

UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION

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In the Matter of )  
)  
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LEACHCO, INC. )

CPSC DOCKET NO. 22-1

)  
) Hon. Michael G. Young  
) Presiding Officer  
)

Respondent. )  
\_\_\_\_\_)

**COMPLAINT COUNSEL’S OPPOSITION TO LEACHCO’S MOTION FOR  
SANCTIONS AND ORDER THAT REQUESTS FOR ADMISSION BE DEEMED  
ADMITTED**

Pursuant to 16 C.F.R. § 1025.23(c), Complaint Counsel hereby opposes the Motion for Sanctions and Order that RFAs Be Deemed Admitted (Dkt. Nos. 86 & 87) filed by Respondent Leachco, Inc. (“Leachco”). Complaint Counsel respectfully requests that the Motion be denied in its entirety. As Complaint Counsel explains in further detail below, Leachco is time barred from seeking to compel admissions as to many of the requests for admission (“RFAs”), and its other arguments are unpersuasive. In essence, Leachco appears to disagree with the responses supplied by Complaint Counsel, but such disagreement does not give rise to a motion for sanctions.

**I. INTRODUCTION**

Near the close of fact discovery, Leachco served 363 RFAs on Complaint Counsel, many of which were duplicative, imprecise, or called for legal analysis. Complaint Counsel moved for a protective order with respect to many of the RFAs, noting the oppressive nature of so many requests, their redundancy, and specific substantive issues with the RFAs, such as their

vagueness or lack of relevance.<sup>1</sup> Complaint Counsel responded to the balance of the RFAs on February 24, 2023.<sup>2</sup>

The Presiding Officer ultimately granted the motion for protective order in part and denied it in part, directing Complaint Counsel to respond to 279 of the RFAs it had challenged, and a portion of a 280th RFA.<sup>3</sup> Complaint Counsel did so, and its RFA responses totaled over 294 pages of text.<sup>4</sup>

Leachco never moved to compel with respect to the RFA responses that Complaint Counsel served on February 24, 2023. Yet Leachco now asks the Presiding Officer to impose sanctions on those responses and deem 56 of those RFAs admitted. However, such a demand is procedurally barred in two respects. First, the deadline to move to compel responses to those RFAs expired three months ago in March. Second, the governing rules permit discovery sanctions “[i]f a party fails to obey an order to provide or permit discovery,” 16 C.F.R. § 1025.37, but there has been no such order with respect to the responses served in February. And, regardless of these procedural deficiencies, Leachco fails to establish that the responses are deficient. Leachco’s complaint seems to be with the substantive responses Complaint Counsel provided and the context it included, not the legal sufficiency of the responses.

With respect to the RFAs that were the subject of Complaint Counsel’s protective order, Leachco does not contest that over 250 of Complaint Counsel’s RFA responses were sufficient, and Leachco identifies only 23 RFA responses that it believes to be deficient.<sup>5</sup> But, in essence, those responses are not deficient—Leachco simply disagrees with them. And disagreement with

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<sup>1</sup> Dkt. Nos. 59 & 60.

<sup>2</sup> See Exhibit B.

<sup>3</sup> Dkt. No. 76.

<sup>4</sup> See Dkt. No. 87 at Exhibit 1.

<sup>5</sup> Leachco never attempted to meet and confer with Complaint Counsel about these 23 responses it considers to be deficient. The first notice Complaint Counsel had of Leachco’s objections to these responses was when the motion for sanctions was filed.

an RFA response is not grounds to reverse a party's responses and seek an admission of that RFA.

Notwithstanding the procedural issues with Leachco's motion and its baseless attacks on Complaint Counsel's responses, Complaint Counsel has served amended responses with respect to 38 of the RFA responses challenged in Leachco's motion. The amended responses are included in Exhibit A to this brief.<sup>6</sup> Complaint Counsel hopes that its efforts to amend these responses will help streamline and expedite the Presiding Officer's review of this motion, and Complaint Counsel notes that much of this motion practice may have been avoided if Leachco has met and conferred before filing its motion for sanctions.

## **II. LEGAL STANDARD**

Complaint Counsel acknowledges that the Court can impose sanctions for failure to comply specifically with discovery orders pursuant to the Rules of Practice of Adjudicative Proceedings ("Rules of Practice"), 16 C.F.R. § 1025.37. This rule permits a Presiding Officer to impose sanctions "[i]f a party fails to obey an order to provide or permit discovery." *Id.* However, such sanctions are not appropriate here, as Complaint Counsel has obeyed this Court's discovery orders and acted in good faith to amend its discovery responses.

## **III. ARGUMENT**

### **A. Sanctions Are Inappropriate as to RFA Responses that Complaint Counsel Served Nearly Four Months Ago and that Leachco Never Moved to Compel**

In its Motion, Leachco asks the Presiding Officer to impose sanctions with respect to, and deem admitted, 56 RFA responses that Complaint Counsel served on February 24, 2023, but that Leachco has not previously moved to compel or otherwise challenge by motion (the "February

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<sup>6</sup> See Exhibit A (providing amended responses to RFAs 128-29, 149-52, 186-194, 210-11, 213-14, 218-19, 228-31, 234, 292, 297-300, 322-24, and 362-63).

RFAs”).<sup>7</sup> Nor were those RFAs the subject of Complaint Counsel’s Motion for a Protective Order<sup>8</sup> and the Presiding Officer’s Resulting Order.<sup>9</sup> In fact, the February RFAs have been the subject of no Court order.

Leachco’s request to compel admissions as to these February RFAs is procedurally barred on two grounds and, regardless, is unavailing.

### **1. Leachco’s Effort to Compel Admissions Is Time Barred**

As an initial matter, Leachco’s deadline to compel admissions to the February RFAs expired three months ago. CPSC’s Rules of Practice dictate that “the party seeking discovery may move within twenty (20) days for an order compelling an answer, or compelling inspection or production of documents, or otherwise compelling discovery.” 16 C.F.R. § 1025.36.<sup>10</sup> Here, that 20-day deadline expired on March 16, 2023—three months ago. Because Leachco did not move to compel the admissions by that deadline, it cannot do so now—three months later and two months before the commencement of the hearing in this matter—under the guise of a motion for sanctions.

Leachco tacitly acknowledges this timeliness issue by contending in a footnote that Leachco, through its Opposition to Complaint Counsel’s Motion for a Protective Order, “preserved its objections to the responses that the Commission had initially provided.” (Mem. 4 n. 2.)

But there is no provision in the Rules of Practice that permits a party to unilaterally toll the deadline to bring a motion to compel by mentioning discovery responses in an opposition

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<sup>7</sup> Dkt. No. 87 at 14–19.

<sup>8</sup> Dkt Nos. 59 & 60.

<sup>9</sup> Dkt. No. 76.

<sup>10</sup> See also 16 C.F.R. § 1025.34(b) (“The party who has requested an admission may move to determine the sufficiency of any answer or objection in accordance with § 1025.36 of these Rules.”).

brief, nor does Leachco cite any authority to that effect. Leachco also fails to note that its opposition brief did not even address some of the RFAs as to which it now seeks admissions. For example, the first February RFAs as to which Leachco seeks to compel admissions—RFAs 4 to 6—are not mentioned in Leachco’s opposition brief, and, therefore, its objections could not even arguably have been preserved.<sup>11</sup>

In sum, Leachco’s efforts to compel admissions to the RFA responses Complaint Counsel served on February 24 are time barred by Section 1025.36, and Leachco has pointed to no authority suggesting that the Presiding Officer should disregard that rule.

## **2. There Has Been No “Order to Provide or Permit” Discovery as to the February RFAs**

Leachco also cannot seek an order imposing sanctions with respect to the February RFAs because there has been no “order to provide or permit discovery.” The Rules of Practice permit a Presiding Officer to impose sanctions “[i]f a party fails to obey an order to provide or permit discovery . . . .” 16 C.F.R. § 1025.37 (titled “Sanctions for failure to comply with discovery orders”). But there has been no order to provide or permit discovery with respect to the February RFAs. Complaint Counsel served responses to the RFAs in February, and Leachco has not previously moved to compel answers to those RFAs, nor did Complaint Counsel seek a protective order shielding it from responding to those RFAs. Thus, there has been no “order to provide or permit discovery” with respect to those RFAs, and Leachco is procedurally barred from seeking sanctions pursuant to Section 1025.37.

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<sup>11</sup> Leachco also did not somehow preserve its ability to compel these admissions when “immediately following this Court’s February 24 discovery conference, Leachco emailed the Commission and offered to submit a revised set of RFAs.” Dkt. No. 87 at 2. Pursuant to the Presiding Officer’s Order on Prehearing Schedule, the last day to serve written discovery requests was February 2, 2023. Dkt. No. 35. Amending RFAs weeks after that deadline had expired would essentially have been an end run around the fact-discovery cutoff date.

### 3. Leachco's Substantive Arguments Are Unpersuasive

Even if this court were to consider the doubly procedurally barred motion with respect to the February RFA responses, there also is no reason to grant Leachco's motion for sanctions as to the February RFAs. Complaint Counsel today has served amended responses to 32 of the February RFAs as to which Leachco seeks to compel admissions.<sup>12</sup> Although Complaint Counsel recognizes there is no procedural requirement for it to have done so, as Leachco's ability to contest the RFA responses is time barred, Complaint Counsel has in good faith voluntarily elected to revise these responses to clarify them, which hopefully will reduce Leachco's concerns and "narrow issues for trial."<sup>13</sup> Complaint Counsel is focused on ensuring the expeditious resolution of this litigation to ensure that additional infants do not die in the Podster, and Complaint Counsel hopes that its voluntary amendment of these responses will help facilitate that end. Complaint Counsel notes that some of this motion practice could have been avoided if Leachco had attempted to meet and confer before filing the instant motion for sanctions.

With respect to the remaining February RFAs as to which Leachco seeks to compel admissions, not only is Leachco procedurally barred from seeking such admissions, its stated bases for seeking admissions are unavailing. Leachco generally seems to ignore the fact that Complaint Counsel responded to its RFAs, or Leachco seems to disagree with Complaint Counsel's response to the RFAs. But while Leachco "may disagree with these responses, that disagreement does not render the responses inadequate." *See Richard v. Digneau*, 332 F.R.D. 450, 462 (W.D.N.Y. 2019) (quoting *Bernstein v. Principal Life Ins. Co.*, No. 09-cv-4925-CM-

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<sup>12</sup> See Exhibit A (providing amended responses to RFAs 128-29, 186-194, 210-11, 213-14, 218-19, 228-31, 234, 292, 297-300, and 322-24). The remaining 24 February RFAs at issue are RFAs 4-6, 195-209, 220-22, 224-25, and 227.

<sup>13</sup> See Dkt. No. 76 at 4 ("The purpose of RFAs is to narrow issues for trial, rather than simply to obtain information.").

HBP, 2010 WL 4922093, at \*4 (S.D.N.Y. Dec. 2, 2010)); *see also Bakambia v. Schnell*, No. 20-CV-1434 (NEB/KMM), 2021 WL 4622250, at \*7 (D. Minn. Oct. 7, 2021) (denying motion to compel RFAs and holding: “A disagreement with an answering party’s refusal to admit certain matters and an argument that the record shows otherwise is generally not a basis to require the answering party to provide a different answer.”).

Take, for example, the initial February RFAs Leachco challenges: RFAs 4–6. Each asks Complaint to admit some variation of “The Podster is not intended to be used for sleep.”<sup>14</sup> These RFAs are vague and do little to “narrow issues for trial,” so Complaint Counsel reminded Leachco in its responses that Complaint Counsel already had conceded in its Complaint that [REDACTED] [REDACTED]” and “[REDACTED] [REDACTED]”<sup>15</sup> But Complaint Counsel then ultimately “[REDACTED] [REDACTED]”<sup>16</sup>

These denials make sense and are accurate. As Complaint Counsel acknowledges in its Complaint, Leachco does not advertise the Podster for sleep. But, as Complaint Counsel detailed at length in its Motion for Partial Summary Decision, numerous consumers—[REDACTED] [REDACTED] have used Podsters for sleep and intended to use the Podsters for sleep.<sup>17</sup> It therefore is entirely appropriate for Complaint Counsel to deny that “The Podster is not intended to be used for sleep” and provide context for that denial. Despite Leachco’s warnings and advertising to the contrary, consumers intend to use Podsters for infant sleep.

Leachco takes issue with Complaint Counsel’s reference to its allegations to provide

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<sup>14</sup> Dkt. No. 87 at 15–16.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Complaint Counsel’s Mem. in Support of Partial Summary Decision at 5–7, 14–16.

context for its denials to RFAs 4 to 6, but such an argument does not warrant changing Complaint Counsel’s valid denials to admissions. Complaint Counsel’s references to its allegations provide fuller context for its denial than a simple “Denied” would have and so more effectively “narrow issues for trial”—the primary aim of RFAs, as the Court explained in its earlier order.<sup>18</sup> Nor does this added context render the responses inappropriate. *See Gordon v. Sappi N. Am., Inc.*, No. 20-CV-1167 (PJS/LIB), 2021 WL 6763719, at \*11 (D. Minn. Feb. 24, 2021) (“To the extent that a particular response also includes additional explanation, that unnecessary verbiage does not render the admission/denial ambiguous.”).

Indeed, although the responding party in *Digneau* allegedly submitted “boilerplate” responses to RFAs and, according to the court, “most of Defendants’ responses are materially indistinguishable,” the Court found that the responses were sufficient because “ultimately, Defendants specifically denied each one.” 332 F.R.D. at 462. The court therefore denied the motion to compel and for sanctions with respect to those RFAs. *Id.* at 462–63; *see also Gordon*, 2021 WL 6763719 at \*10 (RFA response was sufficient even if it included “boilerplate objections”).

A similar result is appropriate here. Complaint Counsel ultimately denied RFAs 4 and 6. And although Leachco may disagree with those denials or the context Complaint Counsel provides in its responses, the RFA responses are sufficient, and Leachco’s motion should be denied.

Leachco similarly appears to disagree with the substance of Complaint Counsel’s other responses and the context that Complaint Counsel provides, but that does not make Complaint Counsel’s denials insufficient. For example, Leachco seeks to compel an admission with respect

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<sup>18</sup> Dkt. No. 76 at 4

to RFA 195.<sup>19</sup> There, Leachco sought an admission that “Concerning Incident A, a caregiver of Infant A placed Infant A in a Podster and then placed the Podster in a crib.”<sup>20</sup> Complaint Counsel provided objections to that Request, denied it, and provided context for that denial: the in-depth investigation report prepared by CPSC staff contradicted the admission Leachco sought:

[REDACTED]

[REDACTED]<sup>21</sup>

This is not an improper, evasive response. This is a denial that helps narrow the scope of issues for trial not only by denying the RFA but by giving context for why Complaint Counsel denied the admission.

The next RFA response Leachco challenges, the response with respect to RFA 196, fares no better. With respect to that RFA, Leachco sought to have Complaint Counsel admit: “Concerning Incident A, a caregiver(s) of Infant A placed a bottle, containing liquid, in Infant A’s mouth when the caregiver(s) placed Infant A in the Podster and then placed the Podster in a crib.”<sup>22</sup> But Complaint Counsel offered objections, admitted the portion of the RFA it could, denied the rest, and gave context for its partial admission.

[REDACTED]

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<sup>19</sup> Dkt. No. 87 at 19.

<sup>20</sup> Dkt. No. 87, Exhibit 1 at 168.

<sup>21</sup> *Id.* at 168–69 (emphasis added).

<sup>22</sup> *Id.* at 169.

[REDACTED]

This also is not an evasive answer. Complaint Counsel reflected on the RFA; [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Such a response helps narrow the issues for trial, and Complaint Counsel is entitled to admit only a portion of an RFA if such a partial admission is appropriate. *See Schnell*, 2021 WL 4622250 at \*7 (holding that “partial admissions, qualifications of a response when necessary,” and “admit[ing] portions of other requests” were “appropriate responses” to RFAs). Indeed, the Rules of Practice specify as much: “When good faith requires that a party qualify an answer or deny only a part of the matter to which an admission is requested, the party shall specify the portion that is true and qualify or deny the remainder.” 16 C.F.R. § 1025.34(b). Leachco is not entitled to a full admission with respect to the RFA simply because it does not like, or disagrees with, Complaint Counsel’s response.

If Leachco wished for different, or shorter, responses, it could have followed the hornbook rule that, with respect to RFAs, that “the facts should be stated singly, so that the party called upon to make answers need not write an essay in reply.” *United States v. Chevron U.S.A. Inc.*, No. 88-cv-6681, 1989 WL 100927, at \*1–2 (E.D. Pa. Aug. 30, 1989) (quoting Moore’s *Federal Practice* and ruling that a party need not answer an RFA that “is not stated in simple and

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<sup>23</sup> *Id.* (emphasis added).

concise terms so that it can be denied or admitted with an absolute minimum of explanation or qualification.”).

Instead, Leachco lumped several facts together in a single RFA: (1) a caregiver placed a bottle in the infant’s mount; (2) the bottle contained liquid; (3) the caregiver placed the bottle in the infant’s mouth at the time the caregiver placed the infant in the Podster; and (4) the caregiver placed the Podster in a crib after the caregiver had placed the bottle in the infant’s mouth and placed the infant in the Podster. Such an aggregation of facts leads to an imprecise, improper RFA that is not susceptible to a short “admit” or “deny.”

The other RFA responses Leachco challenges are more of the same. Leachco appears to disagree with Complaint Counsel’s response or not like the context for the response that Complaint Counsel provides, but that does not render the responses insufficient.

**4. RFAs about Complaint Counsel’s Relationship with the Office of General Counsel Are Beyond the Appropriate Scope of Discovery in this Proceeding**

Leachco also seeks to compel admissions to RFAs regarding the relationship between Complaint Counsel and the Commission’s Office of General Counsel. Specifically, Leachco seeks admissions that “After an administrative complaint has been filed by Complaint Counsel, the Commission’s General Counsel represents both the Commissioners and Complaint Counsel (and their staff)” and “After an administrative complaint has been filed by Complaint Counsel, the Commission’s General Counsel advises both the Commissioners and Complaint Counsel (and their staff).”<sup>24</sup> Leachco broadly defines “General Counsel” to mean “the CPSC’s Office of General Counsel, including all staff and agents thereof.”<sup>25</sup>

Leachco contends that these requests “bear[] directly on its due process and separation-

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<sup>24</sup> Dkt. No. 87 at 17–19.

<sup>25</sup> Exhibit C at 3.

of-functions defenses.”<sup>26</sup> But as Complaint Counsel properly objected in its Responses, these sort of speculative theories of impropriety fail to seek information that is relevant to the subject matter involved in this proceeding—whether the Podsters pose a substantial product hazard—or information reasonably calculated to the discovery of admissible evidence.<sup>27</sup> See 16 C.F.R. § 1025.31(c)(1). The Presiding Officer also recently held that these types of theories are not ripe.<sup>28</sup>

As evidenced by Exhibit A to this opposition, Complaint Counsel did, however, amend its responses to these RFAs to include denials and further explain the two groups on either side of the litigation barrier.<sup>29</sup> Specifically, some attorneys in the CPSC Office of the General Counsel have assisted Complaint Counsel after the administrative complaint was filed and are on Complaint Counsel’s side of a litigation barrier, sometimes referred to as an ethical wall. Those attorneys in the CPSC Office of the General Counsel are separated by a litigation barrier from the other members of the CPSC Office of the General Counsel who assist or will assist Commissioners in connection with this litigation and therefore are on the Commissioners’ (i.e., decision-makers’) side of the litigation barrier.

This structure is consistent with the provision the Presiding Officer quoted in a recent order.<sup>30</sup> “Decision-makers” include: “Those Commission personnel who render decisions in adjudicative proceedings under these rules, or who advise officials who render such decisions, including: . . . (iii) The General Counsel and his/her staff, *unless otherwise designated by the General Counsel.*” 16 C.F.R. § 1025.68(b)(1) (emphasis added). Members of the Office of the General Counsel may be designated as being on the other side of the litigation barrier from the

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<sup>26</sup> Dkt. No. 87 at 18.

<sup>27</sup> *Id.* at 17–18.

