



## U.S. CONSUMER PRODUCT SAFETY COMMISSION

4330 EAST WEST HIGHWAY  
BETHESDA, MARYLAND 20814-4408

Record of Commission Action  
Commissioners Voting by Ballot\*

Commissioners Voting:     Acting Chairman Ann Marie Buerkle  
                                  Commissioner Robert S. Adler  
                                  Commissioner Elliot F. Kaye  
                                  Commissioner Dana Baiocco  
                                  Commissioner Peter A. Feldman

### ITEM:

Vote Regarding Revised Proposed Settlement of In the Matter of Britax Child Safety, Inc., CPSC Docket No. 18-1  
(Briefing package dated October 31, 2018, OS No. 3143)

### DECISION:

The Commission voted (3-2) on the Vote Regarding Revised Proposed Settlement of *In the Matter of Britax Child Safety, Inc.*, CPSC Docket 18-1 (“Vote Regarding Revised Settlement”), concerning the parties’ jointly proposed Consent Agreement and Order (“October Consent Agreement”).

Acting Chairman Buerkle, Commissioner Baiocco, and Commissioner Feldman voted to accept the October Consent Agreement and to issue the Order attached to the October Consent Agreement. Commissioners Adler and Kaye voted to reject the October Consent Agreement and to issue an *In Camera* Order Rejecting Proposed Revised Settlement. Commissioners Adler and Kaye issued a Dissenting Opinion in connection with their vote to reject the October Consent Agreement.

For the Commission:

A handwritten signature in black ink, appearing to read "Alberta E. Mills", written over a horizontal line.

Alberta E. Mills  
Secretary

\*Ballot Vote Due November 9, 2018  
(Commissioner Kaye extended the vote due date from November 6, 2018)

Attachments:

- Consent Agreement and Exhibit A
- Consent Order
- Dissenting Opinion of Commissioner Robert S. Adler and Commissioner Elliot F. Kaye

UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION

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In the Matter of ) )  
 ) )  
BRITAX CHILD SAFETY, INC. ) CPSC DOCKET NO.: 18-1  
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 ) )  
Respondent. ) )  
\_\_\_\_\_)

**CONSENT AGREEMENT**  
**IN CAMERA**

This Consent Agreement, Exhibit A (the Consent Agreement and Exhibit A are collectively referred to as the “Consent Agreement”), and the attached Order (the “Order”) settle the above-captioned administrative action. The parties agree as follows:

**Parties**

1. The Commission staff is the staff of the United States Consumer Product Safety Commission (“CPSC” or the “Commission”), an independent regulatory agency of the United States, established by Congress pursuant to Section 4 of the Consumer Product Safety Act (“CPSA”), 15 U.S.C. § 2053. Commission staff is represented by Complaint Counsel in this matter.
2. Britax Child Safety, Inc. (“Britax” or “Respondent”), is a South Carolina corporation with its principal place of business located at 4140 Pleasant Road, Fort Mill, South Carolina. B.O.B. Trailers, Inc. (“B.O.B.”), was a California corporation until it was merged with and into Britax in December 2011. Respondent or Britax, as those terms are used herein, shall mean Britax Child Safety, Inc., its successors, assigns or receivers.

### Subject Matter

3. The Subject Products are various models of single and double occupant 3-wheeled B.O.B. brand jogging strollers designed with a dropout fork assembly and quick release (“Quick Release”) mechanism (“Strollers” or “Subject Products”). The Strollers, which were manufactured and imported between 1997 and September 2015, include the following models: Revolution, Revolution Duallie, Revolution 12”, Revolution Duallie 12”, Sport Utility Stroller, Sport Utility Stroller D’Lux, Ironman, Sport Utility Stroller/SUS Duallie, Ironman Duallie, Revolution SE, Revolution CE, Stroller Strides, Revolution SE Duallie, Stroller Strides Duallie, Revolution Pro, Revolution Pro Duallie, Revolution Flex, Revolution SE Plus, Revolution Flex Duallie, and Revolution SE Duallie Plus.

4. The Strollers were introduced into commerce beginning in 1997 and sold by B.O.B. until December 2011, when B.O.B. merged with and into Britax. Subsequent to that time, Britax continued to import and distribute the Strollers under the B.O.B. brand name. Britax is a manufacturer of the Strollers, which are consumer products that are distributed in commerce, as those terms are defined in Sections 3(a)(5), (8), and (11) of the CPSA, 15 U.S.C. Section 2052(a)(5), (8), and (11). The Strollers are offered for sale to consumers for their personal use in or around a permanent or temporary household or residence, in recreation or otherwise.

