

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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D. JOSEPH KURTZ, Individually and on	:	Civil Action No.
Behalf of All Others Similarly Situated,	:	
	:	CLASS ACTION COMPLAINT
Plaintiff,	:	
	:	
vs.	:	
	:	
KIMBERLY-CLARK CORPORATION and	:	<u>JURY TRIAL REQUESTED</u>
COSTCO WHOLESALE CORPORATION,	:	
	:	
Defendants.	:	
	:	
	X	

Plaintiff D. Joseph Kurtz (“Kurtz” 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 Defendants Kimberly-Clark Corporation (“Kimberly-Clark”) and Costco Wholesale Corporation (“Costco” and, together with Kimberly-Clark, “Defendants”) to recover for the harm caused by Defendants’ 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 the 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”). Costco manufactures Kirkland Signature Moist Flushable Wipes under its generic brand, Kirkland Signature (the “Kirkland Signature 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 Defendants 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 Defendants’ 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 Defendants’ 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

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<sup>1</sup> <http://nymag.com/news/intelligencer/flushable-wipes-2013-10/index1.html> (last visited February 21, 2014)

homes, or, worse, causing damage in their homes due to backups caused by the use of flushable wipes.

5. Defendants' conduct violates New Jersey Consumer Fraud Act §56:8-1 and constitutes unfair practices under the New York Deceptive Practices Act General Business Law §§349 and 350 (collectively, the "Unfair Trade Practices Statutes"). Defendant's conduct also constitutes negligent misrepresentation and unjust enrichment, as well as a breach of express warranties.

### **THE PARTIES**

6. Plaintiff is, and was at all relevant times, a resident of Brooklyn, New York and rented a home in Elberon, New Jersey. Plaintiff regularly purchased Kirkland Signature Moist Flushable Wipes from two Costco locations, located at 976 Third Avenue, Brooklyn, New York and 2361 Highway 66, Ocean Township, New Jersey. Plaintiff purchased Cottonelle Fresh Flushable Cleansing Cloths from various drug stores such as Walgreens, and supermarkets such as Stop & Shop and ShopRite, near each of his homes.

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, swimpants, 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 Costco, a Washington corporation, together with its subsidiaries, operates membership warehouses. The company offers branded and private-label products in a range of merchandise categories, including Kirkland Signature, its generic line. It offers candy, snack foods, tobacco, alcoholic and nonalcoholic beverages, and cleaning and institutional supplies; appliances, electronics, health and beauty aids, hardware, office supplies, cameras, garden and patio, sporting goods, toys, seasonal items, and automotive supplies; dry and institutionally packaged foods; apparel, domestics, jewelry, house wares, media, home furnishings, and small appliances; and meat, bakery, deli, and produce. The company also operates gas stations, pharmacies, food courts, optical dispensing centers, one-hour photo centers, and hearing aid centers, and travel businesses. In addition, it provides business and gold star (individual) membership services. Headquartered in Issaquah, Washington, Costco common stock trades on the NASDAQ Global Select Market under the ticker symbol “COST.”

9. Defendants, 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**

10. 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 York while at least one Defendant is a citizen of a different state.

11. 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.

### **SUBSTANTIVE ALLEGATIONS**

12. 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.

13. 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.

14. Defendant Kimberly-Clark describes its Cottonelle Fresh Care Flushable Wipes & Cleansing Cloths 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>

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

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<sup>2</sup> <https://www.cottonelle.com/products/cottonelle-fresh-care-flushable-moist-wipes> (last visited February 21, 2014)

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

16. A true and correct representation of the front panel of the package for Cottonelle Fresh Care Flushable Cleansing Cloths appears below:



17. 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>

18. 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-

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

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>

19. 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>



20. 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

<sup>5</sup> <https://www.youtube.com/watch?v=2FrXNW2-xo&feature=youtu.be&noredirect=1> (last visited February 21, 2014)

