

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, )	PLAINTIFF’S SUPPLEMENTAL
vs. )	MEMORANDUM OF LAW IN
)	FURTHERANCE OF MOTION FOR
)	PRELIMINARY APPROVAL OF CLASS
)	ACTION SETTLEMENTS
COSTCO WHOLESALE CORPORATION, )	
CVS HEALTH CORPORATION, )	
KIMBERLY-CLARK CORPORATION, THE )	
PROCTER & GAMBLE COMPANY, )	
TARGET CORPORATION, WALGREEN )	
CO. and WAL-MART, INC., )	
Defendants. )	
_____ )	

Representative plaintiff, the Commissioners of Public Works of the City of Charleston (d.b.a. “Charleston Water System”) (“Plaintiff”), submits this supplemental memorandum of law in furtherance of its motion for preliminary approval of the proposed Settlement with Target Corporation (“Target”) (collectively, the “Parties”).<sup>1</sup>

**I. THE PARTIES HAVE AGREED TO MODIFY THE DATE BY WHICH TARGET MUST COMPLY WITH THE IWSFG: PAS 3 FLUSHABILITY STANDARD**

When the Parties reached their agreement in principle in March 2023, Target agreed to ensure that it would purchase wipes for its store-branded (*e.g.*, up & up<sup>TM</sup>) flushable wipes that meet the IWSFG 2020: PAS 3 flushability standard by April 1, 2024. After finalizing the terms of their agreement, the parties executed a Stipulation on October 11, 2023 (Costco, CVS, and Target Agreement ¶2.1(a)(ii)), which Plaintiff filed with the Court along with its Motion for Preliminary Approval of Class Action Settlements on October 26, 2023 (ECF No. 198). On November 14, 2023, Target’s counsel apprised Plaintiff’s counsel that Target’s vendor will likely need additional time to ensure that the flushable wipes products it supplies to Target meet the current IWSFG 2020: PAS 3 flushability specifications.<sup>2</sup> As a result, the Parties have agreed to a slight modification of the compliance date for Target. Specifically, as reflected in the Addendum to Stipulation of Settlement, attached hereto as Exhibit 1 (the “Addendum”), the Parties have agreed to modify the compliance date for Target’s commitment to purchasing flushable wipes that meet the current IWSFG 2020: PAS 3 flushability standard from April 1, 2024 to December 1, 2024.<sup>3</sup> All other provisions of the Costco, CVS, and Target Agreement remain unchanged.

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<sup>1</sup> Capitalized terms not defined herein are defined in the Stipulation of Settlement entered into between Plaintiff and Costco, CVS, and Target, dated October 11, 2023 (ECF No. 198-2, the “Costco, CVS, and Target Agreement”) and Plaintiff’s Memorandum of Law in Support of Motion for Preliminary Approval of Class Action Settlements (ECF No. 198-1).

<sup>2</sup> While Nice-Pak Products, Inc. manufactured Target’s up & up<sup>TM</sup> flushable wipes during the litigation, Target has since transitioned its supplier contract exclusively to a different vendor.

<sup>3</sup> By extension, the Parties have modified the date by which the testing and monitoring period must begin to correspond with the December 1, 2024 compliance date. Addendum at 2.

## II. THE MODIFIED SETTLEMENT WITH TARGET IS FAIR, REASONABLE, AND ADEQUATE, AND CONTINUES TO WARRANT PRELIMINARY APPROVAL

The Costco, CVS, and Target Agreement, as amended, continues to satisfy each of the elements of Rule 23(e)(2) and the factors set forth in *In re Jiffy Lube Securities Litigation*, 927 F.2d 155 (4th Cir. 1991), and therefore warrants preliminary approval. The primary injunctive settlement relief – compliance with the IWSFG 2020: PAS 3 flushability standard – remains intact and substantively unchanged for Target. The Addendum modifies only the *timing* aspect of Target’s commitment to purchase IWSFG 2020: PAS 3 compliant flushable wipes. *See* Addendum at 2. Accordingly, the change does not in any other way substantively alter Target’s commitment to purchase flushable wipes that meet the wastewater industry’s preferred flushability standard or to submit to periodic testing, nor does the Addendum alter any time tables with respect to non-flushable wipes label changes or any other settlement benefits set forth in the Costco, CVS, and Target Agreement. *See* ECF No. 198-2 ¶2.1.

Further, an eight-month extension of the previously agreed-to compliance date in the Stipulation is wholly reasonable and – along with Target’s commitment to achieve IWSFG 2020: PAS 3 flushability compliance, submit to independent testing, and institute non-flushable wipes labeling improvements – remains in the best interest of Plaintiff and the proposed Settlement Class. Indeed, the new timing provision is in-line with other settlements in this Action. For example, the December 1, 2024 compliance date is earlier than the compliance date in the P&G Stipulation, which is 18 months following the Effective Date, though both defendants have the ability to initiate the testing and monitoring periods for their products before their respective compliance deadlines should they gain compliance earlier and choose to do so. *See* ECF No. 197-2 ¶2.1(a)(ii), ¶2.1(b)(iv); ECF No. 198-2 ¶2.1(b)(ii). Moreover, the time for compliance under the modified compliance date – less than 14 months after execution of the Stipulation – is similar in length to the compliance period

specified in the Court-approved settlement with Kimberly-Clark, where Kimberly-Clark agreed to meet the full IWSFG 2020: PAS 3 guidelines roughly one year after execution of the stipulation of settlement (following an interim period where it agreed to a lower threshold). See ECF No. 59-2 ¶2.1(a)(ii).<sup>4</sup> For these reasons, Plaintiff believes the modification of the date by which Target will achieve IWSFG 2020: PAS 3 compliance for its flushable wipes is fair, reasonable, and adequate and the agreement, as modified, warrants preliminary approval.

