

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

In the Matter of Amazon.com, Inc.,
Respondent.

CPSC Docket No. 21-2

Hon. James E. Grimes
Presiding Officer

**DECLARATION OF SARAH WILSON IN SUPPORT OF AMAZON'S MOTION
TO COMPEL DISCOVERY OF CPSC POLICY AND PRACTICE MATERIAL**

I, Sarah Wilson, hereby declare:

1. I am an attorney for Respondent Amazon.com, Inc. ("Amazon") in the above-captioned matter.
2. I am over the age of 18 and I am competent to make this Declaration.
3. Attached as Exhibit A is a true and correct copy of Respondent's First Set of Requests for Production of Documents and Things to Consumer Product Safety Commission, served on February 14, 2022.
4. Attached as Exhibit B is a true and correct copy of Complaint Counsel's Objections and Responses to Respondent's First Set of Requests for Production of Documents and Things to Consumer Product Safety Commission, served on March 21, 2022.
5. Attached as Exhibit C is a true and correct copy of an April 8, 2022 email from John Eustice to Sarah Wilson.
6. Attached as Exhibit D is a true and correct copy of an April 13, 2022 email from Sarah Wilson to John Eustice.

7. Attached as Exhibit E is a true and correct copy of an April 19, 2022 email from John Eustice to Sarah Wilson.

8. Attached as Exhibit F is a true and correct copy of an April 21, 2022 email from Sarah Wilson to John Eustice.

9. Attached as Exhibit G is a true and correct copy of an April 22, 2022 email from John Eustice to Sarah Wilson.

10. Attached as Exhibit H is a true and correct copy of an April 29, 2022 email from John Eustice to Sarah Wilson.

11. Attached as Exhibit I is a true and correct copy of a May 5, 2022 email from Sarah Wilson to John Eustice.

12. Attached as Exhibit J is a true and correct copy of a May 16, 2022 email from John Eustice to Sarah Wilson.

13. Attached as Exhibit K is a true and correct copy of a May 19, 2022 email from Sarah Wilson to John Eustice.

14. Attached as Exhibit L is a true and correct copy of a May 20, 2022 email from John Eustice to Sarah Wilson.

15. Attached as Exhibit M is a true and correct copy of a May 24, 2022 email from John Eustice to Sarah Wilson.

16. Attached as Exhibit N are true and correct copies of two June 10, 2022 emails from Sarah Wilson to John Eustice.

17. Attached as Exhibit O is a true and correct copy of a June 15, 2022 email from John Eustice to Sarah Wilson.

18. Attached as Exhibit P is a true and correct copy of a June 22, 2022 email from Sarah Wilson to John Eustice.

19. Attached as Exhibit Q is a true and correct copy of a June 24, 2022 email from Sarah Wilson to John Eustice.

20. Attached as Exhibit R is a true and correct copy of a July 7, 2022 email from John Eustice to Nicholas Griepsma.

21. Attached as Exhibit S is a true and correct copy of a July 7, 2022 email from Nicholas Griepsma to John Eustice.

22. Attached as Exhibit T is a true and correct copy of a July 7, 2022 email from Nicholas Griepsma to John Eustice.

23. Attached as Exhibit U is a true and correct copy of a July 8, 2022 email from John Eustice to Nicholas Griepsma.

24. Attached as Exhibit V is a true and correct copy of a July 14, 2022 email from Sarah Wilson to John Eustice.

25. Attached as Exhibit W is a true and correct excerpt from a CPSC spreadsheet titled “Regulated Products Violations,” produced by Complaint Counsel to Amazon as Bates No. CPSC_AM0013545. In an email on August 1, 2022, Complaint Counsel notified Amazon that although this document was marked “Confidential – Subject to Protective Order” when produced, it may be filed on the public docket.

26. Attached as Exhibit X is a true and correct copy of an excerpt from Complaint Counsel’s First Privilege and Redaction Log, served on July 8, 2022.

27. Attached as Exhibit Y is a true and correct copy of Complaint Counsel’s Supplemental Objections and Responses to Respondent’s Requests for Admission Nos. 19 and 20, served on July 11, 2022.

28. Attached as Exhibit Z is a true and correct copy of a CPSC document titled “Proposed Corrective Action Plan, CPSC – CAP Template,” produced by Complaint


Counsel to Amazon as Bates No. CPSC_AM0012125. In an email on August 1, 2022, Complaint Counsel requested that the entirety of this document be filed in camera pursuant to the Protective Order.

29. Attached as Exhibit AA is a true and correct copy of a PowerPoint presentation titled “CPSC Defect Recall Data,” by Carol Cave, Deputy Director, Office of Compliance and Field Operations, produced by Complaint Counsel to Amazon as Bates No. CPSC_AM0009637. olations,” produced by Complaint Counsel to Amazon as Bates No. CPSC_AM0013545. In an email on August 1, 2022, Complaint Counsel notified Amazon that although this document was marked “Confidential – Subject to Protective Order” when produced, it may be filed on the public docket.

30. Attached as Exhibit BB is a true and correct copy of a PowerPoint presentation titled “Goals for CPSC Recall Press Releases,” by Patty Davis, Acting Director, CPSC’s Office of Communications, produced by Complaint Counsel to Amazon as Bates No. CPSC_AM0009649. olations,” produced by Complaint Counsel to Amazon as Bates No. CPSC_AM0013545. In an email on August 1, 2022, Complaint Counsel notified Amazon that although this document was marked “Confidential – Subject to Protective Order” when produced, it may be filed on the public docket.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August, 1, 2022



Sarah L. Wilson

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2022, a true and correct copy of the foregoing document was, pursuant to the Order Following Prehearing Conference entered by the Presiding Officer on October 19, 2021:

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

Nicholas Griepsma

Nicholas Griepsma

Exhibit A

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

)	
In the Matter of AMAZON.COM, INC.,)	
Respondent.)	CPSC DOCKET NO.: 21-2
)	

**RESPONDENT’S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS
AND THINGS TO CONSUMER PRODUCT SAFETY COMMISSION**

Pursuant to the Presiding Officer’s Order of January 19, 2022 (Doc. No. 27), Respondent Amazon.com Inc. (“Amazon”) hereby requests that the Consumer Product Safety Commission (“CPSC”) respond to the following set of requests for the production of documents and things, and produce the following documents and things, within 30 days of service hereof (or as otherwise agreed to by the Parties or ordered by the Presiding Officer). Documents should be sent electronically, if possible, to the email addresses of the undersigned, or, if in physical form, should be delivered to the offices of Covington & Burling LLC, One CityCenter, 850 Tenth Street, NW, Washington, D.C. 20001-4956.

Pursuant to 16 C.F.R. § 1025.31(e), Amazon reserves the right to submit additional requests for production of documents or things pursuant to § 1025.31(b)(2), requests for admission pursuant to § 1025.31(b)(3), or interrogatories pursuant to § 1025.31(b)(1).

DEFINITIONS AND INSTRUCTIONS

A. In the following requests:

1. “YOU” or “YOUR” shall mean the CPSC and includes the staff and, where applicable, the Commissioners and Complaint Counsel. References to the “staff” and the “Commissioners” shall refer to the staff and Commissioners of the CPSC, respectively and shall

include, without limitation, Commissioners' personal staffs and the staffs of the Office of Compliance and Field Operations, the Office of Hazard Identification and Reduction, the Directorate for Engineering Sciences, the Directorate for Laboratory Sciences, and the Office of Communications.

2. “**DOCUMENT**” shall mean all written, printed, typed, graphic, and photographic matter of any kind or nature, and all mechanical or electronic audio and/or visual recordings or transcripts thereof, however produced or reproduced, and all entries in a computer or electronic database, including but not limited to: correspondence, telephone messages, voice mail, electronic mail, and all other computer files or data..

3. “**COMMUNICATION**” shall mean any correspondence, contact, discussion, e-mail, instant message, or any other kind of oral or written exchange or transmission of information (in the form of facts, ideas, inquiries, or otherwise) and any response thereto between two or more Persons or entities, including, without limitation, all telephone conversations, face-to-face meetings or conversations, internal or external discussions, or exchanges of any **DOCUMENT**.

4. “**PERSON**” shall mean any government agency, natural person, corporation, partnership, unincorporated association, joint venture, trust, estate, public or quasi-public entity, or any other legal entity.

5. “**IDENTIFY**” shall mean:

- a. When used in reference to an individual, shall mean to state his, her, or their full name, former names, present or last known home and business address and telephone numbers, and present or last known occupation, employer and job title or description; or if none of the information is known, then the name, present home

and business address and telephone numbers of all individuals who likely or may be able to provide all or part of the information.

- b. When used in reference to an organization of any kind, shall mean to state its full name, its state of incorporation (if applicable), the address of its principal place of business and its telephone numbers.
 - c. When used in reference to a **DOCUMENT**, shall mean to state the type of **DOCUMENT**, its date, the identity of its author(s) and its recipient(s), any title and/or serial number or file number appearing on the **DOCUMENT**, the identity of its present custodian, its present location and a brief description of its subject matter. If any such **DOCUMENT** was, but no longer is, in **YOUR** possession or control or in existence, state whether it (i) is missing or lost, (ii) has been destroyed, (iii) has been transferred to others, or (iv) has been otherwise disposed of. In lieu of identifying a **DOCUMENT**, a copy of the **DOCUMENT** can be produced.
6. **“COMPLAINT”** shall mean the Complaint that **YOU** filed against Amazon.com, Inc. in the above-captioned matter.
 7. **“CPSA”** shall mean the Consumer Product Safety Act, as amended.
 8. **“SUBJECT PRODUCT(S)”** shall mean the products referred to in Paragraphs 21, 30, and 39 of **YOUR COMPLAINT**, including (where relevant) the component parts of the same.
 9. **“CHILDREN’S SLEEPWEAR GARMENTS”** means the products identified at Paragraph 21 of **YOUR COMPLAINT**.
 10. **“CO DETECTORS”** means the products identified at Paragraph 30 of **YOUR COMPLAINT**, including any of their designs, warnings, labels, instructions, packaging, advertising, marketing, testing, certifications, or marks.

11. “**HAIR DRYERS**” means the products identified at Paragraph 39 of **YOUR COMPLAINT**.

12. “Including” shall mean including without limitation.

13. “And” and “Or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

B. These document production requests shall be deemed continuing to the extent permitted by 16 C.F.R. § 1025.31(f) so as to require prompt further responses if additional information or **DOCUMENTS** are obtained between the time the responses were served and the time of trial.

C. If any privilege is claimed with respect to any **DOCUMENT**, please state with respect to each such claim of privilege the identity of the item with respect to which the privilege is claimed with sufficient particularity to enable the matter to be brought before the Presiding Officer for a ruling on such a claim, and state the alleged ground of privilege and the complete factual basis for such a claim.

D. If it is claimed that the attorney-client privilege or any other privilege is applicable to any **DOCUMENT** sought by these discovery requests, specify the privilege claimed and the factual basis **YOU** contend supports the assertion of the privilege, and **IDENTIFY** the **DOCUMENT** as follows:

- a. State the date, nature, and subject matter of the **DOCUMENT**;
- b. **IDENTIFY** each author of the **DOCUMENT**;
- c. **IDENTIFY** each preparer of the **DOCUMENT**;
- d. **IDENTIFY** each **PERSON** who is an addressee or an intended recipient of the **DOCUMENT**;
- e. **IDENTIFY** each **PERSON** from whom the **DOCUMENT** was received;

- f. State the present location of the **DOCUMENT** and all copies;
 - g. **IDENTIFY** each **PERSON** who has or ever had possession, custody, or control of the **DOCUMENT** or any copy;
 - h. State the number of pages, attachments, appendices, and exhibits;
 - i. Provide all further information concerning the **DOCUMENT** and the circumstances upon which the claim of privilege is asserted;
 - j. Produce all non-privileged portions of the **DOCUMENT**.
- E. For any **COMMUNICATION** with respect to which a privilege is asserted, please state with respect to each such claim of privilege the identity of the item with respect to which the privilege is claimed with sufficient particularity to enable the matter to be brought before the Presiding Officer for a ruling on such a claim, and state the alleged ground of privilege and the complete factual basis for such a claim.
- F. Pursuant to 16 C.F.R. § 1025.31 and Fed. R. Civ. P. 26(e), Complaint Counsel are under a continuing duty to supplement its responses to these discovery requests without further request from Respondent. Where Complaint Counsel have responded to a discovery request with a response that was complete when made, Complaint Counsel is under a duty to supplement that response to include information later obtained.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. All **DOCUMENTS** described in **YOUR** “List and Summary of Documentary Evidence” attached to the **COMPLAINT**.
2. All **DOCUMENTS** supporting, relating to, or controverting the allegations in the **COMPLAINT**.

3. All **DOCUMENTS** relating to **YOUR** decision to file the **COMPLAINT**, including but not limited to **DOCUMENTS** related to meetings and Staff materials and other materials relating to the Commission vote on or about July 14, 2021.

4. ALL **COMMUNICATIONS** with Commissioners regarding the **SUBJECT PRODUCTS** or third-party products handled through the Amazon's "Fulfillment By Amazon" service.

5. All **DOCUMENTS** that **YOU** intend to introduce in evidence at the hearing on this matter.

6. All **DOCUMENTS** referred to, or relied upon, in answering any Interrogatory or Request for Admission propounded to **YOU** by Amazon.

7. Any **DOCUMENT** provided to, or prepared by, for, or at the direction of, or which in any way was relied upon by, considered by, or formed the basis for the opinions of, any person whom **YOU** expect to call as an expert witness in this matter, including, without limitation, the (i) curriculum vitae, (ii) resume or other summary of the qualifications of such person, (iii) a list of all publications authored or co-authored by the witness, (iv) the amount of and basis for the compensation of the witness, and (v) a list of cases (described by name of case, jurisdiction, case number, and date of testimony) in which the witness has testified.

8. Any **DOCUMENT** provided to, or prepared by, for, or at the direction of, or which in any way was relied upon by, considered by, or formed the basis for the opinions of, any expert or consultant retained by or consulted by the CPSC whom **YOU** do not expect to call as an expert witness in this matter.

9. All voluntary operative standards on which the CPSC has relied, in whole or in part, with respect to any of the **SUBJECT PRODUCTS**.

10. All **DOCUMENTS** and **COMMUNICATIONS** relating to the **CHILDREN'S SLEEPWEAR GARMENTS**, including but not limited to **DOCUMENTS** and **COMMUNICATIONS** relating to, or reflecting, the evaluation, testing, analyses assessments, or inspections of the **CHILDREN'S SLEEPWEAR GARMENTS**; consumer reviews, Preliminary Determinations, Product Safety Assessments, or Epidemiological Investigation Reports (also known as In-Depth Investigation Reports, or IDI Reports), National Electronic Injury Surveillance System ("NEISS") data, or SaferProducts.gov reports regarding the **CHILDREN'S SLEEPWEAR GARMENTS**; corrective actions regarding the **CHILDREN'S SLEEPWEAR GARMENTS**; or incidents, injuries or deaths involving a **CHILDREN'S SLEEPWEAR GARMENTS**.

11. All **DOCUMENTS** and **COMMUNICATIONS** relating to the **CO DETECTORS**, including but not limited to **DOCUMENTS** and **COMMUNICATIONS** relating to, or reflecting, the evaluation, testing, analyses assessments, or inspections of the **CO DETECTORS**; consumer reviews, Preliminary Determinations, Product Safety Assessments, or Epidemiological Investigation Reports (also known as In-Depth Investigation Reports, or IDI Reports), NEISS data, or SaferProducts.gov reports regarding the **CO DETECTORS**; corrective actions regarding the **CO DETECTORS**; or incidents, injuries or deaths involving a **CO DETECTORS**.

12. All **DOCUMENTS** and **COMMUNICATIONS** relating to the **HAIR DRYERS**, including but not limited to **DOCUMENTS** and **COMMUNICATIONS** relating to, or reflecting, the evaluation, testing, analyses assessments, or inspections of the **HAIR DRYERS**; consumer reviews, Preliminary Determinations, Product Safety Assessments, or Epidemiological Investigation Reports (also known as In-Depth Investigation Reports, or IDI Reports), NEISS data,

or SaferProducts.gov reports regarding the **HAIR DRYERS**; corrective actions regarding the **HAIR DRYERS**; or incidents, injuries or deaths involving a **HAIR DRYERS**.

13. All **DOCUMENTS** and **COMMUNICATIONS** that are part of, or relate to, CPSC File Nos. PI210013, PI210014, PI210016, PI210022, or CA210014; CPSC Sample Numbers 20-800-1345, 20-800-1726, 20-800-1727, or 20-800-1505; or any other file number or sample number relating to a **SUBJECT PRODUCT**.

14. All **COMMUNICATIONS** between **YOU** on the one hand, and any third-party seller or third-party manufacturer of a **SUBJECT PRODUCT** relating to such **SUBJECT PRODUCT**.

15. All **DOCUMENTS** consisting of, or containing, any standard, rule, policy, procedure, or guidance issued, considered, proposed, or adopted by **YOU** that explain, identify, or reflect **YOUR** current or previous position(s) on (i) the circumstances when a Commission order directing a company to provide notification or further notification of a recall to purchasers, consumers, or users of a product, or to the public, “is required in order to adequately protect the public” under 15 U.S.C. § 2064(c)(1); or (ii) the factors bearing on such determination.

16. All **DOCUMENTS** consisting of, or containing, any standard, rule, policy, procedure, or guidance issued, considered, proposed, or adopted by **YOU** that explain, identify, or reflect **YOUR** current or previous position(s) on (i) the circumstances when a Commission order directing a company to provide an remedy, or additional remedy, to purchasers, consumers, or users of a product is “in the public interest” within the meaning of 15 U.S.C. § 2064(d)(1); or (ii) the factors bearing on such determination.

17. All **DOCUMENTS** and **COMMUNICATIONS** relating to the proposed Recalls Pledge between the CPSC and Amazon relating to recalls of products sold by third-party sellers on Amazon.com.

18. All **DOCUMENTS** and **COMMUNICATIONS** relating to the proposed Memorandum of Understanding between the CPSC and Amazon relating to recalls of products sold by third-party sellers on Amazon.com.

19. All **DOCUMENTS** relating to **YOUR** position, policies, practices, or procedures pertaining to corrective actions or recalls conducted by distributors of consumer products.

20. All **DOCUMENTS** relating to **YOUR** position, policies, practices, or procedures pertaining to corrective actions or recalls conducted by manufacturers, importers, and retailers of consumer products domiciled or headquartered outside the United States.

21. All **DOCUMENTS** relating to **YOUR** position, policies, practices, or procedures pertaining to corrective actions or recalls conducted by manufacturers, importers, and retailers of consumer products domiciled or headquartered within the United States.

22. All **DOCUMENTS** relating to **YOUR** positions, policies, practices, or procedures pertaining to recall effectiveness, or the measurement, assessment, or evaluation of recall effectiveness.

23. All **DOCUMENTS** that consist of, or relate to, studies, analyses, or reports regarding direct recall notifications and indirect recall notifications, including without limitation any study regarding their effectiveness.

24. All **DOCUMENTS** relating to **YOUR** positions, policies, practices, or procedures pertaining to assessment, evaluation, or approval of proposed recall remedies or corrective actions,

including but not limited to repairs, replacements, refunds, returns, or disposal (including self-disposal) of recalled products.

25. All **DOCUMENTS** relating to **YOUR** position on, or practices, or procedures related to, when a “recall” should be issued as opposed to a “recall alert.”

26. All **DOCUMENTS** that state, explain, identify, or reflect **YOUR** positions, policies, practices, or procedures pertaining to the circumstances when a Commission order directing a company to provide a remedy, or additional remedy, to purchasers, consumers, or users of a product is “in the public interest” within the meaning of 15 U.S.C. § 2064(d)(1), including the factors bearing on such determination.

REQUEST FOR PRODUCTION OF THINGS

27. Produce, at a reasonable time and place for non-destructive examination and testing, any **SUBJECT PRODUCT(S)** which **YOU** have obtained, analyzed or tested, along with any original instructions, packaging, manuals, and related materials.

Dated: February 14, 2022

Respectfully submitted,



Sarah L. Wilson
Stephen P. Anthony
Thomas Brugato
Benjamin L. Cavataro
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
202-662-5397
swilson@cov.com
santhony@cov.com
tbrugato@cov.com
bcavataro@cov.com

Exhibit B

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)

AMAZON.COM, INC.)

Respondent.)

CPSC DOCKET NO.: 21-2

**COMPLAINT COUNSEL’S OBJECTIONS AND RESPONSES
TO RESPONDENT’S FIRST SET OF REQUESTS FOR PRODUCTION OF
DOCUMENTS AND THINGS TO
CONSUMER PRODUCT SAFETY COMMISSION**

Pursuant to 16 C.F.R. § 1025.32, Complaint Counsel respectfully submits its objections and responses (“Responses”) to Respondent Amazon.com, Inc.’s (“Respondent’s”) First Set of Requests for Production of Documents and Things to Consumer Product Safety Commission (“Requests”).

