

**UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION**

IN THE MATTER OF

LEACHCO, INC.,

Respondent.

CPSC DOCKET No. 22-1

JUDGE MICHAEL G. YOUNG

HEARING REQUESTED

**LEACHCO, INC.'S NOTICE OF SERVICE OF PRIVILEGE LOG AND
RESPONSE TO JUDGE YOUNG'S FEBRUARY 17, 2023 ORDER**

Leachco, Inc. hereby provides notice that it served its privilege log upon the Commission. *See* Ex. 1 (Feb. 21, 2023 O. Dunford E-Mails). A copy of the privilege log is submitted for *in camera* review as Exhibit 2.

Leachco completed and served the privilege log as required by the Court's February 17, 2023 *Order Deferring Rule on Complaint Counsel's Motion to Compel Discovery and For Sanctions and Ordering Production of Privilege Log* (Order). Leachco respectfully submits, however, that the Order misconstrues the key dispute between the parties. The Order states, "[r]egarding the RFP, the dispute relies wholly on whether the withheld documents are covered by privilege."

But the Commission's Motion did not argue that Leachco improperly withheld documents as privileged. Instead, the production dispute between the parties concerns the scope of the Commission's Request for Production No. 27. This Request sought electronic communications to or from seven current or former Leachco employ-

ees that met two criteria: communications that included (1) the term “Podster” and (2) another search term (*e.g.*, “sleep,” “nap,” “defect”) identified by Complaint Counsel in RFP No. 27. *See* CPSC’s Second Set of Requests for Production (Ex. 1 to Leachco’s Opposition). The Commission argues that Leachco did not produce all documents that met these criteria. For example, in its Memorandum in Support to its Motion to Compel, the Commission noted that it asked for “electronic documents containing the keyword ‘podster’ *along with other search terms . . .*” *See* Mem. in Supp. 5 (emphasis added).

Responding to that argument, Leachco stated that it produced all communications that met both criteria of RFP No. 27—*i.e.*, communications containing ***both*** (1) the term “Podster” ***and*** (2) one or more other specific terms (*e.g.*, “safe,” “nap,” “warning”) identified in RFP No. 27. *See* Leachco Opp. 2–8.

But, as Leachco explained, Leachco did not produce communications that met only one of the criteria from RFP No. 27. That is, Leachco did not produce communications that contained (only) ***either*** (1) the term “Podster” ***or*** (2) one or more of the other terms. And Leachco withheld such communications *not* because of privilege, but because such communications did not meet both criteria of the Commission’s RFP No. 27. *See* Leachco Opp. 2–8. In other words, Leachco withheld such communications because, Leachco submits, they fall outside the scope of RFP No. 27.

Accordingly, the document-production dispute raised in the Commission’s Motion to Compel turns on *the scope of RFP No. 27*, not on any privilege-based reasons for withholding documents. While the Commission’s Motion included a request for a

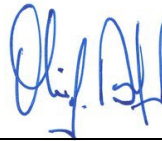
privilege log in its Motion to Compel, that request was separate from its contention that Leachco improperly withheld documents based on the scope of RFP No. 27.

* * *

Leachco asks that the Court schedule a conference so that the parties may answer any questions the Court may have.

Dated: February 21, 2023.

Respectfully submitted,



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Counsel for Respondent Leachco, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2023, the forgoing was served via email

upon the following:

