

# Exhibit B

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

MELISSA ARMSTRONG, *et al.*, individually  
and on behalf of other similarly situated  
persons,

Plaintiffs,

v.

KIMBERLY-CLARK CORPORATION,

Defendant.

Civil Action No. 3:20-CV-3150-M  
LEAD CASE

(Consolidated With Civil Action No. 3:21-  
CV-01484-M)

**PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL AND TO  
DIRECT NOTICE OF PROPOSED SETTLEMENT TO THE CLASS AND  
MEMORANDUM IN SUPPORT THEREOF**

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## I. INTRODUCTION<sup>1</sup>

After nearly three years of hard-fought litigation and extensive settlement negotiations, including four, full-day mediation sessions guided by the Honorable Justice Deborah Hankinson (Ret.) acting as mediator, the Parties have reached a proposed Settlement to resolve consumer economic loss claims arising from Kimberly Clark’s recall of Cottonelle Flushable Wipes (“Wipes”) announced in October 2020. The proposed Settlement, achieved only after significant investigation, motion practice, cooperative discovery, and vigorous arm’s-length mediation efforts, requires Kimberly-Clark to pay a non-reversionary amount of at least \$6 million in new dollars, and up to \$13.5 million, to pay valid Claims of Settlement Class Members who purchased recalled Wipes. Together with the \$4 million Kimberly-Clark previously paid as part of its refund program,<sup>2</sup> this Settlement will ensure that at least \$10 million, and up to \$17.5 million, will be spent in connection with reimbursing consumers who purchased recalled lots of Wipes. In addition, Kimberly-Clark will separately pay for the costs of notice, settlement administration, and attorneys’ fees and expenses.<sup>3</sup> Importantly, the Settlement does *not* release claims of class members who experienced personal injuries.

To ensure class members learn of the Settlement, Plaintiffs’ counsel issued subpoenas to more than 30 retailers that sold the Wipes. As a result of these efforts, Plaintiffs were able to identify an estimated 4-5 million class members who will receive direct notice of the Settlement.

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<sup>1</sup> Plaintiffs previously moved for an expansion of the page limits, which has not yet been decided. *See* Doc. 116. Plaintiffs do not intend to be presumptuous by filing an overlength brief but hope the Court will agree there is good cause to do so in order to fully set forth the litigation history, Settlement terms, and address the relevant legal standards. *See id.*

<sup>2</sup> Kimberly-Clark previously paid approximately \$4 million in activated refund cards issued through its Recall and Refund Program. *See* Settlement Agreement, ¶ 2.28.

<sup>3</sup> If the Amount Payable for Approved Claims is less than the Minimum Settlement Amount, Kimberly-Clark shall receive a credit towards its other obligations: first to Notice and Administration Expenses, and second to Fee Award and Costs. *See infra* § III.F.

This is virtually unprecedented in consumer class action settlements involving consumer products, where it is notoriously difficult to identify class members. These efforts will ensure that a significant number of class members are made aware of the Settlement and can participate.

The Settlement also provides for meaningful relief. Settlement Class Members with proof of purchase are eligible for up to 100% reimbursement of their purchase price. Settlement Class Members without proof of purchase are eligible for reimbursement of up to five dollars (\$5.00) per household.<sup>4</sup> In short, the proposed Settlement secures the primary relief sought by Plaintiffs.

Considering the valuable benefits conveyed to Settlement Class Members, and the significant risks faced through continued litigation, the Court should conclude that it is likely to find the Settlement “fair, reasonable, and adequate” under Rule 23(e)(2). Plaintiffs thus move for an order preliminarily approving the proposed Settlement, appointing Class Counsel and the Settlement Class Representatives, authorizing the provision of notice to the Settlement Class, and setting a Final Approval Hearing.<sup>5</sup>

## II. SUMMARY OF THE LITIGATION

### A. The Consolidated Case

On October 16, 2020, Wipes users Melissa Armstrong and Roland Nadeau filed a class action complaint against Kimberly-Clark in the U.S. District Court for the Northern District of Texas on behalf of a putative nationwide class of Wipes purchasers, along with a California subclass. *See Armstrong et al. v. Kimberly-Clark Corp.*, No. 3:20-cv-03150 (N.D. Tex.).

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<sup>5</sup> This request is unopposed. Plaintiffs submit herewith the executed Settlement Agreement and Release (“Settlement Agreement” or “Agreement”) as **Exhibit 1** (with the Long Form Notice, the Short Form Notice, and the Claim Form as **Exhibits 1-1, 1-2, and 1-3** to the Agreement, respectively), the Declaration of J. Austin Moore (“Moore Dec.”) as **Exhibit 2**; the Declaration of Jeanne C. Finegan (“Finegan Dec.”) on behalf of the proposed Settlement Administrator, Kroll Settlement Administration, LLC (“Settlement Administrator” or “Kroll”) as **Exhibit 3**; and the Declaration of Sarah Arpin (“Arpin Dec.”) on behalf of Amazon, Inc. (“Amazon”) as **Exhibit 4**.

On November 19, 2020, New York resident Dawn Rothfeld filed a putative class action in the U.S. District Court for the Eastern District of New York asserting similar allegations along with claims for personal injury. *See Rothfeld v. Kimberly-Clark Corp.*, No. 2:20-cv-05647-JS-ARL (E.D.N.Y.). While the cases initially proceeded separately, they ultimately stipulated that the *Rothfeld* action would be transferred to the Northern District of Texas. After transfer, this Court entered an order consolidating *Rothfeld* with *Armstrong* on July 9, 2021, and Plaintiffs' counsel agreed to work cooperatively to jointly prosecute the consolidated action.

**B. Plaintiffs' Allegations.**

In the Complaint, Plaintiffs allege Kimberly-Clark initiated recalled the Wipes in October 2020 after discovering they were contaminated with a bacterial strain called *Pluralibacter gergoviae*. *See, e.g.*, Doc. 116-1 ¶¶ 4, 10, 56. The scope and breadth of the recall was significant, and included most units manufactured on one production line and sold across North America for the prior eight months. *Id.* ¶ 72. Many big-box retailers directly notified consumers of the recall, warning them of potential health risks and advising them to immediately discard their recalled Wipes. *See id.* ¶ 73. Plaintiffs' Complaint asserts claims against Kimberly-Clark for: (1) breach of implied warranty of merchantability; (2) breach of express warranty; (3) strict product liability; (4) negligence; (5) fraud by silence or omission; (6) negligent misrepresentation; and (7) unjust enrichment, as well as numerous additional claims on behalf of statewide subclasses. *Id.* at Counts 8-23. On September 21, 2023, Plaintiffs filed a motion for leave to file an amended complaint in conjunction with settlement that includes additional allegations about each named Plaintiff's purchase of recalled lots of the Wipes and conforms the class definition to that used in the Settlement Agreement. *See* Doc. 116-1. This motion remains pending. *See* Footnote 1, *supra*.

**C. The Settlement Negotiations.**

From the outset of the case in late 2020, the Parties have pursued global resolution through arm's length settlement negotiations. Moore Dec. ¶ 3. These efforts culminated in substantial, ongoing exchanges of information, myriad settlement proposals, and significant settlement communications, including four, full-day mediations guided by Justice Hankinson between December 2021 and May 2023. *Id.* To enable the Parties to meaningfully evaluate the claims and defenses at issue, the Parties, after their initial Rule 26(f) conference in late 2020, began exchanging information, including information about the cause of the contamination, consumer complaints received by Kimberly-Clark, and estimated third-party sales data. *Id.*

During this time, the Parties jointly requested, and this Court granted, several extensions of pending deadlines to permit the Parties to make progress in settlement discussions. Moore Dec. ¶ 4; *see, e.g.*, Docs. 22–23, 26-27, 29–29, 30-31, 37–38. Also during this time, the Parties jointly moved for an order an order consolidating the *Rothfeld* action with the *Armstrong* action, explaining that consolidation would facilitate global settlement discussions. Moore Dec. ¶ 4. On July 9, 2021, the Court granted the motion, and the Parties continued settlement negotiations on behalf of the class as part of a single, consolidated case. *Id.*; *see* Docs. 35-36.

After several productive Rule 408 exchanges, Plaintiffs sent Kimberly-Clark a comprehensive global settlement demand letter on August 23, 2021. Moore Dec. ¶ 5. Shortly thereafter, the Parties agreed to mediate, and engaged the services of a highly respected mediator, the Honorable Justice Deborah Hankinson (Ret.). *Id.*; *see* Doc. 42 ¶ 2. On December 7, 2021, the Parties participated in the first all-day, in-person mediation session in Dallas, Texas before Justice Hankinson after exchanging detailed mediation briefs setting forth the Parties' respective positions. Moore Dec. ¶ 5. While the Parties were unable to reach a resolution at that first session, the Parties continued to negotiate with the assistance of Justice Hankinson, including through

several telephone conferences in January, February, March, April, and May 2022 in advance of a second mediation session. *Id.*

During this time, the Parties reached an agreement that third-party discovery involving Kimberly-Clark's retailers would be critical to advancing ongoing settlement discussions. *Id.* ¶ 6. Because Kimberly-Clark did not sell the Wipes directly to consumers, the Parties needed this discovery to identify purchasers of the product, including for purposes of providing class notice. *Id.* Thus, the Parties sought, and the Court ordered on January 31, 2022, the entry of a scheduling order frontloading certain third-party discovery (Docs. 46–47). *Id.* Thereafter, Plaintiffs served subpoenas on over 30 retailers seeking, among other information, “the name, address, email address, and telephone number of every individual who purchased” a recalled product along with the “date of purchase” and “amount of purchase.” *Id.*; *see, e.g.*, Docs. 48-63, 66-71, 73, 74, 76-78, 82-84. During this time, Plaintiffs also filed their Consolidated Class Action Complaint on March 29, 2022. Doc. 64.

On June 1, 2022, the Parties participated in a second all-day mediation session with Justice Hankinson. Moore Dec. ¶ 7. After no resolution was reached, the Parties paused settlement negotiations and focused efforts on discovery and motion practice. *Id.* In the weeks that followed, the Parties negotiated a protective order (*see* Doc. 95) and briefed Kimberly-Clark's product preservation sampling methodology. Doc. 97. Plaintiffs also drafted and served comprehensive document requests on Kimberly-Clark and continued seeking class member contact information from various retailers pursuant to its third-party subpoenas. Moore Dec. ¶ 7. Finally, after Kimberly-Clark filed a Motion to Dismiss, the Parties fully briefed the issues and argued the motion on September 7, 2022. *See* Docs. 81, 85, 86, and 98.

After Kimberly-Clark's motion to dismiss was fully briefed, argued, and ripe for determination, the Parties conferred and agreed that the time was ripe to re-engage in settlement negotiations before expending additional time and resources on remaining discovery, experts, and dispositive motion briefing. Moore Dec. ¶ 8. As a result, the parties jointly requested a stay of proceedings. *Id.*; Doc. 100. The Court granted the Parties' joint motion and stayed all pending deadlines. Doc. 101.

On January 10, 2023, the Parties participated in a third, full-day mediation session with Justice Hankinson. Moore Dec. ¶ 9. Prior to the mediation, on January 9, 2023, the Parties advocated for their respective positions during separate telephone conferences with Justice Hankinson. *Id.* Though the Parties did not reach agreement at the mediation, Justice Hankinson made a mediator's proposal on the monetary terms of settlement that was ultimately accepted by both Parties. *Id.*

Thereafter, the Parties continued to negotiate the non-monetary terms of settlement with the assistance of Justice Hankinson, including through additional written position statements. *Id.* ¶ 10. On May 1, 2023, the Parties participated in a fourth mediation session with Justice Hankinson to assist negotiations with outstanding material terms, including attorneys' fees and costs. *Id.* Following that session, Justice Hankinson issued a mediator's proposal that was accepted by both parties. *Id.* Thereafter, after vigorous and hard-fought negotiations occurring over almost three years, the Parties finalized a term sheet reflecting the essential terms of the Settlement now offered for the Court's consideration in the final Settlement Agreement. *Id.*; see Ex. 1.

**D. The Parties' Efforts to Secure Settlement Class Contact Information.**

Since serving the over 30 third-party subpoenas in Spring of 2022, Plaintiffs have dedicated substantial time and effort to working with third party retailers to obtain class member contact information for purposes of providing settlement notice. Moore Dec. ¶ 19. This effort



required months of individual negotiations with dozens of retailers, all of which were represented by sophisticated counsel. *Id.* As a result, Plaintiffs have obtained commitments from numerous major retailers to provide class member information, including Amazon, Costco, Sam's Club, Wal-Mart, Target Corp., Hy-Vee Inc., Ingles Market Inc., Jewel-Osco, Safeway, and BJ's Wholesale Club, among many others. *Id.* Several of these retailers have already provided the requested data to the Settlement Administrator, and others have committed to producing the data upon entry of a preliminary approval order. *Id.* In total, because of Plaintiffs' efforts, an estimated 4-5 million purchasers of Wipes will receive direct notice of the Settlement. <sup>6</sup> *Id.*

### **III. THE TERMS OF THE PROPOSED SETTLEMENT**

#### **A. The Settlement Class**

Under the Settlement,<sup>7</sup> the Parties agree to certification of the following Settlement Class, which includes the various State Subclasses:

All persons in the United States and United States territories who purchased recalled lots of Cottonelle Flushable Wipes ("Wipes") between February 7, 2020 and December 31, 2020 for personal use and not for resale, and any persons residing in the same household.

Ex. 1 ¶ 3.1. The Settlement expressly excludes from the Settlement Class: (1) the Court and its officers and employees; (2) Kimberly-Clark, its subsidiaries, parent companies, successors, predecessors, and any entity in which Kimberly-Clark or its parents have a controlling interest and their current or former officers, directors, and employees; and (3) any Settlement Class Members who submit a valid Request for Exclusion on or before the Opt-Out Deadline. *Id.* ¶ 3.2.

Relatedly, if a Settlement Class Member was issued a refund card under the Recall and Refund Program and then activated the refund card, she is ineligible to submit a valid Claim under

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<sup>6</sup> The Parties do not yet have an exact number of consumers, as the Settlement Administrator has not yet received all of the data or completed the process of de-duping. Moore Dec. ¶ 19 n. 3.

<sup>7</sup> Unless stated otherwise, all capitalized terms are as defined in the Settlement Agreement.

the Settlement Agreement, unless she provides proof to the Settlement Administrator that she had additional purchases of Wipes for which she did not receive compensation through the Recall and Refund Program. *Id.* ¶ 7.3(d).

**B. The Settlement Fund**

In exchange for the release of the Settlement Class Members' claims against Kimberly-Clark, Kimberly-Clark will pay a non-reversionary minimum of \$6 million in new dollars, and a maximum of \$13.5 million, to pay valid Claims submitted as part of the Settlement. Accounting for the \$4 million Kimberly-Clark paid through its refund program, Kimberly-Clark will pay at least \$10 million, and up to \$17.5 million, in connection with refunds to consumers who purchased recalled lots of Wipes. *Id.* ¶¶ 2.18, 2.17 (respectively, the "Minimum Settlement Amount" and "Maximum Settlement Amount"). Settlement Class Members who submit a valid Claim with proof of purchase are eligible for reimbursement up to a maximum of 100% of the amount for which they provide proof of purchase. *Id.* ¶ 7.5(b). Settlement Class Members who submit a valid Claim without proof of purchase are eligible for reimbursement of up to five dollars (\$5.00) per household. *Id.* ¶ 7.5(a). If the sum of the Amount Payable for Approved Claims exceeds \$13.5 million (which is the Maximum Settlement Amount less the \$4 million credit for previously-paid claims), payments to Settlement Class Members will be reduced *pro rata* so that the total of all payments for valid Claims does not exceed the Maximum Settlement Amount. *Id.* ¶ 6.4. If the Amount Payable for Approved Claims is less than the Minimum Settlement Amount, Kimberly-Clark shall receive a credit towards its other obligations: first to Notice and Administration Expenses, and second to attorneys' fees and expenses. *Id.*; *see infra* § III.F.

**C. Provision of Notice to the Settlement Class**

The Parties have consulted with Kroll, the proposed Settlement Administrator, to determine the best practicable method of class notice. *See* Moore Dec. ¶ 18; Finegan Dec. ¶¶ 3, 32. Subject to the requirements of any orders entered by the Court, the Parties propose that Notice be provided as follows:

The Notice Deadline will be forty-five (45) days from the entry of the Preliminary Approval Order. Ex. 1 ¶ 2.22. The Settlement Administrator shall provide direct Notice by the Notice Deadline via email to those Settlement Class Members for whom the Settlement Administrator has obtained Settlement Class Contact Information. Ex. 1 ¶ 4.1; *see* Finegan Dec. ¶¶ 15, 17–19. The Settlement Administrator may send additional emails to ensure successful transmission. Ex. 1 ¶ 4.1; Finegan Dec. ¶ 19. If email is unavailable for any such Settlement Class Member, the Settlement Administrator shall send Notice via regular mail. Ex. 1 ¶ 4.1; Finegan Dec. ¶ 15.

Further, Plaintiffs have reached an agreement with Amazon to provide direct notice of the Settlement directly to Amazon customers, which will help ensure successful transmission of the Notice. Moore Dec. ¶ 20; Arpin Dec. ¶¶ 5–7 (explaining “[t]he successful delivery rate for Amazon-provided direct email notice typically exceeds 99%”). Specifically, Amazon will separately provide direct Notice by the Notice Deadline, one time, via email, to the email addresses in its possession associated with the approximately 1,080,663 consumers it previously identified as purchasing recalled Wipes. Moore Dec. ¶ 20; Arpin Dec. ¶¶ 5–6. Within seven (7) days of sending the Notice, Amazon will provide a declaration to the Parties indicating compliance with this obligation and setting forth the total number of unique email addresses to whom it sent Notice, and the total number of those emails that were delivered successfully as reported by Amazon’s email server. Moore Dec. ¶ 20; Arpin Dec. ¶ 6.

Notice will also be provided by publication through advertisements in appropriate print and electronic media including social media as agreed to by the Parties through the Claims Deadline. Moore Dec. ¶ 18; Finegan Dec. ¶¶ 20–28; Ex. 1 ¶ 4.1. The Notice will (1) notify Settlement Class Members of the Settlement and relevant terms, (2) provide Settlement Class Members the URL to the Settlement website and a telephone number they can call to obtain information about the Settlement, and (3) instruct Settlement Class Members on how to make a claim for Settlement benefits, exclude themselves from the Settlement, or object to it. Ex. 1-1 and 1-2 (proposed notice forms). Settlement Class Members will be given sixty (60) days after the Notice Date to submit claims. Ex. 1 ¶ 2.4.

As soon as practicable following entry of a preliminary approval order, the Settlement Administrator will create a Settlement Website as a means for Settlement Class Members to obtain notice of and information about the Settlement. Moore Dec. ¶ 21; Finegan Dec. ¶ 30; Ex. 1 ¶ 2.39. The Settlement Website will contain relevant documents, including the Notice, the Agreement, this Motion, the preliminary approval order, and the operative Complaint. *Id.* The Settlement Website will also include a toll-free telephone number, email address, and mailing address through which Settlement Class Members may contact the Settlement Administrator directly. *Id.* The Settlement Website will remain operational until at least thirty (30) days after all Settlement Payments have been distributed. *Id.*

#### **D. Opt-Out and Objection Procedures**

Any Settlement Class Member who wishes to exclude themselves from the Settlement must submit a written request for exclusion to the Settlement Administrator via U.S. mail postmarked no later than the Opt-Out Deadline. Ex. 1 ¶ 5.1. The written request for exclusion must: (1) identify the name of the proceeding; (2) include the individual's full name and current address; (3) be personally signed by the individual seeking exclusion; and (4) include a statement clearly

indicating the individual's intent to be excluded from the Settlement. *Id.* Any individual who submits a valid and timely request for exclusion in the manner described herein shall not: (1) be bound by any orders or judgments entered in connection with the Settlement; (2) be entitled to any relief under, or be affected by, the Agreement; (3) gain any rights by virtue of the Agreement; or (4) be entitled to object to any aspect of the Agreement. *See* Ex. 1 ¶¶ 3.2, 5.1.

Other than individuals excluded under the class definition, any Settlement Class Member who does not submit a valid and timely request for exclusion in the manner described herein shall lose the opportunity to exclude himself or herself from the Settlement and will be bound by the Settlement. Ex. 1 ¶ 5.1.

Any Settlement Class Member who wants to object to the Settlement must submit a written objection to the Settlement Administrator via U.S. mail postmarked no later than the Objection Deadline. *Id.* ¶ 5.2. The written objection must include: (1) the name of the proceedings; (2) the Settlement Class Member's full name, current mailing address, and telephone number; (3) a statement of the specific grounds for the objection, as well as any documents supporting the objection; (4) a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (5) the identity of any attorneys representing the objector; (6) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; and (7) the signature of the Settlement Class Member or the Settlement Class Member's attorney. *Id.* Any Settlement Class Member who fails to submit a timely and adequate objection in the manner described herein waives the right to object or to be heard at the Final Approval Hearing and shall forever be barred from making any objection to the Settlement. *Id.*

**E. Service Awards, Attorneys' Fees, and Expenses**

At least twenty-one (21) days before the Opt-Out and Objection Deadlines, proposed Class Counsel will separately move the Court for an order awarding attorneys' fees and expenses in the amount of \$3,650,000. Moore Dec. ¶ 24; Ex. 1 ¶ 12.2. Any Fee Award and Costs will be paid separately from the Minimum or Maximum Settlement Amounts, unless the sum of the Amount Payable for Approved Claims is less than \$6 million, in which case Kimberly-Clark will receive a credit towards its other obligations under the Settlement, first to Notice and Administration Expenses, and second to the Fee Award and Costs. Moore Dec. ¶ 24; Ex. 1 ¶¶ 6.4, 12.2. This provision was separately and independently negotiated by the Parties only after the Class relief was agreed upon, with the assistance of a mediator, and the Settlement Agreement is not conditioned on its approval. Moore Dec. ¶ 24.

Proposed Class Counsel will also seek Service Awards of up to \$2,500 for each proposed Settlement Class Representative, which are intended to compensate such individuals for their efforts in the litigation and commitment on behalf of the Settlement Class. Moore Dec. ¶ 25; Ex. 1 ¶ 12.1. Kimberly-Clark does not oppose these requests. *Id.* Any Service Awards approved by the Court will count toward the Minimum Settlement Amount, however, if Approved Claims exceed the Maximum Settlement Amount, Service Awards will not count toward the Maximum Settlement Amount. *Id.*

**F. Settlement Contingencies**

Kimberly-Clark is obligated to pay a non-reversionary amount of at least \$6 million in new dollars to pay valid Claims to Settlement Class Members. Ex. 1 ¶¶ 6.4–6.5. If the sum of the Amount Payable for Approved Claims is less than \$6 million, Kimberly-Clark will receive a credit towards its other obligations under the Settlement, first to Notice and Administration Expenses,

and second to Fee Award and Costs.<sup>8</sup> *Id.* ¶ 6.4. If the sum of the Amount Payable for Approved Claims exceeds \$13.5 million, payments will be reduced *pro rata* so that the total payments for valid Claims does not exceed the Maximum Settlement Amount. *Id.*

#### **G. Release Provisions**

In exchange for the benefits provided under the Settlement, Class Members will release any legal claims that may arise from or relate to the facts and claims alleged in the Complaint filed in this litigation. Importantly, personal injury claims are excluded from the Released Claims, meaning nothing in the release will impact the ability of Settlement Class Members to bring valid personal injury claims in another forum. Ex. 1 ¶ 11.2 (“Exclusion of Personal Injury Claims”).

#### **IV. THE COURT HAS SUBJECT MATTER JURISDICTION.**

Before considering whether to certify a proposed class, a court must consider whether the proposed class representatives have Article III standing. *Flecha v. Medicredit, Inc.*, 946 F.3d 762, 769 (5th Cir. 2020). This requires “(1) an injury in fact, (2) a sufficient causal connection between the injury and the conduct complained of, and (3) a likel[i]hood that the injury will be redressed by a favorable decision.” *Soniat v. Texas Real Estate Comm’n*, 721 F. App’x 398, 399 (5th Cir. 2018) (citing *Susan B. Anthony List v. Driehaus*, 134 S.Ct. 2334, 2341 (2014)) (cleaned up). Each element of standing ““must be supported...with the manner and degree of evidence required at the successive stages of the litigation.”” *Kostka v. Dickey’s Barbecue Restaurants, Inc.*, 2022 WL 16821685, at \*3–4 (N.D. Tex. Oct. 14, 2022), *report and recommendation adopted*, 2022 WL 16821665 (N.D. Tex. Nov. 8, 2022). Under Fifth Circuit precedent, “[i]njuries to rights recognized at common law—property, contracts, and torts—have always been sufficient for standing

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<sup>8</sup> In the unlikely event the Amount Payable for Approved Claims, Notice and Administration Expenses, and the Fee Award and Costs collectively amount to less than \$6 million, then the Parties will confer and jointly submit a proposal to the Court regarding the proposed distribution of the remaining Settlement Funds. Ex. 1 ¶ 6.4.

purposes.” *Servicios Azucareros de Venezuela, C.A. v. John Deere Thibodeaux, Inc.*, 702 F.3d 794, 800 (5th Cir. 2012) (citations omitted). Because the Parties settled at the pleading stage of the litigation, the Court only considers whether Plaintiffs have “plausibly alleged” the minimum requirements for Article III standing. *Kostka*, 2022 WL 16821685, at \*4.

In their proffered First Amended Complaint (Doc. 116-2), each named Plaintiff alleges that they verified they purchased recalled lots of the Wipes and “would not have purchased the Wipes had he known that Kimberly-Clark did not implement safety and quality control measures sufficient to prevent and detect contamination of its products.” *See id.* ¶¶ 87, 96, 103, 109, 115, 121, 127, 134, 141, 148, 156, 164, 171, 179, 185, 191, 198, 205, 212, 219, 225, and 230. The proposed Settlement Class is defined as “[a]ll persons in the United States and United States territories who purchased recalled lots[.]” Ex. 1 ¶ 3.1. Thus, Plaintiffs have plausibly alleged a concrete harm attributable to themselves individually and to all Settlement Class Members—namely, that individual purchasers of Kimberly-Clark’s recalled Wipes did not receive the benefit of their bargain. This is a “classic form of injury-in-fact” that is traceable to Kimberly-Clark’s conduct. *See Kinetica Partners, LLC v. U.S. Dep’t of the Interior*, 505 F. Supp. 3d 653, 664–65 (S.D. Tex. 2020); *Kostka*, 2022 WL 16821685, at \*5 (holding settling plaintiffs sufficiently alleged Article III standing for preliminary approval of settlement through allegations that Dickey’s payment card customers did not get the benefit of their bargain); *Cole v. Gen. Motors Corp.*, 484 F.3d 717, 723 (5th Cir. 2007) (finding allegations “sufficient for standing purposes” where plaintiffs sought losses “emanating from the loss of their benefit of the bargain”).

## **V. THE COURT SHOULD DIRECT NOTICE TO THE SETTLEMENT CLASS.**

### **A. The Standard for Issuance of Notice**

Under Rule 23(e)(1), giving notice to the class of a class action settlement is justified when the Court concludes it will likely be able to approve the settlement and certify the class for purposes



of judgment on the settlement. Rule 23(e)(2) provides that a proposed settlement may be approved only upon a finding that it is “fair, reasonable, and adequate.”

Under Rule 23(e)(2), courts consider the following factors in this analysis:

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm’s length;

(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney’s fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2). Courts in this Circuit also evaluate the *Reed* factors to determine whether a proposed class action settlement is fair, reasonable, and adequate. *See Reed v. General Motors Corp.*, 703 F.2d 170 (5th Cir. 1983). These factors include: (1) evidence that the settlement was obtained by fraud or collusion; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the litigation and available discovery; (4) the probability of plaintiffs prevailing on the merits; (5) the range of possible recovery and certainty of damages; and (6) the opinions of class counsel, class representatives, and absent class members. *Newby v. Enron Corp.*, 394 F.3d 296, 301 (5th Cir. 2004).