PRELIMINARY STATEMENT

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

These Responses are based solely upon information presently known and readily available to Complaint Counsel following a reasonable inquiry for responsive information, as described herein. Complaint Counsel will amend these Responses in accordance with 16 C.F.R.

14. All **COMMUNICATIONS** between **YOU** on the one hand, and any third-party seller or third-party manufacturer of a **SUBJECT PRODUCT** relating to such **SUBJECT PRODUCT**.

RESPONSE TO REQUEST NO. 14:

Complaint Counsel objects to this Request as overly broad and unduly burdensome because it seeks documents which go well beyond the subject matter involved in this proceeding. The subject matter involved in these proceedings concerns whether the Subject Products distributed by Respondent create a substantial product hazard under Section 15 of the CPSA, 15 U.S.C. § 2064, and the remedies sought by Complaint Counsel. The Communications between CPSC staff and any third-party seller are irrelevant to the proceedings following the Court's January 19, 2022 Order on Motion to Dismiss and Motion for Summary Decision.

Complaint Counsel further objects to this Request to the extent it seeks documents duplicative of other Requests. Complaint Counsel also objects to this Request as overly broad, vague, and ambiguous in its use of the phrase "All Communications".

Subject to and without waiver of the foregoing general and specific objections, and following a reasonable search, Complaint Counsel states that the parties have agreed to discuss a possible Stipulation that would moot Request No. 14. If the parties do not reach agreement on a Stipulation, Complaint Counsel will respond to Request No. 14 subject to their objections within a time frame agreed-upon by counsel.

15. All **DOCUMENTS** consisting of, or containing, any standard, rule, policy, procedure, or guidance issued, considered, proposed, or adopted by **YOU** that explain, identify, or reflect **YOUR** current or previous position(s) on (i) the circumstances when a Commission order directing a company to provide notification or further notification of a recall to purchasers, consumers, or users of a product, or to the public, "is required in order to adequately protect the public" under 15 U.S.C. § 2064(c)(1); or (ii) the factors bearing on such determination.

RESPONSE TO REQUEST NO. 15:

Complaint Counsel objects to this Request as calling for a legal conclusion in seeking the circumstances or factors bearing on a determination of a remedy being "required in order to

adequately protect the public” within the meaning of 15 U.S.C. § 2064(d)(1). Complaint Counsel further objects to this Request as it seeks documents that are protected by privilege or other protection, including the attorney-client privilege, work product doctrine, or deliberative process privilege. Complaint Counsel also objects to this Request as overly broad, vague, and ambiguous in its use of the phrase “All Documents and Communications.” Complaint Counsel also objects to this Request as overly broad and unduly burdensome because it seeks documents which go well beyond the subject matter involved in this proceeding. The subject matter involved in these proceedings concerns whether the Subject Products distributed by Respondent create a substantial product hazard under Section 15 of the CPSA, 15 U.S.C. § 2064, and the remedies sought by Complaint Counsel. Complaint Counsel objects to this Request and states that it seeks information that is neither relevant to the subject matter involved in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Documents pertaining to the circumstances when a Commission order concerning other products was required in order to adequately protect the public is not relevant to the Court’s analysis in this matter under Section 15 of the CPSA, 15 U.S.C. § 2064, or applicable regulations, including 16 C.F.R. Part 1115. Removing any products that present a substantial product hazard from consumers’ households and the secondary market is in the public interest and will protect the public from injury.

16. All **DOCUMENTS** consisting of, or containing, any standard, rule, policy, procedure, or guidance issued, considered, proposed, or adopted by **YOU** that explain, identify, or reflect **YOUR** current or previous position(s) on (i) the circumstances when a Commission order directing a company to provide an remedy, or additional remedy, to purchasers, consumers, or users of a product is “in the public interest” within the meaning of 15 U.S.C. § 2064(d)(1); or (ii) the factors bearing on such determination.

RESPONSE TO REQUEST NO. 16:

Complaint Counsel objects to this Request as calling for a legal conclusion in seeking the circumstances or factors bearing on a determination of a remedy being “in the public interest” within the meaning of 15 U.S.C. § 2064(d)(1). Complaint Counsel further objects to this Request as it seeks

documents that are protected by privilege or other protection, including the attorney-client privilege, work product doctrine, or deliberative process privilege. Complaint Counsel also objects to this Request as overly broad and unduly burdensome because it seeks documents which go well beyond the subject matter involved in this proceeding. The subject matter involved in these proceedings concerns whether the Subject Products distributed by Respondent create a substantial product hazard under Section 15 of the CPSA, 15 U.S.C. § 2064, and the remedies sought by Complaint Counsel. Complaint Counsel objects to this Request and states that it seeks information that is neither relevant to the subject matter involved in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Documents pertaining to the circumstances when a Commission order concerning other recalls directed a company to provide a remedy are not relevant to the Court's analysis in this matter under Section 15 of the CPSA, 15 U.S.C. § 2064, or applicable regulations, including 16 C.F.R. Part 1115. Removing any products that present a substantial product hazard from consumers' households and the secondary market is in the public interest.

17. All **DOCUMENTS** and **COMMUNICATIONS** relating to the proposed Recalls Pledge between the CPSC and Amazon relating to recalls of products sold by third-party sellers on Amazon.com.

RESPONSE TO REQUEST NO. 17:

Complaint Counsel objects to this Request as irrelevant to any issue live and in dispute in the proceedings following the Court's January 19, 2022 Order on Motion to Dismiss and Motion for Summary Decision. In addition, Complaint Counsel objects to this Request as overly broad, vague, and ambiguous in its use of the phrase "All Documents and Communications." Complaint Counsel further objects to this Request as it seeks documents that are protected by privilege or other protection, including the attorney-client privilege, work product doctrine, or deliberative process privilege.

18. All **DOCUMENTS** and **COMMUNICATIONS** relating to the proposed Memorandum of Understanding between the CPSC and Amazon relating to recalls of products sold by third-party sellers on Amazon.com.

RESPONSE TO REQUEST NO. 18:

Complaint Counsel objects to this Request as irrelevant to any issue live and in dispute in the proceedings following the Court's January 19, 2022 Order on Motion to Dismiss and Motion for Summary Decision. In addition, Complaint Counsel objects to this Request as overly broad, vague, and ambiguous in its use of the phrase "All Documents and Communications." Complaint Counsel further objects to this Request as it seeks documents that are protected by privilege or other protection, including the attorney-client privilege, work product doctrine, or deliberative process privilege.

19. All **DOCUMENTS** relating to **YOUR** position, policies, practices, or procedures pertaining to corrective actions or recalls conducted by distributors of consumer products.

RESPONSE TO REQUEST NO. 19:

Complaint Counsel objects to this Request as overly broad and unduly burdensome because it seeks documents which go well beyond the subject matter involved in this proceeding. The subject matter involved in these proceedings concerns whether the Subject Products distributed by Respondent create a substantial product hazard under Section 15 of the CPSA, 15 U.S.C. § 2064, and the remedies sought by Complaint Counsel. Complaint Counsel objects to this Request and states that it seeks information that is neither relevant to the subject matter involved in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Documents pertaining to other distributors are not relevant to the Court's analysis in this matter under Section 15 of the CPSA, 15 U.S.C. § 2064, or applicable regulations, including 16 C.F.R. Part 1115.

20. All **DOCUMENTS** relating to **YOUR** position, policies, practices, or procedures pertaining to corrective actions or recalls conducted by manufacturers, importers, and retailers of consumer products domiciled or headquartered outside the United States.

RESPONSE TO REQUEST NO. 20:

Complaint Counsel objects to this Request as overly broad and unduly burdensome because it seeks documents which go well beyond the subject matter involved in this proceeding. The subject matter involved in these proceedings concerns whether the Subject Products distributed by Respondent create a substantial product hazard under Section 15 of the CPSA, 15 U.S.C. § 2064, and the remedies sought by Complaint Counsel. Complaint Counsel objects to this Request and states that it seeks information that is neither relevant to the subject matter involved in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Documents pertaining to other manufacturers, importers and retailers of consumer products are not relevant to the Court's analysis in this matter under Section 15 of the CPSA, 15 U.S.C. § 2064, or applicable regulations, including 16 C.F.R. Part 1115.

21. All **DOCUMENTS** relating to **YOUR** position, policies, practices, or procedures pertaining to corrective actions or recalls conducted by manufacturers, importers, and retailers of consumer products domiciled or headquartered within the United States.

RESPONSE TO REQUEST NO. 21:

Complaint Counsel objects to this Request as overly broad and unduly burdensome because it seeks documents which go well beyond the subject matter involved in this proceeding. The subject matter involved in these proceedings concerns whether the Subject Products distributed by Respondent create a substantial product hazard under Section 15 of the CPSA, 15 U.S.C. § 2064, and the remedies sought by Complaint Counsel. Complaint Counsel objects to this Request and states that it seeks information that is neither relevant to the subject matter involved in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Documents pertaining to other manufacturers, importers and retailers of consumer products are not relevant to the Court's analysis in this matter under Section 15 of the CPSA, 15 U.S.C. § 2064, or applicable regulations, including 16 C.F.R. Part 1115.

22. All **DOCUMENTS** relating to **YOUR** positions, policies, practices, or procedures pertaining to recall effectiveness, or the measurement, assessment, or evaluation of recall effectiveness.

RESPONSE TO REQUEST NO. 22:

Complaint Counsel objects to this Request as overly broad and unduly burdensome because it seeks documents which go well beyond the subject matter involved in this proceeding. The subject matter involved in these proceedings concerns whether the Subject Products distributed by Respondent create a substantial product hazard under Section 15 of the CPSA, 15 U.S.C. § 2064, and the remedies sought by Complaint Counsel. Complaint Counsel objects to this Request and states that it seeks information that is neither relevant to the subject matter involved in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Documents pertaining to recall effectiveness studies are not relevant to the Court's analysis in this matter under Section 15 of the CPSA, 15 U.S.C. § 2064, or applicable regulations, including 16 C.F.R. Part 1115.

23. All **DOCUMENTS** that consist of, or relate to, studies, analyses, or reports regarding direct recall notifications and indirect recall notifications, including without limitation any study regarding their effectiveness.

RESPONSE TO REQUEST NO. 23:

Complaint Counsel objects to this Request as overly broad and unduly burdensome because it seeks documents which go well beyond the subject matter involved in this proceeding. The subject matter involved in these proceedings concerns whether the Subject Products distributed by Respondent create a substantial product hazard under Section 15 of the CPSA, 15 U.S.C. § 2064, and the remedies sought by Complaint Counsel. Complaint Counsel objects to this Request and states that it seeks information that is neither relevant to the subject matter involved in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Documents pertaining to studies on recall notifications are not relevant to the Court's analysis in this matter under Section 15 of the CPSA, 15 U.S.C. § 2064, or applicable regulations, including 16 C.F.R. Part 1115.

24. All **DOCUMENTS** relating to **YOUR** positions, policies, practices, or procedures pertaining to assessment, evaluation, or approval of proposed recall remedies or corrective actions, including but not limited to repairs, replacements, refunds, returns, or disposal (including self-disposal) of recalled products.

RESPONSE TO REQUEST NO. 24:

Complaint Counsel objects to this Request as overly broad and unduly burdensome because it seeks documents which go well beyond the subject matter involved in this proceeding. The subject matter involved in these proceedings concerns whether the Subject Products distributed by Respondent create a substantial product hazard under Section 15 of the CPSA, 15 U.S.C. § 2064, and the remedies sought by Complaint Counsel. Complaint Counsel objects to this Request and states that it seeks information that is neither relevant to the subject matter involved in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Documents pertaining to CPSC's assessment, evaluation or approval of other proposed recall remedies or corrective action plans are not relevant to the Court's analysis in this matter under Section 15 of the CPSA, 15 U.S.C. § 2064, or applicable regulations, including 16 C.F.R. Part 1115.

25. All **DOCUMENTS** relating to **YOUR** position on, or practices, or procedures related to, when a "recall" should be issued as opposed to a "recall alert."

RESPONSE TO REQUEST NO. 25:

Complaint Counsel objects to this Request as overly broad and unduly burdensome because it seeks documents which go well beyond the subject matter involved in this proceeding. The subject matter involved in these proceedings concerns whether the Subject Products distributed by Respondent create a substantial product hazard under Section 15 of the CPSA, 15 U.S.C. § 2064, and the remedies sought by Complaint Counsel. Complaint Counsel objects to this Request and states that it seeks information that is neither relevant to the subject matter involved in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Documents pertaining to whether a recall is published as a recall alert are not relevant to the Court's analysis in this matter

under Section 15 of the CPSA, 15 U.S.C. § 2064, or applicable regulations, including 16 C.F.R. Part 1115.

26. All **DOCUMENTS** that state, explain, identify, or reflect **YOUR** positions, policies, practices, or procedures pertaining to the circumstances when a Commission order directing a company to provide a remedy, or additional remedy, to purchasers, consumers, or users of a product is “in the public interest” within the meaning of 15 U.S.C. § 2064(d)(1), including the factors bearing on such determination.

RESPONSE TO REQUEST NO. 26:

Complaint Counsel objects to this Request as calling for a legal conclusion in seeking the factors bearing on a determination of a remedy being “in the public interest” within the meaning of 15 U.S.C. § 2064(d)(1). Complaint Counsel further objects to this Request as it seeks documents that are protected by privilege or other protection, including the attorney-client privilege, work product doctrine, or deliberative process privilege. Complaint Counsel also objects to this Request as overly broad and unduly burdensome because it seeks documents which go well beyond the subject matter involved in this proceeding. The subject matter involved in these proceedings concerns whether the Subject Products distributed by Respondent create a substantial product hazard under Section 15 of the CPSA, 15 U.S.C. § 2064. Complaint Counsel objects to this Request and states that it seeks information that is neither relevant to the subject matter involved in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Documents pertaining to Commission orders directing other companies to provide remedies are not relevant to the Court’s analysis in this matter under Section 15 of the CPSA, 15 U.S.C. § 2064, or applicable regulations, including 16 C.F.R. Part 1115.

27. Produce, at a reasonable time and place for non-destructive examination and testing, any **SUBJECT PRODUCT(S)** which **YOU** have obtained, analyzed or tested, along with any original instructions, packaging, manuals, and related materials.

RESPONSE TO REQUEST NO. 27:

Complaint Counsel states that the parties have agreed to discuss a possible Stipulation that would moot Request No. 27. If the parties do not reach agreement on a Stipulation,

Complaint Counsel will meet and confer with Respondent's counsel and respond to Request No. 27 subject to their objections within a time frame agreed-upon by counsel.

Dated this 21st day of March, 2022

John C. Eustice

John C. Eustice, Senior Trial Attorney
Liana G.T. Wolf, Trial Attorney
Serena Anand, Trial Attorney

Division of Enforcement and Litigation
Office of Compliance and Field Operations
U.S. Consumer Product Safety Commission
Bethesda, MD 20814
Tel: (301) 504-7809

Complaint Counsel for
U.S. Consumer Product Safety Commission

Exhibit C

From: Eustice, John <JEustice@cpsc.gov>
Sent: Friday, April 8, 2022 12:47 PM
To: Wilson, Sarah; Anand, Serena; Wolf, Liana
Cc: Anthony, Stephen; Cavataro, Benjamin; Ramirez, Diane; Griepsma, Nick
Subject: RE: CPSC v. Amazon: Revised Draft Stip and M/C on CPSC Discovery Responses

[EXTERNAL]

Sarah,

We are writing to clarify Complaint Counsel's position with respect to the following discovery requests served by Respondent – Requests for Admission Nos. 11, 15, 18, 19, and 20; Requests for Production Nos. 15, 19, 20, 21, 22, 23, 24, 25, and 26; and Interrogatory No. 13. Collectively, following our meet-and-confer discussions, we view these discovery requests as seeking information relating to the CPSC's past actions and practices. According to you, these requests are relevant to the issue of remedy. As noted in our stated objections, however, this litigation only relates to the specific remedies sought with respect to the three categories of Subject Products listed in the Complaint. Respondent's broad requests seek documents and information well beyond what is proportional or necessary for determining the remedies appropriate here. Moreover, CPSC makes its recall remedies publicly available through press releases that are posted on our website, as well as in comprehensive resources about recalls. See <https://www.cpsc.gov/Business--Manufacturing/Recall-Guidance>. That said, we are willing, subject to our objections, to search for and produce non-privileged material and documents concerning the following:

1. Recalls and corrective actions conducted by a distributor with CPSC. **Time limit: Last 5 years.**
2. Recall Handbook and, to the extent they exist, other non-privileged policy manuals or instructive aids used by compliance officers in crafting recalls and corrective action plans. **Time limit: Last 5 years.**
3. Recalls in which the CPSC sought a remedy from the recalling entity involving a refund or other incentive provided to consumers to return or provide proof of destruction of the subject product(s). **Time limit: Last 2 years.**

With respect to your request for additional materials relating to recall effectiveness, I refer you to the Recall Effectiveness Workshop conducted in 2017 on which the CPSC reported to the public. See <https://cpsc.gov/Recall-Effectiveness>. This link includes reports on the Recall Effectiveness Workshop, consolidated workshop notes, and workshop transcripts.

For the reasons we discussed during our meet-and-confer, CPSC's issuance of Notices of Violation to entities domiciled outside of the United States is not relevant to this action. In any event, Amazon regularly receives courtesy copies of such Notices of Violation issued to foreign entities involved in the sales of products on amazon.com.

As to Respondent's discovery requests relating to the Commission's decision to issue the Complaint, communications with Commissioners concerning Amazon's FBA program generally, and documents and communications regarding the draft Memorandum of Understanding and proposed Recalls Pledge (Requests for Production Nos. 3, 4, and 18; Interrogatory No. 16), Complaint Counsel continues to stand on all of its previously-stated objections. These requests do not pertain to any issue live and in dispute in this litigation. To the extent any of these requests seek factual information relating to the Subject Products, Complaint Counsel has and is prepared to review and provide responsive factual information to the extent such materials are not mooted by the parties' resolution of the pending Stipulation. However, these requests seek information well beyond that and relating to general discussions of Amazon's FBA program and the pre-Complaint negotiations between the parties that both sides agreed lay outside the confines of discoverable

information. As previously stated, these requests do not seek relevant information and are unduly burdensome, overly broad, vague, ambiguous, and seek information protected by privilege or other protection, including the attorney-client privilege, work product doctrine, and deliberative process privilege.

Please let us know if you have any questions concerning this clarification of Complaint Counsel's position.

Kind regards,

John

Exhibit D

From: Wilson, Sarah
Sent: Wednesday, April 13, 2022 6:17 PM
To: Wolf, Liana; Eustice, John; Anand, Serena
Cc: Anthony, Stephen; Cavataro, Benjamin; Ramirez, Diane; Griepsma, Nick; Fletcher, Michael
Subject: RE: CPSC v. Amazon: Revised Draft Stip and M/C on CPSC Discovery Responses

Liana:

We anticipate getting final approval on the draft stipulation this week, and will let you know if there are any additional changes as soon as possible. As discussed on our meet-and-confer call last week, we think it would be helpful for the parties to memorialize the specific hazard-related discovery requests that will be withdrawn as a result of the stipulation.

We also write in response to John's email of April 8, 2022, in follow-up to our meet-and-confer regarding the CPSC's objections to Amazon Requests for Admission Nos. 11, 15, 18–20; Requests for Production Nos. 3, 4, 15, 18–26; and Interrogatory Nos. 13 and 16.

In total, the CPSC's written responses and objections refuse to provide discovery for eighteen of Amazon's requests (over one quarter of Amazon's requests). Fourteen of Amazon's requests involve the CPSC's past remedial actions and practices: Requests for Admission Nos. 11, 15, 18–20; Requests for Production Nos. 15, 19–26; and Interrogatory No. 13.

CPSC's Policies, Guidance, Practices, and Past Actions are Highly Relevant

CPSC's written objections and April 8 email state that the CPSC intends to withhold discovery for the requests identified above based on an incorrect and under-inclusive framing of relevance in this matter. You state that “[a]ccording to [Amazon], these requests are relevant to the issue of remedy,” but “this litigation only relates to the specific remedies sought with respect to the three categories of Subject Products listed in the Complaint.” Your written objections similarly assert, with little or no elaboration, that Amazon's requests regarding CPSC's policies and practices relating to corrective actions and recalls are not relevant.

Contrary to your assertions, the requests for which the CPSC is currently declining to provide discovery are highly relevant for at least two reasons.

First, CPSC policies, practices, and guidance are relevant to whether the Commission order sought by Complaint Counsel is “required in order to adequately protect the public” (15 U.S.C. § 2064(c)) or “is in the public interest” (*id.* § 2064(d)). For example, the corrective actions and levels of recall effectiveness that the CPSC has accepted bear on these considerations in the instant case.

