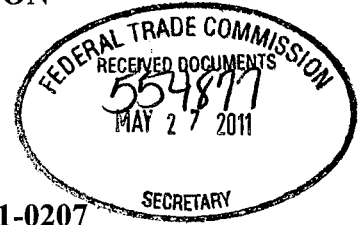


**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**



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IN THE MATTER OF )  
 )  
W.L. GORE & ASSOCIATES, INC. )  
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File No. 101-0207

**REQUEST FOR FULL COMMISSION REVIEW OF LETTER RULING DENYING W.L.  
GORE & ASSOCIATES INC.'S PETITION TO LIMIT OR QUASH  
SUBPOENA DUCES TECUM DATED MARCH 10, 2011**

Mark W. Nelson  
Steven J. Kaiser  
Elaine Ewing

CLEARY GOTTlieb STEEN & HAMILTON LLP  
2000 Pennsylvania Avenue, NW  
Washington, D.C. 20006  
Tel: 202-974-1500

Counsel for W.L. Gore & Associates, Inc.

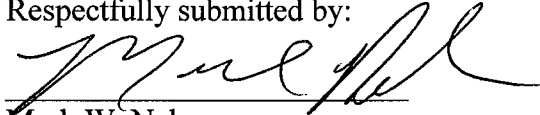
by Gore regarding its organization structure and the responsibilities of various employees, Gore provided a substantially augmented proposal. This proposal, which was contained in a letter of May 26 (attached as Exhibit I), Gore proposed that its compliance be completed through producing responsive documents from the files of 21 custodians (and providing certain other information and materials that previously had been offered). That proposal is pending with Staff.

\* \* \*

Gore hopes that the ongoing negotiations with Staff will lead to a reasonable resolution regarding the scope of Gore's subpoena compliance and render this request for review moot. However, the subpoena as written is vastly overbroad and compliance would place an incredible burden on Gore that would be undue and unjust. Gore therefore requests that the Commission quash the subpoena.

Date: May 27, 2011

Respectfully submitted by:



Mark W. Nelson  
Steven J. Kaiser  
Elaine Ewing

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2000 Pennsylvania Avenue, NW  
Washington, D.C. 20006  
Tel: 202-974-1500

Counsel for W.L. GORE & ASSOCIATES, INC.

# **EXHIBIT A**

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION



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IN THE MATTER OF )  
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W.L. GORE & ASSOCIATES, INC. )  
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\_\_\_\_\_ )

File No. 101-0207

**W.L. GORE & ASSOCIATES INC.'S PETITION TO LIMIT OR QUASH  
SUBPOENA DUCES TECUM DATED MARCH 10, 2011**

Mark W. Nelson  
Steven J. Kaiser  
Elaine Ewing

CLEARY GOTTlieb STEEN & HAMILTON LLP  
2000 Pennsylvania Avenue, NW  
Washington, D.C. 20006  
Tel: 202-974-1500

Counsel for W.L. Gore & Associates, Inc.



industry and Gore's contracts with its customers, which Gore understands to be at the heart of the staff's investigation. In the short time since the subpoena was received on March 14, 2011, the company already has produced thousands of pages of documents and offered to produce many more. Unfortunately, because the staff is unwilling even to extend the return date to allow for negotiations over the reasonable scope of what should be produced in response to the subpoena, Gore is left with no alternative but to file this petition to quash.

### **BACKGROUND<sup>1</sup>**

On November 5, 2010, the staff sent a letter to Gore informing it that the Commission was conducting a non-public investigation into whether Gore may have engaged in conduct in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 by "restricting competition for water repellant, waterproof, waterproof and breathable, or chemical resistant fabrics, coating or laminates or the markets for products which use any of those technologies."<sup>2</sup> The letter stated that the "[c]onduct under investigation includes, but is not limited to Gore policies, practices or contracts, agreements, and communications with customers, manufacturers, distributors, or retailers that restrict customers' ability to deal with competing suppliers."

Gore has cooperated fully with the investigation. The company made a voluntary production of business plans and sample contracts in January 2011.<sup>3</sup> It also made several of its executives available for an interview for half a day, which included a detailed presentation to the staff in January about Gore's business, showing how it is organized, what segments it serves, who it competes with, samples of Gore products and competitive products, and other relevant

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<sup>1</sup> The factual statements made in this motion are based on the declaration of Michelle Katz, attached as Exhibit B.

<sup>2</sup> See Letter from Karen A. Mills to Terri Kelly, attached as Exhibit C.

<sup>3</sup> See Letter from Mark Nelson to Karen A. Mills, attached as Exhibit D.

information.<sup>4</sup> After the January meeting, Gore's counsel expressed willingness to produce additional documents and products on a voluntary basis.

On March 10, 2011, without further communication from the staff (including, for example, any requests for further production of documents or information), the subject subpoena was issued, with Gore receiving it on March 14, 2011. The subpoena demands the production of numerous extremely broad categories of documents, ranging across a broad portion of Gore's business, dating back more than ten years, to January 1, 2001. It calls for "a complete search of all the files of the Company" for responsive documents, which in effect would include virtually every scrap of paper (or its electronic equivalent)<sup>5</sup> that Gore might have that in any way relates to a "relevant product," which is broadly defined to include "any membrane, coating, laminate, seam tape, equipment, technology, intellectual property, or know-how used to make waterproof or waterproof and breathable outerwear, clothing, footwear, gloves, accessories, or other apparel or items."<sup>6</sup> Specification 3 calls for "[a]ll documents relating to the Company's studies, forecasts, plans, strategy or decision relating to research, development, intellectual property protection, manufacturing, branding, licensing, pricing, sales, or marketing of any relevant product ...." Specification 14 calls for "[a]ll documents relating to communications between the Company and any person outside the Company who manufactures or creates and sells, licenses, or leases any relevant product." Specification 10 calls for "[d]ocuments sufficient to identify all Company intellectual property and know how related to any relevant product." Taken together, these three requests alone call for all documents relating to the development, manufacturing, sales, or marketing of Gore's Fabrics Division for the last ten years.

<sup>4</sup>

[REDACTED]

<sup>5</sup>

Indeed, unlike Second Requests, the subpoena defines documents to include purely transactional documents such as "bills" and "invoices." Subpoena, Def. IX.

<sup>6</sup>

Subpoena, Def. II.

After receiving the subpoena, Gore's counsel had several conversations with the staff regarding the scope of the subpoena and noted that it was patently overbroad and would require the production of nearly every document from the past ten years from nearly every employee of Gore's Fabrics Division.<sup>7</sup> This includes not only the 1,500 current employees of the Fabrics Division, but also every ex-employee who worked for Gore in the past ten years. Despite these issues, Gore expressed its willingness to provide a substantial production of key documents quickly, without in any way prejudicing the staff's ability to seek additional information after reviewing Gore's initial submission.<sup>8</sup> In other words, Gore proposed to produce documents immediately without seeking *any* modification to the subpoena, with its only request being that the staff defer the subpoena's return date so as to avoid the need to file a motion to quash. During a March 28, 2011 conversation with Gore, the staff requested that Gore put its proposal in writing, which Gore did on March 31, 2011.<sup>9</sup>

While it awaited the staff's response to its proposal, Gore unilaterally began producing documents responsive to the subpoena. Within three weeks after receiving the subpoena, on April 1 and April 4, 2011, Gore produced more than 10,000 pages of materials, including its current organization chart, a number of current and historical business plans, all of its technical specifications, and the majority of its contracts related to the relevant products.<sup>10</sup> It was Gore's hope that by producing those documents immediately and agreeing to produce more documents as reasonably agreed, including the remaining contracts, the staff would be able to assess what if

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<sup>7</sup> See Declaration of Mark Nelson, attached as Exhibit F.

<sup>8</sup> Nelson Declaration at 1-2.

<sup>9</sup> See Letter from Mark Nelson to Karen Mills, attached as Exhibit G. The only extension the staff has agreed to was an initial two-week extension to April 15, 2011.

<sup>10</sup> See Letters from Elaine Ewing to Karen Mills, attached as Exhibit H and Exhibit I.



any next steps it should take in its investigation while minimizing the need to burden Gore with requests for enormous volumes of irrelevant documents.<sup>11</sup>

On April 6, 2011 and April 8, 2011, Gore's counsel had further conversations with the staff during which the staff rejected Gore's proposal out of hand.<sup>12</sup> During the course of the April 8 discussion, the staff requested historical organization charts and stated that that such information, as well as unspecified details on the "burden" of complying with the subpoena, would be necessary before the staff would be willing to engage in discussions about narrowing the scope of the subpoena.<sup>13</sup> With the April 15 return date looming, Gore produced historical organizational charts (they are not responsive to the subpoena, which asked only for a current organizational chart), along with information regarding the amount of electronic data its custodians have and the associated burden of complying with the subpoena.<sup>14</sup> Gore also requested a modest two-week extension to the subpoena's return date, in order to continue negotiations with the staff. On April 14, while acknowledging that these submissions "will be useful," the staff denied the request without explanation and has neither agreed to Gore's proposal for the production of documents nor proposed its own suggestions for narrowing the scope of the subpoena.<sup>15</sup> On April 15, Gore's counsel sent a letter to the staff expressing its disappointment with the denial of Gore's request for a two-week extension.<sup>16</sup>

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<sup>11</sup> Gore is confident that such a review would substantially narrow, if not eliminate, the need for further productions. For example, the staff can readily see from a review of Gore's contracts that

[REDACTED] Gore's [REDACTED] Gore' [REDACTED] d  
[REDACTED]

<sup>12</sup> Nelson Declaration at 2.

<sup>13</sup> *Id.*

<sup>14</sup> See Emails from Elaine Ewing to Karen Mills, attached as Exhibit J and Exhibit K.

<sup>15</sup> See Letter from Karen A. Mills to Mark Nelson, attached as Exhibit L.

<sup>16</sup> See Letter from Mark Nelson to Karen Mills, attached as Exhibit M.

## ARGUMENT

As is plain from the above, this is not an appropriate way for the staff to conduct an investigation. Gore has sought to be accommodating to the staff and to reach a reasonable compromise on the core documents that will allow the staff to evaluate the theories under investigation while not imposing an undue burden on the company. Without even receiving a subpoena, Gore produced business plans, made its business leaders available for interviews, and made an extensive presentation about its business. It offered to produce more on a voluntary basis. Rather than discuss the matter further, the staff disregarded the FTC Staff Manual and issued a patently overbroad subpoena. *See* FTC Staff Manual § 3.3.6.7.5.1 (“The specifications, which are attached to and become part of a subpoena duces tecum, must be drafted with precision and clarity to produce the desired information and to withstand the test of an enforcement proceeding if one becomes necessary. Care should be taken in describing documents to avoid return of irrelevant or redundant materials.”).

Indeed, the staff has resisted or ignored all efforts by Gore to plot a reasonable path forward, which would include Gore searching the paper and electronic files of key custodians. *See also* FTC Staff Manual § 3.3.6.7.5.1 (“Consideration should be given to the use of staggered production schedules allowing companies to produce limited information initially and additional information if it is necessary.”) The staff has not offered any proposals of its own. The staff has likewise refused to engage on the substance of the contracts that have been produced, which provide ample evidence for the staff to conclude that Gore’s relationships with its customers are not anticompetitive in purpose or effect.

Because of the staff’s intransigence, Gore is left with no choice but to petition to quash the subpoena. The subpoena seeks irrelevant information, is overly broad, and would be

outrageously burdensome to comply with. Indeed, the subpoena is not limited to information relevant to whether the business practices at issue violate Section 5 of the FTC Act. Rather, the subpoena seeks virtually every document at Gore from the past decade relating to some of Gore's most significant business activities.

A petition to quash should be granted where, as here, the subpoena is overbroad, unduly burdensome, and seeks large volumes of irrelevant materials. *See Concord Boat Corp. v. Brunswick Corp.*, 169 F.R.D. 44, 49, 53 (S.D.N.Y. 1996); *Am. Elec. Power Co. v. United States*, 191 F.R.D. 132, 136 (S.D. Ohio 1999); *Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 637-38 (C.D. Cal. 2005); *Williams v. City of Dallas*, 178 F.R.D. 103, 110 (N.D. Tex. 1998), *aff'd* 200 F.3d 814 (5<sup>th</sup> Cir. 1999). The burden is on the staff to demonstrate the relevance of the materials sought, which is evaluated against the burden as demonstrated by Gore. *Am. Elec. Power*, 191 F.R.D. at 136. In addition to quashing the subpoena, the Commission may modify the subpoena to address the objections raised. *See, e.g., Faith Satellite Radio, LLC v. Lutheran Church Missouri Synod*, C-10-1373, 2010 WL 3909467 at \*2 (D.D.C. October 4, 2010).

**I. A "Complete Search of the Company" Would Be Outrageously Burdensome and Overly Broad**

Complying with the subpoena's requirement that Gore conduct "a complete search of all the files of the Company" would impose an undue burden on Gore, which is all the more inappropriate given the manifest overbreadth of many of the specifications in the subpoena. Because the definition of relevant product encompasses virtually all of the products manufactured and sold by Gore's Fabrics Division and the scope of the documents responsive to the subpoena is so broad, Gore believes that to undertake "a complete search of the files of the Company" would, at a minimum, require a search of the files of each employee in its Fabrics Division and the shared files of the Fabrics Division. As discussed above, among other things

the subpoena seeks the production of “all documents relating to” various broad subjects, including the Company’s “studies, forecasts, plans, strategy or decision” (Specification 3), “competition or potential competition” (Specification 5), “communications between the Company and any person outside the Company who manufactures or create and sells, licenses, or leases any relevant product” (Specification 14) as well as “documents sufficient to identify all Company intellectual property and know how related to any relevant product” (Specification 10).<sup>17</sup> All of the Fabrics Division employees, even laborers, can be expected to have at least some documents in at least one of these categories. Moreover, because these categories encompass mainly documents that would have no relevance to the limited stated scope of the investigation, they are likewise overbroad.