5. On February 16, 2018, Commission staff filed an Administrative Complaint (“Complaint”) against Britax seeking, *inter alia*, a recall of the Subject Products pursuant to Section 15 of the CPSA, as amended, 15 U.S.C. § 2064. The Complaint alleges that the Subject Products are defective under 15 U.S.C. § 2064(a)(2) because the Quick Release can fail to secure the front wheel to the fork, allowing the front wheel to detach suddenly during use. The Complaint

further alleges that the Subject Products present a “substantial product hazard” within the meaning of Section 15(a) of the CPSA, 15 U.S.C. § 2064(a).

6. Respondent filed an Answer to the Complaint in which it denied that the Subject Products present a substantial product hazard or contain a defect within the meaning of Section 15(a) of the CPSA, 15 U.S.C. § 2064(a).

### **Agreement**

7. It is the express purpose of the parties in entering into this Consent Agreement to promote the public safety by implementing the following actions as set forth herein. It constitutes a compromise resolution of the matter described herein without a hearing or a determination of issues of law and fact.

8. The parties intend for this Consent Agreement, Exhibit A, and the attached Order, which are hereby incorporated by reference, to resolve staff’s charges and requests for relief against Respondent set forth in the Complaint in this proceeding. The allegations in the Complaint are resolved by this Consent Agreement and Order.

9. Respondent admits that the Commission has jurisdiction over the Subject Products as “consumer products” under Section 3 of the CPSA, 15 U.S.C. § 2052(a)(5), and over Respondent in relation to the Subject Products.

10. Upon acceptance of the Consent Agreement and issuance of the Order by the Commission, the Commission shall issue a Press Release announcing the Consent Agreement and Order (“Press Release”). The Press Release and public facing documents shall comport with the terms of this Consent Agreement and Order and shall, among other things, identify the nature of the Information Campaign described in paragraph 11 and clearly and conspicuously state that all eligible consumers who participate in the Information Campaign will be offered incentives to promote the effectiveness of the campaign, including free parts and accessories (including an

alternative front wheel quick release or thru-axle), or discounts on certain parts, accessories or new strollers, all of which will be available exclusively through Respondent.

11. Respondent agrees to take the following actions regarding the Subject Products:

- a. Respondent shall undertake, at its sole cost and expense, a robust, intensive campaign to further instruct consumers who reside in the United States how to safely and correctly operate the Quick Release on the Strollers (“Information Campaign”). This does not constitute an admission by Respondent or a determination by the Commission in relation to any inadequacy of the instructions, warnings and guidance already provided by Respondent in relation to the proper use of the existing Quick Release on the Strollers. The Information Campaign shall include an instructional video created by Respondent, demonstrating and describing how to safely, correctly, and consistently operate the Quick Release on the Strollers (“Instructional Video”). The Information Campaign shall be announced no later than January 10, 2019, and at that time, Respondent shall begin to take orders for the free parts, accessories, discounts, or other incentives in paragraph 11(e) from consumers who elect to participate in the Campaign. The content and timeline for the production and dissemination of the Campaign is set forth in Exhibit A and is incorporated by reference as though fully set forth herein.
- b. On a date mutually agreeable to the parties, but no later than January 10, 2019, the Information Campaign shall be announced and Respondent shall disseminate the Information Campaign through the following means:
  - i. Publication of the Instructional Video through BOBGear.com.

- ii. Direct email notice to consumers who have informed Respondent of their consent to receive information emails from BOB Gear.
  - iii. Direct notice to the following secondary markets: eBay, Craigslist, OfferUp, Goodwill Industries, The Salvation Army and NARTS: The Association of Resale Professionals.
  - iv. A statement announcing the Information Campaign, including the Instructional Video, on BOBGear.com. Respondent shall maintain such a statement prominently on the home page for 12 months following the announcement of the Information Campaign as set forth in paragraph 11 herein.
  - v. For the first 12 months of the Information Campaign, quarterly announcements of the Information Campaign through BOB Gear Facebook, Twitter, and Instagram social media accounts with a link to the Press Release.
- c. In addition, Respondent shall email notice of the Information Campaign to known dealers or retailers of the Subject Products, which dealers or retailers are located in the United States. The dealer and retailer notice will be substantially identical to the text set forth in Exhibit A.
- d. The notices and communications described in paragraph 11(b) above shall be subject to review by Commission staff, and the parties shall work in good faith to ensure that such notices and communications are mutually agreeable to the parties and accurately convey the terms of this Consent Agreement and Order.