Second, the requests are relevant to Amazon's APA defenses. As you know, Judge Grimes declined to rule upon the APA issues at the pleading stage, and left the door open to resolving Amazon's APA arguments at a later stage (Doc. No. 27 at 14-18). A federal court or the Commission could also consider APA arguments.

As you know, under the APA, a decision or action by the Commission (or any other federal agency) will be held unlawful and set aside if it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; unsupported by substantial evidence.” 5 U.S.C. § 706. The discovery sought is directly relevant to determining whether the CPSC's actions (or the Commission order that it presently seeks) would constitute an abuse of discretion or would be arbitrary and capricious.

A “fundamental norm of administrative procedure requires an agency to treat like cases alike.” *Westar Energy, Inc. v. Fed. Energy Regul. Comm’n*, 473 F.3d 1239, 1241 (D.C. Cir. 2007); *Steger v. Def. Investigative Serv. Dep’t of Def.*, 717 F.2d 1402, 1406 (D.C. Cir. 1983) (a federal agency “can be said to be at its most arbitrary” when it “treat[s] similar situations dissimilarly”). The validity of the Commission’s action therefore turns, at least in part, on whether it constitutes an unreasonable departure from the Commission’s past actions and practices. See *Am. Wild Horse Pres. Campaign v. Perdue*, 873 F.3d 914, 923 (D.C. Cir. 2017); *Lone Mountain Processing, Inc. v. Sec’y of Labor*, 709 F.3d 1161, 1164 (D.C. Cir. 2013). There are multiple ways in which the agency’s action here could depart from its policies and actions in other matters. Even if Amazon is ultimately deemed a “distributor” under the CPSA, for example, the CPSC’s historic and comparative approach to remedies imposed on distributors—compared to other marketplace actors such as retailers and manufacturers—could constitute a significant departure. Alternatively, the specific remedies at issue in this litigation could differ from recall practices and policies applicable to any and all categories of marketplace actors, both domestic and international. The absence of concrete policies or guidance outlining the circumstances under which certain forms of recall notification or remedies are appropriate would also be relevant to Amazon’s APA arguments.

Given the well-established relevance of past and comparative agency actions and practices, courts have consistently held that a respondent in an adjudication is entitled to a thorough and well-developed record necessary to evaluate the agency’s consistency over time. For that reason, an agency carries a “burden of production ... about its own practices.” *Canadian Com. Corp. v. Dep’t of Air Force*, 514 F.3d 37, 41 (D.C. Cir. 2008). Production of underlying material showing past actions and practices is required—courts “need not accept [the agency’s] conclusory statement of what its practice has been, or what it believes the law allows.” *Id.*; see also *J.O.P. v. U.S. Dep’t of Homeland Sec.*, 2020 WL 2932922, at *18 (D. Md. June 3, 2020) (holding that agency “must produce an administrative record” concerning “past practice” to enable arbitrary and capriciousness review).

Requests for Admission and Interrogatories

The April 8 email discusses proposals related to document collection and production, and thus appears limited in scope to Amazon’s RFPs.

For the reasons stated above, the CPSC should also provide responses to Amazon’s Requests for Admission or Interrogatories at issue. Responding to the RFAs and to the interrogatories should be less burdensome to the CPSC than providing documents in response to the RFPs. Indeed, many of the RFAs at issue simply ask whether the CPSC has ever adopted particular standards or policies.

Requests for Production

The April 8 email claims that the Amazon requests at issue seek information that is already available on the CPSC’s website:

- First, you indicate that public press releases contain all potentially relevant information concerning recalls. But public press releases do not include the actual corrective action plans negotiated the CPSC, which are the authoritative and most-accurate memorialization of past recalls. We presume that the CPSC possesses aggregations or compilations of corrective action plan data that are responsive to the RFPs at issue, and those can be readily produced.
- Second, you state that the CPSC web page titled “Recall Guidance” contains the information that Amazon is seeking. None of the links on that page, however, contain material responsive to Amazon’s specific requests for policies, standards, or guidance regarding the agency’s historic and comparative approach to recalls involving distributors or the remedies sought in this action.

As we said during the meet and confer, Amazon is willing to consider narrowing its requests if the CPSC explains how it did (or did not) compile material that describes or relates to its past actions and practices. You committed to identify what, if any, responsive documents exist and provide an update to Amazon as to the CPSC’s findings. Rather than elaborate on the extent of responsive material in the CPSC’s possession, however,

the April 8 email simply states that Complaint Counsel will collect material meeting **your own** criteria without providing **any** clarification of what responsive documents actually exist, the volume of such material, the timeframe for which material exists, and any purported burdens in collecting the material. For example:

- The April 8 email states that the CPSC would produce a “Recall Handbook and, to the extent they exist, other non-privileged policy manuals or instructive aids used by compliance officers in crafting recalls and corrective action plans” dating back five years.
 - Please explain whether your proposal would cover all non-privileged material encompassed by Amazon’s Requests for Production Nos. 15 and 16, or, alternatively, whether you are imposing a topical/substantive narrowing of the Requests in addition to a timeframe limitation.
- With regard to Requests involving recall effectiveness, you merely refer Amazon to the publicly available documents relating to the CPSC's 2017 Recall Effectiveness Workshop. But your response is silent as to whether the CPSC possesses any other “positions, policies, practices, or procedures pertaining to recall effectiveness, or the measurement, assessment, or evaluation of recall effectiveness” or “studies, analyses, or reports regarding direct recall notifications and indirect recall notifications, including without limitation any study regarding their effectiveness.” *See* Amazon RFP Nos. 22 and 23.
 - Does any nonprivileged material responsive to Amazon RFP Nos. 22 and 23 exists aside from the “2017 Recall Effectiveness Workshop”? If "yes," please describe such material so Amazon can consider the appropriateness of the CPSC's position.
- You offer to produce documents going back two years related to “recalls in which the CPSC sought a remedy from the recalling entity involving a refund or other incentive provided to consumers to return or provide proof of destruction of the subject products(s).”
 - Please explain (a) the volume of material going back further than two years and (b) whether, under your proposal, the CPSC would withhold other responsive categories of material such as policies, guidance, or manuals relating to the circumstances in which the CPSC would seek such a remedy.

Without sufficient information concerning the universe of responsive material, Amazon is not in a position to evaluate the sufficiency of the CPSC’s positions.

By April 18, please either withdraw your self-imposed narrowing of Amazon’s discovery requests or provide a description of the universe of responsive material in the CPSC’s possession along with an explanation as to how any narrowing proposals will still result in Amazon receiving the information to which it is entitled.

CPSC Assertions of Privilege

Finally, we understand that you intend to stand on your attorney work product protection and deliberative process privilege objections in refusing to provide documents and information responsive to Amazon RFP Nos. 3, 4, and 18, and Amazon Interrogatory No. 16. As you are aware, Rule 26(b) governs the scope of discovery in this matter, *see* Dkt. No. 22, and requires that parties asserting privilege provide sufficient information to enable other parties to assess the claim. Fed. R. Civ. P. 26(b)(5). Accordingly, we request a privilege log describing the nature of the documents being withheld, and the asserted basis for withholding the documents so that we can assess the claim of privilege.

Regards,

Sarah

Exhibit E

From: Eustice, John <JEustice@cpsc.gov>
Sent: Tuesday, April 19, 2022 4:35 PM
To: Wilson, Sarah; Wolf, Liana; Anand, Serena
Cc: Anthony, Stephen; Cavataro, Benjamin; Ramirez, Diane; Griepsma, Nick; Fletcher, Michael
Subject: RE: CPSC v. Amazon: Revised Draft Stip and M/C on CPSC Discovery Responses

EXTERNAL

Sarah,

We are writing in response to your email of Wednesday, April 13, 2022. As an initial matter, you said that you anticipated receiving final approval on the Stipulation last week. We agreed to your final language on Friday, April 8, and we have not heard from you since. As you know, we have pending discovery related to the substantial product hazard analysis and, accordingly, we need the finalized Stipulation as soon as possible. If not, we expect Amazon to respond to all outstanding discovery requests on or before April 25, 2022.

CPSC Past Actions and Practices

As to the discovery requests relating to CPSC’s past actions and practices – Requests for Admission Nos. 11, 15, 18, 19, and 20; Requests for Production Nos. 15, 19, 20, 21, 22, 23, 24, 25, and 26; and Interrogatory No. 13 – we reject your view that our proposal is a “self-imposed narrowing” of your discovery requests. Rather, we spoke with you and elaborated on our objections to these overbroad requests, which essentially seek documents and information relating to any “standard, rule, policy, procedure, or guidance” or any “current or previous position(s)” on direct notifications, on whether a remedy is “in the public interest,” on all recalls conducted by distributors, on all recalls conducted by parties outside the United States, on recall effectiveness, on all “assessment, evaluation, or approval of proposed recall remedies or corrective actions,” and on recall alerts. You provided no time limit for these requests, meaning that Amazon is looking for all of these documents going back for nearly fifty years.

Moreover, your email “presume[s]” that “the CPSC possesses aggregations or compilations of corrective action plan data . . . and those can be readily produced.” This is simply not the case beyond the publicly available Annual Performance Report that the agency releases each fiscal year. See [FY 2021 Annual Performance Report \(APR\) | CPSC.gov](#). In sum, Amazon is not entitled to discovery related to every agency recall practice since the agency’s inception.

As explained below, we are nonetheless attempting to identify documents that may be responsive to your requests within the confines of a more reasonable time-delineated scope. This includes historical CPSC recall activity that is available via public press releases and public materials relating to Recall Guidance.

Amazon’s APA-Related Defenses

We do not share your interpretation that Judge Grimes’ January Order finds that Amazon’s APA-related defenses are ripe for discovery.

First, Judge Grimes expressly denied Amazon’s challenge of the Commission’s choice of adjudication in this case, holding that “the Supreme Court has recognized that administrative agencies have the discretion to choose between rulemaking and adjudication. *SEC v. Chenery (Chenery II)*, 332 U.S. 194, 201–03 (1947); see 5 U.S.C. §§ 553, 554; *NLRB v. Bell Aerospace Co. Div. of Textron*, 416 U.S. 267, 294–95 (1974).” Order on Motion to Dismiss and Motion for Summary Decision (Jan. 19, 2022) at 14. And Amazon cannot challenge any final decision of the Commission because no such decision has been handed down. That is why Amazon’s APA, due process, and retroactivity arguments are premature. Amazon is without basis to seek prospective, potentially unnecessary discovery before a final agency

decision is even issued. Indeed, Judge Grimes rightly pointed out that “Amazon has no way to predict how the Commission will rule.” *Id.* at 16. He further explained that any “decision [he] reaches on the merits will be based only on the [CPSA]. And basing a decision on the [CPSA], even if the agency has not previously interpreted the provisions at issue, does not violate the Administrative Procedure Act or the Due Process Clause. See *Chenery II*, 332 U.S. at 203; *cf. Clark-Cowlitz Joint Operating Agency v. FERC*, 826 F.2d 1074, 1081 (D.C. Cir. 1987) (en banc).” *Id.* at 17.

Second, our own review of applicable case law finds that the APA provides a very limited cause of action for parties affected by final agency action, allowing judicial review only for final orders from an agency. See *Bennett v. Spear*, 520 U.S. 154, 175, 117 S. Ct. 1154, 137 L.Ed.2d 281 (1997); *Japan Whaling Ass'n v. Am. Cetacean Soc'y*, 478 U.S. 221, 230 n. 4, 106 S. Ct. 2860, 92 L.Ed.2d 166 (1986); *Md. Dep't of Human Res. v. Dep't of Health & Human Servs.*, 763 F.2d 1441, 1445 n. 1 (D.C. Cir. 1985). The D.C. Circuit clearly framed the issue, stating that “[b]ecause an on-going program or policy is not, in itself, a ‘final agency action’ under the APA, our jurisdiction does not extend to reviewing generalized complaints about agency behavior.” *Cobell v. Kempthorne*, 455 F.3d 301, 307 (D.C. Cir. 2006).

Ultimately, Judge Grimes’ decision did not open up the APA issues for discovery. Unless and until Amazon receives a Commission Order in this case from which legal consequences would flow and identifies a reasonable basis for it being “arbitrary or capricious,” we do not view these issues as discoverable.

Requests for Admission and Interrogatories

We are willing to answer, subject to our objections and to the best of our ability, Amazon’s Requests for Admission numbers 11 and 18. We are still unsure what Amazon means in Request for Admission No. 15 when it uses the phrase “hazard determinations” and includes the word “and” in its grouping of “manufacturers, importers, distributors, and retailers.” Amazon is well aware that the CPSC sends Notices of Violation to entities outside of the United States that sell their products on amazon.com. Amazon receives courtesy copies of such Notices. However, Amazon’s confusing framing of Request No. 15 makes it impossible to answer as a straight admission or denial. Similarly, Request for Admission Nos. 19 and 20 use vague, confusing terms to outline a specific situation that prevents us from giving a blanket admission or denial. We invite Amazon to clarify Request for Admission Nos. 15, 19, and 20.

We will provide a response to Interrogatory No. 13, understanding that we will not do so for the full five-decade life span of the CPSC, but instead focus on the last two years.

We anticipate providing supplemental responses to Requests for Admission Nos. 11 and 18, and Interrogatory No. 13, on or before Monday, April 25.

Prospective Documents Responsive to a Reasonable Scope of Amazon’s Requests for Production

As noted above, Amazon’s presumptions about the existence of responsive documents are simply not accurate. We respond to your questions about our search for documents responsive to a reasonable interpretation of the proper scope of Amazon’s requests for production as follows:

- **Publicly Available Information** – we are in the midst of looking for materials supplemental to publicly available information that are responsive to a reasonable interpretation of the proper scope of Amazon’s discovery requests, and we will provide you with an update on additional potential materials on or before Monday, April 25.
- **Request Nos. 15 and 16** – we maintain our objections to Amazon’s broad and ambiguous use of the phrase “any standard, rule, policy, procedure, or guidance issued, considered, proposed, or adopted” in both of these requests, as well as their unlimited time frame. We are nonetheless searching for non-privileged documents from the last five years responsive to these requests, and we will provide you with an update on additional potential materials on or before Monday, April 25.
- **Request Nos. 22 and 23** – we are in the midst of looking for materials supplemental to publicly available information on the CPSC’s 2017 Recall Effectiveness Workshop that are responsive to a reasonable

interpretation of the proper scope of Request for Production Nos. 22 and 23, and we will provide you with an update on additional potential materials on or before Monday, April 25.

- **Recalls Including Refund/Incentive to Return or Destroy Products** – we are looking for responsive materials and identifying responsive press releases for such recalls, and this request appears to implicate a high volume of documents. We do not believe that going back more than two years serves any reasonable purpose in this litigation, and we will provide you with an update on additional materials on or before Monday, April 25.

CPSC Objections to Requests for Production Nos. 3, 4, and 18, and Interrogatory No. 16

You state that we are standing on assertions of privilege with respect to the above-listed discovery requests. That is not accurate. Rather, as we stated in our last communication, these requests do not pertain to any issue live and in dispute in this litigation. They seek wholly irrelevant information. It is on that basis that we are not providing responsive documents and information. We have explained our position that pre-decisional documents are immaterial and therefore not discoverable. *See, e.g., Oceana, Inc. v. Ross*, 920 F.3d 855, 865 (D.C. Cir. 2019) (“Because predecisional documents are ‘immaterial,’ they are not ‘discoverable.’ . . . A privilege log is required only when ‘a party withholds information otherwise discoverable by claiming that the information is privileged,’ . . . and since predecisional documents are irrelevant and therefore not ‘otherwise discoverable,’ they are not required to be placed on a privilege log.”).

Please let us know if you have any additional questions.

Kind regards,

John

Exhibit F

From: Wilson, Sarah
Sent: Thursday, April 21, 2022 8:47 AM
To: Eustice, John; Wolf, Liana; Anand, Serena
Cc: Anthony, Stephen; Cavataro, Benjamin; Ramirez, Diane; Griepsma, Nick; Fletcher, Michael
Subject: CPSC v. Amazon: Stipulation and Discovery Meet-and-Confer

John,

We have received sign-off on the stipulation and are ready to finalize. On a previous call, you committed to giving further thought to next steps for procedural finalization of the stipulation. Let us know your availability for a call tomorrow or early next week to discuss. We also would like to meet-and-confer on your discovery responses.

Past Agency Policies, Guidance, Practices, and Actions

We acknowledge your commitment to provide supplemental responses to Amazon RFA Nos. 11 & 18 and ROG No. 13, as well as an update regarding document collection by Monday, April 25.

Your email elaborates on relevance objections to Amazon's requests, but none are well-founded. First, your email fails to acknowledge, let alone counter, the relevance of CPSC policies, practices, and guidance to whether the Commission order sought by Complaint Counsel is "required in order to adequately protect the public" (15 U.S.C. § 2064(c)) or "is in the public interest" (*id.* § 2064(d)). On that basis alone, the requested material is discoverable. *See* 16 C.F.R. § 1025.31 (information is discoverable if it is "reasonably calculated to lead to the discovery of admissible evidence").

Second, none of the cases cited in your email stand for the proposition that **discovery** related to the reasonableness of the agency's requested remedy is not permissible until the Commission issues a final order. To the contrary, the agency's decision itself - not Complaint Counsel's subsequent argument in a federal APA action - must acknowledge any change in policy or practice and provide a reasoned basis for that change. *See Circus Circus Casinos, Inc. v. Nat'l Lab. Rels. Bd.*, 961 F.3d 469, 476 (D.C. Cir. 2020) ("When the Board seeks to change applicable standards through an adjudication, the Board must display awareness that it is changing position, demonstrate the rule is permissible under the statute, and show there were good reasons for the new policy." (quotation marks and citation omitted)). Here, the Commission's awareness of whether it is changing a prior policy or practice must be informed by discovery **in this adjudication**, not subsequent APA litigation.

Your basis for imposing 5 and 2 year time limitations on Amazon's requests is unclear from your correspondence and discovery responses. A producing party "cannot just merely state in a conclusory fashion that the requests are burdensome." *Tequila Centinela, S.A. de C.V. v. Bacardi & Co. Ltd.*, 242 F.R.D. 1, 10 (D.D.C. 2007) (quotation marks and citation omitted). Courts will only entertain "an unduly burdensome objection when the responding party demonstrates **how** the document is overly broad, burdensome, or oppressive, by submitting affidavits or offering evidence which reveals the nature of the burden." *Id.* (emphasis added) (quotation marks and citation omitted). Your email and written objections, however, fail to provide any explanation or evidence identifying the scope of the universe of responsive material, nor have you provided any calculation of the time and effort required to collect such material.

We expressed willingness to consider time limitations for certain requests **to the extent** aggregate data could provide equivalent information. You are now representing that such aggregations do not exist. We understand from the public record that the CPSC produced documents on recalls to the GAO, including on issues such as monthly progress reports and recall effectiveness and believe that much of that information is responsive to

Amazon's requests. We would like to meet-and-confer on these time limitations and the scope and format of material previously compiled by the CPSC.

Requests for Admission Nos. 15, 19, and 20

Your email states that, as written, you are refusing to provide responses to Amazon RFA Nos. 15, 19, and 20.

Amazon RFA No. 15 states: "Admit that YOU can send, and have sent, hazard determinations and Notices of Violations to manufacturers, importers, distributors, and retailers domiciled or headquartered outside the United States."

- Your written objections and email state that the phrase "hazard determinations" is so vague that you cannot respond to the request. This objection is not well-founded, however, given that the CPSC's own "Recall Handbook" uses the phrase to describe the determination communicated to a company that a product constitutes a substantial product hazard under Section 15 of the CPSA. Amazon's request refers to such notices. To the extent the CPSC takes issue with the word "and" with regard to "manufacturers, importers, distributors, and retailers," it may substitute the word "or" for purposes of its response.

Amazon RFA No. 19 states: "Admit that You have adopted no standard, rule, policy, procedure, or guidance outlining the circumstances when a Commission order directing a company to provide notification or further notification of a recall to purchasers, consumers, or users of a product, or to the public, "is required in order to adequately protect the public" under 15 U.S.C. § 2064(c)(1)."

Amazon RFA No. 20 states: "Admit that You have adopted no standard, rule, policy, procedure, or guidance outlining the circumstances when a Commission order directing a company to provide a remedy, or additional remedy, to purchasers, consumers, or users of a product is 'in the public interest' within the meaning of 15 U.S.C. § 2064(d)(1)."

- Your email states that RFA Nos. 19 and 20 use "vague and confusing terms," but the terms "standard, rule, policy, procedure, or guidance" carry a plain meaning that any reasonable reader could recognize and apply. Indeed, these terms constitute various forms in which the CPSC may have supplied its personnel with criteria for determining the circumstances when a remedy is "in the public interest" or a notification is required to "adequately protect the public," which are specific legal standards under Section 15 of the CPSA.
- Your email further indicates that these requests refer to a "specific situation," but no reasonable reading of the requests leads to such a conclusion. More accurately, the requests seek a denial to the extent the CPSC has ever provided the above-referenced criteria to its personnel. If such an event has ever occurred, then the CPSC can deny the request (and produce the relevant material supporting its denial). If the CPSC has never provided such criteria to its personnel, then it can admit the request.

