



Statement of

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before the

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Chairwoman Maloney, Ranking Member Comer, and Members of the Committee, I want to thank you for the opportunity to be here today to discuss Mattel's and Fisher-Price's consumer-product safety efforts. At the outset, I echo Mr. Kreiz's comments and convey my deepest condolences to families who have faced the terrible loss of a child.

I also share Mr. Kreiz's views about the foundational importance of trust in Fisher-Price and the safety of our products. Mattel's comprehensive product-safety program is especially important at Fisher-Price because we focus on products intended for newborns, babies, toddlers, and preschoolers. Indeed, I have placed my trust in Fisher-Price myself. My daughter grew up using Fisher-Price products. Until the Rock 'n Play Sleeper's recall, this item was the gift that I gave to friends and expecting parents. The Rock 'n Play Sleeper, like so many of our products, was also used extensively by Fisher-Price employees and their families. I assure you that everyone at Fisher-Price believes that every product we offer is safe and we do not and would never sell any product about which we thought otherwise.

As Mr. Kreiz noted, Fisher-Price is dedicated to supporting the development of children and helping families in the first five years of life. We are especially committed to offering baby products because of our desire to provide resources and solutions for parents. Our products provide safe places to play, to bathe, to soothe, and to sleep. Though not a large part of our business, it is a critical part of being a partner to parents.

We take this partner role seriously because, for more than 90 years, parents and caregivers have looked to Fisher-Price for toys and baby products that engage and entertain children and foster their children's development. Fisher-Price began as a toy company that understood that children learn and develop through play, but we have evolved as a company to become a crucial part of families from birth to age five. We built these relationships on understanding children and parenting, based on a foundation of trust.

As a trusted partner to parents, we recognize that one of the most important parts of a baby's development is sleep. Newborns can need as much as 18 hours a day of sleep, while infants will normally sleep 12 to 15 hours a day in that first year. Given this biological need for

sleep, infants fall asleep in all types of children's products, from car seats to bouncers and even high chairs. I share this because Fisher-Price designs many of these infant products aware that infants may fall asleep when the product is being used, and we make sure to take the potential for a child falling asleep into account when considering the design of all of our baby-gear products.

Although we recognize that a baby can fall asleep almost anywhere, and will snooze or nap in many places, there are products designed specifically for overnight, unsupervised sleep. These sleep products must meet separate and distinct design and safety standards from the Consumer Product Safety Commission (CPSC) and standards organizations like ASTM International (ASTM). When it comes to Fisher-Price, our products must meet those standards and Mattel's own internal standards. Fisher-Price products designed for overnight sleep are created with the understanding and awareness that parents will not be supervising the child while they are asleep, either because the parents are sleeping themselves or they have left the child alone to tend to other things. This is an important distinction that I want to reinforce because it relates to the products that we are discussing today.

Today we are here to discuss three products that exemplify the difference between products intended for sleep and those that are not.

Let me begin with the Rock 'n Play Sleeper. The Rock 'n Play Sleeper was sold from its introduction in 2009 up until its voluntary recall in April 2019. As the name suggests, we designed, marketed, and sold the Rock 'n Play Sleeper as a product intended for sleep, as well as to entertain babies when they were awake. When introduced, the Rock 'n Play Sleeper met the CPSC and consensus standards applicable to bassinets, which are also products intended for sleep. But beyond just meeting the standards, Fisher-Price conducted extensive research and analysis to assess the Rock 'n Play Sleeper's safety prior to introduction, including consulting with a medical doctor, evaluating many different aspects in extensive testing in our laboratories, and conducting approximately 60 in-home tests with families in the communities around our headquarters in Buffalo, New York.

As Fisher-Price always does on all new products, both toy and baby gear alike, our analysis and evaluation did not stop at introduction. After the product launch, Fisher-Price regularly examined and analyzed any safety incident that was reported, and regularly shared the reports of fatalities and serious incidents with the CPSC for its own analysis under our reporting protocol with the agency. In 2018, we had extensive discussions with the CPSC about the Rock 'n Play Sleeper, and asked one of the top engineering firms in the country to assess independently whether infants were at risk of rolling over when using the product. We also asked two top doctors to evaluate the safety of the product specifically related to observing the breathing of infants sleeping at an incline in the product. These doctors confirmed the Rock 'n Play Sleeper was safe when used in accordance with the warnings and instructions.

We are confident that all of our products are safe when used as intended, in accordance with the warnings and instructions. At the same time, we also take into account reports of injuries that are associated with other patterns of use, and we are committed to reducing the risk of any additional occurrence of an injury. In light of the risks of accidents in the use of incline sleepers if the safety restraints were not used, we decided two years ago to recall the Rock 'n Play voluntarily as the best way to reduce this risk.

Recently, we considered a similar situation with the Fisher-Price 4-in-1 Rock 'n Glide Soother. Although it is not a sleeping product, the data indicated a risk of accidents if the safety restraints were not used or children were left unsupervised. Given these incidents and evidence of a pattern of use where the product was used differently than intended, we decided to recall the Glider. We have been working with the CPSC on a recall for several weeks, and we and the CPSC announced it last Friday. We also recalled the Fisher-Price 2-in-1 Soothe 'n Play Glider, even though there are no reported fatalities associated with this product, because of its similarity to the 4-in-1 Glider.

