

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)	
)	
AMAZON.COM, INC.)	
)	
)	CPSC DOCKET NO.: 21-2
)	
Respondent.)	

**COMPLAINT COUNSEL’S REPLY BRIEF IN SUPPORT OF
AMENDED [PROPOSED] INITIAL ORDER**

Complaint Counsel files this Reply Brief in Support of Amended [Proposed] Initial Order in accordance with this Court’s May 8, 2023 Order on Summary Decision Motions (Dkt. No. 109) (the “Court’s Order”). As directed by the Court’s Order, this Reply Brief addresses the issues raised by Amazon in its Supplemental Brief on Remedies (Dkt. No. 112) (“Amazon Brief”) and redlined Amended [Proposed] Initial Order (Dkt. No. 114) (“Amazon Proposed Order”). With only a few exceptions, noted below, Complaint Counsel objects to Amazon’s proposed edits to Complaint Counsel’s Amended [Proposed] Initial Order (“CC’s Proposed Order”).¹ Amazon’s proposed changes to the timing and mechanisms for notices, as well as its proposed alterations to the maintenance of the recall response system, the Internet Notice, and to the record-keeping requirements in CC’s Proposed Order are inconsistent with CPSC practice and procedure as reflected in recent recalls, the Corrective Action Plan Template (“CAP Template”)² and the Recall Handbook.³ Moreover, contrary to Amazon’s assertions, these proposed modifications to CC’s

¹ In addition, Complaint Counsel is amenable to inconsequential wording changes such as beginning the direct notices in Exhibit C with “Dear Amazon Customer” or beginning the Facebook social media posts in Exhibit D with “RECALL NOTICE.”

² CAP Template, Complaint Counsel’s Statement of Undisputed Material Facts, Dkt. No. 80, Exhibit 1, Exhibit T, CPSC_AM0012125-12133.

³ Recall Handbook, Complaint Counsel’s Statement of Undisputed Material Facts, Dkt. No. 80, Exhibit 1, Exhibit S, CPSC_AM0011464-11515.

Proposed Order are not required by law.⁴

I. CEASE DISTRIBUTION ORDER

CC's Proposed Order, at Paragraph 1, follows the Court's Order at Section VI(D)(1)(a) and Paragraph 1, and states that Amazon must immediately cease distribution of the Subject Products and notify all persons or entities in its distribution chain, such as its third-party sellers, to cease distribution.

a. Products Possessed by Entities in the Distribution Chain

Complaint Counsel is amenable to Amazon's proposed edit to Exhibit A, which deletes the request in the cease distribution notice that entities send Subject Products to Amazon for destruction even if they were never in Amazon's inventory. Complaint Counsel has amended its Proposed Order to make clear that Amazon is only responsible for the quarantine and destruction of Subject Products that Amazon possessed or distributed. Nevertheless, Amazon's cease distribution notices should urge recipients, including its third-party sellers, to destroy any inventory in their possession.⁵ Attached is a new Amended Proposed Order and Exhibit A (updated cease distribution letters) reflecting that change.⁶

b. Products Varying by Size, Color, and Style

Expressly ignoring the Court's Order, Amazon deletes Paragraph 2 of CC's Proposed Order, arguing in its Brief that alterations of the Subject Products should not be included in the

⁴ Below, Complaint Counsel explains its position as to Amazon's proposed amendments. In addition, Complaint Counsel attaches an amended Proposed Order reflecting limited proposed changes.

⁵ Amazon contends that the only entities (other than consumers) with remaining inventory of the Subject Products are the "originating third-party sellers." Amazon Brief at 2.