### III. CONCLUSION

For the foregoing reasons, as well as the reasons set forth in Plaintiff's Memorandum of Law in Support of Motion for Preliminary Approval of Class Action Settlements (ECF No. 198-1), Plaintiff respectfully asks that the Court grant preliminary approval of the proposed settlement with Target and enter the proposed Order Granting Motion for Preliminary Approval of Class Action Settlements, submitted as Exhibit D to the Settlement Agreements.<sup>5</sup>

DATED: November 20, 2023

AQUALAW PLC  
F. PAUL CALAMITA (ID #12740)

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*/s/ F. Paul Calamita*  
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<sup>4</sup> The April 1, 2024 compliance date remains in effect for defendants Costco, CVS and Walgreens. ECF No. 198-2 ¶2.1(b)(ii); ECF No. 198-3 ¶2.1(a)(ii). Wal-Mart has agreed that its flushable wipes currently meet the IWSFG 2020: PAS 3 flushability specifications. ECF No. 198-4 ¶2.1(b)(ii).

<sup>5</sup> Plaintiff will ensure the Notice and Summary Notice exhibits reflect the modified compliance date for Target.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on November 20, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to all counsel of record.

*/s/ F. Paul Calamita*

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# EXHIBIT 1

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, )	
	ADDENDUM TO STIPULATION OF
Plaintiff, )	SETTLEMENT
	)
vs. )	
	)
COSTCO WHOLESALE CORPORATION, )	
CVS HEALTH CORPORATION, )	
KIMBERLY-CLARK CORPORATION, THE )	
PROCTER & GAMBLE COMPANY, )	
TARGET CORPORATION, WALGREEN )	
CO. and WAL-MART, INC., )	
	)
Defendants. )	
_____ )	

Representative Plaintiff Commissioners of Public Works of the City of Charleston (“Plaintiff”), on behalf of itself and all Settlement Class Members (defined below), and Defendant Target Corporation (“Target”), hereby enter into this Addendum to the Stipulation of Settlement (“Addendum”), subject to approval of the Court.<sup>1</sup>

WHEREAS, the Settling Parties entered into a settlement in principle on March 21, 2023.

WHEREAS, after negotiating the attorneys’ fees and costs portion of the settlement, the parties executed their Stipulation of Settlement on October 11, 2023 and Plaintiff filed the same with the Court, along with Plaintiff’s Motion for Preliminary Approval of Class Action Settlements, on October 26, 2023.

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<sup>1</sup> All undefined terms in this Addendum shall have the meaning ascribed to them in the Stipulation of Settlement.



WHEREAS, Paragraph 2.1(a)(ii) of the Stipulation of Settlement provides that Defendants commit to purchasing flushable wipes that meet current IWSFG 2020: PAS 3 flushability specifications by April 1, 2024, and Paragraphs 2.1(b)(i) and (b)(ii) of the Stipulation of Settlement provide that Defendants will submit to certain periodic testing and monitoring by April 1, 2024.

WHEREAS, since executing the Stipulation of Settlement, Target has been informed that its vendor may need additional time to ensure that the flushable wipes products it supplies to Target meet current IWSFG 2020: PAS 3 flushability specifications.

WHEREAS, Plaintiff and Target have agreed to revise Target's timeframe for meeting current IWSFG 2020: PAS 3 flushability specifications (the "Compliance Date"), under Paragraphs 2.1(a)(ii), (b)(i), and (b)(ii) of the Stipulation of Settlement, as set forth in this Addendum. All other terms of the Settlement remain the same.

NOW THEREFORE, Plaintiff and Target hereby STIPULATE AND AGREE, through their respective attorneys, to revise the Compliance Date in Paragraphs 2.1(a)(ii), 2.1(b)(i), and 2.1(b)(ii) of the Stipulation of Settlement as follows:

Under Paragraph 2.1(a)(ii), Target commits to purchasing flushable wipes that meet the current IWSFG 2020: PAS 3 flushability specifications for the Products manufactured on or after December 1, 2024. Target may provide written notice of IWSFG compliance to Plaintiff before December 1, 2024, which will initiate the Settlement's monitoring period.

Under Paragraph 2.1(b)(i), Target's Compliance Date is December 1, 2024.

Under Paragraph 2.1(b)(ii), Target and/or its flushable wipes manufacturer will submit to the testing set forth in this Paragraph on December 1, 2024 (or before at Target's election).

IN WITNESS WHEREOF, the Plaintiff and Target have executed this Addendum to the Stipulation of Settlement effective as of the date set forth below.

DATED: November 20, 2023

*/s/ F. Paul Calamita*

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