

Commissioners of Public Works of the City of Charleston (d.b.a. Charleston Water System) v. Costco Wholesale Corporation, CVS Health Corporation, Kimberly-Clark Corporation, The Procter & Gamble Company, Target Corporation, Walgreens Boots Alliance, Inc. and Wal-Mart, Inc.
Case No. 2:21-CV-00042

United States District Court for the District of South Carolina, Charleston Division

IF YOU ARE A SEWAGE TREATMENT SYSTEM OPERATOR IN THE UNITED STATES WHOSE SYSTEM WAS IN OPERATION BETWEEN JANUARY 6, 2018 AND OCTOBER 4, 2021, A CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS

*A federal court authorized this Notice. You are **not** being sued.
This is **not** a solicitation from a lawyer.*

- A proposed settlement (“Settlement”) has been reached in the above class action limited to claims against Defendant Kimberly-Clark Corporation (“Kimberly-Clark”). The action challenges the manufacturing, design, marketing and/or sale of multiple Defendants’ flushable wipes.¹ Kimberly-Clark denies the allegations about its flushable wipes and there has been no finding of liability against Kimberly-Clark. Kimberly-Clark has agreed to the Settlement to avoid the uncertainties and expenses associated with continuing the case.
- You are a Settlement Class Member if you own[ed] and/or operate[d] sewage or wastewater conveyance and treatment systems.
- If you are a Settlement Class Member, your legal rights are affected whether you act or don’t act. Read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
Do Nothing	If you do nothing, then you will automatically receive benefits under this Settlement in the form of Kimberly-Clark’s business modifications that are further described in this Notice.
Object	Write to the Court about why you do not like something about the Settlement or Class Counsel’s requested attorneys’ fees and expenses such that it is received no later than December 29, 2021.

¹ The terms of the Settlement are in the Stipulation of Settlement, dated April 21, 2021 (the “Stipulation”), which can be viewed at www.charlestonwipessettlement.com. All capitalized terms not defined in this Notice have the same meanings as in the Stipulation.

**Attend a hearing on
January 24, 2022**

Ask to speak in Court about your opinion of the Settlement and/or the requests for attorneys' fees and expenses. Requests to speak must be received by the Court and counsel for the Parties **no later than December 29, 2021. A Final Fairness Hearing is scheduled for January 24, 2022**

- **There is no need to submit a claim form.** This Settlement provides benefits in the form of business practice modifications that are further detailed on pages 5 - 8 of this Notice. If you do nothing, then you will automatically receive the benefits of this Settlement.
- These rights and options – **and the Court-ordered deadlines to exercise them** – are explained in this Notice.
- The Court in charge of this litigation still has to decide whether to approve the Settlement with Kimberly-Clark.

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BASIC INFORMATION

1. Why should I read this Notice?

The Court authorized this Notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your rights and options, before the Court decides whether to approve the Settlement.

If you operate a sewage or wastewater conveyance and treatment plant, such as a municipality, authority or wastewater district in the United States whose system was in operation between January 6, 2018 and October 4, 2021, you are part of the Settlement Class.

This Notice explains the lawsuit, the Settlement with Kimberly-Clark, and your rights.

The Honorable Judge Richard M. Gergel of the United States District Court for the District of South Carolina is overseeing this class action. The lawsuit is known as *Commissioners of Public Works of the City of Charleston (d.b.a. Charleston Water System) v. Costco Wholesale Corporation, CVS Health Corporation, Kimberly-Clark Corporation, The Procter & Gamble Company, Target Corporation, Walgreens Boots Alliance, Inc. and Wal-Mart, Inc.*, Case No. 2:21-CV-00042.

2. What is this lawsuit about?

This lawsuit challenges the manufacturing, design, marketing and/or sale of flushable wipes by Defendants, including Kimberly-Clark.