⁶ Paragraphs 5(a)-(b) of the Amended Proposed Order now read:

"5. Amazon shall immediately quarantine, segregate and mark as recalled all Subject Products in its possession, custody or control, including all Subject Products that are returned from consumers. In addition, Amazon shall:

a. Quarantine, retrieve, and destroy the Subject Products possessed by Amazon and returned by consumers;

b. Inform any third-party to destroy any Subject Products in their inventory;"

The additional sections of Paragraph 5 remain unchanged.

cease distribution order at all, or, should that argument fail, proposing a limit on the scope of products included to children’s sleepwear garments that vary only by “size” or “color” to the Subject Products and present the same hazard.⁷ These arguments have already been litigated, and the Court’s Order held that the cease distribution order include products “that are just alterations of the Subject Products.”⁸ Contrary to Amazon’s assertion that “the Presiding Officer lacks authority to extend the cease-distribution order”⁹ beyond the specific list of Subject Products identified in the parties’ Stipulation, the Court’s Order recognizes that a “product” subject to a Section 15(c) corrective action encompasses those products that have only color, size, or style variations but present the same hazards.

Furthermore, Amazon’s alternative proposal to exclude Subject Product carbon monoxide detectors and hair dryers and to limit this remedy to children’s sleepwear garments that vary only by “size” or “color, ” but not “style” plainly contradicts the Court’s Order.¹⁰ Specifically, the Court—quoting Amazon’s own description of its existing practice of reviewing “style variation[s]” (in addition to “size” or “color” variations) of ASINs corresponding to known hazardous products— directed that the cease distribution order “should cover the children’s sleepwear Subject Products, and variations in size, color, and *style* that present the same hazards.”¹¹ The Court further held that the relief ordered should incorporate “products that are but ‘a mere alteration’ of a Subject Product: ‘for example, one is red and the other is blue, or one is a smaller model and one larger—but all presenting the same substantial product hazard.’”¹² In sum, there is no basis to treat cosmetic design alterations in hair dryers or carbon monoxide detectors differently than analogous

⁷ Amazon Brief, at 3-6.

⁸ See Order on Summary Decision Motions, Dkt. No. 109, at 31; CC’s Proposed Order, at Paragraph 2.

⁹ Amazon Brief, at 3.

¹⁰ See Amazon Brief, at 3-4.

¹¹ Order on Summary Decision Motions, Dkt. No. 109, at 29-30 (citing Amazon’s Response to Complaint Counsel’s Statement of Undisputed Material Facts, Dkt. No. 92, ¶ 112) (emphasis added).

¹² Order on Summary Decision Motions, Dkt. No. 109, at 30.

variations in children’s sleepwear, and nothing in the Court’s Order supports Amazon’s attempt to limit this provision of CC’s Proposed Order.

II. NOTICES

a. Direct Notice and Press Release

Amazon’s amendments to Paragraph 2(a) of CC’s Proposed Order delete the provision requiring Amazon to send a second round of direct notices two weeks after sending the first one,¹³ even though requiring two rounds of notice is common CPSC practice.¹⁴ Amazon argues that its previous email to consumers served as the initial notice of the hazard, and that one additional notice ordered by the Court “would effectively serve as a second notice to original purchasers of the Subject Products.”¹⁵ However, the Court’s Order expressly found that Amazon’s previous email to consumers was “insufficient,” and that Amazon cannot “avoid a remedial order of the type sought by the CPSC through its uncoordinated unilateral action.”¹⁶ Therefore, CC’s Proposed Order directs Amazon to provide all standard elements of notice to consumers for Section 15 recalls, including the two rounds of direct notice, spaced two weeks apart, that are “typical for recalls.”¹⁷

Amazon also protests the inclusion in Complaint Counsel’s draft recall notices and press releases of the fact that the Subject Products pose a risk of death.¹⁸ Amazon’s deletion of “death” in those notices runs afoul of both the Court’s Order at page 39 and Paragraph 2 (requiring the form and contents of the notices to include the “risk of death associated with the Subject Products”) as well as Section 15(i)(2)(D) of the Consumer Product Safety Act (requiring a “description of the

¹³ Amazon Proposed Order at 2(a).

¹⁴ Order on Summary Decision Motions, Dkt. No. 109, at 25, 34.

¹⁵ Amazon Brief at 6.

