

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

IN THE MATTER OF

LEACHCO, INC.,

Respondent.

CPSC DOCKET NO. 22-1

JUDGE MICHAEL G. YOUNG

HEARING REQUESTED

**LEACHCO, INC.’S OPPOSITION TO COMPLAINT COUNSEL’S
MOTION TO COMPEL AND MOTION FOR SANCTIONS FOR VIOLATING THE COURT’S
DECEMBER 16, 2022, AND DECEMBER 27, 2022 ORDERS**


The Commission’s Motion to Compel and Motion for Sanctions should be denied. *First*, Leachco did not withhold any (nonprivileged) responsive documents. In fact, Leachco produced more documents than required. *Second*, while Leachco—despite its best efforts—was unable to produce documents by the agreed-upon due date, the delay was minimal, and the Commission suffered no resulting prejudice. Leachco offered to postpone the Commission’s depositions to give the Commission more time to prepare. The Commission refused that offer, proceeded with its depositions, and—proving that it suffered no prejudice—used documents from the production it now claims it had insufficient time to review. *Finally*, consistent with the Commission’s Rules of Practice for Adjudicative Proceedings, Leachco properly included objections in response to the Commission’s Requests for Admission and, in “good faith,” “[1] qualif[ied] an answer or den[ied] only a part of the matter to which an admission is requested, . . . [2] specif[ied] the portion that is true and . . . [3] den[ied] the remainder.” 16 C.F.R. § 1025.34(b). The Commission cannot compel an admission when, as here, an unqualified admission would be inaccurate.

ARGUMENT

I. Leachco has produced all nonprivileged documents responsive to the Commission's Second Set of Requests for Production and thus has not violated this Court's Orders.

The Commission asks the Court to compel Leachco to immediately produce documents responsive to the Commission's Second Set of Requests for Production that, the Commission claims, were withheld. *See* Mtn. to Compel (Dkt No. 57); Mem. in Support (CPSC Mem.) (Dkt. No. 58). But Leachco did not withhold any (nonprivileged) documents responsive to the Commission's Second Set of Requests for Production, which consisted of a single Request, RFP 27. In fact, Leachco produced *more* documents than RFP 27 required. There is thus no factual or legal basis to compel documents that have not been withheld.¹

The Commission's RFP 27 asked for electronic communications (to or from seven individuals) that contained *both* (1) the term "Podster" *and* (2) another specific term (e.g., "safe," "nap," "warning"). *See* Complaint Counsel's Second Set of Requests for Production. Leachco Ex. 1. Leachco produced all nonprivileged communications that met these criteria. Notably, many of these responsive documents are completely unrelated to the Commission's claim. For example, Leachco produced



¹ After the Commission filed its Motion to Compel, it took the deposition of Dan Marshall, a Leachco employee, on February 14, 2023. During that deposition, it was learned that responsive documents may be stored in repositories (computer platforms) that were overlooked during the document-production process. Leachco has searched these repositories and has produced responsive (nonprivileged) documents from all but one of the repositories. Nonprivileged responsive documents from the one remaining repository will be produced next week (the week of February 20, 2023). Since the Commission's Motion to Compel was filed before Mr. Marshall's deposition, the Motion does not address the documents held in these repositories. The Commission's Motion addresses whether Leachco's production met the requirements of RFP No. 27. Leachco responds to that issue here; and, as explained in this brief, Leachco produced more documents than required.

[REDACTED]

To argue that Leachco withheld responsive documents, the Commission effectively rewrites its RFP 27. For instance, the Commission claims—based on Leachco’s production—that Leachco’s Vice-President Jamie Leach would have sent, on average, only two emails per month “regarding the Podster”. *See* Jan. 25, 2023 M. Rogal E-Mail (CPSC Mem. at Ex. D). But RFP 27 did *not* request communications “regarding the Podster.” Put another way, RFP 27 did *not* ask for communications containing *either* (1) the term “Podster” *or* (2) one of the other terms. (Such a request would have been obviously overbroad.) Instead, again, the Commission requested electronic

communications (to or from seven individuals) that contained **both** (1) the term “Podster” **and** (2) another specific term (e.g., “safe,” “nap,” “warning”). Accordingly, a communication that included only the term “Podster”—but no other search term identified in RFP 27—did not meet the requirements of RFP 27 and, therefore, was not responsive. The Commission’s contentions that Leachco’s production was “minimal” or “exceptionally small,” CPSC Mem. at 4, is, aside from being pure speculation, based on a false premise. Leachco produced all electronic communications (to or from seven individuals) that contained **both** (1) the term “Podster” **and** (2) another specific term (e.g., “safe,” “nap,” “warning”) identified in RFP 27.

