

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA**

DENNIS PATRICK SWEENEY, JR. and )  
HEATHER RENEE COPHER-SWEENEY, )  
On Behalf of Themselves And All Others )  
Similarly Situated, )

Plaintiffs; )

v. )

KIMBERLY-CLARK CORPORATION, )  
WAL-MART STORES, INC., and )  
ROCKLINE INDUSTRIES, INC., )

Defendants. )

Civil Action No. \_\_\_\_\_

**CLASS ACTION COMPLAINT**

**INJUNCTIVE RELIEF SOUGHT**

**JURY TRIAL REQUESTED**

Plaintiffs, Dennis Patrick Sweeney, Jr. and Heather Renee Copher-Sweeney, (“the Sweeneys” or “Plaintiffs”) bring this action on behalf of themselves and all others similarly situated and allege upon information and belief, formed after an inquiry reasonable under the circumstances, except as to those allegations pertaining to the named Plaintiffs and for which Plaintiffs allege on personal knowledge, as follows:

**NATURE OF THE ACTION**

1. This class action is brought against Defendants, Kimberly-Clark Corporation (“Kimberly-Clark”), Wal-Mart Stores, Inc. (“Walmart”), and Rockline Industries, Inc. (“Rockline”), (collectively referred to as, “Defendants”), to recover for the harm caused by Defendants’ deceptive, improper, unlawful, or tortious conduct in the design, manufacturing, marketing, distribution, and/or sale of flushable wipes. Flushable wipes include all wipe products

marketed and advertised by manufacturers, distributors, and/or sellers as suitable or able to be flushed down a toilet without causing harm to plumbing, sewer, and/or septic systems.

2. Defendant, Kimberly-Clark manufactures, markets, and/or sells several brands and types of flushable and non-flushable wipe products. Among Kimberly-Clark's wipe products that are marketed to be flushable are: Cottonelle Fresh Care Flushable Cleansing Cloths, Cottonelle Fresh Care Moist Wipes, Cottonelle Ultra Comfort Care Flushable 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"). In addition to its Cottonelle brand, Kimberly-Clark manufactures other brands of flushable wipes, including Scott Naturals, Pull-Ups, U by Kotex, and Poise.

3. Walmart is the largest retailer in the world. It operates retail stores throughout the United States and also sells products online via its website: [www.walmart.com](http://www.walmart.com). Walmart markets and/or sells many national brands of flushable wipes, including Cottonelle.

4. Upon information and belief, about 40 percent of products sold by Walmart are private label store brands, including its Equate brand.

5. Under its private label store brand, Equate, Walmart manufactures, markets, or sells in its stores located in the United States and via its website various flushable wipes, including Equate Flushable Wipes (the "Equate Flushable Wipes").

6. Walmart markets Equate Flushable Wipes as a quick and easy disposable alternative to non-flushable pre-moistened fabric wipes that are not supposed to be flushed down a toilet. In fact, Walmart sells other Equate branded wipes and cleaning products that are not meant to be flushed.

7. In its Sam's Club stores, Walmart sells national branded flushable wipes, including Cottonelle, as well as, private label store brands, including Member's Mark brand products. Walmart manufactures, markets, and sells Member's Mark Flushable Wipes in its Sam's Club stores in the United States.

8. Defendant, Rockline, designs, manufactures, markets, and/or sells several brands and types of flushable and non-flushable wipe products. Among Rockline's wipe products that are marketed to be flushable are wipes branded as Walmart's Equate private label store brand, which Rockline manufactures and/or markets under terms of a contract with Walmart.

9. At the point of sale, Defendants' flushable wipes cost significantly more than other pre-moistened wipes that are not marketed as flushable and that are not supposed to be flushed down a toilet. For example, Cottonelle Fresh Care Flushable Moist Wipes cost approximately \$0.06 per wipe, while wipes not marketed to be flushable, (e.g.) Pampers Natural Clean Wipes, cost approximately \$0.02 per wipe. Equate Fresh Care Flushable Moist Wipes cost approximately \$0.03 per wipe, while Equate wipes not marketed to be flushable, (e.g.) Equate Everyday Clean Fragrance Free Wipes, cost approximately \$0.002 per wipe.

10. Contrary to Defendants' representations, these flushable wipes are not sewer and septic safe and do not break apart after flushing. Rather, they remain intact and often cause clogging and/or other problems in consumer's plumbing and sewer and/or septic systems, resulting in hundreds, even thousands of dollars in damages. Simply put, Defendants' flushable wipes are defective because they are not "flushable" and "sewer and septic safe."

11. Plaintiffs, Class members, and other consumers purchased defective flushable wipes designed, marketed, manufactured, distributed, and/or sold by Defendants as safe to be flushed. Through the ordinary and/or directed use of flushable wipes, Plaintiffs, Class members,

and other consumers experienced plumbing issues, including clogged toilets, clogged pipes, flooding of portions of their homes, and/or other collateral plumbing problems.

12. Due to Defendants' misrepresentations that these wipes are flushable and sewer and septic safe, consumers, like Plaintiffs, were induced and deceived into purchasing these flushable wipes that are defective and do not perform as represented and guaranteed by Defendants. But for Defendants' misrepresentations, Plaintiffs would not have expended money to purchase these flushable wipes or, at the very least, Plaintiffs would not have paid more money for flushable wipes than the non-flushable alternatives.

13. But for Defendants' actions, and had Plaintiffs and Class members known of the defective nature of Defendants' flushable wipes, Plaintiff and Class members would not have purchased or used the flushable wipes in their homes and risked damaging the plumbing systems in their homes, or, worse, causing damage in their homes due to backups caused by the use of Defendants' flushable wipes

14. Despite numerous complaints that Defendants' flushable wipes do not perform as warranted and marketed from consumers and various state and local sewer authorities around the US, flushable wipes manufacturers, marketers, and/or sellers, including Defendants, have been unwilling to remove the false and/or misleading claims regarding flushability and plumbing, sewer, and septic safety, and consumers continue to purchase these products under the false pretenses created by Defendants.

#### **THE PARTIES**

15. Plaintiffs, Dennis Patrick Sweeney, Jr., and Heather Renee Copher-Sweeney, are married, adult citizens of the State of Florida, and at all times relevant to this action have resided at 3109 West Kensington Avenue, Tampa, Hillsborough County, Florida.

16. Defendant, Kimberly-Clark, is a Delaware corporation (traded on the New York Stock Exchange under the ticker symbol “KMB”), is headquartered in Dallas, Texas, and together with its subsidiaries, manufacturers, markets, and sells personal care, consumer tissue, and health care products worldwide, and at all times relevant to this action has done so within Florida and this Judicial District. The company operates in four (4) segments: Personal Care, Consumer Tissue, K-C Professional, and Health Care. 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.

