

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)
)
AMAZON.COM, INC.)
)
)
)
Respondent.)
_____)

CPSC DOCKET NO.: 21-2

COMPLAINT COUNSEL’S STATEMENT
OF UNDISPUTED MATERIAL FACTS

THE UNDISPUTED FACTS REGARDING THE HAZARDS AND SUBSTANTIAL RISK OF INJURY AND DEATH PRESENTED BY THE SUBJECT PRODUCTS

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

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

3. The children’s sleepwear garments include:

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

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

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

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

4. [REDACTED]

[REDACTED]

[REDACTED] Exhibit 1

(Exhibit B, CPSC_AM0000349-352).

5. On November 3, 2020, CPSC staff sent a Notice of Violation directly to Amazon's Corporate Counsel, Genus Heidary, informing Amazon that the Taiyicyxgan Little Girl's Coral Fleece Bathrobe Unisex Kids Robe Pajamas Sleepwear violated flammability standards, and requested that Amazon conduct a recall of the products. Exhibit 1 (Exhibit C, CPSC_AM0000515-519).

6.

[REDACTED]

[REDACTED]

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

7. On November 3, 2020, CPSC Staff sent a Notice of Violation directly to Amazon's Corporate Counsel, Genus Heidary, informing Amazon that the IDGIRLS Kids Animal Hooded Soft Plush Flannel Bathrobes for Girls Boys Sleepwear failed flammability standards, and requested that Amazon recall the products. Exhibit 1 (Exhibit E, CPSC_AM0000790-794).

8.

[REDACTED]

[REDACTED]

[REDACTED]

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

9. On November 3, 2020, CPSC staff sent a Notice of Violation directly to Amazon's Corporate Counsel Genus Heidary, informing Amazon that the Home Sweet Boy's Plush Fleece Robe Shawl Skull and Hooded Spacecraft Printed Soft Kids Bathrobe for Boy had failed flammability standards, and requested that Amazon recall the products. Exhibit 1 (Exhibit G, CPSC_AM0001077-1081).

10.

[REDACTED]

[REDACTED]

[REDACTED]

Exhibit 1 (Exhibit H, CPSC_AM0000624-628).

11. On November 3, 2020, CPSC staff sent a Notice of Violation directly to Amazon's Corporate Counsel, Genus Heidary, informing Amazon that the HOYMN Little Girl's Lace Cotton Nightgowns, Kids Long-Sleeve Sleep Shirts Princess Sleepwear for Toddlers 2-15 Years had failed flammability standards, and requested that Amazon recall the products. Exhibit 1 (Exhibit I, CPSC_AM0000672-676).

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

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

14. [REDACTED]

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

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

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

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

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

18. The Standards require that children's sleepwear garments stop burning when the flame source is removed. To meet the flammability requirements of the Standards, children's

sleepwear garments must not have a sample with an average char length exceeding seven inches and no individual specimen can have a char length of ten inches, as set forth at 16 C.F.R. Parts 1615.3(b) and 1616.3(b).

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

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

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

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

23. The carbon monoxide detectors include:

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

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

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

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

24. On November 23, 2020, CPSC staff sent letters to Amazon relating to the carbon monoxide detectors listed in Paragraph 23 above. Exhibit 1 (Exhibit L, CPSC_AM0009462-9466, CPSC_AM0009467-9471, CPSC_AM0009472-9476, CPSC_AM0009477-9481).

25. The letters to Amazon state that the carbon monoxide detectors were tested by CPSC staff and “either alarmed prematurely or failed to alarm at all when exposed to certain

levels of carbon monoxide.” The letters request that Amazon agree to a voluntary corrective action plan to recall the products. Exhibit 1 (Exhibit L).

26. The Parties agree that the carbon monoxide detectors are consumer products that were imported, distributed in U.S. commerce, and offered for sale to consumers for their personal use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise. *See* Amazon’s Response to Complaint Counsel’s Statement of Undisputed Material Facts and Amazon’s Statement of Undisputed Material Facts, Dkt. No. 15, at Response to Paragraph 37.