The Commission also contends that Leachco exercised discretion to withhold responsive documents. Not so. In fact, Leachco exercised discretion only to produce *more* documents than RFP 27 required. Thus, along with communications that did meet RFP 27’s criteria, Leachco also produced other communications that did not meet RFP 27’s criteria—if the latter were part of a responsive communication thread, even though a reasonable interpretation of RFP 27 would not require their production. Leachco notes here just three examples of many. First, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A second example can be found at [REDACTED]

[REDACTED]

A final example can be found at [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

. This last point helps refute

the Commission’s claim that Leachco exercised discretion to withhold responsive documents. *See* CPSC Mem. at 8. As the above examples show, the only discretion Leachco exercised was to produce more than what was required by RFP No. 27.

These examples also show that the Commission’s erroneous claims about Leachco’s production appear to arise from the way communications happened to be grouped together. Thus, if a long string of emails was grouped together, the Commission apparently contends that if the word “Podster” and one of the other RFP 27 search terms appear *anywhere* in the string—even those terms do not appear together in an individual communication, and even if, say, the term “Podster” appears in an email, and another RFP 27 term appears in an attachment to a completely separate email—that entire string of emails was responsive. But, again, that is not what RFP 27 requires. RFP 27 calls for each “electronic communication” that includes *both* (1) the term “Podster” *and* (2) another specific term (e.g., “sleep,” “nap,” “warning”).

It does not call for any group of communications, one of which contains “Podster” and another of which—perhaps several emails and days or weeks apart; or an attachment to a separate email—contains (say) “defect.” See e.g., Ex. 4 [REDACTED]

[REDACTED]

In other words, the Commission appears to treat separate emails as a single communication. Once again, that is not what RFP 27 requests.

Therefore, Leachco did not exercise *any* discretion to withhold responsive communications. To the contrary, Leachco produced each communication that includes **both** (1) the term “Podster” **and** (2) another specific term (e.g., “sleep,” “nap,” “warning”) from RFP 27. The *only* discretion Leachco exercised was to produce additional

(non-responsive) documents that were part of a string or email attachment connected to a responsive communication.

In sum, Leachco withheld *no* documents responsive to RFP 27; it in fact produced more documents than the Commission requested. There is therefore no factual or legal basis to compel Leachco to produce “withheld documents.”²

II. THE COMMISSION’S REQUEST FOR SANCTIONS SHOULD BE DENIED BECAUSE LEACHCO ACTED IN GOOD FAITH TO TIMELY COMPLY WITH THE COURT’S ORDERS AND FULLY COMPLIED WITH THE COMMISSION’S REQUESTS FOR ADMISSIONS.

A. Leachco Acted in Good Faith to Timely Produce all Responsive Documents, and the Commission rejected Leachco’s offer for an accommodation on scheduling depositions.

Leachco worked over the Christmas and New Year’s holidays to collect, review, and produce documents responsive to RFP 27. Unfortunately, Leachco missed the agreed-upon deadline. But the Commission has suffered no prejudice whatsoever. Therefore, sanctions are inappropriate here.

16 C.F.R. § 1025.37 states that the Presiding officer “*may* take such action as is just[,]” when deciding whether to grant sanctions. *Id.* (emphasis added). While the rule does not define what is “just,” federal courts have considered when sanctions are appropriate in given circumstances. And those courts have repeatedly found that the presence or lack of good faith is relevant to whether sanctions are appropriate. *See B.F. Goodrich Tire Co v. Lyster*, 328 F.2d 411, 415 (5th Cir. 1964) (“[T]he presence of lack of good faith in the parties is relevant to the orders which should be given and

² The Commission also requests the Court to compel Leachco to provide full and complete privilege log. *See* CPSC Mem. at 15–16. Leachco is working on its privilege log will produce it as soon as possible.

the severity of the sanctions.”) (citing *Societe Internationale Pour Participations Industrielles v. Rogers*, 357 U.S. 197, 207 (1958)).

Sanctions against Leachco would not be just and are unnecessary. On November 21, 2022, Leachco moved this Court for a Protective Order because it believed, in good faith, that the Commission was requesting irrelevant and burdensome discovery over its allegations that Leachco’s Podster is defective and creates a substantial product hazard. *See* Dkt. Nos. 45, 46. But this Court denied that request. *See* Dkt. No. 51. Shortly after the Court denied Leachco’s Motion, on December 23, 2022, to comply with the Court’s Order and move the proceedings along—and despite its reservations about tight deadlines—Leachco stipulated to the Commission’s demand that it would produce responsive documents on January 17, 2023. *See* Dkt. No. 54.³ Leachco and the Commission also agreed to set a schedule for the depositions of six Leachco employees to take place between January 31, 2023 and March 1, 2023. *Id.*⁴ Leachco afterward diligently worked in good faith with the Commission to comply with that deadline, has been in constant contact with the Commission about its document production, and has fully participated in the scheduled depositions.