17. Defendant, Walmart, is a Delaware corporation (traded on the New York Stock Exchange under the ticker symbol “WMT”), is headquartered in Bentonville, Arkansas, and conducts business, markets, and sells goods worldwide, and at all times relevant to this action has done so within Florida and this Judicial District. Walmart is a multinational retail corporation that is divided into three (3) operating divisions: Walmart Stores U.S., Sam’s Club, and Walmart International. Walmart owns and operates chains of large discount department stores, supermarkets, and warehouse stores, including Walmart Supercenter(s), Walmart Neighborhood Market(s), and Sam’s Club(s). The world’s largest company by revenue, according to the Fortune Global 500 list in 2014, Walmart is the largest retailer in the world. Upon information and belief, about 40 percent of products sold in Walmart stores are private label store brands, which are products offered by Walmart and produced through contracts with manufacturers. In the U.S. and Canada, Walmart brands include Great Value and Equate.

18. Rockline, a Wisconsin corporation, is headquartered in Sheboygan, Wisconsin, and designs and manufactures a wide variety of consumer products that are distributed and sold worldwide, and at all times relevant to this action has done so within Florida and this Judicial

District. According to their website ([www.rocklineind.com](http://www.rocklineind.com)), Rockline's primary product line is wet wipes, including flushable wipes. Among other product lines offered, Rockline offers "contract manufacturing" for various retailers. Rockline is the contract manufacturer for the Walmart Equate Brand.

19. Defendants, upon becoming and continuing to be involved with the design, manufacture, distribution, advertising, marketing, and/or sale of flushable wipes, knew or should have known that their representations regarding flushable wipes were false and misleading.

### **JURISDICTION AND VENUE**

20. This Court has original jurisdiction over this matter, pursuant to 28 U.S.C. §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 Plaintiffs are citizens of Florida while at least one Defendant is a citizen of a different state.

21. This Court has personal jurisdiction over Defendants because Defendants have established substantial contacts, ties, and relations to this Judicial District.

22. Venue is proper in this district pursuant to 28 U.S.C. §1391(a), because Plaintiffs reside within this district and Defendant(s) reside, are found, have their principle place of business, have an agent, or have transacted substantial business within the Middle District of Florida 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 Middle District of Florida.

**SUBSTANTIVE ALLEGATIONS (FACTS COMMON TO ALL CLAIMS)**

23. The flushable wipes industry has experienced exceptional growth since flushable wipes became widely available in the 1980s. Some predictions call for the total market to grow at a rate of 12.1% annually to reach \$2.4 billion by 2018.

24. This market includes pre-moistened wipes that are manufactured, marketed, distributed, and sold to consumers as being “flushable” or safe to a consumer’s plumbing system, sewer or septic when the wipes are flushed down the consumer’s toilet.

25. There are currently no legally enforceable requirements that a product must meet in order to claim it is “flushable.” Only voluntary industry guidelines exist, which may be followed by a manufacturer or distributor if they so choose.

**Cottonelle Brand Flushable Wipes**

26. Among many other brands, Defendant, Kimberly-Clark, manufactures, markets, distributes, and/or sells Cottonelle Fresh Care Flushable Cleansing Cloths, Cottonelle Fresh Care Flushable Moist Wipes, and Cottonelle Ultra Comfort Care Flushable Cleansing Cloths.

27. On its website ([www.cottonelle.com](http://www.cottonelle.com)) where Kimberly-Clark markets these products to the public, Kimberly-Clark describes its Cottonelle Fresh Care Flushable Cleansing Cloths 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.”

28. On its Cottonelle website, where it markets these products to the public, in a section titled “About this item,” Kimberly-Clark makes the following guarantees or representations:

Our Fresh Care Flushable Cleansing Cloths feature SafeFlush Technology, so they not only offer you a confident clean but also start to break down immediately after flushing.

#### The Flushability of Cottonelle Wipes

Cottonelle Flushable Cleansing Cloths use a patented dispersible technology that allows them to lose strength and break up after flushing.

Emphasis added.

29. On its Cottonelle website where it markets these products to the public, in a section titled “Product Details,” Kimberly-Clark makes the following guarantees or representations: “Flushable,” “Break up after flushing,” “Sewer– and septic– safe.”

30. In another section on its Cottonelle website, where it markets these products to the public, titled “Frequently Asked Questions,” Kimberly-Clark makes the following guarantees or representations:

#### **How can I be sure it is safe to flush Cottonelle® Flushable Cleansing Cloths?**

The flushability of Kimberly-Clark® products is tested in accordance with trade association guidelines. These guideline tests demonstrate that when used as directed, our wipes clear properly maintained toilets, drainlines, sewers and pumps, and are compatible with on-site septic and municipal treatment. Cottonelle® Flushable Cleansing Cloths are flushable due to patented technology that allows them to lose strength and break up when moving through the system after flushing. [Watch our video](#) to learn more about the tests that Cottonelle® flushable wipes go through to ensure their flushability.

#### **Will Cottonelle® Flushable Cleansing Cloths break down in my septic system?**

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.



**What is SafeFlush Technology™? Is it different from the previous technology?**

At Cottonelle®, we know that flushability is important, and continuously improving our products is, too. We've always had the most dispersible, best performing, flushable wipes. Our new product improvement sets the bar even higher. Now, only Cottonelle® Flushable Cleansing Cloths give you a confident clean and have SafeFlush Technology™, so they start to break down immediately after flushing.

31. Also on its website where Kimberly-Clark markets and sells these products to the public, in a section titled “Warnings,” Kimberly-Clark warns of the following risks: “To avoid suffocation, keep plastic bags away from children [a]nd pets. This bag not intended for reuse. Do not flush this bag.”

32. On the product packaging for the Cottonelle Fresh Care Flushable Cleansing Cloths, the phrase “flushable cleansing cloths” is displayed prominently. Also appearing on the front of the product’s package is a logo guaranteeing the wipes to be “SEWER AND SEPTIC SAFE.” See below for a true and accurate representation of the front panel of the package for Cottonelle Fresh Care Flushable Cleansing Cloths and an enlarged representation of the logo guaranteeing the product to be sewer and septic safe.





33. On the back of the product packaging for the Cottonelle Fresh Care Flushable Cleansing Cloths, Kimberly-Clark states, represents, and guarantees that “COTTONELLE FRESH CARE Flushable Cleansing Cloths break up after flushing. See below for a true and accurate representation of the back panel of the package for Cottonelle Fresh Care Flushable Cleansing Cloths and an enlarged representation of the statement, representation and guarantee that the wipes “break up after flushing.”



34. On the product packaging for Cottonelle Fresh Care Flushable Moist Wipes, Kimberly-Clark represents, states, and guarantees, “Safe for sewer and septic systems” and “you can flush Cottonelle Fresh Care wipes with confidence because they break up like toilet paper after flushing.” This packaging also displays a circular logo representing, stating, and guaranteeing that this wipe product “BREAKS UP AFTER FLUSHING.” See below for a true and accurate representation of the front and back panels of the package for Cottonelle Fresh Care Flushable Moist Wipes and an enlarged representation of the logo guaranteeing that the product breaks up after flushing.





