

UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION

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

**OPPOSITION TO LEACHCO, INC.’S NOTICES OF DEPOSITION OF  
CELESTINE KISH AND CONSUMER PRODUCT SAFETY COMMISSION**

Pursuant to 16 C.F.R. § 1025.35(b)(3), Complaint Counsel respectfully submits its Opposition to Leachco, Inc.’s (“Leachco”) Notices of Deposition of Celestine Kish and Consumer Product Safety Commission (individually, “Notice” or collectively, “Notices”). On February 27, 2023, Leachco noticed the depositions of five employees of the Consumer Product Safety Commission (“CPSC” or “Commission”): Hope Nesteruk, Zachary Foster, Celestine Kish, Suad Wanna-Nakamura, and Christopher Nguyen.<sup>1</sup> Leachco also noticed a deposition of the “Consumer Product Safety Commission” at the same time. Complaint Counsel has no objection to the other four Notices and files this opposition concerning only the Notices of Ms. Kish and the Consumer Product Safety Commission.

Instead of attempting to work cooperatively to resolve any issues with the Notices, Leachco served the Notices *unilaterally* despite Complaint Counsel’s objections and attempts to

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<sup>1</sup> Ms. Nesteruk, Mr. Foster, and Ms. Wanna-Nakamura are all CPSC technical staff that performed the testing and analysis of the Leachco Podster during CPSC’s internal investigation and were the primary drafters of the Product Safety Assessments. Ms. Kish also participated in testing and analysis of the Leachco Podster. Mr. Nguyen was a CPSC compliance officer who assisted with the Podster investigation.

reach a compromise. This is directly against the direction provided by the Presiding Officer since the September 7, 2022 Discovery Conference. Thus, Complaint Counsel is required to file this Opposition in accordance with the Rules of Practice for Adjudicative Proceedings (the “Rules of Practice”), 16 C.F.R. Part 1025, governing this proceeding.

In addition to Leachco’s unilateral actions, these Notices are improper for various reasons. Specifically, the Notice for Celestine Kish fails to comply with the requirements of 16 C.F.R. § 1025.35(b)(1) and seeks an improper “fact deposition” of an expert witness. The Notice of Consumer Product Safety Commission also fails to comply with the requirements of 16 C.F.R. § 1025.35(b)(1), is disguised as a Rule 30(b)(6) deposition under the Federal Rules of Civil Procedure (which is not permitted by the Rules of Practice), and in any event, is improper and fails to meet the requirements of a Rule 30(b)(6) notice.

As detailed below, Complaint Counsel requests that this Court limit the deposition of Celestine Kish by imposing appropriate guardrails to prevent inquiry into areas of her expert testimony, and requests that the deposition of the Consumer Product Safety Commission not be had. *See* 16 C.F.R. § 1025.31(d)(1).

## **I. BACKGROUND**

On February 9, 2022, Complaint Counsel filed an Administrative Complaint against Leachco alleging that its infant lounging pillows (“Podsters”) which were manufactured and distributed by Leachco contain defects that create a Substantial Product Hazard under Section 15(a)(2) of the Consumer Product Safety Act (“CPSA”), 15 U.S.C. § 2064(a)(2). Compl. ¶¶ 1, 6-7, 20-34, 48-52. Pursuant to the Court’s September 16, 2022 Order on Prehearing Schedule, Dkt. No. 35, a trial in this matter is scheduled to commence on August 7, 2023. The parties are currently engaged in fact discovery, which closes on March 20, 2023.

Just over a week ago, on February 22, 2023, Leachco first informed Complaint Counsel, in earnest, that it had decided to take depositions of five CPSC staff members, and the CPSC in its agency capacity.<sup>2</sup> *See* Ex. A, at 1. After obtaining information about the availability of those witnesses, Complaint Counsel responded on February 24, 2023, providing dates for four of Leachco’s proposed deponents. Ex. B, at 2-3. Complaint Counsel also objected to two proposed depositions, Celestine Kish’s and the “agency deposition.” *Id.* Complaint Counsel informed Leachco that Ms. Kish is an expert for Complaint Counsel and that the Rules of Practice do not permit depositions of expert witnesses, and noted that there was no support for an agency deposition—which is essentially a notice for a 30(b)(6) deposition—under the Rules of Practice. *Id.* Further, Complaint Counsel stated that “without additional information on the types of topics [Leachco is] considering [for the agency deposition], we are unable to even properly consider such a request.” *Id.* On February 27, 2023, Leachco responded, disagreeing with Complaint Counsel, and threatening to unilaterally serve notices for these depositions over Complaint Counsel’s objections. *See id.*, at 1-2.

In an attempt to reach a cooperative resolution, *on the same day*, Complaint Counsel promptly responded to Leachco, noting that Complaint Counsel would agree to the deposition of Ms. Kish, provided that Leachco not inquire into areas relating to her expert testimony. *See id.*, at 1. Further, regarding the agency deposition, Complaint Counsel reiterated its request for topic areas to properly consider such a request:

[W]e cannot even begin to consider such a request, much less identify a person and track down availability, without a potential list of topics. If you would like us

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<sup>2</sup> Leachco had previously noted on January 25, 2023 that “while we have not made any final decisions, we intend to depose one or more of the following individuals: Zachary Foster, Celestine Kish, Hope Nesteruk, Christopher Nguyen, Renae Rauchsawalbe, and Suad Wanna-Nakamura. We can discuss mutually convenient dates and times.” Ex. A, at 2. However, Leachco did not reach out to Complaint Counsel again to discuss depositions, potential deponents, or dates and times until its February 22, 2023 email.

to consider that request, we again request a potential list of topics. We believe that your unilateral notice of such a deposition would be improper without additional information on your proposed topics.

*Id.*

Despite Complaint Counsel's efforts to strike a compromise, about nine hours later that same evening, Leachco unilaterally served the Notices. *See* Ex. C. Leachco made no attempt to contact or email Complaint Counsel after Complaint Counsel emailed Leachco and did not request a meet and confer to discuss this issue before serving the Notices.<sup>3</sup>

Despite Leachco taking the very unilateral actions it objected to in the past, *see* Dkt. No. 16, as detailed below, the Notices at issue here are improper or defective on their face. Further, Leachco's failure to cooperate with Complaint Counsel has forced Complaint Counsel to respond to the Notices in accordance with the procedures set forth in the Rules of Practice for opposing deposition notices.

## **II. THE STANDARDS GOVERNING DEPOSITIONS UNDER THE RULES OF PRACTICE**

Pursuant to 16 C.F.R. § 1025.35(a), "any party may take the deposition of any other party, including the agents, employees, consultants, or prospective witnesses of that party at a place convenient to the deponent." A party that desires to take a deposition "shall . . . serve written notice of the deposition on all other parties and the Presiding Officer at least ten (10) days before the date noticed for the deposition." 16 C.F.R. § 1025.35(b)(1). The notice must contain the following requirements:

- (i) The time and place for the taking of the deposition;
- (ii) The name and address of each person to be deposed, if known, or if the name is not known, a general description sufficient to identify him/her; and
- (iii) The subject matter of the expected testimony. If a subpoena *duces tecum* is to be served on the person to be deposed, the designation of the materials to be

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<sup>3</sup> The Presiding Officer advised the parties during the September 7, 2022 Discovery Conference to avoid preemptively noticing depositions. *See* Ex. D, at 37:18-38:2.

produced, as set forth in the subpoena, shall be attached to or included in the notice of deposition.

*Id.* § 1025.35(b)(1)(i)-(iii).

Under the Rules, “[a] person served with a notice of deposition may oppose, in writing, the taking of the deposition within five (5) days of service of the notice.” 16 C.F.R. § 1025.35(b)(3). Subsequent to the filing of an opposition, the “Presiding Officer shall rule on the notice and any opposition”—“good cause” is a required showing to permit any deposition that a party opposes. *Id.*; *see also* 16 C.F.R. § 1025.31(d) (stating that good cause exists to issue an Order protecting or limiting discovery, including a deposition notice, to prevent a person or party from “annoyance, embarrassment, competitive disadvantage, oppression, or undue burden or expense”).

Complaint Counsel requests that this Court limit the deposition of Celestine Kish to prevent inquiry into areas of her expert testimony, and requests that the deposition of the Consumer Product Safety Commission, which is essentially an improper 30(b)(6) deposition, not be had. *See* 16 C.F.R. § 1025.31(d)(1).

### **III. THE NOTICE OF DEPOSITION OF CELESTINE KISH IS DEFECTIVE ON ITS FACE AND IMPROPER GIVEN MS. KISH’S DESIGNATION AS AN EXPERT WITNESS**

The Notice of Celestine Kish is improper for at least two reasons: (1) the Notice fails to comply with the requirements for deposition notices in the Rules of Practice; and (2) Leachco is seeking deposition testimony from an expert witness, which is not allowed under the Rules of Practice. In the spirit of cooperation, Complaint Counsel is willing to offer Ms. Kish for a deposition, but seeks to limit the topics of Ms. Kish’s deposition to facts that do not relate to her expert testimony and that were not acquired or developed in anticipation of litigation or for trial.

**A. The Notice of Deposition of Celestine Kish Fails to Comply with the Timing Requirements under the Rules of Practice**

Pursuant to 16 C.F.R. § 1025.35(b), a party wishing to take a deposition “shall . . . serve written notice of the deposition on all other parties and the Presiding Officer at least ten (10) days before the date noticed for the deposition.” Leachco’s Notice fails to comply with this requirement. On February 27, 2023, Leachco unilaterally served a Notice seeking the deposition of Ms. Kish on March 7, 2023, which is eight days from the date of the notice and is less than the 10 days required by the Rules of Practice. *See* Ex. E. Had Leachco responded to Complaint Counsel’s email instead of unilaterally serving its Notice, Complaint Counsel would have informed Leachco that such date was unacceptable and provided alternative dates. However, Leachco did not do so.

To allow this Court time to rule on Complaint Counsel’s opposition to Ms. Kish’s deposition notice, Complaint Counsel offers to reschedule the date of Ms. Kish’s deposition for March 23, 2023. Although this date is outside the close of discovery, Complaint Counsel is attempting to accommodate Leachco’s request and believes that—in this one instance—scheduling this deposition shortly outside of the discovery deadline will not prejudice either party.

**B. The Notice of Deposition of Celestine Kish is an Improper Notice Because it Seeks the Deposition of an Expert Witness, which is not Permitted under the Rules of Practice**

More importantly, however, the Notice of Deposition for Ms. Kish is improper, because Leachco seeks to depose a witness whom Complaint Counsel is designating as an expert witness. Under the Rules of Practice, discovery for experts is only allowed in extremely limited circumstances. Specifically:

Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of [16 C.F.R. § 1025.31(c)(1)] and acquired or developed in anticipation of litigation or for trial, may be obtained *only* as follows:

(i)(A) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, to state the substance of the facts and opinions to which the expert is expected to testify, and to provide a summary of the grounds for each opinion.

(B) Upon motion, the Presiding Officer may order further discovery by other means upon a showing of substantial cause and may exercise discretion to impose such conditions, if any, as are appropriate in the case.

16 C.F.R. § 1025.31(c)(4)(i)(A)-(B) (emphasis added).

Arguably, given her designation as a testifying expert, Ms. Kish's deposition should not be had at all. However, in an effort to be transparent and cooperative, upon being informed of Leachco's desire to depose Ms. Kish, Complaint Counsel informed Leachco that Ms. Kish is an expert witness and that the Rules of Practice limited expert discovery to specific circumstances. *See* Ex. B, at 2-3. Nevertheless, Leachco continued to press for the deposition of Ms. Kish and Complaint Counsel agreed to make Ms. Kish available for a deposition, provided that, Leachco "agree to ask only questions regarding 'facts related to this case' not acquired or developed in anticipation of litigation or for trial." *Id.*, at 1. This is a reasonable position given both the Rules of Practice's restrictions on expert discovery, and the fact that Ms. Kish will be providing her written testimony to opposing counsel on April 28, 2023, in accordance with the Order on Prehearing Schedule, *see* Dkt. No. 35, and well in advance of the August 7, 2023 hearing date. By then, Leachco will have had ample time to prepare for cross-examination. *See* 16 C.F.R. § 1025.44(b), (c).

Because Leachco has not agreed to the reasonable and appropriate guardrails that were requested, Complaint Counsel requests that the Court limit Ms. Kish's deposition accordingly

and pursuant to the Rules of Practice governing this proceeding. To proceed without such an order in place may result in numerous communications to the Court regarding the appropriateness of particular inquiries to which Complaint Counsel is likely to object.

