

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

IN THE MATTER OF

LEACHCO, INC.,

Respondent.

CPSC DOCKET NO. 22-1

**MEMORANDUM IN SUPPORT
OF LEACHCO, INC.'S MOTION TO COMPEL DISCOVERY**

Pursuant to 16 C.F.R. §§ 1025.23, 1025.31(c), (i), and 1025.36, Respondent Leachco, Inc. (“Leachco”) respectfully submits this Memorandum in Support of its Motion to Compel Discovery. Leachco has requested and is entitled to obtain proper discovery materials that it has been denied. Specifically, Leachco moves to compel on the following topics and issues of information and documents:

1. Information regarding the Commission’s testing and data, and assessment of related consumer and infant products (RFPs 83–88; Interrogatories 46–48, 50–59.)
2. Documents concerning communications between Complaint Counsel and other individuals at the Commission about this proceeding, Complaint, the Podster, or Leachco. (RFPs 64, 66, 68, 70, 72, 74, 76, 78.)

INTRODUCTION

As this Court has already acknowledged, discovery extends to “*any matter*, not privileged, which is relevant to the subject matter involved.” Dec. 16 Order at 9 (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978)). That broad scope encompasses *any* information—“whether it relates to the claim *or defense* of the party seeking discovery”—that “could reasonably lead to other matter that could bear on[] *any* issue that is or *may be* in the case.” *Id.* (quoting *Oppenheimer*, 437 U.S. at 351 (emphasis added)). “[D]iscovery should be denied for matters relevant only to claims or defenses that have been stricken, or to events that occurred before an applicable limitations period.” *Id.* The Court has been clear: Just as the Commission is entitled to discovery on its *claims*, Leachco is entitled to discovery on its *defenses*.

Yet the Commission’s latest discovery responses treat discovery as a one-way street. The Commission objects to Leachco’s Requests for Production and Interrogatories because, the Commission says, “*the* issue involved in these proceedings” is “whether the . . . Podsters are defective and create a substantial product hazard” under the Consumer Product Safety Act. *See, e.g.*, Commission Response to RFP No. 59 (attached as Ex. A) (emphasis added).

Of course, the Podster’s lack of a defect amounts to *an* issue in this case. And Leachco’s discovery requests bear directly on that question. But even so, the existence of a defect is not the only issue here. Leachco has many other defenses on which it is entitled to discovery. For one, as this Court has already recognized, the Commission cannot bring an arbitrary and capricious enforcement action. *See* Tr. of Sept Hearing

at 14:7–11 (Ex. G) (the Court explaining that if it “has been established” that the case is “arbitrary and capricious,” then the Commission’s claims fail). Leachco’s RFPs and Interrogatories seek information and documents explaining what the Commission considered and why—issues plainly relevant to whether an agency makes an arbitrary or capricious decision. For another, Leachco contends that this proceeding violates the Due Process Clause of the Fifth Amendment to the Constitution and the Administrative Procedure Act’s separation of functions provision. The information and documents Leachco requested are directly relevant to those issues.

The Commission has no justification for withholding these documents and information simply because (in its own view) they don’t relate to the Commission’s claims. In the first place, the Commission is wrong. But more fundamentally, the Commission misunderstands the discovery standard. Leachco’s defenses are just as proper a basis for discovery as the Commission’s claims. And so the Commission must produce documents and information in response to Leachco’s requests.

BACKGROUND

On February 24, 2023, the Commission served its objections and responses to Leachco’s Second Set of Requests for Production of Documents (Ex. A) and Leachco’s Second Set of Interrogatories (Ex. B.) Over a week later, the Commission served its objections and responses to Leachco’s Third Set of Interrogatories. (Ex. C.) As part of those responses, the Commission made numerous objections and refused to answer or respond to several RFPs and Interrogatories. Leachco now moves to compel under the Commission’s rules of practice.

LEGAL STANDARD

The Rules governing this proceeding require a party to produce documents and things “which are in the possession, custody, or control of the party upon whom the request is served.” 16 C.F.R. § 1025.33 (also allowing a party to permit inspection as appropriate). They also require a party to “furnish such information as is available to the party” in response to written interrogatories. 16 C.F.R. § 1025.32. When a party “fails to respond to discovery, in whole or in part,” the requesting party may move for an order “compelling discovery.” 16 C.F.R. § 1025.36. Federal Rule of Civil Procedure 37 similarly provides that a party may seek to compel the production of documents when a responding party fails to provide the requested material. Fed. R. Civ. P. 37(a)(3)(B)(iv).

ARGUMENT

A. Documents and Information Regarding the Commission’s Assessment of Testing, Data, and Related Consumer and Infant Products

Several RFPs and Interrogatories seek information about the Commission’s testing and assessment of non-Leachco products. But the Commission issued blanket objections, arguing that, for example, “information about other consumer products . . . is not reasonably calculated to lead to the discovery of admissible evidence pertaining to the issue involved in these proceedings—namely, whether Respondent’s Podsters are defective and create a substantial product hazard under Section 15 of the CPSA.” *See, e.g.,* Response to ROG 50 (Ex. B). The Commission also echoes another common objection in this case—that Leachco seeks “premature expert discovery.” *Id.* Rather than responding to Leachco’s requests, the Commission merely says that it has

[REDACTED]

[REDACTED]

In fact, a third PSA is based [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Naturally, then, Leachco would like to know what other products the Commission tested and evaluated. The Commission cannot cherry-pick which products it now claims are relevant to the Podster's safety. Rather, because the Commission evaluated and relied on other products to claim that the Podster is defective, Leachco is entitled to know what other products the Commission has considered to be safe, and what products the Commission has testing and data on. The requests are plainly relevant to the claims and defenses. If testing or data about other products within the Commission's control can show the Podsters are *defective* (as the Commission claims), then surely data is relevant to whether the Podsters are safe.

2. Leachco's requests are relevant to its defenses

More fundamentally, Leachco's requests go to a basic administrative law defense: whether the Commission's action is arbitrary and capricious. 5 U.S.C. § 706(2)(A). Arbitrary and capricious review applies to the Commission's adjudicative proceedings. *See Zen Magnets, LLC v. U.S. Consumer Prod. Safety Comm'n*, No. 17-cv-02645-RBJ, 2018 WL 2938326, at *3 (D. Colo. June 12, 2018). Under the arbitrary and capricious standard, "the agency must examine the relevant data and articulate a satisfactory explanation for its action, including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). An agency cannot "entirely fail[] to consider an important aspect of the problem" or "offer[] an explanation for its decision that runs counter to the evidence before the agency." *Id.*; *see Marsh v. Oregon Nat. Res. Council*, 490 U.S. 360, 376 (1989).

Indeed, an agency must conduct a "reasoned analysis" when it makes decisions—and that analysis must "consider the alternatives" available. *DHS v. Regents of the Univ. of Calif.*, 140 S. Ct. 1891, 1913 (2020). When agencies fail to consider "important aspect[s] of the problem," they act arbitrarily and capriciously. *Id.* Even when an agency "should have considered" some issues "but did not," the "failure was arbitrary and capricious in violation of the APA." *Id.* at 1915. That is especially true where an "agency changes course." *Id.* at 1913. "[L]ongstanding policies may have 'engendered serious reliance interests that must be taken into account.'" *Id.* (quoting *Encino Motorcars, LLC*

v. Navarro, 136 S. Ct. 2117, 2126 (2016)). “It would be arbitrary and capricious to ignore such matters.” *Id.*

The Commission’s data, testing, and analysis of “similar products”—an often undefined term used repeatedly in its own PSAs—are clearly relevant to whether the Commission has acted arbitrarily and capriciously regarding the Podster. Leachco is entitled to know how—and why—the Commission determined that the Podster represents a hazard—and whether the Commission conducted a “reasoned analysis” that “consider[ed] the alternatives.” *Regents*, 140 S. Ct. at 1913. It would be arbitrary and capricious for the Commission to deem the Podster a hazard while ignoring the risks posed by other products. So, too, if the Commission overlooked “the relevant data” regarding infant deaths and injuries. *State Farm*, 463 U.S. at 43. A basic tenet of the APA is that agencies must “consider an important aspect of the problem” it seeks to solve. *Id.* And if the agency possesses information about infant deaths and injuries on other products, that is directly relevant to whether the agency properly determined that the Podster is defective and a substantial product hazard.