35. On the product packaging for the Cottonelle Ultra Comfort Care Flushable Cleansing Cloths the phrase “flushable cleansing cloths” is displayed prominently. Also appearing on the front of the product’s package is a logo stating the wipes are manufactured using “SAFE FLUSH TECHNOLOGY,” representing to consumers that these wipes “break up after flushing and are sewer and septic safe.” See below for a true and accurate representation of the front panel of the package for Cottonelle Ultra Comfort Care Flushable Cleansing Cloths and an enlarged representation of the SAFE FLUSH TECHNOLOGY logo.



36. On the side panels for the product packaging for the Cottonelle Ultra Comfort Care Flushable Cleansing Cloths the SAFE FLUSH TECHNOLOGY logo and a representation, statement and guarantee that “Safe Flush Technology ensures that Cottonelle Ultra Comfort Care Flushable Cleansing Cloths break up after flushing, and are sewer and septic safe.” The side panels advise consumers, “For best results, flush only one or two cloths at a time.” The side panels also contain the following warning: “WARNING To avoid danger of suffocation, keep this bag away from babies and children. Dispose of plastic divider inside bag properly. Do not use or flush divider.” See below for a true and accurate representation of the side panels of the package for Cottonelle Ultra Comfort Care Flushable Cleansing Cloths.



37. The inclusion of a warning not to flush the wipes' packaging materials, creates a reasonable expectation with consumers that Defendants represent and warranty that the term "flushable" means that the wipes can be safely disposed of by flushing them down the toilet, like regular toilet paper, and the wipes will not clog the toilet or cause plumbing damage – in contrast to other items, such as the plastic divider inside the bag in which the wipes are packaged, which are not toilet safe and should not be flushed.

38. Nowhere on the packaging for this product is a warning to consumers that flushing these flushable wipes could cause problems with or damage to the purchaser's plumbing system, or sewer or septic systems.

39. In a document titled FLUSH? OR DON'T FLUSH? Some Questions & Answers About Pre-Moistened Wipes from Kimberly-Clark, Kimberly-Clark, represents that "Consumers should read the labels on our wipes products to determine whether they are flushable or non-flushable." Representing to consumers that representations, statements, and guarantees on their product packaging is reliable, accurate, and the ultimate authority as to whether the wipes can be safely be flushed down the consumer's toilet without the risk of damage to the consumer's plumbing or sewer and septic systems.

### **Equate Flushable Wipes**

40. Rockline designs, manufactures, packages, and/or markets Equate brand flushable wipes.

41. Walmart designs, manufactures, packages, distributes and/or sells Equate brand flushable wipes in many of its stores throughout the U.S., including in Florida and this Judicial District. In fact, appearing on the packaging for its Equate Fresh Scent Flushable Wipes is the following statement: "Distributed by: Wal-Mart Stores, Inc., Bentonville, AR 72716."

42. On the product packaging for the Equate flushable wipes, Rockline and/or Walmart (when referred to together regarding the Equate wipes "the Equate defendants"), have placed representations, statements, and guarantees that the wipes are flushable and safe for plumbing, septic and sewer systems.

43. On the product packaging for the Equate Fresh Scent Flushable Wipes, the phrase “Flushable Wipes” is displayed prominently. Also appearing on the package is a logo guaranteeing the wipes, “BEAKS APART AFTER FLUSHING.” See below for a true and accurate representation of the front of the packaging for Equate Fresh Scent Flushable Wipes and an enlarged representation of the BEAKS APART AFTER FLUSHING logo.



44. On the back of the product packaging for Equate Fresh Scent Flushable Wipes, the Equate Defendants have placed various guarantees and representations that the wipes are “flushable” and safe to be disposed of through a consumer’s home plumbing system. One such



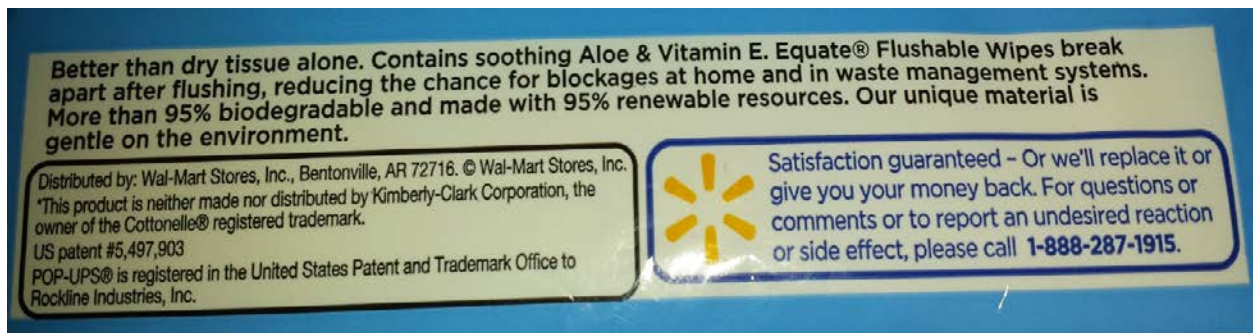
guarantee or representation states, “Certified Flushable,” and “Suitable for Sewer and Septic.” Another guarantee or statement appearing on the back of the product packaging states, “Safe for properly maintained sewer & septic.” See below for a true and accurate representation of the referred to portion of the back of packaging for Equate Fresh Scent Flushable Wipes.

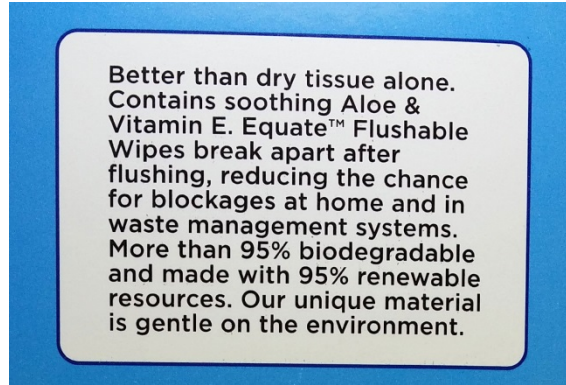


45. Also on the back of the packaging for the Equate Fresh Scent Flushable Wipes is the following guarantee or representation:

Better than dry tissue alone. Contains soothing Aloe & Vitamin E. Equate Flushable Wipes break apart after flushing, reducing the chance for blockages at home and in waste management systems. More than 95% biodegradable and made with 95% renewable resources. Our unique material is gentle on the environment.

Emphasis added. See below for a true and accurate representation of the referred to portion of the back of packaging for Equate Fresh Scent Flushable Wipes.





46. On the product's packaging, the Equate Defendants advise the consumer, "For best flushability, use only one or two wipes per flush."

47. On its website (www.walmart.com) where Walmart markets and sells these products to the public, in a section titled "About this item," Walmart makes the following guarantee or representation:

Better than dry tissue alone—Equate Fresh Scent Flushable Wipes contains soothing aloe and vitamin E. Like toilet paper, Equate Flushable Wipes break apart after flushing, reducing the chance for blockages at home and in waste management systems. More than 95% biodegradable and made with 95% renewable resources, this unique material is gentle on the environment.