Importantly, with these actions, we no longer make any products in either the inclined sleeper category or the glider category, and we have no intention of doing so in the future. I would like to provide additional information about certain of the topics summarized above.

### **Safety Considerations in the Development of the Rock 'n Play Sleeper**

Mattel and Fisher-Price conducted extensive safety analyses on the Rock 'n Play Sleeper during its development, including more than a year of significant review and testing. Like all new products, Mattel's safety team assessed the Rock 'n Play Sleeper's safety and directed the product development team to modify several design elements for safety considerations. For example, an early design used hammock-shaped fabric to hold the infant, and designers revised the design to use a hard shell to address head and torso alignment. Mattel's safety committee met numerous times over a period of several months to review and discuss the product.

Fisher-Price also conducted significant consumer testing with the Rock 'n Play Sleeper. The first safety testing occurred in February 2009 at one of Fisher-Price's Play Labs staffed with experts in child development. Fisher-Price first brought parents and infants to its campus to use the product under supervision. Later in 2009, Fisher-Price provided the Rock 'n Play Sleeper to about 60 families for in-home tests. Fisher-Price reviewed the reports from the families that tested the Rock 'n Play Sleeper and further revised it in response to this feedback. For example, in response to a consumer who reported that an infant pushed up to the top of the product, Fisher-Price added a head stop to prevent infants from moving upwards into an unsafe position.

Given the Rock 'n Play Sleeper's innovative design, Fisher-Price went beyond its standard and thorough safety analysis and consulted with a medical doctor about the product's design. We retained Dr. Gary Deegear, a family medicine practitioner who had developed expertise in assessing the safety of juvenile products, to advise on the product. Fisher-Price had consulted with Dr. Deegear on other products, and we found his input on the Rock 'n Play Sleeper to be helpful. Years after Dr. Deegear consulted with us, we learned that he may have lost his license to practice medicine. This was well after the time during which he worked with us, and we would not engage him again.

### **Safety Considerations and Monitoring After Launch of the Rock 'n Play Sleeper**

Like all of Fisher-Price's products, the Rock 'n Play Sleeper was subject to the company's comprehensive safety-monitoring process after its launch. In addition to the monitoring process and reporting information to the CPSC, which Mr. Kreiz's testimony addresses, we undertook additional analyses specific to the Rock 'n Play Sleeper.

In 2016, Fisher-Price retained two top doctors who evaluated the product, evaluated babies in the product, and submitted expert reports in two separate cases that concluded the product was safe when used as instructed. Specifically, both doctors concluded that it was safe for babies to sleep all night at an incline. In addition, the doctors observed babies in the product and determined that placing them at an angle did not negatively impact their breathing.

In 2018, Mattel had discussions with the CPSC about the Rock 'n Play Sleeper to address the CPSC's concerns about potential infant rollovers in the product. To provide analysis in connection with these discussions, Mattel retained a prominent engineering firm, Exponent, to analyze the Rock 'n Play Sleeper further.

Exponent analyzed the risk of infant rollover in the Rock 'n Play Sleeper and concluded that infants were unable to roll in the product when they were properly restrained. Further, Exponent concluded that even if infants were unrestrained (contrary to warnings and instructions), they were less likely to roll over in the Rock 'n Play Sleeper than when placed on non-inclined surfaces such as traditional cribs.

Exponent also conducted a statistical analysis of deaths reported at the time to be associated with the Rock 'n Play Sleeper. Taking into account the number of units sold and the number of fatalities in the Rock 'n Play Sleeper and other sleep environments, Exponent concluded that infant fatalities occurred less frequently in the Rock 'n Play Sleeper than in cribs, bassinets, and cradles.

Mattel shared this information with the CPSC in 2018 in a series of presentations and discussions. The CPSC issued a safety alert in May 2018 to parents of infants urging them to always use restraints in inclined sleep products and to cease the use of inclined sleep products as soon as an infant has the ability to roll over. This alert was consistent with Fisher-Price's warnings and instructions for the Rock 'n Play Sleeper.

## **ASTM Standards**

ASTM is a leading international organization that is responsible for setting safety standards for consumer products. The ASTM standard-setting process is broad and public, including participants from government agencies, industry, consumer advocates, and others.

During the design and testing of the Rock 'n Play Sleeper, Fisher-Price created the product consistent with the requirements of the ASTM standard applicable to bassinets. The Sleeper met the standard, and independent laboratory testing under the Juvenile Product Manufacturing Association Certification program confirmed its compliance with the standard.

In 2011, the CPSC separated infant inclined sleep products (greater than 10 degrees) from the bassinet and cradle standard. ASTM simultaneously began working to develop a voluntary standard for these products. At that time, the Rock 'n Play Sleeper and other manufacturers' inclined sleeping products were on the market and ASTM concluded that this specific product category warranted a separate standard.

