



Plaintiff Gladys Honigman (“Honigman” or “Plaintiff”) brings this action on behalf of himself and all other consumers similarly situated, and alleges upon information and belief, formed after an inquiry reasonable under the circumstances, except as to those allegations which pertain to the named Plaintiff (which are alleged on personal knowledge), as follows:

### **NATURE OF THE ACTION**

1. This class action is brought against Defendant Kimberly-Clark Corporation (“Kimberly-Clark”) to recover for the harm caused by Defendant’s deceptive, improper or unlawful conduct in the design, marketing, manufacturing, distribution, and sale of flushable wipes. Flushable wipes include all wipe products marketed and advertised by manufacturers as able to be flushed without causing harm to plumbing and sewer systems.

2. In addition to manufacturing Cottonelle Fresh Care Flushable Wipes & Cleansing Cloths, Cottonelle Gentle Care Flushable Cleansing Cloths with Aloe & E, Cottonelle Fresh Folded Wipes and Cottonelle Soothing Clean Flushable Moist Wipes with Aloe (collectively, the “Cottonelle Flushable Wipes”), Defendant Kimberly-Clark manufactures many other different brands and types flushable wipes, including: Scott Naturals Flushable Moist Wipes, Scott Naturals Flushable Moist Wipes with Aloe Vera, Scott Naturals Folded Flushable Moist Wipes, Pull-Ups Big Kid Flushable Wipes, U by Kotex Refresh Wipes, Poise Intimate Cleansing Cloths, Kleenex Cottonelle Flushable Moist Wipes Refills, Scottex Pure Sensitive Wipes, Scottex Hygienic Comfort Wipes, Scottex Naturally Gentle Wipes, Scottex Junior Wipes, Scottex Fresh Wipes, Andrex Washlets Flushable Toilet Tissue Wipes, and Andrex Kids Flushable Toilet Tissue Wipes (collectively, the “Kimberly-Clark Flushable Wipes”).

3. Because flushable wipes do not disintegrate immediately upon flushing, like toilet paper, they cause serious problems for homeowners and municipalities alike. An article in *New York Magazine* chronicling the problems caused by flushable wipes points out that flushable wipes do not

break down as easily as toilet paper, nor can they, if they are to do their job effectively. Unlike toilet paper, flushable wipes must hold up under the pressure of scrubbing *after* being soaked in water and propylene glycol lotion for an extended period of time. To be useful, flushable wipes must be strong enough to do their job effectively, which cannot be done if they disintegrate in water as easily as toilet paper. Thus “the very thing that makes a wet wipe good at its job makes it a problem once it’s discarded.”<sup>1</sup>

4. Plaintiff and other consumers purchased defective flushable wipes designed, marketed, manufactured, distributed, and sold by Defendant as safe to be flushed (the “Class”). Through the ordinary and/or directed use of flushable wipes, consumers across the country experienced plumbing issues, including clogged toilets, clogged pipes, flooding of home basements and other plumbing problems. Plaintiff and members of the Class would not have purchased the flushable wipes and/or paid the purchase price for the flushable wipes if they knew that flushing the wipes would cause the wipes to become clogged in sewer or septic systems. Absent Defendant’s actions, and had Plaintiff and members of the Class known of the defective nature of the flushable wipes, Plaintiff and members of the Class would not have purchased and/or paid the purchase price for the flushable wipes. And, absent Defendant’s actions, and had Plaintiff and members of the Class known of the defective nature of the flushable wipes, Plaintiff and members of the Class would not have used the flushable wipes in their homes and risked damaging the plumbing systems in their homes, or, worse, causing damage in their homes due to backups caused by the use of flushable wipes.

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<sup>1</sup> <http://nymag.com/news/intelligencer/flushable-wipes-2013-10/index1.html> (last visited May 15, 2015).

5. Defendant's conduct constitutes unfair practices under the New York Deceptive Practices Act General Business Law §§349 and 350, as well as negligent misrepresentation, unjust enrichment and a breach of express warranties.

### **THE PARTIES**

6. Plaintiff is, and was at all relevant times, a resident of Plainview, New York. Plaintiff regularly purchased Cottonelle Fresh Care Flushable Moist Wipes from ShopRite and Harmon stores near her home.

7. Defendant Kimberly-Clark, a Delaware corporation, together with its subsidiaries, manufactures and markets personal care, consumer tissue, and health care products worldwide. The company operates in four segments: Personal Care, Consumer Tissue, K-C Professional, and Health Care. The Personal Care segment offers disposable diapers, training and youth pants, swim pants, baby wipes, feminine and incontinence care products, and related products under the Huggies, Pull-Ups, Little Swimmers, GoodNites, Kotex, Depend, Plenitud, and Poise brand names. The Consumer Tissue segment provides facial and bathroom tissue, paper towels, napkins, and related products under the Kleenex, Scott, Cottonelle, Viva, Andrex, Scottex, Hakle, and Page brands. The K-C Professional segment offers apparel, wipers, soaps, sanitizers, tissues, and towels under the Kleenex, Scott, WypAll, Kimtech, and Jackson Safety brand names. The Health Care segment provides surgical and infection prevention products, and medical devices focused on pain management, respiratory, and digestive health under the Kimberly-Clark and ON-Q brands. Headquartered in Dallas, Texas, Kimberly-Clark common stock trades on the New York Stock Exchange under the ticker symbol "KMB."

8. Defendant, upon becoming involved with the manufacture, distribution, advertising, marketing and sale of flushable wipes, knew or should have known that their representations regarding flushable wipes were false and misleading.

## **JURISDICTION AND VENUE**

9. This Court has original jurisdiction over this matter, pursuant to 28 U.S.C.S. §1332(d), in that the matter in controversy exceeds \$5 million, exclusive of interest and costs, and is a class action of more than 100 potential Class members in which Plaintiff is a citizen of New Jersey and Defendant Kimberly-Clark is incorporated in Delaware with its principal place of business in Texas.

10. Venue properly lies in this district pursuant to 28 U.S.C. §1391(a), because Plaintiff resides and Defendants reside, are found, have their principal place of business, have an agent, or have transacted substantial business within the Eastern District of New York within the meaning of 28 U.S.C. §1391(a) as defined in 28 U.S.C. §1391(c), and because a substantial part of the events giving rise to the claims alleged herein occurred in the Eastern District of New York. In addition, venue properly lies in this district as the facts and claims at issue in this action are substantially related to *Kurtz v. Kimberly-Clark Corp., et al.*, No. 1:14-cv-1142-JBW-RML and *Belfiore v. The Procter & Gamble Co.*, No. 14-cv-4090-JBW-RML, which are currently pending in this District.

## **SUBSTANTIVE ALLEGATIONS**

11. The pre-moistened wipes market is a \$6 billion-a-year industry with consumer sales growing approximately 5% each year since 2007. The industry is expected to grow 6% annually over the next five years.

12. There are currently no legally enforceable requirements that a product must meet in order to claim that it is “flushable,” only voluntary industry guidelines that may be followed at the discretion of manufacturers.

13. Defendant Kimberly-Clark describes its Cottonelle Flushable Wipes on their website as using “a patented dispersible technology, which means that when used as directed they break up after flushing and clear properly maintained toilets, drainlines, sewers, pumps, and septic and

municipal treatment systems.”<sup>2</sup> Kimberly-Clark also notes, in the product details section, that the wipes are “flushable,” “break up after flushing” and are “sewer- and septic-safe.”<sup>3</sup>

14. On the packaging of Cottonelle Fresh Care Flushable Moist Wipes, the word “flushable” is clearly displayed, along with a circular logo containing a symbol and the words “sewer and septic safe.”

15. A true and correct representation of the front panel of the package for Cottonelle Fresh Care Flushable Moist Wipes appears below:



16. In the “Frequently Asked Questions” section of its website, Kimberly-Clark responds to the question of whether its wipes will break down in consumers’ septic systems by stating: “Flushable Cleansing Cloths are designed to safely break down in home septic systems and will not affect the normal bacterial activity in a septic system. Watch our video to learn more about the tests that Cottonelle flushable wipes go through to ensure their flushability.”<sup>4</sup>

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<sup>2</sup> <https://www.cottonelle.com/products/cottonelle-fresh-care-flushable-moist-wipes> (last visited May 15, 2015).

