

UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of	)	
	)	
	)	
LEACHCO, INC.	)	CPSC DOCKET NO. 22-1
	)	
	)	
Respondent.	)	
	)	

**MEMORANDUM IN SUPPORT OF COMPLAINT COUNSEL’S  
MOTION TO COMPEL DEPOSITIONS OR, IN THE ALTERNATIVE, MOTION FOR  
LEAVE TO TAKE DEPOSITIONS**

Pursuant to 16 C.F.R. §§ 1025.23, 1025.31(i), 1025.35(a), and 1025.36, Complaint Counsel respectfully submits this Memorandum in Support of its Motion to Compel Depositions or, in the Alternative, Motion for Leave to Take Depositions of certain employees of Respondent Leachco, Inc. (“Leachco”). The depositions Complaint Counsel seeks are essential to Complaint Counsel’s case and its preparation for the hearing in this matter. The depositions are particularly important given Leachco’s refusal to timely produce documents in this matter, which was the subject of this Court’s recent Order granting Complaint Counsel’s Motion to Compel. Dkt. No. 51. Notwithstanding that development, Leachco counsel persists in refusing to agree to depositions of essential witnesses. Although Complaint Counsel has attempted to work collaboratively with Leachco to schedule and take appropriate depositions in this matter since August, Leachco has thwarted those efforts. Complaint Counsel therefore is seeking the intervention of this Court.

## I. BACKGROUND

During the April 22, 2022 initial prehearing conference in this matter, the Presiding Officer and the parties agreed that each party may take up to ten depositions without leave of the Presiding Officer. *See* Ex. A at 16:13–17:22. Pursuant to that ruling, Complaint Counsel first noticed the depositions of Mabry Ballard, Tonya Barrett, Alex Leach, Clyde Leach, and Jamie Leach on August 4, 2022. Rather than proceed with the depositions as contemplated during the initial prehearing conference, Leachco filed “Objections” to the deposition notices. Dkt. No. 16. Complaint Counsel filed a response to those Objections, Dkt. No. 26, but the Court mooted those papers following the September 7, 2022 discovery conference, *see* Dkt No. 32 at 5.

In the weeks following the discovery conference, Complaint Counsel attempted to work with Leachco to obtain documents responsive to Complaint Counsel’s written discovery requests. Those attempts were unsuccessful, and Complaint Counsel ultimately had to file a Motion to Compel. *See* Dkt. No. 43. The Presiding Officer granted that Motion on December 16, 2022 and ordered Leachco to produce responsive documents. Dkt. No. 51.

While the Motion to Compel was pending, Complaint Counsel contacted counsel for Leachco on December 6, 2022 and provided proposed dates in January and February for the depositions of Mabry Ballard, Tonya Barrett, Alex Leach, Clyde Leach, and Jamie Leach, as well as Daniel Marshall.<sup>1</sup> Ex. B at 7–8. Complaint Counsel suggested that all but the depositions of Jamie and Clyde Leach be conducted virtually via videoconference and that the depositions be spaced out over the course of a month to help minimize any burden to Leachco.<sup>2</sup>

---

<sup>1</sup> Complaint Counsel did not notice Mr. Marshall’s deposition in August because he was not identified in any of Leachco’s Interrogatory responses. However, Complaint Counsel has since learned that Mr. Marshall answered emails from consumers about the safety of the Podsters.

<sup>2</sup> The parties also have agreed to a seven-hour limit for each deposition, which should reduce the burden further. *See* Dkt. No. 13 at 8.

Leachco's counsel did not respond until December 12. In its response, Leachco contended that scheduling the depositions was premature because "it makes sense to wait for Judge Young's ruling on our Motion for Protective Order before conducting these depositions." Ex. B at 7. Leachco also argued that the depositions were "completely unnecessary and overly burdensome" and suggested the parties "discuss a more reasonable arrangement." *Id.*

Counsel for both parties participated in a telephone conference on December 13. During that conference, Complaint Counsel explained the relevance of the proposed depositions and how each deponent may have unique insight and knowledge as it relates to the subject matter of this proceeding. Leachco's counsel contended that the knowledge of Leachco employees is irrelevant to Complaint Counsel's case and proposed producing only Jamie Leach for a deposition.<sup>3</sup> However, Leachco's counsel did not confirm that they would make Ms. Leach available for an in-person deposition or provide a date on which they would make her available.

Complaint Counsel followed up the next day with an email summarizing the call and reiterating reasons why each deponent's testimony would be relevant to the case and noting that Leachco's broad allegations of harm do not support shielding a party from depositions. Ex. B at 3–5 (citing *Adams v. Sharfstein*, No. 11-cv-3755-CCB, 2012 WL 2992172, at \*2 (D. Md. July 19, 2012)). Leachco responded and reiterated its belief that the deposition testimony would be "irrelevant to your case" and made arguments similar to the relevance contentions it raised in relation to Complaint Counsel's Motion to Compel and in support of its own Motion for a Protective Order. Ex. B at 2–3.

---

<sup>3</sup> Specifically, Leachco proposed producing Ms. Leach in her individual capacity and as a Rule 30(b)(6) witness. Rule 30(b)(6) is from the Federal Rules of Civil Procedure, and no analogous provision exists under CPSC's Rules.

The next day, the Presiding Officer granted the Motion to Compel and denied Leachco's Motion for a Protective Order. Dkt. No. 51. Because Leachco initially had objected to scheduling depositions until after the Presiding Officer ruled on its Motion for a Protective Order, Complaint Counsel requested that Leachco now withdraw its objections to the depositions and agree to a deposition schedule. Ex. B at 1. But Leachco still refused to agree to the deposition schedule, contending in a conclusory manner that the depositions would be "overly burdensome and harassing." Ex. B at 1. Leachco also did not commit to producing the documents required by the Court's December 16 Order by the December 27, 2022 production deadline. *Id.*<sup>4</sup>

## II. LEGAL STANDARDS

The right to discovery in civil litigation matters "includes the right to take the opposing party's deposition, so long as that deposition is properly noticed." *Pulliam v. Lozano*, No. 1:07-cv-964-MJS (PC), 2011 WL 335866, at \*3 (E.D. Cal. Jan. 31, 2011) (granting motion to compel deposition of a party); *accord Bertrand v. Yellow Trans., Inc.*, No. 3:08-cv-1123, 2010 WL 2196584, at \*2 (M.D. Tenn. May 28, 2010) ("Clearly Defendants are entitled to take the deposition of Plaintiff, an opposing party, and to use that deposition for any purpose at trial."). This principle is both practical and efficient, as "[t]he use of oral depositions is often crucial to an attorney's assessment of the opposing party's case and to preparation for a trial." *Sadowski v. Tech. Career Insts., Inc.*, No. 93-Civ-455 (PKL), 1994 WL 240546, at \*1 (S.D.N.Y. May 27, 1994) (denying motion for a protective order to shield a party from an oral deposition). "[D]epositions may be a key part of a party's preparation for trial." *Adams v. Sharfstein*, No. 11-

---

<sup>4</sup> Although the December 16 Order does not expressly state the date by which Leachco must produce the applicable documents, the Order granted Complaint Counsel's Motion to Compel, which requested that the documents be produced no later than ten days after an order granting the Motion. Dkt. No. 43 at 2. Ten days after the Court's December 16 Order is December 27, 2022.

cv-3755-CCB, 2012 WL 2992172, at \*2 (D. Md. July 19, 2012) (denying motion for protective order to bar deposition of a party to the action). Depositions permit parties “to discover facts about the case, meet the adverse witnesses and assess their character and credibility, freeze the witnesses’ testimony, establish a foundation for subsequent impeachment, neutralize potentially harmful witnesses, and perpetuate testimony.” *Id.* (citation omitted).

“Courts should not bar a relevant deposition absent extraordinary circumstances as such a prohibition would likely be in error.” *Kelley v. Microsoft Corp.*, No. C07-0475MJP, 2008 WL 5000278, at \*1 (W.D. Wash. Nov. 21, 2008) (denying motion for a protective order to shield Microsoft’s CEO from a deposition) (citation and internal quotation marks omitted). An attempt—such as Leachco’s—“to deny a deposition altogether is extraordinary and is usually denied.” *NuCal Foods, Inc. v. Quality Egg LLC*, No. 10-cv-3105-KJM-CKD, 2012 WL 6629573, at \*2 (N.D. Cal. Dec. 19, 2012) (denying motion for protective order against deposition). Moreover, “[b]road allegations of harm unsubstantiated by specific examples or articulated reasoning, do not support” an order to shield a party from depositions. *Adams*, 2012 WL 2992172 at \*2 (citation omitted).

There is no rule under the Rules of Practice of Adjudicative Proceedings that expressly addresses the situation present here: a party to the lawsuit refusing to agree to depositions and deposition dates of the party’s employees. But Section 1025.36, which pertains to motions to compel, provides that “[i]f a party fails to respond to discovery, in whole or in part, the party seeking discovery may move for an order . . . otherwise compelling discovery.” 16 C.F.R. § 10253.36. Under that Rule, “an evasive or incomplete response is to be treated as a failure to respond.” *Id.* Here, Leachco has been evasive with respect to Complaint Counsel’s efforts to

schedule and proceed with depositions. Complaint Counsel therefore seeks an order compelling that discovery.<sup>5</sup>

In the alternative, Complaint Counsel seeks leave to depose the six Leachco employees under Section 1025.35(a). That Rule provides that, upon leave of the Presiding Officer, “any party may take the deposition of any other party, including the agents, employees, consultants, or prospective witnesses of that party at a place convenient to that deponent.” 16 C.F.R.

§ 1025.35(a). Complaint Counsel believes it typically would be unnecessary to seek such leave in light of the decision by the Presiding Officer and the parties at the initial prehearing conference that each party may take up to ten depositions without requesting leave of the Presiding Officer. *See* Ex. A at 16:13–17:22. But Complaint Counsel respects the Presiding Officer’s instruction that the parties should refrain from preemptively noticing depositions without first coordinating with opposing counsel, *see* Ex. C at 37:22–38:2, and so has filed this Motion in an abundance of caution in light of Leachco’s failure to agree to depositions, much less deposition dates.<sup>6</sup>

---

<sup>5</sup> Complaint Counsel is mindful of the Presiding Officer’s instruction to “not take actions such as preemptively noticing depositions without coordinating them with counsel.” *See* Transcript of Sept. 7, 2022 Discovery Conference, Ex. C at 37:22–38:2. Complaint Counsel therefore has refrained from noticing the depositions of these six individuals unilaterally, despite Leachco’s refusal to agree to the depositions and their timing.

<sup>6</sup> Complaint Counsel also is bringing this Motion out of an abundance of caution because Leachco argued in an August filing that Leachco’s mere act of informally objecting to a request for a deposition undermines the Court’s ruling at the prehearing conference and requires Complaint Counsel to seek leave from the Court. *See* Dkt. No. 16 at 2 ¶ 5. Complaint Counsel disagrees with that interpretation of the Presiding Officer’s ruling but has filed this Motion to ensure that it is able to move forward with the requested depositions in a timely fashion.

### **III. ARGUMENT**

#### **A. The Proposed Depositions Are Appropriate and Squarely Within the Scope of Discovery**

Complaint Counsel seeks to notice the depositions of six Leachco employees: (1) Mabry Ballard, Leachco's Customer Service Supervisor and Executive Assistant to the Vice President; (2) Tonya Barrett, Leachco's Compliance Coordinator and Office Manager; (3) Daniel Marshall, Leachco's Director of Ecommerce; (4) Alex Leach, Leachco's Chief of Operations and Chief Marketing Strategist; (5) Clyde Leach, Leachco's President and CEO; and (6) Jamie Leach, Leachco's Vice President and Chief of Product Development.

As Complaint Counsel has explained to Leachco orally and in writing, each of these individuals has a different role at Leachco, a unique perspective on the inner workings of Leachco and its products, and each is expected to provide testimony "relevant to the subject matter involved in the proceedings." 16 C.F.R. § 1025.31(c)(1) (articulating the scope of discovery in CPSC adjudicative proceedings). That is, they are anticipated to provide testimony about Leachco's Podster infant lounger products, their design, their intended and foreseeable uses, their potential defects, and other information relevant to the question whether the Podsters pose a substantial product hazard. Despite Leachco's reluctance to produce fulsome discovery responses to date, based on the minimal information available to Complaint Counsel, the testimony of these six employees will provide crucial evidence regarding the substantial product hazard matter at issue here.

