

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

|   |                                    |
|---|------------------------------------|
| COMMISSIONERS OF PUBLIC WORKS OF )              | Civil Action No. 2:21-cv-00042-RMG |
| THE CITY OF CHARLESTON (d.b.a. )                |                                    |
| Charleston Water System), Individually and on ) | <u>CLASS ACTION</u>                |
| Behalf of All Others Similarly Situated, )      |                                    |
| Plaintiff, )                                    | JOINT DECLARATION OF VINCENT M.    |
| vs. )   | SERRA AND F. PAUL CALAMITA IN      |
| )   | SUPPORT OF PLAINTIFF'S MOTION FOR  |
| )   | FINAL APPROVAL OF CLASS ACTION     |
| )   | SETTLEMENT AND AN AWARD OF         |
| COSTCO WHOLESALE CORPORATION, )                 | ATTORNEYS' FEES AND EXPENSES       |
| CVS HEALTH CORPORATION, )                       |                                    |
| KIMBERLY-CLARK CORPORATION, THE )               |                                    |
| PROCTER & GAMBLE COMPANY, )                     |                                    |
| TARGET CORPORATION, WALGREEN )                  |                                    |
| CO. and WAL-MART, INC., )                       |                                    |
| Defendants. )                                   |                                    |
| _____ )   |                                    |

Vincent M. Serra declares as follows:

1. I, Vincent M. Serra, am an attorney duly licensed to practice in the States of New York and California, and in the District of Columbia, a partner of the law firm Robbins Geller Rudman & Dowd LLP (“Robbins Geller” or “Class Counsel”), and I represent plaintiff, the Commissioners of Public Works of the City of Charleston (d.b.a. Charleston Water System) (“Plaintiff” or “CWS”), in this action (the “Litigation”).<sup>1</sup> I have been actively involved in the prosecution and resolution of the Litigation, am familiar with its proceedings, and have knowledge of the matters set forth herein based upon my involvement in this Litigation and supervision of or communications with other lawyers and staff assigned to this Litigation.

F. Paul Calamita declares as follows:

2. I, F. Paul Calamita, am an attorney duly licensed to practice in the States of South Carolina, Virginia, Maryland, North Carolina, West Virginia, and Missouri, the chairman of the law firm AquaLaw PLC (“AquaLaw” or “Class Counsel”), and I represent Plaintiff in this Litigation. I have been actively involved in the prosecution and resolution of the Litigation, am familiar with its proceedings, and have knowledge of the matters set forth herein based upon my involvement in this Litigation and supervision of or communications with other lawyers and staff assigned to this Litigation.

3. Attached are true and correct copies of the following exhibits:

Exhibit A Confirmation of Email Notice

Exhibit B Excerpt of the WE&T November 2021 Issue with Summary Notice

Exhibit C Email Correspondence with Mauriceville Municipal Utility District

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<sup>1</sup> All capitalized terms that are not otherwise defined herein have the same meanings ascribed to them in the Class Action Settlement Agreement, dated April 21, 2021 and filed April 26, 2021, ECF No. 59-2 (“Settlement Agreement”).

Vincent M. Serra and F. Paul Calamita, declare as follows:

4. We respectfully submit this Declaration in support of: (1) Plaintiff’s Motion for Final Approval of Class Action Settlement; and (2) Class Counsel’s Application for an Award of Attorneys’ Fees and Expenses. This Declaration demonstrates why the proposed Settlement is fair, reasonable, adequate, in the best interests of the Settlement Class (defined below), and warrants final approval by the Court. This Declaration also demonstrates the basis for Class Counsel’s request for an award of attorneys’ fees of \$560,655.27 and expenses of \$29,344.73.

## **I. THE NATURE AND PROCEDURAL HISTORY OF THE LITIGATION**

### **A. Summary of Plaintiff’s Allegations**

5. This is a putative class action brought against settling defendant Kimberly-Clark Corporation (“Kimberly-Clark” or “Defendant”) – a leading, if not the leading, manufacturer of flushable wipes (referred to herein as “Flushable Wipes”) in the country – and non-settling defendants Costco Wholesale Corporation, CVS Health Corporation, The Procter & Gamble Company, Target Corporation, Walgreen Co., and Wal-Mart, Inc. (the “Non-Settling Defendants”) (together with Kimberly-Clark, “Defendants”) alleging that Defendants’ deceptive, improper, or unlawful conduct in the design, marketing, manufacturing, distribution, and/or sale of flushable wipes caused recurring property damage. The action asserts causes of action against Defendants – the dominant manufacturers and/or sellers in the Flushable Wipes market – for nuisance, trespass, defective design, failure to warn, and negligence on behalf of a proposed settlement class (“Settlement Class”) consisting of all entities that own and/or operate sewage or wastewater conveyance and treatment systems, including municipalities, authorities and wastewater districts (sewage treatment plant, or “STP Operators”) in the United States whose systems were in operation between January 6, 2018 and October 4, 2021 (the “Settlement Class Period”), the date of entry of the Preliminary Approval Order (defined below).

6. As described in the Amended Class Action Complaint (“Amended Complaint”), Plaintiff alleges that Defendant’s Cottonelle-branded flushable wipes (the “Product”)<sup>2</sup> are unsuitable for flushing, making them improperly labeled as “flushable” or “safe for sewer and septic systems.” ¶¶28-47.<sup>3</sup> Plaintiff alleges that the Product does not disperse in a sufficiently short amount of time to avoid clogging or other operational problems, as indicated by independent testing and numerous instances of clogs and backups in wastewater systems nationwide, and thus causes ongoing damage to STP Operators’ sewer treatment facilities. ¶¶39-99. The Amended Complaint describes various “flushability” testing of Defendants’ Flushable Wipes that highlights the lack of empirical support for Defendants’ “flushable” claims (¶¶39-47), and details wastewater utilities’ negative experiences with Flushable Wipes, including their costly efforts to address and remediate damage caused in part by Defendants’ products. ¶¶63-99.