**IV. THE NOTICE OF DEPOSITION OF CONSUMER PRODUCT SAFETY COMMISSION IS AN IMPROPER NOTICE FOR A 30(b)(6) DEPOSITION NOT ALLOWED UNDER THE RULES OF PRACTICE**

Under 16 C.F.R. § 1025.35(b)(1)(ii), a party may notice the deposition of any person of the opposing party to the proceeding, as long as the notice states the “name and address of each person to be deposed, if known, or if the name is not known, a general description sufficient to identify him/her.” Leachco’s Notice to the “Consumer Product Safety Commission” fails this requirement because no name is provided and no general description is provided to identify any particular individual. Leachco’s Notice is clearly an improper attempt to backdoor a Federal Rule of Civil Procedure 30(b)(6) deposition into this proceeding—there is no analogous provision in the Rules of Practice that allow such a deposition.<sup>4</sup> As such, Leachco’s 30(b)(6)-type deposition notice is improper.<sup>5</sup>

Leachco’s Notice is also improper because the topics listed in that Notice: (1) are overly broad; (2) are duplicative of other factual testimony requested; (3) would require testimony by an

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<sup>4</sup> This is not the first time Complaint Counsel has explained this principle in a filing. In its December 21, 2022 brief, Complaint Counsel noted: “Rule 30(b)(6) is from the Federal Rules of Civil Procedure, and no analogous provision exists under CPSC’s Rules.” Dkt. 53, at 3 n.3.

<sup>5</sup> Contained within its improper 30(b)(6) Notice is also an improper request for production of documents: “Such person or persons [that CPSC designates pursuant to the Notice] are requested to bring with them to the deposition all documents relied on or referred to in preparing for the deposition unless such documents have previously been produced pursuant to other requests.” Ex. F, at 2. Under the Rules of Practice, a party may only obtain documents from a deponent through a subpoena. *See* 16 C.F.R. § 1025.35(b)(1)(iii). This appears to be a way for Leachco to improperly backdoor a request for documents past the deadline to request production of documents in the Order on Prehearing Schedule and should not be allowed.



attorney, which requires the showing of extraordinary circumstances that Leachco has failed to meet in its Notice; and/or (4) are precluded on the basis of privilege.

**A. Depositions of an Organization, Commonly Referred to as “30(b)(6) Depositions,” Are Not Permitted Under CPSC’s Rules of Practice**

The Federal Rules of Civil Procedure allow for depositions to be taken of an organization under Rule 30(b)(6):

*(6) Notice or Subpoena Directed to an Organization.* In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. Before or promptly after the notice or subpoena is served, the serving party and the organization must confer in good faith about the matters for examination. A subpoena must advise a nonparty organization of its duty to confer with the serving party and to designate each person who will testify. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.

As stated in Rule 30(b)(6), the notice of deposition is directed to an “organization” as opposed to a particular person, must describe the topics of the deposition with reasonable particularity, and requires the noticed organization to designate person(s) to testify to the organization’s knowledge about those topic areas, as opposed to the designee’s personal knowledge.

16 C.F.R. § 1025.35 is the analogous rule in CPSC’s Rules of Practice to Federal Rule of Civil Procedure 30. However, 16 C.F.R. § 1025.35(b) does not contain an analog to Rule 30(b)(6)—instead, 16 C.F.R. § 1025.35(b)(1) requires all deposition notices to state either the deponent’s name, or a general description sufficient to identify the requested deponent if the name is not known by the opposing party. In other words, there is no provision in the Rules of Practice that permit a party to notice the deposition of an organization (as opposed to an

individual), and no provision that provides for a listing of subject matter topics that a party is required to educate the organization's designee on prior to that deposition. That latter point is significant—the Rules of Practice do not require any fact witness to “testify about information known or reasonably available to the organization” as opposed to testifying just on the witness’s personal knowledge.

The Commission’s decision to omit this provision from the Rules of Practice was likely intentional. Rule 30(b)(6) was added to the Federal Rules of Civil Procedure as part of the 1970 amendments to those rules. *Groh v. Decker*, File CA 5691, 1971 WL 475, at \*6 (W.D. Mich. Oct. 27, 1971) (“Rule 30(b)(6) was added to the rules in 1970.”). The Commission, thus, was well aware of the existence of Rule 30(b)(6) and its requirements when promulgating the Rules of Practice in the early 1970s. However, a provision analogous to Rule 30(b)(6) does not appear—and is not even discussed—in the first notice proposing the Rules of Practice issued in 1974, see 39 Fed. Reg. 26,848-857 (July 23, 1974), or in the final notice issued in 1980 where the Rules of Practice were adopted. See 45 Fed. Reg. 29,206-232 (May 1, 1980). In the 1980 *Federal Register* notice, the Commission expressly noted that it “deliberately chose to depart from the procedures under the Federal Rules of Civil Procedure in establishing its requirements for the taking of depositions,” in the context of requiring leave, *id.* at 29,213; thus, it is evident that the Commission reviewed Rule 30 of the Federal Rules of Civil Procedure at that time and made the conscious decision to keep a provision like Rule 30(b)(6) out of the Rules of Practice.

The lack of such a provision is also consistent with the objective in the Scope to the Rules of Practice, which makes clear that the administrative proceeding should “move forward in a timely manner,” giving the Presiding Officer the ability to “expedite the proceedings.” 16 C.F.R. § 1025.1. This allows for the timely resolution and avoidance of “unnecessary delay” in a

matter that was brought in the interest of public safety; specifically, the safety of infants, a vulnerable population. *See id.* §§ 1025.2, 1025.42.

As mentioned above, the parties did not adopt and follow the Federal Rules of Civil Procedure in this action. In fact, the parties filed a joint statement for this Court’s consideration, where only certain provisions of Rule 30 of the Federal Rules of Civil Procedure were adopted; *Rule 30(b)(6) is entirely absent from such statement. See* Dkt. No. 13, at 5-6 (noting Complaint Counsel and Leachco were “amenable to proceeding without obtaining leave of this Court for noticing depositions” under 30(a) of the Federal Rules), and at 8 (noting joint agreement of the parties that “Federal Rules of Civil Procedure Rule 30(d)(1) will be applicable regarding deposition duration, in that a deposition shall be limited to one day of seven hours”). Leachco had another opportunity during the September 7, 2023 Discovery Conference to raise such a request but did not do so then either. *See generally* Ex. D.

Therefore, even though a Rule 30(b)(6) deposition is not allowed under the Rules of Practice, Leachco had numerous opportunities to raise the argument that it should be allowed to take such a deposition and never did. As such, CPSC’s Rules of Practice and the Court’s Order on Prehearing Schedule are the only rules governing this proceeding—neither of which permit unnamed depositions of an entire organization.<sup>6</sup> Thus, Leachco’s Notice to the Consumer Product Safety Commission should not be permitted.

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<sup>6</sup> In correspondence with Leachco’s counsel regarding the Notices, Leachco noted 16 C.F.R. § 1025.35(b)’s reference to a deposition of “another party” and stated that since the CPSC is a “party” to this proceeding that CPSC’s Rules of Practice permit Leachco to take a 30(b)(6)-type deposition of the CPSC. Even if this overly broad reading of the rule was true, as discussed above, there is nothing in the Rules of Practice that outline the procedure required to state the topics of such deposition with reasonable particularity or that require any deponent to testify with respect to organizational knowledge. Thus, any deposition in this matter should be limited to the deponent’s personal knowledge of Leachco and the Podster and not require any person designated to testify with respect to CPSC agency knowledge in general.

**B. Leachco's Proposed Subject Matter Topics are Either Duplicative of Other Testimony Sought or an Impermissible Attempt to Delve into the CPSC's Legal Theories and Deliberative Processes**

As discussed above, Rule 30(b)(6) depositions of agency designees are not permitted under the Rules of Practice. However, even a review of the subject matter topics in Leachco's Notice reveals that its proposed topics are all either duplicative of other scheduled testimony; available through less burdensome means such as written discovery; or impermissible attempts to delve into Complaint Counsel's legal theories, mental processes, and deliberative processes.<sup>7</sup>

Federal courts have limited 30(b)(6) depositions of governmental agencies where the testimony sought is duplicative of other testimony already provided. *See, e.g., E.E.O.C. v. Texas Roadhouse, Inc.*, No. 11-11732-DJC, 2014 WL 4471521, at \*4-6 (D. Mass. Sep. 9, 2014) (preventing testimony because Rule 30(b)(6) topics were irrelevant, intrusive, available through less burdensome means, or sought information already produced in discovery); *E.E.O.C. v. Source One Staffing, Inc.*, No. 11 C 6754, 2013 WL 25033, at \*3-8 (N.D. Ill. Jan. 2, 2013) (granting protective order to EEOC because defendant's Rule 30(b)(6) notice improperly sought protected, privileged, duplicative, and confidential information.).

Further, where the subject matter sought in a 30(b)(6) deposition is tantamount to an attempt to delve into a government agency's legal theories and deliberative processes, courts have refused to permit such testimony. *See United States ex rel. Baklid-Kunz v. Halifax Hosp. Med. Ctr.*, No. 6:09-cv-1002-Orl-31TBS, 2012 WL 3537070, \*4 (M.D. Fla. Aug. 14, 2012) ("If the United States was required to produce a witness in response to these topics, it would necessarily have to provide its legal theories and positions on important issues."); *E.E.O.C. v.*

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<sup>7</sup> The case law cited herein are all federal district court litigations that followed the Federal Rules of Civil Procedure, where 30(b)(6) depositions were permitted, as opposed to CPSC's Rules of Practice which do not contemplate 30(b)(6)-type agency depositions.

*McCormick & Schmick's Seafood Rests., Inc.*, No. Civil Action WMN-08-CV-984, 2010 WL 2572809, at \*4 (D. Md. Jun. 22, 2010) (prohibiting Rule 30(b)(6) deposition of EEOC, noting “[n]umerous other federal courts have similarly concluded that 30(b)(6) deposition notices directed to a law enforcement agency . . . were, in effect, notices to depose opposing counsel of record and would not be permitted”); *FTC v. U.S. Grant Res., LLC*, 2004 WL 1444951, at \*9-11 (E.D. La. Jun. 25, 2004) (“[T]he Court finds that the 30(b)(6) notice is an inappropriate attempt to depose opposing counsel and to delve into the theories, opinions and mental impressions of FTC attorneys.”); *In re Bilzerian*, 258 B.R. 846, 849 (Bankr. M.D. Fla. 2001) (“Based on the foregoing, it is the conclusion of this court that the taking of the deposition of the SEC—which would necessarily require the taking of the deposition of their lead counsel or someone with knowledge gained exclusively from the SEC’s counsel—is not an appropriate use of Fed. R. Civ. P. 30(b)(6).”); *SEC v. Morelli*, 143 F.R.D. 42, 47 (S.D.N.Y. 1992) (Rule 30(b)(6) deposition of the SEC “constitutes an impermissible attempt by defendant to inquire into the mental processes and strategies of the SEC”).

Leachco provided 12 topics for discussion in its Notice directed to the Consumer Product Safety Commission:

1. The facts and allegations in this proceeding.
2. Leachco, Inc. and the Podster.
3. The process(es) by which the Consumer Product Safety Commission (CPSC) examines and evaluates potential consumer-product defects, including but not limited to all laws, regulations, policies, practices, guidelines, and procedures considered or relied upon therefor.
4. The process(es) by which the CPSC determines which consumer products to pursue for recall and which ones it does not pursue, including but not limited to all laws, regulations, policies, practices, guidelines, and procedures considered or relied upon therefor.

5. The process(es) by which the CPSC determines that a “substantial product hazard” under 15 U.S.C. § 2064(a) exists, including but not limited to all laws, regulations, policies, practices, guidelines, and procedures considered or relied upon therefor.
6. Training and education requirements for technical staff.
7. The nature and scope of the CPSC’s allegations against Leachco.
8. Evidence supporting the allegations in CPSC’s Complaint.
9. CPSC’s requested relief in this proceeding and the basis(-es) therefor.
10. CPSC studies, tests, analyses, examinations, inspections, or other assessments, and the results thereof—including but not limited to In-Depth Investigation Reports, Product Safety Assessments, the CPSC’s annual Injuries and Deaths Associated with Nursery Products Among Children Younger than Age Five—concerning infant consumer products.
11. Aside from the work of expert witnesses retained by the Commission for this proceeding non-CPSC studies, tests, analyses, examinations, inspections, or other assessments, and the results thereof, concerning infant consumer products.
12. Communications concerning Leachco, the Podster, and infant-lounger products between or among any agent of the CPSC and third parties, including but not limited to, Members of Congress and/or their staff; other state or federal governmental agencies, including the President’s administration; outside experts, specialists, or consultants, *e.g.*, Erin D. Mannen; lawyers, including Michael Comer; and any other individual.