For example, Leachco admitted in its Interrogatory responses that Mabry Ballard was one of the individuals responsible for developing and implementing Leachco's policies for responding to customer inquiries, including inquiries related to the Podsters:

Leachco states that its customer service department responds to consumer claims and inquiries by e-mail and/or by phone, gathers information as necessary and documents all complaints, inquiries, and injuries, including all information available. At all relevant times, Jamie Leach, Alex Leach, and Mabry Ballard were responsible for the development and implementation of these policies and procedures.<sup>7</sup>

By virtue of her role as Leachco’s Customer Service Supervisor and Leachco’s admission that she is responsible for developing and implementing Leachco’s customer service policy and procedures, Ms. Ballard is expected to testify to Leachco’s interactions and communications with consumers with respect to the Podster, and she is expected to be able to discuss its foreseeable uses. Such testimony goes to the core of this case. As the Presiding Officer has held: “Knowledge, or information obtained by the manufacturer, of foreseeable misuse is relevant to the claim [brought by Complaint Counsel].” Dkt. No. 51 at 11.

Similarly, Alex Leach—who also admittedly was responsible for the development and implementation of customer service policies—is in a position to provide testimony about Leachco’s interactions with consumers regarding the Podsters. And, in his role as Chief Marketing Strategist, Mr. Leach is expected to testify about the marketing strategy behind the Podster and any interactions Mr. Leach and Leachco may have had with retailers regarding how best to market and use the product, including whether the product could be used for sleep.

Tonya Barrett, Leachco’s Compliance Coordinator, assisted in “the creation and design of the warnings for the Podster,” according to Leachco’s discovery responses.<sup>8</sup> Ms. Barrett therefore is in a position to testify about those warnings, the reasons for them, and the foreseeable uses they were designed to guard against. In addition, Ms. Barrett is poised to provide testimony about any compliance due diligence, testing, or evaluations Leachco

---

<sup>7</sup> Ex. D at Response to Interrogatory No. 15 on p. 8.

<sup>8</sup> *Id.* at Response to Interrogatory No. 8 on p. 4.



conducted with respect to the Podster, whether during its development or after the two instances in which infants died while using the product.

Complaint Counsel also is entitled to depose Clyde Leach—the President and CEO of what Leachco itself characterizes as a “small family company”<sup>9</sup>—about his involvement and knowledge with respect to the Podsters. Complaint Counsel may also inquire into Leachco’s contention that Mr. Leach has had “*nearly* no involvement with the Podster”<sup>10</sup> even after learning of the death of an infant in the product in 2015 and battling a wrongful death lawsuit arising from that death. Did Mr. Leach, the head of the company, request an investigation into the safety of the product? Was any evaluation of the product conducted at his direction? These sorts of questions go directly to the subject matter of the litigation, and Complaint Counsel is entitled to ask them. “[H]ighly-placed executives are not immune from discovery, and the fact that an executive has a busy schedule cannot shield that witness from being deposed.” *Six West Retail Acquisition v. Sony Theatre Mgt. Corp.*, 203 F.R.D. 98, 102 (S.D.N.Y. 2001) (granting motion to compel depositions of high-ranking executives) (citation omitted). “Even where, as in this case, a high-ranking corporate officer denies personal knowledge of the issues at hand, this claim is subject to testing by the examining party.” *Id.* (citation omitted); *accord Carnegie Mellon University v. Marvell Tech. Grp., Ltd.*, 09-cv-290, 2010 WL 4338388, at \*1 (W.D. Pa. Oct. 27, 2010) (“Moreover, where, as in this case, high ranking corporate officers deny personal knowledge of the issues at hand, these claims are subject to testing by the requesting party.” (citation omitted)). It also does not appear accurate to suggest that Mr. Leach had “nearly no

---

<sup>9</sup> Dkt. No. 16 at 4.

<sup>10</sup> *Id.* (emphasis added). Complaint Counsel notes that “nearly no involvement” is conspicuously different than “no involvement.” Complaint Counsel is entitled to ask Mr. Leach about his involvement with the Podsters.

involvement with the Podster.” Mr. Leach apparently was involved in commissioning initial safety tests, such as lead tests, for the Podsters. *See, e.g.,* Ex. E.<sup>11</sup> Complaint Counsel is entitled to ask Mr. Leach about any safety tests he commissioned with respect to the Podsters, their results, and any other work Mr. Leach performed with respect to the Podsters.

Daniel Marshall is the only one of the six proposed deponents whose deposition was not originally noticed in August. That is because Mr. Marshall is not mentioned in Leachco’s Interrogatory responses at all, let alone identified as someone with knowledge related to the Podsters. However, Complaint Counsel subsequently has learned that Mr. Marshall corresponded with consumers who had questions about the safety of the Podsters. Complaint Counsel therefore anticipates that Mr. Marshall will be able to testify to communications he has had with consumers about the safety of the Podsters and foreseeable ways in which the consumers may be using the Podsters. In addition, as Leachco’s Director of Ecommerce, Mr. Marshall should be able to speak to the statements on Leachco’s website about the safety of the Podsters. For example, Leachco claims on its website that the Podster “provides a safe, secure spot to place an infant . . . .” *See* Ex. F at 3 (available at <http://leachco.com-pages-important-info>). As the Director of Ecommerce, Mr. Marshall should be able to answer questions about that statement and any underlying analyses Leachco has to support it.

There can be no debate that Jamie Leach, the designer of the Podsters, should be deposed. In fact, Ms. Leach is the only person that Leachco has offered to produce for a deposition, though Leachco has not yet agreed to a date, or even a range of dates, for her deposition, nor has Leachco agreed to produce her for an in-person deposition as requested by Complaint Counsel.

---

<sup>11</sup> Exhibit E has been provided to the Court in camera because it was marked “Confidential” by Leachco.

The need for Ms. Leach’s deposition, and a timely deposition, is readily apparent. For example, in its responses to Complaint Counsel’s Interrogatories, Leachco admits “that the Podster was designed in 2008 by founder and Leachco Vice President, Jamie Leach, with consultation only in connection with the Patent process.”<sup>12</sup> Leachco also concedes that Jamie Leach was involved in the creation and design of the warnings for the Podster,<sup>13</sup> as well as “the marketing and promotion for the Podster.”<sup>14</sup> Ms. Leach therefore is expected to be able to testify at her deposition about the development of the Podsters, the creation of their warnings, their marketing and promotion, and how Leachco addressed customers’ inquiries and concerns about the Podsters. All these topics fall squarely within the subject matter of this litigation and are appropriate topics for deposition.

In sum, Complaint Counsel seeks to depose six Leachco employees about topics directly relevant to the subject matter of this lawsuit: whether the Podsters pose a substantial product hazard. Six depositions are a limited number of depositions given the 180,000 Podsters that have been sold and the substantial risks the Podsters are alleged to pose. *See Comer v. Wal-Mart Stores, Inc.*, 454 F.3d 544, 546 (6th Cir. 2006) (referring to ten depositions per party as “small numbers of depositions”). Six depositions also are fewer depositions than the up to ten depositions the parties and the Presiding Officer agreed could be taken without seeking leave of the Court.<sup>15</sup> These depositions will be taken to help advance this administrative lawsuit and protect American consumers against products that already have contributed to the deaths of at

---

<sup>12</sup> Ex. D at Response to Interrogatory No. 7 on p. 4.

<sup>13</sup> *Id.* at Response to Interrogatory No. 8 on p. 4.

<sup>14</sup> *Id.* at Response to Interrogatory No. 9 on p. 5.

<sup>15</sup> *See* Ex. A at 16:13–17:22. This agreement about the parties being able to take up to ten depositions without the leave of the Court is consistent with Rule 30(a) of the Federal Rules of Civil Procedure. *See* Ex. A at 13:13–14:3.

least two infants. They also will assist Complaint Counsel in preparing for the hearing in this matter and “freeze the witnesses’ testimony, establish a foundation for subsequent impeachment, . . . and perpetuate testimony.” *Adams*, 2012 WL 2992172 at \*2 (citation omitted). Moreover, to reduce the burden on the deponents, Complaint Counsel has offered to take all the depositions virtually, with the exception of the depositions of Jamie and Clyde Leach, whose depositions will be taken in person in or close to Leachco’s headquarters in Ada, Oklahoma. Complaint Counsel also proposed a schedule that would space out the depositions between January 10 and February 8, 2023 to minimize any burdens on Leachco’s business operations. Yet Leachco refused that offer and agreed to produce only Jamie Leach for a deposition, though Leachco did not even provide a timeframe for that deposition.

#### **B. Leachco’s Vague Invocations of Burden and Harassment Are Unavailing**

Not only is there good cause to proceed with the noticed depositions, Leachco’s objections to the deposition notices do not supply the sort of “extraordinary” circumstances required to bar the taking of a deposition. *Kelley*, 2008 WL 5000278 at \*1. Nor do Leachco’s “[b]road allegations of harm unsubstantiated by specific examples or articulated reasoning” support shielding Leachco employees from depositions. *Adams*, 2012 WL 2992172 at \*2 (citation omitted); *accord Naham v. Haljean*, No. 08-cv-519, 2010 WL 3025574, at \*2 (N.D. Ill. July 30, 2010) (denying motion seeking to bar deposition and explaining “general and vague assertions are insufficient to block the discovery of potentially relevant information”).

Apparently realizing that the December 16 Order undermines Leachco’s objections to the depositions on relevance grounds, Leachco most recently contended simply that Complaint Counsel should take Ms. Leach’s deposition and “determine what additional information you need.” Ex. B at 1. According to Leachco, taking additional depositions would be “overly

burdensome and harassing, especially when it comes to a small business.” *Id.* Not only are these the sort of vague arguments that are insufficient to shield a witness from a deposition, they are unpersuasive for several other reasons.

As an initial matter, Leachco has failed to articulate why these deposition notices pose an undue, oppressive burden, rather than simply the sort of burden that all depositions impose. “Depositions usually involve some burden to all participants.” *Clayton v. Velociti, Inc.*, No. 08-2298-CM/GLR, 2009 WL 1033738, at \*3 (D. Kan. Apr. 17, 2009). Here, that burden will be lessened by the virtual nature of most of the depositions, the spacing of the depositions, and the fact that the parties have agreed to limit each deposition to seven hours. Leachco has not pointed to any facts or law demonstrating that the burden is so extraordinary as to warrant refraining from taking the depositions. As explained above, Complaint Counsel seeks to depose this focused and limited number of Leachco employees in an effort to continue building evidence about the substantial product hazard posed by the Podsters and intends to present that evidence to the Presiding Officer during the August 2023 hearing in this matter. This is proper discovery, and the depositions should be permitted to proceed.

If anything, Complaint Counsel would be the party prejudiced by having to take the depositions at this time: Complaint Counsel still has not received full written discovery from Leachco, and, as the Presiding Officer correctly noted, “it’s difficult to take depositions without having the documentary evidence in advance.” Ex. C at 19:5–7. Nonetheless, Complaint Counsel is willing to move forward with the depositions in January and February so that this case may remain on schedule for a hearing in August 2023. This is a public safety proceeding in which the Complaint alleges the existence of a substantial product hazard that places at risk infants, a

uniquely vulnerable population, and Complaint Counsel is committed to resolving it in a timely fashion.