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

28. [REDACTED]

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

29. The CPSC obtained samples of the carbon monoxide detectors identified in Paragraph 23 above by purchasing them from Amazon.com. Exhibit 1 (Exhibit M, CPSC_AM0000201-210, CPSC_AM0000211).

30. CPSC staff tested the samples to determine whether they detect carbon monoxide gas. CPSC testing revealed that the carbon monoxide detectors fail to detect carbon monoxide gas and fail to alarm in its presence. Exhibit 5, Affidavit of Benjamin Mordecai (Exhibit A, CPSC_AM00000194-200).

31. [REDACTED]

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

32. In additional testing, [REDACTED]

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

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

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

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

[REDACTED] *Id.*

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

[REDACTED] *Id.*

37. [REDACTED]

[REDACTED]

[REDACTED] Exhibit 5

(Exhibit B, at CPSC_AM0017343).

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

39. “More than 150 people in the United States die every year from accidental non-fire related CO poisoning associated with consumer products, including generators.”

[https://www.cpsc.gov/Safety-Education/Safety-Education-Centers/Carbon-Monoxide-](https://www.cpsc.gov/Safety-Education/Safety-Education-Centers/Carbon-Monoxide-Information-Center)

[Information-Center](https://www.cpsc.gov/Safety-Education/Safety-Education-Centers/Carbon-Monoxide-Information-Center). “CO poisoning from portable generators can happen so quickly that

exposed persons may become unconscious before recognizing the symptoms of nausea, dizziness

or weakness.” [https://www.cpsc.gov/Newsroom/News-Releases/2022/CPSC-Releases-New-](https://www.cpsc.gov/Newsroom/News-Releases/2022/CPSC-Releases-New-Report-on-Carbon-Monoxide-CO-Fatalities-Urges-Generator-Safety-in-New-PSA)

[Report-on-Carbon-Monoxide-CO-Fatalities-Urges-Generator-Safety-in-New-PSA](https://www.cpsc.gov/Newsroom/News-Releases/2022/CPSC-Releases-New-Report-on-Carbon-Monoxide-CO-Fatalities-Urges-Generator-Safety-in-New-PSA).

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

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

42. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Exhibit 1

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

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

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

Exhibit 1 (Exhibit K, at Paragraph 3).

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

Sample Number	Seller/Manufacturer	ASIN
21-800-0406	OSEIDOO	B07RRVKPMD
21-800-1213	Aiskki	B0814LSM48
21-800-0556	Raxurt Store	B08LD9S6PB
21-800-0481	LEMOCA	B087JCJ4NC
21-800-1183	Xianming	B087CVZT9V
21-800-0609	BEAUTIKEN	B087TJJ5XP
21-800-0731	VIBOOS	B07T3D3TQR
21-800-0635	VIBOOS	B0878SRBM2
21-800-0756	SARCCH	B0852JWLTP
21-800-0831	Bongtai	B085NNM6NY
21-800-0933	Bvser Store	B07TVX4G4C
21-800-0956	TDYJWELL	B08R87G9KH
21-800-1806	Bownyo	B07TQRVMJF
21-800-1883	Romancelink	B089QDK2VV
21-800-1983	BZ	B088ZPLZ91
21-800-1317	Techip	B07YS53MKB
21-800-1632	LetsFunny	B07PJ8F941
21-800-1606	SUNBA YOUTH Store / Naisen	B08143HCDC
21-800-1706	OWEILAN	B08QYRL9GC
21-800-1585	Surelang Store	B085RMB16H
21-800-1106	GEPORAY	B07YF7JHKC