<sup>28</sup> Dkt. No. 85 at 9.

<sup>29</sup> See Exhibit A at 97–100.

<sup>30</sup> See Dkt. No. 85 at 9.

decision-makers (that is, on Complaint Counsel’s side of the barrier), and those individuals may speak with Complaint Counsel.

**B. Sanctions Are Inappropriate as to the Remaining RFA Responses Because Leachco Merely Disagrees with the Substance of the Responses and the Context Provided by Complaint Counsel**

Leachco’s contentions also are not persuasive with respect to 23 of the over 270 RFAs that Complaint Counsel responded to as a result of the Presiding Officer’s order on Complaint Counsel’s motion for a protective order. Complaint Counsel substantively responded to each of those RFAs and provided context for those responses. Leachco seems to disagree with those responses, rather than be able to establish that they are legally deficient. But again, “[a] disagreement with an answering party’s refusal to admit certain matters . . . is generally not a basis to require the answering party to provide a different answer.” *Schnell*, 2021 WL 4622250 at \*7.

There are six general categories into which the challenged RFA responses fall. First, there are legal contention RFAs in which Leachco asks Complaint Counsel to admit that it “contend[s] that Leachco is liable under the CPSA” if certain hypothetical—and often counterfactual—conditions are met.<sup>31</sup> For example, “if Leachco has received zero communications Concerning consumers’ misuse of the Podster” (counterfactual) or “if Leachco was unaware of consumer misuse of the Podster” (also counterfactual).<sup>32</sup> In response to each, Complaint Counsel reminded Leachco that it is alleging that the Podsters posed a substantial product hazard by admitting as much and then Complaint Counsel “denies the remainder of this request.” This is not a “deficient” response, as Leachco contends. This is a denial of the RFA.

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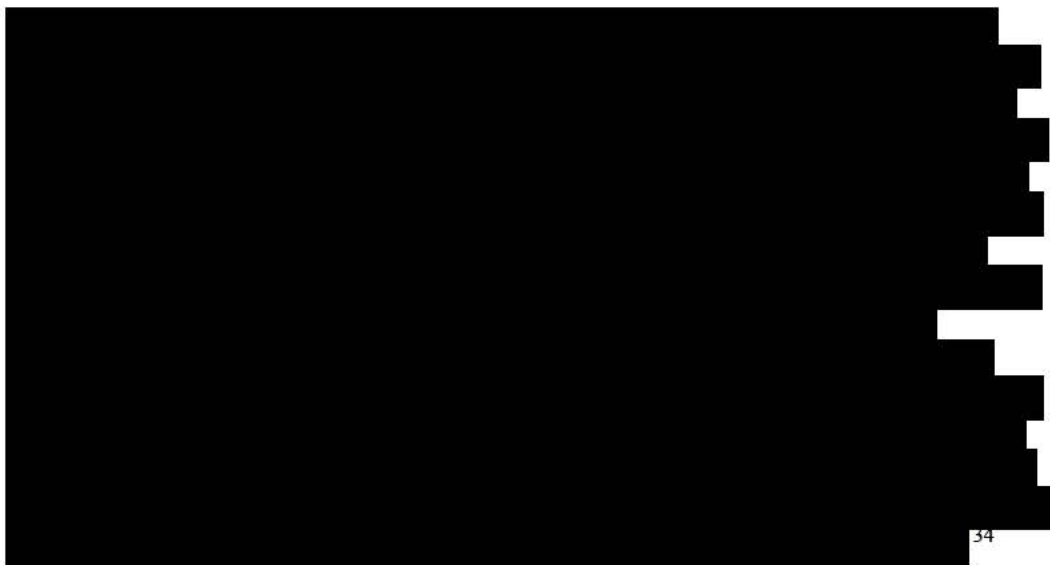
<sup>31</sup> See RFAs 136-42 at Dkt. No. 87, Exhibit 1 at 101–07.

<sup>32</sup> Dkt. No. 87, Exhibit 1 at 103–04.

<sup>32</sup> *Id.* at 101–07.

And Leachco is not entitled to an admission simply because Leachco does not like that Complaint Counsel set forth a denial. *See Gordon*, 2021 WL 6763719 at \*11 (“To the extent that a particular response also includes additional explanation, that unnecessary verbiage does not render the admission/denial ambiguous.”).

In the next category of challenged RFA responses, Leachco asks Complaint Counsel to admit that “The Podster is useful.” and “The Podster is useful for Caregivers.”<sup>33</sup> The Podster is not useful, and so Complaint Counsel denied that RFA and provided context for that denial:



Leachco may not agree with this denial and may not agree with the context Complaint Counsel supplied for the denial, but that does not mean that Leachco is entitled to move to convert Complaint Counsel’s denial into an admission. Even if the language Complaint Counsel provided to explain its denial and “narrow the issues for trial” were deemed superfluous, that does not make its denial legally deficient. *Digean*, 332 F.R.D. at 462-63; *Gordon*, 2021 WL 6763719 at \*11.

With respect to the third tranche of RFA responses—the responses related to RFAs 149-

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<sup>33</sup> *Id.* at 109–10.

<sup>34</sup> *Id.* (emphasis added).

52, Leachco asks Complaint Counsel to make sweeping admissions that “The Podster does not fail to comply with any applicable consumer product safety rule under Chapter 47 of Title 15 of the U.S. Code.”<sup>35</sup> Chapter 47 of Title 15 of the U.S. Code is where Consumer Product Safety statutes are codified. In response to these sweeping requests, Complaint Counsel attempted to narrow the issues for trial and denied the requests, explaining: “

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]”<sup>36</sup> Although Complaint Counsel disagrees with Leachco’s contention that this too narrowly answers the RFAs—as this response seeks to narrow the issues for trial—Complaint Counsel recently amended its responses to these RFAs to a simple “Denied.”<sup>37</sup> That should resolve Leachco’s concerns.

In RFAs 153 to 156, Leachco seeks even broader, more sweeping, and more ambiguous admissions. Rather than limit itself Chapter 47 of Title 15, Leachco asks for sweeping admissions with respect to provisions “similar to” ones in Chapter 47 of Title 15. For example, Leachco asks Complaint Counsel to admit: “The Podster does not fail to comply with any rule, regulation, standard, or ban, *similar to* an applicable safety rule under Chapter 47 of Title 15 of the U.S. Code, under any other Act enforced by the Commission.”<sup>38</sup> But these are exactly the sort of vague, sweeping RFAs that are inappropriate and do nothing to narrow the issues for trial. Rather than narrow the issues, they raise new issues: what rules, regulations, standards, or bans are “similar to” Chapter 47 of Title 15, and why are they relevant to a substantial product hazard

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<sup>35</sup> *Id.* at 111.

<sup>36</sup> *Id.* at 111–12 (emphasis added).

<sup>37</sup> Exhibit A at 112–15.

<sup>38</sup> Dkt. No. 87, Exhibit 1 at 114 (emphasis added).

case brought under 15 U.S.C. § 2064?

As one court explained with respect to RFAs: “we observe that if a party is compelled to answer vague and indefinite questions capable of more than one interpretation, and which in fairness to either party require an explanation, then one of the purposes of the rules is immediately thwarted, since at the trial a great deal of the necessary time devoted to determining the issue would be taken up with explanations of answers to improper questions.” *Johnstone v. Cronlund*, 25 F.R.D. 42, 45 (E.D. Pa. 1960); see *Dubin v. E.F. Hutton Group Inc.*, 125 F.R.D. 372, 376 (S.D.N.Y. 1989) (“The disputed Discovery Requests are not simple and concise statements of fact, but contain vague and ambiguous wording that does not allow defendants fairly to admit or to deny them. . . . The Court finds defendants’ objections are well-founded.”).

In an effort to respond to these vague RFAs while also narrowing the issues for trial, Complaint Counsel responded in part: “ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].”<sup>39</sup>

This response is appropriately tailored to this substantial product hazard case, helps guard against the scenario warned against in *Cronlund*, and also provides a denial to each RFA. These responses are sufficient.

In RFAs 249, 250, 252, and 265, Leachco seeks admissions regarding certain legal provisions that have no bearing on this substantial product hazard case. In its responses, Complaint Counsel attempted to narrow the issues for trial by admitting that it was not alleging a violation of those legal provisions and then denying the remainder of the requests. For example,

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<sup>39</sup> *Id.* at 114 (emphasis added).

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<sup>41</sup> *Id.* at 204–05.

With respect to the final category—the responses to RFAs 362 and 363, Complaint Counsel inadvertently responded with respect to the incorrect incident. As can be seen in Exhibit A, Complaint Counsel amended those responses and now admits the RFAs.<sup>42</sup> That should resolve Leachco’s concerns. Complaint Counsel notes that those RFA responses also could have been addressed without the need for motion practice if Leachco had attempted to meet and confer before filing this motion for sanctions.

#### **IV. CONCLUSION**

For the foregoing reasons, Leachco’s motion for sanctions should be denied in its entirety.

Dated this 16th day of June, 2023

Respectfully submitted,

*/s/ Brett Ruff*

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

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Complaint Counsel for  
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<sup>42</sup> Exhibit A at 306–08.

**CERTIFICATE OF SERVICE**

I hereby certify that on June 16, 2023, I served Complaint Counsel's Opposition to Leachco's Motion for Sanctions and Order that RFAs Be Deemed Admitted on all parties and participants or record in these proceedings as follows:

*By email to the Secretary:*

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*/s/ Brett Ruff*

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Brett Ruff  
Complaint Counsel for  
U.S. Consumer Product Safety Commission

**EXHIBIT A**  
**(submitted *in camera*)**

# **EXHIBIT B**

UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION

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

**COMPLAINT COUNSEL’S OBJECTIONS AND RESPONSES TO  
RESPONDENT’S FIRST SET OF REQUESTS FOR ADMISSION AND  
RESPONDENT’S SECOND SET OF REQUESTS FOR ADMISSION**

Pursuant to 16 C.F.R. § 1025.34, Complaint Counsel hereby provides its objections and responses (“Responses”) to Respondent Leachco, Inc.’s (“Leachco” or “Respondent”) First Set of Requests for Admission and Second Set of Requests for Admission (“Requests”) as to RFA Nos. 1-2, 4-7, 100-101, 124-129, 185-211, 213-231, 234-235, 279-284, 292, 297-301, 303-304, 306, and 322-324. In a separate filing, Complaint Counsel has moved for a protective order as to Leachco’s RFA Nos. 3, 8-99, 102-123, 130-184, 212, 232-233, 236-278, 285-291, 293-296, 302, 305, 307-321, and 325-363.

**PRELIMINARY STATEMENT**

Discovery in this action is ongoing. The specific Responses set forth below are for the purposes of discovery only, and Complaint Counsel neither waives nor intends to waive, and expressly reserves, any and all objections it may have to the relevance, competence, materiality, admission, admissibility, or use at a hearing of any information, documents, or writings produced, identified, or referred to herein, or to the introduction of any evidence at a hearing relating to the subjects covered by such Responses.

These Responses are based solely upon information presently known and readily available to Complaint Counsel following a reasonable inquiry. Complaint Counsel will amend these Responses in accordance with 16 C.F.R. § 1025.31(f), if appropriate. Complaint Counsel expressly reserves the right to rely, at any time including trial, upon subsequently discovered information. Further, the specific Responses below are based upon Complaint Counsel's interpretation of the language used in the Requests, and Complaint Counsel reserves its right to amend or supplement further its responses in the event Respondent asserts an interpretation that differs from Complaint Counsel's interpretation.

By making these Responses, Complaint Counsel does not concede it is in possession of any information responsive to any particular Request or that any Response given is relevant to this action. Complaint Counsel's failure to object to a particular Request or willingness to provide responsive information pursuant to a Request is not, and shall not be construed, as an admission of the relevance, or admissibility into evidence, of any such information, nor does it constitute a representation that any such information in fact exists.

Further, Complaint Counsel does not waive any of its objections by providing a specific Response or by raising additional, specific objections to any specific Request. The following objections shall be applicable to, included, and incorporated in Complaint Counsel's Responses to every Request propounded by Respondent, whether or not expressly mentioned in the Response to a particular Request. Upon request by Respondent, Complaint Counsel is willing to meet and confer regarding its Response to any of the Requests.

### **GENERAL OBJECTIONS**

1. Complaint Counsel objects to the Requests, including the Definitions and Instructions contained within them, to the extent they impose or seek to impose any requirement

or discovery obligation greater than or different from those under the 16 C.F.R. Part 1025 and applicable orders of the Presiding Officer.

2. Complaint Counsel objects to the Requests to the extent they seek disclosure of information protected under the attorney-client privilege, attorney work product doctrine, deliberative process privilege, or any other applicable privilege or immunity, including the privilege afforded confidential information given to the staff of the Commission and/or by other law or rule of procedure, including, but not limited to, the Consumer Product Safety Act (“CPSA”), 15 U.S.C. § 2051 *et seq.*, the Privacy Act, 5 U.S.C. § 552a, and other applicable laws and regulations. Nothing in Complaint Counsel’s Responses to these Requests is intended as, or shall in any way be deemed to operate as, a waiver of any privilege, protection, immunity, claim, defense, or objection to which Complaint Counsel may be entitled. Should any such disclosure by Complaint Counsel occur, it is inadvertent.

3. Complaint Counsel objects to each of the Requests to the extent it seeks an admission as to scientific or other expert opinion. Complaint Counsel also objects because under the Rules of Practice for Administrative Proceedings, 16 C.F.R. Part 1025, requests for admission are not proper vehicles for expert discovery. *See* 16 C.F.R. § 1025.31(c)(4).

4. Complaint Counsel objects to each Request to the extent it seeks an admission as to a legal conclusion.

5. Complaint Counsel objects to each Request to the extent it seeks an admission as to information that is publicly accessible because it is equally convenient for Respondent to obtain such information. Complaint Counsel will not conduct a literature search or collect or organize information or documents which are as accessible to Respondent as they are to Complaint Counsel.

6. Complaint Counsel objects to the Requests to the extent they are duplicative of one another and other discovery in this matter and, therefore, are harassing and unduly burdensome.

7. Complaint Counsel objects to the volume of Requests served by Respondent as harassing and unduly burdensome.

Subject to and without waiving the foregoing objections, Complaint Counsel provides the following Responses:

**COMPLAINT COUNSEL'S RESPONSES TO REQUESTS FOR ADMISSION**

Admit the following:

1. *You do not allege a claim against Leachco under 15 U.S.C. § 2064(a)(1).*

**RESPONSE:**

Complaint Counsel objects to this Request as it seeks information from Complaint Counsel about the contents of the Complaint that was served upon Respondent. The Complaint is a publicly available document [Dkt. No. 1, available at <https://www.cpsc.gov/Recalls/Recall-Lawsuits-Adjudicative-Proceedings>] and it is equally accessible to Leachco as it is to Complaint Counsel. Subject to these qualifications, and without waiving its objections, Complaint Counsel admits it made the allegations contained in its Complaint, which do not contain any claims under 15 U.S.C. § 2064(a)(1). Complaint Counsel denies the remainder of this Request.

2. *You do not allege a claim against Leachco under 15 U.S.C. § 2064(b).*

**RESPONSE:**

Complaint Counsel objects to this Request as it seeks information from Complaint Counsel about the contents of the Complaint that was served upon Respondent. The Complaint is a publicly available document [Dkt. No. 1, available at <https://www.cpsc.gov/Recalls/Recall->

Lawsuits-Adjudicative-Proceedings] and it is equally accessible to Leachco as it is to Complaint Counsel. Subject to these qualifications, and without waiving its objections, Complaint Counsel admits it made the allegations contained in its Complaint, which do not contain any claims under 15 U.S.C. § 2064(b). Such an omission from the Complaint does not bar the Commission from initiating a separate proceeding for any violation of 15 U.S.C. § 2064(b). Complaint Counsel denies the remainder of this Request.

3. *The Podster is not an Infant Sleep Product.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

4. *The Podster is not intended to be used for sleep.*

**RESPONSE:**

Complaint Counsel objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions. Complaint Counsel also objects to this Request to the extent it seeks expert discovery, as requests for admission are not proper expert discovery tools pursuant to 16 C.F.R. § 1025.31(c)(4).

Subject to these qualifications, and without waiving its objections, Complaint Counsel admits in the allegations in paragraphs 14 and 15 of the Complaint that “[t]he Podster is not and has never been advertised by Respondent as a sleep product” and “[t]he Podster contains warnings that the product should not be used for sleep and that adult supervision is always required.” Complaint Counsel denies the remainder of this Request.

*5. The Podster was never intended to be used for sleep.*

**RESPONSE:**

Complaint Counsel objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions. Complaint Counsel also objects to this Request to the extent it seeks expert discovery, as requests for admission are not proper expert discovery tools pursuant to 16 C.F.R. § 1025.31(c)(4).

Subject to these qualifications, and without waiving its objections, Complaint Counsel admits in the allegations in paragraphs 14 and 15 of the Complaint that "[t]he Podster is not and has never been advertised by Respondent as a sleep product" and "[t]he Podster contains warnings that the product should not be used for sleep and that adult supervision is always required." Complaint Counsel denies the remainder of this Request.

*6. The Podster is not designed for sleep.*

**RESPONSE:**

Complaint Counsel objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions. Complaint Counsel also objects to this Request to the extent it seeks expert discovery, as requests for admission are not proper expert discovery tools pursuant to 16 C.F.R. § 1025.31(c)(4).

Subject to these qualifications, and without waiving its objections, Complaint Counsel admits in the allegations in paragraphs 14 and 15 of the Complaint that "[t]he Podster is not and

has never been advertised by Respondent as a sleep product” and “[t]he Podster contains warnings that the product should not be used for sleep and that adult supervision is always required.” Complaint Counsel denies the remainder of this Request.

*7. The Podster was never designed for sleep.*

**RESPONSE:**

Complaint Counsel objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster’s warnings or instructions. Complaint Counsel also objects to this Request to the extent it seeks expert discovery, as requests for admission are not proper expert discovery tools pursuant to 16 C.F.R. § 1025.31(c)(4).

Subject to these qualifications, and without waiving its objections, Complaint Counsel admits in the allegations in paragraphs 14 and 15 of the Complaint that “[t]he Podster is not and has never been advertised by Respondent as a sleep product” and “[t]he Podster contains warnings that the product should not be used for sleep and that adult supervision is always required.” Complaint Counsel denies the remainder of this Request.

*8. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product amounts to a Substantial Product Hazard.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.<sup>1</sup>

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<sup>1</sup> During the February 24, 2023 prehearing conference in this matter, the Presiding Officer indicated, but did not decide, that he may order a response to this RFA and others that were identified in the Motion for Protective Order

*9. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product causes a Substantial Product Hazard.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*10. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product creates a Substantial Product Hazard.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*11. There is no rule or regulation that states foreseeable misuse of a consumer product amounts to, causes, or creates a Substantial Product Hazard.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*12. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product amounts to a defect.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

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as improperly pertaining to a question of law. Complaint Counsel will abide by any order of the Presiding Officer and will amend its Responses as necessary.

*13. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product causes a defect.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*14. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product creates a defect.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*15. There is no rule or regulation that states foreseeable misuse of a consumer product creates a defect.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*16. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product amounts to a Product Defect.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*17. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product causes a Product Defect.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*18. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product creates a Product Defect.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*19. There is no rule or regulation that states foreseeable misuse of a consumer product amounts to, causes, or creates a Product Defect.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*20. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product amounts to a Substantial Risk of Injury.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*21. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product causes a Substantial Risk of Injury.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*22. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product creates a Substantial Risk of Injury.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*23. There is no rule or regulation that states foreseeable misuse of a consumer product amounts to, causes, or creates a Substantial Risk of Injury.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*24. To find Leachco liable under the CPSA in this Proceeding, the Commission must prove both that the Podster contains a “defect” and that the “defect” “creates a substantial risk of injury.”*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*25. The Podster does not have a manufacturing defect.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this

request for admission.