To that end, the depositions also should be permitted to proceed in a timely fashion so that fact discovery can be finished by the March 20, 2023 fact-discovery deadline. *See* Dkt. No. 35. Leachco already has delayed producing documents in this matter for approximately seven months and has required Complaint Counsel to seek intervention from the Court in order to obtain those documents. Leachco also has failed to provide Complaint Counsel with a specific date by which it will produce documents pursuant to the Court’s December 16 Order. It would not be prudent to further delay the case by taking a single deposition (on a still undetermined date), “determin[ing] what additional information” is needed, and then inevitably having to seek Court intervention again to permit additional depositions. Nor would such a course of action be appropriate: each of the proposed deponents has a different role at Leachco, each will have unique perspective and information regarding the Podsters, and each could be called as a witness at trial. Nor is the procedure outlined by Leachco contemplated in the Rules of Practice: Complaint Counsel should be permitted to take the depositions of all six employees so that it can continue to move forward with discovery expeditiously. The time to take depositions is now; Complaint Counsel is not required to take a single deposition and then petition to take more. Leachco should not be permitted to stymie Complaint Counsel’s efforts to conduct discovery or prepare for trial by offering only a single deponent.

///

///

///

///

#### IV. CONCLUSION

For the foregoing reasons, Complaint Counsel respectfully requests that the Presiding Officer order Leachco to produce for deposition Mabry Ballard, Tonya Barrett, Daniel Marshall, Alex Leach, Jamie Leach, and Clyde Leach on the dates set forth in the accompanying Motion and Proposed Order. Because fact discovery ends in March 2023, Complaint Counsel requests expedited consideration of this Motion. *See* 16 C.F.R. §§ 1025.23(c) & 1025.31(i).

Dated this 21st day of December, 2022

Respectfully submitted,

*/s/ Brett Ruff*

---

Gregory M. Reyes, Supervisory Attorney  
Brett Ruff, Trial Attorney  
Michael J. Rogal, Trial Attorney

Division of Enforcement and Litigation  
Office of Compliance and Field Operations  
U.S. Consumer Product Safety Commission  
Bethesda, MD 20814  
Tel: (301) 504-7220

Complaint Counsel for  
U.S. Consumer Product Safety Commission

**CERTIFICATE OF SERVICE**

I hereby certify that on December 21, 2022, I served Complaint Counsel’s Memorandum in Support of Its Motion to Compel Depositions or, in the Alternative, Motion for Leave to Take Depositions on all parties and participants of record in these proceedings as follows:

*By email to the Secretary:*

Alberta E. Mills  
Secretary  
U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814  
Email: AMills@cpsc.gov

*By email to the Presiding Officer:*

Judge Michael G. Young  
Presiding Officer and Administrative Law Judge  
Federal Mine Safety and Health Review Commission  
1331 Pennsylvania Ave., N.W., Ste. 520N  
Washington, DC 20004-1710  
Email: myoung@fmshrc.gov  
cjannace@fmshrc.gov

*By email to Counsel for Respondent:*

Oliver J. Dunford  
Pacific Legal Foundation  
4440 PGA Blvd., Suite 307  
Palm Beach Gardens, FL 33410  
Email: ODunford@pacificlegal.org

John F. Kerkhoff  
Frank D. Garrison  
Pacific Legal Foundation  
3100 Clarendon Boulevard, Suite 610  
Arlington, VA 22201  
Email: JKerkhoff@pacificlegal.org  
FGarrison@pacificlegal.org

*/s/ Brett Ruff*

---

Brett Ruff  
Complaint Counsel for  
U.S. Consumer Product Safety Commission



# **EXHIBIT A**

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION  
 OFFICE OF THE CHIEF ADMINISTRATIVE JUDGE  
 1331 PENNSYLVANIA AVE., N.W., SUITE 520N  
 WASHINGTON, D.C. 20004

----- x  
 In the Matter of: :  
 :  
 LEACHCO, INC., : CPSC Docket No. 22-1  
 :  
 Respondent :  
 :  
 ----- x

Via Remote Link  
 Friday, April 22, 2022

PREHEARING TELEPHONE CONFERENCE

The above-entitled matter came on for hearing,  
 pursuant to notice, at 1:00 p.m.

BEFORE:  
 THE HONORABLE MICHAEL G. YOUNG,  
 Administrative Law Judge

Diversified Reporting Services, Inc.  
 (202) 467-9200

## APPEARANCES:

## On Behalf of the Complainant:

BRETT RUFF, ESQ.  
LEAH IPPOLITO, ESQ.  
CAITLIN O'CONNELL, ESQ.  
ROSALEE THOMAS, ESQ.  
NINA E. DiPADOVA  
U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, Maryland 20814

## On Behalf of the Respondent:

BETTINA J. STRAUSS, ESQ.  
JAMES EMANUEL, ESQ.  
Bryan Cave Leighton Paisner LLP  
One Metropolitan Square, Suite 3600  
211 North Broadway  
St. Louis, Missouri 63102

CHERYL A. FALVEY, ESQ.  
Crowell & Moring LLP  
1001 Pennsylvania Avenue, N.W.  
Washington, D. C. 20004

## Also Present:

CHRISTOPHER JANNACE  
KIRSTEN BROWN  
Federal Mine Safety and Review Commission  
Office of the Chief Administrative Law Judge

1 the constitutional defense.

2 I'm not sure it will ever become relevant here,  
3 but because the case relates to the Commissioners' voting  
4 authorities and they have to vote on this complaint and they  
5 will have to vote on an appeal, I don't want to make a  
6 mistake by not preserving that constitutional argument.

7 So we would just amend the complaint to add  
8 that -- I mean, amend our answer to add that. No discovery  
9 has occurred. So I don't see there's any prejudice.

10 JUDGE YOUNG: Mr. Ruff, would you have any problem  
11 with us proceeding with the understanding that Respondents  
12 may file a motion for leave to amend the complaint to add  
13 this defense?

14 You'll have an opportunity to respond to that  
15 before I decide whether to grant it or not.

16 MR. RUFF: Your Honor, we'd have no objections to  
17 that course of action.

18 JUDGE YOUNG: All right. We'll proceed that way  
19 then.

20 The page turned around backwards.

21 All right. Now we get into the fun stuff,  
22 discovery. It is ever that. Notices of deposition. Have

1     you taken steps since this statement to try and iron out any  
2     of these differences?

3             Are we going to debate that here now?

4             MR. RUFF: I think -- oh, go on.

5             MS. STRAUSS: My apologies. Feel free.

6             MR. RUFF: I don't think we're quite as far apart  
7     as it might seem from this statement. We haven't talked  
8     since this statement was executed, but really, this goes to  
9     a peculiarity with the adjudicative rules for the CPSC, and  
10    specifically, 16 CFR 1025.35(b)(1).

11            And that provision requires the parties to seek  
12    your leave, Your Honor, before taking any depositions.

13            And with these other cases that CPSC has had going  
14    on, we can find that can be fairly onerous for the parties  
15    and for the presiding officer to each time we want to have a  
16    deposition to come to you.

17            So our suggestion would be that for the first ten  
18    depositions we not have to come to you, and if we have more  
19    than ten depositions, if a party has more than ten  
20    depositions, the party would then have to come to you for  
21    leave for each additional deposition.

22            And that is consistent with the federal rules for

1 depositions. Typically, the first ten one does not have to  
2 seek leave to the court. If one needs more, one seeks leave  
3 of the court.

4 And I won't put words into Ms. Strauss' mouth, but  
5 I think that Ms. Strauss also understands it would probably  
6 be preferable to not have the court have to weigh in each  
7 time, but I'm not sure if they're yet ready to agree to a  
8 particular number of depositions that essentially could be  
9 taken before we'd have to seek leave of the court.

10 JUDGE YOUNG: Ms. Strauss, the federal rule says  
11 ten. Are you agreeable with that or do you want to propose  
12 a different number and discuss that?

13 MS. STRAUSS: Actually, Your Honor, that was an  
14 interesting way I just heard Mr. Ruff describe. As I  
15 understand it there are two issues here.

16 One of the issues there is complete agreement. We  
17 don't need to bother the court with a request for  
18 deposition, and there is no issue in terms of how many. We  
19 just don't think it's necessary to do that unless the court  
20 would like us to do it. It just seems like an unnecessary  
21 step, and we all do agree on efficiency.

22 The area of dispute is whether we are willing to

1     adopt the federal rules ten-deposition limit, which is not  
2     applicable in this case and is not a requirement for the  
3     parties.

4             And while we have absolutely no desire to take  
5     more than ten depositions or even ten depositions, this case  
6     has just gotten started. We just got our first few  
7     documents. We don't know how many people have been involved  
8     in then evaluation of this product. We don't know the  
9     CPSC's evidence.

10            In fact, there's some reference to other products,  
11     and we need to hopefully through agreements and otherwise  
12     determine what the limitations are to this case.

13            Once we do that, we'll be in a good position to  
14     determine how many depositions there are, Judge, but we  
15     don't want to agree to a limit that isn't applicable without  
16     any more information than we have right now.

17            JUDGE YOUNG: When you say it's not applicable,  
18     the number under the CPSC rules is one, isn't it?

19            MS. STRAUSS: That's not --

20            JUDGE YOUNG: It's not ten.

21            MS. STRAUSS: That hasn't been the parties'  
22     understanding. Mr. Ruff can address it, but as we

1 discussed it, the federal rule limitation didn't apply, and  
2 there was no limit.

3 JUDGE YOUNG: Under your rules, Mr. Ruff, do you  
4 have to technically seek my approval unless you agree  
5 otherwise to take any?

6 MR. RUFF: Correct, yes.

7 JUDGE YOUNG: All right.

8 MR. RUFF: In order to take any depositions, we  
9 need to seek your approval, Your Honor. There isn't any  
10 hard stop at the number of depositions that one can take,  
11 but in order to take anyone, one needs to reach out to you,  
12 Your Honor.

13 So our proposal is not to have a hard stop at ten  
14 in this matter. Our proposal is to be able to go and depose  
15 up to ten people without the need to involve Your Honor, and  
16 then if we do want to depose more than ten people, then we  
17 would seek leave from Your Honor as outlined in I'll say  
18 Subsection 35(b)(1), as would typically be the case.

19 JUDGE YOUNG: That seems like a reasonable  
20 approach, doesn't it, Ms. Strauss?

21 I mean, if you guys can agree on a further  
22 boundary, I would certainly approve that. If there's a



1       disagreement, I would be willing to listen to you, but  
2       having at least a pause or a horizon where we have to  
3       consider where things are going, that seems like a  
4       reasonable approach to me.

5                   What do you think?

6                   MS. STRAUSS: Your Honor, it's not an unreasonable  
7       approach, and if that's the approach you want to take, we  
8       certainly won't fight about it. We're going to save our big  
9       fight for the interrogatories.

10                  So we will concede on the depositions and trust  
11       Your Honor to let us take an extra one if it turns out it's  
12       necessary.

13                  JUDGE YOUNG: Thank you for saving me the need for  
14       an awkward transition by providing a graceful one. I will  
15       proceed, as we said, on the depositions.

16                  After you get your feet under you with the  
17       depositions and have an opportunity to discuss with one  
18       another, I would encourage you to come to some kind of an  
19       agreement on any further number of depositions that you  
20       think would be appropriate for me to approve without further  
21       leave of, you know, the presiding officer here. So let's  
22       proceed that way on that.

C E R T I F I C A T E

THE UNITED STATES OF AMERICA )  
 )  
IN THE DISTRICT OF COLUMBIA )

I, Kevin E. Carr, Notary Public, before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing pages was duly sworn by me; that the testimony of said witness was reported by me by digital record, and thereafter reduced to typewritten form; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of this action.



---

Kevin E. Carr  
Notary Public in and for the  
District of Columbia

My commission expires:

October 14, 2023

# **EXHIBIT B**

## Ruff, Brett

---

**From:** Oliver J. Dunford <ODunford@pacificlegal.org>  
**Sent:** Monday, December 19, 2022 4:21 PM  
**To:** Rogal, Michael; John F. Kerkhoff; Frank Garrison  
**Cc:** Reyes, Gregory; Ruff, Brett  
**Subject:** RE: Leachco, Inc., CPSC Docket. No. 22-1; Follow-up on the Court's December 16, 2022 Order

We still object to your proposed deposition schedule. Again, we think it makes the most sense for all involved to (1) depose Jamie Leach in her individual capacity and as the company's representative and then (2) determine what additional information you need. Otherwise, irrespective of each individual's perspective on certain matters, the topics involved and the relevant information obtained will be cumulative—and, therefore, overly burdensome and harassing, especially when it comes to a small business.

Separately, we are already working on supplementing our discovery responses and production, and we will produce supplements as fast as possible.

