

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

In the Matter of Amazon.com, Inc.,

Respondent.

CPSC Docket No. 21-2

Hon. Carol Fox Foelak
Presiding Officer

**AMAZON’S RESPONSE TO COMPLAINT COUNSEL’S
STATEMENT OF UNDISPUTED MATERIAL FACTS**

1. The products at issue (collectively, the “Subject Products”) in this case fall into three categories. The first category is children’s sleepwear garments sold on Amazon.com that consist of nightgowns and bathrobes intended for children primarily for sleeping or activities related to sleeping (hereinafter, the “children’s sleepwear garments”). Complaint, Dkt. No. 1, 20.

RESPONSE: Undisputed, with the clarification that the Subject Products were sold by Third-Party Sellers¹ on Amazon.com, and Amazon provided third-party logistics services through its FBA program.

2. Consumers purchased over 400,000 units of the Subject Products from Amazon.com. *See* Amazon’s Response to Complaint Counsel’s Statement of Undisputed Material Facts and Amazon’s Statement of Undisputed Material Facts, Dkt. No. 16, at § II, ¶ 6; Exhibit 1, Declaration of John Eustice in Support of Complaint Counsel’s Motion for Summary Decision (Exhibit A, Respondent’s Objections and Responses to Complaint Counsel’s First Set of Interrogatories, Response to Interrogatory No. 10).

RESPONSE: Undisputed, with the clarification that the Subject Products were sold by Third-Party Sellers on Amazon.com, and Amazon provided third-party logistics services through its FBA program.

3. The children’s sleepwear garments include:

¹ As defined in Amazon’s September 23, 2022 Statement of Undisputed Material Facts, “Third-Party Sellers” refers to the sellers of the Subject Products.

a. CPSC Sample Number: 20-800-1345 (ASIN: B074V558SB), HOYMN Little Girl’s Lace Cotton Nightgowns, Kids Long-Sleeve Sleep Shirts Princess Sleepwear for Toddlers 2-15 Years.

b. CPSC Sample Number: 20-800-1726 (ASIN: B0S9B7QQ7, B07S66PR4G, B07SCJNMFP, B07S99Y5YP, B07S99R16X, B07SDLKLS4, B07SCJ2HK6, B07S87FF4G, B07SCJ6FR6, B07S65KQX1), IDGIRLS Kids Animal Hooded Soft Plush Flannel Bathrobes for Girls Boys Sleepwear.

c. CPSC Sample Number: 20-800-1727 (ASIN: B07QTGMWPK), Home Swee Boy’s Plush Fleece Robe Shawl Skull and Hooded Spacecraft Printed Soft Kids Bathrobe for Boy.

d. CPSC Sample Number: 20-800-1505 (ASIN: B01HGJY9FO), Taiycyxgan Little Girl’s Coral Fleece Bathrobe Unisex Kids Robe Pajamas Sleepwear. Complaint, Dkt. No. 1, ¶ 21.a. through 21.d.

RESPONSE: Undisputed.

4. [Redacted]

Exhibit 1 (Exhibit B, CPSC_AM0000349-352).

RESPONSE: Undisputed as to the date and content of the communication. As noted in Amazon’s September 23, 2022 Statement of Undisputed Material Facts (“Amazon SUMF”) at ¶ 10, [Redacted]

5. [Redacted]

[Redacted] Exhibit 1 (Exhibit C, CPSC_AM0000515-519).

RESPONSE: Undisputed as to the date and content of the communication. For the purpose of this litigation, Amazon “does not contest that the Subject Product children’s sleepwear garments ... were tested by the CPSC and did not meet the current flammability requirements for children’s sleepwear under the Flammable Fabrics Act.” Stipulation of the Parties, Dkt. No. 35, (“Stip. of Parties”), at ¶ 1. Amazon has not had the opportunity to review the validity of the testing conducted by the CPSC and, as noted in the stipulation in

this matter, “reserves the right to fully contest any and all remedial relief sought by Complaint Counsel in this action.” Stip. of Parties at ¶ 4.

6. [REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit D, CPSC_AM0000770-773).

RESPONSE: Undisputed as to the date and content of the communication. As noted in Amazon’s SUMF at ¶ 46, [REDACTED]
[REDACTED]

7. [REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit E, CPSC_AM0000790-794).

RESPONSE: Undisputed as to the date and content of the communication. For the purpose of this litigation, Amazon “does not contest that the Subject Product children’s sleepwear garments... were tested by the CPSC and did not meet the current flammability requirements for children’s sleepwear under the Flammable Fabrics Act.” Stip. of Parties at ¶ 1. Amazon has not had the opportunity to review the validity of the testing conducted by the CPSC and, as noted in the stipulation in this matter, “reserves the right to fully contest any and all remedial relief sought by Complaint Counsel in this action.” Stip. of Parties at ¶ 4.

8. [REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit F, CPSC_AM 0000927-931).

RESPONSE: Undisputed as to the date and content of the communication. As noted in Amazon’s SUMF at ¶ 30, [REDACTED]
[REDACTED]

9. [REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit G, CPSC_AM0001077-1081).

RESPONSE: Undisputed as to the date and content of the communication. For the purpose of this litigation, Amazon “does not contest that the Subject Product children’s sleepwear garments ... were tested by the CPSC and did not meet the current flammability requirements for children’s sleepwear under the Flammable Fabrics Act.” Stip. of Parties at ¶ 1. Amazon has not had the opportunity to review the validity of the testing conducted by the CPSC and, as noted in the stipulation in this matter, “reserves the right to fully contest any and all remedial relief sought by Complaint Counsel in this action.” Stip. of Parties at ¶ 4.

10. [REDACTED]
[REDACTED]
[REDACTED] Exhibit 1
(Exhibit H, CPSC_AM0000624-628).

RESPONSE: Undisputed as to the date and content of the communication. As noted in Amazon’s SUMF at ¶ 65, [REDACTED]
[REDACTED]

11. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Exhibit 1 (Exhibit I, CPSC_AM0000672-676).

RESPONSE: Undisputed as to the date and content of the communication. For the purpose of this litigation, Amazon “does not contest that the Subject Product children’s sleepwear garments ... were tested by the CPSC and did not meet the current flammability requirements for children’s sleepwear under the Flammable Fabrics Act.” Stip. of Parties at ¶ 1. Amazon has not had the opportunity to review the validity of the testing conducted by the CPSC and, as noted in the stipulation in this matter, “reserves the right to fully contest any and all remedial relief sought by Complaint Counsel in this action.” Stip. of Parties at ¶ 4.

12. The Parties agree that the children’s sleepwear garments are consumer products imported, distributed in U.S. commerce, and offered for sale to consumers for their personal use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise. *See* Amazon’s Response to Complaint Counsel’s Statement of Undisputed Material Facts and Amazon’s Statement of Undisputed Material Facts, Dkt. No. 15, at Response to Paragraph 34.

RESPONSE: Disputed that Amazon is a distributor of the Subject Products. The Subject Products were “sold by Third-Party Sellers on Amazon.com,” *see* Amazon’s Response to

Complaint Counsel's Statement of Undisputed Material Facts and Amazon's Statement of Undisputed Material Facts, Dkt. No. 16 ("Amazon's Response to CPSC SUMF"), at p. 10, ¶ 6, and Amazon contends it was a third-party logistics provider, not a "distributor," of the Subject Products, *see* Amazon's Response to CPSC SUMF at § I, ¶ 7. Undisputed that the children's sleepwear garments are consumer products.

13. The Parties agree that the children's sleepwear garments were sold through Amazon's "Fulfillment by Amazon" ("FBA") program. *See* Amazon's Response to Complaint Counsel's Statement of Undisputed Material Facts and Amazon's Statement of Undisputed Material Facts, Dkt. No. 15, at Response to Paragraph 36.

RESPONSE: Undisputed, with the clarification that the Subject Products were sold by Third-Party Sellers on Amazon.com, and Amazon provided third-party logistics services through its FBA program.

14. [REDACTED]
[REDACTED] See Exhibit 1 (Exhibit A). [Footnote: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] See Exhibit 1 (Exhibit R, Respondent's Supplemental Objections and Responses to Complaint Counsel's Interrogatory Nos. 16 and 17, Supplemental Response to Interrogatory No. 17).]

RESPONSE: Undisputed as to [REDACTED]. As noted in Complaint Counsel's footnote, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Declaration of John Eustice ("Eustice Decl."), Exhibit R (Respondent's Supplemental Objections and Responses to Complaint Counsel's Interrogatory Nos. 16 and 17, Supplemental Response to Interrogatory No. 17).

15. The CPSC obtained samples of the children's sleepwear products identified in Paragraph 2 above by purchasing them from Amazon.com. Exhibit 1 (Exhibit J, CPSC_AM0009488-9552, CPSC_AM0009557).

RESPONSE: Undisputed that the documents cited show that the Subject Product children's sleepwear garments were purchased by CPSC staff.

16. The CPSC tested the samples purchased from Amazon.com and found that they are children’s sleepwear garments as defined in the regulations and that they did not meet the flammability requirements for children’s sleepwear as required under the Flammable Fabrics Act, 15 U.S.C. §§ 1191–1204 and 16 C.F.R. Parts 1615–16 (2021). Exhibit 2, Affidavit of Allyson Tenney (Exhibit A, CPSC_AM0000001-3), Exhibit 3, Affidavit of Emily Maling (Exhibit A, CPSC_AM0000008-10), Exhibit 4, Affidavit of Paige Witzgen (Exhibit A, CPSC_AM0000013-15, Exhibit B, CPSC_AM0000016-18).

RESPONSE: Undisputed, with the clarification that, for the purpose of this litigation, Amazon “does not contest that the Subject Product children’s sleepwear garments... were tested by the CPSC and did not meet the current flammability requirements for children’s sleepwear under the Flammable Fabrics Act.” Stip. of Parties at ¶ 1. Amazon has not had the opportunity to review the validity of the testing conducted by the CPSC and, as noted in the stipulation in this matter, “reserves the right to fully contest any and all remedial relief sought by Complaint Counsel in this action.” Stip. of Parties at ¶ 4.

17. The purpose of the Standards for the Flammability of Children’s Sleepwear, 16 C.F.R. Parts 1615 and 1616 (“the Standards”) in the Flammable Fabrics Act (“FFA”) is to reduce the unreasonable risk of burn injuries and deaths from fire associated with children’s sleepwear garments. Most burn incidents do not occur while children are sleeping but while they are awake, unsupervised, and wearing sleepwear garments. The primary hazard is ignition of the sleepwear by contact with hot surfaces and/or small open-flame ignition sources, such as stove elements, matches, and lighters. *See* CPSC Laboratory Test Manual for 16 C.F.R. Parts 1615 and 1616: Standards for the Flammability of Children’s Sleepwear, July 2010, at 5. *See also* U.S. Department of Commerce, Nat. Bur. Stand. (U.S.), Tech. Note 815 (Feb. 1974) at 6 (tabulating ignition sources); U.S. Department of Commerce, Nat. Bur. Stand. (U.S.), Tech. Note 810 (Dec. 1973) at 7 (tabulating ignition sources).

RESPONSE: Undisputed that the cited “CPSC Laboratory Test Manual for 16 C.F.R. Parts 1615 and 1616: Standards for the Flammability of Children’s Sleepwear” asserts that the purpose of the Standards is as described above. Amazon is not in a position to verify the remaining statements provided above.

18. The Standards require that children’s sleepwear garments stop burning when the flame source is removed. To meet the flammability requirements of the Standards, children’s sleepwear garments must not have a sample with an average char length exceeding seven inches and no individual specimen can have a char length of ten inches, as set forth at 16 C.F.R. Parts 1615.3(b) and 1616.3(b).

RESPONSE: Undisputed.

19. The testing of the samples for the children’s sleepwear garments identified in Paragraph 3 above revealed that they fail the Standards. Exhibit 2 (Exhibit A), Exhibit 3 (Exhibit A), Exhibit 4 (Exhibit A, Exhibit B).

RESPONSE: Undisputed that the documents cited show testing conducted by the CPSC. Amazon is not in a position to verify the test results identified above.

