

UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of	)	
	)	
	)	
LEACHCO, INC.	)	CPSC DOCKET NO. 22-1
	)	
	)	Hon. Michael G. Young
Respondent.	)	Presiding Officer
	)	

**JOINT INITIAL PROPOSED PREHEARING SCHEDULES AND  
STATEMENT ON PREHEARING CONFERENCE MATTERS**

Pursuant to the Presiding Officer’s April 4, 2022 Order (“Order”) and 16 C.F.R. § 1025.21, Complaint Counsel and Respondent Leachco, Inc. (“Respondent” or “Leachco”), (collectively “Parties”) submit this Joint Initial Proposed Prehearing Schedules and Statement on Prehearing Conference Matters as set forth in 16 C.F.R. § 1025.21(a)(1) through (14) in advance of the April 22, 2022 Initial Prehearing Conference.

The parties have met and conferred to discuss the issues identified in the Order and the CPSC Rules of Practice for Adjudicative Hearings (the “Rules”). The parties provide their joint statements on each point below. Where the parties could not reach agreement, each party provides a separate response.

**I. DISCOVERY PLAN**

The Parties have filed, and the Court has granted, a protective order that addresses issues regarding review, disclosure, or production of discoverable information, including electronically stored information. To date, there are no issues as to preservation or retrieval of discoverable information.

On March 14, 2022, the Parties exchanged discovery requests, including the First Set of Requests for Production of Documents and Things and the First Set of Interrogatories. The Parties have agreed that the deadline for the responses to the first set of discovery requests is May 13, 2022.

**II. PROPOSED PREHEARING SCHEDULES**

**Complaint Counsel:** Complaint Counsel proposes the following prehearing schedule:

<b>Event</b>	<b>Deadline</b>
Responses to First Set of Requests for Production of Documents and First Set of Interrogatories	<b>May 13, 2022</b>
Last day to serve any written discovery requests	<b>October 14, 2022</b>
Discovery closes (pending motions to compel)	<b>November 16, 2022</b>
Motions for Summary Decision Due	<b>December 16, 2022</b>
Response to Motion for Summary Decision Due	<b>January 30, 2023</b>
Prehearing Briefs, Related Prehearing Motions and written expert testimony due	<b>February 20, 2023</b>
Witness and Exhibit Lists, Stipulations and Motions in Limine due	<b>February 27, 2023</b>
Hearing (estimate two weeks)	<b>March 27, 2023</b>
Post-hearing briefs due (16 C.F.R. § 1025.46)	<b>50 days after hearing</b>
Replies to post-hearing briefs due (16 C.F.R. § 1025.46)	<b>15 days after briefs</b>

**Respondent:** Respondent proposes the following prehearing schedule:

<b>Event</b>	<b>Deadline</b>
Responses to First Set of Requests for Production of Documents and First Set of Interrogatories	<b>May 13, 2022</b>
Last day to serve any written discovery requests	<b>December 2, 2022</b>
Discovery closes (pending motions to compel)	<b>January 20, 2023</b>
Motions for Summary Decision Due	<b>February 3, 2023</b>
Response to Motion for Summary Decision Due	<b>March 17, 2023</b>
Prehearing Briefs, Related Prehearing Motions and written expert testimony due	<b>April 14, 2023</b>
Witness and Exhibit Lists, Stipulations and Motions in Limine due	<b>May 1, 2023</b>
Hearing (estimate two weeks)	<b>June 5, 2023</b>
Post-hearing briefs due (16 C.F.R. § 1025.46)	<b>50 days after hearing</b>
Replies to post-hearing briefs due (16 C.F.R. § 1025.46)	<b>15 days after briefs</b>

The Parties are prepared to discuss these proposed schedules during the prehearing conference scheduled for April 22, 2022.