“When considering the *Reed* factors, the court should keep in mind the strong presumption in favor of finding a settlement fair.” *Klein v. O’Neal, Inc.*, 705 F. Supp. 2d 632, 650 (N.D. Tex. 2010) (citing *Purdie v. Ace Cash Express, Inc.*, 2003 WL 22976611, at \*4 (N.D. Tex. Dec. 11,

2003)). “This presumption reflects the strong public interest in settling class actions.” *ODonnell v. Harris Cty., Texas*, 2019 WL 4224040, at \*7 (S.D. Tex. Sept. 5, 2019) (citing *Kincade v. Gen. Tire & Rubber Co.*, 635 F.2d 501, 507 (5th Cir. 1981) (“Particularly in class action suits, there is an overriding public interest in favor of settlement.”)). A proposed settlement ““will be preliminarily approved unless there are obvious defects in the notice or other technical flaws, or the settlement is outside the range of reasonableness or appears to be the product of collusion, rather than arms-length negotiation.”” *Id.* (quoting 2 McLaughlin on Class Actions § 6:7 (15th ed. 2018)).

**B. The Proposed Settlement is Fair, Reasonable, and Adequate Under Rule 23(e) and the Fifth Circuit *Reed* Factors.**

As demonstrated below, the proposed settlement is fair, reasonable, and adequate under Rule 23(e) and the *Reed* factors, and the Court should conclude it will likely be able to approve the settlement, and therefore, that issuing notice to the settlement class is justified.

**1. Plaintiffs and Their Counsel Have Provided Excellent Representation to the Settlement Class.<sup>9</sup>**

This factor involves an inquiry into “the zeal and competence of the representative[s] counsel and...the willingness and ability of the representative[s] to take an active role in and control the litigation and to protect the interests of absentees.” *Berger v. Compaq Computer Corp.*, 257 F.3d 475, 479–80 (5th Cir. 2001). It focuses “on the actual performance of counsel acting on behalf of the class.” Fed. R. Civ. P. 23, Advisory Committee Notes to subdivision (e)(2) at ¶¶ A–B.

Here, the adequacy factor is easily satisfied. Proposed Class Counsel have substantial experience prosecuting and trying consumer class action cases, and were able to use their experience to negotiate a fair and well-informed Settlement. Moore Dec. ¶ 29. Counsel’s efforts

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<sup>9</sup> See Fed. R. Civ. P. 23(e)(2)(A).

included engaging in substantial case investigation and evaluation, culminating in a 94-page consolidated complaint; briefing and arguing Kimberly-Clark’s motion to dismiss; engaging opposing counsel in both formal and informal discovery efforts; and pursuing extensive, arm’s length settlement negotiations with the guidance of an experienced and neutral mediator, including four separate mediation sessions over the course of many months. *Id.* at ¶¶ 29–30. As a result, proposed Class Counsel have achieved an excellent recovery on behalf of the class—a non-reversionary settlement fund of up to \$13.5 million in new dollars to reimburse Settlement Class Members for up to 100% of the economic losses sought in this case. *Id.* at ¶ 28. A better result could only potentially have been achieved through victory at trial—a task that would have been costly, lengthy, inherently risky, and subjected Plaintiffs to stricter proof requirements. Further, Plaintiffs have actively participated in the litigation for the benefit of all Settlement Class Members, by providing allegations for the Complaint, gathering information for discovery, and working with proposed Class Counsel to advance the settlement process. *Id.* at ¶ 35. Thus, Plaintiffs and their counsel have vigorously and adequately represented the interests of the Class.

**2. The Proposed Settlement is the Product of Arm’s Length Negotiations.<sup>10</sup>**

Rule 23(e)(2)(B) asks whether the proposed settlement was negotiated at arm’s length, thereby implicating the first *Reed* factor—the existence of fraud or collusion in the negotiation. “The Court may...presume that no fraud or collusion occurred between opposing counsel in the absence of any evidence to the contrary.” *ODonnell*, 2019 WL 4224040, at \*9 (citation omitted). “The involvement of ‘an experienced and well-known’ mediator ‘is also a strong indicator of

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<sup>10</sup> See Fed. R. Civ. P. 23(e)(2)(B); *Reed*, 703 F.2d at 172.

procedural fairness.” *Jones v. Singing River Health Servs. Found.*, 865 F.3d 285, 295 (5th Cir. 2017) (citation omitted).

Here, the proposed Settlement is the product of nearly three years of heavily contested and arm’s-length negotiations between experienced counsel. Moore Dec. ¶ 30. With the assistance of a neutral, qualified, and highly-respected mediator, Justice Hankinson, the Parties expended substantial time and resources on pursuing a global settlement, including four separate, all-day mediation sessions, along with ongoing, months-long negotiations before and after those sessions. *Id.* This factor supports issuing notice of the Settlement to the Settlement Class. *See, e.g., Erica P. John Fund, Inc. v. Halliburton Co.*, 2018 WL 1942227, at \*4 (N.D. Tex. Apr. 25, 2018) (holding that the presence of a neutral mediator “strongly suggests that the settlement was not the result of improper dealings.”).

**3. The Relief Provided by the Settlement is Excellent.<sup>11</sup>**

Rule 23(e)(2)(C) requires the relief granted by the Settlement be adequate, taking into account four considerations: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief...including the method of processing class-member claims; (iii) the terms of any proposed award of attorneys’ fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3). Each of these factors supports approval of the proposed Settlement.

**a. The duration, costs, risks, and delay of trial and appeal support approval of the Settlement.<sup>12</sup>**

The commitment of at least \$6 million in new dollars and up to \$13.5 million to pay valid Claims is an excellent result in light of the duration, costs, risks, and delay of trial and appeal.

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<sup>11</sup> *See Reed*, 703 F.2d at 172.

<sup>12</sup> *See Fed. R. Civ. P. 23(e)(2)(C)(i).*

Moore Dec. ¶ 32. As this Court has instructed, “[m]ost class actions are inherently complex and settlement avoids the costs, delays and [a] multitude of other problems associated with them.” *Kostka*, 2022 WL 16821685, at \*11. Indeed, “[w]hen the prospect of ongoing litigation threatens to impose high costs of time and money on the parties, the reasonableness of approving a mutually-agreeable settlement is strengthened.” *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1064 (S.D. Tex. 2012) (quoting *Klein*, 705 F. Supp. 2d at 651); *see also Ayers v. Thompson*, 358 F.3d 356, 369 (5th Cir. 2004) (“[S]ettling...avoids the risks and burdens of potentially protracted litigation.”). “A settlement must be evaluated taking into account the uncertainty and risks involved in litigation in light of the strength of the claims and possible defenses.” *Matson v. Nibco, Inc.*, 2021 WL 4895915, at \*12 (W.D. Tex. Oct. 20, 2021). “The court, however, must not try the case in the settlement hearings because ‘the very purpose of the compromise is to avoid the delay and expense of such a trial.’” *Reed*, 703 F.2d at 173.

Plaintiffs’ Complaint raises complex legal and factual issues, including those briefed and argued in relation to Kimberly-Clark’s pending motion to dismiss. At a minimum, continued litigation would require “a significant amount of time and expense” associated with written discovery, depositions, the hiring and preparation of experts, motion practice, and trial. *Melby v. Am.’s MHT, Inc.*, 2018 WL 10399004, at \*8 (N.D. Tex. June 22, 2018); *Kostka*, 2022 WL 16821685, at \*11 (“The fact that the case is now only at the pleading stage indicates that the greatest costs of potential litigation are still ahead, to say nothing of potential appeals”). Settlement Class Members, Kimberly-Clark, and likely witnesses are also located across the country, further increasing the cost of continued proceedings, which would likely be followed by a lengthy appeal, regardless of the outcome. Thus, the amount of time it would take to recover on behalf of the class “would measure in years rather than months were the Court to disapprove the proposed

settlement.” *Melby*, 2018 WL 10399004, at \*8; *see Schwartz v. TXU Corp.*, 2005 WL 3148350, at \*19 (N.D. Tex. Nov. 8, 2005) (weighing a potential “delay in the receipt of any relief” in favor of approving a proposed settlement). In short, a “swift resolution of this dispute would avoid complex and protracted litigation,” and this weighs in favor of approval. *See, e.g., Izzio v. Century Golf Partners Mgmt., L.P.*, 2019 WL 10589568, at \*6 (N.D. Tex. Feb. 13, 2019), *aff’d*, 787 F. App’x 242 (5th Cir. 2019).

**b. The effectiveness of the proposed method of distributing relief to the Settlement Class supports approval of the Settlement.<sup>13</sup>**

This consideration requires the Court to consider whether the claims process is “unduly demanding” on potential class members. Fed. R. Civ. P. 23. Here, the claims process is designed to be straightforward and consumer friendly. The Claim Form explains that consumers can submit a claim with proof of purchase and receive up to 100% of their purchase price or submit a claim without proof of purchase and receive up to \$5.00 per household. Ex. 1-3 (proposed Claim Form). The attestation provides helpful guideposts for consumers to determine if they can self-identify as purchasers of recalled lots. Moore Dec. ¶ 33.

Further, all claims will be considered and assessed by an experienced and recognized national claims administrator in an efficient manner. Moore Dec. ¶ 33; Finegan Dec. ¶ 2. Thus, this factor weighs in favor of approval. *See Kostka*, 2022 WL 16821685, at \*12 (finding this consideration favored approval where potential class members only needed to submit a claim form to have their claims considered by an experienced claims administrator).

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<sup>13</sup> *See* Fed. R. Civ. P. 23(e)(2)(C)(ii).

**c. The terms for the award of attorneys’ fees, including the timing of payment, support approval of the Settlement.<sup>14</sup>**

No later than 21 days before the Opt-Out and Objection Deadlines, proposed Class Counsel will separately move for an order awarding attorneys’ fees and expenses in the amount of \$3,650,000.00, which is expressly disclosed in the Notice. Ex. 1 ¶ 12.2; Moore Dec. ¶ 24; Ex. 1-1 (Proposed Long Form Notice); *see* Fed. R. Civ. P. 23(h) (permitting the court to award “reasonable attorney’s fees and nontaxable costs that are authorized by law or by the parties’ agreement”). The motion will also request Service Awards not to exceed \$2,500 for each proposed Settlement Class Representative. Ex. 1 ¶ 12.1. The attorneys’ fee and expense provisions were separately and independently negotiated by the Parties only after the Class relief was agreed upon, with the assistance of a mediator, and the Settlement Agreement is not conditioned on their approval. Moore Dec. ¶ 24; Ex. 1 ¶¶ 10.2, 12.1–2. While the Fee Application will include a thorough analysis establishing that Class Counsel’s request for attorneys’ fees and service awards are fair and reasonable,<sup>15</sup> at this stage, the Court can conclude that it is likely to approve the Settlement for purposes of sending notice to the Class. This factor supports issuing notice to the Settlement Class.

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<sup>14</sup> *See* Fed. R. Civ. P. 23(e)(2)(C)(iii).

<sup>15</sup> The Agreement’s provision for a separate award of \$3,650,000.00 is fair and reasonable considering the applicable “*Johnson* factors”: “(1) the time and labor required for the litigation; (2) the novelty and complication of the issues; (3) the skill required to properly litigate the issues; (4) whether the attorney had to refuse other work to litigate the case; (5) the attorney’s customary fee; (6) whether the fee is fixed or contingent; (7) whether the client or case circumstances imposed any time constraints; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) whether the case was ‘undesirable;’ (11) the type of attorney-client relationship and whether that relationship was long-standing; and (12) awards made in similar cases.” *Klein*, 705 F. Supp. 2d at 674 (citing *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717–19 (5th Cir. 1974)). Further, service awards well-above the size contemplated by the Settlement have been found reasonable. *See, e.g., Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 973 (E.D. Tex. 2000) (approving incentive awards of \$25,000 to each of two named plaintiffs); *In re Catfish Antitrust Litig.*, 939 F. Supp. 493, 504 (N.D. Miss. 1996) (approving \$10,000 incentive awards to each of the four named plaintiffs).

**d. There is no agreement required to be identified under Rule 23(e)(3).<sup>16</sup>**

Under Rule 23(e)(3), “[t]he parties seeking approval must file a statement identifying any agreement made in connection with the proposal.” There is no agreement between the Parties here, except those set forth or explicitly referenced in the Settlement Agreement. Moore Dec. ¶ 34.

**4. The Stage of the Proceedings and the Amount of Discovery Completed Supports Approval of the Settlement.<sup>17</sup>**

This factor requires the court to look to whether “the parties and the district court possess ample information with which to evaluate the merits of the competing positions.” *Ayers*, 358 F.3d at 369. Although “[t]here is no precise yardstick to measure the amount of litigation that the parties should conduct before settling,” “[t]he Court need not find that the parties have engaged in extensive discovery.” *Schwartz*, 2005 WL 3148350, at \*19–20 (citing *Levell v. Monsanto Research Corp.*, 191 F.R.D. 543, 556–57 (S.D. Ohio 2000) (approving settlement in which counsel relied primarily on informal discovery). The central question, instead, is “whether the parties have obtained sufficient information about the strengths and weaknesses of their respective cases to make a reasoned judgment about the desirability of settling the case on the terms proposed or continuing to litigate it.” *Matson*, 2021 WL 4895915, at \*10. Unless the Parties settled while “groping in darkness” the lack of formal discovery will not hinder the settlement. *Id* at \*19 (quoting *Cotton v. Hinton*, 559 F.2d 1326, 1332 (5th Cir. 1977)).

Following the filing of the initial Complaint, the Parties sought to stay pending deadlines to explore the possibility of settlement. *See, e.g.*, Docs. 26, 28, 30, 32, 37 and 42. Counsel for the parties participated in extensive settlement-related discovery and engaged in extensive mediation

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<sup>16</sup> *See* Fed. R. Civ. P. 23(e)(2)(C)(iv).

<sup>17</sup> *Reed*, 703 F.2d at 172.



efforts, including four formal mediation sessions and numerous conferences, with the assistance of Justice Hankinson. Moore Dec. ¶¶ 3–10, 30. To inform those efforts, the Parties spent many months exchanging information and documentation, providing sufficient information to all counsel to weigh the relative strengths and weaknesses of their respective cases. *Id.*; *In re Corrugated Container Antitrust Litigation*, 643 F.2d 195, 211 (5th Cir. 1981) (explaining the trial court “may legitimately presume that counsel’s judgment that ‘they had achieved the desired quantum information necessary to achieve a settlement’ is reliable”). Under these circumstances, there is “no doubt” that Plaintiffs were “able to form an adequate appreciation of the merits of the case before negotiating.” *Schwartz*, 2005 WL 3148350, at \*19–20 (cleaned up). Thus, this factor supports issuing notice to the Settlement Class. *See id.*; *Ayers*, 358 F.3d at 369 (finding state of the proceedings favored settlement when discovery provided for ample information with which to evaluate the merits of the competing positions).

**5. Plaintiffs’ Probability of Success on the Merits Supports Approval of the Settlement.<sup>18</sup>**

To analyze this factor, courts must compare the terms of the settlement with the likely rewards the class would have received following a successful trial. *Melby v. Am.’s MHT, Inc.*, 2018 WL 10399004, at \*9. However, because the very purpose of settlement is to avoid the delay and expense associated with litigation, the Court is not to try the merits of the case. *Id.*

While Plaintiffs are confident in the merits of their theory of liability and ability to prove the claims of the absent class members, there remain significant obstacles to a class-wide judgment in favor of the class on liability and damages. Moore Dec. ¶ 32. Even if Plaintiffs survived Kimberly-Clark’s motion to dismiss, achieved class certification, and prevailed at trial on behalf

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<sup>18</sup> *See* Fed. R. Civ. P. 23(e)(2)(C)(i); *Reed*, 703 F.2d at 172.

of the class, there is the risk that, after years-long litigation, that the Fifth Circuit could reverse on the merits. *Id.*

Given these significant risks that could result in consumers receiving nothing, the Settlement reflects the Parties' compromise of their assessments of the worst-case and best-case scenarios, weighing the likelihood of various potential outcomes. *Id.* It ensures that Class Members will recover significant, immediate relief, including the very relief that this litigation sought to achieve. *Id.* Thus, this Settlement strikes an appropriate balance between Plaintiffs' "likelihood of success on the merits" and "the amount and form of the relief offered in the settlement." *See Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981); *see also Hays v. Eaton Grp. Att'ys, LLC*, 2019 WL 427331, at \*10 (M.D. La. Feb. 4, 2019) ("[A]pproval of settlement is favored where settling 'avoids the risks and burdens of potentially protracted litigation.'"); Conte & H. Newberg, *Newberg on Class Actions*, § 11:50 at 155 (4th ed. 2002) ("In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results."). This factor supports issuing notice to the Settlement Class.

**6. The Range and Certainty of Recovery Supports Approval of the Settlement.<sup>19</sup>**

"The focus of this factor is whether the settlement falls within the range of reasonableness." *Erica P. John Fund, Inc.*, 2018 WL 1942227, at \*5. Courts compare the recovery for the class under the proposed agreement to "the relief the class could expect to recover at trial, i.e., the strength of the plaintiff's case." *Id.* As a result, this factor "can take into account the challenges to recovery at trial that could preclude the class from collecting altogether, or from only obtaining a small amount." *Klein*, 705 F. Supp. 2d at 656. When considering the possible range of recovery, a

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<sup>19</sup> *See* Fed. R. Civ. P. 23(e)(2)(C)(i); *Reed*, 703 F.2d at 172.

court should keep in mind that “compromise is the essence of a settlement.” *Turner v. Murphy Oil USA, Inc.*, 472 F. Supp. 2d 830, 850 (E.D. La. 2007). Thus, “[a] proposed settlement need not obtain the largest conceivable recovery for the class to be worthy of approval; it must simply be fair and adequate considering all the relevant circumstances.” *Klein*, 705 F. Supp. 2d at 649; *see also Pettway v. Am. Cast Iron Pipe Co.*, 576 F.2d 1157, 1214 n.69 (5th Cir. 1978) (“compromise is the essence of settlement, and the settlement need not accord the plaintiff class every benefit that might have been gained after full trial”).

The Settlement is an excellent result given the range and certainty of recovery. While the Parties cannot identify the precise number of consumers impacted, based on data made available during settlement negotiations, Plaintiffs are confident that the Settlement is more than sufficient to pay valid claimants. Moore Dec. ¶ 28. Because of Plaintiffs’ efforts to secure contact information for consumers through third-party subpoenas, an estimated 4-5 million purchasers of recalled Wipes will receive direct notice of the Settlement. *Id.* ¶ 19. Even assuming this population accounts for only 40% of the total class, a 10% claims rate at an average of \$10 per purchase would result in \$10 million in valid Claims, comfortably within the range of settlement. Of course, this does not account for class members who were already reimbursed by Kimberly-Clark (and thus ineligible to participate) or the fact that most consumer class settlements have claims rates well below 10%. *See, e.g., Keil v. Lopez*, 862 F.3d 685, 697 (8th Cir. 2017) (“a claim rate as low as 3 percent is hardly unusual in consumer class actions.”) (collecting cases); *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 329 n.60 (3d Cir. 2011) (en banc) (claims rates in consumer class action settlements “rarely” exceed 7%, “even with the most extensive notice campaigns”); *see also Kurtz v. Kimberly-Clark Corp.*, Case No. 14-cv-01142, Dkt. 471 (E.D.N.Y. June 12, 2023) (relying solely on publication notice, 2% claims rate in estimated class of 9.3 million purchasers of flushable wipes

products). Based on the available data, Plaintiffs are confident the Settlement will provide meaningful and fair recoveries to all claimants.

**7. The Respective Views of Plaintiffs and their Counsel Support Approval of the Settlement.<sup>20</sup>**

Class Counsel’s recommendation that the Settlement satisfies the requirements for approval is entitled to deference, *Turner*, 472 F. Supp. 2d at 852, “especially in light of class counsels’ significant experience in complex civil litigation and their lengthy opportunity to evaluate the merits of the claims.” *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 292 (W.D. Tex. 2007); *see also Stott v. Capital Fin. Servs., Inc.*, 277 F.R.D. 316, 346 (N.D. Tex. 2011) (“As class counsel tends to be the most familiar with the intricacies of a class action lawsuit and settlement, ‘the trial court is entitled to rely upon the judgment of experienced counsel for the parties.’”) (quoting *Cotton*, 559 F.2d at 1330).

Here, proposed Class Counsel spent significant time and effort investigating these claims, obtaining relevant data from dozens of third parties, engaging clients across the country, and participating in extensive negotiations spanning a period of years. Moore Dec. ¶ 29. Based on their experience litigating this case, proposed Class Counsel believe the Settlement provides a fair and reasonable result for Settlement Class Members while avoiding the uncertainties of continued and protracted litigation. *Id* ¶ 28. This factor supports issuing notice to the Settlement Class.

**8. The Settlement Treats Class Members Equitably Relative to Each Other, Supporting Approval of the Settlement.<sup>21</sup>**

The Settlement treats Settlement Class Members equitably relative to each other. Importantly, equitable treatment is not synonymous with equal treatment. *See Ortiz v. Fibreboard*

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<sup>20</sup> *See Reed*, 703 F.2d at 172.

<sup>21</sup> *See Fed. R. Civ. P. 23(e)(2)(D)*.

*Corp.*, 527 U.S. 815, 855–56 (1999) (“[A] settlement must seek equity by providing for procedures to resolve the difficult issues of treating such differently situated claimants with fairness among themselves.”). “It is perfectly fair and reasonable, and indeed common and accepted, for settlement benefits to turn on the strength of class members’ claims.” *In re Oil Rig Deepwater Horizon in Gulf of Mexico on April 20, 2010*, 910 F. Supp. 2d 891, 948 (E.D. La. 2012) (citing *Reed*, 703 F.2d at 175).

The Settlement provides for a certainty of recovery for Settlement Class Members who submit valid Claims, taking into consideration the relative strength of claims for Settlement Class Members who can provide proof of purchase, and those that cannot. Settlement Class Members who can demonstrate that they suffered non-reimbursed losses have a stronger claim than class members who cannot. The Settlement accounts for this by allowing Settlement Class Members who submit proof of purchase the opportunity to recover one hundred percent (100%) of money spent on Wipes, whereas Settlement Class Members that are unable to provide proof of purchase still have the opportunity to recover up to five dollars. Moore Dec. ¶ 34. Thus, this consideration weighs in favor of preliminary approval. *See, e.g., Kostka*, 2022 WL 16821685, at \*13 (“Indeed, if the proposed settlement did not account for the relative strength of these groups’ claims, it would likely not be equitable”).

## **VI. THE PROPOSED SETTLEMENT CLASS MEETS THE REQUIREMENTS FOR CERTIFICATION FOR THE PURPOSE OF SETTLEMENT.**

### **A. The Standard for Certifying the Settlement Class.**

The second requirement in Rule 23(e)(1) for issuance of notice to the class is a finding that the Court will “likely be able to...certify the class for purposes of judgment” on the proposed settlement. A motion for class certification under Federal Rule of Civil Procedure 23 involves a two-part analysis. First, under Rule 23(a), the proposed class must satisfy the requirements of

numerosity, commonality, typicality, and fair and adequate representation. Second, the proposed class must meet at least one of the three requirements of Rule 23(b). *See, e.g., Steward v. Janek*, 315 F.R.D. 472, 479 (W.D. Tex. 2016). A district court has broad discretion in deciding whether a particular action complies with the requirements of Rule 23. *Yates v. Collier*, 868 F.3d 354, 359–60 (5th Cir. 2017). In this case, the proposed Class meets all the requirements of Rule 23(a) as well as the requirements of Rule 23(b)(3).

**B. The Settlement Class Meets Each of the Requirements of Rule 23(a).**

**1. The Settlement Class Meets the Numerosity Requirement.**

Numerosity is satisfied when the proposed class is “so large that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1); *Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 623 (5th Cir. 1997). While the precise number of class members is unknown, millions of units of Wipes were sold to consumers nationwide. Based on information gathered from third-party retailers to date, Plaintiffs believe the class exceeds 5 million consumers, easily satisfying the numerosity requirement. *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 954 (E.D. Tex. 2000) (explaining that a class containing “possibly even millions of persons” owning five million Toshiba laptop computers satisfied numerosity: “the precise number of class members need not be known”); *Durrett v. John Deere Co.*, 150 F.R.D. 555, 557 (N.D. Tex. 1993) (expressing “no difficulty” in concluding that the numerosity requirement was met in light of estimates that the potential class size was as high as 14,000). Furthermore, members of the settlement class are geographically dispersed, decreasing the practicability of joinder into one action. *See Zeidman v. Ray McDermott & Co.*, 651 F.2d 1030, 1038 (5th Cir. 1981) (noting the relevance of “geographic dispersion” to numerosity). Thus, the numerosity requirement is satisfied.

**2. There Are Common Questions of Law and Fact for All Potential Class Members.**

Commonality is met when “there are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). The test of commonality is “not demanding;” it requires only one issue of law or fact that, if resolved, would affect a significant number of the proposed class members. *Mullen*, 186 F.3d at 625. A common issue “need not relate to the injurious effects experienced by class members but may also relate to the defendant’s injurious conduct.” *Kotska*, 2022 WL 16821685, at \*6; *see also Heartland*, 851 F. Supp. 2d at 1053 (“The focus in the settlement context should be on the conduct (or misconduct) of the defendant and the injury suffered as a consequence”).

Here, common questions abound. Settlement Class Members’ claims depend on common questions of fact regarding Kimberly-Clark’s course of conduct relating to the contamination, distribution, and recall of the Wipes, including alleged misrepresentations and omissions relating to their suitability for intended use. *See, e.g., Melby*, 2018 WL 10399004, at \*4 (“Courts have often found this requirement met when class members are alleged victims of a common course of fraudulent conduct”). Plaintiffs’ claims rise and fall on such conduct, which was common to, and similarly harmed, all Settlement Class Members. Settlement Class Members’ claims are likewise replete with common questions of law that class members would have to prove in pursuing their claims, including whether Kimberly-Clark breached implied or express warranties relating to the Wipes, whether Kimberly-Clark owed a duty of care to class members, whether Kimberly-Clark misrepresented or omitted material facts related to the Wipes, and whether Kimberly-Clark was unjustly enriched. *See, e.g., Stott*, 277 F.R.D. at 324 (finding commonality requirement was met by common questions such as whether defendant owed a fiduciary duty to class members). The answers to these questions are common to all Settlement Class Members, and “would thus inform

the resolution of the litigation” if not for settlement. *See Heartland*, 851 F. Supp. 2d at 1054. Commonality is therefore satisfied.

### **3. Plaintiffs’ Claims Are Typical of the Class.**

This requirement is met when “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). Like commonality, the test for typicality is “not demanding,” and “focuses on the similarity between the named plaintiffs’ legal and remedial theories and the theories of those whom they purport to represent.” *Mullen*, 186 F.3d at 625. Typicality does not require the claims of the representative parties to be identical to those of the absent members. *Melby*, 2018 WL 10399004, at \*5 (citing *Ligon v. Frito–Lay, Inc.*, 82 F.R.D. 42, 47 (N.D. Tex. 1979) (requiring that “a class representative and a class member...be similarly, not identically, situated”)). In the settlement context, this element requires “proof that the interests of the class representatives and the class are commonly held for purposes of receiving similar or overlapping benefits from a settlement.” *Stott*, 277 F.R.D. at 325 (citations omitted).

Here, typicality is satisfied given that the claims arise from a single course of conduct and a single set of legal theories. *See also M.D. v. Perry*, 294 F.R.D. 7, 29 (S.D. Tex. 2013) (“Often, once commonality is shown typicality will follow as a matter of course.”). Plaintiffs and Settlement Class Members’ claims revolve around proving facts about the same conduct—the actions Kimberly-Clark took (or failed to take) before, during, and after learning of the contamination of the Wipes to prevent Settlement Class Members’ economic injuries. This is sufficient to satisfy typicality. *See Angell v. GEICO Advantage Ins. Co.*, 67 F.4th 727, 736 (5th Cir. 2023) (“[a] complete identity of claims is not required; rather, the critical inquiry is whether the named plaintiff’s claims have the same essential characteristics of those of the putative class. If the claims arise from a similar course of conduct and share the same legal theory, factual differences will not defeat typicality”).



**4. Plaintiffs Satisfy the Adequacy of Representation Requirement.**

Adequacy requires that the class representatives and class counsel “fairly and adequately protect the interests of the class.” Rule 23(a)(4). This requirement is met when (1) the named Plaintiffs’ counsel will prosecute the action zealously and competently; (2) the named Plaintiffs parties are willing and able to take an active role in and control the litigation and protect the interests of absentee class members; and (3) there are no conflicts of interest between the named Plaintiffs and the class members. *See Melby*, 2018 WL 10399004, at \*5.