Searching the computer files and offices of (at least) its 1,500 Fabrics Division employees, as well as a decade’s worth of former employees, located in more than 40 offices around the world,<sup>18</sup> would be Herculean. As was communicated to the staff, within the Fabrics Division in North America, the average employee’s *active* email file contains approximately 7,500 emails comprising approximately 500 megabytes of data.<sup>19</sup> Across the entire universe of custodians, for active email alone, this would suggest more than 10 million email messages and

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<sup>17</sup> Several of the other specifications are similarly overbroad and unduly burdensome. For example, Specification 5 calls for “[a]ll documents relating to the possibility, likelihood, or plans of the Company, or any other person, to begin, resume, expand, reduce, or discontinue the manufacture, sale, licensing, provision, or use of any relevant product.” Specification 6 calls for “[a]ll documents relating to the applicability or effect of any import duties or restrictions, including but not limited to the effect of any “Buy American” provision, requirement, or preference on marketing, competition, prices, sales, demand, output profits, sourcing opportunities, or costs of any relevant product.” Specification 13, while not requiring an extensive search of custodians, is likewise overbroad in seeking “[d]ocuments sufficient to show, for each customer and for each product separately recognized by the Company, by month: a. sales in units, and both gross sales and net sales in dollars, where net sales means sales after deducting discounts, returns, allowances and excise taxes, and sales includes sales of the relevant product whether manufactured by the Company itself or purchased from sources outside the Company and resold by the Company in the same manufactured form as purchased; b. prices, and prices net of any discounts; c. costs; and d. spending on advertising, cooperative advertising, or promotional campaigns.” This level of detail has no relevance to the investigation the Commission has authorized.

<sup>18</sup> See Katz Declaration, ¶ 3.

<sup>19</sup> *Id.* at ¶ 4.

750 gigabytes of data. Even if half of the Fabrics Division employees worldwide could be eliminated because they have no connection with Gore's U.S. business, there would still be an estimated 375 gigabytes of active email alone to search.

Gore's Fabrics Division employees also store significant amounts of a variety of information in [REDACTED] including, in many cases, archived emails.<sup>20</sup> For North America alone, the collective volume of the Fabrics Division employees [REDACTED] is more than 1.3 terabytes of data.<sup>21</sup>

Employees also use a [REDACTED]. For the Fabrics Division in North America alone, this [REDACTED] contains approximately 1 terabyte of information.<sup>22</sup> In addition to the [REDACTED], employees store documents (including archived emails in some cases) on their local hard drives [REDACTED] have paper files, and may store documents on disks, CDs, or personal computers.<sup>23</sup> There are also shared databases, with thousands of records as well as potentially documents from former employees.<sup>24</sup>

Even eliminating those custodians that plainly have no connection to Gore's business in the United States, searching, reviewing, and producing the documents that would be responsive to the subpoena would require tens if not hundreds of thousands of hours of personnel time and cost many millions of dollars.<sup>25</sup> Although Gore (and its counsel) are unaware of any instance where such a search has been attempted and therefore there is no baseline to predict the total expense, typical second request document productions involving only a few dozen custodians

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<sup>20</sup> *Id.* at ¶ 5.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at ¶ 6.

<sup>23</sup> *Id.* at ¶ 7.

<sup>24</sup> *Id.* at ¶ 8.

<sup>25</sup> See Declaration of Tom Hall, attached as Exhibit N.

over two to three years can cost a company millions of dollars.<sup>26</sup> The costs here would obviously be astronomical.

**II. Requiring Production of “All Documents Prepared, Received, Circulated, Transmitted, or In Use on or After January 1, 2001” Until “Fourteen Days Prior to Full Compliance” Would Be Unduly Burdensome and Overbroad**

In addition to casting an unduly burdensome and overbroad net potentially ensnaring more than 1,500 custodians, the subpoena calls for the production of responsive “documents prepared, received, circulated, transmitted, or in use on or after January 1, 2001” and “all documents responsive to any Specification included in this subpoena produced or obtained by the Company up to fourteen (14) calendar days prior to the date of the Company's full compliance with this subpoena.”

Complying with this requirement would be incredibly and unduly burdensome. A production that encompasses “all documents prepared, received, circulated, transmitted, or in use on or after January 1, 2001” would require Gore to investigate archived storage and dated electronic records, including files of long-departed employees. Moreover, determining whether a document dated outside the period was “in use” during the period would be essentially impossible. In addition, requiring a production spanning back more than a decade is overly broad given the five-year statute of limitations for actions under Section 5 of the FTC Act.

Requiring a production current to within 14 days of “full compliance” would also be unduly burdensome. As noted, the subpoena would require searching hundreds if not thousands of employees' files plus numerous shared files and databases. Conducting such a search,

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<sup>26</sup> In its 2007 report to Congress, the Antitrust Modernization Commission, which was formed to examine the current application of antitrust laws and to recommend legislative changes, estimated that on average, a second request investigation takes approximately seven months with legal and expert fees (not including vendor fees) in the range of \$3.3 to \$5.2 million. The ABA's Antitrust Section also provided the AMC with reports that suggest compliance with second requests typically takes around six months and costs \$5 million, with more complex transactions taking as long as 18 months and costing the merging parties as much as \$20 million.

reviewing the results, and producing responsive documents within 14 days on the scale demanded by the subpoena, to the extent it were even possible (which it plainly is not), would require an army of personnel working around the clock and entail millions of dollars of incremental expense.

### **III. Several of the Specifications Seek Documents that Can Be Expected to Largely Be Privileged**

The subpoena is also unduly burdensome because it seeks numerous privileged documents and requires a log to be submitted on or before the return date of the subpoena as to any documents withheld. For example, Specification 11 seeks “[a]ll documents that refer or relate to any allegation, investigation, lawsuit or settlement relating to any claim that the Company or a competitor violated any federal, state, or foreign antitrust law in connection [with] the manufacture, sale, marketing, or provision of any relevant product.” Specification 12 calls for “[a]ll documents related to communications with or proceedings before the U.S. International Trade Commission in connection with any relevant product.” Specification 9 seeks “[a]ll documents” relating to certain contractual arrangements (which the subpoena defines as “Exclusive Dealing Arrangements”), which presumably includes counsel prepared drafts and legal advice pertaining to those contracts. Specification 10 seeks “all documents related to suspected, possible, alleged, or actual violations of the Company’s intellectual property or threats to its know-how.”

The cost of preparing the demanded log would be significant, particularly given the little time that has been provided to comply. In addition, many of the documents sought in these requests would be at best tangential to the investigation. For example, whatever relevance documents about litigation or ITC proceedings Gore might have, the investigation would not be advanced by requiring Gore to log all privileged communications about such matters.

Identifying the matter by docket number would certainly suffice and the requests are excessively and overly broad in light of their limited (if any) relevance.

**IV. In the Alternative, Gore Remains Willing to Make the Productions Set Forth in Its March 31 Letter or to Continue to Negotiate an Appropriate Scope**

As discussed above, on March 31, Gore made a concrete written proposal for responding to the subpoena. The staff has made no counterproposals of any kind but in its April 14 letter indicated that the custodian information that Gore has provided "will be useful" should there be further negotiations over the scope of the subpoena.

Gore remains willing to produce the substantial volume of documents identified in the March 31 letter, itself a significant burden, assuming a sufficient amount of time is provided. In the alternative, Gore is willing to continue negotiations with the staff if the staff is willing to do so as well. Gore would welcome, in that context, an order requiring the parties to negotiate the scope of the subpoena for up to thirty days, followed by mediating any remaining disputes with the Commission's general counsel's office or other suitable official, with the return date suspended in the meantime. If that process did not lead to a full resolution of the scope of the subpoena, Gore would then renew its motion to quash on whatever grounds remained.

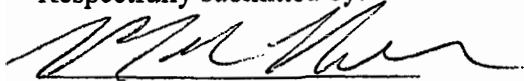
**CONCLUSION**

Gore has attempted in good faith to negotiate a reasonable process for providing documents on a timely basis. The staff has rejected and continues to reject those efforts, and has offered no modification at all to the subpoena. Rather, the staff has in effect insisted on full compliance with an outrageously overbroad and burdensome 10-year subpoena on the vague assertion that Gore has not demonstrated "burden" or provided enough information about its organization and employees. The subpoena should be quashed and the staff instructed to deal reasonably with Gore in any further requests for documents or information.



Date: April 15, 2011

Respectfully submitted by:



Mark W. Nelson

Steven J. Kaiser

Elaine Ewing

CLEARY GOTTlieb STEEN & HAMILTON LLP

2000 Pennsylvania Avenue, NW

Washington, D.C. 20006

Tel: 202-974-1500

Counsel for W.L. GORE & ASSOCIATES, INC.

# **Exhibit A**



# SUBPOENA DUCES TECUM

<b>1. TO</b> W.L. Gore & Associates, Inc. c/o Mark Nelson, Esq. Cleary Gottlieb Steen & Hamilton LLP 2000 Pennsylvania Avenue, N.W. Washington, DC 20006-1801	<b>2. FROM</b>  <b>UNITED STATES OF AMERICA  FEDERAL TRADE COMMISSION</b>
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This subpoena requires you to appear and testify at the request of the Federal Trade Commission at a hearing [or deposition] in the proceeding described in Item 6.

<b>3. LOCATION OF HEARING</b>  601 New Jersey Avenue, N.W., Room 6227 Washington, D.C. 2001	<b>4. YOUR APPEARANCE WILL BE BEFORE</b> Karen A. Mills, Esq.  <b>5. DATE AND TIME OF HEARING OR DEPOSITION</b> April 1, 2011
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**6. SUBJECT OF INVESTIGATION**

See attached Resolution Authorizing Use of Compulsory Process in  
W.L. Gore & Associates, Inc., File No. 101-0207

**7. RECORDS YOU MUST BRING WITH YOU**

See attached Definitions, Instructions, and Specifications

<b>8. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN</b>  Melanie Sabo, Custodian - 202-326-2955 Geoffrey Green, Deputy Custodian - 202-326-2641	<b>9. COMMISSION COUNSEL</b>  Karen A. Mills, Commission Counsel - 202-326-2052
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<b>DATE ISSUED</b>  3/10/11	<b>COMMISSIONER'S SIGNATURE</b>  ↓ Tm Roc
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### GENERAL INSTRUCTIONS

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

#### PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this subpoena be filed within 20 days after service or, if the return date is less than 20 days after service, prior to the return date. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission. Send one copy to the Commission Counsel named in Item 9.

#### TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this subpoena should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

**RETURN OF SERVICE**

*I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)*

- in person.*
- by registered mail.*
- by leaving copy at principal office or place of business, to wit:*

*on the person named herein on:*

(Month, day, and year)

(Name of person making service)

(Official title)

## SCHEDULE

For the purpose of this Subpoena, the following definitions and instructions apply:

### DEFINITIONS

- I. The term "the Company" and "Gore" mean W.L. Gore & Associates, its directors, officers, trustees, employees, attorneys, agents, consultants, and representatives, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, trustees, employees, attorneys, agents, consultants, and representatives of its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, and partnerships and joint ventures.
- II. The term "relevant product" means any membrane, coating, laminate, seam tape, equipment, technology, intellectual property, or know-how used to make waterproof or waterproof and breathable outerwear, clothing, footwear, gloves, accessories, or other apparel or items.
- III. The terms "agreement" or "contract" mean any oral, written, or implied contract, arrangement, understanding, or plan, whether formal or informal, between two or more persons, together with all modifications or amendments thereto.
- IV. The term "communication" means any transmittal, exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished, and includes all communications, whether written or oral, and all discussions, meetings, telephone communications, or email contacts.
- V. The terms "manufacture" or "manufacturer" includes a person's use of its own productive assets as well as the productive assets of any other person, including contracting for the use of those assets.
- VI. The term "Exclusive Dealing Arrangement" means any program, policy, or agreement, whether written or otherwise, that renders any aspect of any transaction involving sale, purchase, licensing, use, or supply of a relevant product or of a product for use in conjunction with a relevant product conditional on a customer's or supplier's dealing, refusal to deal, or terms of dealing, with other manufacturers, licensors, or suppliers of any relevant product. The term Exclusive Dealing Agreement includes a program, policy or agreement that the Company will either decline to license, sell, purchase, supply, or permit use of a relevant product to a person that licenses, purchases, uses, or manufactures a relevant product from or for a person other than the Company, or will do so only on less commercially desirable terms than those otherwise available to customers dealing only with the Company. The term Exclusive Dealing Agreement includes any program, policy, or agreement that requires notice to or approval of the Company for any customer's or supplier's sale, purchase, licensing, use, or supply of a relevant product or of a product for use in conjunction with a relevant product.

- VII. The term "containing" means containing, describing, or interpreting in whole or in part.
- VIII. The terms "discuss" or "discussing" mean in whole or in part constituting, containing, describing, analyzing, explaining, or addressing the designated subject matter, regardless of the length of the treatment or detail of analysis of the subject matter, but not merely referring to the designated subject matter without elaboration. A document that "discusses" another document includes the other document itself.
- IX. The term "documents" means all written, recorded, transcribed, or graphic matter of every type and description, however and by whomever prepared, produced, reproduced, disseminated, or made, including, but not limited to, analyses, letters, telegrams, memoranda, reports, bills, receipts, telexes, contracts, invoices, books, accounts, statements, studies, surveys, pamphlets, notes, charts, maps, plats, tabulations, graphs, tapes, data sheets, data processing cards, printouts, net sites, microfilm, indices, calendar or diary entries, manuals, guides, outlines, abstracts, histories, agendas, minutes or records of meetings, conferences, electronic mail, and telephone or other conversations or communications, as well as films, tapes, or slides, and all other data compilations in the possession, custody, or control of the Company, or to which the Company has access. The term "documents" includes the complete original document (or a copy thereof if the original is not available), all drafts (whether or not they resulted in a final document), and all copies that differ in any respect from the original, including any notation, underlining, marking, or information not on the original. The term "other data compilations" includes information stored in, or accessible through, computer or other information retrieval systems, together with instructions and all other material necessary to use or interpret such data compilations as set out in the attached Definitions and Instructions. If the name of the person or persons who prepared, reviewed, or received the document and the date of preparation, review, or receipt are not clear on the face of any document, such information should be provided separately. Documents shall be produced in accordance with the attached Definitions and Instructions.
- X. The terms "documents sufficient to show" and "documents sufficient to identify" mean both documents that are necessary and documents that are sufficient to provide the specified information. If summaries, compilations, lists, or synopses are available that provide the information being requested, these may be provided in lieu of the underlying documents.
- XI. The term "effect" means the actual, intended, forecast, desired, predicted, or contemplated consequence or result of an action or plan.
- XII. The term "person" includes the Company, and means any natural person, corporate

entity, partnership, association, joint venture, governmental entity, trust, or any other organization or entity engaged in commerce.

