

UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION

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

COMPLAINT COUNSEL’S RESPONSE TO RESPONDENT AMAZON.COM, INC.’S  
STATEMENT OF UNDISPUTED MATERIAL FACTS

Complaint Counsel hereby responds to Respondent Amazon.com, Inc.’s (“Amazon’s”) Statement of Undisputed Material Facts. Complaint Counsel contends that there “is no genuine issue as to any material fact,” 16 C.F.R. § 1025.25(c), showing that the Consumer Product Safety Commission (“CPSC”) is entitled to judgment as a matter of law as set forth in Complaint Counsel’s Motion for Summary Decision (filed September 23, 2022).

For ease of reference, this response includes the original footnotes and citations included in Amazon’s Statement of Undisputed Material Facts. Complaint Counsel’s citations are included in the body of each response. In addition, Complaint Counsel has left Amazon’s subject headings intact, though Complaint Counsel objects to the headings to the extent they contain characterizations.

## I. THE SUBJECT PRODUCTS & THIRD-PARTY SELLERS<sup>1</sup>

1. As used in this statement of undisputed material facts, “Subject Products” refers to certain (A) children’s sleepwear garments, (B) carbon monoxide detectors, and (C) hair dryers identified in greater detail below.<sup>2</sup>

**RESPONSE:** Undisputed.

2. Specifically, the Subject Products consist of the following:

### A. Children’s sleepwear garments:<sup>3</sup>

Sample Number	Seller/Manufacturer	ASIN <sup>4</sup>
20-800-1345	HOYMN	B074V558SB
20-800-1726	IDGIRLS	B0S9B7QQ7
20-800-1726	IDGIRLS	B07S66PR4G
20-800-1726	IDGIRLS	B07SCJNMFP
20-800-1726	IDGIRLS	B07S99Y5YP
20-800-1726	IDGIRLS	B07S99R16X
20-800-1726	IDGIRLS	B07SDLKLS4
20-800-1726	IDGIRLS	B07SCJ2HK6
20-800-1726	IDGIRLS	B07S87FF4G
20-800-1726	IDGIRLS	B07SCJ6FR6
20-800-1726	IDGIRLS	B07S65KQX1
20-800-1727	Home Swee	B07QTGMWPK
20-800-1505	Taiycyxgan	B01HGJY9FO

### B. Carbon monoxide detectors:<sup>5</sup>

Sample Number	Seller/Manufacturer	ASIN
20- 800-1419	WJZXTEK	B07HK8JHDV <sup>6</sup>
20-800-1420	Zhenzhou Winsen Electronics Technology Company, LTD	B07GNKD44L

<sup>1</sup> All exhibits cited herein are attached to Respondent Amazon.com, Inc.’s Declaration of Joshua González, dated September 23, 2022.

<sup>2</sup> Dkt. 1 ¶¶ 21, 30, 39, In re Amazon.com, Inc., CPSC Dkt. No. 21-2 (“Complaint”) (July 14, 2021);

Dkt. 2 ¶¶ 21, 30, 36, 39, 45, In re Amazon.com, Inc., CPSC Dkt. No. 21-2 (“Answer”) (Aug. 3, 2021); see also Dkt. 24, Resp. to ¶ 1, In re Amazon.com, Inc., CPSC Dkt. No. 21-2 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021).

<sup>3</sup> Compl. ¶ 21; Answer ¶ 21.

<sup>4</sup> An ASIN is the unique Amazon Standard Identification Number used to identify a particular product.

<sup>5</sup> Compl. ¶ 30; Answer ¶¶ 30, 36.

<sup>6</sup> Excluding two units that were sold by Amazon through its “Amazon Warehouse” program (through which Amazon sells used, pre-owned, or open box products).

20-800-1422	Zhenzhou Winsen Electronics Technology Company, LTD	B07C2KM8RB <sup>7</sup>
20-800-1422	Zhenzhou Winsen Electronics Technology Company, LTD	B07BDJTX8W <sup>8</sup>
20-800-1837	BQQZHZ	B07MPP42GT <sup>9</sup>

C. Hair dryers:<sup>10</sup>

Sample Number	Seller/Manufacturer	ASIN
21-800-0406	OSEIDOO	B07RRVKPMD
21-800-1213	Aiskki	B0814LSM48
21-800-0556	Raxurt Store	B08LD9S6PB
21-800-0481	LEMOCA	B087JCJ4NC
21-800-1183	Xianming	B087CVZT9V
21-800-0609	BEAUTIKEN	B087TJJ5XP
21-800-0731	VIBOOS	B07T3D3TQR
21-800-0635	VIBOOS	B0878SRBM2
21-800-0756	SARCCH	B0852JWLTP
21-800-0831	Bongtai	B085NNM6NY
21-800-0933	Bvser Store	B07TVX4G4C
21-800-0956	TDYJWELL	B08R87G9KH
21-800-1806	Bownyo	B07TQRVMJF
21-800-1883	Romancelink	B089QDK2VV
21-800-1983	BZ	B088ZPLZ91
21-800-1317	Techip	B07YS53MKB
21-800-1632	LetsFunny	B07PJ8F941
21-800-1606	SUNBA YOUTH Store / Naisen	B08143HCDC
21-800-1706	OWEILAN	B08QYRL9GC
21-800-1585	Surelang Store	B085RMB16H
21-800-1106	GEPORAY	B07YF7JHKC
21-800-0135	Miserwe	B0888P3PDH
21-800-0081	Techip	B08LD44V8W
21-800-1081	ADTZYLD	B07SH5QZFX
21-800-1006	KIPOZI	B08J7JTW2M
21-800-1131	KENLOR	B07V5WVFV28 <sup>11</sup>
21-800-0981	Shaboo Prints	B08LN4FR4T
21-800-0026	ELECDOLPH	B08PCQ7QFK

<sup>7</sup> Excluding ten units that were sold by Amazon through its “Amazon Warehouse” program.

<sup>8</sup> Excluding two units that were sold by Amazon through its “Amazon Warehouse” program.

<sup>9</sup> Excluding fourteen units that were sold by Amazon through its “Amazon Warehouse” program.

<sup>10</sup> Compl. ¶ 39; Answer ¶¶ 39, 45.

<sup>11</sup> Excluding approximately four units that were sold by Amazon through its “Amazon Warehouse” program.

21-800-1382	LANIC	B07YXNMXH3
21-800-1398	Songtai	B088GWLNT
21-800-1558	BEAUTIKEN	B0814TCYZM
21-800-1431	tiamo airtrack	B07ZYJCK25
21-800-0334	Ohuhu	B07XDTJZKS
21-800-0281	Nisahok	B08M183SR4
21-800-0231	Dekugaa Store	B07ZYJ92DM
21-800-0186	Admitrack	B0854FGPP7

**RESPONSE:** Undisputed. However, Complaint Counsel notes that Amazon, on June 15, 2022, supplemented its response to Complaint Counsel’s Interrogatory No. 17 and informed Complaint Counsel of 20 additional ASINs that Amazon had identified as sleepwear sold by Home Sweet, HOYMN and Taiycyxgan. Amazon has not provided the number of units sold under those ASINs. *See* Complaint Counsel’s Statement of Undisputed Material Facts ¶ 14 (filed September 23, 2022), Exhibit 1, Declaration of John Eustice in Support of Complaint Counsel’s Motion for Summary Decision (Exhibit R, Respondent’s Supplemental Objections and Responses to Complaint Counsel’s Interrogatory Nos. 16 and 17, Supplemental Response to Interrogatory No. 17).

3. As used in this statement of undisputed material facts, “Third-Party Sellers” refers to the sellers of the Subject Products.

**RESPONSE:** Undisputed as to Amazon’s choice to refer to the sellers of the Subject Products as “Third-Party Sellers.”

**II. AMAZON’S REMEDIAL ACTIONS WITH RESPECT TO THE SUBJECT PRODUCTS**

**A. Amazon’s Remedial Actions Regarding the Children’s Sleepwear Subject Products.**

4. The children’s sleepwear Subject Products, were manufactured and sold by the following four third-party sellers: Taiycyxgan, Home Swee, IDGIRLS, and HOYMN.<sup>12</sup>

**RESPONSE:** Undisputed.

5. Prior to the filing of the Complaint in this matter, Amazon had removed the children’s sleepwear Subject Products, as well as additional products Amazon identified as potentially posing the same hazard as the Subject Products, from Amazon.com.<sup>13</sup>

**RESPONSE:** Undisputed as to the initial removal by Amazon of the ASINs corresponding to the children’s sleepwear Subject Products identified in Complaint Counsel’s Statement of Undisputed Material Facts, at ¶ 3. However, Complaint Counsel objects to Paragraph 5 to the extent it implies that the removal of the ASINs is permanent and that it does not define the universe of “additional products Amazon identified as potentially posing the same hazard as the Subject Products . . . .” In addition, the CPSC identified additional functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com in May 2022. See Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170.

6. None of the children’s sleepwear Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, are currently listed or available for purchase on Amazon.com.<sup>14</sup>

**RESPONSE:** Undisputed as to the current availability of the ASINs corresponding to the children’s sleepwear Subject Products. However, Complaint Counsel objects to Paragraph 6 to the extent it does not define the universe of “additional products Amazon identified as potentially posing the same hazard as the Subject Products . . . .

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<sup>12</sup> Compl. ¶ 21; Answer ¶ 21; Ex. 1, Compl. Counsel’s Obj. and Resp. to Amazon’s Requests for Admission, No. 1 (Mar. 21, 2022).

<sup>13</sup> See Ex. 1, Compl. Counsel’s Obj. and Resp. to Amazon’s Request for Admission, No. 7 (Mar. 21, 2022); Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data Chart).

<sup>14</sup> Dkt. 24, Resp. to ¶ 15 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 12–13.

.” In addition, the CPSC identified additional functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com in May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170.

7. Amazon prohibits Third-Party Sellers, or any other entity, from listing any of the children’s sleepwear Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, on Amazon.com.<sup>15</sup>

**RESPONSE:** Undisputed as to Amazon’s attempts to prohibit the Third-Party Sellers, or any other entity, from listing any of the ASINs corresponding to the children’s sleepwear Subject Products for sale on Amazon.com, though the CPSC is without sufficient information to confirm or deny this statement. However, as described in Complaint Counsel’s responses to Paragraphs 5 and 6 above, the CPSC identified additional functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com as recently as May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 7.

**1. Amazon’s Remedial Actions Regarding the Taiyicyxgan Subject Products.**

- i. *Amazon stopped selling the Taiyicyxgan Subject Products and blocked the release of any inventory in its fulfillment centers.*

- 8.

[REDACTED]

<sup>16</sup>

**RESPONSE:** Undisputed.

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<sup>15</sup> Ex. 2, Goldberg Dep. 306:19–307:2; Shrem Decl. ¶ 13.

<sup>16</sup> Ex. 3, Amazon-CPSC-FBA-00003695 (CPSC-Amazon Comm. re Contact Info. of Taiyicyxgan).

9. [REDACTED] 17

**RESPONSE:** Undisputed.

10. [REDACTED] 19

**RESPONSE:** Undisputed.

11. [REDACTED] 20

**RESPONSE:** Undisputed.

12. On or about January 29, 2020, Amazon stopped selling the Taiyicyxgan Subject Products identified in the January 24, 2020 NOV to Taiyicyxgan, as well as 387 additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all of the Taiyicyxgan Subject Products listed in the Complaint.<sup>21</sup>

**RESPONSE:** Undisputed as to Amazon stopping sale of the ASINs associated with the “Taiyicyxgan Subject Products identified in the January 24, 2020 NOV,” including the ASINs corresponding to “all of the Taiyicyxgan Subject Products listed in the Complaint,” and “additional products,” though Complaint Counsel

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<sup>17</sup> Ex. 4, Amazon-CPSC-FBA-00003696 (CPSC-Amazon Comm. re Stop-Sale, Quarantine, and Destruction of Taiyicyxgan); Ex. 5, Amazon-CPSC-FBA-00002388 at 90 (Children’s Sleepwear Chronology); Ex. 6, Amazon-CPSC-FBA-00001674 (CPSC-Amazon Comm. re Update of Stop- Sale, Quarantine, and Destruction of Taiyicyxgan Products).

<sup>18</sup> A NOV is issued by the CPSC Office of Compliance when it determines that product violates a mandatory standard. The NOV “advises the company of the violation, and specifies the appropriate corrective action.” See <https://www.cpsc.gov/Recalls/violations>.

<sup>19</sup> Ex. 7, Amazon-CPSC-FBA-00000229 (NOV to seller Taiyicyxgan); Ex. 4, Amazon-CPSC- FBA-00003696 (CPSC-Amazon Comm. re Stop-Sale, Quarantine, and Destruction of Taiyicyxgan Products).

<sup>20</sup> Ex. 4, Amazon-CPSC-FBA-00003696 (CPSC-Amazon Comm. re Stop-Sale, Quarantine, and Destruction of Taiyicyxgan Products); Ex. 8, Amazon-CPSC-FBA-00001627 (CPSC-Amazon Comm. re Stop-Sale, Quarantine, and Destruction of Taiyicyxgan Products).

<sup>21</sup> Ex. 8, Amazon-CPSC-FBA-00001627 (CPSC-Amazon Comm. re Stop-Sale, Quarantine, and Destruction of Taiyicyxgan Products); Ex. 5, Amazon-CPSC-FBA-00002388 at 02390 (Children’s Sleepwear Chronology); Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); Dkt. 24, Resp. to ¶ 12 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); see also Ex. 2, Goldberg Dep. 99:8–100:5, 182:9–182:15; Shrem Decl. ¶¶ 8, 11 (Sept. 23, 2022).

objects to Paragraph 12 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, as described in Complaint Counsel’s responses to previous paragraphs, the CPSC identified additional functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com as recently as May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 12.

13. On or about January 29, 2020, Amazon quarantined (that is, blocked their release from fulfillment centers) all units of the Taiycyxgan Subject Products identified in the January 24, 2020 NOV to Taiycyxgan, as well as 387 additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all Taiycyxgan Subject Products listed in the Complaint.<sup>22</sup>

**RESPONSE:** Undisputed as to Amazon quarantining the “Taiycyxgan Subject Products identified in the January 24, 2020 NOV” and the “387 additional products,” though Complaint Counsel objects to Paragraph 13 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, as described in Complaint Counsel’s responses to previous paragraphs, the CPSC identified additional functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com as recently as May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170. On

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<sup>22</sup> Ex. 8, Amazon-CPSC-FBA-00001627 (CPSC-Amazon Comm. re Stop-Sale, Quarantine, and Destruction of Taiycyxgan Products); Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); *see also* Ex. 2, Goldberg Dep. 99:22–100:5, 182:9–182:15; Shrem Decl. ¶¶ 14–15 (Sept. 23, 2022).



that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 13.

14.

[REDACTED]

**RESPONSE:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15.

[REDACTED]

**RESPONSE:** Undisputed.

16. By December 8, 2020, Amazon had destroyed all inventory of the Taiycyxgan Subjects Products, as well as all inventory of the additional products Amazon identified as potentially posing the same hazard as the Subject Products.<sup>25</sup>

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<sup>23</sup> Ex. 8, Amazon-CPSC-FBA-00001627 (CPSC-Amazon Comm. re Stop-Sale, Quarantine, and Destruction of Taiycyxgan Products).

<sup>24</sup> Ex. 10, Amazon-CPSC-FBA-00001682 (CPSC-Amazon Comm. re NOV to Taiycyxgan); Ex. 11, Amazon-CPSC-FBA-00001683 (NOV to Amazon re Taiycyxgan).

<sup>25</sup> Ex. 12, Amazon-CPSC-FBA-00000255-258 (Amazon Final Resp. to NOV re Taiycyxgan); Shrem Decl. ¶ 18 (Sept. 23, 2022).

**RESPONSE:** Undisputed as to Amazon destroying “all [of its] inventory of the Taiyicyxgan Subject Products” and the “additional products,” though Complaint Counsel objects to Paragraph 16 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, as described in Complaint Counsel’s responses to previous paragraphs, the CPSC identified additional functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com as recently as May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 16.

ii. *Amazon sent all purchasers of the Taiyicyxgan Subject Products an appropriate direct consumer safety notification email.*

17. Between June 11, 2021 and August 1, 2021, Amazon had sent all consumers who purchased a Taiyicyxgan Subject Product, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, a direct consumer safety notification by email.<sup>26</sup>

**RESPONSE:** Undisputed as to Amazon sending “all consumers who purchased a Taiyicyxgan Subject Product” or “the additional products” a “notification by email,” though Complaint Counsel objects to Paragraph 17 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” In addition, Complaint Counsel objects to Paragraph 17 to the extent it does not define “direct consumer safety notification.” However, as described in Complaint

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<sup>26</sup> Ex. 13, Amazon-CPSC-FBA-00001841 (Customer Notification Dates Data); Ex. 14, Amazon- CPSC-FBA-00002397 (Consumer Messaging Data); Shrem Decl. ¶ 25 (Sept. 23, 2022).

Counsel's responses to previous paragraphs, the CPSC identified additional functionally equivalent products to the children's sleepwear Subject Products for sale on Amazon.com as recently as May 2022. *See* Complaint Counsel's Statement of Undisputed Material Facts, at ¶¶ 166-170. On that basis, Complaint Counsel disputes the remainder of Amazon's statements in Paragraph 17.

18. The subject line of Amazon's direct consumer safety notification email regarding the Taiycyxgan Subject Products read: "Attention: Important safety notice about your past Amazon order."<sup>27</sup>

**RESPONSE:** Undisputed that the subject line of the "notification email" sent to consumers who purchased the "Taiycyxgan Subject Products" reads: "Attention: Important safety notice about your past Amazon order." Complaint Counsel objects to Paragraph 18 to the extent it does not define "direct consumer safety notification."

19. The body of Amazon's direct consumer safety notification email said the following: "Dear Amazon Customer,  
  
We have learned of a potential safety issue that may impact your Amazon purchase(s) below:  
  
Order ID: 111-1024079-4201801  
  
Item: B01HGJYZF8 - Taiycyxgan Little Girl's Coral Fleece Bathrobe, Pink Cat, 130:6T  
  
The product listed above is either a product that the U.S. Consumer Product Safety Commission (CPSC) has informed us about, or our Product Safety team has identified, that may fail to meet the federal standard for flammability of children's sleepwear, posing a risk of burn injuries to children.  
  
If you still have this product, we urge you to stop using it immediately and dispose of it. If you purchased this product for someone else, please

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<sup>27</sup> Ex. 15, CPSC\_AM0000497 (Amazon Direct Product Safety Notification Email re Taiycyxgan Children's Sleepwear Products).

notify the recipient immediately and let them know they should dispose of it. There is no need for you to return the product.

Amazon is applying a refund in the form of a gift card to Your Account. You can view your available balance and activity here: <https://www.amazon.com/gp/css/gc/balance/>

The safety and satisfaction of our customers is our highest priority. We regret any inconvenience this may cause you.

Thanks for shopping at Amazon.”<sup>28</sup>

**RESPONSE:** Undisputed that the body of the “notification email” sent to consumers who purchased the “Taiycyxgan Subject Products” reads as set forth by Amazon in Paragraph 19. Complaint Counsel objects to Paragraph 19 to the extent it does not define “direct consumer safety notification.”

20. The direct notification email for the Taiycyxgan Subject Products contained the information necessary to help the consumer to identify the product, including the Order ID, Amazon Standard Identification Number, and item name.<sup>29</sup>

**RESPONSE:** Undisputed that the “notification email” contained information relating to the “Taiycyxgan Subject Products,” including the “Order ID, Amazon Standard Identification Number, and item name.” Otherwise disputed by Complaint Counsel because Amazon’s characterization of this information as all of the information “necessary to help the consumer to identify the product” is an opinion rather than a factual contention. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>28</sup> Ex. 15, CPSC\_AM0000497 (Amazon Direct Product Safety Notification Email re Taiycyxgan Children’s Sleepwear Products).