- e. In order to encourage participation in the Information Campaign, consumers who reside in the United States and who participate in the Information Campaign are entitled to receive certain free parts, accessories, discounts, or other incentives as follows:
  - i. Each consumer who self-identifies as having concerns about their ability to safely and correctly operate the Quick Release on their Stroller manufactured before September 30, 2015, shall be offered the option to receive one of the following parts, accessories, or discounts:
    - 1. Consumers owning Strollers manufactured between January 1, 2009, and September 30, 2015, shall be offered, completely free of charge, the consumer's choice of one of the following:
      - a. A new Quick Release ("Modified QR") with a shaft/axle compatible with Strollers manufactured between January 1, 2009, and September 30, 2015, featuring a Quick Release lever that only rotates 90 degrees;
      - b. A new "thru-bolt" ("Modified Thru-Bolt") with a shaft/axle compatible with Strollers manufactured between January 1, 2009, and September 30, 2015, which is tightened utilizing an included Allen wrench/hex key, or other similar installation hardware, which will be supplied by Britax; or
      - c. A 20% discount off the Manufacturer's Suggested Retail Price ("MSRP") of any new BOB Gear stroller, subject to availability of the new strollers.

2. Consumers owning Strollers manufactured prior to January 1, 2009, shall be offered a 20% discount off the MSRP of any new BOB Gear stroller, subject to availability of the new strollers.
  - ii. Each consumer who self-identifies as having no concerns about their ability to safely and correctly operate the Quick Release on their Stroller manufactured before September 30, 2015, will be offered a 20% discount off the MSRP of any new BOB Gear stroller, or certain discounted parts and accessories, subject to availability of the new strollers, parts and accessories.
  - iii. A consumer will be required to provide the Stroller serial number or other unique product identifier to Respondent in order to obtain one of the options identified in paragraphs 11(e)(i)–(ii) above, which will be available through Respondent directly. Only one of the options identified above will be available for each Stroller.
- f. Respondent will take orders for and provide all parts and accessories, discounts, or other incentives for 12 months from the announcement of the Information Campaign. Respondent shall fulfill all orders placed and honor all discounts requested within those 12 months. Respondent endeavors to ensure that the Modified QR and Modified Thru-Bolt are available to ship to eligible consumers by January 10, 2019. The Modified QR and Modified Thru-Bolt shall be available to ship to eligible consumers no later than thirty days thereafter.
- g. For the first 12 months of the Information Campaign, Respondent shall maintain a dedicated website portal and customer service number to facilitate the distribution

of the parts, accessories, discounts, or other incentives described in paragraph 11(e). The Modified QR and Modified Thru-Bolt described in paragraphs 11(e)(i)(1)(a)–(b) shall be featured prominently on the website page applicable to the consumers identified in paragraph 11(e)(i)(1), above.

- h. At the conclusion of the initial 12-month period of the Information Campaign, Respondent shall maintain a version of the Instructional Video containing information demonstrating and describing how to safely, correctly, and consistently operate the Quick Release on the Strollers, on the BOBGear.com website (“Revised Instructional Video”) for an additional 12-month period at a location that is easily accessible to consumers. The content and timeline for the production of the Revised Instructional Video is set forth in Exhibit A and is incorporated by reference as though fully set forth herein.

12. Respondent shall ensure that the Modified QR and Modified Thru-Bolt are suitable for securing the front wheel to the front fork of Strollers manufactured between January 1, 2009, and September 30, 2015, and are otherwise compatible with such Strollers. Respondent shall provide instructions to ensure that consumers can safely and correctly install the Modified QR and Modified Thru-Bolt. Such instructions shall also be provided on the Website identified in paragraph 11(g).

13. For the first 12 months of the Information Campaign, Respondent shall provide to the Commission staff information on a quarterly basis identifying the number of consumers who have viewed the Information Campaign and requested any of the incentives identified in paragraph 11(e).

14. The parties shall fulfill all requirements of the Consent Agreement and Order. The Order shall be issued under the CPSA, as amended, 15 U.S.C. §§ 2051, *et seq.*, and 16 C.F.R. § 1025.26(f).

15. If the Commission accepts this Consent Agreement pursuant to 16 C.F.R. § 1025.26(f) and issues the appropriate Order, then this adjudicative proceeding, CPSC Docket No. 18-1, shall be dismissed with prejudice and CPSC File RP160404 shall be closed.

16. If the Commission rejects, does not accept, or takes no action on this Consent Agreement through a Record of Commission Action, then this Consent Agreement shall be null and void. Pursuant to 16 C.F.R. § 1025.26(h), neither rejected offers of settlement, nor the fact of the proposal of offers of settlement are admissible in evidence.

