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.	)	

MEMORANDUM IN SUPPORT OF COMPLAINT COUNSEL'S MOTION FOR PROTECTIVE ORDER AS TO CERTAIN OF LEACHCO, INC.'S FIRST SET OF REQUESTS FOR ADMISSION, LEACHCO, INC.'S SECOND SET OF REQUESTS FOR ADMISSION AND LEACHCO, INC.'S INTERROGATORY NO. 40

Pursuant to 16 C.F.R. §§ 1025.23, 1025.31(d) and (i), 1025.32 and 1025.34, Complaint Counsel respectfully submits this Memorandum in Support of its Motion for Protective Order as to Certain of Leachco, Inc.'s ("Leachco") First Set Of Requests For Admission, Leachco's Second Set Of Requests For Admission, (collectively, "RFAs") and Leachco's Interrogatory No. 40.

In two separate sets of requests for admission served within two weeks of each other, Leachco has sought Complaint Counsel's responses to ***363*** RFAs. The sheer number of RFAs demonstrate that Leachco is not interested in legitimate discovery, but rather is seeking to subject Complaint Counsel to "annoyance . . . oppression, or undue burden or expense." 16 C.F.R. § 1025.31(d). Indeed, many of these RFAs are duplicative and seek the same information, over and over again. For example, RFA No. 193 asks for an admission that "The Podster on which Infant A was placed, as alleged in Paragraph 36 of the Complaint, was not used according to Leachco's warnings." Then, some 100 or so RFAs later, basically the same RFA is posed in No. 297:

"Caregivers of Infant A did not follow Leachco's warnings." In this example, each RFA is asking the same question: whether the Podster was used according to Leachco's warnings with respect to a particular incident. There is no valid reason to ask this matter in two separate RFAs unless the purpose is to harass and annoy, or worse, an attempt to trick Complaint Counsel by separating the questions among a maze of other unrelated and irrelevant RFAs. This example of gamesmanship is why a protective order should issue.

Nonetheless, in an attempt to limit the need for court intervention, Complaint Counsel has carefully examined all ***363*** requests for admission and will separately respond to 80 of Leachco's requests for admission. However, as discussed below, there is good cause to protect Complaint Counsel against 283 of Leachco's requests for admission because they subject Complaint Counsel to "annoyance . . . oppression, or undue burden or expense." 16 C.F.R. § 1025.31(d), and Complaint Counsel requests that "the discovery shall not be had." 16 C.F.R. § 1025.31(d)(1). The requests for admission for which Complaint Counsel seeks protection broadly fall into five categories:

(1) RFAs that relate to a legal question;[1]

(2) RFAs that seek information related to Leachco's own business;[2]

(3) RFAs that relate to and/or seek expert opinion or expert testimony;[3]

(4) RFAs that pose improper hypotheticals;[4] and,

(5) RFAs that call for privileged information or seek information not yet required under this Court's scheduling Order.[5]

[1] RFA Nos. 3, 8-24, 92-99, 136-142, 149-156, 236-239, 249-252, 274-278, 296, 305, 325-358, 360-361.
[2] RFA Nos. 110-115, 212, 293.
[3] RFA Nos. 25-91, 102-109, 116-123, 130-135, 143-148, 157-184. 240-245, 253-264, 266-273, 285-291, 295, 307-321, 359, 362-363.
[4] RFA Nos. 232-233, 294.
[5] RFA Nos. 246-48, 302.

Complaint Counsel also seeks a Protective Order as to Interrogatory No. 40, which incorporates Leachco's RFAs by reference. Complaint Counsel attempted to resolve this motion without court intervention but the parties were unable to reach an agreement. [*See* Exhibit A, Emails between Michael Rogal and Oliver Dunford between February 2, 2023 and February 8, 2023.]

I. BACKGROUND

On February 9, 2022, Complaint Counsel filed an Administrative Complaint against Leachco alleging that its infant lounging pillows ("Podsters") which were manufactured and distributed by Leachco contain defects that create a Substantial Product Hazard under Section 15(a)(2) of the Consumer Product Safety Act ("CPSA"). Compl. ¶¶ 1, 6-7, 20-34, 48-52. Complaint Counsel alleges, among other things, that the Podsters contain design defects that can obstruct airflow leading to suffocation if an infant rolls, moves, or is placed in a position where their nose and mouth are obstructed by the Podster. *Id*. ¶¶ 50. Complaint Counsel further alleges that these defects create a substantial risk of injury; indeed, the defects could cause an infant to "suffocate and die in three to 10 minutes" and to date Complaint Counsel is aware of three (3) infant deaths associated with the Podster.[6] *Id.* ¶¶ 34-37, 51. The relief sought by the Complaint includes, among other things, that the Commission: determine that the Podster present a substantial product hazard; order extensive notification to protect the public; order Leachco recall the Podster and provide refunds to consumers and take other and further actions as the Commission deems necessary to protect the public health and safety and comply with the CPSA. Compl. at 9-10 ¶¶ A-C.

[6] Complaint Counsel's Complaint originally alleged there were two fatal incidents associated with the Podster. In January 2023, Complaint Counsel became aware of a third infant death involving a Podster. Complaint Counsel, in turn, provided information on this third fatal incident to Leachco. *See* CPSC In-Depth Investigation 220916HCC1454 (produced to Leachco on January 20, 2023, CPSC0010501-65).

Pursuant to the Court's September 16, 2022 Order on Prehearing Schedule [Dkt. No. 35], a trial in this matter is scheduled to commence on August 7, 2023. The parties are currently engaged in fact discovery, which closes on March 20, 2023.

On January 25, 2023, Leachco served its First Set of Requests for Admission, containing 361 requests for admission. On February 2, 2023, Leachco served its Second Set of Requests for Admission, containing two additional RFAs, bringing the total number of RFAs to 363.

II. THE LEGAL STANDARDS GOVERNING REQUESTS FOR ADMISSION

Pursuant to 16 C.F.R. § 1025.34(a), "[a] party may serve upon any other party, a written request for the admission, for the purposes of the pending proceedings only, of the truth of any matters within the scope of § 1025.31(c) set forth in the request that relate to statements of fact or of the application of law to fact, including the genuineness of any documents described in the request." The Rules of Practice for Adjudicative Proceedings governing requests for admission is similar to Fed.R.Civ.P. 36. Although the Federal Rules do not apply in this proceeding, it is instructive to examine the federal rule and cases involving requests for admission in federal practice. Under the federal rules, "[t]he purpose of requests for admission as a discovery device is to reduce the number of material facts to be tried." *Netlist Inc. v. Samsung Electronics Co., Ltd.*, 341 F.R.D. 650, 661 (C.D. Cal. 2022) (citing advisory committee notes to Rule 37). However, courts have noted that requests for admission have the potential for misuse. Indeed, it has been held that "'[r]equests to admit should not be excessive in number and, obviously, should be tailored to in a manner and scope to avoid harassment and improper motive.'" *Tamas v. Family Video Movie Club, Inc.*, 301 F.R.D. 346, 347 (N.D.Ill. 2014) (granting protective order as to 460 requests for admissions and related interrogatories) (quoting *Robinson v. Stanley*, No. 06 C 5158, 2009 WL 3233909, *2 (N.D.Ill. Oct. 8 2009)). Properly drafted requests for

admission "should be simple and direct so that they can be readily admitted to denied." *Id.* "Courts 'routinely disallow requests for admission that run into the hundreds on the grounds that they are abusive, unreasonable, and oppressive.'" *Id.*

III. QUESTIONS OF LAW ARE INAPPROPRIATE REQUESTS FOR ADMISSION

Although 16 C.F.R. § 1025.34(a) permits requests for admission that relate to "the application of law to fact," courts have held that requests for admission that solely pertain to questions of law are not proper. *See Machinery Solutions, Inc. v. Doosan Infracore America Corp.*, 323 F.R.D. 522, 534 (D.S.C. 2018) (denying motion to compel request for admission because it found the RFA improperly "asks [Defendant] to admit a legal conclusion by requesting [Defendant] to admit that [Plaintiff] is a 'dealer or equipment dealer' under the Fair Practices Act."); *Abbott v. U.S.*, 177 F.R.D. 92, 93 (N.D.N.Y. 1997) (vacating magistrate judge's order to answer requests for admission, noting "[w]hat is improper under Rule 36, however, is a request to admit a pure matter of law.").

Leachco has claimed that its requests are those that pertain to the application of law to fact, but upon closer inspection, it is apparent that they are exclusively legal questions that are not proper RFAs.

One example of an improper RFA seeking a legal conclusion is request for admission No. 3:

3. The Podster is not an Infant Sleep Product.

[*See* Exhibit B, Leachco, Inc.'s First Set of Requests for Admission, January 25, 2023 at 7.] The instructions to the First RFA state that a "Podster" "means the products referred to in paragraphs 7 and 9 of Your Complaint" *Id.* at 6. And "Infant Sleep Product" "means any product marketed, intended, or designed for infant sleep, including "inclined sleeper for infants" as that term is

defined in 15 U.S.C. § 2057d(b)." *Id.* at 5. This is exactly the type of RFA that was held impermissible by the court in *Machinery Solutions*, by asking a party to admit or deny whether something fits within a statutory definition. 323 F.R.D. at 534. Moreover, the Complaint does not allege that the Podster is an "Infant Sleep Product," and that specific statutory section is not relevant to this proceeding. This is exactly the type of time-waster RFA that relates to a statute not at issue that demonstrates Leachco's abuse of process.

RFA No. 8 also improperly pertains to a question of law:

> 8. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product amounts to a Substantial Product Hazard.

[*See* Exhibit B, Leachco, Inc.'s First Set of Requests for Admission, January 25, 2023 at 8.] This too, seeks a legal conclusion as to whether there exists a particular rule or not. That is not a factual question, or even an application of law to a fact. It is a pure legal inquiry—the question of whether a product presents a substantial product hazard is a legal question for the Presiding Officer and the Commission. This legal issue may or may not be something to be determined in this proceeding, but the parties and the Court will properly address it, if at all, through motion practice or at trial, not through RFAs. Request for Admission Nos. 9-24 and 274-278 suffer from the same infirmity—not asking about facts or the application of law to fact, but the meaning and interpretation of laws and rules:

> 9. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product causes a Substantial Product Hazard.

10. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product creates a Substantial Product Hazard.

11. There is no rule or regulation that states foreseeable misuse of a consumer product amounts to, causes, or creates a Substantial Product Hazard.

12. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product amounts to a defect.

13. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product causes a defect.

14. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product creates a defect.

15. There is no rule or regulation that states foreseeable misuse of a consumer product creates a defect.

16. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product amounts to a Product Defect.

17. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product causes a Product Defect.

18. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product creates a Product Defect.

19. There is no rule or regulation that states foreseeable misuse of a consumer product amounts to, causes, or creates a Product Defect.

20. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product amounts to a Substantial Risk of Injury.

21. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product causes a Substantial Risk of Injury.

22. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product creates a Substantial Risk of Injury.

23. There is no rule or regulation that states foreseeable misuse of a consumer product amounts to, causes, or creates a Substantial Risk of Injury.

24. To find Leachco liable under the CPSA in this Proceeding, the Com-mission must prove both that the Podster contains a "defect" and that the "defect" "creates a substantial risk of injury."

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274. 16 C.F.R. § 1115.4 was not adopted through notice-and-comment rule-making.

275. 16 C.F.R. § 1115.4 is an interpretive rule.

276. 16 C.F.R. § 1115.4 is not a legislative rule.

277. 16 C.F.R. § 1115.4 is not binding on the public.

278. 16 C.F.R. § 1115.4 is not binding on Leachco.

[*See* Exhibit B, Leachco, Inc.'s First Set of Requests for Admission, January 25, 2023 at 8-10, 32.]

Leachco's RFA Nos. 92-99 and 305 are also impermissible on these grounds. The requests state:

92. Leachco did not fail to report a Substantial Product Hazard.

93. Leachco has not failed to report a Substantial Product Hazard.

94. Leachco did not fail to report a product that created an unreasonable risk of injury or death.

95. Leachco has not failed to report a product that created an unreasonable risk of injury or death.

96. Leachco did not breach any express warranty with respect to the Pod-ster.

97. Leachco did not breach any implied warranty with respect to the Pod-ster.

98. You have the burden of proof to establish that the Podster is a Substantial Product Hazard.

99. You have the burden of persuasion to establish that the Podster is a Substantial Product Hazard.

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305. Leachco has not violated 15 U.S.C. 2064(b) with respect to the incidents involving Infant A, Infant B, and Incident C.

[*See* Exhibit B, Leachco, Inc.'s First Set of Requests for Admission, January 25, 2023 at 15, 34.] The timeliness of Leachco's reporting, and whether it met its reporting obligations or not under Section 15(b), 15 U.S.C. § 2064(b) and Section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4) is not at issue or alleged in this specific proceeding; Complaint Counsel's complaint in this matter

was brought pursuant to Sections 15(c) and (d) of the CPSA, 15 U.S.C. § 2064(c) and (d), for public notification and remedial action. Whether Leachco's met its CPSA reporting obligations are questions of law and questions of law not even at issue in this case. Whether or not Leachco is liable for civil penalties under a separate statutory provision is not at issue in this case and Respondent's RFA seeking to demonstrate a negative is a quintessential time-waster for Complaint Counsel and this Court.

Request for Admission Nos. 136-142 and 296 all seek what admissions on Complaint Counsel's contentions, thus seeking a legal determination of whether there is liability:

> 136. You contend that Leachco is liable under the CPSA regardless of whether Leachco Tested the Podster before it first sold the Podster.
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> 137. You contend that Leachco is liable under the CPSA regardless of whether Leachco Tested the Podster after it first sold the Podster.
>
> 138. You contend that Leachco is liable under the CPSA if Leachco has received zero communications Concerning consumers' misuse of the Podster.
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> 139. You contend that Leachco is liable under the CPSA if Leachco was unaware of consumer misuse of the Podster.
>
> 140. You contend that Leachco is liable under the CPSA if Leachco is unaware of consumer misuse of the Podster.
>
> 141. You contend that Leachco is liable under the CPSA if Leachco never considered potential risks arising out of the use of the Podster.
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> 142. You contend that Leachco is liable under the CPSA even if Leachco never considered potential risks arising out of misuse of the Podster.
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> ***

296. You contend that it is irrelevant, for the purposes of proving the allegations in the Complaint, whether any consumer misused the Podster.

[*See* Exhibit B, Leachco, Inc.'s First Set of Requests for Admission, January 25, 2023 at 18-19, 34.]

Request Nos. 149-156, 249-252 and 325-358 also call for a pure question of law, essentially asking whether the Podster complies or does not comply with "Chapter 47 of Title 15 of the U.S. Code," a Chapter relating to infant sleep products that is completely irrelevant to this proceeding:

149. The Podster does not fail to comply with any applicable consumer product safety rule under Chapter 47 of Title 15 of the U.S. Code.

150. The Podster has never failed to comply with any applicable consumer product safety rule under Chapter 47 of Title 15 of the U.S. Code.

151. The Podster complies with all applicable product safety rules under Chapter 47 of Title 15 of the U.S. Code.

152. The Podster has always complied with all applicable product safety rules under Chapter 47 of Title 15 of the U.S. Code.

153. The Podster does not fail to comply with any rule, regulation, standard, or ban, similar to an applicable safety rule under Chapter 47 of Title 15 of the U.S. Code, under any other Act enforced by the Commission.