<sup>29</sup> Ex. 15, CPSC\_AM0000497 (Amazon Direct Product Safety Notification Email re Taiycyxgan Children’s Sleepwear Products).

[REDACTED]

In addition, under the sub-section entitled “Requirements for Recall Notices,” the Consumer Product Safety Act requires, among other things, “a photograph of the product.” *See* 15 U.S.C. § 2064(i)(2); *see also* 16 C.F.R. § 1115.27(c)(6)

21. The direct notification email helped the consumer identify the specific potential risk posed by the Taiycyxgan Subject Products, namely that they “may fail to meet the federal standard for flammability of children’s sleepwear, posing a risk of burn injuries to children.”<sup>30</sup>

**RESPONSE:** Undisputed that the “notification email” contained information relating to the “Taiycyxgan Subject Products,” including that the products “may fail to meet the federal standard for flammability of children’s sleepwear, posing a risk of burn injuries to children.” Otherwise disputed by Complaint Counsel because Amazon’s characterization of this information as “help[ing] the consumer identify the specific potential risk posed by the” products is an opinion rather than a factual contention. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>30</sup> Ex. 15, CPSC\_AM0000497 (Amazon Direct Product Safety Notification Email re Taiycyxgan Children’s Sleepwear Products).

[REDACTED]

22. The direct notification email helped the consumer understand the steps a consumer should take to mitigate the potential risk posed by the product, namely that they should “stop using it immediately and dispose of it” and “[i]f [they] purchased this product for someone else, please notify the recipient immediately and let them know they should dispose of it.”<sup>31</sup>

**RESPONSE:** Undisputed that the “notification email” contained information relating to the “Taiycyxgan Subject Products,” including stating that consumers should “stop using it immediately and dispose of it” and “[i]f [they] purchased this product for someone else, please notify the recipient immediately and let them know they should dispose of it.” Otherwise disputed by Complaint Counsel because Amazon’s characterization of this information as “help[ing] the consumer

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<sup>31</sup> Ex. 15, CPSC\_AM0000497 (Amazon Direct Product Safety Notification Email re Taiycyxgan Children’s Sleepwear Products).

understand the steps a consumer should take to mitigate the potential risk posed by the” products is an opinion rather than a factual contention. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

23. The direct notification email helped the consumer understand the remedy being provided by Amazon, namely that “Amazon [was] applying a refund in the form of a gift card,” and the consumer could view the “balance and activity [of] here: <https://www.amazon.com/gp/css/gc/balance/>.”<sup>32</sup>

**RESPONSE:** Undisputed that the “notification email” contained information relating to the “Taiyicyxgan Subject Products,” including stating that “Amazon [was] applying a refund in the form of a gift card,” and the consumer could view the “balance and activity” at a specific link. Otherwise disputed by Complaint Counsel because Amazon’s characterization of this information as “help[ing] the consumer understand the remedy being provided by Amazon” is an opinion rather a factual contention.

24. [REDACTED].<sup>33</sup>

**RESPONSE:** Disputed. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

<sup>32</sup> Ex. 15, CPSC\_AM0000497 (Amazon Direct Product Safety Notification Email re Taiyicyxgan Children’s Sleepwear Products).

<sup>33</sup> Ex. 16, Davis Dep. 145:19–146:22.



[REDACTED]

[REDACTED]

iii. *Amazon provided all purchasers of the Taiyicyxgan Subject Products a complete refund.*

25. Amazon provided refunds to all consumers who purchased the Taiyicyxgan Subject Products, as well as consumers who purchased the additional products Amazon identified as potentially posing the same hazard as the Subject Products.<sup>34</sup>

**RESPONSE:** Undisputed that Amazon provided refunds to purchasers of the “Taiyicyxgan Subject Products” and “additional products,” though Complaint Counsel objects to Paragraph 25 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, as described in Complaint Counsel’s responses to previous paragraphs, the CPSC identified additional functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com as recently as May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 25.

iv. *Amazon has not listed for sale and does not intend to list for sale any of the Taiyicyxgan Subject Products.*

26. None of the Taiyicyxgan Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, have been listed or purchase on Amazon.com since January 29, 2020.<sup>35</sup>

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<sup>34</sup> Ex. 17, Amazon-CPSC-FBA-00001616 (*cf.* Column H and Column L) (Refund Data re Children’s Sleepwear Products); Shrem Decl. ¶ 28 (Sept. 23, 2022).

<sup>35</sup> Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); Dkt. 24, Resp. to ¶ 12 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021).

**RESPONSE:** Undisputed that none of the ASINs corresponding to the “Taiyicyxgan Subject Products” or the “additional products” have been listed for purchase on Amazon.com since January 29, 2020, though Complaint Counsel objects to Paragraph 26 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, as described in Complaint Counsel’s responses to previous paragraphs, the CPSC identified additional functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com as recently as May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 26.

27. None of the Taiyicyxgan Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, are currently listed or available for purchase on Amazon.com.<sup>36</sup>

**RESPONSE:** Undisputed that none of the ASINs associated with the “Taiyicyxgan Subject Products” or the “additional products” are currently listed or available for purchase on Amazon.com, though Complaint Counsel objects to Paragraph 27 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, as described in Complaint Counsel’s responses to previous paragraphs, the CPSC identified additional functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com as

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<sup>36</sup> Dkt. 24, Resp. to ¶ 15 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 12–13 (Sept. 23, 2022).

recently as May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 27.

28. Amazon prohibits Third-Party Sellers, or any other entity, from listing any of the Taiycyxgan Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, on Amazon.com.<sup>37</sup>

**RESPONSE:** Undisputed that Amazon attempts to prohibit “Third-Party Sellers, or any other entity, from listing any of the Taiycyxgan Subject Products” or “additional products” for sale on Amazon.com, though the CPSC is without sufficient information to confirm or deny this statement. In addition, Complaint Counsel objects to Paragraph 28 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, as described in Complaint Counsel’s responses to previous paragraphs, the CPSC identified additional functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com as recently as May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 28.

**2. Amazon’s Remedial Actions Regarding the Home Swee Subject Products.**

- i. *Amazon stopped selling the Home Swee Subject Products and blocked the release of any inventory in its fulfillment centers.*

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<sup>37</sup> Ex. 2, Goldberg Dep. 306:19–307:2; Shrem Decl. ¶ 13 (Sept. 23, 2022).

29.

[REDACTED]

**RESPONSE:** Undisputed.

30.

[REDACTED]

**RESPONSE:** Undisputed.

31.

[REDACTED]

**RESPONSE:** Undisputed that the CPSC contacted Amazon about the Home Sweet Home NOV on or about March 31, 2020, and further undisputed that the contact included the requests quoted by Amazon in Paragraph 31.

32. On or about March 31, 2020, Amazon stopped selling from Amazon.com the Home Sweet Home Subject Product identified in the March 17, 2020 NOV to Home Sweet Home, as well as 38 additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all of the Home Sweet Home Subject Product listed in the Complaint.<sup>41</sup>

**RESPONSE:** Undisputed as to Amazon stopping sale of the ASINs associated with the “Home Sweet Home Subject Products identified in the March 17, 2020 NOV,” “all of

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<sup>38</sup> Ex. 18, Amazon-CPSC-FBA-00003694 (CPSC-Amazon Comm. re Contact Info. of Home Sweet Home); Ex. 5, Amazon-CPSC-FBA-00002388 (Children’s Sleepwear Chronology).

<sup>39</sup> Ex. 19, Amazon-CPSC-FBA-00003707 (CPSC-Amazon Comm.re Stop-Sale, Quarantine and Destruction of Home Sweet Home); Ex. 20, Amazon-CPSC-FBA-00003709 (NOV to seller Home Sweet Home).

<sup>40</sup> Ex. 19, Amazon-CPSC-FBA-00003707 (CPSC-Amazon Comm.re Stop-Sale, Quarantine and Destruction of Home Sweet Home); Ex. 21, Amazon-CPSC-FBA-00002017 at 02020-02021 (CPSC- Amazon Comm. re Children Sleepwear Stop-Sale, Quarantine and Destruction).

<sup>41</sup> Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); Ex. 5, Amazon-CPSC- FBA-00002388 (Children’s Sleepwear Chronology); Dkt. 24, Resp. to ¶ 12 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 8, 11 (Sept. 23, 2022).

the Home Swee Subject Products listed [by ASIN] in the Complaint,” and the “additional products,” though Complaint Counsel objects to Paragraph 32 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, as described in Complaint Counsel’s responses to previous paragraphs, the CPSC identified additional functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com as recently as May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 32.

33. By April 1, 2020, Amazon had quarantined all units of the Home Swee Subject Products identified in the March 17, 2020 NOV to Home Swee, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all of the Subject Products identified in the Complaint.<sup>42</sup>

**RESPONSE:** Undisputed as to Amazon quarantining the “Home Swee Subject Products identified in the March 17, 2020 NOV” and the “additional products,” though Complaint Counsel objects to Paragraph 33 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, as described in Complaint Counsel’s responses to previous paragraphs, the CPSC identified additional functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com as recently as May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170. On

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<sup>42</sup> Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); Ex. 21, Amazon-CPSC- FBA-00002017 at 02020 (CPSC-Amazon Comm. re Children Sleepwear Stop-Sale, Quarantine and Destruction); Shrem Decl. ¶¶ 14–15 (Sept. 23, 2022).

that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 33.

34.

[REDACTED]

<sup>43</sup>

**RESPONSE:** Undisputed.

35.

[REDACTED]

<sup>44</sup>

**RESPONSE:** Undisputed.

36.

[REDACTED]

<sup>45</sup>

**RESPONSE:** Undisputed.

ii. *Amazon sent all purchasers of the Home Swee Subject Products an appropriate direct consumer safety notification email.*

37. By January 21, 2021, Amazon had sent all consumers who purchased a Home Swee Subject Product, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, a direct consumer safety notification by email.<sup>46</sup>

**RESPONSE:** Undisputed as to Amazon sending “all consumers who purchased a Home Swee Subject Product” or “the additional products” a “notification by email,” though Complaint Counsel objects to Paragraph 37 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.”

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<sup>43</sup> Ex. 22, Amazon-CPSC-FBA-00001654 (CPSC-Amazon Comm. re Stop-Sale, Quarantine and Destruction of Home Swee); Ex. 21, Amazon-CPSC-FBA-00002017 at 02020 (CPSC-Amazon Comm. re Children Sleepwear Stop-Sale, Quarantine and Destruction).

<sup>44</sup> Ex. 23, Amazon-CPSC-FBA-00000302 (NOV to Amazon re Home Swee).

<sup>45</sup> Ex. 107, Amazon-CPSC-FBA-00000219 (Amazon’s Supp. Resp. to NOV from CPSC re Home Swee).

<sup>46</sup> Ex. 13, Amazon-CPSC-FBA-00001841 (Customer Notification Dates Data); Ex. 14, Amazon- CPSC-FBA-00002397 (Consumer Messaging Data); Shrem Decl. ¶ 25 (Sept. 23, 2022).

In addition, Complaint Counsel objects to Paragraph 37 to the extent it does not define “direct consumer safety notification.” However, as described in Complaint Counsel’s responses to previous paragraphs, the CPSC identified additional functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com as recently as May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 37.

38. Aside from the date and product identifying information, the notification provided to consumers who purchased a Home Swee Subject Product, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, was a near verbatim copy of the notification provided to consumers who purchased the other children’s sleepwear Subject Products.<sup>47</sup>

**RESPONSE:** Undisputed that, aside from the date and product information, the notification email sent to consumers who purchased a “Home Swee Subject Product” was “a near verbatim copy of the notification provided to consumers who purchased the other children’s sleepwear Subject Products,” though Complaint Counsel objects to Paragraph 38 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, as described in Complaint Counsel’s responses to previous paragraphs, the CPSC identified additional functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com as recently as May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 38.

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<sup>47</sup> Shrem Decl. ¶ 26 (Sept. 23, 2022).

iii. *Amazon provided all purchasers of the Home Swee Subject Products a complete refund.*

39. Amazon provided refunds to all consumers who purchased the Home Swee Subject Products, as well as consumers who purchased the additional products Amazon identified as potentially posing the same hazard as the Subject Products.<sup>48</sup>

**RESPONSE:** Undisputed that Amazon provided refunds to purchasers of the “Home Swee Subject Products” and “additional products,” though Complaint Counsel objects to Paragraph 39 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, as described in Complaint Counsel’s responses to previous paragraphs, the CPSC identified additional functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com as recently as May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 39.

iv. *Amazon has not listed for sale and does not intend to list for sale any of the Home Swee Subject Products.*

40. None of the Home Swee Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, have been listed or available for purchase on Amazon.com since March 31, 2020.<sup>49</sup>

**RESPONSE:** Undisputed that none of the ASINs corresponding to the “Home Swee Subject Products” or the “additional products” have been listed for purchase on Amazon.com since March 31, 2020, though Complaint Counsel objects to

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<sup>48</sup> Ex. 17, Amazon-CPSC-FBA-00001616 (*cf.* Column H and Column L) (Refund Data re Children’s Sleepwear Products); Shrem Decl. ¶ 28 (Sept. 23, 2022).

<sup>49</sup> Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); Dkt. 24, Resp. to ¶ 12 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 8, 11 (Sept. 23, 2022).



Paragraph 40 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, as described in Complaint Counsel’s responses to previous paragraphs, the CPSC identified additional functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com as recently as May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 40.

41. None of the Home Swee Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, are currently listed or available for purchase on Amazon.com.<sup>50</sup>

**RESPONSE:** Undisputed that none of the ASINs associated with the “Home Swee Subject Products” or the “additional products” are currently listed or available for purchase on Amazon.com, though Complaint Counsel objects to Paragraph 41 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, as described in Complaint Counsel’s responses to previous paragraphs, the CPSC identified additional functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com as recently as May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 41.

42. Amazon prohibits Third-Party Sellers, or any other entity, from listing any of the Home Swee Subject Products, or the additional products Amazon identified as

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<sup>50</sup> Dkt. 24, Resp. to ¶ 15 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 12–13.

potentially posing the same hazard as the Subject Products, on Amazon.com.<sup>51</sup>

**RESPONSE:** Undisputed that Amazon attempts to prohibit “Third-Party Sellers, or any other entity, from listing any of the Home Sweet Subject Products” or “additional products” for sale on Amazon.com, though the CPSC is without sufficient information to confirm or deny this statement. In addition, Complaint Counsel objects to Paragraph 42 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, as described in Complaint Counsel’s responses to previous paragraphs, the CPSC identified additional functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com as recently as May 2022. See Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 42.

**3. Amazon’s Remedial Actions Regarding the IDGIRLS Subject Products**

- i. *Amazon stopped selling the IDGIRLS Subject Products and blocked the release of any inventory in its fulfillment centers.*

43.



**RESPONSE:** Undisputed.

44. On or about February 20, 2020, Amazon stopped selling from Amazon.com the IDGIRLS Subject Products, as well as 10 additional products Amazon identified

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<sup>51</sup> Ex. 2, Goldberg Dep. 306:19–307:2; Shrem Decl. ¶ 13 (Sept. 23, 2022).

<sup>52</sup> Ex. 24, Amazon-CPSC-FBA-00003699 (CPSC-Amazon Comm. re Contact Info. of IDGIRLS).

as potentially posing the same hazard as the Subject Products, including all IDGIRLS Subject Products identified in the Complaint.<sup>53</sup>

**RESPONSE:** Undisputed as to Amazon stopping sale of the ASINs associated with the “IDGIRLS Subject Products,” “including all IDGIRLS Subject Products identified [by ASIN] in the Complaint,” and “10 additional products,” though Complaint Counsel objects to Paragraph 44 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, as described in Complaint Counsel’s responses to previous paragraphs, the CPSC identified additional functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com as recently as May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 44.

45. On or about February 20, 2020, Amazon quarantined all units of the IDGIRLS Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all IDGIRLS Subject Products identified in the Complaint.<sup>54</sup>

**RESPONSE:** Undisputed as to Amazon quarantining the “IDGIRLS Subject Products,” “including all IDGIRLS Subject Products identified in the Complaint,” and the “additional products,” though Complaint Counsel objects to Paragraph 45 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as

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<sup>53</sup> Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); Ex. 5, Amazon-CPSC- FBA-00002388 at 02390 (Children’s Sleepwear Chronology); Dkt. 24, Resp.to ¶ 12 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 8, 11 (Sept. 23, 2022).

<sup>54</sup> Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); Ex. 21, Amazon-CPSC- FBA-00002017 at 02022 (CPSC-Amazon Comm. re Children Sleepwear Stop-Sale, Quarantine and Destruction); Shrem Decl. ¶¶ 14–15 (Sept. 23, 2022).

the Subject Products.” However, as described in Complaint Counsel’s responses to previous paragraphs, the CPSC identified additional functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com as recently as May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 45.

46.

[REDACTED]

<sup>55</sup>

**RESPONSE:** Undisputed.

47.

[REDACTED]

<sup>56</sup>

**RESPONSE:** Undisputed.

48.

[REDACTED]

<sup>57</sup>

**RESPONSE:** Undisputed.

49. By December 8, 2020, Amazon had destroyed all IDGIRLS inventory identified in the November 3, 2020 NOV, as well as all inventory of the additional products Amazon identified as potentially posing the same hazard as the Subject Products.<sup>58</sup>

**RESPONSE:** Undisputed as to Amazon destroying the “IDGIRLS inventory identified in the November 3, 2020 NOV” and the “additional products,” though

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<sup>55</sup> Ex. 25, Amazon-CPSC-FBA-00000225 (NOV to seller IDGIRLS).

<sup>56</sup> Ex. 26, Amazon-CPSC-FBA-00001647–01648 (CPSC-Amazon Comm. re Stop-Sale and Destruction of IDGIRLS); Ex. 21, Amazon-CPSC-FBA-00002017 at 02022 (CPSC-Amazon Comm. re Children Sleepwear Stop-Sale, Quarantine and Destruction).

<sup>57</sup> Ex. 27, Amazon-CPSC-FBA-00000328 (NOV to Amazon re IDGIRLS).

<sup>58</sup> Ex. 28, Amazon-CPSC-FBA-00000307–00310 (Amazon Final Resp. to NOV and Cert. of Destruction re IDGIRLS); Shrem Decl. ¶ 18 (Sept. 23, 2022).

Complaint Counsel objects to Paragraph 49 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.”

However, as described in Complaint Counsel’s responses to previous paragraphs, the CPSC identified additional functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com as recently as May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 49.

ii. *Amazon sent all purchasers of the IDGIRLS Subject Products an appropriate direct consumer safety notification email.*

50. By January 21, 2021, Amazon had sent all consumers who purchased an IDGIRLS Subject Product, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, a direct consumer safety notification by email.<sup>59</sup>

**RESPONSE:** Undisputed as to Amazon sending “all consumers who purchased an IDGIRLS Subject Product” or “the additional products” a “notification by email,” though Complaint Counsel objects to Paragraph 50 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” In addition, Complaint Counsel objects to Paragraph 50 to the extent it does not define “direct consumer safety notification.” However, as described in Complaint Counsel’s responses to previous paragraphs, the CPSC identified additional

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<sup>59</sup> Ex. 29, Amazon-CPSC-FBA-00000212 (Amazon Direct Product Safety Notification Email re IDGIRLS Children Sleepwear); Ex. 13, Amazon-CPSC-FBA-00001841 (Customer Notification Dates Data); Shrem Decl. ¶ 25 (Sept. 23, 2022).

functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com as recently as May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 50.

51. The subject line of Amazon’s direct consumer safety notification email regarding the IDGIRLS Subject Products read: “Important safety notice about your past Amazon order.”<sup>60</sup>

**RESPONSE:** Undisputed that the subject line of the “notification email” sent to consumers who purchased the “IDGIRLS Subject Products” reads: “Important safety notice about your past Amazon order.” Complaint Counsel objects to Paragraph 51 to the extent it does not define “direct consumer safety notification.”