<sup>6</sup> <http://www.amazon.com/Scott-Naturals-Flushable-Wipes-Refill/dp/B003VD4XVU> (last visited February 21, 2014)



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>

21. 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>

22. 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 February 21, 2014)

<sup>8</sup> <http://www.poise.com/products/intimate-cleansing-cloths/1782> (last visited February 21, 2014)

<sup>9</sup> <https://www.pull-ups.com/products/flushable-wipes> (last visited February 21, 2014)

<sup>10</sup> <http://www.kimberly-clark.com/safetoflush/faq/SafeToFlushFAQ.pdf> (last visited February 21, 2014)

<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>

23. Kirkland Signature Moist Flushable Wipes are marketed by Defendant Costco. The packaging depicts, in big letters, “moist flushable wipes” and the statement “safe for well-maintained sewer & septic.”<sup>13</sup>

24. The only warning on the packaging of potential problems consumers may have as a result of flushing Kirkland Signature Moist Flushable Wipes is a yellow bubble stating: “[N]ever flush more than one wipe at a time[.]”<sup>14</sup>

25. A true and correct representation of the front panel of the package for Kirkland Signature Moist Flushable Wipes appears below:



<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 February 21, 2014)

<sup>13</sup> <http://www.costco.com/Kirkland-Signature%e2%84%a2-Moist-Flushable-Wipes%2c-600-Wipes.product.11767169.html> (last visited February 20, 2014)

<sup>14</sup> *Id.*

26. In the “Frequently Asked Questions on Flushability” section of Costco’s Kirkland Signature Moist Flushable Wipes site, when asked whether the wipes are really flushable, Costco states: “Yes, Kirkland Signature™ Moist Flushable Wipes comply with industry guidelines and are proven to pass through a home’s well-maintained toilet, pump and drain line without clogging. The wipe is very different than other wipes and made of a special material.”<sup>15</sup> When asked how it is possible to know if a wipe is flushable, Costco instructs consumers to “[l]ook for the Do Not Flush logo that is starting to appear on many products that are not flushable or read the directions on the package on how to dispose of properly.”<sup>16</sup>

27. On Costco’s website, the only warnings associated with the flushing of Kirkland Signature Moist Flushable Wipes are that the wipes “are not recommended for flushing in motor homes” and that users should “[m]ake sure sewer and septic systems are well-maintained and there are no tree roots growing in the sewer lines.”<sup>17</sup>

28. In addition to the flushable wipes manufactured by Defendants, 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>18</sup> while Pampers Kandoo Flushable Toilet Wipes are marketed as “your little one’s first toilet wipe.”<sup>19</sup> Wet Ones Fresh ‘n Flush personal hygiene wipes claim to be “gentle on your plumbing” and assure consumers that they can simply

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</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 February 21, 2014)

<sup>19</sup> <http://www.pampers.com/flushable-wipes-kandoo> (last visited February 21, 2014)

“flush ‘em away,”<sup>20</sup> and Dynarex Flushable Wipes claim to “easily break[] down back to fibers as [they go] through the pipes.”<sup>21</sup>

29. 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>22</sup> and that its Equate Flushable Wipes “break apart after flushing like toilet paper, reducing the chance for blockage at home and in waste management systems.”<sup>23</sup> Target claims that its Up&Up Toddler and Family Wipes are flushable and “sewer and septic safe.”<sup>24</sup>

30. 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>25</sup> and CVS Total Home Flushable Moist Wipes claim to “break[] apart when flushed.”<sup>26</sup> Similarly, Rite Aid Flushable Moist Wipes are described as being “safe for septic tanks and sewers.”<sup>27</sup>

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

<sup>21</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 February 21, 2014)

<sup>22</sup> <http://www.walmart.com/ip/Great-Value-Flushable-Wipes-Refill-100-sheets/23680392> (last visited February 21, 2014)

<sup>23</sup> <http://www.walmart.com/ip/Equate-Flushable-Fresh-Scent-Wipes-144-count/15610928> (last visited February 21, 2014)

<sup>24</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 February 21, 2014)

