

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

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

**COMPLAINT COUNSEL’S OFFER OF PROOF REGARDING
THE EXCLUDED EXPERT TESTIMONY OF CELESTINE T. KISH, M.A.**

Pursuant to 16 C.F.R. § 1025.43(f), Complaint Counsel respectfully submits an Offer of Proof regarding the Expert Testimony of Celestine T. Kish, M.A., admitted into evidence during Complaint Counsel’s August 8, 2023 examination of Celestine Kish as CCX-2, subject to this Court’s August 2, 2023 Order Granting In Part and Denying In Part Respondent’s Motion to Exclude Expert Testimony (“August 2 Order”). The August 2 Order specified that the portions of Ms. Kish’s testimony “regarding adequacy of the Podster’s warnings” would be excluded from evidence. *Id.* at 5. Ms. Kish’s full testimony contains opinions relevant to assessing how the Podster’s instructions and warnings fail to adequately prevent misuse or mitigate against the dangers of misuse that contribute to the existence of a design defect in the Podster. *See* 16 C.F.R. § 1115.4. Pursuant to the Commission’s Rules of Practice that govern this proceeding:

When an objection to proffered testimony or documentary evidence is sustained, the sponsoring party may make a specific offer, either in writing or orally, of what the party expects to prove by the testimony of the document. . . . Written offers of proof or of rebuttal, adequately marked for identification shall accompany the record and be available for consideration by any reviewing authority.

16 C.F.R. § 1025.43(f).

Thus, pursuant to 16 C.F.R. § 1025.43(f), Complaint Counsel submits this Offer of Proof so that the entirety of CCX-2, the Expert Testimony of Celestine Kish, M.A., “shall accompany the record and be available for consideration by any reviewing authority” without any excluded testimony.

Dated this 8th day of August, 2023

Respectfully submitted,

/s/ Thomas J. Mendel

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CERTIFICATE OF SERVICE

I hereby certify that on August 8, 2023, I served Complaint Counsel's Offer Of Proof Regarding The Excluded Expert Testimony Of Celestine T. Kish, M.A. on all parties and participants of record in these proceedings as follows:

By email to the Secretary:

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Judge Michael G. Young
Presiding Officer and Administrative Law Judge
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/s/ Thomas J. Mendel

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