We look forward to a further meet-and-confer on these issues. In the event that the parties need additional time to produce documents, particularly in light of the narrowed scope of discovery as a result of the stipulation, we are willing to consider a reciprocal extension of the April 29 target date for completion of document production.

Regards,

Sarah

Exhibit G

From: Eustice, John <JEustice@cpsc.gov>
Sent: Friday, April 22, 2022 4:33 PM
To: Wilson, Sarah; Wolf, Liana; Anand, Serena
Cc: Anthony, Stephen; Cavataro, Benjamin; Ramirez, Diane; Griepsma, Nick; Fletcher, Michael
Subject: RE: CPSC v. Amazon: Stipulation and Discovery Meet-and-Confer

[EXTERNAL]

Sarah,

Thank you for your email. Please send the signed Stipulation to us when you have a chance. We can speak about next procedural steps for it after it has been signed by the parties. We are available for a meet-and-confer on Tuesday, April 26, between 1:00 and 2:00 p.m., and from 3:00 to 4:00 p.m. Please let us know when in those windows your team is available.

We respond to the balance of your email as follows:

Past Agency Policies, Guidance, Practices, and Actions

We acknowledge that discovery is appropriate as to the specific remedies we seek in this matter. However, that does not mean that discovery may be taken of every action in which the CPSC has ever asserted that a remedy is “required in order to adequately protect the public” or “is in the public interest.” These are legal standards present in the agency’s founding statute and they form the foundation of the agency’s approach to recalls. These standards provide the framework for all of the CPSC’s work, but each recall is unique and the agency is afforded discretion in the manner of enforcement. Generally, “discovery requests are not relevant simply because there is a possibility that the information may be relevant to the general subject matter of the action.” *Cole’s Wexford Hotel, Inc. v. Highmark Inc.*, 209 F. Supp. 3d 810, 812 (W.D. Pa. 2016). Amazon’s requests seeking all documents and information relating to all enforcement actions of the CPSC tethered to its statutory legal standards extends far beyond the boundaries of permissible discovery. In a recent ALJ decision (*In the Matter of TK Access Solutions Corp.*, CPSC Docket No. 21-1), Judge Mary F. Withum quashed a subpoena seeking corrective action-related materials concerning a purportedly related enforcement action, stating:

CPSC has administrative discretion to determine its enforcement efforts – and potential remedies – based on the unique circumstances of each case, company, product, and agency resources. Indeed, the residential elevator products at issue are different than the Respondent’s elevators and may have different recall rates based on many factors including the number of units in the field, distribution, and installation, among other distinctions For this reason, the information sought is not proportional to the needs of the case, and Otis is not required to produce the documents requested in the subpoena duces tecum, including the CAP and MPRs, related to its voluntary recall.

Decision and Order Granting Non-Party Otis Elevator Company’s Motion to Quash Subpoena Duces Tecum (April 11, 2022), at 7.

In addition, we disagree with your formulation that the Complaint constitutes a “change in policy or practice.” This is a routine action seeking remedies from a responsible party relating to the harms presented by three categories of Subject Products. And the undue burden placed on the agency by your broad and vague discovery requests that lack any time limitations is clear – you are asking us to search through nearly five decades of enforcement documents encompassing thousands upon thousands of recalls.

We are nonetheless attempting to identify a reasonable time frame for your requests, as well as reasonable limitations tied to the actual remedies we are seeking in this case. We will identify certain categories of documents we believe are responsive to a proper interpretation of your requests on Monday.

Requests for Admission Nos. 15, 19, and 20

We will answer Request for Admission No. 15 with your proposed change to the wording.

We maintain our objections to Requests for Admission Nos. 19 and 20, which relate to the legal standards cited above – enforcement actions “required in order to adequately protect the public” or “in the public interest.” You claim to want to know whether the “CPSC has ever provided the above-referenced criteria to its personnel.” Since the CPSC provides its enforcement staff with a copy of the CPSA and related regulations, the answer to that question is yes. But whether any remedy required by a prior “Commission order” meets these legal standards is not a matter for discovery here. As noted above, every recall and every enforcement action is unique.

We look forward to speaking with you next week.

Kind regards,

John

Exhibit H

From: Eustice, John <JEustice@cpsc.gov>
Sent: Friday, April 29, 2022 5:23 PM
To: Wilson, Sarah; Anthony, Stephen; Cavataro, Benjamin; Ramirez, Diane; Fletcher, Michael; Griepsma, Nick
Cc: Wolf, Liana; Anand, Serena
Subject: In the Matter of Amazon.com, Inc. (CPSC Docket No. 21-2)

[EXTERNAL]

Sarah,

We are producing additional responsive, non-privileged documents today. You should be receiving a separate email from Watchdox with a link to the files and the password to access them. These documents are Bates labeled CPSC_AM0009558 to CPSC_AM0011584 and they include the following:

- The recalls listed in our Complaint Counsel’s Supplemental Objections and Responses to Respondent’s Interrogatory No. 13 and Requests for Admission Nos. 11, 15, and 18 (served April 25, 2022), including press releases relating to recalls conducted by distributors and recalls where refunds were conditioned on returns;
- Responses to CPSC 2018 RFI “Recall Effectiveness: Announcement of Request for Information Regarding the Use of Direct Notice and Targeted Notices during Recalls”;
- Documents relating to the Recall Effectiveness Workshop held on July 25, 2017;
- Internal CPSC research on recall effectiveness and consumer behavior (including info obtained from NHTSA on recall effectiveness); and
- Additional publicly available information regarding Recalls, including the Recall Handbook, Recall Checklist and Information on Monthly Progress Reports.

As we discussed and as you agreed during our meet-and-confer on Tuesday, April 26, 2022, we will be producing additional documents next week.

Kind regards,

John C. Eustice
Senior Trial Counsel
Office of Compliance
Division of Enforcement and Litigation
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
JEustice@cpsc.gov



*****!!! 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> *****!!!

Exhibit I

From: Wilson, Sarah
Sent: Thursday, May 5, 2022 4:24 PM
To: Eustice, John; Wolf, Liana; Wolf, Liana
Cc: Anthony, Stephen; Brugato, Thomas; Cavataro, Benjamin; Griepsma, Nick
Subject: In the Matter of Amazon.com, Inc. (CPSC Docket No. 21-2)
Attachments: DRAFT Proposed Order for Stipulation (In re Amazon) (Cov 5.5.22).docx

John,

We have received and reviewed your production of Friday, April 29. Amazon likewise produced additional material responsive to Complaint Counsel's RFPs on Tuesday, May 3. As stated in our last meet and confer, we will be producing further documents to you this month. This email follows up on multiple topics discussed at the Parties' April 26 meet and confer.

Proposed Order Regarding Stipulation

We have reviewed your draft order regarding the Stipulation. We are willing to agree to submission of the proposed order to Judge Grimes subject to the redline edits shown in the attached version. Please (1) confirm whether this is acceptable to Complaint Counsel; and (2) confirm whether you intend to submit to Judge Grimes. If so, please send for our review the draft cover email to Judge Grimes with the executed Stipulation and the proposed order. We would need to review and approve any such language before the proposed order is submitted.

Mooted Discovery Requests

At the meet and confer, we agreed to memorialize the Parties' understanding as to which discovery requests have been rendered moot on account of the Stipulation.

On March 18, you confirmed via email that the Parties are in agreement that the following CPSC discovery requests have been mooted by the Stipulation:

- CPSC Interrogatories Nos. 4, 5, 7, 8, 9, 11, 12
- CPSC RFP Nos. 5, 8, 9, 11
- CPSC RFA Nos. 13, 15, 17

We further noted in our meet and confer that to the extent CPSC RFP No. 10 references "testing," "evaluation," or "assessment" of the Subject Products, that portion of the request would be mooted.

On March 21, Amazon confirmed via email that the Parties are in agreement that the following Amazon discovery requests have been mooted by the Stipulation:

- Amazon Interrogatories Nos. 3, 4, 5, 7, 8 (partially, relating to paragraphs 58-61, 66-69 and 72-74 of the Complaint, but not to paragraphs 50-51), 10, 11, 12
- Amazon RFP No. 27

You originally asserted on March 17 that Amazon RFP Nos. 4, 9, 10, 11, 12, 13, and 14 were also rendered moot by the Stipulation, but clarified during our meet and confer on March 21 (and in a follow-up email later that day) that you would not withhold documents for Amazon RFP Nos. 9, 10, 11, 12, 13, and 14. You also clarified that the CPSC would oppose Amazon RFP No. 4 on relevance grounds.

Please confirm your understanding that the discovery requests listed in the above bullets (in addition to the above-referenced portion of CPSC RFP No. 10) have been rendered moot by the Stipulation, and that the Parties are not obligated to respond to those requests.

CPSC's Outstanding Productions

Thank you for the CPSC's April 29 production. At the meet and confer, you indicated that your production would provide material responsive to Amazon's requests involving past agency policies, guidance, practices, and actions. We note that the vast majority of the approximately 200 documents from your April 29 production consist of recall press releases posted on the CPSC website and other publically-available materials. The production did not contain information responsive to the core of Amazon's requests involving past agency actions and policies. Nor did it appear to contain material submitted to the GAO.

You indicated on the meet-and-confer that you are in the process of identifying the full universe of not-yet-produced documents in the CPSC's possession that were (a) responsive to Amazon's RFP Nos. 15, 19-26 and/or (b) submitted to the GAO in connection with GAO's November 2020 report GAO-21-56 or the underlying performance audit ("CPSC Materials Provided to GAO"). To be clear, Amazon believes that all CPSC Materials Provided to GAO would be responsive to one or more of Amazon's RFP Nos. 19 through 26.

We would like to determine as soon as possible whether we need to present any outstanding disputes to Judge Grimes. Accordingly, by Monday, May 9, please let us know your responses to the following questions:

1. On our last call, you indicated that you would look into our question related to the CPSC's Section 15 Defect Investigation Procedures Manual. Have you located identified this manual, or any similar content (including past versions of the manual)? If so, when will Complaint Counsel produce it?
2. Regarding the CPSC Materials Provided to GAO:
 - a. Has CPSC identified the full set of CPSC Materials Provided to GAO?
 - b. Of these materials, what does Complaint Counsel intend to produce to Amazon, and by what date(s)?
 - c. Of these materials, what does Complaint Counsel intend to withhold from Amazon, and on what basis?
3. Regarding other (non-GAO-related) materials responsive to RFP Nos. 15, 19-26 and not yet produced:
 - a. Has CPSC identified the full set of these materials?
 - b. Of these materials, what does Complaint Counsel intend to produce to Amazon, and by what date(s)?
 - c. Of these materials, what does Complaint Counsel intend to withhold from Amazon, and on what basis?
4. Is the CPSC standing on its self-imposed two-year and five-year limitations imposed on Amazon's requests involving past agency actions and policies? If so, please describe "the nature of the burden" that you contend exists with providing additional responsible documents. *Tequila Centinela, S.A. de C.V. v. Bacardi & Co. Ltd.*, 242 F.R.D. 1, 10 (D.D.C. 2007) (the withholding party must demonstrate "how the document is overly broad, burdensome, or oppressive, by submitting affidavits or offering evidence which reveals the nature of the burden") (quotation marks and citation omitted).

In order to reduce any burdens on CPSC, we are willing to narrow and clarify the scope of records that we are seeking with respect to RFP Nos. 15, 19-26:

- With respect to these requests, Amazon is not seeking records dating back to CPSC's creation in 1972. Rather, we are seeking responsive, non-privileged records dating back to **2009** (the enactment of the CPSIA).
- Amazon is not seeking material that is publicly available on CPSC.gov.

5. We understand that CPSC is standing on its relevance objections to Amazon RFA Nos. 19 and 20; RFP Nos. 3, 4, and 18; and Interrogatory No. 16. Please let us know if this is accurate.

Regards,

Sarah

Sarah Wilson

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5397 | swilson@cov.com
www.cov.com

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Exhibit J

From: Eustice, John <JEustice@cpsc.gov>
Sent: Monday, May 16, 2022 10:40 AM
To: Wilson, Sarah; Wolf, Liana; Wolf, Liana
Cc: Anthony, Stephen; Brugato, Thomas; Cavataro, Benjamin; Griepsma, Nick
Subject: RE: In the Matter of Amazon.com, Inc. (CPSC Docket No. 21-2)

EXTERNAL

Sarah,

Thank you for your email. I am responding to the portion of your communication concerning our outstanding document production, specifically the questions you pose:

1. We have identified the Section 15 Defect Investigation Procedures Manual. In our review, we note that the entirety of the manual, which includes internal processes and procedures that are not at issue in this litigation, is not responsive to Amazon's discovery requests or relevant to any matter in dispute. Accordingly, we plan to produce the portions of the Manual that are both responsive and relevant.
2. We have identified the materials that the CPSC provided to GAO. We have reviewed the materials and, as we indicated in prior correspondence, we intend to produce materials that are responsive to Amazon's discovery requests and relevant to matters in dispute. Any documents that the CPSC provided to GAO that we do not produce are neither responsive nor relevant to this case, or they are documents we have already produced or intend to produce.
3. It is unclear what you mean when you ask whether the CPSC has identified the "full set" of materials responsive to Amazon's Requests for Production Nos. 15 and 19-26. We have engaged in multiple meet-and-confer negotiations, exchanged proposals for narrowing these overbroad requests, and the CPSC has engaged in a reasonable search for materials responsive to these requests.
4. We have explained, in detail, the legal and factual bases for our scope objections to Amazon's RFP Nos. 15 and 19-26. Most importantly, while we acknowledge that discovery is appropriate as to the specific remedies we seek in this matter for the Subject Products, that does not mean that discovery may be taken of every action in which the CPSC has ever asserted that a remedy is "required in order to adequately protect the public" or "is in the public interest." Even limiting these requests to a time period from 2009 to the present encompasses thousands of recalls and enforcement actions. Moreover, these are legal standards present in the agency's founding statute and they form the foundation of the agency's approach to recalls. They provide the framework for all of the CPSC's work, but each recall is unique and the agency is afforded discretion in the manner of enforcement. Generally, "discovery requests are not relevant simply because there is a possibility that the information may be relevant to the general subject matter of the action." *Cole's Wexford Hotel, Inc. v. Highmark Inc.*, 209 F. Supp. 3d 810, 812 (W.D. Pa. 2016). Amazon's requests seeking all documents and information relating to all enforcement actions of the CPSC tethered to its statutory legal standards extends far beyond the boundaries of permissible discovery.
 - a. Despite our meritorious objections, we have already produced documents and information relating to dozens of recalls in which the CPSC has directed or requested a company to condition the provision of refunds to purchasers on returns or proof of destruction of a hazardous product, and we have also identified recalls that the CPSC conducted with

distributors. We view our production of these documents, and the time frames involved, as sufficient to meet our discovery obligations.

- b. In addition, we have served a supplemental response to Amazon's Request for Admission No. 15, which relates to the CPSC sending Notices of Violation to manufacturers, importers, distributors, and/or retailers domiciled or headquartered outside of the United States. We do not view every investigation in which the CPSC involved an entity domiciled outside of the U.S. as appropriate for discovery in this case.
 - c. We accept your narrowing on the balance of Amazon's RFP Nos. 15 and 19-26, and we have searched for additional responsive materials relating to CPSC's positions, policies, practices or procedures on recall effectiveness, relevant recall remedies, and relevant corrective actions. We anticipate producing additional responsive, non-privileged documents in this category.
5. We have made our position on these discovery requests clear through our objections and responses, email communications, and meet-and-confer discussions. For the reasons we have stated, and supported by the law and facts we have cited, we stand on our objections to these discovery requests.

Should you have any additional questions, we are happy to meet-and-confer on these issues during this week.

Kind regards,

John

Exhibit K

From: Wilson, Sarah
Sent: Thursday, May 19, 2022 6:37 PM
To: Eustice, John; Wolf, Liana; Wolf, Liana
Cc: Anthony, Stephen; Brugato, Thomas; Cavataro, Benjamin; Griepsma, Nick; Ramirez, Diane
Subject: RE: In the Matter of Amazon.com, Inc. (CPSC Docket No. 21-2)

John,

We hope you are feeling better. We appreciate the confirmation provided in your most recent email that Complaint Counsel intends to produce at least some material previously submitted to the GAO and additional material related to the agency's past policies and practices. Please see below for our responses to your email.

Withholding of Material Responsive to RFP Nos. 15, 19-26

Your email appears, for the first time, to draw a distinction between "responsive" and "relevant material," and suggests that Complaint Counsel is withholding material that it admits is "responsive" but deems "irrelevant." With regard to material provided by the CPSC to the GAO, for example, you state that "we intend to produce materials that are responsive to Amazon's discovery requests and relevant to matters in dispute." You further state with regard to discovery involving the agency's past actions and policies that you will produce responsive material relating to "relevant recall remedies" and "relevant corrective actions."

It is well-established that parties may not withhold responsive discovery on relevance grounds absent court authorization. *See, e.g., Gordon v. Target Corp.*, 318 F.R.D. 242, 244–45 (E.D.N.Y. 2016) ("[A] party is not free to unilaterally withhold production without court authorization."). Indeed, "[t]here is nothing in the Federal Rules of Civil Procedure that permits a party to unilaterally withhold discovery as a self-help remedy." *Othon v. Wesleyan Univ.*, 2019 WL 3051327, at *3 (D. Conn. July 12, 2019)' *see also Johnson v. Kraft Foods N. Am., Inc.*, 236 F.R.D. 535, 541 (D. Kan. 2006) ("A party may not unilaterally withhold information or documents that are responsive to a discovery request by stating that 'all relevant, non-privileged' responsive information or documents have been, or will be, produced.").

Amazon has been more than accommodating in assuaging potential burden concerns by (1) significantly limiting the scope of its past action and policy requests to 2009 and (2) eliminating the need to collect or produce already-public material available on the CPSC's website. On one hand, you state that you "accept" Amazon's proposed narrowing, but on the other, you indicate that you will be withholding discovery that falls within these parameters. Amazon's proposed narrowing, however, is contingent on agreement by the CPSC that it will produce all responsive non-public material going back to 2009.

While your email states your intention to withhold discovery on relevance grounds, it does not explain (1) what responsive material you are withholding, or (2) the criteria (if any) CPSC is relying upon to withhold such material. Accordingly, neither Amazon nor the ALJ is equipped to evaluate your position. Indeed, our last email asked explicitly with regard to both GAO and non-GAO material responsive to RFP Nos. 15, 19-26: (1) "Of these materials, what does Complaint Counsel intend to produce to Amazon, and by what date(s)," and (2) "Of these materials, what does Complaint Counsel intend to withhold from Amazon, and on what basis?" Your email fails to respond to these specific questions.

In addition, your email acknowledges the CPSC's "Section 15 Defect Investigation Procedures Manual," which is a non-public document that is clearly responsive to Amazon RFP Nos. 15, 19-26 and has not been produced to-date. As with the above-referenced material, your email states that although you now plan to produce the Section 15 Manual, you also plan to redact portions of the Manual relating to "internal processes and procedures" that you contend "are not at issue in this litigation." Pursuant to the discovery rules, however,

such redactions or withholdings are impermissible. Additionally, your statements regarding the Section 15 Manual raise two concerns.

First, your withholding of any portion of this document contravenes the Freedom of Information Act, which requires agencies to affirmatively "make available for public inspection," without a specific FOIA request, any "statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register" or "administrative staff manuals and instructions to staff that affect a member of the public." 5 U.S.C. § 552(a)(2). The Section 15 Manual clearly falls within the scope of this provision, and would therefore be subject to public inspection in its entirety. Please let us know if you will promptly produce the Manual in accordance with Section 552(a)(2), and if not, please share the basis for such decision.

Second, we are concerned that Complaint Counsel appears to have identified this document only *after* Amazon inquired about its existence by name. Please confirm, in light of this document, (1) what steps Complaint Counsel has taken to identify and collect similar manuals, handbooks, guidance documents, or staff instructions responsive to Amazon RFP Nos. 15 and 19-26, and (2) whether the Section 15 Manual, the (public) 2012 [Recall Handbook](#), and the (public) 2021 [Product Safety Planning, Reporting, and Recall Handbook](#) are the sole policies, manuals, or guides provided to CPSC staff relevant to Amazon RFP Nos. 15, 19-26.

By Monday, please confirm whether the CPSC will continue to withhold responsive discovery on relevance grounds, and if so, identify the material that you are withholding on the basis of your "responsive but not relevant" assertions, and your particularized bases for withholding such material. We remain available to meet and confer on these issues as needed.

Supplemental Productions

Per our recent phone discussion, we understand that both parties have experienced production delays and we remain flexible to jointly seeking a reasonable, agreed-upon, mutual discovery extension from Judge Grimes, to give both parties sufficient time to complete document discovery and to take any necessary depositions.