52. The body of Amazon’s direct consumer safety notification said the

following: “Dear Amazon Customer,

We have learned of a potential safety issue that may impact your Amazon purchase(s) below:

Order ID: [redacted]

Item: B07SCJNMFP - IDGIRLS Kids Animal Hooded Soft Plush Flannel Bathrobes for Girls Boys Sleepwear Orange Fox M

The U.S. Consumer Product Safety Commission (CPSC) has informed us that the products listed above failed to meet the federal safety standard for the flammability of children’s sleepwear, posing a risk of burn injuries to children.

If you still have this product, we urge you to stop using it immediately and dispose of it. If you purchased this product for someone else, please notify the recipient immediately and let them know they should dispose of it. There is no need for you to return the product.

Amazon is applying a refund in the form of a gift card to Your Account. You can view your available balance and activity here:

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<sup>60</sup> Ex. 29, Amazon-CPSC-FBA-00000212 (Amazon Direct Product Safety Notification Email re IDGIRLS Children Sleepwear); Ex. 13, Amazon-CPSC-FBA-00001841 (Customer Notification Dates Data).

<https://www.amazon.com/gp/css/gc/balance/>

The safety and satisfaction of our customers is our highest priority. We regret any inconvenience this may cause you.”<sup>61</sup>

**RESPONSE:** Undisputed that the body of the “notification email” sent to consumers who purchased the “IDGIRLS Subject Products” reads as set forth by Amazon in Paragraph 52. Complaint Counsel objects to Paragraph 52 to the extent it does not define “direct consumer safety notification.”

53. The direct notification email for the IDGIRLS Subject Products contained the information necessary to help the consumer to identify the product, including the Order ID, Amazon Standard Identification Number, and item name.<sup>62</sup>

**RESPONSE:** Undisputed that the “notification email” contained information relating to the “IDGIRLS Subject Products,” including the “Order ID, Amazon Standard Identification Number, and item name.” Complaint Counsel objects to Amazon’s characterization of this information as all of the information “necessary to help the consumer to identify the product,” and disputes Amazon’s statements in Paragraph 53 on that basis. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In addition, under the sub-section entitled “Requirements for Recall Notices,” the Consumer Product Safety Act requires, among other things, “a photograph of the product.” *See* 15

<sup>61</sup> Ex. 29, Amazon-CPSC-FBA-00000212 (Amazon Direct Product Safety Notification Email re IDGIRLS Children Sleepwear).

<sup>62</sup> Ex. 29, Amazon-CPSC-FBA-00000212 (Amazon Direct Product Safety Notification Email re IDGIRLS Children Sleepwear).

U.S.C. § 2064(i)(2); *see also* 16 C.F.R. § 1115.27(c)(6)

54. The direct notification email helped the consumer identify the specific potential risk posed by the IDGIRLS Subject Products, namely that they “failed to meet the federal safety standard for the flammability of children’s sleepwear, posing a risk of burn injuries to children.”<sup>63</sup>

**RESPONSE:** Undisputed that the “notification email” contained information relating to the “IDGIRLS Subject Products,” including that the products “failed to meet the federal safety standard for the flammability of children’s sleepwear, posing a risk of burn injuries to children.” Otherwise disputed by Complaint Counsel because Amazon’s characterization of this information as “help[ing] the consumer identify the specific potential risk posed by the” products is an opinion rather than a factual contention. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>63</sup> Ex. 29, Amazon-CPSC-FBA-00000212 (Amazon Direct Product Safety Notification Email re IDGIRLS Children Sleepwear).



[REDACTED]

55.

[REDACTED]

<sup>64</sup>.

**RESPONSE:** [REDACTED]

[REDACTED]

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<sup>64</sup> Ex. 30, Rose Dep. 155:10–155:18.

[REDACTED]

[REDACTED] Complaint Counsel disputes Amazon’s characterizations of the testimony on these bases.

- 56. The direct notification email helped the consumer understand the steps a consumer should take to mitigate the potential risk posed by the product, namely that they should “stop using it immediately and dispose of the item” and “[i]f you purchased this product for someone else, please notify the recipient immediately and let them know they should dispose of the item.”<sup>65</sup>

**RESPONSE:** Undisputed that the “notification email” contained information relating to the “IDGIRLS Subject Products,” including stating that consumers should “stop using it immediately and dispose of the item” and “[i]f [they] purchased this product for someone else, please notify the recipient immediately and let them know they should dispose of the item.” Otherwise disputed by Complaint Counsel because Amazon’s characterization of this information as “help[ing] the consumer understand the steps a consumer should take to mitigate the potential risk posed by the” products is an opinion and not a factual contention.

[REDACTED]

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<sup>65</sup> Ex. 29, Amazon-CPSC-FBA-00000212 (Amazon Direct Product Safety Notification Email re IDGIRLS Children Sleepwear).

[REDACTED]

57. The direct notification email helped the consumer understand the remedy being provided by Amazon, namely that “Amazon is applying a refund in the form of a gift card,” and the consumer could view the “balance and activity here: <https://www.amazon.com/gp/css/gc/balance/>.”<sup>66</sup>

**RESPONSE:** Undisputed that the “notification email” contained information relating to the “IDGIRLS Subject Products,” including stating that “Amazon is applying a refund in the form of a gift card,” and the consumer could view the “balance and activity” at a specific link. Otherwise disputed by Complaint Counsel because Amazon’s characterization of this information as “help[ing] the consumer understand the remedy being provided by Amazon” is an opinion and not a factual contention.

iii. *Amazon provided all purchasers of the IDGIRLS Subject Products a complete refund.*

58. Amazon provided refunds to all consumers who purchased the IDGIRLS Subject Products, as well as consumers who purchased the additional products Amazon

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<sup>66</sup> Ex. 29, Amazon-CPSC-FBA-00000212 (Amazon Direct Product Safety Notification Email re IDGIRLS Children Sleepwear).

identified as potentially posing the same hazard as the Subject Products, including all IDGIRLS Subject Products identified in the Complaint.<sup>67</sup>

**RESPONSE:** Undisputed that Amazon provided refunds to purchasers of the “IDGIRLS Subject Products” and “additional products,” though Complaint Counsel objects to Paragraph 58 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, as described in Complaint Counsel’s responses to previous paragraphs, the CPSC identified additional functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com as recently as May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 58.

*iv. Amazon has not listed for sale and does not intend to list for sale any of the IDGIRLS Subject Products.*

59. None of the IDGIRLS Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, have been listed or available for purchase on Amazon.com since February 20, 2020.<sup>68</sup>

**RESPONSE:** Undisputed that none of the ASINs associated with the “IDGIRLS Subject Products” or the “additional products” have been listed for purchase on Amazon.com since February 20, 2020, though Complaint Counsel objects to Paragraph 59 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing

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<sup>67</sup> Ex. 17, Amazon-CPSC-FBA-00001616 (*cf.* Column H and Column L) (Refund Data re Children’s Sleepwear Products); Shrem Decl. ¶ 28 (Sept. 23, 2022).

<sup>68</sup> Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); Dkt. 24, Resp. to ¶ 12 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 8, 11 (Sept. 23, 2022).

the same hazard as the Subject Products.” However, as described in Complaint Counsel’s responses to previous paragraphs, the CPSC identified additional functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com as recently as May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 59.

60. None of the IDGIRLS Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, listed in the Complaint are currently listed or available for purchase on Amazon.com.<sup>69</sup>

**RESPONSE:** Disputed. Paragraph 60 appears to be a run-on sentence that includes, without citation, a purported statement of the Commission, and Complaint Counsel objects to Paragraph 60 on that basis. To the extent that Paragraph 60 is asserting that none of the ASINs associated with the “IDGIRLS Subject Products” or the “additional products” are currently listed or available for purchase on Amazon.com, Complaint Counsel objects to Paragraph 60 because it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, as described in Complaint Counsel’s responses to previous paragraphs, the CPSC identified additional functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com as recently as May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-

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<sup>69</sup> Dkt. 23, Resp. to ¶ 15 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 12–13 (Sept. 23, 2022).

170. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 60.

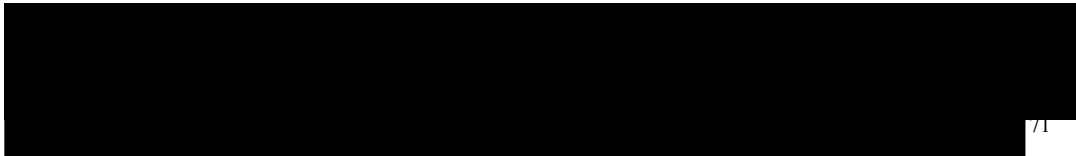
61. Amazon prohibits Third-Party Sellers, or any other entity, from listing any of the IDGIRLS Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, on Amazon.com.<sup>70</sup>

**RESPONSE:** Undisputed that Amazon attempts to prohibit “Third-Party Sellers, or any other entity, from listing any of the IDGIRLS Subject Products” or “additional products” for sale on Amazon.com, though the CPSC is without sufficient information to confirm or deny this statement. In addition, Complaint Counsel objects to Paragraph 61 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, as described in Complaint Counsel’s responses to previous paragraphs, the CPSC identified additional functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com as recently as May 2022. See Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 61.

**4. Amazon’s Remedial Actions Regarding the HOYMN Subject Products**

- i. *Amazon stopped selling the HOYMN Subject Products and blocked the release of any inventory in its fulfillment centers.*

62.



<sup>70</sup> Ex. 2, Goldberg Dep. 306:19–307:2; Shrem Decl. ¶ 13 (Sept. 23, 2022).

<sup>71</sup> Ex. 31, Amazon-CPSC-FBA-00001633 (CPSC-Amazon Comm. re Contact Info. and Stop-Sale of HOYMN).

**RESPONSE:** Undisputed.

63. On or about March 12, 2020, Amazon stopped selling from Amazon.com the HOYMN Subject Products, as well as approximately 706 additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all HOYMN Subject Products identified in the Complaint.<sup>72</sup>

**RESPONSE:** Undisputed as to Amazon stopping sale of the ASINs associated with the “HOYMN Subject Products” including “all HOYMN Subject Products listed in the Complaint,” and the “additional products,” though Complaint Counsel objects to Paragraph 63 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, as described in Complaint Counsel’s responses to previous paragraphs, the CPSC identified additional functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com as recently as May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 63.

64. On or about March 12, 2020, Amazon quarantined all units of the HOYMN Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all HOYMN Subject Products identified in the Complaint.<sup>73</sup>

**RESPONSE:** Undisputed as to Amazon quarantining the “HOYMN Subject Products identified in the January 24, 2020 NOV” and the “additional products,”

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<sup>72</sup> Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); Ex. 31, Amazon-CPSC- FBA-00001633 (CPSC-Amazon Comm. re Contact Info. and Stop-Sale of HOYMN); Ex. 5, Amazon-CPSC-FBA-00002388 at 02389 (Children’s Sleepwear Chronology); Dkt. 24, Resp. to ¶ 12 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 8, 11 (Sept. 23, 2022).

<sup>73</sup> Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); Ex. 31, Amazon-CPSC-FBA-00001633 (CPSC-Amazon Comm. re Contact Info. and Stop-Sale of HOYMN); Shrem Decl. ¶¶ 14–15 (Sept. 23, 2022).

though Complaint Counsel objects to Paragraph 64 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.”

However, as described in Complaint Counsel’s responses to previous paragraphs, the CPSC identified additional functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com as recently as May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 64.

65.

[REDACTED]

<sup>74</sup>

**RESPONSE:** Undisputed.

66.

[REDACTED]

<sup>75</sup>

**RESPONSE:** Undisputed.

67.

[REDACTED]

<sup>76</sup>

**RESPONSE:** Undisputed.

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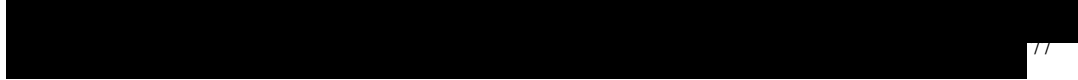
<sup>74</sup> Ex. 32, Amazon-CPSC-FBA-00000323 (NOV to seller HOYMN).

<sup>75</sup> Ex. 33, Amazon-CPSC-FBA-00002583 (CPSC-Amazon Comm. re Stop-Sale, Quarantine and Destruction of HOYMN).

<sup>76</sup> Ex. 34, Amazon-CPSC-FBA-00001651 (Amazon-CPSC Comm. re Stop-Sale, Quarantine and Destruction of HOYMN).



68.



**RESPONSE:** Undisputed.

69. By December 23, 2020, Amazon had destroyed all inventory the HOYMN Subject Products, as well as all inventory of the additional products Amazon identified as potentially posing the same hazard as the Subject Products.<sup>78</sup>

**RESPONSE:** Undisputed as to Amazon destroying “all [of its] inventory of the HOYMN Subject Products” and the “additional products,” though Complaint Counsel objects to Paragraph 69 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, as described in Complaint Counsel’s responses to previous paragraphs, the CPSC identified additional functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com as recently as May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 69.

ii. *Amazon sent all purchasers of the HOYMN Subject Products an appropriate direct consumer safety notification email.*

70. By May 18, 2022, Amazon had sent all consumers who purchased a HOYMN Subject Product, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, a direct consumer safety notification by email with the subject line: “Attention: Important safety notice about your past Amazon order.”<sup>79</sup>

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<sup>77</sup> Ex. 35, Amazon-CPSC-FBA-00000250 (NOV to Amazon re HOYMN).

<sup>78</sup> Ex. 36, Amazon-CPSC-FBA-00002383 (Amazon Resp. to Req. for Corrective Action re HOYMN and Cert. of Destruction); Shrem Decl. ¶ 18 (Sept. 23, 2022).

<sup>79</sup> Ex. 37, Amazon-CPSC-FBA-00002419 (Amazon Direct Product Safety Notification Email re HOYMN Children’s Sleepwear); Ex. 13, Amazon-CPSC-FBA-00001841 (Customer Notification Dates Data); Shrem Decl. ¶ 25 (Sept. 23, 2022).

**RESPONSE:** Undisputed that the subject line of the “notification email” sent to consumers who purchased the “HOYMN Subject Products” reads: “Attention: Important safety notice about your past Amazon order,” though Complaint Counsel objects to Paragraph 70 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” Complaint Counsel also objects to Paragraph 70 to the extent it does not define “direct consumer safety notification.”

71. The body of Amazon’s direct consumer safety notification said the following:

“Dear Amazon Customer,

We have learned of a potential safety issue that may impact your Amazon purchase(s) below:

Order ID: 114-8417428-2257849

Item: B0743NKWC - Girls’ Lace Nightgowns & Bowknot Sleep Shirts  
100 percent Cotton Nightie for Toddler, Purple Lace, 6-7 Years/Tag 140

The product listed above is either a product that the U.S. Consumer Product Safety Commission (CPSC) has informed us, or our Product Safety team has identified, may fail to meet the federal safety standard for the flammability of children’s sleepwear, potentially posing a risk of burn injuries to children.

If you still have this product, we urge you to stop using it immediately and dispose of the item. If you purchased this item for someone else, please notify the recipient immediately and let them know they should dispose of the item. There is no need for you to return the product.

Amazon is applying a refund in the form of a gift card to Your Account. You can view your available balance and activity here:  
<https://www.amazon.com/gp/css/gc/balance/>

The safety and satisfaction of our customers is our highest priority. We regret any inconvenience this may cause you.

Thank you for shopping at Amazon.”<sup>80</sup>

**RESPONSE:** Undisputed that the body of the “notification email” sent to consumers who purchased the “HOYMN Subject Products” reads as set forth by Amazon in Paragraph 71. Complaint Counsel objects to Paragraph 71 to the extent it does not define “direct consumer safety notification.”

72. The direct notification email for the HOYMN Subject Products contained the information necessary to help the consumer to identify the product, including the Order ID, ASIN, and item name.<sup>81</sup>

**RESPONSE:** Undisputed that the “notification email” contained information relating to the “HOYMN Subject Products,” including the “Order ID, Amazon Standard Identification Number, and item name.” Otherwise disputed by Complaint Counsel because Amazon’s characterization of this information as all of the information “necessary to help the consumer to identify the product” is an opinion and not a factual contention. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In addition, under the sub-section entitled “Requirements for Recall Notices,” the Consumer Product Safety Act requires, among other things, “a photograph of the product.” *See* 15 U.S.C. § 2064(i)(2); *see also* 16 C.F.R. § 1115.27(c)(6)

73. The direct notification email helped the consumer identify the specific potential risk posed by the HOYMN Subject Products, namely that they “may fail to meet the

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<sup>80</sup> Ex. 37, Amazon-CPSC-FBA-00002419 (Amazon Direct Product Safety Notification Email re HOYMN Children’s Sleepwear).

<sup>81</sup> Ex. 37, Amazon-CPSC-FBA-00002419 (Amazon Direct Product Safety Notification Email re HOYMN Children’s Sleepwear).

federal safety standard for the flammability of children’s sleepwear, potentially posing a risk of burn injuries to children.”<sup>82</sup>

**RESPONSE:** Undisputed that the “notification email” contained information relating to the “HOYMN Subject Products,” including that the products “may fail to meet the federal standard for flammability of children’s sleepwear, posing a risk of burn injuries to children.” Otherwise disputed by Complaint Counsel because Amazon’s characterization of this information as “help[ing] the consumer identify the specific potential risk posed by the” products is an opinion and not a factual contention. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>82</sup> Ex. 37, Amazon-CPSC-FBA-00002419 (Amazon Direct Product Safety Notification Email re HOYMN Children’s Sleepwear).

[REDACTED]

74. The direct notification email helped the consumer understand the steps a consumer should take to mitigate the potential risk posed by the product, namely that they should “stop using it immediately and dispose of the item” and “[i]f you purchased this item for someone else, please notify the recipient immediately and let them know they should dispose of the item.”<sup>83</sup>

**RESPONSE:** Undisputed that the “notification email” contained information relating to the “HOYMN Subject Products,” including stating that consumers should “stop using it immediately and dispose of the item” and “[i]f you purchased this item for someone else, please notify the recipient immediately and let them know they should dispose of the item.” Otherwise disputed by Complaint Counsel because Amazon’s characterization of this information as “help[ing] the consumer understand the steps a consumer should take to mitigate the potential risk posed by the” products is an opinion and not a factual contention. [REDACTED]

[REDACTED]

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<sup>83</sup> Ex. 37, Amazon-CPSC-FBA-00002419 (Amazon Direct Product Safety Notification Email re HOYMN Children’s Sleepwear).

[REDACTED]

75. The direct notification email helped the consumer understand the remedy being provided by Amazon, namely that “Amazon is applying a refund in the form of a gift

card,” and the consumer could view the “balance and activity here: <https://www.amazon.com/gp/css/gc/balance/>.”<sup>84</sup>

**RESPONSE:** Undisputed that the “notification email” contained information relating to the “HOYMN Subject Products,” including stating that “Amazon is applying a refund in the form of a gift card,” and the consumer could view the “balance and activity” at a specific link. Otherwise disputed by Complaint Counsel because Amazon’s characterization of this information as “help[ing] the consumer understand the remedy being provided by Amazon” is an opinion and not a factual contention.

iii. *Amazon provided all purchasers of the HOYMN Subject Products a complete refund.*

76. Amazon provided refunds to all consumers who purchased the HOYMN Subject Products, as well as consumers who purchased the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all HOYMN subject products identified in the Complaint.<sup>85</sup>

**RESPONSE:** Undisputed that Amazon provided refunds to purchasers of the “HOYMN Subject Products” and “additional products,” though Complaint Counsel objects to Paragraph 76 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, as described in Complaint Counsel’s responses to previous paragraphs, the CPSC identified additional functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com as recently as May 2022. *See* Complaint

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<sup>84</sup> Ex. 37, Amazon-CPSC-FBA-00002419 (Amazon Direct Product Safety Notification Email re HOYMN Children’s Sleepwear).

<sup>85</sup> Ex. 17, Amazon-CPSC-FBA-00001616 (*cf.* Column H and Column L) (Refund Data re Children’s Sleepwear Products); Shrem Decl. ¶ 28 (Sept. 23, 2022).

Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 76.

*iv. Amazon has not listed for sale and does not intend to list for sale any of the HOYMN Subject Products.*

77. None of the HOYMN Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, have been listed or available for purchase on Amazon.com since March 12, 2020.<sup>86</sup>

**RESPONSE:** Undisputed that none of the ASINs associated with the “HOYMN Subject Products” or the “additional products” have been listed for purchase on Amazon.com since March 12, 2020, though Complaint Counsel objects to Paragraph 77 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, as described in Complaint Counsel’s responses to previous paragraphs, the CPSC identified additional functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com as recently as May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 77.

78. None of the HOYMN Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, are currently listed or available for purchase on Amazon.com.<sup>87</sup>

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<sup>86</sup> Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); Ex. 31, Amazon-CPSC- FBA-00001633 (CPSC-Amazon Comm. re Contact Info. and Stop-Sale of HOYMN); Dkt. 23, Resp. to ¶ 12 (Compl. Counsel’s Resp. to Respondent Amazon.com, Inc.’s Statement of Undisputed Facts) (Nov. 22, 2021).

<sup>87</sup> Dkt. 23, Resp. to ¶ 15 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 12–13 (Sept. 23, 2022); Shrem Decl. ¶¶ 8, 11 (Sept. 23, 2022).



**RESPONSE:** Undisputed that none of the ASINs associated with the “HOYMN Subject Products” or the “additional products” are currently listed or available for purchase on Amazon.com, though Complaint Counsel objects to Paragraph 78 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, as described in Complaint Counsel’s responses to previous paragraphs, the CPSC identified additional functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com as recently as May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 78.

79. Amazon prohibits Third-Party Sellers, or any other entity, from listing any of the HOYMN Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, on Amazon.com.<sup>88</sup>

**RESPONSE:** Undisputed that Amazon attempts to prohibit “Third-Party Sellers, or any other entity, from listing any of the HOYMN Subject Products” or “additional products” for sale on Amazon.com, though the CPSC is without sufficient information to confirm or deny this statement. In addition, Complaint Counsel objects to Paragraph 79 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, as described in Complaint Counsel’s responses to previous paragraphs, the CPSC identified additional functionally equivalent products to the children’s sleepwear

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<sup>88</sup> Ex. 2, Goldberg Dep. 306:19–307:2; Shrem Decl. ¶¶ 8, 11, 13 (Sept. 23, 2022).

Subject Products for sale on Amazon.com as recently as May 2022. See Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 79.

**B. Amazon’s Remedial Actions Regarding the Hair Dryer Subject Products.**

1. *Amazon stopped selling the Hair Dryer Subject Products and blocked the release of any inventory in its fulfillment centers.*

80. [REDACTED]<sup>89</sup>

**RESPONSE:** Undisputed.

81. [REDACTED]<sup>90</sup>

**RESPONSE:** Undisputed.

82. [REDACTED]<sup>91</sup>

**RESPONSE:** Disputed. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

<sup>89</sup> Ex. 38, CPSC\_AM001813 (Mar. 2, 2021 email from Joseph Williams to Amazon); Ex. 39, Amazon-CPSC-FBA-00000233 (NOV regarding “Various Hair Dryers”).

<sup>90</sup> See Ex. 40, Williams Dep. 155:12–155:14.

<sup>91</sup> Ex. 40, Williams Dep. 155:5–155:8.

83.

[REDACTED]

**RESPONSE:** [REDACTED]

[REDACTED]

84. On or about March 3, 2021, Amazon stopped selling from Amazon.com the hair dryer Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all hair dryer models identified in the Complaint.<sup>93</sup>

**RESPONSE:** Undisputed as to Amazon stopping sale of the ASINs associated with the “hair dryer Subject Products,” including “all hair dryer models identified [by ASIN] in the Complaint,” and the “additional products,” though Complaint Counsel objects to Paragraph 84 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, the CPSC identified additional functionally equivalent products to the hair dryer Subject Products for sale on Amazon.com as recently as June 2022. *See* Complaint

<sup>92</sup> Ex. 39, Amazon-CPSC-FBA-00000233 at 00236 (NOV regarding “Various Hair Dryers”); *see also* Ex. 40, Williams Dep. 140:11–140:20, 141:10–141:18.

<sup>93</sup> Ex. 41, Amazon-CPSC-FBA-00001617 (Amazon Destruction Data); Shrem Decl. ¶¶ 9, 11 (Sept. 23, 2022).

Counsel’s Statement of Undisputed Material Facts, at ¶¶ 175-179. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 84.

85. On or about March 3, 2021, Amazon quarantined all units of the hair dryer Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all hair dryer models identified in the Complaint.<sup>94</sup>

**RESPONSE:** Undisputed as to Amazon quarantining the “hair dryer Subject Products,” including “all hair dryer models identified in the Complaint,” and the “additional products,” though Complaint Counsel objects to Paragraph 85 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, as described in Complaint Counsel’s response to Paragraph 84, the CPSC identified additional functionally equivalent products to the hair dryer Subject Products for sale on Amazon.com as recently as June 2022. See Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 175-179. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 85.

2. *Amazon sent all purchasers of the Hair Dryer Subject Products an appropriate direct consumer safety notification email.*

86. Between June 11, 2021 and August 1, 2021, Amazon sent all consumers who purchased the hair dryer Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all hair dryer models identified in the Complaint, a direct consumer safety notification by email with the subject line: “Attention: Important safety notice about your past Amazon order.”<sup>95</sup>

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<sup>94</sup> Ex. 41, Amazon-CPSC-FBA-00001617 (Amazon Destruction Data); Shrem Decl. ¶¶ 14, 16 (Sept. 23, 2022).

<sup>95</sup> Ex. 13, Amazon-CPSC-FBA-00001841 (Customer Notification Dates Data); Dkt. 24, Resp. ¶ 20 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶ 25 (Sept. 23, 2022).

**RESPONSE:** Undisputed that the subject line of the “notification email” sent to consumers who purchased the “hair dryer Subject Products” reads: “Attention: Important safety notice about your past Amazon order,” though Complaint Counsel objects to Paragraph 86 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” Complaint Counsel also objects to Paragraph 86 to the extent it does not define “direct consumer safety notification.”

87. The body of Amazon’s direct consumer safety notification said the following:

“Dear Amazon Customer,

We have learned of a potential safety issue that may impact your Amazon purchase(s) below:

Order ID: [redacted]

Item: B07TVX4G4C - Hair Dryer Brush and Hot Air Brush, Bvser Air Hair Brush 3 in 1 Electric Hair Dryer Volumizer with Negative Ion Curling Dryer Brush One Styler Step, Hair Straightening Brush, Rotating

The product listed above is either a product that the U.S. Consumer Product Safety Commission (CPSC) has informed us about, or our Product Safety team has identified, that may fail to have mandatory immersion protection, posing a risk of electric shock if the hair dryer comes in contact with water.

If you still have this product, we urge you to stop using it immediately and dispose of it. If you purchased this product for someone else, please notify the recipient immediately and let them know they should dispose of it. There is no need for you to return the product.

Amazon is applying a refund in the form of a gift card to Your Account. You can view your available balance and activity here: <https://www.amazon.com/gp/css/gc/balance/>

The safety and satisfaction of our customers is our highest priority. We regret any inconvenience this may cause you.

Thanks for shopping at Amazon.”<sup>96</sup>

**RESPONSE:** Undisputed that the body of the “notification email” sent to consumers who purchased the “hair dryer Subject Products” reads as set forth by Amazon in Paragraph 87. Complaint Counsel objects to Paragraph 87 to the extent it does not define “direct consumer safety notification.”

88. The direct notification email for the hair dryer Subject Products contained the information necessary to help the consumer to identify the product, including the Order ID, Amazon Standard Identification Number, and item name.<sup>97</sup>

**RESPONSE:** Undisputed that the “notification email” contained information relating to the “hair dryer Subject Products,” including the “Order ID, Amazon Standard Identification Number, and item name.” Otherwise disputed by Complaint Counsel because Amazon’s characterization of this information as all of the information “necessary to help the consumer to identify the product” is an opinion and not a factual contention. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In addition, under the sub-section entitled “Requirements for Recall Notices,” the Consumer Product Safety Act requires, among other things, “a photograph of the product.” *See* 15 U.S.C. § 2064(i)(2); *see also* 16 C.F.R. § 1115.27(c)(6).

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<sup>96</sup> Ex. 29, Amazon-CPSC-FBA-00000212 at 00213 (Amazon Hair Dryer Safety Notice).

<sup>97</sup> Ex. 29, Amazon-CPSC-FBA-00000212 at 00213 (Amazon Hair Dryer Safety Notice).

89.

[REDACTED]

<sup>98</sup>

**RESPONSE:** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

90. The direct notification email helped the consumer identify the specific potential risk posed by the hair dryer Subject Products, namely that they “may fail to have mandatory immersion protection, posing a risk of electric shock if the hair dryer comes in contact with water.”<sup>99</sup>

**RESPONSE:** Undisputed that the “notification email” contained information relating to the “hair dryer Subject Products,” including that the products “may fail to have mandatory immersion protection, posing a risk of electric shock if the hair dryer comes in contact with water.” Otherwise disputed by Complaint Counsel because Amazon’s characterization of this information as “help[ing] the consumer identify the specific potential risk posed by the hair dryer Subject Products” is an opinion and not a factual contention. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

<sup>98</sup> Ex. 40, Williams Dep. 62:15–63:1.

<sup>99</sup> Ex. 29, Amazon-CPSC-FBA-00000212 at 00213 (Amazon Hair Dryer Safety Notice); Ex. 40, Williams Dep. 63:14–63:19.





91. The direct notification email helped the consumer understand the steps a consumer should take to mitigate the potential risk posed by the product, namely that they should “stop using it immediately and dispose of it” and “[i]f you purchased this product for someone else, please notify the recipient immediately and let them know they should dispose of it.”<sup>100</sup>

**RESPONSE:** Undisputed that the “notification email” contained information relating to the “hair dryer Subject Products,” including stating that consumers should “stop using it immediately and dispose of it” and “[i]f you purchased this product for someone else, please notify the recipient immediately and let them know they should dispose of it.” Otherwise disputed by Complaint Counsel because Amazon’s characterization of this information as “help[ing] the consumer understand the steps a consumer should take to mitigate the potential risk posed by the” products is an opinion and not a factual contention. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>100</sup> Ex. 29, Amazon-CPSC-FBA-00000212 at 00213 (Amazon Hair Dryer Safety Notice); Ex. 40, Williams Dep. 64:18–64:22.

[REDACTED]

92. The direct notification email helped the consumer understand the remedy being provided by Amazon, namely that “Amazon is applying a refund in the form of a gift card”, and the consumer could view the “balance and activity here: <https://www.amazon.com/gp/css/gc/balance/>.”<sup>101</sup>

**RESPONSE:** Undisputed that the “notification email” contained information relating to the “hair dryer Subject Products,” including stating that “Amazon [was] applying a refund in the form of a gift card,” and the consumer could view the “balance and activity” at a specific link. Otherwise disputed by Complaint Counsel because Amazon’s characterization of this information as “help[ing] the consumer

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<sup>101</sup> Ex. 29, Amazon-CPSC-FBA-00000212 at 00213 (Amazon Hair Dryer Safety Notice); Ex. 40, Williams Dep. 64:11–64:17.

understand the remedy being provided by Amazon” is an opinion and not a factual contention.

3. *Amazon provided all purchasers of the hair dryer Subject Products a complete refund.*

93. Amazon provided refunds to all consumers who purchased the hair dryer Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all hair dryer models identified in the Complaint.<sup>102</sup>

**RESPONSE:** Undisputed that Amazon provided refunds to purchasers of the “hair dryer Subject Products” and “additional products,” though Complaint Counsel objects to Paragraph 93 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, as described in Complaint Counsel’s response to previous paragraphs, the CPSC identified additional functionally equivalent products to the hair dryer Subject Products for sale on Amazon.com as recently as June 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 175-179. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 93.

4. *Amazon has not listed for sale and does not intend to list for sale any of the hair dryer Subject Products.*

94. Prior to the filing of the Complaint in this matter, Amazon had removed the hair dryer Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, from Amazon.com.<sup>103</sup>

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<sup>102</sup> Ex. 42, Amazon-CPSC-FBA-00002377 (Amazon Refund Data re Carbon Monoxide Detectors and Hair Dryers); Shrem Decl. ¶ 28 (Sept. 23, 2022).

<sup>103</sup> Ex. 1, Compl. Counsel’s Obj. and Resp. to Amazon Request for Admission, No. 9 (Mar. 21, 2022); Ex. 41, Amazon-CPSC-FBA-00001617 (Amazon Destruction Data) Shrem Decl. ¶¶ 9, 11, 13 (Sept. 23, 2022).

**RESPONSE:** Undisputed as to the initial removal by Amazon of the ASINs corresponding to the hair dryer Subject Products identified in Complaint Counsel’s Statement of Undisputed Material Facts, at ¶ 45. However, Complaint Counsel objects to Paragraph 94 to the extent it does not define the universe of “additional products Amazon identified as potentially posing the same hazard as the Subject Products . . . .” In addition, the CPSC identified additional functionally equivalent products to the hair dryer Subject Products for sale on Amazon.com as recently as June 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 175-179. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 94.

95. None of the hair dryer Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all hair dryer models listed in the Complaint are currently listed or available for purchase on Amazon.com.<sup>104</sup>

**RESPONSE:** Undisputed that none of the ASINs associated with the “hair dryer Subject Products” or the “additional products” are currently listed or available for purchase on Amazon.com, though Complaint Counsel objects to Paragraph 95 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, as described in Complaint Counsel’s response to previous paragraphs, the CPSC identified additional functionally equivalent products to the hair dryer Subject Products for sale on Amazon.com as recently as June 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶

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<sup>104</sup> Dkt. 24, Resp. to ¶ 15 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 12–13 (Sept. 23, 2022).

175-179. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 95.

96. Amazon prohibits Third-Party Sellers, or any other entity, from listing any of the hair dryer Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, on Amazon.com.<sup>105</sup>

**RESPONSE:** Undisputed that Amazon attempts to prohibit “Third-Party Sellers, or any other entity, from listing any of the hair dryer Subject Products” or “additional products” for sale on Amazon.com, though the CPSC is without sufficient information to confirm or deny this statement. In addition, Complaint Counsel objects to Paragraph 96 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, as described in Complaint Counsel’s response to previous paragraphs, the CPSC identified additional functionally equivalent products to the hair dryer Subject Products for sale on Amazon.com as recently as June 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 175-179. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 96.

C. **Amazon’s Remedial Actions Regarding the Carbon Monoxide Subject Products.**

1. *Amazon stopped selling the carbon monoxide Subject Products and blocked the release of any inventory in its fulfillment centers.*

97. 

<sup>106</sup>

<sup>105</sup> Ex. 2, Goldberg Dep. 306:19–307:2; Shrem Decl. ¶ 13 (Sept. 23, 2022).

<sup>106</sup> Ex. 43, Amazon-CPSC-FBA-00002712 (Aug. 10, 2020 email from CPSC to Amazon).

**RESPONSE:** Undisputed.

98. On or about August 13, 2020, Amazon stopped selling from Amazon.com the carbon monoxide Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all carbon monoxide detector models identified in the Complaint.<sup>107</sup>

**RESPONSE:** Undisputed as to Amazon stopping sale of the ASINs associated with the “carbon monoxide Subject Products” including “all carbon monoxide models identified [by ASIN] in the Complaint,” and the “additional products,” though Complaint Counsel objects to Paragraph 98 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, the CPSC identified additional functionally equivalent products to the carbon monoxide Subject Products for sale on Amazon.com as recently as May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 171-174. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 98.

99. On or about August 13, 2020, Amazon quarantined all units of the carbon monoxide Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all carbon monoxide detector models identified in the Complaint.<sup>108</sup>

**RESPONSE:** Undisputed as to Amazon quarantining the “carbon monoxide Subject Products,” including “all carbon monoxide models identified in the Complaint,” and the “additional products,” though Complaint Counsel objects to Paragraph 99 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing

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<sup>107</sup> Ex. 41, Amazon-CPSC-FBA-00001617 (Amazon Destruction Data); Shrem Decl. ¶¶ 10–11 (Sept. 23, 2022).

<sup>108</sup> Ex. 41, Amazon-CPSC-FBA-00001617 (Amazon Destruction Data); Shrem Decl. ¶¶ 14, 17 (Sept. 23, 2022).

the same hazard as the Subject Products.” However, as described in Complaint Counsel’s response to Paragraph 98, the CPSC identified additional functionally equivalent products to the carbon monoxide Subject Products for sale on Amazon.com as recently as May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 171-174. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 98.

2. *Amazon sent all purchasers of the carbon monoxide Subject Products an appropriate direct consumer safety notification email.*

100. Between June 11, 2021 and August 1, 2021, Amazon sent all consumers who purchased the carbon monoxide Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all carbon monoxide detector models identified in the Complaint, a direct consumer safety notification by email with the subject line: “Attention: Important safety notice about your past Amazon order.”<sup>109</sup>

**RESPONSE:** Undisputed that the subject line of the “notification email” sent to consumers who purchased the “carbon monoxide Subject Products” reads:

“Attention: Important safety notice about your past Amazon order,” though

Complaint Counsel objects to Paragraph 100 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.”

Complaint Counsel also objects to Paragraph 100 to the extent it does not define “direct consumer safety notification.”

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<sup>109</sup> Ex. 29, Amazon-CPSC-FBA-00000212 at 00214 (Carbon Monoxide Detector Safety Notice); Dkt. 24, Resp. ¶ 20 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶ 25 (Sept. 23, 2022).

101. The body of Amazon’s direct consumer safety notification said the following:

“Dear Amazon Customer,

We have learned of a potential safety issue that may impact your Amazon purchase(s) below:

Order ID: [redacted]

Item: B07C2KM8RB - MIXSight Carbon Monoxide Detector CO Alarm Detector with LCD Digital Display Battery Operated, 4-Pack, Battery Included

The product listed above is either a product that the U.S. Consumer Product Safety Commission (CPSC) has informed us about, or our Product Safety team has identified, that may fail to alarm on time, posing a risk of exposure to potentially dangerous levels of Carbon Monoxide.

If you still have this product, we urge you to stop using it immediately and dispose of it. If you purchased this product for someone else, please notify the recipient immediately and let them know they should dispose of it. There is no need for you to return the product.

Amazon is applying a refund in the form of a gift card to Your Account. You can view your available balance and activity here: <https://www.amazon.com/gp/css/gc/balance/>

The safety and satisfaction of our customers is our highest priority. We regret any inconvenience this may cause you.

Thanks for shopping at Amazon.”<sup>110</sup>

**RESPONSE:** Undisputed that the body of the “notification email” sent to consumers who purchased the “carbon monoxide Subject Products” reads as set forth by Amazon in Paragraph 101. Complaint Counsel objects to Paragraph 101 to the extent it does not define “direct consumer safety notification.”

102. The direct notification email for the carbon monoxide Subject Products contained the information necessary to help the consumer to identify the product, including the Order ID, Amazon Standard Identification Number, and item name.<sup>111</sup>

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<sup>110</sup> Ex. 29, Amazon-CPSC-FBA-00000212 at 00214 (Carbon Monoxide Detector Safety Notice).

<sup>111</sup> Ex. 29, Amazon-CPSC-FBA-00000212 at 00214 (Carbon Monoxide Detector Safety Notice).