First, proposed Class Counsel are qualified and experienced in both prosecuting and trying consumer class action litigation. They have performed extensive work to identify and investigate potential claims, establish the factual bases for the claims sufficient to prepare a detailed class action complaint, oppose Kimberly-Clark’s motion to dismiss; and vigorously negotiate an excellent recovery for class members through over multiple years of settlement negotiations guided by an experienced mediator. Moore Dec. ¶¶ 3–10.

Second, Plaintiffs have demonstrated their commitment to the class by vigorously representing their interests: they hired experienced class counsel, have read and understood the allegations of the Complaint, and are dedicated to prosecuting this matter on behalf of the class. *See Moore Dec.* ¶ 35.

Finally, no conflict of interest exists between Plaintiffs and absent class members, or involving proposed Class Counsel. Moore Dec. ¶ 35. Considering the effort expended to achieve the proposed Settlement, “all class members are asserting [the] common right [of] achieving a maximum potential recovery for the class”; accordingly, “the class interests are not antagonistic for representation purposes.” *Stott*, 277 F.R.D. at 326 (citing *In re Corrugated Container Antitrust Litig.*, 643 F.2d at 208); *see also McNamara v. Bre-X Minerals Ltd.*, 214 F.R.D. 424, 428–29 (E.D. Tex. 2002) (finding that the adequacy of representation requirement was met when the named

plaintiffs and class members all sought maximum recovery and where class counsel was skilled and experienced). Thus, the Court should find Plaintiffs and their counsel can adequately represent the interests of the proposed Settlement Class.

**C. The Settlement Class Satisfies the Requirements of Rule 23(b)(3).**

The proposed Settlement Class also meets the requirements of Rule 23(b)(3), which requires that “questions of law or fact common to class members predominate over any questions affecting only individual members, and [that] a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.”

**1. Predominance is Satisfied.**

This requirement is met where common issues predominate over individual ones. *Melby*, 2018 WL 10399004, at \*5. However, Rule 23(b)(3) does not require all questions of law or fact be common. *Id.* The predominance requirement is satisfied when plaintiffs and class members share a common claim that is “capable of classwide resolution,” meaning that determination of the claims’ “truth or falsity will resolve an issue that is central to [the claims’] validity...in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). For example, the predominance test is “readily met” in cases alleging consumer fraud. *Kotska*, 2022 WL 16821685, at \*8. Dispositive issues of law and fact, including for Plaintiffs’ warranty,<sup>22</sup> negligence,<sup>23</sup> defect,<sup>24</sup> and

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<sup>22</sup> See, e.g., *McManus v. Fleetwood Enterprises, Inc.*, 320 F.3d 545, 552 (5th Cir. 2003) (common questions predominated in motor home purchasers’ Texas-law claim against seller for breach of implied warranty of merchantability as determinative issue of whether homes were fit for their ordinary purpose did not turn on questions of individual reliance).

<sup>23</sup> See, e.g., *Hi-Lo Auto Supply, L.P. v. Beresky*, 986 S.W.2d 382, 386 (Tex. App. 1999) (Common questions of law and fact predominated in class action against auto parts supplier asserting claims for deceptive trade practices, breach of contract, negligence, fraud, and negligent misrepresentation based on allegations that supplier sold “old” and “used” automotive batteries as “new” batteries).

<sup>24</sup> See, e.g., *In re Zurn Pex Plumbing Prod. Liab. Litig.*, 644 F.3d 604, 619 (8th Cir. 2011) (certifying warranty claim based on “universal defect” in plumbing equipment: “[i]n the case of warranty and negligence claims premised on a universal and inherent product defect, ... plaintiffs may rely on common evidence to establish a *prima facie* case because there is no similar individual reliance requirement for such claims.”).

misrepresentation/omission claims,<sup>25</sup> are common to all class members. Because a “common course of conduct provide[s] a class-wide basis for deciding the predominant class issues of fact and law,” this requirement is met. *See Gene And Gene LLC v. BioPay LLC*, 541 F.3d 318, 326 (5th Cir. 2008).

## 2. Superiority is Satisfied.

This requirement is met where “a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” Fed. R. Civ. P. 23(b)(3). Class actions are superior when individual actions would be wasteful, duplicative, or adverse to judicial economy. *Mullen*, 186 F.3d at 627. Other relevant factors include “(A) the interests of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; [and] (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum.” *Ibe v. Jones*, 836 F.3d 516, 529–30 (5th Cir. 2016). “[T]he purpose of the superiority requirement is to assure that the class action is the most efficient and effective means of resolving the controversy[.]” Charles Wright, Arthur Miller & Mary Kay Kane, 7AA Fed. Prac. & Proc. Civ. § 1779 (3d ed. 2005). This analysis “encompasses the whole range of practical problems that may render the class action format inappropriate for a particular suit.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 164 (1974).

A class action represents the only realistic means through which the millions of Settlement Class Members may obtain relief. Individually litigating each claim against Kimberly-Clark would be a waste of judicial resources, given that class members share many common dispositive

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<sup>25</sup> *See, e.g., Sw. Bell Tel. Co. v. Mktg. on Hold Inc.*, 308 S.W.3d 909, 922 (Tex. 2010) (affirming certification of breach of express warranty and fraud-based unjust enrichment classes where misrepresentation was “uniform to all members of the class”); *In re Urethane Antitrust Litig.*, 237 F.R.D. 440, 452 (D. Kan. 2006) (recognizing that concealment is a predominating common issue “because the key inquiry will focus on the defendants’ conduct”).

issues of law and fact. Further, most class members would have little incentive to litigate their claims outside this class action, as the amounts paid for Wipes are relatively small. This concern is “[t]he policy at the very core of the class action mechanism.” *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 617 (1997); *Shields v. State Farm Mut. Auto. Ins. Co.*, 2022 WL 37347, at \*10 (W.D. La. Jan. 3, 2022) (“The existence of a negative value claim is the ‘most compelling rationale for superiority.’”). The superiority requirement is thus satisfied.

## **VII. THE COURT SHOULD APPOINT PLAINTIFFS’ COUNSEL AS INTERIM CLASS COUNSEL.**

When certifying a class, Rule 23 requires a court to appoint class counsel that will fairly and adequately represent the class members. Fed. R. Civ. P. 23(g)(1)(B). In making this determination, the Court must consider, among other things, counsel’s (i) work in identifying or investigating potential claims; (ii) experience in handling class actions or other complex litigation and the types of claims asserted in the case; (iii) knowledge of the applicable law; and (iv) resources committed to representing the class. Fed. R. Civ. P. 23(g)(1)(A)(i–iv).

Proposed Class Counsel readily satisfy the criteria. They are highly experienced in litigating and trying class action cases. They identified the potential claims, investigated them, and have committed their full resources to representing the Settlement Class and will continue that commitment in resolving this case and administering the Settlement. Moore Dec. ¶ 29. As a result of Class Counsel’s efforts, the proposed Settlement Agreement provides significant monetary relief to the Settlement Class. As such, Plaintiffs and their counsel have adequately represented the Settlement Class. Accordingly, the Court should appoint J. Austin Moore of Stueve Siegel Hanson LLP; Joshua L. Hedrick of Hedrick Kring Bailey PLLC; Michael R. Reese of Reese LLP; and Jordan S. Palatiello of Lewis Johs Avallone Aviles, LLP as Interim Class Counsel.

The Court should also appoint the plaintiffs identified in Exhibit 1 as Settlement Class Representatives for the Settlement Class. Settlement Class Representatives have fulfilled their duties in pursuing their claims and those of the Settlement Class Members in this matter, and they have vigorously represented the interests of the Settlement Class. Settlement Class Representatives are pursuing this case on behalf of all Settlement Class Members, they are fulfilling their duty to protect the interests of all Settlement Class Members, and they do not have any conflicts of interest with any other members of the Settlement Class. Moore Dec. ¶ 35. Plaintiffs will fairly and adequately represent and protect the interests of the Settlement Class as Class Representatives.

#### **VIII. THE COURT SHOULD APPROVE THE NOTICE PLAN, NOTICES, AND CLAIM FORM.**

Rule 23(e)(1) requires that, prior to final approval, the “court must direct notice in a reasonable manner to all class members who would be bound by the [settlement] proposal.” Fed. R. Civ. P. 23(e)(1)(B). For classes certified under Rule 23(b)(3), “the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). “The notice may be by one or more of the following: United States mail, electronic means, or other appropriate means.” *Id.* The threshold requirement concerning class notice is whether the means employed to distribute the notice was reasonably calculated to apprise the class of the pendency of the action, the proposed settlement, and the class members’ rights to opt out or to object. *See Eisen*, 417 U.S. at 173.

The Notice plan provides for direct written notice to all class members who could be identified through reasonable effort (*see* Fed. R. Civ. P. 23(c)(2)(B)). Moore Dec. ¶¶ 18–19; Finegan Dec., ¶ 16; Ex. 1 ¶ 2.34. Direct notice is virtually unprecedented in consumer class action settlements involving consumer products, where it is notoriously difficult to identify purchasers.

As such, most products settlements rely solely on publication notice. *See, e.g., In re Procter & Gamble Aerosol Prod. Mktg. & Sales Pracs. Litig.*, 2022 WL 20178514, at \*2 (S.D. Ohio Oct. 28, 2022) (preliminarily approving settlement involving solely publication notice for class of consumer purchasers of certain Aerosol Products alleging economic loss); *Wilson v. Airborne, Inc.*, 2008 WL 3854963, at \*5 (C.D. Cal. Aug. 13, 2008) (approving publication notice where identities and contact information for retail purchasers of defendants’ consumer product “cannot be readily ascertained”). Here, direct notice will be supplemented by publication notice through advertisements in appropriate print and electronic media including social media as detailed in the Finegan Declaration. Finegan Dec., ¶ 15; Ex. 1 ¶ 4.1.

The Proposed Notice Forms, attached as Exhibits 1-1 and 1-2, comply with Rule 23(c)(2)(B) in that they “clearly and concisely state in plain, easily understood language” a description of the Settlement Class, a description of the claims, the names of Class Counsel, a description of Settlement Class Members’ opportunity to appear at the Final Approval Hearing, opt-out and objection specifics, and the manner in which to obtain further information. Ex. 1-1 and 1-2 (Proposed Notice Forms). The Notice Plan thus satisfies the requirements of Fed. R. Civ. P. 23(c)(2)(B), Federal Judicial Center guidelines for notice, and other similar court-approved notice plans. Further, the Notice Plan has been reviewed to ensure it meets due process requirements. *See* Finegan Dec. ¶ 3. Likewise, the claims process is designed to be as straightforward as possible, including a simple online claim form or, if preferred, a paper form that can be mailed to the Settlement Administrator. Ex. 1-3 (Proposed Claim Form); Ex. 1 ¶ 7.1. In connection with implementation of the Notice Plan and administration of the Settlement benefits, Plaintiffs request the Court appoint Kroll to serve as the Settlement Administrator. Kroll is qualified and has

administration experience in similar matters, and is willing, able, and prepared to fulfill the role of Settlement Administrator in this case. *See generally* Finegan Dec.

Because the class notices and Notice Plan set forth in the Settlement satisfy the requirements of due process and Rule 23, the Court should direct the Parties and the Settlement Administrator to proceed with providing notice to the Settlement Class Members pursuant to the terms of the Settlement and the Court’s order granting preliminary approval.

#### **IX. PROPOSED TIMELINE OF EVENTS**

Plaintiffs request that the Court set a Final Approval Hearing for approximately 90-120 days after the Notice Deadline. This will allow sufficient time for the Settlement Administrator to provide Notice to the Class and for Class Members who wish to opt out or object to do so, but will not delay relief to the Settlement Class any more than necessary. Plaintiffs respectfully propose the following schedule:

<b>EVENT</b>	<b>TIMING</b>
Deadline for Settlement Administrator to disseminate CAFA notices	[10 days from filing of Motion for Preliminary Approval]
Deadline for the Settlement Administrator and Amazon to send Court-approved Notice to Settlement Class (“Notice Deadline”)	[45 days from entry of preliminary approval order]
Notice Date	[the later of: (1) seven days after mailing of all Notices sent by U.S. mail; (2) one day after the date by which all email Notices have been emailed; and (3) one day after the date by which the publication Notice campaign has been initiated, per Ex. 1 ¶ 2.21].
Claim Deadline	[60 days after Notice Date]
Deadline for Plaintiffs’ counsel file Fee	[21 days before the Opt-Out and Objection]

Application	Deadlines, per Ex. 1 ¶ 12.2]
Objection Deadline	[40 days after Notice Date]
Opt-Out Deadline	[40 days after Notice Date]
Deadline for Class Counsel to file with the Court all objections served on the Settlement Administrator	[5 days after Objection Deadline]
Deadline for Plaintiffs’ counsel to file motion for final approval of settlement and responses to any timely submitted Class member objections	[21 days prior to Final Approval Hearing]
Final Approval Hearing	[90-120 days after Notice Deadline]

**X. CONCLUSION**

The Settlement Agreement proposed is an immediate, substantial, and fair settlement. It achieves the goals of the litigation, benefits the entire Settlement Class, and accounts for the risks and uncertainties of continued, vigorously contested litigation. Plaintiffs therefore respectfully request that the Court grant the Motion and enter the agreed proposed Preliminary Approval Order submitted contemporaneously herewith.

Dated: September 22, 2023

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served on all counsel and/or pro se parties of record via CM/ECF on September 22, 2023.

/s/ Joshua L. Hedrick  
Joshua L. Hedrick

# EXHIBIT 1

## **SETTLEMENT AGREEMENT AND RELEASE**

This Class Action Settlement Agreement (“Settlement Agreement” or “Agreement”) is entered into by and between Plaintiffs Melissa Armstrong, Roland Nadeau, Karyn Ray, Linda Gordan, Erik Heinrich, Sandra Green, Ruth Bogue, Ann Rader, Karen Zambelli, Susan Hall, Mark Levit, Courtney Conley, Jannet Ray, Tracey Alexander, Adrian Lewis, Mitchell Craven, Daniel Kaplan, Stephen Simpson, Rosetta Turner, Donna Styx, Jamie Chipman, and Dawn Rothfeld, individually and on behalf of Participating Settlement Class Members (as defined in Paragraph 2.25) (together, “Plaintiffs”), and Defendant Kimberly-Clark Corporation (“Defendant” or “Kimberly-Clark”) (collectively, the “Parties”) in the action *Armstrong et al. v. Kimberly-Clark Corp.*, Case No. 3:20-cv-3150, pending in the United States District Court for the Northern District of Texas.

### **1. RECITALS**

1.1 On October 16, 2020, plaintiffs Melissa Armstrong and Roland Nadeau filed a class action complaint against Kimberly-Clark in the United States District Court for the Northern District of Texas on behalf of a putative nationwide class, along with a California subclass. *See Armstrong et al. v. Kimberly-Clark Corp.*, Case No. 20-cv-03150 (N.D. Tex.). The case was assigned to the Honorable Chief District Judge Barbara Lynn.

1.2 On November 19, 2020, New York resident Dawn Rothfeld filed a putative class action in the United States District Court for the Eastern District of New York asserting similar allegations. *See Rothfeld v. Kimberly-Clark Corp.*, Case No. 20-cv-05647 (E.D.N.Y.).

1.3 After the *Rothfeld* action was transferred to the United States District Court for the Northern District of Texas, Judge Lynn entered an order consolidating *Rothfeld* with *Armstrong* on July 9, 2021. A Consolidated Amended Complaint was filed in the consolidated Action on March 19, 2022.

1.4 The Action, if it were to continue, would likely result in expensive and protracted litigation, appeals, and continued uncertainty as to outcome.

1.5 While Kimberly-Clark does not dispute that the settlement is fair and reasonable in light of the merits and risks of the case, Kimberly-Clark does not admit or concede any actual or potential fault, wrongdoing, or legal liability in connection with any facts or claims that have been or could have been alleged by Plaintiffs in the Action.

1.6 Without admitting to the validity of any allegations made by Plaintiffs, or any liability with respect thereto, the Parties agree that it is desirable that this action be settled upon the terms and conditions set forth below to avoid further expense and uncertain, burdensome and protracted litigation, which will be dismissed and released on the terms reflected in this Agreement.

1.7 The agreement reflected in this Settlement Agreement was reached after extensive arm’s length settlement negotiations conducted through the Honorable Deborah Hankinson (Ret.). These efforts include all-day mediation sessions on December 20, 2021, June 1, 2022, and May 1,

2023, along with ongoing, months-long negotiations before and after those sessions. After exhaustive negotiations proved unsuccessful, Justice Hankinson made a mediator's proposal on March 24, 2023, which the Parties accepted. Thereafter, the Parties negotiated a term sheet setting forth the essential terms of settlement. This Agreement supersedes the term sheet completely, and to the extent that there are any ambiguities or inconsistencies between the Agreement and the term sheet, this Agreement shall govern.

1.8 This Settlement Agreement reflects a compromise between the Parties, and shall in no event be construed as or be deemed an admission or concession by any Party of the truth, or lack thereof, of any allegation, or the validity, or lack thereof, of any purported claim or defense asserted in any of the pleadings or filings in the Action, or of any fault on the part of Kimberly-Clark, and all such allegations are expressly denied by Kimberly-Clark. Nothing in this Settlement Agreement shall constitute an admission of liability or used as evidence of liability, by or against any Party hereto.

1.9 In exchange for the mutual promises and valuable consideration provided for in this Agreement, and without any admission or concession by either Party, the Parties agree to a full, complete, and final settlement and resolution of the Action, subject to Court approval, on the following terms and conditions:

## **2. DEFINITIONS**

In addition to terms defined at various points within this Agreement, the following defined terms shall have meanings set forth below:

2.1 "Action" means the consolidated class action lawsuit captioned *Armstrong et al. v. Kimberly-Clark Corporation*, Case No. 3:20-CV-3150, currently pending before the Honorable Barbara M. G. Lynn in the United States District Court for the Northern District of Texas, including all of its related cases prior to consolidation.

2.2 "Amount Payable for Approved Claims" means the total monetary amount of all Approved Claims.

2.3 "Approved Claim" means a timely submitted Claim by a Participating Settlement Class Member that has been approved by the Settlement Administrator.

2.4 "Claims Deadline" means the last day to submit a timely Claim Form, which will occur sixty (60) days after the Notice Date.

2.5 "Claim Form" or "Claim" means the form(s) Participating Settlement Class Members must submit to the Settlement Administrator to be eligible for relief provided by this Settlement Agreement, which is attached hereto as Exhibit 3.

2.6 "Claims Period" means the period of time during which Settlement Class Members may submit Claims to receive Settlement benefits, which will end on the Claims Deadline.

2.7 “Class Counsel” means J. Austin Moore of Stueve Siegel Hanson LLP; Joshua L. Hedrick of Hedrick Kring Bailey PLLC; Michael R. Reese of Reese LLP; and Jordan S. Palatiello of Lewis Johns Avallone Aviles, LLP.

2.8 “Court” means the Honorable Barbara M. G. Lynn in the United States District Court for the Northern District of Texas, or such other judge to whom the Action may hereafter be assigned.

2.9 “Effective Date” means ten (10) business days after the date of entry of the Court’s Final Approval Order, or if there is one or more objector, then “Effective Date” means ten (10) business days after the expiration of the time for such objectors to file a notice of appeal from the Final Approval Order, if no appeal is filed; or if an appeal is filed, then “Effective Date” means ten (10) business days after the latest of the expiration of the time to petition for writ of certiorari to review the Final Approval Order, if affirmed; and if certiorari is granted, then “Effective Date” means ten (10) business days after the date of final affirmance of the Final Approval Order following review pursuant to that grant or the date of final dismissal of any appeal from the Final Approval Order to the final dismissal of any proceeding on certiorari to review the Final Approval Order that has the effect of confirming the Final Approval Order. For clarity and avoidance of doubt, in no event shall the Effective Date occur any time sooner than ten (10) business days after the final resolution of any legal challenges that may be brought in response to the Court’s Final Approval Order.

2.10 “Fee Application” means any motion for an award of attorneys’ fees and Litigation Costs and Expenses to be paid as specified in Paragraph 12.2.

2.11 “Fee Award and Costs” means the amount of attorneys’ fees and reimbursement of Litigation Costs and Expenses awarded by the Court to Class Counsel.

2.12 “Final Approval Hearing” means the hearing to be conducted by the Court to determine the fairness, adequacy, and reasonableness of the Settlement Agreement pursuant to Federal Rule of Civil Procedure 23 and whether to issue a Final Approval Order and Judgment.

2.13 “Final Approval Order and Judgment” means an order and judgment that the Court enters after the Final Approval Hearing, which finally approves the Settlement Agreement, certifies the Settlement Class, dismisses the Action with prejudice, otherwise satisfies the settlement-related provisions of Federal Rule of Civil Procedure 23, and is consistent with all material provisions of this Settlement Agreement. Class Counsel will submit a proposed Final Approval Order and Judgment in conjunction with Plaintiffs’ motion for final approval.

2.14 “Household” means all individuals who resided at one physical address at any time between February 7, 2020 and the present.

2.15 “Kimberly-Clark’s Counsel” means Heather L. Richardson of Gibson, Dunn & Crutcher LLP.

2.16 “Litigation Costs and Expenses” means the costs and expenses incurred by counsel for Plaintiffs in connection with commencing, prosecuting, and settling the Action.

2.17 “Maximum Settlement Amount” means an amount not to exceed seventeen million five hundred thousand dollars (\$17,500,000.00) that Kimberly-Clark agrees to pay to satisfy valid Claims if the Amount Payable for Approved Claims exceeds the Minimum Settlement Amount subject to the conditions in Paragraph 2.18 (“Minimum Settlement Amount”). For the avoidance of doubt, in no event shall Kimberly-Clark pay more than \$13,500,000 in additional new dollars to satisfy payments for Approved Claims.

2.18 “Minimum Settlement Amount” means the minimum total payment of ten million dollars (\$10,000,000.00) that Kimberly-Clark agrees to pay to satisfy valid Claims and Litigation Costs and Expenses. The Minimum Settlement Amount includes four million dollars (\$4,000,000.00) in credit that is attributable to the amount of claims Kimberly-Clark previously paid through activated refund cards issued through the Recall and Refund Program. Thus, this Parties agree that the “Minimum Settlement Amount” of ten million dollars (\$10,000,000.00) is comprised of: (1) the four million dollar (\$4,000,000.00) credit, and (2) an additional six million dollars (\$6,000,000.00) to be paid toward the satisfaction of the Minimum Settlement Amount. If the Amount Payable for Approved Claims exceeds the Minimum Settlement Amount, Kimberly-Clark will pay any additional Approved Claims in an amount not to exceed the Maximum Settlement Amount, consistent with Paragraphs 2.17 and 6.4.

2.19 “Notice” means notice of the proposed class action Settlement to be provided to Settlement Class Members pursuant to the Preliminary Approval Order, substantially in the form attached hereto as Exhibit 2.

2.20 “Notice and Administrative Expenses” means all of the expenses incurred in the administration of this Settlement, including, without limitation, all expenses or costs associated with providing Notice to the Settlement Class, including by Amazon, Inc. (*see* Paragraph 4.2) locating Settlement Class Members, processing Claims, determining the eligibility of any person to be a Settlement Class Member, and administering, calculating and distributing the Settlement Fund to Participating Settlement Class Members. Administrative Expenses also include all reasonable third-party fees and expenses incurred by the Settlement Administrator in administering the terms of this Agreement.

2.21 “Notice Date” shall be the later of: (i) seven (7) days after the mailing of all Notices sent by U.S. mail; (ii) one (1) day after the date by which all email Notices have been emailed; and (iii) one (1) day after the date by which the publication Notice campaign has been initiated.

2.22 “Notice Deadline” means the last day by which notice sent by U.S. mail and email must issue to the Settlement Class Members and will occur forty-five (45) days from entry of the Preliminary Approval Order. Notice by publication shall extend until the Claims Deadline.

2.23 “Objection Deadline” is the last day on which a Settlement Class Member may file an objection to the Settlement or Fee Application, which will be forty (40) days after the Notice Date.

2.24 “Opt-Out Deadline” is the last day on which a Settlement Class Member may file a request to be excluded from the Settlement Class, which will be forty (40) days after the Notice Date.

2.25 “Participating Settlement Class Member” means a Settlement Class Member who does not submit a valid Request for Exclusion prior to the Opt-Out Deadline.

2.26 “Preliminary Approval Order” means an order directing issuance of Notice to Settlement Class Members, determining that the Court will likely be able to approve the Settlement under Federal Rule of Civil Procedure 23(e)(2), and determining that the Court will likely be able to certify the Settlement Class for purposes of judgment, that is consistent with all material provisions of this Settlement Agreement subject to modifications by the Court. Class Counsel will submit a proposed Preliminary Approval Order in conjunction with Plaintiffs’ motion for preliminary approval.

2.27 “Proof of Purchase” means a record reflecting the purchase of “Wipes” defined in Paragraph 3.1.

2.28 “Recall and Refund Program” means the reimbursement program implemented by Kimberly-Clark in which Kimberly-Clark issued refund cards to certain purchasers of Wipes which resulted in activated card reimbursements of approximately \$4,000,000.

2.29 “Released Claims” means any and all claims or causes of action of every kind and description, including any causes of action in law, claims in equity, complaints, suits or petitions, and any allegations of wrongdoing, demands for legal, equitable or administrative relief (including, but not limited to, any claims for injunction, rescission, reformation, restitution, disgorgement, constructive trust, declaratory relief, compensatory damages, consequential damages, penalties, exemplary damages, punitive damages, attorneys’ fees, costs, interest or expenses) that the Releasing Parties had, have or may claim now or in the future to have (including, but not limited to, assigned claims and any and all “Unknown Claims” as defined below) that were or could have been asserted or alleged arising out of the same nucleus of operative facts as any of the claims alleged or asserted in the Action, including but not limited to the facts, transactions, occurrences, events, acts, omissions, or failures to act that were alleged, argued, raised or asserted in any pleading or court filing in the Action, including but not limited to those concerning the purchase or use of Wipes. “Released Claims” do not include personal injury claims related to the purchase or use of Wipes (the “Personal Injury Claims”).

2.30 “Request for Exclusion” is the written communication by or on behalf of a Settlement Class Member in which he or she requests to be excluded from the Settlement Class in the form and manner provided for in the Notice.

2.31 “Settlement” means the settlement of the Action by and between the Parties, and the terms and conditions thereof as stated in this Settlement Agreement.

2.32 “Settlement Administrator” means Kroll Settlement Administration, LLC. A different Settlement Administrator may be substituted if proposed by the Parties and approved by order of the Court.

2.33 “Settlement Amount” means the total amount to be paid by Kimberly-Clark to satisfy its monetary obligations under the Settlement, which, subject to Paragraph 2.18 (“Minimum Settlement Amount”) and Paragraph 2.17 (“Maximum Settlement Amount”), includes (i) the Amount Payable for Approved Claims and (ii) the amounts to be paid by Kimberly-Clark for



Notice and Administration Expenses; Service Awards; and Fee Award and Costs approved by the Court (collectively, the “Other Obligations”), which together constitute the limit and extent of Kimberly-Clark’s monetary obligations with respect to the Settlement.

2.34 “Settlement Class Contact Information” means the contact information for Settlement Class Members provided by third-party retailers to the Settlement Administrator in response to third-party subpoenas served by Class Counsel. The Parties agree to cooperate to obtain all reasonably-available Settlement Class Contact Information, including through the potential enforcement of third-party subpoenas. The Parties further agree that Settlement Class Contact Information shall be provided only to the Settlement Administrator, not to be viewed by the Parties, and shall be maintained in confidence by the Settlement Administrator.

2.35 “Settlement Class Member” means an individual who falls within the definition of the Settlement Class set forth in Paragraph 3.1.

2.36 “Settlement Class Representatives” means Melissa Armstrong, Roland Nadeau, Karyn Ray, Linda Gordan, Erik Heinrich, Sandra Green, Ruth Bogue, Ann Rader, Karen Zambelli, Susan Hall, Mark Levit, Courtney Conley, Jannet Ray, Tracey Alexander, Adrian Lewis, Mitchell Craven, Daniel Kaplan, Stephen Simpson, Rosetta Turner, Donna Styx, Jamie Chipman, and Dawn Rothfeld.

2.37 “Settlement Fund” means the payments Kimberly-Clark agrees to make to satisfy its monetary obligations under the Settlement.