**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:** Rogal, Michael <MRogal@cpsc.gov>  
**Sent:** Monday, December 19, 2022 9:49 AM  
**To:** Oliver J. Dunford <ODunford@pacificlegal.org>; John F. Kerkhoff <JKerkhoff@pacificlegal.org>; Frank Garrison <FGarrison@pacificlegal.org>  
**Cc:** Reyes, Gregory <GReyes@cpsc.gov>; Ruff, Brett <BRuff@cpsc.gov>  
**Subject:** Leachco, Inc., CPSC Docket. No. 22-1; Follow-up on the Court's December 16, 2022 Order

Counsel—following up on the Presiding Officer's December 16, 2022 Order, please provide a full and complete production in response to our RFP No. 27 and responses to RFA Nos. 3-5 on or before December 27, 2022 (10 days after the Order).

In addition, in light of the December 16, 2022 Order, we request that you withdraw your objections to our proposed depositions. Please let us know by 5 p.m. ET today, December 19, 2022. If we cannot agree by that time to the deposition schedule we have proposed, please be advised we will take appropriate action, which may include filing another motion before the Presiding Officer.

If you have any questions or would like to discuss, please contact us. Thanks. Mike Rogal

### **Michael J. Rogal**

**Trial Attorney**

[U.S. Consumer Product Safety Commission](#)

Division of Enforcement and Litigation | Office of Compliance and Field Operations  
4330 East West Highway | Bethesda, MD 20814

**Office:** (301) 504-7528 | **Cell:** (240) 743-7330 | [mrogal@cpsc.gov](mailto:mrogal@cpsc.gov) | [www.cpsc.gov](http://www.cpsc.gov)



---

**From:** Oliver J. Dunford <[ODunford@pacifical.org](mailto:ODunford@pacifical.org)>

**Sent:** Thursday, December 15, 2022 4:58 PM

**To:** Ruff, Brett <[BRuff@cpsc.gov](mailto:BRuff@cpsc.gov)>

**Cc:** John F. Kerkhoff <[JKerkhoff@pacifical.org](mailto:JKerkhoff@pacifical.org)>; Frank Garrison <[FGarrison@pacifical.org](mailto:FGarrison@pacifical.org)>; Reyes, Gregory <[GReyes@cpsc.gov](mailto:GReyes@cpsc.gov)>; Rogal, Michael <[MRogal@cpsc.gov](mailto:MRogal@cpsc.gov)>; Thomas, Rosalee <[RBThomas@cpsc.gov](mailto:RBThomas@cpsc.gov)>; O'Donnell, Caitlin <[CODonnell@cpsc.gov](mailto:CODonnell@cpsc.gov)>; Perilla, Frank Robert <[FPerilla@cpsc.gov](mailto:FPerilla@cpsc.gov)>

**Subject:** RE: In re Leachco, Inc. -- Depositions

Brett,

We object to the duplicative and burdensome deposition notices you intend to serve. As you know, Leachco is a small family-owned company with limited resources, and you request to depose virtually the entire management team. Doing so is unnecessary and will result in hardship and harassment of Leachco.

Most importantly, the topics you intend to explore are irrelevant to your case. Your Complaint alleges that the Podster is a “substantial product hazard” under 15 U.S.C. § 2064 because “it is foreseeable that caregivers will use the Podster without supervision” and it is foreseeable the Podster will be used “for infant sleep.” Compl. ¶ 20; *see id.* ¶¶38, 50. Nonetheless, during our call on December 13, 2022, you stated that individual employees’ views on the safety of the Podster are relevant to whether the Podster contains a defect that causes substantial risk of injury to the public, and thus is a “substantial product hazard” under the CPSA.

Below, you claim that the depositions were necessary to elicit “facts about dangers the Podster may pose and the foreseeable ways in which they may be used.” You stated that individual employees:

- “will be able to discuss [the Podster’s] foreseeable uses (Mabry Ballard);
- “should be able to testify about those warnings and the reasons for them, including the foreseeable uses of the product” (Tonya Barrett);
- “should be able to testify to . . . the Podsters’ foreseeable uses” (Dan Marshall);
- “is expected to testify about . . . how consumers may use the product” (Alex Leach);
- “is expected to testify about . . . how Leachco addressed customers’ inquiries and concerns about the Podsters” (Jamie Leach).

This expected testimony is cumulative, irrelevant, and unnecessary. As the sole respondent in this case, Leachco has offered to produce Jamie Leach to testify in her personal capacity and as an official representative of the company. She will no doubt provide nearly all of the relevant information you want.

There is no good reason to reject Leachco’s offer but, instead, to schedule Jamie’s deposition last.

More fundamentally, the internal subjective knowledge of Leachco employees regarding consumer use is irrelevant. As the Commission’s own regulations acknowledge, part of the defect analysis is whether “[r]easonably foreseeable consumer . . . misuse . . . [can] result in injury.” 16 C.F.R. 1115.4(d). And the foreseeability of misuse arises when considering the “severity of the risk” of injury. 16 C.F.R. 1115.12(g)(1)(iii). In that analysis, the Commission considers the “*reasonably* foreseeable use of misuse of the product.” *Id.* The law has long recognized that the reasonable person standard to be an objective one—not subjective. *See Micron Tech. Inc. v. Rambus, Inc.*, 645 F.3d 1311, 1319–20 (Fed. Cir. 2011) (“reasonably foreseeable” is “an objective standard”). Therefore, individual, subjective thoughts or views about consumer behavior is irrelevant to whether it is objectively reasonably foreseeable that the Podster will be used for sleep. And it is even more attenuated from the ultimate question of whether the Podster contains a “defect” that results in “substantial risk of injury” to the public. 15 U.S.C. § 2064(a)(2).

Nor are the Commission’s intended questions concerning Leachco’s internal knowledge of warnings or designs relevant. The Commission has already admitted that its claim has nothing to do with Leachco’s warnings or alternative designs.

Finally, the sought-after testimony would be relevant—if at all—to a claim that Leachco failed to meet its reporting obligations under 15 U.S.C. § 2064(b). But the Commission did not allege any such violation. And discovery may not be used to seek evidence of *other* (potential) claims.

As we stated on our call, we do not oppose all depositions. But we see no reason why you cannot obtain the information you seek by deposing fewer than six company employees. And we remain open to work with you for an alternative arrangement.

We maintain that it makes sense to depose Jamie Leach in both her individual capacity and as a 30(b)(6)-style witness and then reassess whether you need more information.

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:** Ruff, Brett <[BRuff@cpsc.gov](mailto:BRuff@cpsc.gov)>  
**Sent:** Wednesday, December 14, 2022 11:46 AM  
**To:** Oliver J. Dunford <[ODunford@pacifical.org](mailto:ODunford@pacifical.org)>  
**Cc:** John F. Kerkhoff <[JKerkhoff@pacifical.org](mailto:JKerkhoff@pacifical.org)>; Frank Garrison <[FGarrison@pacifical.org](mailto:FGarrison@pacifical.org)>; Reyes, Gregory <[GReyes@cpsc.gov](mailto:GReyes@cpsc.gov)>; Rogal, Michael <[MRogal@cpsc.gov](mailto:MRogal@cpsc.gov)>; Thomas, Rosalee <[RBThomas@cpsc.gov](mailto:RBThomas@cpsc.gov)>; ODonnell, Caitlin <[CODonnell@cpsc.gov](mailto:CODonnell@cpsc.gov)>; Perilla, Frank Robert <[FPerilla@cpsc.gov](mailto:FPerilla@cpsc.gov)>  
**Subject:** RE: In re Leachco, Inc. -- Depositions

Oliver,

Thank you for speaking with us yesterday, and thank you for offering to make Jamie Leach available for a Rule 30(b)(6)-style deposition. We have discussed your proposal internally, and we still are inclined to proceed with the depositions of the six Leachco employees listed below in our December 6 email in the sequence we have proposed. Specifically, we would like to take the following depositions on the following dates. We intend to conduct the January depositions virtually via video conference, and we will conduct the February depositions in person in Ada, Oklahoma or somewhere close to Ada.

Mabry Ballard – January 10

Tonya Barrett – January 12

Dan Marshall – January 24

Alex Leach – January 26

Clyde Leach – February 7

Jamie Leach – February 8

Please let us know by 5 p.m. ET tomorrow, Thursday, December 15, whether the dates we proposed on December 6 and repeated above are workable for your clients. As we mentioned in our correspondence and during the call, we are willing to work with you to find acceptable dates that will minimize any burden to Leachco or resolve any unmovable scheduling conflicts. We also hope that our proposal to take most of the depositions electronically and over the course of a month will further reduce any burden to Leachco.

As we discussed yesterday, we believe it is important to depose the six Leachco witnesses for several reasons. The case of *Hall v. Clifton Precision* succinctly summarizes some of those reasons: “One of the purposes of the discovery rules in general, and the deposition rules in particular, is to elicit the facts of a case before trial. Another purpose is to even the playing field somewhat by allowing all parties access to the same information, thereby tending to prevent trial by surprise. Depositions serve another purpose as well: the memorialization, the freezing, of a witness’s testimony at an early stage of the proceedings, before that witness’s recollection of the events at issue either has faded or has been altered by intervening events, other discovery, or the helpful suggestions of lawyers.” 150 F.R.D. 525, 528 (E.D. Pa. 1993). The reasons for the six depositions in this matter include, but are not limited to:

1. Eliciting, from different Leachco employees with different roles and responsibilities, facts about dangers the Podsters may pose and the foreseeable ways in which they may be used. The necessity of such oral testimony is compounded by the paucity of documents produced by Leachco.
  - a. Mabry Ballard: In light of her role as Leachco’s Customer Service Supervisor and Leachco’s admission in its Interrogatory responses that she is responsible for developing and implementing Leachco’s customer service policy and procedures, Ms. Ballard is expected to testify to Leachco’s interactions and communications with consumers with respect to the Podster, and she will be able to discuss its foreseeable uses.
  - b. Tonya Barrett: Ms. Barrett, Leachco’s Compliance Coordinator, who admittedly assisted Jamie Leach in “the creation and design of the warnings for the Podster” should be able to testify about those warnings and the reasons for them, including the foreseeable uses of the product that gave rise to those warnings. In addition, Ms. Barrett is expected to provide testimony about any compliance due diligence, testing, or evaluations Leachco conducted with respect to the Podster, whether during its development or after the two instances in which infants died while using the product.
  - c. Dan Marshall: We have seen from the few documents produced by Leachco that Dan Marshall is in a customer service role and responds to consumers’ safety concerns regarding the Podsters. Mr. Marshall therefore should be able to testify to Leachco’s interactions and communications with consumers with respect to the Podsters, as well as the Podsters’ foreseeable uses.

- d. Alex Leach: Alex Leach—who also admittedly was responsible for the development and implementation of customer service policies—is in a position to provide testimony about Leachco’s interactions with consumers regarding the Podsters. In addition, in his role as Chief Marketing Strategist, Mr. Leach is expected to testify about the marketing strategy behind the Podster and any interactions Mr. Leach and Leachco may have had with retailers regarding how best to market and use the product, as well as how consumers may use the product.
- e. Clyde Leach: As the President and CEO of a small family company, Mr. Leach should be able to be able to testify regarding the development, marketing, and sales of the Podsters, as well as any safety testing Leachco performed with respect to the Podsters whether before or after it received notice of the infant deaths. Further, Mr. Leach has made public statements about the safety of the Podsters and therefore should be able to testify to any safety tests or evaluations that Leachco has conducted with respect to the Podsters.
- f. Jamie Leach: In its Interrogatory responses, Leachco admits “that the Podster was designed in 2008 by founder and Leachco Vice President, Jamie Leach, with consultation only in connection with the Patent process.” Leachco also concedes that “Jamie Leach was primarily responsible for the creation and design of the warnings for the Podster, with assistance from Tonya Barrett and Leah Barnes.” Leachco further admits that “the marketing and promotion for the Podster—primarily through Amazon, trade shows and brochures—was overseen by Jamie Leach, with assistance from Leah Barnes (with staff assistance).” Leachco also explained that “over the years, Jamie Leach has reviewed industry and other materials concerning suffocation risks and other risks related to infants, but does not have specific identifying information about those materials.” In addition, Leachco admitted that Ms. Leach was one of the individuals responsible for developing and implementing Leachco’s policies for responding to customer inquiries, including inquiries related to the Podsters. Given all of this, Ms. Leach is expected to testify about the development of the Podsters, the creation of their warnings, their marketing and promotion, and how Leachco addressed customers’ inquiries and concerns about the Podsters. Complaint Counsel also will be able to inquire further about the “materials concerning suffocation risks and other risks related to infants” that Ms. Leach reviewed but about which Leachco was unable to offer additional details.