*26. The Podster does not have a warning defect.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*27. The Podster is not defective because of inadequate warnings.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*28. The Podster is not defective because of inadequate instructions.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*29. The Podster is not defective because of a defective design.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*30. The Podster is a not Substantial Product Hazard because of inadequate warnings.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*31. The Podster is a Substantial Product Hazard because of inadequate instructions.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*32. The Podster is a not Substantial Product Hazard because of defective warnings.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*33. The Podster is a not Substantial Product Hazard because of defective instructions.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*34. The Podster is a not Substantial Product Hazard because of the existence of a reasonable alternative design.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*35. The Podster has never been a Substantial Product Hazard because of the existence of a reasonable alternative design.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*36. The Podster is a not Substantial Product Hazard because of defective manufacturing.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*37. The Podster has never been a Substantial Product Hazard because of defective manufacturing.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*38. The Podster is a not Substantial Product Hazard because of defective design.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*39. The Podster has never been a Substantial Product Hazard because of defective design.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*40. Leachco has not failed to provide adequate warnings for use of the Pod-ster.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*41. Leachco has not failed to provide adequate instructions for use of the Podster.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*42. The Podster is a not Product Defect because of inadequate warnings.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*43. The Podster has never been a Product Defect because of inadequate warnings.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*44. The Podster is a not Product Defect because of inadequate instructions.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*45. The Podster has never been a Product Defect because of inadequate instructions.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*46. The Podster is a not Product Defect because of defective warnings.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*47. The Podster has never been a Product Defect because of defective warnings.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*48. The Podster is a not Product Defect because of defective instructions.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*49. The Podster has never been a Product Defect because of defective instructions.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*50. The Podster is a not Product Defect because of the existence of reasonable alternative design.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*51. The Podster has never been a Product Defect because of the existence of a reasonable alternative design.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*52. The Podster is a not Product Defect because of defective manufacturing.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*53. The Podster has never been a Product Defect because of defective manufacturing.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*54. The Podster is a not Product Defect because of defective design.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*55. The Podster has never been a Product Defect because of defective de-sign.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*56. The Podster presents no Substantial Risk of Injury because of inadequate warnings.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*57. The Podster presents no Substantial Risk of Injury because of inadequate instructions.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this

request for admission.

*58. The Podster presents no Substantial Risk of Injury because of defective warnings.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*59. The Podster presents no Substantial Risk of Injury because of defective instructions.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*60. The Podster has never presented a Substantial Risk of Injury because of inadequate warnings.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*61. The Podster has never presented a Substantial Risk of Injury because of inadequate instructions.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*62. The Podster has never presented a Substantial Risk of Injury because of defective warnings.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this

request for admission.

*63. The Podster has never presented a Substantial Risk of Injury because of defective instructions.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*64. The Podster does not present a Substantial Risk of Injury because of the existence of a reasonable alternative design.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*65. The Podster has never presented a Substantial Risk of Injury because of the existence of a reasonable alternative design.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*66. The Podster does not present a Substantial Risk of Injury because of the existence of a defective manufacturing.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*67. The Podster has never presented a Substantial Risk of Injury because of the existence of a defective manufacturing.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*68. The Podster does not present a Substantial Risk of Injury because of the existence of a defective design.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*69. The Podster has never presented a Substantial Risk of Injury because of the existence of a defective design.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*70. Leachco's warnings Concerning the Podster were adequate.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*71. Leachco's instructions Concerning the Podster were adequate.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*72. Leachco's warnings Concerning the Podster are adequate.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*73. Leachco's instructions Concerning the Podster are adequate.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*74. The Podster is not defective because of inadequate warnings.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*75. The Podster has never been defective because of inadequate warnings.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*76. The Podster is not defective because of inadequate instructions.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*77. The Podster has never been defective because of inadequate instructions.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*78. The Podster is not defective because of defective warnings.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*79. The Podster is not defective because of defective instructions.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*80. The Podster has never been defective because of defective warnings.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*81. The Podster has never been defective because of defective instructions.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*82. The Podster is not defective because of the existence of a reasonable alternative design.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*83. The Podster has never been defective because of the existence of a rea-sonable alternative design.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*84. The Podster is not defective because of defective manufacturing.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*85. The Podster has never been defective because of defective manufacturing.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*86. The Podster is not defective because of defective design.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*87. The Podster has never been defective because of defective design.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*88. The Podster has never been a Substantial Product Hazard because of inadequate instructions.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this

request for admission.

*89. The Podster has never been a Substantial Product Hazard because of inadequate warnings.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*90. The Podster has never been a Substantial Product Hazard because of defective warnings.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*91. The Podster has never been a Substantial Product Hazard because of defective instructions.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*92. Leachco did not fail to report a Substantial Product Hazard.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*93. Leachco has not failed to report a Substantial Product Hazard.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this

request for admission.

*94. Leachco did not fail to report a product that created an unreasonable risk of injury or death.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*95. Leachco has not failed to report a product that created an unreasonable risk of injury or death.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*96. Leachco did not breach any express warranty with respect to the Pod-ster.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*97. Leachco did not breach any implied warranty with respect to the Pod-ster.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*98. You have the burden of proof to establish that the Podster is a Substantial Product Hazard.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this

request for admission.

*99. You have the burden of persuasion to establish that the Podster is a Substantial Product Hazard.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*100. You allege that the Podster presents a risk of Infant suffocation.*

**RESPONSE:**

Complaint Counsel objects to this Request as it seeks information from Complaint Counsel about the contents of the Complaint that was served upon Respondent, and the Complaint is a publicly available document [Dkt. No. 1, available at <https://www.cpsc.gov/Recalls/Recall-Lawsuits-Adjudicative-Proceedings>]. The Complaint is equally accessible to Leachco as it is to Complaint Counsel. Subject to these qualifications, and without waiving its objections, Complaint Counsel admits it made the allegations contained in its Complaint, including, but not limited to, paragraphs 20-34 that have a subtitle “The Podsters’ Defects Create a Suffocation Hazard” and paragraph 34 states: “If an infant rolls, moves, or is placed in a position where the infant’s nose and mouth are obstructed by the Podster or another object, such as soft bedding, the infant can suffocate and die in three to 10 minutes.”

*101. You allege that the only risk presented by the Podster is the risk of infant suffocation.*

**RESPONSE:**

Complaint Counsel objects to this Request as it seeks information from Complaint Counsel about the contents of the Complaint that was served upon Respondent, and the

Complaint is a publicly available document [Dkt. No. 1, available at <https://www.cpsc.gov/Recalls/Recall-Lawsuits-Adjudicative-Proceedings>]. The Complaint is equally accessible to Leachco as it is to Complaint Counsel. Subject to these qualifications, and without waiving its objections, Complaint Counsel denies that it alleged “the only risk presented by the Podster is the risk of infant suffocation.”

*102. Leachco adequately warned consumers about the potential risk of Infant suffocation.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*103. Leachco adequately warned consumers about the potential risk of using the Podster for sleep.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*104. Leachco adequately warned consumers about the potential risk of using the Podster without constant adult supervision.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*105. Leachco adequately warned consumers about the potential risk of using the Podster on anything but flat surfaces.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this

request for admission.

*106. Leachco adequately warned consumers about the potential risk of using the Podster on elevated surfaces.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*107. Leachco adequately warned consumers about the potential risk of using the Podster for co-sleeping or bed-sharing.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*108. Leachco adequately warned consumers about the potential risk of using the Podster in a crib.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*109. Leachco adequately warned consumers about the potential risk of using the Podster with soft products.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*110. Leachco instructed consumers not to use the Podster for sleep.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*111. Leachco instructed consumers not to use the Podster without constant adult supervision.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*112. Leachco instructed consumers not to use the Podster on elevated surfaces.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*113. Leachco instructed consumers not to use the Podster for co-sleeping or bed-sharing.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*114. Leachco instructed consumers not to use the Podster in a crib.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*115. Leachco instructed consumers not to place Infants in a Podster in a crib.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this

request for admission.

*116. Leachco's instructions adequately explained proper use of the Podster.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*117. The Podster presents no risk that is not contemplated in Leachco's warnings.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*118. The Podster presents no risk that is not contemplated in Leachco's instructions.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*119. You do not allege that the Podster presents a risk that is not contemplated in Leachco's warnings.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*120. You do not allege that the Podster presents a risk that is not contemplated in Leachco's instructions.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*121. You contend that no warnings about the Podster by Leachco would have been sufficient to cure the alleged Substantial Product Hazard.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*122. You contend that no instructions about the Podster by Leachco could be sufficient to cure the alleged Substantial Product Hazard.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*123. Your allegation that the Podster presents a Substantial Product Hazard is not based on Your consideration of whether Leachco's warnings and instructions were adequate to mitigate the alleged risk of injury.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*124. Before filing Your Complaint, You did not consider whether Leachco's warnings were adequate to mitigate the alleged risk of injury.*

**RESPONSE:**

Complaint Counsel objects to this Request on the grounds that it is vague and ambiguous in the use of the terms "consider" and "mitigate." Complaint Counsel also objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may

be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate. Complaint Counsel also objects to this Request to the extent it seeks expert discovery, as requests for admission are not proper expert discovery tools pursuant to 16 C.F.R. § 1025.31(c)(4).

Subject to these qualifications, and without waiving its objections, Complaint Counsel denies that it did not consider whether Leachco's warnings were adequate to "mitigate the alleged risk of injury."

*125. Before filing Your Complaint, You did not consider whether Leachco's instructions were adequate to mitigate the alleged risk of injury.*

**RESPONSE:**

Complaint Counsel objects to this Request on the grounds that it is vague and ambiguous in the use of the terms "consider" and "mitigate." Complaint Counsel also objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when consumers used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate. Complaint Counsel also objects to this Request to the extent it seeks expert discovery, as requests for admission are not proper expert discovery tools pursuant to 16 C.F.R. § 1025.31(c)(4).

Subject to these qualifications, and without waiving its objections, Complaint Counsel denies that it did not consider whether Leachco's instructions were adequate to "mitigate the alleged risk of injury."

*126. Before filing Your Complaint, You did not consider whether Leachco's warnings were adequate to cure the alleged risk of injury.*

**RESPONSE:**

Complaint Counsel objects to this Request on the grounds that it is vague and ambiguous in the use of the term “consider” and “cure.” Complaint Counsel also objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster’s warnings or instructions and to the extent it suggests that any of the Podster’s warnings and instructions are adequate. Complaint Counsel also objects to this Request to the extent it seeks expert discovery, as requests for admission are not proper expert discovery tools pursuant to 16 C.F.R. § 1025.31(c)(4).

Subject to these qualifications, and without waiving its objections, Complaint Counsel denies that it did not consider whether Leachco’s warnings were adequate to “cure the alleged risk of injury.”

*127. Before filing Your Complaint, You did not consider whether Leachco’s instructions were adequate to cure the alleged risk of injury.*

**RESPONSE:**

Complaint Counsel objects to this Request on the grounds that it is vague and ambiguous in the use of the term “consider” and “cure.” Complaint Counsel also objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster’s warnings or instructions and to the extent it suggests that any of the Podster’s warnings and instructions are adequate. Complaint Counsel also objects to this Request to the extent it seeks expert discovery, as requests for admission are not proper expert discovery tools pursuant to 16 C.F.R. § 1025.31(c)(4).

Subject to these qualifications, and without waiving its objections, Complaint Counsel denies that it did not consider whether Leachco's instructions were adequate to "cure the alleged risk of injury."

*128. After an administrative complaint has been filed by Complaint Counsel, the Commission's General Counsel represents both the Commissioners and Complaint Counsel (and their staff).*

**RESPONSE:**

The subject matter involved in these proceedings concerns whether Respondent's Podsters are defective and create a substantial product hazard under Section 15 of the CPSA, 15 U.S.C. § 2064. Complaint Counsel objects to this Request and states that it seeks information that is neither relevant to the subject matter involved in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Whether the CPSC Office of General Counsel has certain staff members on the Commission side of a litigation barrier and certain staff members on the Complaint Counsel side of a litigation barrier is not relevant to the Court's analysis in this matter under Section 15 of the CPSA, 15 U.S.C. § 2064, or applicable regulations, including 16 C.F.R. Part 1115. Complaint Counsel further objects to this Request on the grounds that it is vague and ambiguous in the use of the phrases "represents both" and to the extent it incorrectly implies that the same staff members represent both the Commission and Complaint Counsel. Complaint Counsel also objects to this Request as it calls for a legal conclusion. Complaint Counsel further objects to this Request to the extent that it seeks information protected by privilege or other protection, including the attorney-client privilege, work product doctrine, or deliberative process privilege.

*129. After an administrative complaint has been filed by Complaint Counsel, the*

*Commission's General Counsel advises both the Commissioners and Complaint Counsel (and their staff).*

**RESPONSE:**

The subject matter involved in these proceedings concerns whether Respondent's Podsters are defective and create a substantial product hazard under Section 15 of the CPSA, 15 U.S.C. § 2064. Complaint Counsel objects to this Request and states that it seeks information that is neither relevant to the subject matter involved in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Whether the CPSC Office of General Counsel has certain staff members on the Commission side of a litigation barrier and certain staff members on the Complaint Counsel side of a litigation barrier is not relevant to the Court's analysis in this matter under Section 15 of the CPSA, 15 U.S.C. § 2064, or applicable regulations, including 16 C.F.R. Part 1115. Complaint Counsel further objects to this Request on the grounds that it is vague and ambiguous in the use of the phrases "advises both" and to the extent it incorrectly implies that the same staff members represent both the Commission and Complaint Counsel. Complaint Counsel also objects to this Request as it calls for a legal conclusion. Complaint Counsel further objects to this Request to the extent that it seeks information protected by privilege or other protection, including the attorney-client privilege, work product doctrine, or deliberative process privilege.

*130. You do not propose a reasonable alternative design for the Podster.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*131. You do not propose any alternative design for the Podster.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*132. You do not allege that a reasonable alternative design of the Podster would mitigate the Substantial Product Hazard allegedly presented by the Podster.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*133. You do not allege that a reasonable alternative design of the Podster would cure the Substantial Product Hazard allegedly presented by the Podster.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*134. You do not allege that an alternative design of the Podster would mitigate the risk of injury while providing to consumers the same utility.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*135. You do not allege that an alternative design of the Podster would cure the risk of injury while providing to consumers the same utility.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*136. You contend that Leachco is liable under the CPSA regardless of whether Leachco Tested the Podster before it first sold the Podster.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*137. You contend that Leachco is liable under the CPSA regardless of whether Leachco Tested the Podster after it first sold the Podster.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*138. You contend that Leachco is liable under the CPSA if Leachco has received zero communications Concerning consumers' misuse of the Podster.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*139. You contend that Leachco is liable under the CPSA if Leachco was unaware of consumer misuse of the Podster.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*140. You contend that Leachco is liable under the CPSA if Leachco is unaware of consumer misuse of the Podster.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*141. You contend that Leachco is liable under the CPSA if Leachco never considered potential risks arising out of the use of the Podster.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*142. You contend that Leachco is liable under the CPSA even if Leachco never considered potential risks arising out of misuse of the Podster.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*143. All Infants need adult supervision.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*144. All Infants need adult supervision regardless of the use of an Infant product.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*145. All Infants need adult supervision regardless of the use of a product intended for Infants.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*146. All Infants need adult supervision regardless of the use of an Infant product by adults.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*147. The Podster is useful.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*148. The Podster is useful for Caregivers.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*149. The Podster does not fail to comply with any applicable consumer product safety rule under Chapter 47 of Title 15 of the U.S. Code.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*150. The Podster has never failed to comply with any applicable consumer product safety rule under Chapter 47 of Title 15 of the U.S. Code.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*151. The Podster complies with all applicable product safety rules under Chapter 47 of Title 15 of the U.S. Code.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*152. The Podster has always complied with all applicable product safety rules under Chapter 47 of Title 15 of the U.S. Code.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*153. The Podster does not fail to comply with any rule, regulation, standard, or ban, similar to an applicable safety rule under Chapter 47 of Title 15 of the U.S. Code, under any other Act enforced by the Commission.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*154. The Podster has never failed to comply with any rule, regulation, standard, or ban, similar to an applicable safety rule under Chapter 47 of Title 15 of the U.S. Code, under any other Act enforced by the Commission.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*155. The Podster complies with all rules, regulations, standards, or bans similar to applicable safety rules under Chapter 47 of Title 15 of the U.S. Code under any other Act enforced by the Commission.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*156. The Podster has always complied with all rules, regulations, standards, or bans similar to applicable safety rules under Chapter 47 of Title 15 of the U.S. Code under any other Act enforced by the Commission.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*157. The Podster is safe when used consistent with Leachco's warnings.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*158. The Podster is safe when used consistent with Leachco's instructions.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*159. The Podster is safe when consumers follow Leachco's warnings.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*160. The Podster is safe when consumers follow with Leachco's instructions.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*161. The Podster is not defective when used consistent with Leachco's warnings.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*162. The Podster is not defective when used consistent with Leachco's instructions.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*163. The Podster is not defective when consumers follow Leachco's warnings.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*164. The Podster is not defective when consumers follow Leachco's instructions.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this

request for admission.

*165. The Podster does not present a Substantial Product Hazard when it is used consistent with Leachco's warnings.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*166. The Podster does not present a Substantial Product Hazard when it is used consistent with Leachco's instructions.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*167. The Podster does not present a Substantial Product Hazard when consumers follow Leachco's warnings.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*168. The Podster does not present a Substantial Product Hazard when consumers follow Leachco's instructions.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*169. The Podster does not have a Product Defect when it is used consistent with Leachco's warnings.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*170. The Podster does not have a Product Defect when it is used consistent with Leachco's instructions.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*171. The Podster does not have a Product Defect when consumers follow Leachco's warnings.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*172. The Podster does not have a Product Defect when consumers follow Leachco's instructions.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*173. The Podster presents no Substantial Risk of Injury when used consistent with Leachco's warnings.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*174. The Podster presents no Substantial Risk of Injury when used consistent with Leachco's instructions.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*175. The Podster presents no Substantial Risk of Injury when consumers follow Leachco's warnings.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*176. The Podster presents no Substantial Risk of Injury when consumers follow Leachco's instructions.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*177. The Podster does not have a defect when used consistent with Leachco's warnings.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*178. The Podster does not have a defect when used consistent with Leachco's instructions.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this

request for admission.

*179. The Podster does not have a defect when consumers follow Leachco's warnings.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*180. The Podster does not have a defect when consumers follow Leachco's instructions.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*181. Infants under constant adult supervision can roll or move on the Podster into a position where their noses and mouths may be obstructed by the Podster.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*182. Infants under constant adult supervision can roll or move off the Podster into a position where their noses and mouths may be obstructed by another object, such as soft bedding.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*183. Infants under constant adult supervision who roll or move on the Podster into a position where their noses and mouths may be obstructed by the Podster can be repositioned to prevent the obstruction.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*184. Infants under constant adult supervision who roll or move off the Podster into a position where their noses and mouths may be obstructed by another object, such as soft bedding, may be repositioned by an adult to prevent the obstruction.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*185. You are aware of no injuries caused by the Podster when the Podster was used consistent with Leachco's warnings.*

**RESPONSE:**

Complaint Counsel objects to this Request and states that it is vague and ambiguous in the use of the phrases "You are aware of no injuries" and "when the Podster was used consistent," as well as "Leachco's warnings," which is not a defined term. Complaint Counsel also objects to this Request as it seeks information from Complaint Counsel about Respondent's own business practices that is readily or more easily accessible to Respondent. Complaint Counsel further objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate. Complaint Counsel further objects to this request to the extent that Complaint Counsel is not necessarily aware of all incidents in which infants were injured by the Podster when the

Podster was not used in accordance with Leachco's warnings.

Subject to these qualifications, and without waiving its objections, Complaint Counsel Complaint Counsel admits to the representations made in its Complaint, particularly paragraphs 35-37, that describe two fatal incidents involving the Podsters. In addition, Complaint Counsel has recently learned of a third fatal incident involving the Podster, and Complaint Counsel has notified Leachco of this incident. Complaint Counsel denies the remainder of this Request.