Moreover, because arbitrary and capricious review is “record-specific,” Leachco *must* obtain the evidence now. *Troy Corp. v. Browner*, 120 F.3d 277, 284 (D.C. Cir. 1997). Without access to the relevant data and information—testing, deaths, and injuries in infant and child products—Leachco’s ability to present a defense will suffer. This Court has already explained that the Commission must “show your cards” to avoid an arbitrary and capricious problem. Tr. (Ex. G) at 14:6–18 (If “no factual basis has

been established and it's arbitrary and capricious, you're going to have to produce an affidavit of supporting documents.”).

Discovery, in short, extends to information and documents relevant to *defenses*. Leachco argues that the Commission's proceeding is arbitrary and capricious—a standard APA defense—because the agency failed to consider all relevant data, including infant deaths and injuries, and other infant products. And to prove that defense, Leachco needs access to the information in the Commission's control. Thus, this Court should grant the motion to compel.

B. Documents and Information Regarding Communications Between Complaint Counsel and Other Individuals at the Commission About this Proceeding, the Complaint, the Podster, or Leachco

The Commission also objects to several RFPs regarding internal Commission communications. In those objections, the Commission says (1) it will not produce documents “received, prepared, or sent by, or at the direction of, Complaint Counsel after the February 9, 2022 filing of the Complaint of this action,” *see, e.g.*, Response to RFP No. 64, and (2) that Leachco's requests are not relevant to the Commission's claims.

As already explained above, the Commission cannot limit Leachco's discovery requests by narrowing the relevant issues to only the Commission's claims. Thus, objections that “the issue involved in these proceedings—namely whether the Respondent's Podsters are defective and create a substantial product hazard under Section 15 of the CPSA and applicable regulations” are beside the point. Leachco must have access to discovery relevant to its defenses.

And here again, Leachco raises these requests to obtain information that could reasonably lead to evidence relevant to its defenses—namely whether the Commission’s administrative enforcement runs afoul of due process principles and the Administrative Procedure Act.

The APA requires a “separation of functions” during adjudications like the Commission’s here. 5 U.S.C. § 554(d). Under that provision, “[a]n employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that . . . case, participate or advise in the decision, recommended decision, or agency review pursuant to section 557 of this title.” *Id.* In addition, the Commission’s own rules prohibit any communication—written or oral—about an ongoing case to a “decision-maker” in the case. 16 C.F.R. § 1025.68(b), (c). And a decision-maker includes: “The Commissioners and their staffs” and “[t]he General Counsel and his/her staff.” *Id.* § 1025.68(b)(1).

Moreover, the Due Process Clause requires a hearing untainted by bias—or even the appearance of bias. Indeed, “[a] fair trial in a fair tribunal is a basic requirement of due process.” *In re Murchison*, 349 U.S. 133, 136 (1955). Neutrality means “an absence of actual bias in the trial of cases,” *id.*, and no *potential* for bias, *Caperton v. A.T. Massey Coal. Co., Inc.*, 556 U.S. 868, 884–85 (2009).

“An unconstitutional potential for bias exists when the same person serves as both accuser and adjudicator in a case.” *Williams v. Pennsylvania*, 136 S. Ct. 1899, 1905 (2016). “The due process guarantee that ‘no man can be a judge in his own case’ would have little substance if it did not” prevent a judge from hearing a case in which he made

“any number of critical decisions, including what charges to bring.” *Id.* at 1906–07. A judge plainly may not have a “direct, personal role in the defendant’s prosecution.” *Id.* at 1906. Indeed, “[i]t would be very strange if our system of law permitted a judge to act as a grand jury and then to try the very persons accused as a result of his investigations.” *Murchison*, 349 U.S. at 137. In each case, “fairness” would be a mirage.

As the Court recognized in the latest conference, the Commission is the ultimate judge in this case. Indeed, the Commission makes all the final decisions on appeal. The Commission can, in its own discretion, “exercise all the powers which it could have exercised if it had made the Initial Decision.” 16 C.F.R. § 1025.55(a). And even if no party appeals, it remains up to the Commission whether it wants to modify any part of the ALJ’s decision. *See id.* § 1025.54 (allowing the Commission to review the ALJ’s ruling even in the absence of an appeal).

Yet, the Commission also voted to file the Administrative Complaint. *See Record of Commission Action to Issue Administrative Complaint (Feb. 9, 2022)*, available at <https://www.cpsc.gov/s3fs-public/RCA-Vote-to-Issue-Administrative-Complaint-Against-Leachco-Inc.pdf?VersionId=faOQ7PzlN36LojGDXqcLkvqJTn.HIjny> (“The Commission voted . . . to authorize issuance of a Complaint . . . against Leachco, Inc.”). And if the Commission and its staff—or other individuals at the Commission like the General Counsel—continue to communicate to Complaint Counsel about this case, Leachco will have a strong argument that its due process rights have been violated. *Williams*, 136 S. Ct. at 1905 (noting a due process problem arises when a judge has a “direct . . . role in the defendant’s prosecution”). The APA further supports the point:

Agencies are supposed to separate functions during administrative enforcement. And if the Commission has failed to do so, it has raised the *appearance of bias*—which is itself a due process violation. *Caperton*, 556 U.S. at 884–85.

The Commission’s own documents reveal that numerous individuals review and communicate about information related to the Podster and Leachco. For example, the IDIs include attorneys, compliance officers, field investigators, and potentially more individuals. Leachco is entitled to know the scope of communications regarding such documents (as well as similar communications) or, at the very least, the Commission must note such communications on a privilege log.

Thus, Leachco’s requests regarding communications about this case must be produced. They are relevant to Leachco’s defenses. And as the Commission’s own rules note, “[i]t is the policy of the Commission that adjudicative proceedings shall be conducted . . . with due regard to the rights and interests of all persons affected.” 16 C.F.R. § 1025.2; *id.* § 1025.1 (“A major concern of the Commission is that all matters in adjudication move forward . . . consistent with the Constitutional due process rights of all parties.”). But Leachco’s defense will be swept away—and its due process rights ignored—if the Commission simply refuses to answer these discovery requests.

CONCLUSION

Because Leachco’s interrogatories and RFPs bear directly on Leachco’s defenses, the Motion to Compel should be granted.

DATED: March 16, 2022.

Respectfully submitted,

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Counsel for Respondent Leachco, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on March 16, 2023, the foregoing was served upon all parties and participants of record as follows:

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

s/John F. Kerkhoff
John F. Kerkhoff
Counsel for Respondent Leachco, Inc.

LEACHCO, INC.'S MOTION TO COMPEL

EXHIBIT A

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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

COMPLAINT COUNSEL’S OBJECTIONS AND RESPONSES TO RESPONDENT’S SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

Pursuant to 16 C.F.R. § 1025.33, Complaint Counsel respectfully submits its objections and responses (“Responses”) to Respondent’s Second Set of Requests for Production of Documents and Things (“Requests”).

PRELIMINARY STATEMENT

Complaint Counsel hereby incorporates by reference its Preliminary Statement set forth in Complaint Counsel’s Objections and Responses to Respondent’s First Set of Requests for Production of Documents and Things to Consumer Product Safety Commission, dated May 13, 2022.

GENERAL OBJECTIONS

Complaint Counsel hereby incorporates by reference all its General Objections set forth in Complaint Counsel’s Objections and Responses to Respondent’s First Set of Requests for Production of Documents and Things to Consumer Product Safety Commission, dated May 13, 2022.

Requests contained within Respondent’s First Set of Requests, namely, Request Nos. 8, 9, and 10. Complaint Counsel further objects to this Request as it seeks documents that are protected by privilege or other protection, including the attorney-client privilege, work product doctrine, or deliberative process privilege. Complaint Counsel objects to producing such materials and states that, although not required by 16 C.F.R. Part 1025, Complaint Counsel has produced an appropriate privilege log identifying documents withheld from production on the basis of privilege or other protection. Complaint Counsel incorporates by reference herein its objections and responses to Request Nos. 8, 9, and 10 from its Objections and Responses and First Supplemental Responses to Respondent’s First Set of Requests, served on Leachco on May 13, 2022, and October 3, 2022, respectively. Complaint Counsel also objects to this Request to the extent it seeks information outside the permissible scope of discovery set forth in 16 C.F.R. § 1025.31(c), and Complaint Counsel will not produce documents and things that exclusively are within the possession of the CPSC Commissioners or their immediate staff. Complaint Counsel further objects to this Request as the term “Communications” is not defined and is vague and ambiguous.