<sup>3</sup> *Id.*

<sup>4</sup> <https://www.cottonelle.com/products/cottonelle-fresh-care-flushable-moist-wipes#faqs> (last visited February 20, 2014).

17. The video referenced above (and discussed more fully in paragraphs 25-28 below), was posted by Kimberly-Clark, and states that its flushable wipes go through “rigorous tests” that are “based on industry guidelines” and which “demonstrate that when used as directed, Kimberly-Clark flushable wipes clear properly maintained toilets, drainlines, sewers and pumps and are compatible with on-site septic and municipal treatment systems.”<sup>5</sup>

18. Other flushable wipe brands manufactured by Defendant Kimberly-Clark make similar flushability claims. In addition to Cottonelle, Scott Naturals, Pull-Ups, U by Kotex and Poise all make claims on their packaging that the wipes are “flushable.” The packaging for Scott Naturals Flushable Wipes, for example, states in a circular logo that the wipes “break[] up after flushing,” as depicted below:<sup>6</sup>



<sup>5</sup> <https://www.youtube.com/watch?v=2FrXNWr2-xo&feature=youtu.be&noredirect=1> (last visited May 15, 2015).

<sup>6</sup> <http://www.amazon.com/Scott-Naturals-Flushable-Wipes-Refill/dp/B003VD4XVU> (last visited May 15, 2015).

19. Also manufactured by Kimberly-Clark are U by Kotex Refresh Flushable Wipes, Poise Intimate Cleansing Cloths, and Pull-Ups Big Kid flushable wipes. On the U by Kotex Refresh Flushable Wipes official website, the language next to a photo of an individually packaged wipe states: “Use it and lose it. Flushable for a quick and easy refresh.”<sup>7</sup> Poise Intimate Cleansing Cloths also state on their website that they are “individually wrapped and flushable for on the go convenience.”<sup>8</sup> The official website for Huggies Pull-Ups Big Kid Flushable Wipes states that the wipes are “sewer and septic safe and break up quickly after flushing.”<sup>9</sup>

20. According to Kimberly-Clark, the wipes may be safely flushed because manufacturers use “patented dispersible technology that allows [the wipes] to break-up after flushing and clear properly maintained toilets, drain-lines, sewers, pumps, septic tanks and municipal treatment systems.”<sup>10</sup>

21. Flushable wipes manufactured by Defendant Kimberly-Clark are allegedly made up of “wood pulp and cellulosic fibers which are 100% derived from sustainable resources with a proprietary binder that allows the wipe to break up after flushing.”<sup>11</sup> Kimberly-Clark’s wipes use an ion triggered latex bonded airlaid which allegedly allows the wipes to be flushed safely. The wipes contain an “acrylic binder that forms ionic bonds in the presence of certain water-soluble ions, which can be added to the wipe’s lotion; these bonds are reversible, disappearing if the level of these ions falls below a certain level (as in excess water in a toilet). The reduction of ion concentration

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<sup>7</sup> <https://www.ubykotex.com/products/wipes/1422> (last visited May 15, 2015).

<sup>8</sup> <http://www.poise.com/products/intimate-cleansing-cloths/1782> (last visited May 15, 2015).

<sup>9</sup> <https://www.pull-ups.com/products/flushable-wipes> (last visited May 15, 2015).

<sup>10</sup> <http://www.kimberly-clark.com/safetoflush/faq/SafeToFlushFAQ.pdf> (last visited May 15, 2015).

<sup>11</sup> *Id.*



“triggers” a significant reduction in wet strength, allowing the shear from normal “flushing” to cause the nonwoven to disintegrate or disperse.”<sup>12</sup>

22. In addition to the flushable wipes manufactured by Defendant, many other brands of wipes are being marketed as “flushable.” Charmin Freshmates are marketed as “flushable wet wipes [that] provide a cleaner clean than dry bath tissue alone,”<sup>13</sup> while Pampers Kandoo Flushable Toilet Wipes are marketed as “your little one’s first toilet wipe.”<sup>14</sup> Wet Ones Fresh ‘n Flush personal hygiene wipes claim to be “gentle on your plumbing” and assure consumers that they can simply “flush ‘em away,”<sup>15</sup> and Dynarex Flushable Wipes claim to “easily break[] down back to fibers as [they go] through the pipes.”<sup>16</sup>

23. Large chain retailers are also offering generic brands of wipes that claim to be flushable. Walmart, for example, purports that its Great Value Flushable Wipes “[b]reak[] apart when flushed” and are “safe for sewer and septic systems,”<sup>17</sup> and that its Equate Flushable Wipes “break apart after flushing like toilet paper, reducing the chance for blockage at home and in waste

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<sup>12</sup> [http://www.nonwovens-industry.com/contents/view\\_experts-opinion/2012-05-16/dispersible-nonwovens-for-flushable-wipes/](http://www.nonwovens-industry.com/contents/view_experts-opinion/2012-05-16/dispersible-nonwovens-for-flushable-wipes/) (last visited May 15, 2015).

<sup>13</sup> [http://www.charmin.com/freshmates-flushable-wipes.aspx?utm\\_source=msn&utm\\_medium=cpc&utm\\_campaign=Charmin\\_Search\\_Desktop\\_Category+Interest.RF&utm\\_term=flushable%20wipes&utm\\_content=8N9FB9pv\\_flushable%20wipes\\_e\\_2095917578](http://www.charmin.com/freshmates-flushable-wipes.aspx?utm_source=msn&utm_medium=cpc&utm_campaign=Charmin_Search_Desktop_Category+Interest.RF&utm_term=flushable%20wipes&utm_content=8N9FB9pv_flushable%20wipes_e_2095917578) (last visited May 15, 2015).

<sup>14</sup> <http://www.pampers.com/flushable-wipes-kandoo> (last visited May 15, 2015).

<sup>15</sup> <http://www.wetones.com/FreshandFlush.aspx> (last visited February 20, 2014).

<sup>16</sup> [http://www.dynarex.com/product.php?family=Flushable\\_Wipes&itmno=0850](http://www.dynarex.com/product.php?family=Flushable_Wipes&itmno=0850) (last visited May 15, 2015).

<sup>17</sup> <http://www.walmart.com/ip/Great-Value-Flushable-Wipes-Refill-100-sheets/23680392> (last visited May 15, 2015).

management systems.”<sup>18</sup> Target claims that its Up&Up Toddler and Family Wipes are flushable and “sewer and septic safe.”<sup>19</sup>

24. Many chain drugstores offer their own brands of wipes purporting to be flushable. Walgreens Flushable Cleansing Cloths claim to be “safe for sewer and septic systems,”<sup>20</sup> and CVS Total Home Flushable Moist Wipes claim to “break[] apart when flushed.”<sup>21</sup> Similarly, Rite Aid Flushable Moist Wipes are described as being “safe for septic tanks and sewers.”<sup>22</sup>

### **Homeowner Horror Stories**

25. Despite Defendant’s marketing wipes as safe to flush, homeowners from all over the United States have suffered plumbing issues, such as clogged toilets, clogged pipes and flooded basements, as a result of the flushing purportedly “flushable” wipes. The problem with flushable wipes is clear: they do not break down as manufacturers advertise.

26. In Jacksonville, Florida, Kevin Herbertson learned the truth – that flushable wipes are not flushable – when sewage overflowed into the laundry room and backyard of his 88 year-old

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<sup>18</sup> <http://www.walmart.com/ip/Equate-Flushable-Fresh-Scent-Wipes-144-count/15610928> (last visited May 15, 2015).

<sup>19</sup> [http://www.target.com/p/up-wipes-432ct-toddler/-/A-13991458#prodSlot=medium\\_1\\_3](http://www.target.com/p/up-wipes-432ct-toddler/-/A-13991458#prodSlot=medium_1_3) (last visited May 15, 2015).

<sup>20</sup> <http://www.walgreens.com/store/c/walgreens-flushable-cleansing-cloths/ID=prod6015923-product> (last visited May 15, 2015).

<sup>21</sup> <http://www.cvs.com/shop/product-detail/Total-Home-by-CVS-Flushable-Moist-Wipes-Tub?skuId=420029> (last visited May 15, 2015).