Emphasis added.

48. Also on its website where Walmart markets and sells these products to the public, in a section titled "Warnings," Walmart warns of the following risks: "To avoid suffocation, keep plastic bags away from children [a]nd pets. This bag not intended for reuse. Do not flush this bag."

49. The inclusion of a warning not to flush the bag, creates a reasonable expectation with consumers that Defendants represent and warranty that the term "flushable" means that the wipes can be safely disposed of by flushing them down the toilet, like regular toilet paper, and the wipes will not clog the toilet or cause plumbing damage – in contrast to other items, such as the bag in which the wipes are packaged, which are not toilet safe and should not be flushed.

50. Nowhere in the marketing of or on the packaging for Equate flushable wipes have Defendants provided a warning to consumers that flushing these flushable wipes could cause problems with or damage to the purchaser's plumbing system, or sewer or septic systems.

### **Consumer Problems and Complaints**

51. Despite Defendants marketing these wipes as safe to flush, consumers from all over the United States have for several years experienced and complained to Defendants of problems with flushable wipes. These problems relating to the non-flushability of Defendants flushable wipe products and that they do not break down after flushing as Defendants represent, were apparent and were and are known to Defendants.

52. In an April 24, 2013, comment titled "not for rural treatment systems," posted by a consumer identified as "tlkflat" to both the Cottonelle and Walmart websites, the consumer informed of Cottonelle flushable wipes: "DO NOT use with the newer rural waste water treatment systems like a JET system. They [the wipes] will clog the booster pump and then tangle in the air pump spinner, VERY costly repair."

53. In an April 15, 2014, comment titled "never use again," posted by a consumer identified as "sugah" to both the Cottonelle and Walmart websites, the consumer informed of Cottonelle flushable wipes:

[J]ust had to pay over [\$]300.00 today, from using Cottonelle flushable cleansing cloths!!! [H]ad to have a plumber first and then a septic tank cleaned, just 2 of us living here and have previously only had to have tank cleaned yearly, we were told and shown the cloths that had caused the blockage !! of course we will never use them again. [T]his [sic] are very false statements on your package. [T]hey are not sewer and septic safe...just ask anyone who has just experienced what we have today, I will make sure all my friend [sic] know about this...you should be called out on this, we are retired, and this is not in the budget!!!

54. In a June 1, 2013, comment posted by a consumer identified as “Kenneth” to the Cottonelle website, the consumer informed of Cottonelle flushable wipes:

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

55. In a June 24, 2013, comment titled “Cloggs septic systems,” posted by a consumer identified as “Richard” to both the Cottonelle and Walmart websites, the consumer informed of Cottonelle flushable wipes:

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 bread 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.

56. In a March 18, 2013, comment titled “Not Flushable,” posted by a consumer identified as “Doug” to both the Cottonelle and Walmart websites, the consumer informed:

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 clean our lines. It is ALWAYS flushable wipes. BAD PRODUCT.

57. In a March 22, 2014, comment titled “Use at the risk of FLOODING” posted by a consumer identified as “MLST” to the Walmart website, the consumer informed of Equate flushable wipes:

We used these for personal hygiene, only one at a time as the directions state. We have had TWO floods in our basement, the second time we completely disassembled the plumbing to find a HUGE wad of equate wipes in the pipes. Clearly these do NOT dissolve as stated. Use at your own risk.

58. In a February 2, 2012, comment titled “Horrible! DO NOT BUY!!,” posted by a consumer identified as “ctechwife25” to the Walmart website, the consumer informed of Equate flushable wipes:

Do not buy these wipes! They caused a massive clog in our plumbing lines and when we put a snake down, these came back just the [way] they were used. They are only good for wiping you shoes off after you clean out the plumbing pipes. Don’t waste you time and money on these.

59. In a May 8, 2013, comment titled “Absolutely not Flushable!!!,” posted by a consumer identified as “Mmmos” to the Walmart website, the consumer informed of Equate flushable wipes:

I just wrote a check for \$110 to the plumber to repair and unclog the sewer system pump. Even though it says on the package the wipes break apart after flushing, they absolutely DO NOT break apart. Expensive lesson learned. Wish I could take that bill to Walmart!

60. In a November 12, 2012, comment posted by a consumer identified as “dolphin2010” to the Walmart website, the consumer informed of Equate flushable wipes: “[T]hese are supposed to be flushable. [T]hey are not. [I]t plugged up my plumbing.”

61. In a June 20, 2011, comment titled “Bad for Septic System” posted by a consumer identified as “2eff4me” to the Walmart website, the consumer informed of Equate flushable wipes:

We recently had a routine septic tank pumping done at our home. We do this every two years as we have found that it is best to do

this to avoid an emergency winter pumping. However, this time we found that the equate flushable wipes were not decomposing but were forming hard balls and in one case a very large mass that plugged the pumper's hose. We pulled the mass apart and there they were, in just the same for as they were the day they were used. I think you need to go back to the drawing board with these wipes. They are neither flushable nor safe for septic tanks. I'm just glad we discovered this before they really caused an awful problem.

62. Despite having notice that their flushable wipes products have and continue to cause problems with and damage to many purchasers' plumbing system, or sewer or septic systems, and despite issuing other product warnings, Defendants have not included in their marketing of these products any warnings to consumers of the defective condition of these products or the products' propensity or potential to cause problems with or damage to the purchaser's plumbing system, or sewer or septic systems.

63. Like many consumers, Plaintiffs and the Class members have experienced problems and sustained damage as a result of Defendants' deceptive, untrue, and false representations regarding their flushable wipes products, as well as Defendants' defective design and/or manufacturing and/or marketing and/or sale of the products, and Defendants' failure to warn consumers, Plaintiffs, and the Class members of the risk of damage to plumbing, sewer and septic systems caused by use of these flushable wipes.

64. Defendants were and are aware and have ample notice that their flushability claims about their flushable wipe products are untrue.

**Other Sources Contradicting Defendant's Claims of "Flushability" and Safety for Sewer and Septic Systems**

65. In addition to consumer complaints, state and local sewer authorities have been imploring manufacturers and seller of these purported flushable wipes to remove the flushability claims from their marketing and product packaging. The reason the wastewater industry has

made these requests is because these products are causing damage to sewer infrastructure all over the United States and the world.

66. Indeed, according to the National Association of Clean Water Agencies (NACWA) – a trade association that represents the interests of nearly 300 publicly owned wastewater treatment agencies nationwide – over the past few years cities across the country have incurred hundreds of thousands of dollars in new equipment and maintenance costs to repair damage resulting from flushed wipes, and in some cases even more. The Orange County Sanitation District spent \$2.4 million on new equipment to unclog its pumps. The Washington Suburban Sanitary Commission, which handles sewage for the residents of Montgomery and Prince George’s Counties in Maryland, spent more than \$1 million to install heavy-duty grinders to shred wipes before they reach pumps on the way to the treatment plant.