**III. STATEMENT OF PREHEARING CONFERENCE MATTERS LISTED IN 16 C.F.R. § 1025.21(a)(1) through (14):**

The Parties submit the following responses to the matters set forth in 16 C.F.R. § 1025.21(a)(1) through (14):

**16 C.F.R. § 1025.21(a)(1): “Petitions for leave to intervene;”**

**Joint Statement:** To date, no petitions for leave to intervene have been filed in this action.

Neither party is aware of plans by any person or entity to submit a petition.

**16 C.F.R. § 1025.21(a)(2): “Motions, including motions for consolidation of proceedings and for certification of class actions;”**

**Joint Statement:** To date, no motions, including motions for consolidation or for certification for class actions have been filed in this action. Depending on the information exchanged during the course of discovery, the Parties each may file a motion for summary decision pursuant to 16 C.F.R. § 1025.25.

**16 C.F.R. § 1025.21(a)(3): “Identification, simplification and clarification of the issues;”**

**Complaint Counsel:** Complaint Counsel states the issues currently identified in this case are principally set forth in the Complaint (Doc. No. 1) and Answer (Doc. No. 2). Joint stipulations and motions to simplify and clarify issues in this matter are forthcoming.

**Respondent:** Respondent states that this issue is premature at this time as discovery will help to identify, simplify and clarify the issues for hearing. Respondent proposes that the pretrial briefs, and motions for summary disposition, if any, contain statements of uncontested and contested facts.

**16 C.F.R. § 1025.21(a)(4): “Necessity or desirability of amending the pleadings;”**

**Complaint Counsel:** Complaint Counsel does not foresee a need to amend the Complaint but reserves the right to do so.

**Respondent:** Respondent plans to amend the complaint to add a defense on constitutionality in light of a decision in *Consumer’s Research v. CPSC*, Case 6:21-cv-00256-JDK, dated March 18, 2022, after the Respondent filed its original answer.

**16 C.F.R. § 1025.21(a)(5): “Stipulations and admissions of fact and of the content and authenticity of documents;”**

**Joint Statement:** The Parties anticipate submitting joint stipulations on facts and the authenticity of documents in the timeframes ordered by the Presiding Officer.

**16 C.F.R. § 1025.21(a)(6): “Oppositions to notices of deposition;”**

**Complaint Counsel:** No deposition notices have been submitted to date. Complaint Counsel is amenable to proceeding without obtaining leave of this Court for noticing depositions for the first ten depositions requested by each party unless there is an objection. This course of action would be consistent with the procedure set forth in Rule 30(a) of the Federal Rules of Civil Procedure. Complaint Counsel is also amenable to producing, for depositions, appropriate staff involved in the preliminary determination that the Subject Products pose a substantial product hazard. This excludes Commissioners, Commissioners’ staff, and others not involved in the allegations set forth in the Complaint.

**Respondent:** Respondent is also amenable to proceeding without obtaining leave of this Court for noticing depositions and is just not yet in the position to agree to a limitation of ten of depositions given the number of potential issues that may be raised on the CPSC evaluation of the Podster.

**16 C.F.R. § 1025.21(a)(7): “Motions for protective orders to limit or modify discovery;”**

**Joint Statement:** The Parties have jointly submitted a motion for protective order that was granted by the Court.

The Parties expect to have a continuing dialogue about limitations going forward on depositions, interrogatories, requests for production and requests for admission consistent with the expeditious resolution of matters as described 16 C.F.R. § 1025.1.

**Complaint Counsel:** Complaint Counsel has proposed a few modifications to the discovery procedures to bring them more in line with the Federal Rules of Civil Procedure, but Respondent has not agreed to the following proposals:

- Adopting Federal Rule of Civil Procedure’s 33(a)(1)’s limitation of 25 interrogatories per party. In fact, Respondent has served 38 interrogatories to date.
- Modifying 16 C.F.R. § 1025.35(b)(1) to remove the requirement that the parties obtain the Presiding Officer’s approval before undertaking a deposition, unless the proposed deponent already has been deposed in this matter or the requesting party already has conducted more than ten depositions. The proposed modification is based on Rule 30(a) of the Federal Rules.