3. What is a class action and who is involved?

In a class action lawsuit, one or more people called “Class Representatives” (in this case, Commissioners of Public Works of the City of Charleston) sue on behalf of other people who have similar claims. The people together are a “Settlement Class” or “Settlement Class Members.” The people who sue – and all the Settlement Class Members like them – are called the “Plaintiffs.” The company or companies the Plaintiffs sue (in this case, Kimberly-Clark, among others) is or are called the “Defendant” or “Defendants.” If the court certifies (or approves) the Settlement Class, then one court can resolve the issues for everyone in the Settlement Class.

4. Why is there a Settlement?

The Court has not decided whether Plaintiff City of Charleston or Defendant Kimberly-Clark should win this case. Instead, both sides agreed to a settlement. That way both sides avoid the cost and risks of trial, and Kimberly-Clark will agree to make changes to its policies and practices to benefit Settlement Class Members now rather than years from now, if at all.

More information about the Settlement and the lawsuit is available in the “Court Documents” section of the Settlement Website: www.charlestonwipessettlement.com.

WHO IS IN THE SETTLEMENT CLASS?

You need to decide whether you are affected by this lawsuit.

5. Am I part of the Settlement Class?

If you own[ed] or operate[d] a sewage or wastewater conveyance and treatment system, such as a municipality, authority or wastewater district in the United States whose system was in operation between January 6, 2018 and October 4, 2021, you are part of the Settlement Class.

THE SETTLEMENT BENEFITS

6. What are the benefits of the Settlement with Kimberly-Clark?

Kimberly-Clark has agreed to implement certain modifications to its business practices with respect to the flushable wipes Product, Kimberly-Clark's Cottonelle-branded flushable wipes manufactured in the United States, including any FreshCare or GentlePlus-branded Cottonelle flushable wipes.

(a) Product and Testing Criteria:

(i) Kimberly-Clark commits to Plaintiff, as a representative for the Rule 23(b)(2) settlement class, that Kimberly-Clark flushable wipes manufactured in the United States do not contain plastic.

(ii) Kimberly-Clark commits to meeting the current International Water Services Flushability Group (IWSFG) Publicly Available Specification (PAS) 3 (Disintegration Test) (hereinafter, "IWSFG 2020: PAS 3") flushability specifications for its Product, consistent with usage in §1.22 above, by May 1, 2022, whereby the average percentage of the total initial dry mass of the sample (as described in IWSFG 2020: PAS 3) passing through a 25 mm sieve for the five test pieces drawn from each of four (or, at Kimberly-Clark's election, more) packages of flushable wipes (as further detailed below) after 30 minutes of testing shall be equal to or greater than 80% (at the temperature (20 degrees celsius +/- 2 degrees), volume (4 liters) and RPM (18) specified in IWSFG 2020: PAS 3).

(iii) Kimberly-Clark commits to certify that the Product currently meets all IWSFG 2020 specifications other than the PAS 3 disintegration test. For the disintegration test, the Settling Parties will confirm that Kimberly-Clark currently meets a modified PAS 3 specification of an average pass-through percentage of at least 70% after 30 minutes of testing, with all other parameters remaining the same.

(iv) Plaintiff agrees that upon the Effective Date of the Settlement, Kimberly-Clark can represent that the Product has been tested, and the data reviewed and confirmed by Plaintiff and North American technical consultants who are IWSFG members, to meet the modified PAS 3 specifications set forth in the preceding subparagraph iii. Once the Product meets the IWSFG 2020: PAS 3 specification and all other IWSFG 2020 specifications, Kimberly-Clark may represent that the Product is IWSFG 2020 compliant for a period of at least five years, subject to the on-going testing requirements set forth herein, irrespective of whether IWSFG adopts heightened testing specifications.

(v) Plaintiff agrees that if (1) Plaintiff reaches settlements with other manufacturers, marketers, distributors, or retailers of flushable wipes that require such companies' flushable wipes to comply with specifications more lenient than IWSFG 2020: PAS 3 specifications, or that commit such companies to more lenient testing frequency and testing expense terms, or (2) IWSFG adopts standards more lenient than IWSFG 2020: PAS 3, then Kimberly-Clark's Product needs to only meet those more lenient specifications and monitoring terms to comply with this Stipulation and the resulting Final Judgment.