154. The Podster has never failed to comply with any rule, regulation, standard, or ban, similar to an applicable safety rule under Chapter 47 of Title 15 of the U.S. Code, under any other Act enforced by the Commission.

155. The Podster complies with all rules, regulations, standards, or bans similar to applicable safety rules under Chapter 47 of Title 15 of the U.S. Code under any other Act enforced by the Commission.

156. The Podster has always complied with all rules, regulations, standards, or bans similar to applicable safety rules under Chapter 47 of Title 15 of the U.S. Code under any other Act enforced by the Commission.

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249. The Podster is not an "infant sleep product" as defined in Safety Standard for Infant Sleep Products, 86 Fed. Reg. 33022 (June 23, 2021).

250. The Safety Standard for Infant Sleep Products specifically exempts "Loungers" unless they are "marketed for infant sleep on the product itself or its packaging, marketing materials, inserts, or instructions, or the product is advertised with pictures of sleeping infants."

251. The Podster is not an Infant Sleep Product.

252. The Podster is not an "inclined sleeper for infants" as that term is de-fined in 15 U.S.C. § 2057d(b).

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325. The Podster is not subject to 16 C.F.R. Part 1112.

326. The Podster is not subject to 16 C.F.R. Part 1130.

327. The Podster is not subject to 16 C.F.R. Part 1215.

328. The Podster is not subject to 16 C.F.R. Part 1216.

329. The Podster is not subject to 16 C.F.R. Part 1217.

330. The Podster is not subject to 16 C.F.R. part 1218.

331. The Podster is not subject to 16 C.F.R. part 1219.

332. The Podster is not subject to 16 C.F.R. part 1220.

333. The Podster is not subject to 16 C.F.R. part 1221.

334. The Podster is not subject to 16 C.F.R. part 1222.

335. The Podster is not subject to 16 C.F.R. Part 1223.

336. The Podster is not subject to 16 C.F.R. Part 1224.

337. The Podster is not subject to 16 C.F.R. Part 1225.

338. The Podster is not subject to 16 C.F.R. Part 1226.

339. The Podster is not subject to 16 C.F.R. Part 1227.

340. The Podster is not subject to 16 C.F.R. Part 1228.

341. The Podster is not subject to 16 C.F.R. Part 1229.

342. The Podster is not subject to 16 C.F.R. Part 1230.

343. The Podster is not subject to 16 C.F.R. Part 1231.

344. The Podster is not subject to 16 C.F.R. Part 1232.

345. The Podster is not subject to 16 C.F.R. Part 1233.

346. The Podster is not subject to 16 C.F.R. Part 1234.

347. The Podster is not subject to 16 C.F.R. Part 1235.

348. The Podster is not subject to 16 C.F.R. Part 1236.

349. The Podster is not subject to 16 C.F.R. Part 1237.

350. The Podster is not subject to 16 C.F.R. Part 1238.

351. The Podster is not subject to 16 C.F.R. Part 1239.

352. The Podster is not subject to 16 C.F.R. Part 1241.

353. The Podster is not subject to 16 C.F.R. Part 1250.

354. The CPSA does not create a duty for a manufacturer of consumer products to monitor third-party websites Concerning the manufacturer's consumer products.

355. The CPSA does not create a duty for a manufacturer of consumer products to review third-party websites Concerning the manufacturer's consumer products.

356. The CPSA does not create a duty for a manufacturer of consumer products to read comments on third-party websites Concerning the manufacturer's consumer products.

357. The CPSA does not create a duty for a manufacturer of consumer products to take affirmative steps to address comments on third-party websites Concerning the manufacturer's consumer products.

358. The CPSA does not create a duty for a manufacturer of consumer products to respond to comments on third-party websites Concerning the manufacturer's consumer products.

[See Exhibit B, Leachco, Inc.'s First Set of Requests for Admission, January 25, 2023 at 20-21, 29-30, 36-38.]

Of course, as Leachco knows, this proceeding has nothing to do with Chapter 47 of Title 15 of the U.S. Code, which relates to the inclined sleeper ban that was recently passed by Congress in May, 2022. *See* 15 U.S.C § 2057d. Leachco knows this from reading the Complaint that was served to it and is publicly available—that this is an administrative enforcement proceeding pursuant to Section 15 of the CPSA, 15 U.S.C § 2064, for public notification and remedial action. Nonetheless, Leachco put forth numerous RFAs about a different laws and rules not mentioned anywhere in the Complaint, and seeking an answer on the liability or applicability

of such laws—all classic legal determinations. That is improper and Complaint Counsel should be protected from such outlandish and irrelevant requests.

Request Nos. 236-239 and 360-361 also improperly seek admissions on legal questions:

> 236. State regulations governing the daycare center where Infant A died required that infants be held for bottle feeding.
>
> 237. State regulations governing the daycare center where Infant A died prohibit the placement of pillows in cribs.
>
> 238. State regulations governing the daycare center where Infant A died require staff to monitor sleeping infants at all times.
>
> 239. Daycare employees violated state law by giving Infant A a bottle while Infant A was on the Podster.
>
> ***
>
> 360. You seek an order compelling Leachco to pay damages to third parties.
>
> 361. Your Claim against Leachco is akin to a common-law action arising in tort.

[See Exhibit B, Leachco, Inc.'s First Set of Requests for Admission, January 25, 2023 at 28, 38.]

Besides being wholly inapplicable in this forum and incomprehensible because there is no definition of "state regulations" or "state law," which could mean literally thousands of sources, even if Complaint Counsel knew what laws Respondent is talking about, it is impermissible for a request for admission to seek an answer on a legal question of what a law required or whether it was violated. And whether a remedy is classified as "damages" or whether a claim is "akin" to another type of a claim are legal issues to be determined, if at all, by this

Court, and not through a request for admission. There are no facts for Complaint Counsel to admit or deny here and a motion for protective order is warranted under these circumstances.

IV. MATTERS WITHIN A PARTY'S OWN BUSINESS PRACTICES ARE NOT PROPER REQUESTS FOR ADMISSION

Requests for admission in which a party seeks information about matters regarding a party's own business practices not independently within the knowledge of the answering party are impermissible. While 16 C.F.R. § 1025.34(b) has a "reasonable inquiry" requirement like Fed.R.Civ.P. 36, it is unfair to ask a party to admit something for which the requesting party has sole knowledge. *See Dubin v. E.F. Hutton Group, Inc.*, 125 F.R.D. 372, 374 (S.D.N.Y 1989) (request for admissions within sole personal knowledge of a former employee of defendant an insufficient basis to require the employer to admit or deny).

Leachco's communications generally are within its own purview, and requests for admission that ask Complaint Counsel to opine on Respondent's own communications are unworkable and unfair. This is shown by Request Nos. 110-115:

> 110. Leachco instructed consumers not to use the Podster for sleep.
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> 111. Leachco instructed consumers not to use the Podster without constant adult supervision.
>
> 112. Leachco instructed consumers not to use the Podster on elevated surfaces.
>
> 113. Leachco instructed consumers not to use the Podster for co-sleeping or bed-sharing.
>
> 114. Leachco instructed consumers not to use the Podster in a crib.
>
> 115. Leachco instructed consumers not to place Infants in a Podster in a crib.

[See Exhibit B, Leachco, Inc.'s First Set of Requests for Admission, January 25, 2023 at 16-17]. Complaint Counsel cannot reasonably admit or deny something purportedly relating to all of

Leachco's communications. Only Leachco knows about all of its own communications—and Leachco's failure to provide adequate discovery has made it impossible for Complaint Counsel to respond.[7]

Request No. 212 is improper for essentially the same reason:

212. The Podster has always contained warnings that it should not be used for sleep and that adult supervision is always required.

[See Exhibit B, Leachco, Inc.'s First Set of Requests for Admission, January 25, 2023 at 26]. Only Respondent knows what warnings "always" were used with the product. This is something within the exclusive knowledge of Leachco, and Complaint Counsel cannot fairly answer something about the entire multi-decade history of a company's practices.

Also, Respondent has asked Complaint Counsel to admit or deny the number of Podsters it has sold in Request No. 293:

293. Leachco has sold approximately 180,000 Podsters.

[See Exhibit B, Leachco, Inc.'s First Set of Requests for Admission, January 25, 2023 at 33]. Only Leachco knows how many Podsters it has sold. Complaint Counsel made an allegation based on "information and belief" in the Complaint ¶ 10 regarding this, ***and Leachco admitted that it sold 180,000 Podsters in its Answer***. [Dkt. Nos. 1 (Complaint) and (2) (Answer). Complaint Counsel pointed this out to Leachco in emails prior to filing this motion, but Leachco claimed that "[i]t's a question of fact that can be determined before trial . . ." even though there was an allegation and an admission in the answer. [*See* Exhibit A at 1-2]. This shows exactly how Leachco is using its RFAs to cause annoyance, oppression, or undue burden or expense. There is no legitimate reason for this request given the course of the pleadings. This is exactly

[7] *See* Complaint Counsel's Motion to Compel and Motion for Sanctions for Violation of the Court's December 16, 2022 and December 27, 2022 Orders [Dkt. Nos. 57 and 58].

the type of RFA for which a protective order must be granted – it is improper, duplicative, and useless since Leachco already admitted to something it already knows. If anything, this might be the subject of a stipulation between the parties, but those are not due until July 14, 2023 according to the Court's September 16, 2023 Order on Prehearing Schedule. An RFA of this kind is not proper.

V. REQUESTS FOR ADMISSION THAT SEEK EXPERT TESTIMONY OR EXPERT OPINION ARE OBJECTIONABLE

Numerous requests for admission propounded by Leachco relate to Complaint Counsel's expected expert testimony. According to this Court's September 16, 2022 Order on Prehearing Schedule [Dkt. No. 35], expert direct testimony pursuant to 16 C.F.R. § 1025.44(b) is due April 28, 2023. Thus, Leachco's RFAs that seek to question Complaint Counsel about its expected expert testimony is premature and improper. *See Emerson v. Laboratory Corp. of America*, No. 1:11-CV-01709-RWS, 2012 WL 1564683,*4 (N.D.Ga. May 1, 2012) (finding RFAs "improper under the Federal Rules and this Court's Scheduling Order" to the extent "the requested opinions are held by testifying experts, these opinions can only be discovered through expert reports . . ."). Further, pursuant to the rules governing this proceeding, expert discovery can only be obtained in limited circumstances and requests for admission are not among the methods to obtain such expert discovery. *See* 16 C.F.R. § 1025.31(c)(4). On or before April 28, 2023, Leachco will be able to examine and address Complaint Counsel's expert direct testimony but these RFAs are plainly inconsistent with the Court's schedule and the rules governing this proceeding.

The Leachco RFAs that improperly and untimely seek expert opinions and expert testimony are RFA Nos. 25-99, 102-109, 116-123, 130-135, 143-148, 157-184, 240-245, 253-264, 266-273, 285-291, 295, 307-321, 359 and 362-363:[8]

25. The Podster does not have a manufacturing defect.

26. The Podster does not have a warning defect.

27. The Podster is not defective because of inadequate warnings.

28. The Podster is not defective because of inadequate instructions.

29. The Podster is not defective because of a defective design.

30. The Podster is a not Substantial Product Hazard because of inadequate warnings.

31. The Podster is a Substantial Product Hazard because of inadequate instructions.

32. The Podster is a not Substantial Product Hazard because of defective warnings.

33. The Podster is a not Substantial Product Hazard because of defective instructions.

34. The Podster is a not Substantial Product Hazard because of the existence of a reasonable alternative design.

35. The Podster has never been a Substantial Product Hazard because of the existence of a reasonable alternative design.

36. The Podster is a not Substantial Product Hazard because of defective manufacturing.

37. The Podster has never been a Substantial Product Hazard because of defective manufacturing.

38. The Podster is a not Substantial Product Hazard because of defective design.

39. The Podster has never been a Substantial Product Hazard because of defective design.

40. Leachco has not failed to provide adequate warnings for use of the Pod-ster.

[8] Many of these RFAs also implicate pure legal questions, which are improper for the reasons discussed in Section III of this memo.

41. Leachco has not failed to provide adequate instructions for use of the Podster.

42. The Podster is a not Product Defect because of inadequate warnings.

43. The Podster has never been a Product Defect because of inadequate warnings.

44. The Podster is a not Product Defect because of inadequate instructions.

45. The Podster has never been a Product Defect because of inadequate instructions.

46. The Podster is a not Product Defect because of defective warnings.

47. The Podster has never been a Product Defect because of defective warnings.

48. The Podster is a not Product Defect because of defective instructions.

49. The Podster has never been a Product Defect because of defective instructions.

50. The Podster is a not Product Defect because of the existence of reason-able alternative design.

51. The Podster has never been a Product Defect because of the existence of a reasonable alternative design.

52. The Podster is a not Product Defect because of defective manufacturing.

53. The Podster has never been a Product Defect because of defective manufacturing.

54. The Podster is a not Product Defect because of defective design.

55. The Podster has never been a Product Defect because of defective de-sign.

56. The Podster presents no Substantial Risk of Injury because of inadequate warnings.

57. The Podster presents no Substantial Risk of Injury because of inadequate instructions.

58. The Podster presents no Substantial Risk of Injury because of defective warnings.

59. The Podster presents no Substantial Risk of Injury because of defective instructions.

60. The Podster has never presented a Substantial Risk of Injury because of inadequate warnings.

61. The Podster has never presented a Substantial Risk of Injury because of inadequate instructions.

62. The Podster has never presented a Substantial Risk of Injury because of defective warnings.

63. The Podster has never presented a Substantial Risk of Injury because of defective instructions.

64. The Podster does not present a Substantial Risk of Injury because of the existence of a reasonable alternative design.

65. The Podster has never presented a Substantial Risk of Injury because of the existence of a reasonable alternative design.

66. The Podster does not present a Substantial Risk of Injury because of the existence of a defective manufacturing.

67. The Podster has never presented a Substantial Risk of Injury because of the existence of a defective manufacturing.

68. The Podster does not present a Substantial Risk of Injury because of the existence of a defective design.

69. The Podster has never presented a Substantial Risk of Injury because of the existence of a defective design.

70. Leachco's warnings Concerning the Podster were adequate.

71. Leachco's instructions Concerning the Podster were adequate.

72. Leachco's warnings Concerning the Podster are adequate.

73. Leachco's instructions Concerning the Podster are adequate.

74. The Podster is not defective because of inadequate warnings.

75. The Podster has never been defective because of inadequate warnings.

76. The Podster is not defective because of inadequate instructions.

77. The Podster has never been defective because of inadequate instructions.

78. The Podster is not defective because of defective warnings.

79. The Podster is not defective because of defective instructions.

80. The Podster has never been defective because of defective warnings.

81. The Podster has never been defective because of defective instructions.

82. The Podster is not defective because of the existence of a reasonable alternative design.

83. The Podster has never been defective because of the existence of a rea-sonable alternative design.

84. The Podster is not defective because of defective manufacturing.

85. The Podster has never been defective because of defective manufacturing.

86. The Podster is not defective because of defective design.

87. The Podster has never been defective because of defective design.

88. The Podster has never been a Substantial Product Hazard because of inadequate instructions.

89. The Podster has never been a Substantial Product Hazard because of inadequate warnings.

90. The Podster has never been a Substantial Product Hazard because of defective warnings.

91. The Podster has never been a Substantial Product Hazard because of defective instructions.

***

102. Leachco adequately warned consumers about the potential risk of Infant suffocation.

103. Leachco adequately warned consumers about the potential risk of using the Podster for sleep.

104. Leachco adequately warned consumers about the potential risk of using the Podster without constant adult supervision.