20. Children’s sleepwear garments that fail to meet the FFA requirements create a substantial risk of injury to consumers because of the serious injuries that can occur when such garments ignite while worn by children. *See* U.S. Department of Commerce, Nat. Bur. Stand. (U.S.), Tech. Note 815 (Feb. 1974) at 1 (finding that of the 22 incidents in the NBS Flammable Fabrics Accident Case and Testing System (FFACTS) as of January 1973 for children between ages 0 to 2, 16 would not have suffered as severe injuries if afforded the protection of the flammability standard); U.S. Department of Commerce, Nat. Bur. Stand. (U.S.), Tech. Note 810 (Dec. 1973) at 14 (finding that all of the children involved in the 77 reports in FFACTS for children ages 6-12 suffered injuries, including 52 hospitalizations and 5 deaths, and that the children “would not have been severely burned had the sleepwear they were wearing been flame retardant”).

RESPONSE: Undisputed that the cited documents include the statement above. Amazon is not in a position to verify the statements provided above.

21. Amazon stipulated that the children’s sleepwear garments identified in Paragraph 2 above fail to meet the Standards set forth in the FFA, and that the children’s sleepwear meets the requirements for a substantial product hazard under Section 15(a)(1) of the CPSA (15 U.S.C. § 2064(a)(1)). Exhibit 1 (Exhibit K, Stipulation of the Parties (April 26, 2022), at Paragraph 1).

RESPONSE: Undisputed.

22. The second category of Subject Products is carbon monoxide detectors sold on Amazon.com and equipped with alarms intended to alert consumers to the presence of harmful carbon monoxide gas (hereinafter, the “carbon monoxide detectors”). Complaint, Dkt. No. 1, ¶ 29.

RESPONSE: Undisputed.

23. The carbon monoxide detectors include:
- a. CPSC File No. PI210013 (ASIN: B07HK8JHDV, Sample No. 20-800-1419), CD01 carbon monoxide detector manufactured by WJZXTEK.

b. CPSC File No. PI210014 (ASIN: B07GNKD44L, Sample No. 20-800-1420), ME2-CO carbon monoxide detector manufactured by Zhenzhou Winsen Electronics Technology Company, LTD.

c. CPSC File No. PI210016 (ASIN: B07C2KM8RB, B07BDJTX8W, Sample No. 20-800-1422), ME2-CO and ss4 carbon monoxide detector manufactured by Zhenzhou Winsen Electronics Technology Company, LTD.

d. CPSC File No. PI210022 (ASIN: B07MPP42GT, Sample No. 20-800-1837), carbon monoxide detector manufactured by BQQZHZ. Complaint, Dkt. No. 1), at ¶ 30.a. through 30.d.

RESPONSE: Undisputed.

24. [REDACTED]
[REDACTED] Exhibit 1 (Exhibit L, CPSC_AM0009462- 9466, CPSC_AM0009467-9471, CPSC_AM0009472-9476, CPSC_AM0009477-9481).

RESPONSE: Undisputed.

25. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit L).

RESPONSE: Undisputed as to the date and content of the communication. For the purpose of this litigation, Amazon stipulated that, “according to testing conducted by the CPSC,” the Subject Product carbon monoxide detectors “failed to alarm within 15 minutes when subjected to 400 ppm of CO.” Stip. of Parties at ¶ 2. Amazon has not had the opportunity to review the validity of the testing conducted by the CPSC and, as noted in the stipulation in this matter, “reserves the right to fully contest any and all remedial relief sought by Complaint Counsel in this action.” Stip. of Parties at ¶ 4.

26. The Parties agree that the carbon monoxide detectors are consumer products that were imported, distributed in U.S. commerce, and offered for sale to consumers for their personal use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise. *See* Amazon’s Response to Complaint Counsel’s Statement of

Undisputed Material Facts and Amazon’s Statement of Undisputed Material Facts, Dkt. No. 15, at Response to Paragraph 37.

RESPONSE: Disputed that Amazon is a distributor of the Subject Products. The Subject Products were “sold by Third-Party Sellers on Amazon.com,” *see* Amazon’s Response to CPSC SUMF at p. 10, ¶ 6, and Amazon contends it was a third-party logistics provider, not a “distributor,” of the Subject Products, *see* Amazon’s Response to CPSC SUMF at § I, ¶ 7. Undisputed that the children’s sleepwear garments are consumer products.

27. The Parties agree that the carbon monoxide detectors were sold through Amazon’s FBA program. *See* Amazon’s Response to Complaint Counsel’s Statement of Undisputed Material Facts and Amazon’s Statement of Undisputed Material Facts, Dkt. No. 15, at Response to Paragraph 38.

RESPONSE: Undisputed, with the clarification that the carbon monoxide detectors were sold by Third-Party Sellers on Amazon.com, and Amazon provided third-party logistics services through its FBA program.

28. [REDACTED]
[REDACTED]. *See* Exhibit 1 (Exhibit A).

RESPONSE: Undisputed.

29. [REDACTED]
[REDACTED] Exhibit 1 (Exhibit M, CPSC_AM0000201-210, CPSC_AM0000211).

RESPONSE: Disputed. [REDACTED]
[REDACTED]
[REDACTED] Eustice Decl., Exhibit M at CPSC_AM0000201-210, CPSC_AM0000211.

30. [REDACTED]
[REDACTED]
[REDACTED] Exhibit 5, Affidavit of Benjamin Mordecai (Exhibit A, CPSC_AM00000194-200).

RESPONSE: Undisputed that the document cited states that [REDACTED]
[REDACTED]
[REDACTED] CPSC’s September 23, 2022 Affidavit of Benjamin Mordecai, Exhibit A at CPSC_AM00000194-200. Amazon is not in a position to verify the test results identified above. For the purpose

of this litigation, Amazon stipulated that, “according to testing conducted by the CPSC,” the Subject Product carbon monoxide detectors “failed to alarm within 15 minutes when subjected to 400 ppm of CO.” Stip. of Parties at ¶ 2. Amazon has not had the opportunity to review the validity of the testing conducted by the CPSC and, as noted in the stipulation in this matter, “reserves the right to fully contest any and all remedial relief sought by Complaint Counsel in this action.” Stip. of Parties at ¶ 4.

31.

[REDACTED], *see* Exhibit 5, and therefore did not meet the standards set forth in the Underwriters Laboratories (“UL”) *Standard for Single and Multiple Station Alarms*, UL 2034 (4th edition). *Id.* “UL Standards encompass UL’s extensive safety research and scientific expertise. With over a century of experience in the development of more than 1,500 Standards, UL is an accredited standards developer in the US and Canada. In extending its global public safety mission, UL Standards partners with national standards bodies in countries around the world to build a safer, more sustainable world.” <https://ulstandards.ul.com/>. According to the UL Standard, the 15 minute time frame is designed so that an alarm will sound before an individual experiences “a loss of ability to react to the dangers of carbon monoxide exposure.” Exhibit 1 (Exhibit N, CPSC_AM0014333-14513, at CPSC_AM0014345).

RESPONSE: Undisputed that the cited document and webpage contain the statements described. Amazon is not in a position to verify the accreditation of UL as a standards developer. For the purpose of this litigation, Amazon stipulated that, “according to testing conducted by the CPSC,” the Subject Product carbon monoxide detectors “failed to alarm within 15 minutes when subjected to 400 ppm of CO.” Stip. of Parties at ¶ 2. Amazon has not had the opportunity to review the validity of the testing conducted by the CPSC and, as noted in the stipulation in this matter, “reserves the right to fully contest any and all remedial relief sought by Complaint Counsel in this action.” Stip. of Parties at ¶ 4.

32.

In additional testing, [REDACTED] Exhibit 5 (Exhibit B, CPSC_AM0017340-44).

RESPONSE: Undisputed that the cited report states that [REDACTED] For the purpose of this litigation, Amazon has stipulated that, “according to testing conducted by the CPSC,” the Subject Product carbon monoxide detectors “failed to alarm within 15 minutes when subjected to 400 ppm of CO.” Stip. of Parties at ¶ 2. Amazon has not had the opportunity to review the validity of the testing conducted by the CPSC and, reserves the right to fully

contest the validity of the report, as well as “any and all remedial relief sought by Complaint Counsel in this action.” Stip. of Parties at ¶ 4.

33. All three samples of the Subject Product identified in Paragraph ¶ 23.a. were tested [REDACTED]
[REDACTED]
Exhibit 5 (Exhibit B, at CPSC_AM0017342-43).

RESPONSE: Undisputed that the cited report states that [REDACTED]
[REDACTED] For the purpose of this litigation, Amazon has stipulated that, “according to testing conducted by the CPSC,” the Subject Product carbon monoxide detectors “failed to alarm within 15 minutes when subjected to 400 ppm of CO.” Stip. of Parties at ¶ 2. Amazon has not had the opportunity to review the validity of the testing conducted by the CPSC and, reserves the right to fully contest the validity of the report, as well as “any and all remedial relief sought by Complaint Counsel in this action.” Stip. of Parties at ¶ 4.

34. All three samples of the Subject Product identified in Paragraph ¶ 23.b. were tested [REDACTED]
[REDACTED] *Id.*

RESPONSE: Undisputed that the cited report states that [REDACTED]
[REDACTED] For the purpose of this litigation, Amazon has stipulated that, “according to testing conducted by the CPSC,” the Subject Product carbon monoxide detectors “failed to alarm within 15 minutes when subjected to 400 ppm of CO.” Stip. of Parties at ¶ 2. Amazon has not had the opportunity to review the validity of the testing conducted by the CPSC and, reserves the right to fully contest the validity of the report, as well as “any and all remedial relief sought by Complaint Counsel in this action.” Stip. of Parties at ¶ 4.

35. All three samples of the Subject Product identified in Paragraph ¶ 23.c. were tested [REDACTED]
[REDACTED] *Id.*

RESPONSE: Undisputed that the cited report states that [REDACTED]
[REDACTED] For the purpose of this litigation, Amazon has stipulated that, “according to testing conducted by the CPSC,” the Subject Product carbon monoxide detectors “failed to alarm within 15 minutes when subjected to 400 ppm of CO.” Stip. of Parties at ¶ 2. Amazon has not had the opportunity to review the validity of the testing conducted by the CPSC and, reserves the right to fully contest the validity of the report, as well as “any and all remedial relief sought by Complaint Counsel in this action.” Stip. of Parties at ¶ 4.

36. All three samples of the Subject Product identified in Paragraph ¶ 23.d. were tested, [REDACTED]
[REDACTED]
[REDACTED] *Id.*

RESPONSE: Undisputed that the cited report states that [REDACTED]
[REDACTED] For the purpose of this litigation, Amazon has stipulated that, “according to testing conducted by the CPSC,” the Subject Product carbon monoxide detectors “failed to alarm within 15 minutes when subjected to 400 ppm of CO.” Stip. of Parties at ¶ 2. Amazon has not had the opportunity to review the validity of the testing conducted by the CPSC and, reserves the right to fully contest the validity of the report, as well as “any and all remedial relief sought by Complaint Counsel in this action.” Stip. of Parties at ¶ 4.

37. [REDACTED]
[REDACTED]
[REDACTED] Exhibit 5 (Exhibit B, at CPSC_AM0017343).

RESPONSE: Undisputed that the cited report states that [REDACTED]
[REDACTED] For the purpose of this litigation, Amazon has stipulated that, “according to testing conducted by the CPSC,” the Subject Product carbon monoxide detectors “failed to alarm within 15 minutes when subjected to 400 ppm of CO.” Stip. of Parties at ¶ 2. Amazon has not had the opportunity to review the validity of the testing conducted by the CPSC and, reserves the right to fully contest the validity of the report, as well as “any and all remedial relief sought by Complaint Counsel in this action.” Stip. of Parties at ¶ 4.

38. Carbon monoxide is a “colorless, odorless, toxic gas” produced by burning gasoline, wood, propane, charcoal or other fuel. Improperly ventilated appliances and engines, particularly in a sealed or enclosed space, may allow carbon monoxide to accumulate to dangerous levels. Exhibit 1 (Exhibit N, at CPSC_AM0014347).

RESPONSE: Undisputed.