- XIII. The terms "plan" means a decision, proposal, strategy, intention, recommendation, analysis, report, or consideration, whether or not precisely formulated, finalized, authorized, preliminary, tentative or adopted.
- XIV. The term "relating to" means in whole or in part constituting, containing, concerning, embodying, reflecting, discussing, explaining, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to.
- XV. The terms "and" and "or" have both conjunctive and disjunctive meanings.
- XVI. The terms "each," "any," and "all" mean "each and every."

#### **INSTRUCTIONS**

The response to this subpoena shall be submitted in the following manner:

1. Unless modified by agreement with the staff of the Federal Trade Commission, each Specification of this subpoena *duces tecum* ("subpoena") requires a complete search of all the files of the Company as defined in Definition I above. If the Company believes that the scope of either the required search or the subpoena itself can be narrowed in any way that is consistent with the Commission's need for documents and information, you are encouraged to discuss such questions and possible modifications with the Commission representative identified in Instruction 16 of this subpoena. All such modifications to this subpoena must be agreed to in writing by the Commission through its delegated staff.
2. Documents covered by this subpoena include all responsive documents in the Company's possession, custody, or control, including documents that its officers, directors, employees, agents, or representatives are holding, whether or not such documents are on the Company's premises. If any such person is unwilling to produce responsive documents, state individually as to each person: name, address, telephone number, and relationship to the Company.
3. Unless otherwise stated, each Specification calls for all documents prepared, received, circulated, transmitted, or in use on or after January 1, 2001, and each Specification refers to each of the years during the relevant time period. Where data, rather than documents, is requested, it shall be provided separately for each year, unless otherwise specified. All references herein to year refer to calendar year. If calendar year information is not available, supply the Company's fiscal year data indicating the twelve-month period covered, and provide the Company's best estimate of calendar

year data.

4. This subpoena shall be deemed continuing in nature so as to require production of all documents responsive to any Specification included in this subpoena produced or obtained by the Company up to fourteen (14) calendar days prior to the date of the Company's full compliance with this subpoena. Responsive documents generated after that date should be preserved so that they may be provided later if requested.
5. The geographic scope of each Specification is the United States, unless otherwise specified.
6. In each Specification, the present tense shall be construed to include the past tense, and the past tense shall be construed to include the present tense. The singular shall be construed to include the plural, and the plural shall be construed to include the singular.
7. Each document submitted shall be marked with document identification and consecutive document control numbers. The Company shall submit a master list showing all documents, identified by control number, the name of each person from whose files the document was obtained, and the Specification number to which the document responds.
8. Documents provided shall be complete and submitted as found in the Company's files, even if only a portion of the document relates to the specified subject matter (*e.g.*, documents are to be stapled together if they are fastened together in the files). With the exception of privileged material, do not mask or delete any portion of any document in any manner.
9. Documents supplied in response to one Specification or subpart need not be supplied again in response to another subsequent Specification or subpart. However, the responses should be clearly marked as to which Specification(s) or subpart(s) the document relates.
10. If documents responsive to the Specification no longer exist, but you have reason to believe such documents have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the Specification(s) to which they are responsive, and identify persons having knowledge of the contents of such documents.
11. If the Company is unable to answer any Specification fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by the Company to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available,



enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data shall be followed by the notation "est." If there is no reasonable way for the Company to make an estimate, provide an explanation.

12. If any document called for by this subpoena is withheld based on a claim of privilege or any similar claim, the claim must be asserted no later than the return date of this subpoena. In addition, pursuant to 16 C.F.R. § 2.8A(a), submit, together with the claim, a schedule of the items withheld stating individually as to each such item:
  - a. the type, title, specific subject matter, and date of the item;
  - b. the names, addresses, positions, and organizations of all authors and recipients of the item;
  - c. the bates number(s) of the item; and
  - d. the specific grounds for claiming that the item is privileged.

For each document withheld under a claim that it constitutes or contains attorney work product, also state whether the Company asserts that the document was prepared in anticipation of litigation or for trial, and, if so, identify the anticipated litigation or trial upon which the assertion is based. If only some portion(s) of any responsive document is (are) privileged, all non-privileged portions of the document must be submitted. The addressee shall comply with the requirement of 16 C.F.R. § 2.8A(a) in lieu of filing a petition to limit or quash this subpoena solely for the purposes of asserting claims of privilege. 16 C.F.R. § 2.8A(b).

13. All documents provided in response to the subpoena must be produced in the format described in Attachment 1.2 and accompanied by the documentation described in Attachment 1.2.
14. All documentary materials used in the preparation of responses to the Specifications of this subpoena shall be retained by the Company. The Commission may require the submission of additional documents at a later time. Accordingly, you should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this investigation during its pendency, irrespective of whether you believe such documents are protected from discovery by privilege or otherwise. See 15 U.S.C. § 50. See also 18 U.S.C. § 1505.
15. To furnish a complete response, the person supervising compliance with this subpoena must submit a signed and notarized copy of the attached verification form, along with the responsive materials. The Company need not send a representative to testify with

the documents, but the Commission reserves the right to have the Company provide a person to testify as to the adequacy of return at a later date.

16. Any questions you have relating to this subpoena should be directed to Karen A. Mills at (202) 326-2052.
17. The response to this subpoena should be directed to the attention of Karen A. Mills, Attorney, and delivered between 9:00 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission, Bureau of Competition, 601 New Jersey Avenue, N.W., Room 6227, Washington, DC 20001. Hand delivery by courier will be acceptable, but please advise in advance of hand delivery if a signature will be required. The Company may comply with this subpoena by making a full return of all documents requested in this subpoena prior to the return date and by notifying Karen A. Mills, at (202) 326-2052, not less than ten days prior to the formal return date, of the Company's intention to comply with this subpoena.
18. All information submitted pursuant to this subpoena is subject to the confidentiality provisions of Section 21(f) of the Federal Trade Commission Act, 15 U.S.C. § 57b-2(f), and Rule 4.10 of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 4.10.

**DOCUMENTS TO BE PRODUCED  
SPECIFICATIONS**

1. A current organization chart for each division of the Company that has responsibilities relating to research, development, commercialization, manufacture, testing, warranties, marketing, advertising, sales, distribution, intellectual property, know-how, or licensing of any relevant product.
2. One copy of each of the Company's current sales, marketing, promotional, and training materials for the licensing, sale, or use of any relevant product.
3. All documents relating to the Company's studies, forecasts, plans, strategy or decision relating to research, development, intellectual property protection, manufacturing, branding, licensing, pricing, sales, or marketing of any relevant product, including, but not limited to all: strategic plans, business plans, pricing plans, marketing plans, advertising plans, market studies, and presentations to management committees, executive committees, and boards of directors.
4. All documents relating to actual or potential competition, market share, strength, weakness, or competitive position of the Company or any actual or potential competitor or its products or services, or to competition in the licensing, branding, marketing, advertising, distribution or sale of the relevant product, including, but not limited to, all documents relating to:
  - a. supply and demand;
  - b. pricing or discounts;
  - c. research, development, innovation, or technology;
  - e. product attributes;
  - f. services;
  - g. brand identity;
  - h. marketing, advertising, or promotion;
  - i. training related to marketing, sales, manufacturing, or testing;
  - j. warranties;

- j. relationships with suppliers, customers, licensees, brands, factories, manufacturers, or retailers;
  - k. costs;
  - l. availability of product or flexibility in development of product;
  - m. ability to meet standards or specifications;
  - n. insulation from competition; and
  - o. customers of the Company that also buy, license, or use any relevant product of a competitor; propensity of customers to switch suppliers of the relevant product or to switch from the relevant product to another product; attempts to win or maintain the business of customers; success in winning customers from other companies; and losses of customers to other companies, including, but not limited to, all sales personnel call reports.
5. All documents relating to the possibility, likelihood, or plans of the Company, or any other person, to begin, resume, expand, reduce, or discontinue the manufacture, sale, licensing, provision, or use of any relevant product, including but not limited to documents relating to actual or potential impact of entry, ease of entry, any impediments or barriers to entry, the requirements and costs of entry, conditions of entry, the costs of research and development, planning and design, production requirements, distribution systems, service requirements, patents, licenses, sales and marketing activities, testing, warranties, validation, approval (including public, government, military, state, city, or municipal specifications), development of customer loyalty or brand recognition, whether there are economies of scale present in research, development, manufacture, production, marketing, distribution, or otherwise, and, if so, the minimum viable scale, production line size and volume, or other factors required to attain any available cost savings or other efficiencies necessary to compete profitably in the manufacture, sale, licensing, or provision of any relevant product.
6. All documents relating to the applicability or effect of any import duties or restrictions, including but not limited to the effect of any "Buy American" provision, requirement, or preference on marketing, competition, prices, sales, demand, output, profits, sourcing opportunities, or costs of any relevant product.
7. Documents sufficient to identify for the Company relating to any relevant product all:
- a. licensees of the Gore brand or of any Gore technology;

- b. recipients of any Gore know-how;
  - c. lessees, users, or purchasers of any Gore equipment;
  - d. purchasers or users of any Gore relevant product;
  - e. names of brands and companies using any Gore relevant product or selling any product to be used in conjunction with any Gore relevant product; and
  - f. all Gore-certified or approved factories or manufacturing facilities;
8. All written agreements with any of those persons identified in Specification 7.
  9. All documents relating to any Exclusive Dealing Agreement between the Company and any of the following: fabric manufacturer; factory that manufactures waterproof/breathable outerwear, footwear, gloves, apparel or other items; company that uses any relevant product in waterproof/breathable branded products; company that uses any relevant product in private label products; private label retailers; retailers; or any other person, including without limitation all documents relating to: (a) the origin, objective, rationale, business justification, or intent of any Exclusive Dealing Arrangement; (b) the negotiation, drafting, development, implementation, enforcement, structure or terms of any Exclusive Dealing Arrangement; (c) any actual or potential alternatives, amendments or changes to, or deviations from, any terms of any Exclusive Dealing Arrangement; (d) objections to or criticisms of any Exclusive Dealing Arrangement; (e) any request for relief from any Exclusive Dealing Arrangement; (f) any relief granted from any provision of any Exclusive Dealing Arrangement; (g) any attempt by any person to satisfy the conditions of any Exclusive Dealing Arrangement; (h) the effect of any Exclusive Dealing Arrangement on competitors, competition, prices, output, sales, marketing, scale economies, profits, or costs of the relevant product; (i) the effect of any Exclusive Dealing Arrangement on consumers of the relevant product or on downstream users of the relevant product; (j) communications with customers, licensees, or any factory regarding any Exclusive Dealing Arrangement; and (k) the actual, contemplated, predicted, forecast or intended costs and benefits of, or justifications for, any Exclusive Dealing Arrangement.
  10. Documents sufficient to identify all Company intellectual property and know how related to any relevant product, the effective dates of any intellectual property rights, the Company's practices with respect to sale, licensing, or disclosure of intellectual property, and all documents related to suspected, possible, alleged, or actual violations of the Company's intellectual property or threats to its know-how.
  11. All documents that refer or relate to any allegation, investigation, lawsuit, or settlement relating to any claim that the Company or a competitor violated any federal,

- state, or foreign antitrust law in connection the manufacture, sale, marketing, or provision of any relevant product.
12. All documents related to communications with or proceedings before the U.S. International Trade Commission in connection with any relevant product.
  13. Documents sufficient to show, for each customer and for each product separately recognized by the Company, by month:
    - a. sales in units, and both gross sales and net sales in dollars, where net sales means sales after deducting discounts, returns, allowances and excise taxes, and sales includes sales of the relevant product whether manufactured by the Company itself or purchased from sources outside the Company and resold by the Company in the same manufactured form as purchased;
    - b. prices, and prices net of any discounts;
    - c. costs; and
    - d. spending on advertising, cooperative advertising, or promotional campaigns.
  14. All documents relating to communications between the Company and any person outside the Company who manufactures or creates and sells, licenses, or leases any relevant product.
  15. Documents sufficient to show the Company's document retention and document destruction policies.

**Attachment 1.1**

**VERIFICATION**

I personally supervised the preparation and assembly of this response on behalf of W.L. Gore in accordance with the Definitions and Instructions set forth in Subpoena *Duces Tecum* Issued in FTC File No. 101-0207. All copies submitted in lieu of originals are true, correct and complete copies of the original documents. This response is complete and correct to the best of my knowledge and belief.

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2011 .