<sup>25</sup> <http://www.walgreens.com/store/c/walgreens-flushable-cleansing-cloths/ID=prod6015923-product> (last visited February 21, 2014)

<sup>26</sup> <http://www.cvs.com/shop/product-detail/Total-Home-by-CVS-Flushable-Moist-Wipes-Tub?skuId=420029> (last visited February 21, 2014)

<sup>27</sup> <http://shop.riteaid.com/Rite-Aid-Flushable-Moist-Wipes/dp/B0085XCDAE#.UwZPWvldV8E> (last visited February 21, 2014)

### Homeowner Horror Stories

31. Despite Defendants 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.

32. 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 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>28</sup>

33. 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>29</sup>

34. A poster identified as “Nancy,” the founder of NancysVacationRentals.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>30</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:

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<sup>28</sup> <http://www.firstcoastnews.com/story/news/local/consumer/on-your-side/2014/02/17/flushable-wipes-costly-repairs/5559801/> (last visited February 21, 2014)

<sup>29</sup> *Id.*

<sup>30</sup> [http://www.vacationrentalmarketingblog.com/flushable\\_wipes/](http://www.vacationrentalmarketingblog.com/flushable_wipes/) (last visited February 21, 2014)

“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 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.

35. 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>31</sup>

36. 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>32</sup>

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<sup>31</sup> <http://consumerist.com/2014/02/04/cottonelle-wipes-say-theyre-flushable-but-my-plumber-disagrees/> (last visited February 21, 2014)

<sup>32</sup> [http://www.pumper.com/editorial/2013/06/wipe\\_out](http://www.pumper.com/editorial/2013/06/wipe_out) (last visited February 21, 2014)



37. 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>33</sup>



#### Testing for Flushability

38. 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>34</sup>

39. 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 Defendant Costco’s Kirkland Signature Moist Flushable Wipes was placed in a one liter

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<sup>33</sup> *Id.*

<sup>34</sup> <http://www.consumerreports.org/cro/video-hub/home--garden/bed--bath/flushable-wipes/16935265001/22783507001/> (last visited February 21, 2014)

sized beaker filled with tap water and containing a stir bar, stirring at a speed of 120 rotations per minute.<sup>35</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 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>36</sup>

40. 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>37</sup>

41. 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>38</sup> The video begins with the message: "What you are about to see is unaltered footage of how COTTONELLE FRESH Flushable

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<sup>35</sup> <http://www.nacwa.org/images/stories/public/2012-08-06ocsddfw.pdf> (last visited February 21, 2014)

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

<sup>37</sup> <http://miami.cbslocal.com/2014/02/04/the-trouble-with-wipes-in-your-pipes/> (last visited February 21, 2014)

<sup>38</sup> <http://video.costco.com/v/12429/cottonelle-fresh-flushable-moist-wipes/> (last visited February 21, 2014)



Moist Wipes break down in water, so they'll never clog your toilet[,]” followed by Cottonelle’s logo.<sup>39</sup>

42. 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 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>40</sup>

43. 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>41</sup> Thus, according to Cottonelle’s own slosh box test, Cottonelle Flushable Wipes do not fully disperse after a full 110 minutes.

44. 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>42</sup>

45. Defendant Kimberly-Clark’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>43</sup> The video depicts a wipe being flushed down a toilet and

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

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

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

<sup>42</sup> <http://www.youtube.com/watch?v=2FrXNW2-xo&feature=youtu.be> (last visited February 21, 2014)

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

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>44</sup>

46. 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 potentially clogging the pump.”<sup>45</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>46</sup>

47. The slosh box test is meant to “determine the potential of materials to disintegrate when subject to agitation in water.”<sup>47</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>48</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>49</sup>

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

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

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

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

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

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

48. 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>50</sup>

49. 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>51</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>52</sup>

50. 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.