Subject to and without waiver of the foregoing general and specific objections, Complaint Counsel refers Leachco to Complaint Counsel’s prior document productions and privilege log.

REQUEST NO. 64: All Communications—on or after February 9, 2022—between Complaint Counsel and Commissioners Concerning the Proceeding, Your Complaint, the Podster and/or Leachco.

RESPONSE TO REQUEST NO. 64:

Complaint Counsel objects to this Request on the grounds that it seeks information

outside the permissible scope of discovery set forth in 16 C.F.R. § 1025.31(c) because the requested documents are not reasonably calculated to lead to the discovery of admissible evidence pertaining to the issue involved in these proceedings—namely, whether the Respondent’s Podsters are defective and create a substantial product hazard under Section 15 of the CPSA and applicable regulations, including 16 C.F.R. Part 1115, and because Complaint Counsel will not produce documents and things that exclusively are within the possession of the CPSC Commissioners or their immediate staff. Complaint Counsel also objects to this Request as it seeks the production of documents and things received, prepared, or sent by, or at the direction of, Complaint Counsel after the February 9, 2022 filing of the Complaint in this action. This approach is consistent with Respondent’s similar position that January 20, 2022, the date of the Commission’s press release alleging that the Podster is defective, “is the proper cut-off date for relevant materials in this case” Leachco, Inc.’s Objections and Responses to CPSC’s Second Set of Requests for Production of Documents at 3, and with the Court’s December 16, 2022 Order. Complaint Counsel further objects to this Request as the term “Communications” is not defined and is vague and ambiguous.

REQUEST NO. 65: All Communications—between January 20, 2022 and February 9, 2022—between Complaint Counsel and the Office of Compliance and Field Operations Concerning the Proceeding, Your Complaint, the Podster, and/or Leachco.

RESPONSE TO REQUEST NO. 65:

Complaint Counsel is comprised of attorneys within the Division of Enforcement and Litigation of the Office of Compliance and Field Operations. Nevertheless, Complaint Counsel objects to this request on the grounds that it is duplicative of other Requests contained within Respondent’s First Set of Requests, namely, Request Nos. 8 and 9. Complaint Counsel further

objects to this Request as it seeks documents that are protected by privilege or other protection, including the attorney-client privilege, work product doctrine, or deliberative process privilege. Complaint Counsel objects to producing such materials and states that, although not required by 16 C.F.R. Part 1025, Complaint Counsel has produced an appropriate privilege log identifying documents withheld from production on the basis of privilege or other protection. Complaint Counsel incorporates by reference herein its objections and responses to Request Nos. 8 and 9 from its Objections and Responses and First Supplemental Responses to Respondent's First Set of Requests, served on Leachco on May 13, 2022, and October 3, 2022, respectively. Complaint Counsel also objects to this Request as the term "Communications" is not defined and is vague and ambiguous.

Subject to and without waiver of the foregoing general and specific objections, Complaint Counsel refers Leachco to Complaint Counsel's prior document productions and privilege log.

REQUEST NO. 66: All Communications—on or after February 9, 2022—between Complaint Counsel and the Office of Compliance and Field Operations Concerning the Proceeding, Your Complaint, the Podster, and/or Leachco.

RESPONSE TO REQUEST NO. 66:

Complaint Counsel is comprised of attorneys within the Division of Enforcement and Litigation of the Office of Compliance and Field Operations. Nevertheless, Complaint Counsel objects to this Request on the grounds that it seeks information outside the permissible scope of discovery set forth in 16 C.F.R. § 1025.31(c) because the requested documents are not reasonably calculated to lead to the discovery of admissible evidence pertaining to the issue involved in these proceedings—namely, whether the Respondent's Podsters are defective and

create a substantial product hazard under Section 15 of the CPSA and applicable regulations, including 16 C.F.R. Part 1115. Complaint Counsel also objects to this Request as it seeks the production of documents and things received, prepared, or sent by, or at the direction of, Complaint Counsel after the February 9, 2022 filing of the Complaint in this action. This approach is consistent with Respondent’s similar position that January 20, 2022, the date of the Commission’s press release alleging that the Podster is defective, “is the proper cut-off date for relevant materials in this case” Leachco, Inc.’s Objections and Responses to CPSC’s Second Set of Requests for Production of Documents, at 3, and with the Court’s December 16, 2022 Order. Complaint Counsel also objects to this Request as the term “Communications” is not defined and is vague and ambiguous.

REQUEST NO. 67: All Communications—between January 20, 2022 and February 9, 2022—between Complaint Counsel and the General Counsel concerning the Proceeding, Your Complaint, the Podster, and/or Leachco.

RESPONSE TO REQUEST NO. 67:

Complaint Counsel objects to this request on the grounds that it is duplicative of other Requests contained within Respondent’s First Set of Requests, namely, Request Nos. 8 and 9. Complaint Counsel further objects to this Request as it seeks documents that are protected by privilege or other protection, including the attorney-client privilege, work product doctrine, or deliberative process privilege. Complaint Counsel objects to producing such materials and states that, although not required by 16 C.F.R. Part 1025, Complaint Counsel has produced an appropriate privilege log identifying documents withheld from production on the basis of privilege or other protection. Complaint Counsel incorporates by reference herein its objections and responses to Request Nos. 8 and 9 from its Objections and Responses and First

Supplemental Responses to Respondent’s First Set of Requests, served on Leachco on May 13, 2022, and October 3, 2022, respectively. Complaint Counsel also objects to this Request as the term “Communications” is not defined and is vague and ambiguous.

Subject to and without waiver of the foregoing general and specific objections, Complaint Counsel refers Leachco to Complaint Counsel’s prior document productions and privilege log.

REQUEST NO. 68: All Communications—on or after February 9, 2022—between Complaint Counsel and the General Counsel Concerning the Proceeding, Your Complaint, the Podster, and/or Leachco.

RESPONSE TO REQUEST NO. 68:

Complaint Counsel objects to this Request on the grounds that it seeks information outside the permissible scope of discovery set forth in 16 C.F.R. § 1025.31(c) because the requested documents are not reasonably calculated to lead to the discovery of admissible evidence pertaining to the issue involved in these proceedings—namely, whether the Respondent’s Podsters are defective and create a substantial product hazard under Section 15 of the CPSA and applicable regulations, including 16 C.F.R. Part 1115. Complaint Counsel also objects to this Request as it seeks the production of documents and things received, prepared, or sent by, or at the direction of, Complaint Counsel after the February 9, 2022 filing of the Complaint in this action. This approach is consistent with Respondent’s similar position that January 20, 2022, the date of the Commission’s press release alleging that the Podster is defective, “is the proper cut-off date for relevant materials in this case” Leachco, Inc.’s Objections and Responses to CPSC’s Second Set of Requests for Production of Documents, at 3, and with the Court’s December 16, 2022 Order. Complaint Counsel also objects to this Request

as the term “Communications” is not defined and is vague and ambiguous.

REQUEST NO. 69: All Communications—between January 20, 2022 and February 9, 2022—between Complaint Counsel and the Office of Communications Concerning the Proceeding, Your Complaint, the Podster, and/or Leachco.

RESPONSE TO REQUEST NO. 69:

Complaint Counsel objects to this request on the grounds that it is duplicative of other Requests contained within Respondent’s First Set of Requests, namely, Request Nos. 8, 9, and 15. Complaint Counsel further objects to this Request as it seeks documents that are protected by privilege or other protection, including the attorney-client privilege, work product doctrine, or deliberative process privilege. Complaint Counsel objects to producing such materials and states that, although not required by 16 C.F.R. Part 1025, Complaint Counsel has produced an appropriate privilege log identifying documents withheld from production on the basis of privilege or other protection. Complaint Counsel incorporates by reference herein its objections and responses to Request Nos. 8, 9, and 15 from its Objections and Responses and First Supplemental Responses to Respondent’s First Set of Requests, served on Leachco on May 13, 2022, and October 3, 2022, respectively. Complaint Counsel also objects to this Request as the term “Communications” is not defined and is vague and ambiguous.

Subject to and without waiver of the foregoing general and specific objections, Complaint Counsel refers Leachco to Complaint Counsel’s prior document productions and privilege log.

REQUEST NO. 70: All Communications—on or after February 9, 2022—between Complaint Counsel and the Office of Communications Concerning the Proceeding, Your Complaint, the Podster, and/or Leachco.

