

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF THE CHIEF ADMINISTRATIVE LAW JUDGE
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February 17, 2023

In the Matter of

LEACHCO, INC.,

CPSC Docket No. 22-1

Respondent.

**ORDER DEFERRING RULING ON COMPLAINANT COUNSEL'S MOTION TO
COMPEL DISCOVERY AND FOR SANCTIONS AND ORDERING PRODUCTION OF
PRIVILEGE LOG**

Complaint Counsel moved to compel production and for sanctions, claiming Respondent violated this Court's orders, on February 6, 2023. Complaint Counsel stated that Respondent failed to meet the agreed upon January 17, 2023, deadline for the request for production ("RFP"), and it was not completed until January 23, 2023. *See* Memo. in Supp. of Compl. Counsel's Mot. to Compel & Mot. for Sanctions for Violation of the Court's Dec. 16, 2022 and Dec. 27, 2022 Orders, at 4 (Feb. 6, 2023). It was also informed days later that Respondent had withheld a significant number of documents, claiming privilege. *Id.* at 5, 8. Respondent provided a table of the total documents related to each term search, only noting the quantity excluded as privileged. *Id.* Ex. E. Complaint Counsel also asserts that Respondent failed to adequately respond to Interrogatories 29 and 30, and Requests for Admission ("RFA") 3, 4, and 5. *See id.* at 7–11.

Respondent responded by first asserting that it produced all nonprivileged documents, claiming further that it also produced documents that exceeded the scope of the RFP. *See* Leachco, Inc.'s Opp'n to Compl. Counsel's Mot. to Compel & Mot. for Sanctions for Violating the Court's Dec. 16, 2022 and Dec. 27, 2022 Orders, at 2–4, 7 (Feb. 16, 2023). It next asserted that it acted in good faith in production and fully complied with the RFAs. It acknowledged its tardiness in producing the documents, but claimed that Complaint Counsel suffered no prejudice, and that it produced all nonprivileged documents. *Id.* at 8–9. It then claimed that each of its RFA responses properly included objections, explanations, and admissions or denials regarding the remaining information. *Id.* at 13.

Regarding the RFP, the dispute relies wholly on whether the withheld documents are covered by privilege. I cannot properly rule on the adequacy of Respondent's production without reviewing its privilege log, an adequate version of which has not been produced to Complaint Counsel or this Court. I will rule on the adequacy of Respondent's responses to the RFAs contemporaneously.

Respondent is therefore **ORDERED** to produce a privilege log for the withheld documents **no later than 12:00 p.m. ET, on Tuesday, February 21, 2023.**¹

I **DEFER** ruling on Complaint Counsel's motion to compel discovery and for sanctions until production of, or the set deadline elapses for, Respondent's privilege log.



Michael G. Young
Administrative Law Judge

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¹ The privilege log shall comply with this Court's guidance. *See* Order Providing Guidance for Privilege Logs (Sept. 9, 2022).

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