7. Notably, Plaintiff’s experience with Flushable Wipes includes a massive 12-foot-long clog removed from its system in October 2018 (causing over \$140,000 in damage) and another major clog in June 2019 (causing approximately \$60,000 in damage). ¶¶51-54. To address the ongoing problems associated with Defendants’ Flushable Wipes, Plaintiff has invested more than \$2 million over the past 8 years to install a Supervisory Control and Data Acquisition (“SCADA”) system at each of its 213 pump stations, to allow for continuous remote monitoring of each pump station to provide early notification of potential wipe-related clogs. ¶56. Plaintiff has also installed

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<sup>2</sup> The Product is defined by the Settling Parties as “Kimberly-Clark’s Cottonelle-branded flushable wipes manufactured in the United States, including any FreshCare or GentlePlus-branded Cottonelle flushable wipes.” Settlement Agreement at ¶1.19.

<sup>3</sup> References to “¶\_\_” and “¶¶\_\_” refer to the Amended Complaint, filed on August 12, 2021. ECF No. 85. As discussed below, at the time the parties executed the Settlement Agreement, Plaintiff’s original complaint, filed on January 6, 2021 (the “Complaint”) (ECF No. 1), was the operative pleading. As the Amended Complaint acknowledges, since the filing of the original Complaint, Plaintiff has learned that Kimberly-Clark’s flushable wipes now perform exceedingly better than those of the Non-Settling Defendants.

screens and/or bar screen overlays within approach channels at vortexes to capture and remove wipes, which cost \$120,000 in the past five years. *Id.*

8. The Amended Complaint seeks injunctive relief only – in the form of accurate and truthful labeling – to remedy costly and ongoing damage to Plaintiff’s wastewater facilities due in significant part to the inability of Defendants’ purportedly “flushable” wipes to break down and disperse sufficiently to pass through Plaintiff and Class members’ wastewater systems. ¶1; *Id.* at Prayer for Relief, C-G.

### **B. Procedural History of the Litigation and Settlement**

9. Class Counsel’s efforts in connection with the Litigation and on behalf of Plaintiff began years before the filing of the Complaint. Indeed, Class Counsel began its factual investigation in November 2018, shortly after it was first reported that Flushable Wipes contributed to major clogging of CWS’s sewer system and facilities. Even before then, Robbins Geller was litigating an analogous case on behalf of a different STP Operator against similar Defendants in the Eastern District of New York – *The Preserve at Connetquot Homeowners Association, Inc. v. Costco Wholesale Corporation, et al.*, No. 2:17-cv-07050-JFB-AYS. In *Preserve*, plaintiff’s expert consultant – Robert Villée, the former Executive Director of the Plainfield Area Regional Sewerage Authority and former chair of WEF, received testing data from, and conducted testing in coordination with, Kimberly-Clark in December 2018 in connection with separate settlement discussions. Mr. Villée also advised Plaintiff here in connection with Plaintiff’s investigation and, ultimately, the settlement negotiations discussed below.

10. Class Counsel’s investigation of the Litigation included a review of publicly available information, including, *inter alia*, countless media reports, flushability testing results, an FTC investigation, and pending litigation against Defendants. The investigation also included extensive communications with CWS about its experience dealing with Flushable Wipes at its facilities, and

coordination with industry experts and consultants – including Mr. Villée and Barry Orr, a prominent wastewater industry specialist and representative of the Canadian Water and Wastewater Association on the International Water Services Flushability Group (“TWSFG”), a group of water associations, utilities, and professionals focused on flushability – who advised Class Counsel on factual bases of Plaintiff’s claims. Plaintiff’s thorough investigation informed the allegations in the Complaint, and after over two years of conducting its pre-suit investigation, on January 6, 2021, Class Counsel filed a detailed 59-page, 180-paragraph Complaint, setting forth claims for nuisance, trespass, defective design, failure to warn, and negligence on behalf of STP Operators in South Carolina and throughout the country.

11. Long before the filing of the Complaint, however, and recognizing the strength of Plaintiff’s claims and their unique experience with flushable wipes-related litigation and municipal water issues, along with the desire to minimize expenses incurred by the proposed Classes, Class Counsel initiated settlement discussions with Kimberly-Clark beginning in late 2019. Specifically, in December 2019, Class Counsel informed counsel for Kimberly-Clark that it was preparing to file a putative class action in federal court on behalf of a nationwide class of STP Operators, seeking injunctive relief in connection with several companies’ manufacturing, design, marketing and/or sale of Flushable Wipes, including Kimberly-Clark’s Cottonelle-branded Flushable Wipes (the “Proposed Action”). These discussions, which included some limited information sharing between Plaintiff and Kimberly-Clark, picked up where earlier discussions between counsel for Plaintiff and Kimberly-Clark in *Preserve* left off.