- 2. Ensuring adequate trial/hearing preparation. We are entitled to depose these potential trial witnesses to obtain information about what they know about the Podsters and what facts or arguments they may raise at the hearing in this matter in defense of Leachco. This sort of trial preparation is a core aspect of depositions in civil proceedings. “Indeed, depositions may be a key part of a party's preparation for trial.” *Adams v. Sharfstein*, No. 11-cv-3755-CCB, 2012 WL 2992172, at \*2 (D. Md. July 19, 2012) (denying motion for protective order to bar deposition of a party to the action). Depositions permit parties, such as Complaint Counsel, “to discover facts about the case, meet the adverse witnesses and assess their character and credibility, freeze the witnesses’ testimony, establish a foundation for subsequent impeachment, neutralize potentially harmful witnesses, and perpetuate testimony.” *Id.* (citation omitted).

Although it is not our burden to explain the rationale for the depositions, we are providing the above in an effort to collaboratively resolve any concerns Leachco might have. We note that we previously have explained the basis for the depositions to Leachco, including in writing in our August 19 filing with respect to the deposition notices we first served on August 4. *See* Dkt. No. 26. We also note that “[b]road allegations of harm,” such as those raised by Leachco, “unsubstantiated by specific examples or articulated reasoning, do not support” a protective order to shield a party from depositions. *Adams*, 2012 WL 2992172 at \*2 (citation omitted). Leachco has not articulated specifically why it is unduly burdensome to take six depositions of key corporate personnel that were involved with the Podster, many of whom appear in the limited set of documents produced by Leachco.

We look forward to your response about the proposed dates by 5 p.m. ET tomorrow. If we cannot reach agreement by 5 p.m. tomorrow, we will issue the deposition notices with the dates identified above.

Thank you,



## Brett Ruff

Trial Attorney

U.S. Consumer Product Safety Commission

Division of Enforcement and Litigation | Office of Compliance and Field Operations

4330 East West Highway | Bethesda, MD 20814

---

**From:** Oliver J. Dunford <[ODunford@pacifical.org](mailto:ODunford@pacifical.org)>

**Sent:** Tuesday, December 13, 2022 7:19 AM

**To:** Ruff, Brett <[BRuff@cpsc.gov](mailto:BRuff@cpsc.gov)>

**Cc:** John F. Kerkhoff <[JKerkhoff@pacifical.org](mailto:JKerkhoff@pacifical.org)>; Frank Garrison <[FGarrison@pacifical.org](mailto:FGarrison@pacifical.org)>; Reyes, Gregory <[GReyes@cpsc.gov](mailto:GReyes@cpsc.gov)>; Rogal, Michael <[MRogal@cpsc.gov](mailto:MRogal@cpsc.gov)>; Thomas, Rosalee <[RBThomas@cpsc.gov](mailto:RBThomas@cpsc.gov)>; O'Donnell, Caitlin <[CODonnell@cpsc.gov](mailto:CODonnell@cpsc.gov)>; Perilla, Frank Robert <[FPerilla@cpsc.gov](mailto:FPerilla@cpsc.gov)>

**Subject:** RE: In re Leachco, Inc. -- Depositions

We're available at 3:00. Thanks.

**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:** Ruff, Brett <[BRuff@cpsc.gov](mailto:BRuff@cpsc.gov)>

**Sent:** Monday, December 12, 2022 10:52 AM

**To:** Oliver J. Dunford <[ODunford@pacifical.org](mailto:ODunford@pacifical.org)>

**Cc:** John F. Kerkhoff <[JKerkhoff@pacifical.org](mailto:JKerkhoff@pacifical.org)>; Frank Garrison <[FGarrison@pacifical.org](mailto:FGarrison@pacifical.org)>; Reyes, Gregory <[GReyes@cpsc.gov](mailto:GReyes@cpsc.gov)>; Rogal, Michael <[MRogal@cpsc.gov](mailto:MRogal@cpsc.gov)>; Thomas, Rosalee <[RBThomas@cpsc.gov](mailto:RBThomas@cpsc.gov)>; O'Donnell, Caitlin <[CODonnell@cpsc.gov](mailto:CODonnell@cpsc.gov)>; Perilla, Frank Robert <[FPerilla@cpsc.gov](mailto:FPerilla@cpsc.gov)>

**Subject:** RE: In re Leachco, Inc. -- Depositions

Oliver,

We do not see any need to wait for Judge Young's ruling on your Motion for Protective Order before conducting the depositions. Your Motion, and our Motion to Compel, address a separate issue: written and electronic discovery. If anything, Complaint Counsel—not Leachco—would be the entity prejudiced by moving forward with the depositions in the absence of appropriate discovery responses and productions. As we explained in our August 19th filing, there is good reason for us to proceed with depositions, and the law is clear that parties must make witnesses available for deposition. *See* Dkt. No. 26.

Please let us know whether the proposed deposition dates work for Leachco. If Leachco does not agree to the dates or provide reasonable alternatives by the end of the business day tomorrow, we will notice the depositions using the dates set forth below. We are, of course, happy to work with you on scheduling and to discuss the "more reasonable arrangement" you mention below. If you would like to speak, please let us know a convenient time between 2 p.m. and 4:30 p.m. tomorrow when we can do so.

**Brett Ruff**

Trial Attorney

U.S. Consumer Product Safety Commission

Division of Enforcement and Litigation | Office of Compliance and Field Operations

4330 East West Highway | Bethesda, MD 20814

---

**From:** Oliver J. Dunford <[ODunford@pacifical.org](mailto:ODunford@pacifical.org)>  
**Sent:** Monday, December 12, 2022 7:26 AM  
**To:** Ruff, Brett <[BRuff@cpsec.gov](mailto:BRuff@cpsec.gov)>  
**Cc:** John F. Kerkhoff <[JKerkhoff@pacifical.org](mailto:JKerkhoff@pacifical.org)>; Frank Garrison <[FGarrison@pacifical.org](mailto:FGarrison@pacifical.org)>; Reyes, Gregory <[GReyes@cpsec.gov](mailto:GReyes@cpsec.gov)>; Rogal, Michael <[MRogal@cpsec.gov](mailto:MRogal@cpsec.gov)>; Thomas, Rosalee <[RBThomas@cpsec.gov](mailto:RBThomas@cpsec.gov)>; O'Donnell, Caitlin <[CODonnell@cpsec.gov](mailto:CODonnell@cpsec.gov)>; Perilla, Frank Robert <[FPerilla@cpsec.gov](mailto:FPerilla@cpsec.gov)>  
**Subject:** RE: In re Leachco, Inc. -- Depositions

Brett,

We think it makes sense to wait for Judge Young's ruling on our Motion for Protective Order before conducting these depositions. Perhaps we should ask to schedule a discovery conference. And, in any event, we believe that five depositions of a small company's leadership is completely unnecessary and overly burdensome. We should discuss a more reasonable arrangement. I'm unavailable today, but I can discuss later this week.

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:** Ruff, Brett <[BRuff@cpsec.gov](mailto:BRuff@cpsec.gov)>  
**Sent:** Tuesday, December 6, 2022 2:16 PM  
**To:** Oliver J. Dunford <[ODunford@pacifical.org](mailto:ODunford@pacifical.org)>  
**Cc:** John F. Kerkhoff <[JKerkhoff@pacifical.org](mailto:JKerkhoff@pacifical.org)>; Frank Garrison <[FGarrison@pacifical.org](mailto:FGarrison@pacifical.org)>; Reyes, Gregory <[GReyes@cpsec.gov](mailto:GReyes@cpsec.gov)>; Rogal, Michael <[MRogal@cpsec.gov](mailto:MRogal@cpsec.gov)>; Thomas, Rosalee <[RBThomas@cpsec.gov](mailto:RBThomas@cpsec.gov)>; O'Donnell, Caitlin <[CODonnell@cpsec.gov](mailto:CODonnell@cpsec.gov)>; Perilla, Frank Robert <[FPerilla@cpsec.gov](mailto:FPerilla@cpsec.gov)>  
**Subject:** In re Leachco, Inc. -- Depositions

Oliver,

We would like to get some depositions on the calendar. We would like to depose the following individuals on the following dates. Please let us know by this Friday, December 9, whether any of these dates are unworkable, and, if so, please provide some available dates. We will issue revised notices of deposition once we have finalized the dates. We intend to conduct the January depositions virtually via video conference, and we will conduct the February depositions in person in Ada, Oklahoma or somewhere close to Ada.

Mabry Ballard – January 10  
Tonya Barrett – January 12

Dan Marshall – January 24  
Alex Leach – January 26

Clyde Leach – February 7

Jamie Leach – February 8

**Brett Ruff**

**Trial Attorney**

U.S. Consumer Product Safety Commission

Division of Enforcement and Litigation | Office of Compliance and Field Operations

4330 East West Highway | Bethesda, MD 20814

\*\*\*\*\*!!! Unless otherwise stated, any views or opinions expressed in this e-mail (and any attachments) are solely those of the author and do not necessarily represent those of the U.S. Consumer Product Safety Commission. Copies of product recall and product safety information can be sent to you automatically via Internet e-mail, as they are released by CPSC. To subscribe or unsubscribe to this service go to the following web page:

<http://www.cpsc.gov/en/Newsroom/Subscribe> \*\*\*\*\*!!!

Email secured by Check Point

Email secured by Check Point

Email secured by Check Point

\*\*\*\*\*!!! Unless otherwise stated, any views or opinions expressed in this e-mail (and any attachments) are solely those of the author and do not necessarily represent those of the U.S. Consumer Product Safety Commission. Copies of product recall and product safety information can be sent to you automatically via Internet e-mail, as they are released by CPSC. To subscribe or unsubscribe to this service go to the following web page:

<http://www.cpsc.gov/en/Newsroom/Subscribe> \*\*\*\*\*!!!

Email secured by Check Point

# **EXHIBIT C**

IN THE MATTER OF LEACHCO, INC.

DOCKET NO. 22-1

U.S. CONSUMER PRODUCT SAFETY COMMISSION

BETHESDA, MARYLAND

Wednesday, September 7, 2022

APPEARANCES:

Presiding Officer:

Michael G. Young, Administrative Law Judge

On behalf of the Complaint:

Brett Ruff, Esq.

Michael Rogal, Esq.

Rosalee Thomas, Esq.

Leah Ippolito, Esq.

U.S. Consumer Product and Safety Commission

Office of Compliance and Enforcement

4330 East West Highway, Suite 400

Bethesda, Maryland 20814

On behalf of the Respondent:

Bettina Strauss, Esq.

James Emanuel, Esq.

Bryan Cave Leighton Paisner

211 N. Broadway, Suite 3600

St. Louis, MO 63102

APPEARANCES (cont.):

On behalf of the Respondent (cont.):

John Kerkhoff, Esq.

Oliver Dunford, Esq.

Frank Garrison, Esq.

Pacific Legal Foundation

From the Office of the Secretary, CPSC:

Nina DiPadova, Esq.

Also Present:

Frank Robert Perilla, Paralegal

Christopher Jannace, Law Clerk

1 I was hoping that we could maybe agree to a discovery  
2 timetable that works for everybody in light of the  
3 goals and expectations that we've talked about  
4 previously in this conference. I know that there were  
5 some depositions noticed. And it's difficult to take  
6 depositions without having the documentary evidence in  
7 advance. I -- I really like to see us set up a  
8 timetable here where we agree on when you're going to  
9 produce the documentary evidence that's been requested  
10 and when you're going to have a cut-off if you're going  
11 to, for example, submit requests for admissions and  
12 then proceed with the deposition schedule and have kind  
13 of a horizon for completing the depositions. Does that  
14 sound reasonable to everybody or are we not in a  
15 position to make those kinds of decisions today?