Additional Children's Sleepwear Messaging

Finally, we wanted to let you know that Amazon recently messaged consumers about certain HOYMN children's sleepwear garments based on our review of the testing and PSA documents produced by Complaint Counsel in this litigation. Those documents confirm that the product purchased and tested by the CPSC was ASIN B0743BM1NV, even though ASIN B074V558SB was the ASIN listed on the NOV originally sent to Amazon and later identified in the Complaint. In addition to messaging consumers and issuing refunds for ASIN B0743BM1NV, Amazon voluntarily messaged consumers and issued refunds for 20 other ASINs associated with B0743BM1NV, in an abundance of caution. Amazon will supplement its productions accordingly.

Regards,

Sarah

Sarah Wilson

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5397 | swilson@cov.com
www.cov.com

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Exhibit L

From: Eustice, John <JEustice@cpSC.gov>
Sent: Friday, May 20, 2022 3:17 PM
To: Wilson, Sarah; Wolf, Liana; Anand, Serena
Cc: Anthony, Stephen; Brugato, Thomas; Cavataro, Benjamin; Griepsma, Nick; Ramirez, Diane
Subject: RE: In the Matter of Amazon.com, Inc. (CPSC Docket No. 21-2)

[EXTERNAL]

Sarah,

Thank you for your response. I am definitely starting to feel better, and I appreciate your concern.

We will respond to the bulk of your email early next week, but we wanted to reach out regarding your suggestion that the parties seek a reasonable discovery extension from Judge Grimes. We agree that an extension would be beneficial to both parties, particularly given the need to schedule depositions. Please let us know when you are available to discuss.

As an initial matter, I would note that a document cannot be properly responsive to a discovery request unless it is first relevant. Nothing in the cases you cite prevents a party in litigation from lodging objections to discovery requests on relevance grounds. In this matter, we have made timely, reasonable relevance objections to certain of Amazon's discovery requests. Amazon has also asserted relevancy objections. Indeed, in response to the CPSC's Requests for Production of Documents, Amazon unilaterally limited its search for responsive documents in stating that it "will conduct a reasonable search to collect and produce additional **relevant**, non-privileged documents responsive to this Request." *See, e.g.,* Amazon's Response to Request No. 2 (emphasis added). Amazon also lodged numerous relevance objections, taking the position that it would not search for and produce documents that are "irrelevant to the claims and defenses at issue in this proceeding." *See, e.g.,* Amazon's General Objection No. 2 and Responses to Request Nos. 7 and 10.

We will provide additional responses to your email next week.

Kind regards,

John

Exhibit M

From: Eustice, John <JEustice@cpsc.gov>
Sent: Tuesday, May 24, 2022 4:16 PM
To: Wilson, Sarah; Wolf, Liana; Anand, Serena
Cc: Anthony, Stephen; Brugato, Thomas; Cavataro, Benjamin; Griepsma, Nick; Ramirez, Diane
Subject: RE: In the Matter of Amazon.com, Inc. (CPSC Docket No. 21-2)

[EXTERNAL]

Sarah,

Following up on my email to you on Friday, I respond to the rest of your May 19th email here.

As we indicated on Friday, we have conducted reasonable searches for relevant, responsive materials subject to our objections. Accordingly, we have searched for responsive documents relating to policies, procedures, and guidelines dating back to 2009. Though you claim that you do not want us to produce publicly available information, much of what you have requested exists in the public domain. Our agency is transparent in the manner that it operates, which is why resources such as the Recall Handbook and the public materials relating to the Recall Effectiveness Workshop are responsive to your requests. Ultimately, we do not intend to withhold from production any relevant, non-privileged documents responsive to your Request Nos. 15 and 19 through 26. If we withhold any documents based on a claim of privilege, we will provide a log of such documents.

As to the Section 15 Defect Investigation Procedures Manual, we identified it as a potentially responsive document prior to your mentioning it in a meet-and-confer. We do not agree with your analysis that 5 U.S.C. § 552(a)(2), a provision of the Freedom of Information Act, applies in the context of this litigation, but we note that it requires agencies to proactively disclose certain categories of nonexempt records or information to the public. As per 16 C.F.R. § 1015.2, the CPSC provides an electronic reading room where records required to be disclosed under 5 U.S.C. § 552(a)(2) are available (see <https://www.cpsc.gov/Newsroom/FOIA/Guide-to-Public-Information>). We have agreed to produce the portions of the Section 15 Manual that relate to recall remedies. The balance of the Manual is not relevant to any issue live and in dispute in this case.

Finally, we propose a meet-and-confer tomorrow afternoon, Wednesday, May 25, regarding a reasonable extension of discovery deadlines, discovery disputes, and Amazon's additional children's sleepwear messaging for 21 ASINs. We are available between 1:00 and 5:00 p.m. Please let us know what time works best for your team.

Thanks much.

Kind regards,

John

Exhibit N

From: Wilson, Sarah
Sent: Friday, June 10, 2022 12:53 PM
To: Eustice, John; Wolf, Liana; Anand, Serena
Cc: Anthony, Stephen; Brugato, Thomas; Cavataro, Benjamin; Ramirez, Diane; Griepsma, Nick
Subject: RE: CPSC Document Production

John:

Adding another item below to the list:

10. Recall Notice Guidance by Compliance and the Office of Communications. Page 62 of the recently produced Section 15 Manual (CPSC_AM0013528) directs staff to “follow the latest guidelines developed by Compliance and the Office of Communications.” Please let us know when you will produce these guidelines to Amazon. Please also confirm whether any other guidelines from Compliance and the Office of Communications are responsive to Amazon’s requests and when you will produce them.

We look forward to hearing from you.

Regards,

Sarah

From: Wilson, Sarah
Sent: Friday, June 10, 2022 3:06 AM
To: 'Eustice, John' <JEustice@cpsc.gov>; 'Wolf, Liana' <LWolf@cpsc.gov>; 'Anand, Serena' <SANand@cpsc.gov>
Cc: Anthony, Stephen <santhony@cov.com>; Brugato, Thomas <tbrugato@cov.com>; Cavataro, Benjamin <BCavataro@cov.com>; Ramirez, Diane <DRamirez@cov.com>
Subject: CPSC Document Production

John,

Thank you for your production of Friday, June 3, which we have reviewed. We write in follow-up to the production (the vast majority of which appears to consist of publicly available documents) and to our previous meet-and-confer sessions regarding Complaint Counsel’s responses to Amazon’s discovery requests. Our questions are set forth below:

1. **Planned Future Productions.** Please confirm whether Complaint Counsel plan to make any further productions. If so, please let us know when you anticipate making such productions, and the content and approximate size of those productions.
2. **Section 15 Defect Investigation Procedures Manual – Date.** On June 3, you produced “Section 15 Defect Investigation Manual_Cropped.pdf,” consisting of a title page and two partially redacted chapters of the CPSC’s “Section 15 Defect Investigation Procedures Manual” dated April 2014 (CPSC_AM0013521 through CPSC_AM0013544). Please confirm that the April 2014 version is the latest version of this Manual and no subsequent amended versions exist.
3. **Section 15 Defect Investigation Procedures Manual – Omitted Material.** We reiterate our request that Complaint Counsel produce the entirety of the Section 15 Manual, including the table of contents and the omitted chapters. The entirety of the Manual is responsive to Amazon’s requests. (This is

reflected by some of the content in the excerpted Manual — for example, page 62 makes reference to Section 10.3, which purportedly outlines the approval process for press releases. *See* CPSC_AM0013528).

Moreover, there is no colorable basis to withhold any portion of the Manual given that the agency is required by FOIA to affirmatively (i.e., without a specific request) make the manual available to the public in its entirety pursuant, as the Manual undoubtedly falls under the category of “administrative staff manuals and instructions to staff that affect a member of the public.” 5 U.S.C. § 552(a)(2)(C).

Please let us know whether (and when) Complaint Counsel will produce this material. To the extent you continue to assert that the remainder of the manual “includes internal processes and procedures that are not at issue in this litigation,” please promptly produce the table of contents to us, so we can meaningfully evaluate that assertion.

4. **Section 15 Defect Investigation Procedures Manual — Redactions.** Can you please explain the basis for the redactions on page 62 of the Manual (CPSC_AM0013528) and pages 71 through 76 of the Manual (CPSC_AM0013537 through CPSC_AM0013542)?
5. **Corrective Action Plan Template Redactions.** Can you please explain the basis for the redactions on several parts of “CAP Template_updated_clean.3.30.22.Anonymized.docx” (CPSC_AM0012125 through CPSC_AM0012132)?
6. **Material Produced to CPSC to GAO in connection with 2020 GAO Audit/Report.** On our most-recent meet-and-confer on May 25, you stated that Complaint Counsel had produced some of the material that CPSC produced to GAO, but intended to produce more.
 - a. Please confirm whether your June 3 production contained material produced by CPSC to GAO. If so, please identify those documents by Bates number.
 - b. Please confirm whether Complaint Counsel intends to produce to Amazon any other material produced by CPSC to GAO.
 - c. We understand that Complaint Counsel is currently withholding from Amazon some material produced by CPSC to GAO. Please confirm whether that is the case. If so, please identify the material you are withholding. Amazon is not seeking individual copies of corrective action plans or other manufacturer-identifying material protected by CPSC section 6(b). Amazon is, however, entitled to all the other material that CPSC produced to GAO.
7. **“CPSC Directive 9010.34”: “Initiating and Monitoring Corrective Action Plans.”** Page 56 of the recently produced Section 15 Manual (CPSC_AM0013522) refers to this directive. Such a document is clearly responsive to Amazon’s discovery requests, yet Complaint Counsel does not appear to have provided it. Please let us know when you will produce it to Amazon. Please also confirm whether any other CPSC Directives are responsive to Amazon’s requests and when you produce them.
8. **“CPSC News Release Performance (Tracking) Log.”** Page 55 of the Fiscal Year 2020 CPSC Annual Performance Report (CPSC_AM0012827) refers to this log, which apparently compiles information relevant to recall alerts. Other annual reports make similar references. The log seems directly responsive to Amazon’s discovery requests. Please let us know when you will produce it to Amazon. Please also confirm whether any other Tracking Logs are responsive to Amazon’s requests and when you will produce them.
9. **Requests for Admission Nos. 19 and 20.** We understand from past discussions that the parties have come to an impasse on Amazon’s RFAs Nos. 19 and 20, and that Complaint Counsel is refusing to either admit or deny those RFAs. Please let us know if that is still your position.

We request a response no later than noon on Tuesday, June 14, and we are available for a further meet-and-confer if necessary.

Regards,

Sarah

Sarah Wilson

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5397 | swilson@cov.com
www.cov.com

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Exhibit O

From: Eustice, John <JEustice@cpsc.gov>
Sent: Wednesday, June 15, 2022 3:40 PM
To: Wilson, Sarah; Wolf, Liana; Anand, Serena
Cc: Anthony, Stephen; Brugato, Thomas; Cavataro, Benjamin; Ramirez, Diane; Griepsma, Nick
Subject: RE: CPSC Document Production

[EXTERNAL]

Sarah,

Thank you for your emails. I respond to your questions below, and I invite a meet-and-confer on any issues that you believe remain outstanding. Before answering your questions, we would also like to know whether Amazon plans to make any future productions of documents. We note that, to date, Amazon has produced very little internal deliberation documents relating to the unilateral remedies it issued with regards to the Subject Products and very little documentation demonstrating how such remedies were implemented and financed. If additional productions will be made, please let us know when.

1. Complaint Counsel has largely and substantially completed its production of responsive documents. However, in response to certain of your follow-up queries, we may produce several additional documents. We may also produce additional documents upon which we intend to affirmatively rely.
2. We can confirm that the Section 15 Defect Investigation Procedures Manual, portions of which we produced, is the most recent and operative version.
3. We maintain our objections to producing the balance of the Section 15 Defect Investigation Procedures Manual, the non-produced portions of which are not relevant to any issues live and in dispute in this litigation and which are privileged. They include chapters on substantial product hazards, the organization of investigative teams, and other internal procedures that reveal the investigative process of the agency.
4. The redacted portions of the Section 15 Defect Investigation Procedures Manual reflect law enforcement techniques and procedures protected from disclosure by the law enforcement privilege and FOIA Exemption 7E.
5. The redacted portions of the Corrective Action Plan Template reflect law enforcement techniques and procedures protected from disclosure by the law enforcement privilege and FOIA Exemption 7E. The redacted portions were prepared within the Office of Compliance, Division of Enforcement and Litigation, and are also protected from disclosure by the deliberative process privilege and attorney-client privilege.
6. Complaint Counsel has explained in prior meet-and-confer discussions that it would produce all responsive, relevant documents provided by the CPSC to GAO. We have done so.
 - a. Specifically, Complaint Counsel has now produced the following responsive, relevant documents provided by the CPSC to GAO: CPSC_AM0009972, CPSC_AM0011459 – CPSC_AM0011463, CPSC_AM0011464 – CPSC_AM0011515, CPSC_AM0011828, CPSC_AM0011829 – CPSC_AM0011832, CPSC_AM0011833 – CPSC_AM0011838, CPSC_AM0011839 – CPSC_AM0011847, CPSC_AM0011848 – CPSC_AM0011853,

CPSC_AM0013518 – CPSC_AM0013520, CPSC_AM0013521 – CPSC_AM0013544, and CPSC_AM0012125 – CPSC_AM0012133.

- b. The materials identified in 6.a. above represent the documents that are relevant and responsive to Amazon’s discovery requests to Complaint Counsel.
- c. Complaint Counsel disagrees with your assertion that Amazon is “entitled to all the other material that CPSC produced to GAO.” However, in an attempt to reduce discovery matters in dispute, we will describe the non-responsive documents that we did not produce. These include documents regarding the Voluntary Standard Process, documents regarding rulemaking and mandatory standards, documents delegating certain actions to CPSC staff, the internal operating procedures of the Office of Communications’ information campaigns, documents relating to ethics and financial disclosures for CPSC staff, internal documents relating to the CPSC public calendar and meeting logs, responses relating to voluntary standards, organization charts, a summary of performance measures that are already included in our productions of CPSC reports to Congress, a list of Notices of Violation issued from October 2012 to December 2019, and IT process guides. None of these documents are responsive or relevant.
7. We are in the process of reviewing this Directive and any other potentially responsive Directives. We will update you later this week on the status of that review and whether we intend to produce them.
8. We are in the process of reviewing the Tracking Log you reference and any other potentially responsive tracking documents. We will update you later this week on the status of that review and whether we intend to produce them.
9. Complaint Counsel has made clear its objections to Amazon’s Request for Admissions Nos. 19 and 20. We maintain our objections to these Requests, noting that they seek an admission relating to a legal conclusion. As we have explained, the CPSC provides the CPSA to its compliance staff and they seek recalls and remedies in line with its authority.
10. We have searched for, reviewed, and produced relevant, responsive guidelines used by CPSC staff. These include the following Bates-labeled documents: CPSC_AM0013518 – CPSC_AM0013520; CPSC_AM0012125 – CPSC_AM0012133; CPSC_AM0011464 – CPSC_AM0011515; CPSC_AM0011854-CPSC_AM0011856; CPSC_AM0011857-CPSC_AM0011860; CPSC_AM0013521 – CPSC_AM0013544.

Please let us know if you have any additional questions. In addition, please let us know if you would like to meet-and-confer on any of the above matters.

Kind regards,

John

Exhibit P

From: Wilson, Sarah
Sent: Wednesday, June 22, 2022 5:31 PM
To: Eustice, John; Wolf, Liana; Anand, Serena
Cc: Anthony, Stephen; Brugato, Thomas; Cavataro, Benjamin; Ramirez, Diane; Griepsma, Nick
Subject: RE: CPSC Document Production

Counsel:

We look forward to speaking tomorrow. Does the CPSC have a date by which it anticipates completion of document production? In answer to your question, Amazon is aiming to complete document production within the next two weeks. We anticipate producing additional responsive documents from personnel identified in Amazon's interrogatory responses, as well as additional sample direct safety notifications to purchasers.

We disagree with your characterization that Amazon has produced "very little" documents concerning remedy. As noted in our objections and responses to your Requests for Production, Amazon is not producing privileged material. It should be no surprise that many of Amazon's actions taken in response to CPSC Notices of Violation were at the direction and advice of counsel. Amazon is in the process of completing its privilege log, which we are aiming to serve before the end of the month. Please advise as to the anticipated date by which Complaint Counsel will serve its privilege log.

Concerning the Section 15 Manual, we have made our position clear in multiple emails that CPSC lacks a colorable basis to withhold *any* portion of the Manual. In particular, however, your email is silent as to Amazon's express request for production of the table of contents. Please provide your basis for withholding that specific portion of the Manual. Without it, Amazon is not in a position to evaluate your contention that "the non-produced portions" of the Manual "are not relevant to any issues live and in dispute in this litigation."

Your high-level description of withheld GAO material raises concerns regarding CPSC's approach to withholding material it has unilaterally deemed to be "irrelevant." For example, you contend that the following categories of documents are irrelevant, but that is incorrect:

- documents delegating certain actions to CPSC staff,
 - Amazon's response: "Certain" actions is vague and does not provide sufficient information to evaluate CPSC's relevance determination. So that we may meaningfully evaluate your assertion, please describe what actions were delegated.
- the internal operating procedures of the Office of Communications' information campaigns,
 - Amazon's response: To the extent the Office of Communications is involved with corrective actions or remedies, e.g. consumer notice, then this material would be highly relevant.
- internal documents relating to the CPSC public calendar and meeting logs,
 - Amazon's response: To the extent any of these events or meetings involved corrective actions or remedies, then this material would also be highly relevant.
- organization charts,
 - Amazon's response: To the extent CPSC personnel or job titles identified in your responses to Amazon Interrogatory Nos. 1-2 are listed in organization charts, the charts are responsive and relevant to Amazon RFP No. 6.
- a summary of performance measures that are already included in our productions of CPSC reports to Congress,
 - Amazon's response: Your use of the term "summary" is vague and does not provide sufficient information to evaluate CPSC's "relevance" determination. To the extent any portions of these summaries contain, for example, characterizations of the information, such material is not

wholly duplicative of CPSC's reports to Congress and is therefore be both responsive and relevant.

- a list of Notices of Violation issued from October 2012 to December 2019,
 - Amazon's response: Such a list would be directly responsive to Amazon RFP Nos. 19-21, which involve the agency's past practices with regard to distributors, manufacturers, importers, and retailers. To the extent this document is indeed a list rather than the individual NOV's themselves, there is no colorable burden in producing it to Amazon.

Notably, your high-level description of documents withheld on "relevance" grounds was limited to GAO-related material. We have repeatedly requested, however, a description of any material withheld on "relevance" grounds, not just material related to the GAO report. For example, your email states with regard to past policies and procedures: "We have searched for, reviewed, and produced *relevant*, responsive guidelines used by CPSC staff." (emphasis added). Your email nonetheless fails to provide any description of material withheld on "relevance" grounds beyond the GAO-related material. Please identify any other responsive material that CPSC is withholding on relevance grounds without further delay. Written identification of this material is necessary to narrow this potential dispute.

We look forward to discussing these issues on our call tomorrow so that we may promptly identify any issues for which the parties are at an impasse.

Regards,

Sarah

Sarah Wilson

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5397 | swilson@cov.com
www.cov.com

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Exhibit Q

From: Wilson, Sarah
Sent: Friday, June 24, 2022 5:33 PM
To: Eustice, John; Wolf, Liana; Anand, Serena
Cc: Anthony, Stephen; Cavataro, Benjamin; Brugato, Thomas; Ramirez, Diane; Griepsma, Nick
Subject: Section 15 Procedures Manual
Attachments: 315-cv-371, No. 86-2.pdf; 2016_WL_9528190.pdf

Counsel:

Thank you for the meet-and-confer [yesterday](#). As discussed, we look forward to hearing Complaint Counsel's final position on the issues we identified regarding the specific documents discussed. As you requested, below is information about the production of the Section 15 Procedures Manual in *United States v. Spectrum Brands, Inc.*, 3:15-cv-371 (W.D. Wis.)

- In an April 29, 2016 deposition of Alan H. Schoem (an expert witness for Spectrum and former head of the Compliance Office), the government's counsel discussed the Manual, which was referenced in Mr. Schoem's report. That deposition transcript is publicly available on Westlaw, as 2016 WL 9528190, and was also filed as ECF No. 100 on the docket. See attached.
- The Manual itself — specifically a version dated April 1, 2002, was also produced by the government in the litigation (Bates stamp "USA-00016401" et seq.), and introduced as "Government's Exhibit 72." The Manual was publicly filed as Exhibit 2 to the May 6, 2016 Declaration of James Hennings. The Manual includes a full table of contents and index, and all pages (with some redacted pages). See attached.

As we've discussed in prior emails, the entirety of the current and past versions of the Manual — not just the two chapters that Complaint Counsel has already produced — should be produced to Amazon. The Manual is clearly responsive to multiple Amazon discovery requests about core issues in this litigation, and the Manual is also subject to the proactive-disclosure mandate of FOIA covering "administrative staff manuals and instructions to staff that affect a member of the public." 5 U.S.C. § 552(a)(2).