12. In April 2020, counsel for Plaintiff and Kimberly-Clark began discussing the possibility of resolving the Proposed Action as part of an anticipated mediation in another separate, but related case: *Kurtz v. Kimberly-Clark Corporation, et al.*, No. 1:14-cv-01142-PKC-RML

(E.D.N.Y.), a certified consumer class action on behalf of New York purchasers of Kimberly-Clark and Costco Wholesale Corporation's flushable wipes. In May 2020, counsel for Plaintiff and Kimberly-Clark set a date for the mediation in *Kurtz* and thereafter continued their discussions about settlement of the Proposed Action in the months and weeks leading up to the mediation. On July 15, 2020, in connection with the mediation, Plaintiff submitted a proposal to resolve the Proposed Action, including proposed labeling changes and independent testing of the Product in consultation with its consultants. Despite their good-faith efforts, Plaintiff and Kimberly-Clark did not reach an agreement to settle the Proposed Action at the time.

13. After Plaintiff filed the Complaint, the Settling Parties continued engaging in arm's-length settlement discussions. On February 4, 2021, Class Counsel provided Kimberly-Clark with updated proposed settlement terms. Over the ensuing approximately seven weeks, Class Counsel and Defense Counsel exchanged more than a half-dozen drafts of a proposed term sheet and engaged in approximately a half-dozen teleconferences to discuss the terms of the proposed settlement. During this time, Class Counsel continued to develop the agreed-to injunctive relief terms in consultation with prominent members of the wastewater industry and IWSFG. By March 29, 2021, Class Counsel and Defense Counsel formally executed the term sheet.

14. Class Counsel took the lead role in drafting the Settlement Agreement and related exhibits, including the long form and summary notices. On April 9, 2021, Plaintiff, Class Counsel, Defense Counsel, and various Kimberly-Clark business and legal personnel met virtually via a Microsoft Teams video conference to discuss the performance of the Product. This discussion covered both the Product's current performance, and future performance changes to the Product that would be made pursuant to the term sheet. The discussion also covered Kimberly-Clark's commitment to educate consumers not to flush non-flushable wipes, including its agreement under

the term sheet to enhance its labeling of non-flushable wipes. Thereafter, the Settling Parties exchanged several drafts of the proposed agreement and supporting documents and, on April 21, 2021, executed the Settlement Agreement.

15. Plaintiff filed a Motion for Preliminary Approval of Class Action Settlement (the “Preliminary Approval Motion”), with an accompanying memorandum of law and exhibits, on April 26, 2021. ECF No. 59. The Non-Settling Defendants filed a response to the Preliminary Approval Motion on May 25, 2021, requesting that the Court deny or delay the motion until after the Court rules on their then-pending Joint Motion to Dismiss. ECF No. 70. Plaintiff filed a reply on June 8, 2021, arguing that the Court need not delay its ruling on the Preliminary Approval Motion due to the pendency of the Joint Motion to Dismiss. ECF No. 76. On July 15, 2021, in response to two letters received by Class Counsel and the Court from putative class members who believed that the scope of the release in the Settlement Agreement could include both injunctive and monetary relief (ECF Nos. 80-81), Plaintiff informed the Court that – after extensive communications between Class Counsel, Defense Counsel and the putative class members – the Settling Parties had agreed to amend the Settlement Agreement’s definition of “Plaintiff’s Released Claims” to include the following “avoidance of doubt” provision at the end of the definition:

“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.

ECF No. 83 at 2.

16. In an Order dated August 2, 2021, the Court denied the Non-Settling Defendants' Joint Motion to Dismiss without prejudice and granted Plaintiff leave to file an amended complaint. Plaintiff filed the Amended Complaint on August 12, 2021, and on August 25 and September 9, 2021, the Court held proceedings on the Preliminary Approval Motion during which the Settling Parties agreed to: (1) supplement the notice provisions in the Settlement Agreement to provide direct, mailed notice to 17,297 potential Settlement Class Members consisting of publicly owned sewage treatment plant operators located in the United States as of August 27, 2021; and (2) publish the Summary Notice in both the print and online editions of the Water Environment Federation's ("WEF") magazine, *Water Environment & Technology*. See ECF No. 98 at 3. Additionally, the Settling Parties filed a copy of the proposed postcard notice with the Court on September 14, 2021 (ECF No. 97), and Class Counsel provided a hard copy of the notice to the Court for inspection.

17. The Court granted Plaintiff's Preliminary Approval Motion on October 4, 2021 (the "Preliminary Approval Order") (ECF No. 98), and issued an Order Regarding Timeline for Proposed Settlement on October 13, 2021, establishing various deadlines regarding the Settlement. ECF No. 110. Pursuant to these Orders, by October 21, 2021—four days in advance of the deadline for publishing Notice of the Settlement—Class Counsel had emailed Notice to the State publicly owned treatment works wastewater associations and other entities identified in ¶7.2 of the Settlement Agreement (*see* Ex. A attached hereto), and developed and activated a website dedicated to the Settlement with pertinent information for Settlement Class Members, including the Notice and other case and settlement-related documents, the deadlines associated with the Settlement, answers to FAQs, and Class Counsel's contact information (address, phone and email) should Settlement Class Members have additional questions about the Settlement. Settlement Agreement at ¶7.3; [www.charlestonwipessettlement.com](http://www.charlestonwipessettlement.com).

18. The Notice apprised Settlement Class Members of their right to, and the deadline by which they must, object to the Settlement and Class Counsel's application for the requested attorneys' fees and expenses. The Notice also states that Settlement Class Members can request to speak about their opinion of the Settlement and/or the requests for attorneys' fees and expenses at the Final Approval Hearing, details information about the Settlement and its benefits, and provides further explanation about the various ways to receive additional information about the Settlement. Additionally, Class Counsel coordinated and caused the Summary Notice to be published in the November 2021 print and online editions of WEF's *Water Environment & Technology* magazine. *See* Ex. B attached hereto.

