; and METALAST  
INTERNATIONAL, INC.,

Counterclaimants,

vs.

CHEMEON SURFACE TECHNOLOGY, LLC; DEAN  
S. MEILING; and MADYLON MEILING,

Counter Defendants.

Case No. 3:15-cv-00294-MMD-VPC

**SUBPEONA TO PRODUCE  
DOCUMENTS**

To: Chemetall Chemical Products, Inc.  
Chemetall Corporation  
Chemetall US, Inc.  
675 Central Avenue  
New Providence, NJ 07974

YOU ARE COMMANDED to produce at Action Subpeona Co., Inc., 29 Columbia Turnpike, Suite 302, Florham Park, NJ 07932 on October 9, 2015 at 9:00 o'clock, Eastern Daylight Time. Alternatively, you may either (a) send the requested records for delivery before October 9, 2015 addressed to Michael D. Hoy, 50 West Liberty Street, Suite 840, Reno, Nevada 89501 or (b) arrange for electronic transmission of the requested documents by calling the undersigned.

### Definitions

As used in this subpoena, the following terms have the following meanings:

Chemeon. "Chemeon" means Chemeon Surface Technology, LLC fka Metalast Surface Technology, LLC fka D&M-MI, LLC.

Chemetall. "Chemetall" means Chemetall Chemical Products, Inc., Chemetall Corporation, and Chemetall US, Inc.

Correspondence. "Correspondence" means any written communication, including letters, memoranda, faxes, emails, text messages, other textual message fixed in a tangible medium, or other textual message transmitted electronically.

Native file: email messages. With respect to email messages, "Native File" means the file format for an individual email message file, such as .msg (RFC 822 -

Standard for ARPA Internet Text Messages) or an archive of multiple messages, such as .mbox (a standard format for Apple, Unix or Linux) or .pst (a standard format for Microsoft Outlook).

Native file: documents. With respect to electronically-stored documents other than email messages, "Native File" means the computer file in the default file format used by the application used to draft or create the document. A request to produce the native file of a document (including word processing documents, spreadsheets, and presentations) is a request to produce all files containing intermediate drafts of a single document.

### **Documents and Things to Produce**

Please produce the following. For each document or information that is stored in a computerized file system, please produce the Native Files for each requested document.

Request No. 1. All emails exchanged between any account owned or controlled by Chemetall and any account owned or controlled by Chemeon since May 1, 2013.

Request No. 2. In addition to email messages that fall within Request No. 1, all emails sent to or from any Chemetall company email account, dated after May 1, 2013, that contains the word "Metalast."



1        Request No. 3. In addition to email messages that fall within Request Nos. 1  
2 and 2, all emails sent from or to any Chemetall email account, dated after May 1,  
3 2013, that contains the word "Semas."

4        Request No. 4. Any existing documents that describe Chemetall's method for  
5 backing up email messages sent to or from Chemetall email addresses or through  
6 Chemetall's servers.

7        Request No. 6. All correspondence between Chemetall and Chemeon since  
8 May 1, 2013 that contains the word "Metalast."

9        Request No. 7. All email messages and other correspondence since March  
10 2015 to or from Chemetall customers (including but not limited to the United States  
11 Naval Air Systems Command or any other branches of the United States Department  
12 of Defense and all other departments of the United States government) that contain  
13 the phrases "formerly Metalast" or "formerly known as Metalast."

14        Request No. 8. All email messages and other correspondence, dated after  
15 March 11, 2015, to or from Chemetall customers that discuss compliance of  
16 products licensed, formulated, ordered, labeled as Chemeon products with  
17 procurement specifications.

18        Request No. 9. All email messages and other correspondence, dated after  
19 March 11, 2015, to or from Chemetall customers that discuss compliance of  
20 products licensed, formulated, ordered, labeled as Chemeon products with Qualified  
21 Products Lists ("QPL") or Qualified Products Database ("QPD").  
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1           Request No. 10. All email messages and other correspondence, dated after  
2           March 11, 2015, to or from Chemetall customers that discuss any findings or  
3           concern by Chemetall's customers' process auditors regarding projects marketed or  
4           labeled using the words "Chemeon" or "Metalast."

5           Request No. 11. All internal memoranda that contain the phrases "formerly  
6           Metalast" or "formerly known as Metalast."