67. Like state and local wastewater authorities, NACWA also advocates against the use of flushable wipes and provides information and assistance to its members to help reduce public consumption of these harmful products. See [http://www.nacwa.org/index.php?option=com\\_content&view=article&id=1581&Itemid=3](http://www.nacwa.org/index.php?option=com_content&view=article&id=1581&Itemid=3), (last visited December 22, 2014).

68. Consumer Reports, an independent consumer publication that publishes reviews and comparisons of consumer products, 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. See <http://www.consumerreports.org/cro/video->

hub/home--garden/bed--bath/flushable-wipes/16935265001/22783507001/, (last visited December 22, 2014).

69. Despite numerous customer complaints, the opinions of the NACWA, Consumer Reports, and others, the Defendants deny that their flushable wipes cause harm to plumbing, sewer or septic systems and continue to represent that their flushable wipes are able to be flushed without any adverse consequences.

**FACTUAL ALLEGATIONS RELATED TO THE NAMED PLAINTIFFS**

70. Within four (4) years of the filing of this complaint, Plaintiffs, Dennis and Heather Sweeney, purchased Cottonelle brand flushable wipes and Equate brand flushable wipes from their local Walmart Supercenter store located on Dale Mabry Highway in Tampa, Florida, the Walmart Supercenter store located on West Gandy Boulevard in Tampa, Florida, and/or the Sam's Club store located on South Dale Mabry Highway in Tampa, Florida. The Sweeneys paid approximately \$7 for a package of Cottonelle wipes, \$6 for a package of Equate flushable wipes.

71. The Sweeneys used these wipes primarily for potty training their young children and would dispose of the wipes by flushing them down the toilet(s) in their home, per the directions on the product's packaging.

72. On or about November 13, 2011, the Sweeneys noticed problems with the plumbing in their home. Most notably, the Sweeneys noticed difficulty in flushing the toilet in one of their bathrooms. More alarmingly, when the toilet was flushed, raw sewage would flood out of the drain and into the shower located in the bathroom.

73. Upon discovery of this potentially health-endangering plumbing problem, the Sweeneys hired Olin Plumbing, Inc. ("Olin") to diagnose and repair the problem.



74. Upon inspection of the Sweeneys' home plumbing system, Olin determined that the home's main plumbing line was clogged. In repairing the clogged line, Olin discovered, in the presence of Plaintiff Dennis Sweeney, that the flushable wipes the Sweeneys had disposed of via their toilet had not dispersed upon flushing but remained intact and caked together in the Sweeneys' plumbing system, thereby causing the problems described above.

75. The Sweeneys paid Olin approximately \$370 for the work to diagnose and repair the plumbing problem caused by the failure of Defendants' flushable wipes to perform as warranted, *to wit*: disperse upon flushing and clear the Sweeneys' home plumbing system. The Sweeneys also incurred cost to have their shower professionally cleaned and disinfected.

76. The Sweeneys would not have incurred these costs but for Defendant's tortious acts and/or omissions and/or statutory violations regarding the design, manufacturing, marketing, distribution, or sale of their flushable wipes.

77. The Sweeneys were unaware, did not and could not have discovered or become aware, even in the exercise of reasonable diligence, that Defendants' wipes were defective, that the representations on the wipes' packaging were untrue, and would cause harm to their home plumbing until Olin discovered that the wipes had clogged the Sweeneys' home plumbing system.

78. In addition to the damages for plumbing repair(s) and cleaning cost(s), the Sweeneys also sustained damages associated with paying more money per wipe for Defendants' wipes labeled as or represented to be flushable than by purchasing comparable wipes that are not labeled as or represented to be flushable.

79. Plaintiffs and members of the Class paid more for Defendants' flushable wipes than they otherwise would have if they had not been misled by the deceptive, false, and misleading labeling, advertisements, and misrepresentations complained of herein.

80. Neither the Sweeneys, nor members of the Class, would have purchased Defendants' flushable wipes but for Defendants' false and misleading labeling, advertisements, statements, and/or representations. Indeed, the only reason the Sweeneys purchased Defendants' flushable wipes is because they were labeled, advertised, and represented to be "flushable" and "safe for sewer and septic," thus promising a safe, more convenient and sanitary means of disposal.

81. Thus, Defendants' flushable wipes were worth less than what Plaintiffs and members of the Class were wrongfully enticed to and did pay for them.

82. Plaintiffs and members of the Class lost money as a result of Defendants' wrongful conduct because Plaintiffs and members of the Class did not receive what they paid for.

83. Plaintiffs and members of the Class were induced to and did purchase Defendants' flushable wipes rather than competing, similar products based on Defendants' deceptive, false, and misleading labeling, advertisements, and misrepresentations. In so doing, Plaintiffs and members of the Class altered their position to their detriment and suffered damages therefrom.

### **CLASS ACTION ALLEGATIONS**

84. Plaintiffs bring this action pursuant to Federal Rules of Civil Procedure 23(a), (b)(2), and (b)(3) on behalf of themselves and the members of the following proposed Classes:

**Cottonelle Class:** All persons residing in the State of Florida who purchased Kimberly-Clark flushable wipes, including Cottonelle brand flushable wipes.

**Equate Class:** All persons residing in the State of Florida who purchased Equate brand flushable wipes.

85. Subject to additional information obtained through further investigation and discovery, the foregoing Class(es) may be expanded or narrowed by amendment or amended complaint. The following are specifically excluded from the Class: Defendants; any entity in which the Defendants have a controlling interest; any entity which has a controlling interest in the Defendants; Defendants' assigns and/or successors; Defendants' directors, officers, and/or other legal representatives, and members of their immediate families; 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.

86. **Numerosity:** Members of the Class are so numerous that joinder is impracticable. While the exact number of Class members is unknown to Plaintiffs and can only be ascertained through appropriate discovery, upon information and belief Plaintiff alleges that the Class is comprised of thousands of members geographically dispersed throughout the state of Florida. However, the Class is readily identifiable from information and records in Defendants' possession, custody, or control, or other discoverable sources.