105. Leachco adequately warned consumers about the potential risk of using the Podster on anything but flat surfaces.

106. Leachco adequately warned consumers about the potential risk of using the Podster on elevated surfaces.

107. Leachco adequately warned consumers about the potential risk of using the Podster for co-sleeping or bed-sharing.

108. Leachco adequately warned consumers about the potential risk of using the Podster in a crib.

109. Leachco adequately warned consumers about the potential risk of using the Podster with soft products.

***

116. Leachco's instructions adequately explained proper use of the Podster.

117. The Podster presents no risk that is not contemplated in Leachco's warnings.

118. The Podster presents no risk that is not contemplated in Leachco's instructions.

119. You do not allege that the Podster presents a risk that is not contemplated in Leachco's warnings.

120. You do not allege that the Podster presents a risk that is not contemplated in Leachco's instructions.

121. You contend that no warnings about the Podster by Leachco would have been sufficient to cure the alleged Substantial Product Hazard.

122. You contend that no instructions about the Podster by Leachco could be sufficient to cure the alleged Substantial Product Hazard.

123. Your allegation that the Podster presents a Substantial Product Hazard is not based on Your consideration of whether Leachco's warnings and instructions were adequate to mitigate the alleged risk of injury.

***

130. You do not propose a reasonable alternative design for the Podster.

131. You do not propose any alternative design for the Podster.

132. You do not allege that a reasonable alternative design of the Podster would mitigate the Substantial Product Hazard allegedly presented by the Podster.

133. You do not allege that a reasonable alternative design of the Podster would cure the Substantial Product Hazard allegedly presented by the Podster.

134. You do not allege that an alternative design of the Podster would mitigate the risk of injury while providing to consumers the same utility.

135. You do not allege that an alternative design of the Podster would cure the risk of injury while providing to consumers the same utility.

***

143. All Infants need adult supervision.

144. All Infants need adult supervision regardless of the use of an Infant product.

145. All Infants need adult supervision regardless of the use of a product intended for Infants.

146. All Infants need adult supervision regardless of the use of an Infant product by adults.

147. The Podster is useful.

148. The Podster is useful for Caregivers.

***

157. The Podster is safe when used consistent with Leachco's warnings.

158. The Podster is safe when used consistent with Leachco's instructions.

159. The Podster is safe when consumers follow Leachco's warnings.

160. The Podster is safe when consumers follow with Leachco's instructions.

161. The Podster is not defective when used consistent with Leachco's warnings.

162. The Podster is not defective when used consistent with Leachco's instructions.

163. The Podster is not defective when consumers follow Leachco's warnings.

164. The Podster is not defective when consumers follow Leachco's instructions.

165. The Podster does not present a Substantial Product Hazard when it is used consistent with Leachco's warnings.

166. The Podster does not present a Substantial Product Hazard when it is used consistent with Leachco's instructions.

167. The Podster does not present a Substantial Product Hazard when consumers follow Leachco's warnings.

168. The Podster does not present a Substantial Product Hazard when consumers follow Leachco's instructions.

169. The Podster does not have a Product Defect when it is used consistent with Leachco's warnings.

170. The Podster does not have a Product Defect when it is used consistent with Leachco's instructions.

171. The Podster does not have a Product Defect when consumers follow Leachco's warnings.

172. The Podster does not have a Product Defect when consumers follow Leachco's instructions.

173. The Podster presents no Substantial Risk of Injury when used consistent with Leachco's warnings.

174. The Podster presents no Substantial Risk of Injury when used consistent with Leachco's instructions.

175. The Podster presents no Substantial Risk of Injury when consumers follow Leachco's warnings.

176. The Podster presents no Substantial Risk of Injury when consumers follow Leachco's instructions.

177. The Podster does not have a defect when used consistent with Leachco's warnings.

178. The Podster does not have a defect when used consistent with Leachco's instructions.

179. The Podster does not have a defect when consumers follow Leachco's warnings.

180. The Podster does not have a defect when consumers follow Leachco's instructions.

181. Infants under constant adult supervision can roll or move on the Podster into a position where their noses and mouths may be obstructed by the Podster.

182. Infants under constant adult supervision can roll or move off the Podster into a position where their noses and mouths may be obstructed by another object, such as soft bedding.

183. Infants under constant adult supervision who roll or move on the Podster into a position where their noses and mouths may be obstructed by the Podster can be repositioned to prevent the obstruction.

184. Infants under constant adult supervision who roll or move off the Podster into a position where their noses and mouths may be obstructed by another object, such as soft bedding, may be repositioned by an adult to prevent the obstruction.

***

240. You contend that there is nothing Leachco can do to cure the Substantial Product Hazard allegedly presented by the Podster.

241. You contend that there is nothing Leachco can do to mitigate the Substantial Product Hazard allegedly presented by the Podster.

242. You contend that there is nothing Leachco could have done to cure the Substantial Product Hazard allegedly presented by the Podster.

243. You contend that there is nothing Leachco could have done to mitigate the Substantial Product Hazard allegedly presented by the Podster.

244. You contend that there is no warning adequate to cure the Podster's alleged substantial defect.

245. You contend that there is no instruction adequate to cure the Podster's alleged substantial defect.

***

253. The Podster is not intended to provide sleeping accommodations for an Infant.

254. The Podster is not marketed to provide sleeping accommodations for an Infant.

255. The Podster is not designed to provide sleeping accommodations for an Infant.

256. The Podster was never intended to provide sleeping accommodations for an Infant.

257. The Podster was never marketed to provide sleeping accommodations for an Infant.

258. The Podster was never designed to provide sleeping accommodations for an Infant.

259. The Podster is not intended to provide sleeping accommodations for any infant or baby of any age.

260. The Podster is not marketed to provide sleeping accommodations for any infant or baby of any age.

261. The Podster is not designed to provide sleeping accommodations for any infant or baby of any age.

262. The Podster was never intended to provide sleeping accommodations for any infant or baby of any age.

263. The Podster was never marketed to provide sleeping accommodations for any infant or baby of any age.

264. The Podster was never designed to provide sleeping accommodations for any infant or baby of any age.

***

266. The 2019 Mannen Report considered only Inclined Sleep Products.

267. The 2019 Mannen Report reviewed incidents involving only Inclined Sleep Products.

268. The 2019 Mannen Report did not review Infant Lounger Products.

269. The 2019 Mannen Report did not consider Infant Lounger Products.

270. The 2019 Mannen Report did not study Infant Lounger Products.

271. The 2019 Mannen Report did not Test Infant Lounger Products.

272. The 2019 Mannen Report did not review incidents involving Infant Lounger Products.

273. The 2019 Manned [sic] Report did not review deaths involving Infant Lounger Products.

***

285. The deaths allegedly identified in IDI 160519CCC2600, IDI 200917CCC3888, and IDI 220916HCC1454 involve failures by the infants' caregivers to follow or observe one or more of the warnings or instructions contained on the Podster.

286. The death allegedly identified in IDI 160519CCC2600 involved failures by the infant's caregiver(s) to follow or observe one or more of the warnings or instructions contained on the Podster.

287. The death allegedly identified in IDI 200917CCC3888 involved failures by the infant's caregiver(s) to follow or observe one or more of the warnings or instructions contained on the Podster.

288. The death allegedly identified in IDI 220916HCC1454 involved failures by the infant's caregiver(s) to follow or observe one or more of the warnings or instructions contained on the Podster.

289. The death allegedly identified in IDI 160519CCC2600 was caused by consumer misuse of a Podster.

290. The death allegedly identified in IDI 200917CCC3888 was caused by consumer misuse of a Podster.

291. The death allegedly identified in IDI 220916HCC1454 was caused by consumer misuse of a Podster.

***

295. The deaths alleged in the Complaint were caused by consumer misuse of the Podster.

***

307. The Podster did not cause Infant A's death.

308. The Podster's design did not cause Infant A's death.

309. No manufacturing defect of the Podster caused Infant A's death.

310. The lack of warnings or instructions for the Podster did not cause Infant A's death.

311. Inadequate warnings or instructions for the Podster did not cause Infant A's death.

312. The Podster did not cause Infant B's death.

313. The Podster's design did not cause Infant B's death.

314. No manufacturing defect of the Podster caused Infant B's death.

315. The lack of warnings or instructions for the Podster did not cause Infant B's death.

316. Inadequate warnings or instructions for the Podster did not cause Infant B's death.

317. The Podster did not cause Infant C's death.

318. The Podster's design did not cause Infant C's death.

319. No manufacturing defect of the Podster caused Infant C's death.

320. The lack of warnings or instructions for the Podster did not cause Infant C's death.

321. Inadequate warnings or instructions for the Podster did not cause Infant C's death.

***

359. The risk of injury from a Podster is caused by the same aspect of the product that creates its utility; namely, its structure allowing Caregivers to secure Infants.

***

362. Caregivers of Infant C did not follow Leachco's warnings.

363. Caregivers of Infant C did not follow Leachco's instructions.

[*See* Exhibit B, Leachco, Inc.'s First Set of Requests for Admission, January 25, 2023 at 10-22, 29-35, 38, Exhibit C, Leachco, Inc.'s Second Set of Requests for Admission, February 2, 2023, at 7].

Many of these RFAs ask about "defect" and "Substantial Product Hazard." Others ask whether Leachco's actions were "adequate" or not. Still others ask about infants and adult supervision in general. All of these questions raise expert opinion testimony that Complaint Counsel will address at trial and per the Court's scheduling Order by April 28, 2023. Requiring RFA responses now is improper and inconsistent with the Court's schedule.

VI. REQUESTS FOR ADMISSION THAT POSE HYPOTHETICALS ARE NOT PROPER

Requests for admission that pose hypothetical questions are also inappropriate. Leachco's RFAs that pose improper hypotheticals include Nos. 232, 233 and 294:

232. According to IDI 220916HCC1454 (Bates No. CPSC0010504), Infant C's caregiver used a Podster "for elevation." Admit that Infant C's caregiver could have used another object—for example, a pillow, blanket, stuffed animal—"for elevation."

233. According to IDI 220916HCC1454 (Bates No. CPSC0010504), Infant C's caregiver used a Podster to keep Infant C "propped up." Admit that Infant C's caregiver could have

used another object—for example, a pillow, blanket, stuffed animal—to keep Infant C "propped up."

***

294. You do not know how many times each Podster is used by a caregiver.

[*See* Exhibit B, Leachco, Inc.'s First Set of Requests for Admission, January 25, 2023 at 28, 34].

Whether a particular caregiver "could have" taken a particular action is a hypothetical question not amenable to a request for admission. *Abbott v. U.S.*, 177 F.R.D. 92 (N.D.N.Y. 1997) (rejecting "improper hypothetical factual scenarios" propounded as requests for admissions); *Storck USA, L.P. v. Farley Candy Co.*, No. 92 C 552, 1995 WL 153260, *3 (N.D.Ill. April 6, 1995) (finding that the Plaintiff "will not be required to admit such hypothetical questions" as to certain requests for admissions"). RFA Nos. 232, 233 and 294 clearly implicate a hypothetical and are therefore not proper requests for admission.

VII. CERTAIN LEACHCO REQUESTS FOR ADMISSION IMPROPERLY SEEK PRIVILEGED INFORMATION

Certain Leachco RFAs improperly seek privileged information and a protective order should issue against them:

246. You will not rely on Tests performed before Your Complaint was filed to prove your case against Leachco in this proceeding.

247. You will not rely on Tests performed before Your Complaint was filed to prove Your case against Leachco at the hearing in this proceeding.

248. Complaint Counsel is not relying on the results of Testing performed before the Complaint was filed.

***

302. Since February 9, 2022, the Commission has not attempted to recall any Infant Lounger Products.

[*See* Exhibit B, Leachco, Inc.'s First Set of Requests for Admission, January 25, 2023 at 29, 34].

What Complaint Counsel will "rely" on implicates the deliberative process privilege or work product privilege or both. *Dept. of Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 8 (2001) (noting deliberative process privilege protects "governmental decisions and policies" and work product protects "mental processes of the attorney"). What documents Complaint Counsel will seek to introduce at trial will only be disclosed at the Court-directed time according to this Court's Order on Prehearing Schedule, September 16, 2022 [Dkt. No. 35]. According to this Court's pretrial schedule, witness and exhibit lists, *i.e.*, the proof Complaint Counsel will rely on, are due July 14, 2023. Complaint Counsel should not be required to answer RFAs that are inconsistent with the Court's scheduling Order.

VIII. LEACHCO'S INTERROGATORY NO. 40 IMPERMISSIBLY AND UNFAIRLY INCREASES THE NUMBER OF INTERROGATORIES

The Presiding Officer also should enter a protective order excusing Complaint Counsel from responding to Interrogatory No. 40. That Interrogatory is closely related to the RFAs discussed in this Motion and appears designed to annoy, oppress, and impose an undue burden on Complaint Counsel. *See* 16 C.F.R. § 1025.31(d).

Interrogatory 40 states: "If you responded to any Request for Admission with other than an unqualified, 'Admit,' explain the reason(s) for not so admitting." [*See* Exhibit D at 7.[9]] Leachco does not define "any Request for Admission," so the Interrogatory arguably relates to

[9] The interrogatory at issue here is the one numbered "40" on page 7 of Leachco, Inc.'s Second Set of Interrogatories, January 25, 2023. The next interrogatory is numbered "39" in an apparent numbering error. Then there is a second interrogatory number "40" on page 8, but this is not the interrogatory that Complaint Counsel is challenging.

all 363 RFAs served by Leachco. It therefore demands that Complaint Counsel "explain the reasons for not so admitting" any and all of those 363 RFAs that Complaint Counsel does not unequivocally admit. Such an Interrogatory is improper and imposes an undue and harassing burden on Complaint Counsel.

As an initial matter, Interrogatory No. 40 substantially and unfairly increases the number of interrogatories that Complaint Counsel would be required to answer. It essentially would require Complaint Counsel to respond to a separate interrogatory regarding the "reasons for not so admitting" the potentially *hundreds* of RFAs as to which Complaint Counsel likely will not provide an unqualified admission. *See Safeco of Am. v. Rawstron*, 181 F.R.D. 441, 446 (C.D. Cal. 1998) ("[A]n interrogatory that asks the responding party to state facts, identify witnesses, or identify documents supporting the denial of each request for admission contained in a set of requests for admissions usually should be construed as containing a subpart for each request for admission contained in the set."); Fed. Civ. Proc. Before Trial National Ed. § 11:1694 (Rutter Group May 2022) ("An interrogatory asking for the basis for denial of any accompanying requests for admission (RFAs) *as to discrete matters* is treated as an interrogatory with subparts; i.e., as many interrogatories as there are RFAs."). Although the Presiding Officer has not adopted the Federal Rules' limit of "no more than 25 written interrogatories, including all discrete subparts," *see* Fed.R.Civ.P. 33(a)(2), Leachco's interrogatory-multiplying discovery request is abusive and Complaint Counsel should be protected from responding to it. *See Rawstron*, 181 F.R.D. at 442–48 (shielding a party from answering similar interrogatories because they were unduly burdensome, oppressive, and exceeded the federal limitation on interrogatories).