7           Request No. 12. All internal memoranda that contain any statements that  
8           Chemeon was at one time Metalast or in some form or fashion directly affiliated  
9           with the Metalast name or brand.

10           Request No. 13. All email messages and other correspondence between  
11           Chemetall, including its legal counsel, and Chemeon, including its legal counsel,  
12           regarding any aspect of this subpoena.  
13

14           The following provisions of Fed.R.Civ.P. 45 are attached -- Rule 45(c), relating  
15           to the place of compliance; Rule 45(d), relating to your protection as a person  
16           subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to  
17           this subpoena and the potential consequences of not doing so.  
18

19           (continues)  
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1 The name, address, email address, and telephone number of the attorney  
2 representing Metalast International, Inc., which issues this subpoena, are:

3 September 9, 2015.

HOY CHRISSINGER KIMMEL VALLAS, PC  
50 West Liberty Street, Suite 840  
Reno, Nevada 89501

4  
5  
6  
7

8 Michael D. Hoy

mhoy@nevadalaw.com

(775) 786-8000 (main)

(775) 785-3471 (direct)

Attorneys for Counterclaimants David M.  
Semas and Metalast International, Inc.

## Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

### (c) Place of Compliance.

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

### (d) Protecting a Person Subject to a Subpoena; Enforcement.

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

### (e) Duties in Responding to a Subpoena.

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.



Michael D. Hoy (NV Bar 2723)  
HOY CHRISSINGER KIMMEL VALLAS, PC  
50 West Liberty Street, Suite 840  
Reno, Nevada 89501  
775.786.8000  
mhoy@nevadalaw.com

Attorneys for Metalast International, Inc.,  
Metalast, Inc., Sierra Dorado, Inc.,  
David Semas, Greg Semas, and  
Wendi Semas-Fauria

## United States District Court District of Nevada

CHEMEON SURFACE TECHNOLOGY, LLC,  
Plaintiff,

vs.

METALAST INTERNATIONAL, INC.; METALAST, INC.;  
SIERRA DORADO, INC.; DAVID M. SEMAS; GREG D.  
SEMAS; AND WENDI SEMAS-FAURIA,

Defendants.

Consolidated Case Nos.  
3:15-cv-00294-MMD-VPC  
3:15-cv-00295-MMD-VPC

CHEMEON SURFACE TECHNOLOGY, LLC  
Plaintiff,

vs.

MARC HARRIS dba MHA GROUP,  
Defendant.

**Notice of Service of Subpoena for Records  
FRCP 45(a)(4)**

DAVID M. SEMAS; AND METALAST INTERNATIONAL,  
INC.,

Counterclaimants,

vs.

CHEMEON SURFACE TECHNOLOGY, LLC; DEAN S.  
MEILING; AND MADYLON MEILING,

Counter Defendants.

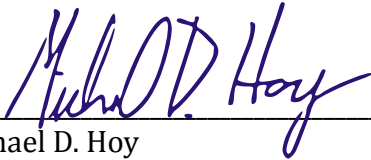




1 Defendants Metalast International, Inc. and David Semas hereby give notice that they  
2 will serve a subpoena upon Chemetall, U.S., and Chemetall, Inc. in the form attached.

3 Dated August 11, 2016.

HOY CHRISSINGER KIMMEL VALLAS, PC

4  
5   
6 \_\_\_\_\_  
7 Michael D. Hoy  
8 Attorneys for Defendants

9 **Proof of Service**

10 On August 12, 2016, I served the foregoing Title as follows:

11 Electronic: by electronic transmission through the United States District Court's CM/  
12 ECF system to Robert C. Ryan, Anthony Hall, Tamara Reid, and Christopher Hadley, all counsel  
13 for plaintiffs and counter defendants.  
14

15 Mail: by depositing a true and correct copy in the United States Mail, postage prepaid,  
16 addressed to Marc Harris, 2471 Morning Dew Drive, Brea, CA 92821.

17 I declare under penalty of perjury that the foregoing is true and correct.

18 Executed on August 12, 2016 in Reno, Nevada.

19  
20 s/s Shondel Seth  
21 \_\_\_\_\_  
22 Shondel Seth  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
for the District of New Jersey

CHEMEON SURFACE TECHNOLOGY, LLC,  
Plaintiff,

vs.

METALAST INTERNATIONAL, INC.; Metalast, Inc.;  
Sierra Dorado, Inc.; David M. Semas; Greg D. Semas;  
Wendi Semas-Fauria,  
Defendants.