You suggest that the remainder of the Manual may be withheld because some parts of it allegedly reveal the "internal procedures that reveal the investigative process of the agency." We assume this is an invocation of FOIA Exemption 7(E), 5 U.S.C. § 552(b)(7)(e), concerning law enforcement techniques and procedures. Such invocation is misplaced. First, there is no indication that the Manual was compiled for "law enforcement purposes." Second, even if the Manual was compiled for such purposes, disclosure of the Manual could not "reasonably be expected to risk circumvention of the law." *Am. Immigration Council v. U.S. Dep't of Homeland Sec.*, 950 F. Supp. 2d 221, 246 (D.D.C. 2013) (government cannot successfully invoke FOIA Exemption 7(E) without "'relatively detailed justification' for each record that permits the reviewing court to make a meaningful assessment of the redactions and to understand how disclosure would create a reasonably expected risk of circumvention of the law"). Third, Exemption 7(E) can protect only those techniques and procedures "not generally known to the public." *Doherty v. U.S. Dep't of Justice*, 775 F.2d 49, 52 & n. 4 (2d Cir. 1985). That is not the case here, given that (a) CPSC defect investigations routinely result in public recalls and (b) the majority of the 2002 version of the Manual was made public in the *Spectrum Brands* litigation.

Regards,

Sarah

Exhibit R

From: Eustice, John <JEustice@cpsc.gov>
Sent: Thursday, July 7, 2022 2:02 PM
To: Griepsma, Nick; Wolf, Liana; Anand, Serena
Cc: Wilson, Sarah; Anthony, Stephen; Brugato, Thomas; Cavataro, Benjamin; Ramirez, Diane
Subject: RE: CPSC Document Production

EXTERNAL

Nick,

Thank you for your email. Complaint Counsel intends to produce additional documents tomorrow, Friday, July 8, and serve its First Privilege and Redaction Log. We believe this production will narrow the issues you list as in dispute in the draft letter to Judge Grimes.

In addition, Complaint Counsel objects to a number of the topics listed in Attachment A to Amazon's Notice of Deposition of Agency Representative of Consumer Product Safety Commission Pursuant to Federal Rule of Civil Procedure 30(b)(6) (served on June 29, 2022). We seek a meet-and-confer on those topics and the proper scope of the Rule 30(b)(6) deposition of the CPSC. Please let us know your availability for a meet-and-confer on Monday, Tuesday, or Wednesday of next week. Should Amazon wish to seek relief from Judge Grimes after reviewing tomorrow's production, we are amenable to working with Amazon on a joint letter. Given that we may also be seeking relief relating to Amazon's Rule 30(b)(6) Notice, we believe that teeing up these issues at the same time for Judge Grimes would be more efficient. We are willing to work on the respective joint letter(s), as necessary, early next week.

We also understand that Amazon intends to provide a Privilege and Redaction Log this week. Please confirm.

Finally, on June 15, 2022, Complaint Counsel served a Notice of Deposition of Corporate Representative(s) for Respondent Amazon.com, Inc., with the date of the deposition set for Wednesday, July 13, 2022 (at CPSC headquarters in Bethesda). Amazon counsel has not responded to this Notice, has not identified its corporate representative(s), and has not stated whether it will or will not produce a witness on that date. Please state your intentions for this Notice by close of business today, as we need to arrange for court reporter services.

Kind regards,

John

Exhibit S

From: Griepsma, Nick
Sent: Thursday, July 7, 2022 8:50 PM
To: 'Eustice, John'; Wolf, Liana; Anand, Serena
Cc: Wilson, Sarah; Anthony, Stephen; Brugato, Thomas; Cavataro, Benjamin; Ramirez, Diane
Subject: RE: CPSC Document Production
Attachments: 2022.07.07 Amazon Notice of Deposition - Sharon White.pdf

John,

We are working to confirm Amazon's 30(b)(6) designee(s) and corresponding availability by Monday, but can confirm in the meantime that Amazon is not available next week. We are available at 2 p.m. EST on Tuesday to discuss 30(b)(6) topics. Please let us know if that time works for you and please also send us your concerns in writing as soon as possible in advance of the meeting. Amazon likewise intends to raise concerns regarding CPSC's 30(b)(6) notice and will send those to you in advance of the meeting.

We will review your production tomorrow, but if that production does not resolve the pending disputes, we will need to insist on submission of the dispute summary to Judge Grimes on Monday. We note that there were multiple issues for which CPSC committed to follow-up after our June 23 meet and confer, and your failure to provide any further elaboration or answers to Amazon's concerns beyond your invitation to simply review tomorrow's production is unlikely to bring resolution to this dispute. To the extent there may be any future disputes concerning the Parties' respective 30(b)(6) notices, we agree that those issues should be combined into a subsequent submission to Judge Grimes as a matter of efficiency.

We are working diligently to complete our privilege log and subject to client approval, we anticipate service early-to-mid next week. We are also working to finalize our anticipated final production by the end of next week.

Finally, please find attached Amazon's Notice of Deposition for Sharon White.

Regards,
Nick

Nicholas Griepsma

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5230 | ngriepsma@cov.com
www.cov.com

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Exhibit T

From: Griepsma, Nick
Sent: Thursday, July 7, 2022 11:49 AM
To: 'Eustice, John'; Wolf, Liana; Anand, Serena
Cc: Wilson, Sarah; Anthony, Stephen; Brugato, Thomas; Cavaturo, Benjamin; Ramirez, Diane
Subject: RE: CPSC Document Production
Attachments: Amazon CPSC - ALJ Dispute Letter (7.7.22).docx

John,

Two weeks have passed since our June 23 meet and confer during which you committed to responding to our various concerns as soon as possible. Since then, however, we have not received any further documents or responses. Given the impending closure of fact discovery and the need to prepare for depositions, unless the CPSC can commit (by tomorrow, July 8) to producing the requested past policy/practice discovery, Amazon will seek relief from ALJ Grimes without further delay. To the extent we need to elevate this dispute to Judge Grimes, we intend to submit the attached dispute summary tomorrow afternoon in accordance with his Order of October 19, 2021. We also intend to seek relief regarding CPSC's refusal to provide responses to Amazon Request for Admission Nos. 19 & 20. Your email of June 15 (below) confirms that CPSC intends to stand on its objections for those Requests.

As you will see in the draft submission, there are placeholders for CPSC statements for each of the two disputes. To the extent you intend to stand on your objections for either of these two disputes, please respond with your respective statement insertions by 12:00 p.m. EST tomorrow, July 8.

Regards,
Nick

Nicholas Griepsma

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5230 | ngriepsma@cov.com
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Exhibit U

From: Eustice, John <JEustice@cpsc.gov>
Sent: Friday, July 8, 2022 4:41 PM
To: Griepsma, Nick; Wolf, Liana; Anand, Serena
Cc: Wilson, Sarah; Anthony, Stephen; Brugato, Thomas; Cavataro, Benjamin; Ramirez, Diane
Subject: RE: CPSC Document Production

EXTERNAL

Nick,

We are available on Tuesday, July 12, at 2:00 p.m. for a meet-and-confer on Rule 30(b)(6) topics. We will circulate a WebEx meeting invitation and send you our general concerns in writing prior to that meeting.

We take issue with Amazon counsel's description of the issues in the draft letter to Judge Grimes that you circulated yesterday.

- First, as you know, the scope of discovery in this case has been limited twice, once by Judge Grimes in his January 19, 2022 Order on Motion to Dismiss and Motion for Summary Judgement, and again by the parties in executing the Stipulation on substantial product hazard issues. Accordingly, while we acknowledge that discovery is appropriate as to the specific remedies we seek in this matter, this does not mean that discovery may be taken of every action in which the CPSC has ever asserted that a remedy is "required in order to adequately protect the public" or "is in the public interest." These are legal standards present in the agency's founding statute and they form the foundation of the agency's approach to recalls. These standards provide the framework for all of the CPSC's work, but each recall is unique and the agency is afforded discretion in the manner of enforcement. "CPSC has administrative discretion to determine its enforcement efforts – and potential remedies – based on the unique circumstances of each case, company, product, and agency resources." *In the Matter of TK Access Solutions Corp.*, CPSC Docket No. 21-1, Decision and Order Granting Non-Party Otis Elevator Company's Motion to Quash Subpoena Duces Tecum (April 11, 2022), at 7; *see also* April 22, 2022 Email from J. Eustice to S. Wilson *et al.*
- Second, CPSC has produced more than 14,000 pages of documents in this case, supplemented its interrogatory answers with more specific references to prior recalls with distributors (*see* Supplemental Response to Amazon RFA No. 18) and instances in which a responsible party was asked to condition refunds on the return or proof of destruction of a hazardous product (*see* Supplemental Response to Amazon ROG No. 13, RFA No. 11), and conducted multiple searches for information responsive to Amazon's RFP Nos. 15, 19-26. We have even provided descriptions of non-responsive, irrelevant documents and explained our rationale for not producing them. We are producing today items (2) and (3) listed in the "CPSC Document Production" paragraph in your draft letter to Judge Grimes. And our First Privilege and Redaction Log lists the specific reasons that we have not produced the balance of the Section 15 Product Defect Investigation Procedures Manual (item (1) in that paragraph). The unspecified additional documents that Amazon appears to be asking Judge Grimes to order CPSC to produce – seeking an order compelling production of "all non-privileged material, from 2008 to present, responsive to its discovery requests involving past CPSC actions, practices, policies, and guidance" – fails to identify any potentially responsive, relevant documents that CPSC has yet to provide. We have dutifully met our discovery obligations in this case, and Amazon's remaining "discovery requests are not relevant simply because there is a possibility that the information may be

relevant to the general subject matter of the action.” *Cole’s Wexford Hotel, Inc. v. Highmark Inc.*, 209 F. Supp. 3d 810, 812 (W.D. Pa. 2016).

- Third, you state that Amazon “has limited the chronological scope of [Amazon RFP Nos. 15, 19-26] to 2008 to the present,” when, in fact, in an email from Sarah Wilson on May 5, 2022, Amazon had already limited the scope of these requests to **2009** to the present.
- Fourth, Amazon’s argument that the relief sought by Complaint Counsel in this matter must be compared with relief sought in “other comparable matters” because doing so is “required under APA” misstates the law. As we previously noted, Judge Grimes expressly denied Amazon’s challenge of the Commission’s choice of adjudication in this case under the APA, holding that “the Supreme Court has recognized that administrative agencies have the discretion to choose between rulemaking and adjudication. *SEC v. Chenery (Chenery II)*, 332 U.S. 194, 201–03 (1947); see 5 U.S.C. §§ 553, 554; *NLRB v. Bell Aerospace Co. Div. of Textron*, 416 U.S. 267, 294–95 (1974).” Order on Motion to Dismiss and Motion for Summary Decision (Jan. 19, 2022) at 14. And Amazon cannot challenge any final decision of the Commission because no such decision has been handed down. That is why Amazon’s APA, due process, and retroactivity arguments are premature. Amazon is without basis to seek prospective, potentially unnecessary discovery before a final agency decision is even issued. Indeed, Judge Grimes rightly pointed out that “Amazon has no way to predict how the Commission will rule.” *Id.* at 16. He further explained that any “decision [he] reaches on the merits will be based only on the [CPSA]. And basing a decision on the [CPSA], even if the agency has not previously interpreted the provisions at issue, does not violate the Administrative Procedure Act or the Due Process Clause. See *Chenery II*, 332 U.S. at 203; cf. *Clark-Cowlitz Joint Operating Agency v. FERC*, 826 F.2d 1074, 1081 (D.C. Cir. 1987) (en banc).” *Id.* at 17; see also April 19, 2022 Email from J. Eustice to S. Wilson *et al.*

Today’s document production, which ranges from CPSC_AM0013545 to CPSC_AM0014122, consists of the list of Notices of Violation data sent to GAO (redacted to remove information protected from disclosure by Section 6(b) of the CPSA), Directive 9010.34 which, while outside the date range for which Amazon is seeking documents, is referenced in the produced chapters of the Section 15 Defect Investigation Procedures Manual (redacted to remove portions reflecting law enforcement techniques and procedures protected from disclosure), the Performance Measures taken from the Annual Reports to Congress that were provided in a summary document to GAO, as well as the 1981 Directive delegating the authority to accept certain voluntary corrective action plans and its 2016 successor. The password for the production in the zip file you are about to receive is [REDACTED].

If, following this production, Amazon nonetheless desires to seek relief from Judge Grimes, we will work with you on a substantially revised and accurate letter that sets forth the issues.

Finally, we are checking with Sharon White on her availability and we will get back to you early next week on your proposed date for her deposition and, if necessary, alternate dates.

Kind regards,

John

Exhibit V

From: Wilson, Sarah
Sent: Thursday, July 14, 2022 5:52 PM
To: Eustice, John; Anand, Serena; Wolf, Liana
Cc: Anthony, Stephen; Brugato, Thomas; Cavataro, Benjamin; Ramirez, Diane; Griepsma, Nick; Fletcher, Michael
Subject: CPSC Document Production
Attachments: Amazon CPSC - ALJ Dispute Letter (7.15.22).docx

Counsel:

Thank you for meeting with us earlier this week. We write to follow-up on certain points covered in our meeting, including document discovery, the narrowing of your 30(b)(6) notice, and deposition scheduling.

Follow-up Collection/Production

We look forward to a response as soon as possible regarding the following categories of documents that we discussed:

- Any compilations similar to the NOV spreadsheet which track actions by firms in other contexts such as corrective action plans.
- Internal documents, manuals, or procedures from the Office of Communications (or elsewhere) which discuss the effectiveness of consumer communications, including effective modes of notification, effective language, and any agency rationale regarding effectiveness applied by the agency to its own communications to consumers.

We acknowledge your statement that the parties are at an impasse as to production of any other portion of the Section 15 Manual beyond the two redacted chapters that you have produced to date. We note, however, that we still have not received a clear articulation as to what prejudice or risk to law enforcement efforts is posed by the production of the Manual's table of contents. You stated that such risks were present for certain chapters of the Manual, but have yet to elaborate as to how any of those risks reasonably apply to chapter headings listed in a table of contents.

CPSC's Relevance Withholdings

You confirmed that you intend to stand on your continued withholding of responsive material that you have determined to be irrelevant to the proceeding. You raised two objections in particular. We address those in turn.

CPSC Objection: Because each recall is different, CPSC is not required to treat like cases alike.

Your first objection was recently rejected by a federal appellate court. *See Univ. of Texas M.D. Anderson Cancer Ctr. v. United States Dep't of Health & Hum. Servs.*, 985 F.3d 472, 479–80 (5th Cir. 2021). In that case, the Fifth Circuit surveyed the extensive Supreme Court precedent confirming that agencies must treat “like cases alike.” *Id.*; *see also Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981, 125 S.Ct. 2688, 162 L.Ed.2d 820 (2005) (“Unexplained inconsistency is ... a reason for holding [agency action] to be ... arbitrary and capricious”); *Burlington N. & Santa Fe Ry. Co. v. Surface Transp. Bd.*, 403 F.3d 771, 776 (D.C. Cir. 2005) (“An agency must provide an adequate explanation to justify treating similarly situated parties differently.”).

In the Fifth Circuit case, as you do here, the agency argued that because “it evaluates each case on individual facts,” it was not subject to the above-cited requirement that agencies treat like cases alike. *Anderson Cancer Ctr.*, 985 F.3d at 480. The Fifth Circuit flatly rejected this argument. “[A]n administrative agency cannot hide

behind the fact-intensive nature of penalty adjudications to ignore irrational distinctions between like cases.” *Id.* “Were it otherwise, an agency could give free passes to its friends and hammer its enemies—while also maintaining that its decisions are judicially unreviewable because each case is unique.” *Id.* Accordingly, your contention that the CPSC’s treatment of other firms in other recalls is categorically irrelevant is unfounded.

CPSC Objection: Because CPSC has yet to issue a final order in this adjudication, it is premature to consider the CPSC’s treatment of other firms in other recalls.

The above-summarized obligation to treat like cases alike includes the requirement for an agency to acknowledge changes in practice or policy and supply reasoned justification for the change. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 513 (2009) (“[T]he requirement that an agency provide reasoned explanation for its action ... ordinarily demand[s] that it display awareness that it is changing position. ... [T]he agency must show that there are good reasons for the new [position].”). Agencies must demonstrate this awareness at the time they issue their decision, not later or after the fact. *See Circus Circus Casinos, Inc. v. Nat’l Lab. Rels. Bd.*, 961 F.3d 469, 476 (D.C. Cir. 2020) (“When the Board seeks to change applicable standards through an adjudication, the Board must ‘display awareness that it is changing position,’ demonstrate the rule is ‘permissible under the statute,’ and show ‘there are good reasons for the new policy.’” (quoting *Fox*, 556 U.S. at 515)).

As you acknowledged during our call, the agency is under a continuing obligation to ensure that its actions are not arbitrary and capricious. For that reason, both the ALJ and Commission must take steps to ensure – at the time they enter any decisions – that those decisions are not arbitrary and capricious. And in order to evaluate whether Complaint Counsel’s proposed remedy constitutes a departure from any past policies or practices, both the ALJ and the Commission must have a sufficient discovery record from which they can survey CPSC’s policies and practices. Accordingly, this objection is likewise unfounded.

You indicated on our call that the CPSC intends to stand on these objections in continuing to withhold responsive material it deems to be irrelevant. Accordingly, Amazon intends to seek relief from Judge Grimes. We have drafted the attached 1-page dispute summary in accordance with Judge Grimes’s Oct. 19, 2021 Order. We intend to submit this to Judge Grimes by the end of this week. Accordingly, please provide your highlighted insertions no later than 3 p.m. EST tomorrow.

CPSC’s 30(b)(6) Notice to Amazon

As discussed on our call yesterday, below is Amazon’s understanding as to CPSC’s narrowing or clarification of its 30(b)(6) topics.

- **Topic 1** – CPSC is not requesting knowledge of each and every policy or action ever taken with regard to consumer notification, but rather Amazon’s overarching policies and general practices in place at the time Amazon carried out consumer notifications for the Subject Products at issue in this adjudication.
- **Topic 2** – CPSC is not requesting knowledge of each and every policy or action ever taken with regard to the “handling” of products by Amazon. By “handling” products, CPSC is referring to the receiving, sorting, shipping, or destruction of Subject Products. This topic seeks testimony regarding Amazon’s overarching policies and general practices in place at the time Amazon interacted with the Subject Products at issue in this adjudication.
- **Topic 3** – CPSC is not seeking information governed by the hazard stipulation reached in this case. CPSC is limiting the scope of this topic to Amazon’s general practices toward the Subject Products following any determination that the products constituted a safety hazard to consumers.
- **Topic 4** – CPSC acknowledges that testimony relevant to this topic may be privileged and that Amazon’s witness will be directed not to divulge privileged information as appropriate. CPSC is limiting the scope of this topic to any non-privileged communications involving Amazon’s general practices toward the Subject Products following any determination that the products constituted a potential safety hazard to consumers.

- **Topic 5** – CPSC clarifies that by “notice,” it is not seeking testimony regarding any and all potential notices that Amazon may have sent consumers who purchased the Subject Products, but rather any notices specifically relating to safety.
- **Topic 6** – CPSC clarifies that by “handling,” it refers to what Amazon did with any Subject Products following any determination that the products constituted a potential safety hazard to consumers, such as shipment or destruction.
- **Topic 7** – CPSC is not seeking testimony regarding each and every action ever taken with regard to the issuance of refunds to consumers or reimbursement from third-party sellers, but rather Amazon’s overarching policies and general practice in place at the time Amazon issued refunds related to the Subject Products at issue in this adjudication. Amazon reiterates its objection, however, to Complaint Counsel’s contention that third-party reimbursements issued to Amazon are relevant to this adjudication.
- **Topic 8** – CPSC clarifies that here it seeks testimony regarding the operative FBA and BSA agreements in place with third-party sellers at the time of sale of the Subject Products. CPSC is not seeking testimony regarding all potential topics of communication with third-party sellers, only communications involving the safety of Subject Products.
- **Topic 9** – CPSC clarifies that it is not seeking testimony regarding all actions taken by Amazon relating to the Subject Products. This topic is limited to whether Amazon conducted additional messaging to consumers regarding potential safety hazards of the Subject Products after issuing notices to consumers regarding potential safety hazards.
- **Topics 10/11** – CPSC acknowledges substantial portions of these topics may be covered by the attorney-client privilege. CPSC further is not requesting knowledge of each and every policy or action ever taken with regard to identification of what CPSC refers to as “functionally equivalent products,” but rather Amazon’s overarching policies and general practices in place at the time Amazon carried out consumer notifications for the Subject Products at issue in this adjudication. Amazon reiterates its objection that CPSC lacks authority to seek relief with regard to “functionally equivalent products.”