19. Class Counsel also supervised the efforts of Gilardi & Co. LLC ("Gilardi") to disseminate the First-Class mail notice to Settlement Class Members and to oversee and effectuate publication of notice via press release. Submitted herewith is the Declaration of Ross D. Murray Regarding Notice Dissemination and Publication, which attests to the services that Gilardi has performed, including that these notices having been mailed to over 17,000 Settlement Class Members and transmitted over *Business Wire*.

20. To date, there have been no formal objections from any Settlement Class Member. Class Counsel have received one email purporting to object, without explanation, to the Settlement and request for attorneys' fees and expenses (*see* Ex. C attached hereto), but that correspondence did not include any of the information required to be considered a valid objection. *See* ECF No. 59-2 at 40 (Notice detailing requirements for written objections). Most notably, the email – submitted by the Mauriceville Municipal Utility District ("Mauriceville") – failed to include the reasons for the objection. Within 24 hours of receiving the email, Class Counsel responded to Mauriceville and advised it to write to the Court should it continue to desire to formally object to the Settlement and

directed Mauriceville to the Settlement website FAQs page containing the details about objecting to the proposed Settlement that are included in the Notice. Ex. C. To date, Class Counsel is unaware of Mauriceville filing an objection with, or otherwise submitting any objection to, the Court.

## **II. THE SETTLEMENT**

### **A. The Settlement Was Fairly, Honestly, and Aggressively Negotiated by Counsel Who Endorse the Settlement**

21. The terms of the Settlement were negotiated by the Settling Parties at arm's length through adversarial, good faith negotiations. The Settlement was reached only after extensive settlement negotiations seeking to resolve the Litigation before it was filed, including through mediation in the *Kurtz* action, and after a virtual meeting with Kimberly-Clark business and legal personnel to discuss current and future Product performance and labeling improvements. Thus, after approximately sixteen months of negotiations on behalf of and between the Settling Parties, Class Counsel were ultimately able to ensure that Kimberly-Clark would commit to meeting specific flushability standards (including the IWSFG Publicly Available Specification (PAS) 3 (“Slosh Box” Disintegration Test)) (“IWSFG 2020: PAS 3”), submit to periodic independent testing, implement modifications to the packaging of both flushable and non-flushable products, and promote content instructing consumers not to flush non-flushable wipes. Settlement Agreement at ¶2.1.

22. Class Counsel have extensive experience representing public utilities and other governmental entities in complex and other litigation in federal and state courts nationwide. Robbins Geller is actively engaged in flushable wipes-related litigation in the *Kurtz* matter, and has achieved favorable results in a variety of important and unprecedented complex class actions. *See, e.g.*, <https://www.rgrdlaw.com/services-litigation-consumer-fraud-privacy-litigation.html>. Likewise, AquaLaw is a preeminent firm with a wide-ranging municipal water practice, serving public utilities

and other entities nationwide and litigating a wide range of disputes in courts involving water and infrastructure. *See, e.g.*, [www.aqualaw.com/our-focus/](http://www.aqualaw.com/our-focus/).

23. Defense Counsel are experienced lawyers from Sidley Austin LLP (“Sidley”), a well-respected top defense firm with offices worldwide, and Metcalfe and Atkinson, LLC, both with reputations for vigorous advocacy in the defense of complex class action litigation. Indeed, according to the National Law Journal, Sidley placed 6th on The American Lawyer’s 2021 Am Law 200 ranking and was ranked as the 7th highest grossing law firm in the world. *See* <https://www.law.com/law-firm-profile/?id=274&name=Sidley&slreturn=20211109005919> (last visited Dec. 13, 2021). Defense Counsel continue to deny any wrongdoing or legal liability for any wrongdoing on behalf of Kimberly-Clark, and have vigorously pressed their client’s defenses and would continue to do so.

24. The volume and substance of Class Counsel’s knowledge of the merits and potential weaknesses of Plaintiff’s claims are adequate to support the Settlement. It took hard and diligent work by skilled counsel to develop the facts and theories which persuaded Defendant to enter into serious settlement negotiations months, and indeed over a year, before Plaintiff even filed the Complaint. As discussed above, Class Counsel conducted an extensive factual investigation beginning over two years before the filing of the Complaint, including coordination with industry experts and consultants and the review of extensive media reports, testing analyses, and pending litigation against Defendant. Class Counsel also thoroughly researched the law applicable to the claims of the Settlement Class and applicable defenses thereto, including analyzing the strengths and weaknesses of numerous other unsuccessful class actions on behalf of STP Operators against Defendant regarding alleged misrepresentations in connection with the sale of Flushable Wipes, and developed a robust Complaint. Class Counsel gained even greater knowledge of the merits of

Plaintiff's claims as a result of the extensive initial discussions with Defendant, and based on Robbins Geller's history of litigating flushable wipes-related claims against Kimberly-Clark and other defendants. The accumulation of these efforts permitted Plaintiff and Class Counsel to be well-informed of the strengths and weaknesses of their case and to engage in effective settlement discussions with Defendant.

25. In deciding to enter into the Settlement, Plaintiff and Class Counsel considered, among other things, the substantial immediate benefit to Settlement Class Members under the terms of the Settlement Agreement, and the risks of continued litigation, including the legal hurdles and risks involved in opposing a motion to dismiss and motion for summary judgment, as well as the further risk, delay, and expense in ultimately proving liability and damages, particularly in a case such as this where causation issues – highlighted in the Non-Settling Defendants' two Joint Motions to Dismiss (*see, e.g.*, ECF Nos. 46-1 at 11-14 and 108-1 at 10-13) – are highly contested.