<sup>22</sup> <http://shop.riteaid.com/Rite-Aid-Flushable-Moist-Wipes/dp/B0085XCDAE#.UwZPWvldV8E> (last visited May 15, 2015).

mother's home. Herbertson stated that he has spent hundreds of dollars in plumbing services to clear out the clogs caused by flushable wipes.<sup>23</sup>

27. Frank Freece, the plumber who cleared the pipes at Herbertson's mother's home, said in 2014 alone he has been called to clear "'flushable wipes' stoppages in two to three dozen homes." Freece stated: "They're worse than paper towels or feminine products. . . [b]ut, because they're marked 'flushable,' people think they can just go right on down."<sup>24</sup>

28. A poster identified as "Nancy," the founder of Nancy'sVacationRentals.com, who owns about 50 rental properties in San Diego, posted on the blog vacationrentalmarketingblog.com about her "horror story" experience with a renter who used flushable wipes.<sup>25</sup> After the renters, a family of five, called complaining that the toilet was backing up into the shower, Nancy sent a plumber over to snake the drain. The renters then complained a second time, two days later, of the same problem. Since this particular house had never had plumbing issues before, Nancy sent over a different plumber, this time with a camera, to see what the source of the clog was. Nancy wrote: "The first thing this plumber noticed was a package of 'flushable wipes' sitting near each toilet and the camera confirmed that there were 'flushable wipes' hanging on every little piece of rust or corrosion in the cast iron pipes that could possibl[y] snag one of those cloth wipes and he said they never break down." Concerned by this, Nancy called the first plumber who originally came to remedy the problem, and asked him what he had pulled out of the drain. He told her he had pulled out "some type of cloth things." Since the flushable wipe users left the home, Nancy has not had any

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<sup>23</sup> <http://www.firstcoastnews.com/story/news/local/consumer/on-your-side/2014/02/17/flushable-wipes-costly-repairs/5559801/> (last visited May 15, 2015).

<sup>24</sup> *Id.*

<sup>25</sup> [http://www.vacationrentalmarketingblog.com/flushable\\_wipes/](http://www.vacationrentalmarketingblog.com/flushable_wipes/) (last visited May 15, 2015).

plumbing issues at the house. After putting in a claim, her insurance paid over \$800 in plumbing expenses to remedy the problem caused by the flushable wipes.

29. A reader identified as “Emery,” wrote into Consumerist.com, a consumer watch dog website, complaining that he only used three Cottonelle flushable wipes on three different days, but when he flushed the toilet, they caused a backup. After having a plumber come to snake out his plumbing, the plumber told him that the cause of the backup was something that looked like diapers, which turned out to be the three flushable cleansing cloths.<sup>26</sup>

30. Jim Kneiszel recently wrote an article for *Pumper*, an e-magazine for pumping contractors, detailing his experience with flushable wipes. Due to a medical condition, Kneiszel’s household was using a lot of flushable wipes and purchased them specifically because they were labeled “flushable.” One morning, he woke up to three inches of dirty water in his basement caused by “[a] clog of wipes that were hung up in the system before they could fall into the sewer pipe and float away from [his] house.” The plumber Kneiszel called to snake out his home’s pipes told him: “I don’t care what the box says, these wipes are not flushable. And this happens all the time.”<sup>27</sup>

31. Kneiszel posted the photos below, explaining that they depict “how wipes reached the first 5 feet of drainfield, which has to be evacuated and replaced. It took Goodman Sanitation more than a day to repair the clogged system. Technicians removed a half-dozen 50-gallon bags of wipes from the septic system.”<sup>28</sup>

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<sup>26</sup> <http://consumerist.com/2014/02/04/cottonelle-wipes-say-theyre-flushable-but-my-plumber-disagrees/> (last visited May 15, 2015).

<sup>27</sup> [http://www.pumper.com/editorial/2013/06/wipe\\_out](http://www.pumper.com/editorial/2013/06/wipe_out) (last visited May 15, 2015).

<sup>28</sup> *Id.*



### Testing for Flushability

32. Consumer Reports performed its own independent disintegration test on flushable wipes that simulated toilet flushing conditions. A video clip of the test showed that standard toilet paper broke down in about eight seconds, but flushable wipes did not break down after ten minutes and, even more shocking, *still* did not break down after being placed in a Kitchen Aid mixer for the same period of time.<sup>29</sup>

33. The Orange County Sanitation District also conducted its own test to evaluate the dispersibility of allegedly “flushable” products. According to a Staff Report dated May 30, 2012, one sheet of Costco Wholesale Corporation’s (“Costco’s”) Kirkland Signature Moist Flushable Wipes was placed in a one liter sized beaker filled with tap water and containing a stir bar, stirring at a speed of 120 rotations per minute.<sup>30</sup> The Orange County Sanitation District found that the wipe did not break down after a full 24 hours, had remained intact with no change in the wipe’s initial dimensions, and was still recognizable after such time. The Orange County Sanitation District also

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<sup>29</sup> <http://www.consumerreports.org/cro/video-hub/home--garden/bed--bath/flushable-wipes/16935265001/22783507001/> (last visited May 15, 2015).

<sup>30</sup> <http://www.nacwa.org/images/stories/public/2012-08-06ocsddfw.pdf> (last visited May 15, 2015).

evaluated toilet paper using the same test and found that the toilet paper rapidly dispersed after about 20 seconds. The Orange County Sanitation District concluded that because wipes are not able to disperse, they may adversely affect sewer systems, lift stations and wastewater treatment plants.<sup>31</sup>

34. CBS4 Miami, after investigating damage caused by flushable wipes, hired I-P-S testing, the only independent testing facility in the country, to conduct a slosh box test. I-P-S put toilet paper, flushable wipes and non-flushable wipes through the same slosh box test. After one hour, the toilet tissue was barely visible, but the flushable and non-flushable wipes were fully intact. After two hours, the toilet tissue had dispersed completely, the flushable wipes had “shredded some, but visible chunks still remain[ed]” and the non-flushable wipes had not changed at all. After three hours, there was “a trace amount” left of the flushable wipes and the non-flushable wipes remained “pretty intact.”<sup>32</sup>

35. On Costco’s website, there is a link to a video posted by Cottonelle demonstrating the “dispersability” of Cottonelle Flushable Wipes using the slosh box test.<sup>33</sup> The video begins with the message: “What you are about to see is unaltered footage of how COTTONELLE FRESH Flushable Moist Wipes break down in water, so they’ll never clog your toilet[,]” followed by Cottonelle’s logo.<sup>34</sup>

36. According to the video, the slosh box test can be used to predict the wipes’ ability to break up as they pass through pumps and pipes. The test begins by placing a Cottonelle Flushable

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<sup>31</sup> *Id.*

<sup>32</sup> <http://miami.cbslocal.com/2014/02/04/the-trouble-with-wipes-in-your-pipes/> (last visited May 15, 2015).

<sup>33</sup> <http://video.costco.com/v/12429/cottonelle-fresh-flushable-moist-wipes/> (last visited May 15, 2015).

<sup>34</sup> *Id.*

Wipe in a tank filled with tap water. The tank is then set into motion to “simulate the physical forces acting to disintegrate the product.”<sup>35</sup>

37. The video then jumps to 40-50 minutes later, at which time the wipe is still not completely dispersed, and large chunks of the wipe are still clearly visible. After 95-110 minutes, the wipe is still not completely dispersed and although smaller, there are still multiple chunks of wipe remaining.<sup>36</sup> Thus, according to Kimberly-Clark’s own slosh box test, Cottonelle Flushable Wipes do not fully disperse after a full 110 minutes.