RESPONSE TO REQUEST NO. 70:

Complaint Counsel objects to this Request on the grounds that it seeks information outside the permissible scope of discovery set forth in 16 C.F.R. § 1025.31(c) because the requested documents are not reasonably calculated to lead to the discovery of admissible evidence pertaining to the issue involved in these proceedings—namely, whether the Respondent’s Podsters are defective and create a substantial product hazard under Section 15 of the CPSA and applicable regulations, including 16 C.F.R. Part 1115. Complaint Counsel also objects to this Request as it seeks the production of documents and things received, prepared, or sent by, or at the direction of, Complaint Counsel after the February 9, 2022 filing of the Complaint in this action. This approach is consistent with Respondent’s similar position that January 20, 2022, the date of the Commission’s press release alleging that the Podster is defective, “is the proper cut-off date for relevant materials in this case” Leachco, Inc.’s Objections and Responses to CPSC’s Second Set of Requests for Production of Documents, at 3, and with the Court’s December 16, 2022 Order. Complaint Counsel also objects to this Request as the term “Communications” is not defined and is vague and ambiguous.

REQUEST NO. 71: All Communications—between January 20, 2022 and February 9, 2022—between Complaint Counsel and the Division of Regulatory Enforcement Concerning the Proceeding, Your Complaint, the Podster, and/or Leachco.

RESPONSE TO REQUEST NO. 71:

Complaint Counsel objects to this request on the grounds that it is duplicative of other Requests contained within Respondent’s First Set of Requests, namely, Request Nos. 8 and 9. Complaint Counsel further objects to this Request as it seeks documents that are protected by privilege or other protection, including the attorney-client privilege, work product doctrine, or deliberative

process privilege. Complaint Counsel objects to producing such materials and states that, although not required by 16 C.F.R. Part 1025, Complaint Counsel has produced an appropriate privilege log identifying documents withheld from production on the basis of privilege or other protection. Complaint Counsel incorporates by reference herein its objections and responses to Request Nos. 8 and 9 from its Objections and Responses and First Supplemental Responses to Respondent's First Set of Requests, served on Leachco on May 13, 2022, and October 3, 2022, respectively. Complaint Counsel also objects to this Request as the term "Communications" is not defined and is vague and ambiguous.

Subject to and without waiver of the foregoing general and specific objections, Complaint Counsel refers Leachco to Complaint Counsel's prior document productions and privilege log.

REQUEST NO. 72: All Communications—on or after February 9, 2022—between Complaint Counsel and the Division of Regulatory Enforcement Concerning the Proceeding, Your Complaint, the Podster, and/or Leachco.

RESPONSE TO REQUEST NO. 72:

Complaint Counsel objects to this Request on the grounds that it seeks information outside the permissible scope of discovery set forth in 16 C.F.R. § 1025.31(c) because the requested documents are not reasonably calculated to lead to the discovery of admissible evidence pertaining to the issue involved in these proceedings—namely, whether the Respondent's Podsters are defective and create a substantial product hazard under Section 15 of the CPSA and applicable regulations, including 16 C.F.R. Part 1115. Complaint Counsel also objects to this Request as it seeks the production of documents and things received, prepared, or sent by, or at the direction of, Complaint Counsel after the February 9, 2022 filing of the

Complaint in this action. This approach is consistent with Respondent’s similar position that January 20, 2022, the date of the Commission’s press release alleging that the Podster is defective, “is the proper cut-off date for relevant materials in this case” Leachco, Inc.’s Objections and Responses to CPSC’s Second Set of Requests for Production of Documents, at 3, and with the Court’s December 16, 2022 Order. Complaint Counsel also objects to this Request as the term “Communications” is not defined and is vague and ambiguous.

REQUEST NO. 73: All Communications—between January 20, 2022 and February 9, 2022—between Complaint Counsel and the Division of Enforcement and Litigation Concerning the Proceeding, Your Complaint, the Podster, and/or Leachco.

RESPONSE TO REQUEST NO. 73:

Complaint Counsel is comprised of attorneys within the Division of Enforcement and Litigation of the Office of Compliance and Field Operations. Nevertheless, Complaint Counsel objects to this request on the grounds that it is duplicative of other Requests contained within Respondent’s First Set of Requests, namely, Request Nos. 8 and 9. Complaint Counsel further objects to this Request as it seeks documents that are protected by privilege or other protection, including the attorney-client privilege, work product doctrine, or deliberative process privilege. Complaint Counsel objects to producing such materials and states that, although not required by 16 C.F.R. Part 1025, Complaint Counsel has produced an appropriate privilege log identifying documents withheld from production on the basis of privilege or other protection. Complaint Counsel incorporates by reference herein its objections and responses to Request Nos. 8 and 9 from its Objections and Responses and First Supplemental Responses to Respondent’s First Set of Requests, served on Leachco on May 13, 2022, and October 3, 2022, respectively. Complaint

Counsel also objects to this Request as the term “Communications” is not defined and is vague and ambiguous.

Subject to and without waiver of the foregoing general and specific objections, Complaint Counsel refers Leachco to Complaint Counsel’s prior document productions and privilege log.

REQUEST NO. 74: All Communications—on or after February 9, 2022—between Complaint Counsel and the Division of Enforcement and Litigation Concerning the Proceeding, Your Complaint, the Podster, and/or Leachco. CPSC Secretary [sic].

RESPONSE TO REQUEST NO. 74:

Complaint Counsel is comprised of attorneys within the Division of Enforcement and Litigation of the Office of Compliance and Field Operations. Nevertheless, Complaint Counsel objects to this Request on the grounds that it seeks information outside the permissible scope of discovery set forth in 16 C.F.R. § 1025.31(c) because the requested documents are not reasonably calculated to lead to the discovery of admissible evidence pertaining to the issue involved in these proceedings—namely, whether the Respondent’s Podsters are defective and create a substantial product hazard under Section 15 of the CPSA and applicable regulations, including 16 C.F.R. Part 1115. Complaint Counsel also objects to this Request as it seeks the production of documents and things received, prepared, or sent by, or at the direction of, Complaint Counsel after the February 9, 2022 filing of the Complaint in this action. This approach is consistent with Respondent’s similar position that January 20, 2022, the date of the Commission’s press release alleging that the Podster is defective, “is the proper cut-off date for relevant materials in this case” Leachco, Inc.’s Objections and Responses to CPSC’s Second Set of Requests for Production of Documents, at 3, and with the Court’s December 16, 2022 Order.

Complaint Counsel also objects to this Request as the term “Communications” is not defined and is vague and ambiguous. Complaint Counsel further objects to this request to the extent that it contains the words “CPSC Secretary” at the end of the record but no other words or information; as such, the request is vague and ambiguous and not able to be answered.

REQUEST NO. 75: All Communications (except Communications in which Leachco’s counsel were copied)—between January 20, 2022 and February 9, 2022—between Complaint Counsel and the CPSC Secretary Concerning the Proceeding, Your Complaint, the Podster, and/or Leachco. Communications in which Leachco’s counsel were copied need not be produced in response to this Request.

RESPONSE TO REQUEST NO. 75:

Complaint Counsel objects to this request on the grounds that it is duplicative of other Requests contained within Respondent’s First Set of Requests, namely, Request Nos. 8 and 9. Complaint Counsel further objects to this Request as it seeks documents that are protected by privilege or other protection, including the attorney-client privilege, work product doctrine, or deliberative process privilege. Complaint Counsel objects to producing such materials and states that, although not required by 16 C.F.R. Part 1025, Complaint Counsel has produced an appropriate privilege log identifying documents withheld from production on the basis of privilege or other protection. Complaint Counsel incorporates by reference herein its objections and responses to Request Nos. 8 and 9 from its Objections and Responses and First Supplemental Responses to Respondent’s First Set of Requests, served on Leachco on May 13, 2022, and October 3, 2022, respectively. Complaint Counsel also objects to this Request as the term “Communications” is not defined and is vague and ambiguous.

Subject to and without waiver of the foregoing general and specific objections,

Complaint Counsel refers Leachco to Complaint Counsel’s prior document productions and privilege log.

REQUEST NO. 76: All Communications (except Communications in which Leachco’s counsel were copied)—on or after February 9, 2022—between Complaint Counsel and the CPSC Secretary Concerning the Proceeding, Your Complaint, the Podster, and/or Leachco.