26. After filing the Complaint, Class Counsel – through their expert Barry Orr – independently tested the performance of Defendant's Flushable Wipes, which performed substantially better than other Defendants' products, further informing its decision regarding the Settlement. Additionally, during a lengthy Microsoft Teams video conference, Defense Counsel and business personnel provided a thorough and detailed presentation of information of not only the then-current performance of Kimberly-Clark's Flushable Wipes, but also Defendant's plans to achieve the specific flushability standards as well as planned product labeling improvements pursuant to the Settlement.

#### **B. The Terms of the Settlement**

27. The Settlement provides meaningful injunctive relief in response to Plaintiff's claims, including: (1) enhanced Product performance; (2) confirmatory Product performance testing; (3) Product labeling improvements; and (4) public outreach about flushable and non-flushable wipes.

*First*, Kimberly-Clark has agreed to certain product and testing criteria, including implementing manufacturing improvements to ensure that the Product meets the IWSFG 2020: PAS 3 flushability specifications by May 1, 2022, and ensuring that the Product currently meets all other IWSFG 2020 specifications and 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. Settlement Agreement at ¶2.1(a).<sup>4</sup>

28. *Second*, Kimberly-Clark has agreed to certain testing implementation and monitoring, including two years of confirmatory testing to verify that the Product continues to meet the IWSFG 2020 specifications after May 2, 2022, either by: (1) hosting periodic independent testing of the Product; or (2) submitting the Product to a mutually acceptable lab for independent testing beginning May 1, 2022. Settlement Agreement at ¶2.1(b).

29. *Third*, Kimberly-Clark has agreed to labeling changes for both flushable and non-flushable products. For flushable products (*i.e.*, the Product), upon verification that the Product meets 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. Settlement Agreement at ¶2.1(c)(i). For non-flushable labeling, 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-

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<sup>4</sup> The Slosch Box Disintegration Test is a testing metric widely used in the flushable wipes industry, including by certain Defendants’ own trade association – “INDA,” the Association of the Nonwoven Fabrics Industry – to determine flushability. The IWSFG 2020: PAS 3 Slosch Box Disintegration Test contains a testing methodology and acceptance criteria far more stringent than INDA’s own Slosch Box Disintegration Test contained in the Guidelines for Assessing the Flushability of Disposable Nonwoven Products (GD4) given, *inter alia*, the IWSFG’s significantly shorter test duration, lower RPMs (causing less disturbance to the wipes during the test period) and higher percentage “pass through” threshold.

flushable products (*e.g.*, “Do Not Flush”), and 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”). *Id.* at ¶2.1(c)(ii). Kimberly-Clark also agreed that it would exceed the standards 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, and will include certain high contrast coloring to its “Do Not Flush” symbol. *Id.*

30. *Fourth*, beyond product improvements and labeling enhancements, Kimberly-Clark has agreed to work with Plaintiff to instruct consumers not to flush non-flushable wipes and to conduct outreach to help educate consumers about which wipes are truly flushable, including promoting its compliance with IWSFG 2020: PAS 3. *Id.* at ¶2.1(b)(i)-(iii).

**C. The Settlement Eliminates the Risks and Any Potential Delay of Injunctive Relief for Plaintiff and the Settlement Class**

31. During the Settling Parties’ preliminary discussions, and in other previous flushable wipes litigations against Kimberly-Clark, Defendant previewed many of its forthcoming arguments at various stages of the Litigation, including the motion to dismiss and summary judgment stages. Defendant would attempt to refute Plaintiff’s allegations concerning and/or supporting standing, causation, the viability of a nationwide class, and Plaintiff’s request for a permanent injunction. Indeed, these are the very same arguments that the Non-Settling Defendants have already made in their Joint Motion to Dismiss, which Kimberly-Clark likely would have joined absent the Settlement. While Plaintiff has now defeated that motion (ECF No. 122), it cannot be certain that the Court will continue to reject those arguments in the future – particularly at the summary judgment stage – and as a result Plaintiff faces the risk of failing to obtain meaningful injunctive relief for the Settlement Class. For example, causation and the viability of a nationwide class, at a

minimum, would be costly and hotly contested issues if the Litigation continued. The Settlement, therefore, eliminates this risk and provides substantial, immediate benefits to the Settlement Class.

32. The process of ultimately proving liability and entitlement to injunctive relief requires further expert work in examining the performance of Defendant's Flushable Wipes, exchanging expert reports and rebuttal reports, taking expert depositions, briefing *Daubert* motions and/or holding *Daubert* hearings, briefing summary judgment, and prevailing at trial. This is a costly and time-consuming process that is not guaranteed to enhance the injunctive relief the Settlement Class is currently expected to receive under the Settlement terms described above.

33. Based on their extensive experience in flushable wipes-related litigation, water and wastewater-related issues, class action litigation, and in this case, and after weighing the substantial benefits of the Settlement against the numerous obstacles to recovery after continued litigation, Class Counsel maintains that the Settlement is fair, reasonable, and in the best interest of the Settlement Class.