Notary Public

My Commission expires: \_\_\_\_\_

**Attachment 1.2**

**PRODUCTION FORMS AND METHODS**

1. **Forms of Production:** The Company shall submit documents as instructed below absent written consent signed by an Assistant Director.
  - (a) Documents stored in electronic or hard copy formats in the ordinary course of business shall be submitted in electronic format provided that such copies are true, correct, and complete copies of the original documents:
    - (i) submit Microsoft Access, Excel, and PowerPoint in native format with extracted text and metadata; and
    - (ii) submit all documents other than those provided pursuant to subparts (a)(i) or (a)(iii) in image format with extracted text and metadata.
    - (iii) electronic format: documents stored in hard copy form may be submitted in image format accompanied by OCR.
  - (b) For each document submitted in electronic format, include the following metadata fields and information:
    - (i) for documents stored in electronic format other than email: beginning Bates or document identification number, ending Bates or document identification number, page count, custodian, creation date and time, modification date and time, last accessed date and time, size, location or path file name, and SHA Hash value;
    - (ii) for emails: beginning Bates or document identification number, ending Bates or document identification number, page count, custodian, to, from, Cc, Bcc, subject, date and time sent, Outlook Message ID (if applicable), child records (the beginning Bates or document identification number of attachments delimited by a semicolon);
    - (iii) for email attachments: beginning Bates or document identification number, ending Bates or document identification number, page count, custodian, creation date and time, modification date and time, last accessed date and time, size, location or path file name, parent record (beginning Bates or document identification number of parent email), and SHA Hash value; and



- (iv) for hard copy documents: beginning Bates or document identification number, ending Bates or document identification number, page count, and custodian.
  - (c) If the Company intends to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in the Company's computer systems or electronic storage media, or if the Company's computer systems contain or utilize such software, the Company must contact a Commission representative to determine, with the assistance of the appropriate government technical officials, whether and in what manner the Company may use of such software or services when producing materials in response to this Request.
  - (d) Submit data compilations in Excel spreadsheet or in delimited text formats, with all underlying data un-redacted and all underlying formulas and algorithms intact.
  - (e) Submit electronic files and images as follows:
    - (i) for productions over 10 gigabytes, use IDE and EIDE hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data in USB 2.0 external enclosure;
    - (ii) for productions under 10 gigabytes, CD-R CD-ROM and DVD-ROM for Windows-compatible personal computers, and USB 2.0 Flash Drives are also acceptable storage formats.; and
    - (iii) **All documents produced in electronic format shall be scanned for and free of viruses. The Commission will return any infected media for replacement, which may affect the timing of the Company's compliance with this Request.**
2. All documents responsive to this Request, regardless of format or form and regardless of whether submitted in hard copy or electronic format:
- (a) shall be produced in complete form, un-redacted unless privileged, and in the order in which they appear in the Company's files, and shall not be shuffled or otherwise rearranged. For example:
    - (i) if in their original condition hard copy documents were stapled, clipped, or otherwise fastened together or maintained in file folders, binders, covers, or containers, they shall be produced in such form, and any documents that

must be removed from their original folders, binders, covers, or containers in order to be produced shall be identified in a manner so as to clearly specify the folder, binder, cover, or container from which such documents came; and

- (ii) if in their original condition electronic documents were maintained in folders or otherwise organized, they shall be produced in such form and information shall be produced so as to clearly specify the folder or organization format;
- (b) shall be marked on each page with corporate identification and consecutive document control numbers;
- (c) shall be produced in color where necessary to interpret the document (if the coloring of any document communicates any substantive information, or if black-and-white photocopying or conversion to TIFF format of any document (*e.g.*, a chart or graph), makes any substantive information contained in the document unintelligible, the Company must submit the original document, a like-colored photocopy, or a JPEG format image);
- (d) shall be accompanied by an affidavit of an officer of the Company stating that the copies are true, correct, and complete copies of the original documents; and
- (e) shall be accompanied by an index that identifies: (i) the name of each person from whom responsive documents are submitted; and (ii) the corresponding consecutive document control number(s) used to identify that person's documents, and if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that Commission representatives determine prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission representative will provide a sample index upon request.

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**      **Jon Leibowitz, Chairman**  
                                 **William E. Kovacic**  
                                 **J. Thomas Rosch**  
                                 **Edith Ramirez**  
                                 **Julie Brill**

**RESOLUTION AUTHORIZING USE OF  
COMPULSORY PROCESS IN A NONPUBLIC INVESTIGATION**

**File No. 101-0207**

**Nature and Scope of Investigation:**

To determine whether W.L. Gore & Associates, Inc., or any other unnamed persons, partnerships, or corporations have engaged or are engaging in unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended, by contracts, exclusionary practices, or other conduct relating to waterproof or waterproof and breathable membranes or technologies and related products.

The Federal Trade Commission hereby resolves and authorizes that any compulsory processes available to it be used in connection with this investigation.

**Authority to Conduct Investigation:**

Sections 6, 9, 10 and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1, *et seq.*, and supplements thereto.

By direction of the Commission.

  
Donald S. Clark  
Secretary

Issued: February 16, 2011

# **Exhibit B**

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

\_\_\_\_\_  
IN THE MATTER OF \_\_\_\_\_ )  
\_\_\_\_\_) )  
W.L. GORE & ASSOCIATES, INC. \_\_\_\_\_ )  
\_\_\_\_\_) )  
\_\_\_\_\_) )  
\_\_\_\_\_ )

**File No. 101-0207**

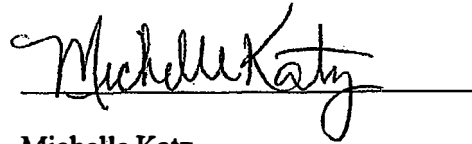
**DECLARATION OF MICHELLE KATZ IN SUPPORT OF W.L. GORE &  
ASSOCIATES, INC.'S PETITION TO LIMIT OR QUASH SUBPOENA DUCES TECUM  
DATED MARCH 10, 2011**

I, Michelle Katz, declare under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am Contract Administrator at W.L. Gore & Associates, Inc. ("Gore").
2. My duties and responsibilities include contract and database administration in Gore's legal department. I work regularly with the documents and files of Gore employees. I am familiar with the ways Gore Fabrics Division employees keep and store electronic information.
3. I am familiar with the organization and structure of Gore's Fabrics Division. Gore's Fabrics Division has approximately 1,500 employees, located at more than 40 offices worldwide.
4. Based upon my understanding of Gore's records for Gore's Fabrics Division in North America, the average employee's active email file contains approximately 7,500 emails comprising approximately 500 megabytes of data.
5. Gore's Fabrics Division employees store significant amounts of information in [REDACTED]. [REDACTED] Employees store a variety of documents on their [REDACTED]; in many cases, these documents include archived emails. Based upon my understanding of Gore's records for North America, the collective volume of the Fabrics Division employees' [REDACTED] is more than 1.3 terabytes of data.
6. Gore employees use a [REDACTED]. Based upon my understanding of Gore's records for the Fabrics Division in North America, this [REDACTED] [REDACTED] contains approximately 1 terabyte of information.

7. Gore employees also store documents (including archived emails in some cases) on their local hard drives [REDACTED] have paper files, and may store documents on disks, CDs, or personal computers.
8. Gore's Fabrics Division also maintains shared databases, which contain thousands of individual records.

DATED: April 15, 2011

A handwritten signature in cursive script that reads "Michelle Katz". The signature is written over a solid horizontal line.

Michelle Katz

Contract Administrator  
W.L. Gore & Associates, Inc.

# **Exhibit C**



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

VIA FACSIMILE AND FEDERAL EXPRESS

Ms. Terri Kelly  
President and Chief Executive Officer  
W. L. Gore & Associates, Inc.  
555 Paper Mill Road  
Newark, DE 19711

November 5, 2010

Re: *W.L. Gore and Associates*, FTC File No. 1010207

Dear Ms. Kelly:

The Federal Trade Commission's Bureau of Competition is conducting a non-public investigation to determine whether W.L. Gore and Associates, Inc. ("Gore"), or others, may be engaging in or may have engaged in conduct in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended, by restricting competition for water repellant, waterproof, waterproof and breathable, or chemical resistant fabrics, coatings, or laminates, or markets for products which use any of those technologies. Conduct under investigation includes, but is not limited to Gore policies, practices or contracts, agreements, and communications with customers, manufacturers, distributors, or retailers that restrict customers' ability to deal with competing suppliers. Gore conduct under investigation may relate to intellectual property licensing, or restrictions on supply, design, development, production, testing, marketing, advertising, sale, or pricing of any Gore fabric or any clothing or footwear product containing a Gore fabric.

Gore has an ongoing obligation to preserve and not destroy evidence that may be relevant to a government investigation from the time Gore becomes aware of the investigation. *See, generally*, 15 U.S.C. § 50 and 18 U.S.C. § 1505. Gore should take affirmative steps to ensure that Gore, its Board of Directors, its officers, directors, agents, and representatives, and all staff and employees, wherever located, preserve from destruction all materials and data potentially relevant to the investigation, including but not limited to hard copy documents, electronic documents, and computer files. Gore should suspend destruction or recycling of any backup tapes or other media containing potentially relevant materials.

Neither this letter nor the existence of the non-public investigation indicates that the Federal Trade Commission has concluded that Gore or anyone else has violated Section 5.

I look forward to discussing this matter further with you. If you have any questions, please do not hesitate to contact me at (202) 326-2052.

Sincerely,

A handwritten signature in cursive script that reads "Karen A. Mills".

Karen A. Mills

Attorney



# **Exhibit D**

# CLEARY GOTTlieb STEEN & HAMILTON LLP

2000 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20006-1801

(202) 974-1500

FACSIMILE  
(202) 974-1999

WWW.CLEARYGOTTLIEB.COM

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PARIS

BRUSSELS

LONDON

MOSCOW

FRANKFURT

COLOGNE

ROME

MILAN

HONG KONG

BEIJING

KENNETH L. BACHMAN, JR.  
MARK LEDDY  
JOHN C. MURPHY, JR.  
GEORGE S. CARY  
MITCHELL S. DUPLER  
LINDA J. SOLDO  
GIOVANNI P. PREZIOSO  
JOHN T. BYAN  
MATTHEW D. SLATER  
MICHAEL R. LAZERWITZ  
DAVID I. GELFAND  
MICHAEL A. MAZZUCHI  
MARK W. NELSON  
ROBIN M. BERGEN  
DEREK M. BUSH  
PAUL D. MARQUARDT  
JEREMY CALSYN  
LEAH BRANNON  
SHAWN J. CHEN  
RESIDENT PARTNERS

DANIEL B. SILVER  
RICHARD DEC. HINDS  
SARA D. SCHOTLAND  
JOHN S. MAGNEY  
JANET L. WELER  
SENIOR COUNSEL

W. RICHARD BIDSTRUP  
KEVIN A. GRIFFIN  
STEVEN J. KAISER  
JOYCE E. MCCARTY  
COUNSEL

KAREN A. KERR  
SCOTT R. GOODWIN  
JOHN P. MCGILL, JR.  
PATRICIA M. McDERMOTT  
SENIOR ATTORNEYS

NOWELL BAMBERGER  
LEE F. BERGER  
PATRICK BOCK  
KATHLEEN W. BRADISH  
ALLISON H. BREAUT  
COURTNEY BROWN  
GEOFFREY CARLSON  
KATHERINE M. CARROLL  
JACOB N. CHACKIN  
TRACY CHIN\*

KATIA S. COLTITI  
EMILY L. COOKE  
MARGARET COWAN  
DANIEL CULLEY  
CARL F. EMIGHOLZ  
ELAINE EWING  
CATHERINE L. FAGG\*  
NINA FRANT  
PATRICK FULLER  
RYAN C. GAUBERT  
CAROLINE K. GREENE  
REHANA GUBIN  
STEVEN A. HAIDAR\*  
PAUL S. HAYES  
DAVID HULTS\*  
MICHAEL HURST

MEGHAN A. IRLER  
HEATHER M. JOHNSON  
MIJI KIM\*  
JAY LEE  
MACEY LEVINGTON\*  
COLIN D. LLOYD  
JOHN R. LOATMAN  
NICOLE MANARA  
BRANDON MASLOV\*  
THOMAS D. McCONNELL  
BENJAMIN MEEKS  
YASMIN MEHRAN  
JENNIFER MELLOTT  
ANTONIO M. POZOS  
ANTONIO J. REYNOLDS  
PAUL R. ST. LAWRENCE III  
VALERIE SCHUSTER\*  
OMAR SERAGELDIN  
GREGORY M. SERGI  
KELSEY W. SHANNON  
MARGARET E. SHEER  
ALEX SISTLA  
JOSHUA STERN  
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January 19, 2011

Karen Mills, Esq.  
Federal Trade Commission  
601 New Jersey Avenue, NW  
Washington, DC 20580

Rc: W.L. Gore & Associates, Inc. ("Gore")

Dear Karen,

On behalf of Gore, this letter encloses two copies of a set of several ordinary course business documents relating to Gore, its Fabrics Division, and competition and competitors. The documents included are as follows:

- The document labeled WLGORE-FTC-000001 provides an overview of Gore's business across all of its business units.
- The document labeled WLGORE-FTC-000030 is a retail training guide to GORE-TEX® products used by Gore's Fabrics Division.
- The documents labeled WLGORE-FTC-000058 through -000062 are examples of product literature included with GORE-TEX® products sold at retail.
- The documents labeled WLGORE-FTC-000063 through -000135 discuss competition in waterproof and breathable fabrics and technologies.

Karen Mills, Esq., p. 2

- The documents labeled WLGORE-FTC-000136 through -000189 are examples of Gore's standard contracts with its trademark licensees and certified manufacturers. WLGORE-FTC-000136
- 

\* \* \* \* \*

The documents contain highly confidential and proprietary information of Gore and are submitted with the understanding that they will be afforded confidential treatment pursuant to 15 U.S.C. § 57b-2(c) and 16 C.F.R. § 4.10, and all other applicable statutes and regulations.

Please do not hesitate to contact me if you have any questions.

Sincerely,

*Mark Nelson / EHE*

Mark Nelson

Enclosures

# **Exhibit E**

Redacted From the Public Record

# **Exhibit F**

**STATEMENT OF MARK W. NELSON PURSUANT TO 16 C.F.R. § 2.7(d)(2)**

I am a Partner with Cleary Gottlieb Steen & Hamilton LLP, counsel for W.L. Gore & Associates, Inc. ("Gore"). I submit this statement in connection with Gore's Petition to Quash or Limit the Subpoena *Duces Tecum* Issued on March 10, 2011. Pursuant to 16 C.F.R. §2.7(d)(2), I hereby certify that counsel for Gore has communicated with Commission staff by phone, email, and letter correspondence in a good faith effort to resolve by agreement the issues raised by this Petition.