Please confirm whether the above narrowing summary comports with your understanding.

Deposition Scheduling

Amazon will designate a single 30(b)(6) representative: Lauren Shrem, Senior Manager for Product Safety, Worldwide Product Safety and Compliance. She is available for deposition on July 26 in Seattle – please let us know if you have availability on that date. Please also identify the CPSC’s 30(b)(6) representative and confirm the noticed date, or suggest alternative available dates.

Regards,

Sarah

Sarah Wilson

Covington & Burling LLP
 One CityCenter, 850 Tenth Street, NW
 Washington, DC 20001-4956
 T +1 202 662 5397 | swilson@cov.com
 www.cov.com

COVINGTON

This message is from a law firm and may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply e-mail that this message has been inadvertently transmitted to you and delete this e-mail from your system. Thank you for your cooperation.

Exhibit W

Regulated Products Violations

	A	B	C	D	E	F
1	For all products regulated by the CPSC, the Commission issues a Notice of Violation (NOV) when there is a violation of a mandatory standard. It advises the company of the violation and of the nature of the necessary corrective					
2	manufacturers beginning in Fiscal Year 2013, where the Commission received a response from the company confirming the violation and the Commission decided that the company voluntarily completed corrective action					
3						
4	NOTE: THIS EXCEL SPREADSHEET CONTAINS THE MOST UP-TO-DATE DATA.					
5						
6	LOA DATE	PRODUCT NAME	MODEL NO	VIO 1 DESC	VIO 1 CITATION	ACTION REQUESTED
7	December, 2019	PLUSH TOYS		Tracking Label Violation	15 U.S.C. 2063(a)(5)	CFP - Correct Future Production
8	December, 2019	INFANT BUTTONED SHIRTS AND PAN		Lead in Children's Product / FHSA	16 CFR 1500	SSC - Stop Sale and Correct Future Production
9	December, 2019	INFANT BUTTONED SHIRTS AND PAN		Lead in Children's Product / FHSA	16 CFR 1500	SSC - Stop Sale and Correct Future Production
10	December, 2019	INFANT BUTTONED SHIRTS AND PAN		Lead in Children's Product / FHSA	16 CFR 1500	SSC - Stop Sale and Correct Future Production
11	December, 2019	INFANT BUTTONED SHIRTS AND PAN		Lead in Children's Product / FHSA	16 CFR 1500	SSC - Stop Sale and Correct Future Production
12	December, 2019	INFANT BUTTONED SHIRTS AND PAN		Lead in Children's Product / FHSA	16 CFR 1500	SSC - Stop Sale and Correct Future Production
13	December, 2019	TOY VINYL FIGURES	69637 & 69648	Tracking Label Violation	15 U.S.C. 2063(a)(5)	CFP - Correct Future Production
14	December, 2019	CHILDREN'S JEANS	RM-451	Lead in Children's Product / FHSA	16 CFR 1500	SSC - Stop Sale and Correct Future Production
15	December, 2019	CHILDREN'S JEANS	RM-447	Lead in Children's Product / FHSA	16 CFR 1500	SSC - Stop Sale and Correct Future Production
16	December, 2019	CHILDREN'S JEANS	RM-442	Lead in Children's Product / FHSA	16 CFR 1500	SSC - Stop Sale and Correct Future Production
17	December, 2019	CHILDREN'S JEANS	RM-441	Lead in Children's Product / FHSA	16 CFR 1500	SSC - Stop Sale and Correct Future Production
18	December, 2019	CHILDREN'S JEANS	RM-462	Lead in Children's Product / FHSA	16 CFR 1500	SSC - Stop Sale and Correct Future Production
19	December, 2019	CHILDREN'S JEANS	RM-452	Lead in Children's Product / FHSA	16 CFR 1500	SSC - Stop Sale and Correct Future Production
20	December, 2019	CHILDREN'S JEANS	RM-446	Lead in Children's Product / FHSA	16 CFR 1500	SSC - Stop Sale and Correct Future Production
21	December, 2019	CHILDREN'S JEANS	RM-443	Lead in Children's Product / FHSA	16 CFR 1500	SSC - Stop Sale and Correct Future Production
22	December, 2019	CHILDREN'S JEANS	RM-448	Lead in Children's Product / FHSA	16 CFR 1500	SSC - Stop Sale and Correct Future Production
23	December, 2019	CHILDREN'S JEANS	RM-461	Lead in Children's Product / FHSA	16 CFR 1500	SSC - Stop Sale and Correct Future Production
24	December, 2019	CHILDREN'S JEANS	RM-463	Lead in Children's Product / FHSA	16 CFR 1500	SSC - Stop Sale and Correct Future Production
25	December, 2019	CHILDREN'S CLOTHING SETS		Lead in Children's Product / FHSA	16 CFR 1500	SSC - Stop Sale and Correct Future Production
26	December, 2019	FURREAL PET TOY	A7274	Third Party Certificate Violation	15 U.S.C. 2063(a)(2)	CFP - Correct Future Production
27	December, 2019	FLASHING ANIMALS	GIRAFFE, DEER	Third Party Certificate Violation	15 U.S.C. 2063(a)(2)	CFP - Correct Future Production
28	December, 2019	EGG SHAKER TOY	ASSORTED	Tracking Label Violation	15 U.S.C. 2063(a)(5)	SSC - Stop Sale and Correct Future Production
29	December, 2019	INFANTS' FEEDER/ DROPPERS	ASSORTED	Tracking Label Violation	15 U.S.C. 2063(a)(5)	SSC - Stop Sale and Correct Future Production
30	December, 2019	GIRLS' UNICORN BACKPACK- PINK		Tracking Label Violation	15 U.S.C. 2063(a)(5)	SSC - Stop Sale and Correct Future Production
31	December, 2019	GIRLS' PLAY DOLL VET SET	ASSORTED	Tracking Label Violation	15 U.S.C. 2063(a)(5)	SSC - Stop Sale and Correct Future Production
32	December, 2019	BACKPACK		Tracking Label Violation	15 U.S.C. 2063(a)(5)	SSC - Stop Sale and Correct Future Production
33	December, 2019	GIRLS' UNICORN BACKPACK- PURPL		Tracking Label Violation	15 U.S.C. 2063(a)(5)	SSC - Stop Sale and Correct Future Production
34	December, 2019	DIY MAZE KIT	ASSORTED	Tracking Label Violation	15 U.S.C. 2063(a)(5)	SSC - Stop Sale and Correct Future Production
35	December, 2019	GIRL'S FUZZY UNICORN EYE MASK	ASSORTED	Tracking Label Violation	15 U.S.C. 2063(a)(5)	SSC - Stop Sale and Correct Future Production
36	December, 2019	PIANO PLAYMAT		Tracking Label Violation	15 U.S.C. 2063(a)(5)	SSC - Stop Sale and Correct Future Production
37	December, 2019	CHILDREN'S PUZZLE	ASSORTED	Tracking Label Violation	15 U.S.C. 2063(a)(5)	SSC - Stop Sale and Correct Future Production
38	December, 2019	GIRLS' PLAY DOLL VET SET	ASSORTED	Tracking Label Violation	15 U.S.C. 2063(a)(5)	SSC - Stop Sale and Correct Future Production
39	December, 2019	FOAM PIRATES SHIP- ACTIVITY KI		Tracking Label Violation	15 U.S.C. 2063(a)(5)	CFP - Correct Future Production
40	December, 2019	BALANCE BIKE	BIKE045PK, BIKE	Lead in Children's Product / FHSA	16 CFR 1500	SSC - Stop Sale and Correct Future Production
41	December, 2019	MAGNETIC SCULPTURE TOY	X002B62UHN	ASTM Toy Magnet Violation	15 U.S.C. 2058(b)(1)	SSC - Stop Sale and Correct Future Production
42	December, 2019	3 PCS BABY SET	B07ZHZFBS	Lead in Children's Product / FHSA	16 CFR 1500	SSC - Stop Sale and Correct Future Production
43	December, 2019	TOY TACTICAL VEST		Lead in Children's Product / FHSA	16 CFR 1500	SSC - Stop Sale and Correct Future Production
44	December, 2019	CHILDREN'S BEAD SET	ASSORTED	Tracking Label Violation	15 U.S.C. 2063(a)(5)	CFP - Correct Future Production
45	December, 2019	TOY REMOTE CAR	NO-666	Lead in Children's Product / FHSA	16 CFR 1500	SSC - Stop Sale and Correct Future Production
46	December, 2019	BIC DISPOSABLE LIGHTERS MINI	60267	Lighter Reporting	16 CFR 1210.17(b)	SSC - Stop Sale and Correct Future Production
47	December, 2019	BIC MULTIUSE TABLE LIGHTER DIS	62321	MP Lighter Reporting	16 CFR 1212.17 (b)	SSC - Stop Sale and Correct Future Production
48	December, 2019	BIC DISPOSABLE LIGHTERS	60127	Lighter Reporting	16 CFR 1210.17(b)	SSC - Stop Sale and Correct Future Production
49	December, 2019	NIPPON TOYS PLASTIC MINI CRICK		Lead in Children's Product / FHSA	16 CFR 1500	SSC - Stop Sale and Correct Future Production
50	December, 2019	TACTICAL VEST AND GUN SET		Lead in Children's Product / FHSA	16 CFR 1500	SSC - Stop Sale and Correct Future Production
51	December, 2019	CHILDREN'S BOOTS/SHOES		Lead in Children's Product / FHSA	16 CFR 1500	SSC - Stop Sale and Correct Future Production
52	December, 2019	T-REX CONSTRUCTION TOY	BC-35002	Tracking Label Violation	15 U.S.C. 2063(a)(5)	CFP - Correct Future Production

Regulated Products Violations

	G	H	I	J
1	Corrective action (to correct future production (CFP); to stop sale and CFP; or to recall, stop sale, and CFP). This section lists the NOV's sent to importers and			
2	to remedy the hazard.			
3				
4				
5				
6	FIRM NAME	FIRM ADDRESS	FIRM CITY	COUNTRY
7				PERU
8				PERU
9				PERU
10				PERU
11				PERU
12				PERU
13				PERU
14				HONG KONG
15				HONG KONG
16				HONG KONG
17				HONG KONG
18				HONG KONG
19				HONG KONG
20				HONG KONG
21				HONG KONG
22				HONG KONG
23				HONG KONG
24				HONG KONG
25				HONG KONG
26				CHINA
27				CHINA
28				CHINA
29				CHINA
30				CHINA
31				CHINA
32				CHINA
33				CHINA
34				CHINA
35				CHINA
36				CHINA
37				CHINA
38				CHINA
39				CHINA
40				CHINA
41				CHINA
42				CHINA
43				CHINA
44				CHINA
45				CHINA
46				FRANCE
47				FRANCE
48				FRANCE
49				INDIA
50				CHINA
51				CHINA
52				CANADA

Exhibit X

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)
)
AMAZON.COM, INC.)
)
) CPSC DOCKET NO.: 21-2
)
)
Respondent.)

COMPLAINT COUNSEL’S FIRST PRIVILEGE AND REDACTION LOG

Complaint Counsel respectfully submits its First Privilege and Redaction Log. This Log reflects redactions of produced documents and withheld documents identified following a reasonable inquiry for responsive information, as described in Complaint Counsel’s Objections and Responses to Respondent’s First Set of Requests for Production of Documents and Things to Consumer Product Safety Commission (served on March 21, 2022). In addition, Complaint Counsel did not log potentially privileged documents responsive to discovery requests mooted by the parties’ execution of the Stipulation of the Parties (dated April 26, 2022).

Complaint Counsel will serve additional Privilege and Redaction Logs if and as appropriate.

						client privilege and the deliberative process privilege.
79	CPSC_AM0013545-14048	CPSC, Office of Compliance and Field Operations	GAO	12/2019	Section 6 / Privacy	Redacted to remove identifiable information precluded from disclosure by Section 6(b) of the CPSA.
80	CPSC_AM0014049-14113	CPSC	Compliance Staff	7/1992	Law Enforcement Privilege	1992 Directive 9010.34 incorporating 1984 Directive 9010.34 on Corrective Action Plans for use by CPSC staff. Redacted portions reflect law enforcement techniques and procedures protected from disclosure by the law enforcement privilege and FOIA Exemption 7E
81		CPSC, Office of Compliance and Field Operations, Division of Enforcement and Litigation	Compliance Staff	4/2014	Law Enforcement Privilege	Non-produced portions of the Section 15 Defect Investigation Procedures Manual are not relevant to any issues live and in dispute in this action. In addition, non-produced portions of the Manual include information reflecting law enforcement techniques and procedures protected from disclosure by the law enforcement privilege and FOIA Exemption 7E.
82		Joseph Williams	Anne Inserra, Natasha Bylenok	8/23/2018	Deliberative Process Privilege	Notes on potential follow-up actions to improve recall effectiveness that reflect the predecisional deliberative opinions and recommendations of CPSC staff and are protected from disclosure by the deliberative process privilege.
83		Joseph Williams	N/A	9/10/2018	Deliberative Process Privilege	Notes on potential follow-up actions to improve recall effectiveness that reflect the predecisional deliberative opinions and recommendations of CPSC staff and are

						protected from disclosure by the deliberative process privilege.
84		Joseph Williams	Stephane Synnott, Shelby Mathis, Carol Cave, Robert Kaye, CPSC Office of the Executive Director	10/17/2018	Deliberative Process Privilege	Draft suggestions and draft plan for Recall Effectiveness Actions following the Recall Effectiveness Project prepared as part of a decision-making process reflecting the deliberative opinions and recommendations of CPSC staff and are protected from disclosure by the deliberative process privilege.
85		Joseph Williams	Stephane Synnott, Shelby Mathis, Carol Cave, Robert Kaye, CPSC Office of the Executive Director	10/17/2018	Deliberative Process Privilege	Draft summary of findings following the Recall Effectiveness Project prepared as part of a decision-making process reflecting the deliberative opinions and recommendations of CPSC staff and are protected from disclosure by the deliberative process privilege.
86		Joseph Williams	Valery Ceasar, Blake Rose, Carol Cave, Robert Kaye	5/23/2017	Deliberative Process Privilege	Draft announcement relating to the Recall Effectiveness Workshop that reflects the predecisional deliberative opinions and recommendations of CPSC staff and are protected from disclosure by the deliberative process privilege.
87		Joseph Williams	Robert Kaye, Valery Ceasar, Blake Rose, Carol Cave	5/15/2017	Deliberative Process Privilege	Draft description and listed goals for the Recall Effectiveness Workshop. Draft reflects the predecisional deliberative opinions and recommendations of CPSC staff and are protected from disclosure by the deliberative process privilege.
88		Joseph Williams	Blake Rose, Carol Cave,	8/29/2017	Deliberative Process Privilege	Draft recommendations regarding the Recall Effectiveness Workshop. Draft

			Robert Kaye, Celestine Kish, Shelby Mathis, Stephane Synnott, Justin McDonough			reflects the work product and predecisional deliberative opinions and recommendations of CPSC staff and are protected from disclosure by the deliberative process privilege.
89		Joseph Williams	N/A	9/7/2017	Deliberative Process Privilege	Draft recommendations regarding the Recall Effectiveness Workshop. Draft prepared as part of a decision-making process reflecting the deliberative opinions and recommendations of CPSC staff and are protected from disclosure by the deliberative process privilege.
90		Joseph Williams	Stephane Synnott, Celestine Kish, Justin McDonough, Shelby Mathis, Robert Kaye, Carol Cave, Blake Rose	9/5/2017	Deliberative Process Privilege	Draft recommendations regarding the Recall Effectiveness Workshop. Draft prepared as part of a decision-making process reflecting the deliberative opinions and recommendations of CPSC staff and are protected from disclosure by the deliberative process privilege.
91		Joseph Williams	Stephane Synnott, Celestine Kish, Justin McDonough, Shelby Mathis, Robert Kaye, Carol Cave,	9/5/2017	Deliberative Process Privilege	Draft recommendations regarding the Recall Effectiveness Workshop. Draft prepared as part of a decision-making process reflecting the deliberative opinions and recommendations of CPSC staff and are protected from disclosure by the deliberative process privilege.

			Blake Rose, DeWane Ray			
92		CPSC	GAO	5/18/2021	Law Enforcement Privilege	CPSC Response to Recommendations Contained in the GAO Report GAO-21-56. Non-public document reflects law enforcement techniques and procedures protected from disclosure by the law enforcement privilege and FOIA Exemption 7E.

Dated this 8th day of July, 2022

John C. Eustice

John C. Eustice, Senior Trial Attorney
Liana G.T. Wolf, Trial Attorney
Serena Anand, Trial Attorney

Division of Enforcement and Litigation
Office of Compliance and Field Operations
U.S. Consumer Product Safety Commission
Bethesda, MD 20814
Tel: (301) 504-7809

Complaint Counsel for
U.S. Consumer Product Safety Commission

Exhibit Y

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)

AMAZON.COM, INC.)

Respondent.)

CPSC DOCKET NO.: 21-2

**COMPLAINT COUNSEL’S SUPPLEMENTAL OBJECTIONS AND RESPONSES
TO RESPONDENT’S REQUESTS FOR ADMISSION NOS. 19 AND 20**

Pursuant to 16 C.F.R. §§ 1025.31(f), 1025.32, and 1025.34, Complaint Counsel respectfully submits its supplemental objections and responses (“Responses”) to Respondent Amazon.com, Inc.’s (“Respondent’s”) Requests for Admission Nos. 19 and 20 (“Requests”). Complaint Counsel incorporates herein the Preliminary Statement and General Objections served with the Objections and Responses to Respondent’s First Set of Requests for Admission.

COMPLAINT COUNSEL’S SUPPLEMENTAL RESPONSES

REQUEST NO. 19. Admit that YOU have adopted no standard, rule, policy, procedure, or guidance outlining the circumstances when a Commission order directing a company to provide notification or further notification of a recall to purchasers, consumers, or users of a product, or to the public, “is required in order to adequately protect the public” under 15 U.S.C. § 2064(c)(1).

MARCH 21, 2022 RESPONSE TO REQUEST NO. 19:

Complaint Counsel objects to this Request as overly broad, vague, and ambiguous in its use of the phrases “standard, rule, policy, procedure, or guidance” and “outlining the circumstances.” In addition, Complaint Counsel objects to this Request to the extent that it seeks a legal conclusion. Complaint Counsel further objects to this Request as irrelevant to any issue live and in dispute in the proceedings following the Court’s January 19, 2022 Order on Motion to Dismiss and Motion for Summary Decision.

Complaint Counsel stands on its objections in response to Request No. 19.

SUPPLEMENTAL RESPONSE TO REQUEST NO. 19:

Subject to and without waiver of the foregoing general and specific objections, Complaint Counsel denies this Request. Complaint Counsel refers Respondent to numerous documents contained in CPSC’s production to date, including, but not limited to, the Consumer Product Safety Act, as amended, 15 U.S.C. §§ 2051 *et seq.*; the Consumer Product Safety Act Regulations, Code of Federal Regulations, Title 16, Chapter II, Subchapter B, including Part 1115 (Substantial Product Hazard Reports, 16 C.F.R. § 1115.21 (Compulsory remedial actions)), and Subpart C (Guidelines and Requirements for Mandatory Recall Notices); the Product Safety Planning, Reporting, and Recall Handbook (CPSC_AM0011464-CPSC_AM0011515), and the produced chapters of the Section 15 Product Defect Investigation Procedures Manual (CPSC_AM0013521-13544). These materials provide guidance to CPSC compliance staff in determining, for each unique case, the appropriate remedies necessary in order to adequately protect the public.

REQUEST NO. 20. Admit that **YOU** have adopted no standard, rule, policy, procedure, or guidance outlining the circumstances when a Commission order directing a company to provide a remedy, or additional remedy, to purchasers, consumers, or users of a product is “in the public interest” within the meaning of 15 U.S.C. § 2064(d)(1).

MARCH 21, 2022 RESPONSE TO REQUEST NO. 20:

Complaint Counsel objects to this Request as overly broad, vague, and ambiguous in its use of the phrases “standard, rule, policy, procedure, or guidance” and “outlining the circumstances.” In addition, Complaint Counsel objects to this Request to the extent that it seeks a legal conclusion. Complaint Counsel further objects to this Request as irrelevant to any issue live and in dispute in the proceedings following the Court’s January 19, 2022 Order on Motion to Dismiss and Motion for Summary Decision.

Complaint Counsel stands on its objections in response to Request No. 20.