2.38 “Settlement Payment(s)” means the payment(s) to be made via mailed check and/or electronic payment to Participating Settlement Class Members.

2.39 “Settlement Website” means the website that the Settlement Administrator will establish as soon as practicable following entry of the Preliminary Approval Order, but prior to the mailing of the Notice, as a means for Settlement Class Members to obtain notice of and information about the Settlement and relevant case documents and deadlines. The Settlement Website shall contain relevant documents, including, but not limited to, the Notice, this Agreement, Plaintiffs’ motion for preliminary approval of the Settlement, the Preliminary Approval Order, Plaintiffs’ Fee Application, and the operative complaint in the Action. The Settlement Website shall also include a toll-free telephone number, e-mail address, and mailing address through which Settlement Class Members may contact the Settlement Administrator directly. The Settlement Website shall not include any advertising and shall remain operational until at least thirty (30) days after all Settlement Payments have been distributed.

2.40 “Taxes and Tax-Related Expenses” means any and all applicable taxes, duties, and similar charges imposed by a government authority (including any estimated taxes, interest or penalties) arising in any jurisdiction, if any, with respect to the income or gains earned by or in respect of the Settlement Fund, including, without limitation, any taxes that may be imposed upon Kimberly-Clark with respect to any income or gains earned by or in respect of the Settlement Fund for any period while it is held in the Settlement Fund.

### **3. SETTLEMENT CLASS**

3.1 For Settlement purposes only, the Parties agree that the Court should certify the following Settlement Class pursuant to Fed. R. Civ. P. 23(b)(3), defined as:

All persons in the United States and United States territories who purchased recalled lots of Cottonelle Flushable Wipes (“Wipes”) between February 7, 2020 and December 31, 2020 for personal use and not for resale, and any persons residing in the same household.

3.2 Excluded from the Settlement Class are: (1) the Court and its officers and employees; (2) Kimberly-Clark, its subsidiaries, parent companies, successors, predecessors, and any entity in which Kimberly-Clark or its parents have a controlling interest and their current or former officers, directors, and employees; (3) Settlement Class Members who submit a valid Request for Exclusion on or before the Opt-Out Deadline.

3.3 For Settlement purposes only, Class Counsel shall seek, and Kimberly-Clark shall not oppose, the appointment of Class Counsel as Settlement Class Counsel and appointment of the persons listed in Paragraph 2.33 as Settlement Class Representatives.

#### **4. SETTLEMENT CLASS NOTICE**

4.1 Except as provided for in Paragraph 4.2, the Settlement Administrator shall disseminate Notice to Settlement Class Members by the Notice Deadline. The Settlement Administrator shall disseminate Notice in a manner that complies with due process under the United States Constitution. The Settlement Administrator will provide direct Notice, one time, via email to those Settlement Class Members for whom the Settlement Administrator has obtained contact information through third party subpoenas served by Class Counsel, unless there is evidence the emails were not successfully transmitted (e.g., a percentage of email notices are flagged as spam mail) in which case additional emails can be sent to ensure successful transmission. In the event that email is unavailable, the Settlement Administrator shall send Notice, one time, via regular mail to those Settlement Class Members for whom the Settlement Administrator has obtained contact information through third party subpoenas served by Class Counsel. Notice will also be provided by publication through advertisements in appropriate print and electronic media including social media as agreed to by the Parties through the Claims Deadline. In no event shall Notice be provided through television or radio advertisements or through claim promotion sites (e.g., topclassactions.com).

4.2 Amazon, Inc., is a third-party retailer who received a subpoena from Class Counsel. In or about October 2020, Amazon, Inc. sent emails regarding the recall to consumers it identified as purchasing affected Wipes through Amazon, Inc. Amazon, Inc. will separately provide direct Notice by the Notice Deadline, one time, via email to the email addresses in Amazon’s possession associated with consumers that Amazon, Inc. previously identified as purchasing affected Wipes. The notice sent by Amazon will include the following additional disclaimer “Amazon is emailing you because our records indicate that you may have purchased certain Cottonelle-branded products through the Amazon.com store. YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT. Amazon is not a party to or otherwise involved in the class action lawsuit and is providing this notice only as a courtesy.” Within seven (7) days of sending the Notice, Amazon shall provide a declaration to the Parties indicating compliance with this

obligation and setting forth the total number of unique email addresses to whom it sent Notice, and the total number of those emails that were delivered successfully as reported by Amazon's email server.

## **5. OPT-OUTS AND OBJECTIONS**

5.1 **Opt-Outs.** The Notice shall explain the procedure for Settlement Class Members to exclude themselves or "opt-out" of the Settlement by submitting a Request for Exclusion to the Settlement Administrator postmarked no later than forty (40) days after the Notice Date. The Request for Exclusion must include the name of the proceeding, the individual's full name, current address, personal signature, and the words "Request for Exclusion" or a comparable statement that the individual does not wish to participate in the Settlement at the top of the communication. The Notice must state that any Settlement Class Member who does not file a timely Request for Exclusion in accordance with this Paragraph will lose the opportunity to exclude himself or herself from the Settlement and will be bound by the Settlement. If a Settlement Class Member submits both a Claim Form and an opt-out request, the Claim Form shall take precedence and be considered valid and binding, and the opt-out request shall be deemed to have been sent by mistake and rejected.

5.2 **Objections.** The Notice shall explain the procedure for Settlement Class Members to object to the Settlement or Fee Application by submitting written objections to the Settlement Administrator postmarked no later than forty (40) days after the Notice Date. The written objection must include (i) the name of the proceedings; (ii) the Settlement Class Member's full name, current mailing address, and telephone number; (iii) a statement of the specific grounds for the objection, as well as any documents supporting the objection; (iv) a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (v) the identity of any attorneys representing the objector; (vi) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; and (vii) the signature of the Settlement Class Member or the Settlement Class Member's attorney. The Notice must set forth the time and place of the Final Approval Hearing (subject to change) and state that any Settlement Class Member who does not file a timely and adequate objection in accordance with this Paragraph waives the right to object or to be heard at the Final Approval Hearing and shall be forever barred from making any objection to the Settlement.

## **6. SETTLEMENT FUND**

6.1 **Establishment of Settlement Fund.** The Settlement Amount shall be funded and paid into an account established and administered by the Settlement Administrator at a financial institution agreed upon by the Parties. The Parties agree that the Settlement Fund is intended to be maintained as a qualified settlement fund within the meaning of Treasury Regulation § 1.468 B-1, and that the Settlement Administrator, within the meaning of Treasury Regulation § 1.468 B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the Settlement Fund and paying from the Settlement Fund any Taxes and Tax-Related Expenses owed with respect to the Settlement Fund. The Parties agree that the Settlement Fund shall be treated as a qualified settlement fund from the earliest date possible and agree to any relation-back election required to treat the Settlement Fund as a qualified settlement fund from the earliest date possible. Any and all funds held in the Settlement Fund shall be held in an interest-bearing account

insured by the Federal Deposit Insurance Corporation. Funds may be placed in a non-interest bearing account as may be reasonably necessary during the check clearing process. The Settlement Administrator shall provide an accounting of any and all funds in the Settlement Fund, including any interest accrued thereon and payments made pursuant to this Agreement, upon request of any of the Parties.

**6.2 Use of the Settlement Fund.** As further described in this Agreement, the Settlement Fund including any interest earned shall be used by the Settlement Administrator to pay for the following: (i) Approved Claims; (ii) Notice and Administrative Expenses; (iii) Service Awards; and (iv) Fee Award and Costs approved by the Court. No amounts may be withdrawn from the Settlement Fund unless expressly authorized by this Agreement or approved by the Court.

**6.3 Custody of Settlement Fund.** The Settlement Fund shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to this Settlement Agreement or the balance returned to those who paid the Settlement Fund in the event this Settlement Agreement is terminated in accordance with Paragraph 10.3.

**6.4 Funding the Settlement.** Within thirty (30) days of the Preliminary Approval Order, Kimberly-Clark shall deposit a minimum of two million dollars (\$2,000,000.00) into a Fund that will be used to pay the Minimum Settlement Amount and Notice and Administration Expenses (“Settlement Fund”). Preliminarily, this initial deposit in the fund will be used to pay Notice and Administration Expenses, and may be applied toward the Minimum Settlement Amount only as described below. No later than thirty (30) days from the date of the Final Approval Order and Judgment, Kimberly-Clark shall ensure that all Notice and Administration Expenses (unless otherwise agreed by Kimberly-Clark and the Settlement Administrator), Service Awards, and Fee Award and Costs approved by the Court are paid. As soon as reasonably practicable after all validly submitted Claims have been reviewed and approved or rejected, the Settlement Administrator shall notify the Parties of the total Amount Payable for Approved Claims. No later than thirty (30) days from the date that the Settlement Administrator provides such notice, Kimberly-Clark shall deposit, at a minimum, funds into the Settlement Fund sufficient to satisfy its obligation to pay the Minimum Settlement Amount for Approved Claims, and if the Amount Payable for Approved Claims exceeds the Minimum Settlement Amount, Kimberly-Clark shall deposit funds in the Settlement Fund to satisfy any additional Approved Claims in an amount not to exceed the Maximum Settlement Amount, notwithstanding that there may be a minority of Claims subject to appeal or further determination. If the Amount Payable for Approved Claims is less than the Minimum Settlement Amount, Kimberly-Clark shall receive a credit towards its other obligations: first to Notice and Administration Expenses, and second to the Fee Award and Costs, in which case Kimberly-Clark must fund the Settlement sufficient to satisfy the Amount Payable for Approved Claims and the Minimum Settlement Amount less the applicable credits described herein. If the sum of the Amount Payable for Approved Claims exceeds \$13.5 million, then payments to Participating Settlement Class Members shall be reduced pro rata so that the total of all payments for valid Claims under the Settlement Agreement does not exceed the Maximum Settlement Amount. If the Amount Payable for Approved Claims and the cost of Notice and Administration Expenses and the Fee Award and Costs together amount to less than the Minimum Settlement Amount, the Parties will confer and jointly submit a proposal to the Court regarding the proposed distribution of the remaining Settlement Funds.

6.5 **Non-Reversionary.** The Settlement Fund is non-reversionary. As of the Effective Date, all rights of Kimberly-Clark in or to the Settlement Fund shall be extinguished, except in the event this Settlement Agreement is terminated, as described in Paragraph 10.3.

6.6 **Uncashed Checks.** To the extent that a settlement check is not cashed within ninety (90) days after the date of issue, the Settlement Administrator shall undertake the following actions: (1) attempt to contact the Participating Settlement Class Member by e-mail and/or telephone to discuss how to obtain a reissued check; (2) if those efforts are unsuccessful, make reasonable efforts to locate an updated address for the Participating Settlement Class Member using advanced address searches or other reasonable methods. Any reissued settlement checks issued to Participating Settlement Class Members shall remain valid and negotiable for sixty (60) days from the date of their issuance and may thereafter automatically be canceled if not cashed by the Participating Settlement Class Members within that time. To the extent any monies remain in the Settlement Fund more than 150 days after the distribution of settlement payments to the Participating Settlement Class Members, or 30 days after all reissued Settlement Checks are no longer negotiable, whichever occurs later or as otherwise agreed to by the Parties, any remaining monies shall be distributed to a non-profit organization proposed by the Parties and approved by the Court.

6.7 **Deceased Class Members.** If the Settlement Administrator is notified that a Participating Settlement Class Member is deceased, the Settlement Administrator is authorized to reissue the settlement check to the Participating Settlement Class Member's estate or next of kin upon receiving reasonable documentation that the Participating Settlement Class Member is deceased and upon consultation with the Parties.

6.8 **Taxes and Representations.** Taxes and Tax-Related Expenses relating to the Settlement Fund shall be considered Notice and Administrative Expenses and shall be timely paid by the Settlement Administrator out of the Settlement Fund without prior order of the Court. Further, the Settlement Fund shall indemnify and hold harmless the Parties and their counsel for Taxes and Tax-Related Expenses (including, without limitation, taxes payable by reason of any such indemnification payments). Kimberly-Clark shall have no obligation to replenish or refund amounts from the Settlement Fund that are used to satisfy Taxes and Tax-Related Expenses. The Parties and their respective counsel have made no representation or warranty with respect to the tax treatment by any Settlement Class Representative or any Settlement Class Member of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Settlement Fund. Each Class Representative and Participating Settlement Class Member shall be solely responsible for the federal, state, and local tax consequences to him, her or it of the receipt of funds from the Settlement Fund pursuant to this Agreement.

## **7. CLAIM PROCESS**

7.1 **Submission of Electronic and Hard Copy Claims.** All Settlement Class Members may submit a Claim to the Settlement Administrator electronically via a claims website or physically by mail to the Settlement Administrator. Claims must be submitted electronically or postmarked during the Claims Period and on or before the Claims Deadline.



7.2 **Claim Form.** Each Claim Form will be assigned a unique identifier that can be used by Participating Settlement Class Members to track their Claims. The Claim Form will contain various anti-fraud provisions used for validation, verification, and allocation of the Settlement benefits subject to review by the Parties. Such anti-fraud provisions shall not be so onerous as to discourage participation by Settlement Class Members.

7.3 **Claim Requirements.** The following requirements apply to Participating Settlement Class Members who submit a Claim:

- a. Participating Settlement Class Members who submit a valid Claim must sign an attestation that they purchased Wipes from recalled lots. The attestation will state that Settlement Class Members will qualify as a purchaser of recalled lot(s) if they: (1) received a notice from a retailer identifying them as a potential purchaser of recalled lots; (2) verified with Kimberly-Clark that they purchased recalled lot(s); or (3) learned of the recall and discarded Wipes with a good faith belief that they purchased recalled lot(s).
- b. Participating Settlement Class Members may file only one Claim per Household, and must choose between submitting a Claim with Proof of Purchase or a Claim without Proof of Purchase. If a Claim with Proof of Purchase is deemed insufficient by the Settlement Administrator because of inadequate proof or lack of documentation and is thereafter not corrected, the Settlement Administrator shall treat the claim as a Claim without Proof of Purchase.
- c. Participating Settlement Class Members that choose to submit a Claim with Proof of Purchase may include multiple purchases in the Claim, so long as there is Proof of Purchase submitted for each purchase.
- d. If a Participating Settlement Class Member was issued a refund card under the Recall and Refund Program and then activated the refund card, that Participating Settlement Class Member and anyone living in their Household is ineligible to submit a valid Claim under this Settlement Agreement unless they provide proof to the Settlement Administrator that they purchased Wipes for which they did not receive compensation through the Recall and Refund Program.

7.4 **Assessing Claims for Reimbursement.** The Settlement Administrator shall have the sole discretion and authority to determine whether the prerequisites have been met in order to award Settlement Payment(s) to Participating Class Members; however, the Settlement Administrator may consult with Class Counsel in making individual determinations. The Settlement Administrator's decision as to the validity of a submitted Claim shall be final. The Settlement Administrator is authorized to contact any Settlement Class Member (by email, telephone, or U.S. mail) to seek clarification regarding a submitted Claim prior to determining its validity. The Settlement Administrator may employ other measures of its choosing to minimize waste, fraud, and abuse, in consultation with the parties.

7.5 **Individual Caps.** Participating Settlement Class Members who submit timely and valid Claims will be eligible for Settlement Payments as follows (subject to pro rata reduction as described in Section 6):

- a. Participating Settlement Class Members who submit a valid Claim without Proof of Purchase are eligible for reimbursement of up to five dollars (\$5.00) per household.
- b. Participating Settlement Class Members who submit a valid Claim with Proof of Purchase are eligible for reimbursement up to a maximum of one hundred percent (100%) of the amount for which they provide Proof of Purchase.

## **8. DUTIES OF THE SETTLEMENT ADMINISTRATOR**

8.1 The Settlement Administrator shall perform the functions and duties necessary to effectuate the Settlement and as specified in this Agreement, including, but not limited to, the following:

- a. Creating, administering, and overseeing the Settlement Fund;
- b. Obtaining the Settlement Class Contact Information for the purpose of disseminating Notice to Settlement Class Members;
- c. Providing Notice to Settlement Class Members via U.S. mail and e-mail as specified in Paragraph 4.1;
- d. Establishing and maintaining the Settlement Website;
- e. Establishing and maintaining a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries (without live operators), and answering the questions of Settlement Class Members who call with or otherwise communicate such inquiries within two (2) business days absent exigent circumstances;
- f. Responding to any mailed or emailed Settlement Class Member inquiries within two (2) business days absent exigent circumstances;
- g. Reviewing, determining the validity of, and processing all Claims submitted by Settlement Class Members;
- h. Receiving Requests for Exclusion and objections from Settlement Class Members and providing Class Counsel and Kimberly-Clark's Counsel a copy thereof no later than three (3) days following the deadline for submission of the same. If the Settlement Administrator receives any Requests for Exclusion, objections, or other requests from Settlement Class Members after the Opt-Out and Objection Deadlines, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and to Kimberly-Clark's Counsel;

- i. Processing and transmitting Settlement Payments to Participating Settlement Class Members;
- j. Providing weekly or other periodic reports to Class Counsel and Kimberly-Clark's Counsel that include information regarding the number of Settlement Checks mailed and delivered, Settlement Checks cashed, undeliverable information, and any other requested information relating to Settlement Payments. The Settlement Administrator shall also, as requested by Class Counsel or Kimberly-Clark's Counsel and from time to time, provide the amounts remaining in the Settlement Fund;
- k. In advance of the Final Approval Hearing, preparing a sworn declaration to submit to the Court that: (i) attests to implementation of Notice in accordance with the Preliminary Approval Order; and (ii) identifies each Settlement Class Member who timely and properly submitted a Request for Exclusion; and
- l. Performing any function related to Settlement administration at the agreed-upon instruction of Class Counsel or Kimberly-Clark's Counsel, including, but not limited to, verifying that Settlement Payments have been distributed.

8.2 The scope of the Settlement Administrator's services may be expanded by the Parties if the Parties agree such action is necessary to successfully provide Notice and/or administer the Settlement.

8.3 **Limitation of Liability.** The Parties, Class Counsel, and Kimberly-Clark's Counsel shall not have any liability whatsoever with respect to (i) any act, omission or determination of the Settlement Administrator, or any of its respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes and Tax-Related Expenses.

8.4 **Indemnification.** The Settlement Administrator shall indemnify and hold harmless the Parties, Class Counsel, and Kimberly-Clark's Counsel for (i) any act or omission or determination of the Settlement Administrator, or any of Settlement Administrator's designees or agents, in connection with the Notice Plan and the administration of the Settlement; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes and Tax-Related Expenses.



## **9. PRELIMINARY APPROVAL, FINAL APPROVAL, AND JURISDICTION**

9.1 **Certification of the Settlement Class.** For purposes of this Settlement only, the Parties stipulate to the certification of the Settlement Class, which is contingent upon the Court entering the Final Approval Order and Judgment of this Settlement and the occurrence of the Effective Date.

9.2 **Preliminary Approval.** Following execution of this Agreement, Class Counsel shall file an amended motion for preliminary approval of the settlement as soon as practicable, but no later than 30 days following execution of this Agreement.

9.3 **Final Approval.** Class Counsel shall move the Court for a Final Approval Order and Judgment of this Settlement, to be issued following the Final Approval Hearing; within a reasonable time after the Notice Deadline, Objection Deadline, and Opt-Out Deadline; and at least 90 days after Kimberly-Clark notifies the appropriate government officials of this Settlement Agreement pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

9.4 **Jurisdiction.** The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice and the Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

## **10. MODIFICATION AND TERMINATION**

10.1 **Modification by the Parties.** The terms and provisions of this Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, that, after entry of the Preliminary Approval Order, the Parties may make non-material changes to the Settlement Agreement and exhibits (for example fixing typos or making non-substantive changes for consistency) without further notice to the Settlement Class or approval by the Court so long as such changes are consistent with the Court's Preliminary Approval Order and do not materially alter, reduce, or limit the rights of Settlement Class Members under this Agreement.

10.2 **Modification by the Court.** If the final Settlement Agreement or any material part of it is modified by the Court or is materially modified on appeal or remand, any Party may terminate the Settlement. For purposes of this paragraph, a "material modification" is one that significantly alters the rights or obligations of one or more of the Parties. Without limiting the foregoing and by way of illustration only, material modifications include but are not limited to: (1) any change to the scope of the Released Claims or Settlement Class; (2) any increase in the cost of the Settlement to be borne by Kimberly-Clark; (3) any non-trivial change to the benefit, Class Notice, Claim Form, notice plan set forth in Paragraph 4.1, or Claims Process. No order or action

of the Court pertaining to attorneys' fees or expenses shall be considered to constitute a modification so long as such order, action, or modification does not increase the cost of Settlement to be borne by Kimberly-Clark. The Parties agree that the denial, downward modification, or failure to grant the request for attorneys' fees or expenses or the request for Class Representative Payment shall not constitute grounds for modification or termination of the Settlement Agreement.

**10.3 Termination.** The Parties shall have the right to terminate the Settlement by providing written notice of their election to do so to the other Party if: (a) the Court declines to enter the Preliminary Approval Order or in the event of any "material modification" of the Settlement Agreement as described in Paragraph 10.2 above; (b) the Court refuses to approve the Settlement or any material part thereof; (c) the Court declines to enter the Final Approval Order or makes material changes thereto; (d) the Final Approval Order is vacated, modified, or reversed in any material respect; or (e) the Effective Date otherwise does not occur.

**10.4 Effect of Termination.** In the event of a termination as provided in Paragraph 10.3, this Agreement and the Settlement shall be considered null and void; all of the Parties' obligations under the Agreement shall cease to be of any force and effect and the Parties shall return to the status quo ante in the Action as if the Parties had not entered into this Agreement or the Settlement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement claims and defenses will be preserved.

## **11. RELEASES**

**11.1 The Release.** Upon the Effective Date, and in consideration of the Settlement benefits described here, each of the Settlement Class Representatives and Participating Settlement Class Members, and each of their respective heirs, executors, administrators, representatives, agents, partners, successors, attorneys, and assigns (the "Releasing Parties") shall be deemed to have released and acquitted, and forever discharged any and all Released Claims against Kimberly-Clark and its present and former predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates, departments, and any and all of their past, present, and future officers, directors, employees, stockholders, partners, servants, agents, successors, attorneys, advisors, consultants, representatives, insurers, reinsurers, subrogees and the predecessors, successors, and assigns of any of the foregoing (the "Released Parties").

**11.2 Exclusion of Personal Injury Claims.** The Released Claims do not include Personal Injury claims. Personal Injury Claims are not being released as part of this Settlement Agreement.

**11.3 Unknown Claims.** The Released Claims include the release of Unknown Claims. "Unknown Claims" means claims that could have been raised in the Action and that any of the Settlement Class Representatives or Participating Settlement Class Members, and each of their respective heirs, executors, administrators, representatives, agents, partners, successors, attorneys, and assigns does not know or suspect to exist, which, if known by him, her or it, might affect his, her or its agreement to release Kimberly-Clark and its present and former predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates, departments, and any and all of their past, present, and future officers, directors, employees, stockholders, partners, servants, agents, successors, attorneys, advisors, consultants, representatives, insurers, reinsurers, subrogees and the

predecessors, successors, and assigns of any of the foregoing or the Released Claims or might affect his, her or its decision to agree, object or not to object to the Settlement. Upon the Effective Date, the Settlement Class Representatives and Participating Settlement Class Members, and each of their respective heirs, executors, administrators, representatives, agents, partners, successors, attorneys, and assigns shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides as follows:

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

Upon the Effective Date, each of the Settlement Class Representatives and Participating Settlement Class Members, and each of their respective heirs, executors, administrators, representatives, agents, partners, successors, attorneys, and assigns shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state, the District of Columbia or territory of the United States, by federal law, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. The Settlement Class Representatives and Participating Settlement Class Members, and each of their respective heirs, executors, administrators, representatives, agents, partners, successors, attorneys, and assigns acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Release, but that it is their intention to finally and forever settle and release the Released Claims, including but not limited to any Unknown Claims they may have, as that term is defined in this Paragraph.

**11.4 Release of Class Representatives and Class Counsel.** Upon the Effective Date, Kimberly-Clark and its representatives, officers, agents, directors, affiliates, employees, insurers, and attorneys shall be deemed to have released, acquitted, and forever discharged the Settlement Class Representatives and Class Counsel from any and all claims or causes of action of every kind and description, including any causes of action in law, claims in equity, complaints, suits or petitions, and any allegations of wrongdoing, demands for legal, equitable or administrative relief (including, but not limited to, any claims for injunction, rescission, reformation, restitution, disgorgement, constructive trust, declaratory relief, compensatory damages, consequential damages, penalties, exemplary damages, punitive damages, attorneys' fees, costs, interest or expenses), whether known or unknown, that arise out of, are based upon, or relate to prosecution of the Action, the Settlement Agreement, or the Settlement claims process (provided, however, that this release and discharge shall not include claims relating to the enforcement of the terms of the Settlement or this Agreement).

**11.5 Bar to Future Suits.** Upon entry of the Final Approval Order and Judgment, the Settlement Class Representatives and other Settlement Class Members shall be enjoined from prosecuting any claim they have released in the preceding paragraphs in any proceeding against any of the Released Parties or based on any actions taken by any of the Released Parties that are

authorized or required by this Agreement or by the Final Approval Order. Likewise, Kimberly-Clark and its representatives, officers, agents, directors, affiliates, employees, insurers, and attorneys shall be enjoined from prosecuting any claim they have released in the preceding paragraphs in any proceeding against Settlement Class Representatives and Class Counsel or based on any actions taken by Settlement Class Representatives and Class Counsel that are authorized or required by this Agreement or by the Final Approval Order. It is further agreed that the Settlement may be pleaded as a complete defense to any proceeding subject to this section.

## **12. ATTORNEYS' FEES, COSTS, EXPENSES, AND SERVICE AWARDS**

12.1 **Service Awards.** Class Counsel will ask the Court to approve, and Kimberly-Clark will not oppose, service awards not to exceed \$2,500 for each Settlement Class Representative, which are intended to compensate such individuals for their efforts in the litigation and commitment on behalf of the Settlement Class ("Service Awards"). Any Service Awards approved by the Court will count toward the Minimum Settlement Amount, however, if Approved Claims exceed the Maximum Settlement Amount, Service Awards will not count toward the Maximum Settlement Amount. Service Awards shall be paid per section 6.4 above. Neither Class Counsel's application for, nor any individual's entitlement to, a Service Award shall be conditioned in any way upon such individual's support for this Agreement.

12.2 **Attorneys' Fees and Costs and Expenses.** At least twenty-one (21) days before the Opt-Out and Objection Deadlines, Class Counsel will file a Fee Application for an award of attorneys' fees and Litigation Costs and Expenses in an amount not to exceed \$3,650,000.00. Prior to the disbursement or payment of the Fee Award and Costs under this Agreement, Class Counsel shall provide to Kimberly-Clark a properly completed and duly executed IRS Forms W-9 from each of their firms. Fee Award and Costs shall be paid per paragraph 6.4 above.

## **13. NO ADMISSION OF LIABILITY**

13.1 **No Admission of Liability.** The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgement or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever. Kimberly-Clark expressly denies the allegations of the Amended Complaint. Neither this Settlement Agreement, nor the fact of settlement, nor the settlement proceedings, nor settlement negotiations, nor any related document, shall be used as an admission of any fault or omission by the Parties, or be offered or received in evidence as an admission, concession, presumption, or inference of any wrongdoing by the Parties, other than such proceedings as may be necessary to consummate, interpret, or enforce this Agreement.

## **14. MISCELLANEOUS**

14.1 **Integration of Exhibits.** The exhibits to this Agreement and any exhibits thereto are a material part of this Settlement and are incorporated and made a part of the Agreement.

14.2 **Entire Agreement.** This Agreement, including all exhibits hereto, shall constitute the entire Agreement among the Parties with regard to the subject matter hereof and shall supersede

any previous agreements, representations, communications and understandings among the Parties, including but not limited to the binding term sheet that preceded this Agreement. This Agreement may not be changed, modified, or amended except in writing signed by all Parties, subject to Court approval. The Parties contemplate that, subject to Court approval or without such approval where legally permissible, the exhibits to this Agreement may be modified by subsequent Agreement of counsel for the Parties prior to dissemination of the Settlement Class Notice to the Settlement Class.