38. According to a video posted by Defendant Kimberly-Clark, the company’s flushable wipe products go through testing to ensure “flushability.” Such tests include: (i) the toilet and drain line test; (ii) the sloshbox disintegration test; and (iii) the municipal pump test.<sup>37</sup>

39. Defendant’s toilet and drain line test consists of flushing wipes through only 68 feet of drainline and are supposedly tested on toilets “from all major global regions where K-C-Flushable Wipes are sold.”<sup>38</sup> The video depicts a wipe being flushed down a toilet and flowing through a clear tube, appearing to be mostly intact. Defendant Kimberly-Clark states in the video: “As you can see, [the wipes] easily pass through properly maintained toilets and drainlines.”<sup>39</sup>

40. As Defendant Kimberly-Clark states in its video, “it is important that flushable materials do not accumulate in the pump, which could lead to decreasing pump efficiency and

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> <http://www.youtube.com/watch?v=2FrXNWr2-xo&feature=youtu.be> (last visited May 15, 2015).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

potentially clogging the pump.”<sup>40</sup> Defendant Kimberly-Clark’s municipal pump test consisted of putting one wipe through the pump every ten seconds for ten minutes. The test found that the average pump’s power did not “increase significantly during the test[,]” which Defendant Kimberly-Clark claims it would have if the wipes had accumulated inside the pump. Defendant Kimberly-Clark concluded that this test shows that its flushable wipes “pass through pumps without clogging, interfering or causing strain.”<sup>41</sup>

41. The slosh box test is meant to “determine the potential of materials to disintegrate when subject to agitation in water.”<sup>42</sup> Defendant Kimberly-Clark’s own slosh box test found that the wipe began to break down into “smaller pieces” in 35 minutes and reduced to fibers after three hours.<sup>43</sup> The company claims that “by breaking up this way, [its] wipes can safely pass through municipal pump stations commonly present in city sewers.”<sup>44</sup>

#### **Problems Caused for Municipal Sewers Across the County**

42. However, utility officials say that wipes cause a problem because in actuality, they reach a pump in just a matter of minutes, and also because many sewer systems move sewage using gravity, which does not create the same level of agitation used in tests like Defendant Kimberly-Clark’s.<sup>45</sup>

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> [http://articles.washingtonpost.com/2013-09-07/local/41850520\\_1\\_baby-wipes-sewer-toilet-paper](http://articles.washingtonpost.com/2013-09-07/local/41850520_1_baby-wipes-sewer-toilet-paper) (last visited May 15, 2015).



43. In addition, newer toilets that use three-gallon flushes, as opposed to older models that use five-gallon flushes, are also unable to push whole, undispersed wipes down sewage lines.<sup>46</sup> Thus, the problem is further exacerbated when wipes are flushed down a newer toilet into an old line without the needed amount of water to flush it, resulting in the wipes not being fully flushed and remaining behind in the system.<sup>47</sup>

44. Unsurprisingly, if wipes make it through home plumbing systems and are not fully disintegrated when they leave individual homeowners' pipes, they wreak havoc on city sewer systems. Cities across the country have suffered thousands, if not millions, of dollars in damage to city sewer and water systems due to flushable wipes.

45. When the wipes flow through the home plumbing and sewer systems at various stages of disintegration, they can mix with grease and congeal to form masses in home and city pipelines. According to Operations Manager of the Charleston Sanitary Board, Tim Haapala, wipes create serious problems for municipal sewer lines, especially when they get mixed up with grease in drains, which results in developing masses in city pipelines that are very expensive to remove. Haapala stated: "They're not degradable. That's the problem."<sup>48</sup>

46. Haapala described the slow buildup of wipes mixing with grease and other debris in pipes "like cholesterol in a vein."<sup>49</sup> Below is a photo of a Charleston Sanitary Board customer's lateral pipe, which was completely clogged with wipes and had to be removed.<sup>50</sup>

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<sup>46</sup> <http://www.wvgazette.com/News/201310270044> (last visited May 15, 2015).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*



47. The problem is occurring all over the country, according to Cynthia Finley, Director of Regulatory Affairs for the National Association of Clean Water Agencies (“NACWA”).<sup>51</sup> In fact, the problem is not even limited to the continental United States. In Honolulu, Hawaii, Jesse Broder Van Dyke, a spokesperson for Honolulu Mayor Kirk Caldwell, stated: “The wipes clog sewer lines, pump stations and treatments plants.”<sup>52</sup> Markus Owens, a Honolulu Department of Environmental Services spokesperson, stated: “These wipes contribute to recurring problems at our pumping stations; they do not break down, and create additional work for our crews who have to repeatedly remove them on a monthly or weekly basis.”<sup>53</sup>

48. According to Finley, “[c]onsumers are being told by the packaging that these things are flushable” and “[a]lthough the material might make it through the toilet and the pipes leading

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<sup>51</sup> <http://www.usatoday.com/story/news/nation/2013/07/16/wipes-pollution/2522919/> (last visited May 15, 2015).

<sup>52</sup> <http://www.civilbeat.com/articles/2013/10/11/20030-new-age-toilet-paper-clogging-honolulus-sewer-pipes-causing-headaches/> (last visited May 15, 2015).

<sup>53</sup> *Id.*

away from the house, they tend to clog up once in the sewer system . . . That can cause huge headaches for the utilities.”<sup>54</sup>

49. In London, perhaps the most dramatic example of the effects flushable wipes can have on sewer systems came to light in the summer of 2013 in the form of “fatberg.” Fatberg was a 15-ton, bus-size clog in London’s sewer system that took three weeks to dislodge.<sup>55</sup> Fatberg was made up of wipes and coagulated fat, which built up to the point where it blocked a sewer main. Gail Hailwood of Thames Water stated: “The sewer was almost completely clogged. If we hadn’t discovered it in time, raw sewage could have started spurting out of manholes across the whole of Kingston. It was so big it damaged the sewer and repairs will take up to six weeks.”<sup>56</sup>

50. Carter Strickland, commissioner of the New York City Department of Environmental Protection, when interviewed about the problem flushable wipes are causing, told *New York Magazine*: “You can safely say [it’s costing us] millions of dollars.”<sup>57</sup> One of Strickland’s aide’s provided *New York Magazine* with an estimate that the cost caused by flushable wipes is “about \$18 million per year for extra disposal, and that doesn’t include staff overtime and damaged equipment.”<sup>58</sup>

51. Although screens have been used to filter wipes out, “[t]he Wards Island treatment plant seems to be getting the worst of it, but all around the city, huge gray-black masses of synthetic

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<sup>54</sup> <http://www.usatoday.com/story/news/nation/2013/07/16/wipes-pollution/2522919/> (last visited May 15, 2015).

<sup>55</sup> <http://www.theguardian.com/environment/2013/aug/06/fatberg-london-sewer-grease-blockage> (last visited May 15, 2015).

<sup>56</sup> *Id.*

<sup>57</sup> <http://nymag.com/news/intelligencer/flushable-wipes-2013-10/> (last visited May 15, 2015).

<sup>58</sup> *Id.*

fiber, steeped in every foul fluid that's gone down the drain, are regularly being extracted, by hand, from pipes and pumps. Jammed, snarled equipment frequently breaks down, causing 'a lot of downtime.'"<sup>59</sup>

52. According to Strickland, the problem is that wipes, unlike toilet paper, are meant to hold up under soaking a scrubbing, and are "very, very strong, pound for pound, like [a] spiderweb."<sup>60</sup>

53. Andrew Jantzer, General Manager of wastewater facilities at York City Wastewater Treatment Plant in Pennsylvania, stated: "At our plant we have a five foot pipe that comes in and all of the sewage comes into that pipe. The first thing it does is goes through these giant rakes, and it rakes out all of the flushable products that have not broken down. The more we can get out at the head of the plant the better. It causes a lot of havoc throughout the rest of the plant if it makes it through. It clogs the pumps and channels and all kinds of tanks and other things that we have at the treatment plant."<sup>61</sup>

54. In Raleigh, North Carolina, sewer overflows and backups are predominately caused by flushable wipes, according to the city's environmental coordinator for wastewater, Marti Gibson.<sup>62</sup> The problem is so bad that Raleigh now has an ordinance prohibiting the flushing of anything except human waste, toilet paper and water.<sup>63</sup>

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<sup>59</sup> *Id.*

<sup>60</sup> <http://nymag.com/news/intelligencer/flushable-wipes-2013-10/index1.html> (last visited May 15, 2015).

<sup>61</sup> <http://todaynewsgazette.com/flushable-wipes-clogging-pipes/> (last visited May 15, 2015).

<sup>62</sup> <http://www.usatoday.com/story/news/nation/2013/07/16/wipes-pollution/2522919/> (last visited May 15, 2015).

<sup>63</sup> <http://www.usatoday.com/story/news/nation/2013/07/16/wipes-pollution/2522919/> (last visited May 15, 2015).