17. This Consent Agreement shall take effect upon final acceptance by the Commission and issuance of the Order.

18. Upon acceptance by the Commission of this Consent Agreement and entry of the Order, Respondent knowingly, voluntarily, and completely waives and relinquishes any past, present, and future right or rights: (1) to an administrative or judicial hearing and to all further procedural steps in this matter, including findings of fact, conclusions of law, or further determination of whether the Subject Products contain a defect which creates a substantial product hazard within the meaning of Section 15 of the CPSA; (2) to seek judicial review or otherwise contest the validity of this Consent Agreement or Order as issued and entered; (3) to seek judicial review of this or any past order, finding or determination of the Commission or the Presiding Officer in this matter; and (4) to seek administrative or judicial review of any action by the Commission, Commissioners, and Commission staff in this matter, including the right to a statement of findings of fact and conclusions of law, and all further procedural steps and rights afforded by law.

19. The parties acknowledge and agree that this Consent Agreement and Order are pursuant to the Commission's regulatory power to resolve the Complaint issued by the Commission. Upon acceptance by the Commission of this Consent Agreement and entry of the Order, the Commission and Respondent may disclose the terms of this Consent Agreement and Order to the public.

20. The Consent Agreement is entered into for settlement purposes only and does not constitute an admission of liability by Respondent to the allegations made in the Complaint relating to the Strollers or a determination by the Commission of the existence of a defect in the Subject Products, a substantial product hazard, or reportable information pursuant to Section 15(b) of the CPSA, 15 U.S.C. § 2064(b). The parties agree that the actions taken pursuant to this Consent Agreement and Order shall not be construed as a recall pursuant to section 15 of the Consumer Product Safety Act, 15 U.S.C. § 2064.

21. If, after the effective date hereof, any provision of this Consent Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of this Consent Agreement and Order, such provision shall be fully severable. The rest of this Consent Agreement and Order shall remain in full effect, unless the Commission and Respondent mutually determine that severing the provision materially impacts the remaining obligations as set forth in this Consent Agreement and Order.

22. The provisions of this Consent Agreement and Order shall not be interpreted or construed against any person or entity because that person or entity or any of its attorneys or representatives drafted or participated in drafting this Consent Agreement. No representations other than those contained in this Consent Agreement, Exhibit A, and the attached Order, have been made or relied upon by either party in negotiating or executing this Consent Agreement.

23. The provisions of this Consent Agreement and Order shall be interpreted in a reasonable manner to effect its purpose to resolve staff's charges in the Complaint.

24. The Commission shall retain jurisdiction to enforce the provisions of the Consent Agreement and Order. In the event of a dispute between the parties arising under this Consent Agreement and Order, including without limitation whether the Consent Agreement and Order has been breached or violated in any manner, any party may submit the issue for initial determination and resolution by the Commission, without waiver of the jurisdiction of the United States District Courts to preside over the dispute and enforce the provisions of the Consent Agreement and Order thereafter.

25. The existence of a dispute between the parties arising under this Consent Agreement and Order shall not excuse, toll, or suspend any obligation or deadline established under this Consent Agreement and Order.

26. Respondent hereby waives any claims under the Equal Access to Justice Act (5 U.S.C. § 504), and agrees that each party shall bear its own costs and expenses, including, without limitation, attorneys' fees incurred in connection with CPSC case number RP160404, this proceeding, CPSC Docket No. 18-1, the Consent Agreement and the transactions contemplated hereby.

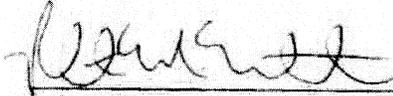
27. This Consent Agreement and Order shall not be waived, changed, amended, modified or otherwise altered, except in writing executed by the party against which such amendment, modification, alteration or waiver is sought to be enforced, and approved by the Commission, except that if this Consent Agreement and Order is not accepted by the Commission by December 11, 2018, all references in this Consent Agreement and Exhibit A to the date of January 10, 2019

shall be revised to be the date that is 30 days after acceptance of this Consent Agreement and Order by the Commission.

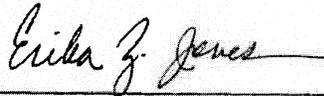
28. This Consent Agreement may be executed in any number of counterparts.