14.3 **Deadlines.** If any of the dates or deadlines specified herein falls on a weekend or legal holiday, the applicable date or deadline shall fall on the next business day. All reference to “days” in this Agreement shall refer to calendar days unless otherwise specific.

14.4 **Construction.** For the purpose of construing or interpreting this Agreement, the Parties agree that this Agreement is to be deemed to have been drafted equally by all Parties hereto and shall not be construed strictly for or against any Party.

14.5 **Cooperation of Parties.** The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, defend Court approval, and to do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement.

14.6 **Public Statements.** Settlement Class Representatives and Class Counsel agree not to making disparaging public statements about Kimberly-Clark, the Wipes, and/or Kimberly-Clark’s Counsel. Plaintiffs and Class Counsel are free to: (i) respond in a truthful and non-disparaging manner to inquiries regarding the Action or Settlement from Settlement Class Members; (ii) state that they served as legal counsel in this Action and reference the terms and amount of the Settlement on their firm’s website, biographies, or similar marketing materials, and in connection with future applications to serve as interim-class or lead counsel, or as otherwise required by law. Kimberly-Clark and Kimberly-Clark’s Counsel agree not to make disparaging public statements about Settlement Class Representatives, Class Counsel, or the Settlement.

14.7 **Governing Law.** The Agreement shall be construed in accordance with, and be governed by, the laws of the State of Texas, without regard to the principles thereof regarding choice of law.

14.8 **Headings.** Any headings contained herein are for informational purposes only and do not constitute a substantive part of this Agreement. In the event of a dispute concerning the terms and conditions of this Agreement, the headings shall be disregarded.

14.9 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all signatories do not sign the same counterparts. Original signatures are not required. Any signature submitted electronically through email of an Adobe PDF shall be deemed an original.

14.10 **Notices.** All notices to Class Counsel provided for herein, shall be sent by overnight mail and email:

J. Austin Moore  
**STUEVE SIEGEL HANSON LLP**  
460 Nichols Road, Suite 200  
Kansas City, Missouri 64112  
moore@stuevesiegel.com

Joshua L. Hedrick  
**HEDRICK KRING BAILEY PLLC**  
1700 Pacific Avenue, Suite 4650  
Dallas, Texas 75201  
josh@hedrickkring.com

Michael R. Reese  
**REESE LLP**  
100 west 93rd Street, 16th Floor  
New York, New York 10025  
mreese@reesellp.com

Jordan S. Palatiello  
**LEWIS JOHS AVALLONE AVILES, LLP**  
One CA Plaza, Suite 225  
Islandia, New York 11749  
jspalatiello@lewisjohs.com

All notices to Kimberly-Clark provided for herein, shall be sent by overnight mail and email to:

Heather L. Richardson  
**GIBSON, DUNN & CRUTCHER LLP**  
333 South Grand Avenue  
Los Angeles, California 90071  
hrichardson@gibsondunn.com

The notice recipients and addresses designated above may be changed by written notice.

14.11 **Severability.** Should any part, term, or provision of this Agreement be declared or determined by any court or tribunal to be illegal or invalid, the Parties agree that the Court may modify such provision to the extent necessary to make it valid, legal, and enforceable. In any event, such provision shall be separable and shall not limit or affect the validity, legality, or enforceability of any other provision hereunder.

14.12 **Authority.** Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

**EXHIBITS**

- [1] Long Form Claim Notice
- [2] Short Form Claim Notice
- [3] Claim Form

[SIGNATURES ON FOLLOWING PAGE]



IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by themselves or by their duly authorized counsel:



---

Name: J. Austin Moore

Date: 9/22/2023

*Counsel for Plaintiffs and the Settlement Class*



---

Name: Heather L. Richardson

Date: 9/22/2023

*Counsel for Kimberly-Clark Corporation*



# Exhibit 1

(Long-Form Notice)

## **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

*Armstrong et al., v. Kimberly-Clark Corp.*, Case No. 3:20-cv-3150  
United States District Court for the Northern District of Texas

***The United States District Court for the Northern District of Texas authorized this Notice. You are not being sued. This is not a solicitation from a lawyer.***

**If you purchased recalled lots of Cottonelle Flushable Wipes between February 7, 2020 and December 31, 2020 in the United States or United States territories, for personal use and not for resale, you may be eligible for a cash payment from a Class Action Settlement.**

- A federal judge has given preliminary approval to a class action settlement. Kimberly-Clark Corporation (“Kimberly-Clark” or “Defendant”) has agreed to pay up to \$13.5 million to pay claims arising out of the sale of recalled lots of Cottonelle Flushable Wipes between February 7, 2020 and December 31, 2020 (“Cottonelle Flushable Wipes”).
- **READ THIS NOTICE CAREFULLY BECAUSE IT AFFECTS YOUR RIGHTS.**
- You are included in the Settlement if you purchased recalled lots Cottonelle Flushable Wipes for personal use between February 7, 2020 and December 31, 2020 in the U.S. or U.S. territories.
- The proposed Settlement reimburses Settlement Class Members for money spent on Cottonelle Flushable Wipes between February 7, 2020 and December 31, 2020. This Settlement does not include personal injury claims and does not release those claims.
- If you previously received a refund from Kimberly-Clark, you may not be eligible for payment under this Class Action Settlement.
- **Settlement Class Members must submit a Claim Form to be eligible for payment.** Settlement Class Members that submit a valid Claim Form by [**DEADLINE**] are eligible to receive either:
  - \* A payment of up to 100% of the amount spent on eligible Cottonelle Flushable Wipes (if you provide proof of purchase); **or**
  - \* A payment of up to \$5.00 per household (if you do not provide proof of purchase).
  - \* If the amount payable for valid claims under this settlement exceeds \$13.5 million, payments for Settlement Class Members will be reduced *pro rata* so that the total of all payments for valid claims does not exceed \$13.5 million. \$4

QUESTIONS? CALL [NUMBER] TOLL-FREE OR VISIT [WEBSITE].

million was already paid under a separate refund process administered by Kimberly-Clark.

- The Court still has to decide whether to approve the Settlement. No payments will be made until after the Court grants final approval of the Settlement and all appeals, if any, are resolved.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT		DEADLINE
<b>SUBMIT A CLAIM FORM</b>	To be eligible for a cash payment from this Settlement, you <b>must</b> submit a Claim Form no later than <b>[DEADLINE]</b> .  You can submit your Claim Form online at <b>[WEBSITE]</b> or download the Claim Form from the Settlement Website and mail it to the Settlement Administrator.  For more information see <b>Questions 7-10</b> .	_____, <b>2023</b>
<b>OPT OUT OF THE SETTLEMENT</b>	You can choose to opt out of the Settlement and receive no payment. You will receive <b>no</b> money but you keep the right to sue Defendant separately.  For more information see <b>Question 16</b> .	_____, <b>2023</b>
<b>OBJECT TO THE SETTLEMENT AND/OR ATTEND A HEARING</b>	If you do not opt out of the Settlement, you may object to it by writing to the Settlement Administrator about why you think the Settlement should not be approved. If you object, you may still file a claim for payment.  For more information see <b>Question 17</b> .	_____, <b>2023</b>
<b>DO NOTHING</b>	You are automatically part of the Settlement (unless you opt out). If you do nothing, you will not get a payment from this Settlement and you will give up the right to sue, continue to sue, or be part of another lawsuit against the Defendant related to the legal claims resolved by this Settlement.	

**WHAT THIS NOTICE CONTAINS**

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**BASIC INFORMATION**

**1. Why did I get this Notice?**

A federal court authorized this Notice because you have a right to know about the proposed Settlement of this class action lawsuit, and about your options, before the Court decides whether to approve the Settlement. This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, and how to get them.

**2. What is this class action lawsuit about?**

In October 2020, Kimberly-Clark Corporation, the manufacturer of toilet paper brand Cottonelle, initiated a recall of certain lots of Cottonelle Flushable Wipe products manufactured between February 7, 2020 and September 14, 2020 after detecting the bacterium *Pluralibacter gergoviae* during product testing. The lawsuit seeks refunds for consumers in the United States and United States territories who purchased these products.

The Honorable Judge Barbara Lynn of the United States District Court for the Northern District of Texas is overseeing this class action. The case is called *Armstrong et al., v. Kimberly-Clark Corporation*, Case No. 3:20-CV-3150 (N.D. Tex.). The people that filed this lawsuit are called the “Plaintiffs” and the company they sued, Kimberly-Clark Corporation, is called the “Defendant.” The most recent version of the lawsuit, which describes the specific legal claims alleged by the Plaintiffs is available at [WEBSITE].

For information on how to determine if you are a Settlement Class Member, and therefore eligible for benefits under this Settlement, see Question 5.

**3. What is a class action lawsuit?**

In a class action, one or more individuals sue on behalf of other people with similar claims. These individuals are known as “class representatives.” Together, the people included in the class action are called a “class” or “class members.” One court resolves the lawsuit for all class members, except for those who opt out from a settlement. In this Settlement, the Settlement Class Representatives are listed in the Complaint, which can be found at [WEBSITE].

**4. Why is there a Settlement?**

QUESTIONS? CALL [NUMBER] TOLL-FREE OR VISIT [WEBSITE].

The Court did not decide in favor of Plaintiffs or Defendant. Instead, Plaintiffs and Defendant agreed to a Settlement after a lengthy negotiation process overseen by a neutral mediator. Settlements avoid the costs and risks of a trial, while more quickly providing benefits to Settlement Class Members. The Settlement Class Representatives and the attorneys for the Settlement Class (“Class Counsel,” see Question 13), think the Settlement is in the best interest of all Settlement Class Members.

## WHO IS IN THE SETTLEMENT?

### 5. Who is in the Settlement?

A copy of this Notice was sent via electronic and/or direct mail to all purchasers who may have purchased products whose mailing and/or electronic email addresses could be located. You are a part of this Settlement as a Settlement Class Member if you fit the following description:

All persons in the United States and United States territories who purchased recalled lots of Cottonelle Flushable Wipes between February 7, 2020 and December 31, 2020, for personal use and not for resale, and any persons residing in the same household.

If you are not sure whether you are included in the Settlement Class, you can ask for free help by emailing the Settlement Administrator at [EMAIL] or calling the Settlement Administrator at [NUMBER]. You may also view the Settlement Agreement at [WEBSITE].

### 6. Are there exceptions to being included?

Yes. The Settlement Class does not include: (1) the Court and its officers and employees; (2) Kimberly-Clark, its subsidiaries, parent companies, successors, predecessors, and any entity in which Kimberly-Clark or its parents have a controlling interest and their current or former officers, directors, and employees; (3) Settlement Class Members who submit a valid request for exclusion on or before the Opt-Out Deadline (see Question 16).

## THE SETTLEMENT BENEFITS

### 7. What does the Settlement provide?

If the Settlement is approved by the Court, Defendant will pay a minimum of six million dollars (\$6,000,000.00) and a maximum of thirteen million five hundred thousand dollars (\$13,500,000.00) to pay valid claims submitted by Settlement Class Members. Four million dollars (\$4,000,000.00) was already paid under a separate refund process administered by Kimberly-Clark.

Defendant will also pay notice and administration expenses, attorney fees, costs and expenses, and service awards for the Settlement Class Representatives. These payments

QUESTIONS? CALL [NUMBER] TOLL-FREE OR VISIT [WEBSITE].

will have no impact on the Settlement benefits available to the Settlement Class, but if valid claims are less than \$6,000,000, Defendant will receive a credit towards its other obligations under the settlement, including costs of notice, settlement administration, and attorneys' fees and expenses.

### 8. How much will my payment be?

The amount of payment will depend on whether you submit a Claim Form with proof of purchase, or without proof of purchase. **You must submit a Claim Form to be eligible for payment.**

If you submit a Claim Form with proof of purchase, you are eligible for reimbursement up to 100% of the amount for which you provide proof of purchase.

If you submit a Claim Form without proof of purchase, you are eligible for reimbursement of up to five dollars (\$5.00) per household.

If the amount payable for valid new claims submitted under this settlement agreement exceeds \$13.5 million, payments for Settlement Class Members will be reduced *pro rata* so that the total of all payments for valid claims does not exceed \$13.5 million. \$4 million was already paid under a separate refund process administered by Kimberly-Clark.

See **Question 10** for details on how to submit a valid Claim Form. The Settlement Administrator will decide if your claim is valid. Only timely and valid claims will be paid.

### 9. What claims am I releasing if I stay in the Settlement Class?

Unless you opt out of the Settlement, you are staying in the Settlement Class, and that means you cannot sue, continue to sue, or be part of any other lawsuit against the Defendant about any of the legal claims this Settlement resolves. It also means that the Court's orders relating to this Settlement will apply to you and legally bind you. You will be bound by the "Released Claims" section in the Settlement Agreement, which describes the legal claims that you give up if you remain in the Settlement Class. "Released Claims" do not include personal injury claims related to the purchase or use of Cottonelle Flushable Wipes. To review the Settlement Agreement, visit **[WEBSITE]**.

## HOW TO GET A PAYMENT—MAKING A CLAIM

### 10. How do I submit a claim and get a cash payment?

**You must submit a Claim Form to be eligible for payment.** You may submit a Claim Form online at **[WEBSITE]** or print out the Claim Form from the website and mail it to the Settlement Administrator at **[ADDRESS]**.

QUESTIONS? CALL [NUMBER] TOLL-FREE OR VISIT [WEBSITE].

**You may only submit one Claim Form per household.** “Household” means all individuals who resided at one physical address at any time between February 7, 2020 and the present. Thus, you must choose between submitting a Claim Form with proof of purchase or submitting a Claim Form without proof of purchase—you may not choose both.

If you submit a Claim Form with proof of purchase, you are eligible for reimbursement up to 100% of the amount for which you provide proof of purchase. If you submit a Claim Form with proof of purchase, you may include multiple purchases in the Claim Form, so long as you provide proof for each purchase.

If you submit a Claim Form without proof of purchase, you are eligible for reimbursement of up to five dollars (\$5.00) per household.

When you submit your Claim Form, you will be required to sign an attestation that you, or a person residing in your household, purchased eligible recalled lots of Cottonelle Flushable Wipes. You are presumed to be a purchaser of recalled lot(s) if you: (1) received a notice from a retailer identifying you as a potential purchaser of recalled lots; (2) verified with Kimberly-Clark that you purchased recalled lot(s); or (3) learned of the recall and discarded Wipes with a good faith belief that you purchased recalled lot(s). You must also attest you have not already been reimbursed by Kimberly-Clark for the purchase of the same Cottonelle Flushable Wipes for which you are submitting a claim.

If you were issued a refund card under Defendant’s recall and refund program (announced in October 2020), and then activated that refund card, then you and your household are not eligible for payment under the Settlement, **unless** you provide proof that you purchased eligible Cottonelle Flushable Wipes for which you did not receive compensation through the recall and refund program.

All Claim Forms must be completed, signed, and submitted online or postmarked on or before **[CLAIMS DEADLINE]**. The Settlement Administrator will decide if your claim is valid. Only timely and valid claims will be paid.

**11. What is the deadline for submitting a claim?**

If you submit a Claim Form online, you must do so by **11:59 p.m. CT on [CLAIMS DEADLINE]**.

If you submit a Claim Form by U.S. mail, the completed and signed Claim Form must be postmarked by **[CLAIMS DEADLINE]**.

**12. When will I get my payment?**

Settlement payments will be distributed as soon as possible if the Court grants final approval of the Settlement and after any appeals are resolved.

The Court will hold a hearing on [DATE], referred to as a “Final Approval Hearing.” See Question 19. After the hearing, the Court will decide whether to approve the Settlement. If the Court approves the Settlement, there may be appeals. It is always uncertain whether appeals will be filed and how long it will take to resolve them.

### THE LAWYERS REPRESENTING YOU

#### 13. Do I have a lawyer in the case?

Yes. The Court has appointed the following attorneys to represent the Settlement Class as Class Counsel:

J. Austin Moore  
**STUEVE SIEGEL HANSON LLP**  
460 Nichols Road, Suite 200  
Kansas City, Missouri 64112

Joshua L. Hedrick  
**HEDRICK KRING BAILEY PLLC**  
1700 Pacific Avenue, Suite 4650  
Dallas, Texas 75201

Michael R. Reese  
**REESE LLP**  
100 West 93rd Street, 16th Floor  
New York, New York 10025

Jordan S. Palatiello  
**LEWIS JOHS AVALLONE AVILES, LLP**  
One Ca Plaza, Suite 225  
Islandia, New York 11749

You will not be charged for their services.

If you have questions about making a claim, please contact the Settlement Administrator. See Question 22.

#### 14. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel works for you. If you want to be represented by your own lawyer, you may hire one at your own expense.

#### 15. How will the lawyers be paid?



Class Counsel has undertaken this case on a contingency-fee basis. This means Class Counsel has paid for all of the expenses in the case, and have not been paid any money in relation to their work on this case.

Class Counsel will ask the Court to award them three million six hundred fifty thousand dollars (\$3,650,000.00) for attorneys' fees and reimbursement for costs and expenses, to be paid separately by the Defendant. The Court will decide the amount of attorney fees and costs and expenses to be paid. You will not have to separately pay any portion of these fees yourself. Class Counsel's request for attorney fees, costs and expenses (which must be approved by the Court) will be filed on [INSERT DATE] and will be available to view on the Settlement website at [INSERT WEBSITE]. Any amount approved by the Court will have no impact on the settlement benefits available to the Settlement Class.

Class Counsel will also ask the Court to approve a service award of two thousand five hundred dollars (\$2,500.00) for each of the Settlement Class Representatives. This amount will have to be approved by the Court. Payments of service awards will count towards Kimberly-Clark's obligation to pay a minimum of \$6 million unless valid claims exceed \$13.5 million.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

### 16. How do I opt out of the Settlement?

If you do not want to receive any benefits from the Settlement, and you want to keep your right, if any, to separately sue the Defendant about the legal issues in this case, you must take steps to exclude yourself from the Settlement Class. This is called "opting out" of the Settlement Class. The deadline for requesting exclusion from the Settlement is [DEADLINE].

To exclude yourself from the Settlement, you must submit a letter requesting exclusion to the Settlement Administrator. **You must sign the letter personally.** The signature of your attorney representing you in this matter will not be accepted by the Court. Each Settlement Class Member must sign his or her own request for exclusion.

The letter must contain the following information:

- (1) The name of this lawsuit: *Armstrong, et al., v. Kimberly-Clark Corp.*, No. 3:20-cv-3150-M (N.D. Tex.);
- (2) Your full name and current address;
- (3) Your personal signature;
- (4) The words "Request for Exclusion," or a statement clearly indicating your intent to be excluded from the Settlement, at the top of the letter.

Your letter **must** be postmarked no later than [DEADLINE]. Send the letter to:

Kroll Settlement Administration LLC  
Attn: Request for Exclusion  
[ADDRESS]

QUESTIONS? CALL [NUMBER] TOLL-FREE OR VISIT [WEBSITE].

**If you do not submit a request for exclusion by [DEADLINE], you will lose the opportunity to exclude yourself from the Settlement, and you will be bound by the Settlement.**

If you exclude yourself, you are stating to the Court that you do not want to be part of the Settlement. You will not be eligible to receive a payment if you exclude yourself.

## **OBJECTING TO THE SETTLEMENT**

### **17. How do I tell the Court if I like or do not like the Settlement?**

If you are a Settlement Class Member, you can object to the Settlement if you don't like any part of it, including the requests being made by Class Counsel for attorney fees, costs and expenses or the service awards being sought for Class Representatives. You can give reasons why you think the Court should not approve the Settlement or what you do not like about the Settlement. The Court will consider your views.

You can't ask the Court to order a different settlement; the Court can only approve or reject the Settlement. If the Court denies approval, no settlement payments will be sent out, and the lawsuit will continue. If that is what you want to happen, you should object.

To object, you must submit a written objection to the Settlement Administrator, postmarked no later than [DEADLINE].

Your objection must include:

- (i) the name of this lawsuit: *Armstrong, et al., v. Kimberly-Clark Corp.*, No. 3:20-cv-3150-M (N.D. Tex.);
- (ii) Your full name, current mailing address, and telephone number;
- (iii) A statement of the specific grounds for the objection, as well as any documents supporting the objection;
- (iv) A statement as to whether the objection applies only to the objector, to a specific subset of the Settlement Class, or to the entire class;
- (v) The identity of any attorneys representing you with respect to your objection;
- (vi) A statement regarding whether you intend to appear at the Final Approval Hearing;
- (vii) You or your attorney's signature.

The Court will hold the Final Approval Hearing on [FFH DATE/TIME/LOCATION]. See Question 19. The date or time of the Final Approval Hearing may change. Please check the Settlement Website [WEBSITE], for any updates, and to find out whether the Final Approval Hearing will be held in person or by video conference.

QUESTIONS? CALL [NUMBER] TOLL-FREE OR VISIT [WEBSITE].

**If you do not file a timely objection consistent with these instructions, you waive the right to object or to be heard at the Final Approval Hearing, and will be forever barred from making any objection to the Settlement.**

**18. What is the difference between objecting and excluding?**

Objecting is telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you do not exclude yourself from the Settlement. Excluding yourself from the Settlement is opting out and stating to the Court that you do not want to be part of the Settlement. If you opt out of the Settlement, you cannot object to it because the Settlement no longer affects you.

**THE COURT'S FINAL APPROVAL HEARING**

**19. When is the Court's Final Approval Hearing?**

The Court has scheduled a Final Approval Hearing at [TIME] on [DATE] at [LOCATION].

At the Final Approval Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider whether to approve Class Counsel's request for an award of attorney fees, costs and expenses, as well as the Settlement Class Representatives' service awards. If there are objections, the Court will consider them. Judge Lynn will listen to people who have asked to speak at the hearing (see **Question 17** above). After the hearing, the Court will decide whether to approve the Settlement.

The briefs and declarations in support of the Final Approval of the Settlement and the requests described above will be posted on the Settlement Website, [WEBSITE].

The date or time of the Final Approval Hearing may change. Please check the Settlement Website [WEBSITE], for any updates, and to find out whether the Final Approval Hearing will be held in person or by video conference.

**20. Do I have to come to the Final Approval Hearing?**

No. Class Counsel will answer any questions the Court may have. You may attend at your own expense if you wish. If you file an objection, you do not have to come to the Final Approval Hearing to talk about it. If you file your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but such attendance is not necessary for the Court to consider an objection that was filed on time.

**IF I DO NOTHING**

**21. What happens if I do nothing at all?**

QUESTIONS? CALL [NUMBER] TOLL-FREE OR VISIT [WEBSITE].

If you are a Settlement Class Member and you do nothing, you will give up the rights explained in **Question 9**, including your right to start a lawsuit, continue a lawsuit, or be part of any other lawsuit against the Defendant and the Released Parties about the legal issues resolved by this Settlement. In addition, you will not receive a payment from this Settlement.

## GETTING MORE INFORMATION

### 22. How do I get more information?

This Notice summarizes the proposed Settlement. Complete details are provided in the Settlement Agreement. The Settlement Agreement and other related documents are available at the Settlement Website [**WEBSITE**].

If you have additional questions, you may contact the Settlement Administrator by email, phone, or mail:

[EMAIL]

[NUMBER]

[ADDRESS]

Publicly filed documents can also be obtained by visiting the office of the Clerk of the United States District Court for the Northern District of Texas or reviewing the Court's online docket.

***Please do not contact the Court, its Clerks, or Kimberly-Clark.***

QUESTIONS? CALL [NUMBER] TOLL-FREE OR VISIT [WEBSITE].

# Exhibit 2

(Short-Form Notice)

## **LEGAL NOTICE**

*Armstrong et al., v. Kimberly-Clark Corp.*, Case No. 3:20-cv-3150  
United States District Court for the Northern District of Texas

**If you purchased recalled lots of Cottonelle Flushable Wipes between February 7, 2020 and December 31, 2020 in the United States or United States territories, for personal use and not for resale, you may be eligible for a cash payment from a Class Action Settlement.**

### **WHAT IS THE LAWSUIT ABOUT?**

A Settlement has been reached in a class action lawsuit called *Armstrong et al. v. Kimberly-Clark Corporation*, Case No. 3:20-CV-3150, pending in the U.S. District Court for the Northern District of Texas. The lawsuit was initiated after Kimberly-Clark Corporation recalled certain lots of Cottonelle Flushable Wipes after detecting bacterium during product testing. The lawsuit seeks refunds for purchasers of those products.

### **WHO IS INCLUDED?**

You are included in the Settlement if you purchased recalled lots Cottonelle Flushable Wipes for personal use between February 7, 2020 and December 31, 2020 in the U.S. or U.S. territories. This Settlement does not include personal injury claims and does not release those claims.

### **WHAT DOES THE SETTLEMENT PROVIDE?**

If you purchased recalled lots of Cottonelle Flushable Wipes for personal use between February 7, 2020 and December 31, 2020 in the U.S. or U.S. territories, you could get up to a **full refund with Proof of Purchase or up to \$5 total without Proof of Purchase**. Payments will be reduced *pro rata* if valid claims under this settlement exceed \$13.5 million (\$4 million was already paid under a separate refund process administered by Kimberly-Clark). You must submit a valid Claim Form by **[DATE]**. If you previously received a refund from Kimberly-Clark, you may not be eligible for payment under this settlement.

You can find more details on how to submit a claim by visiting **[WEBSITE]** or calling **[PHONE NUMBER]**.

### **WHAT ARE YOUR OPTIONS?**

- **Submit a Claim Form.** To be eligible for a cash payment from this Settlement, you must submit a valid Claim Form no later than **[DEADLINE]**. You can submit your Claim Form online at **[WEBSITE]** or download the Claim Form from the Settlement Website and mail it to the Settlement Administrator.
- **Opt Out.** If you do not want to be included in the Settlement, you must submit a written request to the Settlement Administrator by **[DEADLINE]**. You will keep your right to sue Defendant about the claims in this case, but you will not receive money. Detailed instructions on how to exclude yourself are found on **[WEBSITE]**.
- **Object/Comment.** You have the right to object to or comment on the Settlement and still get benefits. If you want to object to or tell the Court what you think about the Settlement, you must submit your objection/comment in writing by **[DEADLINE]** Detailed instructions on how to object or comment are found on **[WEBSITE]**.
- **Do Nothing.** If you do nothing, you will not receive any benefits from the Settlement. You will be legally bound by decisions of the Court and you give up your right to sue Defendants relating to the claims resolved by this Settlement.

The Court will hold a Final Approval Hearing on **[DATE]**, at **[TIME]**, at the United States District Court for the Northern District of Texas, **[ADDRESS]**, which may be moved to a different location, time or date. At the hearing, the Court will hear objections, determine if the Settlement is fair, reasonable, and adequate, and consider Settlement Class Counsel's request for fees and expenses and a Service Award for the Class Representatives. You may attend the Final Approval Hearing and ask to be heard by the Court, but you do not have to attend. Attorneys' fees and expense requests will be posted on **[WEBSITE]** after they are filed with the Court.

### **THIS IS ONLY A SUMMARY.**

For more information about the settlement and benefits, visit **[WEBSITE]**, call **[PHONE NUMBER]**, or write to Cottonelle Flushable Wipes Settlement Program, c/o Settlement Administrator, **[ADDRESS]**.

# Exhibit 3

(Claim Form)

## **CLAIM FORM**

*Armstrong et al., v. Kimberly-Clark Corp.*, Case No. 3:20-cv-3150  
United States District Court for the Northern District of Texas

### **STEP 1: READ THESE INSTRUCTIONS**

- There are two ways to submit this Claim Form to the Settlement Administrator: (1) online at [**WEBSITE**] or (2) by U.S. Mail to the following address: [**ADDRESS**].
- **DEADLINE:** If submitting a Claim Form online, you must do so by [**DEADLINE**]. If you submit a claim by U.S. Mail, the completed and signed Claim Form must be postmarked by [**DEADLINE**].
- You must complete the entire Claim Form. Please type or write your responses legibly.
- You may only submit one Claim Form per household.<sup>1</sup>
- Under **STEP 2** below, you must choose between submitting a Claim Form with proof of purchase (**OPTION 1**) or submitting a Claim Form without proof of purchase (**OPTION 2**). You may not choose both.
  - If you submit a Claim Form with proof of purchase (**OPTION 1**):
    - You must provide proof of purchase. You may include multiple purchases in the Claim Form, so long as you provide proof for each purchase. The proof of purchase must reflect the purchase of Cottonelle Flushable Wipes between February 7, 2020, and December 31, 2020.
    - You are eligible for reimbursement up to 100% of the amount for which you provide proof of purchase.
  - If you submit a Claim Form without proof of purchase (**OPTION 2**):
    - You are eligible for reimbursement of up to five dollars (\$5.00) per household.
- Under **STEP 3**, you must sign an attestation that you, or a person residing in your household, actually purchased eligible Cottonelle Flushable Wipes. You must complete **STEP 3** regardless of which option you chose in **STEP 2**.
- Submission of the Claim Form does not guarantee payment. Your Claim Form must be approved by the Settlement Administrator. If the amount payable for valid claims exceeds \$13.5 million, payments for Settlement Class Members will be reduced *pro rata* so that the total of all payments for valid claims does not exceed \$13.5 million.