RESPONSE TO REQUEST NO. 76:

Complaint Counsel objects to this Request on the grounds that it seeks information outside the permissible scope of discovery set forth in 16 C.F.R. § 1025.31(c) because the requested documents are not reasonably calculated to lead to the discovery of admissible evidence pertaining to the issue involved in these proceedings—namely, whether the Respondent’s Podsters are defective and create a substantial product hazard under Section 15 of the CPSA and applicable regulations, including 16 C.F.R. Part 1115. Complaint Counsel also objects to this Request as it seeks the production of documents and things received, prepared, or sent by, or at the direction of, Complaint Counsel after the February 9, 2022 filing of the Complaint in this action. This approach is consistent with Respondent’s similar position that January 20, 2022, the date of the Commission’s press release alleging that the Podster is defective, “is the proper cut-off date for relevant materials in this case” Leachco, Inc.’s Objections and Responses to CPSC’s Second Set of Requests for Production of Documents, at 3, and with the Court’s December 16, 2022 Order. Complaint Counsel also objects to this Request as the term “Communications” is not defined and is vague and ambiguous.

REQUEST NO. 77: To the extent not captured above, all Communications—between January 20, 2022 and February 9, 2022—between Complaint Counsel and all other employees of the Commission Concerning the Proceeding, Your Complaint, the Podster, and/or Leachco.

RESPONSE TO REQUEST NO. 77:

Complaint Counsel objects to this request on the grounds that it is duplicative of other Requests contained within Respondent’s First Set of Requests, namely, Request Nos. 8, 9, and 10. Complaint Counsel further objects to this Request as it seeks documents that are protected by privilege or other protection, including the attorney-client privilege, work product doctrine, or deliberative process privilege. Complaint Counsel objects to producing such materials and states that, although not required by 16 C.F.R. Part 1025, Complaint Counsel has produced an appropriate privilege log identifying documents withheld from production on the basis of privilege or other protection. Complaint Counsel incorporates by reference herein its objections and responses to Request Nos. 8, 9, and 10 from its Objections and Responses and First Supplemental Responses to Respondent’s First Set of Requests, served on Leachco on May 13, 2022, and October 3, 2022, respectively. Complaint Counsel also objects to this Request as the term “Communications” is not defined and is vague and ambiguous.

Subject to and without waiver of the foregoing general and specific objections, Complaint Counsel refers Leachco to Complaint Counsel’s prior document productions and privilege log.

REQUEST NO. 78: To the extent not captured above, all Communications—on or after February 9, 2022—between Complaint Counsel and all other employees of the Commission Concerning the Proceeding, Your Complaint, the Podster, and/or Leachco.

RESPONSE TO REQUEST NO. 78:

Complaint Counsel objects to this Request on the grounds that it seeks information outside the permissible scope of discovery set forth in 16 C.F.R. § 1025.31(c) because the requested documents are not reasonably calculated to lead to the discovery of admissible

evidence pertaining to the issue involved in these proceedings—namely, whether the Respondent’s Podsters are defective and create a substantial product hazard under Section 15 of the CPSA and applicable regulations, including 16 C.F.R. Part 1115. Complaint Counsel also objects to this Request as it seeks the production of documents and things received, prepared, or sent by, or at the direction of, Complaint Counsel after the February 9, 2022 filing of the Complaint in this action. This approach is consistent with Respondent’s similar position that January 20, 2022, the date of the Commission’s press release alleging that the Podster is defective, “is the proper cut-off date for relevant materials in this case” Leachco, Inc.’s Objections and Responses to CPSC’s Second Set of Requests for Production of Documents, at 3, and with the Court’s December 16, 2022 Order. Complaint Counsel also objects to this Request as the term “Communications” is not defined and is vague and ambiguous.

REQUEST NO. 79: A detailed organizational chart of the Commission, including the identification of all offices, divisions, and employees.

RESPONSE TO REQUEST NO. 79:

Complaint Counsel objects to this Request on the grounds that it seeks information outside the permissible scope of discovery set forth in 16 C.F.R. § 1025.31(c) because the requested document is not reasonably calculated to lead to the discovery of admissible evidence pertaining to the issue involved in these proceedings—namely, whether the Respondent’s Podsters are defective and create a substantial product hazard under Section 15 of the CPSA and applicable regulations, including 16 C.F.R. Part 1115.

Subject to and without waiver of the foregoing general and specific objections, Complaint Counsel refers Leachco to the organizational chart of the Commission, publicly available at <https://www.cpsc.gov/Organization-Chart>.

Complaint Counsel further objects to this Request to the extent it seeks information outside the permissible scope of discovery set forth in 16 C.F.R. § 1025.31(c), and Complaint Counsel will not produce documents and things that exclusively are within the possession of the CPSC Commissioners or their immediate staff.

Subject to and without waiver of the foregoing general and specific objections, Complaint Counsel refers Leachco to Complaint Counsel's prior document productions.

REQUEST NO. 83: All Documents reflecting studies, reports, or investigations relating to consumer misuse of infant products, including but not limited to, infant-lounger products.

RESPONSE TO REQUEST NO. 83:

Complaint Counsel objects to this Request on the grounds that it seeks information well outside the permissible scope of discovery set forth in 16 C.F.R. § 1025.31(c). Documents pertaining to products other than the Podsters are not reasonably calculated to lead to the discovery of admissible evidence pertaining to the issue involved in these proceedings—namely, whether the Respondent's Podsters are defective and create a substantial product hazard under Section 15 of the CPSA and applicable regulations, including 16 C.F.R. Part 1115. Complaint Counsel further objects to this Request as overly broad and unduly burdensome because it seeks materials that are beyond the scope of permissible discovery and therefore are unnecessarily burdensome.

Complaint Counsel further objects to this Request as it seeks documents that are protected by privilege or other protection, including the attorney-client privilege, work product doctrine, or deliberative process privilege. Complaint Counsel also objects to this Request as it seeks documents that are protected by Section 6 of the CPSA, 15 U.S.C. § 2055. Complaint

Counsel further objects to this Request as vague and ambiguous in the use of the phrase “reflecting studies, reports, or investigations.”

Subject to and without waiver of the foregoing general and specific objections, Complaint Counsel refers Leachco to Complaint Counsel’s prior document productions.

REQUEST NO. 84: All Documents from 2000 to the present, reflecting data Concerning deaths of infants involving consumer products.

RESPONSE TO REQUEST NO. 84:

Complaint Counsel objects to this Request on the grounds that it seeks information well outside the permissible scope of discovery set forth in 16 C.F.R. § 1025.31(c). Documents pertaining to products other than the Podsters are not reasonably calculated to lead to the discovery of admissible evidence pertaining to the issue involved in these proceedings—namely, whether the Respondent’s Podsters are defective and create a substantial product hazard under Section 15 of the CPSA and applicable regulations, including 16 C.F.R. Part 1115. Complaint Counsel further objects to this Request as overly broad and unduly burdensome because it seeks materials that are beyond the scope of permissible discovery and therefore are unnecessarily burdensome.

Complaint Counsel further objects to this Request as it seeks documents that are protected by privilege or other protection, including the attorney-client privilege, work product doctrine, or deliberative process privilege. Complaint Counsel also objects to this Request as it seeks documents that are protected by Section 6 of the CPSA, 15 U.S.C. § 2055. Complaint Counsel further objects to this Request as vague and ambiguous in the use of the phrase “reflecting data.”

Subject to and without waiver of the foregoing general and specific objections, Complaint Counsel refers Leachco to Complaint Counsel's prior document productions.

REQUEST NO. 85: All Documents and data evaluated by the CPSC, and/or anyone acting on behalf of or at the direction of the CPSC, Concerning Sudden Unexplained Infant Death.

RESPONSE TO REQUEST NO. 85:

Complaint Counsel objects to this Request on the grounds that it seeks information well outside the permissible scope of discovery set forth in 16 C.F.R. § 1025.31(c). The requested documents are not reasonably calculated to lead to the discovery of admissible evidence pertaining to the issue involved in these proceedings—namely, whether the Respondent's Podsters are defective and create a substantial product hazard under Section 15 of the CPSA and applicable regulations, including 16 C.F.R. Part 1115. Complaint Counsel further objects to this Request as overly broad and unduly burdensome because it seeks materials that are beyond the scope of permissible discovery and therefore are unnecessarily burdensome.

Complaint Counsel further objects to this Request as it seeks documents that are protected by privilege or other protection, including the attorney-client privilege, work product doctrine, or deliberative process privilege. Complaint Counsel also objects to this Request as it seeks documents that are protected by Section 6 of the CPSA, 15 U.S.C. § 2055. Complaint Counsel further objects to this Request as vague and ambiguous in the use of the phrase "data evaluated" and the phrase "Sudden Unexplained Infant Death," which is not defined.