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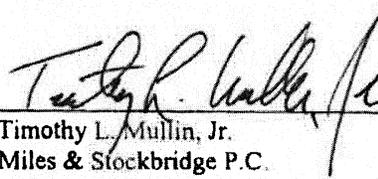
DATED: OCTOBER <sup>25</sup> \_\_, 2018



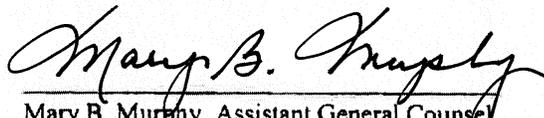
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Bethesda, MD 20814

Complaint Counsel for  
U.S. Consumer Product Safety Commission

UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION

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In the Matter of	)	
	)	
BRITAX CHILD SAFETY, INC.	)	CPSC DOCKET NO.: 18-1
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Respondent.	)	
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**EXHIBIT A TO CONSENT AGREEMENT AND ORDER**

Respondent shall develop an Information Campaign pursuant to the Consent Agreement (“Consent Agreement”) and Order. The Information Campaign shall consist of an Instructional Video, Revised Instructional Video, and dedicated website portal identified in paragraph 11(g) of the Consent Agreement. The timelines and content of the Information Campaign are set forth below:

1. The production schedule for the script, storyboard, Instructional Video and Revised Instructional Video are as follows:
  - a. Respondent shall develop a draft script and storyboard, reflecting the planned content and duration of the Instructional Video and Revised Instructional Video, and provide it to CPSC staff by October 26, 2018.
  - b. CPSC staff shall review the draft script and storyboard and provide comments and edits to Respondent by November 9, 2018.
  - c. Respondent shall complete the final script and storyboard by November 30, 2018, and provide it to CPSC staff upon completion.

- d. Respondent shall produce the Instructional Video and Revised Instructional Video, in a manner substantially equivalent to the final script and storyboard, by December 14, 2018, and provide them to CPSC staff upon completion. The Instructional Video and website shall be completed and fully operational by the date that the Information Campaign is announced. The Revised Instructional Video shall be completed by the date that the Information Campaign is announced and publicized as described in paragraph 6, below.
  - e. The notices and communications described in paragraphs 1(a)–(d) above shall be subject to review by Commission staff and the parties shall work in good faith to ensure that the script, storyboard, Instructional Video, and Revised Instructional Video are mutually agreeable to the parties. If the parties cannot agree on the substance of the notices and communications described in paragraphs 1(a)–(d), they shall submit any such dispute to the Commission for resolution in accordance with paragraph 24 of the Consent Agreement. These timelines may be slightly adjusted upon agreement of the parties, but in no event shall such adjustments prevent the Information Campaign from being announced by January 10, 2019, subject to paragraph 27 of the Consent Agreement.
2. Content of the Instructional Video shall contain the following elements:
- a. The Instructional Video shall be produced in English and Spanish, in both audio and subtitle format, and shall not include general advertising or marketing materials or information, which are not reasonably required for the Information Campaign or incentives.
  - b. The Instructional Video shall:

- i. At the outset, advise eligible consumers who watch the video that they will be entitled to receive certain free parts and accessories, discounts or other incentives upon completion of the video;
  - ii. Identify the Quick Release and all component parts;
  - iii. Provide instructions for the proper installation of the Quick Release from a consumer's perspective in a manner substantively similar to the manner in which it is described in Respondent's user guide; and
  - iv. Clearly explain the potential for front wheel detachment associated with improper Quick Release use, including a statement that is substantively similar to Respondent's on-product warnings for the Strollers.
- c. At the end of the Instructional Video, the following information and instructions shall be presented to all consumers, as applicable:
  - i. Consumers shall be thanked for watching the Instructional Video.
  - ii. Consumers shall be advised that if they have concerns about how to safely and correctly operate the Quick Release on a BOB stroller manufactured before September 30, 2015, options are available to them consisting of a new thru-bolt axle, quick release mechanism, or a discount towards the purchase of new BOB Gear strollers.
  - iii. Consumers who have concerns about how to safely and correctly operate the Quick Release on a BOB stroller manufactured before September 30, 2015 shall be directed through functional links to the website portal identified in paragraph 11(g) of the Consent Agreement, and to a telephone number for BOB Gear customer service to review their options.