Accordingly, shortly after the parties agreed to a January 17, 2023 deadline to produce documents, Leachco searched for documents responsive to the Commission’s RFP 27. That request not only included several search terms but also requested documents stretching back over a fourteen-year timeframe for seven Leachco employees. As a result, Leachco was required, through its single IT employee, to help employ-

³ The Court granted the Stipulation on December 27, 2022. Dkt. No. 55.

⁴ Since that Order, Leachco and the Commission agreed to a seventh deposition for Leah Barnes.

ees do extensive searches and upload documents that took around two weeks to complete—including time during the Christmas and New Year’s holidays. After those documents were collected, Leachco reviewed tens of thousands of documents in response to the Commission’s requests. As of Friday, January 13, 2023, Leachco believed it was on schedule to fully produce all responsive documents by the agreed Tuesday, January 17, 2023, deadline and, in a show of good faith, notified the Commission that it would be able to fully produce the documents. *See* CPSC Mem. Ex. A.

Despite this herculean effort, during the final weekend push to complete the production, Leachco experienced technical difficulties with certain uploads, and other unavoidable delays, and could not complete the production by the deadline. On January 17, 2023, Leachco notified the Commission of the delay and assured the Commission it was working as fast as possible to complete the production. *See id.* When the Commission emailed the next day to ask about the production’s status, Leachco did not ignore the Commission’s inquiry, but promptly responded and apologized for the delay and offered to rearrange the deposition schedule to accommodate the Commission. *See id.*⁵ But rather than work with Leachco to resolve the brief delay in production, the Commission did not ask for a meet and confer over the delay, nor would it entertain rescheduling depositions. Instead, the Commission threatened sanctions against Leachco. *See id.*

Because the Commission would not work with Leachco over deposition scheduling, Leachco shifted to making sure the Commission had the documents responsive

⁵ The first depositions in the agreed to schedule were to be conducted remotely, which if rearranged, would not require the Commission to rearrange any travel. *See* Dkt. No. 54.

to its requests for Mabry Ballard and Tonya Barrett as soon as possible, since their depositions were the first scheduled depositions (to be conducted on January 31, 2023, and February 1, 2023, respectively). Thus, on January 19, 2023—less than 48 hours after the document production deadline passed—Leachco produced responsive communications from Mrs. Ballard’s and Mrs. Barrett’s user accounts. *See* Jan. 19, 2023 O. Dunford E-Mail (Leachco Exhibit 6). And after producing those documents, Leachco continued to work to fully complete the document production—which it did on Friday, January 20, 2023. *See* Leachco Exhibit 7.⁶ Thus, Leachco made every effort to meet the agreed-upon deadline. It apologized for the delay and attempted to accommodate the Commission and briefly postpone the Commission’s depositions to allow the Commission time to review Leachco’s production.

Further, the slight delay in Leachco’s production caused no prejudice to the Commission. As just explained, the Commission received responsive emails related to Ms. Ballard and Ms. Barrett—the witnesses whose depositions were scheduled first—less than 48 hours after the production deadline. And Leachco offered to postpone those depositions, but the Commission refused, even though it would have been easy and non-disruptive to do so. These virtual depositions were scheduled for Tuesday, January 31, 2023, and Wednesday, February 1, 2023, and could have been postponed for 48 hours—to Thursday, February 2, 2023 and Friday, February 3, 2023. Yet the Commission went forward with the depositions on January 31st and February

⁶ To be sure, as the Commission notes, the remaining documents were sent at around 10:30 p.m. on a Friday. Mem. at 4. But that is only because Leachco produced the documents as soon as they were ready for production, not for any delay purposes.

1st, and during those depositions, the Commission used the documents Leachco produced on January 19th. Thus, the claim that the Commission was prejudiced because it did not have enough time to review documents contradicts the facts.

Moreover, as noted, Leachco produced all remaining documents to the Commission on January 20, 2023—just three days after the January 17, 2023, deadline. Thus, even if the Commission could not have reviewed those documents until January 23rd as it claims, it would still have had over three weeks to review the produced documents for the depositions of Daniel Marshall (February 14, 2023); Alex Leach (February 15, 2023); and Leah Barnes (February 16, 2023) and over a month to review documents for the depositions of Clyde Leach (February 28, 2023) and Jamie Leach (March 1, 2023). *See* Dkt. No. 54. And, of course, the Commission could have agreed to Leachco’s proposal to briefly postpone the depositions.

At bottom, this Court should not punish Leachco for a slight delay in producing documents to the Commission. Leachco is a small company that acted in good faith to timely produce documents and comply with the Court’s Orders. Leachco also tried to work with the Commission to resolve delays in the discovery process. And the Commission suffered no prejudice for the slight delay. Sanctions against Leachco here would not be “just,” and thus the Court should deny the Commission’s Motion.