16 MS. STRAUSS: Your Honor, I would like to be  
17 in a position to do that. That's obviously an  
18 important and basic function in litigation of the  
19 parties. And we thought we were able to do that when  
20 we first met with Your Honor. But as I mentioned --  
21 and I'm sorry to keep harping on this -- we served  
22 discovery in the spring. We received responses May



1 correctly the first time.

2 MS. STRAUSS: Your Honor, the parties did  
3 already have a sequencing of written discovery  
4 initially and then depositions following. And it was  
5 our contention that the complaint counsel's failure to  
6 provide us with the discovery necessary meant the  
7 deposition should be delayed. We have not issued any  
8 deposition notices for CPSC staff for that reason. And  
9 they jumped the gun and sent deposition notices, even  
10 though, at that time, we still hadn't even received  
11 information about --

12 JUDGE YOUNG: If --

13 MS. STRAUSS: -- what they are withholding.

14 JUDGE YOUNG: I'm sorry to keep interrupting  
15 you. But if that's -- if that was a problem, it has  
16 been forgiven to this point. If it continues to be a  
17 problem, we'll deal with it as an ongoing and  
18 continuing problem. But at this point, you know, I'm  
19 hopeful that you all will go forward with a renewed  
20 sense of purpose and deal with each other a little more  
21 forthrightly than seems to have been the case to this  
22 point, and, you know, not take actions such as

1 preemptively noticing depositions without coordinating  
2 them with counsel or, on the alternative, not making  
3 reasonable efforts to make people available for  
4 depositions if it comes to that.

5           And I'm not saying that that was an issue  
6 previously. But, you know, these -- these are things  
7 that maybe down the road -- the things that happened in  
8 the past regarding the deposition notices and the  
9 nonproduction, etc., I don't care as long as it's not  
10 an ongoing problem.

11           But if it becomes an ongoing problem, we'll  
12 deal with it. And if it's -- if -- if the problem  
13 reflects a continued misunderstanding, you're not going  
14 to get the -- gotten today.

15           MS. STRAUSS: Thank you, Your Honor.

16           JUDGE YOUNG: So we're looking at extending  
17 the deadlines generally as follows. The deadline for  
18 responses to the first set of written discovery now is  
19 going to be October 3rd, which is a Monday. And then  
20 we will -- and I -- I need to get the -- the  
21 calculations. But it's going to be roughly a two-month  
22 extension of written discovery to early February of

# **EXHIBIT D**

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

In the Matter of  
  
LEACHCO, INC.

Respondent.

CPSC DOCKET NO. 22-1

**RESPONDENT LEACHCO, INC.'S OBJECTIONS AND RESPONSES TO COMPLAINT  
COUNSEL'S FIRST SET OF INTERROGATORIES TO RESPONDENT**

Pursuant to 16 C.F.R. § 1025.32, Respondent Leachco, Inc. ("Leachco") hereby submits the following objections and responses to Complaint Counsel's First Set of Interrogatories to Leachco.

**RESPONSES AND OBJECTIONS TO COMPLAINT COUNSEL'S  
INTERROGATORIES**

**INTERROGATORY NO. 1**

Identify all Persons who assisted in the preparation of, or who provided information or Documents used in the preparation of, the responses to written discovery served by Complaint Counsel in this matter.

**RESPONSE:**

**Objection, this interrogatory calls for information protected by the attorney-client and attorney work product privileges. Subject to and without waiving this objection, Leachco states that these responses were drafted by counsel from information obtained from multiple sources.**

**INTERROGATORY NO. 2**

Identify each Person who possesses, or who you believe possesses, any knowledge relating to the infant suffocation risk or other risks to infants posed by the Podsters, and describe with specificity the knowledge of each Person identified.

**RESPONSE:**

**Objection, this interrogatory is vague, overbroad, argumentative, and assumes facts not established.**

**Subject to and without waiving these objections, Leachco states that the product has always had warnings on the product, its label, and packaging about the potential risk of suffocation if not properly used, and thus all consumers, the company's officers and employees would be aware of this risk. The number of people potentially called for by this interrogatory makes it unanswerable in its current form.**

**INTERROGATORY NO. 3**

Identify the complete corporate organization of Respondent from founding to the present, including, but not limited to, a detailed listing of its places of incorporation and principal places of business, its officers and directors, and its internal corporate structure. This request includes, but is not limited to, related entities, such as former and current parents and subsidiaries, as well as any entities acquired by or merged with Respondent.

**RESPONSE:**

**Leachco states that it is incorporated in Oklahoma and has its principal place of business is in Ada, Oklahoma. Leachco was founded in 1988 by Clyde and Jamie Leach. Clyde Leach is the President and CEO; Jamie Leach is the Vice President; Stephen Ballard is the Chief Financial Officer, and Alex Leach is the Chief Operating Officer. The company has fewer than 50 full-time employees, including six members of the Leach family, and all of its operations are run out of Ada, Oklahoma.**

**INTERROGATORY NO. 4**

Separately identify all Podsters by: model numbers, names, or the like; total number sold organized by year; dates of manufacture, distribution, and sale; and retail price. Indicate all differences between the different models and whether any model was changed in any way.

**RESPONSE:**

**Leachco will create and produce a spreadsheet for sales of the Podster products. *See also* Leachco's Amended Full Report dated December 11, 2020.**

### **INTERROGATORY NO. 5**

Describe in detail the process by which you collected documents and information in response to requests by CPSC staff in CPSC matter nos. PI210002 and CA220007, including, but not limited to, what sources, libraries, or repositories you searched or accessed; whether hard-copy or electronic; whether immediately accessible or in storage; and the results of those searches. If any potential sources, libraries, or repositories of documents or information which may contain responsive information were not searched, provide a detailed explanation of why it was not searched.

#### **RESPONSE:**

**Objection, this interrogatory seeks information that is not relevant to any claim or defense in this case and is therefore outside the scope of permissible discovery under 16 CFR § 1025.31(c)(1). The request is also overbroad and unduly burdensome, and seeks information protected by the attorney-client and work product privileges.**

**Subject to and without waiving this objection, Leachco states that with the assistance of counsel, it searched for and produced documents from all known files of the company including its design and patent files, its marketing files, its sales/distribution files, its testing and quality control files, and its customer service files, including all claims by consumers, whether by claim or litigation.**

### **INTERROGATORY NO. 6**

Identify each Person whom you expect to call as a witness, whether as an expert or a percipient witness, at the trial or Hearing of this matter, and for each witness, state or provide the following information:

- a) The subject matter on which the witness is expected to testify;
- b) Whether you intend to designate the witness as an expert;
- c) The substance of the opinions, if any, and facts to which the witness is expected to testify; and
- d) A summary of the grounds for each opinion, if any.

**RESPONSE:**

**At this early state of the case, Leachco has not yet identified the witnesses it intends to call at the trial or Hearing of this matter. Leachco will supplement its response to this interrogatory, in accordance with 16 CFR § 1025.31.**

**INTERROGATORY NO. 7**

Identify each Person who participated in the design, development, and manufacture of the Podsters, including any outside parties that Leachco consulted with when designing and developing the Podster. For each Person, indicate the time period of the work and describe the Person's responsibilities, role, and contributions.

**RESPONSE:**

**Objection, overbroad, vague, compound and unduly burdensome. Leachco further objects to requests for information concerning manufacturing, which is not at issue in this case. Subject to and without waiver of these objections, Leachco states that the Podster was designed in 2008 by founder and Leachco Vice President, Jamie Leach, with consultation only in connection with the Patent process.**

**INTERROGATORY NO. 8**

Identify each Person involved in creating, designing, and manufacturing any and all versions or iterations of the packaging, labels, warnings, and instructions that accompanied the Podsters, including any Person with knowledge of changes made at any time to the packaging, labels, warnings, and instructions that accompanied the Podsters. For each Person, indicate the time period of the work, and describe the person's responsibilities, role, and contributions.

**RESPONSE:**

**Objection, overbroad, vague, compound and unduly burdensome and unlimited in time and scope. Leachco further objects to requests for information concerning manufacturing, which is not at issue in this case. Subject to and without waiver of this objection, Leachco states that at all relevant times, Jamie Leach was primarily responsible for the creation and design of the warnings for the Podster, with assistance from Tonya Barrett and Leah Barnes. In addition, the Podster packaging was submitted to independent third-party testing laboratories for their evaluation and approval. See Leachco's testing documents, which were previously produced to the CPSC in connection with its full report request.**

**INTERROGATORY NO. 9**

Identify each Person who participated in the marketing, advertising, and/or promotion of the Podsters, in any form or through any media. For each Person, indicate the time period of the work, and describe the Person's responsibilities, role, and contribution.

**RESPONSE:**

**Objection, this interrogatory is vague, overbroad and unlimited in time and scope. It also seeks irrelevant information, which is outside the scope of 16 CFR § 1025.31.**

**Subject to and without waiving these objections, Leachco states that the marketing and promotion for the Podster—primarily through Amazon, trade shows and brochures—was overseen by Jamie Leach, with assistance from Leah Barnes (with staff assistance). Leachco did not conduct any print, radio, or television advertising of the Podster.**

**INTERROGATORY NO. 10**

Identify any studies, reports, publications, written evaluations, or materials of any kind that discuss or refer to the infant suffocation risk or other risks to infants posed by the Podsters.

**RESPONSE:**

**Objection, this request is vague as to the type of materials sought and duplicative of Interrogatory No. 2. Subject to and without waiving these objections, Leachco refers to and incorporates by reference its response to Interrogatory No. 2. Further responding, Leachco states that over the years, Jamie Leach has reviewed industry and other materials concerning suffocation risks and other risks related to infants, but does not have specific identifying information about those materials. Further responding, Leachco submitted the Podster to independent third-party testing laboratories, which evaluated the Product and its warnings. See Leachco's testing documents, which were previously produced to the CPSC in connection with its full report request. In addition, Leachco has produced the expert evaluations of the Podster by Dr. Emily Skow, Ph.D. and Dr. Michael Prange, Ph.D., P.E.**

**INTERROGATORY NO. 11**

Identify any studies, reports, publications, written evaluations, or materials of any kind that evaluated the risks, hazards, or safety of the design of the Podsters that Respondent relied on to



develop or revise the Podster's design, materials, finishing, instructions, warnings, packaging materials, or marketing materials, or that Respondent relied on to refrain from making any changes, and explain why the Respondent refrained from relying on those studies, reports, publications, written evaluations, or materials.

**RESPONSE:**

**Objection, this request is vague, overbroad, and unclear or unlimited in time and scope. It also calls for a narrative, which is improper and which is outside the scope of 16 CFR § 1025.31. Further it is duplicative of other requests. Subject to and without waiving these objections, see Leachco's testing documents, which were previously produced to the CPSC in connection with its full report request and refers to and incorporates herein its response to Interrogatory No. 2 and Interrogatory 10.**

**INTERROGATORY NO. 12**

Identify any third-party experts, consultants, or any other person who evaluated the risks, hazards, or safety of the design of the Podsters that Respondent relied on to develop or revise the Podster's design, materials, finishing, instructions, warnings, packaging materials, or marketing materials, and/or that Respondent relied on to refrain from making any changes, and explain why the Respondent refrained from relying on the evaluations of those third party experts, consultants or any other person.

**RESPONSE:**

**Objection, this request is vague, overbroad, and unlimited in time and scope and repetitive of several prior interrogatories. Subject to and without waiving these objections, Leachco refers to and incorporates herein its response to Interrogatories 2 and 10 as well as Leachco's testing documents.**

**INTERROGATORY NO. 13**

Identify by brand name and model any other products examined or considered by any person in relation to the design, development, revision, or manufacture of the Podsters or the packaging, instructions, warnings, or marketing materials for the Podsters.