- iv. Consumers who are satisfied that they can safely and correctly operate the Quick Release on a BOB stroller manufactured before September 30, 2015, shall be advised that they have options available in the form of discounts towards the purchase of new BOB Gear strollers or certain parts and accessories. Consumers who are satisfied that they can safely and correctly operate the Quick Release on a BOB stroller manufactured before September 30, 2015, shall be directed through functional links to the website portal identified in paragraph 11(g) of the Consent Agreement, and to a telephone number for BOB Gear customer service to review their options.
  - d. The Instructional Video shall provide functional links, as described above, to the dedicated website portal identified in paragraph 11(g) of the Consent Agreement.
3. Content of the Revised Instructional Video shall contain the following elements, utilizing the content of the Instructional Video, and shall:
- i. Identify the Quick Release and all component parts;
  - ii. Provide instructions for the proper installation of the Quick Release from a consumer's perspective in a manner substantively similar to the manner in which it is described in Respondent's user guide; and
  - iii. Clearly explain the potential for front wheel detachment associated with improper Quick Release use, including a statement that is substantively similar to Respondent's on-product warnings for the Strollers.
4. The production schedule for the website and Customer Service Script are as follows:

- a. Respondent shall develop a website portal identified in paragraph 11(g) of the Consent Agreement for the dissemination of the Information Campaign.
  - b. Respondent shall develop a customer service script (“Customer Service Script”) for handling consumer inquiries regarding the Campaign and the distribution of the parts, accessories, discounts, or other incentives described in paragraph 11(e) of the Consent Agreement.
  - c. The applicable website portal identified in paragraph 11(g) of the Consent Agreement and Customer Service Script shall clearly and conspicuously describe the availability and utility of the offered Modified QR and Modified Thru-Bolt and shall include links to any available instruction and warning manuals regarding the Strollers and shall not include general advertising or marketing materials or information, which are not reasonably required for the Information Campaign or incentives.
  - d. The content of the website portal identified in paragraph 11(g) of the Consent Agreement and Customer Service Script shall be subject to review by Commission staff, and the parties shall work in good faith to complete mutually agreeable content by December 14, 2018.
5. Pursuant to paragraph 11(c) of the Consent Agreement, the notice to dealers or retailers will be as follows: “In February, we notified you that the U.S. Consumer Product Safety Commission had sued Britax to compel a recall of certain BOB strollers manufactured prior to September 2015. We are pleased to report that we have resolved this litigation without a recall by developing and launching an information campaign to further instruct consumers how to safely and correctly operate the Quick Release on the BOB strollers

manufactured prior to September 2015. Consumers will be offered incentives to participate in the information campaign, which are more fully described in the links below. If any of your customers ask you about this issue, please direct them to [INSERT HYPERLINKS TO CPSC PRESS RELEASE AND INSTRUCTIONAL VIDEO].”

6. Pursuant to paragraph 11 of the Consent Agreement, the Instructional Video and website portal shall be publicly available no later than January 10, 2019, subject to paragraph 27 of the Consent Agreement.
7. Pursuant to paragraph 11 of the Consent Agreement, at the conclusion of the initial 12-month period of the Information Campaign, Respondent shall maintain the Revised Instructional Video on the BOBGear.com website for an additional 12-month period at a location that is easily accessible to consumers.

UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION

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In the Matter of )	
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BRITAX CHILD SAFETY, INC. )	CPSC DOCKET NO.: 18-1
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Respondent. )	
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**ORDER**  
**IN CAMERA**

UPON CONSIDERATION of the Complaint against Respondent and the Consent Agreement appended hereto;

UPON CONSIDERATION of Respondent’s admission that the Commission has jurisdiction over Britax Child Safety Inc., and the Subject Products, and that the Subject Products constitute “consumer products” under the Consumer Product Safety Act (“CPSA”), 15 U.S.C. § 2052; and pursuant to CPSA, as amended, 15 U.S.C. §§ 2051, *et seq.*, and 16 C.F.R. § 1025.26(f),

IT IS HEREBY ORDERED THAT:

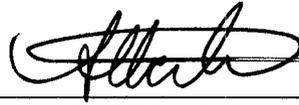
1. The Consent Agreement between Respondent and the Commission staff is accepted and incorporated by reference herein, and the parties shall comply with all of their obligations hereunder.
2. All allegations of the Complaint against Respondent are resolved by this Consent Agreement and Order. Based on the Consent Agreement, the Commission finds that the Consent Agreement and this Order is in the public interest.