B. LEACHCO ADEQUATELY RESPONDED TO COMPLAINT COUNSEL’S REQUESTS FOR ADMISSIONS AND, THUS, THERE ARE NO GROUNDS FOR SANCTIONS.

The Court should reject the Commission’s request for sanctions over Leachco’s alleged failure to adequately respond to Requests for Admission Nos. 3, 4, and 5. (CPSC Mem. at 9–11).

Under Rule 1025.34 of the Rules of Practice for Adjudicative Proceedings, a response to a request for admission, “shall specifically admit or deny the matter *or* set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission.” 16 C.F.R. § 1025.34(b) (emphasis added). Leachco’s responses to RFAs 3, 4, and 5 complied with this rule. For each RFA, Leachco objected to the RFAs on certain grounds but answered the Commission by admitting and denying what it could. And for each objection, Leachco set forth the reasons it could not truthfully admit or deny parts of the RFAs.

The Commission’s RFA No. 3 requested Leachco to “admit that, prior to the filing of the Complaint, Leachco had knowledge that consumers were allowing infants to sleep on Podsters.” *Id.* In response, Leachco objected to RFA 3, but set forth why it could not truthfully confirm whether consumers were “allowing” infants to sleep on Podsters. Leachco cannot read the minds of consumers, and so it objected and answered that the RFA’s wording suggests that “Leachco can know what consumers did and intended to do.” *Id.* Leachco still admitted what it knew: that it “received communications concerning the Podster and sleep.” *Id.*

Similarly, RFA 4 requested Leachco “admit that, prior to the filing of the Complaint, Leachco had knowledge that at least one retailer advertised the Podster as a product in which infants can sleep.” *Id.* As with RFA 3, Leachco responded by admitting and denying the parts of the RFA it could answer and objected by setting forth the reasons it could not admit or deny other parts of the RFA. Leachco could not

confirm that Amazon sought to “advertise” the Podster as a sleep product. But again, Leachco admitted what it knew: Amazon had included the Podster in what it considered a category of products called “sleep positioners.” *Id.* at 9–10.

Finally, RFA 5 requested Leachco “admit that, prior to the filing of the Complaint, Leachco had knowledge that there were reviews on Amazon.com in which consumers referenced infants sleeping on Podsters.” *Id.* at 10. Again, Leachco objected because it simply cannot know and thus could not specifically admit or deny, whether “reviews” on Amazon.com were made by actual consumers or by actual consumers of the Podster, nor could Leachco know whether the “reviews” on Amazon.com were accurate in whole or in part. Leachco cannot admit or deny what it does not know to be correct. And again, Leachco specifically admitted that it knew, what the Commission classified as “reviews,” were present on Amazon’s website that referenced infants sleeping on Podsters. *Id.*

The Commission nonetheless claims that Leachco was compelled to answer its RFAs in a certain way. But the Court ordered Leachco to respond—it did not order Leachco to ignore the CPSC’s Rules of Practice when doing so. *See Wright & Miller*, § 2289 Failure to Comply with Order Compelling Discovery, 8B Fed. Prac. & Proc. Civ. § 2289 (3d ed.) (“Discovery sanctions apply to a party’s disobedience of a court order; absent such an order the court may not impose sanctions . . .”). Leachco followed the Court’s order and responded to the Commission’s RFAs 3, 4, and 5. Thus, no sanctions are warranted.

In sum, for each RFA, Leachco admitted, denied, or set forth in detail the reasons why it could not truthfully admit or deny the Commission’s request for admission—consistent with 16 C.F.R. § 1025.34(b). Thus, the Commission’s Motion should be denied regarding sanctions over Leachco’s RFA responses.

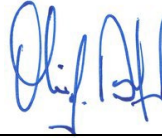
CONCLUSION

The Commission’s motion to compel “withheld documents” and for a full privilege log should be denied. Leachco did not withhold any (nonprivileged) responsive documents and will provide a full privilege log to the Commission immediately. The Commission’s request for sanctions should also be denied because (1) Leachco acted in good faith to timely produce all responsive documents under this Court’s Orders, and the Commission suffered no prejudice from the slight production delay; and (2) Leachco fully complied with the Court’s order to respond to the Commission’s Requests for Admission Nos. 3, 4, and 5.

* * *

Dated: February 16, 2023.