**RESPONSE:** Undisputed that the “notification email” contained information relating to the “carbon monoxide Subject Products,” including the “Order ID, Amazon Standard Identification Number, and item name.” Otherwise disputed by Complaint Counsel because Amazon’s characterization of this information as all of the information “necessary to help the consumer to identify the product” is an opinion and not a factual contention. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In addition, under the sub-section entitled “Requirements for Recall Notices,” the Consumer Product Safety Act requires, among other things, “a photograph of the product.” *See* 15 U.S.C. § 2064(i)(2); *see also* 16 C.F.R. § 1115.27(c)(6)

103. The direct notification email helped the consumer identify the specific potential risk posed by the carbon monoxide Subject Products, namely that they “may fail to alarm on time, posing a risk of exposure to potentially dangerous levels of Carbon Monoxide.”<sup>112</sup>

**RESPONSE:** Undisputed that the “notification email” contained information relating to the “carbon monoxide Subject Products,” including that the products “may fail to alarm on time, posing a risk of exposure to potentially dangerous levels of Carbon Monoxide.” Otherwise disputed by Complaint Counsel because Amazon’s characterization of this information as “help[ing] the consumer identify the specific potential risk posed by the carbon monoxide Subject Products” is an opinion and not a factual contention. [REDACTED]

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<sup>112</sup> Ex. 29, Amazon-CPSC-FBA-00000212 at 00214 (Carbon Monoxide Detector Safety Notice).

[Redacted text block consisting of approximately 24 lines of blacked-out content]

[REDACTED]

[REDACTED]

[REDACTED]

104. The direct notification email identified and helped the consumer understand the steps a consumer should take to mitigate the potential risk posed by the product, namely, that they should “stop using it immediately and dispose of it” and “[i]f you purchased this product for someone else, please notify the recipient immediately and let them know they should dispose of it.”<sup>113</sup>

**RESPONSE:** Undisputed that the “notification email” contained information relating to the “carbon monoxide Subject Products,” including stating that consumers should “stop using it immediately and dispose of it” and “[i]f you purchased this product for someone else, please notify the recipient immediately and let them know they should dispose of it.” Otherwise disputed by Complaint Counsel because Amazon’s characterization of this information as “help[ing] the consumer understand the steps a consumer should take to mitigate the potential risk posed by the” products is an opinion and not a factual contention. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>113</sup> Ex. 29, Amazon-CPSC-FBA-00000212 at 00214 (Carbon Monoxide Detector Safety Notice).

[REDACTED]

105. The direct notification email helped the consumer understand the remedy being provided by Amazon, namely that “Amazon is applying a refund in the form of a gift card,” and the consumer could view the “balance and activity here: <https://www.amazon.com/gp/css/gc/balance/>.”<sup>114</sup>

**RESPONSE:** Undisputed that the “notification email” contained information relating to the “carbon monoxide Subject Products,” including stating that “Amazon is applying a refund in the form of a gift card,” and the consumer could view the “balance and activity” at a specific link. Otherwise disputed by

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<sup>114</sup> Ex. 29, Amazon-CPSC-FBA-00000212 at 00214 (Carbon Monoxide Detector Safety Notice).

Complaint Counsel because Amazon’s characterization of this information as “help[ing] the consumer understand the remedy being provided by Amazon” is an opinion and not a factual contention.

3. *Amazon provided all purchasers of the carbon monoxide Subject Products a complete refund.*

106. Amazon provided refunds to all consumers who purchased the carbon monoxide Subject Products, as well as the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all carbon monoxide Subject Products identified in the Complaint.<sup>115</sup>

**RESPONSE:** Undisputed that Amazon provided refunds to purchasers of the “carbon monoxide Subject Products” and “additional products,” though Complaint Counsel objects to Paragraph 106 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, as described in Complaint Counsel’s response to previous paragraphs, the CPSC identified additional functionally equivalent products to the carbon monoxide Subject Products for sale on Amazon.com as recently as May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 171-174. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 106.

4. *Amazon has not listed for sale and does not intend to list for sale any of the carbon monoxide Subject Products.*

107. Prior to the filing of the Complaint in this matter, Amazon had removed the carbon monoxide Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, from Amazon.com.<sup>116</sup>

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<sup>115</sup> Ex. 44, Amazon-CPSC-FBA-00003803 (Info. Re Amazon Refunds to Purchasers of Subject Products); Shrem Decl. ¶ 28 (Sept. 23, 2022).

<sup>116</sup> Ex. 1, Compl. Counsel’s Obj. and Resp. to Amazon Request for Admission, No. 8 (Mar. 21, 2022); Ex. 41, Amazon-CPSC-FBA-00001617 (Amazon Destruction Data).

**RESPONSE:** Undisputed as to the initial removal by Amazon of the ASINs corresponding to the carbon monoxide Subject Products identified in Complaint Counsel’s Statement of Undisputed Material Facts, at ¶ 23. However, Complaint Counsel objects to Paragraph 107 to the extent it does not define the universe of “additional products Amazon identified as potentially posing the same hazard as the Subject Products . . . .” In addition, the CPSC identified additional functionally equivalent products to the carbon monoxide Subject Products for sale on Amazon.com as recently as May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 171-174. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 107.

108. None of the carbon monoxide Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, are currently listed or available for purchase on Amazon.com.<sup>117</sup>

**RESPONSE:** Undisputed that none of the ASINs associated with the “carbon monoxide Subject Products” or the “additional products” are currently listed or available for purchase on Amazon.com, though Complaint Counsel objects to Paragraph 108 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, as described in Complaint Counsel’s response to previous paragraphs, the CPSC identified additional functionally equivalent products to the carbon monoxide Subject Products for sale on Amazon.com as recently as May 2022. *See* Complaint Counsel’s Statement of

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<sup>117</sup> Dkt. 24, Resp. to ¶ 15 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 12–13 (Sept. 23, 2022).

Undisputed Material Facts, at ¶¶ 171-174. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 108.

109. Amazon prohibits Third-Party Sellers, or any other entity, from listing any of the carbon monoxide Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, on Amazon.com.<sup>118</sup>

**RESPONSE:** Undisputed that Amazon attempts to prohibit “Third-Party Sellers, or any other entity, from listing any of the carbon monoxide Subject Products” or “additional products” for sale on Amazon.com, though the CPSC is without sufficient information to confirm or deny this statement. In addition, Complaint Counsel objects to Paragraph 109 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, as described in Complaint Counsel’s response to previous paragraphs, the CPSC identified additional functionally equivalent products to the hair dryer Subject Products for sale on Amazon.com as recently as June 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 175-179. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 109.

**D. Amazon’s Remedial Actions with Respect to All Subject Products.**

110. Amazon retains email address information for purchasers of the Subject Products. After the Commission approached Amazon about the Subject Products, Amazon sent a direct consumer safety notification, via email, to all purchasers of the Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products.<sup>119</sup>

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<sup>118</sup> Ex. 2, Goldberg Dep. 306:19–307:2; Shrem Decl. ¶ 13 (Sept. 23, 2022).

<sup>119</sup> Dkt. 23, Resp. to ¶ 19 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶ 24 (Sept. 23, 2022); Ex 2, Goldberg Dep. 152:19–152:22, 153:1–153:5; Ex. 40, Williams Dep. 64:6–64:22; Ex. 14, Amazon-CPSC-FBA-00002397 (Consumer Messaging Data).

**RESPONSE:** Undisputed, though Complaint Counsel objects to Paragraph 110 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” In addition, Complaint Counsel objects to Paragraph 110 to the extent it does not define “direct consumer safety notification.”

111. The direct consumer safety notifications informed all purchasers of the Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, of the potential product hazard, instructed them to stop using and dispose of the products, and that told them that Amazon had applied a refund of the full purchase price to their account.<sup>120</sup>

**RESPONSE:** Disputed by Complaint Counsel because Amazon’s characterization that “all purchasers” were “informed” by the notifications is an opinion and not a factual contention. In addition, Complaint Counsel objects to Paragraph 111 on the grounds that Amazon did not confirm that its notifications to purchasers were opened, read, understood, or followed. Complaint Counsel further objects to Paragraph 111 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” Complaint Counsel also objects to Paragraph 111 to the extent it does not define “direct consumer safety notification.” Complaint Counsel further specifically objects to Amazon’s characterization that its “notifications” “informed all purchasers” “of the potential product hazard.”

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<sup>120</sup> Dkt. 24, Resp. to ¶¶ 19, 23 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Ex. 14, Amazon-CPSC-FBA-00002397 (Consumer Messaging Data); Ex. 29, Amazon-CPSC-FBA-00000212 to 14 (Amazon Direct Product Safety Notification Email re IDGIRLS Children Sleepwear); Ex. 37, Amazon-CPSC-FBA-00002419 (Amazon Direct Product Safety Notification Email re HOYMN Children’s Sleepwear); Shrem Decl. ¶ 28 (Sept. 23, 2022).





[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

112. In total, Amazon refunded over \$20 million to the Subject Product purchasers.<sup>121</sup>

**RESPONSE:** Undisputed, though Complaint Counsel notes that, in its Business Solutions Agreement with its third-party sellers, Amazon tells the third-party sellers it has the right to “determine whether a customer will receive a refund.” Amazon further states “we will require you to reimburse us where we determine you have responsibility in accord with the Agreement.” *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶ 100 (citing to Amazon’s Statement of Undisputed Material Facts, Dkt No. 16 at § I, ¶ 14; Amazon Services Business Solutions Agreement, Amazon-CPSC-FBA-00000167-211, at Provision F-8.2 (Amazon-CPSC-FBA-00000197)). [REDACTED]

[REDACTED]

[REDACTED]

113. Prior to the filing of the Complaint in this matter, Amazon had removed the Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, from Amazon.com.<sup>122</sup>

**RESPONSE:** Undisputed as to the initial removal by Amazon of the ASINs corresponding to the Subject Products identified in Complaint Counsel’s Statement

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<sup>121</sup> Ex. 44, Amazon-CPSC-FBA-00003803 (Info. Re Amazon Refunds to Purchasers of Subject Products).

<sup>122</sup> Ex. 1, Compl. Counsel’s Obj. and Resp. to Amazon’s Request for Admission, No. 8 (Mar. 21, 2022); Ex. 45, Compl Counsel’s Obj. and Resp. to Amazon Interrogatory, No. 6 (Mar. 21, 2022); Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data).

of Undisputed Material Facts, at ¶¶ 3, 23, 45. However, Complaint Counsel objects to Paragraph 113 to the extent it does not define the universe of “additional products Amazon identified as potentially posing the same hazard as the Subject Products . . . .” [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The CPSC also identified additional functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com in May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170. The CPSC further identified additional functionally equivalent products to the hair dryer Subject Products for sale on Amazon.com as recently as June 2022. *Id.* at ¶¶ 175-179. Finally, the CPSC further identified additional functionally equivalent products to the carbon monoxide Subject Products for sale on Amazon.com as recently as May 2022. *Id.* at ¶¶ 171-174. On these bases, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 113.

114. [REDACTED]

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<sup>123</sup> Ex. 2, Goldberg Dep. 262:13–265:14.

**RESPONSE:** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- 115. None of the Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, are currently listed or available for purchase on Amazon.com.<sup>124</sup>

**RESPONSE:** Undisputed that none of the ASINs associated with the “Subject Products” or the “additional products Amazon identified” are currently listed or available for purchase on Amazon.com, though the CPSC is without sufficient information to confirm or deny this statement. Complaint Counsel objects to Paragraph 115 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, as described in Complaint Counsel’s response to previous paragraphs, the CPSC identified additional

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<sup>124</sup> Dkt. 23, Resp. to ¶ 15 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 12–13 (Sept. 23, 2022).

functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com in May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170. The CPSC also identified additional functionally equivalent products to the hair dryer Subject Products for sale on Amazon.com as recently as June 2022. *Id.* at ¶¶ 175-179. The CPSC further identified additional functionally equivalent products to the carbon monoxide Subject Products for sale on Amazon.com as recently as May 2022. *Id.* at ¶¶ 171-174. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 115.

116. Amazon prohibits Third-Party Sellers, or any other entity, from listing any of the Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, on Amazon.com.<sup>125</sup>

**RESPONSE:** Undisputed that Amazon attempts to prohibit “Third-Party Sellers, or any other entity, from listing any of the Subject Products” or “additional products” for sale on Amazon.com, though the CPSC is without sufficient information to confirm or deny this statement. In addition, Complaint Counsel objects to Paragraph 116 to the extent it does not define how Amazon identified or how Amazon defines the “additional products Amazon identified as potentially posing the same hazard as the Subject Products.” However, as described in Complaint Counsel’s responses to previous paragraphs, the CPSC identified additional functionally equivalent products to the children’s sleepwear Subject Products for sale on Amazon.com in May 2022. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶¶ 166-170. The CPSC also identified

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<sup>125</sup> Ex. 2, Goldberg Dep. 306:19–307:2; Shrem Decl. ¶¶ 12–13 (Sept. 23, 2022).

additional functionally equivalent products to the hair dryer Subject Products for sale on Amazon.com as recently as June 2022. *Id.* at ¶¶ 175-179. The CPSC further identified additional functionally equivalent products to the carbon monoxide Subject Products for sale on Amazon.com as recently as May 2022. *Id.* at ¶¶ 171-174. On that basis, Complaint Counsel disputes the remainder of Amazon’s statements in Paragraph 116.

117. Amazon’s fulfillment centers destroy products in the order they are received.<sup>126</sup>

**RESPONSE:** Undisputed, though the CPSC is without sufficient information to confirm or deny the truth of this statement.

118. The process of destroying products can take time due to the large number of products that require destruction.<sup>127</sup>

**RESPONSE:** Undisputed, though the CPSC is without sufficient information to confirm or deny the truth of this statement.

119. Amazon has destroyed 45,785 units of the Subject Products identified in the Complaint.<sup>128</sup>

**RESPONSE:** Undisputed, though the CPSC is without sufficient information to confirm or deny the truth of this statement.

120. Amazon has destroyed all but 6 units the Subject Products (all of them hair dryers) at its fulfillment centers.<sup>129</sup>

**RESPONSE:** Undisputed, though the CPSC is without sufficient information to confirm or deny the truth of this statement.

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<sup>126</sup> Shrem Decl. ¶ 22 (Sept. 23, 2022).

<sup>127</sup> Shrem Decl. ¶ 22 (Sept. 23, 2022).

<sup>128</sup> Shrem Decl. ¶ 19 (Sept. 23, 2022).

<sup>129</sup> Shrem Decl. ¶ 21 (Sept. 23, 2022).

121. All items that are awaiting destruction cannot be sold or shipped to customers.<sup>130</sup>

**RESPONSE:** Disputed by Complaint Counsel because Amazon does not define the term “items” in this context. In addition, CPSC is without sufficient information to confirm or deny the truth of this statement.

### III. AMAZON REQUESTED THAT ALL THIRD-PARTY SELLERS COOPERATE WITH THE COMMISSION.

122. Amazon notified all Third-Party Sellers of Commission notices regarding the Subject Products that Amazon received.<sup>131</sup>

**RESPONSE:** Undisputed.

123.

[REDACTED]

**RESPONSE:** Undisputed.

124.

[REDACTED]

**RESPONSE:** Undisputed.

### IV. THE REMEDIES AVAILABLE TO THE COMMISSION & MEASURE OF REMEDIAL EFFECTIVENESS

#### A. **The Consumer Product Safety Act Remedies Available to the Commission Are Limited to Repair, Replacement, and Refund.**

<sup>130</sup> Shrem Decl. ¶ 23 (Sept. 23, 2022).

<sup>131</sup> Ex. 46, Amazon-CPSC-FBA-00000337 (Amazon-Dolcevida Comms.); Ex. 47, Amazon- CPSC-FBA-00000347 (Amazon-IDGIRLS Comms.); Ex. 48, Amazon-CPSC-FBA-00000342 (Amazon-HOYMN Comms.); Ex. 49, Amazon-CPSC-FBA-00000353 (Amazon-Taicyxgan Comms.); Ex. 50, Amazon-CPSC-FBA-00001615 (Amazon-Third Party Seller Comms.); Ex. 51, Amazon-CPSC-FBA-00001774 (Amazon-Jackshop Comms.); Ex. 52, Amazon-CPSC-FBA- 00001776 (Amazon-WangLuoYMX Comms.); Ex. 53, Amazon-CPSC-FBA-00001778 (Amazon- WJZXTEK Direct Comms.); Ex. 54, Amazon-CPSC-FBA-00001780 (Amazon-Bistee US Comms.); Ex. 55, Amazon-CPSC-FBA-00001782 (Amazon-lecoolife Comms.); Ex. 56, Amazon- CPSC-FBA-00001784 (Amazon-Beauty-America SHOP Comms.); Ex. 57, Amazon-CPSC-FBA-00001786 (Amazon-SiDell-US Comms.); Ex. 58, Amazon-CPSC-FBA-00002346 (Amazon-Liu Chongxiao Comms.); Ex. 59, Amazon-CPSC-FBA-00001813 (Amazon- Romancelink Comms.).

<sup>132</sup> See *supra* FN 131.

<sup>133</sup> See *supra* FN 131.

125. The Commission’s practices, summarized in its handbook, limit “recall” to mean any “repair, replacement, refund, or notice/warning program.”<sup>134</sup>

**RESPONSE:** Disputed as to the term “limit,” which does not appear in the cited material in support of the stated contention. Amazon cites to the March 2012 edition of the CPSC’s Recall Handbook to support Paragraph 125. Complaint Counsel further disputes Paragraph 125 because the document cited by Amazon states that it is intended for “companies that manufacture, import, distribute, retail, or otherwise sell consumer products.” *See* Respondent’s Statement of Undisputed Material Facts, Exhibit 60, at 5. The March 2012 edition of the Recall Handbook further states that “[i]t has three purposes: (1) to familiarize companies with their reporting requirements under sections 15(b) and 37 of the CPSA, 15 U.S.C. § 2064(b) and § 2084, and Section 102 of the Child Safety Protection Act, Pub. L. 103-267, 108 Stat. 722, 6/16/94; (2) to help companies learn how to recognize potentially hazardous consumer products at an early stage; and (3) to assist firms that discover they have manufactured, distributed or retailed such products to develop and implement ‘corrective action plans’ that address the hazards. The term ‘corrective action plan’ (CAP) generally includes any type of remedial action taken by a firm. A CAP could, for example, provide for the return of a product to the manufacturer or retailer for a cash refund or a replacement product; for the repair of a product; and/or for public notice of the hazard. A CAP may include multiple measures that are necessary to protect consumers. The Commission staff refers to corrective actions as ‘recalls’ because the public and media more readily recognize and respond to that description.” *Id.* Accordingly, the March 2012 edition of the

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<sup>134</sup> Ex. 60, 2012 CPSC Recall Handbook at 6; *supra* FN 3.



Recall Handbook makes clear that the term “recall” is shorthand for corrective actions, with the Mandatory Recall Notice Rule defining it as “any one or more of the actions required by an order under sections 12, 15(c), or 15(d) of the CPSA.” 16 C.F.R. § 1115.25(a). A “recall” may include more than “repair, replacement, refund, or notice/warning program” and encompass, for example, “the return of a product . . . for a cash refund or a replacement product” or any number of “multiple measures that are necessary to protect consumers.” *See* Respondent’s Statement of Undisputed Material Facts, Exhibit 60, at 5. In the most recent version of the Recall Handbook, published in September 2021, it states that a “recall is the component of a [corrective action plan] that provides for public notice and a remedy for consumers. Other components of a CAP might include any actions taken to mitigate the potential hazard . . . .” *See* Complaint Counsel’s Statement of Undisputed Material Facts, Exhibit 1, at Exhibit S (CPSC\_AM0011478).

126.

[REDACTED]

<sup>135</sup>

**RESPONSE:** Disputed. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>135</sup> Ex. 40, Williams Dep. 67:2–67:8.

[REDACTED]

**B. “Correction Rate” is the Commission’s Standard Metric for Measuring Remedial Effectiveness.**

127. A “correction rate” is the Commission’s primary metric for measuring recall effectiveness.<sup>136</sup>

**RESPONSE:** [REDACTED]

[REDACTED]

[REDACTED] In addition, Complaint Counsel objects to Amazon’s citation to a conclusion in an expert report as a purported “undisputed material fact.”

128. A correction rate, represents the proportion of product units recalled that have been refunded, replaced, or repaired.<sup>137</sup>

**RESPONSE:** Disputed as incomplete and misleading. [REDACTED]

[REDACTED]

<sup>136</sup> Ex. 61, Amazon-CPSC-FBA-00001566 at 01597 (GAO-21-56 Rep. on CPSC Nov. 2020); Ex. 62, Mohorovic Rep. at 23.