(b) Testing Implementation/Monitoring:

(i) Kimberly-Clark and Plaintiff to co-promote upon submission of Stipulation for approval and upon preliminary and final approval of the Settlement, including online and in social media, that (1) the Product will soon meet the IWSFG 2020: PAS 3 flushability specifications and, (2) based upon Plaintiff's independent testing and testing by Kimberly-Clark that has been shared with Plaintiff, the Product outperforms all other U.S. marketed flushable wipes tested by the Plaintiff on the IWSFG 2020: PAS 3 disintegration specification;

(ii) Kimberly-Clark and Plaintiff agree to co-promote, upon submission of Stipulation for approval and upon preliminary and final approval of the Settlement, including online and in social media, educational content instructing consumers not to flush non-flushable wipes.

(iii) Kimberly-Clark and Plaintiff agree to engage in such co-promotion again regarding compliance with the IWSFG 2020: PAS 3 flushability specifications once Kimberly-Clark confirms that it meets the IWSFG 2020: PAS 3 flushability specifications.

(iv) Plaintiff agrees to cooperate with inquiries by media and other municipalities and wastewater treatment operators regarding flushability by reiterating that the Product meets the modified PAS 3 specification above and, at the appropriate time, meets the IWSFG 2020 flushability specifications.

(v) Kimberly-Clark will submit to and either (1) host periodic independent testing of the Product, including funding of reasonable costs for Plaintiff-selected representative(s) to participate in and conduct testing, or (2) submit the Product at its cost to a mutually acceptable lab for independent testing (Settling Parties agree in advance that Integrated Paper Services (IPS) lab is an acceptable independent lab), beginning May 1, 2022 (or before at Kimberly-Clark's election) in accordance with agreed-to IWSFG 2020: PAS 3 testing protocols. Testing to be conducted every four months for a period of 24 months with five test pieces drawn from each of at least four (and more at Kimberly-Clark's election) packages of the Product manufactured on or after May 1, 2022 (or such earlier manufacture date that Kimberly-Clark indicates to Plaintiff that the Product is IWSFG 2020: PAS 3-compliant) to be selected by Plaintiff from at least four different states. Kimberly-Clark to have the rights to observe testing, and, if Plaintiff's independent IWSFG: 2020 PAS 3 testing finds the Product non-compliant, to object to such result with its own data. If Kimberly-Clark's data finds the Product compliant, and the Settling Parties cannot resolve inconsistent results, Kimberly-Clark shall submit the Product to IPS within 60 days of receipt of the conflicting results for independent testing in accordance with agreed-to IWSFG 2020: PAS 3 testing protocols. If the Product is thereafter found non-compliant, Kimberly-Clark shall have eight weeks to regain compliance in its wipes manufacturing operations. "Reasonable costs" noted above shall consist of reimbursement of Plaintiff's selected representative for up to eight hours of testing per testing cycle (*i.e.*, every four months) at Plaintiff representative's agreed

hourly rate, and reimbursement of flight, hotel, and incidental travel expenses for Plaintiff's representative.

(c) Label Changes:

(i) Flushable wipes labeling:

1) Upon verification that Kimberly-Clark's Product meets the IWSFG 2020 specifications (including PAS 3), Kimberly-Clark will modify the packaging and websites for the Product to add language specifying the bases or sources for the "flushable" claim that appears on its labeling, including that the Product complies with IWSFG 2020 and INDA GD4 guidelines.

(ii) Non-flushable wipes labeling:

1) Kimberly-Clark will add prominent language or illustration on its non-flushable wipes products (*e.g.*, baby wipes) identifying the non-flushable products as "nonflushable" or instructing users not to flush the non-flushable products (*e.g.*, "Do Not Flush").

2) Kimberly-Clark agrees that all such non-flushable wipes product labeling will meet the "do not flush" labeling standards set forth in Section 3 of House Bill 2565 of Washington State, enacted March 26, 2020 ("HB2565"), except as set forth below.