21-800-0135	Miserwe	B0888P3PDH
21-800-0081	Techip	B08LD44V8W
21-800-1081	ADTZYLD	B07SH5QZFX
21-800-1006	KIPOZI	B08J7JTW2M
21-800-1131	KENLOR	B07V5WV28
21-800-0981	Shaboo Prints	B08LN4FR4T
21-800-0026	ELECDOLPH	B08PCQ7QFK
21-800-1382	LANIC	B07YXNMXH3
21-800-1398	Songtai	B088GWLNT
21-800-1558	BEAUTIKEN	B0814TCYZM
21-800-1431	tiamo airtrack	B07ZYJCK25
21-800-0334	Ohuhu	B07XDTJZKS
21-800-0281	Nisahok	B08M183SR4
21-800-0231	Dekugaa Store	B07ZYJ92DM
21-800-0186	Admitrack	B0854FGPP7

46. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Exhibit 1 (Exhibit O, CPSC_AM00005051-5058).

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

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

49. [REDACTED]

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

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

51. CPSC staff tested the samples to determine whether the hair dryers are hand-supported hair dryers and lack an immersion protection device integral to the power cord. CPSC testing revealed that the hair dryers are hand-supported and that they lack the required immersion protection device integral to the power cord. Exhibit 6, Affidavit of Arthur Lee (Exhibit A, CPSC_AM0000019-79, Exhibit B, CPSC_AM0000080-144, Exhibit C, CPSC_AM0000145-180, Exhibit D, CPSC_AM0000181-193).

52. In 2011, the CPSC approved a federal safety rule specifying that hand-supported hair dryers that do not provide integral immersion protection in compliance with the

requirements of Section 5 of Underwriters Laboratories (“UL”) *Standard for Safety for Household Electric Personal Grooming Appliances*, UL 859 (10th edition) or Section 6 of *UL Standard for Safety for Commercial Electric Personal Grooming Appliances*, UL 1727 (4th edition) are a “substantial product hazard” under Section 15(a) of the CPSA, 15 U.S.C. § 2064(a). See 15 U.S.C. § 2064(j) and 16 C.F.R. § 1120.3.

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

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

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

**THE UNDISPUTED FACTS REGARDING AMAZON'S UNILATERAL ACTIONS
RELATING TO THE SUBJECT PRODUCTS**

56. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

57. [REDACTED]

[REDACTED]. Exhibit 1

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

58. [REDACTED]

[REDACTED]

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

59. [REDACTED]

[REDACTED]

[REDACTED] Exhibit 1

(Exhibit Q, at 68:19-69:3).

60. [REDACTED]

[REDACTED]

[REDACTED]

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

61. [REDACTED]

[REDACTED]

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

62. [REDACTED]

[REDACTED] Exhibit 1

(Exhibit Q, at 140:7-11).

63. [REDACTED]

[REDACTED] Exhibit 1 (Exhibit

Q, at 142:5-7.

64. [REDACTED]

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

65. [REDACTED]

[REDACTED]

Exhibit 1 (Exhibit Q, at 141:5-7).

66. [REDACTED]

[REDACTED]

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

67. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See Exhibit 7 (Amazon-CPSC-FBA-00002393 ([REDACTED]

[REDACTED])); Exhibit 8 (Amazon-

CPSC-FBA-00002493 [REDACTED]

[REDACTED]).

68. [REDACTED]

[REDACTED]

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

69. [REDACTED]

[REDACTED]

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

70. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

71. Another iteration states that “[t]he CPSC has informed us that the products listed above failed to meet the federal safety standard for the flammability of children’s sleepwear posing a risk of burn injuries to children.” Exhibit 10 (Amazon-CPSC-FBA-00000212-214).

72. The emails then state: “If you still have this product, we urge you to stop using it immediately and dispose of it. If you purchased this product for someone else, please notify the recipient immediately and let them know they should dispose of it. There is no need for you to return the product.” Exhibit 10 (at Amazon-CPSC-FBA-00000212).

