

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

In the Matter of

LEACHCO, INC.

Respondent.

CPSC DOCKET NO. 22-1

**RESPONDENT'S FIRST SET OF REQUESTS FOR PRODUCTION
OF DOCUMENTS AND THINGS TO THE
CONSUMER PRODUCT SAFETY COMMISSION**

Pursuant to 16 C.F.R. § 1025.33, Respondent Leachco, Inc. ("Leachco") hereby requests that the Consumer Product Safety Commission ("CPSC") produce the following documents and/or things for inspection and copying within 30 days of service hereof.

DEFINITIONS AND INSTRUCTIONS

A. In the following requests:

1. "You," or "your," shall mean the CPSC and includes the staff and, where applicable, the Commissioners. References to the "staff" and the "Commissioners" shall refer to the staff and Commissioners (including without limitation the Office of Compliance and Field Operations and the Office of Communications) of the CPSC, respectively.

2. "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 the possession, custody or control of CPSC, CPSC's attorneys, representatives, employees or agents.

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

4. The term "Complaint" shall mean your Complaint filed against Leachco in the above-captioned matter.

5. The term "Podster" shall mean the products referred to in paragraph 7 and 9 of your Complaint.

6. The term "Infant Lounger Product(s)" shall mean any product marketed, intended, or designed for infant lounging, including but not limited to the Boppy Pillow, and/or any product similar to the Podster.

7. The term "Infant Sleep Product(s)" shall mean any product marketed, intended, or designed for infant sleep.

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

C. These document production requests shall be deemed continuing to the extent permitted by 16 C.F.R. § 1025.31(f) so as to require prompt further responses if additional information or Documents are obtained between the time the responses were served and the time of trial.

D. If any privilege is claimed with respect to any document, please state with

respect to each such claim of privilege the identity of the item with respect to which the privilege is claimed with sufficient particularity to enable the matter to be brought before the Court for a ruling on such a claim, and state the alleged ground of privilege and the complete factual basis for such a claim. Among other things, please: 1) state the date, nature, and subject matter of the Document; 2) identify each author of the Document; 3) identify each preparer of the Document; 4) identify each Person who is an addressee or an intended recipient of the Document; 5) identify each Person from whom the Document was received; 6) state the present location of the Document and all copies thereof; 7) identify each Person who has or ever had possession, custody, or control of the Document or any copy thereof; 8) State the number of pages, attachments, appendices, and exhibits; and 9) provide all further information concerning the Document and the circumstances upon which the claim of privilege is asserted.

E. Pursuant to 16 C.F.R. § 1025.31, Complaint Counsel are under a continuing duty to supplement its responses to these discovery requests without further request from Respondents. Where Complaint Counsel have responded to a discovery request with a response that was complete when made, Complaint Counsel is under a duty to supplement that response to include information later obtained.

DOCUMENT PRODUCTION REQUESTS

1. All Documents described in your "List and Summary of Documentary Evidence" filed in these proceedings.
2. All Documents in your possession that support the allegations in the Complaint.
3. All Documents that you intend to introduce in evidence at the hearing on this matter.

4. All Documents referred to, or relied upon in answering, any Interrogatories propounded to you by Leachco.

5. All Documents in your possession relating to any assessments, evaluations, analysis and testing, including without limitation any Product Safety Assessments (PSA), performed by or on behalf of the CPSC, or upon which the CPSC relies or has relied, with respect to any aspect of the Podster, including but not limited to:

- a. Design
- b. Warnings
- c. Construction
- d. Instructions
- e. Packaging
- f. Advertising and marketing
- g. Any other issue

6. All Documents in your possession relating to any assessments, evaluations, analysis and testing, including without limitation any Product Safety Assessments (PSA), performed by or on behalf of the CPSC, or upon which the CPSC relies or has relied, with respect to any aspect of any Infant Lounger Product, including but not limited to:

- a. Design
- b. Warnings
- c. Instructions
- d. Packaging
- e. Advertising and marketing
- f. Any other issue

7. All Documents in your possession relating to or documenting any inspections and testing of any Podster.

8. All Documents and communications among the staff and/or Commissioners, and among the CPSC and third parties, regarding or pertaining to the Podster.

9. All Documents and communications among the staff and/or Commissioners, and among the CPSC and third parties, regarding or pertaining to the Complaint, its preparation, filing or approval.

10. All Documents relating to meetings or communications between any member of the staff and any Commissioner relating to the Complaint, its preparation or filing.