¹⁶ Order on Summary Decision Motions, Dkt. No. 109, at 32, 45.

¹⁷ *Id.*, at 34.

¹⁸ Amazon Brief at 8.

substantial product hazard”) and 16 C.F.R. §§ 1115.27(f)(2) (requiring a “description of the substantial product hazard,” including “the type of hazard or risk”). Amazon’s edits to the substantial product hazard characterization in the draft notices should therefore be rejected.

Finally, Amazon’s Proposed Order also removes the phrase “Court-Ordered Mandatory Recall” in the headlines of the proposed press releases.¹⁹ However, that headline accurately describes the circumstances of this corrective action and is therefore appropriate and accurate. If altered, Complaint Counsel proposes alternative headlines.²⁰

b. Internet Notice

CC’s Proposed Order, at Paragraphs 3(b) and 3b(i)-(vii) addresses the portion of the Court’s Order directing Amazon to provide additional notice to “protect members of the public that direct notice does not reach.”²¹ Amazon’s amendments to these Paragraphs reflect a number of proposed changes that would undermine that instruction.

i. Website Notice

First, Amazon suggests removing the requirement that it create a “clear and conspicuous link on its home page to its ‘Product Safety and Recalls’ site.”²² As discussed in Complaint Counsel’s Brief in Support of Amended [Proposed] Initial Order,²³ the “Product Safety and Recalls” page is not readily accessible to the average consumer: it neither provides the “clear and conspicuous” public notice contemplated by 15 U.S.C. § 2064(c)(1)(D), nor allows “a person querying the product on its site [to] have access to the notice.”²⁴ With no identifiable link on the homepage, any person using Amazon.com without being signed

¹⁹ Amazon Brief at 7.

²⁰ The headlines could read: “Children’s Sleepwear Recalled by Amazon Due to Violation of Federal Flammability Standards and Burn Hazard”; “Carbon Monoxide (CO) Detectors Recalled by Amazon Due to Risk of Failure to Alert Consumers to Hazardous Levels of Carbon Monoxide”; and “Combination Hairdryers and Hairbrushes Recalled by Amazon Due to Electrocutation or Shock Hazard”.

²¹ Order on Summary Decision Motions, Dkt. No. 109,, at 38.

²² Amazon Brief at 9.

²³ Complaint Counsel’s Brief in Support of Amended [Proposed] Initial Order, Dkt. No. 110, at 5-7.

²⁴ See Order on Summary Decision Motions, Dkt. No. 109, at 38.

into an Amazon account will not be able to locate the pertinent recall notices except by clicking through a minimum of three links or by correctly guessing an effective query to type into the search bar on the homepage or the “Help & Customer Service” site.²⁵ The addition of a clear and conspicuous (and not uncommon) link²⁶ to the site on Amazon’s home page is therefore necessary to effectuate the Court’s Order.

Amazon’s proposed deletion of the requirement to post banner notice of the recalls on each original purchaser’s “Your Orders” page linking to the “Your Recalls and Product Safety Alerts” page would similarly thwart consumer access to important information about the Subject Product recalls. Contrary to Amazon’s contention that this would require a “rebuild” of the “Your Orders” page,²⁷ the instruction simply memorializes Amazon’s current practices as described in its Post-Argument Letter,²⁸ which the Court relied on for its determination that notice on Amazon’s existing recall-related webpages would provide “[s]ufficient public protection.”²⁹ Additionally, requiring Amazon to maintain this existing banner on the “Your Orders” page is necessary to effectuate the Court’s direction that the Internet Notice be designed to properly inform consumers who may have experienced a problem with one of their purchases but were “not aware of the recall.”³⁰ Based on the description in Amazon’s Post-Argument Letter,³¹ the “Your Orders” page is currently the *only* page on Amazon’s website that provides notice of recalls to customers who are

²⁵ See Complaint Counsel’s Brief In Support Of Amended [Proposed] Initial Order, Dkt. No. 110, at 5-7.