*See* Ex. F, Attach. A.

Each of these topics are improper for the following reasons: (1) topics 1, 2, 7, and 8 are overly broad and not described with “reasonable particularity”; (2) topics 1, 2, 6-8, 10 and 11 are duplicative of information that Leachco will learn from its already scheduled factual depositions of CPSC technical staff; (3) topics 9 and 12 would require the deposition of an attorney at the CPSC, particularly one of the litigation attorneys in this proceeding; and (4) topics 3-5 are entirely within the confines of privilege, particularly the deliberative process and work product privileges.

Topics 1, 2, 7, and 8 are overly broad. These topics, which request testimony on “[t]he facts and allegations in this proceeding,”<sup>8</sup> “[t]he nature and scope of the CPSC’s allegations against Leachco,” “[e]vidence supporting the allegations in CPSC’s complaint” and “Leachco, Inc. and the Podster” could encompass any factual or legal issue present in this case. These topics are not described with “reasonable particularity” as required by Rule 30(b)(6) and are thus improper. *See Source One Staffing*, 2013 WL 25033, at \*4 (ruling that the topic requesting “information obtained during the EEOC’s investigation” was overbroad and not permissible 30(b)(6) testimony).

Further, federal courts have ruled that similar Rule 30(b)(6) topic areas requesting testimony supporting allegations in a complaint were impermissible under privilege grounds. In *Source One Staffing*, defendants provided four subject matter topics requesting 30(b)(6) testimony that “supports or rebuts” various allegations in the government agency’s complaint. The court found those topic areas impermissible, concluding that:

A Rule 30(b)(6) deposition seeking testimony about the facts “supporting or rebutting” any claims [in a complaint] necessarily would be filtered through an attorney’s mental impressions. Any Rule 30(b)(6) deponent would be an EEOC attorney or an EEOC investigator prepared by an attorney with case theories and strategies inextricably intertwined in that preparation.

2013 WL 25033, at \*6-7; *see also S.E.C. v. Nacchio*, 614 F. Supp. 2d 1164, 1177 (D. Colo. 2009) (“An ‘allegation’ is not necessarily the same thing as a ‘fact.’ An allegation is ‘a party’s formal statement of a factual matter as being true or provable, without having yet been proved.’ To convert an ‘allegation’ into a proven fact, a party necessarily ‘marshals the facts . . . in its possession’ or draws inferences from the evidence.”); *E.E.O.C. v. Am. Int’l Group, Inc.*, 1994

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<sup>8</sup> *See Texas Roadhouse*, 2014 WL 4471521, at \*3 (“While the request is framed as one for ‘factual information’ . . . the witness . . . would necessarily be asked to interpret the facts and discuss how the EEOC decided to proceed in preparing the case. This topic is not appropriate for a Rule 30(b)(6) deposition.”).

WL 376052, at \*2-3 (S.D.N.Y. Jul. 18, 1994) (ruling that 30(b)(6) witness did not have to answer questions relating to allegations in the complaint and possible defenses the defendant may have). Thus, topics 1, 2, 7, and 8 are impermissible.

Topics 1, 2, 6-8, 10, and 11 are duplicative of other testimony sought by Leachco. On the same day it noticed this 30(b)(6)-type deposition, Leachco also noticed the depositions of Hope Nesteruk, Zachary Foster, and Suad Wanna-Nakamura. Ms. Nesteruk was an engineer in CPSC's mechanical division who worked on the mechanical testing of the Podster. Mr. Foster is an Industrial Engineer in CPSC's human factors division who evaluated the Podster design, packaging, warning labels, and consumer use of the Podster. Ms. Wanna-Nakamura is a physiologist in CPSC's Health Sciences division that evaluated the potential for consumers to be injured by foreseeable uses of the Podster.

Each of these deponents will be able to testify as to their personal knowledge regarding their training and education (topic 6); the nature and scope of the work they did related to the Podster investigation (topics 1-2, 7-8); and any studies, tests, analyses, examinations, inspections, or other assessments performed on the Podster (topic 10) or (if relevant to the Podster) any other infant consumer product they reviewed or analyzed as part of their Podster investigation (topic 11). Thus, each of topics 1-2, 6-8, and 10-11 are duplicative of other testimony that Leachco will obtain from deposing CPSC's technical staff in their individual capacities and are improper in the context of a 30(b)(6)-type deposition request. *See Source One Staffing*, 2013 WL 25033, at \*3 (noting that one of the rationales to preclude or limit 30(b)(6) deposition testimony is that the testimony sought is "unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive," citing Fed. R. Civ. P. 26(b)(2)(C)).



Topic 9, which requests testimony about “CPSC’s requested relief in this proceeding and the basis(-es) therefor,” should not be permitted as it would inherently reveal CPSC’s legal theories and positions on this issue, and discovery on this topic may be obtained through less burdensome means. *See Texas Roadhouse*, 2014 WL 4471521, at \*3-4 (holding that testimony related to “equitable relief and remedies sought” by a government agency was not a proper 30(b)(6) deposition topic because the “information requested can be adequately provided by written discovery”). As many federal courts have held, 30(b)(6) topics such as this one are impermissible attempts to inquire into the mental processes and strategies of governmental agencies. *See Morelli*, 143 F.R.D. at 47; *see also U.S. ex rel. Baklid-Kunz*, 2012 WL 3537070, at \*3 (“[O]pinion work product enjoys a nearly absolute immunity and can be discovered only in very rare and extraordinary circumstances.”) (citing *Cox v. Administrator U.S. Steel & Carnegie*, 17 F.3d 1386, 1422 (11th Cir. 1994)).

Further, unless Complaint Counsel misunderstands this vague topic (in which case the topic would necessarily not be described with “reasonable particularity”), the only individuals at CPSC who have knowledge to testify on the “requested relief in this proceeding” are the attorneys involved in the litigation. There is a significantly high bar for courts to allow the deposition of opposing counsel in a proceeding, *see Shelton v. Am. Motors Corp.*, 805 F.2d 1323, 1327 (8th Cir. 1986), and Leachco’s notice falls well short of any exceptional circumstances finding that would permit such deposition. *See U.S. Grant Res.*, 2004 WL 1444951, at \*10 (“The notice at issue seeks either the deposition of opposing counsel or the practical equivalent thereof. Courts in this and other districts generally take a critical view of such a tactic.”). Thus, topic 9 is simply impermissible.

Similarly, topic 12, which requests testimony about communications between Complaint Counsel and third parties, would also require the deposition of one of CPSC's litigation attorneys, because the attorneys who handled the investigation of the Podster are also involved in this lawsuit. Again, Leachco's notice fails to demonstrate any exceptional circumstances that would justify such deposition of opposing counsel. *See S.E.C. v. Rosenfeld*, No. 97 CIV. 1467 (RPP), 1997 WL 576021, at \*2 (S.D.N.Y. Sep. 16, 1997) (finding similar deposition topics related to communications between the SEC and others improper because the proffered testimony would necessarily "call[] for the revealing of information gathered by the SEC attorneys in anticipation of bringing the instant enforcement proceedings"). Thus, topic 12 is similarly impermissible.

Moreover, Topic 12 is duplicative, as Complaint Counsel has produced thousands of documents as part of discovery, many of which would fit within this topic. Indeed, this topic reads like a Request for Production. *See Source One Staffing*, 2013 WL 25033, at \*6 (ruling that a topic requesting testimony on "all correspondence or documents the EEOC sent to" defendant or others was an improper 30(b)(6) topic and "better answered through serving interrogatories or document requests."); *Texas Roadhouse*, 2014 WL 4471521, at \*4 (same).

Finally, topics 3 through 5 are entirely within the confines of privilege, particularly the deliberative process and work product privileges. Topics 3 and 5 request testimony about how the CPSC evaluates products for defects and substantial product hazards. First, these topics are overly broad as they seek information about all of CPSC's investigations and not just its Podster investigation. Second, testimony on these topics related to the Podster necessarily delve into privilege concerns, which is impermissible testimony under Rule 30(b)(6), because facts related to these topics are intertwined with Complaint Counsel's mental processes and legal strategies.

*See Source One Staffing*, 2013 WL 25033, at \*5 (holding that the 30(b)(6) topic of “Policies, procedures and/or practices the EEOC used that determined or affected the scope of the investigation conducted” was not a proper subject of discovery because the topic required an examination of “the sufficiency of the EEOC’s pre-suit investigation”).

Topic 4 requests testimony concerning CPSC’s prosecutorial discretion about “which consumer products to pursue for recall.” Any testimony on this topic would squarely fall within the deliberative process privilege of any government agency. *See Texas Roadhouse*, 2014 WL 4471521, at \*6 (holding that defendants were not entitled to discovery concerning the topic of “internal directives regarding the handling” of EEOC’s investigations “as it requests information protected by the governmental deliberative process”). Thus, topics 3 through 5 are impermissible.

Accordingly, a review of Leachco’s 30(b)(6)-type Notice shows that each of Leachco’s proposed topic areas is impermissible for the reasons stated above.

## **V. CONCLUSION**

Thus, for the reasons set forth herein, Complaint Counsel requests that this Court limit the deposition of Celestine Kish to ensure that appropriate guardrails exist that will prevent inquiry into areas of her expert testimony, that Ms. Kish’s deposition be scheduled for March 23 with these guardrails in place; and further requests that the deposition of the Consumer Product Safety Commission, which is essentially an improper 30(b)(6) deposition, not be had.

Dated this 3rd day of March, 2023

Respectfully submitted,

A handwritten signature in blue ink, reading "Michael J. Rogal". The signature is fluid and cursive, with the first name "Michael" and last name "Rogal" clearly legible. The middle initial "J." is smaller and less distinct. The signature is positioned above a horizontal line.

---

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

**CERTIFICATE OF SERVICE**

I hereby certify that on March 3, 2023, I served Complaint Counsel's Opposition to Leachco, Inc.'s Notices of Deposition of Celestine Kish and Consumer Product Safety Commission 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:*

Oliver J. Dunford  
Pacific Legal Foundation  
4440 PGA Blvd., Suite 307  
Palm Beach Gardens, FL 33410  
Email: ODunford@pacificlegal.org

John F. Kerkhoff  
Frank D. Garrison  
Pacific Legal Foundation  
3100 Clarendon Boulevard, Suite 610  
Arlington, VA 22201  
Email: JKerkhoff@pacificlegal.org  
FGarrison@pacificlegal.org

A handwritten signature in blue ink, reading "Michael J. Rogal", is written over a horizontal line.

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

# **EXHIBIT A**

**From:** [Oliver J. Dunford](#)  
**To:** [Ruff, Brett](#); [Thomas, Rosalee](#); [ODonnell, Caitlin](#); [Rogal, Michael](#); [Millett, Frederick](#); [Reyes, Gregory](#)  
**Cc:** [John F. Kerkhoff](#); [Frank Garrison](#)  
**Subject:** RE: In the Matter of Leachco, Inc., CPSC Docket No. 22-1  
**Date:** Wednesday, February 22, 2023 5:21:20 PM  
**Attachments:** [image001.png](#)

---

Brett,

We will depose Zachary Foster, Celestine Kish, Hope Nesteruk, Christopher Nguyen, and Suad Wanna-Nakamura during the weeks of March 6 and 13. We will also depose the CPSC in its agency capacity, and we will serve a notice with topics.

The depositions will be conducted at our office in Arlington, Virginia.

Would you please let me know which dates are best for these depositions.