Respectfully submitted,



OLIVER J. DUNFORD

Florida Bar No. 1017791
Pacific Legal Foundation
4440 PGA Blvd., Suite 307
Palm Beach Gardens, FL 33410
Telephone: 916.503.9060
Fax: 916.419.7747
ODunford@pacificlegal.org

JOHN F. KERKHOFF

Ohio Bar No. 0097134
FRANK D. GARRISON
Indiana Bar No. 34024-49
Pacific Legal Foundation
3100 Clarendon Boulevard, Suite 610
Arlington, VA 22201
Telephone: 202.888.6881
Fax: 916.419.7747
JKerkhoff@pacificlegal.org
FGarrison@pacificlegal.org

Counsel for Respondent Leachco, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2023, the forgoing was served via email as follows:

<p>Honorable Michael G. Young Federal Mine Safety and Health Review Commission Office of the Chief Administrative Law Judge 1331 Pennsylvania Ave., NW, Suite 520N Washington, D.C. 20004-1710 myoung@fmshrc.gov cjannace@fmshrc.gov</p>	<p>Mary B. Murphy Director, Div. of Enforcement and Litigation U.S. Consumer Product Safety Commission 4330 East West Highway Bethesda, MD 20814 mmurphy@cpsc.gov</p>
<p>Alberta Mills Secretary of the U.S. Consumer Product Safety Commission U.S. Consumer Product Safety Commission 4330 East West Highway Bethesda, MD 20814 amills@cpsc.gov</p>	<p>Robert Kaye Assistant Executive Director Office of Compliance and Field Operations U.S. Consumer Product Safety Commission 4330 East West Highway Bethesda, MD 20814 rkaye@cpsc.gov</p>
	<p>Leah Ippolito, Supervisory Attorney Brett Ruff, Trial Attorney Rosalee Thomas, Trial Attorney Caitlin O'Donnell, Trial Attorney Michael Rogal, Trial Attorney Frederick C. Millett Gregory M. Reyes 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>



Oliver J. Dunford
Counsel for Respondent Leachco, Inc.

LEACHCO, INC.'S OPPOSITION TO COMPLAINT COUNSEL'S
MOTION TO COMPEL AND MOTION FOR SANCTIONS FOR VIOLATING THE COURT'S
DECEMBER 16, 2022, AND DECEMBER 27, 2022 ORDERS

EXHIBIT 1

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 SECOND SET OF REQUESTS
FOR PRODUCTION OF DOCUMENTS TO RESPONDENT**

Pursuant to 16 C.F.R. § 1025.33, Complaint Counsel hereby requests that Respondent, Leachco, Inc. (“Respondent” or “Leachco”) serve upon Complaint Counsel, within thirty (30) days, written responses to each of the requests set forth below, and, within thirty (30) days, produce at Complaint Counsel’s office each of the documents and things requested below.

PRELIMINARY STATEMENT

Complaint Counsel is serving these requests to obtain relevant, non-privileged discovery permitted pursuant to 16 C.F.R. § 1025.31(c)(1). Specifically, the request seeks electronic communications, including, but not limited to, emails from Leachco personnel, that are clearly relevant and important to this proceeding and that to-date Leachco has refused to search, collect, and produce. For example, if there are emails between Jamie Leach and Clyde Leach that include the search terms “Podster” and “hazard,” those should be produced to Complaint Counsel. Emails like this example and others requested herein are straightforward and ordinary requests seeking electronic communications using search terms for a defined set of custodians. And yet, Leachco has failed to produce these electronic communications, either claiming the requests are

overbroad or failing to respond to the requests at all. Such discovery gamesmanship is contrary to the Rules of Practice for Adjudicative Proceedings and Judge Young's instructions to the parties.

The requested electronic communications should have been produced long ago. They should have been produced in response to Request No. 9 of the March 14, 2022 First Set of Requests for Production of Documents and Things to Respondent. After Leachco failed to produce any internal or external electronic communications, Complaint Counsel attempted to resolve this without court intervention by sending emails and holding meet-and-confer calls that led to a motion to compel. After the September 7, 2022 hearing and the Court's September 9, 2022 and September 16, 2022 Orders, Complaint Counsel expected to receive a full production of electronic communications. Leachco's October 3, 2022 supplemental response, like its original response, however, is insufficient, and Leachco makes only a vague offer to collect and produce communications between Leachco and retailers, dealers, distributors, and consumers. *See* Leachco's Supplemental Responses to the Commission's Request for Production Nos. 9, 10, 11. Leachco also entirely failed to respond to Complaint Counsel's request for internal Leachco communications. Accordingly, Complaint Counsel has set forth this request in specific and concrete terms. Leachco must answer, search for, collect, and produce any responsive documents. This request narrows Request No. 9 to specific custodians and search terms, providing Leachco with guidance on which electronic communications to search and how to search them. As a result, this narrowed Request is not overly broad nor unduly burdensome to Leachco. Anything less than a full and complete production of responsive electronic communications will be met with a motion to compel.