73. The emails inform the customer that they are receiving a “refund in the form of a gift card to Your Account.” Exhibit 10 (Amazon-CPSC-FBA-00000212).

74. The emails indicate that it is being sent from a “notification-only [email] address that cannot accept incoming e-mail. Please do not reply to this message.” Exhibit 10 (Amazon-CPSC-FBA-00000213).

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

76. The first line of the email states: “We have learned of a potential safety issue that may impact your Amazon purchase(s) below.” Exhibit 10 (Amazon-CPSC-FBA-00000214).

77. The email then provides an Order ID number, ASIN, and product description. Exhibit 10 (Amazon-CPSC-FBA-00000214).

78. The email then states that the product is either a product that the CPSC “has informed us about, or our Product Safety team has identified, that may fail to alarm on time, posing a risk of exposure to potentially dangerous levels of Carbon Monoxide.” Exhibit 10 (Amazon-CPSC-FBA-00000214).

79. The email then states: “If you still have this product, we urge you to stop using it immediately and dispose of it. If you purchased this product for someone else, please notify the recipient immediately and let them know they should dispose of it. There is no need for you to return the product.” Exhibit 10 (Amazon-CPSC-FBA-00000214).

80. The email informs the customer that he or she is receiving a “refund in the form of a gift card to Your Account.” Exhibit 10 (Amazon-CPSC-FBA-00000214).

81. The email indicates that it is being sent from a “notification-only [email] address that cannot accept incoming e-mail. Please do not reply to this message.” Exhibit 10 (Amazon-CPSC-FBA-00000214).

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

83. The first line of the email states: “We have learned of a potential safety issue that may impact your Amazon purchase(s) below.” Exhibit 10 (Amazon-CPSC-FBA-00000213).

84. The email then provides an Order ID number, ASIN, and product description. Exhibit 10 (Amazon-CPSC-FBA-00000213).

85. The email states that the product is either a product that the CPSC “has informed us about, or our Product Safety team has identified, that may fail to have mandatory immersion protection, posing a risk of electric shock if the hair dryer comes in contact with water.” Exhibit 10 (Amazon-CPSC-FBA-00000213).

86. The email then states: “If you still have this product, we urge you to stop using it immediately and dispose of it. If you purchased this product for someone else, please notify the recipient immediately and let them know they should dispose of it. There is no need for you to return the product.” Exhibit 10 (Amazon-CPSC-FBA-00000213).

87. The email informs the customer that he or she is receiving a “refund in the form of a gift card to Your Account.” Exhibit 10 (Amazon-CPSC-FBA-00000213).

88. The email indicates that it is being sent from a “notification-only [email] address that cannot accept incoming e-mail. Please do not reply to this message.” Exhibit 10 (Amazon-CPSC-FBA-00000213).

89. [REDACTED]

[REDACTED]

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

90. [REDACTED]

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

91. [REDACTED]

[REDACTED]

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

92. [REDACTED]

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

93. [REDACTED]

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

94. [REDACTED]

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

95. [REDACTED]

[REDACTED]

[REDACTED]

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

96. Amazon did not agree to the issuance of a joint press release with CPSC to inform the public – including second-hand purchasers – of the substantial product hazards presented by the 400,000 Subject Products it distributed through its FBA program. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Exhibit 1 (Exhibit Q, at 166:4-166:10; see also 177:17-178:4 (stating that “[w]ith respect to the customers, [Amazon] messaged the customers, and provided a remedy.”)).

97. [REDACTED]

[REDACTED]

[REDACTED]

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

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

99. Amazon is also “responsible for all customer service issues relating to packaging, handling and shipment, and customer returns, refunds, and adjustments related to Amazon

Fulfillment Units,” which are products sold through the FBA program. Amazon’s Statement of Undisputed Material Facts, Dkt No. 16 at § I, ¶ 14.