### **III. CLASS COUNSEL'S REQUESTED AWARD OF ATTORNEYS' FEES AND EXPENSES IS REASONABLE**

34. Class Counsel has substantial experience representing public utilities and other entities in complex cases, including in this District and in district courts throughout the Fourth Circuit. As described above, Class Counsel brought their substantial experience to bear, working efficiently and diligently to obtain an excellent result for the Settlement Class on a wholly contingent basis. The lodestar multiplier for the requested fee is 0.56, and the total requested fee and expense award of \$590,000 is less than described in the Notice. Class Counsel's experience and advocacy were required in presenting the strengths of the case from the initiation of their investigation to the Settlement and thereafter, in an effort to achieve the best possible settlement and convince Defendant, its insurers, and Defense Counsel of the risks Defendant faced from litigating Plaintiff's

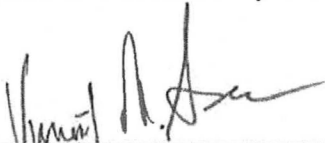
claims. The Settlement represents a substantial recovery for the Settlement Class, attributable to the diligence, determination, hard work, and reputation of Class Counsel. In light of Class Counsel's significant efforts in the face of numerous risks, we respectfully submit that the fee request is reasonable and warrants approval.

#### IV. CONCLUSION

35. Given that the Settlement will result in critical injunctive relief in ensuring, *inter alia*, that Kimberly-Clark's Flushable Wipes meet the national municipal wastewater standard for flushability and that Kimberly-Clark's non-flushable wipes are more prominently labeled as not being flushable, and the uncertainty surrounding whether Plaintiff would have ultimately prevailed, Class Counsel respectfully submits that the Settlement is fair, reasonable, and adequate, and warrants final approval. Class Counsel also submits that its request for an award of attorneys' fees of \$560,655.27 and an award of expenses of \$29,344.73 is reasonable and warrants this Court's approval.

We declare under penalty of perjury that the foregoing is true and correct.

Executed this 13th day of December, 2021.

  
\_\_\_\_\_  
VINCENT M. SERRA  
\_\_\_\_\_  
F. PAUL CALAMITA

# EXHIBIT A

## NOTICE OF CHARLESTON FLUSHABLE WIPES SETTLEMENT (Revised)

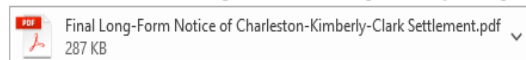


Amanda Waters

To ● Amanda Waters

Cc ● Paul Calamita; ● Meghan Morel; ○ vserra@rgrdlaw.com

Bcc ○ Jaco, Joey D; ○ Adam Link; ○ burkeiii.kevin@comcast.net; ○ ptucker@yorksewerdistrict.org; ○ cphipp@aacounty.org; ○ smyers@stlmsd.com; ○ MBarry@newea.org; ○ TJ.Lynch@raleighnc.gov; ○ pgallos@aeaj.org; ○ mhara@uswateralliance.org; ○ Alexander, Rees; ○ Winters, Karen A.; ○ bilheimer@municipalauthorities.org; ○ ron.patel@dallascityhall.com; ○ Mike McEvoy (mike.mcevoy@westernvawater.org); ○ David Sago; ○ RickMealy1@gmail.com; ○ cternieden@wef.org; ○ wmarlowe@wef.org; ○ Adam Krantz; ○ Cynthia Finley; ○ Amanda Aspatore; ○ matt@nrwa.org; ○ mchase@naco.org; ○ anthony@nlc.org; ○ sgrayson@apwa.net; ○ sberry@uswateralliance.org; ○ jgreen@oawu.net; ○ Nathan Gardner-Andrews



↩ Reply   ↩ Reply All   → Forward   ...

Thu 10/21/2021 1:59 PM

*[Revised to include list of associations]***Notice of Charleston Flushable Wipes Settlement**

To the wastewater/governmental associations listed at bottom:

Please be advised that the federal district court in Charleston, South Carolina, has given preliminary approval to a proposed [Class Action Settlement](#) between Plaintiff Charleston Water System and Defendant Kimberly-Clark Corporation ("Kimberly-Clark") addressing Kimberly-Clark's flushable and non-flushable wipe products.

The settlement does not affect any of your members' potential individual claims against wipe manufacturers for damages or other monetary relief due to wipes-related blockages. However, if approved, Kimberly-Clark will implement certain modifications to its business practices with respect to flushable wipes, as well as labeling requirements for non-flushable wipes, and Settlement Class Members will release any and all claims for injunctive relief they may have against Kimberly-Clark arising from or relating to Plaintiff's allegations. Your members who own wastewater treatment plants/systems should review this [settlement](#) as their legal rights are affected whether or not they act.

We are providing you with notice of the settlement pursuant to Section 7.2 of the [Settlement Agreement](#) and kindly request that you forward the attached notice to your membership, which includes Settlement Class Members. We ask that you confirm that you have forwarded or intend to forward this notice to your members. I also welcome you sharing a copy of your notice with me so that we may verify to the Court that we alerted you of the opportunity for your members to comment.

We believe the settlement is outstanding in terms of ensuring that Kimberly-Clark's Cottonelle Flushable Wipes will meet a national municipal flushability standard for flushable wipes and Kimberly-Clark will provide much improved notice on its packages of non-flushable wipes that such wipes should not be flushed. In combination we believe this settlement will significantly reduce collection system impacts from Kimberly-Clark's products, and eventually other manufacturers' products, given that this settlement will set a precedent/standard for the rest of the industry.

If you or any of your members have any questions, please contact me or Class Counsel, Paul Calamita, AquaLaw, via email at [paul@aqualaw.com](mailto:paul@aqualaw.com). Thank you.