Subject to and without waiver of the foregoing general and specific objections, Complaint Counsel refers Leachco to Complaint Counsel's prior document productions.

REQUEST NO. 86: All Documents and data evaluated by the CPSC, and/or anyone acting on behalf of or at the direction of the CPSC, Concerning Sudden Unexplained Infant Death.

RESPONSE TO REQUEST NO. 86:

Complaint Counsel objects to this Request on the grounds that it seeks information well outside the permissible scope of discovery set forth in 16 C.F.R. § 1025.31(c). The requested documents are not reasonably calculated to lead to the discovery of admissible evidence pertaining to the issue involved in these proceedings—namely, whether the Respondent’s Podsters are defective and create a substantial product hazard under Section 15 of the CPSA and applicable regulations, including 16 C.F.R. Part 1115. Complaint Counsel further objects to this Request as overly broad and unduly burdensome because it seeks materials that are beyond the scope of permissible discovery and therefore are unnecessarily burdensome.

Complaint Counsel further objects to this Request as it seeks documents that are protected by privilege or other protection, including the attorney-client privilege, work product doctrine, or deliberative process privilege. Complaint Counsel also objects to this Request as it seeks documents that are protected by Section 6 of the CPSA, 15 U.S.C. § 2055. Complaint Counsel further objects to this Request as vague and ambiguous in the use of the phrase “data evaluated” and the phrase “Sudden Unexplained Infant Death,” which is not defined.

Subject to and without waiver of the foregoing general and specific objections, Complaint Counsel refers Leachco to Complaint Counsel’s prior document productions.

REQUEST NO. 87: All Documents and data evaluated by the CPSC, and/or anyone acting on behalf of or at the direction of the CPSC, Concerning consumer products that create or pose a risk of suffocation to infants.

RESPONSE TO REQUEST NO. 87:

Complaint Counsel objects to this Request on the grounds that it seeks information well outside the permissible scope of discovery set forth in 16 C.F.R. § 1025.31(c). Documents pertaining to products other than the Podsters are not reasonably calculated to lead to the discovery of admissible evidence pertaining to the issue involved in these proceedings—namely, whether the Respondent’s Podsters are defective and create a substantial product hazard under Section 15 of the CPSA and applicable regulations, including 16 C.F.R. Part 1115. Complaint Counsel further objects to this Request as overly broad and unduly burdensome because it seeks materials that are beyond the scope of permissible discovery and therefore are unnecessarily burdensome.

Complaint Counsel further objects to this Request as it seeks documents that are protected by privilege or other protection, including the attorney-client privilege, work product doctrine, or deliberative process privilege. Complaint Counsel also objects to this Request as it seeks documents that are protected by Section 6 of the CPSA, 15 U.S.C. § 2055. Complaint Counsel further objects to this Request as vague and ambiguous in the use of the phrase “data evaluated.”

Subject to and without waiver of the foregoing general and specific objections, Complaint Counsel refers Leachco to Complaint Counsel’s prior document productions.

REQUEST NO. 88: All Documents reflecting Tests on which the Commission relied to initiate its Complaint.

RESPONSE TO REQUEST NO. 88:

Complaint Counsel objects to this request on the grounds that it is duplicative of other Requests contained within Respondent’s First Set of Requests, namely, Request Nos. 5, 7, 12,

and 46. Complaint Counsel incorporates by reference herein its objections and responses to Request Nos. 5, 7, 12, and 46 from its Objections and Responses and First Supplemental Responses to Respondent's First Set of Requests, served on Leachco on May 13, 2022, and October 3, 2022, respectively. Complaint Counsel further objects to this Request as it is vague and ambiguous in the use of the phrase "relied to initiate" and the word "Tests," which is not defined.

Subject to and without waiver of the foregoing general and specific objections Complaint Counsel refers Leachco to Complaint Counsel's prior document productions.

Dated this 24th day of February, 2023

/s/ Brett Ruff
Gregory Reyes, Supervisory Attorney
Brett Ruff, Trial Attorney
Caitlin O'Donnell, 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
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Complaint Counsel for
U.S. Consumer Product Safety Commission

LEACHCO, INC.'S MOTION TO COMPEL

EXHIBIT B

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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

**COMPLAINT COUNSEL’S OBJECTIONS AND RESPONSES
TO RESPONDENT’S SECOND SET OF INTERROGATORIES**

Pursuant to 16 C.F.R. § 1025.32, Complaint Counsel respectfully submits its objections and responses (“Responses”) to Respondent Leachco, Inc.’s (“Respondent”) Second Set of Interrogatories (“Interrogatories”).

PRELIMINARY STATEMENT

Complaint Counsel hereby incorporates by reference its Preliminary Statement set forth in Complaint Counsel’s Objections and Responses to Respondent’s First Set of Interrogatories to Consumer Product Safety Commission, dated May 13, 2022.

GENERAL OBJECTIONS

Complaint Counsel hereby incorporates by reference its General Objections set forth in Complaint Counsel’s Objections and Responses to Respondent’s First Set of Interrogatories to Consumer Product Safety Commission, dated May 13, 2022. Complaint Counsel also objects to these Interrogatories to the extent they are duplicative of other discovery propounded by Respondent and seek information outside the permissible scope of discovery set forth in 16 C.F.R. § 1025.31(c), as the Interrogatories run contrary to Respondent’s pledge at the April 22,

Order on Prehearing Schedule and will amend these responses in accordance with 16 C.F.R. § 1025.31(f), as appropriate. Complaint Counsel further objects to this Interrogatory as unduly burdensome because it is duplicative of other discovery propounded by Leachco. *See, e.g.*, Interrogatory No. 20. Complaint Counsel also objects to this Interrogatory on the grounds it seeks information protected by privilege or other protection, including the attorney-client privilege, work product doctrine, or deliberative process privilege.

Subject to and without waiver of the foregoing general and specific objections, Complaint Counsel states that information of the type sought by this Interrogatory is contained within, or can be derived from, the PSAs Complaint Counsel produced to Respondent on April 8, 2022.

INTERROGATORY NO. 46: Identify every other product Tested by the same people who Tested the Podster.

RESPONSE TO INTERROGATORY NO. 46:

Complaint Counsel objects to this Interrogatory and states that it seeks information outside the permissible scope of discovery set forth in 16 C.F.R. § 1025.31(c). The requested information is not reasonably calculated to lead to the discovery of admissible evidence pertaining to the issue involved in these proceedings—namely, whether Respondent’s Podsters are defective and create a substantial product hazard under Section 15 of the CPSA and applicable regulations, including 16 C.F.R. Part 1115. Complaint Counsel further objects that this Interrogatory is vague and ambiguous in its use of the term “Tested”. Complaint Counsel further objects to this Interrogatory as overly broad and unduly burdensome because it seeks information that is beyond the scope of permissible discovery, as well as information regarding the exceedingly broad category of “every other product Tested” by the identified personnel.

INTERROGATORY NO. 47: Identify all Infant Lounger Products on the market that the agency has determined are safe.

RESPONSE TO INTERROGATORY NO. 47:

Complaint Counsel objects to this Interrogatory and states that it seeks information outside the permissible scope of discovery set forth in 16 C.F.R. § 1025.31(c). The requested information, to the extent it exists, is not reasonably calculated to lead to the discovery of admissible evidence pertaining to the issue involved in these proceedings—namely, whether Respondent’s Podsters are defective and create a substantial product hazard under Section 15 of the CPSA and applicable regulations, including 16 C.F.R. Part 1115. Complaint Counsel further objects that this Interrogatory is vague and ambiguous in its use of the undefined term “safe”. Complaint Counsel further objects to this Interrogatory as overly broad and unduly burdensome because it seeks information that is beyond the scope of permissible discovery, as well as information regarding the exceedingly broad category of “all Infant Lounger Products”.

INTERROGATORY NO. 48: Identify any infant product category on the market in which no infant deaths have occurred.