*186. You are aware of no injuries caused by the Podster when the Podster was used consistent with Leachco's instructions.*

**RESPONSE:**

Complaint Counsel objects to this Request and states that it is vague and ambiguous in the use of the phrases "You are aware of no injuries" and "when the Podster was used consistent," as well as "Leachco's instructions," which is not a defined term. Complaint Counsel also objects to this Request as it seeks information from Complaint Counsel about Respondent's own business practices that is readily or more easily accessible to Respondent. Complaint Counsel further objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate. Complaint Counsel further objects to this request to the extent that Complaint Counsel is not necessarily aware of all incidents in which infants were injured by the Podster when the Podster was not used in accordance with Leachco's instructions.

Subject to these qualifications, and without waiving its objections, Complaint Counsel admits to the representations made in its Complaint, particularly paragraphs 35-37, that describe

two fatal incidents involving the Podsters. In addition, Complaint Counsel has recently learned of a third fatal incident involving the Podster, and Complaint Counsel has notified Leachco of this incident. Complaint Counsel denies the remainder of this Request.

*187. You are aware of no injuries caused by the Podster when a consumer(s) followed Leachco's warnings.*

**RESPONSE:**

Complaint Counsel objects to this Request and states that it is vague and ambiguous in the use of the phrases “You are aware of no injuries” and “when a consumer(s) followed Leachco’s warnings,” which is not a defined term. Complaint Counsel also objects to this Request as it seeks information from Complaint Counsel about Respondent’s own business practices that is readily or more easily accessible to Respondent. Complaint Counsel further objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster’s warnings or instructions and to the extent it suggests that any of the Podster’s warnings and instructions are adequate. Complaint Counsel further objects to this request to the extent that Complaint Counsel is not necessarily aware of all incidents in which infants were injured by the Podster when the Podster was not used in accordance with Leachco’s warnings.

Subject to these qualifications, and without waiving its objections, Complaint Counsel admits to the representations made in its Complaint, particularly paragraphs 35-37, that describe two fatal incidents involving the Podsters. In addition, Complaint Counsel has recently learned of a third fatal incident involving the Podster, and Complaint Counsel has notified Leachco of this incident. Complaint Counsel denies the remainder of this Request.

*188. You are aware of no injuries caused by the Podster when a consumer(s) followed Leachco's instructions.*

**RESPONSE:**

Complaint Counsel objects to this Request and states that it is vague and ambiguous in the use of the phrases “You are aware of no injuries” and “when a consumer(s) followed Leachco’s instructions,” which is not a defined term. Complaint Counsel also objects to this Request as it seeks information from Complaint Counsel about Respondent’s own business practices that is readily or more easily accessible to Respondent. Complaint Counsel further objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster’s warnings or instructions and to the extent it suggests that any of the Podster’s warnings and instructions are adequate. Complaint Counsel further objects to this request to the extent that Complaint Counsel is not necessarily aware of all incidents in which infants were injured by the Podster when the Podster was not used in accordance with Leachco’s instructions.

Subject to these qualifications, and without waiving its objections, Complaint Counsel admits to the representations made in its Complaint, particularly paragraphs 35-37, that describe two fatal incidents involving the Podsters. In addition, Complaint Counsel has recently learned of a third fatal incident involving the Podster, and Complaint Counsel has notified Leachco of this incident. Complaint Counsel denies the remainder of this Request.

*189. You are aware of no injuries associated with a Podster when the Podster was used consistent with Leachco's warnings.*

**RESPONSE:**

Complaint Counsel objects to this Request and states that it is vague and ambiguous in the use of the phrases “You are aware of no injuries” and “when the Podster was used consistent with Leachco’s warnings,” which is not a defined term. Complaint Counsel also objects to this Request as it seeks information from Complaint Counsel about Respondent’s own business practices that is readily or more easily accessible to Respondent. Complaint Counsel further objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster’s warnings or instructions and to the extent it suggests that any of the Podster’s warnings and instructions are adequate. Complaint Counsel further objects to this request to the extent that Complaint Counsel is not necessarily aware of all incidents in which infants were injured by the Podster when the Podster was not used in accordance with Leachco’s warnings.

Subject to these qualifications, and without waiving its objections, Complaint Counsel admits to the representations made in its Complaint, particularly paragraphs 35-37, that describe two fatal incidents involving the Podsters. In addition, Complaint Counsel has recently learned of a third fatal incident involving the Podster, and Complaint Counsel has notified Leachco of this incident. Complaint Counsel denies the remainder of this Request.

*190. You are aware of no injuries associated with a Podster when the Podster was used consistent with Leachco’s instructions.*

**RESPONSE:**

Complaint Counsel objects to this Request and states that it is vague and ambiguous in the use of the phrases “You are aware of no injuries” and “when the Podster was used consistent

with Leachco's instructions," which is not a defined term. Complaint Counsel also objects to this Request as it seeks information from Complaint Counsel about Respondent's own business practices that is readily or more easily accessible to Respondent. Complaint Counsel further objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate. Complaint Counsel further objects to this request to the extent that Complaint Counsel is not necessarily aware of all incidents in which infants were injured by the Podster when the Podster was not used in accordance with Leachco's instructions.

Subject to these qualifications, and without waiving its objections, Complaint Counsel admits to the representations made in its Complaint, particularly paragraphs 35-37, that describe two fatal incidents involving the Podsters. In addition, Complaint Counsel has recently learned of a third fatal incident involving the Podster, and Complaint Counsel has notified Leachco of this incident. Complaint Counsel denies the remainder of this Request.

*191. You are aware of no injuries associated with a Podster when a consumer(s) followed Leachco's warnings.*

**RESPONSE:**

Complaint Counsel objects to this Request and states that it is vague and ambiguous in the use of the phrases "You are aware of no injuries" and "when the Podster was used consistent with Leachco's warnings," which is not a defined term. Complaint Counsel also objects to this Request as it seeks information from Complaint Counsel about Respondent's own business practices that is readily or more easily accessible to Respondent. Complaint Counsel further

objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate. Complaint Counsel further objects to this request to the extent that Complaint Counsel is not necessarily aware of all incidents in which infants were injured by the Podster when the Podster was not used in accordance with Leachco's warnings.

Subject to these qualifications, and without waiving its objections, Complaint Counsel admits to the representations made in its Complaint, particularly paragraphs 35-37, that describe two fatal incidents involving the Podsters. In addition, Complaint Counsel has recently learned of a third fatal incident involving the Podster, and Complaint Counsel has notified Leachco of this incident. Complaint Counsel denies the remainder of this Request.

*192. You are aware of no injuries associated with a Podster when a consumer(s) followed Leachco's instructions.*

**RESPONSE:**

Complaint Counsel objects to this Request and states that it is vague and ambiguous in the use of the phrases "You are aware of no injuries" and "when the Podster was used consistent with Leachco's instructions," which is not a defined term. Complaint Counsel also objects to this Request as it seeks information from Complaint Counsel about Respondent's own business practices that is readily or more easily accessible to Respondent. Complaint Counsel further objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the

extent it suggests that any of the Podster's warnings and instructions are adequate. Complaint Counsel further objects to this request to the extent that Complaint Counsel is not necessarily aware of all incidents in which infants were injured by the Podster when the Podster was not used in accordance with Leachco's instructions.

Subject to these qualifications, and without waiving its objections, Complaint Counsel admits to the representations made in its Complaint, particularly paragraphs 35-37, that describe two fatal incidents involving the Podsters. In addition, Complaint Counsel has recently learned of a third fatal incident involving the Podster, and Complaint Counsel has notified Leachco of this incident. Complaint Counsel denies the remainder of this Request.

*193. The Podster on which Infant A was placed, as alleged in Paragraph 36 of the Complaint, was not used according to Leachco's warnings.*

**RESPONSE:**

Complaint Counsel objects to this Request and states that it is vague and ambiguous in the use of the phrase "not used according to Leachco's warnings," which is not a defined term. Complaint Counsel further objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate.

Subject to these qualifications, and without waiving its objections, Complaint Counsel admits to the representations made in paragraph 36 of the Complaint, that describes use of a Podster in a crib, and paragraph 38, that alleges that "it is foreseeable that caregivers will use the Podster for infant sleep, despite instructions and warnings." Complaint Counsel further refers

Leachco to Task No. 160519CCC2600, which speaks for itself. Complaint Counsel denies the remainder of this Request.

*194. The Podster on which Infant A was placed, as alleged in Paragraph 36 of the Complaint, was not used according to Leachco's instructions.*

**RESPONSE:**

Complaint Counsel objects to this Request and states that it is vague and ambiguous in the use of the phrase “not used according to Leachco’s instructions,” which is not a defined term. Complaint Counsel further objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster’s warnings or instructions and to the extent it suggests that any of the Podster’s warnings and instructions are adequate.

Subject to these qualifications, and without waiving its objections, Complaint Counsel admits to the representations made in paragraph 36 of the Complaint, that describes use of a Podster in a crib, and paragraph 38, that alleges that “it is foreseeable that caregivers will use the Podster for infant sleep, despite instructions and warnings.” Complaint Counsel further refers Leachco to Task No. 160519CCC2600, which speaks for itself. Complaint Counsel denies the remainder of this Request.

*195. Concerning Incident A, a caregiver(s) of Infant A placed Infant A in a Podster and then placed the Podster in a crib.*

**RESPONSE:**

Complaint Counsel objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used

by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate.

Subject to this qualification, and without waiving its objections, Complaint Counsel denies this Request as inconsistent with the records relating to the incident, Task No. 160519CCC2600, which speak for themselves and are equally accessible to Leachco as they are to Complaint Counsel.

*196. Concerning Incident A, a caregiver(s) of Infant A placed a bottle, containing liquid, in Infant A's mouth when the caregiver(s) placed Infant A in the Podster and then placed the Podster in a crib.*

**RESPONSE:**

Complaint Counsel objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate.

Subject to this qualification, and without waiving its objections, Complaint Counsel admits in part and denies in part the Request as follows. Complaint Counsel admits that the incident records relating to Task No. 160519CCC2600 indicate a caregiver provided a bottle to the infant. Complaint Counsel further refers Leachco to Task No. 160519CCC2600, which speaks for itself. Complaint Counsel denies the remainder of this Request.

*197. Concerning Incident A, a caregiver(s) of Infant A placed a bottle, containing liquid, in Infant A's mouth when the caregiver(s) placed Infant A in the Podster and then placed the*

*Podster in a crib, which also contained a soft object.*

**RESPONSE:**

Complaint Counsel objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate.

Subject to this qualification, and without waiving its objections, Complaint Counsel admits in part and denies in part the Request as follows. Complaint Counsel admits that the incident records relating to Task No. 160519CCC2600 indicate a caregiver provided a bottle to the infant in a crib that also contained a soft object. Complaint Counsel further refers Leachco to Task No. 160519CCC2600, which speaks for itself. Complaint Counsel denies the remainder of this Request.

*198. Concerning Incident A, after Infant A was placed in a Podster and after this Podster was placed in a crib, Infant A was left unattended for over an hour.*

**RESPONSE:**

Complaint Counsel objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate.

Subject to this qualification, and without waiving its objections, Complaint Counsel admits in part and denies in part the Request as follows. Complaint Counsel admits that the

incident records relating to Task No. 160519CCC2600 indicate a caregiver provided a bottle to the infant in a crib that the infant was left unattended. Complaint Counsel further refers Leachco to Task No. 160519CCC2600, which speaks for itself. Complaint Counsel denies the remainder of this Request.

*199. Concerning Incident A, Infant A was placed in a Podster and after this Podster was placed in a crib, caregivers did not attend to Infant A for over an hour.*

**RESPONSE:**

Complaint Counsel objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate.

Subject to this qualification, and without waiving its objections, Complaint Counsel admits in part and denies in part the Request as follows. Complaint Counsel admits that the incident records relating to Task No. 160519CCC2600 indicate a caregiver provided a bottle to the infant in a crib and that the infant was left unattended. Complaint Counsel further refers Leachco to Task No. 160519CCC2600, which speaks for itself. Complaint Counsel denies the remainder of this Request.

*200. Concerning Incident A, after Infant A was placed in a Podster and after this Podster was placed in a crib, Infant A was not supervised by an adult for over an hour.*

**RESPONSE:**

Complaint Counsel objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used

by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate.

Subject to this qualification, and without waiving its objections, Complaint Counsel admits in part and denies in part the Request as follows. Complaint Counsel admits that the incident records relating to Task No. 160519CCC2600 indicate the infant was left unsupervised. Complaint Counsel further refers Leachco to Task No. 160519CCC2600, which speaks for itself. Complaint Counsel denies the remainder of this Request.

*201. Concerning Incident A, After Infant A was placed in a Podster and after this Podster was placed in a crib, Infant A was not under constant adult supervision.*

**RESPONSE:**

Complaint Counsel objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate.

Subject to this qualification, and without waiving its objections, Complaint Counsel admits in part and denies in part the Request as follows. Complaint Counsel admits that the incident records relating to Task No. 160519CCC2600 indicate the infant was left unsupervised. Complaint Counsel further refers Leachco to Task No. 160519CCC2600, which speaks for itself. Complaint Counsel denies the remainder of this Request.

*202. Concerning Incident A, a bottle filled with liquid was placed in Infant A's mouth.*

**RESPONSE:**

Complaint Counsel objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate.

Subject to this qualification, and without waiving its objections, Complaint Counsel admits in part and denies in part the Request as follows. Complaint Counsel admits that the incident records relating to Task No. 160519CCC2600 indicate a bottle was left with the infant. Complaint Counsel further refers Leachco to Task No. 160519CCC2600, which speaks for itself. Complaint Counsel denies the remainder of this Request.

*203. Concerning Incident B, the Podster on which Infant B was placed, as alleged in Paragraph 37 of the Complaint, was not used according to Leachco's warnings.*

**RESPONSE:**

Complaint Counsel objects to this Request and states that it is vague and ambiguous in the use of the phrase "not used according to Leachco's warnings," which is not a defined term. Complaint Counsel further objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate.

Subject to these qualifications, and without waiving its objections, Complaint Counsel admits to the representations made in paragraph 37 of the Complaint, that describes use of a

Podster on an adult bed, and paragraph 38, that alleges that “it is foreseeable that caregivers will use the Podster for infant sleep, despite instructions and warnings.” Complaint Counsel further refers Leachco to Task No. 200917CCC3888, which speaks for itself. Complaint Counsel denies the remainder of this Request.

*204. Concerning Incident B, the Podster on which Infant B was placed, as alleged in Paragraph 37 of the Complaint, was not used according to Leachco’s instructions.*

**RESPONSE:**

Complaint Counsel objects to this Request and states that it is vague and ambiguous in the use of the phrase “not used according to Leachco’s instructions,” which is not a defined term. Complaint Counsel further objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster’s warnings or instructions and to the extent it suggests that any of the Podster’s warnings and instructions are adequate.

Subject to these qualifications, and without waiving its objections, Complaint Counsel admits to the representations made in paragraph 37 of the Complaint, that describes use of a Podster on an adult bed, and paragraph 38, that alleges that “it is foreseeable that caregivers will use the Podster for infant sleep, despite instructions and warnings.” Complaint Counsel further refers Leachco to Task No. 200917CCC3888, which speaks for itself. Complaint Counsel denies the remainder of this Request.

*205. Concerning Incident B, Infant B was placed in a Podster for co-sleeping.*

**RESPONSE:**

Complaint Counsel objects to this Request and states that it is vague and ambiguous in

the use of the phrase “co-sleeping,” which is not a defined term. Complaint Counsel further objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster’s warnings or instructions and to the extent it suggests that any of the Podster’s warnings and instructions are adequate.

Subject to these qualifications, and without waiving its objections, Complaint Counsel admits to the representations made in paragraph 37 of the Complaint, that describes use of a Podster on an adult bed, and paragraph 38, that alleges that “it is foreseeable that caregivers will use the Podster for infant sleep, despite instructions and warnings.” Complaint Counsel also admits that the incident records relating to Task No. 200917CCC3888 indicate the infant was sleeping with her parents. Complaint Counsel further refers Leachco to Task No. 200917CCC3888, which speaks for itself. Complaint Counsel denies the remainder of this Request.

*206. Concerning Incident B, Infant B was placed in a Podster on an adult bed between two caregivers.*

**RESPONSE:**

Complaint Counsel objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster’s warnings or instructions and to the extent it suggests that any of the Podster’s warnings and instructions are adequate.

Subject to this qualification, and without waiving its objections, Complaint Counsel admits to the representations made in paragraph 37 of the Complaint, that describes use of a

Podster “on an adult bed between two caregivers,” and paragraph 38, that alleges that “it is foreseeable that caregivers will use the Podster for infant sleep, despite instructions and warnings.” Complaint Counsel also admits that the incident records relating to Task No. 200917CCC3888 indicate the infant was sleeping on an adult bed between two caregivers. Complaint Counsel further refers Leachco to Task No. 200917CCC3888, which speaks for itself. Complaint Counsel denies the remainder of this Request.

*207. Concerning Incident B, Infant B was placed in a Podster for bed-sharing.*

**RESPONSE:**

Complaint Counsel objects to this Request and states that it is vague and ambiguous in the use of the phrase “bed-sharing,” which is not a defined term. Complaint Counsel also objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster’s warnings or instructions and to the extent it suggests that any of the Podster’s warnings and instructions are adequate.

Subject to these qualifications, and without waiving its objections, Complaint Counsel admits to the representations made in paragraph 37 of the Complaint, that describes use of a Podster “on an adult bed between two caregivers,” and paragraph 38, that alleges that “it is foreseeable that caregivers will use the Podster for infant sleep, despite instructions and warnings.” Complaint Counsel also admits that the incident records relating to Task No. 200917CCC3888 indicate the infant was sleeping on an adult bed between two caregivers. Complaint Counsel further refers Leachco to Task No. 200917CCC3888, which speaks for itself. Complaint Counsel denies the remainder of this Request.

*208. Concerning Incident B, Infant B’s caregivers used a Podster for co-sleeping.*

**RESPONSE:**

Complaint Counsel objects to this Request and states that it is vague and ambiguous in the use of the phrase “co-sleeping,” which is not a defined term. Complaint Counsel further objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster’s warnings or instructions and to the extent it suggests that any of the Podster’s warnings and instructions are adequate.

Subject to these qualifications, and without waiving its objections, Complaint Counsel admits to the representations made in paragraph 37 of the Complaint, that describes use of a Podster on an adult bed, and paragraph 38, that alleges that “it is foreseeable that caregivers will use the Podster for infant sleep, despite instructions and warnings.” Complaint Counsel also admits that the incident records relating to Task No. 200917CCC3888 indicate the infant was sleeping with her parents. Complaint Counsel further refers Leachco to Task No. 200917CCC3888, which speaks for itself. Complaint Counsel denies the remainder of this Request.

*209. Concerning Incident B, Infant B’s caregivers used a Podster for bedsharing.*

**RESPONSE:**

Complaint Counsel objects to this Request and states that it is vague and ambiguous in the use of the phrase “bedsharing,” which is not a defined term. Complaint Counsel also objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster’s warnings or instructions and to the extent it suggests that any of the Podster’s warnings and instructions are adequate.

Subject to these qualifications, and without waiving its objections, Complaint Counsel admits to the representations made in paragraph 37 of the Complaint, that describes use of a Podster “on an adult bed between two caregivers,” and paragraph 38, that alleges that “it is foreseeable that caregivers will use the Podster for infant sleep, despite instructions and warnings.” Complaint Counsel also admits that the incident records relating to Task No. 200917CCC3888 indicate the infant was sleeping on an adult bed between two caregivers. Complaint Counsel further refers Leachco to Task No. 200917CCC3888, which speaks for itself. Complaint Counsel denies the remainder of this Request.

*210. Concerning Incident B, Infant B’s caregivers could have shared their bed with Infant B without using a Podster.*

**RESPONSE:**

Complaint Counsel objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster’s warnings or instructions and to the extent it suggests that any of the Podster’s warnings and instructions are adequate. Complaint Counsel also objects to the extent this Request poses a hypothetical that is an improper request for admission and/or calls for expert testimony. Requests for admission are not proper expert discovery tools pursuant to 16 C.F.R. § 1025.31(c)(4).