51. 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,

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<sup>50</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 February 21, 2014)

<sup>51</sup> <http://www.wvgazette.com/News/201310270044> (last visited February 21, 2014)

<sup>52</sup> *Id.*

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>53</sup>

52. Haapala described the slow buildup of wipes mixing with grease and other debris in pipes “like cholesterol in a vein.”<sup>54</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>55</sup>



53. 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>56</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,

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

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> <http://www.usatoday.com/story/news/nation/2013/07/16/wipes-pollution/2522919/> (last visited February 21, 2014)

pump stations and treatments plants.”<sup>57</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>58</sup>

54. 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 away from the house, they tend to clog up once in the sewer system. . . . That can cause huge headaches for the utilities.”<sup>59</sup>

55. 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>60</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>61</sup>

56. Carter Strickland, commissioner of the New York City Department of Environmental Protection, when interviewed about the problem flushable wipes are causing, told *New York*

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<sup>57</sup> <http://www.civilbeat.com/articles/2013/10/11/20030-new-age-toilet-paper-clogging-honolulus-sewer-pipes-causing-headaches/> (last visited February 21, 2014)

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

<sup>59</sup> <http://www.usatoday.com/story/news/nation/2013/07/16/wipes-pollution/2522919/> (last visited February 21, 2014)

<sup>60</sup> <http://www.theguardian.com/environment/2013/aug/06/fatberg-london-sewer-grease-blockage> (last visited February 21, 2014)

<sup>61</sup> *Id.*

*Magazine*: “You can safely say [it’s costing us] millions of dollars.”<sup>62</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>63</sup>

57. 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 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>64</sup>

58. 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>65</sup>

59. 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

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<sup>62</sup> <http://nymag.com/news/intelligencer/flushable-wipes-2013-10/> (last visited February 21, 2014)

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> <http://nymag.com/news/intelligencer/flushable-wipes-2013-10/index1.html> (last visited February 21, 2014)

through. It clogs the pumps and channels and all kinds of tanks and other things that we have at the treatment plant.”<sup>66</sup>

60. 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>67</sup> In January 2013, a sewer overflowed on Marlowe Road in Raleigh and city officials blamed flushable wipes and paper towels as the cause of the incident. The spill resulted in an estimated 39,750 gallons of wastewater overflowing into an unnamed tributary near a creek.<sup>68</sup> This spill is one of 29 sewer overflows Raleigh has suffered. John Carman, Raleigh Public Utilities Director, stated that one of the most common forms of debris that cause sewer overflows are wipes that are labeled safe to flush. Carman stated: “There is this notion that somehow they’re safe to flush down the toilet,” but “[f]lushable wipes don’t always disintegrate.”<sup>69</sup> Raleigh officials say that because the wipes are “[t]hicker and heavier than toilet paper,” they tend to stick to the sides of pipes, resulting in the buildup of a much bigger problem.<sup>70</sup>

61. Raleigh Wastewater Treatment Superintendent T.J. Lynch asked the Neuse River Wastewater Treatment Plant to test different wipes to see how they break down.<sup>71</sup> Darrell Crews, the lab supervisor who ran the testing found that “[s]ome of them disintegrated a little bit, but a little

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<sup>66</sup> <http://todaynewsgazette.com/flushable-wipes-clogging-pipes/> (last visited February 21, 2014)

<sup>67</sup> <http://www.usatoday.com/story/news/nation/2013/07/16/wipes-pollution/2522919/> (last visited February 21, 2014)

<sup>68</sup> <http://www.newsobserver.com/2013/01/28/2639855/raleigh-says-paper-towels-and.html> (last visited February 21, 2014)

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> <http://www.newsobserver.com/2009/05/27/64324/now-not-flushable-flushable-wipes.html> (last visited February 21, 2014)

bit is not good enough.”<sup>72</sup> Crews stated: “If it doesn’t break down like toilet paper, you probably shouldn’t flush it.” The problem is so bad that Raleigh now has an ordinance prohibiting the flushing of anything except human waste, toilet paper and water.<sup>73</sup>

62. 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>74</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>75</sup>