DEFINITIONS AND INSTRUCTIONS

Complaint Counsel hereby incorporates by reference all of its Definitions and Instructions set forth in Complaint Counsel's First Set of Requests for Production of Documents and Things to Respondent, dated March 14, 2022.

REQUEST FOR PRODUCTION

REQUEST NO. 27:

All electronic communications (including, but not limited to, internal and external emails, instant messages, and text messages) to and from the following persons, whether involving third parties and/or other Leachco personnel, between January 1, 2008 and the date the Complaint was filed in this matter (February 9, 2022) containing the following search terms:

a. Persons to search:

1. Jamie Leach;
2. Clyde Leach;
3. Alex Leach;
4. Mabry Ballard;
5. Tonya Barrett;
6. Dan Marshall; and,
7. Leah Barnes.

b. Search Terms:

1. "Podster" and "safety" or "safe";
2. "Podster" and "suffocation" or "suffocate" or "suffocating";
3. "Podster" and "incident";
4. "Podster" and "breathing" or "breathe";

5. "Podster" and "obstruction" or "obstructing";
6. "Podster" and "injury" or "injure" or "injuries";
7. "Podster" and "hazard" or "hazardous";
8. "Podster" and "death" or "died" or "dying";
9. "Podster" and "sleep";
10. "Podster" and "warnings" or "warn" or "warned";
11. "Podster" and "prone" or "face down";
12. "Podster" and "roll" or "move";
13. "Podster" and "unsupervised" or "supervise";
14. "Podster" and "crib";
15. "Podster" and "bed";
16. "Podster" and "nap";
17. "Podster" and "asphyxia";
18. "Podster" and "defect";

///

///

///

///

///

///

///

///

///

19. “Podster” and “recall”; and
20. “Podster” and “CPSC”.

Dated this 5th day of October, 2022

/s/ Brett Ruff

Gregory Reyes, Supervisory Attorney
Brett Ruff, Trial Attorney
Rosalee Thomas, Trial Attorney
Caitlin O’Donnell, Trial Attorney
Michael J. Rogal, Trial Attorney
Frederick Millett, Trial Attorney

Division of Enforcement and Litigation
Office of Compliance and Field Operations
U.S. Consumer Product Safety Commission
Bethesda, MD 20814
301-504-7220

Complaint Counsel for
U.S. Consumer Product Safety Commission

CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2022, I served Complaint Counsel's Second Set of Requests for Production of Documents to Respondent as follows:

By email to Counsel for Respondent:

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

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

Bettina Strauss
Bryan Cave Leighton Paisner LLP
One Metropolitan Square
211 North Broadway, Suite 3600
St. Louis, MO 63102
Email: bjstrauss@bclplaw.com

/s/ Brett Ruff

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

LEACHCO, INC.'S OPPOSITION TO COMPLAINT COUNSEL'S
MOTION TO COMPEL AND MOTION FOR SANCTIONS FOR VIOLATING THE COURT'S
DECEMBER 16, 2022, AND DECEMBER 27, 2022 ORDERS

EXHIBIT 6

Subject: RE: In re Leachco -- Document Production
Date: Thursday, January 19, 2023 at 4:27:54 PM Eastern Standard Time
From: Oliver J. Dunford
To: Ruff, Brett, Reyes, Gregory, Rogal, Michael, Perilla, Frank Robert, Millett, Frederick
CC: Frank Garrison, John F. Kerkhoff
Attachments: image001.png

Brett,

We have uploaded some documents. We should have the rest tomorrow.

Oliver

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



Defending Liberty and Justice for All.

From: Ruff, Brett <BRuff@cpsc.gov>
Sent: Wednesday, January 18, 2023 3:21 PM
To: Oliver J. Dunford <ODunford@pacificlegal.org>; Reyes, Gregory <GReyes@cpsc.gov>; Rogal, Michael <MRogal@cpsc.gov>; Perilla, Frank Robert <FPerilla@cpsc.gov>; Millett, Frederick <FMillett@cpsc.gov>
Cc: Frank Garrison <FGarrison@pacificlegal.org>; John F. Kerkhoff <JKerkhoff@pacificlegal.org>
Subject: RE: In re Leachco -- Document Production

Oliver,

We are surprised that Leachco still has not produced the Court-ordered documents given its assurances last Friday that the documents would be produced on time. Please provide specific information regarding what issue arose, when exactly you learned about this issue, and what has been done to resolve it.

Additionally, we need a firm date by which the production will be made. We cannot rely on a vague timeline and your statements that documents will be provided “as soon as they are ready.”

Further, we are not going to delay the depositions due to Leachco’s continued discovery delays. We jointly decided on the current dates in light of Leachco’s representation that it would be able to serve the Court-ordered production by January 17—over a month after the Court granted the motion to compel. At this point, Leachco has delayed the production of documents responsive to our RFPs for months and now has delayed compliance with the Court’s order. We will not also delay the depositions, and we reserve the right to seek appropriate evidentiary sanctions.