Subject to these qualifications, and without waiving its objections, Complaint Counsel admits in part and denies in part the Request as follows. Complaint Counsel admits that the incident records relating to Task No. 200917CCC3888 indicate that the infant’s caregivers were sleeping in an adult bed. Complaint Counsel further refers Leachco to Task No. 200917CCC3888, which speaks for itself. Complaint Counsel denies the remainder of this

Request.

*211. Concerning Incident B, Infant B's caregivers could have shared their bed with Infant B without placing their child in a Podster.*

**RESPONSE:**

Complaint Counsel objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate. Complaint Counsel also objects to the extent this Request poses a hypothetical that is an improper request for admission and/or calls for expert testimony. Requests for admission are not proper expert discovery tools pursuant to 16 C.F.R. § 1025.31(c)(4).

Subject to these qualifications, and without waiving its objections, Complaint Counsel admits in part and denies in part the Request as follows. Complaint Counsel admits that the incident records relating to Task No. 200917CCC3888 indicate that the infant's caregivers were sleeping in an adult bed. Complaint Counsel further refers Leachco to Task No. 200917CCC3888, which speaks for itself. Complaint Counsel denies the remainder of this Request.

*212. The Podster has always contained warnings that it should not be used for sleep and that adult supervision is always required.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*213. Infant A's death occurred after Infant A had been placed in a Podster for*

*unsupervised sleep.*

**RESPONSE:**

Complaint Counsel objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate.

Subject to this qualification, and without waiving its objections, Complaint Counsel admits to the representations made in paragraph 36 of the Complaint, that describes use of a Podster in a crib and that the infant "later died of complications from asphyxia," and paragraph 38, that alleges that "it is foreseeable that caregivers will use the Podster for infant sleep, despite instructions and warnings." Complaint Counsel further refers Leachco to Task No. 160519CCC2600, which speaks for itself. Complaint Counsel denies the remainder of this Request.

*214. Infant B's death occurred after Infant B had been placed in a Podster for unsupervised sleep.*

**RESPONSE:**

Complaint Counsel objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate.

Subject to this qualification, and without waiving its objections, Complaint Counsel

admits to the representations made in paragraph 37 of the Complaint, that alleged the infant “suffocated after being placed face up in the Podster on an adult bed after one of the caregivers rolled onto the Podster and infant,” and paragraph 38, that alleges that “it is foreseeable that caregivers will use the Podster for infant sleep, despite instructions and warnings.” Complaint Counsel further refers Leachco to Task No. 200917CCC3888, which speaks for itself. Complaint Counsel denies the remainder of this Request.

*215. The in-home daycare center identified in IDI 220916HCC1454 was not licensed by any governmental authority.*

**RESPONSE:**

The subject matter involved in these proceedings concerns whether Respondent’s Podsters are defective and create a substantial product hazard under Section 15 of the CPSA, 15 U.S.C. § 2064. Complaint Counsel objects to this Request and states that it seeks information that is neither relevant to the subject matter involved in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Whether state or local jurisdictions or even “any governmental authority” are licensed is not relevant to the Court’s analysis in this matter under Section 15 of the CPSA, 15 U.S.C. § 2064, or applicable regulations, including 16 C.F.R. Part 1115. Complaint Counsel further objects to this Request on the grounds that it is vague and ambiguous in the use of the phrases “any governmental authority” which is not a defined term.

Subject to these qualifications, and without waiving its objections, Complaint has made reasonable inquiry and the information known or readily available is insufficient to enable it to admit or deny this Request.

*216. The in-home daycare center identified in IDI 220916HCC1454 was not licensed by any organization authorized to license in-home daycare centers.*

**RESPONSE:**

The subject matter involved in these proceedings concerns whether Respondent's Podsters are defective and create a substantial product hazard under Section 15 of the CPSA, 15 U.S.C. § 2064. Complaint Counsel objects to this Request and states that it seeks information that is neither relevant to the subject matter involved in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Whether "any organization" are licensed is not relevant to the Court's analysis in this matter under Section 15 of the CPSA, 15 U.S.C. § 2064, or applicable regulations, including 16 C.F.R. Part 1115. Complaint Counsel further objects to this Request on the grounds that it is vague and ambiguous in the use of the phrases "any organization" which is not a defined term.

Subject to these qualifications, and without waiving its objections, Complaint has made reasonable inquiry and the information known or readily available is insufficient to enable it to admit or deny this Request.

*217. The in-home daycare center identified in IDI 220916HCC1454 was not licensed by any licensing authority.*

**RESPONSE:**

The subject matter involved in these proceedings concerns whether Respondent's Podsters are defective and create a substantial product hazard under Section 15 of the CPSA, 15 U.S.C. § 2064. Complaint Counsel objects to this Request and states that it seeks information that is neither relevant to the subject matter involved in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Whether "any licensing authority" licensed the in-home daycare center for IDI 220916HCC1454 is not relevant to the Court's analysis in this matter under Section 15 of the CPSA, 15 U.S.C. § 2064, or applicable regulations, including 16

C.F.R. Part 1115. Complaint Counsel further objects to this Request on the grounds that it is vague and ambiguous in the use of the phrases “any licensing authority” which is not a defined term.

Subject to these qualifications, and without waiving its objections, Complaint has made reasonable inquiry and the information known or readily available is insufficient to enable it to admit or deny this Request.

*218. Concerning Incident C, Infant C’s death occurred after Infant C had been placed in a Podster for unsupervised sleep.*

**RESPONSE:**

Complaint Counsel objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster’s warnings or instructions and to the extent it suggests that any of the Podster’s warnings and instructions are adequate.

Subject to this qualification, and without waiving its objections, Complaint Counsel admits that the incident records relating to Task No. 220916HCC1454 indicate that the infant’s death occurred after the infant had been placed in a Podster for unsupervised sleep. Complaint Counsel further refers Leachco to Task No. 220916HCC1454, which speaks for itself. Complaint Counsel denies the remainder of this Request.

*219. Concerning Incident C, Infant C’s caregiver(s) placed Infant C in a Podster for a nap.*

**RESPONSE:**

Complaint Counsel objects to this Request as misleading to the extent that it suggests that

Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate.

Subject to this qualification, and without waiving its objections, Complaint Counsel admits that the incident records relating to Task No. 220916HCC1454 indicate that the infant's caregiver placed the infant in a Podster for a nap. Complaint Counsel further refers Leachco to Task No. 220916HCC1454, which speaks for itself. Complaint Counsel denies the remainder of this Request.

*220. Concerning Incident C, Infant C was placed in a Podster, which was in a crib or "play yard".*

**RESPONSE:**

Complaint Counsel objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate.

Subject to this qualification, and without waiving its objections, Complaint Counsel admits that the incident records relating to Task No. 220916HCC1454 indicate that the infant was placed in a playpen identified as a "pack-n-play." Complaint Counsel further refers Leachco to Task No. 220916HCC1454, which speaks for itself. Complaint Counsel denies the remainder of this Request.

*221. Concerning Incident C, a blanket was in the crib or "play yard" in which Infant C*

*was placed.*

**RESPONSE:**

Complaint Counsel objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate.

Subject to this qualification, and without waiving its objections, Complaint Counsel admits that the incident records relating to Task No. 220916HCC1454 indicate that the infant was placed in a playpen identified as a "pack-n-play" that also contained a blanket. Complaint Counsel further refers Leachco to Task No. 220916HCC1454, which speaks for itself. Complaint Counsel denies the remainder of this Request.

*222. Infant C was taken to a pediatrician a week before Incident C because Infant C was extremely congested.*

**RESPONSE:**

Complaint Counsel objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate.

Subject to this qualification, and without waiving its objections, Complaint Counsel admits that the underlying incident records relating to Task No. 220916HCC1454 indicate that the infant was taken to the pediatrician on October 18, 2021 for "congestion." Complaint

Counsel also admits that the Lunenburg County Sherriff's Report notes that the infant was "very congested." Complaint Counsel further refers Leachco to Task No. 220916HCC1454, which speaks for itself. Complaint Counsel denies the remainder of this Request.

*223. Infant C was taken to a pediatrician a week before Incident C because Infant C was congested.*

**RESPONSE:**

Complaint Counsel objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate.

Subject to this qualification, and without waiving its objections, Complaint Counsel admits that the underlying incident records relating to Task No. 220916HCC1454 indicate that the infant was taken to the pediatrician on October 18, 2021 because for "congestion." Complaint Counsel further refers Leachco to Task No. 220916HCC1454, which speaks for itself. Complaint Counsel denies the remainder of this Request.

*224. When Infant C was taken to a pediatrician a week before Incident C, Infant C wheezed during the visit to the pediatrician.*

**RESPONSE:**

Complaint Counsel objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are

adequate.

Subject to this qualification, and without waiving its objections, Complaint Counsel admits that the underlying incident records relating to Task No. 220916HCC1454 indicate that the infant went to the pediatrician for “congestion” on October 18, 2021. Complaint Counsel further refers Leachco to Task No. 220916HCC1454, which speaks for itself. Complaint Counsel denies the remainder of this Request.

*225. When Infant C was taken to a pediatrician a week before Incident C, the physician prescribed respiratory treatments for Infant C.*

**RESPONSE:**

Complaint Counsel objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster’s warnings or instructions and to the extent it suggests that any of the Podster’s warnings and instructions are adequate. Complaint Counsel further objects to this Request as it is vague and ambiguous in the use of the phrase “respiratory treatments.”

Subject to this qualification, and without waiving its objections, Complaint Counsel admits that the underlying incident records relating to Task No. 220916HCC1454 indicate that the infant was prescribed albuterol during a visit to the pediatrician. Complaint Counsel further refers Leachco to Task No. 220916HCC1454, which speaks for itself. Complaint Counsel denies the remainder of this Request.

*226. Within 72 hours of Incident C, Infant C had stopped breathing and turned blue.*

**RESPONSE:**

Complaint Counsel objects to this Request as misleading to the extent that it suggests that

Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate.

Subject to this qualification, and without waiving its objections, Complaint Counsel denies this Request. Specifically, page 3 of the underlying SUIDI form included in Task No. 220916HCC1454 indicates "No" is selected for "Apnea (stopped breathing)" and "Cyanosis (turned blue/gray)."

*227. Two days before Incident C, Infant C's mother called 911 because Infant C was having trouble breathing.*

**RESPONSE:**

Complaint Counsel objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate.

Subject to this qualification, and without waiving its objections, Complaint Counsel admits that the underlying incident records relating to Task No. 220916HCC1454 indicate that the infant's mother called "the rescue squad" days before the incident because the infant was having trouble breathing, but the infant was not transported to the hospital. Complaint Counsel further refers Leachco to Task No. 220916HCC1454, which speaks for itself. Complaint Counsel denies the remainder of this Request.

*228. Infant C was given albuterol on October 25, 2021.*

**RESPONSE:**

Complaint Counsel objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate.

Subject to this qualification, and without waiving its objections, Complaint Counsel admits that the underlying incident records relating to Task No. 220916HCC1454 indicate that the infant was given albuterol on October 25, 2021. Complaint Counsel further refers Leachco to Task No. 220916HCC1454, which speaks for itself. Complaint Counsel denies the remainder of this Request.

*229. Infant C was scheduled to see a doctor on October 25, 2021.*

**RESPONSE:**

Complaint Counsel objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate.

Subject to this qualification, and without waiving its objections, Complaint Counsel admits that the underlying incident records relating to Task No. 220916HCC1454 indicate that the infant was scheduled to see the pediatrician on October 25, 2021. Complaint Counsel further refers Leachco to Task No. 220916HCC1454, which speaks for itself. Complaint Counsel denies the remainder of this Request.

*230. Concerning Incident C, Infant C's caregiver(s) did not follow the warnings and instructions on the Podster.*

**RESPONSE:**

Complaint Counsel objects to this Request and states that it is vague and ambiguous in the use of the phrase “did not follow the warnings and instructions on the Podster,” which are not defined terms. Complaint Counsel further objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster’s warnings or instructions and to the extent it suggests that any of the Podster’s warnings and instructions are adequate.

Subject to these qualifications, and without waiving its objections, Subject to this qualification, and without waiving its objections, Complaint Counsel further refers Leachco to Task No. 220916HCC1454, which speaks for itself. Complaint Counsel denies the remainder of this Request

*231. Within 72 hours of Incident C, Infant C had a possible ear infection.*

**RESPONSE:**

Complaint Counsel objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster’s warnings or instructions and to the extent it suggests that any of the Podster’s warnings and instructions are adequate.

Subject to this qualification, and without waiving its objections, Complaint Counsel admits that the underlying incident records relating to Task No. 220916HCC1454 indicate that

72 hours prior to her death, the infant may have had a “possible ear infection.” Complaint Counsel further refers Leachco to Task No. 220916HCC1454, which speaks for itself. Complaint Counsel denies the remainder of this Request..

*232. According to IDI 220916HCC1454 (Bates No. CPSC0010504), Infant C’s caregiver used a Podster “for elevation.” Admit that Infant C’s caregiver could have used another object—for example, a pillow, blanket, stuffed animal—“for elevation.”*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*233. According to IDI 220916HCC1454 (Bates No. CPSC0010504), Infant C’s caregiver used a Podster to keep Infant C “propped up.” Admit that Infant C’s caregiver could have used another object—for example, a pillow, blanket, stuffed animal—to keep Infant C “propped up.”*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*234. The Podster’s warnings and instructions state that the Podster should not be used by infants exceeding 16 pounds.*

**RESPONSE:**

Complaint Counsel objects to this Request and states that it is vague and ambiguous in the use of the phrase “Podster’s warnings and instructions” which are not defined terms. Complaint Counsel further objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster’s warnings or

instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate. Complaint Counsel also objects to this Request as it seeks information from Complaint Counsel about Respondent's own business practices that is readily or more easily accessible to Respondent.

Subject to these qualifications, and without waiving its objections, Complaint Counsel admits that its Complaint alleges in paragraph 18 of the Complaint that the "Podster contains instructions that it should be used for infants not to exceed 16 pounds . . . ." Complaint Counsel denies the remainder of this Request.

*235. Infant A weighed 19 pounds.*

Complaint Counsel objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate. Complaint Counsel further objects to this Request as it seeks information from Complaint Counsel about Respondent's own business practices that is readily or more easily accessible to Respondent.

Subject to this qualification, and without waiving its objections, Complaint Counsel denies this Request. Specifically, Leachco's own summary judgment motion in the "Infant A" litigation notes: "[m]edical records establish that [Infant A] weighed 16 pounds, 2 ounces" on the date of the incident. Leachco's December 9, 2019 Motion for Summary Judgment, Dkt. No. 843, in *McMullen v. Leachco*, 01-CV-2015-904869.00 (Cir. Ct. of Jefferson Cty., AL).

*236. State regulations governing the daycare center where Infant A died required that infants be held for bottle feeding.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*237. State regulations governing the daycare center where Infant A died prohibit the placement of pillows in cribs.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*238. State regulations governing the daycare center where Infant A died require staff to monitor sleeping infants at all times.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*239. Daycare employees violated state law by giving Infant A a bottle while Infant A was on the Podster.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*240. You contend that there is nothing Leachco can do to cure the Substantial Product Hazard allegedly presented by the Podster.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*241. You contend that there is nothing Leachco can do to mitigate the Substantial Product Hazard allegedly presented by the Podster.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*242. You contend that there is nothing Leachco could have done to cure the Substantial Product Hazard allegedly presented by the Podster.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*243. You contend that there is nothing Leachco could have done to mitigate the Substantial Product Hazard allegedly presented by the Podster.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*244. You contend that there is no warning adequate to cure the Podster's alleged substantial defect.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*245. You contend that there is no instruction adequate to cure the Podster's alleged substantial defect.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*246. You will not rely on Tests performed before Your Complaint was filed to prove your case against Leachco in this proceeding.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*247. You will not rely on Tests performed before Your Complaint was filed to prove Your case against Leachco at the hearing in this proceeding.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*248. Complaint Counsel is not relying on the results of Testing performed before the Complaint was filed.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*249. The Podster is not an “infant sleep product” as defined in Safety Standard for Infant Sleep Products, 86 Fed. Reg. 33022 (June 23, 2021).*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*250. The Safety Standard for Infant Sleep Products specifically exempts “Loungers” unless they are “marketed for infant sleep on the product itself or its packaging, marketing materials, inserts, or instructions, or the product is advertised with pictures of sleeping infants.”*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*251. The Podster is not an Infant Sleep Product.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*252. The Podster is not an “inclined sleeper for infants” as that term is de-fined in 15 U.S.C. § 2057d(b).*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*253. The Podster is not intended to provide sleeping accommodations for an Infant.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*254. The Podster is not marketed to provide sleeping accommodations for an Infant.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*255. The Podster is not designed to provide sleeping accommodations for an Infant.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*256. The Podster was never intended to provide sleeping accommodations for an Infant.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*257. The Podster was never marketed to provide sleeping accommodations for an Infant.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*258. The Podster was never designed to provide sleeping accommodations for an Infant.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*259. The Podster is not intended to provide sleeping accommodations for any infant or baby of any age.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*260. The Podster is not marketed to provide sleeping accommodations for any infant or baby of any age.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*261. The Podster is not designed to provide sleeping accommodations for any infant or baby of any age.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*262. The Podster was never intended to provide sleeping accommodations for any infant or baby of any age.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*263. The Podster was never marketed to provide sleeping accommodations for any infant or baby of any age.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*264. The Podster was never designed to provide sleeping accommodations for any infant or baby of any age.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*265. There is no Mandatory Consumer Product Safety Rule currently in effect that establishes a safety standard for Infant Lounger Products.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*266. The 2019 Mannen Report considered only Inclined Sleep Products.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*267. The 2019 Mannen Report reviewed incidents involving only Inclined Sleep Products.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*268. The 2019 Mannen Report did not review Infant Lounger Products.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*269. The 2019 Mannen Report did not consider Infant Lounger Products.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*270. The 2019 Mannen Report did not study Infant Lounger Products.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*271. The 2019 Mannen Report did not Test Infant Lounger Products.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*272. The 2019 Mannen Report did not review incidents involving Infant Lounger Products.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*273. The 2019 Manned [sic] Report did not review deaths involving Infant Lounger Products.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*274. 16 C.F.R. § 1115.4 was not adopted through notice-and-comment rule-making.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*275. 16 C.F.R. § 1115.4 is an interpretive rule.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*276. 16 C.F.R. § 1115.4 is not a legislative rule.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*277. 16 C.F.R. § 1115.4 is not binding on the public.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*278. 16 C.F.R. § 1115.4 is not binding on Leachco.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*279. The Commission is aware of no more than three deaths allegedly involving a Podster.*

**RESPONSE:**

Complaint Counsel objects to this Request and states that it is vague and ambiguous in the use of the phrases “The Commission is aware” which is not a defined term. Complaint Counsel also objects to this Request as it seeks information from Complaint Counsel about Respondent’s own business practices that is readily or more easily accessible to Respondent. Complaint Counsel further objects to this Request as misleading to the extent that it suggests that

Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate. Complaint Counsel further objects to this Request to the extent that Complaint Counsel is not necessarily aware of all fatal incidents involving infants and a Podster.

Subject to these qualifications, and without waiving its objections, Complaint Counsel admits to the representations made in its Complaint, particularly paragraphs 35-37, that describe two fatal incidents involving the Podsters. In addition, Complaint Counsel has recently learned of a third fatal incident involving the Podster, and Complaint Counsel has notified Leachco of this incident. Complaint Counsel admits that, at this time, it is not aware of any other deaths to infants involving a Podster aside from the three (3) fatal incidents. Complaint Counsel denies the remainder of this Request.

*280. The Commission is aware of no more than three injuries, including deaths, allegedly involving a Podster.*

**RESPONSE:**

Complaint Counsel objects to this Request and states that it is vague and ambiguous in the use of the phrases "The Commission is aware" which is not a defined term. Complaint Counsel also objects to this Request as it seeks information from Complaint Counsel about Respondent's own business practices that is readily or more easily accessible to Respondent. Complaint Counsel further objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are

adequate. Complaint Counsel further objects to this Request to the extent that Complaint Counsel is not necessarily aware of all fatal incidents involving infants and a Podster.