| | |
|---|--|
| <p>Honorable Michael G. Young Federal Mine Safety and Health Review Commission Office of the Chief Administrative Law Judge 1331 Pennsylvania Ave., NW, Suite 520N Washington, D.C. 20004-1710 myoung@fmshrc.gov cjannace@fmshrc.gov</p> | <p>Mary B. Murphy Director, Div. of Enforcement and Litigation U.S. Consumer Product Safety Commission 4330 East West Highway Bethesda, MD 20814 mmurphy@cpsc.gov</p> <p>Robert Kaye Assistant Executive Director Office of Compliance and Field Operations U.S. Consumer Product Safety Commission 4330 East West Highway Bethesda, MD 20814 rkaye@cpsc.gov</p> <p>Leah Ippolito, Supervisory Attorney Brett Ruff, Trial Attorney Rosalee Thomas, Trial Attorney Caitlin O'Donnell, Trial Attorney Michael Rogal, Trial Attorney Frederick C. Millett Gregory M. Reyes Complaint Counsel Office of Compliance and Field Operations U.S. Consumer Product Safety Comm'n Bethesda, MD 20814 lippolito@cpsc.gov bruff@cpsc.gov rbthomas@cpsc.gov codonnell@cpsc.gov mrogal@cpsc.gov fmillett@cpsc.gov greyes@cpsc.gov</p> |
| <p>Alberta Mills Secretary of the U.S. Consumer Product Safety Commission U.S. Consumer Product Safety Commission 4330 East West Highway Bethesda, MD 20814 amills@cpsc.gov</p> | |
| | |

Oliver J. Dunford
Counsel for Respondent Leachco, Inc.

LEACHCO, INC.'S NOTICE OF SERVICE OF PRIVILEGE LOG AND
RESPONSE TO JUDGE YOUNG'S FEBRUARY 17, 2023 ORDER

EXHIBIT 1

From: [Oliver J. Dunford](#)
To: [Ruff, Brett](#); [Thomas, Rosalee](#); [ODonnell, Caitlin](#); [Rogal, Michael](#); [Millett, Frederick](#); [Reyes, Gregory](#); [Perilla, Frank Robert](#)
Cc: [Frank Garrison](#); [John F. Kerkhoff](#)
Subject: In the Matter of Leachco, Inc., CPSC Docket No. 22-1
Date: Tuesday, February 21, 2023 11:45:00 AM
Attachments: [LEACHCO PRIVILEGE LOG - FINAL 2023.02.21.pdf](#)
[image001.png](#)

Counsel,

Here is Leachco's privilege log. We will shortly file a Notice with Judge Young.

Thank you,
Oliver

Oliver J. Dunford | Senior Attorney
Pacific Legal Foundation
4440 PGA Blvd., Suite 307 | Palm Beach Gardens, FL 33410
916.503.9060 (Direct) | 216.702.7027 (Cell)



**PACIFIC LEGAL
FOUNDATION**

Defending Liberty and Justice for All.

From: [Oliver J. Dunford](#)
To: ["Ruff, Brett"](#); ["Thomas, Rosalee"](#); ["ODonnell, Caitlin"](#); ["Rogal, Michael"](#); ["Millett, Frederick"](#); ["Reyes, Gregory"](#); ["Perilla, Frank Robert"](#)
Cc: [Frank Garrison](#); [John F. Kerkhoff](#)
Subject: RE: In the Matter of Leachco, Inc., CPSC Docket No. 22-1
Date: Tuesday, February 21, 2023 11:50:00 AM
Attachments: [LEACHCO PRIVILEGE LOG GLOSSARY - FINAL 2023.02.21.pdf](#)
[image001.png](#)

Counsel,

Here is the Glossary for the Privilege Log.

Thank you,
Oliver

Oliver J. Dunford | Senior Attorney
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**PACIFIC LEGAL
FOUNDATION**

Defending Liberty and Justice for All.

From: Oliver J. Dunford
Sent: Tuesday, February 21, 2023 11:46 AM
To: Ruff, Brett <BRuff@cpsc.gov>; Thomas, Rosalee <RBThomas@cpsc.gov>; ODonnell, Caitlin <CODonnell@cpsc.gov>; Rogal, Michael <MRogal@cpsc.gov>; Millett, Frederick <FMillett@cpsc.gov>; Reyes, Gregory <GReyes@cpsc.gov>; Perilla, Frank Robert <FPerilla@cpsc.gov>
Cc: Frank Garrison <FGarrison@pacificlegal.org>; John F. Kerkhoff <JKerkhoff@pacificlegal.org>
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EXHIBIT 2

Submitted for In Camera Review