100. In its Business Solutions Agreement with its third-party sellers, Amazon tells the third-party sellers it has the right to “determine whether a customer will receive a refund.” Amazon further states “we will require you to reimburse us where we determine you have responsibility in accord with the Agreement.” Amazon’s Statement of Undisputed Material Facts, Dkt No. 16 at § I, ¶ 14. *See also* Exhibit 11 (Amazon Services Business Solutions Agreement, Amazon-CPSC-FBA-00000167-211, at Provision F-8.2 (Amazon-CPSC-FBA-00000197)).

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

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

103. [REDACTED]

[REDACTED]

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

104. [REDACTED]

[REDACTED]

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

105. [REDACTED]

[REDACTED]

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

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

107. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

108. [REDACTED]

[REDACTED]

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

109. [REDACTED]

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

110. [REDACTED]

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

111. [REDACTED]

[REDACTED]

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

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

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

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

THE UNDISPUTED FACTS REGARDING THE REMEDIES CPSC REQUIRES TO PROTECT CONSUMERS FROM SUBSTANTIAL PRODUCT HAZARDS

115. In proclaiming March 6, 2022, to March 12, 2022, as National Consumer Protection week, the President of the United States of America noted that CPSC works to protect consumers and ensure product safety. *See* The White House, National Consumer Protection Week, 2022 (March 4, 2022) (available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/04/national-consumer-protection-week-2022/>) (“Our Nation’s consumer protection agencies – including the . . . Consumer Product Safety Commission – work . . . every day to protect consumers and ensure product safety through investigations, law

enforcement actions, and free, actionable, plain-language consumer education resources.”); *see also* CPSC, About Us (available at <https://www.cpsc.gov/About-CPSC>) (“CPSC works to save lives and keep families safe by reducing the unreasonable risk of injuries and deaths associated with consumer products and fulfilling its vision to be the recognized global leader in consumer product safety.”).

116. The Recall Handbook, a publicly available document the most recent version of which was published in September 2021, sets out the objectives of a recall. The Recall Handbook explains that the objectives of a recall are: “(1) To prevent injury or death from defective or violative products; (2) To locate all such products as quickly as possible; (3) To remove such products from the distribution chain and from the possession of consumers; and (4) To communicate to the public in a timely manner accurate and understandable information about the product defect or violation, the hazard, and the corrective action. Companies should design all informational materials to motivate retailers and the media to get the word out and to spur consumers to act on the recall.” Exhibit 1 (Exhibit S, CPSC_AM0011464-11515, at CPSC_AM0011479).

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

118. [REDACTED]

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

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

120. [REDACTED]

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

121. [REDACTED]

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

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

123. The Recall Handbook states that remedial action taken by a recalling firm can include providing “return of the product for a cash refund or a replacement product.”

CPSC_AM0011466-11467. [REDACTED]

[REDACTED] Exhibit 1 (Exhibit S, at CPSC_AM0012125).

124. [REDACTED]

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

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

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

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

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

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

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

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

131. Specifically, the Recall Handbook informs companies conducting recalls that they must “link recall announcements to the company website’s first-entry point, such as the consumer home page (not the corporate/shareholder site),” “include the words ‘recall’ and ‘safety’ in the link to the recall information” “include all available recall information in the news release,” “allow consumers to request the remedy directly from the website,” and “convey any

additional instructions that consumers need to receive the remedy in plain language and include photos or videos to explain the remedy process clearly.” Exhibit 1 (Exhibit S, at CPSC_AM0011486).

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

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

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

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

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

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

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

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

140. If CPSC approves off-site destruction, the Recall Handbook similarly requires that a certification of destruction is obtained. The Recall Handbook also advises firms to clearly mark all boxes and pallets containing recalled products, to avoid comingling with other, non-recalled, goods. Exhibit 1 (Exhibit S, at CPSC_AM0011492).