63. 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>76</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

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<sup>72</sup> *Id.*

<sup>73</sup> <http://www.usatoday.com/story/news/nation/2013/07/16/wipes-pollution/2522919/> (last visited February 21, 2014)

<sup>74</sup> <http://www.kctv5.com/story/23508880/flushable-wipes-clog-sewer-lines> (last visited February 21, 2014)

<sup>75</sup> <http://www.today.com/money/what-bummer-flushable-wipes-blamed-sewer-woes-4B11235939> (last visited February 21, 2014)

<sup>76</sup> <http://www.expressnews.com/news/local/article/Flushable-wipes-clean-everything-but-sewers-4724397.php#/6> (last visited February 21, 2014)



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>77</sup>

64. 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 have sent out a mass mailing to homeowners reminding them “no wipes in the pipes.”<sup>78</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>79</sup>

65. 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>80</sup>

66. 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>81</sup>

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

<sup>78</sup> <http://www.usatoday.com/story/news/nation/2013/07/16/wipes-pollution/2522919/> (last visited February 21, 2014)

<sup>79</sup> <http://grcity.us/enterprise-services/Environment-Services/Pages/Environmental-Tip-3.aspx> (last visited February 21, 2014)

<sup>80</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 February 21, 2014)

67. 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>82</sup>

68. 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>83</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.

69. Washington D.C. alone has already spent millions to repair and prevent clogging of city pipes caused by flushable wipes.<sup>84</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>85</sup>

70. 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

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<sup>81</sup> <http://www.pwmag.com/wastewater/strangled-by-disposables.aspx> (last visited February 21, 2014)

<sup>82</sup> <http://grcity.us/enterprise-services/Environment-Services/Pages/Environmental-Tip-3.aspx> (last visited February 21, 2014)

<sup>83</sup> *Id.*

<sup>84</sup> <http://www.mnn.com/your-home/at-home/blogs/increasingly-popular-flushable-wipes-wreak-havoc-on-utilities> (last visited February 21, 2014)

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

landfills, which costs city residents thousands of dollars.<sup>86</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>87</sup>

71. 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 they catch and clog in a private sewer system . . . (they) become almost like a pile of cement in your tank."<sup>88</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>89</sup>

72. 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

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<sup>86</sup> <http://dfw.cbslocal.com/2013/10/04/so-called-flushable-wipes-causing-pipe-sewer-problems/> (last visited February 21, 2014)

<sup>87</sup> *Id.*

<sup>88</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 February 21, 2014)

<sup>89</sup> *Id.*

paper alone.”<sup>90</sup> In addition, *New York Magazine*,<sup>91</sup> *USA Today*,<sup>92</sup> *Huffington Post*,<sup>93</sup> and numerous local news outlets have all reported on plumbing and sewer problems caused by flushable wipes.

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

73. In or about February 2013, Plaintiff purchased Kirkland Signature and Cottonelle flushable wipes products in Brooklyn, New York and Ocean Township, New Jersey, and flushed the products down toilets in both his Brooklyn, New York residence and a home he rented in Elberon, New Jersey.

74. In both residences, Plaintiff experienced plumbing issues, including clogging of his home plumbing and sewer back-ups. As a result, Plaintiff had to employ the help of professional plumbers to unclog the piping in each home. Plumbers who visited and unclogged the piping in Plaintiff’s homes agreed that the problem was caused by flushing flushable wipes down home toilets.

75. Wipes labeled by Defendants 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.

76. Plaintiff and members of the Class paid more for Defendants’ 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.

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<sup>90</sup> <http://nypost.com/2013/09/23/flushable-bathroom-wipes-blamed-for-massive-sewer-clogs/> (last visited February 21, 2014)

<sup>91</sup> <http://nymag.com/news/intelligencer/flushable-wipes-2013-10/> (last visited February 21, 2014)

<sup>92</sup> <http://www.usatoday.com/story/news/nation/2013/07/16/wipes-pollution/2522919/> (last visited February 21, 2014)

<sup>93</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 February 21, 2014)

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 sewer backups in his New York and New Jersey homes.