87. **Commonality:** Common questions of law and fact exist as to all members of the Class. These questions predominate over questions that may affect only individual Class members because Defendants have acted on grounds generally applicable to the Class. Such common legal or factual questions include:

- a. Whether Defendants' flushable wipes are in fact flushable;
- b. Whether Defendants' flushable wipes break apart after flushing;
- c. Whether Defendants' flushable wipes are dispersible;
- d. Whether Defendants' flushable wipes are sewer and septic safe;

- e. Whether Defendants' flushable wipes are defective;
- f. Whether Defendants flushable wipes are defectively designed and/or manufactured;
- g. Whether Defendants had a duty to design their flushable wipes against reasonably foreseeable hazards;
- h. Whether Defendants designed their flushable wipes against reasonably foreseeable hazards;
- i. Whether Defendants had a duty to warn Plaintiffs and the Class that their flushable wipes were not flushable or sewer and septic safe;
- j. Whether Defendants' breached their duty to warn Plaintiffs and the Class;
- k. Whether Defendants knew or reasonably should have known that their flushable wipes were defective prior to distributing the wipes to Plaintiffs and the Class;
- l. Whether Defendants knew or reasonably should have known that their flushable wipes were defective after distributing the wipes to Plaintiffs and the Class;
- m. Whether Defendants concealed and/or failed to disclose to Plaintiffs and the Class the fact that their flushable wipes were defective;
- n. Whether Defendants tortuously breached their warranty obligations to Plaintiff and the Class in connection with their flushable wipes;
- o. Whether Defendants breached the implied warranty of merchantability relating to their flushable wipes;
- p. Whether Defendants breached the implied warranty of fitness for a particular purpose relating to their flushable wipes;
- q. Whether Defendants were unjustly enriched by receiving moneys in exchange for their flushable wipes that, contrary to guarantees, marketing and/or other representations made to Plaintiffs and the Class, are not flushable, do not break apart after flushing, and/or are not sewer and septic safe;
- r. Whether Defendants should be ordered to disgorge all or part of the ill-gotten profits it received from the sale of its flushable wipes;
- s. Whether Plaintiffs and the Class are entitled to damages, including compensatory, punitive, statutory and/or other damages;
- t. Whether Defendants should be enjoined from selling and marketing their flushable wipes;

- u. Whether Defendants engaged in unfair methods of competition, or unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of selling and/or marketing their flushable wipes; and
- v. Whether Defendants engaged in unfair methods of competition, or unconscionable acts or practices, and unfair or deceptive acts or practices in by concealing, misleading, and/or failing to inform Plaintiffs and the Class that their flushable wipes are not flushable, do not break apart after flushing, and/or are not sewer and septic safe.

88. Typicality: Plaintiffs' claims are typical of the Class members as all members of the Class are similarly affected by the Defendants' actionable conduct as complained herein. Plaintiffs' and all members of the Class purchased Defendants' flushable wipes that were defective in that they are not flushable, dispersible, or sewer or septic safe. Plaintiffs and all Class members were subject to the same misrepresentations made by the Defendants' regarding Defendants' flushable wipes, including misrepresentations made on the products' packaging, on Defendants' website(s), and/or via other advertising or communication methods. Moreover, Defendants' conduct giving rise to the claims of Plaintiffs and Class members is the same for all Class members.

89. Defendants' defenses to Plaintiffs' claims are typical of its defenses to claims of the Class members.

90. Adequacy: Plaintiffs will fairly and adequately protect the interests of the Class because Plaintiffs have no interests antagonistic to, or in conflict with, the Class that Plaintiffs seek to represent. Plaintiffs are willing and able to vigorously prosecute this action on behalf of the Class and have or can acquire adequate financial resources to assure that the interests of the Class will not be harmed. Moreover, Plaintiffs have retained counsel experienced and competent in the prosecution of complex class action litigation.

91. Class action treatment is a superior method for the fair and efficient adjudication of this controversy in that, among other things, such treatment will permit a large number of

similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, expense. The benefits of the Class mechanism, including providing injured persons or entities with a method for obtaining redress on claims that might not be practicable to pursue individually, substantially outweigh any difficulties that may arise in the management of this class action.

92. The amount of monetary damages at issue for each claim are such that the expenses of litigating Plaintiffs' and each Class members' claim individually would be so cost prohibitive that proceeding individually would deny Plaintiffs and Class members a viable remedy. Thus, proceeding by way of class action is the only fair, efficient, economical, and sensible manner in which to vindicate the injuries sustained by Plaintiffs and Class members.

93. Plaintiffs know of no difficulty to be encountered in the maintenance of this action that would preclude its maintenance as a class action.

94. Class action treatment is superior to numerous individual actions since Class action treatment would alleviate the risk or possibility of inconsistent or contradictory judgments that would establish incompatible standards of conduct for Defendants. Moreover, class action treatment would prevent the risk of adjudications on individual actions that could, as a practical matter, be dispositive of the interests of other Class members not parties to the individual adjudications, or substantially impair or impede their ability to protect their interests.

95. Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class and subclass as a whole.

96. This forum is an appropriate forum for litigation of the claims of the Class, which is comprised only of persons residing in the state of Florida.

97. The undersigned counsel for Plaintiffs and the Class request that this Court appoint them to serve as Class counsel; first on an interim basis and then on a permanent basis pursuant to Federal Rules 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 this action, know the applicable law, will commit sufficient resources to represent the class, and are best able to represent the Class.

### **COUNT I**

#### **Breach of Express Warranty**

98. Plaintiffs reallege and incorporate each and every allegation set forth above as if fully set forth herein.

99. Under Florida law, a product is defective if it does not conform to representations of fact made by defendant, orally or in writing, in connection with the sale transaction on which Plaintiff relied in the purchase and use of the product. The representation must be one of fact, rather than opinion.

100. Beginning at an exact date unknown to Plaintiffs, but at least since four (4) years prior to the filing date of this action, and as set forth herein, Defendants made representations to the public, including Plaintiffs and Class members, 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 Plaintiffs, 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.

101. Defendants' representations made to the public, including Plaintiffs and Class members, by Defendants' advertising, packaging, and other means, regarding whether their flushable wipes were flushable and/or safe for plumbing, sewer, and septic systems was representations of fact regarding the characteristics of Defendants' products and their intended uses.

102. Defendants made these representations in connection with sales transactions wherein Plaintiffs and Class members purchased Defendants' flushable wipes from retailers selling Defendants' flushable wipes products.

103. In their purchase and use of Defendants' flushable wipes, Plaintiffs and Class members relied upon Defendants' false representations of fact that their flushable wipes are "flushable," "sewer and septic safe," "break up after flushing," and will not harm their plumbing.

104. However, Defendants flushable wipes are defective and Defendants have breached their express warranty in that Defendants' flushable wipes did not, in fact, flush without adverse consequences to Plaintiffs' and Class members' home plumbing and sewer or septic systems as set forth in detail herein. As a result of this breach, Plaintiffs and Class members did not receive goods as warranted by Defendants.

105. The defect in Defendants' flushable wipes existed at the time the products left Defendants' hands.

106. As a proximate result of this breach of warranty by Defendants, Plaintiffs and Class members have been damaged in an amount to be determined at trial.



**COUNT II**

**Breach of Implied Warranty of Merchantability**

107. Plaintiffs reallege and incorporate each and every allegation set forth above as if fully set forth herein.

108. Under Florida law, a product is defective if it is not reasonably fit for either the uses intended or the uses reasonably foreseeable by Defendant.

109. Defendants' implied warranty that their flushable wipes were merchantable was part of the basis of the bargain between Defendants and Plaintiffs and Class members.

110. Defendants breached the implied warranty of merchantability because their flushable wipes were not fit for the ordinary purpose in which they were sold, used, or intended because Defendants' flushable wipes do not conform to the promises, representations of fact, or warranties made by Defendants to Plaintiffs and Class members in the marketing of and on the product packaging of their flushable wipes. Specifically, Defendant's flushable wipes are unfit for the ordinary purpose in which they were sold, used, or intended because the wipes do not break apart after flushing, are not dispersible, and not sewer and septic safe – the wipes are not “flushable.”