Civil Action NO. 3:15-cv-00294-MMD-VPC

Pending in the District of Nevada, Unofficial  
Northern Division

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: Chemetall U.S., Inc.  
Chemetall Corporation  
675 Central Avenue, New Providence, NJ 07974

*(Name of person to whom this subpoena is directed)*

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: Documents and electronic records described in Exhibit A.

**Appearance Not Required - FRCP 45(c)(2)(A)**

Place: By mail: Hoy Chrissinger Kimmel Vallas, PC  
50 West Liberty Street, Suite 840  
Reno, Nevada 89501

Date and Time: August 31, 2016, 5:00 PM

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: August 11, 2016

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk*

*Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Defendants

**Metalast International, Inc. and David M. Semas**

, who issues or requests this subpoena, are:

Michael D. Hoy, 50 W. Liberty St., Suite 840, Reno, Nevada 89501; (775) 786-8000; mhoy@nevadalaw.com

**Notice to the person who issues or requests this subpoena**

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

## Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

### (c) Place of Compliance.

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

### (d) Protecting a Person Subject to a Subpoena; Enforcement.

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

### (e) Duties in Responding to a Subpoena.

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

## **Exhibit A**

### **to Subpoena for Documents and Electronically-stored Information to Chemetall U.S. and Chemetall Corporation**

1. Every email received by any officer, employee, or attorney of Chemetall U.S. or Chemetall Corporation (collectively "Chemetall") from Dean Meiling, Madylon Meiling, Ted Ventresca, Robert C. Ryan, Tamara Reid, or any other user at the email domain [hollandhart.com](mailto:hollandhart.com).
2. Every email sent by any officer, employee, or attorney of Chemetall to Dean Meiling, Madylon Meiling, Ted Ventresca, Robert C. Ryan, Tamara Reid, or any other user at the email domain [hollandhart.com](mailto:hollandhart.com).
3. Every email on any Chemetall email server, or contained in any email archive, that contains the term "Semas."
4. All memoranda authored by any Chemetall officer or employee, other than a licensed lawyer, discussing, analyzing, or referring to a September 2, 2015 letter from Michael D. Hoy addressed to Chemetall North America.
5. All written communications, and all memoranda of oral communications, between any Chemetall officer, employee, or lawyer and any lawyer representing or purporting to represent Chemeon Surface Technology, LLC ("Chemeon").
6. All written communications, and all memoranda of oral communications, between any Chemetall officer, employee, or lawyer and any lawyer representing or purporting to represent Chemeon, that discusses, analyzes or refers to a September 2, 2015 letter from Michael D. Hoy addressed to Chemetall North America.
7. All emails and other written communications, and all memoranda of oral communications, after between any Chemetall officer, employee or lawyer, on one hand, and any Chemeon officer, employee or lawyer, on the other hand, discussing or referring to the use of the terms "formerly Metalast" or "formerly known as Metalast."
8. All emails and other written communications, and all memoranda of oral communications, with any person regarding the Qualified Product Database or Qualified Product Listing for any product identified with "formerly Metalast" or "formerly known as Metalast."
9. All emails and other written communications between any Chemetall officer, employee or lawyer, on one hand, and any other person where the subject is changing a technical specification to reference a Chemeon product in place of a Metalast product.
10. Any existing documents that describe Chemetall's method for archiving email messages received or sent by Chemetall from or to Chemeon, any user on mail domain [chemeon.com](mailto:chemeon.com), any or any user on email domain [metalast.com](mailto:metalast.com).



Exhibit A to Subpoena to Chemetall U.S. and Chemetall Corporation

11. All emails and other written communications to or from any Chemetall customers that discuss any findings or concern by Chemetall's customers' process auditors regarding products identified or labeled using the terms "Chemeon" or "formerly Metalast" or "formerly known as Metalast."
12. All memoranda of oral communications between Chemetall and its customers discuss any findings or concern by Chemetall's customers' process auditors regarding products identified or labeled using the terms "Chemeon" or "formerly Metalast" or "formerly known as Metalast."
13. All emails and other written communications, and all memoranda of any oral communications, between Chemetall officers, employees, or lawyers, on one hand, and Chemeon officers, employees, or lawyers, on the other hand, regarding any aspect of this subpoena.