Mattel participated in the standard-setting process for inclined sleepers, along with a large and diverse group of members working collaboratively on the new standard.

Approximately 50 members attended meetings regarding the new standard, and several different CPSC officials participated. Other participants included representatives from Health Canada, consumer advocates (including Consumer Reports and Kids in Danger), representatives from test labs, and several manufacturers. A broad array of additional members received the materials related to the new standard and voted on the standard.

In developing the new standard, Mattel and the CPSC facilitated the review of incident data related to inclined sleepers. An ASTM committee reviewed incident data that the CPSC provided such that all committee members knew the incident data regarding injuries and fatalities reportedly associated with inclined sleepers. The participants in the standard-setting process also specifically reviewed the incline angle of sleepers, concluding that an incline of 30 degrees or less was safe for sleep. (The Rock 'n Play Sleeper's incline was less than 30 degrees.)

ASTM published the first infant inclined-sleep products standard in May 2015, and in 2017, the CPSC proposed adopting the ASTM standard as a federal rule. The CPSC never acted to finalize that proposal. (In late 2019, after the Rock 'n Play Sleeper's recall, the CPSC proposed a replacement rule that limited the incline to 10 degrees, which was approved last week.)

### **Mattel's Recall Efforts**

After announcing the Rock 'n Play Sleeper recall, Mattel took a number of additional actions to promote the recall in an effort to promote consumer awareness. For example, Fisher-Price posted recall information on its website and social media, sent e-mail notifications to all of the Rock 'n Play Sleeper's registered owners, collaborated with retail partners to provide in-store signage and encouraged them to provide notice to their own customers, and undertook efforts to search for and seek the removal of second-hand Rock 'n Play Sleepers listed on resale sites like Facebook Marketplace and eBay. In addition, Mattel worked with an outside organization to identify and contact operators of day-care centers to notify them of the recall.

### **The 4-in-1 Rock 'n Glide Soother and 2-in-1 Soothe 'n Play Glider Recall**

Fisher-Price manufactured the 4-in-1 Rock 'n Glide Soother from 2014 to 2018 and the 2-in-1 Soothe 'n Play Glider from 2018 to 2021. While the names differ, we refer to both products as Gliders. They are multi-use products that can be operated as both a motorized glider operating on a stationary base and a manual rocker when the seat is detached from the base. As they were not intended for overnight or unsupervised sleep, both products contain instructions and warnings that indicate that the products should not be used to replace a crib or bassinet for prolonged periods of sleep and children should not be left unattended in the products.

Fisher-Price first developed the 4-in-1 Glider in response to market research indicating that parents were interested in a swing product that had a smaller footprint than a traditional standing swing. The product went through all of Fisher-Price's and Mattel's safety practices and procedures before and after it was launched. The analysis included two rounds of testing at the on-site Play Lab, and field testing in dozens of homes.

Mattel designed both Gliders in accordance with the ASTM standards applicable to swings and rockers. When the 4-in-1 Rock 'n Glide Soother was first manufactured, its back-

and-forth “gliding” motion was not squarely within the swing standard’s scope. Fisher-Price nevertheless designed and tested the product consistent with performance requirements in the swing standard. The ASTM resolved that ambiguity in June 2020 in an updated standard that expressly includes the gliders’ back-and-forth motion within its scope. The CPSC recently adopted the revised swing standard as part of its mandatory rule. In addition, both the 4-in-1 and the 2-in-1 Gliders met a separate standard applicable to manual rockers.

Mattel first received notice of a fatality reportedly associated with the 4-in-1 Glider in January 2020 (after we had stopped manufacturing the product). Mattel immediately shared this information with the CPSC and responded to a follow-up question from the CPSC about the product in the subsequent months. In May 2020, we learned of a second fatality reportedly associated with the 4-in-1 Glider. In June 2020, Mattel provided a full report to the CPSC regarding the product. We subsequently learned of two additional reports of fatalities associated with the Glider. Each of these incidents included factors such as unrestrained infants and overnight or unattended sleep, and some of the incidents involved infants with underlying medical issues or modifications to the product.

In February 2021, we provided a detailed briefing to the CPSC regarding the 4-in-1 Glider. We invited Dr. Laura Jana, co-chair of our Medical Safety and Scientific Council, to join the briefing and share her pediatric and parenting insights with respect to each of these four incidents. She identified multiple factors that she suggested warranted further evaluation, including additional underlying medical conditions, environmental conditions, and the failure of caregivers to adequately follow the warnings and instructions. We also shared information from a human factors and bio-mechanical expert who independently reviewed and tested the 4-in-1 Glider and concluded there was no indication the product could contribute to infant rollover. Notwithstanding this data and expert analyses, after further discussions with the CPSC, we concluded that a voluntary recall was the best course of action to reduce the risk of additional occurrences. Though there were no reported fatalities, we proactively included the 2-in-1 Glider in this recall due to its similarity to the 4-in-1 Glider.

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Thank you for the opportunity to appear before you today. I would be happy to answer any questions that you may have.