**Respondent:** Respondent does not agree to a limit to interrogatories in this matter as interrogatories will likely prove to be a more efficient and economical means of obtaining information on the government’s position in this matter than depositions. They will also help define the scope of the contested issues at the hearing.

**16 C.F.R. § 1025.21(a)(8): “Issuance of subpoenas to compel the appearance of witnesses and the production of documents;”**

**Joint Statement:** To date, there are no pending subpoenas to compel the appearance of witnesses and production of documents. Both parties expect to seek leave to obtain non-party subpoenas as discovery progresses.

**16 C.F.R. § 1025.21(a)(9): “Limitation of the number of witnesses, particularly to avoid duplicate expert witnesses;”**

**Joint Statement:** The Parties do not anticipate needing to limit the number of witnesses at this time and intend to avoid duplicative expert testimony. The Parties expect objections and/or motions for protective orders as appropriate and will address any potential duplication or excessive witness discovery.

**16 C.F.R. § 1025.21(a)(10): “Matters of which official notice should be taken and matters which may be resolved by reliance upon the laws administered by the Commission or upon the Commission’s substantive standards, regulations, and consumer product safety rules;”**

**Joint Statement:** The Parties request official notice be taken of the Consumer Product Safety Act, 15 U.S.C. § 2051 *et. seq.* and the regulations relating to the rules of practice for adjudicative proceedings, 16 C.F.R. Part 1025 and substantial product hazards under 16 C.F.R. Part 1115.

**16 C.F.R. § 1025.21(a)(11): “Disclosure of the names of witnesses and of documents or other physical exhibits which are intended to be introduced into;”**

**Joint Statement:** The Parties expect to submit the names of anticipated witnesses and exhibits in the timeframes ordered by the Presiding Officer. The Parties further anticipate

meeting and conferring to determine whether there are witnesses that will be called by both parties and whether exhibits can be designated as joint exhibits.

**16 C.F.R. § 1025.21(a)(12): “Consideration of offers of settlement;”**

**Joint Statement:** Complaint Counsel and Respondent’s counsel are not currently engaged in settlement discussions, and no settlement offer currently is under consideration.

**16 C.F.R. § 1025.21(a)(13): “Establishment of a schedule for the exchange of final witness lists, prepared testimony and documents, and for the date, time and place of the hearing, with due regard to the convenience of the parties;”**

**Joint Statement:** The Parties have submitted their proposed prehearing schedules herein. The Parties estimate two weeks for the hearing and request that the hearing take place in Washington, D.C, or at the headquarters of the U.S. Consumer Product Safety Commission in Bethesda, Maryland.

**16 C.F.R. § 1025.21(a)(14): “Such other matters as may aid in the efficient presentation or disposition of the proceedings.”**

**Joint Statement:** Per the Court’s April 11, 2022 Order (Dkt. 11), all filings and required service on the Parties, Secretary, and Presiding Officer may be effected via electronic email. The Federal Rules of Civil Procedure Rule 30(d)(1) will be applicable regarding deposition duration, in that a deposition shall be limited to one day of seven hours. All discovery requests and responses shall be served upon the parties only, and will not be filed with the Secretary or served on the Presiding Officer unless a dispute arises requiring that a request or response (or a portion thereof) be filed with the Secretary or served on the Presiding Officer. The Parties may request reasonable extensions of time within which to respond or complete discovery and may make

rolling production in response to Requests for Production of Documents and Things. The proposed prehearing schedule will aid in the efficient presentation or disposition of proceedings.

Dated: April 21, 2022

Dated: April 21, 2022

/s/ Brett Ruff

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 21, 2022, I served the foregoing Joint Initial Proposed Prehearing Schedules and Statement on Prehearing Conference Matters upon all parties and participants of record in these proceedings as follows:

*By email to the Secretary:*

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*By email to the Presiding Officer:*

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