3) Kimberly-Clark agrees to exceed the standards of Section 3 of HB2565 insofar as it will include "do not flush" symbols or warnings on not only the principal display panel, but also at least two additional panels of packaging for "non-flushable" wipes products.

- Color – "Do Not Flush" symbol to have high contrast to background or otherwise be set apart from background such that the "Do Not Flush" symbol stands out clearly on the packaging as set forth in HB2565 and the circle-backslash symbol be colored red unless product packaging is red, in which case circle-backslash symbol to be colored white or black, and unless required otherwise by law, including aforementioned high contrast requirements. For example, the following symbols provide examples of compliant contrast and verbiage:



- Kimberly-Clark revisits packaging once per year, and Plaintiff agrees that Kimberly-Clark can make any necessary modifications during next regularly scheduled packaging revision, provided the packaging continues to meet the requirements set forth herein.

- Do Not Flush Instructions – Back panel text to provide instruction, in accordance with HB2565, that baby wipes or other non-flushable wipes

are not designed to be flushed and can cause harm to home plumbing, wastewater systems, and the environment if flushed, and notification that if customers wish to flush wipes, they should use Kimberly-Clark's approved flushable Products.

(d) Product Endorsement:

(i) For as long as Kimberly-Clark's flushable Product meets all IWSFG 2020 specifications, Plaintiff to provide its endorsement of Product compliance with IWSFG 2020 as representative for the Rule 23(b)(2) settlement class and to solicit commitment of U.S. municipal wastewater treatment industry including principally North American-based members of IWSFG, such as NACWA, to provide acknowledgement that the Product is, in fact, flushable for municipal sewer systems according to IWSFG 2020. Plaintiff to provide – and in March 2021 did provide – Kimberly-Clark with sample approved press release acknowledging the performance of the Product. Plaintiff agrees that Kimberly-Clark may use such approved press release(s)/acknowledgement(s), and the content therein, in social media posts, with influencers, and on its websites. Further details of press releases and Product-supporting outreach to be discussed between the Settling Parties, including specific plans for Plaintiff and/or IWSFG to educate class members and especially NACWA and its members on how the Product is, in fact, flushable; why the Product is superior to other flushable wipes sold in the United States (based upon testing and other information available to Plaintiff) and non-flushable wipes; and how to address press inquiries regarding flushability issues. Upon compliance with IWSFG 2020: PAS 3 specification and all other IWSFG 2020 specifications, Kimberly-Clark, if it elects, will be permitted to state on its packaging, advertisements, and website for Product that it is "IWSFG 2020 Compliant," and/or if it chooses, use (with any necessary permissions),² *e.g.*, the following symbol, as long as compliance is maintained:



In addition to the above, Kimberly-Clark shall be entitled to state in advertising, packaging, and other marketing materials that the Product meets the 2020 IWSFG flushability specifications and is subject to regular confirmation testing.

7. What am I giving up by not objecting to the Settlement Class?

As a Settlement Class Member, you cannot sue, continue to sue, or be part of any other lawsuit against

² Plaintiff will encourage IWSFG to expeditiously make its logos available for inclusion on Products that satisfy IWSFG specifications such that Kimberly-Clark may include such logos on its qualifying products.

Defendants or the Released Parties about the Plaintiff's Released Claims (as defined below) in this case. It also means that all of the Court's orders will apply to you and legally bind you. If the Settlement is approved, you will give up all claims (as defined below), including "Unknown Claims" (as defined below), against the "Released Parties" (as defined below):