SUPPLEMENTAL RESPONSE TO REQUEST NO. 15:

Subject to and without waiver of the foregoing general and specific objections, Complaint Counsel denies this Request. Complaint Counsel refers Respondent to numerous

documents contained in CPSC's production to date, including, but not limited to, the Consumer Product Safety Act, as amended, 15 U.S.C. §§ 2051 *et seq.*; the Consumer Product Safety Act Regulations, Code of Federal Regulations, Title 16, Chapter II, Subchapter B, including Part 1115 (Substantial Product Hazard Reports, 16 C.F.R. § 1115.21 (Compulsory remedial actions)), and Subpart C (Guidelines and Requirements for Mandatory Recall Notices); the Product Safety Planning, Reporting, and Recall Handbook (CPSC_AM0011464-CPSC_AM0011515), and the produced chapters of the Section 15 Product Defect Investigation Procedures Manual (CPSC_AM0013521-13544) ("If new information becomes available after the remedy is accepted, or if the CAP does not protect the public sufficiently, staff is authorized to seek broader corrective action and may re-announce the recall"; *see also* Chapter 8.7(2) Procedures when recall notice and/or remedy are ineffective and (3) Procedures when it is determined that a recall is not implemented adequately). These materials provide guidance to CPSC compliance staff in determining, for each unique case, the remedies that are in the public interest.

Dated this 11th day of July, 2022

John C. Eustice

John C. Eustice, Senior Trial Attorney
Liana G.T. Wolf, Trial Attorney
Serena Anand, Trial Attorney

Division of Enforcement and Litigation
Office of Compliance and Field Operations
U.S. Consumer Product Safety Commission
Bethesda, MD 20814
Tel: (301) 504-7809

Complaint Counsel for
U.S. Consumer Product Safety Commission

Exhibit Z
Filed in Camera Pursuant
to Protective Order

Exhibit AA

CPSC Defect Recall Data

Carol Cave
Deputy Director, Office of Compliance and Field
Operations
July 25, 2017

This presentation was prepared by CPSC
staff, has not been reviewed or approved
by, and may not reflect the views of the
Commission

CPSC Recall Data Analysis

- Data analyzed for **closed** cases that have a Corrective Action Plan date between FY 2013 and FY 2016.
- Total number of 865 closed cases analyzed
- Correction rates were determined by comparing the number of reported corrections made to the number of reported products distributed at the manufacturer, distributor, retailer, and consumer levels.

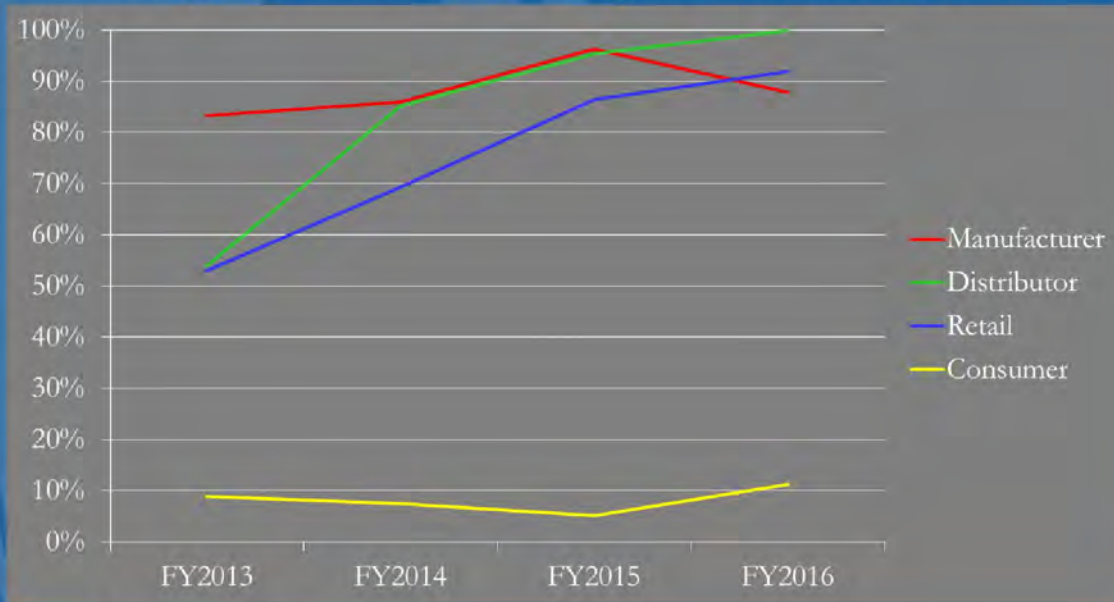
CPSC Recall Data

- Changes to recall data collection and recordation
- Overall correction rate = 65%
- Focuses on all levels in the distribution chain
- On average, 46% of cases reported to the CPSC lead to a recall or recall alert.

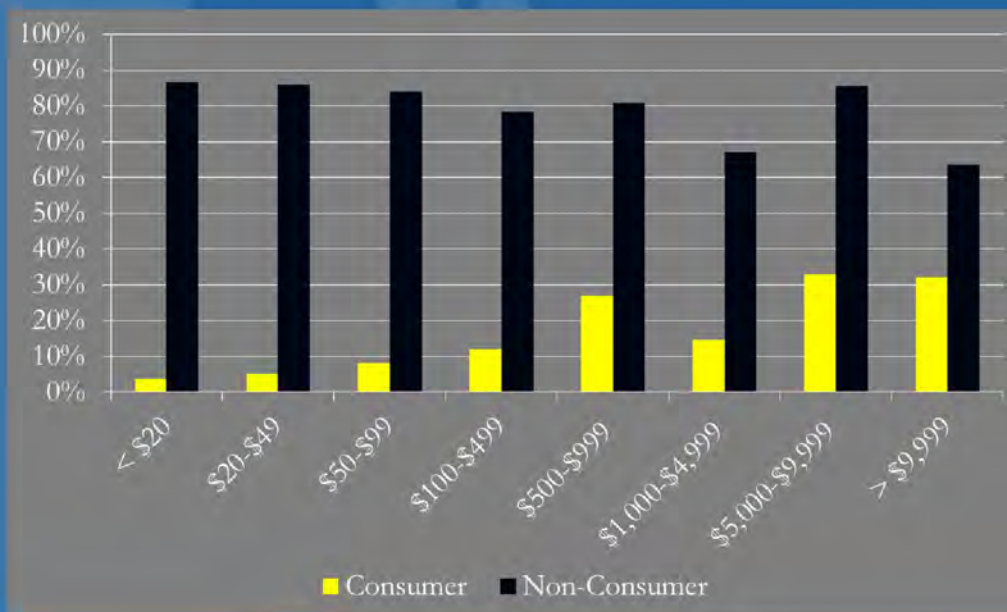
Correction Rate Analysis

- Distribution Levels
- Price
- Product Category
- Correction type
- Recall type

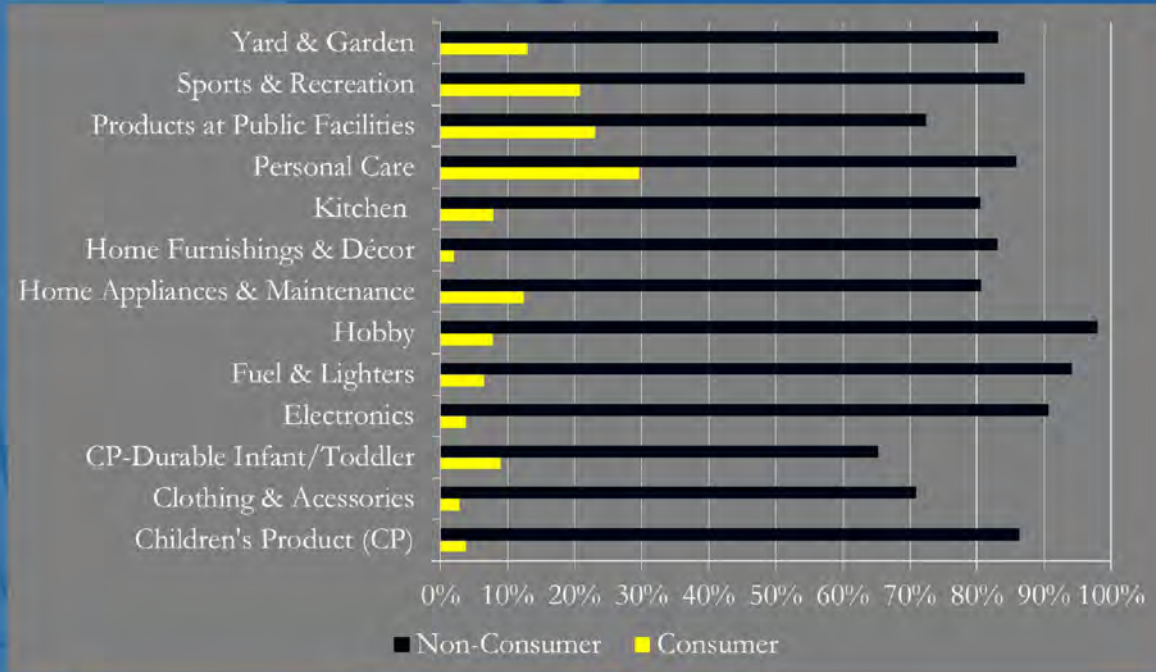
Average Correction Rate by Distribution Levels



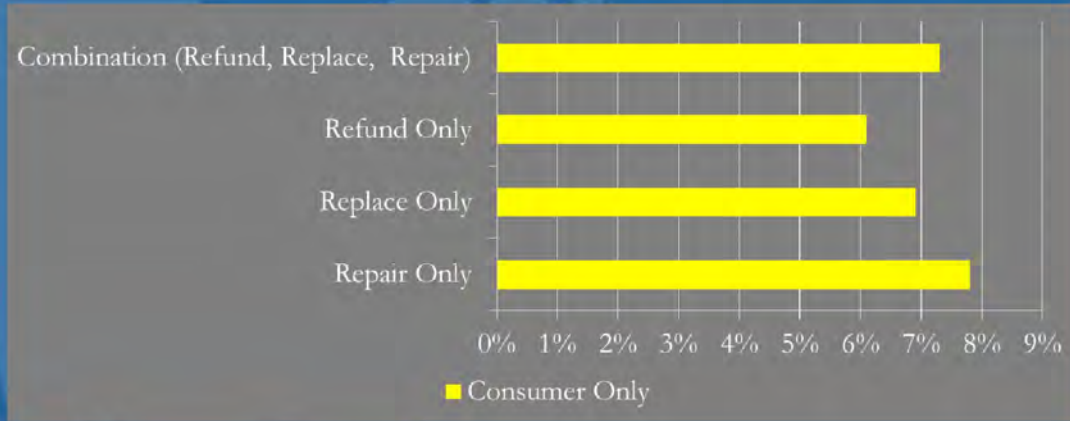
Correction Rates by Retail Price



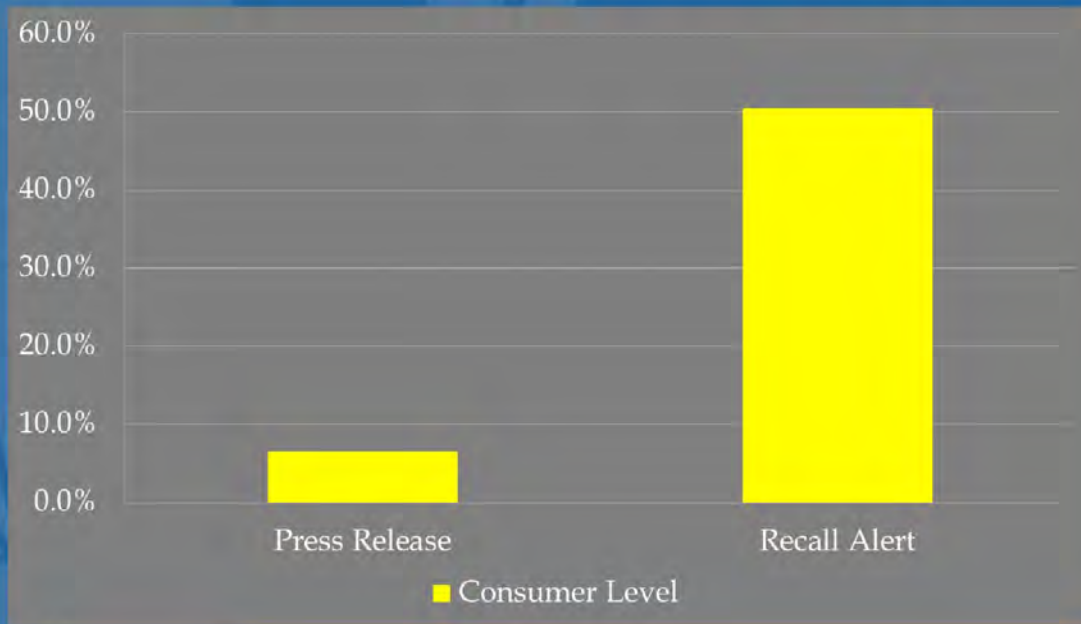
Correction Rate by Product Category



Correction Type



Correction Rate by Recall Type



Recall Alerts vs. Press Releases

- Higher Correction Rates w/ Recall Alerts at all Levels
 - Recall Alerts require the recalling company to demonstrate that they are able to contact 95% of affected consumers through direct notification (i.e. email, mail, telephone, etc.)
- Recall Alerts have a greater consumer correction rate at 50%
- Press Releases have a consumer correction rate of 6%

Additional Findings

- FY 2016 achieved high correction rates for all distribution levels, except Manufacturer.
- Correction rates for products designated with a higher risk do not necessarily motivate consumers to take advantage of remedy.
- There were 3 cases in this data set where a death occurred after the recall.
- Price points appear to be a driver in consumer motivation.
- It is difficult to assess when consumer disposes of product in lieu of a remedy.
- Social media was used in 199 cases. The type of social media used was not recorded. Number of cases that used social media:

FY 2014- 36
FY 2015- 139
FY 2016- 24

Conclusion

- CPSC recognizes the challenges with consumer correction rates.
- CPSC wants to collaborate with all stakeholders to find ways to provide direct notice to consumers and improve recall effectiveness.

Exhibit BB

Goals for CPSC Recall Press Releases

July 25, 2017

Patty Davis
Acting Director
CPSC's Office of
Communications


*This presentation has not been
reviewed or approved by the Commission and may not reflect its views.*

What helps a recall to be more effective?

- **Simple, easy-to-understand recall communication for consumers**
- **Direct contact by the firm with the purchaser**
- **Phone call, email, letter from firm to a consumer spurs action**

What helps a recall to be more effective?

- **Media stories & social media mentions**
- **Multiple communication channels**
- **Multiple times**



**CPSC works with companies to
write, post and distribute more
than 300 recall press releases every
year.**

Two Types

Recall Press Releases – the firm does not have contact for most purchasers

Media assistance is very important

Recall Alerts –if the firm can contact all purchasers

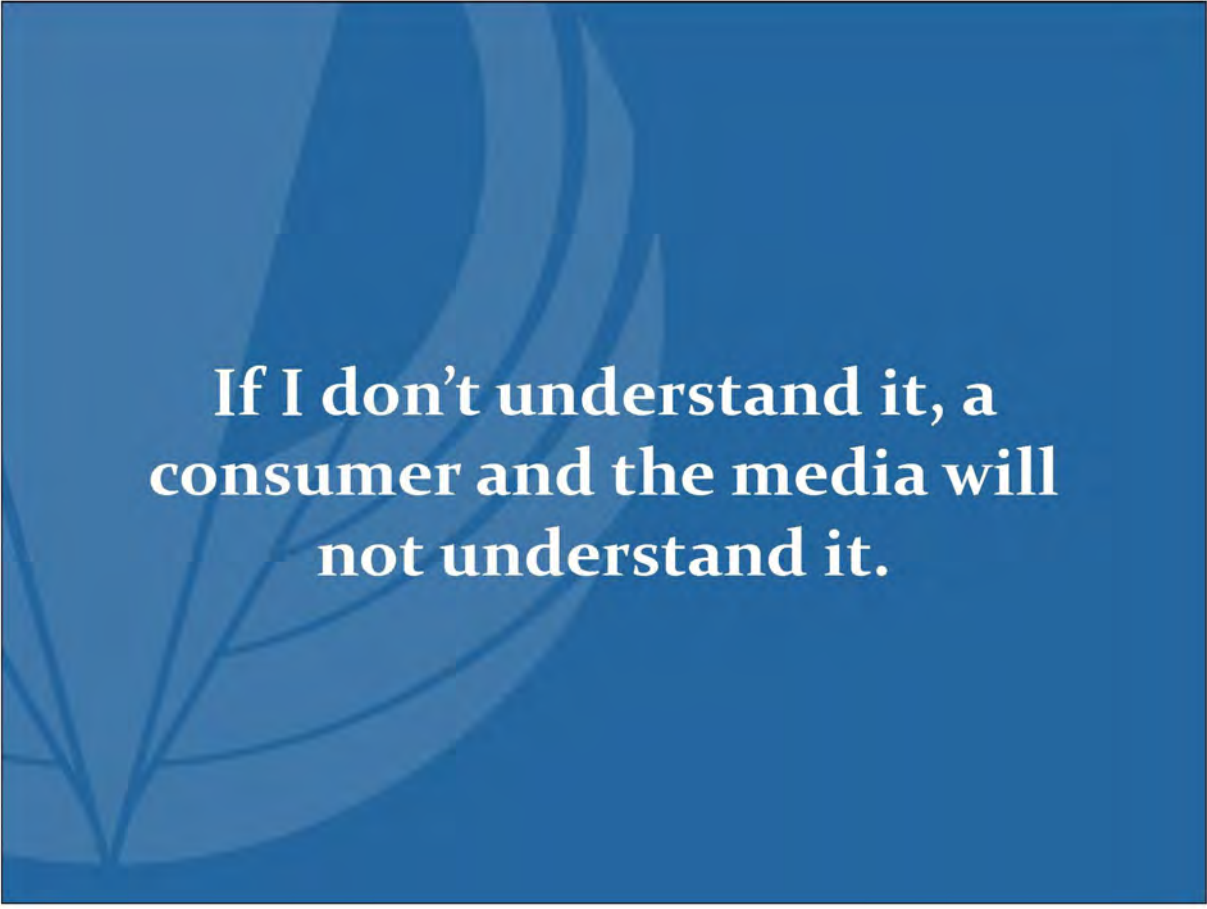
With direct notification, media assistance is not as important



**Goal = Communicate in a way
that spurs consumer action**

How do we do that? OCM guidelines:

- Plain language in recall releases
- Be clear
- Avoid legal language or jargon
- Put the hazard in terms the average person can understand
- Short and concise sentences



**If I don't understand it, a
consumer and the media will
not understand it.**

Sample Headline:

**Johnson Company Incorporated Recalls
R364415 and L441622 Model Red/Green
and Blue/Orange Beaded Children's
Bracelets Due to Potential for the Risk of
Choking**

Simplified Sample Headline:

**Johnson Company Recalls Children's
Bracelets Due to Choking Hazard**

Recall Press Releases

OCM uses AP style

This is used in newsrooms across the country.

Purpose is to promote uniformity for ease of reading and a common understanding.

Inverted pyramid style: Start broad and simple at the top and get more detailed toward the bottom.

You have seconds to hook the reader. If you do not communicate simply at the top, they won't pay attention.

Recall release should answer basic questions:

Who is the recalling company?

What is the product?

What is the hazard?

What is the remedy?

Who should consumers contact?

Remedy

**Is it a refund, repair or
replacement?
Give consumers an easy way to
reach the firm to get their
remedy.**

CPSC Social Media

Facebook
Instagram
Twitter
YouTube
Flickr
Google+
Slideshare



CPSC Social Media

Used to:

Communicate product recalls
Share safety messaging
Answer consumer questions

CPSC Social Media

CPSC product recall social media includes:

#Recall

**Tagged company Twitter/Facebook account
(if available)**

Name of product

Hazard

Remedy

**Company Contact Information (Facebook,
Instagram)**

Link to recall page on CPSC.gov

CPSC Social Media

CPSC Twitter @USCPSC



CPSC Social Media

CPSC encourages companies to use all means of communication possible to contact consumers about a recalled product. Social media is no exception.

IKEA USA
June 28 · 🌐

At IKEA, we want to help create a better life for our customers, and a safe home for families. As part of our efforts to address the danger of tip-over accidents, we're recalling certain MALM and other chests and dressers sold through June 2016. Click here to find more information, along with a full list of recalled products: <http://bit.ly/2S2gQge>

Customers who have these products should return them to IKEA stores for a full refund or anchor to the wall with our free wall-anchoring kits.

IKEA Recalls MALM and Other Models of Chests and Dressers
IKEA Recalls MALM and Other Models of Chests and Dressers
IKEA.COM

Like Comment Share

👍👎🗨️ 845 Top Comments ·

4,134 shares 2K Comments

Cabela's @Cabelas · Oct 20

Cabela's is voluntarily recalling the 80 & 160 Liter Commercial Grade Food Dehydrators. For further info: bit.ly/2eV4bgq @USCPSC

Model #S41650

Model #S41649

CPSC Tools to Amplify the Recall Message:

**CPSC recall listserv
Media pitching/interviews/b-roll
Social media posts
YouTube videos**

The CPSC will accept written comments on this topic until August 11, 2017.
Please submit any written comments to JFWilliams@cpsc.gov