Thank you,  
Oliver

**Oliver J. Dunford** | Senior Attorney  
Pacific Legal Foundation  
4440 PGA Blvd., Suite 307 | Palm Beach Gardens, FL 33410  
916.503.9060 (Direct) | 216.702.7027 (Cell)



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---

**From:** Ruff, Brett <BRuff@cpsc.gov>  
**Sent:** Wednesday, January 25, 2023 5:38 PM  
**To:** Oliver J. Dunford <ODunford@pacificlegal.org>; Thomas, Rosalee <RBThomas@cpsc.gov>; ODonnell, Caitlin <CODonnell@cpsc.gov>; Rogal, Michael <MRogal@cpsc.gov>; Millett, Frederick <FMillett@cpsc.gov>; Reyes, Gregory <GReyes@cpsc.gov>  
**Cc:** John F. Kerkhoff <JKerkhoff@pacificlegal.org>; Frank Garrison <FGarrison@pacificlegal.org>  
**Subject:** RE: In the Matter of Leachco, Inc., CPSC Docket No. 22-1

Oliver,

Please be advised that Ms. Rauchschalbe no longer works for the CPSC. When you have decided which CPSC employees to depose and the timeframe during which you would like to do so, let us know and we can discuss scheduling the depositions.

**Brett Ruff**

**Trial Attorney**

U.S. Consumer Product Safety Commission

Division of Enforcement and Litigation | Office of Compliance and Field Operations  
4330 East West Highway | Bethesda, MD 20814

---

**From:** Oliver J. Dunford <[ODunford@pacificlegal.org](mailto:ODunford@pacificlegal.org)>

**Sent:** Wednesday, January 25, 2023 1:46 PM

**To:** Ruff, Brett <[BRuff@cpsc.gov](mailto:BRuff@cpsc.gov)>; Thomas, Rosalee <[RBThomas@cpsc.gov](mailto:RBThomas@cpsc.gov)>; ODonnell, Caitlin <[CODonnell@cpsc.gov](mailto:CODonnell@cpsc.gov)>; Rogal, Michael <[MRogal@cpsc.gov](mailto:MRogal@cpsc.gov)>; Millett, Frederick <[FMillett@cpsc.gov](mailto:FMillett@cpsc.gov)>; Reyes, Gregory <[GReyes@cpsc.gov](mailto:GReyes@cpsc.gov)>; Ippolito, Leah <[Lippolito@cpsc.gov](mailto:Lippolito@cpsc.gov)>; Murphy, Mary <[MMurphy@cpsc.gov](mailto:MMurphy@cpsc.gov)>; Kaye, Robert <[RKaye@cpsc.gov](mailto:RKaye@cpsc.gov)>

**Cc:** John F. Kerkhoff <[JKerkhoff@pacificlegal.org](mailto:JKerkhoff@pacificlegal.org)>; Frank Garrison <[FGarrison@pacificlegal.org](mailto:FGarrison@pacificlegal.org)>

**Subject:** In the Matter of Leachco, Inc., CPSC Docket No. 22-1

Counsel,

I've attached Leachco's First Set of Requests for Admission, Second Set of Requests for the Production of Documents, and Second Set of Interrogatories.

Also, in light of the Commission's January 20, 2023 production, I remind Counsel of the obligation to supplement, as necessary, the Commission's responses to Leachco's earlier interrogatories and document requests.

Finally, while we have not made any final decisions, we intend to depose one or more of the following individuals: Zachary Foster, Celestine Kish, Hope Nesteruk, Christopher Nguyen, Renae Rauchschalbe, and Suad Wanna-Nakamura. We can discuss mutually convenient dates and times.

Thank you,  
Oliver

**Oliver J. Dunford | Senior Attorney**

Pacific Legal Foundation

4440 PGA Blvd., Suite 307 | Palm Beach Gardens, FL 33410

916.503.9060 (Direct) | 216.702.7027 (Cell)



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<http://www.cpsc.gov/en/Newsroom/Subscribe> \*\*\*\*\*!!!

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# **EXHIBIT B**

**From:** [Reyes, Gregory](#)  
**To:** [Oliver J. Dunford](#); [Frank Garrison](#); [John F. Kerkhoff](#)  
**Cc:** [Ruff, Brett](#); [Rogal, Michael](#)  
**Subject:** RE: In the Matter of Leachco, Inc., CPSC Docket No. 22-1  
**Date:** Monday, February 27, 2023 10:11:00 AM  
**Attachments:** [image001.png](#)

---

Counsel:

We disagree with your reading of the schedule. The Order on Prehearing Schedule states that February 2, 2023 was the last day to serve written discovery. You do not get to revise otherwise improper requests after the deadline for filing written discovery. There is no motion to compel pending on these RFAs, so we do not think the parties are “effectively” at this stage.

Regarding depositions, you still have not provided a list of topics for your proposed “agency deposition.” Again, and as noted in my email below, we cannot even begin to consider such a request, much less identify a person and track down availability, without a potential list of topics. If you would like us to consider that request, we again request a potential list of topics. We believe that your unilateral notice of such a deposition would be improper without additional information on your proposed topics.

For Ms. Kish, we can agree to her deposition, ***provided that***, you agree to ask only questions regarding “facts related to this case” not acquired or developed in anticipation of litigation or for trial. If you delve into areas of her expert testimony we will object and advise her not to answer, based on her designation as an expert that will be providing written testimony in accordance with the Order on Prehearing Schedule. If you agree to this, let us know and we can ask Ms. Kish for her availability.

Regards,  
Greg

---

**Gregory M. Reyes**

**Supervisory Attorney, Division of Enforcement and Litigation**

[U.S. Consumer Product Safety Commission](#) | Office of Compliance and Field Operations

4330 East West Highway | Bethesda, MD 20814

**Office:** (301) 504-7220 | **Mobile:** (301) 787-1751

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---

**From:** Oliver J. Dunford <ODunford@pacifical.org>

**Sent:** Monday, February 27, 2023 8:07 AM

**To:** Reyes, Gregory <GReyes@cpsc.gov>; Ruff, Brett <BRuff@cpsc.gov>; Rogal, Michael <MRogal@cpsc.gov>

**Cc:** Frank Garrison <FGarrison@pacifical.org>; John F. Kerkhoff <JKerkhoff@pacifical.org>

**Subject:** RE: In the Matter of Leachco, Inc., CPSC Docket No. 22-1

Counsel,

With respect to the RFAs, we were following Judge Young's advice to reduce and/or revise our requests. And we disagree that the deadline for serving written requests prevents the parties from considering revisions, particularly as the fact-discovery deadline is still three weeks away. Further, that deadline—pursuant to the Court's schedule—is expressly subject to the resolution of any motions to compel, which is effectively where the parties are here. In any event, we will file our response to your Motion for Protective Order.

Thank you for identifying potential deposition dates. We will be issue notices. Your objections to Ms. Kish and an agency deposition are improper, however. First, Ms. Kish's name appears on relevant documents and, regardless, you identified her as a percipient witness in responses to Leachco's interrogatories. That she may also testify as an expert does not relieve your obligation to present her for a deposition regarding her knowledge of facts related to this case. We will, therefore, serve a notice for her deposition.

Similarly, your assertion that there is "no support" for an agency deposition is mistaken. Under 16 C.F.R. § 1025.35(b) parties may "take a deposition of another party." And Section 1025.35(i)(2) expressly contemplates depositions of "anyone who at the time of the taking of the deposition was an officer, director, managing agent, or person otherwise *designated to testify on behalf of a . . . governmental entity which is a party to the proceedings.*" The Commission is, of course, "another party" (§1025.35(b)) and a "party to the proceeding" (§1025.35(i)(2)), and we are entitled to depose "an officer, director, managing agent, or person otherwise designated to testify on behalf of" the Commission. We will, therefore, serve a notice for this deposition.

Thank you,  
Oliver

**Oliver J. Dunford** | Senior Attorney

Pacific Legal Foundation  
4440 PGA Blvd., Suite 307 | Palm Beach Gardens, FL 33410  
916.503.9060 (Direct) | 216.702.7027 (Cell)



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---

**From:** Reyes, Gregory <[GReyes@cpsc.gov](mailto:GReyes@cpsc.gov)>

**Sent:** Friday, February 24, 2023 3:03 PM

**To:** Oliver J. Dunford <[ODunford@pacificlegal.org](mailto:ODunford@pacificlegal.org)>; Frank Garrison <[FGarrison@pacificlegal.org](mailto:FGarrison@pacificlegal.org)>;  
John F. Kerkhoff <[JKerkhoff@pacificlegal.org](mailto:JKerkhoff@pacificlegal.org)>

**Cc:** Ruff, Brett <[BRuff@cpsc.gov](mailto:BRuff@cpsc.gov)>; Rogal, Michael <[MRogal@cpsc.gov](mailto:MRogal@cpsc.gov)>

**Subject:** RE: In the Matter of Leachco, Inc., CPSC Docket No. 22-1

Counsel:

Regarding the RFAs, we plan on serving our responses today as noted in our motion. If you plan on withdrawing certain RFAs, you can alert the judge that you are doing so in your Monday filing. As

you know, the deadline for serving written discovery has passed, so we will not agree to the serving of additional or revised RFAs.

Regarding depositions, we have been tracking down the availability of CPSC staff you identified in your email sent late Wednesday.

Here is the availability for the following CPSC staff members:

Zachary Foster – March 8

Christopher Nguyen – March 9

Suad Wanna-Nakamura – March 13

Hope Nesteruk – March 15

For Celestine Kish, we plan on designating her as an expert and thus object to her deposition. As you know, the Rules of Practice limit discovery for experts and depositions are not a permitted type. See 16 C.F.R. § 1025.31(c)(4). We will provide Ms. Kish's expert testimony in accordance with the Judge's schedule and you will have an opportunity to conduct cross examination during the hearing.

We also do not think an "agency deposition" is appropriate, as there is no support in the Rules of Practice for such a deposition. In any event, without additional information on the types of topics you are considering, we are unable to even properly consider such a request.

Regards,  
Greg

---

**Gregory M. Reyes**

**Supervisory Attorney, Division of Enforcement and Litigation**

U.S. Consumer Product Safety Commission | Office of Compliance and Field Operations

4330 East West Highway | Bethesda, MD 20814

**Office:** (301) 504-7220 | **Mobile:** (301) 787-1751

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---

**From:** Oliver J. Dunford <[ODunford@pacificlegal.org](mailto:ODunford@pacificlegal.org)>

**Sent:** Friday, February 24, 2023 11:17 AM

**To:** Ruff, Brett <[BRuff@cpsc.gov](mailto:BRuff@cpsc.gov)>; Reyes, Gregory <[GReyes@cpsc.gov](mailto:GReyes@cpsc.gov)>; Rogal, Michael <[MRogal@cpsc.gov](mailto:MRogal@cpsc.gov)>

**Cc:** John F. Kerkhoff <[JKerkhoff@pacificlegal.org](mailto:JKerkhoff@pacificlegal.org)>; Frank Garrison <[FGarrison@pacificlegal.org](mailto:FGarrison@pacificlegal.org)>

**Subject:** In the Matter of Leachco, Inc., CPSC Docket No. 22-1

Counsel,

Two things. First, in light of Judge Young's comments about Leachco's RFAs, we will withdraw our pending set of RFAs and serve (no later than March 3) a revised set of RFAs. Would you agree to

file a Joint Notice to that effect? I don't know whether you'd prefer to withdraw your motion, ask the judge to withhold consideration, note that you may amend the motion after reviewing our revised RFAs—or something else. In any event, because our response is otherwise due Monday, we'd like to get the Notice on file today or Monday.

Second, just a reminder to let us know available dates to depose CPSC personnel during the weeks of March 6 and March 13. We intend to conduct the agency deposition last (March 16 or 17) but, otherwise, we are willing to accommodate schedules. We intend to serve notices Monday.

If you'd like to talk about any of this, I'm available all day today.

Thank you,  
Oliver

**Oliver J. Dunford | Senior Attorney**

Pacific Legal Foundation

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<http://www.cpsc.gov/en/Newsroom/Subscribe> \*\*\*\*\*!!!

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# **EXHIBIT C**

**From:** [Oliver J. Dunford](#)  
**To:** [Murphy, Mary](#); [Kaye, Robert](#); [Ippolito, Leah](#); [Ruff, Brett](#); [Thomas, Rosalee](#); [ODonnell, Caitlin](#); [Rogal, Michael](#); [Millett, Frederick](#); [Reyes, Gregory](#)  
**Cc:** [Frank Garrison](#); [John F. Kerkhoff](#); [Oliver J. Dunford](#)  
**Subject:** In the Matter of Leachco, Inc., CPSC Docket No. 22-1  
**Date:** Monday, February 27, 2023 7:02:43 PM  
**Attachments:** [image001.png](#)  
[Leachco Notice of Deposition - CPSC.pdf](#)  
[Leachco Notice of Deposition - Nesteruk.pdf](#)  
[Leachco Notice of Deposition - Nguyen.pdf](#)  
[Leachco Notice of Deposition - Foster.pdf](#)  
[Leachco Notice of Deposition - Kish.pdf](#)  
[Leachco Notice of Deposition - Wanna-Nakamura.pdf](#)

---

Counsel,

Here are Leachco's Deposition Notices. We have noticed Ms. Kish's deposition for March 7, but we can reschedule if Ms. Kish is unavailable that day.