11. All Documents relating to meetings or communications between any member of the CPSC and any third party other than Leachco, relating to the Complaint, Leachco, and/or the Podster.

12. All Documents relating to any reports under section 15 of the Consumer Product Safety Act, whether initiated by a company or requested by the CPSC staff, involving a Podster, including without limitation any Documents relating to (i) any Preliminary Determination that arose of any such report; and (ii) any corrective action that arose out of any such report, whether or not the corrective action followed a Preliminary Determination.

13. All Documents relating to the decision to file the Complaint.

14. All Documents in your possession relating to any incidents, injuries, or deaths involving the Podster, including without limitation consumer reports to CPSC, Epidemiological Investigation Reports (also known as In-Depth Investigation Reports, or IDI Reports) and/or reports submitted to CPSC via saferproducts.gov (whether or not eligible for publication).

15. All Documents relating to CPSC consideration of issuance of any safety alert or release involving the Podster, including by not limited to the CPSC's January 20, 2022 Release Number 22-056.

16. All Documents relating to any analysis performed by or on behalf of the CPSC, or upon which the CPSC relies or has relied, of consumer reviews of: (a) the Podster on retailer websites; or (b) the Podster on any third-party website or forum.

17. All Documents relating to any communications by the CPSC to any retailers regarding the Podster.

18. All Documents relating to any communications between the CPSC and nongovernmental organizations including, without limitation, consumer advocacy groups or other similar organizations regarding the Podster.

19. All Documents that support the allegations in Paragraph 20 of the Complaint, including subsections a. – e. that it is foreseeable that caregivers will use the Podster without supervision and that it is foreseeable that caregivers will use the Podster for infant sleep.

20. All Documents that support the allegation in Paragraph 24 of the Complaint that the Podster is “defective because it can cause airflow obstruction if an unsupervised infant rolls, moves, or is placed in a position where the infant’s nose and mouth are obstructed by the Podster.”

21. All Documents that support the allegation in Paragraph 25 of the Complaint that the Podster “is defective because it is constructed of thick, soft padding that has a concave shape which can envelop an infant’s face and cause airflow obstruction if an unsupervised infant rolls, moves, or is placed in a position where the infant’s nose and mouth are obstructed by the Podster.”

22. All Documents that support the allegation in Paragraph 26 of the Complaint that the Podster is defective because “it lacks rigid underlying components, which can impede the

ability of an infant to self-rescue in the event that the infant rolls, moves, or is placed in a position where the infant's nose and mouth are obstructed by the Podster."

23. All Documents that support the allegation in Paragraph 27 of the Complaint that the Podster is defective because "it facilitates an infant's movement on the Podster, enhancing the risk that the infant's nose and mouth will be obstructed by the Podster."

24. All Documents that support the allegation in Paragraph 28 of the Complaint that the Podster is defective because "it facilitates an infant's movement off the Podster, enhancing the risk that the infant's nose and mouth will be obstructed by another object in the infant's environment, such as soft bedding."

25. All Documents that support the allegations in Paragraphs 29 and 30 of the Complaint that the Podster may allow an infant to roll or move off the Podster.

26. All Documents that support the allegations in Paragraphs 31 and 32 of the Complaint that the Podster can lead to unsafe bedsharing with caregivers.

27. All Documents that support the allegations in Paragraphs 39 and 40 of the Complaint that it is foreseeable that caregivers will not place infants on their backs in the Podster and that caregivers will use the Podster for bedsharing in an adult bed.

28. All Documents relating to any analysis performed by or on behalf of the CPSC, or upon which the CPSC relies or has relied, comparing the number or frequency of incidents, injuries, or deaths involving the Podster with the number or frequency of incidents, injuries, or deaths involving any other infant Lounger Product or any Infant Sleep Product.

29. All Documents relating to any analysis performed by or on behalf of the CPSC, or upon which the CPSC relies or has relied, comparing the number or frequency of incidents, injuries, or deaths involving the Podster with the number or frequency of incidents, injuries, or deaths involving any other product.

30. All Documents relating to any analysis performed by or on behalf of the CPSC, or upon which the CPSC relies or has relied, comparing the Podster in any way with any other Infant Lounger Product or any Infant Sleep Product.

31. All Documents in your possession relating to any incident, injury, or death, involving the Podster that you allege to have occurred.

32. All Documents relating to any analysis performed by or on behalf of the CPSC, or upon which the CPSC relies or has relied, considering the utility to consumers of the Podster.