Subject to these qualifications, and without waiving its objections, Complaint Counsel admits to the representations made in its Complaint, particularly paragraphs 35-37, that describe two fatal incidents involving the Podsters. In addition, Complaint Counsel has recently learned of a third fatal incident involving the Podster, and Complaint Counsel has notified Leachco of this incident. Complaint Counsel admits that, at this time, it is not aware of any other injuries to infants involving a Podster aside from the three (3) fatal incidents. Complaint Counsel denies the remainder of this Request.

*281. Aside from the three deaths allegedly identified in IDI 160519CCC2600, IDI 200917CCC3888, and IDI 220916HCC1454, the Commission is aware of no injuries caused by a Podster.*

**RESPONSE:**

Complaint Counsel objects to this Request and states that it is vague and ambiguous in the use of the phrases “The Commission is aware” which is not a defined term. Complaint Counsel also objects to this Request as it seeks information from Complaint Counsel about Respondent’s own business practices that is readily or more easily accessible to Respondent. Complaint Counsel further objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster’s warnings or instructions and to the extent it suggests that any of the Podster’s warnings and instructions are adequate. Complaint Counsel further objects to this Request to the extent that Complaint Counsel is not necessarily aware of all fatal incidents involving infants and a Podster.

Subject to these qualifications, and without waiving its objections, Complaint Counsel admits to the representations made in its Complaint, particularly paragraphs 35-37, that describe two fatal incidents involving the Podsters. In addition, Complaint Counsel has recently learned of a third fatal incident involving the Podster, and Complaint Counsel has notified Leachco of this incident. Complaint Counsel admits that, at this time, it is not aware of any other injuries to infants caused by a Podster aside from the three (3) fatal incidents. Complaint Counsel denies the remainder of this Request.

*282. Aside from the three deaths allegedly identified in IDI 160519CCC2600, IDI 200917CCC3888, and IDI 220916HCC1454, the Commission is aware of no injuries involving a Podster.*

**RESPONSE:**

Complaint Counsel objects to this Request and states that it is vague and ambiguous in the use of the phrases “The Commission is aware” which is not a defined term. Complaint Counsel also objects to this Request as it seeks information from Complaint Counsel about Respondent’s own business practices that is readily or more easily accessible to Respondent. Complaint Counsel further objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster’s warnings or instructions and to the extent it suggests that any of the Podster’s warnings and instructions are adequate. Complaint Counsel further objects to this Request to the extent that Complaint Counsel is not necessarily aware of all fatal incidents involving infants and a Podster.

Subject to these qualifications, and without waiving its objections, Complaint Counsel admits to the representations made in its Complaint, particularly paragraphs 35-37, that describe

two fatal incidents involving the Podsters. In addition, Complaint Counsel has recently learned of a third fatal incident involving the Podster, and Complaint Counsel has notified Leachco of this incident. Complaint Counsel admits that, at this time, it is not aware of any other injuries to infants involving a Podster aside from the three (3) fatal incidents. Complaint Counsel denies the remainder of this Request.

*283. Aside from the three deaths allegedly identified in IDI 160519CCC2600, IDI 200917CCC3888, and IDI 220916HCC1454, the Commission is aware of no injuries associated with the use of a Podster.*

**RESPONSE:**

Complaint Counsel objects to this Request and states that it is vague and ambiguous in the use of the phrases “The Commission is aware” which is not a defined term. Complaint Counsel also objects to this Request as it seeks information from Complaint Counsel about Respondent’s own business practices that is readily or more easily accessible to Respondent. Complaint Counsel further objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster’s warnings or instructions and to the extent it suggests that any of the Podster’s warnings and instructions are adequate. Complaint Counsel further objects to this Request to the extent that Complaint Counsel is not necessarily aware of all fatal incidents involving infants and a Podster.

Subject to these qualifications, and without waiving its objections, Complaint Counsel admits to the representations made in its Complaint, particularly paragraphs 35-37, that describe two fatal incidents involving the Podsters. In addition, Complaint Counsel has recently learned of a third fatal incident involving the Podster, and Complaint Counsel has notified Leachco of

this incident. Complaint Counsel admits that, at this time, it is not aware of any other injuries to infants associated with a Podster aside from the three (3) fatal incidents. Complaint Counsel denies the remainder of this Request.

*284. Aside from the three deaths allegedly identified in IDI 160519CCC2600, IDI 200917CCC3888, and IDI 220916HCC1454, the Commission is aware of no injuries caused by defects alleged in Your Complaint.*

**RESPONSE:**

Complaint Counsel objects to this Request and states that it is vague and ambiguous in the use of the phrases “The Commission is aware” which is not a defined term. Complaint Counsel also objects to this Request as it seeks information from Complaint Counsel about Respondent’s own business practices that is readily or more easily accessible to Respondent. Complaint Counsel further objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster’s warnings or instructions and to the extent it suggests that any of the Podster’s warnings and instructions are adequate. Complaint Counsel further objects to this request to the extent that Complaint Counsel is not necessarily aware of all fatal incidents involving infants and a Podster.

Subject to these qualifications, and without waiving its objections, Complaint Counsel admits to the representations made in its Complaint, particularly paragraphs 35-37, that describe two fatal incidents involving the Podsters. In addition, Complaint Counsel has recently learned of a third fatal incident involving the Podster, and Complaint Counsel has notified Leachco of this incident. Complaint Counsel admits that, at this time, it is not aware of any other injuries to infants caused by the Podster’s defects aside from the three (3) fatal incidents. Complaint

Counsel denies the remainder of this Request.

*285. The deaths allegedly identified in IDI 160519CCC2600, IDI 200917CCC3888, and IDI 220916HCC1454 involve failures by the infants' caregivers to follow or observe one or more of the warnings or instructions contained on the Podster.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*286. The death allegedly identified in IDI 160519CCC2600 involved failures by the infant's caregiver(s) to follow or observe one or more of the warnings or instructions contained on the Podster.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*287. The death allegedly identified in IDI 200917CCC3888 involved failures by the infant's caregiver(s) to follow or observe one or more of the warnings or instructions contained on the Podster.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*288. The death allegedly identified in IDI 220916HCC1454 involved failures by the infant's caregiver(s) to follow or observe one or more of the warnings or instructions contained on the Podster.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*289. The death allegedly identified in IDI 160519CCC2600 was caused by consumer misuse of a Podster.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*290. The death allegedly identified in IDI 200917CCC3888 was caused by consumer misuse of a Podster.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*291. The death allegedly identified in IDI 220916HCC1454 was caused by consumer misuse of a Podster.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*292. The Commission is aware of no injuries or deaths involving a Podster that was used in conformance with the Podster's warnings and instructions.*

**RESPONSE:**

Complaint Counsel objects to this Request and states that it is vague and ambiguous in the use of the phrases "The Commission is aware" and "used in conformance with the Podster's

warnings and instructions” which are not defined terms. Complaint Counsel also objects to this Request as it seeks information from Complaint Counsel about Respondent’s own business practices that is readily or more easily accessible to Respondent. Complaint Counsel further objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster’s warnings or instructions and to the extent it suggests that any of the Podster’s warnings and instructions are adequate. Complaint Counsel further objects to this request to the extent that Complaint Counsel is not necessarily aware of all fatal incidents involving infants and a Podster.

Subject to these qualifications, and without waiving its objections, Complaint Counsel admits to the representations made in its Complaint, particularly paragraphs 35-37, that describe two fatal incidents involving the Podsters. In addition, Complaint Counsel has recently learned of a third fatal incident involving the Podster, and Complaint Counsel has notified Leachco of this incident. Complaint Counsel denies the remainder of this Request.

*293. Leachco has sold approximately 180,000 Podsters.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*294. You do not know how many times each Podster is used by a caregiver.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*295. The deaths alleged in the Complaint were caused by consumer misuse of the*

*Podster.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*296. You contend that it is irrelevant, for the purposes of proving the allegations in the Complaint, whether any consumer misused the Podster.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*297. Caregivers of Infant A did not follow Leachco's warnings.*

**RESPONSE:**

Complaint Counsel objects to this Request because it is substantially duplicative of Request No. 193: "The Podster on which Infant A was placed, as alleged in Paragraph 36 of the Complaint, was not used according to Leachco's warnings." Complaint Counsel also objects to this Request and states that it is vague and ambiguous in the use of the phrase "did not follow Leachco's warnings," which is not a defined term. Complaint Counsel further objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate.

Subject to these qualifications, and without waiving its objections, Complaint Counsel admits to the representations made in paragraph 36 of the Complaint, that describes use of a Podster in a crib, and paragraph 38, that alleges that "it is foreseeable that caregivers will use the

Podster for infant sleep, despite instructions and warnings.” Complaint Counsel further refers Leachco to Task No. 160519CCC2600, which speaks for itself. Complaint Counsel denies the remainder of this Request.

*298. Caregivers of Infant A did not follow Leachco’s instructions.*

**RESPONSE:**

Complaint Counsel objects to this Request because it is substantially duplicative of Request No. 194: “The Podster on which Infant A was placed, as alleged in Paragraph 36 of the Complaint, was not used according to Leachco’s instructions.” Complaint Counsel also objects to this Request and states that it is vague and ambiguous in the use of the phrase “did not follow Leachco’s instructions,” which is not a defined term. Complaint Counsel further objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster’s warnings or instructions and to the extent it suggests that any of the Podster’s warnings and instructions are adequate.

Subject to these qualifications, and without waiving its objections, Complaint Counsel admits to the representations made in paragraph 36 of the Complaint, that describes use of a Podster in a crib, and paragraph 38, that alleges that “it is foreseeable that caregivers will use the Podster for infant sleep, despite instructions and warnings.” Complaint Counsel further refers Leachco to Task No. 160519CCC2600, which speaks for itself. Complaint Counsel denies the remainder of this Request.

*299. Caregivers of Infant B did not follow Leachco’s warnings.*

**RESPONSE:**

Complaint Counsel objects to this Request because it is substantially duplicative of

Request No. 203: “Concerning Incident B, the Podster on which Infant B was placed, as alleged in Paragraph 37 of the Complaint, was not used according to Leachco’s warnings.” Complaint Counsel also objects to this Request and states that it is vague and ambiguous in the use of the phrase “did not follow Leachco’s warnings,” which is not a defined term. Complaint Counsel further objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster’s warnings or instructions and to the extent it suggests that any of the Podster’s warnings and instructions are adequate.

Subject to these qualifications, and without waiving its objections, Complaint Counsel admits to the representations made in paragraph 37 of the Complaint, that describes use of a Podster in an adult bed, and paragraph 38, that alleges that “it is foreseeable that caregivers will use the Podster for infant sleep, despite instructions and warnings.” Complaint Counsel further refers Leachco to Task No. 200917CCC3888, which speaks for itself. Complaint Counsel denies the remainder of this Request.

*300. Caregivers of Infant B did not follow Leachco’s instructions.*

**RESPONSE:**

Complaint Counsel objects to this Request because it is substantially duplicative of Request No. 204: “Concerning Incident B, the Podster on which Infant B was placed, as alleged in Paragraph 37 of the Complaint, was not used according to Leachco’s instructions.” Complaint Counsel also objects to this Request and states that it is vague and ambiguous in the use of the phrase “did not follow Leachco’s instructions,” which is not a defined term. Complaint Counsel further objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a

foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate.

Subject to these qualifications, and without waiving its objections, Complaint Counsel admits to the representations made in paragraph 37 of the Complaint, that describes use of a Podster in an adult bed, and paragraph 38, that alleges that "it is foreseeable that caregivers will use the Podster for infant sleep, despite instructions and warnings." Complaint Counsel further refers Leachco to Task No. 200917CCC3888, which speaks for itself. Complaint Counsel denies the remainder of this Request.

*301. Since February 9, 2022, the Commission has not recalled any Infant Lounger Products.*

**RESPONSE:**

The subject matter involved in these proceedings concerns whether Respondent's Podsters are defective and create a substantial product hazard under Section 15 of the CPSA, 15 U.S.C. § 2064. Complaint Counsel objects to this Request and states that it seeks information that is neither relevant to the subject matter involved in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Whether the Commission has recalled any "Infant Lounger Products" as defined herein is not relevant to the Court's analysis in this matter under Section 15 of the CPSA, 15 U.S.C. § 2064, or applicable regulations, including 16 C.F.R. Part 1115. Complaint Counsel further objects to this Request on the grounds whether or not a product has been recalled is publicly available information on the Commission's website at <https://www.cpsc.gov/Recalls> and is equally accessible to Leachco as Complaint Counsel.

*302. Since February 9, 2022, the Commission has not attempted to recall any Infant Lounger Products.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*303. Since February 9, 2022, the Commission has not issued a press release alleging a defective Infant Lounger Product.*

**RESPONSE:**

The subject matter involved in these proceedings concerns whether Respondent's Podsters are defective and create a substantial product hazard under Section 15 of the CPSA, 15 U.S.C. § 2064. Complaint Counsel objects to this Request and states that it seeks information that is neither relevant to the subject matter involved in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Whether the Commission has issued any press releases related to any "Infant Lounger Products" as defined herein is not relevant to the Court's analysis in this matter under Section 15 of the CPSA, 15 U.S.C. § 2064, or applicable regulations, including 16 C.F.R. Part 1115. Complaint Counsel further objects to this Request on the grounds whether or not the Commission has issued a press release is publicly available information on the Commission's website at <https://www.cpsc.gov/Newsroom/News-Releases> and is equally accessible to Leachco as Complaint Counsel.

*304. Since February 9, 2022, the Commission has not issued a press release about any Infant Lounger Product.*

**RESPONSE:**

This Request is substantially similar to the preceding Request No. 303, with the only difference being "alleging a defective" and "about any." As such, they are duplicative and can only be designed to harass and annoy. Further, the subject matter involved in these proceedings

concerns whether Respondent's Podsters are defective and create a substantial product hazard under Section 15 of the CPSA, 15 U.S.C. § 2064. Complaint Counsel objects to this Request and states that it seeks information that is neither relevant to the subject matter involved in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Whether the Commission has issued any press releases related to any "Infant Lounger Products" as defined herein is not relevant to the Court's analysis in this matter under Section 15 of the CPSA, 15 U.S.C. § 2064, or applicable regulations, including 16 C.F.R. Part 1115. Complaint Counsel further objects to this Request on the grounds whether or not the Commission has issued a press release is publicly available information on the Commission's website at <https://www.cpsc.gov/Newsroom/News-Releases> and is equally accessible to Leachco as Complaint Counsel.

*305. Leachco has not violated 15 U.S.C. 2064(b) with respect to the incidents involving Infant A, Infant B, and Incident C.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*306. After Incident A, state authorities suspended the daycare's license because of imminent danger to the health, safety, and welfare of the children who attended the daycare.*

**RESPONSE:**

Complaint Counsel objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are

adequate.

Subject to this qualification, and without waiving its objections, Complaint Counsel admits in part and denies in part the Request as follows. Complaint Counsel admits that the underlying incident records relating to Task No. 160519CCC2600 indicate “the daycare licensing agency suspended the daycare’s license because of the imminent danger to the health, safety, and welfare of the children who attend the daycare center.” Complaint Counsel denies the remainder of this Request.

*307. The Podster did not cause Infant A’s death.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*308. The Podster’s design did not cause Infant A’s death.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*309. No manufacturing defect of the Podster caused Infant A’s death.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*310. The lack of warnings or instructions for the Podster did not cause Infant A’s death.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*311. Inadequate warnings or instructions for the Podster did not cause Infant A's death.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*312. The Podster did not cause Infant B's death.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*313. The Podster's design did not cause Infant B's death.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*314. No manufacturing defect of the Podster caused Infant B's death.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*315. The lack of warnings or instructions for the Podster did not cause Infant B's death.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*316. Inadequate warnings or instructions for the Podster did not cause Infant B's death.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this

request for admission.

317. The Podster did not cause Infant C's death.

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*318. The Podster's design did not cause Infant C's death.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*319. No manufacturing defect of the Podster caused Infant C's death.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*320. The lack of warnings or instructions for the Podster did not cause Infant C's death.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*321. Inadequate warnings or instructions for the Podster did not cause Infant C's death.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*322. No official autopsy, medical report, or medical examiner opinion identified the Podster as the cause of Infant A's death.*

**RESPONSE:**

Complaint Counsel objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate. Subject to this qualification, and without waiving its objections, Complaint Counsel admits that Task No. 160519CCC2600 includes reports that speak for themselves and are equally accessible to Leachco as they are to Complaint Counsel. Complaint Counsel denies the remainder of this Request.

*323. No official autopsy, medical report, or medical examiner opinion identified the Podster as the cause of Infant B's death.*

**RESPONSE:**

Complaint Counsel objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate. Subject to this qualification, and without waiving its objections, Complaint Counsel admits that Task No. 200917CCC3888 includes reports that speak for themselves and are equally accessible to Leachco as they are to Complaint Counsel. Complaint Counsel denies the remainder of this Request.

*324. No official autopsy, medical report, or medical examiner opinion identified the Podster as the cause of Infant c's death.*

**RESPONSE:**

Complaint Counsel objects to this Request as misleading to the extent that it suggests that Respondent has no responsibility for the Podsters that it manufactured and distributed when used by consumers in a foreseeable manner that may be contrary to the Podster's warnings or instructions and to the extent it suggests that any of the Podster's warnings and instructions are adequate. Subject to this qualification, and without waiving its objections, Complaint Counsel admits that Task No. 220916HCC1454 includes reports that speak for themselves and are equally accessible to Leachco as they are to Complaint Counsel. Complaint Counsel denies the remainder of this Request.

*325. The Podster is not subject to 16 C.F.R. Part 1112.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*326. The Podster is not subject to 16 C.F.R. Part 1130.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*327. The Podster is not subject to 16 C.F.R. Part 1215.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*328. The Podster is not subject to 16 C.F.R. Part 1216.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*329. The Podster is not subject to 16 C.F.R. Part 1217.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*330. The Podster is not subject to 16 C.F.R. part 1218.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*331. The Podster is not subject to 16 C.F.R. part 1219.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*332. The Podster is not subject to 16 C.F.R. part 1220.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*333. The Podster is not subject to 16 C.F.R. part 1221.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*334. The Podster is not subject to 16 C.F.R. part 1222.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*335. The Podster is not subject to 16 C.F.R. Part 1223.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*336. The Podster is not subject to 16 C.F.R. Part 1224.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*337. The Podster is not subject to 16 C.F.R. Part 1225.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*338. The Podster is not subject to 16 C.F.R. Part 1226.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*339. The Podster is not subject to 16 C.F.R. Part 1227.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this

request for admission.

*340. The Podster is not subject to 16 C.F.R. Part 1228.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*341. The Podster is not subject to 16 C.F.R. Part 1229.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*342. The Podster is not subject to 16 C.F.R. Part 1230.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*343. The Podster is not subject to 16 C.F.R. Part 1231.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*344. The Podster is not subject to 16 C.F.R. Part 1232.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*345. The Podster is not subject to 16 C.F.R. Part 1233.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*346. The Podster is not subject to 16 C.F.R. Part 1234.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*347. The Podster is not subject to 16 C.F.R. Part 1235.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*348. The Podster is not subject to 16 C.F.R. Part 1236.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*349. The Podster is not subject to 16 C.F.R. Part 1237.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*350. The Podster is not subject to 16 C.F.R. Part 1238.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*351. The Podster is not subject to 16 C.F.R. Part 1239.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*352. The Podster is not subject to 16 C.F.R. Part 1241.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*353. The Podster is not subject to 16 C.F.R. Part 1250.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*354. The CPSA does not create a duty for a manufacturer of consumer products to monitor third-party websites Concerning the manufacturer's consumer products.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*355. The CPSA does not create a duty for a manufacturer of consumer products to review third-party websites Concerning the manufacturer's consumer products.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*356. The CPSA does not create a duty for a manufacturer of consumer products to read*

*comments on third-party websites Concerning the manufacturer's consumer products.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*357. The CPSA does not create a duty for a manufacturer of consumer products to take affirmative steps to address comments on third-party websites Concerning the manufacturer's consumer products.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*358. The CPSA does not create a duty for a manufacturer of consumer products to respond to comments on third-party websites Concerning the manufacturer's consumer products.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*359. The risk of injury from a Podster is caused by the same aspect of the product that creates its utility; namely, its structure allowing Caregivers to secure Infants.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*360. You seek an order compelling Leachco to pay damages to third parties.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*361. Your Claim against Leachco is akin to a common-law action arising in tort.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

\* \* \*

**SECOND SET OF REQUESTS FOR ADMISSION**

Admit the following:

*362. Caregivers of Infant C did not follow Leachco's warnings.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

*363. Caregivers of Infant C did not follow Leachco's instructions.*

**RESPONSE:**

Complaint Counsel has separately filed a Motion for Protective Order with respect to this request for admission.