**RESPONSE:**

**Objection, this request is vague, overbroad, and unlimited in time and scope. It also seeks information not relevant to any claim or defense in this case, which is improper and outside the scope of permissible discovery under 16 CFR § 1025.31. Further, the request seeks information protected by the attorney-client and work product privileges. Subject to these objections, Leachco states that the Podster is patented and was a unique design at the time it was developed. After development, at various times Leachco has reviewed competitor products in the marketplace and considered their design and warnings. No records document or detail the specifics of those reviews.**

**INTERROGATORY NO. 14**

Identify all Tests performed at any time on the Podsters related to the infant suffocation risk, any other potential safety risk, or any safety standard. As part of your response for each Test:

- a) Identify the specific product or products tested;
- b) Describe each Test including the date of the Test and the standard or protocols used;
- c) Identify all Persons who participated in setting up and conducting the Test;
- d) Describe all information, directions, and requests that you or any other Leachco employee provided to the Person conducting the Test;
- e) Describe and explain the results of the Test, including all observations and conclusions;
- f) Identify all Persons who participated in evaluating the test results; and
- g) Describe any changes to the Podsters following each Test.

**RESPONSE:**

**Objection, this request is vague, overbroad, und unlimited in time and scope, and repetitive of many other requests. Subject to and without waiving these objections, *see* Leachco's testing documents, which were previously produced to the CPSC in connection with its full report request. *See also* Expert Evaluations of the Podster by Emily Skow, Ph.D. and Dr. Michael Prange, Ph.D., P.E., previously produced with Leachco's full report.**

**INTERROGATORY NO. 15**

Describe all past and present policies and procedures for Leachco's response to claims, complaints, inquiries, and reports of incidents, injuries, or fatalities, and identify all persons responsible for the development and implementation of such policies and procedures.

**RESPONSE:**

**Objection, this request is vague, overbroad, and unlimited in time and scope. It also calls for a narrative, which is improper and outside the scope of permissible discovery under 16 CFR § 1025.31(c)(1). Additionally, this request calls for information that is protected by the attorney-client and work product privileges.**

**Subject to and without waiving these objections, Leachco states that its customer service department responds to consumer claims and inquiries by e-mail and/or by phone, gathers information as necessary and documents all complaints, inquiries, and injuries, including all information available. At all relevant times, Jamie Leach, Alex Leach, and Mabry Ballard were responsible for the development and implementation of these policies and procedures.**

**INTERROGATORY NO. 16**

Identify each claim, warranty claim, complaint, inquiry, or report of incidents, injuries, or fatalities involving the Podsters. For each claim, warranty claim, complaint, inquiry, or report of incidents, injuries, or fatalities:

- a) Provide the name, address, telephone number, email address, and any other identifying information of the claimant;
- b) Identify the date Respondent first received verbal or written information concerning the claim, warranty claim, complaint, inquiry, or report;
- c) State the information Respondent received in the claim, warranty claim, complaint, inquiry, or report and how you received it;
- d) State whether you or any other Person acting on behalf of Respondent investigated or took other responsive steps after the initial claim, warranty claim, complaint, inquiry, or report, and if so, identify each person involved in the response and state the date and

description of each investigation or other step, including refunds, replacements, or other remedies;

e) State whether medical attention was sought or received by any Person involved in any claim, warranty claim, complaint, inquiry, or reports;

f) State the age of any Person involved in the incident;

g) Provide all information on the Podster involved, including but not limited to, model, year of manufacture, type of packaging, and warnings; and

h) State the date and location of purchase of the involved product and the identity of the purchaser.

**RESPONSE:**

**Objection, this interrogatory is vague, overbroad, and unlimited in time and scope. Additionally, this request calls for information protected by the attorney-client and work product privileges.**

**Subject to and without waiving these objections, Leachco previously provided information regarding all “incidents resulting in injuries, near-death occurrences, or fatalities known to the Firm related to the Subject Products,” (as requested by the letter from Kiara Beverly dated November 19, 2020) in its full report to the CPSC. See Dec. 11, 2020 Amended Podster Full Report. Given that all known injuries involving the Podster were the subject of CPSC Epidemiologic Investigation Reports, the consumer information on these incidents is already known by the CPSC and the CPSC has the underlying reports, including any coroner’s reports, police reports and related contemporaneous documentation of the claims related to the incidents.**

**Further responding, while Leachco provides a limited, 30-day warranty and return policy to the retailers and distributors that sell Podsters to consumers, Leachco does not provide warranties directly to end-users.**

**INTERROGATORY NO. 17**

Identify each Person with knowledge of any claims, lawsuits, or alternative dispute resolution proceedings related to the Podsters.

**RESPONSE:**

**Objection, this interrogatory is vague, overbroad, and unlimited in time and scope. The interrogatory also requests information protected by the attorney-client and work product privileges. Subject to and without waiving these objections, Leachco states that all officers of the company are aware of the one lawsuit involving the Podster, which has been identified in numerous materials provided to the CPSC. As the materials provided reflect, many people were involved in and knowledgeable about these proceedings. See Interrogatory No. 19. There have been no other injury claims or proceedings concerning the Podster.**

#### **INTERROGATORY NO. 18**

Identify any changes or modifications to the Podsters, including changes to their design, materials, finishing, instructions, warnings, packaging, or marketing materials, that were implemented whether or not in response to or as a result of any claims, complaints, inquiries, reports or incidents, injuries, or fatalities related to the Podsters.

#### **RESPONSE:**

**Objection, this interrogatory is repetitive and duplicative of other requests, is overbroad, vague, unlimited in time and scope, compound in subject matter and calls for a narrative that would be impossible to provide over a more than 12-year period. Subject to and without waiving these objections, See Leachco's Amended Full Report, Dated December 11, 2020 as well as responses to Interrogatories 4 and 8.**

#### **INTERROGATORY NO. 19**

Identify each Person who has been deposed or has otherwise given testimony in any legal proceeding regarding the Podsters and provide the date of the testimony and caption of the matter.

#### **RESPONSE:**

**There has been only one legal proceeding involving the Podster, *Konica McMullen and Theodore McMullen, III v. Leachco, Inc., et al.*, Case No. CV-2015-904869 (Circuit Court of Jefferson County, Alabama, Birmingham Division). Deponents were: Mabry Ballard, Tonya Barrett, Vivian Baulding, David Blackwell, Dr. Boris Datnow, David Everson, Lakesha Glass, Beverly Goodman, Ashley Green, Matthew Green, Tyesha Hill, Evelyn Inestroza, Tracey Johnson, Priscilla Kimball, Grant Kline, Lila Laux, Alex Leach, Jamie Leach, Konica McMullen, Theodore McMullen, III, Matthew Murphree, Keith Peterson, Stuart Statler, Michael Taylor, Shakira Trice, Jessica Vice, Ebony Whitby.**

Dated: May 13, 2022

**CROWELL & MORING LLP**

By: /s/ Cheryl A. Falvey  
Cheryl A. Falvey  
1001 Pennsylvania Ave., N.W.  
Washington, D.C. 20004-2595  
Telephone: (202) 624-2675  
Facsimile: (202) 628-5116  
[CFalvey@crowell.com](mailto:CFalvey@crowell.com)

**BRYAN CAVE LEIGHTON PAISNER  
LLP**

Bettina J. Strauss, Esq.  
211 North Broadway, Suite 3600  
St. Louis, MO 63102-2750  
Telephone: (314) 259-2000  
Facsimile: (314) 259-2020  
[bjstrauss@bclplaw.com](mailto:bjstrauss@bclplaw.com)

*Attorneys for Leachco, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 13, 2022, a true and correct copy of Respondent's First Set of Requests for Production was served by e-mail and first class U.S. mail, postage prepaid, on the following:

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](mailto:amills@cpsc.gov)

Mary B. Murphy, Director, Division of Enforcement and Litigation  
U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814  
[mmurpy@cpsc.gov](mailto:mmurpy@cpsc.gov)

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](mailto:rkaye@cpsc.gov)

Leah Ippolito, Supervisory Attorney  
Brett Ruff, Trial Attorney  
Rosalee Thomas, Trial Attorney  
Caitlin O'Donnell, Trial Attorney  
Complaint Counsel  
Office of Compliance and Field Operations  
U.S. Consumer Product Safety Commission  
Bethesda, MD 20814  
Tel: (301) 504-7809  
[Lippolito@cpsc.gov](mailto:Lippolito@cpsc.gov)  
[BRuff@cpsc.gov](mailto:BRuff@cpsc.gov)  
[RBThomas@cpsc.gov](mailto:RBThomas@cpsc.gov)  
[CODonnell@cpsc.gov](mailto:CODonnell@cpsc.gov)

/s/ Cheryl A. Falvey  
Cheryl A. Falvey

**VERIFICATION**

I, JAMIE LEACH, Vice President of Leachco, Inc. ("Leachco"), state that I have read Leachco's answers to The Consumer Product Safety Commission's First Set of Interrogatories and the answers are true to the best of my knowledge, information, and belief.

  
\_\_\_\_\_  
Jamie Leach



**EXHIBIT E**  
**(FILED IN CAMERA)**

# **EXHIBIT F**

# Web Data Collection Report

## Page Title

Important Info - Leachco, Inc

## URL

<https://leachco.com/pages/important-info>

## Collection Date

Wed Oct 26 2022 15:32:29 GMT-0400 (Eastern Daylight Time)

## Collected by

SDonahue@cpsc.gov (SDonahue@cpsc.gov)

## IP Address

173.73.187.122

## Browser Information

Mozilla/5.0 (Windows NT 10.0; Win64; x64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/106.0.0.0 Safari/537.36 Edg/106.0.1370.52

## Digital Signature (SHA256 / PKCS#1v1.5)

4ede01e21c14d7ea4c60e7311f7810295316be3334421ee98495228992212144e90c7def  
76bd3368d6d0690e940850b74bdecd4f4dbe8a666ad59ad5c4ecc838d8648a74715d3327  
7b3002e820b91b1451670a162503ada8ae06b106c8e599b6de9125ea51abdc76222db0a4  
2c11a299b70328111e2ec994becaca3b26200d9eb023ef681c14adb3047cd2094640b210  
c0c7287d43d72feabc5b4056fcfe81b314630bac886e27b7c730a9839ef0dc75eb1c56736  
383374588cf809fc0254e162806a3cf779b3cc889ec1e16e2b5ba328f4542fc37cba8c43f  
ccef514a0b7f51ee37006f9a7e385750a114c8e054ec369a706e38904aec4935683e6837  
93fd9

# File Signatures

## SCREEN CAPTURE

### MHTML

#### File Name

[https-leachco.com-pages-important-info-Oct-26-22-15-32-29-GMT-0400-\(EDT\).mhtml](https-leachco.com-pages-important-info-Oct-26-22-15-32-29-GMT-0400-(EDT).mhtml)

#### Hash (SHA256)

c8b3e9c174ea3ff00b69de29434567ddf24afb3813ba9c8d449badd1a3390ef9

#### Signature (PKCS#1v1.5)

41581eb3e27f207a5768201e95dd10031c9dc23aef8708bec29b3726d6dbfa0bf0604b545  
eaa229e480cbc4e1a4015bea6f53aca7002cba122475a11a2da426fa425ddfe62160abcce  
ebd0e194f35e4a779df6427d99d9bfa0d84320c09958b5f7d7aea62a09aea7944ada1abce  
4d66527faa4f5ad90433861191fd65fd179c3da309685bbe4bff13794f68d572d5be7b5dc  
ba90ca8b993f5f24dba4fbb2e4b61587e727033df475c12c0692f1885b4fa9157102cd9c  
dcb053e99233ebde7cb1d8e935fc7b3291af888d58d68ef85c69284615055e747c7d59c0  
dc2224744e1e7a1 added0c8a10070bbae67d9aac3ebe158ed1db5573928795b0f955223bdd  
4c41



## Leachco Confirms Podster® is Safe for Infants, Rejects CPSC's Claims



Since 1988, Leachco, a family-owned company in Ada, Oklahoma, has made safe, innovative and quality products to support families and infants. The entire Leach family, including founders Clyde and Jamie Leach, and now their adult children, Mabry, Alex, and Andrew, are in the business of helping mothers, fathers and caregivers with the difficult task of caring for infants who need constant daytime care and supervision.