55. In Bemus Point, New York, local officials fed up with dispatching crews “at least once a week to clear a grinder pump that would seize up trying to shred the fibrous wipes”<sup>64</sup> set up “basket strainers in sections of pipe leading to an oft-clogged pump [] to figure out which households the wipes were coming from. They mailed letters and then pleaded in person for residents to stop flushing them.”<sup>65</sup>

56. In San Antonio, Texas, where there is over 9,000 miles of sewer line to keep clog-free, San Antonio Water System (“SAWS”) Communications Director Anne Hayden stated: “Ignore the flushable label, because it’s not . . . It adds additional layers of cleanup we already have to do to our pipes. People have to go out in the summer heat and manually extract the buildup and it’s not pleasant.”<sup>66</sup> SAWS crews remove three to five tons of debris, enough to fill a 15-foot-long dump truck with debris, per day. Joshua Trent, a member of a four-person SAWS crew, explained when flushable wipes get stuck in the sewer system, they “make it easier for items as small as plastic bags and prophylactics to items as large as car tires, engine blocks and even live animals like turtles, snakes and birds to become lodged in siphon boxes.”<sup>67</sup>

57. Some cities, like Grand Rapids, Michigan, are trying to deal with the problem by educating their citizens and asking them not to flush wipes down the toilet. Grand Rapids officials

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<sup>64</sup> <http://www.kctv5.com/story/23508880/flushable-wipes-clog-sewer-lines> (last visited May 15, 2015).

<sup>65</sup> <http://www.today.com/money/what-bummer-flushable-wipes-blamed-sewer-woes-4B11235939> (last visited May 15, 2015).

<sup>66</sup> <http://www.expressnews.com/news/local/article/Flushable-wipes-clean-everything-but-sewers-4724397.php#/6> (last visited May 15, 2015).

<sup>67</sup> *Id.*

have sent out a mass mailing to homeowners reminding them “no wipes in the pipes.”<sup>68</sup> One public education mailer sent out to Grand Rapids homeowners states: “Convenience wipes such as baby, hygienic, cleaning and disinfectant, as well as toilet bowl scrubbers and even paper towels might be labeled as ‘disposable or flushable’ but these items should not go down the drain. Products like these do not break down in the sewer system. They can cause plugs in sewer pipes and pumps and result in sewage backups, costly cleanups and environmental consequences that can cause rate increases.”<sup>69</sup>

58. In addition to Grand Rapids, Waukesha, Wisconsin, Ocean City, Maryland and Sitka, Alaska are just some examples of cities who have publically asked residents not to flush wipes that are labeled as flushable.<sup>70</sup>

59. The blockages caused by flushable wipes are becoming increasingly costly for municipalities. In California, the Orange County Sanitation District had 971 “de-ragging” maintenance calls on ten pump stations in a single year costing the District \$320,000.<sup>71</sup>

60. Some municipalities, like the Washington Suburban Sanitary Commission, have turned to purchasing expensive equipment to deal with the problem. The Commission estimates that it has spent more than \$1 million on equipment to shred wipes and prevent blockages.<sup>72</sup>

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<sup>68</sup> <http://www.usatoday.com/story/news/nation/2013/07/16/wipes-pollution/2522919/> (last visited May 15, 2015).

<sup>69</sup> <http://grcity.us/enterprise-services/Environment-Services/Pages/Environmental-Tip-3.aspx> (last visited May 15, 2015).

<sup>70</sup> [http://www.washingtonpost.com/local/increasingly-clogged-sewers-attributed-to-popular-flushable-wipes/2013/09/23/d29bdab6-2451-11e3-ad0d-b7c8d2a594b9\\_story.html](http://www.washingtonpost.com/local/increasingly-clogged-sewers-attributed-to-popular-flushable-wipes/2013/09/23/d29bdab6-2451-11e3-ad0d-b7c8d2a594b9_story.html) (last visited May 15, 2015).

<sup>71</sup> <http://www.pwmag.com/wastewater/strangled-by-disposables.aspx> (last visited May 15, 2015).

<sup>72</sup> <http://grcity.us/enterprise-services/Environment-Services/Pages/Environmental-Tip-3.aspx> (last visited May 15, 2015).

61. In Vancouver, Washington, officials estimate they have spent over \$1 million replacing three large sewer pumps and eight smaller sewer pumps that were constantly becoming clogged.<sup>73</sup> Frustrated with dealing with problems caused by flushable wipes, Vancouver sewer officials conducted their own experiment in which they dyed several different kinds of wipes and sent them through the sewer for a mile. The result – the wipes labeled flushable had “little rips and tears but still they were intact” said engineer Frank Dick.

62. Washington D.C. alone has already spent millions to repair and prevent clogging of city pipes caused by flushable wipes.<sup>74</sup> Utility DC Water sends workers on “wipes patrol” and has reported that an estimated 500 man-hours have been needed to deal with wipes clogging sewer systems over the span of a year.<sup>75</sup>

63. According to Mary Gugliuzza, Media Relations Coordinator for the Fort Worth Water Department, once wipes make it to the city plant they must be separated and sent to dumpsters or landfills, which costs city residents thousands of dollars.<sup>76</sup> Because the wipes do not break down fully as soon as they are flushed, they can get caught up in various stages of the sewer system including pumps, lift stations and treatment plants.<sup>77</sup>

64. Roxanne Beal from Frederick County, Maryland’s Well and Septic Division, told *The Frederick News-Post*: “I will tell you from experience that these products do not biodegrade before

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<sup>73</sup> *Id.*

<sup>74</sup> <http://www.mnn.com/your-home/at-home/blogs/increasingly-popular-flushable-wipes-wreak-havoc-on-utilities> (last visited May 15, 2015).

<sup>75</sup> *Id.*

<sup>76</sup> <http://dfw.cbslocal.com/2013/10/04/so-called-flushable-wipes-causing-pipe-sewer-problems/> (last visited May 15, 2015).

<sup>77</sup> *Id.*

they catch and clog in a private sewer system . . . (they) become almost like a pile of cement in your tank.”<sup>78</sup> In 2013 alone, Frederick County had to deal with five sewer overflows, with two of them believed to be caused by wipes. Just one of the overflows resulted in 450 gallons of wastewater spilled and clean-up costs of \$1,500. In light of these issues, the Frederick County Health Department now takes the position that even products labeled “flushable” should be thrown in the trash, and not flushed down toilets.<sup>79</sup>

65. Municipalities and homeowners share in the frustration that wipe products labeled and advertised as flushable continue to be sold. *The New York Post* has observed that NACWA has been receiving complaints that flushable wipes were causing clogging and backups in sewer systems for the last 4 years. The newspaper also noted that these complaints “roughly coincide[] with the ramped-up marketing of the ‘flushable cleansing cloths’ as a cleaner, fresher option than dry toilet paper alone.”<sup>80</sup> In addition, *New York Magazine*,<sup>81</sup> *USA Today*,<sup>82</sup> *Huffington Post*,<sup>83</sup> and numerous local news outlets have all reported on plumbing and sewer problems caused by flushable wipes.

### **The FTC’s Enforcement Action Against Nice-Pak**

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<sup>78</sup>[http://www.fredericknewspost.com/news/economy\\_and\\_business/business\\_topics/consumer/count-y-don-t-flush-what-says-flushable/article\\_ba4388b3-e1ba-531b-8970-05a2d6cb7a7b.html](http://www.fredericknewspost.com/news/economy_and_business/business_topics/consumer/count-y-don-t-flush-what-says-flushable/article_ba4388b3-e1ba-531b-8970-05a2d6cb7a7b.html) (last visited May 15, 2015).

<sup>79</sup> *Id.*

<sup>80</sup> <http://nypost.com/2013/09/23/flushable-bathroom-wipes-blamed-for-massive-sewer-clogs/> (last visited May 15, 2015).

<sup>81</sup> <http://nymag.com/news/intelligencer/flushable-wipes-2013-10/> (last visited May 15, 2015).

<sup>82</sup> <http://www.usatoday.com/story/news/nation/2013/07/16/wipes-pollution/2522919/> (last visited May 15, 2015).

<sup>83</sup> [http://www.huffingtonpost.com/2013/09/23/bathroom-wipes-clog\\_n\\_3977082.html](http://www.huffingtonpost.com/2013/09/23/bathroom-wipes-clog_n_3977082.html) (last visited May 15, 2015).



66. On May 18, 2015, the Federal Trade Commission (the “FTC”) announced that it entered into a consent order with Nice-Pak in connection with Nice-Pak’s labeling of its flushable products.