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<sup>1</sup> "Household" means all individuals who resided at one physical address at any time between February 7, 2020 and the present.



- If you have any questions, please contact the Settlement Administrator by email at [EMAIL], by telephone at [PHONE], or by U.S. mail at the above address.

**STEP 2: FILL OUT YOUR CLAIM**

**OPTION 1: I AM SUBMITTING A CLAIM WITH PROOF OF PURCHASE.** I paid \$ \_\_\_\_\_ for recalled lots of Cottonelle Flushable Wipes for personal use and not for resale between February 7, 2020 and December 31, 2020 in the United States or United States territories. You **must** attach proof of purchase to this Claim Form (examples include: receipt(s), record(s) of online purchase history, etc.). You may include multiple purchases, so long as you provide proof for each purchase. Your proof(s) of purchase must reflect a date of purchase between February 7, 2020 and December 31, 2020.

Retailer	Purchase Amount	Purchase Date

**OPTION 2: I AM SUBMITTING A CLAIM WITHOUT PROOF OF PURCHASE.** I purchased recalled lots of Cottonelle Flushable Wipes for personal use and not for resale between February 7, 2020 and December 31, 2020 in the United States or United States territories.

**STEP 3: SIGN A STATEMENT ATTESTING TO YOUR PURCHASE(S)**

I declare under **penalty of perjury** that all the information provided in this Claim Form is, to the best of my knowledge, information and belief accurate and correct and that I, or a person residing in my household, purchased recalled lots of **Cottonelle Flushable Wipes** for personal use and not for resale between February 7, 2020 and December 31, 2020 in the United States or United States territories. I understand that I am presumed to be a purchaser of recalled lot(s) if I: (1) received a notice from a retailer identifying me as a potential purchaser of recalled lots; (2) verified with Kimberly-Clark that I purchased recalled lot(s); or (3) learned of the recall and discarded Wipes with a good faith belief that I purchased recalled lot(s). I also declare that I have not already been reimbursed by Kimberly-Clark for the purchase of the same Cottonelle Flushable Wipes for which I am presently submitting a claim.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Printed Name**

\_\_\_\_\_  
**Address**

\_\_\_\_\_  
**City**

**State**

**Zip Code**

\_\_\_\_\_  
**Telephone Number**

\_\_\_\_\_  
**Email address**

**STEP 4: SUBMIT THIS CLAIM FORM BY [DATE]**

**You must submit this Claim Form by [DATE] to be eligible for payment.**

You may submit this Claim Form (1) electronically at **[WEBSITE]**, or (2) by U.S. Mail to following address:

Kroll Settlement Administration, LLC  
[ADDRESS]  
[EMAIL]  
[PHONE]

**PLEASE DO NOT CONTACT THE COURT IF YOU HAVE QUESTIONS.**

# EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

MELISSA ARMSTRONG, *et al.*, individually  
and on behalf of other similarly situated persons,

Plaintiffs,

v.

KIMBERLY-CLARK CORPORATION,

Defendant.

Civil Action No. 3:20-CV-3150-M  
LEAD CASE

(Consolidated With Civil Action No. 3:21-CV-  
01484-M)

**DECLARATION OF J. AUSTIN MOORE IN SUPPORT OF PLAINTIFFS’  
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL AND TO  
DIRECT NOTICE OF PROPOSED SETTLEMENT TO THE CLASS**

I, J. Austin Moore, declare as follows:

1. I am a partner at Stueve Siegel Hanson LLP and counsel for Plaintiffs in this action.

I submit this declaration in support of Plaintiffs’ unopposed motion for preliminary approval and to direct notice of proposed settlement to the class.

2. Attached as **Exhibit 1** to Plaintiffs’ motion is the Settlement Agreement and Release dated September 22, 2023 along with each of its exhibits (“Settlement Agreement” or “Settlement”).<sup>1</sup>

***Settlement Negotiations***

3. From the outset of the case in late 2020, the Parties have pursued global resolution through arm’s length settlement negotiations. These efforts culminated in substantial, ongoing

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<sup>1</sup> Unless otherwise noted, all capitalized terms are defined in the Settlement Agreement.

exchanges of information, myriad settlement proposals, and significant settlement communications, including four, full-day mediations guided by Justice Hankinson between December 2021 and May 2023. To enable the Parties to meaningfully evaluate the claims and defenses at issue, the Parties, after their initial Rule 26(f) conference in late 2020, began exchanging information, including information about the cause of the contamination, consumer complaints received by Kimberly-Clark, and estimated third-party sales data.

4. During this time, the Parties jointly requested, and this Court granted, several extensions of pending deadlines to permit the Parties to make progress in settlement discussions. *See, e.g.*, Docs. 22-23, 26-27, 29-29, 30-31, 37-38. Also during this time, the Parties jointly moved for an order an order consolidating the *Rothfeld* action with the *Armstrong* action, explaining that consolidation would facilitate global settlement discussions. On July 9, 2021, the Court granted the motion, and the Parties continued settlement negotiations on behalf of the class as part of a single, consolidated case. *See* Docs. 35-36.

5. After several productive Rule 408 exchanges, Plaintiffs sent Kimberly-Clark a comprehensive global settlement demand letter on August 23, 2021. Shortly thereafter, the Parties agreed to mediate, and engaged the services of a highly respected mediator, the Honorable Justice Deborah Hankinson (Ret.). *See* Doc. 42 ¶ 2. On December 7, 2021, the Parties participated in the first all-day, in-person mediation session in Dallas, Texas before Justice Hankinson after exchanging detailed mediation briefs setting forth the Parties' respective positions. While the Parties were unable to reach a resolution at that first session, the Parties continued to negotiate with the assistance of Justice Hankinson, including through several telephone conferences in January, February, March, April, and May 2022 in advance of a second mediation session.

6. During this time, the Parties reached an agreement that third-party discovery involving Kimberly-Clark's retailers would be critical to advancing ongoing settlement discussions. Because Kimberly-Clark did not sell the Wipes directly to consumers, the Parties needed this discovery to identify purchasers of the product, including for purposes of providing class notice. Thus, the Parties sought, and the Court ordered on January 31, 2022, the entry of a scheduling order frontloading certain third-party discovery (Docs. 46-47). Thereafter, Plaintiffs served subpoenas on over 30 retailers seeking, among other information, "the name, address, email address, and telephone number of every individual who purchased" a recalled product along with the "date of purchase" and "amount of purchase." *See, e.g.*, Docs. 48-63, 66-71, 73, 74, 76-78, 82-84. During this time, Plaintiffs also filed their Consolidated Class Action Complaint on March 29, 2022. Doc. 64.

7. On June 1, 2022, the Parties participated in a second all-day mediation session with Justice Hankinson. After no resolution was reached, the Parties paused settlement negotiations and focused efforts on discovery and motion practice. In the weeks that followed, the Parties negotiated a protective order (*see* Doc. 95) and briefed Kimberly-Clark's product preservation sampling methodology. Doc. 97. Plaintiffs also drafted and served comprehensive document requests on Kimberly-Clark and continued seeking class member contact information from various retailers pursuant to its third-party subpoenas. Finally, after Kimberly-Clark filed a Motion to Dismiss, the Parties fully briefed the issues and argued the motion on September 7, 2022. *See* Docs. 81, 85, 86, and 98.

8. After Kimberly-Clark's motion to dismiss was fully briefed, argued, and ripe for determination, the Parties conferred and agreed that the time was ripe to re-engage in settlement negotiations before expending additional time and resources on remaining discovery, experts, and

dispositive motion briefing. As a result, the parties jointly requested a stay of proceedings. Doc. 100. The Court granted the Parties' joint motion and stayed all pending deadlines. Doc. 101.

9. On January 10, 2023, the Parties participated in a third, full-day mediation session with Justice Hankinson. Prior to the mediation, on January 9, 2023, the Parties advocated for their respective positions during separate telephone conferences with Justice Hankinson. Though the Parties did not reach agreement at the mediation, Justice Hankinson made a mediator's proposal on the monetary terms of settlement that was ultimately accepted by both Parties.

10. Thereafter, the Parties continued to negotiate the non-monetary terms of settlement with the assistance of Justice Hankinson, including through additional written position statements. On May 1, 2023, the Parties participated in a fourth mediation session with Justice Hankinson to assist negotiations with outstanding material terms, including attorneys' fees and costs. Following that session, Justice Hankinson issued a mediator's proposal that was accepted by both parties. Thereafter, after vigorous and hard-fought negotiations occurring over almost three years, the Parties finalized a term sheet reflecting the essential terms of the Settlement now offered for the Court's consideration in the final Settlement Agreement. *See Ex. 1.*

### ***The Settlement Class***

11. The Agreement defines the "Settlement Class" as "[a]ll persons in the United States and United States territories who purchased recalled lots of Cottonelle Flushable Wipes ("Wipes") between February 7, 2020 and December 31, 2020 for personal use and not for resale, and any persons residing in the same household." Excluded from the Settlement Class are: (1) the Court and its officers and employees; (2) Kimberly-Clark, its subsidiaries, parent companies, successors, predecessors, and any entity in which Kimberly-Clark or its parents have a controlling interest and their current or former officers, directors, and employees; and (3) any Settlement Class Members

who submit a valid Request for Exclusion on or before the Opt-Out Deadline. Ex. 1, Settlement Agreement, ¶¶ 3.1-3.2.

12. Relatedly, if a Settlement Class Member was issued a refund card under the Recall and Refund Program and then activated the refund card, she is ineligible to submit a valid Claim under the Settlement Agreement, unless she provides proof to the Settlement Administrator that she had additional purchases of Wipes for which she did not receive compensation through the Recall and Refund Program. *Id.* ¶ 7.3(d).

***The Settlement Benefits Conferred on the Settlement Class***

13. Under the proposed Settlement, Kimberly-Clark will pay a non-reversionary minimum of \$6 million in new dollars, and a maximum of \$13.5 million, into a settlement fund to pay valid Claims submitted as part of the Settlement. Accounting for the \$4 million Kimberly-Clark paid through its refund program, Kimberly-Clark will pay at least \$10 million, and up to \$17.5 million, in connection with refunds to consumers who purchased recalled lots of Wipes. Ex. 1 ¶¶ 2.18, 2.17 (respectively, the “Minimum Settlement Amount” and “Maximum Settlement Amount”).

14. Settlement Class Members who submit a valid Claim with proof of purchase are eligible for reimbursement up to a maximum of 100% of the amount for which they provide proof of purchase. *Id.* ¶ 7.5(b). Settlement Class Members who submit a valid Claim without proof of purchase are eligible for reimbursement of up to five dollars (\$5.00) per household. *Id.* ¶ 7.5(a).

15. Settlement Class Members will be given sixty (60) days after the Notice Date to submit claims. *Id.* ¶ 2.4. If the sum of the Amount Payable for Approved Claims exceeds \$13.5 million (which is the Maximum Settlement Amount less the \$4 million credit for previously-paid claims), payments to Settlement Class Members will be reduced *pro rata* so that the total of all



payments for valid Claims does not exceed the Maximum Settlement Amount. *Id.* ¶ 6.4. If the Amount Payable for Approved Claims is less than the Minimum Settlement Amount, Kimberly-Clark shall receive a credit towards its other obligations: first to Notice and Administration Expenses, and second to attorneys' fees and expenses. *Id.*

### *The Notice and Claims Process*

16. The Parties request that the Court appoint Kroll Settlement Administration LLC ("Kroll") as Settlement Administrator to provide notice to class members, process claims, and otherwise administer the Settlement. Both Parties agree to the use of Kroll, which is an experienced class action notice provider and administrator and a widely-regarded expert with the experience and capability to handle a case of this size.

17. Notice and Administration Expenses will be paid separately from the Minimum or Maximum Settlement Amounts, unless the amount of approved claims is less than \$6 million, in which case Kimberly-Clark will receive a credit towards its other obligations under the Settlement, first to Notice and Administration Expenses, and second to the attorney' fee and expense award.<sup>2</sup> *Id.* at ¶ 6.4.

18. The Notice Plan designed by Kroll satisfies the "best notice practicable" standard pursuant to Rule 23 of the Federal Rules of Civil Procedure, drawing on the most up-to-date techniques used in commercial advertising to inform the class and stimulate participation. Ex. 2, Finegan Dec. ¶¶ 20-28. Kroll has formulated a robust Notice Plan that encompasses direct written notice to approximately 4-5 million potential class members, as well as notice by publication

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<sup>2</sup> In the unlikely event the Amount Payable for Approved Claims, Notice and Administration, and the Fee Award and Costs collectively amount to less than \$6 million, then the Parties will confer and jointly submit a proposal to the Court regarding the proposed distribution of the remaining Settlement Funds. *Id.* at ¶ 6.3.

through advertisements in appropriate print and electronic media including social media as agreed to by the Parties through the Claims Deadline. *See id.* ¶¶ 14-30.

19. The class last was developed through Plaintiffs' extensive efforts to secure settlement class contact information. Since serving the over 30 third-party subpoenas in Spring of 2022, Plaintiffs have dedicated substantial time and effort to working with third party retailers to obtain class member contact information for purposes of providing settlement notice. This effort required months of individual negotiations with dozens of retailers, all of which were represented by sophisticated counsel. As a result, Plaintiffs have obtained commitments from numerous major retailers to provide class member information, including Amazon, Inc. ("Amazon"), Costco, Sam's Club, Wal-Mart, Target Corp., Hy-Vee Inc., Ingles Market Inc., Jewel-Osco, Safeway, and BJ's Wholesale Club, among many others. Several of these retailers have already provided the requested data to the Settlement Administrator, and others have committed to producing the data upon entry of a preliminary approval order. In total, because of Plaintiffs' efforts, an estimated 4-5 million purchasers of Wipes will receive direct notice of the Settlement.<sup>3</sup>

20. Further, Plaintiffs have reached an agreement with Amazon to provide direct notice of the Settlement directly to Amazon customers, which will help ensure successful transmission of the Notice. Specifically, Amazon will separately provide direct Notice by the Notice Deadline, one time, via email, to the email addresses in its possession associated with the approximately 1,080,663 consumers it previously identified as purchasing recalled Wipes. Within seven (7) days of sending the Notice, Amazon will provide a declaration to the Parties indicating compliance with this obligation and setting forth the total number of unique email addresses to whom it sent Notice,

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<sup>3</sup> The Parties do not yet have an exact number of consumers, as the Settlement Administrator has not yet received all of the data or completed the process of de-duping.

and the total number of those emails that were delivered successfully as reported by Amazon's email server.

21. As soon as practicable following entry of a preliminary approval order, the Settlement Administrator will also create a Settlement Website as a means for Settlement Class Members to obtain notice of and information about the Settlement. The Settlement Website will contain relevant documents, including the Notice, the Agreement, this Motion, the preliminary approval order, and the operative Complaint. The Settlement Website will also include a toll-free telephone number, email address, and mailing address through which Settlement Class Members may contact the Settlement Administrator directly. The Settlement Website will remain operational until at least thirty (30) days after all Settlement Payments have been distributed.

22. The Notice will (1) notify Settlement Class Members of the Settlement and relevant terms, (2) provide Settlement Class Members the URL to the Settlement website and a telephone number they can call to obtain information about the Settlement, and (3) instruct Settlement Class Members on how to make a claim for Settlement benefits, exclude themselves from the Settlement, or object to it. The Notice uses plain English in an easy-to-read format that concisely explains to class members the nature of the case and their options under the Settlement. It includes information such as the case caption, a description of the Class, a description of the claims and the history of the litigation, a description of the Settlement and the claims being released, the names of Class Counsel, a statement of the amount of attorneys' fees and expenses that will be sought by Class Counsel, the amount Class Counsel will seek for service awards at the final approval hearing, a description of the procedures and deadlines for requesting exclusion and objecting to the Settlement, the URL to access the Settlement Website containing relevant case documents, and the manner in which to obtain further information.

***Opt-Outs and Objections***

23. The Settlement provides standard provisions allowing individuals to opt-out of the Settlement or object to the Settlement within 40 days of the Notice Date. The opt-out provisions require individuals to provide basic information, and opt-outs can be submitted by U.S. Mail. Similarly, the provisions related to objections allow any Settlement Class Member to object to any component of the Settlement. Ex. 1 ¶¶ 5.1-5.2

***Service Awards, Attorneys' Fees, and Expenses***

24. Class Counsel will separately move the Court for an order awarding attorneys' fees and expenses in the amount of \$3.65 million, to be paid separately from the Minimum or Maximum Settlement Amounts, unless the sum of the Amount Payable for Approved Claims is less than \$6 million, in which case Kimberly-Clark will receive a credit towards its other obligations under the Settlement, first to Notice and Administration Expenses, and second to the Fee Award and Costs. This provision was separately and independently negotiated by the Parties only after the Class relief was agreed upon, with the assistance of a mediator, and the Settlement Agreement is not conditioned on its approval.

25. Class Counsel will also seek Service Awards of up to \$2,500 for each Settlement Class Representative, which are intended to compensate such individuals for their efforts in the litigation and commitment on behalf of the Settlement Class. Kimberly-Clark does not oppose these requests. Any Service Awards approved by the Court will count toward the Minimum Settlement Amount, however, if Approved Claims exceed the Maximum Settlement Amount, Service Awards will not count toward the Maximum Settlement Amount.

26. Both the application for attorneys' fees and expenses as well as the application for Service Awards will be filed at least 21 days before the Opt-Out and Objection Deadlines.

### *Releases*

27. In exchange for the benefits provided under the Settlement, Class Members will release any legal claims that may arise from or relate to the facts and claims alleged in the Complaint filed in this litigation. Importantly, personal injury claims are excluded from the Released Claims, meaning nothing in the release will impact the ability of Settlement Class Members to bring valid personal injury claims in another forum. Ex. 1 ¶ 11.2 (“Exclusion of Personal Injury Claims”).

### *The Settlement is Fair, Reasonable, and Adequate*

28. Based on our experience and knowledge of the litigation, as well as experience in other consumer class actions, my colleagues and I believe this Settlement is fair, reasonable, adequate, and in the best interest of the Settlement Class. The Settlement requires Kimberly-Clark to fund a non-reversionary settlement fund of up to \$13.5 million in new dollars to reimburse Settlement Class Members for up to 100% of the economic losses sought in this case.

29. Stueve Siegel Hanson, along with the other firms representing the class here, have substantial experience prosecuting and trying consumer class action cases, and were able to use their experience to negotiate a fair and well-informed Settlement. Proposed Class Counsel spent significant time and effort investigating and evaluating the claims, culminating in a 94-page consolidated complaint; obtained relevant data from dozens of third parties; engaged clients across the country; briefed and argued Kimberly-Clark’s motion to dismiss; engaged opposing counsel in both formal and informal discovery efforts; and pursued extensive, arm’s length settlement negotiations. Proposed Class Counsel have committed their full resources to representing the Settlement Class and will continue that commitment in resolving this case and administering the Settlement.

30. The Settlement is the product of nearly three years of heavily contested and arm's-length negotiations between experienced counsel with the assistance of a neutral, qualified, and highly-respected mediator, Justice Hankinson. Following the filing of the initial Complaint, the Parties sought to stay pending deadlines to explore the possibility of settlement. *See, e.g.*, Docs. 26, 28, 30, 32, 37 and 42. The Parties' mediation efforts were extensive, and included four formal mediation sessions and numerous conferences with the assistance of Justice Hankinson. To inform those efforts, the Parties spent many months exchanging information and documentation, providing sufficient information to all counsel to weigh the relative strengths and weaknesses of their respective cases. Thus, the stage of the proceedings and the amount of discovery completed also supports approval of the Settlement.

31. The Settlement is an excellent result given the range and certainty of recovery. While the Parties cannot identify the precise number of consumers impacted, based on data made available during settlement negotiations, Plaintiffs are confident that the Settlement is fair and reasonable. Because of Plaintiffs' efforts to secure contact information for consumers through third-party subpoenas, an estimated 4-5 million purchasers of recalled Wipes will receive direct notice of the Settlement. Even assuming this population accounts for only 40% of the total class, and 5.5 million additional individuals will learn of the settlement through publication notice, a 10% claims rate at an average of \$10 per purchase would result in \$10 million in valid claims, comfortably within the range of settlement. Of course, this does not account for class members who were already reimbursed by Kimberly-Clark (and thus ineligible to participate) or the fact that most consumers class settlements have claims rates well below 10%.

32. The Settlement must also be viewed against the significant risks to the Plaintiffs had they continued to litigate the case. While Plaintiffs are confident in the merits of their theory

of liability and ability to prove the claims of the absent class members, there remain significant obstacles to a class-wide judgment in favor of the class on liability and damages. Even if Plaintiffs survived Kimberly-Clark's motion to dismiss, achieved class certification, and prevailed at trial on behalf of the class, there is the risk that, after years-long litigation, that the Fifth Circuit could reverse on the merits. Given these significant risks that could result in consumers receiving nothing, the Settlement reflects the Parties' compromise of their assessments of the worst-case and best-case scenarios, weighing the likelihood of various potential outcomes. It ensures that Class Members will recover significant, immediate relief, including the very relief that this litigation sought to achieve.

33. The effectiveness of the proposed method of distributing relief to the Settlement Class also supports approval of the Settlement. The claims process is designed to be straightforward and consumer friendly. The Claim Form explains that consumers can submit a claim with proof of purchase and receive up to 100% of their purchase price or submit a claim without proof of purchase and receive up to \$5.00 per household. The attestation provides helpful guideposts for consumers to determine if they can self-identify as purchasers of recalled lots. Further, all claims will be considered and assessed by an experienced and recognized national claims administrator in an efficient manner.

34. The Settlement treats all Class Members equitably relative to one another because all are eligible to receive reimbursement taking into consideration the relative strength of claims for Settlement Class Members who can provide proof of purchase, and those that cannot. Other than what is reflected in the Settlement Agreement, there is no separate agreement between the parties.

35. Finally, Plaintiffs, the proposed Settlement Class Representatives, are members of

the Settlement Class and do not possess any interests antagonistic to the Settlement Class. They each purchased recalled lots of Wipes and were harmed. Plaintiffs are dedicated to prosecuting this matter on behalf of the class. They hired experienced class counsel, and have actively participated in the litigation for the benefit of all Settlement Class Members by providing allegations for the Complaint, gathering information for discovery, and working with proposed Class Counsel to advance the settlement process.

36. Considering the totality of the circumstances, the Court should conclude that the Settlement as described in the Settlement Agreement is fair, reasonable, and adequate and likely to achieve final approval, and therefore notice should issue to the class.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 22, 2023, in Kansas City, Missouri.



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J. Austin Moore



# EXHIBIT 3



publication/media and through the use of a Settlement Website to be created in connection with this matter.

3. This Declaration describes my experience in designing and implementing notices and notice programs, as well as my credentials to opine on the overall adequacy of noticing efforts. It also describes the proposed “Notice Plan” and addresses how this comprehensive program is consistent with other court-approved, best-practicable notice programs, the requirements of Fed. Civ. P. 23(c)(2)(B), and the Federal Judicial Center guidelines for best practicable due process notice.<sup>2</sup>

4. The proposed Notice Plan, as more fully detailed below, includes a particularly appropriate mix of direct mail, email, print, online display advertising, and social media advertising, designed to reach an estimated 80% of the target audience on average of 3.1 times. By way of comparison, the Federal Judicial Center states that a publication notice plan that reaches<sup>3</sup> over 70% of targeted class members is considered a high percentage and the “norm” of a notice campaign.<sup>4</sup>

5. To ensure that our calculations and estimates are accurately projected, the proposed Notice Plan, as described below, was designed using objective, syndicated advertising research tools from MRI-Simmons and comScore (as described in greater detail below). These are the same tools reasonably relied upon by advertising agencies nationwide as the basis to select media for large brands.

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<sup>2</sup> FED. JUD. CTR., *Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide* (2010), available at <https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf>. The guide suggests that the minimum threshold for adequate notice is 70%. *See id.* at pages 1, 3.

<sup>3</sup> “Reach” measures the number of people who receive or are otherwise exposed to a notice plan.

<sup>4</sup> Barbara Rothstein and Thomas Willging, *Federal Judicial Center Managing Class Action Litigation: A Pocket Guide for Judges*, at 27 (3d Ed. 2010).

## QUALIFICATIONS

6. My credentials, expertise, and experience that qualify me to provide an expert opinion and advice regarding notice in class action cases includes more than 30 years of communications and advertising experience, specifically in the class action and bankruptcy notice context.

7. I am a member of the Board of Directors for the Alliance for Audited Media (“AAM”),<sup>5</sup> and I am the only notice expert accredited in Public Relations (APR) by the Universal Accreditation Board, a program administered by the Public Relations Society of America. Further, I have provided testimony before Congress on issues of notice. I have served the Consumer Product Safety Commission (“CPSC”) as an expert to determine ways in which the CPSC can increase the effectiveness of its product recall campaigns.

8. I have served as an expert and have been directly responsible for the design and implementation of more than 1,000 notice programs, including some of the largest and most complex programs ever implemented in the United States, as well as globally in over 140 countries and in thirty-seven (37) languages. I have been recognized by numerous courts in the United States as an expert on notification and outreach.

9. During my career, the more than 1,000 complex notice programs I have planned and implemented have covered a wide range of class action, bankruptcy, regulatory, and consumer matters, the subject matters of which have included product liability, data breach, construction defect, antitrust, asbestos, medical, pharmaceutical, human rights, civil rights, telecommunications, media, environmental, securities, banking, insurance, and bankruptcy.

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<sup>5</sup> Founded in 1914, the Alliance for Audited Media provides cross-media verification across all brand platforms including web, mobile, and print.

10. I worked with the Special Settlement Administrator's team to assist with the outreach strategy for the historic auto airbag settlement in *In re Takata Airbag Prods. Liab. Litig.*, No. 15-MD-2599-FAM (S.D. Fla.). I was extensively involved as a lead contributing author for *Guidelines and Best Practices Implementing 2018 Amendments to Rule 23 Class Action Settlement Provisions*, published by Duke University School of Law. I have also provided testimony before the United States Congress on issues of notice.<sup>6</sup>

11. Additionally, I have published and lectured extensively on various aspects of legal noticing and taught continuing education courses for jurists and lawyers alike on best practice methods for providing notice in various contexts.

12. Among others, my relevant experience includes *In re: Yahoo! Inc. Customer Data Security Breach Litig.*, Case No. 5:16-MD-02752 (N.D. Cal. 2016). Additionally, I have been recognized as being at the forefront of modern notice practices,<sup>7</sup> and I was one of the first notice experts to integrate digital media,<sup>8</sup> social media and influencers<sup>9</sup> into court-approved legal notice programs.

13. As further reference, in evaluating the adequacy and effectiveness of my notice programs, courts have repeatedly recognized my work as an expert. For example:

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<sup>6</sup> See, e.g., Report on the Activities of the Committee on the Judiciary of the House of Representatives: "Notice" Provision in the *Pigford v. Glickman* Consent Decree: Hearing Before Subcommittee on the Constitution, 108th Cong. 2nd Sess. 805 (2004) (statement of Jeanne C. Finegan); *Pigford v. Glickman & U.S. Dep't of Agric.*, 185 F.R.D. 82, 102 (D.D.C. Apr. 14, 1999) (J. Finegan provided live testimony and was cross-examined before Congress in connection with a proposed consent decree settling a class action suit against the U.S. Department of Agriculture. In the court opinion that followed, the Honorable Paul L. Friedman approved the consent decree and commended the notice program, stating, "The [c]ourt concludes that class members have received more than adequate notice. . . the timing and breadth of notice of the class settlement was sufficient. . . The parties also exerted extraordinary efforts to reach class members through a massive advertising campaign in general and African American targeted publications and television stations.").

