

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 MOTION TO COMPEL AND MOTION FOR SANCTIONS
FOR VIOLATION OF THE COURT’S DECEMBER 16, 2022 AND DECEMBER 27, 2022
ORDERS**

Pursuant to 16 C.F.R. §§ 1025.23, 1025.31(i), 1025.33, 1025.34, 1025.36, and 1025.37, Complaint Counsel respectfully moves this Court to compel and to impose sanctions against Respondent Leachco, Inc. (“Leachco”) and attaches its Memorandum in Support. For the reasons detailed in the attached Memorandum, Leachco did not fully comply with this Court’s December 16, 2022 [Dkt. No. 51] and December 27, 2022 [Dkt. No. 55] Orders because Leachco failed to produce documents and information as required by the Court-imposed January 17, 2023 deadline. Leachco also failed to adequately respond to the Requests for Admission Nos. 3, 4 and 5 as required by the December 16, 2022 and December 27, 2022 Orders. Because these discovery failures are in contravention of this Court’s Orders, sanctions should be imposed against Leachco pursuant to 16 C.F.R. § 1025.37.

Leachco produced only approximately 2,000 documents and approximately 23,000 were improperly withheld. Leachco also has not produced a privilege log.

Complaint Counsel attempted to resolve this motion without court intervention but the parties were unable to reach an agreement.

Complaint Counsel has been prejudiced by Leachco's failure to comply with this Court's Orders. Discovery in this matter closes on March 20, 2023. [Order on Prehearing Schedule, September 16, 2022, Dkt. No. 35]. Leachco's violation of the Court's Orders has impeded Complaint Counsel's ability to adequately prepare for the seven scheduled depositions commencing January 31, 2023. Complaint Counsel requests that a ruling on this matter be expedited in light of the March 20, 2023 discovery deadline and ongoing deposition schedule.

Accordingly, Complaint Counsel respectfully requests that the Presiding Officer issue an order (a) sanctioning Leachco pursuant to 16 C.F.R. § 1025.37 and (b) compelling Leachco to produce the missing discovery as follows:

- (1) Order that because of Leachco's late production of documents and information, Complaint Counsel, in its sole discretion, may elect to take depositions of any Leachco employee past the March 20, 2023 discovery deadline with no time limits (16 C.F.R. § 1025.37);
- (2) Order that Complaint Counsel's Request for Admissions Nos. 3, 4 and 5 be deemed admitted because Leachco failed to adequately respond to them as required by the December 16, 2022 and December 27, 2022 Orders (16 C.F.R. § 1025.37 and 16 C.F.R. 1025.34(b));
- (3) Impose any other sanctions that the Court deems just (16 C.F.R. § 1025.37);
- (4) Order that Leachco immediately produce all previously unproduced documents identified on Leachco's Supplemental Objections and Responses to Complaint Counsel's Interrogatory Nos. 29 and 30, except for any withheld on the basis of privilege; and,

(5) Order that Leachco provide a full and complete privilege log within five (5) days of any order granting the motion to compel.

Complaint Counsel also has included with this Motion a proposed Order.

Dated this 6th day of February, 2023

Respectfully submitted,



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

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Complaint Counsel for
U.S. Consumer Product Safety Commission

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**[PROPOSED] ORDER ON COMPLAINT COUNSEL’S SECOND MOTION TO
COMPEL AND MOTION FOR SANCTIONS FOR VIOLATION OF THE COURT’S
DECEMBER 16, 2022 AND DECEMBER 27, 2022 ORDERS**

This matter, having come before the Presiding Officer on Complaint Counsel’s Second Motion to Compel and Motion for Sanctions for Violation of the Court’s December 16, 2022 and December 27, 2022 Orders, it is hereby ORDERED that the Motion is GRANTED. It shall be further ORDERED:

- (1) Because of Leachco’s late production of documents and information, Complaint Counsel may elect in its sole discretion to take depositions of any Leachco employee past the March 20, 2023 discovery deadline with no time limits (16 C.F.R. § 1025.37);
- (2) Complaint Counsel’s Request for Admissions Nos. 3, 4 and 5 are deemed admitted by Leachco having failed to adequately respond to them as required by the December 16, 2022 and December 27, 2022 Orders (16 C.F.R. § 1025.37 and 16 C.F.R. 1025.34(b));

- (3) Leachco shall immediately produce all previously unproduced documents identified in its February 3, 2023 Supplemental Responses to Complaint Counsel's Interrogatory Nos. 29 and 30 except for any withheld on the basis of privilege; and,
- (4) Leachco is ordered to provide a full and complete privilege log consistent with this Court's September 9, 2022 Order Providing Guidance for Privilege Logs [Dkt. No. 32] within five (5) days of this Order.

Done and dated _____ 2023.

Michael G. Young
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2023, I served Complaint Counsel's Motion to Compel and Motion for Sanctions and Memorandum in Support on all parties and participants of record in these proceedings as follows:

By email to the Secretary:

Alberta E. Mills
Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
Email: AMills@cpsc.gov

By email to the Presiding Officer:

Judge Michael G. Young
Presiding Officer and Administrative Law Judge
Federal Mine Safety and Health Review Commission
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