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

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

80. For these reasons, Defendants' 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 Defendants' deception in that they did not receive what they paid for.

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 Defendants' 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. Defendants deny 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 of 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>94</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>95</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>96</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

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<sup>94</sup> <http://forum.maplewoodonline.com/discussion/82198/warning-flushable-wipes-are-not-flushable> (last visited February 21, 2014)

<sup>95</sup> <http://www.treesfullofmoney.com/?p=1553> (last visited February 21, 2014)

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

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>97</sup>

\* \* \*

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>98</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>99</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>100</sup>

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<sup>97</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 February 21, 2014)

<sup>98</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 February 21, 2014)

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

<sup>100</sup> <http://www.amazon.com/Kirkland-Signature-Flushable-Pre-moistened-Entire/product-reviews/B00788NICY> (last visited February 21, 2014)

87. Similar posts even appear on Defendant Costco's website where consumers can review their Kirkland Flushable Wipes. Posters have commented that they have had plumbing issues:

Cleans your wallet, too. Do not use with septic!

Pros: cleans your bum nicely

Cons: leads to expensive maintenance (clogs), does not break down in septic system

"For the last year, we have enjoyed using these wipes that claim they are safe for septic systems. However, yesterday I had to pay to have my septic line snaked to clear a clog.

The culprit? These Kirkland Signature "flushable wipes" from Costco.

The tank was full of wipes that did not break down, so we had to pump the tank as well. Other than the obvious human waste and toilet paper, these wipes from Costco were the only other thing we've flushed down the toilet.

According to our well-experienced septic specialist, our septic system was functioning great, with the exception of all these Kirkland wipes. He strongly advised us not to flush them any more--he's seen so many clogs caused by them.

So while it's nice to clean your bum with these moist wipes, do not flush them, unless you want them to also clean out your wallet."<sup>101</sup>

\* \* \*

Just paid a hefty plumbing bill

Cons: clogs pipes

"We just started using these wipes about 6 months ago. Prior to that, we had zero problems with our plumbing. This morning, we had a sewage backup because the pipes were clogged. We made an emergency call to a plumber. He used a snake type device and pulled out a wad of these wipes. He said these are the worse things for your pipes. He told us that just because they say 'disposable' on the label doesn't mean they are. Expensive lesson for us! We will never use these again!"<sup>102</sup>

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<sup>101</sup> <http://reviews.costco.com/2070/11767169/nice-pak-kirkland-signature-moist-flushable-wipes-600-wipes-reviews/reviews.htm?sort=reviewTextLength> (last visited February 21, 2014)

<sup>102</sup> *Id.*



\* \* \*

I love the wipes, but must live without them.

Pros: cleans your rear.

Cons: clogs your drains.

“My main line gets clogged every few months. Snaked it myself and pulled out wipes wrapped around the snake. They didn’t appear to be “broken down” much. Never had a problem in my main until I started using these wonderful moist, NON-flushable wipes. My house is 50+ years old. You’ll probably have better luck if your house is newer.”<sup>103</sup>

\* \* \*

#### MAJOR CLOGGING HEADACHE

Pros: cleans well

Cons: clogs your plumbing !

“I Agree with every other user that said NOT FLUSHABLE !! Holy heck . . . what a pain in the hiny !!!! DO NOT NOT NOT flush . . . even if you are one of the ‘lucky ones’ . . . eventually you will pay and your system will clog too, you have been warned. Now , my husband was finally able to clear the clog with a huge plumbing snake and working on it for an hour . . . and now we need a new toilet as he destroyed the whole porcelain surface inside the toilet bowl GGGrrrrrrr thanks ALOT Kirkland”<sup>104</sup>

\* \* \*

#### Not Flushable Afterall

Pros: none if not really flushable

Cons: expensive clogged drains and sewer systems

“Our drains slowly became so clogged the main finally clogged completely, on the weekend of course. When handing us his \$500 invoice, the plumber said the trouble was flushable wipes. A quick Google search brings up lots of hits on how America’s