RESPONSE TO INTERROGATORY NO. 48:

Complaint Counsel objects to this Interrogatory and states that it seeks information outside the permissible scope of discovery set forth in 16 C.F.R. § 1025.31(c). The requested information, to the extent it exists, is not reasonably calculated to lead to the discovery of admissible evidence pertaining to the issue involved in these proceedings—namely, whether Respondent’s Podsters are defective and create a substantial product hazard under Section 15 of

the CPSA and applicable regulations, including 16 C.F.R. Part 1115. Complaint Counsel further objects that this Interrogatory is vague and ambiguous in its use of the undefined term “infant product category”. Complaint Counsel also objects to this Interrogatory as vague and ambiguous in its use of the negative "in which no deaths" have occurred and notes that this Interrogatory improperly is requesting that Complaint Counsel prove a negative. Complaint Counsel further objects to this Interrogatory as overly broad and unduly burdensome because it seeks information that is beyond the scope of permissible discovery, as well as information regarding the exceedingly broad and vague category of “any infant product category”.

INTERROGATORY NO. 49: Describe in detail the “6 incidents” mentioned on the document produced as CPSC0000001, including the nature of each incident, all facts and circum-stances relating thereto, all Persons who have information about each incident, all Commission personnel who reviewed or investigated each incident, all Documents and Communications concerning each incident, and all reports concerning each incident..

RESPONSE TO INTERROGATORY NO. 49:

Complaint Counsel objects to this Interrogatory on the grounds it seeks information outside the permissible scope of discovery set forth in 16 C.F.R. § 1025.31(c), including information about other consumer products and other investigations by CPSC, and is not reasonably calculated to lead to the discovery of admissible evidence pertaining to the issue involved in these proceedings—namely, whether Respondent’s Podsters are defective and create a substantial product hazard under Section 15 of the CPSA, 15 U.S.C. § 2064, and applicable regulations, including 16 C.F.R. Part 1115. Complaint Counsel further objects to this Interrogatory as overly broad and unduly burdensome because it seeks information that is beyond the scope of permissible discovery and therefore is unnecessarily burdensome.

LEACHCO, INC.'S MOTION COMPEL

EXHIBIT C

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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

**COMPLAINT COUNSEL’S RESPONSES AND OBJECTIONS
TO RESPONDENT’S THIRD SET OF INTERROGATORIES**

Pursuant to 16 C.F.R. § 1025.32, Complaint Counsel respectfully submits its responses and objections (“Responses”) to Respondent Leachco, Inc.’s (“Respondent”) Third Set of Interrogatories (“Interrogatories”).

PRELIMINARY STATEMENT

Complaint Counsel hereby incorporates by reference its Preliminary Statement set forth in Complaint Counsel’s Objections and Responses to Respondent’s Second Set of Interrogatories, dated February 24, 2023.

GENERAL OBJECTIONS

Complaint Counsel hereby incorporates by reference its General Objections set forth in Complaint Counsel’s Objections and Responses to Respondent’s Second Set of Interrogatories to, dated February 24, 2023.

Subject to and without waiving those objections, Complaint Counsel states as follows:

INTERROGATORY NO. 50: Identify all Infant Lounger Products that You have determined are unsafe.

RESPONSE TO INTERROGATORY NO. 50:

Complaint Counsel objects to this Interrogatory to the extent that it seeks information about Infant Lounger Products other than Respondent's Podster on the ground it seeks information outside the permissible scope of discovery set forth in 16 C.F.R. § 1025.31(c), including information about other consumer products and other investigations by CPSC, and is not reasonably calculated to lead to the discovery of admissible evidence pertaining to the issue involved in these proceedings—namely, whether Respondent's Podsters are defective and create a substantial product hazard under Section 15 of the CPSA, 15 U.S.C. § 2064, and applicable regulations, including 16 C.F.R. Part 1115. Complaint Counsel further objects to this Interrogatory as overly broad and unduly burdensome because it seeks information that is beyond the scope of permissible discovery, as well as information regarding the exceedingly broad category of "all Infant Lounger Products". In addition, Complaint Counsel objects to this Interrogatory on the grounds it constitutes premature expert discovery. Complaint Counsel will identify the expert witnesses it expects to call at the hearing in this matter in accordance with the Court's September 16, 2022 Order on Prehearing Schedule and will amend its Interrogatory responses in accordance with 16 C.F.R. § 1025.31(f), as appropriate. Complaint Counsel further objects to this Interrogatory because it is vague and ambiguous in its use of the undefined term "unsafe." In responding to this Interrogatory, Complaint Counsel will employ the definition of "unsafe" in the Merriam-Webster Dictionary: "able or likely to cause harm, damage, or loss."

Subject to and without waiver of the foregoing general and specific objections, Complaint Counsel states that CPSC staff made a preliminary determination that Respondent's Podster is "unsafe."

INTERROGATORY NO. 51: Identify all infant products, including but not limited to any Durable Infant or Toddler Products and Infant Sleep Products, that You have determined are unsafe.

RESPONSE TO INTERROGATORY NO. 51:

Complaint Counsel objects to this Interrogatory to the extent that it seeks information about infant products other than Respondent's Podster on the ground it seeks information outside the permissible scope of discovery set forth in 16 C.F.R. § 1025.31(c), including information about other consumer products and other investigations by CPSC, and is not reasonably calculated to lead to the discovery of admissible evidence pertaining to the issue involved in these proceedings—namely, whether Respondent's Podsters are defective and create a substantial product hazard under Section 15 of the CPSA, 15 U.S.C. § 2064, and applicable regulations, including 16 C.F.R. Part 1115. Complaint Counsel further objects to this Interrogatory as overly broad and unduly burdensome because it seeks information that is beyond the scope of permissible discovery, as well as information regarding the exceedingly broad category of "all infant products". In addition, Complaint Counsel objects to this Interrogatory on the grounds it constitutes premature expert discovery. Complaint Counsel will identify the expert witnesses it expects to call at the hearing in this matter in accordance with the Court's September 16, 2022 Order on Prehearing Schedule and will amend its Interrogatory responses in accordance with 16 C.F.R. § 1025.31(f), as appropriate. Complaint Counsel further objects to this Interrogatory because it is vague and ambiguous in its use of the undefined term "unsafe." In responding to this Interrogatory, Complaint Counsel will employ the definition of "unsafe" in the Merriam-Webster Dictionary: "able or likely to cause harm, damage, or loss."

Subject to and without waiver of the foregoing general and specific objections, Complaint Counsel states that CPSC staff made a preliminary determination that Respondent's Podster is "unsafe."

INTERROGATORY NO. 52: Identify all Infant Lounger Products that You have determined present a Substantial Product Hazard.

RESPONSE TO INTERROGATORY NO. 52:

Complaint Counsel objects to this Interrogatory to the extent that it seeks information about Infant Lounger Products other than Respondent's Podster on the grounds it seeks information outside the permissible scope of discovery set forth in 16 C.F.R. § 1025.31(c), including information about other consumer products and other investigations by CPSC, and is not reasonably calculated to lead to the discovery of admissible evidence pertaining to the issue involved in these proceedings—namely, whether Respondent's Podsters are defective and create a substantial product hazard under Section 15 of the CPSA, 15 U.S.C. § 2064, and applicable regulations, including 16 C.F.R. Part 1115. Complaint Counsel further objects to this Interrogatory as overly broad and unduly burdensome because it seeks information that is beyond the scope of permissible discovery, as well as information regarding the exceedingly broad category of "all Infant Lounger Products". In addition, Complaint Counsel objects to this Interrogatory on the grounds it constitutes premature expert discovery. Complaint Counsel will identify the expert witnesses it expects to call at the hearing in this matter in accordance with the Court's September 16, 2022 Order on Prehearing Schedule and will amend its Interrogatory responses in accordance with 16 C.F.R. § 1025.31(f), as appropriate. Complaint Counsel further objects to the extent this Interrogatory is implying that CPSC staff make final determinations regarding whether products pose substantial product hazards. CPSC staff can make only a

preliminary determination that a consumer product, such as the Podster, poses a substantial product hazard.

Subject to and without waiver of the foregoing general and specific objections, Complaint Counsel states that CPSC staff made a preliminary determination that Respondent's Podster presents a Substantial Product Hazard.

INTERROGATORY NO. 53: Identify all infant products, including but not limited to any Durable Infant or Toddler Products and Infant Sleep Products, that You have determined present a Substantial Product Hazard.