3. The above-captioned adjudicative proceeding is dismissed with prejudice.

4. The Commission retains jurisdiction to enforce the provisions of the Consent Agreement and Order.

5. This Order is issued under the CPSA, as amended, 15 U.S.C. §§ 2051, *et seq.*, and 16 C.F.R. § 1025.26(f).

BY ORDER OF THE CONSUMER PRODUCT SAFETY COMMISSION



Alberta E. Mills, Office of the Secretariat

DATED: November 9, 2018

**DISSENTING OPINION**  
**COMMISSIONER ROBERT S. ADLER AND COMMISSIONER ELLIOT F. KAYE**  
***IN THE MATTER OF BRITAX CHILD SAFETY, INC.***  
**CPSC Docket 18-1**  
**NOVEMBER 9, 2018**

CPSC Complaint Counsel and Respondent in the above titled matter have proposed a settlement of the case brought by Complaint Counsel regarding the alleged hazards of single and double occupant strollers sold by Britax under the name, B.O.B. On November 9, 2018, by a vote of 3-2, the Commission voted to accept the proffered settlement. Although we commend the parties for reaching agreement after what appears to be a lengthy and exhaustive negotiation, we respectfully and reluctantly dissent from approving the agreement.

In any negotiation each party must compromise to reach an agreement. We have no problem with appropriate compromises, and we are well aware of the maxim that we should not let the perfect be the enemy of the good. Alas, to us, despite the best efforts of talented counsel on both sides, this agreement falls short of the good.

Background

The B.O.B. strollers in question were introduced into commerce in 1997 and sold by a company known as B.O.B. until December 2011, when Respondent Britax merged with B.O.B. Thereafter, Britax sold numerous models of the strollers under the original B.O.B. name.

On February 16, 2018, Complaint Counsel filed an administrative complaint against Britax, seeking a recall of the subject strollers pursuant to section 15 of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2064. Complaint Counsel alleged that a Quick Release mechanism on the strollers failed to secure the front wheel to the fork, allowing the front wheel to detach suddenly and unexpectedly during use. Staff further alleged that this defect constituted a Substantial Product Hazard under section 15 of the CPSA, leading to a number of serious injuries both to caregivers pushing the strollers and to children sitting in the strollers.

As of the date of filing the complaint, staff alleged that approximately 200 consumers had reported front wheel detachments while using the strollers, resulting in at least 50 injuries to children and 47 adults. Among the injuries alleged to have occurred to children: a concussion, injuries to the head and face requiring stitches, dental injuries, contusions and abrasions. Among the injuries alleged to have occurred to caregivers: torn labrum, fractured bones, torn ligaments, contusions and abrasions.

The Commission authorized the issuance of the complaint after Britax declined to recall or repair the strollers.

## The Agreement

Briefly described, under the terms of the Agreement, Respondent will undertake what is termed a “robust, intensive” information campaign to instruct consumers how to safely and correctly operate the Quick Release on the strollers. One of the main features of the information campaign will be an instructional video for consumers demonstrating and describing how to safely operate the Quick Release. As part of the information campaign, Respondent will email notice of the campaign to all known dealers and retailers of the strollers located in the United States.

In addition to the information campaign, the Agreement, *inter alia*, calls for Respondent to supply free parts, accessories, discounts and incentives to consumers who “self-identify” as having concerns about their ability to safely and correctly operate the Quick Release on strollers manufactured between January 1, 2009 and September 30, 2015. Respondent will do so through one of three options:

1. A new Quick Release mechanism that has a lever that operates only 90 degrees, thereby permitting consumers easily, by visual inspection, to know whether the mechanism is properly fastened;
2. A new “thru-bolt” (with installation tools) which is permanently fastened, thereby precluding any unexpected release of the wheel, but which defeats the Quick Release function of the stroller; or
3. A 20 percent discount off the Manufacturer’s Suggested Retail Price (MSRP) of any new BOB Gear stroller, subject to availability of the new strollers.

For strollers manufactured prior to January 1, 2009, the Agreement will offer owners a 20 percent discount off the MSRP, subject to availability of the new strollers. However, Respondent will not offer the mechanical repairs described in paragraphs 1 and 2 above to such owners.

Although we applaud the good faith and spirit of the Agreement, upon careful reflection, we cannot support it for at least two major reasons:

**The Misleading Nature of the Agreement:** In virtually every Corrective Action Plan the Commission enters into, we insist that it be described to the public as a “recall.” The reason is simple. Consumers know that this term signals that a manufacturer has agreed to take some kind of corrective action to fix a safety problem with its product. The media knows that this term will typically command consumers’ instant attention and concern without the need for more elaborate explanations. Of course, the fact that consumers’ attention is drawn to this news is only a first step in removing or repairing hazardous products, but without such a flag,

the task of protecting consumers is made much harder. Consumers need to know that safety concerns are afoot in order to decide whether to avail themselves of such protections.