39. “More than 150 people in the United States die every year from accidental non- fire related CO poisoning associated with consumer products, including generators.” <https://www.cpsc.gov/Safety-Education/Safety-Education-Centers/Carbon-Monoxide-Information-Center>. “CO poisoning from portable generators can happen so quickly that exposed persons may become unconscious before recognizing the symptoms of nausea, dizziness or weakness.” <https://www.cpsc.gov/Newsroom/News-Releases/2022/CPSC-Releases-New-Report-on-Carbon-Monoxide-CO-Fatalities-Urges-Generator-Safety-in-New-PSA>.

RESPONSE: Undisputed that the cited CPSC webpages contain the language quoted above.

40. If a consumer installs a carbon monoxide detector that does not provide an alert to the presence of carbon monoxide, and carbon monoxide enters the home, the consumer will not be warned of the presence of this harmful gas. Exhibit 1 (Exhibit N, at CPSC_AM0014345).

RESPONSE: For the purpose of this litigation, Amazon does not dispute whether “[c]arbon monoxide alarms covered by these requirements are intended to respond to the presence of carbon monoxide.” Amazon reserves the right to dispute the relevance of this statement at a later time.

41. Carbon monoxide gas may cause severe injury, including tissue damage and death. Continued exposure to 400 ppm CO concentration can hinder an individual’s ability to self-rescue as they become increasingly disoriented, drowsy, and ill. Figure 41.1 in the UL Standard plots the estimated carboxyhemoglobin blood level of an individual exposed to certain concentrations of carbon monoxide over certain periods of time and displays that individuals can experience drowsiness when exposed to 400 ppm of CO concentration after 60-80 mins, can collapse when exposed to that concentration for 80 mins or more, and experience permanent brain damage and death when exposed to 400 ppm CO concentration for 140 minutes. Exhibit 1 (Exhibit N, at CPSC_AM0014386).

RESPONSE: Undisputed that the cited document contains the information described above. Amazon reserves the right to dispute the relevance of this statement at a later time.

42. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit N, at CPSC_AM0014386 (demonstrating side effects of exposure to carbon monoxide in 20-minute increments)); Exhibit 5 (Attachments CPSC_AM00000194-200).

RESPONSE: Undisputed that the cited report states that [REDACTED]
[REDACTED]
[REDACTED] For the purpose of this litigation, Amazon has stipulated that, “according to testing conducted by the CPSC,” the Subject Product carbon monoxide detectors “failed to alarm within 15 minutes when subjected to 400 ppm of CO.” Stip. of Parties at ¶ 2. Amazon has not had the opportunity to review the validity of the testing conducted by the CPSC and, reserves the right to fully contest the validity of the report, as

well as “any and all remedial relief sought by Complaint Counsel in this action.” Stip. of Parties at ¶ 4.

43. Amazon stipulated to the carbon monoxide detectors presenting a substantial product hazard under Section 15(a)(2) of the CPSA (15 U.S.C. § 2064(a)(2)) based on their failure to alarm within the UL standard time frame. Exhibit 1 (Exhibit K, at Paragraph 2).

RESPONSE: Undisputed.

44. The third category of products is hair dryers sold on Amazon.com that consist of hair dryers that do not provide integral immersion protection (hereinafter, the “hair dryers”). Exhibit 1 (Exhibit K, at Paragraph 3).

RESPONSE: Undisputed that “the third category of products is hair dryers sold on Amazon.com.” For the purpose of this litigation, Amazon has stipulated that the Subject Product hair dryers were “found not to contain an immersion protection device integral to the power cord.” Stip. of Parties at ¶ 3.

45. The hair dryers include (Complaint, Dkt. No. 1, ¶ 39):

| 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 | B07V5WV28 |
| 21-800-0981 | Shaboo Prints | B08LN4FR4T |
| 21-800-0026 | ELECDOLPH | B08PCQ7QFK |
| 21-800-1382 | LANIC | B07YXNMXH3 |
| 21-800-1398 | Songtai | B088GWXLNT |
| 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.

46.

[REDACTED]

(Exhibit O, CPSC_AM00005051-5058).

Exhibit 1

RESPONSE: Undisputed as to the date and content of the communication. For the purpose of this litigation, Amazon has stipulated that the Subject Product hair dryers pose a substantial product hazard. Stip. of Parties at ¶ 3. As noted in the stipulation in this matter, Amazon “reserves the right to fully contest any and all remedial relief sought by Complaint Counsel in this action.” Stip. of Parties at ¶ 4.

47. The Parties agree that the hair dryers are consumer products that were imported, distributed in U.S. commerce, and offered for sale to consumers for their personal use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise. *See* Amazon’s Response to Complaint Counsel’s Statement of Undisputed Material Facts and Amazon’s Statement of Undisputed Material Facts, Dkt. No. 15, at Response to Paragraph 40.

RESPONSE: Disputed that Amazon is a distributor of the Subject Products. The Subject Products were “sold by Third-Party Sellers on Amazon.com,” *see* Amazon’s Response to CPSC SUMF at p. 10, ¶ 6, and Amazon contends it was a third-party logistics provider, not a “distributor,” of the Subject Products, *see* Amazon’s Response to CPSC SUMF at § I, ¶ 7. Undisputed that the children’s sleepwear garments are consumer products.

48. The Parties agree that the hair dryers were sold through Amazon’s FBA program. *See* Amazon’s Response to Complaint Counsel’s Statement of Undisputed Material Facts and Amazon’s Statement of Undisputed Material Facts, Dkt. No. 15, at Response to Paragraph 41.

RESPONSE: Undisputed, with the clarification that the carbon monoxide detectors were sold by Third-Party Sellers on Amazon.com, and Amazon provided third-party logistics services through its FBA program.

49. [REDACTED] *See* Exhibit 1 (Exhibit A, at Response to Interrogatory No. 10).

RESPONSE: Undisputed.

50. The CPSC obtained samples of the hair dryers identified in Paragraph 44 above by purchasing them from Amazon.com. Exhibit 1 (Exhibit P, CPSC_AM0001102, CPSC_AM00001108, CPSC_AM0001150, CPSC_AM0001151, CPSC_AM0001198, CPSC_AM0001287, CPSC_AM0001235, CPSC_AM0001327, CPSC_AM0001341, CPSC_AM0001393, CPSC_AM0001395, CPSC_AM0001441, CPSC_AM0001443, CPSC_AM0001469, CPSC_AM0001482, CPSC_AM0001500, CPSC_AM0001527, CPSC_AM0001502, CPSC_AM0001543, CPSC_AM0001573, CPSC_AM0001600, CPSC_AM0001606, CPSC_AM0001619, CPSC_AM0001640, CPSC_AM0001685, CPSC_AM0001738, CPSC_AM0001771, CPSC_AM0001798).

RESPONSE: Undisputed.

51.

[REDACTED]
[REDACTED]
[REDACTED] Exhibit 6, Affidavit of Arthur Lee (Exhibit A, CPSC_AM0000019-79, Exhibit B, CPSC_AM0000080-144, Exhibit C, CPSC_AM0000145- 180, Exhibit D, CPSC_AM0000181-193).

RESPONSE: Undisputed that the cited documents indicate that [REDACTED]
[REDACTED]

[REDACTED] For the purpose of this litigation, Amazon stipulated that the Subject Product hair dryers “were evaluated by the CPSC,” which concluded that the Subject Product hair dryers did not “contain an immersion protection device integral to the power cord, and therefore meet the requirements for a substantial product hazard under Sections 15(a)(2) and (j) of the CPSA (15 U.S.C. § 2064(a)(2)).” Stip. of Parties at ¶ 3. Amazon has not had the opportunity to review the validity of the testing conducted by the CPSC and reserves the right to fully contest the validity of the report, as well as “any and all remedial relief sought by Complaint Counsel in this action.” Stip. of Parties at ¶ 4.

52. In 2011, the CPSC approved a federal safety rule specifying that hand-supported hair dryers that do not provide integral immersion protection in compliance with the requirements of Section 5 of Underwriters Laboratories (“UL”) *Standard for Safety for Household Electric Personal Grooming Appliances*, UL 859 (10th edition) or Section 6 of *UL Standard for Safety for Commercial Electric Personal Grooming Appliances*, UL 1727 (4th edition) are a “substantial product hazard” under Section 15(a) of the CPSA, 15 U.S.C. § 2064(a). *See* 15 U.S.C. § 2064(j) and 16 C.F.R. § 1120.3.

RESPONSE: Undisputed. Amazon reserves the right to dispute the relevance of this statement at a later time.

53. The purpose of the federal safety rule is to reduce the risk of shock and electrocution hazards created by hand-supported hair dryers. When issuing the rule to add hand-supported hair dryers without integral immersion protection to the substantial product hazard list, the CPSC determined that the UL standards referenced in 16 C.F.R. § 1120.3(a) had “been very effective in reducing deaths and electric shock injuries due to hair dryer immersion or contact with water.” 76 Fed. Reg. 37636, 37640 (2011).

RESPONSE: Undisputed. Amazon reserves the right to dispute the relevance of this statement at a later time.

54. Because these hair dryers lack immersion protection, they do not meet the requirements of Section 5 of UL 859 or Section 6 of UL 1727. These hair dryers present a significant electric shock and electrocution hazard to users. Exhibit 6; 76 Fed. Reg. 37636, 37640 (2011).

RESPONSE: Undisputed, with the clarification that, for the purpose of this litigation, Amazon stipulated that the Subject Product hair dryers “were evaluated by the CPSC,” which concluded that the Subject Product hair dryers did not “contain an immersion protection device integral to the power cord, and therefore meet the requirements for a substantial product hazard under Sections 15(a)(2) and (j) of the CPSA (15 U.S.C. § 2064(a)(2), (j)).” Stip. of Parties at ¶ 3. Amazon has not had the opportunity to review the validity of the testing conducted by the CPSC and reserves the right to fully contest the validity of the report, as well as “any and all remedial relief sought by Complaint Counsel in this action.” Stip. of Parties at ¶ 4.

55. Amazon stipulated that because CPSC testing showed that the hair dryers identified in paragraph 45 did contain an immersion protection device integral to the power cord, pursuant to Section 15(j) of the CPSA, 15 U.S.C. §2064(j), and 16 C.F.R. § 1120.3, they meet the requirements for a substantial product hazard under Section 15(a)(2) of the CPSA (15 U.S.C. § 2064(a)(2)). Exhibit 1 (Exhibit K, at Paragraph 3).

RESPONSE: Disputed. For clarification, Amazon assumes the statement above was intended to say “that the hair dryers identified in paragraph 45 did not contain . . .” Regarding the statement above, solely for the purpose of this litigation, Amazon stipulated that the Subject Product hair dryers “were evaluated by the CPSC,” which concluded that the Subject Product hair dryers did not “contain an immersion protection device integral to the power cord, and therefore meet the requirements for a substantial product hazard under Sections 15(a)(2) and (j) of the CPSA (15 U.S.C. § 2064(a)(2)).” Stip. of Parties at ¶ 3. Amazon has not had the opportunity to review the validity of the testing conducted by the CPSC and reserves the right to fully contest the validity of the report, as well as “any and all remedial relief sought by Complaint Counsel in this action.” Stip. of Parties at ¶ 4.

56. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit Q, Rule 30(b)(6) Deposition of Amazon.com, Inc. (representative Sagi Goldberg) (Aug. 12, 2022), at 48:9-20).

RESPONSE: Undisputed, with the clarification that [REDACTED]

57. [REDACTED]
[REDACTED] Exhibit 1
(Exhibit Q, at 51:3-19); *id.* (Exhibit Q, at Exhibit 3 ([REDACTED],
Amazon-CPSC-FBA-00002611)).

RESPONSE: Undisputed.

58. [REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit Q, at Exhibit 3).

RESPONSE: Undisputed.

59. [REDACTED]
[REDACTED]
[REDACTED] Exhibit
1 (Exhibit Q, at 68:19-69:3).

RESPONSE: Disputed. The quoted testimony does not speak to the importance of referring customers to messages issued by the CPSC. As referenced by Complaint Counsel in paragraph 58 above, [REDACTED]
[REDACTED]
[REDACTED] Eustice Decl., Exhibit Q, at Exhibit 3 (Amazon-CPSC-FBA-00002611.)

60. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit Q, at 136:7-20).