RESPONSE TO INTERROGATORY NO. 53:

Complaint Counsel objects to this Interrogatory to the extent that it seeks information about infant products other than Respondent's Podster on the grounds it seeks information outside the permissible scope of discovery set forth in 16 C.F.R. § 1025.31(c), including information about other consumer products and other investigations by CPSC, and is not reasonably calculated to lead to the discovery of admissible evidence pertaining to the issue involved in these proceedings—namely, whether Respondent's Podsters are defective and create a substantial product hazard under Section 15 of the CPSA, 15 U.S.C. § 2064, and applicable regulations, including 16 C.F.R. Part 1115. Complaint Counsel further objects to this Interrogatory as overly broad and unduly burdensome because it seeks information that is beyond the scope of permissible discovery, as well as information regarding the exceedingly broad category of "all infant products". In addition, Complaint Counsel objects to this Interrogatory on the grounds it constitutes premature expert discovery. Complaint Counsel will identify the expert witnesses it expects to call at the hearing in this matter in accordance with the Court's September 16, 2022 Order on Prehearing Schedule and will amend its Interrogatory responses in accordance with 16 C.F.R. § 1025.31(f), as appropriate. Complaint Counsel further

objects to the extent this Interrogatory is implying that CPSC staff make final determinations regarding whether products pose substantial product hazards. CPSC staff can make only a preliminary determination that a consumer product, such as the Podster, poses a substantial product hazard.

Subject to and without waiver of the foregoing general and specific objections, Complaint Counsel states that CPSC staff made a preliminary determination that Respondent's Podster presents a Substantial Product Hazard.

INTERROGATORY NO. 54: Identify all Infant Lounger Products that You have determined present a Substantial Risk of Injury.

RESPONSE TO INTERROGATORY NO. 54:

Complaint Counsel objects to this Interrogatory to the extent that it seeks information about Infant Lounger Products other than Respondent's Podster on the grounds it seeks information outside the permissible scope of discovery set forth in 16 C.F.R. § 1025.31(c), including information about other consumer products and other investigations by CPSC, and is not reasonably calculated to lead to the discovery of admissible evidence pertaining to the issue involved in these proceedings—namely, whether Respondent's Podsters are defective and create a substantial product hazard under Section 15 of the CPSA, 15 U.S.C. § 2064, and applicable regulations, including 16 C.F.R. Part 1115. Complaint Counsel further objects to this Interrogatory as overly broad and unduly burdensome because it seeks information that is beyond the scope of permissible discovery, as well as information regarding the exceedingly broad category of "all Infant Lounger Products". In addition, Complaint Counsel objects to this Interrogatory on the grounds it constitutes premature expert discovery. Complaint Counsel will identify the expert witnesses it expects to call at the hearing in this matter in accordance with the

Court's September 16, 2022 Order on Prehearing Schedule and will amend its Interrogatory responses in accordance with 16 C.F.R. § 1025.31(f), as appropriate.

Subject to and without waiver of the foregoing general and specific objections, Complaint Counsel states that CPSC staff made a preliminary determination that Respondent's Podster presents a Substantial Risk of Injury.

INTERROGATORY NO. 55: Identify any infant products, including but not limited to any Durable Infant or Toddler Products Infant Sleep Products, that You have determined present a Substantial Risk of Injury.

RESPONSE TO INTERROGATORY NO. 55:

Complaint Counsel objects to this Interrogatory to the extent that it seeks information about infant products other than Respondent's Podster on the grounds it seeks information outside the permissible scope of discovery set forth in 16 C.F.R. § 1025.31(c), including information about other consumer products and other investigations by CPSC, and is not reasonably calculated to lead to the discovery of admissible evidence pertaining to the issue involved in these proceedings—namely, whether Respondent's Podsters are defective and create a substantial product hazard under Section 15 of the CPSA, 15 U.S.C. § 2064, and applicable regulations, including 16 C.F.R. Part 1115. Complaint Counsel further objects to this Interrogatory as overly broad and unduly burdensome because it seeks information that is beyond the scope of permissible discovery, as well as information regarding the exceedingly broad category of "any infant products". In addition, Complaint Counsel objects to this Interrogatory on the grounds it constitutes premature expert discovery. Complaint Counsel will identify the expert witnesses it expects to call at the hearing in this matter in accordance with the Court's September 16, 2022 Order on Prehearing Schedule and will amend its Interrogatory responses in accordance with 16 C.F.R. § 1025.31(f), as appropriate.

Subject to and without waiver of the foregoing general and specific objections, Complaint Counsel states that CPSC staff made a preliminary determination that the Respondent's Podster presents a Substantial Risk of Injury.

INTERROGATORY NO. 56: Identify each and every Infant Lounger Product whose risk of injury is outweighed by the usefulness of the product which is made possible by the same aspect which presents the risk of injury.

RESPONSE TO INTERROGATORY NO. 56:

Complaint Counsel objects to this Interrogatory and states that it seeks information outside the permissible scope of discovery set forth in 16 C.F.R. § 1025.31(c). The requested information, to the extent it exists, is not reasonably calculated to lead to the discovery of admissible evidence pertaining to the issue involved in these proceedings—namely, whether Respondent's Podsters are defective and create a substantial product hazard under Section 15 of the CPSA and applicable regulations, including 16 C.F.R. Part 1115. Complaint Counsel further objects to this Interrogatory as overly broad and unduly burdensome because it seeks information that is beyond the scope of permissible discovery and therefore is unnecessarily burdensome.

INTERROGATORY NO. 57: Identify each and every infant product, including but not limited to each and every Durable Infant or Toddler Product or Infant Sleep Product, whose risk of injury is outweighed by the usefulness of the product which is made possible by the same aspect which presents the risk of injury.

RESPONSE TO INTERROGATORY NO. 57:

Complaint Counsel objects to this Interrogatory and states that it seeks information outside the permissible scope of discovery set forth in 16 C.F.R. § 1025.31(c). The requested information, to the extent it exists, is not reasonably calculated to lead to the discovery of admissible evidence pertaining to the issue involved in these proceedings—namely, whether Respondent's Podsters are defective and create a substantial product hazard under Section 15 of the CPSA and applicable regulations, including 16 C.F.R. Part 1115. Complaint Counsel further

objects to this Interrogatory as overly broad and unduly burdensome because it seeks information that is beyond the scope of permissible discovery and therefore is unnecessarily burdensome.

INTERROGATORY NO. 58: Identify any infant product category in which no infant injuries have occurred.

RESPONSE TO INTERROGATORY NO. 58:

Complaint Counsel objects to this Interrogatory and states that it seeks information outside the permissible scope of discovery set forth in 16 C.F.R. § 1025.31(c). The requested information, to the extent it exists, is not reasonably calculated to lead to the discovery of admissible evidence pertaining to the issue involved in these proceedings—namely, whether Respondent’s Podsters are defective and create a substantial product hazard under Section 15 of the CPSA and applicable regulations, including 16 C.F.R. Part 1115. Complaint Counsel further objects to this Interrogatory as overly broad and unduly burdensome because it seeks information that is beyond the scope of permissible discovery and asks Complaint Counsel to prove a negative.

INTERROGATORY NO. 59: Identify any infant product category in which no infant deaths have occurred.

RESPONSE TO INTERROGATORY NO. 59:

Complaint Counsel objects to this Interrogatory and states that it seeks information outside the permissible scope of discovery set forth in 16 C.F.R. § 1025.31(c). The requested information, to the extent it exists, is not reasonably calculated to lead to the discovery of admissible evidence pertaining to the issue involved in these proceedings—namely, whether Respondent’s Podsters are defective and create a substantial product hazard under Section 15 of the CPSA and applicable regulations, including 16 C.F.R. Part 1115. Complaint Counsel further objects to this Interrogatory as overly broad and unduly burdensome because it seeks information

that is beyond the scope of permissible discovery and asks Complaint Counsel to prove a negative. Complaint Counsel further objects to this Interrogatory as unduly burdensome because it is duplicative of other discovery propounded by Leachco. *See, e.g.*, Interrogatory No. 48 (“Identify any infant product category on the market in which no infant deaths have occurred.”).

For the responses:

I, Brett Ruff, affirm that the foregoing responses to Respondent’s Third Set of Interrogatories are true and correct to the best of my knowledge, information, and belief.

Executed on this 6th day of March, 2023

/s/ Brett Ruff
Brett Ruff
Trial Attorney
Division of Enforcement and Litigation
Office of Compliance and Field Operations
U.S. Consumer Product Safety Commission

For the objections:

Dated this 6th day of March, 2023

/s/ Brett Ruff
Gregory Reyes, Supervisory Attorney
Brett Ruff, Trial Attorney
Caitlin O’Donnell, Trial Attorney
Michael J. Rogal, Trial Attorney

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