67. The consent order stemmed from allegations that defendant Nice-Pak made misleading representations in its advertising and marketing of its flushable moist wipes, including CVS Flushable Wipes. According to the consent order and associated documents, Nice-Pak lacks adequate substantiation for the claim that its flushable wipes products are safe for household plumbing, household septic systems, and public sewer systems. According to the FTC’s complaint, Nice-Pak violated the FTC Act by misrepresenting that its wipes: (1) are safe for sewer systems, (2) are safe for septic systems; (3) break apart shortly after being flushed, and (4) are safe to flush.

68. Specifically, the FTC’s complaint alleges that “[b]ecause of their composition, non-woven fabrics do not break down in water in a reasonably short amount of time. As a result, products made from them can clog household plumbing systems, household septic systems, public sewer systems, and sewage treatment plant systems after being flushed.”<sup>84</sup> The complaint also charges that the materials Nice-Pak disseminated to its customers “did not accurately reflect real-world conditions Nice-Pak Wipes would encounter after being flushed (i.e., conditions that exist in household toilets, plumbing, or septic systems, or in public sewer systems or public wastewater treatment facilities).”<sup>85</sup> The complaint further asserts that Nice-Pak:

alone or in concert with others...developed unsubstantiated flushability claims for use by its trade customers based on this purported substantiation. Through these means, [Nice-Pak] provided trade customers with the means and instrumentalities to deceive consumers by disseminating these unsubstantiated flushability claims in

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<sup>84</sup> Complaint, *In the Matter of Nice-Pak Products, Inc.*, File No. 132-3272, at 1, available at <https://www.ftc.gov/system/files/documents/cases/150518nice-pakcmpt.pdf> (last visited May 18, 2015).

<sup>85</sup> *Id.* at 2.

marketing...Nice-Pak Wipes under private labels, such as...CVS's Flushable Cleansings Wipes

69. As part of the proposed consent order, Nice-Pak is prohibited from making any representation that its flushable wipes: (1) are safe for sewer systems, (2) are safe for septic systems, (3) break apart shortly after flushing, (4) will not clog household plumbing systems, (4) will not clog household septic systems, (5) are safe for plumbing, (6) are safe to flush, (7) dissolve or disperse when interacting with water, or (8) are flushable, unless the representation is based on “competent and reliable evidence,” including “tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by qualified persons, using procedures generally accepted in the profession to yield accurate and reliable results.”<sup>86</sup>

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<sup>86</sup> Agreement Containing Consent Order, *In the Matter of Nice-Pak Products, Inc.*, File No. 132-3272, at 3, available at <https://www.ftc.gov/system/files/documents/cases/150518nice-pakorder.pdf> (last visited May 18, 2015).

70. The consent order requires Nice-Pak to demonstrate that its flushable wipes “disperse[] in a sufficiently short amount of time after flushing to avoid clogging, or other operational problems in, household and municipal sewage lines, septic systems, and other standard wastewater equipment.” The term flushable, according to the consent order, means that the flushable product “dispersed in a sufficiently short amount of time after flushing to avoid clogging, or other operational problems in, household and municipal sewage lines, septic systems, and other standard wastewater equipment” and that testing to substantiate the use of the term flushable on a products must “substantially replicate the physical conditions of the environment in which the Covered Product is claimed, directly or indirectly, expressly or by implication, to be properly disposed of; or, if no specific environment is claimed, then in all environments in which the product will likely be disposed of.”<sup>87</sup>

71. Products labeled as flushable must disperse so that to not get stuck in or clog homeowners’ plumbing systems, and requires manufacturers of purported “flushable” wipes to design products that not only pass through homeowners’ home plumbing systems, but also do not cause damage to municipal sewer lines, sewage treatment plants or other public wastewater treatment facilities.

#### **FACTUAL ALLEGATIONS RELATED TO THE PLAINTIFF**

72. On or around 2012, Plaintiff began purchasing Cottonelle Fresh Care Flushable Moist Wipes in ShopRite and Harmon stores located near her home in Plainview, New York.

73. Shortly after flushing Defendant’s Cottonelle Fresh Care Flushable Moist Wipes products down her home toilets, Plaintiff experienced plumbing issues, including clogging of her home plumbing. As a result, Plaintiff had to employ the help of a professional plumber to come and snake her home plumbing. Upon snaking the plumbing system, the plumber removed still-intact

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<sup>87</sup> *Id.* (emphasis added).

flushable wipes products and warned Plaintiff that she “can’t flush” these flushable wipes products down toilet, despite what the label states.

74. And after being advised by her plumber not to flush anything down their toilet other than human waste and toilet paper, Plaintiff immediately stopped using and purchasing the Cottonelle Flushable Wipes.

75. Prior to purchasing Cottonelle Flushable Wipes, Plaintiff read the label on the product, which indicated that the wipes were “flushable[,]” and purchased Defendant’s wipes specifically because they were advertised as safe to flush down toilets. Wipes labeled by Defendant as “flushable” cost more than similar products without misleading advertisements and misrepresentations regarding their flushability, and would have cost less absent the false and misleading information. Furthermore, Plaintiff purchased them because they were labeled as “flushable” and would not have purchased the wipes had they not been labeled as such.

76. Plaintiff and members of the Class paid more for Defendant’s flushable wipes than they otherwise would have had they not been misled by the false and misleading labeling and advertisements and misrepresentations complained of herein.

77. In addition to sustaining damages associated with paying more money per wipe for flushable wipes rather than purchasing comparable, but non-flushable, wipes, Plaintiff also sustained damages in the form of significant plumbing costs to unclog the piping in his home.

78. Plaintiff was unaware and could not have discovered, even in the exercise of reasonable diligence, that Defendant’s flushable wipe products would cause harm to his home plumbing when flushed.

79. Plaintiff and members of the Class would not have purchased Defendant's flushable wipes at the prices they did, or would not have purchased the flushable wipes at all, absent Defendant's false and misleading misrepresentations.

80. For these reasons, Defendant's flushable wipes were worth less than what Plaintiff and members of the Class paid for them.

81. Plaintiff and members of the Class were induced to, and did, purchase flushable wipes instead of competing products based on the false statements and misrepresentations described herein.

82. Plaintiff and members of the Class lost money as a result of Defendant's deception in that they did not receive what they paid for. In particular, Plaintiff has paid approximately \$300-\$400 in plumbing costs, including hiring a professional plumber.

83. Plaintiff and members of the Class altered their position to their detriment and suffered damages in an amount at least equal to the amount they paid for Defendant's flushable wipes.

**PLAINTIFF'S EXPERIENCE IS REPRESENTATIVE  
OF THE EXPERIENCE OF THE CLASS**

84. Plaintiff and members of the Class experienced plumbing and sewer problems after flushing flushable wipes down home toilets. Because of these issues, Plaintiff and members of the Class could not flush the wipes down toilets without suffering harm to the plumbing in their homes.

85. Kimberly-Clark denies that flushable wipes cause any harm to plumbing, sewer or septic systems and continue to represent that their flushable wipes are able to be flushed without any adverse consequences.

86. Customer complaints displayed on the Internet identify a sampling of consumers who complained of damage to their plumbing and sewer systems due to flushing flushable wipes. Such complaints include the following:

The plumber spent a good 3-4 hours trying to clear up the clog that caused the back up. It was the flushable wipes! He explained that flushable is not really flushable and it appears that this is a very common issue.<sup>88</sup>

\* \* \*

Had our septic tank cleaned this morning and was advised against using these “flushable, safe for septic” wipes because they were all wadded up in a ball at the bottom of the tank. If our household had multiple family members using these, we would have had a major problem eventually. Now that they have been cleaned out, our tank is in good working condition and we will not be flushing them in the future. Safe for septic systems and biodegradable my eye!!! Glad we found out before we developed a very expensive problem with our system.<sup>89</sup>

\* \* \*

AH! Cottonelle Fresh Care: I just spent over \$2,000. to have 20 feet of my cast iron pipes replaced. My tenant had been using them (Cottonelle Fresh Care ) for over 6 months. They snag on the insides of cast iron pipes and collect. The plumber could not even snake through them. They do not break down like toilet paper, It has a plastic mesh that holds it together. Over 4 feet of the wipes were cut out. What a mess. City sewer departments should ban the sale of them as they clog the sewer treatment screens costing taxpayers money.<sup>90</sup>

\* \* \*

I live in a fairly new home with new plumbing these wipes do not break down they stay intact and clog your drain. I have a basement full of raw sewage to deal with this morning and guess what keeps coming up from the drain wipes fully intact wipes that must have been there for weeks and weeks they should not be able to use the word flushable with them all because they go down the drain does not mean they dissolve or move through. Wish there was a way to charge them for the bills I am about to face cleaning up this mess and fixing the problem.<sup>91</sup>

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<sup>88</sup> <http://forum.maplewoodonline.com/discussion/82198/warning-flushable-wipes-are-not-flushable> (last visited May 15, 2015).