Sincerely,

Amanda Waters

Attorney

AquaLaw

(804) 716-9021 x209

Cell: (202)-870-0427

[www.AquaLaw.com](http://www.AquaLaw.com)

# EXHIBIT B

wef

16

Water, Sanitation  
& Hygiene

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CS11  
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Water  
Reuse

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Pumps &  
Motors

WATER ENVIRONMENT & TECHNOLOGY

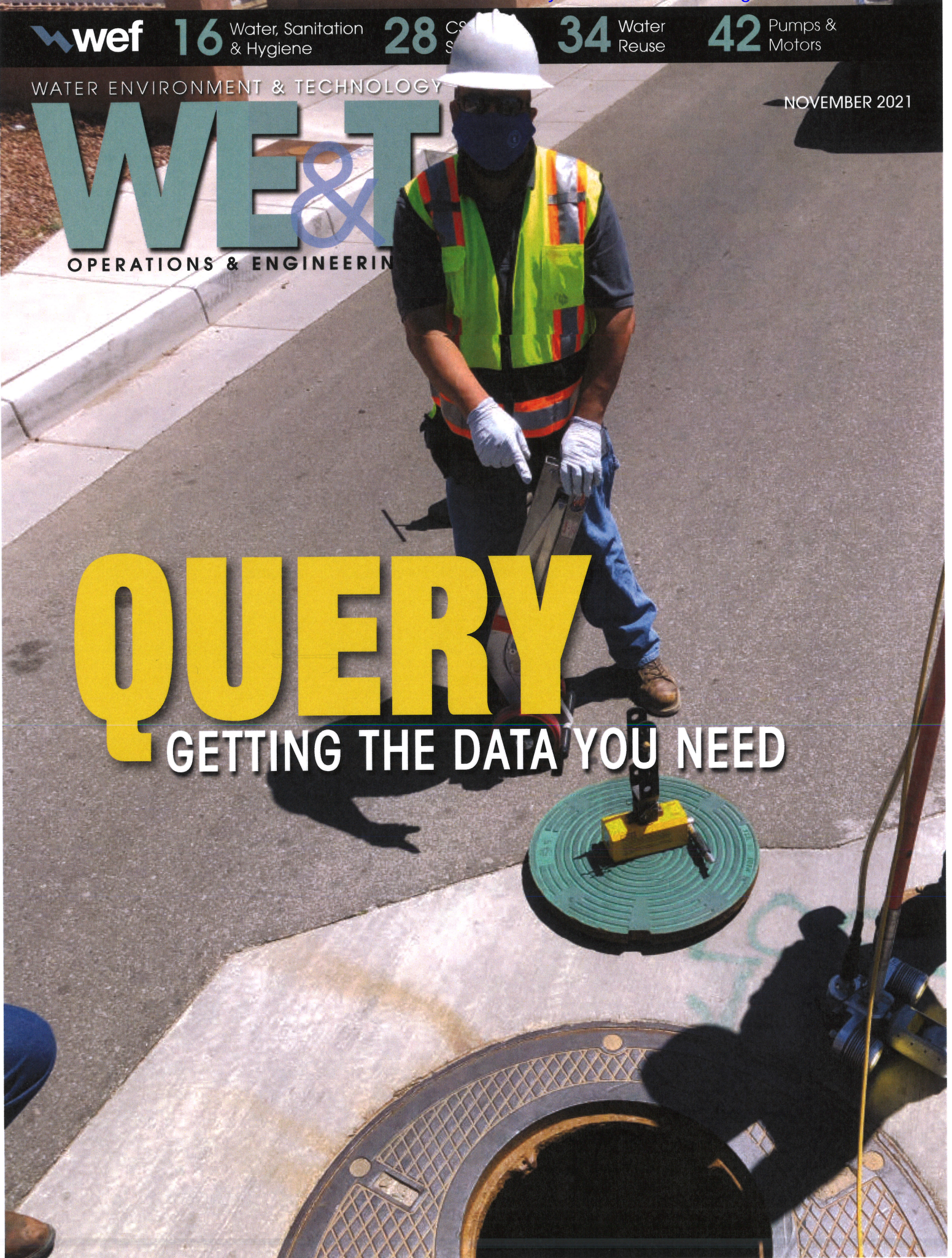
**WE&T**

OPERATIONS & ENGINEERING

NOVEMBER 2021

# QUERY

GETTING THE DATA YOU NEED



# PRODUCTS

## Turbidity Analyzer

Electro-Chemical Devices (Anaheim, California)

► [www.edi-cp.com](http://www.edi-cp.com)

**1** The new TR82 Turbidity Analyzer has a precision nephelometric turbidity sensor designed for use in either municipal or industrial water and wastewater treatment systems. The TR82 gives process and plant engineers an accurate and dependable solution to ensure that their treatment systems are performing at high efficiency and low cost to serve a wide range of needs. With its clear water sensor, the TR82 is designed for use in all phases of drinking water treatment and disinfection. It is ideal for monitoring ground water sources or surface water storage lakes, basins, lagoons, or ponds, as well as in the control of clear rinse water and in filter rupture or backwash monitoring systems.



## Industrial Monitors

TRU-Vu Monitors Inc. (Arlington Heights, Illinois)

► [www.Tru-VuMonitors.com](http://www.Tru-VuMonitors.com)

**2** The VM-13.3G 13.3-in. monitors have new video displays that provide excellent image quality and long-term reliability. They feature 1920 × 1080 full high-definition resolution and 400 nits of brightness, ensuring brilliant, color images. The powder-coated steel enclosure and TRU-Tuff treatment ensures maximum shock and vibration resistance for demanding applications. An operating temperature of -4° F to 158° F ensures that the monitors can operate in a wide range of environments. The VM-13.3G monitors have applications in manufacturing plants, refineries, military and police vehicles, surveillance systems, and are backed by a full 3-year warranty.