111. By marketing their flushable wipes as, *inter alia*, flushable, that like toilet paper they break up after flushing, are sewer and septic safe, Defendants knew or could reasonably foresee that Plaintiffs and Class members would use and flush these wipes down their toilets.

112. As a proximate result of this breach of implied warranty of merchantability by Defendants, Plaintiffs and Class members have been damaged in an amount to be determined at trial.

**COUNT III**

**Breach of Implied Warranty of Fitness for a Particular Purpose**

113. Plaintiffs reallege and incorporate each and every allegation set forth above as if fully set forth herein.

114. Under Florida law, a product is defective if it is not reasonably fit for the specific purpose for which defendant knowingly sold the product and for which, in reliance on the judgment of defendant, the purchaser bought the product.

115. Defendants knowingly sold their flushable wipes for the specific purpose of being flushed down the purchasers' toilet after use. Defendants' knowledge of this purpose is evidenced by its advertising, marketing, and/or product packaging.

116. In their purchase and use of Defendants' flushable wipes, Plaintiffs and Class members relied upon Defendants' false representations of fact that their flushable wipes are fit for the purpose of safely flushing down the toilet after use.

117. Defendants' flushable wipes are defective and not reasonably fit for the particular purpose of flushing down the toilet after use and Defendants have breached the implied warranty or fitness for a particular purpose because Defendants' flushable wipes did not flush without adverse consequences to Plaintiffs' and Class members' home plumbing and sewer or septic systems.

118. As a proximate result of this breach of implied warranty of fitness for a particular purpose by Defendants, Plaintiffs and Class members have been damaged in an amount to be determined at trial.

**COUNT IV**

**Negligence**

119. Plaintiffs reallege and incorporate each and every allegation set forth above as if fully set forth herein.

120. As the designer, manufacturer, distributor, and/or seller, Defendants owed a duty to Plaintiffs and Class members to design and/or manufacture Defendants flushable wipes in a non-defective condition, to safeguard against reasonably foreseeable hazards of the product, and not to cause injury to Plaintiffs and Class members.

121. Defendants breached that duty by, *inter alia*: failing to design or manufacture their flushable wipes to be free from defects; by failing to design and manufacture their flushable wipes so that they would not cause injury to plaintiff; by failing to design or manufacture their flushable wipes against foreseeable hazards of the product; or by failing to exercise reasonable care to design or manufacture their flushable wipes in a manner that the wipes are reasonably safe for their intended use or other uses reasonably foreseeable.

122. Defendants' flushable wipes are defective because they do not perform in the manner in which they were designed, manufactured, or marketed to consumers. Namely, Defendants' flushable wipes do not and did not flush without clogging and/or causing other adverse consequences to Plaintiffs' and Class members' plumbing and sewer or septic systems.

123. Defendants' breach of this duty was the proximate cause of the Plaintiffs' injuries.

124. The harm to Plaintiffs and Class members was foreseeable since the damage was exactly of the type that Defendants marketed and warrantied their flushable wipes would not cause.

125. As a direct and proximate result of Defendants' breach of this duty, Plaintiffs and Class members have sustained damages and ascertainable losses.

## **COUNT V**

### **Negligent Misrepresentation**

126. Plaintiffs reallege and incorporate each and every allegation set forth above as if fully set forth herein.

127. Beginning at an exact date unknown to Plaintiffs, but at least since four (4) years prior to the filing date of this action, and as set forth herein, Defendants made misrepresentations of fact to the public, including Plaintiffs and Class members, by their advertising, marketing, packaging, and other means, that flushable wipes were safe to flush down the toilet without causing damage to their plumbing, sewer, and/or septic systems.

128. Defendants omitted material facts or misrepresented material facts regarding the effects flushing flushable wipes down toilets have on plumbing and sewer systems.

129. Defendants owed a duty to Plaintiffs and Class members to exercise reasonable care when issuing statements or disclosures regarding the nature of flushable wipes, including their safety to be flushed down the consumer's toilet.

130. Defendants breached this duty by making misrepresentations to Plaintiffs and Class members regarding the ability of Defendants' flushable wipes to be flushed without causing adverse effects on plumbing and sewer systems.

131. Defendants knew of the misrepresentations, made the misrepresentation without knowledge of their truth or falsity, or should have known the representations were false because of the existence of several information sources that were known or should have been known to

Defendants, including, testing done by Defendants and/or third parties, and customer complaints detailing the failure of Defendants' flushable wipes to perform as represented by Defendants.

132. Defendants' misrepresentations, statements and disclosures, or omission of the same, regarding the ability of flushable wipes to be flushed without causing adverse effects on plumbing and sewer system were likely to deceive or confuse Plaintiffs and Class members.

133. Defendants' misrepresentations were intended to induce consumers, including Plaintiffs and Class members to act on these misrepresentations and to purchase and use Defendants' flushable wipes.

134. Plaintiffs and Class members, by purchasing flushable wipes and flushing them down their toilets, justifiably acted in reliance upon the representations made by Defendants. Since Defendants are in a superior position and possess greater technical knowledge of the product, Plaintiffs and Class members were justified in their reliance upon Defendants' misrepresentations.

135. Defendants' misrepresentations are likely to influence future decisions of consumers and the buying public.

136. As a direct and proximate result of Plaintiffs' and Class members' reliance upon the false representations made by Defendants, as described above, Plaintiffs and Class members purchased and used Defendant's flushable wipes and as a direct and proximate result have sustained damages and ascertainable losses.

## **COUNT VI**

### **Negligent Failure to Warn**

137. Plaintiffs reallege and incorporate each and every allegation set forth above as if fully set forth herein.

138. Under Florida law, negligence is the failure to use reasonable care, which is the care that a reasonably careful designer, manufacturer, distributor, or seller would use under like circumstances. Reasonable care on the part of defendant requires that defendant give appropriate warning(s) about particular risks of the product which defendant knew or should have known are involved in the reasonably foreseeable use(s) of the product.

139. As the designer, manufacturer, distributor, or seller of their flushable wipes, Defendants had a duty to warn Plaintiffs and Class members about reasonably foreseeable hazards and particular risks associated with the reasonably foreseeable use(s) of the product, including the flushing of the flushable wipes after use. These foreseeable hazards and particular risks include clogged plumbing and clogging or damage to sewer and septic systems caused by flushing Defendants' flushable wipes.

140. Defendants knew or should have known of the risk of clogged plumbing and clogging or damage to sewer and septic systems caused by flushing their flushable wipes by way of several information source known to or should have been known to Defendants, including, testing done by Defendants and/or third parties, and customer complaints detailing the failure of Defendants' flushable wipes to perform as promised.

141. Defendants did not warn Plaintiffs and Class members of these foreseeable hazards and particular risks and thereby breached their duty to warn Plaintiffs and Class members about the foreseeable hazards and particular risks associated with the intended use of these products.