Thank you,  
Oliver

**Oliver J. Dunford** | Senior Attorney  
Pacific Legal Foundation  
4440 PGA Blvd., Suite 307 | Palm Beach Gardens, FL 33410  
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# **EXHIBIT D**



IN THE MATTER OF LEACHCO, INC.

DOCKET NO. 22-1

U.S. CONSUMER PRODUCT SAFETY COMMISSION

BETHESDA, MARYLAND

Wednesday, September 7, 2022

APPEARANCES:

Presiding Officer:

Michael G. Young, Administrative Law Judge

On behalf of the Complaint:

Brett Ruff, Esq.

Michael Rogal, Esq.

Rosalee Thomas, Esq.

Leah Ippolito, Esq.

U.S. Consumer Product and Safety Commission

Office of Compliance and Enforcement

4330 East West Highway, Suite 400

Bethesda, Maryland 20814

On behalf of the Respondent:

Bettina Strauss, Esq.

James Emanuel, Esq.

Bryan Cave Leighton Paisner

211 N. Broadway, Suite 3600

St. Louis, MO 63102

APPEARANCES (cont.):

On behalf of the Respondent (cont.):

John Kerkhoff, Esq.

Oliver Dunford, Esq.

Frank Garrison, Esq.

Pacific Legal Foundation

From the Office of the Secretary, CPSC:

Nina DiPadova, Esq.

Also Present:

Frank Robert Perilla, Paralegal

Christopher Jannace, Law Clerk

## C O N T E N T S

Appearances of Counsel	41
------------------------	----

1 P R O C E E D I N G S

2 JUDGE YOUNG: That said, we will come to order  
3 and go on the record in the matter of Leachco, Inc.,  
4 CPSC Docket No. 22-1. I believe we have all of the  
5 parties well-represented by numerous counsel here. We  
6 have Ms. DiPadova representing the Commission. And her  
7 assistance has been very helpful to me in these  
8 proceedings. Is anybody aware of anybody who was  
9 supposed to be on this call who is not present at this  
10 moment?

11 MS. STRAUSS: Not for the Defendant, Your  
12 Honor.

13 MR. RUFF: No, Your Honor, not for complaint  
14 counsel.

15 JUDGE YOUNG: Very well. We will proceed. I  
16 called this conference because it appears the parties  
17 are having some difficulty with discovery in this case.  
18 And perhaps you seem to have a misunderstanding of the  
19 purpose of discovery. So I thought I would take a  
20 moment to explain to you what the purpose of discovery  
21 is. It is not a tool to help your client win the case.  
22 It is not a thicket or a game you play to help you

1     conceal inconvenient facts. The purpose of discovery  
2     is this. It is to ensure that the parties efficiently  
3     collect and transmit to and from one another all of the  
4     relevant and non-privileged evidence in this case so  
5     that you, the counsel, may distill from me, the Judge,  
6     the evidence that you believe is necessary and that I  
7     will find necessary to render a just decision in this  
8     case. That's it.

9             Anything extraneous to, distracting from,  
10    detracting from, demeaning to that process, I'm not  
11    going to view favorably from this point forward. We  
12    did agree to some limits on discovery. We discussed  
13    further limits. These are safeguards that could be  
14    imposed or have been imposed, but they are not the only  
15    limits. I'm a golden rule guy. You don't want or  
16    would not want to see certain conduct from your  
17    opponent, your adversary in this case. Do not  
18    demonstrate or exhibit that kind of behavior yourself.

19            In this case in particular, I think you ought  
20    to bear in mind your role and your responsibility and  
21    your capabilities because I do. We have something in  
22    the Mine Act. We're talking about knowledge and

1 notice, the reasonable mine operator standard, which  
2 holds an operator to know things that a reasonable mine  
3 operator would know if -- if he or she is familiar with  
4 the mine, the mining industry and the protective  
5 purpose of the standard at issue.

6           You're even greater than that. I'm going to  
7 hold you to a higher standard because you are, in fact,  
8 the subject matter experts in this case. And you are  
9 professional counsel who have a duty to one another and  
10 to the tribunal to conduct yourselves professionally in  
11 these discovery pretrial proceedings.

12           We have a trial date that has been set for  
13 June of 2023. When we set that trial date in April, it  
14 seemed a long way away. But time passes, and it's  
15 precious. It's a nonrenewable resource. And once you  
16 are in an undertaking like this, you have to bear that  
17 in mind and make sure that you don't waste the time and  
18 the energy and the effort and your clients' resources  
19 on things that do not serve the purpose that I just  
20 stated for you in the discovery process.

21           So, for example, I'm going to pick on you all  
22 a little bit. Mr. Ruff, is it true that, as Mr.

1 Dunford has alleged in an email, that in response to an  
2 interrogatory, you didn't produce any of the facts or  
3 refused to produce any facts supporting the decision to  
4 bring and initiate this matter against the Respondent?

5 MR. RUFF: No, Your Honor. At this point, we  
6 produced 4800 pages of documents related to the -- the  
7 evidence that has been cultivated here. The -- the --  
8 the quotation that -- that Mr. Dunford used in his  
9 email was a quotation from our opposition to the motion  
10 to compel discovery in which we were telling the Court  
11 how we intended to produce at the hearing in June, how  
12 we intend to present this evidence.

13 But at this stage, Your Honor, we've produced  
14 internal product safety assessments by a mechanical  
15 engineer, a physiologist and a human factors engineer.  
16 We produced those back in April. We've also produced  
17 the in-depth investigation reports about the two fatal  
18 incidents in this case. And we've made a variety of  
19 other productions. And so we have produced the  
20 evidence at issue in this case. The -- the particular  
21 quotation that was taken from our brief was talking  
22 about how that would be presented at the ultimate



1     hearing here.

2                 JUDGE YOUNG: All right. That's some --  
3     somewhat reassuring. Ms. Strauss?

4                 MS. STRAUSS: May I address what Mr. Ruff just  
5     said?

6                 JUDGE YOUNG: Sure.

7                 MS. STRAUSS: Because we -- we absolutely take  
8     issue with that statement. And I think a -- an  
9     evaluation of their responses shows that that is not  
10    completely true. And I'm sorry to have to say it that  
11    way. First of all, I don't know what 4800 documents  
12    he's talking about. We received, initially, 295  
13    documents, 40 of which have anything to do with the  
14    issues in this case that we didn't already have.  
15    Pardon me.

16                JUDGE YOUNG: I hate to be rude and interrupt,  
17    but I think we're wandering off into something that  
18    might not be relevant in light of what I said at the  
19    beginning of this conference.

20                MS. STRAUSS: I apologize if that's the case,  
21    Your Honor. We --

22                JUDGE YOUNG: It's understandable. And, you

1 know, I --

2 MS. STRAUSS: No, if --

3 JUDGE YOUNG: I understand your need to  
4 respond and picking, in turn, on you all, I would note  
5 that submitting responses to interrogatories that  
6 pretend you don't know what the case is about and which  
7 contain boilerplate language that has been specifically  
8 prohibited by the Federal Rules of Civil Procedure,  
9 which I understand don't apply here, that's not viewed  
10 favorably either.

11 As I said, subject matter experts, that's the  
12 standard. So as you go forward in conducting  
13 discovery, my expectation is this, that when you get a  
14 response, you think about it. You look at it as the  
15 subject matter experts with full knowledge about what  
16 this case is about and what the relevant evidence in  
17 this case is and think about it from your opponent's  
18 standpoint, the evidence that you believe your opponent  
19 is going to want, and ask yourself two questions.

20 Is it relevant to the issues in this case, and  
21 is it privileged? Three questions. And is it  
22 responsive to the -- to the interrogatory? You know,

1 the interrogatories and requests for admission are  
2 fantastic tools if you use them well. But you got to  
3 -- you got to think before you send these things out.  
4 We had a discussion about limits on interrogatories.

5           And I'm not going to extend limits and may  
6 impose limits that are more severe if the  
7 interrogatories are not thoughtfully undertaken by the  
8 parties in this case. And I promise you, you don't  
9 want me involved in micromanaging the discovery  
10 process. What you do want to do is leave this  
11 conference, go back and rethink the approach you have  
12 undertaken so far and basically use the opportunity for  
13 a reset to be responsive to the reasonable requests of  
14 your opponents and narrow your objections down to the  
15 things that are truly objectionable and that might  
16 provide a necessity for me to get involved.

17           I don't mind getting involved if there is a  
18 good-faith dispute about something. And that may  
19 happen and is probably going to happen. But you have  
20 to narrow that field, and you can't chew up the  
21 available time that we have pretrial because, I mean,  
22 if you're going to take Moscow, you need to understand

1 the logistical difficulties of that and appreciate the  
2 fact that winter is coming. And I mean that literally  
3 here because, before long, it's going to be  
4 Thanksgiving. And then it's going to be the winter  
5 holiday season.

6           And you don't know what difficulties you may  
7 encounter. These are just the things we know about on  
8 the way to keeping this thing on track for a trial in  
9 June. And I intend to keep it on track for trial in  
10 June. So having explained it that way, I'll begin with  
11 Mr. Ruff and ask the parties do counsel have any  
12 questions or issues that they need to bring to my  
13 attention at this point so that we can go forward with  
14 a clear understanding of what discovery is for and what  
15 you are to do going forward from here.

16           MR. RUFF: No, Your Honor. We understand. We  
17 will -- we will convene internally, and then we will  
18 reach out to opposing counsel and I -- I think try to  
19 work through the issues that have been breached before  
20 Your Honor, hopefully able to -- to work for it without  
21 involving you unless there is an acute issue that --  
22 that needs your attention.

1 JUDGE YOUNG: Ms. Strauss and/or Mr. Dunford,  
2 both of you, either of you?

3 MS. STRAUSS: Judge, I am aware that the right  
4 answer here is the one that Mr. Ruff just provided. I  
5 will tell you, however, that extensive effort has been  
6 made to get from complaint counsel the basis for this  
7 action. And it is -- they -- they have maintained  
8 privilege and relevance objections that have kept from  
9 us the very basis for this lawsuit. We just received,  
10 on Friday, a privilege log with more than 500 entries  
11 which actually refer to more than 700 documents. And  
12 we don't have enough information even in the privilege  
13 log to address whether privilege applies. And that  
14 dwarfs the 40 docked pages that we received that  
15 actually evaluated our product.

16 Last night, we received, apparently, 1500  
17 pages after I left the office. And I haven't had any  
18 opportunity to review those. But I am mindful and  
19 quite fearful, Your Honor, about your comments about  
20 keeping this case on track because when we wait more  
21 than three months for a privilege log that contains 10  
22 times the number of materials we received and doesn't

1 identify the documents that are allegedly privileged, I  
2 don't know how we can do that.

3 JUDGE YOUNG: Well, I know one way that it  
4 could be done. And maybe Mr. Ruff -- and I'm hopeful  
5 about this -- in providing the 1500 pages, has thought  
6 anew about the discovery process. But if not, Mr.  
7 Ruff, at some point, if there is not a basis for this  
8 complaint and there is a motion to dismiss it because  
9 no factual basis has been established and it's  
10 arbitrary and capricious, you're going to have to  
11 produce an affidavit of supporting documents.

12 So I would suggest that you might anticipate  
13 that and save us some steps, some trouble, some time  
14 and some energy by avoiding that necessity because if  
15 there is not a factual basis for the complaint having  
16 being filed and that is challenged and you need to show  
17 your cards, I'm going to make you show your cards, or  
18 I'm going to dismiss the complaint.

19 MR. RUFF: We understand, Your Honor. And our  
20 position is that -- that we have produced documents and  
21 materials that support our allegations. I recognize  
22 that there might be a difference in opinion on

1 Leachco's part, but we have made productions that --  
2 that show why we believe that the Podster is a  
3 substantial product hazard.