By its terms, this Consent Agreement explicitly rejects characterizing this Corrective Action Plan as a recall. Paragraph 20 of the Agreement leaves no doubt on the point:

The parties agree that the actions taken pursuant to this Consent Agreement and Order *shall not be construed as a recall* pursuant to section 15 of the Consumer Product Safety Act, 15 U.S.C § 2064. (emphasis added)

Underscoring this point is the notice that Respondent intends to send to dealers and retailers, which states as follows:

In February, we notified you that the U.S. Consumer Product Safety Commission had sued Britax to compel a recall of certain BOB strollers manufactured prior to September 2015. *We are pleased to report that we have resolved this litigation without a recall by developing and launching an information campaign to further instruct consumers how to safely and correctly operate the Quick Release on the BOB strollers manufactured prior to September 2015.* Consumers will be offered incentives to participate in the information campaign, which are more fully described in the links below. If any of your customers ask you about this issue, please direct them to [INSERT HYPERLINKS TO CPSC PRESS RELEASE AND INSTRUCTIONAL VIDEO].” (emphasis added)

To say the least, this notice is aggressively misleading. What Respondent is (too) quietly offering goes beyond a mere information campaign; it is a program for corrective action to modify and repair strollers for those consumers dogged enough to pursue a remedy that would actually make their strollers safer. Yet, the notice to the public and to the firm’s distribution chain neglects to point this out in any clear or meaningful fashion. Needless to say, without being fully informed that relief from the hazard extends to repairs, consumers may well ignore an information campaign that is fairly complex to follow and understand.

In making this point, we need to add some further thoughts. As much as we would prefer to use the term “recall,” as a matter of compromise, we would have been cautiously open to a different way of describing the relief offered in this case. A more accurate description of the relief carefully offered and fully explained would have satisfied us. But, describing the Agreement as an information campaign “without a recall” misleadingly directs the public’s attention away from the actual terms agreed to by the parties. It’s not quite analogous to a tree falling in a forest with no one to hear it, but it’s close. Having an agreement that provides relief without anyone being fully alerted to the nature of the relief is pretty much no relief at all.

Compounding the problem is the fact that the parties have provided no explanation why the term “recall” was rejected nor have they explained why this alternative approach would be acceptable. We surmise that rejecting the term “recall” was a point that Respondent insisted upon. If so, they needed to explain why this point was so important to them and, more importantly, to provide some evidence that this revised approach would provide sufficient protection to consumers that it would be acceptable to proceed with it.<sup>1</sup>

Limited Scope of Relief: As we stated at the outset, the B.O.B. strollers were first introduced into commerce beginning in 1997. So, the allegedly hazardous strollers were produced over a period of roughly 18 years. Yet, the mechanical fix for the strollers offered by Respondent extends back only to 2009 – a period of just six years. Nowhere in the Agreement is there any explanation why the fix is so limited in time. If the pre-2009 strollers do not contain the alleged defect, the parties should have explained this. If, on the other hand, the parties believe that few, if any, pre-2009 strollers remain in use, we would like to see evidence of this. It’s our understanding that there is a substantial secondary market for these strollers and that large numbers of them remain in use. If so, we can see no reason for refusing to extend the offer of a mechanical repair to what constitutes two-thirds of the years of production.

Summarily limiting full remedies to all purchasers of these allegedly hazardous products without explanation constitutes a fatal flaw in this Agreement to us.<sup>2</sup>

#### Conclusion

Despite offering a number of very positive features, this Corrective Action Plan falls short of what we believe the Commission should approve. We regret this not only because we believe consumers will come up short in terms of safety, but also because we fear that other respondents will invoke this agreement as a precedent in future recalls, thereby lessening safety for far more consumers than are affected by this agreement.

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<sup>1</sup> Additionally, it is unclear what enforcement authorities the parties refer to in the Agreement when they state that “[t]he Commission shall retain jurisdiction to enforce the provisions of the Consent Agreement and Order.” Any violation of an order issued under Section 15(c) or (d) would be a prohibited act under Section 19(a)(5) and may subject a violator to civil or criminal penalties, see 15 U.S.C. §§ 2069-70. We are concerned that this language does not specify whether this provision applies to this settlement, and it may be difficult for the Commission to meaningfully enforce the Agreement.

<sup>2</sup> We also note that the Agreement limits the information campaign to a period of 24 months from its announcement and limits the availability of parts and accessories, discounts, or other incentives to a period of 12 months from the information campaign’s announcement. As a general matter, relief to consumers should not have such a short expiration date. There is no explanation for why Respondent should not provide the same safety information and remedy to all consumers who may have concerns about their ability to safely and correctly operate the Quick Release, regardless of when those concerns may arise.