<sup>89</sup> <http://www.treesfullofmoney.com/?p=1553> (last visited May 15, 2015).

<sup>90</sup> *Id.*

<sup>91</sup> [http://www.amazon.com/Cottonelle-Fresh-Flushable-Wipes-Refills/product-reviews/B000FDKQ5G/ref=cm\\_cr\\_pr\\_viewpnt\\_sr\\_1?ie=UTF8&filterBy=addOneStar&showViewpoints=0&sortBy=bySubmissionDateDescending](http://www.amazon.com/Cottonelle-Fresh-Flushable-Wipes-Refills/product-reviews/B000FDKQ5G/ref=cm_cr_pr_viewpnt_sr_1?ie=UTF8&filterBy=addOneStar&showViewpoints=0&sortBy=bySubmissionDateDescending) (last visited May 15, 2015).

Was looking down the barrel of a \$400 plumbing bill but fortunately the plumber was able to retrieve all the of the fully intact “flushable” wipes without having to dismantle the toilet. Be aware that these are NOT flushable regardless of the packaging claims.<sup>92</sup>

\* \* \*

First of all, they are difficult to get out in 1 piece, but mostly they do not break down, had to pay a RotoRooter guy to snake the line, \$198 later and all he found were these clogging up the main line. Don’t be fooled, these are not flushable.<sup>93</sup>

\* \* \*

We recently bought several boxes of these “flushable” wipes. Fast forward to today when my landlord had to get our sewer line snaked and clean up a basement flooded with sewage because these wipes did not break down at all once they were flushed. We had no idea that these would clog our sewer lines especially since the box claims they are safe to flush and that they are safe for sewer and septic systems. **THIS IS NOT TRUE.** Save yourself time and money and either do not buy these wipes or do not flush them if you buy them, this will save you lots of time and money down the road.<sup>94</sup>

87. Consumers have posted about plumbing problems caused by Defendant Kimberly-Clark’s Cottonelle wipes on the Company’s website. A few examples of such posts directly on Cottonelle’s website include:

Richard - Monday, June 24, 2013

A few months after flushing the wipes down my toilets and into my septic system it clogged the underground filter. I had the 1000 gallon storage tank pumped and it was disgustingly obvious that the Cottonelle wipes were the culprit. They do not break down like toilet paper or even close. Do not use them if you are on a septic system. If you read Kimberly Clark’s claim for septic systems you will see that it is

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<sup>92</sup> [http://www.amazon.com/Kirkland-Signature-Flushable-Pre-moistened-Entire/product-reviews/B00788NICY/ref=cm\\_cr\\_pr\\_viewpnt\\_sr\\_1?ie=UTF8&filterBy=addOneStar&showViewpoints=0&sortBy=bySubmissionDateDescending](http://www.amazon.com/Kirkland-Signature-Flushable-Pre-moistened-Entire/product-reviews/B00788NICY/ref=cm_cr_pr_viewpnt_sr_1?ie=UTF8&filterBy=addOneStar&showViewpoints=0&sortBy=bySubmissionDateDescending) (last visited May 15, 2015).

<sup>93</sup> *Id.*

<sup>94</sup> <http://www.amazon.com/Kirkland-Signature-Flushable-Pre-moistened-Entire/product-reviews/B00788NICY> (last visited May 15, 2015).

written to confuse the consumer. It focuses on “flushability” which only gets these things down the toilet but not through a septic system.<sup>95</sup>

\* \* \*

Kenneth - Saturday, June 01, 2013

I tried a free sample and it did breakdown like toilet paper. I purchased this nice package (36 or 42 ?? nothing on wrapping indicating count). Being on a septic I checked to ensure it was also going to break down. No matter how hard I mashed and put in jar with water, heavy agitation it would not break apart. This is not suitable for a septic!!!<sup>96</sup>

\* \* \*

tlkflat - Wednesday, April 24, 2013

DO NOT use with the newer rural waste water treatment systems like a JET system. They will clog the booster pump and then tangle in the air pump spinner, VERY costly repair.<sup>97</sup>

\* \* \*

Jill - Monday, February 25, 2013

She might as well have flushed cotton washcloths. My renter used these wipes and we have to pump septic as well as ream the pipe going to the house. Sewer backup in basement too. Girlfriend also had bad luck with toilet paper in her septic. These products do not seem to break down in septic systems. I would not recommend.<sup>98</sup>

\* \* \*

Doug - Monday, March 18, 2013

Flushable Wipes are NOT flushable. Sure, they’ll flush. Then they will clog your pipes . . . always. It may not be today or tomorrow, but they will clog. At my bed

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<sup>95</sup> <https://www.cottonelle.com/products/cottonelle-fresh-care-flushable-moist-wipes/review> (last visited May 15, 2015).

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*



and breakfast I have to have the plumbers out at least 4 times a year to clear our lines. It is ALWAYS flushable wipes. BAD PRODUCT.<sup>99</sup>

88. The problems described by online posters evince prevalent and ongoing problems experienced by purchasers of flushable wipes, including Plaintiff and the Class members. These problems, created by misleading marketing and advertising of flushable wipes by Kimberly-Clark, were apparent and are known to Kimberly-Clark. Although flushable wipes may be used and disposed of in the garbage, like non-flushable wipes, Defendant markets and sells flushable wipes at a higher cost than comparable, non-flushable wipes. For example, Cottonelle Fresh Care Flushable Cleansing Cloths Refill cost \$0.04 per wipe, whereas comparable wipes by Huggies and Pampers that are not labeled as flushable sell for \$0.02 per wipe, or nearly half the cost of flushable wipes. Rather than properly labeling or including a warning on flushable wipes packaging, Kimberly-Clark has ignored customer complaints, thereby causing injury or damage to Plaintiff and members of the Class while providing themselves with additional and unjust financial gain.

### CLASS ACTION ALLEGATIONS

89. Plaintiff brings this action pursuant to Federal Rules of Civil Procedure 23(a), (b)(2), and (b)(3) individually and as a class action on behalf of the following proposed classes:

***National Cottonelle Class: All persons and entities in the United States who purchased the Cottonelle Flushable Wipes.***

***National Kimberly-Clark Class: All persons and entities in the United States who purchased the Kimberly-Clark Flushable Wipes.***

90. Upon completion of discovery with respect to the scope of the Class, Plaintiff reserves the right to amend the Class definition. Excluded from the Class is Defendant, its parents, subsidiaries and affiliates, directors and officers, and members of their immediate families. Also

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<sup>99</sup> *Id.*

excluded from the Class are the Court, the Court's spouse, all persons within the third degree of relationship to the Court and its spouse, and the spouses of all such persons.

91. Numerosity: The Class is so numerous that joinder of all individual members is impracticable. While the exact number and identities of members of the Class are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, upon information and belief, Plaintiff alleges that the Class is comprised of thousands of individual members geographically disbursed throughout the United States. The number of Class members and their geographical disbursement renders joinder of all individual members impracticable if not impossible.

92. Commonality: There are questions of fact and law common to members of the Class that predominate over any questions affecting solely individual members including, *inter alia*, the following:

(a) whether Defendant misrepresented the effect of flushing flushable wipes on plumbing and sewers, and otherwise mislabeled flushable wipes so as to have the consumer believe that the flushable wipes would not cause harm to home plumbing and sewers;

(b) whether the actions and activities of Defendant violated consumer fraud provisions of New York Deceptive Practices Act General Business Law §§349 and 350;

(c) whether Defendant's business practices violate New Jersey law, for which Plaintiff and members of the Class may recover damages;

(d) whether Defendant knew or should have known that the labeling on flushable wipes was false when issued;

(e) whether Defendant misled consumers into believing that the flushable wipes were able to be flushed without adverse effects on plumbing and sewer systems;

- (f) whether Defendant breached their warranties to consumers concerning the flushable wipes;
- (g) whether Defendant was unjustly enriched by the sale and distribution of the misbranded or mislabeled flushable wipes to consumers;
- (h) whether Plaintiffs and members of the Class are entitled to statutory relief;
- (i) whether Plaintiff and members of the Class are entitled to punitive relief;
- (j) whether Plaintiff and members of the Class are entitled to compensatory relief; and
- (k) whether Plaintiff and members of the Class have sustained damages, and, if so, what is the proper measure of damages.