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Dated this 24th day of February, 2023

Respectfully submitted,

/s/ Brett Ruff

Gregory M. Reyes, Supervisory Attorney

Brett Ruff, Trial Attorney

Michael J. Rogal, Trial Attorney

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

Complaint Counsel for  
U.S. Consumer Product Safety Commission

**CERTIFICATE OF SERVICE**

I hereby certify that on February 24, 2023, I served Complaint Counsel's Objections and Responses to Leachco, Inc.'s First Set Of Requests For Admission and Leachco, Inc.'s Second Set Of Requests For Admission on all parties of record in these proceedings as follows:

*By email to Counsel for Respondent:*

Oliver J. Dunford  
Pacific Legal Foundation  
4440 PGA Blvd., Suite 307  
Palm Beach Gardens, FL 33410  
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\_\_\_\_\_/s/ Brett Ruff\_\_\_\_\_  
Brett Ruff  
Complaint Counsel for  
U.S. Consumer Product Safety Commission

# **EXHIBIT C**

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

**IN THE MATTER OF**

**LEACHCO, INC.,**

Respondent.

CPSC Docket No. 22-1

HON. MICHAEL G. YOUNG

PRESIDING OFFICER

**LEACHCO, INC.'S FIRST SET OF REQUESTS FOR ADMISSION**

Pursuant to 16 C.F.R. § 1025.34, Respondent Leachco, Inc. hereby requests that the Commission answer the following Requests for Admission within 30 days of service hereof.

**DEFINITIONS AND INSTRUCTIONS**

1. “2019 Mannen Report” means the report titled, “Biomechanical Analysis of Inclined Sleep Products,” initially completed on September 18, 2019, and updated October 25, 2019, whose Principal Investigator was Erin M. Mannen, Ph.D., produced at CPSC0004996–CPSC0005072.

2. “Caregiver” means an adult who is responsible to care for a child, including parents and daycare employees.

3. “Claim” means the sole claim alleged against Leachco, namely Count I in Your Complaint.

4. “Commissioners” means current and former Commissioners of the CPSC and their staff.

5. “Complaint” means your Complaint filed on or about February 9, 2022 in this Proceeding.

6. “Concerning” shall mean concerning, referencing, referring to, related to, and relating to.

7. “CPSA” means the Consumer Product Safety Act.

8. “CPSC Secretary” means the CPSC’s Office of the Secretary, including all staff and agents thereof.

9. “Division of Enforcement and Litigation” means the Commission’s Division of Enforcement and Litigation, and all staff and agents thereof.

10. “Division of Regulatory Enforcement” means the Commission’s Division of Regulatory Enforcement, and all staff and agents thereof.

11. “Document” shall mean the original and all non-identical copies of all written, printed, typed, graphic, and photographic matter of any kind or nature, and all mechanical or electronic audio and/or visual recordings or transcripts thereof, however produced or reproduced, and all entries in a computer or electronic database (including Twitter and any other form of social media) of any kind, including but not limited to: correspondence, telexes, telegrams, telephone messages, statements, voice mail, electronic mail, and all other computer files or data, claim forms, incident reports, intake forms or histories, summaries or records of telephone conversations, memoranda, records, summaries or records of personal conversations or interviews, medical records, X-rays, MRIs, CT-scans, ultrasound images, and all other radiologic or radiographic films, invoices, contracts, agreements, orders, books, calendars, diaries, reports, notebooks, photographs, videos (digital or otherwise), slides, charts,

notes, plans, drawings, sketches, maps, summaries or records of meetings or conferences, drafts or letters, now or formerly in Your possession, custody, or control.

12. “General Counsel” means the CPSC’s Office of General Counsel, including all staff and agents thereof.

13. “Identify,” “State the Identity of,” “Identification,” or “Describe” means:

a. When used in reference to an individual, shall mean to state his or her full name, maiden or former names, social security number, present or last known home and business address and telephone numbers, and present or last known occupation, employer and job title or description; or if none of the information is known, then the name, present home and business address, and telephone numbers of all individuals who likely or may be able to provide all or part of the information.

b. When used in reference to an organization of any kind, shall mean to state its full name, its state of incorporation (if applicable), the address of its principal place of business, and its telephone numbers.

c. When used in reference to a Document, shall mean to state the type of Document, its date, the identity of its author(s), and its recipient(s); any title and/or serial number or file number appearing on the Document; the identity of its present custodian; its present location; and a brief description of its subject matter. If any such Document was, but no longer is, in your possession or control or in existence, state whether it (i) is missing or lost, (ii) has been destroyed, (iii) has been transferred to others, or (iv) has been otherwise

disposed of. In lieu of identifying a Document, a copy of the Document can be produced.

14. “IDI 160519CCC2600” means the Commission’s Epidemiological Investigation Report 160519CCC2600, produced as CPSC0000039–138, CPSC0010224–0010327.

15. “IDI 200917CCC3888” means the Commission’s Epidemiological Investigation Report 200917CCC3888, produced as CPSC0000139–195, CPSC0010328–0010384.

16. “IDI 220916HCC1454” means the Commission’s Epidemiological Investigation Report 220916HCC1454, produced as CPSC0010501–65.

17. “Incident A” refers to the death, and the surrounding circumstances thereof, of Infant A on or about December 16, 2015.

18. “Incident B” refers to the death, and the surrounding circumstances thereof, of Infant B on or around January 27, 2018.

19. “Incident C” refers to the death, and the surrounding circumstances thereof, of Infant C on or around October 25, 2021.

20. “Infant” means an individual under the age of one year.

21. “Infant A” means the four-month-old infant who, according to paragraph 36 of the Complaint, “suffocated after being placed face-up or on their side in the Podster in a crib.”

22. “Infant B” means the 17-day-old infant who, according to paragraph 37 of the Complaint, “suffocated after being placed face up in the Podster on an adult bed between two caregivers.”

23. “Infant C” means the infant identified in the Commission’s Epidemiological Investigation Report 220916HCC1454, produced as CPSC0010501–65.

24. “Infant Lounger Product(s)” means any product(s) marketed, intended, designed, or manufactured for infant lounging, including but not limited to the Boppy Pillow, and/or any product similar to the Podster. This term does not include products marketed, intended, designed, or manufactured for infant sleep; this term also does not include “inclined sleeper for infants” as that term is defined in 15 U.S.C. § 2057d(b).

25. “Infant Sleep Product(s)” means any product marketed, intended, or designed for infant sleep, including “inclined sleeper for infants” as that term is defined in 15 U.S.C. § 2057d(b).

26. “Office of Communications” means the Commission’s Office of Communications, and all staff and agents thereof.

27. “Office of Compliance and Field Operations” means the Commission’s Office of Compliance and Field Operations, including all staff and agents thereof.

28. “Office of Hazard Identification & Reduction” means the Commission’s Office of Hazard Identification & Reduction, and all staff and agents thereof.

29. “Person” means any natural person, corporation, partnership, unincorporated association, joint venture, trust, estate, public or quasi-public entity, or any other legal entity.

30. “Podster” means the products referred to in paragraphs 7 and 9 of Your Complaint.

31. “Proceeding” means this administrative action, *In the Matter of Leachco, Inc.*, CPSC Docket No. 22-1.

32. “Product Defect” means “product defect” as used in 15 U.S.C. § 2064(a)(2).

33. “Staff” means the CPSC staff.

34. “Substantial Product Hazard” means “substantial product hazard” as defined in 15 U.S.C. § 2064(a)(2).

35. “Substantial Risk of Injury” means “substantial risk of injury” as used in 15 U.S.C. § 2064(a)(2).

36. “Test” means any examination, inspection, analysis, result, or other assessment.

37. “You” or “Your” or “Commission” or CPSC” means the Consumer Product Safety Commission, including the Commissioners, Secretary, directors, officers, employees, staff, Complaint Counsel, and all other agents.

38. “Useful” includes the terms “usefulness” and “utility” and has the same meaning as these terms are used in 16 C.F.R. § 1115.4.

39. The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

40. The singular shall include the plural, and vice versa.

41. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make all definitions and discovery requests inclusive rather than exclusive.

42. Pursuant to 16 C.F.R. Part 1025, the Commission is under a continuing duty to supplement its responses to these discovery requests without further request from Leachco. Where the Commission has responded to a discovery request with a response that was complete when made, the Commission is under a duty to supplement that response to include information later obtained.

\* \* \*

#### **FIRST SET OF REQUESTS FOR ADMISSION**

Admit the following:

1. You do not allege a claim against Leachco under 15 U.S.C. § 2064(a)(1).
2. You do not allege a claim against Leachco under 15 U.S.C. § 2064(b).
3. The Podster is not an Infant Sleep Product.
4. The Podster is not intended to be used for sleep.
5. The Podster was never intended to be used for sleep.
6. The Podster is not designed for sleep.
7. The Podster was never designed for sleep.

8. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product amounts to a Substantial Product Hazard.

9. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product causes a Substantial Product Hazard.

10. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product creates a Substantial Product Hazard.

11. There is no rule or regulation that states foreseeable misuse of a consumer product amounts to, causes, or creates a Substantial Product Hazard.

12. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product amounts to a defect.

13. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product causes a defect.

14. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product creates a defect.

15. There is no rule or regulation that states foreseeable misuse of a consumer product creates a defect.

16. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product amounts to a Product Defect.

17. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product causes a Product Defect.

18. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product creates a Product Defect.

19. There is no rule or regulation that states foreseeable misuse of a consumer product amounts to, causes, or creates a Product Defect.

20. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product amounts to a Substantial Risk of Injury.

21. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product causes a Substantial Risk of Injury.

22. There is no consumer product safety rule issued through notice-and-comment rulemaking that states foreseeable misuse of a consumer product creates a Substantial Risk of Injury.

23. There is no rule or regulation that states foreseeable misuse of a consumer product amounts to, causes, or creates a Substantial Risk of Injury.

24. To find Leachco liable under the CPSA in this Proceeding, the Commission must prove *both* that the Podster contains a “defect” *and* that the “defect” “creates a substantial risk of injury.”

25. The Podster does not have a manufacturing defect.

26. The Podster does not have a warning defect.

27. The Podster is not defective because of inadequate warnings.

28. The Podster is not defective because of inadequate instructions.

29. The Podster is not defective because of a defective design.

30. The Podster is a not Substantial Product Hazard because of inadequate warnings.

31. The Podster is a Substantial Product Hazard because of inadequate instructions.

32. The Podster is a not Substantial Product Hazard because of defective warnings.

33. The Podster is a not Substantial Product Hazard because of defective instructions.

34. The Podster is a not Substantial Product Hazard because of the existence of a reasonable alternative design.

35. The Podster has never been a Substantial Product Hazard because of the existence of a reasonable alternative design.

36. The Podster is a not Substantial Product Hazard because of defective manufacturing.

37. The Podster has never been a Substantial Product Hazard because of defective manufacturing.

38. The Podster is a not Substantial Product Hazard because of defective design.

39. The Podster has never been a Substantial Product Hazard because of defective design.

40. Leachco has not failed to provide adequate warnings for use of the Podster.

41. Leachco has not failed to provide adequate instructions for use of the Podster.

42. The Podster is a not Product Defect because of inadequate warnings.

43. The Podster has never been a Product Defect because of inadequate warnings.

44. The Podster is a not Product Defect because of inadequate instructions.

45. The Podster has never been a Product Defect because of inadequate instructions.

46. The Podster is a not Product Defect because of defective warnings.

47. The Podster has never been a Product Defect because of defective warnings.

48. The Podster is a not Product Defect because of defective instructions.

49. The Podster has never been a Product Defect because of defective instructions.

50. The Podster is a not Product Defect because of the existence of reasonable alternative design.

51. The Podster has never been a Product Defect because of the existence of a reasonable alternative design.

52. The Podster is a not Product Defect because of defective manufacturing.

53. The Podster has never been a Product Defect because of defective manufacturing.

54. The Podster is a not Product Defect because of defective design.

55. The Podster has never been a Product Defect because of defective design.

56. The Podster presents no Substantial Risk of Injury because of inadequate warnings.

57. The Podster presents no Substantial Risk of Injury because of inadequate instructions.

58. The Podster presents no Substantial Risk of Injury because of defective warnings.

59. The Podster presents no Substantial Risk of Injury because of defective instructions.

60. The Podster has never presented a Substantial Risk of Injury because of inadequate warnings.

61. The Podster has never presented a Substantial Risk of Injury because of inadequate instructions.

62. The Podster has never presented a Substantial Risk of Injury because of defective warnings.

63. The Podster has never presented a Substantial Risk of Injury because of defective instructions.

64. The Podster does not present a Substantial Risk of Injury because of the existence of a reasonable alternative design.

65. The Podster has never presented a Substantial Risk of Injury because of the existence of a reasonable alternative design.

66. The Podster does not present a Substantial Risk of Injury because of the existence of a defective manufacturing.

67. The Podster has never presented a Substantial Risk of Injury because of the existence of a defective manufacturing.

68. The Podster does not present a Substantial Risk of Injury because of the existence of a defective design.

69. The Podster has never presented a Substantial Risk of Injury because of the existence of a defective design.

70. Leachco's warnings Concerning the Podster were adequate.

71. Leachco's instructions Concerning the Podster were adequate.

72. Leachco's warnings Concerning the Podster are adequate.

73. Leachco's instructions Concerning the Podster are adequate.

74. The Podster is not defective because of inadequate warnings.
75. The Podster has never been defective because of inadequate warnings.
76. The Podster is not defective because of inadequate instructions.
77. The Podster has never been defective because of inadequate instructions.
78. The Podster is not defective because of defective warnings.
79. The Podster is not defective because of defective instructions.
80. The Podster has never been defective because of defective warnings.
81. The Podster has never been defective because of defective instructions.
82. The Podster is not defective because of the existence of a reasonable alternative design.
83. The Podster has never been defective because of the existence of a reasonable alternative design.
84. The Podster is not defective because of defective manufacturing.
85. The Podster has never been defective because of defective manufacturing.
86. The Podster is not defective because of defective design.
87. The Podster has never been defective because of defective design.
88. The Podster has never been a Substantial Product Hazard because of inadequate instructions.
89. The Podster has never been a Substantial Product Hazard because of inadequate warnings.

90. The Podster has never been a Substantial Product Hazard because of defective warnings.

91. The Podster has never been a Substantial Product Hazard because of defective instructions.

92. Leachco did not fail to report a Substantial Product Hazard.

93. Leachco has not failed to report a Substantial Product Hazard.

94. Leachco did not fail to report a product that created an unreasonable risk of injury or death.

95. Leachco has not failed to report a product that created an unreasonable risk of injury or death.

96. Leachco did not breach any express warranty with respect to the Podster.

97. Leachco did not breach any implied warranty with respect to the Podster.

98. You have the burden of proof to establish that the Podster is a Substantial Product Hazard.

99. You have the burden of persuasion to establish that the Podster is a Substantial Product Hazard.

100. You allege that the Podster presents a risk of Infant suffocation.

101. You allege that the only risk presented by the Podster is the risk of infant suffocation.

102. Leachco adequately warned consumers about the potential risk of Infant suffocation.

103. Leachco adequately warned consumers about the potential risk of using the Podster for sleep.

104. Leachco adequately warned consumers about the potential risk of using the Podster without constant adult supervision.

105. Leachco adequately warned consumers about the potential risk of using the Podster on anything but flat surfaces.

106. Leachco adequately warned consumers about the potential risk of using the Podster on elevated surfaces.

107. Leachco adequately warned consumers about the potential risk of using the Podster for co-sleeping or bed-sharing.

108. Leachco adequately warned consumers about the potential risk of using the Podster in a crib.

109. Leachco adequately warned consumers about the potential risk of using the Podster with soft products.

110. Leachco instructed consumers not to use the Podster for sleep.

111. Leachco instructed consumers not to use the Podster without constant adult supervision.

112. Leachco instructed consumers not to use the Podster on elevated surfaces.

113. Leachco instructed consumers not to use the Podster for co-sleeping or bed-sharing.

114. Leachco instructed consumers not to use the Podster in a crib.

115. Leachco instructed consumers not to place Infants in a Podster in a crib.

116. Leachco's instructions adequately explained proper use of the Podster.

117. The Podster presents no risk that is not contemplated in Leachco's warnings.

118. The Podster presents no risk that is not contemplated in Leachco's instructions.

119. You do not allege that the Podster presents a risk that is not contemplated in Leachco's warnings.

120. You do not allege that the Podster presents a risk that is not contemplated in Leachco's instructions.

121. You contend that no warnings about the Podster by Leachco would have been sufficient to cure the alleged Substantial Product Hazard.

122. You contend that no instructions about the Podster by Leachco could be sufficient to cure the alleged Substantial Product Hazard.

123. Your allegation that the Podster presents a Substantial Product Hazard is not based on Your consideration of whether Leachco's warnings and instructions were adequate to mitigate the alleged risk of injury.

124. Before filing Your Complaint, You did not consider whether Leachco's warnings were adequate to mitigate the alleged risk of injury.

125. Before filing Your Complaint, You did not consider whether Leachco's instructions were adequate to mitigate the alleged risk of injury.

126. Before filing Your Complaint, You did not consider whether Leachco's warnings were adequate to cure the alleged risk of injury.

127. Before filing Your Complaint, You did not consider whether Leachco's instructions were adequate to cure the alleged risk of injury.

128. After an administrative complaint has been filed by Complaint Counsel, the Commission's General Counsel represents both the Commissioners and Complaint Counsel (and their staff).

129. After an administrative complaint has been filed by Complaint Counsel, the Commission's General Counsel advises both the Commissioners and Complaint Counsel (and their staff).

130. You do not propose a reasonable alternative design for the Podster.

131. You do not propose any alternative design for the Podster.

132. You do not allege that a reasonable alternative design of the Podster would mitigate the Substantial Product Hazard allegedly presented by the Podster.

133. You do not allege that a reasonable alternative design of the Podster would cure the Substantial Product Hazard allegedly presented by the Podster.

134. You do not allege that an alternative design of the Podster would mitigate the risk of injury while providing to consumers the same utility.

135. You do not allege that an alternative design of the Podster would cure the risk of injury while providing to consumers the same utility.

136. You contend that Leachco is liable under the CPSA regardless of whether Leachco Tested the Podster before it first sold the Podster.

137. You contend that Leachco is liable under the CPSA regardless of whether Leachco Tested the Podster after it first sold the Podster.

138. You contend that Leachco is liable under the CPSA if Leachco has received zero communications Concerning consumers' misuse of the Podster.

139. You contend that Leachco is liable under the CPSA if Leachco was unaware of consumer misuse of the Podster.

140. You contend that Leachco is liable under the CPSA if Leachco is unaware of consumer misuse of the Podster.

141. You contend that Leachco is liable under the CPSA if Leachco never considered potential risks arising out of the use of the Podster.

142. You contend that Leachco is liable under the CPSA even if Leachco never considered potential risks arising out of misuse of the Podster.

143. All Infants need adult supervision.

144. All Infants need adult supervision regardless of the use of an Infant product.

145. All Infants need adult supervision regardless of the use of a product intended for Infants.

146. All Infants need adult supervision regardless of the use of an Infant product by adults.

147. The Podster is useful.

148. The Podster is useful for Caregivers.

149. The Podster does not fail to comply with any applicable consumer product safety rule under Chapter 47 of Title 15 of the U.S. Code.

150. The Podster has never failed to comply with any applicable consumer product safety rule under Chapter 47 of Title 15 of the U.S. Code.