On March 14, 2011, I had a telephone call with Karen Mills, counsel for the Commission, where she informed me that I would be receiving a subpoena *duces tucem* in connection with the Commission's investigation of Gore. During that call with Ms. Mills, I discussed possible ways of narrowing the scope of the subpoena and reducing the burden on Gore. I received the subpoena that is the subject of this Petition on March 14, 2011.

On the morning of March 18, 2011, my colleague Elaine Ewing and I had a lengthy telephone call conference with Ms. Mills in an effort to reach a reasonable accommodation on Gore's response to the subpoena. During this call, we sought an extension from the initial response date of April 1, 2011, and proposed a plan for staged production of the most relevant materials sought by the subpoena, pursuant to which Gore would produce a large volume of documents initially, without prejudicing the Commission's ability to seek additional documents once these documents had been received and reviewed.

Gore's counsel had subsequent telephone calls with Commission staff on March 25, 2011 (between Ms. Mills and Ms. Ewing) and March 28, 2011 (among Ms. Mills, Ms. Ewing, and myself), where we again tried in good faith to resolve the issues set forth in the Petition. During

these calls, we provided additional information to Commission staff regarding the Gore documents that might be responsive to the subpoena and Gore's proposed approach to the subpoena response.

In all conversations, we made clear that Gore's proposals were without prejudice to what the staff might request after its review of Gore's initial production. On the March 28, 2011 call, Ms. Mills requested that Gore submit its proposal in writing, which we did by letter of March 31, 2011.

On April 1 and April 4, 2011, Gore submitted two productions to the FTC, totaling over 10,000 pages of documents.

On April 6, 2011, Ms. Mills and Ms. Ewing had another telephone call regarding Gore's proposed approach to the subpoena response. Commission staff was unwilling to accept Gore's proposed approach and insisted on a discussion of Gore's organization and potential custodians before modifying the subpoena or deferring the response date. On April 8, 2011, Ms. Ewing and I contacted Commission staff prepared to discuss the organizational chart submitted as part of Gore's initial production. Commission staff was unwilling to engage in the discussion without additional historical organizational charts and unspecified information regarding burden.

Ms. Ewing and I, along with our colleague Steven Kaiser, had another telephone conversation with Ms. Mills on the afternoon of April 12, 2011. During this call, we once again expressed Gore's desire to continue negotiations and a willingness to provide Commission staff with information requested to facilitate those negotiations. We again indicated that Gore was willing to engage in discussions regarding custodial searches. We also asked for a two-week extension of the deadline for filing a motion to quash, noting that it would be almost impossible to complete custodian negotiations by April 15, 2011 given the extensive background

information requested by Commission staff as a prerequisite for having any such discussion.

During the April 12 call, we also provided Commission staff with information about the number of employees with potentially responsive documents and the average size of employees' email files. On April 13, we produced historical organizational charts in response to Commission staff's request.

On April 14, Commission staff notified us by letter that it had denied Gore's request for an extension of the time to file a motion to quash. I responded to the staff's letter by letter of April 15, 2011.

Dated: April 15, 2011



---

Mark W. Nelson  
CLEARY GOTTLIEB STEEN & HAMILTON LLP  
2000 Pennsylvania Avenue, NW  
Washington, D.C. 20006  
Tel: 202-974-1500



# **Exhibit G**

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March 31, 2011

Karen Mills, Esq.  
Federal Trade Commission  
Bureau of Competition  
601 New Jersey Avenue, NW  
Washington, DC 20580

Re: W.L. Gore & Associates ("Gore")

Dear Karen:

Following up on our March 28, 2011 telephone conversation, this letter details our proposed modifications to the subpoena we received on March 14, 2011. We believe these modifications will benefit both Gore and the Commission Staff by enabling the Staff to get documents relevant to its investigation quickly while at the same time reducing the burden on Gore.

We propose that the Staff accept these modifications with the understanding that you reserve the right to request further documents under these requests should the initial set of information that we provide prove insufficient, and Gore reserves the right to otherwise object to the subpoena.

Our proposed modifications are as follows:

*Specification 1.* This specification requests a "current organization chart for each division of the Company that has responsibilities relating to research, development, commercialization, manufacture, testing, warranties, marketing, advertising, sales, distribution,

*intellectual property, know-how, or licensing of any relevant product.*” Gore proposes to respond to this Specification by providing the current organizational chart(s) from its Fabrics Division.

**Specification 2.** This Specification requests “[o]ne copy of each of the Company’s current sales, marketing, promotional, and training materials for the licensing, sale, or use of any relevant product.” Gore proposes to respond to this requests by providing a copy of the current sales, marketing, promotional, and training materials used by the Marketing and Sales Support Group within Gore’s Fabrics Division.

**Specifications 3 through 5.** These Specifications are extremely broad. Specification 3 requests “[a]ll documents relating to the Company’s studies, forecasts, plans, strategy or decision relating to research, development, intellectual property protection, manufacturing, branding, licensing, pricing, sales, or marketing of any relevant product.” As defined, this specification alone would likely require searching the documents of most of the 1,500 employees of Gore’s Fabrics Division over a period of ten years.

Specifications 4 and 5 are slightly narrower, but, as defined, would each require the review of documents from at least dozens (and more likely hundreds) of Gore Fabrics employees for a period of ten years. Specification 4 requests “[a]ll documents relating to actual or potential competition, market share, strength, weakness, or competitive position of the Company or any actual or potential competitor or its products or services, or to competition in the licensing, branding, marketing, advertising, distribution or sale of the relevant product.” Complying with this broad request would at a minimum require Gore to search the documents of all sales and marketing employees, product specialists, and all managerial employees in the Fabrics Division. Given the references to research and development competition, Gore might also have to search R&D employees’ files.

Specification 5 requests “[a]ll documents relating to the possibility, likelihood, or plans of the Company, or any other person, to begin, resume, expand, reduce, or discontinue the manufacture, sale, licensing, provision, or use of any relevant product.” As written, this Specification would require Gore to produce, among other things, all documents regarding any expansion of its production, any new product launch, and any product discontinuation. Nearly all of Gore’s Fabrics Division employees are likely to have documents responsive to this Specification.

Rather than reviewing the documents of hundreds of custodians for documents responsive to these Specifications, Gore proposes to conduct a targeted search for a full set of its business plans in each of these categories over the past two years and to provide these to the Commission. Gore’s production of a set of final business plans, rather than tens (or even hundreds) of thousands of technically responsive but not truly relevant documents, will allow the Commission Staff to focus quickly on the most important documents. Gore’s proposal will also allow the company to produce the information in significantly less time – Gore anticipates being able to provide a set of business plans in a few weeks, whereas a full review would take several months.

**Specification 6.** Specification 6 requires the production of “[a]ll documents relating to the applicability or effect of any import duties or restrictions.” Responding to this Specification as written would require Gore to search the files of all Logistics personnel within the Fabrics Division, as well as numerous business unit employees. To reduce this burden, Gore proposes to limit its response to this Specification to a review of its legal department files for non-privileged documents regarding import duties or restrictions. Gore also proposes to limit its response to this question to documents from the most recent two years, which will capture any current or recent restrictions that affect Gore without requiring Gore to search through its archives for outdated information about restrictions that are no longer in effect.

**Specification 7.** Specification 7 requires Gore to identify all “a. licensees of the Gore brand or of any Gore technology; b. recipients of any Gore know-how; c. lessees, users, or purchasers of any Gore equipment; d. purchasers or users of any Gore relevant product; e. names of brands and companies using any Gore relevant product or selling any product to be used in conjunction with any Gore relevant product; and f. all Gore-certified or approved factories or manufacturing facilities.” Gore proposes to respond to this Specification by identifying the counterparties to the contracts produced in response to Specification 8, which will capture all current licensees, lessees, customers, and certified manufacturers in the United States or that sell into the U.S. market.

**Specification 8.** This Specification requests that Gore provide “all written agreements” with the persons listed in response to Specification 7. Gore maintains internal databases of its contracts with certified manufacturers and trademark licensees, and proposes to provide all of the several hundred currently active contracts with counterparties in response to this Specification. In addition to providing information about the terms of Gore’s current relationships, Gore’s currently active contracts [REDACTED], so this selection of contracts will allow Commission Staff to examine the evolution of Gore’s contract terms [REDACTED].

**Specification 9.** This Specification requests all documents relating to any Exclusive Dealing Arrangements (as defined in the subpoena) to which Gore is a party. In the ordinary course of its business, [REDACTED]. To the extent Gore has correspondence with certified manufacturers regarding Exclusive Dealing Arrangements, it is likely located in these files. Gore thus proposes to respond to Specification 9 by searching these central files for any documents from the last two years responsive to Specification 9 related to U.S. counterparties, or counterparties who sell into the U.S. market. Conducting a full search for documents responsive to this Specification would require searching the files of approximately twenty product support specialists, most of whom are located in Asia, as well as several business unit leaders and a number of other individuals in account management and sales.

**Specification 10.** This specification requests “[d]ocuments sufficient to identify all Company intellectual property and know how related to any relevant product, the effective dates of any intellectual property rights, the Company’s practices with respect to sale, licensing, or disclosure of intellectual property, and all documents related to suspected, possible, alleged, or actual violations of the Company’s intellectual property or threats to its know-how.” Gore does

not seek a modification to this Specification, but notes that its intellectual property extends beyond what is formally documented in Gore's files. Gore's response to this Specification will necessarily omit any intellectual property that is not kept in documentary form.

**Specification 11.** This Specification requests “[a]ll documents that refer or relate to any, allegation, investigation, lawsuit, or settlement relating to any claim that the Company or a competitor violated any federal, state, or foreign antitrust law in connection [with] the manufacture, sale, marketing, or provision of any relevant product.” Gore proposes to respond to this Specification by identifying any specific legal disputes regarding U.S. antitrust laws over the last two years that are responsive to the request and providing all responsive non-privileged documents regarding such disputes. Limiting the response to the last two years will identify those documents that are most relevant to Gore's business practices and the Commission's investigation while reducing the burden on Gore from searching through a decade's worth of legal materials.

**Specification 12.** This specification requests “[a]ll documents related to communications with or proceedings before the U.S. International Trade Commission in connection with any relevant product.” Gore proposes to respond to this Specification by identifying any responsive, non-privileged documents from the last two years within its legal department, to the extent any such documents exist.

**Specification 13.** This Specification requests “[d]ocuments sufficient to show, for each customer and for each product separately recognized by the Company, by month: a. sales in units, and both gross sales and net sales in dollars, where net sales means sales after deducting discounts, returns, allowances and excise taxes, and sales includes sales of the relevant product whether manufactured by the Company itself or purchased from sources outside the Company and resold by the Company in the same manufactured form as purchased; b. prices, and prices net of any discounts; c. costs; and d. spending on advertising, cooperative advertising, or promotional campaigns.” Gore proposes to modify this Specification to the extent that this Specification requests information that Gore does not maintain in the ordinary course of its business. In the ordinary course of its business, [REDACTED]

**Specification 14.** This Specification is extremely broad, requesting “[a]ll documents relating to communications between the Company and any person outside the Company who manufactures or creates and sells, licenses, or leases any relevant product.” Complied with literally, this would require producing all external correspondence over a ten-year period for each of 1,500 Fabrics employees, as well as any internal communications “related to” those external communications. In light of the information that Gore proposes to provide in response to the Specifications discussed above, Gore requests deferral of its response to this Specification.

**Specification 15.** This Specification requests “[d]ocuments sufficient to show the Company's document retention and document destruction policies.” In response to this Specification, Gore will provide its 1987 document retention policy. In addition, [REDACTED]

. (After

Karen Mills, Esq., p. 5

receiving the FTC's November 2010 letter, Gore suspended this practice with respect to individuals with documents potentially relevant to this investigation.)

\* \* \*

Finally, we note that additional information about the nature of the Commission Staff's concerns would significantly improve Gore's ability to identify and produce relevant documents to the Staff. We of course understand that the Commission is bound by confidentiality rules regarding its communications with third parties, but any specific information that the Commission Staff can provide would help Gore identify the most important information to the Commission, hastening the Commission's review and reducing the burden on all parties.

This letter is submitted with the understanding that it will be afforded confidential treatment pursuant to all applicable statutes and regulations.

Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Nelson", written in a cursive style.

Mark Nelson

cc: Cathy Testa, Esq.

# **Exhibit H**

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April 1, 2011

Karen Mills, Esq.  
Federal Trade Commission  
601 New Jersey Avenue, NW  
Washington, DC 20580

Re: W.L. Gore & Associates, Inc. ("Gore"), FTC File No. 101-0207

Dear Karen,

On behalf of Gore, this letter encloses a CD-ROM containing the following documents in response to the subpoena in the above referenced matter:

- The document beginning with Bates label WLGORE-FTC-000190 is an organizational chart for Gore's Fabrics Division responsive to Specification 1 of the subpoena.
- The documents Bates labeled WLGORE-FTC-000209 to WLGORE-FTC-000711 are Gore's current technical specifications, which are responsive to Specification 10 of the subpoena.
- The document beginning with Bates label WLGORE-FTC-000714 is Gore's document retention policy, which is responsive to Specification 15 of the subpoena.



Karen Mills, Esq., p. 2

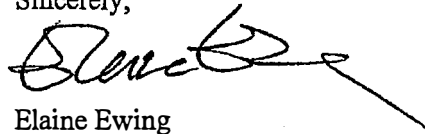
- The documents Bates labeled WLGORE-FTC-000832 to WLGORE-FTC-001056 are training materials used by Gore's Fabrics Division responsive to Specification 2 of the subpoena.
- The documents Bates labeled WLGORE-FTC-001057 to WLGORE-FTC-001646 are business plans from Gore's Fabrics Division responsive to Specification 3 of the subpoena.

\* \* \* \* \*

The documents contain highly confidential and proprietary information of Gore and are submitted with the understanding that they will be afforded confidential treatment pursuant to 15 U.S.C. § 57b-2 and 16 C.F.R. § 4.10, and all other applicable statutes and regulations.

Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Elaine Ewing", with a long horizontal flourish extending to the right.