²⁶ It is not uncommon practice for major companies to post clear and conspicuous links to their recall sites on their homepages. See, e.g. Homepage, WALMART, walmart.com (“Product Recalls” link on the bottom of the homepage) (last visited 6/6/2023 at 2:40 PM); Homepage, TARGET, target.com (“Recalls” link in the “Help” column at the bottom of the homepage) (last visited 6/6/2023 at 2:40 PM); Homepage, HOME DEPOT, homedepot.com (“Product Recalls” link in the “Customer Service” column at the bottom of the homepage) (last visited 6/6/2023 at 2:40 PM); Homepage, BEST BUY, bestbuy.com (“Product Recalls” link in the “Order & Purchasers” column at the bottom of the homepage) (last visited 6/6/2023 at 2:40 PM).

²⁷ Amazon Brief at 10.

²⁸ See Amazon Letter to Judge Patil, Dkt. No. 103, at 3. (“If a customer has purchased a product that has either been recalled or otherwise been the subject of a product safety alert issued by Amazon’s Product Safety team, a hyperlinked banner will appear on the customer’s ‘Your Orders’ page stating that a product that they have purchased has been the subject of a recall or product safety alert. When the banner is clicked, users are redirected to their personalized ‘Your Recalls and Product Safety Alerts’ page.”).

²⁹ Order on Summary Decision Motions, Dkt. No. 109, at 38.

³⁰ *Id.*

³¹ See Amazon Letter to Judge Patil, Dkt. No. 103, at 3.

not specifically searching for information about product recalls. Accordingly, the banner on the “Your Orders” page is an important and necessary “additional measure of protection and redundancy to prevent the continued use of these products.”³²

ii. *Social Media Notice*

Amazon suggests several changes to the social media-related provisions of the Proposed Order, each of which would materially weaken the notice to consumers. Amazon first proposes to limit its social media posts to the “AmazonHelp” pages on Facebook and Twitter, instead of providing notice of the recall on its “primary social media accounts.”³³ But the “AmazonHelp” account on Facebook last posted in 2020 and has far less engagement than the “Amazon” page on Facebook, which is still actively posting.³⁴ The Twitter handle @AmazonHelp similarly boasts far fewer followers than the @Amazon handle and mainly posts responses to consumer questions.³⁵ Furthermore, Amazon proposes to entirely eliminate the posting of the recall on Instagram, where Amazon boasts 4.1 million followers, the second-largest number of followers on any of the Amazon social media platforms.³⁶

Amazon’s proposed edits would limit its social media posts to Amazon accounts with less engagement, meaning that consumers are less likely to view and share the recall announcement. Agency practice requires recalling companies to publicize corrective actions through “all” social

³² Order on Summary Decision Motions, Dkt. No. 109, at 38.

³³ Amazon Brief at 12.

³⁴ “AmazonHelp” on Facebook has 23,002 likes and 30,818 follows, compared to 30,177,485 likes and 29,843,254 follows on the “Amazon” Facebook page. *See* Amazon, FACEBOOK, https://www.facebook.com/Amazon/about/?ref=page_internal (last visited 6/1/2023, 9:30 AM); AmazonHelp, FACEBOOK, <https://www.facebook.com/AmazonHelp/> (last visited 6/1/2023, 9:30 AM).

³⁵ @AmazonHelp on Twitter has 484,300 followers, while @Amazon has 5.5 million followers. *See* @Amazon, TWITTER https://twitter.com/amazon?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor, (last visited 6/1/2023, 9:40 AM); @AmazonHelp, TWITTER https://twitter.com/AmazonHelp?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor (last visited 6/1/2023, 9:40 AM).