4 MS. STRAUSS: I think Your Honor can see the  
5 statements in counsel's opposition that undermine that  
6 statement. I don't believe it's true. We haven't  
7 received the data. What we've received is a summary  
8 that addresses other products, not ours, comparisons to  
9 other products, not ours, and no data that support that  
10 because they maintain, apparently, a privilege and a  
11 relevance objection.

12 And instead, what they've said is they are not  
13 going to rely on that material. They are going to have  
14 experts who are going to prove the product defect. So  
15 it's a bait-and-switch and a hide-the-ball, and we are  
16 in a very compromised position. But we appreciate Your  
17 Honor's comment about the motion to dismiss. And if  
18 that's what's necessary, we can certainly pursue that  
19 because I think Your Honor will see that they haven't  
20 produced a basis. And they have almost said that they  
21 are not going to produce a basis.

22 JUDGE YOUNG: It's too early to tell. Again,

1 I told you what I believe about discovery, what I  
2 expect and anticipate will happen in conformance to  
3 that expectation. If it does not, I'll deal with it.  
4 We can -- we can continue having these conferences, and  
5 we will as much as necessary. But while I recognize I  
6 don't have any formal, clear and express means of  
7 sanctioning parties and counsel in this case, the  
8 evidence is going to come in, in my discretion.

9           And how you present that and when is going to  
10 be important. You need to be clear and careful and  
11 circumspect in how you respond to these discovery  
12 requests and how you submit them to one another to make  
13 sure that you're not being abusive, evasive, that  
14 you're not relying on an opportunity to try and spring  
15 this case into some shape-shifting form at some later  
16 stage if that may be what's -- what's happening here.

17           Mr. Ruff, this is a serious matter. I mean --  
18 and I know you appreciate that, and I know the CPSC  
19 fully appreciates the gravity of bringing an action  
20 against a private company in a way that may be fatal to  
21 their -- their economic interests and their -- and  
22 their lifeblood. You need to have the basis to have



1 initiated that action, or it's arbitrary and  
2 capricious. So if they ask for the facts that led you  
3 to bring this action against them, be clear about it.  
4 And Ms. Strauss, likewise. If they ask for data and  
5 information about the product, if they want to know  
6 what you knew in product development, what you've  
7 learned since then, the experiences, they ask you these  
8 things, three questions. Is it responsive? Is it  
9 relevant? And is it privileged? And that's it.  
10 And --

11 MS. STRAUSS: We understand that.

12 JUDGE YOUNG: And I expect the parties to  
13 conduct themselves accordingly. I don't want to harp  
14 on this any further. So -- and I don't want to  
15 continue to argue particular points. My hope is you  
16 all will go back and look at what you're doing and  
17 decide is it or is it not in conformance to what I  
18 expect you to be doing at this stage of the proceeding  
19 and to move forward and try to get this thing back on  
20 the rails so that we can have the trial in June because  
21 I'm not inclined to continue a trial date except for  
22 agencies that aren't within the control of the parties

1 to this matter. And wasting time is something that is  
2 within your control wholly. So don't do it.

3 MR. DUNFORD: Your Honor, Oliver Dunford. May  
4 I --

5 JUDGE YOUNG: Yes, sir.

6 MR. DUNFORD: Thank you. As -- obviously, as  
7 you've seen, Ms. Strauss has been taking the lead so  
8 far because we at PLF are still catching up. I think  
9 we intend, and we can meet the June trial deadline.  
10 But we do need some time to catch up. Ms. Strauss will  
11 be taking a backseat here.

12 We are -- because of the economics of the  
13 situation, we are taking the lead. We do need some  
14 time to catch up on the discovery that has been  
15 produced as well as the -- just getting up to speed on  
16 -- on the issues. And I understand that there was an  
17 agreement on discovery dates, although I -- I don't see  
18 anything on the public docket.

19 And so I'm asking whether we can push some of  
20 those dates back to allow us some time, again, without  
21 -- without pushing back the -- the June trial deadline.

22 JUDGE YOUNG: That's an excellent transition.

1 I was hoping that we could maybe agree to a discovery  
2 timetable that works for everybody in light of the  
3 goals and expectations that we've talked about  
4 previously in this conference. I know that there were  
5 some depositions noticed. And it's difficult to take  
6 depositions without having the documentary evidence in  
7 advance. I -- I really like to see us set up a  
8 timetable here where we agree on when you're going to  
9 produce the documentary evidence that's been requested  
10 and when you're going to have a cut-off if you're going  
11 to, for example, submit requests for admissions and  
12 then proceed with the deposition schedule and have kind  
13 of a horizon for completing the depositions. Does that  
14 sound reasonable to everybody or are we not in a  
15 position to make those kinds of decisions today?

16 MS. STRAUSS: Your Honor, I would like to be  
17 in a position to do that. That's obviously an  
18 important and basic function in litigation of the  
19 parties. And we thought we were able to do that when  
20 we first met with Your Honor. But as I mentioned --  
21 and I'm sorry to keep harping on this -- we served  
22 discovery in the spring. We received responses May

1 31st. And we didn't get the privilege log until Friday  
2 of Labor Day weekend. The privilege log has more than  
3 500 entries. And it refers to attachments in another  
4 nearly 200 instances that dwarfs any production.

5 And until the CPSC counsel decides to take  
6 Your Honor at his word and limit their privilege  
7 claims, we simply don't have any ability to get those  
8 documents, and we've lost three months in this process.  
9 So --

10 JUDGE YOUNG: All right. So we're looking at  
11 -- I mean, I'm looking at the discovery timetable that  
12 was established. And we'll look into the fact that  
13 it's -- it's not posted to the docket. But this is  
14 a -- an order that was entered into -- see if I got a  
15 date on here -- it was agreed upon April 21st by Ms.  
16 Falvey and Mr. Ruff. It's titled "Joint Initial  
17 Proposed Prehearing Schedules and Statement of  
18 Prehearing Conferences."

19 And it had an initial response date of May  
20 13th, well in the past for first set of requests for  
21 production of documents, first set of interrogatories.  
22 We now know that that is not attainable and has not

1    been attained. The last day to serve any written  
2    discovery request was October 14th. I would tend to  
3    agree with Mr. Dunford that that doesn't seem  
4    especially realistic in light of the position we find  
5    ourselves in. And discovery was to have closed on  
6    November 16th, which again is not realistic in light of  
7    the events that have transpired.

8                So I -- I'd like to see what -- what are the  
9    realistic dates for these timetable events which you  
10   did agree to previously. May 13th for the responses, a  
11   first set of requests for production, first set of  
12   interrogatories, October 14th. The last day for  
13   written discovery and discovery closing on December  
14   16th -- and pardon me -- November 16th with the motions  
15   for summary judgment due on or before December 16th.

16               MS. STRAUSS: Your Honor, if I might respond  
17   to that, I would suggest that we have a three-month  
18   continuance of each of the dates because of the time  
19   that's been lost. And if we work together quickly and  
20   counsel take you at your word, we can get back up to  
21   speed. That would allow Mr. Dunford and his team to  
22   get fully up to speed.

1           The only hiccup I see in that is if a motion  
2   to dismiss is necessary, as Your Honor has suggested,  
3   in which case, I think the times would be altered  
4   depending on how long it takes Your Honor to address  
5   that. But we'll hope that three months would be  
6   sufficient. That would be our proposal.

7           JUDGE YOUNG: Mr. Ruff?

8           MR. RUFF: Your Honor, just to back up one  
9   moment to ensure that we're working off of the -- the  
10  right framework for deadlines, so in that -- the joint  
11  statement that Your Honor just read from, there is a  
12  proposal by complaint counsel on the second page. And  
13  then on the third page, there is the proposal by the  
14  Respondent that --

15          JUDGE YOUNG: Oh, I apologize.

16          MR. RUFF: -- puts --

17          JUDGE YOUNG: You're -- you're right.

18          MR. RUFF: And I believe that's --

19          MS. STRAUSS: That's correct.

20          MR. RUFF: That's the one that -- that Your  
21  Honor adopted. And -- and we do see -- we do recognize  
22  that -- that opposing counsel has -- well, that Leachco

1 has new lead counsel and that a modest continuance of  
2 discovery may be appropriate. But at the same time, we  
3 are guided by the principles and the rules at 1025.1  
4 and 1025.2 to keep moving this along expeditiously.

5           So looking at these -- these deadlines, we do  
6 have discovery closing in January, the end of January  
7 2023. We don't think we need to push that back three  
8 months. But we do understand that -- that a modest  
9 continuance of that and the corresponding deadlines may  
10 be appropriate to give Mr. Dunford an opportunity to --  
11 to adequately prepare.

12           MS. STRAUSS: Your Honor, I was going to  
13 address that, and I appreciate Mr. Ruff doing that  
14 because we did have a -- we submitted different  
15 schedules. That said, it's disingenuous for complaint  
16 counsel to say he wants to efficiently move things  
17 along when they tell us they are going to give us a  
18 privilege log on May 31st.

19           JUDGE YOUNG: Please. I do not want arguments  
20 about particular issues at this point.

21           MS. STRAUSS: Yes, sir.

22           JUDGE YOUNG: I understand that you have a

1 concern about that. I'm going to accommodate a  
2 reasonable delay. Three months seems kind of long to  
3 me, and I worry about pushing -- pushing things too far  
4 down the road and making it difficult to achieve that  
5 June trial date. Would two months be sufficient, Mr.  
6 Dunford?

7 MR. DUNFORD: Just to clarify, two months from  
8 which dates?

9 JUDGE YOUNG: Well, I mean, even two months,  
10 if we're looking at the -- the dates -- and again, this  
11 is my mistake because -- because the dates that were  
12 agreed upon were the later set of dates proposed by the  
13 Respondent. So if we're looking at two months, it  
14 would be -- last date of served written discovery would  
15 be February 2nd, roughly. Discovery would close March  
16 20th. Motions for summary decision would be due May  
17 3rd. And the responses thereto, looks like -- what is  
18 that? -- about six weeks afterwards. So you can -- we  
19 can still get the prehearing done if we moved it two  
20 months forward. But I would note, I mean, I know you  
21 need time to catch up. But it's not as though Leachco  
22 has been unrepresented or has been pro se and nothing



1 has been done. It seems like three months is a long  
2 time.

3 MS. STRAUSS: Your Honor?

4 JUDGE YOUNG: Yes, ma'am?

5 MS. STRAUSS: Tired of hearing about the  
6 privilege log. But again, we don't have the documents.  
7 We only learned about them, their existence, this last  
8 Friday, which was more than three months from the time  
9 that complaint counsel asserted the privileges. They  
10 are still not identified sufficiently. So I -- I find  
11 myself a little bit confused about how complaint  
12 counsel can say anything about moving things forward in  
13 less than three months when this delay has been  
14 entirely on their hands. We don't --

15 JUDGE YOUNG: More time doesn't seem to be the  
16 solution to that problem, Ms. Strauss. I mean, what we  
17 need is responsiveness to the purpose of discovery as  
18 I've outlined it. And the -- the need of the parties  
19 to gather and transmit this evidence and this  
20 information to one another. The -- at some point,  
21 whether it's one month, two months or three months,  
22 that doesn't solve your problem with the privilege log.

1 I know you need some more time to deal with this and  
2 perhaps to bring another motion to this Court if that  
3 remains unremedied.

4 And I'm willing to give some additional time  
5 for things like that. It just seems like three months  
6 is not going to work. Two months still seems kind of  
7 long. I'm trying to figure out what is the time that  
8 will be just and fair to the Respondent. And I want to  
9 make sure that we accommodate that, while at the same  
10 time, keeping this on track because, I mean, looking at  
11 -- from the standpoint of both of you, we have a public  
12 safety concern raised by the federal government, which  
13 is a serious matter and needs to be addressed as soon  
14 as practicable to protect the public health and safety  
15 if that's the issue and, at the same time, your client,  
16 Ms. Strauss, Mr. Dunford, that they're -- they're being  
17 strangled here from -- from significant commercial  
18 opportunities because you're in limbo. And the longer  
19 this drags on, that doesn't seem to be in your client's  
20 interest either.

21 MS. STRAUSS: That's true, Your Honor. And if  
22 I didn't have to give these documents to experts after

1 evaluating them, I would be able to immediately look at  
2 them and sort them out. But I don't have them in my  
3 possession, and I have third parties that need to  
4 evaluate them. And that just simply takes time. So I  
5 would still ask for three months. And of course I --  
6 whatever Your Honor decides, we -- we have to accept.  
7 But I just don't think complaint counsel can hide those  
8 documents for all this time. And maybe they'll turn  
9 them over right away. But we still have to evaluate  
10 them and hand them off to others.