In *Jadwin v. County of Kern*, a party posed an interrogatory similar to the one at issue here, asking:

> [F]or each [RFA] response that is not an unqualified admission: a. State the number of the request; b. State all facts upon which you base YOUR response; c. IDENTIFY all PERSONS who have knowledge of those facts, including their names, addresses and telephone numbers; and d. IDENTIFY all DOCUMENTS and other tangible things that support YOUR response and IDENTIFY all PERSONS who have each DOCUMENT or thing, including their names, addresses, and telephone numbers.

No. 1:07-cv-0026-OWW-TAG, 2008 WL 3820288, at *2 (E.D. Cal. Aug. 8, 2008). The court evaluated the issue and granted a protective order shielding the other party from answering due to the oppressive and unduly burdensome nature of the interrogatory. As the court explained:

> This contention interrogatory incorporates by reference Plaintiff's first set of requests for admissions. There are 290 requests for admissions in Plaintiff's first set of requests for admissions. (Doc. 178). In order to respond to this interrogatory, Defendants would be required to review 290 requests for admissions, state all facts on which any unqualified admissions to them are based, identify all persons with knowledge of those facts, all documents and other tangible things that support their response, and identify all persons who have such documents. The Court has considered the 290 requests for admissions, as well as interrogatory no. 92 and its multiple subparts, and concludes that this interrogatory is not narrowed or tailored in any way so as to avoid being oppressive or unduly burdensome. The Court finds that interrogatory no. 92 is oppressive and unduly burdensome, and concludes that Defendants are entitled to a protective order excusing them from responding to it.

Id. The same analysis is appropriate here. Leachco's Interrogatory No. 40 incorporates by reference 363 RFAs, is not narrowed or tailored in any way, and is oppressive and unduly burdensome. Complaint Counsel therefore should be excused from responding to it.

In essence, Interrogatory No. 40 is an effort to add a requirement to Section 1025.43(b), which governs responses to RFAs, that is not otherwise present in that rule. Section 1025.43(b) requires an answering party to "set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter" set forth in an RFA, but it contains no requirement that the party set forth its reasons for providing anything other than "an unqualified 'Admit.'" Interrogatory No. 40 is an attempt to circumvent that limitation and an effort by Leachco to gain more information than it is entitled to under Section 1025.43(b). *See Rawstron*, 181 F.R.D. at

447 (making a similar observation in the context of the Federal Rules). Such an end run around the Rules of Practice should not be permitted.

Interrogatory 40 and its sweeping scope also cut against the commitments that Leachco's counsel made to the Court early in this litigation. In April 2022, Complaint Counsel suggested adopting the Federal Rules' 25-interrogatory limitation, noting during the initial prehearing conference that such a limitation could "increase the efficiency of the interrogatory process" and "avoid the needless cost and harassment that we sometimes see with interrogatories." *See* Dkt. 13 at 6; April 22, 2022 Transcript at 19:11–21. Leachco objected to such a limitation, contending that, as a small business, "the most efficient way for us to get information from the government is to send interrogatories and requests for production." April 22, 2022 Transcript at 18:12–14. Leachco pledged: "We will not be onerous. We will not do unnecessary work, but we do think that that's an appropriate way for us to proceed." April 22, 2022 Transcript at 19:6–8.

Acknowledging that Leachco "made a promise and a commitment," the Court did not impose a limitation on the number of interrogatories, but the Court also explained that if the interrogatory process "ever becomes abusive, troublesome, vexatious, in any way outside the bounds of the good faith that I think [Leachco's counsel] has committed to here, please bring it to my attention and we'll resolve it that way." April 22, 2022 Transcript at 22:2–15.[10]

Interrogatory No. 40 is abusive, vexatious, and outside the realm of efficient discovery pledged by Leachco, and so Complaint Counsel requests that the Presiding Officer impose a protective order excusing Complaint Counsel from responding to this interrogatory.[11] Nor would

[10] Complaint Counsel suggests these RFAs too fit within the Presiding Officer's classification of "troublesome" and "vexatious" discovery.

[11] Complaint Counsel has been judicious in seeking a protective order from the Court but notes that many of the 61 Interrogatories (including the two Interrogatories with duplicative numbering) Leachco has served on Complaint Counsel depart from the realm of efficient discovery to which Leachco pledged to adhere. For example, far from

Leachco be prejudiced if Complaint Counsel does not respond to Interrogatory No. 40. As one court observed, "Often, the basis for the denial of a request for admission is unimportant" and "preparation of a detailed account of the basis for the denial would merely be a waste of everyone's time." *Rawstron*, 181 F.R.D. at 446.

IX. CONCLUSION

Two hundred and Eighty Three (283) of the ***363*** total requests for admission are improper and a protective order is appropriate and necessary. These RFAs are infirm because they relate to legal questions, Leachco's own business practices, expert opinions, improper hypotheticals and privileged information. Leachco's Interrogatory No. 40, that essentially creates hundreds of other Interrogatories is also inappropriate. Complaint Counsel requests that as to these 283 RFAs and Interrogatory No. 40 "the discovery shall not be had."

Complaint Counsel is acting in good faith and will separately answer 80 of RFAs. Yet Leachco's 283 problematic RFAs are emblematic of the "dilatory tactics, gamesmanship, and procedural posturing" that should not be permitted to stand. *Roberts v. Clark County School District*, 312 F.R.D. 594, 604 (D. Nev. 2016) (quoting Chief Justice Roberts on the 2015 Fed.R.Civ.P. amendments).

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serving thoughtful, efficient discovery requests, Leachco has served duplicative interrogatories on Complaint Counsel. *Compare* Interrogatory No. 48 ("Identify any infant product category on the market in which no infant deaths have occurred."), *with* Interrogatory No. 59 ("Identify any infant product category in which no infant deaths have occurred."). Ex. D at 9 & Ex. E at 8. The only difference is the phrase "on the market." This type of duplication and make-work should not be permitted.

Dated this 16th day of February, 2023

Respectfully submitted,

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

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

EXHIBIT A

From:	Rogal, Michael
To:	Oliver J. Dunford; Frank Garrison; John F. Kerkhoff
Cc:	Reyes, Gregory; Ruff, Brett
Subject:	RE: Leachco - request for meet and confer re: Leachco RFAs to Complaint Counsel
Date:	Wednesday, February 8, 2023 9:26:00 AM
Attachments:	image002.png image003.png

Counsel – thanks for taking the time for the meet and confer yesterday afternoon. As to point 1, whether a rule or regulation states X or Y is a question of law, not of fact. On point 2, the number of Podsters your client sold clearly falls within the scope of Leachco's business and knowledge: Leachco should know how many Podsters it has sold. In any event, that RFA is also objectionable because you already admitted in your Answer the allegations in paragraph 10 of our Complaint which contained this information – and as such this RFA is duplicative and can only be designed to harass and annoy. On point 3, we intend to present expert testimony, in accordance with the Court-ordered schedule, on the issue of defective design and the risk of injury that creates, and the question of whether the product presents a substantial product hazard goes to the heart of that expert testimony. On point 4, a RFA about what "could" happen is an improper hypothetical, and really again something for expert testimony, if at all. Finally, what Complaint Counsel considered or not is privileged under the deliberative process privilege or as work product.

As we discussed during our call, we will be answering a subset of your 363 total RFAs. However, as to the broad categories of objectionable and improper RFAs for which we outlined certain examples, we will be making an appropriate motion before the court. Thank you. Mike Rogal

Michael J. Rogal
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From: Oliver J. Dunford <ODunford@pacificlegal.org>
Sent: Tuesday, February 7, 2023 5:30 PM
To: Rogal, Michael <MRogal@cpsc.gov>; Ruff, Brett <BRuff@cpsc.gov>; Reyes, Gregory <GReyes@cpsc.gov>
Cc: Frank Garrison <FGarrison@pacificlegal.org>; John F. Kerkhoff <JKerkhoff@pacificlegal.org>
Subject: RE: Leachco - request for meet and confer re: Leachco RFAs to Complaint Counsel

Counsel,

You raised objections to what you categorized as five groups of Leachco's RFAs. I've listed those

below and include my responses, as we discussed.

1. Objection to "questions of law," e.g., RFA No. 23 ("There is no rule or regulation that states foreseeable misuse of a consumer product amounts to, causes, or creates a Substantial Risk of Injury."). **Response: This RFA calls for the Commission to admit or deny whether a rule or regulation exists. It is not asking for the Commission to admit or deny what the law requires or imposes.**

2. Objection to RFAs supposedly within Leachco's business practices. No. 293 ("Leachco has sold approximately 180,000 Podsters."). **Response: The Commission alleged exactly that. See Compl. ¶10. It's a question of fact that can be determined before trial, exactly what RFAs are for. To the extent this objection refers to RFAs about, e.g., what the Podster is "designed for," I reiterate the response from below: that's how the Commission defines/designates products. This has nothing at all to do with Leachco's business practices.**

3. Objection to RFAs that allegedly elicit expert testimony, e.g., RFA No. 38 ("The Podster is a not Substantial Product Hazard because of defective design."). **Response: This RFA—like others that ask the Commission to admit, e.g., the Podster is not a Substantial Product Hazard "because of inadequate warnings" (RFA No. 30)—is aimed at determining the scope of the Commission's allegations. Leachco is confirming whether the Commission is alleging, e.g., that the Podster has or had inadequate warnings that render it a Substantial Product Hazard. This has nothing to do with expert testimony.**

4. Objection to RFAs that include allegedly improper hypotheticals, e.g., RFA No. 232 ("According to IDI 220916HCC1454 (Bates No. CPSC0010504), Infant C's caregiver used a Podster 'for elevation.' Admit that Infant C's caregiver could have used another object—for example, a pillow, blanket, stuffed animal—'for elevation.'"). **Response: Again, Leachco asks the Commission about its allegations. The Commission alleges that the Podster caused infant deaths. We are allowed to probe the Commission's understanding of the facts that support (or not) this allegation. An alternative cause would undermine the Commission's claim. Such an admission may harm the Commission's case, but Leachco is entitled to know the answer.**

5. Objection to supposed privileged/trial strategy, RFA No. 124 ("Before filing Your Complaint, You did not consider whether Leachco's warnings were adequate to mitigate the alleged risk of injury."). **Response: These RFAs seek to determine whether the Commission had a good-faith basis to bring its claim against Leachco. As Judge Young stated during the Sept. 7, 2022 hearing, "if there is not a factual basis for the complaint having being filed and that is challenged and you need to show your cards, I'm going to make you show your cards, or I'm going to dismiss the complaint.") (Transcript, p. 14).**

You also objected to Interrogatory No. 40 to the extent you object to the RFAs. While I submit that your objections are without merit, I understand that you would raise them in response to Interrogatory No. 40.

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)

From: Rogal, Michael <MRogal@cpsc.gov>
Sent: Friday, February 3, 2023 4:23 PM
To: Oliver J. Dunford <ODunford@pacificlegal.org>; Frank Garrison <FGarrison@pacificlegal.org>; John F. Kerkhoff <JKerkhoff@pacificlegal.org>
Cc: Reyes, Gregory <GReyes@cpsc.gov>; Ruff, Brett <BRuff@cpsc.gov>
Subject: RE: Leachco - request for meet and confer re: Leachco RFAs to Complaint Counsel

Not a problem - we can change it to 4:30 p.m. ET

From: Oliver J. Dunford <ODunford@pacificlegal.org>
Sent: Friday, February 3, 2023 4:19 PM
To: Rogal, Michael <MRogal@cpsc.gov>; Frank Garrison <FGarrison@pacificlegal.org>; John F. Kerkhoff <JKerkhoff@pacificlegal.org>
Cc: Reyes, Gregory <GReyes@cpsc.gov>; Ruff, Brett <BRuff@cpsc.gov>
Subject: RE: Leachco - request for meet and confer re: Leachco RFAs to Complaint Counsel

Sorry for any confusion. But I indicated below that I'm not available between 11:00 and 1:00 Eastern on Tuesday. And I know have another conflict at 10:00 – 11:00.

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From: Rogal, Michael <MRogal@cpsc.gov>
Sent: Friday, February 3, 2023 12:00 PM
To: Oliver J. Dunford <ODunford@pacificlegal.org>; Frank Garrison <FGarrison@pacificlegal.org>; John F. Kerkhoff <JKerkhoff@pacificlegal.org>
Cc: Reyes, Gregory <GReyes@cpsc.gov>; Ruff, Brett <BRuff@cpsc.gov>
Subject: RE: Leachco - request for meet and confer re: Leachco RFAs to Complaint Counsel

Counsel – thanks for your response. We disagree with your assertions and we can discuss further at

a call Tuesday, February 7 at 11:30 a.m. ET. For example, this is an administrative enforcement proceeding to protect a vulnerable population from a potentially fatal suffocation hazard. Indeed, the urgency to address this matter was underscored by the third infant death that occurred on a podster for which you were recently informed.

Moreover, the elements of the claim in this matter are set forth clearly in the Complaint and you are incorrect, as foreseeable use or misuse is a factor for consideration in whether a product is defective and poses a substantial product hazard. *See* 16 C.F.R. §§ 1115.4 ("In determining whether the risk of injury associated with a product is the type of risk which will render the product defective, the Commission and staff will consider, as appropriate: . . . the role of consumer misuse of the product and the foreseeability of such misuse.") and 1115.12(g)(1)(iii). Further, your reference to comments in a rulemaking proceeding is misplaced; this matter is an adjudication as to whether the Podster is defective and poses a substantial product hazard.

We will circulate a WebEx for an audio-only meeting. Thank you. 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 | www.cpsc.gov

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From: Oliver J. Dunford <ODunford@pacificlegal.org>
Sent: Thursday, February 2, 2023 8:15 PM
To: Rogal, Michael <MRogal@cpsc.gov>; Reyes, Gregory <GReyes@cpsc.gov>; Ruff, Brett <BRuff@cpsc.gov>
Cc: Frank Garrison <FGarrison@pacificlegal.org>; John F. Kerkhoff <JKerkhoff@pacificlegal.org>
Subject: RE: Leachco - request for meet and confer re: Leachco RFAs to Complaint Counsel

Counsel,

The Commission is threatening the viability of a small, family business and the livelihoods of its employees. The "burden" of answering written-discovery requests propounded by that business, to determine the scope of the Commission's allegations and to narrow the issues for trial, is hardly oppressive.

Your complaint fares no better on the substance. Indeed, the Commission's refusal to set forth the elements of its claim left Leachco with no choice but to serve RFAs to (as stated above) determine the full scope of the Commission's allegations. The allegation that a product is defective because of foreseeable misuse alone finds no support in the 15 U.S.C. § 2064(a)(2) or 16 CFR § 1115.4.

Leachco is entitled to understand the basis for the Commission's allegations. Your objections that Leachco seeks admission on pure legal issues is therefore mistaken.

Further, your contention that certain RFAs are "objectionable because they call for an admission related to Leachco's own business practices that is readily or more easily accessible to Leachco (e.g., RFA No. 6 'The Podster is not designed for sleep.')" is belied by the Commission's own Complaint. *See* Compl. ¶13 ("The Podster is a product marketed for caregivers to use for infant lounging and to 'provide[] a warm and cozy caress for infants.' It was ***designed to*** permit a caregiver to keep an infant in a safe environment, allowing for hands-free supervision.") (emphasis added). Further, as you know, the Commission issued a Safety Standard for Infant Sleep Products, 86 Fed. Reg. 33022 (June 23, 2021). Among the responses to comments was the following: "While newborns can and do fall asleep in many products, because young infants sleep for extended hours throughout the day, certain products are ***designed***, marketed, and intended for infant sleep." *See* 86 Fed. Reg. at 33047 (emphasis added). Similarly, 15 U.S.C. 2057d(b) defines "inclined sleeper for infants" as "a product with an inclined sleep surface greater than ten degrees that is intended, marketed, or ***designed to*** provide sleeping accommodations for an infant up to 1 year old." (Emphasis added.) Thus, Leachco's RFAs are based on the Commission's and Congress's definitions and ask the Commission to admit to statements "of the application of law to fact." 16 CFR § 1025.34(a).