RESPONSE: Undisputed.

61. [REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit Q, at 132:2-13).

RESPONSE: Disputed. [REDACTED]
[REDACTED]
[REDACTED] Declaration of Joshua González, Exhibit 2, Transcript of the
Deposition of Sagi Goldberg, (“Goldberg Dep.”) at 131:13-18. [REDACTED]
[REDACTED] *Id.* at 130:19-22.

62. [REDACTED]
[REDACTED] Exhibit 1 (Exhibit Q, at 140:7-11).

RESPONSE: Undisputed, with the clarification that [REDACTED]
[REDACTED], Goldberg Dep. 139:21-140:11, [REDACTED]
[REDACTED] Solely for the purpose of this litigation, Amazon has stipulated that the Subject Product children’s sleepwear garments “meet the requirements for a substantial product hazard.” Stip. of Parties at ¶ 1. As noted in the stipulation in this matter, Amazon “reserves the right to fully contest any and all remedial relief sought by Complaint Counsel in this action.” Stip. of Parties at ¶ 4.

63. [REDACTED]
[REDACTED] Exhibit 1 (Exhibit Q, at 142:5-7).

RESPONSE: Undisputed, with the clarification that, solely for the purpose of this litigation, Amazon has stipulated that the Subject Product carbon monoxide detectors “meet the requirements for a substantial product hazard.” Stip. of Parties at ¶ 2. As noted in the stipulation in this matter, Amazon “reserves the right to fully contest any and all remedial relief sought by Complaint Counsel in this action.” Stip. of Parties at ¶ 4.

64. [REDACTED]
[REDACTED] Exhibit 1 (Exhibit Q, at 148:18-22).

RESPONSE: Undisputed, with the clarification that, solely for the purpose of this litigation, Amazon has stipulated that the Subject Product hair dryers “meet the requirements for a substantial product hazard.” Stip. of Parties at ¶ 3. As noted in the stipulation in this matter, Amazon “reserves the right to fully contest any and all remedial relief sought by Complaint Counsel in this action.” Stip. of Parties at ¶ 4.

65. [REDACTED]
[REDACTED]
Exhibit 1 (Exhibit Q, at 141:5-7).

RESPONSE: Undisputed.

66. [REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit Q, at 152:2-9).

RESPONSE: Undisputed that [REDACTED]
[REDACTED]
[REDACTED] See Declaration of Nicholas J. Griepsma (“Griepsma Decl.”), Exhibit 122 (CPSC_AM0009553-9554.)

67. [REDACTED]
[REDACTED]
[REDACTED] See Exhibit 7 (Amazon-CPSC-FBA-00002393 [REDACTED]); Exhibit 8 (Amazon-CPSC-FBA-00002493 [REDACTED]).

RESPONSE: Undisputed.

68. [REDACTED]
[REDACTED] Exhibit 7 (Amazon-CPSC-FBA-00002393).

RESPONSE: Undisputed.

69. [REDACTED]
[REDACTED] Exhibit 7 (Amazon-CPSC-FBA-00002393).

RESPONSE: [REDACTED] Undisputed, with the clarification that [REDACTED]
[REDACTED] Additionally, the “Order ID” number included in all consumer safety notifications sent to purchasers of the Subject Products appeared as a clickable hyperlink in blue text, which purchasers could click, taking them to a web page showing “an icon photograph of the Subject Product, the order ID, the date of the purchase, the amount paid, the shipping address, and the title of the product.” October 21, 2022 Declaration of Lauren Ann Shrem (“Shrem Decl.”) ¶¶ 9-10. In addition, a purchaser’s order history and information found under the “Your Orders” section of the Amazon.com website is available at all times to that purchaser upon logging in to Amazon.com. Shrem Decl. at 12.

70. [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] Exhibit 9 (Amazon-CPSC-FBA-00002439).

RESPONSE: Undisputed that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] September 23,
2022 Complaint Counsel’s Statement of Undisputed Material Facts, Exhibit 9 (Amazon-CPSC-FBA-00002439.)

71. Another iteration states that [REDACTED]
[REDACTED]
[REDACTED] Exhibit 10 (Amazon-CPSC-FBA-00000212-214).

RESPONSE: Undisputed.

72. The emails then state: [REDACTED]
[REDACTED]
[REDACTED] Exhibit 10 (at Amazon-CPSC-FBA-00000212).

RESPONSE: [REDACTED]
[REDACTED] Undisputed.

73. The emails inform the customer that they are receiving a [REDACTED]
[REDACTED] Exhibit 10 (Amazon-CPSC-FBA-00000212).

RESPONSE: [REDACTED]
[REDACTED] Undisputed, with the clarification that the consumer safety notifications also provided a hyperlink in blue text and instructions for purchasers to view their available gift card balance and verify that the refund for the Subject Product purchase price plus shipping and tax had been applied to their Amazon account. Shrem Decl. ¶ 13. In addition, a purchaser’s gift card balance and activity are available at all times to that purchaser upon logging in to Amazon.com. Shrem Decl. at 16.

74. The emails indicate that it is being sent from a [REDACTED]
[REDACTED] Exhibit 10 (Amazon-CPSC-FBA-00000213)

RESPONSE: [REDACTED]

[REDACTED] Amazon disputes that the emails did not provide a mechanism for purchasers to contact Amazon. In fact, [REDACTED]

[REDACTED] See González Decl., Exhibit 29, at Amazon-CPSC-FBA-00000212. Contact information for the Amazon customer service team was, and remains, available on Amazon.com, and purchasers may contact the Amazon customer service team at any time via phone, chat, or email. Shrem Decl. ¶ 17. Undisputed that [REDACTED]

[REDACTED] See González Decl., Exhibit 29, at Amazon-CPSC-FBA-00000212.

75. Amazon’s emails to customers who directly purchased the carbon monoxide detectors were substantively identical. See Exhibit 10 (Amazon-CPSC-FBA-00000214).

RESPONSE: Disputed. It is unclear what “emails” Complaint Counsel contends those regarding carbon monoxide detectors were identical to. As noted in the response to Paragraph 74, the emails contained different language.

76. [REDACTED] Exhibit 10 (Amazon-CPSC-FBA-00000214).

RESPONSE: Undisputed, with the clarification that [REDACTED]

77. [REDACTED] Exhibit 10 (Amazon-CPSC-FBA-00000214).

RESPONSE: Undisputed, with the clarification that [REDACTED]

[REDACTED] Additionally, the “Order ID” number included in all consumer safety notifications sent to purchasers of the Subject Products appeared as a clickable hyperlink in blue text, which purchasers could click and would be redirected to a web page showing “an icon photograph of the Subject Product, the order ID, the date of the purchase, the amount paid, the shipping address, and the title of the product.” Shrem Decl. ¶¶ 9-10. In addition, a purchaser’s order history and information found under the “Your Orders”

section of the Amazon.com website is available at all times to that purchaser upon logging in to Amazon.com. Shrem Decl. ¶ 12.

78. [REDACTED]
[REDACTED]
[REDACTED] Exhibit 10
(Amazon-CPSC-FBA-00000214).

RESPONSE: Undisputed, with the clarification that [REDACTED]
[REDACTED]
[REDACTED]

79. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Exhibit 10 (Amazon-CPSC-FBA-00000214).

RESPONSE: Undisputed, with the clarification that Amazon assumes Complaint Counsel is referring to the direct notice sent to purchasers of the Subject Product carbon monoxide detectors.

80. The email informs the customer that [REDACTED]
[REDACTED] Exhibit 10 (Amazon-CPSC-FBA-00000214).

RESPONSE: Undisputed, with the clarification that Amazon assumes Complaint Counsel is referring to the direct notice sent to purchasers of the Subject Product carbon monoxide detectors and that the consumer safety notifications also provided a hyperlink in blue text and instructions for purchasers to view their available gift card balance and verify that the refund for the Subject Product purchase price plus shipping and tax had been applied to their Amazon account. Shrem Decl. ¶ 13. In addition, a purchaser's gift card balance and activity are available at all times to that purchaser upon logging in to Amazon.com. Shrem Decl. ¶ 16.

81. The email indicates that [REDACTED]
[REDACTED] Exhibit 10 (Amazon-CPSC-FBA-00000214).

RESPONSE: Amazon assumes that Complaint Counsel is referring to emails sent to purchasers of the Subject Product carbon monoxide detectors. Amazon disputes that [REDACTED]
[REDACTED] In fact, [REDACTED]
[REDACTED]
[REDACTED]

██████████ See González Decl., Exhibit 29, at Amazon-CPSC-FBA-00000214. Contact information for the Amazon customer service team was, and remains, available on Amazon.com, and purchasers may contact the Amazon customer service team at any time via phone, chat, or email. Shrem Decl. ¶ 17. Undisputed that the direct notice sent to purchasers of the Subject Product carbon monoxide detectors contains the language quoted above. See González Decl., Exhibit 29, at Amazon-CPSC-FBA-00000214.

82. Amazon’s emails to customers who directly purchased the hair dryers were substantively identical. Exhibit 10 (Amazon-CPSC-FBA-00000213).

RESPONSE: Disputed. It is unclear what “emails” Complaint Counsel contends those regarding hair dryers were identical to. As noted in the response to Paragraph 74, the emails contained different language.

83. ██████████
██████████ Exhibit 10 (Amazon-CPSC-FBA-00000213).

RESPONSE: Undisputed, with the clarification that Amazon assumes Complaint Counsel is referring to the direct notice sent to purchasers of the Subject Product hair dryers.

84. ██████████ Exhibit 10 (Amazon-CPSC-FBA-00000213).

RESPONSE: Undisputed, with the clarification that Amazon assumes Complaint Counsel is referring to the direct notice sent to purchasers of the Subject Product hair dryers and that ██████████
██████████ and that the direct notice contained both the information needed to help consumers identify the product and information sufficient to do so. Additionally, the “Order ID” number included in all consumer safety notifications sent to purchasers of the Subject Products appeared as a clickable hyperlink in blue text, which purchasers could click and would be redirected to a web page showing “an icon photograph of the Subject Product, the order ID, the date of the purchase, the amount paid, the shipping address, and the title of the product.” Shrem Decl. ¶¶ 9-10. In addition, a purchaser’s order history and information found under the “Your Orders” section of the Amazon.com website is available at all times to that purchaser upon logging in to Amazon.com. Shrem Decl. ¶ 12.

85. The email states that ██████████
██████████
██████████
Exhibit 10 (Amazon-CPSC-FBA-00000213).

RESPONSE: Undisputed, with the clarification that Amazon assumes Complaint Counsel is referring to the direct notice sent to purchasers of the Subject Product hair dryers.

86. The email then states: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Exhibit 10 (Amazon-CPSC-FBA-00000213).

RESPONSE: Undisputed, with the clarification that Amazon assumes Complaint Counsel is referring to the direct notice sent to purchasers of the Subject Product hair dryers.

87. The email informs the customer that [REDACTED]
[REDACTED] Exhibit 10 (Amazon-CPSC-FBA-00000213).

RESPONSE: Undisputed, with the clarification that Amazon assumes Complaint Counsel is referring to the direct notice sent to purchasers of the Subject Product hair dryers and that the consumer safety notifications also provided a hyperlink in blue text and instructions for purchasers to view their available gift card balance and verify that the refund for the Subject Product purchase price plus shipping and tax had been applied to their Amazon account. Shrem Decl. ¶ 13. In addition, a purchaser’s gift card balance and activity are available at all times to that purchaser upon logging in to Amazon.com. Shrem Decl. ¶ 16.

88. The email indicates that [REDACTED]
[REDACTED] Exhibit 10 (Amazon-CPSC-FBA-00000213).

RESPONSE: Amazon assumes that Complaint Counsel is referring to emails sent to purchasers of the Subject Product hair dryers. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] See González Decl., Exhibit 29, at Amazon-CPSC-FBA-00000212. Contact information for the Amazon customer service team was, and remains, available on Amazon.com, and purchasers may contact the Amazon customer service team at any time via phone, chat, or email. Shrem Decl. ¶ 17. Undisputed that the direct notice sent to purchasers of the Subject Product hair dryers contains the language quoted above. See González Decl., Exhibit 29, at Amazon-CPSC-FBA-00000213.