<sup>7</sup> See, e.g., Deborah R. Hensler *et al.*, *Class Action Dilemmas, Pursuing Public Goals for Private Gain*, RAND (2000).

<sup>8</sup> See *In re Louisiana-Pacific Inner-Seal Siding Litig.*, Case Nos. 879-JE, 1453-JE (D. Or. 1995).

<sup>9</sup> See *In Re: PG&E Corp.*, Case No. 19-30088 (Bankr. N.D. Cal. 2019).

a. ***Yahoo! Inc. Customer Data Security Breach Litigation***, Case No. 5:16-MD-02752 (N.D. Cal. 2010). In the preliminary approval order, dated July 20, 2019, paragraph 21, the Honorable Lucy Kho stated:

The Court finds that the Approved Notices and Notice Plan set forth in the Amended Settlement Agreement satisfy the requirements of due process and Federal Rule of Civil Procedure 23 and provide the best notice practicable under the circumstances.

b. ***Hill's Pet Nutrition, Inc., Dog Food Products Liability Litigation***, Case No. 19-MD-2887 (D. Kan. 2021). In the Preliminary Approval Transcript, dated February 2, 2021, at pages 28-29, the Honorable Julie A. Robinson stated:

I was very impressed in reading the notice plan and very educational, frankly to me, understanding the communication, media platforms, technology, all of that continues to evolve rapidly and the ability to not only target consumers, but to target people that could rightfully receive notice continues to improve all the time.

c. ***In re Purdue Pharma L.P.***, Case No. 19-23649 (Bankr. S.D.N.Y. 2019). In the Omnibus Hearing transcript, regarding Motion Pursuant to 11 U.S.C. §§ 105(a) and 501 and Fed. R. Bankr. P. 2002 and 3003(c)(3) for Entry of an Order (I) Extending the General Bar Date for a Limited Period and (II) Approving the Form and Manner of Notice Thereof, dated June 3, 2020, at page 88:10, the Honorable Robert Drain stated:

The notice here is indeed extraordinary, as was detailed on page 8 of Ms. Finegan's declaration in support of the original bar date motion and then in her supplemental declaration from May 20th in support of the current motion, the notice is not only in print media, but extensive television and radio notice, community outreach, -- and I think this is perhaps going to be more of a trend, but it's a major element of the notice here -- online, social media, out of home, i.e. billboards, and earned media, including bloggers and creative messaging. That with a combined with a simplified proof of claims form and the ability to file a claim or first, get more information about filing a claim online -- there was a specific claims website -- and to file a claim either online or by mail. Based on Ms. Finegan's supplemental declaration, it appears clear to me that that process of providing notice has

been quite successful in its goal in ultimately reaching roughly 95 percent of all adults in the United States over the age of 18 with an average frequency of message exposure of six times, as well as over 80 percent of all adults in Canada with an average message exposure of over three times.

d. *In Re: PG&E Corporation*, Case No. 19-30088 Bankr. (N.D. Cal. 2019).

In the Hearing transcript re: (I) Establishing, Deadline for Filing Proofs of Claim, (II) Establishing the Form and Manner of Notice Thereof, and (III) Approving Procedures for Providing Notice of Bar Date and Other Information to all Creditors and Potential Creditors, dated June 26, 2019, at pages 21:1, 201:20, the Honorable Dennis Montali stated:

“...the technology and the thought that goes into all these plans is almost incomprehensible... Ms. Finegan has really impressed me today...”

A more fulsome description of my credentials and experience that qualify me to provide expert opinions on the adequacy of class action notice programs is attached as Exhibit A.

#### **SETTLEMENT CLASS DEFINITION**

14. The proposed Notice Plan is designed to inform Settlement Class Members of the proposed Settlement between Plaintiffs and Defendant. The Settlement Agreement, paragraph 3.1, defines the Settlement Class as:

“All persons in the United States and United States territories who purchased recalled lots Cottonelle Flushable Wipes (“Wipes”) between February 7, 2020 and December 31, 2020 for personal use and not for resale, and any persons residing in the same household.”

#### **SUMMARY OF NOTICE PROGRAM ELEMENTS**

15. To reach potential Settlement Class Members, the proposed Notice Plan includes the following components:

- Direct mail via postcard notice to potential Settlement Class Members identified in the Settlement Class Contact Information provided by third-party retailers, for whom an email address is not available;

- Email notice to potential Settlement Class Members identified in the Settlement Class Contact Information provided by third-party retailers;
- Online display banner advertising targeted to reach potential Settlement Class Members;
- Google keyword search advertising;
- Social media advertising through Facebook, Instagram, and YouTube;
- A neutral, informational Settlement Website on which the notices and other important Court documents will be posted; and
- A 24-hour toll-free interactive voice response (“IVR”) telephone line that Settlement Class members can call for more information about the Settlement, including, but not limited to, requesting copies of the notice or claim forms.

#### **DATA AND CASE SET UP**

16. Since April 21, 2023, to Kroll has received more than 20 data files from third-party retailers that were subpoenaed by Class Counsel. The files contained an assortment of first and last names, emails, physical mailing addresses, purchase dates and other data elements for Settlement Class Members. Once the list of Settlement Class Members (the “Class List”) is certified, Kroll will undertake several steps to reconcile and compile the Class List for the emailing and mailing of Notice. Additionally, in an effort to ensure that Notice will be deliverable to Settlement Class Members, Kroll will run the Class List through the United States Postal Service’s National Change of Address (“NCOA”) database and update the Class List with address changes received from the NCOA.

#### **DIRECT MAIL NOTICE VIA POSTCARD**

17. In preparation for disseminating Notice by mail, Kroll will work with Class Counsel and Defendant’s counsel (collectively, “Counsel”) to format the Notice for mailing. Upon approval, Kroll will coordinate the preparation of mail Notice proofs for Counsel’s review and final approval.



18. Mailed Notices returned by the USPS with a forwarding address will be automatically re-mailed to the updated address provided by the USPS. Mailed Notices returned by the USPS undeliverable as addressed without a forwarding address will be sent through an advanced address search process in an effort to find a more current mailing address for the record. If an updated address is obtained through the advanced search process, Kroll will re-mail the Notice to the updated address.

#### **DIRECT NOTICE VIA EMAIL**

19. In preparation for disseminating Notice by email, Kroll will work with Counsel to finalize the language for the email Notice. Once the email Notice is approved, Kroll will create an email Notice template in preparation for the email campaign. Kroll will prepare a file with all available Settlement Class Member email addresses and upload the file to an email campaign platform. Kroll will prepare email proofs for Counsel's review and final approval. The proofs/test emails for approval will include the body of the email and subject line. Once the proofs/test emails are approved, the email campaign will begin as directed in the Settlement Agreement. Kroll will track and monitor emails that are rejected or "bounced back" as undeliverable.

#### **METHODOLOGY FOR DEVELOPMENT OF ONLINE AND SOCIAL MEDIA NOTICE CAMPAIGN**

20. In order to formulate this Notice Plan, Kroll is guided by best-in-class nationally syndicated media research data provided by MRI-Simmons Research ("MRI")<sup>10</sup> and online measurement comScore,<sup>11</sup> to provide media consumption habits and audience delivery verification

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<sup>10</sup> MRI's *Survey of the American Consumer*® is the industry standard for magazine audience ratings in the U.S. and is used by the majority of media and marketing agencies in the country. MRI provides comprehensive reports on demographic, lifestyle, product usage and media exposure.

<sup>11</sup> comScore is a global Internet information provider on which leading companies and advertising agencies rely for consumer behavior insight and Internet usage data.

of the potentially affected population. This information informs Kroll about which media channels the target audience of Settlement Class Members prefer and then how many of them the Notice Plan is estimated to reach. Based on this research, Kroll's cutting-edge approach to notice focuses on the quality of media exposure, engagement, and appropriate media environment.

21. These data resources are used by numerous advertising agencies nationwide as the basis to select the most appropriate media to reach specific target audiences. The resulting key findings are instrumental in our selection of media channels and outlets for determining the estimated net audience reached through the Notice Plan. Specifically, this research identifies which media channels are favored by the target audience, (*i.e.*, Settlement Class Members). Further, this research identifies browsing behaviors on the Internet, which social media channels are visited, and which magazines are read, by Settlement Class Members.

22. This media research technology allows us to accurately report to the Court the percentage of the target audience estimated to be reached by the online/social media Notice component and how many times the target audience will have the opportunity to see the message. In advertising, this is commonly referred to as a "Reach and Frequency" analysis, where "Reach" refers to the estimated percentage of the unduplicated audience exposed to the campaign, and "Frequency" refers to how many times, on average, the target audience had the opportunity to see the message. The calculations are used by advertising and communications firms worldwide and have become a critical element to help provide the basis for determining adequacy of notice in class actions and class action settlements.

#### **TARGET AUDIENCE AND KEY INSIGHTS**

23. As described in the Settlement Agreement, the Settlement Class includes persons who have purchased Cottonelle Flushable Wipes for personal use during the class period.

According to MRI,<sup>12</sup> of this target, 97% have gone online in the last 30 days. Additionally, over 86% use social media, with 67% reporting that they have visited Facebook in the last 30 days. Further, 55% have spent time on YouTube and 41% have spent time on Instagram.

24. MRI demographic data indicates that Cottonelle Flushable Wipes purchasers have a median annual household income of \$80,000 and are 37% more likely than the average adult to be African American.

### **ONLINE DISPLAY ADVERTISING**

25. Online display banner ads will be directed to Cottonelle product purchasers. Additionally, to cast a wider net, the notice campaign will be directed to Amazon, Costco or Walmart shoppers that are Cottonelle purchasers, and African American adults. Banner ads will appear in English and Spanish.

26. Kroll will apply a programmatic approach to digital advertising. Programmatic advertising is a computerized approach to buying ads online, which uses an algorithm to show a specific ad to a specific visitor in a specific context, where potential Settlement Class Members are visiting across an allow list<sup>13</sup> of approximately 6,000 websites. These ads are device agnostic and will appear across desktop, laptop, tablet, or mobile devices. Display ads will run in the United States and U.S. Territories.

### **KEYWORD SEARCH**

27. Keyword search advertisements will be utilized on Google Ads. When a user conducts a search in their browser, relevant links appear on the search result pages of

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<sup>12</sup> MRI Spring Doublebase, 2023.

<sup>13</sup> An “allow list” is a custom list of acceptable websites where ad content may be served. Creating an allow list helps to mitigate ad fraud, ensure ads will be served in relevant digital environments to the target audience and helps to ensure that ads will not appear next to offensive or objectionable content.

keyword/phrase searches. Keyword and search topics will include, *Kimberly Clark settlement*, *wipes class action*, *Cottonelle Flushable wipes lawsuit*, etc.

### **SOCIAL MEDIA ADVERTISING**

28. Over 11,900,000 social media impressions will be served on Facebook, Instagram and YouTube, targeting those who “like” and “follow” relevant pages, including Cottonelle, Kandoo Flushable wipes and Nice ‘N Clean Wipes. Kroll will also target users who have interacted with relevant accounts, videos or posts/tags, including #cottonelle, #flushablewipes, and #toiletwipes, among others. On YouTube, ads will be targeted to channels and/or content related to flushable wipes, personal hygiene content, and toilet wipes.

29. Social media ads will appear in English and Spanish.

### **SETTLEMENT WEBSITE**

30. Kroll will work with Counsel to create a dedicated Settlement Website with a URL approved by Counsel. The Settlement Website will contain a summary of the Settlement, will allow Settlement Class Members to contact the Settlement Administrator with any questions or changes of address, provide notice of important dates such as the Claims Deadline, Objection Deadline, Opt-Out Deadline, and Final Approval Hearing date, and provide Settlement Class Members an opportunity to file a Claim Form online. The Settlement Website will also contain relevant case documents including the Settlement Agreement, the Notice, the Preliminary Approval Order, the Claim Form, the Complaint, and any other documents Counsel agree to post or the Court orders.

### **TOLL-FREE INFORMATION TELEPHONE LINE**

31. Kroll will establish a toll-free telephone number for the Settlement. The toll-free telephone number will allow Settlement Class Members to call and obtain information about the

Settlement through an Interactive Voice Response (“IVR”) system and will offer the option for a live operator call back. Through this toll-free telephone number, Settlement Class Members will be able to request copies of the Claim Form, the long-form Notice, and the Settlement Agreement.

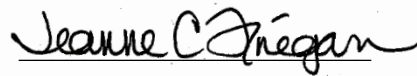
**CONCLUSION**

32. In my opinion, the Notice Plan reflects a particularly appropriate, highly targeted, and contemporary way to provide notice to Settlement Class Members. The Notice Plan is expected to exceed an estimated 80 percent of targeted Settlement Class Members, on average 3.1 times. In my opinion, the efforts undertaken in this proposed Notice Plan are of the highest modern communication standards, are reasonably calculated to provide notice, and are consistent with best-practicable, court-approved notice programs in similar matters and the Federal Judicial Center’s guidelines concerning appropriate reach.

**CERTIFICATION**

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct.

Executed on September 22, in Tigard, Oregon.



Jeanne C. Finegan

# Exhibit A

## JEANNE C. FINEGAN, APR



Jeanne Finegan, APR, is the Managing Director and Head of Kroll Notice Media. She is a member of the Board of Directors for the prestigious Alliance for Audited Media (AAM) and was named by *Diversity Journal* as one of the “Top 100 Women Worth Watching.” She is a distinguished legal notice and communications expert with more than 30 years of communications and advertising experience.

She was a lead contributing author for Duke University's School of Law, "*Guidelines and Best Practices Implementing Amendments to Rule 23 Class Action Settlement Provisions.*" And more recently, she has been involved with New York School of Law and The Center on Civil Justice (CCJ) assisting with a class action settlement data analysis and comparative visualization tool called the *Aggregate Litigation Project*, designed to help judges make decisions in aggregate cases on the basis of data as opposed to anecdotal information. Moreover, her experience also includes working with the Special Settlement Administrator's team to assist with the outreach strategy for the historic Auto Airbag Settlement, In re: *Takata Airbag Products Liability Litigation* MDL 2599.

During her tenure, she has planned and implemented over 1,000 high-profile, complex legal notice communication programs. She is a recognized notice expert in both the United States and in Canada, with extensive international notice experience spanning more than 170 countries and over 40 languages.

Ms. Finegan has lectured, published and has been cited extensively on various aspects of legal noticing, product recall and crisis communications. She has served the Consumer Product Safety Commission (CPSC) as an expert to determine ways in which the Commission can increase the effectiveness of its product recall campaigns. Further, she has planned and implemented large-scale government enforcement notice programs for the Federal Trade Commission (FTC) and the Securities and Exchange Commission (SEC).

Ms. Finegan is accredited in Public Relations (APR) by the Universal Accreditation Board, which is a program administered by the Public Relations Society of America (PRSA), and is also a recognized member of the Canadian Public Relations Society (CPRS). She has served on examination panels for APR candidates and worked *pro bono* as a judge for prestigious PRSA awards.

Ms. Finegan has provided expert testimony before Congress on issues of notice, and expert testimony in both state and federal courts regarding notification campaigns. She has conducted numerous media audits of proposed notice programs to assess the adequacy of those programs under Fed R. Civ. P. 23(c)(2) and similar state class action statutes.

She was an early pioneer of plain language in notice (as noted in a RAND study,<sup>1</sup>) and continues to set the standard for modern outreach as the first notice expert to integrate social and mobile media into court approved legal notice programs.

In the course of her class action experience, courts have recognized the merits of, and admitted expert testimony based on, her scientific evaluation of the effectiveness of notice plans. She has designed legal notices for a wide range of class actions and consumer matters that include product liability, construction defect, antitrust, medical/pharmaceutical, human rights, civil rights, telecommunication, media, environment, government enforcement actions, securities, banking, insurance, mass tort, restructuring and product recall.

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<sup>1</sup> Deborah R. Hensler et al., CLASS ACTION DILEMAS, PURSUING PUBLIC GOALS FOR PRIVATE GAIN. RAND (2000).

**JUDICIAL COMMENTS AND LEGAL NOTICE CASES**

In evaluating the adequacy and effectiveness of Ms. Finegan's notice campaigns, courts have repeatedly recognized her excellent work. The following excerpts provide some examples of such judicial approval.

***In re Purdue Pharma L.P.***, No. 19-23649 (Bankr. S.D.N.Y. 2019). Omnibus Hearing, Motion Pursuant to 11 U.S.C. §§ 105(a) and 501 and Fed. R. Bankr. P. 2002 and 3003(c)(3) for Entry of an Order (I) Extending the General Bar Date for a Limited Period and (II) Approving the Form and Manner of Notice Thereof, June 3, 2020, transcript p. 88:10, the Honorable Robert Drain stated:

*"The notice here is indeed extraordinary, as was detailed on page 8 of Ms. Finegan's declaration in support of the original bar date motion and then in her supplemental declaration from May 20th in support of the current motion, the notice is not only in print media, but extensive television and radio notice, community outreach, -- and I think this is perhaps going to be more of a trend, but it's a major element of the notice here -- online, social media, out of home, i.e. billboards, and earned media, including bloggers and creative messaging. That with a combined with a simplified proof of claims form and the ability to file a claim or first, get more information about filing a claim online -- there was a specific claims website -- and to file a claim either online or by mail. Based on Ms. Finegan's supplemental declaration, it appears clear to me that that process of providing notice has been quite successful in its goal in ultimately reaching roughly 95 percent of all adults in the United States over the age of 18 with an average frequency of message exposure of six times, as well as over 80 percent of all adults in Canada with an average message exposure of over three times."*

***In Re: PG&E Corporation*** Case No. 19-30088 Bankr. (N.D. Cal. 2019). Hearing Establishing, Deadline for Filing Proofs of Claim, (II) establishing the Form and Manner of Notice Thereof, and (III) Approving Procedures for Providing Notice of Bar Date and Other Information to all Creditors and Potential Creditors PG&E. June 26, 2019, Transcript of Hearing p. 21:1, the Honorable Dennis Montali stated:

*...the technology and the thought that goes into all these plans is almost incomprehensible. He further stated, p. 201:20 ... Ms. Finegan has really impressed me today...*

***Yahoo! Inc. Customer Data Security Breach Litigation***, Case No. 5:16-MD-02752 (ND Cal 2016). In the Order Preliminary Approval, dated July 20, 2019, the Honorable Lucy Kho stated, para 21,

*"The Court finds that the Approved Notices and Notice Plan set forth in the Amended Settlement Agreement satisfy the requirements of due process and Federal Rule of Civil Procedure 23 and provide the best notice practicable under the circumstances."*

***Hill's Pet Nutrition, Inc., Dog Food Products Liability Litigation***, Case No. 19-MD-2887 (U.S. District Court, District Kansas 2021). In the Preliminary Approval Transcript, February 2, 2021 p. 28-29, the Honorable Julie A. Robinson stated:

*"I was very impressed in reading the notice plan and very educational, frankly to me, understanding the communication, media platforms, technology, all of that continues to evolve rapidly and the ability to not only target consumers, but to target people that could rightfully receive notice continues to improve all the time."*

***In re: The Bank of New York Mellon ADR FX Litigation***, 16-CV-00212-JPO-JLC (S.D.N.Y. 2019). In the Final Order and Judgement, dated June 17, 2019, para 5, the Honorable J. Paul Oetkin stated:

*"The dissemination of notice constituted the best notice practicable under the circumstances."*

***Simerlein et al., v. Toyota Motor Corporation***, Case No. 3:17-cv-01091-VAB (District of CT 2019). In the Ruling and Order on Motion for Preliminary Approval, dated January 14, 2019, p. 30, the Honorable Victor Bolden stated:

*"In finding that notice is sufficient to meet both the requirements of Rule 23(c) and due process, the Court has reviewed and appreciated the high-quality submission of proposed Settlement Notice Administrator Jeanne C. Finegan. See Declaration of Jeanne C. Finegan, APR, Ex. G to Agrmt., ECF No. 85-8."*



**Fitzhenry- Russell et al., v. Keurig Dr. Pepper Inc.**, Case No. :17-cv-00564-NC, (ND Cal). In the Order Granting Final Approval of Class Action Settlement, Dated April 10, 2019, the Honorable Nathanael Cousins stated:

*“...the reaction of class members to the proposed Settlement is positive. The parties anticipated that 100,000 claims would be filed under the Settlement (see Dkt. No. 327-5 ¶ 36)—91,254 claims were actually filed (see Finegan Decl ¶ 4). The 4% claim rate was reasonable in light of Heffler’s efforts to ensure that notice was adequately provided to the Class.”*

**Pettit et al., v. Procter & Gamble Co.**, Case No. 15-cv-02150-RS ND Cal. In the Order Granting Final Approval of the Class Action Settlement and Judgement, Dated March 28, 2019, p. 6, the Honorable Richard Seeborg stated:

*“The Court finds that the Notice Plan set forth in the Settlement Agreement, and effectuated pursuant to the Preliminary Approval Order, constituted the best notice practicable under the circumstances and constituted due and sufficient notice to the Settlement Class. ...the number of claims received equates to a claims rate of 4.6%, which exceeds the rate in comparable settlements.”*

**Carter v Forjas Taurus S.S., Taurus International Manufacturing, Inc.**, Case No. 1:13-CV-24583 PAS (S.D. Fl. 2016). In her Final Order and Judgment Granting Plaintiffs Motion for Final Approval of Class Action Settlement, the Honorable Patricia Seitz stated:

*“The Court considered the extensive experience of Jeanne C. Finegan and the notice program she developed. ...There is no national firearms registry and Taurus sale records do not provide names and addresses of the ultimate purchasers... Thus the form and method used for notifying Class Members of the terms of the Settlement was the best notice practicable. ...The court-approved notice plan used peer-accepted national research to identify the optimal traditional, online, mobile and social media platforms to reach the Settlement Class Members.”*

Additionally, in January 20, 2016, Transcript of Class Notice Hearing, p. 5 Judge Seitz, noted:

*“I would like to compliment Ms. Finegan and her company because I was quite impressed with the scope and the effort of communicating with the Class.”*

**Cook et. al., v. Rockwell International Corp. and the Dow Chemical Co.**, No. 90-cv-00181- KLK (D.Colo. 2017)., aka, Rocky Flats Nuclear Weapons Plant Contamination. In the Order Granting Final Approval, dated April 28, 2017, p.3, the Honorable John L. Kane said:

*The Court-approved Notice Plan, which was successfully implemented by [HF Media- emphasis added] (see Doc. 2432), constituted the best notice practicable under the circumstances. In making this determination, the Court finds that the Notice Plan that was implemented, as set forth in Declaration of Jeanne C. Finegan, APR Concerning Implementation and Adequacy of Class Member Notification (Doc. 2432), provided for individual notice to all members of the Class whose identities and addresses were identified through reasonable efforts, ... and a comprehensive national publication notice program that included, inter alia, print, television, radio and internet banner advertisements. ...Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, the Court finds that the Notice Plan provided the best notice practicable to the Class.*

**In re: Domestic Drywall Antitrust Litigation**, MDL. No. 2437, in the U.S. District Court for the Eastern District of Pennsylvania. For each of the four settlements, Finegan implemented and extensive outreach effort including traditional, online, social, mobile and advanced television and online video. In the Order Granting Preliminary Approval to the IPP Settlement, Judge Michael M. Baylson stated:

*“The Court finds that the dissemination of the Notice and summary Notice constitutes the best notice practicable under the circumstances; is valid, due, and sufficient notice to all persons... and complies fully with the requirements of the Federal rule of Civil Procedure.”*

**Warner v. Toyota Motor Sales, U.S.A. Inc., Case No 2:15-cv-02171-FMO FFMx (C.D. Cal. 2017).** In the Order Re: Final Approval of Class Action Settlement; Approval of Attorney's Fees, Costs & Service Awards, dated May 21, 2017, the Honorable Fernando M. Olguin stated:

*Finegan, the court-appointed settlement notice administrator, has implemented the multiprong notice program. ...the court finds that the class notice and the notice process fairly and adequately informed the class members of the nature of the action, the terms of the proposed settlement, the effect of the action and release of claims, the class members' right to exclude themselves from the action, and their right to object to the proposed settlement. (See Dkt. 98, PAO at 25-28).*

**Michael Allagas, et al., v. BP Solar International, Inc., et al., BP Solar Panel Settlement,** Case No. 3:14-cv-00560- SI (N.D. Cal., San Francisco Div. 2016). In the Order Granting Final Approval, Dated December 22, 2016, The Honorable Susan Illston stated:

*Class Notice was reasonable and constituted due, adequate and sufficient notice to all persons entitled to be provided with notice; and d. fully satisfied the requirements of the Federal Rules of Civil Procedure, including Fed. R. Civ. P. 23(c)(2) and (e), the United States Constitution (including the Due Process Clause), the Rules of this Court, and any other applicable law.*

**Foster v. L-3 Communications EOTech, Inc. et al (6:15-cv-03519),** Missouri Western District Court.

*In the Court's Final Order, dated July 7, 2017, The Honorable Judge Brian Wimes stated: "The Court has determined that the Notice given to the Settlement Class fully and accurately informed members of the Settlement Class of all material elements of the Settlement and constituted the best notice practicable."*

**In re: Skechers Toning Shoes Products Liability Litigation,** No. 3:11-MD-2308-TBR (W.D. Ky. 2012). In his Final Order and Judgment granting the Motion for Preliminary Approval of Settlement, the Honorable Thomas B. Russell stated:

*... The comprehensive nature of the class notice leaves little doubt that, upon receipt, class members will be able to make an informed and intelligent decision about participating in the settlement.*

**Brody v. Merck & Co., Inc., et al,** No. 3:12-cv-04774-PGS-DEA (N.J.) (Jt Hearing for Prelim App, Sept. 27, 2012, transcript page 34). During the Hearing on Joint Application for Preliminary Approval of Class Action, the Honorable Peter G. Sheridan acknowledged Ms. Finegan's work, noting:

*Ms. Finegan did a great job in testifying as to what the class administrator will do. So, I'm certain that all the class members or as many that can be found, will be given some very adequate notice in which they can perfect their claim.*

**Quinn v. Walgreen Co., Wal-Mart Stores Inc.,** 7:12 CV-8187-VB (NYSB) (Jt Hearing for Final App, March. 5, 2015, transcript page 40-41). During the Hearing on Final Approval of Class Action, the Honorable Vincent L. Briccetti stated:

*"The notice plan was the best practicable under the circumstances. ... [and] "the proof is in the pudding. This settlement has resulted in more than 45,000 claims which is 10,000 more than the Pearson case and more than 40,000 more than in a glucosamine case pending in the Southern District of California I've been advised about. So the notice has reached a lot of people and a lot of people have made claims."*

**In Re: TracFone Unlimited Service Plan Litigation,** No. C-13-3440 EMC (ND Ca). In the Final Order and Judgment Granting Class Settlement, July 2, 2015, the Honorable Edward M. Chen noted:

*"...[D]epending on the extent of the overlap between those class members who will automatically receive a payment and those who filed claims, the total claims rate is estimated to be approximately 25-30%. This is an excellent result..."*

**In Re: Blue Buffalo Company, Ltd., Marketing and Sales Practices Litigation**, Case No. 4:14-MD-2562 RWS (E.D. Mo. 2015), (Hearing for Final Approval, May 19, 2016 transcript p. 49). During the Hearing for Final Approval, the Honorable Rodney Sippel said:

*It is my finding that notice was sufficiently provided to class members in the manner directed in my preliminary approval order and that notice met all applicable requirements of due process and any other applicable law and considerations.*

**DeHoyos, et al., v. Allstate Ins. Co.**, No. SA-01-CA-1010 (W.D.Tx. 2001). In the Amended Final Order and Judgment Approving Class Action Settlement, the Honorable Fred Biery stated:

*[T]he undisputed evidence shows the notice program in this case was developed and implemented by a nationally recognized expert in class action notice programs. ... This program was vigorous and specifically structured to reach the African American and Hispanic class members. Additionally, the program was based on a scientific methodology which is used throughout the advertising industry and which has been routinely embraced routinely [sic] by the Courts. Specifically, in order to reach the identified targets directly and efficiently, the notice program utilized a multi-layered approach which included national magazines; magazines specifically appropriate to the targeted audiences; and newspapers in both English and Spanish.*

**In Re: Reebok Easytone Litigation**, No. 10-CV-11977 (D. MA. 2011). The Honorable F. Dennis Saylor IV stated in the Final Approval Order:

