

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 MOTION TO COMPEL PRODUCTION OF ELECTRONIC  
COMMUNICATIONS PURSUANT TO COMPLAINT COUNSEL’S SECOND SET OF  
REQUESTS FOR PRODUCTION OF DOCUMENTS TO RESPONDENT**

Pursuant to 16 C.F.R. §§ 1025.23, 1025.31(c), (i), 1025.33, and 1025.36, Complaint Counsel respectfully moves this Court to compel discovery and attaches its Memorandum in Support of its Motion to Compel Production of Electronic Communications Pursuant to Complaint Counsel’s Second Set of Requests for Production to Respondent. For the reasons detailed in the attached Memorandum, despite Complaint Counsel’s repeated efforts to resolve discovery disputes through meet and confers, Respondent Leachco, Inc. (“Leachco”) has absolutely refused to produce any documents in response to Complaint Counsel’s Second Set of Requests for Production seeking electronic communications to and from seven current and former Leachco employees using specific search terms.

Complaint Counsel is entitled to obtain this discovery in support of the administrative complaint that it filed in this litigation. The discovery requested is relevant to this proceeding and within the scope of discovery outlined in 16 C.F.R. § 1025.31(c). Complaint Counsel attempted to resolve this motion without judicial intervention through correspondence and several meet and confers, but the parties were unable to come to an agreement.

Complaint Counsel respectfully requests that the Presiding Officer issue an Order compelling Leachco to, within ten (10) days of the date of such Order, make a full and complete production of all documents and information responsive to Complaint Counsel's Second Set of Requests for Production—which contained only one Request and which Complaint Counsel tailored narrowly in the spirit of cooperation and in compliance with this Court's September 16, 2022 Order [Dkt. No. 35]. However, to date, Leachco has not produced a single document in response to the Request—which as detailed in the attached Memorandum—requests documents and information directly relevant to this litigation.

Complaint Counsel also has included with this Motion a proposed Order compelling Leachco to produce the requested discovery. Discovery in this matter closes on March 20, 2023. Leachco's absolute refusal to produce any documents in response to the last request for production has impeded Complaint Counsel's ability to adequately prepare for depositions and expeditiously reach the merits of a significant safety issue for newborns and infants. Thus, Complaint Counsel requests that a ruling on this matter be expedited in light of the discovery deadline.

To the extent the Court may find it useful, Complaint Counsel requests oral argument on this Motion.

Dated this 17th day of November, 2022

Respectfully submitted,

A handwritten signature in blue ink, reading "Michael J. Rogal". The signature is written in a cursive style with a horizontal line underneath it.

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

Division of Enforcement and Litigation  
Office of Compliance and Field Operations  
U.S. Consumer Product Safety Commission  
Bethesda, MD 20814  
Tel: (301) 504-7220

Complaint Counsel for  
U.S. Consumer Product Safety Commission

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**[PROPOSED] ORDER ON COMPLAINT COUNSEL’S  
MOTION TO COMPEL PRODUCTION OF ELECTRONIC COMMUNICATIONS  
PURSUANT TO COMPLAINT COUNSEL’S SECOND SET OF REQUESTS FOR  
PRODUCTION TO RESPONDENT**

This matter, having come before the Presiding Officer on Complaint Counsel’s Motion to Compel Production of Electronic Communications Pursuant to Complaint Counsel’s Second Set of Requests for Production to Respondent dated November 17, 2022, it is hereby ORDERED that the Motion is GRANTED. It shall be further ORDERED:

Within ten (10) days of this Order, Respondent Leachco, Inc. (“Leachco”) shall produce a full and complete production of all responsive documents and information concerning Complaint Counsel’s Second Set of Requests for Production to Leachco, Request No. 27:

All electronic communications (including, but not limited to, internal and external emails, instant messages, and text messages) to and from the following persons, whether involving third parties and/or other Leachco personnel, between January 1, 2008 and the date the Complaint was filed in this matter (February 9, 2022) containing the following search terms:

a. Persons to search:

1. Jamie Leach;
2. Clyde Leach;

3. Alex Leach;
4. Mabry Ballard;
5. Tonya Barrett;
6. Dan Marshall; and,
7. Leah Barnes.

b. Search Terms:

1. “Podster” and “safety” or “safe”;
2. “Podster” and “suffocation” or “suffocate” or “suffocating”;
3. “Podster” and “incident”;
4. “Podster” and “breathing” or “breathe”;
5. “Podster” and “obstruction” or “obstructing”;
6. “Podster” and “injury” or “injure” or “injuries”;
7. “Podster” and “hazard” or “hazardous”;
8. “Podster” and “death” or “died” or “dying”;
9. “Podster” and “sleep”;
10. “Podster” and “warnings” or “warn” or “warned”;
11. “Podster” and “prone” or “face down”;
12. “Podster” and “roll” or “move”;
13. “Podster” and “unsupervised” or “supervise”;
14. “Podster” and “crib”;
15. “Podster” and “bed”;
16. “Podster” and “nap”;
17. “Podster” and “asphyxia”;

18. “Podster” and “defect”;
19. “Podster” and “recall”; and
20. “Podster” and “CPSC”.

Done and dated \_\_\_\_\_ 2022

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Michael G. Young  
Administrative Law Judge

## **CERTIFICATE OF SERVICE**

I hereby certify that on November 17, 2022, I served Complaint Counsel's Motion to Compel Production of Electronic Communications Pursuant to Complaint Counsel's Second Set of Requests for Production to Respondent and Memorandum in Support on all parties and participants of record in these proceedings as follows:

*By email to the Secretary:*

Alberta E. Mills  
Secretary  
U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814  
Email: AMills@cpsc.gov

*By email to the Presiding Officer:*

Judge Michael G. Young  
Presiding Officer and Administrative Law Judge  
Federal Mine Safety and Health Review Commission  
1331 Pennsylvania Ave., N.W., Ste. 520N  
Washington, DC 20004-1710  
Email: myoung@fmshrc.gov  
cjannace@fmshrc.gov

*By email to Counsel for Respondent:*

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Michael J. Rogal  
Complaint Counsel for  
U.S. Consumer Product Safety Commission