³⁶ @Amazon, INSTAGRAM, <https://www.instagram.com/amazon/?hl=en> (last visited 6/1/2023, 9:45 AM).

media platforms “on which the company maintains a presence.”³⁷ Agency practice also includes multiple postings on each social media account.³⁸ Amazon’s proposed edits to these paragraphs of the Proposed Order should therefore be rejected.

iii. Notice to Secondary Market

Amazon proposes deleting the language in the Proposed Order requiring notice to third-party online marketplaces.³⁹ However, the Court’s Order directs Amazon to provide “notice to any third-party Internet website on which [Amazon] placed the product for sale,” as applicable and to the extent not already included in the cease distribution notices. In addition, it is common CPSC practice for recalling entities to provide notice of the recall to secondary market internet websites and request that they inform their consumers of the recall.⁴⁰ For that reason, Complaint Counsel’s Proposed Order requires Amazon to send notice of the recall to well-known and highly trafficked second-hand retailers, as is also agency practice, and Amazon’s proposed deletion is not appropriate. Consistent with the Court’s finding that a cease distribution notice order presents a “relatively light” burden on Amazon,⁴¹ sending one notice to the secondary market websites listed in CC’s Proposed Order would not be unduly burdensome on Amazon and ensures that any second-hand purchasers are informed of the risk of injury and death presented by the Subject Products.

III. RECALL RESPONSE SYSTEM

Amazon argues that Complaint Counsel’s inclusion of the establishment of a recall response system consisting of a toll-free telephone hotline, website for consumer “frequently asked

³⁷ CAP Template, Complaint Counsel’s Statement of Undisputed Material Facts, Dkt. No 80, Exhibit 1, Exhibit T, CPSC_AM0012125-12133, at CPSC_AM0012127.

³⁸ *Id.*

³⁹ Amazon Brief at 13.

⁴⁰ See CAP Template at CPSC_AM0012129; see also Recall Handbook, Complaint Counsel’s Statement of Undisputed Material Facts, Dkt. 80, Exhibit 1, Exhibit S, CPSC_AM0011464-11515, at CPSC_AM0011481-82 (“Notices to thrift stores and secondhand retailers”).

⁴¹ Order on Summary Decision Motions, Dkt. No. 109, at 29 (stating that “Furthermore, on these facts, the burden of a cease distribution and notice order should be relatively light, [...]”).

questions,” and a dedicated email address for consumers to respond to the recall announcement constitutes a request for “new” remedies. This is wrong.

A recall response system is an ordinary part of facilitating a recall. It is not a remedy in and of itself; rather, it is an inherent part of the implementation of the recall remedy.⁴² The CPSC explains that a recalling firm should make available to consumers multiple avenues to obtain “any information” about the remedy.⁴³ Similarly, the regulations provide that this information “may include, but is not limited to” the types of informational options provided by Complaint Counsel in its Proposed Order, including “manufacturer, retailer, and distributor contact information (such as name, address, telephone and facsimile numbers, email address, and Web site address).”⁴⁴ Accordingly, the Recall Handbook makes clear that firms should “establish[] a response system to handle a recall,”⁴⁵ and this standard practice is an important aspect of ensuring that consumers receive adequate information about available remedies.

IV. REVERSE LOGISTICS

Except in the case of carbon monoxide detectors,⁴⁶ Complaint Counsel agrees that Amazon

⁴² Amazon’s claim that Complaint Counsel did not include these requests in response to Amazon’s interrogatory concerning remedies is both wrong and misleading. Complaint Counsel expressly stated that the remedies in this case would include the “issuance of a press release, as well as any other public notice documents or posting required by CPSC staff that inform consumers” *See* Amazon Ex. 131 at 25, Complaint Counsel’s Obj. and Resp. to Amazon’s Interrogatory No. 14 (Mar. 21, 2022). The proposed recall response system is part of the public notice and reflected in the CPSC’s regular practice when conducting recalls with companies. In addition, Complaint Counsel’s [Proposed] Initial Order, filed alongside its Motion for Summary Decision on September 23, 2022, envisions a “recall response system” at Paragraph 3(c). Complaint Counsel’s [Proposed] Initial Order for Motion for Summary Decision, Dkt. 78A.

⁴³ *See* 15 U.S.C. § 2064(i)(2)(H)(iii).