<sup>137</sup> Ex. 66, CPSC\_AM0009637 at 09638 (CPSC Recall Defect Data); Ex. 62, Mohorovic Rep. at 23; Ex. 30, Rose Dep. 88:7–88:14.

[REDACTED]

[REDACTED] A return, or proof of destruction, is therefore part of a refund or replacement. *See* Complaint Counsel’s Statement of Undisputed Material Facts, at ¶ 123 (citing to the current Recall Handbook (Exhibit 1, at Exhibit S (CPSC\_AM0011466-11467))). In addition, Complaint Counsel objects to Amazon’s citation to a conclusion in an expert report as a purported “undisputed material fact.”

129. [REDACTED] <sup>138</sup>

**RESPONSE:** [REDACTED]

<sup>138</sup> *See* Ex. 62, Mohorovic Rep. at 21–22.

[Redacted text block consisting of multiple lines of blacked-out content]

[REDACTED]

130.

[REDACTED]

**RESPONSE:** [REDACTED]

<sup>139</sup> Ex. 30, Rose Dep. 90:11–90:16, 153:4–154:8, 304:1–305:9.

[REDACTED]

[REDACTED]

[REDACTED]

131. Academic research shows that imposing even a “moderate cost” to comply with safety message reduces compliance rate by 94 percent.<sup>140</sup>

**RESPONSE:** Undisputed that the cited 1987 academic article entitled “Effectiveness of Warnings” presents academic research. Otherwise disputed by Complaint Counsel because Amazon’s characterization of that research is an opinion and not a factual contention, and the article is inadmissible hearsay. *See* Fed. R. Civ. Proc. 56(c)(2) (“A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.”).

132. Academic research shows that “in-home” remedies “increase . . . the average recall effectiveness rate” compared to “a remedy that required consumers to return the product.”<sup>141</sup>

**RESPONSE:** Undisputed that the cited 2003 report entitled “Recall Effectiveness Research: A Review and Summary of the Literature on Consumer Motivation and Behavior” presents research. Otherwise disputed by Complaint Counsel because Amazon’s characterization of that research is an opinion and not a factual contention, and the article is inadmissible hearsay. *See* Fed. R. Civ. Proc. 56(c)(2) (“A party may object that the material cited to support or dispute a fact cannot be

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<sup>140</sup> Ex. 63, Michael S. Wogalter et al, Effectiveness of Warnings, 29 Human Factors 599, 609 (1987).

<sup>141</sup> Ex. 94, CPSC\_AM0010101 at 10126 (Heiden Associates & XL Associates, *Recall Effectiveness Research: A Review and Summary of the Literature on Consumer Motivation and Behavior*).



presented in a form that would be admissible in evidence.”).

133.

[REDACTED] <sup>142</sup>

**RESPONSE:** Disputed.

[REDACTED]

134.

[REDACTED] <sup>143</sup>

**RESPONSE:**

[REDACTED]

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<sup>142</sup> See Ex. 64, CPSC\_AM0013521 at 13522 (CPSC Section 15 Manual) (instructing staff that they “must comply with CPSC Directive 9010.34”); see Ex. 65, CPSC\_AM0014049 at 14091 (Directive Order No. 9010.34).

<sup>143</sup> Ex. 62, Mohorovic Rep. at 21.

[REDACTED]

[REDACTED]

135. Based on data analyzed for closed cases that had a Corrective Action Plan<sup>144</sup> between FY 2013 and FY 2016, the Commission’s overall correction rate was 65 percent.<sup>145</sup>

**RESPONSE:** Undisputed.

**C. The Effectiveness of Recall Notices Varies by Type of Notice.**

136. The purpose of recall notices is to “help consumers and other persons to: (1) [i]dentify the specific product to which the recall notice pertains; (2) [u]nderstand the product’s actual or potential hazards to which the recall notice pertains, and information relating to such hazards; and (3) [u]nderstand all remedies available to consumers concerning the product to which the recall notice pertains.”<sup>146</sup>

**RESPONSE:** Undisputed that 16 C.F.R. § 1115.23 is entitled “Purpose” and that 16 C.F.R. § 1115.23(b) states that “The Commission establishes these guidelines and requirements to ensure that every recall notice effectively helps consumers and other persons to: (1) Identify the specific product to which the recall notice pertains; (2) Understand the product’s actual or potential hazards to which the recall notice pertains, and information relating to such hazards; and (3) Understand all remedies available to consumers concerning the product to which the recall notice pertains.” Disputed by Complaint Counsel to the extent Amazon characterizes these three purposes as the sole purposes of a recall notice. The current Recall Handbook explains that the overarching “goal of recall communications, in almost every instance, is to both warn consumers of a hazard and encourage them to take action to reduce the risk.” Complaint Counsel’s

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<sup>144</sup> The term “Corrective Action Plan” includes any type of remedial action, and may include multiple actions, taken by a company with respect to a consumer product.

<sup>145</sup> Ex. 66, CPSC AM0009637 at 0009638–09639 (CPSC Recall Defect Data).

<sup>146</sup> 16 C.F.R. § 1115.23; Ex. 40, Williams Dep. 58:18–59:12; Ex. 67, Carlin Dep. at 121:5–121:11.

Statement of Undisputed Material Facts, Exhibit 1, at Exhibit S

(CPSC\_AM0011480). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

137. The Commission’s policy and practice is to issue one of two recall notices: (1) recall alerts and (2) recall press releases. Recall alerts are not disseminated to the media, and are used when the recalling firm can contact all purchasers. A recall press release is distributed to the media and is used when the firm does not have the contact information for most purchasers.<sup>147</sup>

**RESPONSE:** Disputed. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Both press

releases and recall alerts are posted on [www.cpsc.gov](http://www.cpsc.gov) and [www.saferproducts.gov](http://www.saferproducts.gov)

to serve as a permanent record of and public resource for information about

substantial product hazards. Complaint Counsel’s Statement of Undisputed

Material Facts, at ¶ 128. In addition, the Recall Handbook makes clear that the

CPSC has the discretion to determine which form is appropriate, and both forms

may be shared with the media to further publicize the hazards presented by a given

product. *See id.* Exhibit 1, at Exhibit S (current Recall Handbook, at

CPSC\_AM0011485). [REDACTED]

[REDACTED]

[REDACTED]

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<sup>147</sup> Ex. 68, CPSC\_AM0009649 at 09652–09653 (2017 CPSC Recall Effectiveness Workshop Presentation on Press Release Goals); Ex. 30, Rose Dep. 43:11–44:13.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Further disputed as to Amazon’s

characterization that a recall press release is used only “when the firm does not have the contact information for most purchasers.” [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

138. As of 2017, cases that involved Commission Press Releases had a consumer correction rate of approximately 6 percent.<sup>148</sup>

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<sup>148</sup> Ex. 66, CPSC\_AM0009637 at 09646 (CPSC Recall Defect Data); Ex. 69, Amazon-CPSC- FBA-00001348 at 01386–01387 (Tr. Of CPSC Recall Effectiveness Workshop, July 25, 2017) (statement of Ms. Carol Cave, deputy director, Office of Compliance & Field Operations).

**RESPONSE:** Disputed as incomplete and misleading. The cited figure is an aggregate number presented at a recall effectiveness workshop to demonstrate the different types of response rates for different types of recalls. It shows a correction rate at the consumer level of approximately 6% when only a press release is involved.

139. As of 2017, the correction rate for consumer products with a retail price under \$19 was approximately 4 percent.<sup>149</sup>

**RESPONSE:** Undisputed.

140. [REDACTED]<sup>150</sup>

**RESPONSE:** Undisputed.

141. [REDACTED]<sup>151</sup>

**RESPONSE:** Undisputed.

142. [REDACTED]<sup>152</sup>

**RESPONSE:** [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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<sup>149</sup> Ex. 69, Amazon-CPSC-FBA-00001348 at 01388 (Tr. Of CPSC Recall Effectiveness Workshop, July 25, 2017) (statement of Ms. Carol Cave, deputy director, Office of Compliance & Field Operations).

<sup>150</sup> Ex. 30, Rose Dep. 89:21–90:6.

<sup>151</sup> Ex. 16, Davis Dep. 133:6–133:8.

<sup>152</sup> Ex. 68, CPSC AM0009649 at 09653 (2017 CPSC Recall Effectiveness Workshop Presentation on Press Release Goals).

[REDACTED]

143.

[REDACTED]

<sup>153</sup>

**RESPONSE:**

[REDACTED]

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<sup>153</sup> Ex. 64, CPSC\_AM0013521 at 13526 (CPSC Section 15 Manual).

[REDACTED]

144. As of 2017, for cases that involved a Commission Recall Alert, where the recalling firm was able to directly contact at least 95 percent of consumers, the correction rate was approximately 50 percent.<sup>154</sup>

**RESPONSE:** Undisputed.

145. [REDACTED]<sup>155</sup>

**RESPONSE:** Disputed as incomplete and misleading. [REDACTED]

[REDACTED]

<sup>154</sup> Ex. 66, CPSC AM0009637 at 09646.

<sup>155</sup> Ex. 30, Rose Dep. 149:20–150:8.

[Redacted]

146.

[Redacted] <sup>156</sup>

**RESPONSE:**

[Redacted]

147.

[Redacted] <sup>157</sup>

**RESPONSE:**

[Redacted]

<sup>156</sup> Ex. 70, CPSC\_AM0015392 at 15393 (CPSC Reg. Enforcement Div. Procedure); Ex. 30, Rose Dep. 78:13–79:14; Ex. 64, CPSC\_AM0013521 at 13526 (CPSC Section 15 Manual).

<sup>157</sup> Ex. 64 CPSC\_AM0013521 at 13526 (CPSC Section 15 Manual); Ex. 30, Rose Dep. 73:5–74:14.



[REDACTED]

148.

[REDACTED]

<sup>158</sup>

**RESPONSE:**

[REDACTED]

149. Empirical research has found that 80 percent of consumers comply with the

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<sup>158</sup> Ex. 30, Rose Dep. 98:13–98:20.

instructions provided in recall notices.<sup>159</sup>

**RESPONSE:** Disputed as to Amazon’s characterization of the results of a survey as “[e]mpirical research.” Further disputed as to the page reference of the source, as the cited statistic is on page 28 of the source. Undisputed that 80% of the respondents “who had seen a recall notice for an item they owned” indicated that they “[d]id everything the recall notice asked of them.”

**D. The Content of Amazon’s Recall Notices Was Materially Similar to Notices the Commission-Approved in Other Matters.**

150. Amazon’s direct consumer safety notifications listed the date on which they were sent and the identity of the firm providing the notice (Amazon).<sup>160</sup>

**RESPONSE:** Undisputed, though Complaint Counsel objects to Paragraph 150 to the extent it does not define “direct consumer safety notification.”

151. Amazon’s direct consumer safety notifications made reference to the Commission, stating that “[t]he *U.S. Consumer Product Safety Commission (CPSC)* has informed [Amazon] that the products” described in the message pose a safety risk.<sup>161</sup>

**RESPONSE:** Undisputed that the “notifications” sent by Amazon to consumers who purchased the Subject Products include a reference to the CPSC, stating “[t]he product listed above is either a product that the U.S. Consumer Product Safety Commission (CPSC) has informed us about, or our Product Safety team has identified . . . .” *See, e.g., supra* Paragraph 19. In addition, Complaint Counsel objects to Amazon’s characterization that the “notifications” state that the products “pose a safety risk.” Most of the “notifications,” including the notification email quoted in Paragraph 151 above, state that the products “may” fail a standard or

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<sup>159</sup> Ex. 71, Consumer Product Safety Commission, Staff Statement on Qualtrics, *Consumer Attitudes and Behaviors Regarding Product Safety* at 27.

<sup>160</sup> Ex. 29, Amazon-CPSC-FBA-00000212 at 00214 (Carbon Monoxide Detector Safety Notice).

<sup>161</sup> Ex. 29, Amazon-CPSC-FBA-00000212 (emphasis added).

pose a risk. In addition, all of the notification emails begin with “[w]e have learned of a potential safety issue that may impact your Amazon purchase(s) below.” See Respondent’s Statement of Undisputed Material Facts, at ¶¶ 19, 52, 71, 87. In addition, Complaint Counsel objects to Paragraph 151 to the extent it does not define “direct consumer safety notification.”

152. A Commission notice from 2022 for a children’s sleepwear product stated: “The children’s robes *fail to meet the federal flammability standards for children’s sleepwear, posing a risk of burn injuries to children.*”<sup>162</sup>

**RESPONSE:** Undisputed.

153. A Commission notice from 2020 for a hair dryer product stated: “The hair dryers *do not have an immersion protection device, posing an electrocution or shock hazard if the dryer falls into water when plugged in.*”<sup>163</sup>

**RESPONSE:** Undisputed.

154. A Commission notice from 2022 for a carbon monoxide product stated: “The alarms *can fail* to alert consumers to the presence of a hazardous level of carbon monoxide, *posing a risk of carbon monoxide poisoning or death.* Carbon monoxide (CO) is an odorless, colorless, poisonous gas.”<sup>164</sup>

**RESPONSE:** Undisputed.

155. Empirical research has specifically addressed the question whether the word “*recall*” should be used in notifications, and concluded instead that “*use of different terminology*” is appropriate where the term does not actually describe what action consumers should take with the product.<sup>165</sup>

**RESPONSE:** Undisputed that the cited 2008 academic article entitled “Analysis of Terms Comprising Potential Names for a Recall Notification Campaign” presents academic research. Otherwise disputed by Complaint Counsel because

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<sup>162</sup> Ex. 83, CPSC Recall No. 20-066 (emphasis added).

<sup>163</sup> Ex. 72, CPSC Recall No. 20-738 (emphasis added).

<sup>164</sup> Ex. 73, CPSC Recall No. 22-111 (emphasis added).

<sup>165</sup> Ex. 74, Jennifer A. Cowley & Michael S. Wogalter, Analysis of Terms Comprising Potential Names for a Recall Notification Campaign, Proceedings of the Human Factors and Ergonomics Society, 1698, 1702 (2008) (emphasis added) (noting that certain products “cannot be ‘recalled’” because “[r]eturn to the manufacturer cannot be easily accomplished”).

Amazon’s characterization of that research is an opinion and not a factual contention, and the article is inadmissible hearsay. *See* Fed. R. Civ. Proc. 56(c)(2) (“A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.”). In addition, the article cited by Amazon in Paragraph 155 notes the following: “The results showed that people believed it permissible not to use the term *Recall* for surgically-implanted medical devices, despite the fact that they believed that the term *Recall* should be used in other product defect campaigns.” Respondent’s Statement of Undisputed Material Facts, at Exhibit 74 (Jennifer A. Cowley & Michael S. Wogalter, Analysis of Terms Comprising Potential Names for a Recall Notification Campaign, Proceedings of the Human Factors and Ergonomics Society, 1698, 1702 (2008)).

156. The 2012 version of the Commission’s Recall Handbook, which was in effect until September 2021, advised that for recall notifications issued via letter, the phrase “*Important Safety Notice*” should appear at the top of each notice.<sup>166</sup>

**RESPONSE:** Disputed as to Amazon’s characterization of the statement in the March 2012 Recall Handbook. The guidance in the handbook states as follows: “The words ‘Important Safety Notice’ or ‘Safety Recall’ should appear at the top of each notice and cover letter and should also be on the lower left corner of any mailing envelope.” Respondent’s Statement of Undisputed Material Facts, at Exhibit 60, at 24. In addition, the current and operative version of the Recall Handbook includes the following guidance: “CPSC expects that companies will use the word ‘recall’ to refer to any voluntary action taken pursuant to a [corrective action plan] that involves removing, repairing, inspecting, discarding, updating, or

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<sup>166</sup> Ex. 60, 2012 CPSC Recall Handbook at 24 (emphasis added).

otherwise altering for safety a product once it has been purchased by a consumer. Although details and circumstances of [corrective action plans] and products may differ, the consistent use of the term ‘recall’ is currently the best way to ensure consumers’ attention to a safety notice.” See Complaint Counsel’s Statement of Undisputed Material Facts, Exhibit 1, at Exhibit S (CPSC\_AM0011480).

157. The Commission has approved multiple Press Releases with the language “*Important Safety Notice*.”<sup>167</sup>

**RESPONSE:** Disputed as to Amazon’s characterization of the use of the language “Important Safety Notice,” as each of the press releases cited by Amazon included the use of the term “Recalled” or “Recalls” in the title. In addition, under the “Description” section, two of the press releases begin with the statement “This recall involves . . . .” and the third press release begins “The U.S. Consumer Product Safety Commission (CPSC) and Essential Medical Supply Inc., of Orlando, Florida, are announcing the recall . . . .” Complaint Counsel further objects to Amazon’s characterization of the cited press releases as “approved” by the “Commission.”

158. The Commission-approved recall notice for Recall No. 11-711 provides a hazard description stating “[v]ibration from the ignition module *may* cause the trimmer head to loosen and detach.”<sup>168</sup>

**RESPONSE:** Undisputed that the 2010 recall cited by Amazon describes the hazard as follows: “Vibration from the ignition module may cause the trimmer head to loosen and detach from the mounting, posing an injury hazard.” Complaint Counsel objects to Amazon’s characterization of the cited recall notice as “Commission-approved.”

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<sup>167</sup> Ex. 75, CPSC Recall No. 17-168; Ex. 76, CPSC Recall No. 18-090; Ex. 77, CPSC Recall No. 22-039 (emphasis added).

<sup>168</sup> Ex. 78, CPSC Recall No. 11-711 (emphasis added).

159. The Commission has approved multiple recall notices with language indicating that a product “*may*” cause a potential hazard.<sup>169</sup>

**RESPONSE:** Undisputed that the 2010, 2011, 2015, and 2017 recalls cited by Amazon include the word “*may*” in the “Hazard” section. Complaint Counsel objects to Amazon’s characterization of the cited press releases as “approved” by the “Commission.”

160. The Commission routinely approves recall notices instructing purchasers that they “*should*” take certain actions.<sup>170</sup>

**RESPONSE:** Disputed as to Amazon’s characterization that the Commission “routinely approves” recall notices. Undisputed that the 2020 recalls cited by Amazon include the following language in the “Remedy” section:

“Consumers should immediately stop using the recalled . . .” product.

161. The Commission routinely approves corrective actions that instruct a consumer to dispose of a product or repair it, but do not require the consumer to verify that they have completed the requested action.<sup>171</sup>

**RESPONSE:** Disputed as to Amazon’s characterization that the Commission “routinely approves” recall notices that do not require “the consumer to verify that they have completed the requested action.” The press releases cited by Amazon do not include the steps required to be taken by the recalling firm in the full corrective

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<sup>169</sup> Ex. 79, CPSC Recall No. 17-102 (“master cylinder may cause unintended brake drag”); Ex. 78, CPSC Recall No. 11-711, (“[v]ibration from the ignition module may cause the trimmer head to loosen and detach”); Ex. 80, CPSC Recall No. 12-021 (“[b]urners on range tops operating on liquified petroleum . . . may fail to ignite or light”); Ex. 81, CPSC Recall No. 15-159 (“[e]lectrical arcing may cause the lamp to overheat”).

<sup>170</sup> Ex. 82, CPSC Recall No. 20-163 (“[c]onsumers should immediately stop using the recalled lawn dart sets and destroy and dispose of them to prevent further usage”); Ex. 83, CPSC Recall No. 20-066 (“[c]onsumers should immediately stop using the recalled” product and “consumers should destroy the triangle piece”).