Brett Ruff

Trial Attorney

U.S. Consumer Product Safety Commission

Division of Enforcement and Litigation | Office of Compliance and Field Operations

4330 East West Highway | Bethesda, MD 20814

From: Oliver J. Dunford <ODunford@pacificlegal.org>

Sent: Wednesday, January 18, 2023 1:39 PM

To: Ruff, Brett <BRuff@cpsc.gov>; Reyes, Gregory <GReyes@cpsc.gov>; Rogal, Michael <MRogal@cpsc.gov>; Perilla, Frank Robert <FPerilla@cpsc.gov>; Millett, Frederick <FMillett@cpsc.gov>

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

Subject: RE: In re Leachco -- Document Production

Brett,

We had anticipated meeting the deadline, but we were unable to. We are working as fast as we can, and we will produce the documents as soon as they are ready. In any event, this very brief delay is unfortunate and, again, I apologize and inconvenient. But it is not causing prejudice. If nothing else, we can rearrange the deposition schedule if you need additional time. But that seems unnecessary, particularly in light of your argument, earlier in this case, that the Commission should proceed with depositions before written discovery and document production had been completed.

We continue to work on this and will produce as soon as we can.

Oliver

Oliver J. Dunford | Senior Attorney

Pacific Legal Foundation

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

916.503.9060 (Direct) | 216.702.7027 (Cell)



**PACIFIC LEGAL
FOUNDATION**

Defending Liberty and Justice for All.

From: Ruff, Brett <BRuff@cpsc.gov>

Sent: Wednesday, January 18, 2023 12:08 PM

To: Oliver J. Dunford <ODunford@pacificlegal.org>; Reyes, Gregory <GReyes@cpsc.gov>; Rogal, Michael <MRogal@cpsc.gov>; Perilla, Frank Robert <FPerilla@cpsc.gov>; Millett, Frederick <FMillett@cpsc.gov>

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

Subject: RE: In re Leachco -- Document Production

Oliver,

Leachco was required to produce documents yesterday pursuant to the December 27 Court-ordered deadline for document production. At 4:46 p.m. yesterday, you informed us that you would be unable to meet this deadline due to an issue that arose over the weekend. Half of today already has gone by, yet we still have not received the production. Please produce the documents by the end of the day today. If you do not, we will take appropriate action, including possibly filing a request for sanctions. Your failure to produce documents per the Court's orders is causing us prejudice. Depositions will begin in less than two weeks, and we had anticipated receiving Leachco's documents yesterday and promptly being able to use them in our preparations.

Brett Ruff

Trial Attorney

U.S. Consumer Product Safety Commission

Division of Enforcement and Litigation | Office of Compliance and Field Operations

4330 East West Highway | Bethesda, MD 20814

From: Oliver J. Dunford <ODunford@pacificlegal.org>

Sent: Tuesday, January 17, 2023 4:46 PM

To: Ruff, Brett <BRuff@cpsc.gov>; Reyes, Gregory <GReyes@cpsc.gov>; Rogal, Michael <MRogal@cpsc.gov>; Perilla, Frank Robert <FPerilla@cpsc.gov>

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

Subject: RE: In re Leachco -- Document Production

Brett,

I've attached Leachco's supplemental responses to the Commission's Second RFP and to the Commission's RFA Nos. 3, 4, & 5.

Also, unfortunately, we ran into some problems over the weekend, and we will not be able to produce the documents today. I apologize, but we are working as fast as we can. And we will produce the documents as quickly as possible.

Finally, Ms. Barnes has no documents to produce. When we complete production, let's talk about her deposition.

Thank you,
Oliver

Oliver J. Dunford | Senior Attorney

Pacific Legal Foundation

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

916.503.9060 (Direct) | 216.702.7027 (Cell)



**PACIFIC LEGAL
FOUNDATION**

Defending Liberty and Justice for All.

From: Ruff, Brett <BRuff@cpsc.gov>

Sent: Tuesday, January 17, 2023 11:34 AM

To: Oliver J. Dunford <ODunford@pacificlegal.org>; Reyes, Gregory <GReyes@cpsc.gov>; Rogal, Michael <MRogal@cpsc.gov>; Perilla, Frank Robert <FPerilla@cpsc.gov>

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

Subject: RE: In re Leachco -- Document Production

Oliver,

Thank you for confirming that Leachco is on schedule to produce the materials today. We also thank you for

letting us know that your firm will be representing Ms. Barnes in connection with the subpoena. Will you also be producing her documents today? By our calculation, today is the deadline for her production.

With respect to her deposition, is Ms. Barnes available for a deposition on February 22 or 23? We anticipate deposing Ms. Barnes virtually.