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<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

sewer systems are struggling to manage so-called “flushables”. An expensive lesson learned here.”<sup>105</sup>

\* \* \*

### Septic Systems

Pros: pleasant smell, soft

Cons: not biodegradable, bad for septic systems, very thin, rip easily

“We started using these wipes about 10 months ago. Our grandchildren love them, however, our septic system did not. Recently had septic pumped and found that all the last 10 months of wipes had not “biodegraded” as promised. Our septic service said this was not the 1st problem he’d seen with these wipes.”<sup>106</sup>

\* \* \*

### Do Not Flush

“After using this product for about 18 months, my sewer clogged. \$4000.00 to repair.”<sup>107</sup>

\* \* \*

Not flushable - remove flushable from name of prod

Pros: great - but not flushable

Cons: not flushable

Model Number: L13075

“We had sewer trouble due to using this product and Roto Rooter had to come and clean out our sewer. It says Kirkland Signature, moist flushable wipes . . . these are not flushable and the word flushable needs to be removed from the package. Please address this immediately and make up new labels removing the word “Flushable” please!”

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<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

88. Just as on Defendant Costco's website, consumers have posted about plumbing problems caused by Defendant Kimberly-Clark's Cottonelle wipes. 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 written to confuse the consumer. It focuses on "flushability" which only gets these things down the toilet but not through a septic system.<sup>108</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>109</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>110</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

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<sup>108</sup> <https://www.cottonelle.com/products/cottonelle-fresh-care-flushable-moist-wipes/review> (last visited February 21, 2014)

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

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>111</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 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>112</sup>

89. 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 Defendants, were apparent and are known to Defendants. Although flushable wipes may be used and disposed of in the garbage, like non-flushable wipes, Defendants market and sell 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 and Kirkland Signature Moist Flushable Wipes cost \$0.028 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, Defendants have ignored the 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**

90. 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:

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<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

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

**New York Cottonelle Class:** *All persons and entities in the State of New York who purchased the Cottonelle Flushable Wipes.*

**New Jersey Cottonelle Class:** *All persons and entities in the State of New Jersey 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.*

**New York Kimberly-Clark Class:** *All persons and entities in the State of New York who purchased the Kimberly-Clark Flushable Wipes.*

**New Jersey Kimberly-Clark Class:** *All persons and entities in the State of New Jersey who purchased the Kimberly-Clark Flushable Wipes.*

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

**New York Kirkland Signature Class:** *All persons and entities in the State of New York who purchased the Kirkland Signature Flushable Wipes.*

**New Jersey Kirkland Signature Class:** *All persons and entities in the State of New Jersey who purchased the Kirkland Signature Flushable Wipes.*

91. 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 are Defendants, their parents, subsidiaries and affiliates, directors and officers, and members of their immediate families. Also 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.

92. **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.

93. 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 Defendants 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 Defendants violated consumer fraud provisions of New York General Business Law §§349 and 350 and New Jersey Consumer Fraud Act §56:8-1;

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

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

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

(f) whether Defendants breached their warranties to consumers concerning the flushable wipes;

(g) whether Defendants were 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.

94. Typicality: Plaintiff's claims are typical of the members of the Class he seeks to represent. Plaintiff and all other members of the Class sustained damages arising out of Defendants' common course of conduct as complained herein. The losses of each member of the Class were caused directly by Defendants' 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.

95. 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.

96. 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 Defendants 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.

97. 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 Defendants;

(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) Defendants have 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.

98. 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**

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

100. Starting in or about February 2013, Defendants misrepresented to Plaintiff and the Class the effects flushing flushable wipes down toilets has on plumbing and sewer systems.



101. Starting in or about February 2013, Defendants omitted material facts regarding the effect flushing flushable wipes down toilets has on plumbing and sewer systems.