The same response applies to your final contention—that numerous RFAs are "inappropriate because they seek an expert opinion (e.g., RFA NO. 68, 'The Podster does not present a Substantial Risk of Injury because of the existence of a defective design.')." This is a classic RFA, seeking an admission on the application of law to fact. Such statements are those one would find in a Complaint, including the Commission's here. *See, e.g.*, Compl. ¶50 ("The Podsters contain defects because it is foreseeable . . . ."); 51 ("These defects separately, and in combination, create a substantial risk of injury to infants because of the pattern of defect . . . ."). The point is not to elicit opinion, but to determine what the Commission's allegations are and/or whether certain legal rules apply to the facts of this case.

That said, we are available to discuss Tuesday, February 7 except between 11:00 and 1:00 Eastern.

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)

Defending Liberty and Justice for All.

From: Rogal, Michael <MRogal@cpsc.gov>
Sent: Thursday, February 2, 2023 4:27 PM
To: Oliver J. Dunford <ODunford@pacificlegal.org>; Frank Garrison <FGarrison@pacificlegal.org>; John F. Kerkhoff <JKerkhoff@pacificlegal.org>
Cc: Reyes, Gregory <GReyes@cpsc.gov>; Ruff, Brett <BRuff@cpsc.gov>
Subject: Leachco - request for meet and confer re: Leachco RFAs to Complaint Counsel

Counsel – we would like to meet and confer regarding your January 25, 2023 First Set of Requests

for Admission. Your 361 RFAs are "oppressive" and subject us to "undue burden" per 16 C.F. R. § 1025.31(d). The sheer number of RFAs on its face is inappropriate and unreasonable. And several groups of RFAs are objectionable. For example, numerous RFAs seek admissions on pure legal issues which are inappropriate (e.g., RFA NO. 24 – "To find Leachco liable under the CPSA in this Proceeding, the Commission must prove *both* the Podster contains a "defect" *and* the that the "defect" "creates a substantial risk of injury." Numerous other RFAs are objectionable because they call for an admission related to Leachco's own business practices that is readily or more easily accessible to Leachco (e.g., . RFA No. 6 "The Podster is not designed for sleep."). Finally, numerous other RFAs are inappropriate because they seek an expert opinion (e.g., RFA NO. 68, "The Podster does not present a Substantial Risk of Injury because of the existence of a defective design.").

Please reply to this email with times you are available to meet and confer Monday, February 6 or Tuesday February 7. Thank you. Mike Rogal

Michael J. Rogal
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*****!!! 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 B

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

IN THE MATTER OF **LEACHCO, INC.,** Respondent.	CPSC Docket No. 22-1 HON. MICHAEL G. YOUNG PRESIDING OFFICER

LEACHCO, INC.'S FIRST SET OF REQUESTS FOR ADMISSION

Pursuant to 16 C.F.R. § 1025.34, Respondent Leachco, Inc. hereby requests that the Commission answer the following Requests for Admission within 30 days of service hereof.

DEFINITIONS AND INSTRUCTIONS

1. "2019 Mannen Report" means the report titled, "Biomechanical Analysis of Inclined Sleep Products," initially completed on September 18, 2019, and updated October 25, 2019, whose Principal Investigator was Erin M. Mannen, Ph.D., produced at CPSC0004996–CPSC0005072.

2. "Caregiver" means an adult who is responsible to care for a child, including parents and daycare employees.

3. "Claim" means the sole claim alleged against Leachco, namely Count I in Your Complaint.

4. "Commissioners" means current and former Commissioners of the CPSC and their staff.

5. "Complaint" means your Complaint filed on or about February 9, 2022 in this Proceeding.

6. "Concerning" shall mean concerning, referencing, referring to, related to, and relating to.

7. "CPSA" means the Consumer Product Safety Act.

8. "CPSC Secretary" means the CPSC's Office of the Secretary, including all staff and agents thereof.

9. "Division of Enforcement and Litigation" means the Commission's Division of Enforcement and Litigation, and all staff and agents thereof.

10. "Division of Regulatory Enforcement" means the Commission's Division of Regulatory Enforcement, and all staff and agents thereof.

11. "Document" shall mean the original and all non-identical copies of all written, printed, typed, graphic, and photographic matter of any kind or nature, and all mechanical or electronic audio and/or visual recordings or transcripts thereof, however produced or reproduced, and all entries in a computer or electronic database (including Twitter and any other form of social media) of any kind, including but not limited to: correspondence, telexes, telegrams, telephone messages, statements, voice mail, electronic mail, and all other computer files or data, claim forms, incident reports, intake forms or histories, summaries or records of telephone conversations, memoranda, records, summaries or records of personal conversations or interviews, medical records, X-rays, MRIs, CT-scans, ultrasound images, and all other radiologic or radiographic films, invoices, contracts, agreements, orders, books, calendars, diaries, reports, notebooks, photographs, videos (digital or otherwise), slides, charts,

notes, plans, drawings, sketches, maps, summaries or records of meetings or conferences, drafts or letters, now or formerly in Your possession, custody, or control.

12. "General Counsel" means the CPSC's Office of General Counsel, including all staff and agents thereof.

13. "Identify," "State the Identity of, "Identification," or "Describe" means:

a. When used in reference to an individual, shall mean to state his or her full name, maiden or former names, social security number, present or last known home and business address and telephone numbers, and present or last known occupation, employer and job title or description; or if none of the information is known, then the name, present home and business address, and telephone numbers of all individuals who likely or may be able to provide all or part of the information.

b. When used in reference to an organization of any kind, shall mean to state its full name, its state of incorporation (if applicable), the address of its principal place of business, and its telephone numbers.

c. When used in reference to a Document, shall mean to state the type of Document, its date, the identity of its author(s), and its recipient(s); any title and/or serial number or file number appearing on the Document; the identity of its present custodian; its present location; and a brief description of its subject matter. If any such Document was, but no longer is, in your possession or control or in existence, state whether it (i) is missing or lost, (ii) has been destroyed, (iii) has been transferred to others, or (iv) has been otherwise

disposed of. In lieu of identifying a Document, a copy of the Document can be produced.

14. "IDI 160519CCC2600" means the Commission's Epidemiological Investigation Report 160519CCC2600, produced as CPSC0000039–138, CPSC0010224–0010327.

15. "IDI 200917CCC3888" means the Commission's Epidemiological Investigation Report 200917CCC3888, produced as CPSC0000139–195, CPSC0010328–0010384.

16. "IDI 220916HCC1454" means the Commission's Epidemiological Investigation Report 220916HCC1454, produced as CPSC0010501–65.

17. "Incident A" refers to the death, and the surrounding circumstances thereof, of Infant A on or about December 16, 2015.

18. "Incident B" refers to the death, and the surrounding circumstances thereof, of Infant B on or around January 27, 2018.

19. "Incident C" refers to the death, and the surrounding circumstances thereof, of Infant C on or around October 25, 2021.

20. "Infant" means an individual under the age of one year.

21. "Infant A" means the four-month-old infant who, according to paragraph 36 of the Complaint, "suffocated after being placed face-up or on their side in the Podster in a crib."

22. "Infant B" means the 17-day-old infant who, according to paragraph 37 of the Complaint, "suffocated after being placed face up in the Podster on an adult bed between two caregivers."

23. "Infant C" means the infant identified in the Commission's Epidemiological Investigation Report 220916HCC1454, produced as CPSC0010501–65.

24. "Infant Lounger Product(s)" means any product(s) marketed, intended, designed, or manufactured for infant lounging, including but not limited to the Boppy Pillow, and/or any product similar to the Podster. This term does not include products marketed, intended, designed, or manufactured for infant sleep; this term also does not include "inclined sleeper for infants" as that term is defined in 15 U.S.C. § 2057d(b).

25. "Infant Sleep Product(s)" means any product marketed, intended, or designed for infant sleep, including "inclined sleeper for infants" as that term is defined in 15 U.S.C. § 2057d(b).

26. "Office of Communications" means the Commission's Office of Communications, and all staff and agents thereof.

27. "Office of Compliance and Field Operations" means the Commission's Office of Compliance and Field Operations, including all staff and agents thereof.

28. "Office of Hazard Identification & Reduction" means the Commission's Office of Hazard Identification & Reduction, and all staff and agents thereof.

29. "Person" means any natural person, corporation, partnership, unincorporated association, joint venture, trust, estate, public or quasi-public entity, or any other legal entity.

30. "Podster" means the products referred to in paragraphs 7 and 9 of Your Complaint.

31. "Proceeding" means this administrative action, *In the Matter of Leachco, Inc.*, CPSC Docket No. 22-1.

32. "Product Defect" means "product defect" as used in 15 U.S.C. § 2064(a)(2).

33. "Staff" means the CPSC staff.

34. "Substantial Product Hazard" means "substantial product hazard" as defined in 15 U.S.C. § 2064(a)(2).

35. "Substantial Risk of Injury" means "substantial risk of injury" as used in 15 U.S.C. § 2064(a)(2).

36. "Test" means any examination, inspection, analysis, result, or other assessment.

37. "You" or "Your" or "Commission" or CPSC" means the Consumer Product Safety Commission, including the Commissioners, Secretary, directors, officers, employees, staff, Complaint Counsel, and all other agents.

38. "Useful" includes the terms "usefulness" and "utility" and has the same meaning as these terms are used in 16 C.F.R. § 1115.4.

39. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

40. The singular shall include the plural, and vice versa.

41. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make all definitions and discovery requests inclusive rather than exclusive.

42. Pursuant to 16 C.F.R. Part 1025, the Commission is under a continuing duty to supplement its responses to these discovery requests without further request from Leachco. Where the Commission has responded to a discovery request with a response that was complete when made, the Commission is under a duty to supplement that response to include information later obtained.

* * *

FIRST SET OF REQUESTS FOR ADMISSION

Admit the following:

1. You do not allege a claim against Leachco under 15 U.S.C. § 2064(a)(1).

2. You do not allege a claim against Leachco under 15 U.S.C. § 2064(b).

3. The Podster is not an Infant Sleep Product.

4. The Podster is not intended to be used for sleep.

5. The Podster was never intended to be used for sleep.

6. The Podster is not designed for sleep.

7. The Podster was never designed for sleep.

8. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product amounts to a Substantial Product Hazard.

9. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product causes a Substantial Product Hazard.

10. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product creates a Substantial Product Hazard.

11. There is no rule or regulation that states foreseeable misuse of a consumer product amounts to, causes, or creates a Substantial Product Hazard.

12. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product amounts to a defect.

13. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product causes a defect.

14. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product creates a defect.

15. There is no rule or regulation that states foreseeable misuse of a consumer product creates a defect.

16. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product amounts to a Product Defect.

17. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product causes a Product Defect.

18. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product creates a Product Defect.

19. There is no rule or regulation that states foreseeable misuse of a consumer product amounts to, causes, or creates a Product Defect.

20. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product amounts to a Substantial Risk of Injury.

21. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product causes a Substantial Risk of Injury.

22. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product creates a Substantial Risk of Injury.

23. There is no rule or regulation that states foreseeable misuse of a consumer product amounts to, causes, or creates a Substantial Risk of Injury.

24. To find Leachco liable under the CPSA in this Proceeding, the Commission must prove *both* that the Podster contains a "defect" *and* that the "defect" "creates a substantial risk of injury."

25. The Podster does not have a manufacturing defect.

26. The Podster does not have a warning defect.

27. The Podster is not defective because of inadequate warnings.

28. The Podster is not defective because of inadequate instructions.

29. The Podster is not defective because of a defective design.

30. The Podster is a not Substantial Product Hazard because of inadequate warnings.

31. The Podster is a Substantial Product Hazard because of inadequate instructions.

32. The Podster is a not Substantial Product Hazard because of defective warnings.

33. The Podster is a not Substantial Product Hazard because of defective instructions.

34. The Podster is a not Substantial Product Hazard because of the existence of a reasonable alternative design.

35. The Podster has never been a Substantial Product Hazard because of the existence of a reasonable alternative design.

36. The Podster is a not Substantial Product Hazard because of defective manufacturing.

37. The Podster has never been a Substantial Product Hazard because of defective manufacturing.

38. The Podster is a not Substantial Product Hazard because of defective design.

39. The Podster has never been a Substantial Product Hazard because of defective design.

40. Leachco has not failed to provide adequate warnings for use of the Podster.

41. Leachco has not failed to provide adequate instructions for use of the Podster.

42. The Podster is a not Product Defect because of inadequate warnings.

43. The Podster has never been a Product Defect because of inadequate warnings.

44. The Podster is a not Product Defect because of inadequate instructions.

45. The Podster has never been a Product Defect because of inadequate instructions.

46. The Podster is a not Product Defect because of defective warnings.

47. The Podster has never been a Product Defect because of defective warnings.

48. The Podster is a not Product Defect because of defective instructions.

49. The Podster has never been a Product Defect because of defective instructions.

50. The Podster is a not Product Defect because of the existence of reasonable alternative design.

51. The Podster has never been a Product Defect because of the existence of a reasonable alternative design.

52. The Podster is a not Product Defect because of defective manufacturing.

53. The Podster has never been a Product Defect because of defective manufacturing.

54. The Podster is a not Product Defect because of defective design.

55. The Podster has never been a Product Defect because of defective design.

56. The Podster presents no Substantial Risk of Injury because of inadequate warnings.

57. The Podster presents no Substantial Risk of Injury because of inadequate instructions.

58. The Podster presents no Substantial Risk of Injury because of defective warnings.

59. The Podster presents no Substantial Risk of Injury because of defective instructions.

60. The Podster has never presented a Substantial Risk of Injury because of inadequate warnings.

61. The Podster has never presented a Substantial Risk of Injury because of inadequate instructions.

62. The Podster has never presented a Substantial Risk of Injury because of defective warnings.

63. The Podster has never presented a Substantial Risk of Injury because of defective instructions.

64. The Podster does not present a Substantial Risk of Injury because of the existence of a reasonable alternative design.

65. The Podster has never presented a Substantial Risk of Injury because of the existence of a reasonable alternative design.