Elaine Ewing

Enclosure

# **Exhibit I**

CLEARY GOTTlieb STEEN & HAMILTON LLP

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April 4, 2011

Karen Mills, Esq.  
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601 New Jersey Avenue, NW  
Washington, DC 20580

Re: W.L. Gore & Associates, Inc. ("Gore"), FTC File No. 101-0207

Dear Karen,

On behalf of Gore, this letter encloses a CD-ROM containing the following documents in response to the subpoena in the above referenced matter:

- The documents Bates labeled WLGORE-FTC-001647 to WLGORE-FTC-010674 are agreements between Gore and third parties responsive to Specification 8 of the subpoena.
- The hard copy materials Bates labeled WLGORE-FTC-010675 to WLGORE-FTC-010682 are Gore sales materials responsive to Specification 2 of the subpoena.

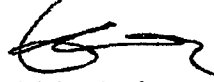
\* \* \* \* \*

The documents contain highly confidential and proprietary information of Gore and are submitted with the understanding that they will be afforded confidential treatment pursuant to 15 U.S.C. § 57b-2 and 16 C.F.R. § 4.10, and all other applicable statutes and regulations.

Karen Mills, Esq., p. 2

Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Elaine Ewing', with a stylized flourish at the end.

Elaine Ewing

Enclosures

# **Exhibit J**



**WL Gore: Org Charts**  
Elaine H Ewing to: kmills  
Cc: Mark W NELSON, Steven J Kaiser

04/13/2011 09:30 AM

Dear Karen,

Following up on our conversation yesterday, attached are two organizational charts for W.L. Gore's Fabrics division, one from 2001, and one from 2007. (Gore plans to provide additional organization charts and information about burden as well, but we wanted to get these to you as quickly as possible.)

This email and the attachments are submitted with the understanding that they will be afforded confidential treatment pursuant to all applicable statutes and regulations.

Regards,  
Elaine



WLGORE-FTC-010707.pdf WLGORE-FTC-010683.pdf

---

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# **Exhibit K**



**WL Gore**  
Elaine H Ewing to: kmills  
Cc: Steven J Kaiser, Mark W NELSON

04/13/2011 06:01 PM

Karen,

Attached are four additional organizational documents regarding Gore's Fabrics Division.

This email and the attachments are submitted with the understanding that they will be afforded confidential treatment pursuant to all applicable statutes and regulations.

Regards,  
Elaine



WLGORE-FTC-010709 - WLGORE-FTC-010728.pdf



WLGORE-FTC-010729 - WLGORE-FTC-010747.pdf



WLGORE-FTC-010748 - WLGORE-FTC-010766.pdf



WLGORE-FTC-010767 - WLGORE-FTC-010785.pdf

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# **Exhibit L**



United State of America  
Federal Trade Commission  
Anticompetitive Practices  
Washington, D.C. 20580  
Fax: 202 326-3496

**FAX COVER SHEET**

FAX NUMBER TRANSMITTED TO:

To: Mark Nelson + Elaine Ewing  
Organization: Cleary Gottlieb  
Client/Matter: W.L. Gore  
Phone no.: 202-974-1622  
Date: 4/14/11

From: Karen Mills  
Organization: Federal Trade Commission  
Client/Matter: W.L. Gore Matter No. 1010207  
Phone no.: 202-326-2052  
Date: 4/14/11

DOCUMENTS	NUMBER OF PAGES
2 page letter	3 with cover

COMMENTS:

See attached

\* CONFIDENTIALITY NOTE: This message is intended only for the individual or entity to whom it is addressed, and may contain information that is privilege, confidential, and exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication by mistake, please notify the sender immediately by telephone, and return the original message to the above address via the U.S. Postal Service. Thank you.



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Via FAX: 202-974-1999

**BY FAX AND U.S. MAIL**

April 14, 2011

Mark Nelson, Esq.  
Cleary Gottlieb Steen & Hamilton LLP  
2000 Pennsylvania Avenue, N.W.  
Washington, DC 20006-1801

Re: FTC Matter Number 1010207

Dear Mark:

Your April 12, 2011 oral request for a second extension of the time for W.L. Gore & Associates, Inc. ("Gore") to file a petition to limit or quash the subpoena *duces tecum* issued by the Commission on March 10, 2011 is denied. Pursuant to the extension previously granted by Bureau of Competition Anticompetitive Practices Division Assistant Director Melanie Sabo, the deadline for filing a petition to limit or quash and the return date remain April 15, 2011.

We encourage Gore to continue, correct, and complete the rolling production that it began April 1, 2011, and we renew our previous many invitations to calendar a productive discussion as soon as possible to discuss the substance and timing of Gore's compliance with the subpoena. As we previously have noted, however, for any such meeting to be productive, you will need to be prepared to identify for the relevant time period document custodians, custodians' responsibilities and reporting relationships, record creating and keeping policies and practices, locations and accessibility of responsive hard-copy and electronic documents, and specific commitments to deadlines for timely production of responsive documents.

The organization charts submitted with Elaine Ewing's e-mails of April 12 and 13, 2011, will be useful, and we encourage further sharing of such information. We also remain open to discussing and reviewing samples of and considering the relevance and necessity of production of particular types of documents, though we note that any proposals to exclude documents from production on account of burden must be justified. Any modifications to the production required by the subpoena must be agreed soon and granted in writing as provided by the FTC Rules of Practice by an appropriate official.

You have raised a general concern about the breadth of Specification 14 and the burden it might impose. We hope that meeting to discuss document custodians, locations of documents, burdens of production, scope of search, search methods (such as keyword searches for electronic documents), and samples of documents you believe not to be relevant or you show to be unduly burdensome to produce will allow us to make any necessary modifications and will reduce those

W.L. Gore  
April 14, 2011

Page 2 of 2

concerns. If documented burden concerns then remain, we might consider other alternatives.

Please contact me at (202) 326-2052 to calendar such a meeting at your earliest convenience.

Sincerely,



Karen A. Mills  
Attorney  
Division of Anticompetitive Practices

cc: Elaine Ewing, Esq., Cleary Gottlieb  
Karen A. Mills, Federal Trade Commission

# **Exhibit M**

# CLEARY GOTTLIB STEEN & HAMILTON LLP

2000 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20006-1801

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KISH VINAYAGAMOORTHY  
MARK W. WALKER  
JOANNE L. WERDEL  
MATTHEW R. WINGERTER  
ASSOCIATES

\* ADMITTED ONLY TO A BAR OTHER THAN THAT OF THE DISTRICT OF COLUMBIA  
WORKING UNDER THE SUPERVISION OF PRINCIPALS OF THE WASHINGTON OFFICE

Writer's Direct Dial: +1 202 974 1622  
E-Mail: mnelson@cgsh.com

April 15, 2011

Karen Mills, Esq.  
Federal Trade Commission  
601 New Jersey Avenue, NW  
Washington, DC 20580

Re: W.L. Gore & Associates, Inc. ("Gore")

Dear Karen,

Thank you for your letter of yesterday.

From the time that Gore received your initial letter regarding the investigation in November, Gore has tried in earnest to cooperate. In January Gore voluntarily presented a detailed presentation about its business and hosted a site visit. Within three weeks of receiving the subpoena in March, Gore produced over ten thousand pages of materials, and offered to produce many more. In response to your request for custodial-level information from 2001 forward, Gore has produced multiple documents dating back to 2001 that set forth Gore's organization and the leaders of its Fabrics Division and their responsibilities. Gore has likewise provided specific information about the quantity of documents its custodians have, which demonstrates the incredible burden that compliance with the subpoena would impose on Gore.

We are therefore disappointed with the denial of Gore's request for a modest two-week extension, which would have given us additional time to negotiate the scope of the subpoena without further delay. As is plain from the subpoena, which purports to require a search of the entire Company's files for, among other things, all documents related to business

Karen Mills, Esq., p. 2

plans and competition, documents sufficient to identify all of Gore's know how, and all correspondence with third parties regarding a broad portion of Gore's business over a ten-year period, compliance would be impossible without the expenditures of many millions of dollars, and would literally be impossible in the four weeks that have been provided. Moreover, you have rejected out of hand our several proposals to produce numerous additional documents from key custodians in short order without prejudice to your ability to seek additional productions under the subpoena and have not provided any counterproposals.

Because you have imposed such an unrealistic deadline to respond to such a broad subpoena and have been unwilling to agree to even a modest extension to facilitate continued negotiations with Gore, you have left Gore with no choice but to file a petition to quash, which we will do later today.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Nelson', written in a cursive style.

Mark Nelson

# **Exhibit N**



**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

\_\_\_\_\_  
IN THE MATTER OF )  
 )

W.L. GORE & ASSOCIATES, INC. )  
 )  
 )  
 )  
 )  
\_\_\_\_\_ )

File No. 101-0207

**DECLARATION OF THOMAS L. HALL IN SUPPORT OF W.L. GORE &  
ASSOCIATES, INC.'S PETITION TO LIMIT OR QUASH  
SUBPOENA DUCES TECUM DATED MARCH 10, 2011**

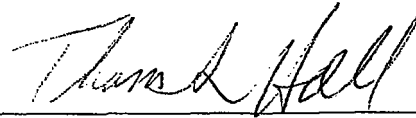
I, Thomas L. Hall, declare under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am Managing Attorney for Discovery and Litigation Technology with the law firm Cleary Gottlieb Steen & Hamilton LLP. I reside in the District of Columbia. I have been practicing law for thirteen years and am admitted to practice by the Bar of the District of Columbia Court of Appeals and by the State Bar of Texas (currently inactive).
2. My duties regularly include the management of projects involving significant discovery issues, including agency investigations, second requests, and civil litigations. My position requires me to continuously evaluate litigation technology including market pricing, to work with discovery service providers and client IT professionals, and to provide discovery and litigation technology services necessary to meet document production obligations in a comprehensive and cost-effective manner.
3. Document reviews and productions like the one called for by the subject subpoena are complicated and lengthy processes. Documents must be collected (often requiring individual interviews of each potential custodian), processed into a form suitable for review, and then reviewed for responsiveness and privilege. Once review is complete, the documents must be prepared for production.
4. I have been told that Gore's North American Fabrics Division has approximately 3 terabytes of information stored on its active email server, [REDACTED] and that this figure does not include paper documents, documents stored on shared databases, documents stored on individuals' hard drives, documents stored on disks, CDs, or flash drives, or documents stored on personal computers.
5. Even if two-thirds of this information could be "deduplicated," which would be a very high percentage, reviewing the remaining documents would require processing and

reviewing approximately one terabyte of data, producing all responsive documents within that terabyte, and logging all privileged documents.

6. Processing one terabyte of data typically costs approximately \$500,000 to \$1,000,000 in vendor fees, hosting fees, and other costs.
7. Based on common metrics, the review of one terabyte of documents following deduplication would require 100,000 to 150,000 hours of reviewer time. Even assuming a blended average hourly rate of \$100 per reviewer, which is a low estimate, reviewing one terabyte of data accordingly would be expected to cost at least \$10,000,000.

DATED: April 15, 2011



Thomas L. Hall

CLEARY GOTTlieb STEEN &  
HAMILTON LLP  
2000 Pennsylvania Ave. N.W.  
Washington, DC 20006  
(202) 974-1500  
(202) 974-1999

# **EXHIBIT B**



United State of America  
Federal Trade Commission  
Anticompetitive Practices  
Washington, D.C. 20580  
Fax: 202 326-3496

# FAX COVER SHEET

**FAX NUMBER TRANSMITTED TO:**

To: *Elaine Ewing*  
*Mark Nelson*  
Organization: *Clean Air Alliance*  
Client/Matter: *W.L. Gore*  
Phone no.: *202-574-1999*  
Date: *4/21/11*

From: *Ken Mills*  
Organization: *Federal Trade Commission*  
Client/Matter: *W.L. Gore File No. 1010907*  
Phone no.: *202-326-2052*  
Date: *4/21/11*

DOCUMENTS	NUMBER OF PAGES
<i>2 page letter</i>	<i>3 with cover</i>

**COMMENTS:**

*See attached*

**\* CONFIDENTIALITY NOTE:** This message is intended only for the individual or entity to whom it is addressed, and may contain information that is privilege, confidential, and exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication by mistake, please notify the sender immediately by telephone, and return the original message to the above address via the U.S. Postal Service. Thank you.



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Via FAX: 202-974-1999

BY FAX AND U.S. MAIL

April 21, 2011

Mark Nelson, Esq.  
Cleary Gottlieb Steen & Hamilton LLP  
2000 Pennsylvania Avenue, N.W.  
Washington, DC 20006-1801

Re: W.L. Gore & Associates, FTC Matter Number 1010207

Dear Mark:

This letter responds to contentions in your April 15, 2011 letter regarding our discussions to date and the extent of W.L. Gore & Associates' cooperation with this investigation.

Regarding our denial of Gore's April 12 request for a second extension of the deadline for a Petition to Quash and the subpoena return date, your letter fails to reflect that Gore already had received one extension, from an initial date of April 1 to a new date of April 15. This first two-week extension was granted on the day you requested it, March 18, to allow time for Gore to collect information that would be necessary for a productive meeting about the subpoena and Gore's concerns, as well as time to hold that meeting. The extension was specifically conditioned upon Gore commencing a rolling production by April 1 of materials Gore had identified, discussed at length with staff on March 18, and did not object to producing. During this first extension period, Gore did not substantially comply with its own proposed production and did not fulfill our specific requests for information or satisfy its meet and confer obligations. Accordingly, we judged that a second extension request was not warranted.

While Gore began its proposed limited rolling production, that production is not yet complete, and is not nearly as substantial as your letter suggests. Gore produced approximately 10,000 pages of documents. Ten thousand pages are roughly the equivalent of only two standard-size boxes of paper documents. This is a small production for a company the size of Gore and an investigation of this scope. We easily completed review of this information within two days and notified you that it did not resolve our concerns. Gore has not produced any additional production since April 4 with the exception of a few additional organizational charts, and has not provided us with a date certain by which its own proposed production will be complete.