11 JUDGE YOUNG: I understand that. I -- I'm not  
12 going to give more than two months. I'll hear from Mr.  
13 Ruff about whether two months -- Mr. Dunford, what was  
14 that?

15 MR. DUNFORD: I'd just like -- perhaps one way  
16 to approach this is that if we go with the two-month  
17 extension but, in the meantime, set some sort of  
18 deadline for production and resolution of the privilege  
19 log issue sooner rather than later -- and that way,  
20 hopefully, that would obviate the need for further  
21 extension later.

22 JUDGE YOUNG: Mr. Ruff, you can address both

1 of those issues, the privilege log claim and the -- the  
2 extension of the deadline by two months.

3 MR. RUFF: Yes, Your Honor. So as -- as we  
4 noted before, we do think a modest extension is  
5 appropriate. One month is probably preferable. But --  
6 but we -- we could do two months if -- if necessary  
7 here. This privilege log issue, Your Honor, we haven't  
8 received a privilege log from Leachco yet. They  
9 asserted privilege with respect to eight of our -- our  
10 RFPs. And we've been asking for mutual exchange of  
11 privilege logs. But we learned after filing our motion  
12 to compel that they apparently no longer are asserting  
13 privilege as to any documents. So they won't be  
14 producing a privilege log.

15 So I -- I do expect there is going to be some  
16 time needed to -- to delve into sort of the privilege  
17 issues that Leachco is asserting as well. And I -- I  
18 don't think that we need to set a particular deadline  
19 for those. I think those were all things that will be  
20 captured in this discovery deadline of -- of resolving  
21 all these issues as we move forward.

22 JUDGE YOUNG: Well, I -- I'm -- I'm not sure

1 about that because, you know, part of the problem is we  
2 -- we have a deadline for completing tasks. But we  
3 have tasks that are in motion right now. And to the  
4 extent that -- that those things remain unresolved,  
5 unanswered, there should be some sort of timetable for  
6 ensuring that the existing discovery request, written  
7 discovery request -- you know, we're going to put off  
8 depositions until after you have a chance to conduct  
9 your written discovery.

10 But -- but -- but I think that the discovery  
11 requests that are outstanding, it would seem to me that  
12 maybe it's more efficient to provide an interim  
13 deadline for the resolution of those requests as a --  
14 as a precursor to the completion of the written  
15 discovery. What do -- what do the parties think about  
16 that?

17 MS. STRAUSS: We would agree with that, Your  
18 Honor.

19 MR. RUFF: Yes, Your Honor. We -- we would  
20 agree with a reciprocal deadline for resolving the  
21 outstanding written discovery.

22 JUDGE YOUNG: Okay. Well, the deadline

1 originally for that, even if I extended it to May 13th,  
2 will be in July, which, as we know, is a happy memory  
3 to all of us and an ever-distant one now. So what --  
4 what would you propose for a reasonable deadline to  
5 deal with the outstanding first -- first set of  
6 requests for production for documents and first set of  
7 interrogatories?

8           The response deadline has passed. The  
9 extended deadline would have passed almost two months  
10 ago now. So what do you -- what do you propose? Your  
11 October 1st? That work?

12           MS. STRAUSS: That would be fine with the  
13 Defendant, Your Honor.

14           JUDGE YOUNG: Mr. Ruff?

15           MR. RUFF: Yes, Your Honor. And one -- one --

16           JUDGE YOUNG: I don't even know what day of  
17 the week October 1st is, and I apologize for that.  
18 I'll have to look at a calendar but --

19           MS. STRAUSS: I think it's a Tuesday. It's a  
20 Monday.

21           JUDGE YOUNG: Of course it's a Saturday.

22           MS. STRAUSS: Oh, okay.

1 JUDGE YOUNG: Yeah. It's a Saturday. Why  
2 don't we go with October 3rd, which is a Monday?

3 MS. STRAUSS: That would be fine. Your Honor,  
4 might we get some similar advice from you about the  
5 issue of privilege logs, general advice, not raising  
6 any issues specifically?

7 JUDGE YOUNG: All right.

8 MS. STRAUSS: First, I'll say that I've told  
9 Mr. Ruff on at least four occasions that we raised  
10 privilege only because his requests were so broad, but  
11 we were not withholding any specific documents and,  
12 therefore, we don't have a privilege log. So there is  
13 no issue on the Defense side in that regard.

14 In terms of the Respondent's privilege log,  
15 the entries for the privilege log do not provide  
16 factual information. They read, "Email reflecting the  
17 predecisional deliberative opinions and recommendations  
18 of CPSC staff prepared as part of the decision-making  
19 process concerning follow-up on full report." And then  
20 the privilege asserted is deliberative process so that  
21 the description is essentially the same as the  
22 privilege that is asserted. There is no factual

1 information or topic identified in the vast majority of  
2 this privilege log.

3 And again, that's with respect to 500-plus  
4 documents. So Your Honor, at this point, we would  
5 simply ask you to give us some of your input upon what  
6 type of information should be disclosed in a privilege  
7 log that would allow the parties to have meaningful  
8 discussion about whether the privilege applies.

9 JUDGE YOUNG: That's a good question, and I am  
10 going to defer that answer. But it won't be deferred  
11 for long. I'd like to get that to you in the next  
12 couple of days.

13 MS. STRAUSS: Thank you so much, Your Honor.

14 JUDGE YOUNG: But in terms of the remainder of  
15 the discovery, two things about the breadth of  
16 interrogatories and document requests. A, again,  
17 you're the subject matter experts. When somebody sends  
18 you something, you know what they are looking for. You  
19 know what's at issue in this case. The issues in the  
20 case define what's responsive, what's relevant.

21 If it's relevant and responsive, you could  
22 narrow it down yourself as long as you're not



1 conveniently omitting things that are actually relevant  
2 and responsive because you seem to think that they  
3 might be -- that you might get a pass because of the  
4 vagueness or the overbreadth of the request. Again, I  
5 want everything to go from party to party that's not  
6 privileged that's relevant to these proceedings.

7           But the second thing is this. When you make  
8 discovery requests, if you make the -- give me the  
9 universe request, you should bear in mind -- and I've  
10 been there personally. The situation that arises where  
11 you have a battalion of lawyers in a warehouse and a  
12 forklift getting pallet after pallet, hundreds of boxes  
13 and thousands of boxes and millions and millions of  
14 pages of discovery responses and a battalion just  
15 sitting there like in a sweatshop Monday through Friday  
16 before they go back to their home cities. And then  
17 they come back and do it again.

18           You don't want that either. You want to be  
19 responsive, but you want to make sure that you do a  
20 good job crafting your written discovery so that you  
21 are asking for what you need to present to me at  
22 hearing. That's what I'm interested in.

1           I want to find the facts that are needed to  
2   decide this case justly and appropriately. So that's  
3   your guidance. And -- and make sure that you bear in  
4   mind that, yeah, I'm going to hold you to know what  
5   this case is about when people are asking you to  
6   produce things. And I -- privilege needs to be  
7   asserted in good faith. And I'm not suggesting, Mr.  
8   Ruff, that you're not asserting it in good faith or,  
9   Ms. Strauss, that you haven't produced a privilege log  
10   in bad faith.

11           But what I'm saying is that -- that you need  
12   to think carefully about whether the privilege applies  
13   and how much information you can transmit in responding  
14   to the privilege or need to transmit in responding so  
15   that the opposing party would have a reasoned  
16   opportunity to challenge the privilege. And if it's  
17   just a regurgitation of something, I don't know that  
18   your opponent has that reasonable opportunity.

19           And I don't want us to get bogged down in  
20   preliminary errata here dealing with minutiae like what  
21   needs to be produced and what is privileged if that's  
22   something that you can figure out on your own. If it

1 becomes -- and it may be already -- you know, as I  
2 said, I'd like some time to think about it and to look  
3 into it -- a sophisticated legal question that needs to  
4 be resolved where there is a good-faith dispute about  
5 it. I'm happy to do that.

6 And -- and like I said, we may be at that  
7 point. I don't know yet. But I'm going to look at it  
8 and give further guidance to the parties in the next  
9 couple of days on that question.

10 MS. STRAUSS: Thank you, Your Honor.

11 MR. RUFF: Thank you, Your Honor. And Your  
12 Honor, one -- one point I just wanted to follow up on.  
13 Your Honor mentioned that the depositions would --  
14 would follow some of this written discovery work that  
15 we're -- we're doing. I -- I think there is prudence  
16 to finishing up these responses by October 3rd to the  
17 initial round of written discovery before we proceed  
18 with depositions.

19 But we would ask that we follow the relevant  
20 rules here and not sequence discovery further than that  
21 because sometimes, depositions can indicate that there  
22 are documents that have been withheld or other

1 information that could be followed up on with -- with  
2 written discovery. So we would ask that there not be a  
3 formal sequencing but that depositions happen after we  
4 -- we resolve this -- this first wave of written  
5 discovery.

6 MS. STRAUSS: Your --

7 JUDGE YOUNG: Yeah. I apologize if I seemed  
8 to suggest that. I'm not suggesting that. What I --  
9 what I meant to say, if I did not say this clearly, was  
10 that it usually makes sense to get your written  
11 discovery underway and underfoot before you conduct the  
12 deposition because, in my experience, you want to use  
13 the documents as opposed to witness or question the  
14 witness about the certain documents.

15 That doesn't mean that you can't take a  
16 deposition of a witness until you have all of the  
17 written discovery out of the way. And I wouldn't  
18 sequence it that way. I leave it to the parties. I  
19 don't necessarily want to be involved in the discovery  
20 decisions that you make. But you should make good  
21 decisions because there may not be latitude to go back  
22 and redo something that could have been accomplished

1     correctly the first time.

2                   MS. STRAUSS:   Your Honor, the parties did  
3     already have a sequencing of written discovery  
4     initially and then depositions following.  And it was  
5     our contention that the complaint counsel's failure to  
6     provide us with the discovery necessary meant the  
7     deposition should be delayed.  We have not issued any  
8     deposition notices for CPSC staff for that reason.  And  
9     they jumped the gun and sent deposition notices, even  
10    though, at that time, we still hadn't even received  
11    information about --

12                  JUDGE YOUNG:   If --

13                  MS. STRAUSS:   -- what they are withholding.

14                  JUDGE YOUNG:   I'm sorry to keep interrupting  
15    you.  But if that's -- if that was a problem, it has  
16    been forgiven to this point.  If it continues to be a  
17    problem, we'll deal with it as an ongoing and  
18    continuing problem.  But at this point, you know, I'm  
19    hopeful that you all will go forward with a renewed  
20    sense of purpose and deal with each other a little more  
21    forthrightly than seems to have been the case to this  
22    point, and, you know, not take actions such as

1 preemptively noticing depositions without coordinating  
2 them with counsel or, on the alternative, not making  
3 reasonable efforts to make people available for  
4 depositions if it comes to that.

5           And I'm not saying that that was an issue  
6 previously. But, you know, these -- these are things  
7 that maybe down the road -- the things that happened in  
8 the past regarding the deposition notices and the  
9 nonproduction, etc., I don't care as long as it's not  
10 an ongoing problem.

11           But if it becomes an ongoing problem, we'll  
12 deal with it. And if it's -- if -- if the problem  
13 reflects a continued misunderstanding, you're not going  
14 to get the -- gotten today.

15           MS. STRAUSS: Thank you, Your Honor.

16           JUDGE YOUNG: So we're looking at extending  
17 the deadlines generally as follows. The deadline for  
18 responses to the first set of written discovery now is  
19 going to be October 3rd, which is a Monday. And then  
20 we will -- and I -- I need to get the -- the  
21 calculations. But it's going to be roughly a two-month  
22 extension of written discovery to early February of

1 2022. And I'll need to calendar that. But it's going  
2 to be around -- or pardon me -- February 2nd.

3 Similarly, March 20th for discovery closing  
4 and then May 3rd for the motions for summary decision  
5 and then the responses then would be -- well, that  
6 doesn't work, does it? If we're having the trial in  
7 June, you can't have a motion for --

8 MS. STRAUSS: Your Honor, nobody has said the  
9 trial date won't work, but the trial date won't work  
10 given the need for the extension of the deadlines. If  
11 we -- if we could help Your Honor, we'd be happy to put  
12 together a schedule that moves everything, including  
13 the trial date, two months, work with complaint counsel  
14 to get those dates calendared and submit a final order  
15 that the Court can just enter. Since we had competing  
16 deadlines, I think that may have contributed to there  
17 being no final deadline entered. And we can make that  
18 easier for Your Honor.