66. The Podster does not present a Substantial Risk of Injury because of the existence of a defective manufacturing.

67. The Podster has never presented a Substantial Risk of Injury because of the existence of a defective manufacturing.

68. The Podster does not present a Substantial Risk of Injury because of the existence of a defective design.

69. The Podster has never presented a Substantial Risk of Injury because of the existence of a defective design.

70. Leachco's warnings Concerning the Podster were adequate.

71. Leachco's instructions Concerning the Podster were adequate.

72. Leachco's warnings Concerning the Podster are adequate.

73. Leachco's instructions Concerning the Podster are adequate.

74. The Podster is not defective because of inadequate warnings.

75. The Podster has never been defective because of inadequate warnings.

76. The Podster is not defective because of inadequate instructions.

77. The Podster has never been defective because of inadequate instructions.

78. The Podster is not defective because of defective warnings.

79. The Podster is not defective because of defective instructions.

80. The Podster has never been defective because of defective warnings.

81. The Podster has never been defective because of defective instructions.

82. The Podster is not defective because of the existence of a reasonable alternative design.

83. The Podster has never been defective because of the existence of a reasonable alternative design.

84. The Podster is not defective because of defective manufacturing.

85. The Podster has never been defective because of defective manufacturing.

86. The Podster is not defective because of defective design.

87. The Podster has never been defective because of defective design.

88. The Podster has never been a Substantial Product Hazard because of inadequate instructions.

89. The Podster has never been a Substantial Product Hazard because of inadequate warnings.

90. The Podster has never been a Substantial Product Hazard because of defective warnings.

91. The Podster has never been a Substantial Product Hazard because of defective instructions.

92. Leachco did not fail to report a Substantial Product Hazard.

93. Leachco has not failed to report a Substantial Product Hazard.

94. Leachco did not fail to report a product that created an unreasonable risk of injury or death.

95. Leachco has not failed to report a product that created an unreasonable risk of injury or death.

96. Leachco did not breach any express warranty with respect to the Podster.

97. Leachco did not breach any implied warranty with respect to the Podster.

98. You have the burden of proof to establish that the Podster is a Substantial Product Hazard.

99. You have the burden of persuasion to establish that the Podster is a Substantial Product Hazard.

100. You allege that the Podster presents a risk of Infant suffocation.

101. You allege that the only risk presented by the Podster is the risk of infant suffocation.

102. Leachco adequately warned consumers about the potential risk of Infant suffocation.

103. Leachco adequately warned consumers about the potential risk of using the Podster for sleep.

104. Leachco adequately warned consumers about the potential risk of using the Podster without constant adult supervision.

105. Leachco adequately warned consumers about the potential risk of using the Podster on anything but flat surfaces.

106. Leachco adequately warned consumers about the potential risk of using the Podster on elevated surfaces.

107. Leachco adequately warned consumers about the potential risk of using the Podster for co-sleeping or bed-sharing.

108. Leachco adequately warned consumers about the potential risk of using the Podster in a crib.

109. Leachco adequately warned consumers about the potential risk of using the Podster with soft products.

110. Leachco instructed consumers not to use the Podster for sleep.

111. Leachco instructed consumers not to use the Podster without constant adult supervision.

112. Leachco instructed consumers not to use the Podster on elevated surfaces.

113. Leachco instructed consumers not to use the Podster for co-sleeping or bed-sharing.

114. Leachco instructed consumers not to use the Podster in a crib.

115. Leachco instructed consumers not to place Infants in a Podster in a crib.

116. Leachco's instructions adequately explained proper use of the Podster.

117. The Podster presents no risk that is not contemplated in Leachco's warnings.

118. The Podster presents no risk that is not contemplated in Leachco's instructions.

119. You do not allege that the Podster presents a risk that is not contemplated in Leachco's warnings.

120. You do not allege that the Podster presents a risk that is not contemplated in Leachco's instructions.

121. You contend that no warnings about the Podster by Leachco would have been sufficient to cure the alleged Substantial Product Hazard.

122. You contend that no instructions about the Podster by Leachco could be sufficient to cure the alleged Substantial Product Hazard.

123. Your allegation that the Podster presents a Substantial Product Hazard is not based on Your consideration of whether Leachco's warnings and instructions were adequate to mitigate the alleged risk of injury.

124. Before filing Your Complaint, You did not consider whether Leachco's warnings were adequate to mitigate the alleged risk of injury.

125. Before filing Your Complaint, You did not consider whether Leachco's instructions were adequate to mitigate the alleged risk of injury.

126. Before filing Your Complaint, You did not consider whether Leachco's warnings were adequate to cure the alleged risk of injury.

127. Before filing Your Complaint, You did not consider whether Leachco's instructions were adequate to cure the alleged risk of injury.

128. After an administrative complaint has been filed by Complaint Counsel, the Commission's General Counsel represents both the Commissioners and Complaint Counsel (and their staff).

129. After an administrative complaint has been filed by Complaint Counsel, the Commission's General Counsel advises both the Commissioners and Complaint Counsel (and their staff).

130. You do not propose a reasonable alternative design for the Podster.

131. You do not propose any alternative design for the Podster.

132. You do not allege that a reasonable alternative design of the Podster would mitigate the Substantial Product Hazard allegedly presented by the Podster.

133. You do not allege that a reasonable alternative design of the Podster would cure the Substantial Product Hazard allegedly presented by the Podster.

134. You do not allege that an alternative design of the Podster would mitigate the risk of injury while providing to consumers the same utility.

135. You do not allege that an alternative design of the Podster would cure the risk of injury while providing to consumers the same utility.

136. You contend that Leachco is liable under the CPSA regardless of whether Leachco Tested the Podster before it first sold the Podster.

137. You contend that Leachco is liable under the CPSA regardless of whether Leachco Tested the Podster after it first sold the Podster.

138. You contend that Leachco is liable under the CPSA if Leachco has received zero communications Concerning consumers' misuse of the Podster.

139. You contend that Leachco is liable under the CPSA if Leachco was unaware of consumer misuse of the Podster.

140. You contend that Leachco is liable under the CPSA if Leachco is unaware of consumer misuse of the Podster.

141. You contend that Leachco is liable under the CPSA if Leachco never considered potential risks arising out of the use of the Podster.

142. You contend that Leachco is liable under the CPSA even if Leachco never considered potential risks arising out of misuse of the Podster.

143. All Infants need adult supervision.

144. All Infants need adult supervision regardless of the use of an Infant product.

145. All Infants need adult supervision regardless of the use of a product intended for Infants.

146. All Infants need adult supervision regardless of the use of an Infant product by adults.

147. The Podster is useful.

148. The Podster is useful for Caregivers.

149. The Podster does not fail to comply with any applicable consumer product safety rule under Chapter 47 of Title 15 of the U.S. Code.

150. The Podster has never failed to comply with any applicable consumer product safety rule under Chapter 47 of Title 15 of the U.S. Code.

151. The Podster complies with all applicable product safety rules under Chapter 47 of Title 15 of the U.S. Code.

152. The Podster has always complied with all applicable product safety rules under Chapter 47 of Title 15 of the U.S. Code.

153. The Podster does not fail to comply with any rule, regulation, standard, or ban, similar to an applicable safety rule under Chapter 47 of Title 15 of the U.S. Code, under any other Act enforced by the Commission.

154. The Podster has never failed to comply with any rule, regulation, standard, or ban, similar to an applicable safety rule under Chapter 47 of Title 15 of the U.S. Code, under any other Act enforced by the Commission.

155. The Podster complies with all rules, regulations, standards, or bans similar to applicable safety rules under Chapter 47 of Title 15 of the U.S. Code under any other Act enforced by the Commission.

156. The Podster has always complied with all rules, regulations, standards, or bans similar to applicable safety rules under Chapter 47 of Title 15 of the U.S. Code under any other Act enforced by the Commission.

157. The Podster is safe when used consistent with Leachco's warnings.

158. The Podster is safe when used consistent with Leachco's instructions.

159. The Podster is safe when consumers follow Leachco's warnings.

160. The Podster is safe when consumers follow with Leachco's instructions.

161. The Podster is not defective when used consistent with Leachco's warnings.

162. The Podster is not defective when used consistent with Leachco's instructions.

163. The Podster is not defective when consumers follow Leachco's warnings.

164. The Podster is not defective when consumers follow Leachco's instructions.

165. The Podster does not present a Substantial Product Hazard when it is used consistent with Leachco's warnings.

166. The Podster does not present a Substantial Product Hazard when it is used consistent with Leachco's instructions.

167. The Podster does not present a Substantial Product Hazard when consumers follow Leachco's warnings.

168. The Podster does not present a Substantial Product Hazard when consumers follow Leachco's instructions.

169. The Podster does not have a Product Defect when it is used consistent with Leachco's warnings.

170. The Podster does not have a Product Defect when it is used consistent with Leachco's instructions.

171. The Podster does not have a Product Defect when consumers follow Leachco's warnings.

172. The Podster does not have a Product Defect when consumers follow Leachco's instructions.

173. The Podster presents no Substantial Risk of Injury when used consistent with Leachco's warnings.

174. The Podster presents no Substantial Risk of Injury when used consistent with Leachco's instructions.

175. The Podster presents no Substantial Risk of Injury when consumers follow Leachco's warnings.

176. The Podster presents no Substantial Risk of Injury when consumers follow Leachco's instructions.

177. The Podster does not have a defect when used consistent with Leachco's warnings.

178. The Podster does not have a defect when used consistent with Leachco's instructions.

179. The Podster does not have a defect when consumers follow Leachco's warnings.

180. The Podster does not have a defect when consumers follow Leachco's instructions.

181. Infants under constant adult supervision can roll or move on the Podster into a position where their noses and mouths may be obstructed by the Podster.

182. Infants under constant adult supervision can roll or move off the Podster into a position where their noses and mouths may be obstructed by another object, such as soft bedding.

183. Infants under constant adult supervision who roll or move on the Podster into a position where their noses and mouths may be obstructed by the Podster can be repositioned to prevent the obstruction.

184. Infants under constant adult supervision who roll or move off the Podster into a position where their noses and mouths may be obstructed by another object, such as soft bedding, may be repositioned by an adult to prevent the obstruction.

185. You are aware of no injuries caused by the Podster when the Podster was used consistent with Leachco's warnings.

186. You are aware of no injuries caused by the Podster when the Podster was used consistent with Leachco's instructions.

187. You are aware of no injuries caused by the Podster when a consumer(s) followed Leachco's warnings.

188. You are aware of no injuries caused by the Podster when a consumer(s) followed Leachco's instructions.

189. You are aware of no injuries associated with a Podster when the Podster was used consistent with Leachco's warnings.

190. You are aware of no injuries associated with a Podster when the Podster was used consistent with Leachco's instructions.

191. You are aware of no injuries associated with a Podster when a consumer(s) followed Leachco's warnings.

192. You are aware of no injuries associated with a Podster when a consumer(s) followed Leachco's instructions.

193. The Podster on which Infant A was placed, as alleged in Paragraph 36 of the Complaint, was not used according to Leachco's warnings.

194. The Podster on which Infant A was placed, as alleged in Paragraph 36 of the Complaint, was not used according to Leachco's instructions.

195. Concerning Incident A, a caregiver(s) of Infant A placed Infant A in a Podster and then placed the Podster in a crib.

196. Concerning Incident A, a caregiver(s) of Infant A placed a bottle, containing liquid, in Infant A's mouth when the caregiver(s) placed Infant A in the Podster and then placed the Podster in a crib.

197. Concerning Incident A, a caregiver(s) of Infant A placed a bottle, containing liquid, in Infant A's mouth when the caregiver(s) placed Infant A in the Podster and then placed the Podster in a crib, which also contained a soft object.

198. Concerning Incident A, after Infant A was placed in a Podster and after this Podster was placed in a crib, Infant A was left unattended for over an hour.

199. Concerning Incident A, Infant A was placed in a Podster and after this Podster was placed in a crib, caregivers did not attend to Infant A for over an hour.

200. Concerning Incident A, after Infant A was placed in a Podster and after this Podster was placed in a crib, Infant A was not supervised by an adult for over an hour.

201. Concerning Incident A, After Infant A was placed in a Podster and after this Podster was placed in a crib, Infant A was not under constant adult supervision.

202. Concerning Incident A, a bottle filled with liquid was placed in Infant A's mouth.

203. Concerning Incident B, the Podster on which Infant B was placed, as alleged in Paragraph 37 of the Complaint, was not used according to Leachco's warnings.

204. Concerning Incident B, the Podster on which Infant B was placed, as alleged in Paragraph 37 of the Complaint, was not used according to Leachco's instructions.

205. Concerning Incident B, Infant B was placed in a Podster for co-sleeping.

206. Concerning Incident B, Infant B was placed in a Podster on an adult bed between two caregivers.

207. Concerning Incident B, Infant B was placed in a Podster for bed-sharing.

208. Concerning Incident B, Infant B's caregivers used a Podster for co-sleeping.

209. Concerning Incident B, Infant B's caregivers used a Podster for bed-sharing.

210. Concerning Incident B, Infant B's caregivers could have shared their bed with Infant B without using a Podster.

211. Concerning Incident B, Infant B's caregivers could have shared their bed with Infant B without placing their child in a Podster.

212. The Podster has always contained warnings that it should not be used for sleep and that adult supervision is always required.

213. Infant A's death occurred after Infant A had been placed in a Podster for unsupervised sleep.

214. Infant B's death occurred after Infant B had been placed in a Podster for unsupervised sleep.

215. The in-home daycare center identified in IDI 220916HCC1454 was not licensed by any governmental authority.

216. The in-home daycare center identified in IDI 220916HCC1454 was not licensed by any organization authorized to license in-home daycare centers.

217. The in-home daycare center identified in IDI 220916HCC1454 was not licensed by any licensing authority.

218. Concerning Incident C, Infant C's death occurred after Infant C had been placed in a Podster for unsupervised sleep.

219. Concerning Incident C, Infant C's caregiver(s) placed Infant C in a Podster for a nap.

220. Concerning Incident C, Infant C was placed in a Podster, which was in a crib or "play yard".

221. Concerning Incident C, a blanket was in the crib or "play yard" in which Infant C was placed.

222. Infant C was taken to a pediatrician a week before Incident C because Infant C was extremely congested.

223. Infant C was taken to a pediatrician a week before Incident C because Infant C was congested.

224. When Infant C was taken to a pediatrician a week before Incident C, Infant C wheezed during the visit to the pediatrician.

225. When Infant C was taken to a pediatrician a week before Incident C, the physician prescribed respiratory treatments for Infant C.

226. Within 72 hours of Incident C, Infant C had stopped breathing and turned blue.

227. Two days before Incident C, Infant C's mother called 911 because Infant C was having trouble breathing.

228. Infant C was given albuterol on October 25, 2021.

229. Infant C was scheduled to see a doctor on October 25, 2021.

230. Concerning Incident C, Infant C's caregiver(s) did not follow the warnings and instructions on the Podster.

231. Within 72 hours of Incident C, Infant C had a possible ear infection.

232. According to IDI 220916HCC1454 (Bates No. CPSC0010504), Infant C's caregiver used a Podster "for elevation." Admit that Infant C's caregiver could have used another object—for example, a pillow, blanket, stuffed animal—"for elevation."

233. According to IDI 220916HCC1454 (Bates No. CPSC0010504), Infant C's caregiver used a Podster to keep Infant C "propped up." Admit that Infant C's caregiver could have used another object—for example, a pillow, blanket, stuffed animal—to keep Infant C "propped up."

234. The Podster's warnings and instructions state that the Podster should not be used by infants exceeding 16 pounds.

235. Infant A weighed 19 pounds.

236. State regulations governing the daycare center where Infant A died required that infants be held for bottle feeding.

237. State regulations governing the daycare center where Infant A died prohibit the placement of pillows in cribs.

238. State regulations governing the daycare center where Infant A died require staff to monitor sleeping infants at all times.

239. Daycare employees violated state law by giving Infant A a bottle while Infant A was on the Podster.

240. You contend that there is nothing Leachco can do to cure the Substantial Product Hazard allegedly presented by the Podster.