Regarding scope of search, we have stated repeatedly that we are willing to discuss limiting Gore's response, if warranted. But Gore has not provided us with the information that we need to conduct a meaningful exchange about your concerns. In particular, Gore has offered very limited information regarding likely custodians; the location, volume, and accessibility of responsive documents; and the specific nature of the burden that it claimed. Indeed, it was not

W.L. Gore  
April 21, 2011

Page 2 of 2

until April 8 – nearly one month after the subpoena issued and one week after the initial return date – that Gore expressed a willingness to even consider discussing potential custodians. We explained then that – with only one current organizational chart from a single division – such discussions would not be fruitful. Gore requested its second extension four days later before even providing the historical organizational charts previously requested covering the time period under investigation. Gore has since provided some additional historical organizational charts, but has not provided us with any additional information to support its requests to limit the scope of the subpoena.<sup>1</sup> In fact, it was not until Gore submitted a Petition to Quash that we learned about some of Gore's caches of electronically-stored information ("ESI").

As for your claim that we rejected Gore's proposals for production without providing counterproposals, Gore's proposal was to make a very limited initial production and reserve indefinitely a right to petition to quash subsequent requests for additional information called for by the subpoena. We rejected this proposed approach because it inconsistent with the FTC's Rules of Practice. The Rules do not contemplate indefinite reservation of the right to file Petitions to Quash. An iterative approach hampers the investigation, introduces inefficiencies, and taxes both the FTC and Gore unnecessarily. The "very backbone of an administrative agency's effectiveness in carrying out the congressionally mandated duties of industry regulation is the rapid exercise of the power to investigate." *FTC v. Texaco, Inc.*, 555 F.2d 862, 872-73 (D.C. Cir. 1977) (quoting *FMC v. Port of Seattle*, 521 F.2d 431, 433 (9th Cir. 1975)). Furthermore, nothing about Gore's submission to date suggests that this approach would avoid an additional, more comprehensive request for information. We have explained many times to you, and above, why Gore's failure to supply requested information and cooperate in good faith with meet and confer obligations did not establish a basis for modifications or enable us to work toward crafting any.

We remain willing to meet with you to discuss concerns you have raised about the subpoena and can support with appropriate documentation. You can reach me at (202) 326-2052 to discuss how Gore would like to proceed.

Sincerely,



Karen A. Mills

cc: Elaine Ewing, Esq.

---

<sup>1</sup> For example, these organizational charts cross-reference a "Fabrics Division Global Licensing and Certification Procedures document in the Global Fabrics Resource Database." Because this document and database appear responsive to the subpoena and relevant to discussions about the scope of our investigation, we requested this document specifically in writing while Gore's request for a second extension was pending. Gore did not produce it and has not provided any information about the contents of the database.

# **EXHIBIT C**

CLEARY GOTTlieb STEEN & HAMILTON LLP

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BENJAMIN MEEKS  
YASMIN MEHRAN  
JENNIFER MELLOTT  
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\* ADMITTED ONLY TO A BAR OTHER THAN THAT OF THE DISTRICT OF COLUMBIA  
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E-Mail: mnelson@cgsh.com

April 22, 2011

Karen Mills, Esq.  
Federal Trade Commission  
601 New Jersey Avenue, NW  
Washington, DC 20580

Re: W.L. Gore & Associates, Inc. ("Gore")

Dear Karen,

This letter responds to your letter of yesterday. While we do not believe it would be productive at this stage to engage in an extended exchange of letters regarding our respective positions, we are compelled to respond to your letter in order to set the record straight about a few key issues.

First, from the beginning of this process, Gore has stressed the substantial burden of conducting custodian searches in response to the subpoena. When we spoke on March 14 – when we first received the subpoena – I noted the importance to Gore of limiting the scope of the subpoena and reducing its burden. As I am sure you are well aware, the burden of producing “all documents sufficient to identify all Company intellectual property and know how” or “all documents relating to communications between the Company and any person outside the Company who manufactures or creates and sells, licenses, or leases any relevant product” would be substantial for any business organization. In an effort to respond to your generalized requests for more information on burden, we also provided – and did so several days before filing the



Karen Mills, Esq., p. 2

petition to quash – specific details on the amount of documents at issue and also the burden of searching and reviewing them.

When we spoke on March 18, we made a detailed specification-by-specification proposal regarding what Gore would produce initially without prejudice to subsequent staff requests. You agreed to consider Gore's offer but noted that Gore's proposed response to Specification 9, regarding Exclusive Dealing Arrangements, would be insufficient. While you expressed a general reservation about limiting the time frame to two years and about our proposal to search for categories of documents rather than searching individual custodians in their entirety, you agreed to consider our request as to all specifications other than Specification 9, and we agreed to revert to you with a further proposal in response to Specification 9. We provided a proposal for Specification 9 when we spoke by telephone on March 25 and March 28. At that time you were unwilling to discuss our proposals regarding the other Specifications or to offer counterproposal(s), and instead asked us to put our proposal in writing, which we did by letter of March 31.

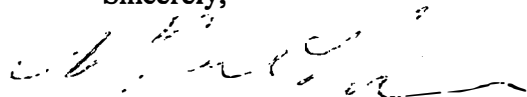
As we awaited your response to our March 31 letter, we produced, among other documents, a number of business plans and the majority of Gore's contracts. We have not yet received any substantive feedback about this production.

On April 6, you responded to our letter by indicating in a telephone call that our proposals were insufficient and that we would need to discuss possible document custodians as a preliminary matter. We responded quickly, calling you on April 8 to discuss the organizational chart for Gore's Fabrics Division produced on April 1. You refused to engage in such discussions and stated that a discussion about custodians would require substantially more information from Gore, including organizational charts covering the entire ten-year period of the subpoena, among other information.

During the week of April 11, we worked quickly to deliver this newly requested information (which, incidentally, was not responsive to the subpoena) and provided several historical organizational charts. However, recognizing that it would be impossible to conclude our negotiations by April 15, on April 12 we requested a modest two-week extension to facilitate negotiation. Despite our production of historical organizational charts and our obvious and demonstrated willingness to negotiate, on April 14 you denied any extension whatsoever. Gore was left with no choice but to file a petition to quash.

As we stated in our petition to quash, Gore remains willing to engage in negotiations regarding possible custodians if sufficient time for such negotiations is granted. In connection with your requests, Gore has produced historical Fabrics Division organizational charts dating to 2001 and has identified specific information about the burdens complying with the subpoena would impose. At this juncture, we do not understand what further information you require to finally engage in discussions about an appropriate response to the subpoena.

Sincerely,



Mark W. Nelson

# **EXHIBIT D**



United State of America  
Federal Trade Commission  
Anticompetitive Practices  
Washington, D.C. 20580  
Fax: 202 326-3496

# FAX COVER SHEET

FAX NUMBER TRANSMITTED TO:

To: *Slaine Ewing*  
*Mark Nelson*  
Organization: *Cleary Gottlieb*  
Client/Matter: *W.L. Gore*  
Phone no.: *202-974-1999*  
Date: *4/29/11*

From: *Karen Mills*  
Organization: *Federal Trade Commission*  
Client/Matter: *W.L. Gore, Matter No. 1010207*  
Phone no.: *202-326-2052*  
Date: *4/29/11*

DOCUMENTS	NUMBER OF PAGES
<i>2 page letter</i>	<i>3 with cover</i>

COMMENTS: *see attached*

\* CONFIDENTIALITY NOTE: This message is intended only for the individual or entity to whom it is addressed, and may contain information that is privilege, confidential, and exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication by mistake, please notify the sender immediately by telephone, and return the original message to the above address via the U.S. Postal Service. Thank you.



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Via FAX: 202-974-1999

BY FAX AND U.S. MAIL

April 29, 2011

Mark Nelson, Esq.  
Cleary Gottlieb Steen & Hamilton LLP  
2000 Pennsylvania Avenue, N.W.  
Washington, DC 20006-1801

Re: W.L. Gore & Associates, FTC Matter Number 1010207

Dear Mark:

I write in response to your letter of April 22, 2011, which purports to summarize and describe our conversations regarding the outstanding subpoena. Although you have mischaracterized our conversations, it will be more productive to focus on present negotiations regarding the scope of the subpoena. In your letter, you state that Gore is willing to engage in such negotiations, but you also indicate that you do not understand what information is required before such discussions can take place. Below, we describe – again – the kinds of information we will need and invite you to produce it and meet with us at your earliest opportunity.

We always have maintained that Gore will need to search some files and custodians, and made ourselves available for productive discussions regarding reasonable limits to such a search, based on a specific showing of undue burden. As we have explained, however, such discussions will not be productive unless Gore first identifies all likely custodians and caches of responsive documents. We clearly have described the kind of information Gore should supply, and even asked for specific documents by name. You have not yet supplied this information. Accordingly, we reiterate our request.

First, in order to identify likely custodians, to the extent available in writing, please supply, and in any case be prepared to discuss, for the entire time period covered by the subpoena:

- Complete present and historical organization charts for the Fabrics Division;
- For Fabrics Division employees not named in the organization charts, categories of employees not on the organization charts, and to the extent available, their names, job titles, responsibilities, and tenure;
- All present and historical organizational charts for parts of the company, other than the Fabrics Division, where responsive documents may be found;

W.L. Gore  
April 29, 2011


Page 2 of 2

- The Gore account representatives for all Fabrics Division customers, licensees, and certified manufacturers for the relevant time period;
- The Gore Fabrics Division Global Licensing and Certification Procedures documents in the Global Fabrics Resource Database for the relevant time period;
- Gore's procedures for and the names of Gore personnel involved in evaluating and certifying manufacturers, licensing customers, monitoring compliance with contract terms, and engaging in efforts to secure compliance with or enforce contract terms during the relevant time period;
- A list of the document custodians you propose searching.

Second, as to likely caches of responsive documents, you have given us no information regarding the volumes or accessibility of specific caches of responsive paper or electronic files. You revealed only the approximate number of total terabytes of electronic documents, and the general types of electronic document storage media and locations where responsive documents may be found. You did not offer any constructive suggestion which files could be excluded, although we offered that we may be able to exclude certain categories of documents, but only if you provide samples and an explanation of why they should be excluded.

Finally, we have suggested there may be ways to reduce any undue burden with respect to electronic documents. We have invited you to have a technical discussion about electronic search and production issues with us and our information technology and litigation support staff. To date, you have not been willing to discuss these issues with us.

In conclusion, we remain willing to have productive discussions about the subpoena, specific undue burdens, and proposed modifications if you are prepared to provide us with and discuss the information identified above. Please contact me at 202-326-2052 to schedule a meeting as soon as possible so that we can reserve time in our calendars. In advance of our meeting, please submit the above information and any other information that you believe would support your claims of burden and requests or proposals for modification of the subpoena. We commit to studying your submissions in advance of our meeting, so that it might proceed as smoothly and productively as possible.

Sincerely,  


Karen A. Mills

cc: Elaine Ewing, Esq.

# **EXHIBIT E**

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\* ADMITTED ONLY TO A BAR OTHER THAN THAT OF THE DISTRICT OF COLUMBIA.  
WORKING UNDER THE SUPERVISION OF PRINCIPALS OF THE WASHINGTON OFFICE.

Writer's Direct Dial: +1 202 974 1622

E-Mail: mnelson@cgsh.com

May 5, 2011

Karen Mills, Esq.  
Federal Trade Commission  
601 New Jersey Avenue, NW  
Washington, DC 20580

Re: W.L. Gore & Associates, Inc. ("Gore")

Dear Karen,

This letter responds to your letter of April 29.

We appreciate your providing a list of materials that would inform these negotiations and have identified below the Gore documents that are responsive to your requests. As described further below, Gore has provided current information and historical information, where available.

- *Request: Complete present and historical organization charts for the Fabrics Division.*

Gore confirms that the current and historical organizational charts produced on April 1, 2011 and April 13, 2011 (WLGORE-FTC-000190, WLGORE-FTC-010683 – WLGORE-FTC-010785) are a complete set of the Fabrics Division organizational charts identified by Gore. The organizational charts provided date back to February 2001 and Gore believes these should provide a sufficient basis for discussion about possible custodians.

- *Request: For Fabrics Division employees not named in the organization charts, categories of employees not on the organization charts, and to the extent available, their names, job titles, responsibilities, and tenure;*

Gore does not keep documents with this information in the ordinary course of its business. In an effort to facilitate negotiations, Gore has prepared the document enclosed with this letter and identified as WLGORE-FTC-010786, which shows the organization of the Fabrics Division and identifies categories of Fabrics Division employees based on their function and geographic location. Gore has also run an extract from its enterprise software, provided as WLGORE-FTC-010787 – WLGORE-FTC-010806, which lists all Fabrics Division employees, their job descriptions, and their dates of hire by Gore. Gore believes these documents, together with the already produced organizational charts, respond to your requests and will be more than sufficient for a meaningful conversation about potential custodians.

- *Request: All present and historical organizational charts for parts of the company, other than the Fabrics Division, where responsive documents may be found;*

Gore believes that its Executive Leadership Team and its Core Technology group are the only parts of the company other than the Fabrics Division that may have documents responsive to the subpoena.

Gore's Executive Leadership Team has three members. In the ordinary course of its business, Gore does not keep an organizational chart displaying these three individuals. In order to facilitate our negotiations, Gore has created an organization chart that displays the individuals currently on the Executive Leadership Team and their relationship to the Fabrics Division, which is provided as WLGORE-FTC-010807.

Gore's Core Technology group does not keep organizational charts that identify individuals by name. The documents provided as WLGORE-FTC-010808 and WLGORE-FTC-010809 are organizational charts that show the functions performed by the Core Technology group. Additionally, though not kept in this form in the ordinary course of Gore's business, the document provided as WLGORE-FTC-010810 - WLGORE-FTC-010818 is a PeopleSoft extract listing the Core Technology group employees, their job descriptions, and their dates of hire by Gore.

Gore notes that while the Core Technology group is likely to have documents technically responsive to the subpoena, Gore believes that it is very unlikely that the Core Technology group, which focuses on basic R&D and component manufacturing, will have documents that are actually relevant to the Commission's investigation into Gore's commercial practices.