⁴⁴ 16 C.F.R. § 1115.27(n)(3) (emphasis added).

⁴⁵ 2021 Recall Handbook, Complaint Counsel’s Statement of Undisputed Material Facts, Dkt. 80, Exhibit 1, Exhibit S, CPSC_AM0011464-11515, at CPSC_AM0011488, Section VII. I (informing companies that they should expect to provide “an email address a toll-free telephone number (800/888/877/866), and a website URL (‘a response system’) for consumers to respond to the recall announcement”); *see also* CAP Template, Complaint Counsel’s Statement of Undisputed Material Facts, Dkt. 80, Exhibit 1, Exhibit T, CPSC_AM0012125-12133, at CPSC_AM0012130 (setting out that recalling firms will establish a toll-free telephone number, a website URL, and an email address for consumers to respond to the recall announcement and obtain information about the remedy).

⁴⁶ As discussed in Complaint Counsel’s Brief in Support of Amended [Proposed] Initial Order, Dkt. No. 110, at 11, and which Amazon does not contest, proof of destruction is not an appropriate option for carbon monoxide detectors, because there is no practicable method for consumers to render these products unusable.

requiring either return or proof of destruction of the Subject Products rather than offering consumers both options, would appropriately effectuate the statutory aims of CPSA Section 15. Accordingly, Complaint Counsel’s new Amended Proposed Order modifies the language in Paragraph 4 in the interest of clarifying this point. However, to avoid any consumer confusion, Amazon must specify in the press release and direct notice which of the two refund mechanisms (or both, if applicable) will be made available to consumers for each category of Subject Product.⁴⁷

Furthermore, Amazon’s additional suggestion that consumers be directed to contact Amazon through the existing customer service page would hinder the implementation of the recall, as it fails to provide a sufficiently direct, dedicated line of communication and is inconsistent with standard CPSC practice.⁴⁸ As the 2021 Recall Handbook explains, “most systems set up to handle typical customer relations, or to receive product orders for repairs or accessories, are unable to also respond effectively to [consumers] about recall announcements.”⁴⁹ For this reason, CC’s Proposed Order requires Amazon to instruct consumers to respond either directly through the Amazon messaging app, or through the email address set up as part of Amazon’s recall response system.

Amazon’s arguments that it should not be required to provide notice to CPSC to allow the opportunity to witness disposal or destruction of the Subject Products in inventory or returned from

⁴⁷ Paragraph 4 of the Amended Proposed Order now reads:

“4. Amazon shall instruct consumers to respond to its email notification directly in the Amazon messaging app or to Amazon’s email address described in Paragraph 3(c) above to either arrange for a prepaid mailing package and shipping label to be sent to them, or to provide photographic evidence of destruction of the Subject Products, in accordance with the procedures set out in subparagraphs 4(a) through 4(c) below. Amazon shall specify in the notices referenced in Paragraph 3 above whether it will be providing a prepaid mailing package and shipping label to consumers, requiring photographic evidence of destruction, or making both options available to consumers. Upon receipt of the returned Subject Products or photographic evidence of destruction, Amazon shall refund consumers the purchase price of the products to consumers in the form of Amazon credit to their account. No expense shall be incurred by consumers in returning or destroying the Subject Products.”

In addition, Paragraphs 4(a) and 4(c) also clarify that Amazon may require either return or proof of destruction from purchasers of the Subject Product children’s sleepwear garments and hairdryers.

⁴⁸ See 2021 Recall Handbook, Complaint Counsel’s Statement of Undisputed Material Facts, Dkt. 80, Exhibit 1, Exhibit S, CPSC_AM0011464-11515, at CPSC_AM0011489 (“A company conducting a recall must provide an email address [and] a website URL . . . dedicated solely to the recall.”).