- "Plaintiff's Released Claims" means any and all claims of Plaintiff and the Settlement Class Members for injunctive relief that arise from or relate to the claims and allegations in the Complaint, including Unknown Claims, and the acts, facts, omissions, or circumstances that were or could have been alleged by Plaintiff in the Action, including but not limited to all claims for injunctive relief related to any wipe products (flushable and non-flushable) currently or formerly manufactured, marketed, or sold by Kimberly-Clark or any of its affiliates. For the avoidance of doubt, "Plaintiff's Released Claims" do not include claims for damages or other monetary relief, including, but not limited to, claims for monetary relief under the law of nuisance.
- "Released Parties" means the parties receiving a release, including Plaintiff, Class Counsel, Kimberly-Clark and its present, former, and future, direct and indirect, parents, subsidiaries, affiliates, assigns, divisions, predecessors, and successors, and all of their respective officers, agents, administrators, and employees, Kimberly-Clark's Counsel, and all Settlement Class Members.
- "Unknown Claims" means Plaintiff's Released Claims and all of Defendant's Released Claims that any of the Settling Parties or Settlement Class Members do not know or suspect to exist in his, her, or its favor at the time of the release, which if known by him, her, or it, might have affected his, her, or its decision not to object to this Settlement or release of the Released Parties, Plaintiff, Class Counsel, or Settlement Class Members. With respect to any and all Plaintiff's Released Claims and Defendants' Released Claims, the Settling Parties stipulate and agree that upon the Effective Date, the Settling Parties shall, to the fullest extent permitted by law, fully, finally, and forever expressly waive and relinquish with respect to such claims, any and all provisions, rights, and benefits of Section 1542 of the California Civil Code and any and all similar provisions, rights, and benefits conferred by any law of any state or territory of the United States or principle of common law that is similar, comparable, or equivalent to Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT A CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

YOUR RIGHTS AND OPTIONS

8. How do I object to the Settlement or to the request for attorneys' fees and expenses?

You can object to the Settlement and/or Class Counsel's request for attorneys' fees and expenses.

You can ask the Court to deny approval of the Settlement by filing an objection. You cannot ask the Court to order a different settlement; the Court can only approve or reject the Settlement. If the Court denies approval of the Settlement, no benefits in the form of modifications of Kimberly-Clark's business practices will be made, and the litigation will continue. If that is what you want to happen, you must object.

Any objection to the proposed Settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney.

All written objections must contain the following:

- the name and case number of this lawsuit (*Commissioners of Public Works of the City of Charleston (d.b.a. Charleston Water System) v. Costco Wholesale Corporation, CVS Health Corporation, Kimberly-Clark Corporation, The Procter & Gamble Company, Target Corporation, Walgreens Boots Alliance, Inc. and Wal-Mart, Inc.*, Case No. 2:21-CV-00042);
- your full name, mailing address, email address, and telephone number;
- an explanation of why you believe you are a Settlement Class Member, including documents sufficient to establish the basis for your standing as a Settlement Class Member;
- all reasons for your objection or comment, including all citations to legal authority and evidence supporting the objection;
- whether you intend to personally appear and/or testify at the Final Approval Hearing (either personally or through counsel), and what witnesses you will ask to speak;
- the name and contact information of any and all attorneys representing, advising, and/or assisting you, including any counsel who may be entitled to compensation for any reason related to your objection or comment, who must enter an appearance with the Court in accordance with the Local Rules;
- the name and case number of all class action settlements to which you have objected; and
- your handwritten or electronically imaged signature (an attorney's signature or typed signature is not sufficient).

To be considered by the Court, your objection must be received by the Court either by mailing it to the Class Action Clerk, United States District Court for the District of South Carolina, Charleston Division, J. Waties Waring Judicial Center, 83 Meeting Street, Charleston, South Carolina 29401, or by filing it in person at any location of the United States District Court for the District of South Carolina.

To be considered, your objection must be received **on or before December 29, 2021.**

THE LAWYERS REPRESENTING YOU

9. Do I have a lawyer in this case?

The Court decided that the law firms of Robbins Geller Rudman & Dowd LLP (“Robbins Geller”) and AquaLaw PLC are qualified to represent you and all Settlement Class Members. These firms are called “Class Counsel” and are experienced in handling similar class action cases. More information about Robbins Geller and AquaLaw are available at www.rgrdlaw.com and www.aqualaw.com, respectively.