89. [REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit Q, at 158:16-20).

RESPONSE: Disputed. [REDACTED]

[REDACTED] González Decl., Exhibit 29 (Amazon-CPSC-FBA-00000212-214). In addition, contact information for the Amazon customer service team was, and remains, available on Amazon.com, and purchasers may contact the Amazon customer service team at any time via phone, chat, or email. Shrem Decl. ¶ 17.

90.

[REDACTED] Exhibit 1 (Exhibit Q, at 158:21-159:6).

RESPONSE: Disputed. [REDACTED]

[REDACTED] González Decl., Exhibit 29 (Amazon-CPSC-FBA-00000212-214).

91.

[REDACTED] Exhibit 1 (Exhibit Q, at 159:19-160:13).

RESPONSE: Disputed. [REDACTED]

[REDACTED] González Decl., Exhibit 29 (Amazon-CPSC-FBA-00000212-214). Contact information for the Amazon customer service team was, and remains, available on Amazon.com, and purchasers may contact the Amazon customer service team at any time via phone, chat, or email. Shrem Decl. ¶ 17.

92.

[REDACTED] Exhibit 1 (Exhibit Q, at 160:21-161:4).

RESPONSE: Undisputed, with the clarification that no CPSC policy or practice requires recalling firms to “track whether any of its customers opened” direct notices relating to recalled products.

93.

[REDACTED] Exhibit 1 (Exhibit Q, at 153:18-154:3, 161:5-8).

RESPONSE: Undisputed, with the clarification that no CPSC policy or practice requires recalling firms to track how many customers actually disposed of the Subject Products.

94.

[REDACTED] Exhibit 1 (Exhibit Q, at 161:20-162:3).

RESPONSE: Undisputed, with the clarification that no CPSC policy or practice requires recalling firms to [REDACTED]

95.

[REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit Q, at 165:22-166:10).

RESPONSE: Undisputed, with the clarification that the [REDACTED]
[REDACTED]
[REDACTED]

96.

Amazon did not agree to the issuance of a joint press release with CPSC to inform the public – including second-hand purchasers – of the substantial product hazards presented by the 400,000 Subject Products it distributed through its FBA program. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit Q, at 166:4-166:10; *see also* 177:17-178:4 [REDACTED]).

RESPONSE: Disputed. The Subject Products were sold by Third-Party Sellers on Amazon.com, and Amazon provided third-party logistics services through its FBA program.. Amazon was a third-party logistics provider, not a “distributor,” of the Subject Products. The CPSC requested a “recall alert,” not a joint press release, for the vast majority of the 400,000 Subject Product units at issue in this proceeding. *See* Amazon SUMF ¶ 83. The CPSC has said that “recall alerts are appropriate when companies can provide direct notice to 90 percent or more of affected consumers.” *Id.* ¶ 60.

97.

[REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit Q, at Exhibit 4 [REDACTED] Amazon-CPSC-FBA-00002387)).

RESPONSE: Undisputed, with the clarification that [REDACTED]
[REDACTED] Disputed that this fact is material or relevant to the present litigation.

98. Amazon provides 24/7 customer service to FBA program participants. Amazon’s Statement of Undisputed Material Facts, Dkt No. 16 at § I, ¶ 14.

RESPONSE: Undisputed.

99. Amazon is also “responsible for all customer service issues relating to packaging, handling and shipment, and customer returns, refunds, and adjustments related to Amazon Fulfillment Units,” which are products sold through the FBA program. Amazon’s Statement of Undisputed Material Facts, Dkt No. 16 at § I, ¶ 14.

RESPONSE: Undisputed, with the clarification that the Fulfillment Units were sold by Third-Party Sellers on Amazon.com, and Amazon provided third-party logistics services through its FBA program..

100. 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.” Amazon’s Statement of Undisputed Material Facts, Dkt No. 16 at § I, ¶ 14. *See also* Exhibit 11 (Amazon Services Business Solutions Agreement, Amazon-CPSC-FBA-00000167-211, at Provision F-8.2 (Amazon-CPSC-FBA- 00000197))

RESPONSE: Disputed. Amazon does not “tell” information to third-party sellers through its Business Solutions Agreement. Third-party sellers agree to abide by the terms of the agreements they enter into. Furthermore, Section F-8.2 is part of the FBA Service Terms and not the Amazon Services Business Solutions Agreement.

101. If a product is sold under the FBA program, customers return their product to Amazon, not the third-party seller. Amazon’s Statement of Undisputed Material Facts, Dkt No. 16 at § I, ¶¶ 14, 16.

RESPONSE: Undisputed, with the clarification that, after a product sold by Third-Party Sellers through the FBA program is returned to Amazon, it may be returned to the third-party seller, handled by Amazon in accordance with the third-party seller’s instructions, or transferred by the third-party seller to Amazon for later sale through the ‘Amazon Warehouse’ program. Amazon’s Response to CPSC SUMF at § I, ¶ 16.

102. Amazon is capable of tracking the movement of products sold through the FBA program, including tracking destruction of inventory by Amazon or as requested by third-party sellers. Amazon’s Statement of Undisputed Material Facts, Dkt No. 16 at § I, ¶¶ 8, 10, § IV, ¶ 16.

RESPONSE: Undisputed, with the clarification that the Subject Products were sold by Third-Party Sellers on Amazon.com, and Amazon provided third-party logistics services through its FBA program.

103.

[REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit Q, at 217:6-12).

RESPONSE: Undisputed, with the clarification that Exhibit Q does not include page 217 of the Goldberg Deposition. In addition, the credit to purchasers included the full purchase price, shipping costs, and tax. September 23, 2022 Declaration of Lauren Ann Shrem ¶ 28.

104.

[REDACTED]
[REDACTED]
Exhibit 12 (Amazon-CPSC-FBA-00003803); Exhibit 1 (Exhibit Q, at 230:12-19).

RESPONSE: Undisputed that Amazon paid approximately 96% of the recalls with its own funds.

105.

[REDACTED]
[REDACTED]
[REDACTED] Exhibit 12 (Amazon-CPSC-FBA-00003803).

RESPONSE: Undisputed.

106. In 2021, Amazon reported \$469.82 Billion in net sales, an increase of 22% compared to the prior year. Amazon.com, Inc., Annual Report (Form 10-K) (February 3, 2022) at 21. Amazon's reported net income in 2021 was \$33.3 Billion. *Id.* at 38.

RESPONSE: Disputed that this fact is material or relevant to the present litigation.

107.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit Q, at 99:8-22).

RESPONSE: Undisputed that Amazon is capable of stopping the sale, suppressing and quarantining products. Disputed that these capabilities include searching for variations of the Subject Products.

108. [REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit Q, at 100:1-5).

RESPONSE: Undisputed.

109. [REDACTED]
[REDACTED] Exhibit 1 (Exhibit Q, at 101:13-102:6).

RESPONSE: Disputed. [REDACTED]
[REDACTED]
[REDACTED] Goldberg
Dep. 100:11-102:6. [REDACTED]
[REDACTED] Further disputed that this fact is material or relevant to the present
litigation.

110. [REDACTED]
[REDACTED] Exhibit 1 (Exhibit Q, at 130:10-17, 131:10-18).

RESPONSE: Disputed that this fact is material or relevant to the present litigation or that
Amazon can investigate such safety issues.

111. [REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit Q, at 105:4-8).

RESPONSE: Undisputed, with the clarification that the Subject Products were sold by
Third-Party Sellers on Amazon.com, and Amazon provided third-party logistics services
through its FBA program.

112. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Exhibit 1
(Exhibit Q, at 262:18- 263:9).

RESPONSE: Undisputed that [REDACTED]
[REDACTED]
[REDACTED] Disputed that this fact is material or relevant to the present litigation.

113. [REDACTED]
[REDACTED] Exhibit 1 (Exhibit Q, at 263:10-265:14).

RESPONSE: Undisputed, with the clarification that such searches are not required by statute or regulation, that conducting this type of searches does not guarantee the identification of safety hazards, given that such identification requires physical testing in accordance with the specific type of product.

114. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit R); *see also* Exhibit 1 (Exhibit Q, at 266:8-269:20).

RESPONSE: Undisputed, with the clarification that such searches are not required by statute or regulation, that conducting this type of searches does not guarantee the identification of safety hazards, given that such identification requires physical testing in accordance with the specific type of product; and noting that Exhibit Q does not include pages 268-69 of the Goldberg Deposition.

115. In proclaiming March 6, 2022, to March 12, 2022, as National Consumer Protection week, the President of the United States of America noted that CPSC works to protect consumers and ensure product safety. *See* The White House, National Consumer Protection Week, 2022 (March 4, 2022) (available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/04/national-consumer-protection-week-2022/>) (“Our Nation’s consumer protection agencies – including the . . . Consumer Product Safety Commission – work . . . every day to protect consumers and ensure product safety through investigations, law enforcement actions, and free, actionable, plain-language consumer education resources.”); *see also* CPSC, About Us (available at <https://www.cpsc.gov/About-CPSC>) (“CPSC works to save lives and keep families safe by reducing the unreasonable risk of injuries and deaths associated with consumer products and fulfilling its vision to be the recognized global leader in consumer product safety.”).

RESPONSE: Undisputed that such statements were made within the context of National Consumer Protection week and the CPSC’s website. Disputed that the issuance of such statements is relevant to this litigation.

116. The Recall Handbook, a publicly available document the most recent version of which was published in September 2021, sets out the objectives of a recall. The Recall Handbook explains that the objectives of a recall are: “(1) To prevent injury or death from defective or violative products; (2) To locate all such products as quickly as possible; (3) To remove

such products from the distribution chain and from the possession of consumers; and (4) To communicate to the public in a timely manner accurate and understandable information about the product defect or violation, the hazard, and the corrective action. Companies should design all informational materials to motivate retailers and the media to get the word out and to spur consumers to act on the recall.” Exhibit 1 (Exhibit S, CPSC_AM0011464-11515, at CPSC_AM0011479).

RESPONSE: Undisputed that the Recall Handbook contains the quoted language. Disputed that the statements in such document represent the statutory requirements or the regulations currently governing recalls, as it has not been approved or reviewed by the Commission. *See, e.g.,* González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; and this version of the Recall Handbook was not in effect and had not been published at the time the CPSC sent the NOV’s related to the Subject Products to Amazon.

117. The Recall Handbook explains that an effective corrective action plan (“CAP”) “will mitigate the hazard to consumers and correct or prevent the problem in any future production or similar product. A common component of a CAP is a recall. A recall is the component of a CAP that provides for public notice and a remedy for consumers.” It further elaborates that “[r]arely will any two recall programs be identical,” CPSC_AM0011478, and explains that a consumer product safety problem may “make a product recall necessary to prevent injuries and save lives.” Exhibit 1 (Exhibit S, at CPSC_AM0011466).

RESPONSE: Undisputed that the Recall Handbook contains the quoted language. Disputed that the statements in such document represent the statutory requirements or the regulations currently governing recalls, as it has not been approved or reviewed by the Commission. *See, e.g.,* González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; and this version of the Recall Handbook was not in effect and had not been published at the time the CPSC sent the NOV’s related to the Subject Products to Amazon.

118. [REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit U, Rule 30(b)(6) Deposition of the Consumer Product Safety Commission (representative Blake Rose) (Aug. 26, 2022), at 188:10-19); Exhibit 1 (Exhibit T, CPSC_AM0012125-133).

RESPONSE: Undisputed that [REDACTED]
[REDACTED] Disputed that [REDACTED]
[REDACTED]

[REDACTED] See, e.g., González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; [REDACTED]

119. Before a firm conducts a voluntary recall, the Recall Handbook states that the firm “[s]end a stop-sale notice to all entities in the chain of commerce”. The Recall Handbook further states that a recalling firm must send “notice to all distributors, dealers, and retailers to stop sale of the Subject Products” notifying them of the pending recall. Exhibit 1 (Exhibit S, at CPSC_AM0011491).