Thank you,

Brett Ruff

Trial Attorney

U.S. Consumer Product Safety Commission

Division of Enforcement and Litigation | Office of Compliance and Field Operations

4330 East West Highway | Bethesda, MD 20814

From: Oliver J. Dunford <ODunford@pacificlegal.org>

Sent: Friday, January 13, 2023 2:18 PM

To: Ruff, Brett <BRuff@cpsc.gov>; Reyes, Gregory <GReyes@cpsc.gov>; Rogal, Michael <MRogal@cpsc.gov>; Perilla, Frank Robert <FPerilla@cpsc.gov>

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

Subject: RE: In re Leachco -- Document Production

Brett,

We are on schedule to produce the documents on Tuesday, in the format described below. We will have Sam Chang reach out to Mr. Perilla as needed.

Also, we are representing Leah Barnes for purposes of the Commission's subpoena. Please direct any questions for her to us.

Thank you,
Oliver

Oliver J. Dunford | Senior Attorney

Pacific Legal Foundation

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

916.503.9060 (Direct) | 216.702.7027 (Cell)



**PACIFIC LEGAL
FOUNDATION**

Defending Liberty and Justice for All.

From: Ruff, Brett <BRuff@cpsc.gov>

Sent: Thursday, January 5, 2023 4:13 PM

To: Oliver J. Dunford <ODunford@pacificlegal.org>; Frank Garrison <FGarrison@pacificlegal.org>; John F. Kerkhoff <JKerkhoff@pacificlegal.org>

Cc: Reyes, Gregory <GReyes@cpsc.gov>; Rogal, Michael <MRogal@cpsc.gov>; Perilla, Frank Robert <FPerilla@cpsc.gov>

Subject: In re Leachco -- Document Production

Oliver,

To facilitate the processing and review of the materials Leachco will be producing by January 17, we are writing to confirm that Leachco will be producing the materials in the format specified in the Requests for Production: “Please provide all responsive Documents, including hardcopy, electronic and e-mail Documents in electronic format Document level searchable text, all fielded data, and metadata should be delivered in a Relativity-compatible load file (DAT and OPT) accompanied by Bates-numbered single page Group IV TIFF images representing each page of production.”

We would ask that the materials be uploaded to the Watchdox folder at <https://cpsc.watchdox.com/ngdox/workspaces/bbcc1567-3d7f-4cc2-951f-75427aabf467/da794a70-0111-4ccf-9fa5-21b16a728ef6> to avoid potential firewall issues.

Robert Perilla, our paralegal who is copied here, will be able to coordinate with your side regarding any technical questions that may arise. I understand that we had good success in working with Mr. Chang on your side to ensure our productions were compliant with your firm’s needs, and we hope to be able to similarly ensure a smooth production by Leachco by January 17. Mr. Chang and all three PLF attorneys have access to the Watchdox folder noted above. We can add anyone else you would like.

Thank you,

Brett Ruff

Trial Attorney

U.S. Consumer Product Safety Commission

Division of Enforcement and Litigation | Office of Compliance and Field Operations

4330 East West Highway | Bethesda, MD 20814

*****!!! Unless otherwise stated, any views or opinions expressed in this e-mail (and any attachments) are solely those of the author and do not necessarily represent those of the U.S. Consumer Product Safety Commission. Copies of product recall and product safety information can be sent to you automatically via Internet e-mail, as they are released by CPSC. To subscribe or unsubscribe to this service go to the following web page: <http://www.cpsc.gov/en/Newsroom/Subscribe> *****!!!

Email secured by Check Point

Email secured by Check Point

Email secured by Check Point

LEACHCO, INC.'S OPPOSITION TO COMPLAINT COUNSEL'S
MOTION TO COMPEL AND MOTION FOR SANCTIONS FOR VIOLATING THE COURT'S
DECEMBER 16, 2022, AND DECEMBER 27, 2022 ORDERS

EXHIBIT 7

Subject: In the Matter of Leachco, Inc., CPSC Docket No. 22-1
Date: Friday, January 20, 2023 at 10:29:38 PM Eastern Standard Time
From: Oliver J. Dunford
To: BRuff@cpsc.gov, MRogal@cpsc.gov, GReyes@cpsc.gov, FPerilla@cpsc.gov
CC: John F. Kerkhoff, Frank Garrison
Attachments: image001.png, Leachco response to CPSC 2nd ROGs to Leachco - 2023.01.20 FINAL.pdf

Counsel,

The remaining documents are scheduled to be uploaded. Also, I've attached Leachco's responses to the Commission's Second Set of Interrogatories.

Thank you,
Oliver

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



**PACIFIC LEGAL
FOUNDATION**

Defending Liberty and Justice for All.