33. All Documents relating to any analysis performed by or on behalf of the CPSC, or upon which the CPSC relies or has relied in this case, considering the utility to consumers of any Infant Lounger Product.

34. All Documents relating to any regulatory evaluation conducted by or on behalf of the CPSC, or upon which the CPSC relies or has relied to evaluate the effectiveness of the warning labels and instructions for the Podster.

35. All Documents relating to any regulatory evaluation conducted by or on behalf of the CPSC, or upon which the CPSC relies or has relied to evaluate the effectiveness of the warning labels and instructions for any Infant Lounger Product and/or any Infant Sleep Product.

36. All Documents in your possession relating to the actions of any manufacturers to address the risk of product misuse of Infant Lounger Products.

37. All Documents in your possession relating to the actions of any manufacturer to warn consumers regarding Infant Lounger Products.

38. All Documents relating to communications between the CPSC and any persons, their parents, guardians or attorneys, who alleged any incident, injury, or death involving any Infant Lounger Product.

39. All Documents relating to any analysis performed by or on behalf of the CPSC, or upon which the CPSC relies or has relied, with respect to the National Electronic Injury Surveillance System (NEISS) and:

- (a) the Podster;
- (b) other Infant Lounger Products; or
- (c) any Infant Sleep Product.

40. All Documents relating to any analysis performed by or on behalf of the CPSC, or upon which the CPSC relies or has relied, with respect to any comparison of the performance, risks, or any other aspect of the Podster to the performance, risks, or any other aspect of any other product.

41. All Documents in your possession relating to any risk assessment involving the Podster.

42. All Documents in your possession relating to any risk assessment involving other Infant Lounger Products.

43. All Documents in your possession relating to any retailer advertising or marketing of the Podster.

44. All Documents in your possession relating to consideration by any voluntary standards organization of a voluntary standard with respect to Infant Lounger Products.

45. All Documents relating to communications between the CPSC and any persons who own, used or where involved in any incidents allegedly involving a Podster.

46. Any photograph of any Podster related to the relief requested in the Complaint, whether taken by you or by any other person.

47. Any X-ray or other recorded radiographic or diagnostic study of the Podster or any component part thereof (including without limitation fluoroscopy, ultrasonography,

scanning electron microscopy, light microscopy, or energy dispersive analysis x-ray (EDAX)), or any other physical evidence related to the relief requested in the Complaint.

48. Any document provided to, or prepared by, for, or at the direction of, or which in any way was relied upon or forms the basis for the opinions of, any person you expect to call as an expert witness at trial or any hearing in this matter, including the expert's complete file and any communications between the expert and the CPSC.

49. The curriculum vitae, resume or other summary of the qualifications of any person you expect to call as an expert witness at trial or any hearing in this matter, including without limitation a list of all publications authored or co-authored by the witness, the amount of and basis for the compensation of the witness, and a list of cases (described by name of case, jurisdiction, case number, and date of testimony) in which the witness has testified.

REQUESTS FOR PRODUCTION OF THINGS

50. Produce at a reasonable time and place for non-destructive examination any Podster which you have obtained, analyzed and/or tested related to any of the allegations in the Complaint.

51. Produce at a reasonable time and place for non-destructive examination any Infant Lounger Product and/or Infant Sleep Product which you have obtained, analyzed and/or tested related to any of the allegations in the Complaint.

Dated: March 14, 2022

CROWELL & MORING LLP

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

**BRYAN CAVE LEIGHTON PAISNER
LLP**

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

Attorneys for Leachco, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2022, a true and correct copy of Respondent's First Set of Requests for Production was served by e-mail and first class U.S. mail, postage prepaid, on the following:

Alberta Mills
Secretary of the U.S. Consumer Product Safety Commission
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
amills@cpsc.gov

Mary B. Murphy, Director, Division of Enforcement and Litigation
U.S. Consumer Product Safety Commission
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 Commission
4330 East West Highway
Bethesda, MD 20814
rkaye@cpsc.gov

Leah Ippolito, Supervisory Attorney
Brett Ruff, Trial Attorney
Rosalee Thomas, Trial Attorney
Caitlin O'Donnell, Trial Attorney
Complaint Counsel

Office of Compliance and Field Operations
U.S. Consumer Product Safety Commission
Bethesda, MD 20814
Tel: (301) 504-7809
Lippolito@cpsc.gov
BRuff@cpsc.gov
RBThomas@cpsc.gov
CODonnell@cpsc.gov

/s/ Cheryl A. Falvey
Cheryl A. Falvey