<sup>171</sup> Ex. 84, CPSC Recall No. 22-022 (consumers should dispose of old exercise equipment in the trash); Ex. 83, CPSC Recall No. 20-066 (consumers should destroy part of a children’s toy); Ex. 85, CPSC Recall No. 21-114 (consumers should remove and dispose of youth jacket draw strings to eliminate hazard); Ex. 86, CPSC Recall No. 20-018 (consumers take away sweatshirts from children and remove the drawstring); Ex. 87, CPSC Recall No. 21-705 (consumers should stop using oven liners which present carbon monoxide hazard); Ex. 88, CPSC Recall No. 18-023 (consumers should take away ponchos from children and remove the drawstring or return the poncho to the company).

action plan, which may include tracking the limited destruction or return of the products. For example, Recall No. 20-066 states that “[c]onsumers should immediately take the recalled jacket away from children and remove the drawstrings to eliminate the hazard, or return the jacket to BRAV USA for a full refund, shipping included.” Respondent’s Statement of Undisputed Material Facts, at Exhibit 83. Recall No. 18-023 states that “[c]onsumers should immediately take the recalled ponchos away from children and remove the drawstring to eliminate the hazard or return the poncho to the firm for a full refund.” *Id.* at Exhibit 88.

**E. Direct Notice is the Most Effective Form of a Recall Notice.**

162. A direct recall notice is the most effective form of a recall notice.<sup>172</sup>

**RESPONSE:** Undisputed, though Complaint Counsel notes that direct recall notices must conform with CPSC practice and satisfy the Consumer Product Safety Act’s regulations and the statutory notice content requirements. *See* Section IV.B.2. of Complaint Counsel’s Opposition to Amazon’s Motion for Summary Decision.

163. Direct notice “has a substantial impact on consumer return rates.”<sup>173</sup>

**RESPONSE:** Undisputed.

164. Empirical research has “consistently . . . identified” direct notice as “a preferred and effective method of contacting most population segments.”<sup>174</sup>

**RESPONSE:** Undisputed that the cited 2020 research paper entitled “Insights into Product Recall Effectiveness” presents research. Disputed as to Amazon’s

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<sup>172</sup> 16 CFR § 1115.26; Ex. 89, CPSC\_AM0011464 at 11481 (2021 CPSC Product Safety Planning, Reporting and Recall Handbook); Ex. 90, CPSC\_AM0011459 at 11463 (2018 CPSC Recall Effectiveness Workshop Report); Ex. 30, Rose Dep. 47:2–47:7; Ex. 91, CPSC\_AM0009669 at 09680 (Blake Rose, Director, Defect Investigations Division of CPSC, *Review of Recall Process and Standard Notifications*).

<sup>173</sup> Ex. 90, CPSC\_AM0011459 at 11462 (2018 CPSC Recall Effectiveness Workshop Report).

<sup>174</sup> Ex. 92 at 5, U.K. Department for Business, Energy & Industrial Strategy, *Insights into Product Recall Effectiveness* (Sept. 2020).

characterization of that research and assertion of that characterization as an “undisputed material fact.”

165. The Commission has admitted that “direct notification of a recall to all purchasers of a recalled product is an effective means of publicizing a recall and promoting recall.”<sup>175</sup>

**RESPONSE:** Undisputed that the CPSC admitted that “direct notification of a recall to all purchasers can be one part of an acceptable manner of providing notice of a recall to the public depending upon the particulars and adequacy of the notice.” See Respondent’s Statement of Undisputed Material Facts, Exhibit 1 (Compl. Counsel’s Obj. and Resp. to Amazon Request for Admission, No. 12 (Mar. 21, 2022)).

166. The Commission admits that “media assistance is not as important” when direct notification to consumers is used.<sup>176</sup>

**RESPONSE:** Undisputed that media assistance may not be as important when a recalling company can directly contact all or nearly all of the purchasers of a recalled product. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>175</sup> Ex. 1, Compl. Counsel’s Obj. and Resp. to Amazon Request for Admission, No. 12 (Mar. 21, 2022).

<sup>176</sup> Ex. 68, CPSC\_AM0009649 at 09653 (2017 CPSC Recall Effectiveness Workshop Presentation on Press Release Goals); see also Ex. 62, Mohorovic Rep. at 10–11 [REDACTED]



[REDACTED]

In addition, Complaint Counsel objects to Amazon’s citation to a conclusion in an expert report as a purported “undisputed material fact.”

**F. Amazon’s Direct Notice Helped Consumers Identify the Product, Hazard, and Remedy Provided.**

167. Amazon’s direct notices to consumers regarding the Subject Products helped consumers identify the product.<sup>177</sup>

**RESPONSE:** Undisputed that the “direct notices” sent by Amazon to purchasers of the Subject Products contained information relating to the Subject Products, including the Order ID, Amazon Standard Identification Number, and item name. Otherwise disputed by Complaint Counsel because Amazon’s characterization of

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<sup>177</sup> Ex. 94, CPSC\_AM001814 (Amazon’s Direct Product Safety Notification Email re Hairdryers); Ex. 30, Amazon-CPSC-FBA-00000212 at 00213 (Amazon’s Direct Product Safety Notification Email re Hairdryers); Ex. 41, Williams Dep. 62:15–63:1; Ex. 30, Amazon-CPSC-FBA-00000212 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear (IDGIRLS)); Ex. 38, Amazon-CPSC-FBA-00002419 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear); Ex. 16, CPSC\_AM0000497 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear (Taiicyxgan)); Ex. 68, Carlin Dep. 124:12–124:18; Ex. 30, Amazon-CPSC-FBA-00000212 at 00214 (Amazon’s Direct Product Safety Notification Email re Carbon Monoxide Detector); Ex. 63, Mohorovic Rep. at 14.

this information as “help[ing] consumers identify the product” is an opinion and not a factual contention. Under the sub-section entitled “Requirements for Recall Notices,” the Consumer Product Safety Act requires, among other things, “a photograph of the product.” *See* 15 U.S.C. § 2064(i)(2); *see also* 16 C.F.R. § 1115.27(c)(6). In addition, Complaint Counsel objects to Amazon’s citation to a conclusion in an expert report as a purported “undisputed material fact.”

168. Amazon’s direct notices to consumers regarding the Subject Products helped consumers understand the actual or potential hazard posed by the product.<sup>178</sup>

**RESPONSE:** Undisputed that the “direct notices” sent by Amazon to purchasers of the Subject Products contained information relating to the Subject Products.

Otherwise disputed by Complaint Counsel because Amazon’s characterization of this information as “help[ing] consumers understand the actual or potential hazard posed by the” products is an opinion and not a factual contention. Complaint Counsel further notes that the “direct notices” sent by Amazon to purchasers of the Subject Products fail to satisfy the Consumer Product Safety Act’s regulations, the statutory notice content requirements, and the general practices of the CPSC. *See* Section IV.B.2. of Complaint Counsel’s Opposition to Amazon’s Motion for Summary Decision. [REDACTED]

[REDACTED]

[REDACTED]

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<sup>178</sup> Ex. 93, CPSC\_AM001814 (Amazon’s Direct Product Safety Notification Email re Hairdryers); Ex. 29, Amazon-CPSC-FBA-00000212 at 00213 (Amazon’s Direct Product Safety Notification Email re Hairdryers); Ex. 40, Williams Dep. 63:14–63:19; Ex. 29, Amazon-CPSC-FBA-00000212 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear (IDGIRLS)); Ex. 37, Amazon-CPSC-FBA-00002419 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear); Ex. 15, CPSC\_AM0000497 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear (Taiycyxgan)); Ex. 67, Carlin Dep. 124:5–124:11; Ex. 29, Amazon-CPSC-FBA-00000212 at 00214 (Amazon’s Direct Product Safety Notification Email re Carbon Monoxide Detector); Ex. 62, Mohorovic Rep. at 11–13.

[REDACTED]

169. Amazon’s direct notices to consumers regarding the Subject Products helped the consumers understand the remedy being provided to them.<sup>179</sup>

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<sup>179</sup> Ex. 93, CPSC\_AM001814 (Amazon’s Direct Product Safety Notification Email re Hairdryers); Ex. 29, Amazon-

**RESPONSE:** Disputed as to Amazon’s use of the term “remedy,” which implies action relating to remedying a safety hazard as opposed to providing financial relief for consumers in the form of a refund. Complaint Counsel does not dispute that the “direct notices” sent by Amazon to purchasers of the Subject Products contained some information relating to the Subject Products and the refund offered by Amazon. Otherwise disputed by Complaint Counsel because Amazon’s characterization of this information as “help[ing] the consumer understand the remedy being provided” is an opinion and not a factual contention. In addition, Complaint Counsel objects to Amazon’s citation to a conclusion in an expert report as a purported “undisputed material fact.”

170. Amazon’s direct notices to consumers regarding the Subject Products indicated that consumers should stop using the product “immediately and dispose of it.”<sup>180</sup>

**RESPONSE:** Undisputed.

171. [REDACTED]<sup>181</sup>

**RESPONSE:** Disputed. [REDACTED]

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CPSC-FBA-00000212 at 00213 (Amazon’s Direct Product Safety Notification Email re Hairdryers); Ex. 40, Williams Dep. 64:11–64:17; Ex. 29, Amazon-CPSC-FBA-00000212 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear (IDGIRLS)); Ex. 37, Amazon-CPSC-FBA-00002419 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear); Ex. 15, CPSC\_AM0000497 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear (Taiyxyxgan)); Ex. 67, Carlin Dep. 124:19–125:3; Ex. 29, Amazon-CPSC-FBA-00000212 at 00214 (Amazon’s Direct Product Safety Notification Email re Carbon Monoxide Detector); Ex. 62, Mohorovic Rep. at 14.

<sup>180</sup> Ex. 93, CPSC\_AM001814 (Amazon’s Direct Product Safety Notification Email re Hairdryers); Ex. 29, Amazon-CPSC-FBA-00000212 at 00213 (Amazon’s Direct Product Safety Notification Email re Hairdryers); Ex. 40, Williams Dep. 64:18–64:22; Ex. 29, Amazon-CPSC-FBA-00000212 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear (IDGIRLS)); Ex. 37, Amazon-CPSC-FBA-00002419 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear); Ex. 15, CPSC\_AM0000497 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear (Taiyxyxgan)); Ex. 29, Amazon-CPSC-FBA-00000212 at 00214 (Amazon’s Direct Product Safety Notification Email re Carbon Monoxide Detector).

<sup>181</sup> Ex. 16, Davis Dep. 146:10–146:22; Ex. 62, Mohorovic Rep. at 14.

[REDACTED]

172. Academic research supports the conclusion that when “consumers . . . throw away the product . . . the recall is effective in alerting the consumer and removing the hazard[.]”<sup>182</sup>

**RESPONSE:** Undisputed that the cited 2020 report by the GAO entitled “Consumer Product Safety Commission: Actions Needed to Improve Processes for Addressing Product Defect Cases” presents information. Otherwise disputed by Complaint Counsel because Amazon’s characterization of that report as presenting “[a]cademic research [that] supports the conclusion that when ‘consumers . . . throw away the product . . . the recall is effective in alerting the consumer and removing the hazard’ is an opinion and not a factual contention. In fact, the section of the report that Amazon misleadingly and selectively quotes reads as follows: “For example, when a firm recalls, and offers to replace, a product that has a very low dollar value, like a fast food meal toy, consumers aware of the recall may throw away the product rather than take the corrective action (return it for replacement). In this case, the recall is effective in alerting the consumer and

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<sup>182</sup> Ex. 61, Amazon-CPSC-FBA-00001566 at 01597 at 01597 (GAO-21-56 Rep. on CPSC Nov. 2020).

removing the hazard, but this would not be reflected in CPSC’s correction rate because the consumer did not use the firm-provided remedy.” Respondent’s Statement of Undisputed Material Facts, Exhibit 61 (Amazon-CPSC-FBA-00001566, at 01597 (GAO-21-56 Rep. on CPSC Nov. 2020)).

173. [REDACTED]<sup>183</sup>

**RESPONSE:** Disputed as incomplete and misleading. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

174. [REDACTED]<sup>184</sup>

**RESPONSE:** [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

<sup>183</sup> Ex. 30, Rose Dep. 144:4–144:9.

<sup>184</sup> Ex. 94, CPSC\_AM0010101 at 10104 (Heiden Associates & XL Associates, *Recall and Effectiveness Research: A Review and Summary of the Literature on Consumer Motivation Behavior*).

[REDACTED]

175.

[REDACTED]

<sup>185</sup>

**RESPONSE:** Disputed as incomplete and misleading. [REDACTED]

[REDACTED]

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<sup>185</sup> Ex. 30, Rose Dep. 239:2–240:21.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

176. Amazon’s use of the phrase “Important Safety Notice” in the subject line of its direct notices regarding the Subject Products is consistent with applicable Commission policy and practice.<sup>186</sup>

**RESPONSE:** Disputed as incomplete and misleading. The guidance in the March 2012 Recall Handbook states as follows: “The words ‘Important Safety Notice’ or ‘Safety Recall’ should appear at the top of each notice and cover letter and should also be on the lower left corner of any mailing envelope.” Respondent’s Statement of Undisputed Material Facts, at Exhibit 60, at 24. In addition, the current and operative version of the Recall Handbook includes the following guidance: “CPSC expects that companies will use the word ‘recall’ to refer to any voluntary action taken pursuant to a [corrective action plan] that involves removing, repairing, inspecting, discarding, updating, or otherwise altering for safety a product once it has been purchased by a consumer. Although details and circumstances of [corrective action plans] and products may differ, the consistent use of the term ‘recall’ is currently the best way to ensure consumers’ attention to a safety notice.” See Complaint Counsel’s Statement of Undisputed Material Facts, Exhibit 1, at Exhibit S (CPSC\_AM0011480); [REDACTED]

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<sup>186</sup> Ex. 60, 2012 CPSC Recall Handbook at 24; Ex. 30, Rose Dep. 178:5–178:11.



[REDACTED] Complaint Counsel also objects to Amazon’s characterization of the statement in Paragraph 176 as “Commission policy.” Amazon does not cite to any policy documents issued by the Commission.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**V. REPEATED CONSUMER COMMUNICATIONS ADD TO CONSUMER CONFUSION AND RECALL FATIGUE.**

177. Recall fatigue is the concept that additional communications to consumers will make them less likely to respond to safety messaging.<sup>187</sup>

**RESPONSE:** Disputed. There is considerable debate within the academic community concerning whether or not “[r]ecall fatigue” exists. *See, e.g.*, Exhibit 1, at Exhibit F (Wogalter, M.S. and Leonard, S.D. (1999). Attention Capture and Maintenance. In M.S. Wogalter, D.M. DeJoy, and K.R. Laughery (Eds.), *Warnings and Risk Communication* (123-148), London: Taylor & Francis, Ltd.); Exhibit G (Wogalter, M.S. and Vigilante, Jr., W.J. (2006). Attention Switch and Maintenance. In M.S. Wogalter (Ed), *Handbook of Warnings* (245-265)). Even articles cited by Amazon in this filing include questions about the existence of recall fatigue. *See, e.g.*, Respondent’s Statement of Undisputed Material Facts,

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<sup>187</sup> Ex. 62, Mohorovic Rep. at 25–26; *supra* FN 82.

Exhibit 95, at 395 (“Observers debate the existence of recall fatigue.”), at 396 (mentioning the “question of whether recall fatigue does or does not exist”). In addition, Complaint Counsel objects to Amazon’s citation to a conclusion in an expert report as a purported “undisputed material fact.” Complaint Counsel further disputes Paragraph 177 on the grounds that it is immaterial.

178. Recall fatigue results in consumers “simply ignor[ing] urgent calls to destroy or return defective goods.”<sup>188</sup>

**RESPONSE:** Disputed. As noted in response to Paragraph 177, there is considerable debate within the academic community concerning whether or not “[r]ecall fatigue” exists. In addition, Amazon cites to a newspaper article from 2010 in support of Paragraph 178, which constitutes inadmissible hearsay. *See, e.g., Facey v. Dickhaut*, 91 F. Supp. 3d 12, 21 (D. Mass. 2014) (“The Boston Globe article is not relevant to the plaintiff’s claim, and, in any event, is inadmissible hearsay.”). Complaint Counsel further disputes Paragraph 177 on the grounds that it is immaterial.

179. Consumers are exposed to thousands of recalls per year.<sup>189</sup>

**RESPONSE:** Disputed. Amazon does not specify what types of recalls it is referencing in Paragraph 179. In CPSC’s annual reports to Congress, there were 259 voluntary recalls for FY 2019, 240 voluntary recalls for FY 2020, and 223 voluntary recalls for FY 2021. *See* Exhibit 1, at Exhibit H (U.S. Consumer Product Safety Commission, Fiscal Year 2019 Annual Performance Report, CPSC\_AM0013327-13385, at CPSC\_AM0013344); Exhibit I (U.S. Consumer

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<sup>188</sup> Ex. 95, Lyndsey Layton, *Officials Worry About Consumers Lost Among the Recalls*, The Washington Post (July 2, 2010).

<sup>189</sup> Ex. 62, Mohorovic Rep. at 26.

Product Safety Commission, Fiscal Year 2020 Annual Performance Report, CPSC\_AM0012768-12829, at CPSC\_AM0012785); Exhibit J (U.S. Consumer Product Safety Commission, Annual Performance Report Fiscal Year 2021, CPSC\_AM009558-9622, at CPSC\_AM0009576). In addition, Complaint Counsel objects to Amazon’s citation to a conclusion in an expert report as a purported “undisputed material fact.” Complaint Counsel further disputes Paragraph 179 on the grounds that it is immaterial.

180. Consumers have limited bandwidth to track, process and act on recalls.<sup>190</sup>

**RESPONSE:** Undisputed that the cited 2006 article by Michael S. Wogalter & William J. Vigilante, Jr. entitled “Attention Switch and Maintenance” and published in Handbook of Warnings presents research. Otherwise disputed by Complaint Counsel because Amazon’s characterization of that research is an opinion and not a factual contention, and the article is inadmissible hearsay. *See* Fed. R. Civ. Proc. 56(c)(2) (“A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.”). Complaint Counsel further disputes Paragraph 180 on the grounds that it is immaterial.

181. Consumers “tune out the [recall] news because they have been bombarded by repetition.”<sup>191</sup>

**RESPONSE:** Undisputed that the cited 2013 article by Anita Bernstein entitled “Voluntary Recalls” and published in the University of Chicago Legal Forum presents research. Otherwise disputed by Complaint Counsel because Amazon’s

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<sup>190</sup> Ex. 96, Michael S. Wogalter & William J. Vigilante, Jr., Attention Switch and Maintenance, *in* Handbook of Warnings 245, 245 (M.S. Wogalter ed., 2006) (consumers “have a limited capacity of attention or mental resources to be used for active processing” and “cannot attend to everything around us”).

<sup>191</sup> Ex. 97, Anita Bernstein, *Voluntary Recalls*, 1(10) UNIV. CHICAGO LEGAL FORUM 359, 394 (2013).

characterization of that research is an opinion and not a factual contention, and the article is inadmissible hearsay. *See* Fed. R. Civ. Proc. 56(c)(2) (“A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.”). Complaint Counsel further disputes Paragraph 181 on the grounds that it is immaterial.

182. [REDACTED]<sup>192</sup>

**RESPONSE:** Disputed. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

183. Polls show that more than 60 percent of consumers believe that recalls are “primarily exercises in red tape” and “less about protecting consumers and more about government regulations.”<sup>193</sup>

**RESPONSE:** Undisputed that the cited 2018 news article provided by Stericycle Expert Solutions and entitled “Product Recalls: Big Brother or Caring for One Another?” presents poll results. Otherwise disputed by Complaint Counsel because Amazon’s characterization of that research is an opinion and not a factual contention, and the article is inadmissible hearsay. *See* Fed. R. Civ. Proc. 56(c)(2) (“A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.”). Complaint Counsel further disputes Paragraph 183 on the grounds that it is immaterial.

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<sup>192</sup> Ex. 62, Mohorovic Rep. at 26.  
<sup>193</sup> Ex. 98, Stericycle Expert Solutions, *Product Recalls: Big Brother or Caring for One Another?* (June 12, 2018).