RESPONSE: Undisputed that the Recall Handbook and [REDACTED] Disputed that the statements in such documents represent the statutory requirements or the regulations currently governing recalls, as neither have been approved or reviewed by the Commission. See, e.g., González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; this version of the Recall Handbook was not in effect and had not been published at the time the CPSC sent the NOV’s related to the Subject Products to Amazon; [REDACTED]

[REDACTED]. Further clarifying that [REDACTED] (Eustice Decl., Exhibit T at CPSC_AM0012130) and not the Recall Handbook.

120. [REDACTED] Exhibit 1 (Exhibit T, at CPSC_AM0012130).

RESPONSE: Undisputed that [REDACTED]. Disputed that the statements in such document represent the statutory requirements or the regulations currently governing recalls, as is has not been approved or reviewed by the Commission. See, e.g., González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; t [REDACTED]

121. [REDACTED] Exhibit 1 (Exhibit T, at CPSC_AM0012130).

RESPONSE: Undisputed that [REDACTED] Disputed that the statements in such document represent the statutory requirements or the regulations currently governing recalls, as is has not been approved or reviewed by the Commission. *See, e.g.,* González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; [REDACTED]

122. The Recall Handbook also explains that the goal of any remedial action “should be to remove or correct as many hazardous products as possible from the distribution chain and from consumers.” Exhibit 1 (Exhibit S, at CPSC_AM0011479).

RESPONSE: Undisputed that the Recall Handbook contains the quoted language. Disputed that the statements in such document represent the statutory requirements or the regulations currently governing recalls, as it has not been approved or reviewed by the Commission. *See, e.g.,* González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; and this version of the Recall Handbook was not in effect and had not been published at the time the CPSC sent the NOV’s related to the Subject Products to Amazon.

123. The Recall Handbook states that remedial action taken by a recalling firm can include providing “return of the product for a cash refund or a replacement product.” CPSC_AM0011466-11467. [REDACTED] Exhibit 1 (Exhibit S, at CPSC_AM0012125).

RESPONSE: Undisputed that the Recall Handbook and [REDACTED] contain the quoted language. Disputed that the statements in such documents represent the statutory requirements or the regulations currently governing recalls, as neither have been approved or reviewed by the Commission. *See, e.g.,* González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; this version of the Recall Handbook was not in effect and had not been published at the time the CPSC sent the NOV’s related to the Subject Products to Amazon; [REDACTED]

[REDACTED]; and [REDACTED]

124. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit T, at CPSC_AM0012125-12126).

RESPONSE: Undisputed that [REDACTED] Disputed that the statements in such document represent the statutory requirements or the regulations currently governing recalls, as is has not been approved or reviewed by the Commission. *See, e.g.*, González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; [REDACTED]

[REDACTED]
[REDACTED]; and [REDACTED]
[REDACTED]
[REDACTED]

125. The Recall Handbook explains that a recalling firm must “prepare, for CPSC approval, a comprehensive communications plan, including a media plan utilizing direct notice, for communicating the recall”; prepare “a plan for other forms of public notice, including social and digital media”; prepare for “modification of the recalling firm’s website to announce the recall”; “develop a plan to quarantine and correct returned products”; “develop and implement procedures to ensure hazardous products do not reenter the stream of commerce”; and “[a]rrange for a toll-free telephone hotline to be used for the recall.” Exhibit 1 (Exhibit S, at CPSC_AM0011478-11479). The Recall Handbook further states that companies conducting a recall must “provide an email address, a toll-free phone number (800/888/877/866) and a website URL (“a response system”) for consumers to respond to a recall announcement.” *Id.* (Exhibit S, at CPSC_AM0011488).

RESPONSE: Undisputed that the Recall Handbook contains the quoted language. Disputed that the statements in such document represent the statutory requirements or the regulations currently governing recalls, as it has not been approved or reviewed by the Commission. *See, e.g.*, González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; and this version of the Recall Handbook was not in effect and had not been published at the time the CPSC sent the NOV’s related to the Subject Products to Amazon.

126. The Recall Handbook further states that collaboration with CPSC staff throughout the recall process is key and “results in greater protection for consumers from injury or death, as well as a more efficient and productive process for companies.” Exhibit 1 (Exhibit S, at CPSC_AM0011467).

RESPONSE: Undisputed that the Recall Handbook contains the quoted language, with the clarification that the Recall Handbook states that companies “should work closely with CPSC” (rather than stating that it is key). Disputed that the statements in such document represent the statutory requirements or the regulations currently governing recalls, as it has not been approved or reviewed by the Commission. *See, e.g.,* González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; and this version of the Recall Handbook was not in effect and had not been published at the time the CPSC sent the NOV’s related to the Subject Products to Amazon.

127. The Recall Handbook also explains that a “satisfactory plan” for communications will include a news release; other forms of public notice, including social and digital media; website postings; and other notice documents to reach all relevant consumers. Exhibit 1 (Exhibit S, at CPSC_AM0011478-CPSC_AM0011479). [REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit T, at CPSC_AM0012126).

RESPONSE: Undisputed that the Recall Handbook and [REDACTED] contain the quoted language. Disputed that the statements in such documents represent the statutory requirements or the regulations currently governing recalls, as neither have been approved or reviewed by the Commission. *See, e.g.,* González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; this version of the Recall Handbook was not in effect and had not been published at the time the CPSC sent the NOV’s related to the Subject Products to Amazon; [REDACTED]
[REDACTED]; and [REDACTED]
[REDACTED]

128. The Recall Handbook informs firms that CPSC press releases, also called “recall news releases,” will be posted to the CPSC websites: www.cpsc.gov and www.SaferProducts.gov. Exhibit 1 (Exhibit S, at CPSC_AM0011482).

RESPONSE: Undisputed that the Recall Handbook contains the quoted language. Disputed that the statements in such document represent the statutory requirements or the regulations currently governing recalls, as it has not been approved or reviewed by the Commission. *See, e.g.,* González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; and this version of the Recall Handbook was not in effect and had not been published at the time the CPSC sent the NOV’s related to the Subject Products to Amazon.

129. The Recall Handbook states that recall news releases will be distributed to the media and can “receive wide media attention and increase the response rate of consumers.” Exhibit 1 (Exhibit S, at CPSC_AM0011482).

RESPONSE: Undisputed that the Recall Handbook contains the quoted language, with the clarification that the Recall Handbook also provides that “(i)n some circumstances, direct notice may lessen the need for notice to the news media, while in other cases notification to the media will augment the direct notice.” González Decl., Exhibit 89, at CPSC_AM0011485. Disputed that the statements in such document represent the statutory requirements or the regulations currently governing recalls, as it has not been approved or reviewed by the Commission. *See, e.g.,* González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; and this version of the Recall Handbook was not in effect and had not been published at the time the CPSC sent the NOV’s related to the Subject Products to Amazon.

130. The Recall Handbook states that “companies must post recall announcements to all current websites.” Exhibit 1 (Exhibit S, at CPSC_AM0011486). Where available, the Recall Handbook also states that firms are expected to utilize their social media platforms to post about the recall announcement. Exhibit 1 (Exhibit S, at CPSC_AM0011486).

RESPONSE: Undisputed that the Recall Handbook contains the quoted language. Disputed that the statements in such document represent the statutory requirements or the regulations currently governing recalls, as it has not been approved or reviewed by the Commission. *See, e.g.,* González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; and this version of the Recall Handbook was not in effect and had not been published at the time the CPSC sent the NOV’s related to the Subject Products to Amazon.

131. Specifically, the Recall Handbook informs companies conducting recalls that they must “link recall announcements to the company website’s first-entry point, such as the consumer home page (not the corporate/shareholder site),” “include the words ‘recall’ and ‘safety’ in the link to the recall information “include all available recall information in the news release,” “allow consumers to request the remedy directly from the website,” and “convey any additional instructions that consumers need to receive the remedy in plain language and include photos or videos to explain the remedy process clearly.” Exhibit 1 (Exhibit S, at CPSC_AM0011486).

RESPONSE: Undisputed that the Recall Handbook contains the quoted language. Disputed that the statements in such document represent the statutory requirements or the regulations currently governing recalls, as it has not been approved or reviewed by the Commission. *See, e.g.,* González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC

staff does not have the authority to decide policy or promulgate regulations; and this version of the Recall Handbook was not in effect and had not been published at the time the CPSC sent the NOV's related to the Subject Products to Amazon.

132. The Recall Handbook also states that “[t]he last several decades have seen significant changes and advancements to the way companies reach consumers for marketing and advertising products,” and “[t]hose same developments should be reflected in the way companies communicate with consumers about recalls and other important safety issues.” Exhibit 1 (Exhibit S, at CPSC_AM0011485).

RESPONSE: Undisputed that the Recall Handbook contains the quoted language. Disputed that the statements in such document represent the statutory requirements or the regulations currently governing recalls, as it has not been approved or reviewed by the Commission. *See, e.g.,* González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; and this version of the Recall Handbook was not in effect and had not been published at the time the CPSC sent the NOV's related to the Subject Products to Amazon.

133. The Recall Handbook explains that companies must “use the terms ‘recall’ and ‘safety’ in the social media messaging about the recall,” “keep it concise,” “link directly to the dedicated recall webpage,” “use photos to increase priority on social media feeds and recall views,” “use videos to give even greater priority on the various platforms, where possible,” “make the recall a featured post, if possible,” and “use direct messaging to answer recall questions from consumers.” Exhibit 1 (Exhibit S, at CPSC_AM0011486-11487).

RESPONSE: Undisputed that the Recall Handbook contains the quoted language. Disputed that the statements in such document represent the statutory requirements or the regulations currently governing recalls, as it has not been approved or reviewed by the Commission. The use of the word “Recall” is not required by the statute, the CPSC staff does not have the authority to decide policy or promulgate regulations; and this version of the Recall Handbook was not in effect and had not been published at the time the CPSC sent the NOV's related to the Subject Products to Amazon.

134. The Recall Handbook also states that “CPSC’s headline for recall announcements will include the word ‘recall.’ That headline is standard as part of a CAP agreement. Exhibit 1 (Exhibit S, at CPSC_AM0011480).

RESPONSE: Undisputed that the Recall Handbook contains the quoted language. Disputed that the statements in such document represent the statutory requirements or the regulations currently governing recalls, as it has not been approved or reviewed by the Commission. *See, e.g.,* González Decl., Exhibit 89, at CPSC_AM0011464. The use of the word “Recall” is not required by the statute, the CPSC staff does not have the authority to

decide policy or promulgate regulations; and this version of the Recall Handbook was not in effect and had not been published at the time the CPSC sent the NOV's related to the Subject Products to Amazon.

135. The Recall Handbook includes publicly available templates that set forth the general model language for press releases. Exhibit 1 (Exhibit S, at Appendix C: News Release Templates, CPSC_AM0011501-514). The Recall Handbook also includes content requirements in a checklist for press releases. Exhibit 1 (Exhibit S, at CPSC_AM0011484).

RESPONSE: Undisputed that the Recall Handbook contains the quoted language. Disputed that the statements in such document represent the statutory requirements or the regulations currently governing recalls, as it has not been approved or reviewed by the Commission. *See, e.g.*, González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; and this version of the Recall Handbook was not in effect and had not been published at the time the CPSC sent the NOV's related to the Subject Products to Amazon.

136. Internal and external documents, including the Recall Handbook [REDACTED], explain that all CPSC recall releases or alerts must be approved by CPSC staff prior to their publication. Exhibit 1 (Exhibit S, at CPSC_AM0011481), Exhibit 1 (Exhibit T, at CPSC_AM0012126).

RESPONSE: Undisputed that the Recall Handbook and [REDACTED] contain the statements referred to, with the clarification that, in the case of press releases, the Recall Handbook (González Decl., Exhibit 89, at CPSC_AM0011482) states that the press release must be issued jointly between CPSC and the company and refers to an “agreed-upon language,” and not CPSC-approved language. Disputed that the statements in such documents represent the statutory requirements or the regulations currently governing recalls, as neither have been approved or reviewed by the Commission. *See, e.g.*, González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; this version of the Recall Handbook was not in effect and had not been published at the time the CPSC sent the NOV's related to the Subject Products to Amazon; [REDACTED]

[REDACTED]; and [REDACTED]
[REDACTED]

137. As part of a firm’s “Recall Execution Plan,” the Recall Handbook states that firms must create a plan on “[h]ow to handle return or destruction of recalled products.” Exhibit 1 (Exhibit S, at CPSC_AM0011492). [REDACTED]
[REDACTED] Exhibit 1 (Exhibit T, at CPSC_AM0012131).