241. You contend that there is nothing Leachco can do to mitigate the Substantial Product Hazard allegedly presented by the Podster.

242. You contend that there is nothing Leachco could have done to cure the Substantial Product Hazard allegedly presented by the Podster.

243. You contend that there is nothing Leachco could have done to mitigate the Substantial Product Hazard allegedly presented by the Podster.

244. You contend that there is no warning adequate to cure the Podster's alleged substantial defect.

245. You contend that there is no instruction adequate to cure the Podster's alleged substantial defect.

246. You will not rely on Tests performed before Your Complaint was filed to prove your case against Leachco in this proceeding.

247. You will not rely on Tests performed before Your Complaint was filed to prove Your case against Leachco at the hearing in this proceeding.

248. Complaint Counsel is not relying on the results of Testing performed before the Complaint was filed.

249. The Podster is not an "infant sleep product" as defined in Safety Standard for Infant Sleep Products, 86 Fed. Reg. 33022 (June 23, 2021).

250. The Safety Standard for Infant Sleep Products specifically exempts "Loungers" unless they are "marketed for infant sleep on the product itself or its

packaging, marketing materials, inserts, or instructions, or the product is advertised with pictures of sleeping infants."

251. The Podster is not an Infant Sleep Product.

252. The Podster is not an "inclined sleeper for infants" as that term is defined in 15 U.S.C. § 2057d(b).

253. The Podster is not intended to provide sleeping accommodations for an Infant.

254. The Podster is not marketed to provide sleeping accommodations for an Infant.

255. The Podster is not designed to provide sleeping accommodations for an Infant.

256. The Podster was never intended to provide sleeping accommodations for an Infant.

257. The Podster was never marketed to provide sleeping accommodations for an Infant.

258. The Podster was never designed to provide sleeping accommodations for an Infant.

259. The Podster is not intended to provide sleeping accommodations for any infant or baby of any age.

260. The Podster is not marketed to provide sleeping accommodations for any infant or baby of any age.

261. The Podster is not designed to provide sleeping accommodations for any infant or baby of any age.

262. The Podster was never intended to provide sleeping accommodations for any infant or baby of any age.

263. The Podster was never marketed to provide sleeping accommodations for any infant or baby of any age.

264. The Podster was never designed to provide sleeping accommodations for any infant or baby of any age.

265. There is no Mandatory Consumer Product Safety Rule currently in effect that establishes a safety standard for Infant Lounger Products.

266. The 2019 Mannen Report considered only Inclined Sleep Products.

267. The 2019 Mannen Report reviewed incidents involving only Inclined Sleep Products.

268. The 2019 Mannen Report did not review Infant Lounger Products.

269. The 2019 Mannen Report did not consider Infant Lounger Products.

270. The 2019 Mannen Report did not study Infant Lounger Products.

271. The 2019 Mannen Report did not Test Infant Lounger Products.

272. The 2019 Mannen Report did not review incidents involving Infant Lounger Products.

273. The 2019 Manned Report did not review deaths involving Infant Lounger Products.

274. 16 C.F.R. § 1115.4 was not adopted through notice-and-comment rule-making.

275. 16 C.F.R. § 1115.4 is an interpretive rule.

276. 16 C.F.R. § 1115.4 is not a legislative rule.

277. 16 C.F.R. § 1115.4 is not binding on the public.

278. 16 C.F.R. § 1115.4 is not binding on Leachco.

279. The Commission is aware of no more than three deaths allegedly involving a Podster.

280. The Commission is aware of no more than three injuries, including deaths, allegedly involving a Podster.

281. Aside from the three deaths allegedly identified in IDI 160519CCC2600, IDI 200917CCC3888, and IDI 220916HCC1454, the Commission is aware of no injuries caused by a Podster.

282. Aside from the three deaths allegedly identified in IDI 160519CCC2600, IDI 200917CCC3888, and IDI 220916HCC1454, the Commission is aware of no injuries involving a Podster.

283. Aside from the three deaths allegedly identified in IDI 160519CCC2600, IDI 200917CCC3888, and IDI 220916HCC1454, the Commission is aware of no injuries associated with the use of a Podster.

284. Aside from the three deaths allegedly identified in IDI 160519CCC2600, IDI 200917CCC3888, and IDI 220916HCC1454, the Commission is aware of no injuries caused by defects alleged in Your Complaint.

285. The deaths allegedly identified in IDI 160519CCC2600, IDI 200917CCC3888, and IDI 220916HCC1454 involve failures by the infants' caregivers to follow or observe one or more of the warnings or instructions contained on the Podster.

286. The death allegedly identified in IDI 160519CCC2600 involved failures by the infant's caregiver(s) to follow or observe one or more of the warnings or instructions contained on the Podster.

287. The death allegedly identified in IDI 200917CCC3888 involved failures by the infant's caregiver(s) to follow or observe one or more of the warnings or instructions contained on the Podster.

288. The death allegedly identified in IDI 220916HCC1454 involved failures by the infant's caregiver(s) to follow or observe one or more of the warnings or instructions contained on the Podster.

289. The death allegedly identified in IDI 160519CCC2600 was caused by consumer misuse of a Podster.

290. The death allegedly identified in IDI 200917CCC3888 was caused by consumer misuse of a Podster.

291. The death allegedly identified in IDI 220916HCC1454 was caused by consumer misuse of a Podster.

292. The Commission is aware of no injuries or deaths involving a Podster that was used in conformance with the Podster's warnings and instructions.

293. Leachco has sold approximately 180,000 Podsters.

294. You do not know how many times each Podster is used by a caregiver.

295. The deaths alleged in the Complaint were caused by consumer misuse of the Podster.

296. You contend that it is irrelevant, for the purposes of proving the allegations in the Complaint, whether any consumer misused the Podster.

297. Caregivers of Infant A did not follow Leachco's warnings.

298. Caregivers of Infant A did not follow Leachco's instructions.

299. Caregivers of Infant B did not follow Leachco's warnings.

300. Caregivers of Infant B did not follow Leachco's instructions.

301. Since February 9, 2022, the Commission has not recalled any Infant Lounger Products.

302. Since February 9, 2022, the Commission has not attempted to recall any Infant Lounger Products.

303. Since February 9, 2022, the Commission has not issued a press release alleging a defective Infant Lounger Product.

304. Since February 9, 2022, the Commission has not issued a press release about any Infant Lounger Product.

305. Leachco has not violated 15 U.S.C. 2064(b) with respect to the incidents involving Infant A, Infant B, and Incident C.

306. After Incident A, state authorities suspended the daycare's license because of imminent danger to the health, safety, and welfare of the children who attended the daycare.

307. The Podster did not cause Infant A's death.

308. The Podster's design did not cause Infant A's death.

309. No manufacturing defect of the Podster caused Infant A's death.

310. The lack of warnings or instructions for the Podster did not cause Infant A's death.

311. Inadequate warnings or instructions for the Podster did not cause Infant A's death.

312. The Podster did not cause Infant B's death.

313. The Podster's design did not cause Infant B's death.

314. No manufacturing defect of the Podster caused Infant B's death.

315. The lack of warnings or instructions for the Podster did not cause Infant B's death.

316. Inadequate warnings or instructions for the Podster did not cause Infant B's death.

317. The Podster did not cause Infant C's death.

318. The Podster's design did not cause Infant C's death.

319. No manufacturing defect of the Podster caused Infant C's death.

320. The lack of warnings or instructions for the Podster did not cause Infant C's death.

321. Inadequate warnings or instructions for the Podster did not cause Infant C's death.

322. No official autopsy, medical report, or medical examiner opinion identified the Podster as the cause of Infant A's death.

323. No official autopsy, medical report, or medical examiner opinion identified the Podster as the cause of Infant B's death.

324. No official autopsy, medical report, or medical examiner opinion identified the Podster as the cause of Infant c's death.

325. The Podster is not subject to 16 C.F.R. Part 1112.

326. The Podster is not subject to 16 C.F.R. Part 1130.

327. The Podster is not subject to 16 C.F.R. Part 1215.

328. The Podster is not subject to 16 C.F.R. Part 1216.

329. The Podster is not subject to 16 C.F.R. Part 1217.

330. The Podster is not subject to 16 C.F.R. part 1218.

331. The Podster is not subject to 16 C.F.R. part 1219.

332. The Podster is not subject to 16 C.F.R. part 1220.

333. The Podster is not subject to 16 C.F.R. part 1221.

334. The Podster is not subject to 16 C.F.R. part 1222.

335. The Podster is not subject to 16 C.F.R. Part 1223.

336. The Podster is not subject to 16 C.F.R. Part 1224.

337. The Podster is not subject to 16 C.F.R. Part 1225.

338. The Podster is not subject to 16 C.F.R. Part 1226.

339. The Podster is not subject to 16 C.F.R. Part 1227.

340. The Podster is not subject to 16 C.F.R. Part 1228.

341. The Podster is not subject to 16 C.F.R. Part 1229.

342. The Podster is not subject to 16 C.F.R. Part 1230.

343. The Podster is not subject to 16 C.F.R. Part 1231.

344. The Podster is not subject to 16 C.F.R. Part 1232.

345. The Podster is not subject to 16 C.F.R. Part 1233.

346. The Podster is not subject to 16 C.F.R. Part 1234.

347. The Podster is not subject to 16 C.F.R. Part 1235.

348. The Podster is not subject to 16 C.F.R. Part 1236.

349. The Podster is not subject to 16 C.F.R. Part 1237.

350. The Podster is not subject to 16 C.F.R. Part 1238.

351. The Podster is not subject to 16 C.F.R. Part 1239.

352. The Podster is not subject to 16 C.F.R. Part 1241.

353. The Podster is not subject to 16 C.F.R. Part 1250.

354. The CPSA does not create a duty for a manufacturer of consumer products to monitor third-party websites Concerning the manufacturer's consumer products.

355. The CPSA does not create a duty for a manufacturer of consumer products to review third-party websites Concerning the manufacturer's consumer products.

356. The CPSA does not create a duty for a manufacturer of consumer products to read comments on third-party websites Concerning the manufacturer's consumer products.

357. The CPSA does not create a duty for a manufacturer of consumer products to take affirmative steps to address comments on third-party websites Concerning the manufacturer's consumer products.

358. The CPSA does not create a duty for a manufacturer of consumer products to respond to comments on third-party websites Concerning the manufacturer's consumer products.

359. The risk of injury from a Podster is caused by the same aspect of the product that creates its utility; namely, its structure allowing Caregivers to secure Infants.

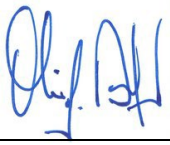
360. You seek an order compelling Leachco to pay damages to third parties.

361. Your Claim against Leachco is akin to a common-law action arising in tort.

* * *

DATED: January 25, 2023.

Respectfully submitted,



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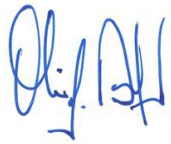
Counsel for Respondent Leachco, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2023, I served, by electronic mail, the foregoing **Leachco, Inc.'s First Set of Requests for Admission** upon all parties and participants of record in these proceedings:

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	**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 **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



Oliver J. Dunford
Counsel for Respondent Leachco, Inc.

EXHIBIT C

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

IN THE MATTER OF **LEACHCO, INC.,** Respondent.	CPSC Docket No. 22-1 HON. MICHAEL G. YOUNG PRESIDING OFFICER

LEACHCO, INC.'S SECOND SET OF REQUESTS FOR ADMISSION

Pursuant to 16 C.F.R. § 1025.34, Respondent Leachco, Inc. hereby requests that the Commission answer the following Requests for Admission within 30 days of service hereof.

DEFINITIONS AND INSTRUCTIONS

1. "2019 Mannen Report" means the report titled, "Biomechanical Analysis of Inclined Sleep Products," initially completed on September 18, 2019, and updated October 25, 2019, whose Principal Investigator was Erin M. Mannen, Ph.D., produced at CPSC0004996–CPSC0005072.

2. "Caregiver" means an adult who is responsible to care for a child, including parents and daycare employees.

3. "Claim" means the sole claim alleged against Leachco, namely Count I in Your Complaint.

4. "Commissioners" means current and former Commissioners of the CPSC and their staff.

5. "Complaint" means your Complaint filed on or about February 9, 2022 in this Proceeding.

6. "Concerning" shall mean concerning, referencing, referring to, related to, and relating to.

7. "CPSA" means the Consumer Product Safety Act.

8. "CPSC Secretary" means the CPSC's Office of the Secretary, including all staff and agents thereof.

9. "Division of Enforcement and Litigation" means the Commission's Division of Enforcement and Litigation, and all staff and agents thereof.

10. "Division of Regulatory Enforcement" means the Commission's Division of Regulatory Enforcement, and all staff and agents thereof.

11. "Document" shall mean the original and all non-identical copies of all written, printed, typed, graphic, and photographic matter of any kind or nature, and all mechanical or electronic audio and/or visual recordings or transcripts thereof, however produced or reproduced, and all entries in a computer or electronic database (including Twitter and any other form of social media) of any kind, including but not limited to: correspondence, telexes, telegrams, telephone messages, statements, voice mail, electronic mail, and all other computer files or data, claim forms, incident reports, intake forms or histories, summaries or records of telephone conversations, memoranda, records, summaries or records of personal conversations or interviews, medical records, X-rays, MRIs, CT-scans, ultrasound images, and all other radiologic or radiographic films, invoices, contracts, agreements, orders, books, calendars, diaries, reports, notebooks, photographs, videos (digital or otherwise), slides, charts,

notes, plans, drawings, sketches, maps, summaries or records of meetings or conferences, drafts or letters, now or formerly in Your possession, custody, or control.

12. "Durable Infant or Toddler Product(s)" has the same meaning as used by the Commission here: https://www.cpsc.gov/Business--Manufacturing/Business-Education/Durable-Infant-or-Toddler-Products.

13. "General Counsel" means the CPSC's Office of General Counsel, including all staff and agents thereof.

14. "Identify," "State the Identity of, "Identification," or "Describe" means:

a. When used in reference to an individual, shall mean to state his or her full name, maiden or former names, social security number, present or last known home and business address and telephone numbers, and present or last known occupation, employer and job title or description; or if none of the information is known, then the name, present home and business address, and telephone numbers of all individuals who likely or may be able to provide all or part of the information.

b. When used in reference to an organization of any kind, shall mean to state its full name, its state of incorporation (if applicable), the address of its principal place of business, and its telephone numbers.

c. When used in reference to a Document, shall mean to state the type of Document, its date, the identity of its author(s), and its recipient(s); any title and/or serial number or file number appearing on the Document; the identity of its present custodian; its present location; and a brief description

of its subject matter. If any such Document was, but no longer is, in your possession or control or in existence, state whether it (i) is missing or lost, (ii) has been destroyed, (iii) has been transferred to others, or (iv) has been otherwise disposed of. In lieu of identifying a Document, a copy of the Document can be produced.

15. "IDI 160519CCC2600" means the Commission's Epidemiological Investigation Report 160519CCC2600, produced as CPSC0000039–138, CPSC0010224–0010327.

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18. "Incident A" refers to the death, and the surrounding circumstances thereof, of Infant A on or about December 16, 2015.

19. "Incident B" refers to the death, and the surrounding circumstances thereof, of Infant B on or around January 27, 2018.

20. "Incident C" refers to the death, and the surrounding circumstances thereof, of Infant C on or around October 25, 2021.

21. "Infant" means an individual under the age of one year.