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

103. Upon information and belief, the statements or disclosures regarding 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.

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 Defendants.

105. As a direct and proximate result of the Plaintiff's and the Class' reliance upon the representations made by Defendants, 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, Defendants made representations to the public, including Plaintiff, by their advertising, packaging and other means, that flushable wipes were safe to flush down the toilet. For example, Defendants made representations 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, Defendants sold the flushable wipes to Plaintiff and other Class members, who bought the flushable wipes from retailers selling Defendants flushable wipe products.

109. However, Defendants 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 Defendants.

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

### **COUNT III**

#### **Violation of §349 of New York General Business Law**

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

112. New York General Business Law (“NYGBL”) §349 provides: “Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful.”

113. As alleged fully above, Defendants engaged in deceptive acts and practices within the meaning of the Unfair Trade Practices Statutes, namely, by representing and marketing their flushable wipes as able to be flushed without adverse effect on home plumbing systems.

114. As alleged fully above, Defendants engaged in deceptive acts and practices within the meaning of the Unfair Trade Practices Statutes, namely, by manufacturing, distributing, supplying and/or selling defective products to Plaintiff and members of the Class.

115. By virtue of the foregoing, Defendants have violated NYGBL §349.

116. As a consequence of Defendants’ conduct, Plaintiff and members of the Class have suffered injury and ascertainable loss.

#### **COUNT IV**

##### **Violation of §350 of New York General Business Law**

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

118. NYGBL §350 provides: “False advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state is hereby declared unlawful.”

119. As alleged fully above, Defendants engaged in false advertising within the meaning of the Unfair Trade Practices Statutes, namely, by representing and marketing their flushable wipes as able to be flushed without adverse effects on home plumbing systems.

120. As alleged fully above, Defendants engaged in false advertising within the meaning of the Unfair Trade Practices Statutes, namely, by manufacturing, distributing, supplying and/or selling defective products to Plaintiff and members of the Class.

121. By virtue of the foregoing, Defendants have violated NYGBL §350.

122. As a consequence of Defendants’ conduct, Plaintiff and members of the Class have suffered injury and ascertainable loss.

#### **COUNT V**

##### **Violations of the New Jersey Consumer Fraud Act §56:8-1**

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

124. Defendants have 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.

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

126. By virtue of the foregoing, Defendants have violated N.J. Stat. Ann. §56:8-2.

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

## **COUNT VI**

### **Unjust Enrichment**

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

129. As a result of Defendants' fraudulent and misleading labeling, advertising, marketing and sale of its flushable wipes, Defendants were enriched at the expense of Plaintiff and members of the Class.

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

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

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for relief and judgment against Defendants as follows:

- A. For an order certifying the Class under the appropriate provisions of Federal Rule of Civil Procedure 23, as well as any appropriate subclasses, and appointing Plaintiff and his legal counsel to represent the Class;
- B. Awarding actual and consequential damages;
- C. Awarding injunctive relief;
- D. Awarding declaratory relief;
- E. Awarding treble damages;
- F. Awarding reimbursement, restitution and disgorgement from Defendants of the benefits conferred by Plaintiff and the Class;
- G. For pre- and post-judgment interest to the Class, as allowed by law;
- H. For reasonable attorneys' fees and costs to counsel for the Class if and when pecuniary and non-pecuniary benefits are obtained on behalf of the Class; and
- I. Granting such other and further relief as is just and proper.

#### **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 Defendants for Defendants' violation of the Unfair Trade Practices Statutes, and for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- C. An Order declaring Defendants' practices to be improper, unfair, unlawful and/or deceptive and requiring Defendants to provide refunds to Plaintiff and members of the Class;

D. A temporary, preliminary or permanent injunction: (i) ordering Defendants 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 Defendants from selling flushable wipes until the proper disclosures set forth above are issued; and (iii) ordering Defendants 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: February 21, 2014

ROBBINS GELLER RUDMAN  
& DOWD LLP  
SAMUEL H. RUDMAN  
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