RESPONSE: Undisputed that the Recall Handbook and [REDACTED] contain the quoted language. Disputed that the statements in such documents represent the statutory requirements or the regulations currently governing recalls, as neither have been approved or reviewed by the Commission. *See, e.g.,* González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; this version of the Recall Handbook was not in effect and had not been published at the time the CPSC sent the NOV's related to the Subject Products to Amazon; [REDACTED]

[REDACTED]; and [REDACTED]
[REDACTED]
[REDACTED]

138. The Recall Handbook states that a firm may choose to use either on- or off-site destruction of recalled products. Both methods of destruction must be approved by the CPSC, as CPSC staff may choose to witness the destruction. Exhibit 1 (Exhibit S, at CPSC_AM0011492).

RESPONSE: Undisputed that the Recall Handbook contains the quoted language. Disputed that the statements in such document represent the statutory requirements or the regulations currently governing recalls, as it has not been approved or reviewed by the Commission. *See, e.g.,* González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; and this version of the Recall Handbook was not in effect and had not been published at the time the CPSC sent the NOV's related to the Subject Products to Amazon.

139. If CPSC approves on-site destruction, the Recall Handbook advises firms to obtain a report certifying the destruction. While an affidavit is preferred, at the minimum, CPSC requires “a signed statement, including the date, stating which recalled products were destroyed, the number of recalled products destroyed, and the name of the employee who performed the destruction, signed by the employee who performed the destruction and a witness.” Exhibit 1 (Exhibit S, at CPSC_AM0011492).

RESPONSE: Undisputed that the Recall Handbook contains the quoted language. Disputed that the statements in such document represent the statutory requirements or the regulations currently governing recalls, as it has not been approved or reviewed by the Commission. *See, e.g.,* González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; and this version of the Recall Handbook was not in effect and had not been published at the time the CPSC sent the NOV's related to the Subject Products to Amazon.

140. If CPSC approves off-site destruction, the Recall Handbook similarly requires that a certification of destruction is obtained. The Recall Handbook also advises firms to clearly

mark all boxes and pallets containing recalled products, to avoid comingling with other, non-recalled, goods. Exhibit 1 (Exhibit S, at CPSC_AM0011492).

RESPONSE: Undisputed that the Recall Handbook contains the quoted language. Disputed that the statements in such document represent the statutory requirements or the regulations currently governing recalls, as it has not been approved or reviewed by the Commission. *See, e.g.,* González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; and this version of the Recall Handbook was not in effect and had not been published at the time the CPSC sent the NOV's related to the Subject Products to Amazon.

141.

[REDACTED] Exhibit 1 (Exhibit V, Recall Alert Content Guidance, CPSC_AM0011854-11856); Exhibit 1 (Exhibit W, Recall Release Content Guidance, CPSC_AM0011857-11860). The releases are posted on cpsc.gov and SaferProducts.gov, where they serve as a public record of the recall. Exhibit 1 (Exhibit S, at CPSC_AM0011482).

RESPONSE: Undisputed that the Recall Alert Content Guidance, the Recall Release Content Guidance and the Recall Handbook contain the quoted language. Disputed that the statements in such documents represent the statutory requirements or the regulations currently governing recalls, as neither have been approved or reviewed by the Commission. *See, e.g.,* González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; and this version of the Recall Handbook was not in effect and had not been published at the time the CPSC sent the NOV's related to the Subject Products to Amazon.

142.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *See* Exhibit 1 (Exhibit V, at CPSC_AM0011854); Exhibit 1, Exhibit W, at CPSC_AM0011857).

RESPONSE: Undisputed that the Recall Alert Content Guidance and the Recall Release Content Guidance contain the quoted language. Disputed that the statements in such documents represent the statutory requirements or the regulations currently governing recalls, as neither have been approved or reviewed by the Commission. *See, e.g.,* González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations.

143. The Recall Handbook states that all press releases – whether in a voluntary recall or in a mandatory recall – must be approved by CPSC staff. Exhibit 1 (Exhibit S, at CPSC_AM0011481). [REDACTED] Exhibit 1 (Exhibit T, at CPSC_AM0012126 (requiring a recalling firm to use CPSC-staff approved language in all communications regarding the corrective action, including the news release and any notice sent to consumers)).

RESPONSE: Disputed that the Recall Handbooks states that all press releases must be approved by CPSC staff. The Recall Handbook (González Decl., Exhibit 89, at CPSC_AM0011482) states that the press release must be issued jointly between CPSC and the company and refers to an “agreed-upon language”, and not CPSC-approved language. Undisputed that the CAP Template contains the quoted language. Disputed that that the statements in such documents represent the statutory requirements or the regulations currently governing recalls, as neither have been approved or reviewed by the Commission. *See, e.g.,* González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; this version of the Recall Handbook was not in effect and had not been published at the time the CPSC sent the NOV’s related to the Subject Products to Amazon; the CAP Template is a summary of the options that are available and subject to customization in accordance with the circumstances of each case; and the CAP Template is not a public document that was available to Amazon prior to this litigation, but rather an internal guidance document that is not binding.

144. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit T, at CPSC_AM0012128).

RESPONSE: Undisputed [REDACTED]. Disputed that the statements in such document represent the statutory requirements or the regulations currently governing recalls, as is has not been approved or reviewed by the Commission. *See, e.g.,* González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; [REDACTED]
[REDACTED]; and [REDACTED]
[REDACTED]
[REDACTED]

145. [REDACTED]
[REDACTED]
[REDACTED] Exhibit 1
(Exhibit T, at CPSC_AM0012128).

RESPONSE: Undisputed that [REDACTED]. Disputed that the statements in such document represent the statutory requirements or the regulations currently governing recalls, as is has not been approved or reviewed by the Commission. *See, e.g.,* González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; [REDACTED]
[REDACTED]; and [REDACTED]
[REDACTED].

146. [REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit T, at CPSC_AM0012128). The Recall Handbook explains that “the consistent use of the term ‘recall’ is currently the best way to ensure consumers’ attention to a safety notice.” Exhibit 1 (Exhibit S, at CPSC_AM11480).

RESPONSE: Undisputed that the Recall Handbook and [REDACTED] contain the quoted language. Disputed that the statements in such documents represent the statutory requirements or the regulations currently governing recalls, as neither have been approved or reviewed by the Commission. *See, e.g.,* González Decl., Exhibit 89, at CPSC_AM0011464. The use of the word “Recall” is not required by the statute; the CPSC staff does not have the authority to decide policy or promulgate regulations; this version of the Recall Handbook was not in effect and had not been published at the time the CPSC sent the NOV’s related to the Subject Products to Amazon; [REDACTED]
[REDACTED]; and [REDACTED]
[REDACTED].

147. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit T, at CPSC_AM0012126). [REDACTED]
[REDACTED]

[REDACTED]

Id. (Exhibit T, at CPSC_AM0012127).

RESPONSE: Undisputed that [REDACTED]. Disputed that the statements in such document represent the statutory requirements or the regulations currently governing recalls, as is has not been approved or reviewed by the Commission. *See, e.g.,* González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; t [REDACTED]
[REDACTED]
[REDACTED]; and [REDACTED]
[REDACTED].

148. [REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit T, at CPSC_AM0012128-12129).

RESPONSE: Undisputed that [REDACTED]. Disputed that the statements in such document represent the statutory requirements or the regulations currently governing recalls, as is has not been approved or reviewed by the Commission. *See, e.g.,* González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; [REDACTED]
[REDACTED]
[REDACTED]; and [REDACTED]
[REDACTED].

149. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit T, at CPSC_AM0012128).

RESPONSE: Undisputed that [REDACTED]. Disputed that the statements in such document represent the statutory requirements or the regulations currently governing recalls, as is has not been approved or reviewed by the Commission. *See, e.g.,* González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; [REDACTED]
[REDACTED]
[REDACTED]; and [REDACTED]
[REDACTED].

150. [REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit T, at CPSC_AM0012128).

RESPONSE: Undisputed that [REDACTED] Disputed that the statements in such document represent the statutory requirements or the regulations currently governing recalls, as is has not been approved or reviewed by the Commission. *See, e.g.,* González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations, with the clarification that [REDACTED]
[REDACTED]; and that [REDACTED]
[REDACTED].

151. [REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit T, at CPSC_AM0012129).

RESPONSE: Undisputed that [REDACTED] contains the quoted language. Disputed that the statements in such document represent the statutory requirements or the regulations currently governing recalls, as is has not been approved or reviewed by the Commission. *See, e.g.,* González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; [REDACTED]
[REDACTED]; and [REDACTED]
[REDACTED].

152. [REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit T, at CPSC_AM0012129).

RESPONSE: Undisputed that [REDACTED]
[REDACTED]
[REDACTED] Disputed that the statements in such document represent the statutory requirements or the regulations currently governing recalls, as is has not been approved or reviewed by the Commission.

See, e.g., González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; [REDACTED]

[REDACTED]
[REDACTED] and [REDACTED]
[REDACTED]
[REDACTED].

153.

[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit T, at CPSC_AM0012125-126).

RESPONSE: Undisputed that [REDACTED]
[REDACTED]
[REDACTED] Disputed that the statements in such document represent the statutory requirements or the regulations currently governing recalls, as is has not been approved or reviewed by the Commission. See, e.g., González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; [REDACTED]; and the [REDACTED]
[REDACTED]

154.

[REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit T, at CPSC_AM0012131).

RESPONSE: Undisputed that [REDACTED] contains the quoted language. Disputed that the statements in such document represent the statutory requirements or the regulations currently governing recalls, as is has not been approved or reviewed by the Commission. See, e.g., González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; [REDACTED]
[REDACTED]
[REDACTED]; and [REDACTED]
[REDACTED].

155. [REDACTED]
[REDACTED]
Exhibit 1 (Exhibit T, at CPSC_AM0012126).

RESPONSE: Undisputed that [REDACTED] contains the quoted language. Disputed that the statements in such document represent the statutory requirements or the regulations currently governing recalls, as is has not been approved or reviewed by the Commission. *See, e.g.,* González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; [REDACTED]
[REDACTED]
[REDACTED]; and [REDACTED]
[REDACTED].

156. [REDACTED]
[REDACTED] Exhibit 1 (Exhibit T, at CPSC_AM0012132). The Recall Handbook likewise notes that companies participate in the monthly progress report system. Exhibit 1 (Exhibit S, at CPSC_AM0011489).

RESPONSE: Undisputed that the Recall Handbook and [REDACTED] contain the quoted language. Disputed that the statements in such documents represent the statutory requirements or the regulations currently governing recalls, as neither have been approved or reviewed by the Commission. *See, e.g.,* González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; this version of the Recall Handbook was not in effect and had not been published at the time the CPSC sent the NOV's related to the Subject Products to Amazon; [REDACTED]
[REDACTED]; and [REDACTED]
[REDACTED].

157. The Monthly Progress Report (“MPR”) form requires companies conducting a recall to submit electronic information each month informing CPSC: (1) how many products have been corrected; (2) whether any new incidents have come to light; (3) how many consumers the firm has notified during the past month; (4) how many consumers have contacted the firm about the recall during the past month; (5) whether the recall announcement is currently posted on the firm’s website, and more. Exhibit 1 (Exhibit X, Monthly Progress Report form, CPSC_AM0011544).

RESPONSE: Undisputed that the MPR form includes spaces to submit the information listed above. Disputed that such document represents the statutory requirements or the regulations currently governing recalls, as neither have been approved or reviewed by the

Commission. *See, e.g.,* González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulation.

158.

[REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit T, at CPSC_AM0012130). The Recall Handbook similarly states, “companies must provide sufficient customer contact information for CPSC to verify later that consumers received the recall communication.” Exhibit 1 (Exhibit S, at CPSC_AM0011481).

RESPONSE: Undisputed that the Recall Handbook and [REDACTED] contain the quoted language. Disputed that the statements in such documents represent the statutory requirements or the regulations currently governing recalls, as neither have been approved or reviewed by the Commission. *See, e.g.,* González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; this version of the Recall Handbook was not in effect and had not been published at the time the CPSC sent the NOV’s related to the Subject Products to Amazon; [REDACTED]; and [REDACTED].