151. The Podster complies with all applicable product safety rules under Chapter 47 of Title 15 of the U.S. Code.

152. The Podster has always complied with all applicable product safety rules under Chapter 47 of Title 15 of the U.S. Code.

153. The Podster does not fail to comply with any rule, regulation, standard, or ban, similar to an applicable safety rule under Chapter 47 of Title 15 of the U.S. Code, under any other Act enforced by the Commission.

154. The Podster has never failed to comply with any rule, regulation, standard, or ban, similar to an applicable safety rule under Chapter 47 of Title 15 of the U.S. Code, under any other Act enforced by the Commission.

155. The Podster complies with all rules, regulations, standards, or bans similar to applicable safety rules under Chapter 47 of Title 15 of the U.S. Code under any other Act enforced by the Commission.

156. The Podster has always complied with all rules, regulations, standards, or bans similar to applicable safety rules under Chapter 47 of Title 15 of the U.S. Code under any other Act enforced by the Commission.

157. The Podster is safe when used consistent with Leachco's warnings.

158. The Podster is safe when used consistent with Leachco's instructions.

159. The Podster is safe when consumers follow Leachco's warnings.

160. The Podster is safe when consumers follow with Leachco's instructions.

161. The Podster is not defective when used consistent with Leachco's warnings.

162. The Podster is not defective when used consistent with Leachco's instructions.

163. The Podster is not defective when consumers follow Leachco's warnings.

164. The Podster is not defective when consumers follow Leachco's instructions.

165. The Podster does not present a Substantial Product Hazard when it is used consistent with Leachco's warnings.

166. The Podster does not present a Substantial Product Hazard when it is used consistent with Leachco's instructions.

167. The Podster does not present a Substantial Product Hazard when consumers follow Leachco's warnings.

168. The Podster does not present a Substantial Product Hazard when consumers follow Leachco's instructions.

169. The Podster does not have a Product Defect when it is used consistent with Leachco's warnings.

170. The Podster does not have a Product Defect when it is used consistent with Leachco's instructions.

171. The Podster does not have a Product Defect when consumers follow Leachco's warnings.

172. The Podster does not have a Product Defect when consumers follow Leachco's instructions.

173. The Podster presents no Substantial Risk of Injury when used consistent with Leachco's warnings.

174. The Podster presents no Substantial Risk of Injury when used consistent with Leachco's instructions.

175. The Podster presents no Substantial Risk of Injury when consumers follow Leachco's warnings.

176. The Podster presents no Substantial Risk of Injury when consumers follow Leachco's instructions.

177. The Podster does not have a defect when used consistent with Leachco's warnings.

178. The Podster does not have a defect when used consistent with Leachco's instructions.

179. The Podster does not have a defect when consumers follow Leachco's warnings.

180. The Podster does not have a defect when consumers follow Leachco's instructions.

181. Infants under constant adult supervision can roll or move on the Podster into a position where their noses and mouths may be obstructed by the Podster.

182. Infants under constant adult supervision can roll or move off the Podster into a position where their noses and mouths may be obstructed by another object, such as soft bedding.

183. Infants under constant adult supervision who roll or move on the Podster into a position where their noses and mouths may be obstructed by the Podster can be repositioned to prevent the obstruction.

184. Infants under constant adult supervision who roll or move off the Podster into a position where their noses and mouths may be obstructed by another object, such as soft bedding, may be repositioned by an adult to prevent the obstruction.

185. You are aware of no injuries caused by the Podster when the Podster was used consistent with Leachco's warnings.

186. You are aware of no injuries caused by the Podster when the Podster was used consistent with Leachco's instructions.

187. You are aware of no injuries caused by the Podster when a consumer(s) followed Leachco's warnings.

188. You are aware of no injuries caused by the Podster when a consumer(s) followed Leachco's instructions.

189. You are aware of no injuries associated with a Podster when the Podster was used consistent with Leachco's warnings.

190. You are aware of no injuries associated with a Podster when the Podster was used consistent with Leachco's instructions.

191. You are aware of no injuries associated with a Podster when a consumer(s) followed Leachco's warnings.

192. You are aware of no injuries associated with a Podster when a consumer(s) followed Leachco's instructions.

193. The Podster on which Infant A was placed, as alleged in Paragraph 36 of the Complaint, was not used according to Leachco's warnings.

194. The Podster on which Infant A was placed, as alleged in Paragraph 36 of the Complaint, was not used according to Leachco's instructions.

195. Concerning Incident A, a caregiver(s) of Infant A placed Infant A in a Podster and then placed the Podster in a crib.

196. Concerning Incident A, a caregiver(s) of Infant A placed a bottle, containing liquid, in Infant A's mouth when the caregiver(s) placed Infant A in the Podster and then placed the Podster in a crib.

197. Concerning Incident A, a caregiver(s) of Infant A placed a bottle, containing liquid, in Infant A's mouth when the caregiver(s) placed Infant A in the Podster and then placed the Podster in a crib, which also contained a soft object.

198. Concerning Incident A, after Infant A was placed in a Podster and after this Podster was placed in a crib, Infant A was left unattended for over an hour.

199. Concerning Incident A, Infant A was placed in a Podster and after this Podster was placed in a crib, caregivers did not attend to Infant A for over an hour.

200. Concerning Incident A, after Infant A was placed in a Podster and after this Podster was placed in a crib, Infant A was not supervised by an adult for over an hour.

201. Concerning Incident A, After Infant A was placed in a Podster and after this Podster was placed in a crib, Infant A was not under constant adult supervision.

202. Concerning Incident A, a bottle filled with liquid was placed in Infant A's mouth.

203. Concerning Incident B, the Podster on which Infant B was placed, as alleged in Paragraph 37 of the Complaint, was not used according to Leachco's warnings.

204. Concerning Incident B, the Podster on which Infant B was placed, as alleged in Paragraph 37 of the Complaint, was not used according to Leachco's instructions.

205. Concerning Incident B, Infant B was placed in a Podster for co-sleeping.

206. Concerning Incident B, Infant B was placed in a Podster on an adult bed between two caregivers.

207. Concerning Incident B, Infant B was placed in a Podster for bed-sharing.

208. Concerning Incident B, Infant B's caregivers used a Podster for co-sleeping.

209. Concerning Incident B, Infant B's caregivers used a Podster for bed-sharing.

210. Concerning Incident B, Infant B's caregivers could have shared their bed with Infant B without using a Podster.

211. Concerning Incident B, Infant B's caregivers could have shared their bed with Infant B without placing their child in a Podster.

212. The Podster has always contained warnings that it should not be used for sleep and that adult supervision is always required.

213. Infant A's death occurred after Infant A had been placed in a Podster for unsupervised sleep.

214. Infant B's death occurred after Infant B had been placed in a Podster for unsupervised sleep.

215. The in-home daycare center identified in IDI 220916HCC1454 was not licensed by any governmental authority.

216. The in-home daycare center identified in IDI 220916HCC1454 was not licensed by any organization authorized to license in-home daycare centers.

217. The in-home daycare center identified in IDI 220916HCC1454 was not licensed by any licensing authority.

218. Concerning Incident C, Infant C's death occurred after Infant C had been placed in a Podster for unsupervised sleep.

219. Concerning Incident C, Infant C's caregiver(s) placed Infant C in a Podster for a nap.

220. Concerning Incident C, Infant C was placed in a Podster, which was in a crib or "play yard".

221. Concerning Incident C, a blanket was in the crib or "play yard" in which Infant C was placed.

222. Infant C was taken to a pediatrician a week before Incident C because Infant C was extremely congested.

223. Infant C was taken to a pediatrician a week before Incident C because Infant C was congested.

224. When Infant C was taken to a pediatrician a week before Incident C, Infant C wheezed during the visit to the pediatrician.

225. When Infant C was taken to a pediatrician a week before Incident C, the physician prescribed respiratory treatments for Infant C.

226. Within 72 hours of Incident C, Infant C had stopped breathing and turned blue.

227. Two days before Incident C, Infant C's mother called 911 because Infant C was having trouble breathing.

228. Infant C was given albuterol on October 25, 2021.

229. Infant C was scheduled to see a doctor on October 25, 2021.

230. Concerning Incident C, Infant C's caregiver(s) did not follow the warnings and instructions on the Podster.

231. Within 72 hours of Incident C, Infant C had a possible ear infection.

232. According to IDI 220916HCC1454 (Bates No. CPSC0010504), Infant C's caregiver used a Podster "for elevation." Admit that Infant C's caregiver could have used another object—for example, a pillow, blanket, stuffed animal—"for elevation."

233. According to IDI 220916HCC1454 (Bates No. CPSC0010504), Infant C's caregiver used a Podster to keep Infant C "propped up." Admit that Infant C's caregiver could have used another object—for example, a pillow, blanket, stuffed animal—to keep Infant C "propped up."

234. The Podster's warnings and instructions state that the Podster should not be used by infants exceeding 16 pounds.

235. Infant A weighed 19 pounds.

236. State regulations governing the daycare center where Infant A died required that infants be held for bottle feeding.

237. State regulations governing the daycare center where Infant A died prohibit the placement of pillows in cribs.

238. State regulations governing the daycare center where Infant A died require staff to monitor sleeping infants at all times.

239. Daycare employees violated state law by giving Infant A a bottle while Infant A was on the Podster.

240. You contend that there is nothing Leachco can do to cure the Substantial Product Hazard allegedly presented by the Podster.

241. You contend that there is nothing Leachco can do to mitigate the Substantial Product Hazard allegedly presented by the Podster.

242. You contend that there is nothing Leachco could have done to cure the Substantial Product Hazard allegedly presented by the Podster.

243. You contend that there is nothing Leachco could have done to mitigate the Substantial Product Hazard allegedly presented by the Podster.

244. You contend that there is no warning adequate to cure the Podster's alleged substantial defect.

245. You contend that there is no instruction adequate to cure the Podster's alleged substantial defect.

246. You will not rely on Tests performed before Your Complaint was filed to prove your case against Leachco in this proceeding.

247. You will not rely on Tests performed before Your Complaint was filed to prove Your case against Leachco at the hearing in this proceeding.

248. Complaint Counsel is not relying on the results of Testing performed before the Complaint was filed.

249. The Podster is not an "infant sleep product" as defined in Safety Standard for Infant Sleep Products, 86 Fed. Reg. 33022 (June 23, 2021).

250. The Safety Standard for Infant Sleep Products specifically exempts "Loungers" unless they are "marketed for infant sleep on the product itself or its

packaging, marketing materials, inserts, or instructions, or the product is advertised with pictures of sleeping infants.”

251. The Podster is not an Infant Sleep Product.

252. The Podster is not an “inclined sleeper for infants” as that term is defined in 15 U.S.C. § 2057d(b).

253. The Podster is not intended to provide sleeping accommodations for an Infant.

254. The Podster is not marketed to provide sleeping accommodations for an Infant.

255. The Podster is not designed to provide sleeping accommodations for an Infant.

256. The Podster was never intended to provide sleeping accommodations for an Infant.

257. The Podster was never marketed to provide sleeping accommodations for an Infant.

258. The Podster was never designed to provide sleeping accommodations for an Infant.

259. The Podster is not intended to provide sleeping accommodations for any infant or baby of any age.

260. The Podster is not marketed to provide sleeping accommodations for any infant or baby of any age.

261. The Podster is not designed to provide sleeping accommodations for any infant or baby of any age.

262. The Podster was never intended to provide sleeping accommodations for any infant or baby of any age.

263. The Podster was never marketed to provide sleeping accommodations for any infant or baby of any age.

264. The Podster was never designed to provide sleeping accommodations for any infant or baby of any age.

265. There is no Mandatory Consumer Product Safety Rule currently in effect that establishes a safety standard for Infant Lounger Products.

266. The 2019 Mannen Report considered only Inclined Sleep Products.

267. The 2019 Mannen Report reviewed incidents involving only Inclined Sleep Products.

268. The 2019 Mannen Report did not review Infant Lounger Products.

269. The 2019 Mannen Report did not consider Infant Lounger Products.

270. The 2019 Mannen Report did not study Infant Lounger Products.

271. The 2019 Mannen Report did not Test Infant Lounger Products.

272. The 2019 Mannen Report did not review incidents involving Infant Lounger Products.

273. The 2019 Manned Report did not review deaths involving Infant Lounger Products.

274. 16 C.F.R. § 1115.4 was not adopted through notice-and-comment rule-making.

275. 16 C.F.R. § 1115.4 is an interpretive rule.

276. 16 C.F.R. § 1115.4 is not a legislative rule.

277. 16 C.F.R. § 1115.4 is not binding on the public.

278. 16 C.F.R. § 1115.4 is not binding on Leachco.

279. The Commission is aware of no more than three deaths allegedly involving a Podster.

280. The Commission is aware of no more than three injuries, including deaths, allegedly involving a Podster.

281. Aside from the three deaths allegedly identified in IDI 160519CCC2600, IDI 200917CCC3888, and IDI 220916HCC1454, the Commission is aware of no injuries caused by a Podster.

282. Aside from the three deaths allegedly identified in IDI 160519CCC2600, IDI 200917CCC3888, and IDI 220916HCC1454, the Commission is aware of no injuries involving a Podster.

283. Aside from the three deaths allegedly identified in IDI 160519CCC2600, IDI 200917CCC3888, and IDI 220916HCC1454, the Commission is aware of no injuries associated with the use of a Podster.

284. Aside from the three deaths allegedly identified in IDI 160519CCC2600, IDI 200917CCC3888, and IDI 220916HCC1454, the Commission is aware of no injuries caused by defects alleged in Your Complaint.

285. The deaths allegedly identified in IDI 160519CCC2600, IDI 200917CCC3888, and IDI 220916HCC1454 involve failures by the infants' caregivers to follow or observe one or more of the warnings or instructions contained on the Podster.

286. The death allegedly identified in IDI 160519CCC2600 involved failures by the infant's caregiver(s) to follow or observe one or more of the warnings or instructions contained on the Podster.

287. The death allegedly identified in IDI 200917CCC3888 involved failures by the infant's caregiver(s) to follow or observe one or more of the warnings or instructions contained on the Podster.

288. The death allegedly identified in IDI 220916HCC1454 involved failures by the infant's caregiver(s) to follow or observe one or more of the warnings or instructions contained on the Podster.

289. The death allegedly identified in IDI 160519CCC2600 was caused by consumer misuse of a Podster.

290. The death allegedly identified in IDI 200917CCC3888 was caused by consumer misuse of a Podster.

291. The death allegedly identified in IDI 220916HCC1454 was caused by consumer misuse of a Podster.

292. The Commission is aware of no injuries or deaths involving a Podster that was used in conformance with the Podster's warnings and instructions.

293. Leachco has sold approximately 180,000 Podsters.

294. You do not know how many times each Podster is used by a caregiver.

295. The deaths alleged in the Complaint were caused by consumer misuse of the Podster.

296. You contend that it is irrelevant, for the purposes of proving the allegations in the Complaint, whether any consumer misused the Podster.

297. Caregivers of Infant A did not follow Leachco's warnings.

298. Caregivers of Infant A did not follow Leachco's instructions.

299. Caregivers of Infant B did not follow Leachco's warnings.

300. Caregivers of Infant B did not follow Leachco's instructions.

301. Since February 9, 2022, the Commission has not recalled any Infant Lounger Products.

302. Since February 9, 2022, the Commission has not attempted to recall any Infant Lounger Products.

303. Since February 9, 2022, the Commission has not issued a press release alleging a defective Infant Lounger Product.

304. Since February 9, 2022, the Commission has not issued a press release about any Infant Lounger Product.

305. Leachco has not violated 15 U.S.C. 2064(b) with respect to the incidents involving Infant A, Infant B, and Incident C.

306. After Incident A, state authorities suspended the daycare's license because of imminent danger to the health, safety, and welfare of the children who attended the daycare.

307. The Podster did not cause Infant A's death.

308. The Podster's design did not cause Infant A's death.

309. No manufacturing defect of the Podster caused Infant A's death.

310. The lack of warnings or instructions for the Podster did not cause Infant A's death.

311. Inadequate warnings or instructions for the Podster did not cause Infant A's death.

312. The Podster did not cause Infant B's death.

313. The Podster's design did not cause Infant B's death.

314. No manufacturing defect of the Podster caused Infant B's death.

315. The lack of warnings or instructions for the Podster did not cause Infant B's death.

316. Inadequate warnings or instructions for the Podster did not cause Infant B's death.

317. The Podster did not cause Infant C's death.

318. The Podster's design did not cause Infant C's death.

319. No manufacturing defect of the Podster caused Infant C's death.

320. The lack of warnings or instructions for the Podster did not cause Infant C's death.

321. Inadequate warnings or instructions for the Podster did not cause Infant C's death.

322. No official autopsy, medical report, or medical examiner opinion identified the Podster as the cause of Infant A's death.

323. No official autopsy, medical report, or medical examiner opinion identified the Podster as the cause of Infant B's death.

324. No official autopsy, medical report, or medical examiner opinion identified the Podster as the cause of Infant c's death.

325. The Podster is not subject to 16 C.F.R. Part 1112.

326. The Podster is not subject to 16 C.F.R. Part 1130.

327. The Podster is not subject to 16 C.F.R. Part 1215.

328. The Podster is not subject to 16 C.F.R. Part 1216.

329. The Podster is not subject to 16 C.F.R. Part 1217.

330. The Podster is not subject to 16 C.F.R. part 1218.

331. The Podster is not subject to 16 C.F.R. part 1219.

332. The Podster is not subject to 16 C.F.R. part 1220.

333. The Podster is not subject to 16 C.F.R. part 1221.

334. The Podster is not subject to 16 C.F.R. part 1222.

335. The Podster is not subject to 16 C.F.R. Part 1223.

336. The Podster is not subject to 16 C.F.R. Part 1224.

337. The Podster is not subject to 16 C.F.R. Part 1225.

338. The Podster is not subject to 16 C.F.R. Part 1226.

339. The Podster is not subject to 16 C.F.R. Part 1227.

340. The Podster is not subject to 16 C.F.R. Part 1228.

- 341. The Podster is not subject to 16 C.F.R. Part 1229.
- 342. The Podster is not subject to 16 C.F.R. Part 1230.
- 343. The Podster is not subject to 16 C.F.R. Part 1231.
- 344. The Podster is not subject to 16 C.F.R. Part 1232.
- 345. The Podster is not subject to 16 C.F.R. Part 1233.
- 346. The Podster is not subject to 16 C.F.R. Part 1234.
- 347. The Podster is not subject to 16 C.F.R. Part 1235.
- 348. The Podster is not subject to 16 C.F.R. Part 1236.
- 349. The Podster is not subject to 16 C.F.R. Part 1237.
- 350. The Podster is not subject to 16 C.F.R. Part 1238.
- 351. The Podster is not subject to 16 C.F.R. Part 1239.
- 352. The Podster is not subject to 16 C.F.R. Part 1241.
- 353. The Podster is not subject to 16 C.F.R. Part 1250.
- 354. The CPSA does not create a duty for a manufacturer of consumer products to monitor third-party websites Concerning the manufacturer's consumer products.
- 355. The CPSA does not create a duty for a manufacturer of consumer products to review third-party websites Concerning the manufacturer's consumer products.
- 356. The CPSA does not create a duty for a manufacturer of consumer products to read comments on third-party websites Concerning the manufacturer's consumer products.

357. The CPSA does not create a duty for a manufacturer of consumer products to take affirmative steps to address comments on third-party websites Concerning the manufacturer's consumer products.

358. The CPSA does not create a duty for a manufacturer of consumer products to respond to comments on third-party websites Concerning the manufacturer's consumer products.

359. The risk of injury from a Podster is caused by the same aspect of the product that creates its utility; namely, its structure allowing Caregivers to secure Infants.

360. You seek an order compelling Leachco to pay damages to third parties.

361. Your Claim against Leachco is akin to a common-law action arising in tort.

\* \* \*

DATED: January 25, 2023.

Respectfully submitted,



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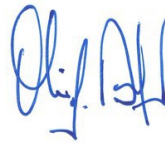
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*Counsel for Respondent Leachco, Inc.*

## CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2023, I served, by electronic mail, the foregoing **Leachco, Inc.'s First Set of Requests for Admission** upon all parties and participants of record in these proceedings:

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