22. "Infant A" means the four-month-old infant who, according to paragraph 36 of the Complaint, "suffocated after being placed face-up or on their side in the Podster in a crib."

23. "Infant B" means the 17-day-old infant who, according to paragraph 37 of the Complaint, "suffocated after being placed face up in the Podster on an adult bed between two caregivers."

24. "Infant C" means the infant identified in the Commission's Epidemiological Investigation Report 220916HCC1454, produced as CPSC0010501–65.

25. "Infant Lounger Product(s)" means any product(s) marketed, intended, designed, or manufactured for infant lounging, including but not limited to the Boppy Pillow, and/or any product similar to the Podster. This term does not include products marketed, intended, designed, or manufactured for infant sleep; this term also does not include "inclined sleeper for infants" as that term is defined in 15 U.S.C. § 2057d(b).

26. "Infant Sleep Product(s)" means any product marketed, intended, or designed for infant sleep, including "inclined sleeper for infants" as that term is defined in 15 U.S.C. § 2057d(b).

27. "Office of Communications" means the Commission's Office of Communications, and all staff and agents thereof.

28. "Office of Compliance and Field Operations" means the Commission's Office of Compliance and Field Operations, including all staff and agents thereof.

29. "Office of Hazard Identification & Reduction" means the Commission's Office of Hazard Identification & Reduction, and all staff and agents thereof.

30. "Person" means any natural person, corporation, partnership, unincorporated association, joint venture, trust, estate, public or quasi-public entity, or any other legal entity.

31. "Podster" means the products referred to in paragraphs 7 and 9 of Your Complaint.

32. "Proceeding" means this administrative action, *In the Matter of Leachco, Inc.*, CPSC Docket No. 22-1.

33. "Product Defect" means "product defect" as used in 15 U.S.C. § 2064(a)(2).

34. "Staff" means the CPSC staff.

35. "Substantial Product Hazard" means "substantial product hazard" as defined in 15 U.S.C. § 2064(a)(2).

36. "Substantial Risk of Injury" means "substantial risk of injury" as used in 15 U.S.C. § 2064(a)(2).

37. "Test" means any examination, inspection, analysis, result, or other assessment.

38. "You" or "Your" or "Commission" or CPSC" means the Consumer Product Safety Commission, including the Commissioners, Secretary, directors, officers, employees, staff, Complaint Counsel, and all other agents.

39. "Useful" includes the terms "usefulness" and "utility" and has the same meaning as these terms are used in 16 C.F.R. § 1115.4.

40. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

41. The singular shall include the plural, and vice versa.

42. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make all definitions and discovery requests inclusive rather than exclusive.

43. Pursuant to 16 C.F.R. Part 1025, the Commission is under a continuing duty to supplement its responses to these discovery requests without further request from Leachco. Where the Commission has responded to a discovery request with a response that was complete when made, the Commission is under a duty to supplement that response to include information later obtained.

* * *

SECOND SET OF REQUESTS FOR ADMISSION

Admit the following:

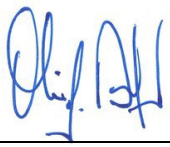
362. Caregivers of Infant C did not follow Leachco's warnings.

363. Caregivers of Infant C did not follow Leachco's instructions.

* * *

DATED: February 2, 2023.

Respectfully submitted,



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Counsel for Respondent Leachco, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2023, I served, by electronic mail, the foregoing **Leachco, Inc.'s Second Set of Requests for Admission** upon all parties and participants of record in these proceedings:

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	**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 **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

Oliver J. Dunford
Counsel for Respondent Leachco, Inc.

EXHIBIT D

CONSUMER PRODUCT SAFETY COMMISSION

IN THE MATTER OF **LEACHCO, INC.**	CPSC Docket No. 22-1 HON. MICHAEL G. YOUNG PRESIDING OFFICER

LEACHCO, INC.'S SECOND SET OF INTERROGATORIES

Pursuant to 16 C.F.R. § 1025.32, Respondent Leachco, Inc. hereby requests that the Commission answer each of the following interrogatories under oath and in writing within 30 days of service hereof.

DEFINITIONS AND INSTRUCTIONS

1. "2019 Mannen Report" means the report titled, "Biomechanical Analysis of Inclined Sleep Products," initially completed on September 18, 2019, and updated October 25, 2019, whose Principal Investigator was Erin M. Mannen, Ph.D., produced at CPSC0004996–CPSC0005072.

2. "Caregiver" means an adult who is responsible to care for a child, including parents and daycare employees.

3. "Claim" means the sole claim alleged against Leachco, namely Count I in Your Complaint.

4. "Commissioners" means current and former Commissioners of the CPSC and their staff.

5. "Complaint" means your Complaint filed on or about February 9, 2022 in this Proceeding.

6. "Concerning" shall mean concerning, referencing, referring to, related to, and relating to.

7. "CPSA" means the Consumer Product Safety Act.

8. "CPSC Secretary" means the CPSC's Office of the Secretary, including all staff and agents thereof.

9. "Division of Enforcement and Litigation" means the Commission's Division of Enforcement and Litigation, and all staff and agents thereof.

10. "Division of Regulatory Enforcement" means the Commission's Division of Regulatory Enforcement, and all staff and agents thereof.

11. "Document" shall mean the original and all non-identical copies of all written, printed, typed, graphic, and photographic matter of any kind or nature, and all mechanical or electronic audio and/or visual recordings or transcripts thereof, however produced or reproduced, and all entries in a computer or electronic database (including Twitter and any other form of social media) of any kind, including but not limited to: correspondence, telexes, telegrams, telephone messages, statements, voice mail, electronic mail, and all other computer files or data, claim forms, incident reports, intake forms or histories, summaries or records of telephone conversations, memoranda, records, summaries or records of personal conversations or interviews, medical records, X-rays, MRIs, CT-scans, ultrasound images, and all other radiologic or radiographic films, invoices, contracts, agreements, orders, books, calendars, diaries, reports, notebooks, photographs, videos (digital or otherwise), slides, charts,

notes, plans, drawings, sketches, maps, summaries or records of meetings or conferences, drafts or letters, now or formerly in Your possession, custody, or control.

12. "General Counsel" means the CPSC's Office of General Counsel, including all staff and agents thereof.

13. "Identify," "State the Identity of, "Identification," or "Describe" means:

a. When used in reference to an individual, shall mean to state his or her full name, maiden or former names, social security number, present or last known home and business address and telephone numbers, and present or last known occupation, employer and job title or description; or if none of the information is known, then the name, present home and business address, and telephone numbers of all individuals who likely or may be able to provide all or part of the information.

b. When used in reference to an organization of any kind, shall mean to state its full name, its state of incorporation (if applicable), the address of its principal place of business, and its telephone numbers.

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17. "Incident A" refers to the death, and the surrounding circumstances thereof, of Infant A on or about December 16, 2015.

18. "Incident B" refers to the death, and the surrounding circumstances thereof, of Infant B on or around January 27, 2018.

19. "Incident C" refers to the death, and the surrounding circumstances thereof, of Infant C on or around October 25, 2021.

20. "Infant" means an individual under the age of one year.

21. "Infant A" means the four-month-old infant who, according to paragraph 36 of the Complaint, "suffocated after being placed face-up or on their side in the Podster in a crib."

22. "Infant B" means the 17-day-old infant who, according to paragraph 37 of the Complaint, "suffocated after being placed face up in the Podster on an adult bed between two caregivers."

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26. "Office of Communications" means the Commission's Office of Communications, and all staff and agents thereof.

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29. "Person" means any natural person, corporation, partnership, unincorporated association, joint venture, trust, estate, public or quasi-public entity, or any other legal entity.

30. "Podster" means the products referred to in paragraphs 7 and 9 of Your Complaint.

31. "Proceeding" means this administrative action, *In the Matter of Leachco, Inc.*, CPSC Docket No. 22-1.

32. "Product Defect" means "product defect" as used in 15 U.S.C. § 2064(a)(2).

33. "Staff" means the CPSC staff.

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37. "You" or "Your" or "Commission" or CPSC" means the Consumer Product Safety Commission, including the Commissioners, Secretary, directors, officers, employees, staff, Complaint Counsel, and all other agents.

38. "Useful" includes the terms "usefulness" and "utility" and has the same meaning as these terms are used in 16 C.F.R. § 1115.4.

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41. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make all definitions and discovery requests inclusive rather than exclusive.

42. Pursuant to 16 C.F.R. Part 1025, the Commission is under a continuing duty to supplement its responses to these discovery requests without further request from Leachco. Where the Commission has responded to a discovery request with a response that was complete when made, the Commission is under a duty to supplement that response to include information later obtained.

* * *

SECOND SET OF INTERROGATORIES

39. Identify each Person with knowledge of your efforts to respond to this Second Set of Interrogatories, Leachco's First Set of Requests for Admission, and Leachco's Second Set of Requests for Production of Documents. For each Person identified, indicate the time period of his or her involvement, and describe the Person's responsibility, role, and contribution.

40. If you responded to any Request for Admission with other than an unqualified, "Admit," explain the reason(s) for not so admitting.

39. Identify the date when the Commission first learned of Infant C and/or Incident C.

40. Is the Commission investigating injuries, deaths, or any other incidents allegedly caused by or associated with the use of a Podster? If so, describe each investigation, including but not limited to the date the Commission first learned of the injury(ies), death(s), or incident(s); the means and manner by which each investigation was conducted or is being conducted; the name, employer, job description, and contact information of each individual who was or is investigating each injury, death, or incident; the name, employer, job description, and contact information of each individual supervising all individuals who were or are investigating each injury, death, or incident; the name, employer, job description, and contact information of each individual who has reviewed any part of each investigation; the name, employer, job description, and contact information of each person interviewed in connection with each investigation.

41. Is the Commission investigating injuries, deaths, or any other incidents allegedly caused by or associated with the use of any Infant Lounger Product? If so, describe each investigation, including but not limited to the date the Commission first learned of the injury(ies), death(s), or incident(s); the means and manner by which each investigation was conducted or is being conducted; the name, employer, job description, and contact information of each individual who was or is investigating each injury, death, or incident; the name, employer, job description, and contact information of each individual supervising all individuals who were or are investigating each injury, death, or incident; the name, employer, job description, and contact information of each individual who has reviewed any part of each investigation;

the name, employer, job description, and contact information of each person interviewed in connection with each investigation.

42. Identify everyone who Tested the Podster.

43. Identify all individuals involved in the determination that the Podster was defective.

44. Identify every Test conducted on the Podster to determine whether it was defective.

45. Identify every other product Tested using the same Tests described in response to the previous Interrogatory.

46. Identify every other product Tested by the same people who Tested the Podster.

47. Identify all Infant Lounger Products on the market that the agency has determined are safe.

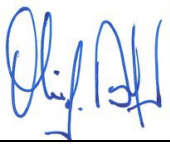
48. Identify any infant product category on the market in which no infant deaths have occurred.

49. Describe in detail the "6 incidents" mentioned on the document produced as CPSC0000001, including the nature of each incident, all facts and circumstances 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.

* * *

DATED: January 25, 2023.

Respectfully submitted,



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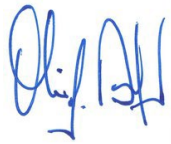
Palm Beach Gardens, FL 33410
Telephone: 916.503.9060
Fax: 916.419.7747
ODunford@pacificlegal.org

Counsel for Respondent Leachco, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2023, I served, by electronic mail, the foregoing **Leachco, Inc.'s Second Set of Interrogatories** upon all parties and participants of record in these proceedings:

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	**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 **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



Oliver J. Dunford
Counsel for Respondent Leachco, Inc.

EXHIBIT E

CONSUMER PRODUCT SAFETY COMMISSION

IN THE MATTER OF **LEACHCO, INC.**	CPSC Docket No. 22-1 HON. MICHAEL G. YOUNG PRESIDING OFFICER

LEACHCO, INC.'S THIRD SET OF INTERROGATORIES

Pursuant to 16 C.F.R. § 1025.32, Respondent Leachco, Inc. hereby requests that the Commission answer each of the following interrogatories under oath and in writing within 30 days of service hereof.

DEFINITIONS AND INSTRUCTIONS

1. "2019 Mannen Report" means the report titled, "Biomechanical Analysis of Inclined Sleep Products," initially completed on September 18, 2019, and updated October 25, 2019, whose Principal Investigator was Erin M. Mannen, Ph.D., produced at CPSC0004996–CPSC0005072.

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notes, plans, drawings, sketches, maps, summaries or records of meetings or conferences, drafts or letters, now or formerly in Your possession, custody, or control.

12. "Durable Infant or Toddler Product(s)" has the same meaning as used by the Commission here: https://www.cpsc.gov/Business--Manufacturing/Business-Education/Durable-Infant-or-Toddler-Products.

13. "General Counsel" means the CPSC's Office of General Counsel, including all staff and agents thereof.

14. "Identify," "State the Identity of, "Identification," or "Describe" means:

a. When used in reference to an individual, shall mean to state his or her full name, maiden or former names, social security number, present or last known home and business address and telephone numbers, and present or last known occupation, employer and job title or description; or if none of the information is known, then the name, present home and business address, and telephone numbers of all individuals who likely or may be able to provide all or part of the information.

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c. When used in reference to a Document, shall mean to state the type of Document, its date, the identity of its author(s), and its recipient(s); any title and/or serial number or file number appearing on the Document; the identity of its present custodian; its present location; and a brief description

of its subject matter. If any such Document was, but no longer is, in your possession or control or in existence, state whether it (i) is missing or lost, (ii) has been destroyed, (iii) has been transferred to others, or (iv) has been otherwise disposed of. In lieu of identifying a Document, a copy of the Document can be produced.

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19. "Incident B" refers to the death, and the surrounding circumstances thereof, of Infant B on or around January 27, 2018.

20. "Incident C" refers to the death, and the surrounding circumstances thereof, of Infant C on or around October 25, 2021.

21. "Infant" means an individual under the age of one year.

22. "Infant A" means the four-month-old infant who, according to paragraph 36 of the Complaint, "suffocated after being placed face-up or on their side in the Podster in a crib."

23. "Infant B" means the 17-day-old infant who, according to paragraph 37 of the Complaint, "suffocated after being placed face up in the Podster on an adult bed between two caregivers."

24. "Infant C" means the infant identified in the Commission's Epidemiological Investigation Report 220916HCC1454, produced as CPSC0010501–65.

25. "Infant Lounger Product(s)" means any product(s) marketed, intended, designed, or manufactured for infant lounging, including but not limited to the Boppy Pillow, and/or any product similar to the Podster. This term does not include products marketed, intended, designed, or manufactured for infant sleep; this term also does not include "inclined sleeper for infants" as that term is defined in 15 U.S.C. § 2057d(b).

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* * *

THIRD SET OF INTERROGATORIES

50. Identify all Infant Lounger Products that You have determined are unsafe.

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.

52. Identify all Infant Lounger Products that You have determined present a Substantial Product Hazard.

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.

54. Identify all Infant Lounger Products that You have determined present a Substantial Risk of Injury.

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.

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.

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.

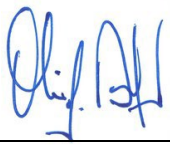
58. Identify any infant product category in which no infant injuries have occurred.

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

* * *

DATED: February 2, 2023.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2023, I served, by electronic mail, the foregoing **Leachco, Inc.'s Third Set of Interrogatories** upon all parties and participants of record in these proceedings:

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