### WIPES SETTLEMENT- 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 with Defendant Kimberly-Clark Corporation ("Kimberly-Clark") limited to claims against Kimberly-Clark. The action challenges the manufacturing, design, marketing and/or sale of multiple Defendants' flushable wipes.<sup>1</sup> 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.

**WHO IS IN THE SETTLEMENT CLASS?** If you own[ed] or operate[d] 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. The Court-certified Settlement Class is defined as "All STP (Sewage Treatment Plant) Operators in the United States whose systems were in operation between January 6, 2018 and October 4, 2021."

**WHAT DOES THE SETTLEMENT WITH KIMBERLY-CLARK PROVIDE?** Kimberly-Clark has agreed to implement certain modifications to its business practices and the Settling Parties have made certain representations and commitments 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. The details of these business practice modifications and the terms of the settlement are set forth in the Notice which is located at [www.charlestonwipessettlement.com](http://www.charlestonwipessettlement.com).

**YOUR RIGHTS AND OPTIONS? Do Nothing.** By doing nothing, you will receive the benefits of the Settlement with Kimberly-Clark in the form of business practice modifications described in the Notice. You will automatically receive the benefits of this Settlement. **Object to the Settlement or the request for attorneys' fees and expenses.** You can object to the Settlement and/or Class Counsel's request for attorneys' fees and expenses of up to \$600,000.

**Should I Hire an Attorney?** You do not need to hire your own attorney because Class Counsel is working on your behalf. If you retain an individual attorney, you will need to pay for that attorney.

**Final Approval Hearing.** The Court will hold the Final Approval Hearing on January 24, 2022 at 10:00 a.m. at the U.S. District Court, Charleston Division, J. Waties Waring Judicial Center, 83 Meeting Street, Charleston, South Carolina 29401. You can go to this hearing, but you do not have to. The Court will hear any objections, determine if the Settlement with Kimberly-Clark is fair, and consider Class Counsel's request for attorneys' fees and expenses. Class Counsel's request for fees and expenses will be posted on the Settlement Website after they are filed.

**HOW DO I GET MORE INFORMATION? This Notice is only a summary.** For more information, including the Stipulation and other legal documents, visit [www.charlestonwipessettlement.com](http://www.charlestonwipessettlement.com).

**PLEASE DO NOT CALL OR WRITE THE COURT FOR INFORMATION OR ADVICE.**

<sup>1</sup> 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](http://www.charlestonwipessettlement.com). All capitalized terms not defined in this Notice have the same meanings as in the Stipulation.

# EXHIBIT C

**From:** [Paul Calamita](#)  
**To:** "Office Manager"; [Vince Serra](#); [Amanda Waters](#)  
**Subject:** RE: Case No. 2:21-CV-00042 (D.S.C.)  
**Date:** Thursday, October 28, 2021 10:17:15 PM  
**Sensitivity:** Confidential

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## EXTERNAL SENDER

Ms. Davis,

Thank you for your email about the wipes settlement. A couple of thoughts in response.

First, the Mauriceville Municipal Utility District will not have to pay anything as part of this settlement. Kimberly-Clark will pay our reasonable fees and expenses up to \$600,000. No public utility will pay anything.

Second, the federal district court does have the authority to approve counsel for class members. Here the class comprises POTW owners/operators nationwide. In this type of class action (seeking injunctive relief against Kimberly-Clark Corporation over its flushable/non-flushable wipes) there is no option for utilities/communities to opt out. The injunctive relief (labeling and flushable wipe performance) will apply nationwide.

Third, if you believe the fees/expenses that KIMBERLY-CLARK has agreed to pay in this case are unreasonable for any reason, or you have other objections about the proposed settlement, feel free to write to the court (see frequently asked question number 4b at:

<https://charlestonwipessettlement.com/faqs> for details about writing to the court).

Fourth, we have briefed the Water Environment Association of Texas on this settlement and I believe they are fully supportive. Julie Nahrgang is the

Executive Director, WEAT | TACWA and can be reached at [julie@weat.org](mailto:julie@weat.org) in case you want to discuss this with her directly.

Finally, my firm represents more than 300 public utilities nationwide and has done so for almost 30 years. That is virtually all we do. We believe this groundbreaking settlement will go a long way to address the wipes trauma that every public utility is now facing. No public utility will pay anything for this settlement and yet all will enjoy the benefits.

Please feel free to contact me should you have any questions.

Best (and thank you for your service),

Paul

Paul Calamita

Chairman

[AquaLaw](#)

(804) 716-9021 ext. 201

(804) 938-4211 (c)

---

**From:** Office Manager <[officemanager@mauricevillemud.com](mailto:officemanager@mauricevillemud.com)>

**Sent:** Thursday, October 28, 2021 3:27 PM

**To:** Paul Calamita <[paul@aqualaw.com](mailto:paul@aqualaw.com)>; [vserra@rgrdlaw.com](mailto:vserra@rgrdlaw.com); Amanda Waters <[amanda@aqualaw.com](mailto:amanda@aqualaw.com)>

**Subject:** Case No. 2:21-CV-00042 (D.S.C.)

**Sensitivity:** Confidential

We received court approved legal notice for the Charleston Wipes Settlement. We object to the Settlement and/or Class Counsel's request for attorney's fees and expenses up to \$600,000. No one involved in this case has permission to represent Mauriceville Municipal Utility District.

Thanks,



Christy Davis

Office Manager

409-745-4882(Office)

409-745-4591(Fax)

[officemanager@mauricevillemud.com](mailto:officemanager@mauricevillemud.com)