Class Counsel believe, after investigating and litigating the case for several years, that the Stipulation is fair, reasonable, and in the best interests of the Settlement Class. You will not be separately charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense.

10. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. But if you want your own lawyer, you will have to pay for that lawyer. For example, you can ask him or her to appear in court for you if you want someone other than Class Counsel to speak for you.

11. How will the lawyers be paid?

Class Counsel’s attorneys’ fees and expenses will be paid in an amount to be determined and awarded by the Court. Kimberly-Clark has also agreed to pay reasonable attorneys’ fees and expenses.

Class Counsel will ask the Court to approve attorneys’ fees and expenses from Kimberly-Clark of no more than \$600,000.

The final amount of attorneys’ fees and expenses will be determined by the Court.

Class Counsel’s application for an award of attorneys’ fees and expenses will be made available on the “Court Documents” page of the Settlement Website at www.charlestonwipessettlement.com on the date it is filed or as quickly thereafter as possible.

THE COURT’S FINAL APPROVAL HEARING

12. When and where will the Court decide whether to approve the Settlement with Kimberly-Clark?

The Court is scheduled to hold the Final Approval Hearing on January 24, 2022 at the United States District Court for the District of South Carolina, Charleston Division, J. Waties Waring Judicial Center, 83 Meeting Street, Charleston, South Carolina 29401. The hearing may be rescheduled to a different date, time, or location without another notice to Settlement Class Members. Especially given the national health emergency, the date, time, or location of the hearing may be subject to change, as will the manner in which Settlement Class Members might appear at the hearing. Please review the Settlement Website for any updated information regarding the hearing.

At the Final Approval Hearing, the Court will consider whether the Settlement with Kimberly-Clark is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court may listen to people who appear at the hearing and who have provided notice of their intent to appear at the hearing. The Court may also consider Class Counsel's application for attorneys' fees and expenses.

13. Do I have to come to the Final Approval Hearing?

No. Class Counsel will answer any questions the Court may have. You may attend at your own expense if you wish. If you submit a written objection, you do not have to come to the Court to talk about it. As long as you submit your written objection on time, and follow the requirements above, the Court will consider it. You may also pay your own attorney to attend, but it is not required.

14. May I speak at the Final Approval Hearing?

Yes. You may ask the Court for permission to speak at the Final Approval Hearing. At the hearing, the Court, in its discretion, will hear any objections and arguments concerning the fairness of the Settlement and/or Class Counsel's request for attorneys' fees and expenses.

To do so, you must include in your objection or comment a statement saying that it is your Notice of Intent to Appear in *Commissioners of Public Works of the City of Charleston (d.b.a. Charleston Water System) v. Costco Wholesale Corporation, CVS Health Corporation, Kimberly-Clark Corporation, The Procter & Gamble Company, Target Corporation, Walgreens Boots Alliance, Inc. and Wal-Mart, Inc.*, Case No. 2:21-CV-00042 (D.S.C.). It must include your name, address, email, telephone number, and signature as well as the name and address of your lawyer, if one is appearing for you. Your submission and Notice of Intent to Appear must be filed with the Court and be received **no later than December 29, 2021**.

GETTING MORE INFORMATION

15. How do I get more information?

This Notice summarizes the proposed Settlement. For precise terms and conditions of the Settlement, please see the Stipulation available at www.charlestonwipessettlement.com, by contacting Class Counsel at (804) 716-9021, by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.scd.uscourts.gov/cgi-bin/login.pl>, or by visiting the office of the Clerk of Court for the United States District Court for the District of South Carolina, Charleston Division, J. Waties Waring Judicial Center, 83 Meeting Street, Charleston, South Carolina 29401, between 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

PLEASE DO NOT TELEPHONE OR WRITE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

All questions regarding the Class Settlement or claims process should be directed to Class Counsel.

DATED: October 13, 2021

BY ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF
SOUTH CAROLINA

THE HONORABLE RICHARD M. GERGEL
UNITED STATES DISTRICT JUDGE