142. The warnings (if any) on the packaging of Defendants' flushable wipes are and were not adequate to alert a reasonable ordinary consumer to the potential damage to plumbing, septic and sewer systems caused by reasonable and ordinary use to the product.

143. Defendants' have not and do not adequately warn Plaintiffs, Class members, or other consumers of the potential harmful consequences to plumbing, sewer, or septic systems caused by flushing Defendants' flushable wipes down the toilet.

144. As a direct and proximate result of Defendants' breach of their failure to warn, Plaintiffs and Class members have sustained injuries and suffered damages in an amount to be determined at trial.

## **COUNT VII**

### **Strict Liability Failure to Warn**

145. Plaintiffs reallege and incorporate each and every allegation set forth above as if fully set forth herein.

146. Under Florida law, a product is defective when the foreseeable risks of harm from the product could have been reduced or avoided by providing reasonable instructions or warnings, and the failure to provide those instructions or warnings makes the product unreasonably dangerous.

147. The warnings (if any) on the packaging of Defendants' flushable wipes are not adequate to alert a reasonable ordinary consumer to the potential damage to plumbing, septic and sewer systems caused by use to the product.

148. Defendants' have not and do not adequately warn Plaintiffs, Class members, or other consumers the potential harmful consequences to plumbing, sewer, or septic systems caused by flushing Defendants' flushable wipes down the toilet.

149. Had Defendants included adequate warnings regarding the risk of harm from clogged plumbing and clogging or damage to sewer and septic systems caused by flushing Defendants' flushable wipes in their advertising, marketing, or packaging of their flushable

wipes, Plaintiffs and Class members could have avoided the harms and damages suffered by either not purchasing Defendants' flushable wipes or not flushing the wipes down their toilets.

150. The absence of adequate warnings from Defendants regarding the foreseeable risk of harm from the reasonably foreseeable use of the product makes Defendants' flushable wipe products unreasonably dangerous.

151. As a direct and proximate result of Defendants' failure to warn of the foreseeable risks of harm associated with the reasonably foreseeable use of their products, Plaintiffs and Class members have sustained injuries and suffered damages in an amount to be determined at trial.

### **COUNT VIII**

#### **Violations of the Florida Deceptive and Unfair Trade Practices Act, Florida Statutes §§501.201, et seq.**

152. Plaintiffs reallege and incorporate each and every allegation set forth above as if fully set forth herein.

153. Defendants' conduct in manufacturing, distributing, marketing and/or selling their flushable wipes that are and were defective, and contrary to Defendants' representations, do not break apart after flushing, are not dispersible, are not sewer and septic safe, and are not flushable, constitutes unconscionable, deceptive, or unfair acts or practices in connection with Defendants' trade or commerce in connection with a consumer transaction.

154. Defendants conduct constitutes unconscionable, deceptive, or unfair acts or practices because Defendants represented that, *inter alia*:

- a. Their flushable wipes have performance characteristics, uses, or benefits that they do not have; and/or



- b. Their flushable wipes are of a particular standard, quality, grade, or style that they are not.

155. Defendants conduct further constitutes unconscionable, deceptive, or unfair acts or practices because Defendants' knowingly made misleading representations and/or statements upon which Plaintiffs and Class members were likely and did to rely upon to their detriment.

156. Absent and but for the Defendants' unconscionable, deceptive, or unfair acts or practices, Plaintiffs and Class members would not have purchased Defendants' flushable wipes, or paid a higher price for Defendants flushable wipes rather than purchasing lower cost wipes not marketed, labeled, and represented to be flushable.

157. Plaintiffs and Class members have been injured and have suffered damages and loss of money as a result of receiving products that were not in the condition or possess the qualities as the products they should have received from Defendants but for Defendants' unconscionable, deceptive, or unfair acts or practices.

## **COUNT IX**

### **Unjust Enrichment**

158. Plaintiffs reallege and incorporate each and every allegation set forth above as if fully set forth herein.

159. Plaintiffs and Class members conferred a benefit upon Defendants by paying money to purchase Defendants' flushable wipes, thereby conferring upon Defendants an economic benefit by which Defendants profited. Defendants retained the benefits conferred upon them by Plaintiffs and Class members.

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

161. Defendants knew about the benefit(s) that Plaintiffs and Class members conferred upon them.

162. It would be against equity and good conscience to permit Defendants to retain the ill-gotten benefits they received from Plaintiffs and Class members, in light of the fact the 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 Plaintiffs and Class members of all monies paid to Defendants for the products at issue.

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

### **PRAYER FOR RELIEF**

WHEREFORE, the Plaintiffs demand judgment against Defendants for themselves and the Class members as follows:

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

B. An Order declaring Defendants' practices to be unconscionable, deceptive, and/or unfair acts or practices, and requiring Defendants to pay actual damages to Plaintiffs and Class members;

C. An Order awarding statutory, compensatory and punitive damages in favor of Plaintiffs and the other Class members against Defendants for Defendants' tortious conduct, breach of contract and/or breach of warranties, and violation of the Florida Deceptive and Unfair

Trade Practices Act, and for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

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 above requested proper disclosures are issued and disseminated; 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 Plaintiffs and the Class members their reasonable costs and expenses incurred in this action, including attorney's fees and expert fees; and

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

**JURY DEMAND**

Plaintiffs demand a trial by jury.

DATED: December 23, 2014

Respectfully submitted,

s/ Anthony J. Garcia  
ANTHONY J. GARCIA (106909)  
**TRIAL COUNSEL**

**AG Law, Inc.**

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(Pending Motion for *Pro Hac Vice*)

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(Pending Motion for *Pro Hac Vice*)

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**Counsel for Plaintiffs and the Proposed Class**

JS 44 (Rev. 12/12)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**  
 DENNIS PATRICK SWEENEY, JR. and HEATHER RENEE  
 COPHER-SWEENEY

(b) County of Residence of First Listed Plaintiff HILLSBOROUGH  
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
 BEASLEY, ALLEN, CROW, METHVIN, PORTIS & MILES, PC, PO BOX  
 4160, MONTGOMERY, AL 36103 PH: 334 269 2343  
 AG LAW, INC. 742 S. VILLAGE C. TAMPA, FL 33606 PH: 813 259 9555

**DEFENDANTS**  
 KIMBERLY-CLARK CORPORATION, WAL-MART STORESM INC.,  
 and ROCKLINE INDUSTRIES, INC.

County of Residence of First Listed Defendant DALLAS  
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
 THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input checked="" type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from Another District (specify)     6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 USC 1332(D)

Brief description of cause:  
DECEPTIVE AND UNFAIR TRADE PRACTICE RELATED TO FLUSHABLE WIPES

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$ \_\_\_\_\_    CHECK YES only if demanded in complaint:  
**JURY DEMAND:**     Yes     No

**VIII. RELATED CASE(S) IF ANY** (See instructions):  
 JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE: 12/23/2014

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

SIGNATURE OF ATTORNEY OF RECORD: *Anthony J. Caruso*