159.

[REDACTED]
[REDACTED] Exhibit 1 (Exhibit T, at CPSC_AM0011489).

RESPONSE: Undisputed that the language is included in CPSC non-binding documents, with the clarification that the cite is included in the Recall Handbook (González Decl., Exhibit 89, at CPSC_AM0011489) and [REDACTED]. Disputed that the statements in such document represent the statutory requirements or the regulations currently governing recalls, as it has not been approved or reviewed by the Commission. *See, e.g.,* González Decl., Exhibit 89, at CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations; and this version of the Recall Handbook was not in effect and had not been published at the time the CPSC sent the NOV’s related to the Subject Products to Amazon.

160.

[REDACTED]
[REDACTED] Exhibit 1 (Exhibit U, at 322:4-15).

RESPONSE: Disputed. Pursuant to data collected by the Government Accountability Office, many companies do not submit MPR information. González Decl., Exhibit 61 at Amazon-CPSC-FBA-00001595.

161. A public-facing news release was issued on CPSC’s website for every single recall of a hair dryer, carbon monoxide detector, and children’s sleepwear garment conducted between 2015 and the present. Exhibit 1 (Exhibit Y, at CPSC_AM0015053-391, Linum Home Textiles Recalls Children’s Robes Due to Violation of Federal Flammability Standards and Burn Hazard, CPSC (May 5, 2022) <https://www.cpsc.gov/Recalls/2022/Linum-Home-Textiles-Recalls-Childrens-Robes-Due-to-Violation-of-Federal-Flammability-Standards-and-Burn-Hazard>).

RESPONSE: Disputed. While Eustice Decl., Exhibit Y at CPSC_AM0015053-391 reflects recalls that have public-facing alerts, CPSC has offered no evidence that all recalls involve the issuance of a public-facing alert (and CPSC has resisted efforts to obtain such information).

162. Pursuant to Federal Rule of Evidence 1006, attached to Exhibit 1 (Exhibit Z) is a chart that summarizes the corrective actions sought by the CPSC from companies for recalls of hair dryers, carbon monoxide detectors, and children’s sleepwear garments conducted between 2015 and the present, based on information reflected in the documents produced during discovery. See Exhibit 1 (Exhibits Y,AA, CPSC_AM0015053-15391, CPSC_AM0015414- 17019, Linum Home Textiles Recalls Children’s Robes Due to Violation of Federal Flammability Standards and Burn Hazard, CPSC (May 5, 2022) <https://www.cpsc.gov/Recalls/2022/Linum-Home-Textiles-Recalls-Childrens-Robes-Due-to-Violation-of-Federal-Flammability-Standards-and-Burn-Hazard>).

RESPONSE: Undisputed.

163. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit AA, at CPSC_AM0015857).

RESPONSE: Disputed that a statement related to a Notice of Violation for a non-Subject Product is material or relevant. Undisputed that document is accurately quoted.

164. The recall news release for the recall of a children’s sleepwear garment (Copper Pearl Recalls Children’s Sleepwear Due to Violation of Federal Flammability Standards and

Burn Hazard) included in the chart referenced in Paragraph 162 above, dated May 26, 2022, states that customers will either be “provided prepaid mailers to return the garment(s)” or “be asked to destroy the garments . . . and send[] the firm a photo” in order to receive a refund. Exhibit 1 (Exhibit AA, at CPSC_AM0015181-184).

RESPONSE: Undisputed that document is accurately quoted.

165.

[REDACTED]

Exhibit 1 (Exhibit U, at 144:10-14).

RESPONSE: Undisputed that the witness so testified. Disputed that the Recall Handbook reflects the statutory requirements or the regulations currently governing recalls, as it has not been approved or reviewed by the Commission. *See, e.g.*, CPSC_AM0011464. The CPSC staff does not have the authority to decide policy or promulgate regulations.

166. On May 22, 2022, CPSC staff purchased six samples each of children’s sleepwear listed by [REDACTED] and [REDACTED] on Amazon.com. Exhibit 13 (Exhibit A, CPSC_AM0014173, Exhibit B, CPSC_AM0014293, Exhibit C, CPSC_AM0014195, Exhibit D, CPSC_AM0014295).

RESPONSE: Disputed that the CPSC’s purchase of non-Subject Products is material or relevant. Undisputed that documents indicate the CPSC purchases samples of non-Subject Products.

167. The children’s sleepwear referenced in Paragraph 166 was sold on Amazon.com through Amazon’s FBA program. *Id.*

RESPONSE: Undisputed, with the clarification that such products were sold by Third-Party Sellers on Amazon.com, and Amazon provided third-party logistics services through its FBA program..

168. The CPSC tested the samples purchased from Amazon.com referenced in Paragraph 166 and found that they are children’s sleepwear garments as defined in the Sleepwear Standards and that they do not meet the flammability requirements for children’s sleepwear as required under the Flammable Fabrics Act, 15 U.S.C. §§ 1191–1204 and 16 C.F.R. Parts 1615– 16 (2021). Exhibit 3 (Exhibit C, CPSC_AM0014164-14166, Exhibit E, CPSC_AM0014190-14192).

RESPONSE: Disputed that the CPSC’s tests of non-Subject Products are material or relevant. Undisputed that documents cited appear to show that the non-Subject Product

garments do not meet FFA flammability requirements. Amazon is not in a position to verify the test results identified above.

169.

[REDACTED]

[REDACTED] Exhibit 3 (Exhibit B, CPSC_AM0014167-14168, Exhibit D, CPSC_AM0014193-14194).

RESPONSE: Disputed that the CPSC’s tests and analysis of non-Subject Products are material or relevant. Further disputing the implication that the non-Subject Products are equivalent to the Subject Products simply based on the CPSC’s assertions as the CPSC has not previously defined what it means for two products to be “functionally equivalent” to one another. Amazon SUMF ¶¶ 189, 190, 191. Undisputed that the analyses contain the statements described, with the clarification that they explicitly “suggest[] the samples . . . are similar.” Amazon is not in a position to verify the analyses identified above.

170.

[REDACTED]

[REDACTED] Exhibit 1 (Exhibit BB, CPSC_AM0014258-14262).

RESPONSE: Disputing the implication that the non-Subject Products are equivalent to the Subject Products simply based on the CPSC’s assertions as the CPSC has not previously defined what it means for two products to be “functionally equivalent” to one another. Amazon SUMF ¶¶ 189, 190, 191. Further noting that Amazon is not in a position to verify the analyses identified above. Undisputed that the cited document contains the statements above.

171.

On May 11, 2022, CPSC staff purchased two units of a carbon monoxide detector listed by [REDACTED] on Amazon.com. Exhibit 13, Affidavit of Helen Gergle, (Exhibit E, CPSC_AM0014217, Exhibit F, CPSC_AM0014218, Exhibit G, CPSC_AM0014289).

RESPONSE: Disputed that the CPSC’s purchase of non-Subject Products is material or relevant. Undisputed that documents indicate the CPSC purchases samples of non-Subject Products.

172. The carbon monoxide detectors were sold on Amazon through Amazon’s FBA program. Exhibit 13 (Exhibit E, CPSC_AM0014217).

RESPONSE: Undisputed, with the clarification that the Subject Products were sold by Third-Party Sellers on Amazon.com, and Amazon provided third-party logistics services through its FBA program.

173. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Exhibit 5
(Exhibit C, CPSC_AM0014123-14131). [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id.*

RESPONSE: Disputed that the CPSC’s testing of non-Subject Products is material or relevant. Further disputing the implication that the non-Subject Products are equivalent to the Subject Products simply based on the CPSC’s assertions, as the CPSC has not previously defined what it means for two products to be “functionally equivalent” to one another. Amazon SUMF ¶¶ 189, 190, 191. Undisputed that documents cited contain the statements made above. Amazon is not in a position to verify the cited test results.

174. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Exhibit 1 (Exhibit
CC, CPSC_AM0014281-14286).

RESPONSE: Disputed that the CPSC’s letters regarding non-Subject Products are material or relevant. Undisputed that the statements described were contained in the document cited, with the clarification that the Subject Products were sold by Third-Party Sellers on Amazon.com, and Amazon provided third-party logistics services through its FBA program.

175. On June 7, 2022, CPSC staff purchased one unit each of two hair dryer brushes on Amazon.com; one listed by [REDACTED] and one by [REDACTED] Exhibit 14, Affidavit of Meghan Ryan (Exhibit A, CPSC_AM0014142, Exhibit B, CPSC_AM0014291), Exhibit 15, Affidavit of Michelle Mach (Exhibit A, CPSC_AM0014148-49, Exhibit B, CPSC_AM0014287).

RESPONSE: Disputed that the CPSC’s purchase of non-Subject Products is material or relevant. Undisputed that documents indicate the CPSC purchases samples of non-Subject Products

176. The hair dryers listed by [REDACTED] and [REDACTED] were both distributed by Amazon through its FBA program. Exhibit 14 (Exhibit A), Exhibit 15 (Exhibit A).

RESPONSE: Disputed that the statement is material or relevant. Further disputed that Amazon acts as a distributor of the aforementioned products. The product was sold by Third-Party Sellers on Amazon.com, and Amazon provided third-party logistics services through its FBA program.

177. CPSC staff tested the samples to determine whether the hair dryers are hand- supported hair dryers and lack an immersion protection device integral to the power cord. CPSC testing revealed that the hair dryers are hand-supported and that they lack the required immersion protection device integral to the power cord. Exhibit 6 (Exhibit E, CPSC_AM0014297-14136).

RESPONSE: Disputed that the CPSC’s testing of non-Subject Products is material or relevant. Undisputed that documents cited contain the statements made above. Amazon is not in a position to verify the cited test results.

178. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Id.

RESPONSE: Disputing the implication that the non-Subject Products are equivalent to the Subject Products simply based on the CPSC’s assertions, as the CPSC has not defined what it means for two products to be “functionally equivalent” to one another. Amazon SUMF ¶¶ 189, 190, 191. Further disputed that the CPSC’s testing of non-Subject Products is material or relevant.

179. [REDACTED]
[REDACTED]

[REDACTED]

Exhibit 1 (Exhibit DD, CPSC_AM0014274-14280).

RESPONSE: Disputed that the CPSC’s letters regarding non-Subject Products are material or relevant. Further disputing the implication that the non-Subject Products are equivalent to the Subject Products simply based on the CPSC’s assertions as the CPSC has not defined what it means for two products to be “functionally equivalent” to one another. Amazon SUMF ¶¶ 189, 190, 191. Undisputed that the statements described were contained in the document cited.

180.

[REDACTED]

Exhibit 1 (Exhibit AA, at CPSC_AM0015627).

RESPONSE: Undisputed that Eustice Decl., Exhibit AA, at CPSC_AM0015627, includes the cited language, noting that Amazon cannot confirm whether [REDACTED]. Further noting that [REDACTED] and that the reference to similar products is a non-binding request, not a mandatory order, and that such non-binding request was sent to the manufacturer of the products.

181.

Companies have re-announced recalls after finding additional functionally equivalent products presenting the same hazard. *See e.g.*, 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 “The Dinosaur 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>.

RESPONSE: Disputed that the products referenced are “functionally equivalent,” as the CPSC has not defined what it means for two products to be “functionally equivalent” to

one another. Amazon SUMF ¶¶ 189, 190, 191. Further noting that the recalls are conducted by the manufacturer. Undisputed that the two cited instances refer to cases in which a recalls have been expanded.

Dated: October 21, 2022

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2022, a true and correct copy of the foregoing document was, pursuant to the Order Following Prehearing Conference entered by the Presiding Officer on October 19, 2021:

- filed by email to the Secretary of the U.S. Consumer Product Safety Commission, Alberta Mills, at amills@cpsc.gov, with a copy to the Presiding Officer at alj@sec.gov and to all counsel of record; and
- served to Complaint Counsel by email at jeustice@cpsc.gov, lwolf@cpsc.gov, and sanand@cpsc.gov.

Nicholas Griepsma

Nicholas J. Griepsma