93. Typicality: Plaintiff's claims are typical of the members of the Class she seeks to represent. Plaintiff and all other members of the Class sustained damages arising out of Defendant's common course of conduct as complained herein. The losses of each member of the Class were caused directly by Defendant's wrongful conduct alleged herein. The amount of money at issue is such that proceeding by way of class action is the only economical and sensible manner in which to vindicate the injuries sustained by Plaintiff and members of the Class.

94. Adequacy: Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff's claims are coextensive with, and not antagonistic to, the claims of the other members of the Class. Plaintiff is willing and able to vigorously prosecute this action on behalf of the Class, and Plaintiff has retained competent counsel experienced in litigation of this nature.

95. Plaintiff brings this action under Rule 23(b)(3) because common questions of law and fact predominate over questions of law and fact affecting individual members of the Class. Indeed, the predominant issue in this action is whether Defendant mislabeled and falsely advertised their

flushable wipes and whether that mislabeling and false advertising caused damages to Plaintiff and the members of the Class. In addition, the expense of litigating each Class member's claim individually would be so cost prohibitive as to deny Class members a viable remedy. Certification under Rule 23(b)(3) is appropriate because a class action is superior to the other available methods for the fair and efficient adjudication of this action, and Plaintiff envisions no unusual difficulty in the management of this action as a class action.

96. In addition, the Class may also be certified under Rule 23(b)(2) because:

(a) the prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudication with respect to individual Class members that would establish incompatible standards of conduct for Defendant;

(b) the prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and/or

(c) Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final declaratory and/or injunctive relief with respect to the members of the Class as a whole.

97. The undersigned counsel for Plaintiff and the Class request that the Court appoint them to serve as Class counsel; first on an interim basis and then on a permanent basis pursuant to Federal Rule of Civil Procedure 23(g). Undersigned counsel will fairly and adequately represent the interests of the Class, have identified or investigated the Class' potential claims, are experienced in handling class actions, other complex litigation, and consumer claims of the type asserted in the

action, know the applicable law, will commit sufficient resources to represent the Class, and are best able to represent the Class.

## **COUNT I**

### **Negligent Misrepresentation**

98. Plaintiff repeats and realleges the allegations contained in all preceding paragraphs as if fully set forth herein.

99. Starting in or about early 2011, Defendant Kimberly-Clark misrepresented to Plaintiff and the Class the effects flushing flushable wipes down toilets has on plumbing and sewer systems.

100. Starting in or about early 2011, Defendant Kimberly-Clark omitted material facts regarding the effect flushing flushable wipes down toilets has on plumbing and sewer systems.

101. Defendant owed a duty to Plaintiff and the Class to exercise reasonable care when issuing statements or disclosures regarding the nature flushable wipes.

102. Upon information and belief, the statements or disclosures regarding the ability of flushable wipes to be flushed without having adverse effects on plumbing and sewer systems were likely to deceive or confuse Plaintiff and members of the Class.

103. In reliance upon Kimberly-Clarks representations that its Cottonelle Flushable Wipes products were flushable, Plaintiff purchased the products and flushed them down his home toilets.

104. The referenced claims have also influenced or are likely to influence future decisions of consumers and the buying public. Plaintiff and the Class, by purchasing flushable wipes, reasonably acted in reliance upon the truth of the representations made by Defendant.

105. As a direct and proximate result of the Plaintiff's and the Class' reliance upon the representations made by Defendant, as described above, Plaintiff and the Class have sustained damages and ascertainable loss.

## COUNT II

### **Breach of Express Warranty**

106. Plaintiff repeats and realleges the allegations contained in all preceding paragraphs as if fully set forth herein.

107. Beginning at an exact date unknown to Plaintiff, but at least since two years prior to the filing date of this action, and as set forth herein, Defendant Kimberly-Clark represented to the public, including Plaintiff, on the label of their Cottonelle Flushable Wipes and other flushable products, the product was safe to flush down the toilet. For example, Kimberly-Clark represented to the public, including Plaintiff, by their advertising, packaging and other means, that flushable wipes are “sewer and septic safe” and “break up after flushing.” These promises became part of the basis of the bargain between the parties and thus constituted an express warranty.

108. Thereon, Defendant Kimberly-Clark sold the flushable wipes to Plaintiff and other Class members, who bought the flushable wipes from retailers selling Defendant’s flushable wipe products.

109. Defendant Kimberly-Clark breached the express warranty in that the goods did not, in fact, flush without adverse consequences to home plumbing and sewer systems as set forth in detail herein. As a result of this breach, Plaintiff and other consumers in fact did not receive goods as warranted by Defendant.

110. As a proximate result of this breach of warranty by Defendant, Plaintiff and other consumers have been damaged in an amount to be determined at trial.

## COUNT III

### **Violations of the General Business Law §§349 and 350**

111. Plaintiff repeats and realleges the allegations contained in all preceding paragraphs as if fully set forth herein.

112. Defendant has used and employed unconscionable commercial practices, deception, fraud, misrepresentations, and/or the knowing concealment, suppression, and/or omission of material facts with the intent that others rely thereon (or, in the case of an omission, with the belief that the parties were ignorant of the true facts), in connection with the marketing, distributing, sale, and advertisement of the flushable wipes.

113. Plaintiff and the other members of the Class, unaware of Defendant's deception, purchased Defendant's flushable wipe products. Had Plaintiff and the other members of the Class known that Defendant was deceiving them, they would not have purchased flushable wipes or paid the price that they did.

114. By virtue of the foregoing, Defendant has violated GBL §§349 and 350.

115. As a direct and proximate result of Defendant's actions, Plaintiff and the Class have suffered damages in an amount to be proven at trial.

#### **COUNT IV**

##### **Unjust Enrichment**

116. Plaintiff repeats and realleges the allegations contained in all preceding paragraphs as if fully set forth herein.

117. As a result of Defendant's fraudulent and misleading labeling, advertising, marketing and sale of its flushable wipes, Defendant was enriched at the expense of Plaintiff and members of the Class.

118. It would be against equity and good conscience to permit Defendant to retain the ill-gotten benefits received from Plaintiff and members of the Class, in light of the fact that flushable wipes were not flushable, as Defendant purported them to be. Thus, it would be unjust and inequitable for Defendant to retain the benefits without restitution to Plaintiff and members of the Class of all monies paid to Defendant for the products at issue.

119. As a direct and proximate result of Defendant's actions, Plaintiff and the Class have suffered damages in an amount to be proven at trial.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment against Defendant for himself and the members of the Class as follows:

A. An Order determining that this action is a proper class action and certifying Plaintiff as a representative of the Class;

B. An Order awarding statutory, compensatory and punitive damages in favor of Plaintiff and the other Class members against Defendant for Defendant's violation of New York Deceptive Practices Act General Business Law §§349 and 350, and for all damages sustained as a result of Defendant's wrongdoing, in an amount to be proven at trial, including interest thereon;

C. An Order declaring Defendant's practices to be improper, unfair, unlawful and/or deceptive and requiring Defendant to provide refunds to Plaintiff and members of the Class;

D. A temporary, preliminary or permanent injunction: (i) ordering Defendant to make disclosures, through corrective advertising, to inform the public of the true nature regarding the effect on plumbing when flushable wipes are flushed; (ii) enjoining Defendant from selling flushable wipes until the proper disclosures set forth above are issued; and (iii) ordering Defendant to waive or reimburse any fees to be incurred by consumers in connection with plumbing services needed to repair plumbing systems;

E. Disgorgement and restitution;

F. An Order awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

G. Such other and further relief as the Court may deem just and proper.



**JURY DEMAND**

Plaintiff hereby demands a trial by jury.

DATED: May 20, 2015

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