19 JUDGE YOUNG: I would greatly appreciate that,  
20 Ms. Strauss. Thank you. Mr. Ruff, you all right with  
21 that?

22 MR. RUFF: That sounds -- sounds prudent to

1     us.   Thank you, Your Honor.

2             JUDGE YOUNG:   Mr. Dunford, you good with that?

3             MR. DUNFORD:   Yes, sir.   Thank you.

4             JUDGE YOUNG:   Excellent.   So what we'll do,  
5   then, moving forward is you will present to me revised  
6   schedule for the completion of discovery and pretrial  
7   motions and conferences.   And then I will provide to  
8   you in the next couple of days my view on privilege  
9   logs and what may -- must be included in the  
10   explanation of why material has been withheld because  
11   of privilege.   That sound fair?

12            MS. STRAUSS:   Yes, Your Honor.   Thank you.

13            MR. RUFF:   Yes, Your Honor.   Thank you.

14            JUDGE YOUNG:   Does any party or any person  
15   have anything they need to bring to my attention beyond  
16   what we've discussed and set forward already?

17            MR. RUFF:   No, Your Honor.

18            MR. DUNFORD:   No, thank you.

19            JUDGE YOUNG:   All right then.   Well, I  
20   appreciate everyone's time, and I appreciate your  
21   good-faith efforts.   Mr. Jannace?

22            MR. JANNACE:   Yes, sir.   I apologize.   I



1 thought we were talking substantively. We do have one  
2 administrative thing we need to get done that Ms.  
3 DiPadova pointed out. And for the court reporter and  
4 for the sake of this record, we need to get all the  
5 counsel on the conference to state their names and  
6 positions for the court reporter. As opposed to  
7 figuring out who is going to talk when, I think I could  
8 just call people out for how they are situated if they  
9 don't mind. Ms. Strauss, would you start?

10 MS. STRAUSS: Yes. Bettina Strauss on behalf  
11 of Leachco, the Defendant. And with me is my  
12 associate, James Emanuel.

13 MR. JANNACE: Okay. Mr. Dunford?

14 MR. DUNFORD: Oliver Dunford for Leachco, Inc.

15 MR. JANNACE: Mr. Rogal?

16 MR. ROGAL: Michael Rogal, CPSC.

17 MR. JANNACE: Mr. Garrison?

18 MR. GARRISON: Frank Garrison on behalf of  
19 Leachco.

20 MR. JANNACE: Mr. Ruff?

21 MR. RUFF: Brett Ruff for complaint counsel.

22 MR. JANNACE: Ms. Thomas?

1           MS. THOMAS: Rosalee Thomas on behalf of  
2 complaint counsel.

3           MR. JANNACE: Ms. Ippolito?

4           MS. IPPOLITO: Leah Ippolito on behalf of  
5 complaint counsel.

6           MR. JANNACE: Mr. Kerkhoff?

7           MR. KERKHOFF: John Kerkhoff on behalf of  
8 Leachco, Inc.

9           MR. JANNACE: Mr. Perilla?

10          MR. PERILLA: Frank Robert Perilla, paralegal  
11 for CPSC.

12          MR. JANNACE: And is there anybody else on the  
13 call that I don't see? I will take that as a no, and  
14 that's all for me, sir.

15          JUDGE YOUNG: All right. And that was  
16 Christopher Jannace, my law clerk. And I am Michael G.  
17 Young, the administrative law judge in these  
18 proceedings, which will be concluded, then, with --  
19 with the thanks of the Court and go forward. And we  
20 will all fulfill our obligations.

21          (Whereupon, the hearing was adjourned at 10:47  
22 a.m., Eastern daylight time.)

# **EXHIBIT E**

**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

**LEACHCO, INC.'S NOTICE OF FACT DEPOSITION  
OF CELESTINE KISH**

Respondent Leachco, Inc., pursuant to 16 C.F.R. § 1025.35, notices the fact deposition of Celestine Kish, c/o Brett Ruff, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, concerning all matters related to CPSC Docket No. 22-1.

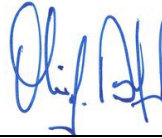
The deposition shall take place at 3100 Clarendon Blvd., Arlington, VA 22201, on March 7, 2023, beginning at 10:00 a.m. Eastern, or on a date and location mutually agreeable to the parties, before a person authorized to administer oaths, for the purposes of discovery and/or as evidence at the hearing of this matter, or for such other purposes as are permitted under the Commission's Rules of Practice for Adjudicative Proceedings. As stipulated by the parties, Federal Rule of Civil Procedure 30(d)(1) will govern the duration of the deposition. The taking of this deposition may be adjourned from day to day until completed and may occur over several days, if necessary, to provide the information requested.

This deposition will be transcribed, and the transcript of the deposition may be used at the hearing of this matter or for such other purposes as are permitted under the Commission's Rules of Practice for Adjudicative Proceedings.

The deposition will concern all matters related to CPSC Docket No. 22-1, as well as all matters related to the Complaint, the Answer, and any responses by Complaint Counsel to any of Leachco's discovery requests. These matters include, but are not limited to, Ms. Kish's educational and professional background; Ms. Kish's role at the CPSC; Ms. Kish's involvement concerning the Podster and/or Leachco; any communications or discussions Ms. Kish has had regarding the Podster and/or Leachco; any documents in Ms. Kish's custody or control related to the Podster and/or Leachco; Ms. Kish's knowledge and experience concerning infant consumer products.

Dated: February 27, 2023.

Respectfully submitted,



JOHN F. KERKHOFF  
Ohio Bar No. 0097134  
FRANK D. GARRISON  
Indiana Bar No. 34024-49  
Pacific Legal Foundation  
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OLIVER J. DUNFORD  
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Palm Beach Gardens, FL 33410  
Telephone: 916.503.9060  
Fax: 916.419.7747  
ODunford@pacificlegal.org

*Counsel for Respondent Leachco, Inc.*

## CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2023, I served, by electronic mail, the foregoing upon all parties of record in these proceedings:

<p><b>Leah Ippolito</b>, Supervisory Attorney <b>Brett Ruff</b>, Trial Attorney <b>Rosalee Thomas</b>, Trial Attorney <b>Caitlin O'Donnell</b>, Trial Attorney <b>Michael Rogal</b>, Trial Attorney <b>Frederick C. Millett</b>, Trial Attorney <b>Gregory M. Reyes</b>, Supervisory Attorney Complaint Counsel Office of Compliance and Field Operations U.S. Consumer Product Safety Comm'n Bethesda, MD 20814 lippolito@cpsc.gov bruff@cpsc.gov rbthomas@cpsc.gov codonnell@cpsc.gov mrogal@cpsc.gov fmillett@cpsc.gov greyes@cpsc.gov</p>	<p><b>Mary B. Murphy</b> Director, Div. of Enforcement &amp; Litigation U.S. Consumer Product Safety Comm'n 4330 East West Highway Bethesda, MD 20814 mmurphy@cpsc.gov</p> <p><b>Robert Kaye</b> Assistant Executive Director Office of Compliance and Field Operations U.S. Consumer Product Safety Comm'n 4330 East West Highway Bethesda, MD 20814 rkaye@cpsc.gov</p>
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Oliver J. Dunford  
*Counsel for Respondent Leachco, Inc.*

# **EXHIBIT F**

**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

**LEACHCO, INC.'S NOTICE OF DEPOSITION  
OF CONSUMER PRODUCT SAFETY COMMISSION**

Respondent Leachco, Inc., pursuant to 16 C.F.R. § 1025.35, notices the deposition of Consumer Product Safety Commission, c/o Brett Ruff, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, concerning all matters related to CPSC Docket No. 22-1.

The deposition shall take place at 3100 Clarendon Blvd., Arlington, VA 22201, on March 16, 2023, beginning at 9:00 a.m. Eastern, or on a date and location mutually agreeable to the parties, before a person authorized to administer oaths, for the purposes of discovery and/or as evidence at the hearing of this matter, or for such other purposes as are permitted under the Commission's Rules of Practice for Adjudicative Proceedings. As stipulated by the parties, Federal Rule of Civil Procedure 30(d)(1) will govern the duration of the deposition. The taking of this deposition may be adjourned from day to day until completed and may occur over several days, if necessary, to provide the information requested.

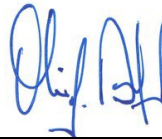
This deposition will be transcribed, and the transcript of the deposition may be used at the hearing of this matter or for such other purposes as are permitted under the Commission's Rules of Practice for Adjudicative Proceedings.



The Consumer Product Safety Commission is requested to designate one or more persons to testify for the Commission concerning the subject matters described in Attachment A. Such person or persons are requested to bring with them to the deposition all documents relied on or referred to in preparing for the deposition unless such documents have previously been produced pursuant to other requests.

Dated: February 27, 2023.

Respectfully submitted,



JOHN F. KERKHOFF  
Ohio Bar No. 0097134  
FRANK D. GARRISON  
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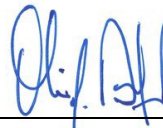
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ODunford@pacificlegal.org

*Counsel for Respondent Leachco, Inc.*

## CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2023, I served, by electronic mail, the foregoing upon all parties of record in these proceedings:

<p><b>Leah Ippolito</b>, Supervisory Attorney <b>Brett Ruff</b>, Trial Attorney <b>Rosalee Thomas</b>, Trial Attorney <b>Caitlin O'Donnell</b>, Trial Attorney <b>Michael Rogal</b>, Trial Attorney <b>Frederick C. Millett</b>, Trial Attorney <b>Gregory M. Reyes</b>, Supervisory Attorney Complaint Counsel Office of Compliance and Field Operations U.S. Consumer Product Safety Comm'n Bethesda, MD 20814 lippolito@cpsc.gov bruff@cpsc.gov rbthomas@cpsc.gov codonnell@cpsc.gov mrogal@cpsc.gov fmillett@cpsc.gov greyes@cpsc.gov</p>	<p><b>Mary B. Murphy</b> Director, Div. of Enforcement &amp; Litigation U.S. Consumer Product Safety Comm'n 4330 East West Highway Bethesda, MD 20814 mmurphy@cpsc.gov</p> <p><b>Robert Kaye</b> Assistant Executive Director Office of Compliance and Field Operations U.S. Consumer Product Safety Comm'n 4330 East West Highway Bethesda, MD 20814 rkaye@cpsc.gov</p>
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Oliver J. Dunford  
*Counsel for Respondent Leachco, Inc.*

## **Attachment A**

1. The facts and allegations in this proceeding.
2. Leachco, Inc. and the Podster.
3. The process(es) by which the Consumer Product Safety Commission (CPSC) examines and evaluates potential consumer-product defects, including but not limited to all laws, regulations, policies, practices, guidelines, and procedures considered or relied upon therefor.
4. The process(es) by which the CPSC determines which consumer products to pursue for recall and which ones it does not pursue, including but not limited to all laws, regulations, policies, practices, guidelines, and procedures considered or relied upon therefor.
5. The process(es) by which the CPSC determines that a “substantial product hazard” under 15 U.S.C. § 2064(a) exists, including but not limited to all laws, regulations, policies, practices, guidelines, and procedures considered or relied upon therefor.
6. Training and education requirements for technical staff.
7. The nature and scope of the CPSC’s allegations against Leachco.
8. Evidence supporting the allegations in CPSC’s Complaint.
9. CPSC’s requested relief in this proceeding and the basis(-es) therefor.
10. CPSC studies, tests, analyses, examinations, inspections, or other assessments, and the results thereof—including but not limited to In-Depth Investigation Reports, Product Safety Assessments, the CPSC’s annual Injuries and

Deaths Associated with Nursery Products Among Children Younger than Age Five—  
concerning infant consumer products.

11. Aside from the work of expert witnesses retained by the Commission for this proceeding non-CPSC studies, tests, analyses, examinations, inspections, or other assessments, and the results thereof, concerning infant consumer products.

12. Communications concerning Leachco, the Podster, and infant-lounger products between or among any agent of the CPSC and third parties, including but not limited to, Members of Congress and/or their staff; other state or federal governmental agencies, including the President's administration; outside experts, specialists, or consultants, *e.g.*, Erin D. Mannen; lawyers, including Michael Comer; and any other individual.