⁴⁹ *Id.*

consumers are unavailing. Supervised disposal, as reflected in Paragraph 5(d) of the Proposed Order, is a typical element of CPSC recalls and a crucial step in the removal of the Subject Products from the stream of commerce. The Paragraph is entirely consistent with CPSC practice⁵⁰ and is clearly described in the Recall Handbook as a standard element of recall monitoring.⁵¹ Furthermore, as the Court has noted, the Commission ordered analogous disposal and destruction requirements in the *Zen Magnets* case, in the interest of preventing redistribution of hazardous products.⁵² It would therefore not be appropriate to exempt Amazon from this ordinary and important practice.

V. MONTHLY PROGRESS REPORTS

Amazon suggests multiple changes to Paragraph 6 of CC's Proposed Order, relating to Monthly Progress Reports, which would hinder the Commission's ability to evaluate the effectiveness of the recall. Amazon first proposes that its obligation to submit Monthly Progress Reports be limited to a single year.⁵³ This is inconsistent with the existing procedure "to bring monthly reporting to a close" that the Court recognized in its Order,⁵⁴ which involves a Firm submitting a request to end recall monitoring upon determination that "the corrective action plan has been implemented to the best of the firm's ability and as many products as possible have been removed from the marketplace."⁵⁵ Such a determination is necessarily based on the progress of an individual recall, and there is no basis to preemptively limit the timeframe for monthly reporting.

⁵⁰ See CAP Template, Section 7. Complaint Counsel's Statement of Undisputed Material Facts, Dkt. No. 80, Exhibit 1, Exhibit T, CPSC_AM0012125-12133, at CPSC_AM0012130-32.

⁵¹ 2021 Recall Handbook Complaint Counsel's Statement of Undisputed Material Facts, Dkt. 80, Exhibit 1, Exhibit S, CPSC_AM0011464-11515, at CPSC_AM0011490. (explaining that "CPSC monitors product recalls by . . . [v]erifying disposal or destruction of recalled products" and that notice should be provided "in advance of scheduling the disposal . . . so that a CPSC investigator can witness disposal, or arrange other means of verifying destruction").

⁵² See Order on Summary Decision Motions, Dkt. No. 109, at 41. (citing Opinion and Order Approving Public Notification and Action Plan, *Zen Magnets, LLC*, 2017 WL 11672451, at *12, *14 (Dec. 8, 2017)).

⁵³ Amazon Proposed Order at 5.

⁵⁴ See Order on Summary Decision Motions, Dkt. No. 109, at 46.

⁵⁵ *Id.* (citing 2012 Recall Handbook at 26).

Regarding Amazon's arguments about Paragraph 6(b) of CC's Proposed Order, which asks for the number of Subject Products in the possession of various entities in the distribution chain, Complaint Counsel agrees that Amazon need only be responsible for reporting concerning recalled products that Amazon itself possessed or distributed. Complaint Counsel's attached new Proposed Order clarifies the scope of this reporting obligation.⁵⁶

It would not be appropriate, however, to accept Amazon's proposed deletion of Paragraph 6(g) which requires tracking the number of hits on the dedicated recall web page. This instruction mirrors the information required as part of CPSC's template Monthly Progress Report Form.⁵⁷ Given the Court's recognition of the desirability of ongoing efforts to improve recall monitoring,⁵⁸ Amazon should not be allowed to provide less recall effectiveness data than what firms submit as a matter of course in typical recalls.

⁵⁶ Paragraph 6(b) of the Amended Proposed Order now reads:

“b. The number of Subject Products in Amazon's possession and in the possession of consumers;”
The remaining provisions of Paragraph 6 remain unchanged.

⁵⁷ See Complaint Counsel's Statement of Undisputed Material Facts, Dkt. No. 80, Exhibit 1, Exhibit X, CPSC_AM0011544 (Monthly Progress Report Form).

⁵⁸ See Order on Summary Decision Motions, Dkt. No. 109, at 45-46.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. Anand', is centered within a light gray rectangular box.

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June 6, 2023

CERTIFICATE OF SERVICE

I hereby certify that on June 6, 2023, a copy of the foregoing was served upon all parties and participants of record in these proceedings as follows:

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