Leachco's Podster®, an infant lounger, is made in the United States and has been sold to nearly 180,000 families since it was introduced 13 years ago in 2009. The Podster® is specifically designed to help with daytime care of awake infants for the countless times each day when parents and caregivers need to free up their hands for the activities of daily life. The Podster® provides a safe, secure spot to place an infant on its back as the parent or caregiver supervises hands-free, able to prepare a meal, pay bills, check email, give a hand to siblings and many other daily tasks. The Podster® helps babies and is loved by parents and caregivers. The Leach family has used the Podster® for their own children and grandchildren, and they stand firmly by the safety and value of the products they provide to the public.

The Podster® is not a sleep product. Even though infants can fall asleep anywhere, safe sleep guidelines and CPSC regulations draw a clear line between products intended for sleep and products not intended for sleep. Leachco has always had clear warnings on the product and its packaging not to place it in a bed or crib or use it unsupervised or for sleep. The CPSC is wrongly telling consumers to stop using the Podster® altogether instead of explaining that no lounger should be used in a crib or bed and no lounger is safe for unsupervised sleep. The loss of an infant is truly tragic and families who suffered that loss have our deepest sympathies. Unfortunately, the statistics show that infant deaths can occur anywhere, even in cribs where sleep is the safest. Leachco supports the American Academy of Pediatrics (AAP) safe sleep guidelines and urges families to use the Podster® as intended for supervised daytime activity only—not for sleep.

Leachco believes that banning products like the Podster® will not improve safety. In fact, it will leave families and caregivers with fewer safe ways to care for awake infants. Infant care requires constant attention. It can be an exhausting job and parents and caregivers need products to help them. For as many hours of the day that infants need care, it simply is not reasonable to expect parents and caregivers to put them in a crib.

The CPSC's claims are wrong. The agency ignores the important role loungers can have for parents and makes the wrong choice for families. Leachco stands by the Podster®'s quality, safety and value of the Podster®.

Leachco has sued the CPSC in federal court to protest unfair treatment in the CPSC's biased in-house court. Leachco is represented by **Pacific**

### File Name

https-leachco.com-pages-important-info-Oct-26-22-15-32-29-GMT-0400-(EDT)\_0.jpg

### Hash (SHA256)

bbde4f032c95e0bcaead97338ea203210404d7cf88029df37f9755d8d0de77f

### Signature (PKCS#1v1.5)

74d881f301877ad86cb8d12f4587273d7ffdf801c7c02a305e922872428dcf5bd19fae0fdcac65700  
c075759b403d51a5ceed7082a8fba8b54a4b20d772f95fbef8371a71c755b87e805f90c906c4fde7d  
ab5bc2bd46234af97b23a996dd8ee4d9a0e9e63dff8c2e3af1223ed7e65c9f4090d52359f7c19c106  
4d8a3e3967e54a3a80a3104a76977040b67bd7eb63c56cca981a54e9e4c5c75ed4de6a82c0886996  
443822946fd5dd7eea9396bfd638020c0bab7bfcf1c486f48296d9f8ea159107cd4f930af8b969ee1  
bb30f95cdbade1dfae448a76a43e44b8e05f71584dad91bb3f7257d57f42339cad0a23928ab820b10  
45a832e87ff658bd3d5f496b707

### URL

https://leachco.com/pages/important-info

### Timestamp

Wed Oct 26 2022 15:32:29 GMT-0400 (Eastern Daylight Time)

between products intended for sleep and products not intended for sleep. Leachco has always had clear warnings on the product and its packaging not to place it in a bed or crib or use it unsupervised or for sleep. The CPSC is wrongly telling consumers to stop using the Podster® altogether instead of explaining that no lounger should be used in a crib or bed and no lounger is safe for unsupervised sleep. The loss of an infant is truly tragic and families who suffered that loss have our deepest sympathies. Unfortunately, the statistics show that infant deaths can occur anywhere, even in cribs where sleep is the safest. Leachco supports the American Academy of Pediatrics (AAP) safe sleep guidelines and urges families to use the Podster® as intended for supervised daytime activity only—not for sleep.

Leachco believes that banning products like the Podster® will not improve safety. In fact, it will leave families and caregivers with fewer safe ways to care for awake infants. Infant care requires constant attention. It can be an exhausting job and parents and caregivers need products to help them. For as many hours of the day that infants need care, it simply is not reasonable to expect parents and caregivers to put them in a crib.

The CPSC's claims are wrong. The agency ignores the important role loungers can have for parents and makes the wrong choice for families. Leachco stands by the Podster®'s quality, safety and value of the Podster®.

Leachco has sued the CPSC in federal court to protest unfair treatment in the CPSC's biased in-house court. Leachco is represented by **Pacific Legal Foundation**, a national public interest law firm.

**JPMA has issued a statement in support of Leachco's position. For more information [Click Here](#).**

**First Candle has also issued a statement concerning the issue. For more information [Click Here](#).**

**To see the press release about our lawsuit against the CPSC [Click Here](#).**

###

## Frequently Asked Questions

### - Why does the CPSC want Leachco to recall the Podster®?

---

The CPSC has told us it believes that loungers, including the Podster® are not safe because parents and caregivers will ignore the warnings and use them for unsupervised sleep. We disagree because the Podster® is not a sleep product. It is intended for daytime use with awake babies. The Podster® has been on the market for 12 years and helped parents care for infants when they are not in their crib. With 180,000 sold over 12 years, parents and caregivers have shown that it can be used safely.

#### File Name

https-leachco.com-pages-important-info-Oct-26-22-15-32-29-GMT-0400-(EDT)\_1.jpg

#### URL

https://leachco.com/pages/important-info

#### Hash (SHA256)

62e133a6d1b94bfeb5f77b0d70c71b3c8cf08b2a77fc2948f3013a080c2cf95f

#### Timestamp

Wed Oct 26 2022 15:32:29 GMT-0400 (Eastern Daylight Time)

#### Signature (PKCS#1v1.5)

5c99d23d843cdf957cc39b3c632a403c043b98525bae810eb5866b0623c3d53c2eea11f8b3f0231a44  
2816e864219d2d2b5132a4696415335cdae96f7d68318bd3afce96b63dbc1c375850b7dc2ca78a323f  
54f1485991f9771ac9d2a9d8d1c1ef501ef6a4beb23e192e3e86038eb32c299b9ab1874a66570ab5c73  
0231e0dee6c7b2b58b1ca0e8d9236aece60e17b0c9b3d8a55a0766f4eea4e2f2071d1fd6e38e0a6ff1  
3c1fe2df67ed9ceeb1decf871168dc72d6c31b36ac2d0482cdc70a6bf582d5389d1fd2db3ff88b5db27  
ffd246f3ed0134f416b294fc0ba62cd32177af9c447ee46f175adf0f55847d893daa62c5f0ac2f52b229  
6562c15d7da8cca

**- Why does the CPSC want Leachco to recall the Podster®?**

The CPSC has told us it believes that loungers, including the Podster® are not safe because parents and caregivers will ignore the warnings and use them for unsupervised sleep. We disagree because the Podster® is not a sleep product. It is intended for daytime use with awake babies. The Podster® has been on the market for 12 years and helped parents care for infants when they are not in their crib. With 180,000 sold over 12 years, parents and caregivers have shown that it can be used safely.

**- Is the government banning all infant loungers?**

The CPSC has not acted against all infant loungers, and there are new infant loungers flooding the market every day, many of which are from non-U.S. companies. We asked the CPSC if there is something specific about the Podster® they want changed or improved, but they haven't provided any answer or suggested any improvement to the product or its warnings.

**- What happens next? Will the government make Leachco recall the Podster®?**

By law, the CPSC must provide Leachco with the opportunity for a hearing where Leachco will defend the safety, quality and value of the Podster®.

**- Can consumers still use the Podster®?**

We can confidently tell parents and caregivers the Podster® is safe for its intended use—which is adult supervised daytime or awake time use. No lounger, including the Podster® is safe for unsupervised care or sleep. The Podster® has 12 years of experience of families using it safely.

**- Does Leachco plan to compensate consumers who have purchased its products?**

We are following our normal process for customer satisfaction and returns if customers are not satisfied with any of our products. Customers can access us in the usual way though our website or email at [customerservice@leachco.com](mailto:customerservice@leachco.com).



**File Name**

[https://leachco.com/pages-important-info-Oct-26-22-15-32-29-GMT-0400-\(EDT\)\\_2.jpg](https://leachco.com/pages-important-info-Oct-26-22-15-32-29-GMT-0400-(EDT)_2.jpg)

**URL**

<https://leachco.com/pages/important-info>

**Hash (SHA256)**

47f3f90622ea727c4890b70ebc482b75126244d3bead4082713109760b0c25be

**Timestamp**

Wed Oct 26 2022 15:32:29 GMT-0400 (Eastern Daylight Time)

**Signature (PKCS#1v1.5)**

078f8e058a61c6d3e67426c021458977448a10b238d95174f6cc2e2339a1b42a937bade3ce50685b7  
69114cce0ccc63e2320c11105cd784720794275892b80a9485c67f5737a5974d0790991d68a80e109  
12db6baf73b5c59e710d5801f809720ae842712e4af26d008d08d250f5567fc2c2e4960115c1c852aa  
34549b6a9582ee95b56fb01b980194228e2f4e10e6436b9b3ea7bcdfe5f7f3dbc2fe96eb58a7133d9  
3ab7a4adb4fbf56637644c69de2185fdee709969ca1520e9343ac15fef091d22064f0c7c52c6b7da55  
13296daf39617d471faade196c87101fa5dbab9f964d6be63bc441041074755486a994ed25f535459ea  
4de2cb419b41a2b185dba0

We are following our normal process for customer satisfaction and returns if customers are not satisfied with any of our products. Customers can access us in the usual way through our website or email at customerservice@leachco.com.

The screenshot shows a website footer with a newsletter sign-up banner at the top. The banner has a yellow background with a pattern of red and green leaves. A dark blue box in the center contains the text "Join the Family" and "Sign Up Now for our Exclusive Email Newsletter" above a white input field and a yellow "Subscribe" button. Below the banner, the footer is dark blue and contains a logo on the left with the tagline "Because you're expecting... more®". To the right of the logo are two columns of links: "Shop" (Top Selling, Last Chance, All Products, Where to Buy, How to Use Sezzle, Terms and Conditions, Do Not Sell My Personal Information) and "Information" (My Account, Important Info, Frequently Asked Questions, Return and Warranty Policy, Privacy Policy, Copyright Information, Accessibility Policy). Further right is a photo of a woman and two children, with a bio for Jamie Leach, VP, Mom, RN, Innovator™. At the bottom, there are social media icons, a copyright notice for © 2022 Leachco, Inc., a row of payment logos (AMEX, Apple Pay, Discover, G Pay, Mastercard, PayPal, D Pay, VISA), and a chat icon.

**File Name**

https-leachco.com-pages-important-info-Oct-26-22-15-32-29-GMT-0400-(EDT)\_3.jpg

**Hash (SHA256)**

872e4a6eb65a29e9d81e6bdc779c4a5067f13ec2c08b9d03363f79dca47cfc8

**Signature (PKCS#1v1.5)**

694a173dffa3313a21e6c27e9def76acdd8ef7253a3abe6e0ff354e699f0fef69015e3ba409e36f693  
17f38de0bfacee8ebd13172b28ce5f1a489be74ce94c21c8d68952bac59cb3ba4464145ee931d7a86  
a2e9a5d88158ff8ac7dc0e9d2d20c6cc581498748875362cae5e59173a0c37d11366a31ee9907b192  
38730ca5fd11e83d7275895b6c066ffbea901c2bcb36d3ed3ea9f1bf894dd936e5949848b8b6b9e9d  
2ce76f5a9fd77c2785e3834f29496ad75a97ed5f702e28a4a9cd92cc5a256fcf8691ba693dba5e1003  
7c7495906734cb56e8e8ecd374cdce4407f26b9f4ac59757ead8a43c7c42b665aa2d6d59744381c001c  
bdffa47fc038ff3bf7bf9

**URL**

https://leachco.com/pages/important-info

**Timestamp**

Wed Oct 26 2022 15:32:29 GMT-0400 (Eastern Daylight Time)