141. [REDACTED]

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

142. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

143. The Recall Handbook states that all press releases – whether in a voluntary recall or in a mandatory recall – must be approved by CPSC staff. Exhibit 1 (Exhibit S, at CPSC_AM0011481). [REDACTED]

[REDACTED] Exhibit 1 (Exhibit T, at CPSC_AM0012126 [REDACTED]

[REDACTED]

[REDACTED]).

144. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

145. [REDACTED]

[REDACTED]

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

146. [REDACTED]

[REDACTED]

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

147. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

[REDACTED]

[REDACTED] *Id.* (Exhibit T, at CPSC_AM0012127).

148. [REDACTED]

[REDACTED]

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

149. [REDACTED]

[REDACTED]

[REDACTED]

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

150. [REDACTED]

[REDACTED]

[REDACTED] Exhibit 1

(Exhibit T, at CPSC_AM0012128).

151. [REDACTED]

[REDACTED]

[REDACTED]

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

152. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

153. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

154. [REDACTED]

[REDACTED]

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

155. [REDACTED]

[REDACTED]

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

156. [REDACTED]

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

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

158. [REDACTED]

[REDACTED]

[REDACTED]

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

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

159. [REDACTED]

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

160. [REDACTED]

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

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

162. Pursuant to Federal Rule of Evidence 1006, attached to Exhibit 1 (Exhibit Z) is a chart that summarizes the corrective actions sought by the CPSC from companies for recalls of hair dryers, carbon monoxide detectors, and children’s sleepwear garments conducted between 2015 and the present, based on information reflected in the documents produced during

discovery. See Exhibit 1 (Exhibits Y,AA, CPSC_AM0015053-15391, CPSC_AM0015414-17019, Linum Home Textiles Recalls Children’s Robes Due to Violation of Federal Flammability Standards and Burn Hazard, CPSC (May 5, 2022) <https://www.cpsc.gov/Recalls/2022/Linum-Home-Textiles-Recalls-Childrens-Robes-Due-to-Violation-of-Federal-Flammability-Standards-and-Burn-Hazard>).

163. [REDACTED]

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

164. The recall news release for the recall of a children’s sleepwear garment (Copper Pearl Recalls Children’s Sleepwear Due to Violation of Federal Flammability Standards and Burn Hazard) included in the chart referenced in Paragraph 162 above, dated May 26, 2022, states that customers will either be “provided prepaid mailers to return the garment(s)” or “be asked to destroy the garments . . . and send[] the firm a photo” in order to receive a refund. Exhibit 1 (Exhibit AA, at CPSC_AM0015181-184).

165. [REDACTED]

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

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

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

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

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

170. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

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

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

173. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.*

174. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

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

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

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

178. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.*

179. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Exhibit 1

(Exhibit DD, CPSC_AM0014274-14280).

180. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Exhibit 1 (Exhibit AA, at

CPSC_AM0015627).

181. Companies have re-announced recalls after finding additional functionally equivalent products presenting the same hazard. *See e.g.*, CoScentrix Expands Recall of DD Brand Candles, CPSC.Gov (Jan. 8, 2015) (second expansion of an April 2014 recall of certain “candles sold in tins” to include additional designs of “candles sold in jars and tins” posing the same fire hazard), <https://www.cpsc.gov/Recalls/2015/CoScentrix-Expands-Recall-of-DD-Brand-Candles1>); Rashti & Rashti Expands Recall of Infant Garments Due to Choking Hazard, CPSC.Gov (Jan. 12, 2009) (expansion of a July 2008 recall involving Taggies Sleep 'n Play infant garments with “Butterfly Applique” and “Fun Dog Print” designs to include “The

Dinosaur Applique and the Pink Toss Print styles,” which were found to pose the same choking hazard), <https://www.cpsc.gov/Recalls/2009/rashti-rashti-expands-recall-of-infant-garments-due-to-choking-hazard>.

Dated this 23rd day of September, 2022,

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CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2022, a copy of the foregoing was served upon all parties and participants of record in these proceedings as follows:

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