- *Request: The Gore account representatives for all Fabrics Division customers, licensees, and certified manufacturers for the relevant time period;*

The PeopleSoft extract provided as WLGORE-FTC-010787 – WLGORE-FTC-010806 identifies the Fabrics Division employees who are account representatives for trademark licensees (these individuals are called “Field Sales Representatives” in the extract) and certified manufacturers (these individuals are called “Product Support” representatives in the extract). The documents provided as WLGORE-FTC-010819 – WLGORE-FTC-010826 identify the particular individuals responsible for specific consumer oriented fabrics (“COF”) and technically oriented fabrics (“TOF”) licensees in North America.

- *Request: The Gore Fabrics Division Global Licensing and Certification Procedures documents in the Global Fabrics Resource Database for the relevant time period;*

Gore’s current Licensing and Certification Procedures document is provided as WLGORE-FTC-011301 – WLGORE-FTC-011314. Gore’s historical Licensing and Certification Procedures documents are provided as WLGORE-FTC-010827 – WLGORE-FTC-011300. Some of these documents are not themselves dated, but the chart below indicates the date each version of the policy was put in effect:

<b>Effective Date</b>	<b>Beginning Bates Number</b>
July 8, 2004	WLGORE-FTC-010827
July 14, 2004	WLGORE-FTC-010840
September 13, 2004	WLGORE-FTC-010853
October 19, 2004	WLGORE-FTC-010866
March 14, 2005	WLGORE-FTC-010879
April 4, 2005	WLGORE-FTC-010892
April 12, 2005	WLGORE-FTC-010906
May 3, 2005	WLGORE-FTC-010918
May 19, 2005	WLGORE-FTC-010931
July 28, 2005	WLGORE-FTC-010944
September 13, 2005	WLGORE-FTC-010957
November 7, 2005	WLGORE-FTC-010970
April 21, 2006	WLGORE-FTC-010983

May 12, 2006	WLGORE-FTC-010996
June 2, 2006	WLGORE-FTC-011009
June 6, 2006	WLGORE-FTC-011022
November 17, 2006	WLGORE-FTC-011035
June 5, 2007	WLGORE-FTC-011049
August 24, 2007	WLGORE-FTC-011063
May 27, 2008	WLGORE-FTC-011077
May 29, 2008	WLGORE-FTC-011091
August 13, 2008	WLGORE-FTC-011105
September 21, 2008	WLGORE-FTC-011119
February 2, 2009	WLGORE-FTC-011133
March 9, 2009	WLGORE-FTC-011147
May 11, 2009	WLGORE-FTC-011161
May 21, 2009	WLGORE-FTC-011175
July 9, 2009	WLGORE-FTC-011189
October 21, 2009	WLGORE-FTC-011203
November 16, 2009	WLGORE-FTC-011217
December 27, 2009	WLGORE-FTC-011231
January 24, 2010	WLGORE-FTC-011245
January 26, 2010	WLGORE-FTC-011259
April 29, 2010	WLGORE-FTC-011273
September 28, 2010	WLGORE-FTC-011287
December 17, 2010	WLGORE-FTC-011301

- *Request: Gore's procedures for and the names of Gore personnel involved in evaluating and certifying manufacturers, licensing customers, monitoring compliance with contract terms, and engaging in efforts to secure compliance with or enforce contract terms during the relevant time period;*

Gore's procedures for evaluating and certifying manufacturers and trademark licensees are discussed in Gore's Licensing and Certification Procedures documents.

[REDACTED]

Documents regarding Gore's interactions with certified manufacturers are stored in a central database, which Gore offered to search for responsive documents as part of the proposal in its March 31, 2011 letter. Gore stores records of communications with trademark licensees in a folder on the [REDACTED] and in another database, and is willing to search these files for responsive documents as well.

- *Request: A list of the document custodians you propose searching;*

Gore proposes searching the following custodians for documents responsive to the subpoena. [REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

○

[REDACTED]

○

[REDACTED]

In addition to these custodians' responsive documents, if this list of custodians can be agreed upon, Gore remains willing to produce the broad range of documents identified in its March 31, 2011 letter and reiterated in Gore's petition to quash. Based on Gore's understanding of the Staff's investigation into its commercial practices, Gore believes these are the documents most pertinent to the Staff's investigation.

- *Request: Information regarding the volumes or accessibility of specific caches of responsive paper or electronic files;*

Gore's petition to quash provided specific information about the locations and volumes of responsive documents, which we had previously conveyed to you over the phone. Gore's employees have potentially responsive documents located in their active email files, their [REDACTED] their [REDACTED] [REDACTED] and their [REDACTED]. In our petition to quash, we identified the average number and volume of documents that Gore's Fabrics employees keep on the active email server and the [REDACTED]. We provided this average information because the subpoena demands a search of the entire Company and to date the parties have been unable to reach an agreement on custodians. Going forward, if you request custodians beyond those indicated above that would be burdensome to search, we will provide information about those custodians. Attempting to do so now as to each of the Fabric Division employees would be extremely burdensome, as you can imagine.

Gore believes that the amount of information provided clearly demonstrates the substantial burden of complying with the subpoena as written.

\* \* \*

Gore believes the information enclosed with this letter responds to your requests and provides a more than adequate basis for negotiation. If you are willing to proceed with

Karen Mills, Esq., p. 7

negotiations on the basis of what we have provided here, we are happy to arrange for a meeting or a call to undertake such negotiations.

Please do not hesitate to contact me with any questions.

Sincerely,

Mark W. Nelson

Enclosure

# **EXHIBIT F**

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\* ADMITTED ONLY TO A BAR OTHER THAN THAT OF THE DISTRICT OF COLUMBIA WORKING UNDER THE SUPERVISION OF PRINCIPALS OF THE WASHINGTON OFFICE

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May 18, 2011

Karen Mills, Esq.  
Federal Trade Commission  
601 New Jersey Avenue, NW  
Washington, DC 20580

Re: W.L. Gore & Associates, Inc. ("Gore")

Dear Karen,

This letter responds to the requests made by Commission Staff during our May 13, 2011 meeting:

*Additional information about Gore's sales account representatives.*

[REDACTED]

[REDACTED]

[REDACTED]

Searching each of the sales account representatives' documents for responsive documents would impose a tremendous burden on Gore. At the same time, [REDACTED] searching the individual account representatives' documents would add little incremental value to the Commission Staff's investigation.

*Additional information about Gore's product support representatives.*

[REDACTED]

In North America, Gore's product support representatives are assigned to factories, meaning that each factory has a single product support representative. A list of Gore's product support representatives and the factories assigned to each is provided as WLGORE-FTC-0111315.

[REDACTED]

Again, given the large number of product support representatives [REDACTED] searching the files of individual product support representatives [REDACTED] would place a substantial burden on Gore while adding only a limited volume of incremental information relevant to the Commission's investigation. In addition, assuming a reasonable group of custodians can be negotiated, Gore is willing to search the set of factory trip reports on Gore's shared drives, which will provide additional information about interactions with the factories, although much of the information on these drives is likely to be duplicative of documents found in the files of the product support leaders.

*Additional information about Gore's marketing and brand management groups.*

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

no independent search of Gore's marketing files should be necessary.

*Additional information about Gore's research and development group.*

[REDACTED]

[REDACTED]

there is thus no need to search the files of the R&D employees,

*Additional information requested:*

- [REDACTED]
- [REDACTED]

- [REDACTED]
- JGI was formerly Japan Gore-Tex Inc., a Gore affiliated joint venture. It is now a wholly-owned subsidiary of Gore known as Nihon Gore Kabushiki Kaisha. [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

*Additional documents requested:*

- A list of Gore's certified manufacturers for the Asia Pacific and North America regions, with the address for each, is provided as WLGORE-FTC-011316 – WLGORE-FTC-0011332. For your convenience, we have also provided this file as a sortable Excel file. [REDACTED]
- As requested, we have provided a sortable Excel file of the list of Gore's Fabrics Division employees previously produced as WLGORE-FTC-010787.
- Gore has recently updated its Fabrics Division organizational document. A copy of the revised version is provided as WLGORE-FTC-011333 – WLGORE-FTC-0011354.

\* \* \*

We recognize that we have not yet responded to all of your requests, but hope that this information can facilitate your providing a list of potential custodians.

Karen Mills, Esq., p. 5

Sincerely,

Mark W. Nelson

Enclosures

cc: Mark Hegedus, Esq.  
Leslie Melman, Esq.  
Nick Widnall, Esq.

# **EXHIBIT G**

# CLEARY GOTTlieb STEEN & HAMILTON LLP

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May 19, 2011

Karen Mills, Esq.  
Federal Trade Commission  
601 New Jersey Avenue, NW  
Washington, DC 20580

Re: W.L. Gore & Associates, Inc. ("Gore")

Dear Karen,

As we discussed today, below is a list of Gore's Asian Product Support representatives, organized by geography and area of responsibility:

*Employees Located in Hong Kong.*

[REDACTED]

[REDACTED]

[REDACTED]

*Employees Located in Shenzhen, China.*

[REDACTED]

[REDACTED]

[REDACTED]

*Employees Located in Korea.*

[REDACTED]

[REDACTED]

Sincerely,

Elaine Ewing

cc: Mark Hegedus, Esq.  
Leslie Melman, Esq.  
Nick Widnell, Esq.

# **EXHIBIT H**

# CLEARY GOTTlieb STEEN & HAMILTON LLP

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May 25, 2011

Karen Mills, Esq.  
Federal Trade Commission  
601 New Jersey Avenue, NW  
Washington, DC 20580

Re: W.L. Gore & Associates, Inc. ("Gore")

Dear Karen,

Following up on our call of yesterday afternoon, I am writing to reiterate our offer to assist the Commission Staff as you prepare your proposal regarding the scope of Gore's response to the subpoena. Based on our call yesterday, we understand that you do not have any outstanding requests of Gore to help you formulate a proposal. As we indicated, we stand ready to provide further information to supplement our prior submissions, including as to specific Gore employees and/or positions, about Gore's business or business practices, about the burden to Gore of complying with parts or all of the subpoena, or on any other subject relevant to the subpoena. Please let us know if any information would be helpful, and we will work to provide it quickly.

We also want to reiterate our willingness to negotiate regarding potential custodians and the scope of the subpoena, as expressed in our May 13, 2011 meeting and on yesterday's call. We understand that you have not accepted our initial proposal, and as we made clear, Gore is open to providing more information, including searching the documents of



Karen Mills, Esq.  
May 25, 2011  
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additional custodians, in order to reach resolution as to the scope of Gore's response to the subpoena.

We look forward to receiving your proposal, or hearing from you as to further information you require, so that we may engage further on the specifics of Gore's response to the subpoena. In the meantime, we will proceed to review the documents of the custodians we offered to search in our letter of May 5, 2011 (including the shared drives they have access to and the shared files that store reports of communications with certified manufacturers and trademark licensees), and will produce those documents as soon as possible. To help facilitate that, we would like to arrange a telephone conference between our respective electronic discovery experts so that we can align on the format of the document production. Please let us know if there is a time that works from your end on Friday, May 27, or early next week.

If you believe a meeting to discuss the scope of the subpoena or other issues would be helpful, we are happy to meet with you and continue our discussions in person.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark W. Nelson', written in a cursive style.

Mark W. Nelson

cc: Mark Hegedus, Esq.  
Leslie Melman, Esq.  
Nick Widnell, Esq.

# **EXHIBIT I**

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May 26, 2011

Karen Mills, Esq.  
Federal Trade Commission  
601 New Jersey Avenue, NW  
Washington, DC 20580

Re: W.L. Gore & Associates, Inc. ("Gore")

Dear Karen,

I am writing to follow up further on our meeting of May 13 and our conversation on the afternoon of May 24. As we discussed on May 13, Gore's initial offer to search the documents of five key custodians was intended as an initial step, whereby Gore would produce those proffered documents (in addition to certain shared files and other documents identified to the Commission Staff) and the Commission Staff would review these documents and then determine which, if any, additional custodians' documents were necessary to the Commission Staff's investigation. At our May 13 meeting, Nick Widnell and you made clear that you do not want to proceed in this "iterative" manner, and would instead like to agree up front on a full set of custodians that is broader than our initial proposal.

That meeting led to an agreed path forward, whereby we would provide as promptly as possible additional information on a series of items identified during the meeting, and the Commission Staff would provide a counterproposal as to the full group of custodians to be searched. In order to help you develop a proposed list of custodians, we have made multiple submissions, providing a substantial volume of information about Gore's organization and its employees. As we indicated in our conversation on May 24 and again in our follow-up letter yesterday, we stand ready to provide additional information you require to facilitate your



Karen Mills, Esq.  
May 26, 2011  
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Name	Position
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Although searching the files of this many custodians will impose considerable costs on Gore, we selected these custodians because we understand that they are likely to be priorities of the Commission Staff, based on discussions with Gore about their roles and responsibilities, as well as on our May 13 conversation with Commission Staff, where we discussed many of these individuals. This list includes individuals responsible [REDACTED] areas you identified as important during that meeting. We have also included [REDACTED] in response to your statements that you would likely request the files of such employees.

We understand that you are particularly interested in [REDACTED]

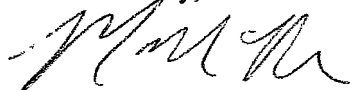
[REDACTED] We have thus included on our list [REDACTED]

[REDACTED] In each category we picked the non-administrative employee with the most experience at Gore; each proposed custodian has been working at Gore since at least [REDACTED]

We would like to review and produce these custodians' files quickly, so we appreciate any feedback you can provide on our proposal. Additionally, we understand that you are working to set up a meeting with the Commission's IT staff to discuss production format, which we very much appreciate. We would like to have this meeting as soon as possible so that the discussion about can inform our review and production.

Please let me know if you have any questions about our proposal. As we indicated in our letter earlier today, we are happy to meet and continue our discussions in person if that would be useful.

Sincerely,



Mark W. Nelson

cc: Mark Hegedus, Esq.  
Leslie Melman, Esq.  
Nick Widnell, Esq.