184. [REDACTED] <sup>194</sup>

**RESPONSE:** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

185. [REDACTED] <sup>195</sup>

**RESPONSE:** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

186. Other federal agencies are aware and acknowledge that recall fatigue is an issue.<sup>196</sup>

**RESPONSE:** Undisputed that the cited transcript of a 2015 hearing before the U.S. Senate Committee on Commerce, Science, and Transportation references recall fatigue in the context of vehicle safety and defective airbags. Disputed as to

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<sup>194</sup> Ex. 16, Davis Dep. 190:17–191:19.

<sup>195</sup> Ex. 16, Davis Dep. 190:17–191:19; Ex. 62, Mohorovic Rep. at 26 (noting “[c]oncerns about recall fatigue are well known at the CPSC” and have grown over time); Ex. 99, Statement by Commissioner Buerkel at the *Consumer Product Safety and the Recall Process*, Hearing Before the Subcomm. on Consumer Protection, Product Safety, Insurance, and Data Security of the Senate Comm. On Commerce, 114th Cong. (Oct. 8, 2015) (“I think on some levels, at least for CPSC, there may be a recall fatigue issue that we really need to address.”).

<sup>196</sup> Ex. 100, *Update on the Recalls of Defective Takata Air Bags and NHTSA’s Vehicle Safety Efforts*, Senate Comm. On Commerce, 114th Cong. at 4 and 72 (June 23, 2015).

Amazon’s characterization of the phrase “recall fatigue.” Complaint Counsel further disputes Paragraph 186 on the grounds that it is immaterial.

187. Research shows that “[c]onsumers are less likely to comply where compliance is inconvenient.”<sup>197</sup>

**RESPONSE:** Undisputed that the cited 1987 article by Michael S. Wogalter et al. entitled “Effectiveness of Warnings” and published in Human Factors presents research. Otherwise disputed by Complaint Counsel because Amazon’s characterization of that research is an opinion and not a factual contention, and the article is inadmissible hearsay. *See* Fed. R. Civ. Proc. 56(c)(2) (“A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.”). In addition, Complaint Counsel objects to Amazon’s citation to a conclusion in an expert report as a purported “undisputed material fact.” Complaint Counsel further disputes Paragraph 187 on the grounds that it is immaterial.

188. [REDACTED]<sup>198</sup>

**RESPONSE:** [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**VI. THE COMMISSION HAS NOT DEFINED THE TERM “FUNCTIONALLY EQUIVALENT PRODUCTS.”**

<sup>197</sup> Ex. 62, Mohorovic Rep. at 19; *see also* Ex. 63, Michael S. Wogalter et al., Effectiveness of Warnings at 609 *in* Human Factors (1987) (imposing even a “moderate cost” to comply with safety message reduces compliance to only 5.9% of the population sample subject to the study).

<sup>198</sup> *See* Ex. 62, Mohorovic Rep. at 18–20.

189. The term “functionally equivalent products” does not appear in the Consumer Product Safety Act, or its implementing regulations.<sup>199</sup>

**RESPONSE:** Disputed. The Consumer Product Safety Act, at 15 U.S.C. § 2064(d)(1)(B), empowers the Commission to order the replacement of a recalled good with “a like or equivalent product which complies with the applicable rule, regulation, standard, or ban or does not contain the defect.”

- 190.

[REDACTED]

<sup>200</sup>

**RESPONSE:** Undisputed.

191. The Commission has never ordered remedial action with respect to “functionally equivalent” products.

**RESPONSE:** Disputed. The Commission has ordered companies to take remedial action with respect to functionally equivalent products. *In the Matter of Relco, Inc.*, CPSC Dkt. No. 74-4, Order, at 1 (Oct. 27, 1976) (ordering in a Section 15 administrative litigation proceeding that “Respondents are to refrain from manufacturing and distributing in commerce or any manner affecting commerce . . . the Wel-Dex Electric Arc Welder, or any other electric welder of similar design or construction, containing any of the defects alleged to create a substantial product hazard in the Notice of Enforcement issued herein on July 17, 1974”) (Decision and Order and Order attached to Complaint Counsel’s Statement of Undisputed Material Facts, Exhibit 1, at Exhibit EE). In addition, companies have re-announced recalls, in conjunction with the CPSC, after finding additional functionally equivalent products presenting the same hazard. *See* Complaint

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<sup>199</sup> Ex. 30, Rose Dep. 335:16–337:19; *see also* 15 U.S.C. §§ 2051–2089; 16 CFR 1000-1799.

<sup>200</sup> Ex. 30, Rose Dep. 335:16–337:19.

Counsel’s Statement of Undisputed Material Facts, at ¶ 181 (citing CoScentrix Expands Recall of DD Brand Candles, CPSC.Gov (Jan. 8, 2015) (second expansion of an April 2014 recall of certain “candles sold in tins” to include additional designs of “candles sold in jars and tins” posing the same fire hazard), <https://www.cpsc.gov/Recalls/2015/CoScentrix-Expands-Recall-of-DD-Brand-Candles1>; Rashti & Rashti Expands Recall of Infant Garments Due to Choking Hazard, CPSC.Gov (Jan. 12, 2009) (expansion of a July 2008 recall involving Taggies Sleep ‘n Play infant garments with “Butterfly Applique” and “Fun Dog Print” designs to include “TheDinosaur Applique and the Pink Toss Print styles,” which were found to pose the same choking hazard), <https://www.cpsc.gov/Recalls/2009/rashti-rashti-expands-recall-of-infant-garments-due-to-choking-hazard>).

192. [REDACTED]<sup>201</sup>

**RESPONSE:** Disputed. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>201</sup> See Ex. 30, Rose Dep. 334:18–335:4.



[REDACTED]

193.

[REDACTED]<sup>202</sup>

**RESPONSE:** Disputed. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

194.

[REDACTED]<sup>203</sup>

**RESPONSE:** Disputed. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

195.

[REDACTED]<sup>204</sup>

**RESPONSE:** Disputed. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

<sup>202</sup> Ex. 30, Rose Dep. 338:17–339:1.

<sup>203</sup> Ex. 30, Rose Dep. 339:12–339:16.

<sup>204</sup> Ex. 30, Rose Dep. 342:4–343:17.

[REDACTED]

196. [REDACTED]<sup>205</sup>

**RESPONSE:** Disputed. [REDACTED]

197. [REDACTED]<sup>206</sup>

**RESPONSE:** [REDACTED]

198. [REDACTED]<sup>207</sup>

**RESPONSE:** Disputed. [REDACTED]

<sup>205</sup> Ex. 30, Rose Dep. 342:4–342:18.

<sup>206</sup> Ex. 30, Rose Dep. 343:1–343:9.

<sup>207</sup> Ex. 30, Rose Dep. 342:4–342:18 (children’s sleepwear); 343:1–343:9 (carbon monoxide detectors); 343:10–343:17 (hair dryers).

[REDACTED]

199.

[REDACTED]<sup>208</sup>

**RESPONSE:** Disputed.

[REDACTED]

200.

[REDACTED]<sup>209</sup>

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<sup>208</sup> Ex. 106, CPSC\_AM0014331 at 14331 (CPSC Laboratory Rep.).

<sup>209</sup> Ex. 106, CPSC\_AM0014331 at 14331 (CPSC Laboratory Rep.).

**RESPONSE:** Disputed. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

201. [REDACTED]  
[REDACTED]<sup>210</sup>

**RESPONSE:** Disputed. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**VII. THE COMMISSION’S NOTICE REQUIREMENTS**

202. [REDACTED]  
[REDACTED]<sup>211</sup>

**RESPONSE:** Disputed. [REDACTED]  
[REDACTED]  
[REDACTED]

<sup>210</sup> Ex. 106, CPSC\_AM0014331 at 14331 (CPSC Laboratory Rep.).  
<sup>211</sup> Ex. 62, Mohorovic Rep. at 11–13.

[REDACTED]

203.

[REDACTED]<sup>212</sup>

**RESPONSE:** [REDACTED]

204. The Commission’s 2012 Recall Handbook states that the term “‘Important Safety Notice’ . . . should appear” in “other forms of notice,” which include email notifications.<sup>213</sup>

**RESPONSE:** Disputed as to Amazon’s characterization of the statement in the March 2012 Recall Handbook. The guidance in the handbook states as follows: “The words ‘Important Safety Notice’ or ‘Safety Recall’ should appear at the top of each notice and cover letter and should also be on the lower left corner of any mailing envelope.” Respondent’s Statement of Undisputed Material Facts, at Exhibit 60, at 24. In addition, the current and operative version of the Recall Handbook includes the following guidance: “CPSC expects that companies will use the word ‘recall’ to refer to any voluntary action taken pursuant to a [corrective action plan] that involves removing, repairing, inspecting, discarding, updating, or otherwise altering for safety a product once it has been purchased by a consumer.

<sup>212</sup> Ex. 62, Mohorovic Rep. at 11–13.

<sup>213</sup> Ex. 60, 2012 CPSC Recall Handbook at 23–24.

Although details and circumstances of [corrective action plans] and products may differ, the consistent use of the term ‘recall’ is currently the best way to ensure consumers’ attention to a safety notice.” See Complaint Counsel’s Statement of Undisputed Material Facts, Exhibit 1, at Exhibit S (CPSC\_AM0011480); [REDACTED]

[REDACTED] In addition, the Mandatory Recall Notice Rule states that a “recall notice must include the word ‘recall’ in the heading and text.” 16 C.F.R. § 1115.27(a).

205.

[REDACTED]<sup>214</sup>

**RESPONSE:** Disputed. [REDACTED]  
[REDACTED]

206. Academic research shows that the reputation of a firm, including whether a brand is well-known and a trusted source of information, increases the likelihood that its consumer messages will be heeded.<sup>215</sup>

**RESPONSE:** Disputed. Complaint Counsel objects to Amazon’s citation to a conclusion in an expert report as a purported “undisputed material fact.”

Complaint Counsel further objects to Paragraph 206 on the grounds that Amazon fails to identify the specific “[a]cademic research” that purportedly supports its assertions. In addition, Complaint Counsel disputes Paragraph 206 on the grounds that it is immaterial.

207. Empirical research has specifically addressed the question whether the word “recall” should be used in notifications, and concluded instead that “use of different

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<sup>214</sup> Ex. 62, Mohorovic Rep. at 16–18.

<sup>215</sup> Ex. 62, Mohorovic Rep. at 16–18.

terminology” is appropriate where the term does not actually describe what action consumers should take with the product.<sup>216</sup>

**RESPONSE:** Undisputed that the cited 2008 academic article entitled “Analysis of Terms Comprising Potential Names for a Recall Notification Campaign” presents academic research. Otherwise disputed by Complaint Counsel because Amazon’s characterization of that research is an opinion and not a factual contention, and the article is inadmissible hearsay. *See* Fed. R. Civ. Proc. 56(c)(2) (“A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.”). In addition, the article cited by Amazon in Paragraph 207 notes the following: “The results showed that people believed it permissible not to use the term *Recall* for surgically-implanted medical devices, despite the fact that they believed that the term *Recall* should be used in other product defect campaigns.” Respondent’s Statement of Undisputed Material Facts, at Exhibit 74 (Jennifer A. Cowley & Michael S. Wogalter, Analysis of Terms Comprising Potential Names for a Recall Notification Campaign, Proceedings of the Human Factors and Ergonomics Society, 1698, 1702 (2008)). In addition, Complaint Counsel objects to Amazon’s citation to a conclusion in an expert report as a purported “undisputed material fact.”

208. The Commission is “not a well-recognized agency.”<sup>217</sup>

**RESPONSE:** Undisputed. However, Complaint Counsel disputes Paragraph 208 on the grounds that it is immaterial.

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<sup>216</sup> Ex. 74, Jennifer A. Cowley & Michael S. Wogalter, Analysis of Terms Comprising Potential Names for a Recall Notification Campaign, Proceedings of the Human Factors and Ergonomics Society, 1698, 1702 (2008); Ex. 62, Mohorovic Rep. at 13–14.

<sup>217</sup> Ex. 102, 2023–2026 CPSC Draft Strategic Plan at 24.

209. There is no evidence that consumers are more likely to take additional action because the Commission says to.<sup>218</sup>

**RESPONSE:** Disputed. Amazon mischaracterizes the findings in the cited GAO report, which does not conclude that “[t]here is no evidence that consumers are more likely to take additional action because the Commission says to.”

**VIII. THE COMMISSION’S CURRENT PRACTICES REGARDING RECALL ACTIONS**

210. [REDACTED]<sup>219</sup>

**RESPONSE:** Disputed. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

211. [REDACTED]<sup>220</sup>

**RESPONSE:** Disputed. [REDACTED]  
[REDACTED]

<sup>218</sup> Ex. 103, Government Accountability Office, *Consumer Product Safety Commission: Awareness, Use, and Usefulness of SaferProducts.gov* at 8 (Mar. 2013).  
<sup>219</sup> Ex. 30, Rose Dep. 290:7–291:4.  
<sup>220</sup> Ex. 30, Rose Dep. 194:19–195:16.



[REDACTED]

212.

[REDACTED]<sup>221</sup>

**RESPONSE:** Disputed. [REDACTED]

[REDACTED]

213.

[REDACTED]<sup>222</sup>

**RESPONSE:** Disputed. [REDACTED]

[REDACTED]

<sup>221</sup> Ex. 30, Rose Dep. 299:10–299:13.

<sup>222</sup> Ex. 30, Rose Dep. 299:14–299:19.

[REDACTED]

214.

[REDACTED]

**RESPONSE:** Disputed. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**IX. THE COMMISSION’S STATED PUBLIC INTEREST JUSTIFICATIONS**

215. Complaint Counsel’s sole identified public interest justification for requesting that Amazon issue an additional CPSC approved direct notice to purchasers is that it would “clarify the hazard presented and promote[] the removal of the hazardous Subject Products from homes and the stream of commerce.”<sup>224</sup>

<sup>223</sup> Ex. 30, Rose Dep. 299:20–300:6.  
<sup>224</sup> Ex. 45, Compl. Counsel’s Obj. and Resp. to Amazon’s Interrogatories, No. 14 (Mar. 21, 2022).

**RESPONSE:** Disputed as to Amazon’s use of the term “sole,” as Complaint Counsel has explained the reasoning behind its requested relief in this case through documents, witnesses, and briefing. Complaint Counsel does not dispute that, in response to an Amazon interrogatory, Complaint Counsel stated that a CPSC-approved direct notice would be in the public interest because “it clarifies the hazard presented and promotes the removal of the hazardous Subject Products from homes and the stream of commerce.” Complaint Counsel further disputes Amazon’s contention in Paragraph 215 to the extent it is stating that the CPSC is precluded from offering additional reasons for requesting a CPSC-approved direct notice to purchasers.

216. Complaint Counsel’s sole identified public interest justification for requesting that Amazon issue a press release regarding the Subject Products is that it would “clarif[y] the hazards presented and promote[] awareness of the hazardous products.”<sup>225</sup>

**RESPONSE:** Disputed as to Amazon’s use of the term “sole,” as Complaint Counsel has explained the reasoning behind its requested relief in this case through documents, witnesses, and briefing. Complaint Counsel does not dispute that, in response to an Amazon interrogatory, Complaint Counsel stated that a press release regarding the Subject Products would be in the public interest because “it both clarifies the hazards presented and promotes awareness of the hazardous products.” Complaint Counsel further disputes Amazon’s contention in Paragraph 216 to the extent it is stating that the CPSC is precluded from offering additional reasons for requesting a press release regarding the Subject Products.

217. Complaint Counsel’s sole identified public interest justification for requesting that Amazon facilitate the return and destruction of the Subject Products is that it would

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<sup>225</sup> Ex. 45, Compl. Counsel’s Obj. and Resp. to Amazon’s Interrogatories, No. 14 (Mar. 21, 2022).

“promote[] the removal of the hazardous Subject Products from homes and the stream of commerce.”<sup>226</sup>

**RESPONSE:** Disputed as to Amazon’s use of the term “sole,” as Complaint Counsel has explained the reasoning behind its requested relief in this case through documents, witnesses, and briefing. Complaint Counsel does not dispute that, in response to an Amazon interrogatory, Complaint Counsel stated that facilitating the return and destruction of the Subject Products would be in the public interest because “it promotes the removal of the hazardous Subject Products from homes and the stream of commerce.” Complaint Counsel further disputes Amazon’s contention in Paragraph 217 to the extent it is stating that the CPSC is precluded from offering additional reasons for requesting a facilitation of the return and destruction of the Subject Products.

218. Complaint Counsel’s sole identified public interest justification for requesting that Amazon submit monthly progress reports reflecting the number of Subject Products located in Amazon’s inventory, returned by consumers, and destroyed is that it would “track[] the return and destruction of the hazardous Subject Products.”<sup>227</sup>

**RESPONSE:** Disputed as to Amazon’s use of the term “sole,” as Complaint Counsel has explained the reasoning behind its requested relief in this case through documents, witnesses, and briefing. Complaint Counsel does not dispute that, in response to an Amazon interrogatory, Complaint Counsel stated that Amazon’s submission of monthly progress reports would be in the public interest because “[the submissions] would promote the public’s interest in tracking the return and destruction of the hazardous Subject Products.” Complaint Counsel further disputes Amazon’s contention in Paragraph 218 to the extent it is stating that the

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<sup>226</sup> Ex. 45, Compl. Counsel’s Obj. and Resp. to Amazon’s Interrogatories, No. 14 (Mar. 21, 2022).

<sup>227</sup> Ex. 45, Compl. Counsel’s Obj. and Resp. to Amazon’s Interrogatories, No. 14 (Mar. 21, 2022).

CPSC is precluded from offering additional reasons for requesting Amazon’s submission of monthly progress reports.

219. Complaint Counsel’s sole identified public interest justification for requesting that Amazon submit monthly progress reports identifying all functionally equivalent products removed by Amazon is that it would “facilitate the identification and removal of products posing identical hazards.”<sup>228</sup>

**RESPONSE:** Disputed as to Amazon’s use of the term “sole,” as Complaint Counsel has explained the reasoning behind its requested relief in this case through documents, witnesses, and briefing. Complaint Counsel does not dispute that, in response to an Amazon interrogatory, Complaint Counsel stated that Amazon’s submission of monthly progress reports identifying all functionally equivalent products removed by Amazon would be in the public interest because “[the submissions] would facilitate the identification and removal of products posing identical hazards.” Complaint Counsel further disputes Amazon’s contention in Paragraph 219 to the extent it is stating that the CPSC is precluded from offering additional reasons for requesting Amazon’s submission of monthly progress reports identifying all functionally equivalent products removed by Amazon.

220. Complaint Counsel’s sole identified public interest justification for requesting that Amazon be prohibited from distributing functionally identical products is that it “subjects [Amazon] to penalties if [Amazon] distributes Subject Products or functionally identical products.”<sup>229</sup>

**RESPONSE:** Disputed as to Amazon’s use of the term “sole,” as Complaint Counsel has explained the reasoning behind its requested relief in this case through documents, witnesses, and briefing. Complaint Counsel does not dispute that, in

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<sup>228</sup> Ex. 45, Compl. Counsel’s Obj. and Resp. to Amazon’s Interrogatories, No. 14 (Mar. 21, 2022).

<sup>229</sup> Ex. 45, Compl. Counsel’s Obj. and Resp. to Amazon’s Interrogatories, No. 14 (Mar. 21, 2022).

response to an Amazon interrogatory, Complaint Counsel stated that prohibiting Amazon from distributing in commerce the Subject Products, including any functionally identical products would be in the public interest because “[doing so would] subject [Amazon] to penalties if [Amazon] distributes the hazardous Subject Products or functionally identical products.” Complaint Counsel further disputes Amazon’s contention in Paragraph 220 to the extent it is stating that the CPSC is precluded from offering additional reasons for requesting that Amazon be prohibited from distributing functionally identical products.

Respectfully submitted,



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October 21, 2022

CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2022, a copy of the foregoing was served upon all parties and participants of record in these proceedings as follows:

*By email to the Secretary:*

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*By email to the Presiding Officer:*

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