*The Court finds that the dissemination of the Class Notice, the publication of the Summary Settlement Notice, the establishment of a website containing settlement-related materials, the establishment of a toll-free telephone number, and all other notice methods set forth in the Settlement Agreement and [Ms. Finegan's] Declaration and the notice dissemination methodology implemented pursuant to the Settlement Agreement and this Court's Preliminary Approval Order... constituted the best practicable notice to Class Members under the circumstances of the Actions.*

**Bezdek v. Vibram USA and Vibram FiveFingers LLC**, No 12-10513 (D. MA) The Honorable Douglas P. Woodlock stated in the Final Memorandum and Order:

*...[O]n independent review I find that the notice program was robust, particularly in its online presence, and implemented as directed in my Order authorizing notice. ...I find that notice was given to the Settlement class members by the best means "practicable under the circumstances." Fed.R.Civ.P. 23(c)(2).*

**Gemelas v. The Dannon Company Inc.**, No. 08-cv-00236-DAP (N.D. Ohio). In granting final approval for the settlement, the Honorable Dan A. Polster stated:

*In accordance with the Court's Preliminary Approval Order and the Court-approved notice program, [Ms. Finegan] caused the Class Notice to be distributed on a nationwide basis in magazines and newspapers (with circulation numbers exceeding 81 million) specifically chosen to reach Class Members. ... The distribution of Class Notice constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. 1715, and any other applicable law.*

**Pashmova v. New Balance Athletic Shoes, Inc.**, 1:11-cv-10001-LTS (D. Mass.). The Honorable Leo T. Sorokin stated in the Final Approval Order:

*The Class Notice, the Summary Settlement Notice, the web site, and all other notices in the Settlement Agreement and the Declaration of [Ms Finegan], and the notice methodology implemented pursuant to the Settlement Agreement: (a) constituted the best practicable notice under the circumstances; (b) constituted notice that was reasonably calculated to apprise Class Members of the pendency of the Actions, the terms of the Settlement and their rights under the settlement ... met all applicable requirements of law, including, but not limited to, the Federal Rules of Civil Procedure, 28 U.S.C. § 1715, and the Due Process Clause(s) of the United States Constitution, as well as complied with the Federal Judicial Center's illustrative class action notices.*

**Hartless v. Clorox Company**, No. 06-CV-2705 (CAB) (S.D.Cal.). In the Final Order Approving Settlement, the Honorable Cathy N. Bencivengo found:

*The Class Notice advised Class members of the terms of the settlement; the Final Approval Hearing and their right to appear at such hearing; their rights to remain in or opt out of the Class and to object to the settlement; the procedures for exercising such rights; and the binding effect of this Judgment, whether favorable or unfavorable, to the Class. The distribution of the notice to the Class constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. §1715, and any other applicable law.*

**McDonough et al., v. Toys 'R' Us et al**, No. 09:-cv-06151-AB (E.D. Pa.). In the Final Order and Judgment Approving Settlement, the Honorable Anita Brody stated:

*The Court finds that the Notice provided constituted the best notice practicable under the circumstances and constituted valid, due and sufficient notice to all persons entitled thereto.*

**In re: Pre-Filled Propane Tank Marketing & Sales Practices Litigation**, No. 4:09-md-02086-GAF (W.D. Mo.) In granting final approval to the settlement, the Honorable Gary A. Fenner stated:

*The notice program included individual notice to class members who could be identified by Ferrellgas, publication notices, and notices affixed to Blue Rhino propane tank cylinders sold by Ferrellgas through various retailers. ... The Court finds the notice program fully complied with Federal Rule of Civil Procedure 23 and the requirements of due process and provided to the Class the best notice practicable under the circumstances.*

**Stern v. AT&T Mobility Wireless**, No. 09-cv-1112 CAS-AGR (C.D.Cal. 2009). In the Final Approval Order, the Honorable Christina A. Snyder stated:

*[T]he Court finds that the Parties have fully and adequately effectuated the Notice Plan, as required by the Preliminary Approval Order, and, in fact, have achieved better results than anticipated or required by the Preliminary Approval Order.*

**In re: Processed Egg Prods. Antitrust Litig.**, MDL No. 08-md-02002 (E.D.P.A.). In the Order Granting Final Approval of Settlement, Judge Gene E.K. Pratter stated:

*The Notice appropriately detailed the nature of the action, the Class claims, the definition of the Class and Subclasses, the terms of the proposed settlement agreement, and the class members' right to object or request exclusion from the settlement and the timing and manner for doing so.... Accordingly, the Court determines that the notice provided to the putative Class Members constitutes adequate notice in satisfaction of the demands of Rule 23.*

**In re Polyurethane Foam Antitrust Litigation**, 10- MD-2196 (N.D. OH). In the Order Granting Final Approval of Voluntary Dismissal and Settlement of Defendant Domfoam and Others, the Honorable Jack Zouhary stated:

*The notice program included individual notice to members of the Class who could be identified through reasonable effort, as well as extensive publication of a summary notice. The Notice constituted the most effective and best notice practicable under the circumstances of the Settlement Agreements, and constituted due and sufficient notice for all other purposes to all persons and entities entitled to receive notice.*

**Rojas v Career Education Corporation**, No. 10-cv-05260 (N.D.E.D. IL) In the Final Approval Order dated October 25, 2012, the Honorable Virginia M. Kendall stated:

*The Court Approved notice to the Settlement Class as the best notice practicable under the circumstance including individual notice via U.S. Mail and by email to the class members whose addresses were obtained from each Class Member's wireless carrier or from a commercially reasonable reverse cell phone number look-up service, nationwide magazine publication, website publication, targeted on-line advertising, and a press release. Notice has been successfully implemented and satisfies the requirements of the Federal Rule of Civil Procedure 23 and Due Process.*



**Golloher v Todd Christopher International, Inc. DBA Vogue International (Organix)**, No. C 1206002 N.D. CA. In the Final Order and Judgment Approving Settlement, the Honorable Richard Seeborg stated:  
*The distribution of the notice to the Class constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. §1715, and any other applicable law.*

**Stefanyshyn v. Consolidated Industries**, No. 79 D 01-9712-CT-59 (Tippecanoe County Sup. Ct., Ind.). In the Order Granting Final Approval of Settlement, Judge Randy Williams stated:  
*The long and short form notices provided a neutral, informative, and clear explanation of the Settlement. ... The proposed notice program was properly designed, recommended, and implemented ... and constitutes the "best practicable" notice of the proposed Settlement. The form and content of the notice program satisfied all applicable legal requirements. ... The comprehensive class notice educated Settlement Class members about the defects in Consolidated furnaces and warned them that the continued use of their furnaces created a risk of fire and/or carbon monoxide. This alone provided substantial value.*

**McGee v. Continental Tire North America, Inc. et al**, No. 06-6234-(GEB) (D.N.J.).

*The Class Notice, the Summary Settlement Notice, the web site, the toll-free telephone number, and all other notices in the Agreement, and the notice methodology implemented pursuant to the Agreement: (a) constituted the best practicable notice under the circumstances; (b) constituted notice that was reasonably calculated to apprise Class Members of the pendency of the Action, the terms of the settlement and their rights under the settlement, including, but not limited to, their right to object to or exclude themselves from the proposed settlement and to appear at the Fairness Hearing; (c) were reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notification; and (d) met all applicable requirements of law, including, but not limited to, the Federal Rules of Civil Procedure, 20 U.S.C. Sec. 1715, and the Due Process Clause(s) of the United States Constitution, as well as complied with the Federal Judicial Center's illustrative class action notices.*

**Varacallo, et al. v. Massachusetts Mutual Life Insurance Company, et al.**, No. 04-2702 (JLL) (D.N.J.). The Court stated that:

*[A]ll of the notices are written in simple terminology, are readily understandable by Class Members, and comply with the Federal Judicial Center's illustrative class action notices. ... By working with a nationally syndicated media research firm, [Finegan's firm] was able to define a target audience for the MassMutual Class Members, which provided a valid basis for determining the magazine and newspaper preferences of the Class Members. (Preliminary Approval Order at p. 9). ... The Court agrees with Class Counsel that this was more than adequate. (Id. at § 5.2).*

**In Re: Nortel Network Corp., Sec. Litig.**, No. 01-CV-1855 (RMB) Master File No. 05 MD 1659 (LAP) (S.D.N.Y.). Ms. Finegan designed and implemented the extensive United States and Canadian notice programs in this case. The Canadian program was published in both French and English, and targeted virtually all investors of stock in Canada. See [www.nortelsecuritieslitigation.com](http://www.nortelsecuritieslitigation.com). Of the U.S. notice program, the Honorable Loretta A. Preska stated:

*The form and method of notifying the U.S. Global Class of the pendency of the action as a class action and of the terms and conditions of the proposed Settlement ... constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.*

Regarding the B.C. Canadian Notice effort: *Jeffrey v. Nortel Networks*, [2007] BCSC 69 at para. 50, the Honourable Mr. Justice Groberman said:

*The efforts to give notice to potential class members in this case have been thorough. There has been a broad media campaign to publicize the proposed settlement and the court processes. There has also been a direct mail campaign directed at probable investors. I am advised that over 1.2 million claim packages were mailed to persons around the world. In addition, packages*

have been available through the worldwide web site [nortelsecuritieslitigation.com](http://nortelsecuritieslitigation.com) on the Internet. Toll-free telephone lines have been set up, and it appears that class counsel and the Claims Administrator have received innumerable calls from potential class members. In short, all reasonable efforts have been made to ensure that potential members of the class have had notice of the proposal and a reasonable opportunity was provided for class members to register their objections, or seek exclusion from the settlement.

**Mayo v. Walmart Stores and Sam's Club**, No. 5:06 CV-93-R (W.D.Ky.). In the Order Granting Final Approval of Settlement, Judge Thomas B. Russell stated:

*According to defendants' database, the Notice was estimated to have reached over 90% of the Settlement Class Members through direct mail. The Settlement Administrator ... has classified the parties' database as 'one of the most reliable and comprehensive databases [she] has worked with for the purposes of legal notice.'... The Court thus reaffirms its findings and conclusions in the Preliminary Approval Order that the form of the Notice and manner of giving notice satisfy the requirements of Fed. R. Civ. P. 23 and affords due process to the Settlement Class Members.*

**Fishbein v. All Market Inc.**, (d/b/a Vita Coco) No. 11-cv-05580 (S.D.N.Y.). In granting final approval of the settlement, the Honorable J. Paul Oetken stated:

*"The Court finds that the dissemination of Class Notice pursuant to the Notice Program...constituted the best practicable notice to Settlement Class Members under the circumstances of this Litigation ... and was reasonable and constituted due, adequate and sufficient notice to all persons entitled to such notice, and fully satisfied the requirements of the Federal Rules of Civil Procedure, including Rules 23(c)(2) and (e), the United States Constitution (including the Due Process Clause), the Rules of this Court, and any other applicable laws."*

**Lucas, et al. v. Kmart Corp.**, No. 99-cv-01923 (D.Colo.), wherein the Court recognized Jeanne Finegan as an expert in the design of notice programs, and stated:

*The Court finds that the efforts of the parties and the proposed Claims Administrator in this respect go above and beyond the "reasonable efforts" required for identifying individual class members under F.R.C.P. 23(c)(2)(B).*

**In Re: Johns-Manville Corp. (Statutory Direct Action Settlement, Common Law Direct Action and Hawaii Settlement)**, No 82-11656, 57, 660, 661, 665-73, 75 and 76 (BRL) (Bankr. S.D.N.Y.). The nearly half-billion dollar settlement incorporated three separate notification programs, which targeted all persons who had asbestos claims whether asserted or unasserted, against the Travelers Indemnity Company. In the Findings of Fact and Conclusions of a Clarifying Order Approving the Settlements, slip op. at 47-48 (Aug. 17, 2004), the Honorable Burton R. Lifland, Chief Justice, stated:

*As demonstrated by Findings of Fact (citation omitted), the Statutory Direct Action Settlement notice program was reasonably calculated under all circumstances to apprise the affected individuals of the proceedings and actions taken involving their interests, Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950), such program did apprise the overwhelming majority of potentially affected claimants and far exceeded the minimum notice required. . . The results simply speak for themselves.*

**Pigford v. Glickman and U.S. Department of Agriculture**, No. 97-1978. 98-1693 (PLF) (D.D.C.).

This matter was the largest civil rights case to settle in the United States in over 40 years. The highly publicized, nationwide paid media program was designed to alert all present and past African-American farmers of the opportunity to recover monetary damages against the U.S. Department of Agriculture for alleged loan discrimination. In his Opinion, the Honorable Paul L. Friedman commended the parties with respect to the notice program, stating;

*The parties also exerted extraordinary efforts to reach class members through a massive advertising campaign in general and African American targeted publications and television*

*stations. . . The Court concludes that class members have received more than adequate notice and have had sufficient opportunity to be heard on the fairness of the proposed Consent Decree.*

***In Re: Louisiana-Pacific Inner-Seal Siding Litig.***, Nos. 879-JE, and 1453-JE (D.Or.). Under the terms of the Settlement, three separate notice programs were to be implemented at three-year intervals over a period of six years. In the first notice campaign, Ms. Finegan implemented the print advertising and Internet components of the Notice program. In approving the legal notice communication plan, the Honorable Robert E. Jones stated:

*The notice given to the members of the Class fully and accurately informed the Class members of all material elements of the settlement...[through] a broad and extensive multi-media notice campaign.*

Additionally, with regard to the third-year notice program for Louisiana-Pacific, the Honorable Richard Unis, Special Master, commented that the notice was:

*...well formulated to conform to the definition set by the court as adequate and reasonable notice. Indeed, I believe the record should also reflect the Court's appreciation to Ms. Finegan for all the work she's done, ensuring that noticing was done correctly and professionally, while paying careful attention to overall costs. Her understanding of various notice requirements under Fed. R. Civ. P. 23, helped to insure that the notice given in this case was consistent with the highest standards of compliance with Rule 23(d)(2).*

***In Re: Expedia Hotel Taxes and Fees Litigation***, No. 05-2-02060-1 (SEA) (Sup. Ct. of Wash. in and for King County). In the Order Granting Final Approval of Class Action Settlement, Judge Monica Benton stated:

*The Notice of the Settlement given to the Class ... was the best notice practicable under the circumstances. All of these forms of Notice directed Class Members to a Settlement Website providing key Settlement documents including instructions on how Class Members could exclude themselves from the Class, and how they could object to or comment upon the Settlement. The Notice provided due and adequate notice of these proceeding and of the matters set forth in the Agreement to all persons entitled to such notice, and said notice fully satisfied the requirements of CR 23 and due process.*

***Thomas A. Foster and Linda E. Foster v. ABTco Siding Litigation***, No. 95-151-M (Cir. Ct., Choctaw County, Ala.). This litigation focused on past and present owners of structures sided with Abitibi-Price siding. The notice program that Ms. Finegan designed and implemented was national in scope and received the following praise from the Honorable J. Lee McPhearson:

*The Court finds that the Notice Program conducted by the Parties provided individual notice to all known Class Members and all Class Members who could be identified through reasonable efforts and constitutes the best notice practicable under the circumstances of this Action. This finding is based on the overwhelming evidence of the adequacy of the notice program. ... The media campaign involved broad national notice through television and print media, regional and local newspapers, and the Internet (see *id.* ¶¶9-11) The result: over 90 percent of Abitibi and ABTco owners are estimated to have been reached by the direct media and direct mail campaign.*

***Wilson v. Massachusetts Mut. Life Ins. Co.***, No. D-101-CV 98-02814 (First Judicial Dist. Ct., County of Santa Fe, N.M.). This was a nationwide notification program that included all persons in the United States who owned, or had owned, a life or disability insurance policy with Massachusetts Mutual Life Insurance Company and had paid additional charges when paying their premium on an installment basis. The class was estimated to exceed 1.6 million individuals. [www.insuranceclassclaims.com](http://www.insuranceclassclaims.com). In granting preliminary approval to the settlement, the Honorable Art Encinias found:

*[T]he Notice Plan [is] the best practicable notice that is reasonably calculated, under the circumstances of the action. ...[and] meets or exceeds all applicable requirements of the law, including Rule 1-023(C)(2) and (3) and 1-023(E), NMRA 2001, and the requirements of federal and/or state constitutional due process and any other applicable law.*

**Sparks v. AT&T Corp.**, No. 96-LM-983 (Third Judicial Cir., Madison County, Ill.). The litigation concerned all persons in the United States who leased certain AT&T telephones during the 1980's. Ms. Finegan designed and implemented a nationwide media program designed to target all persons who may have leased telephones during this time period, a class that included a large percentage of the entire population of the United States. In granting final approval to the settlement, the Court found:

*The Court further finds that the notice of the proposed settlement was sufficient and furnished Class Members with the information they needed to evaluate whether to participate in or opt out of the proposed settlement. The Court therefore concludes that the notice of the proposed settlement met all requirements required by law, including all Constitutional requirements.*

**In Re: Georgia-Pacific Toxic Explosion Litig.**, No. 98 CVC05-3535 (Ct. of Common Pleas, Franklin County, Ohio). Ms. Finegan designed and implemented a regional notice program that included network affiliate television, radio and newspaper. The notice was designed to alert adults living near a Georgia-Pacific plant that they had been exposed to an air-born toxic plume and their rights under the terms of the class action settlement. In the Order and Judgment finally approving the settlement, the Honorable Jennifer L. Bunner stated:

*[N]otice of the settlement to the Class was the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The Court finds that such effort exceeded even reasonable effort and that the Notice complies with the requirements of Civ. R. 23(C).*

**In Re: American Cyanamid**, No. CV-97-0581-BH-M (S.D.AI.). The media program targeted Farmers who had purchased crop protection chemicals manufactured by American Cyanamid. In the Final Order and Judgment, the Honorable Charles R. Butler Jr. wrote:

*The Court finds that the form and method of notice used to notify the Temporary Settlement Class of the Settlement satisfied the requirements of Fed. R. Civ. P. 23 and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all potential members of the Temporary Class Settlement.*

**In Re: First Alert Smoke Alarm Litig.**, No. CV-98-C-1546-W (UWC) (N.D.AI.). Ms. Finegan designed and implemented a nationwide legal notice and public information program. The public information program ran over a two-year period to inform those with smoke alarms of the performance characteristics between photoelectric and ionization detection. The media program included network and cable television, magazine and specialty trade publications. In the Findings and Order Preliminarily Certifying the Class for Settlement Purposes, Preliminarily Approving Class Settlement, Appointing Class Counsel, Directing Issuance of Notice to the Class, and Scheduling a Fairness Hearing, the Honorable C.W. Clemon wrote that the notice plan:

*...constitutes due, adequate and sufficient notice to all Class Members; and (v) meets or exceeds all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Alabama State Constitution, the Rules of the Court, and any other applicable law.*

**In Re: James Hardie Roofing Litig.**, No. 00-2-17945-65SEA (Sup. Ct. of Wash., King County). The nationwide legal notice program included advertising on television, in print and on the Internet. The program was designed to reach all persons who own any structure with JHBP roofing products. In the Final Order and Judgment, the Honorable Steven Scott stated:

*The notice program required by the Preliminary Order has been fully carried out... [and was] extensive. The notice provided fully and accurately informed the Class Members of all material elements of the proposed Settlement and their opportunity to participate in or be excluded from it; was the best notice practicable under the circumstances; was valid, due and sufficient notice to all Class Members; and complied fully with Civ. R. 23, the United States Constitution, due process, and other applicable law.*

**Barden v. Hurd Millwork Co. Inc., et al**, No. 2:6-cv-00046 (LA) (E.D.Wis.)



*"The Court approves, as to form and content, the notice plan and finds that such notice is the best practicable under the circumstances under Federal Rule of Civil Procedure 23(c)(2)(B) and constitutes notice in a reasonable manner under Rule 23(e)(1)."*

**Altieri v. Reebok**, No. 4:10-cv-11977 (FDS) (D.C.Mass.)

*"The Court finds that the notices ... constitute the best practicable notice...The Court further finds that all of the notices are written in simple terminology, are readily understandable by Class Members, and comply with the Federal Judicial Center's illustrative class action notices."*

**Marenco v. Visa Inc.**, No. CV 10-08022 (DMG) (C.D.Cal.)

*"[T]he Court finds that the notice plan...meets the requirements of due process, California law, and other applicable precedent. The Court finds that the proposed notice program is designed to provide the Class with the best notice practicable, under the circumstances of this action, of the pendency of this litigation and of the proposed Settlement's terms, conditions, and procedures, and shall constitute due and sufficient notice to all persons entitled thereto under California law, the United States Constitution, and any other applicable law."*

**Palmer v. Sprint Solutions, Inc.**, No. 09-cv-01211 (JLR) (W.D.Wa.)

*"The means of notice were reasonable and constitute due, adequate, and sufficient notice to all persons entitled to be provide<sup>3d</sup> with notice."*

**In Re: Tyson Foods, Inc., Chicken Raised Without Antibiotics Consumer Litigation**, No. 1:08-md-01982 RDB (D. Md. N. Div.)

*"The notice, in form, method, and content, fully complied with the requirements of Rule 23 and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons entitled to notice of the settlement."*

**Sager v. Inamed Corp. and McGhan Medical Breast Implant Litigation**, No. 01043771 (Sup. Ct. Cal., County of Santa Barbara)

*"Notice provided was the best practicable under the circumstances."*

**Deke, et al. v. Cardservice Internat'l**, Case No. BC 271679, slip op. at 3 (Sup. Ct. Cal., County of Los Angeles)

*"The Class Notice satisfied the requirements of California Rules of Court 1856 and 1859 and due process and constituted the best notice practicable under the circumstances."*

**Levine, et al. v. Dr. Philip C. McGraw, et al.**, Case No. BC 312830 (Los Angeles County Super. Ct., Cal.)

*"[T]he plan for notice to the Settlement Class ... constitutes the best notice practicable under the circumstances and constituted due and sufficient notice to the members of the Settlement Class ... and satisfies the requirements of California law and federal due process of law."*

**In re: Canadian Air Cargo Shipping Class Actions**, Court File No. 50389CP, Ontario Superior Court of Justice, Supreme Court of British Columbia, Quebec Superior Court

*"I am satisfied the proposed form of notice meets the requirements of s. 17(6) of the CPA and the proposed method of notice is appropriate."*

**Fischer et al v. IG Investment Management, Ltd. et al**, Court File No. 06-CV-307599CP, Ontario Superior Court of Justice.

**In re: Vivendi Universal, S.A. Securities Litigation**, No. 02-cv-5571 (RJH)(HBP) (S.D.N.Y.).

**In re: Air Cargo Shipping Services Antitrust Litigation**, No. 06-MD-1775 (JG) (VV) (E.D.N.Y.).

**Berger, et al., v. Property ID Corporation, et al.**, No. CV 05-5373-GHK (CWx) (C.D.Cal.).

**Lozano v. AT&T Mobility Wireless**, No. 02-cv-0090 CAS (AJWx) (C.D.Cal.).

**Howard A. Engle, M.D., et al., v. R.J. Reynolds Tobacco Co., Philip Morris, Inc., Brown & Williamson Tobacco Corp.**, No. 94-08273 CA (22) (11<sup>th</sup> Judicial Dist. Ct. of Miami-Dade County, Fla.).

**In re: Royal Dutch/Shell Transport Securities Litigation**, No. 04 Civ. 374 (JAP) (Consolidated Cases) (D. N.J.).

**In re: Epson Cartridge Cases, Judicial Council Coordination Proceeding**, No. 4347 (Sup. Ct. of Cal., County of Los Angeles).

**UAW v. General Motors Corporation**, No: 05-73991 (E.D.MI).

**Wicon, Inc. v. Cardservice Intern'l, Inc.**, BC 320215 (Sup. Ct. of Cal., County of Los Angeles).

**In re: SmithKline Beecham Clinical Billing Litig.**, No. CV. No. 97-L-1230 (Third Judicial Cir., Madison County, Ill.).

Ms. Finegan designed and developed a national media and Internet site notification program in connection with the settlement of a nationwide class action concerning billings for clinical laboratory testing services.

**MacGregor v. Schering-Plough Corp.**, No. EC248041 (Sup. Ct. Cal., County of Los Angeles).

This nationwide notification program was designed to reach all persons who had purchased or used an aerosol inhaler manufactured by Schering-Plough. Because no mailing list was available, notice was accomplished entirely through the media program.

**In re: Swiss Banks Holocaust Victim Asset Litig.**, No. CV-96-4849 (E.D.N.Y.).

Ms. Finegan managed the design and implementation of the Internet site on this historic case. The site was developed in 21 native languages. It is a highly secure data gathering tool and information hub, central to the global outreach program of Holocaust survivors.  
[www.swissbankclaims.com](http://www.swissbankclaims.com).

**In re: Exxon Valdez Oil Spill Litig.**, No. A89-095-CV (HRH) (Consolidated) (D. Alaska).

Ms. Finegan designed and implemented two media campaigns to notify native Alaskan residents, trade workers, fisherman, and others impacted by the oil spill of the litigation and their rights under the settlement terms.

**In re: Johns-Manville Phenolic Foam Litig.**, No. CV 96-10069 (D. Mass).

The nationwide multi-media legal notice program was designed to reach all Persons who owned any structure, including an industrial building, commercial building, school, condominium, apartment house, home, garage or other type of structure located in the United States or its territories, in which Johns-Manville PFRI was installed, in whole or in part, on top of a metal roof deck.

**Bristow v Fleetwood Enters Litig.**, No Civ 00-0082-S-EJL (D. Id).

Ms. Finegan designed and implemented a legal notice campaign targeting present and former employees of Fleetwood Enterprises, Inc., or its subsidiaries who worked as hourly production workers at Fleetwood's housing, travel trailer, or motor home manufacturing plants. The comprehensive notice campaign included print, radio and television advertising.

**In re: New Orleans Tank Car Leakage Fire Litig.**, No 87-16374 (Civil Dist. Ct., Parish of Orleans, LA) (2000).

This case resulted in one of the largest settlements in U.S. history. This campaign consisted of a media relations and paid advertising program to notify individuals of their rights under the terms of the settlement.

***Garrja Spencer v. Shell Oil Co.***, No. CV 94-074(Dist. Ct., Harris County, Tex.).

The nationwide notification program was designed to reach individuals who owned real property or structures in the United States, which contained polybutylene plumbing with acetyl insert or metal insert fittings.

***In re: Hurd Millwork Heat Mirror™ Litig.***, No. CV-772488 (Sup. Ct. of Cal., County of Santa Clara).

This nationwide multi-media notice program was designed to reach class members with failed heat mirror seals on windows and doors, and alert them as to the actions that they needed to take to receive enhanced warranties or window and door replacement.

***Laborers Dist. Counsel of Alabama Health and Welfare Fund v. Clinical Lab. Servs., Inc.***, No. CV-97-C-629-W (N.D. Ala.)

Ms. Finegan designed and developed a national media and Internet site notification program in connection with the settlement of a nationwide class action concerning alleged billing discrepancies for clinical laboratory testing services.

***In re: StarLink Corn Prods. Liab. Litig.***, No. 01-C-1181 (N.D. Ill)

Ms. Finegan designed and implemented a nationwide notification program designed to alert potential class members of the terms of the settlement.

***In re: MCI Non-Subscriber Rate Payers Litig.***, MDL Docket No. 1275, 3:99-cv-01275 (S.D.Ill.).

The advertising and media notice program, found to be "more than adequate" by the Court, was designed with the understanding that the litigation affected all persons or entities who were customers of record for telephone lines presubscribed to MCI/World Com, and were charged the higher non-subscriber rates and surcharges for direct-dialed long distance calls placed on those lines. [www.rateclaims.com](http://www.rateclaims.com).

***In re: Albertson's Back Pay Litig.***, No. 97-0159-S-BLW (D.Id.).

Ms. Finegan designed and developed a secure Internet site, where claimants could seek case information confidentially.

***In re: Georgia Pacific Hardboard Siding Recovering Program***, No. CV-95-3330-RG (Cir. Ct., Mobile County, Ala.)

Ms. Finegan designed and implemented a multi-media legal notice program, which was designed to reach class members with failed G-P siding and alert them of the pending matter. Notice was provided through advertisements, which aired on national cable networks, magazines of nationwide distribution, local newspaper, press releases and trade magazines.

***In re: Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Litig.***, Nos. 1203, 99-20593.

Ms. Finegan worked as a consultant to the National Diet Drug Settlement Committee on notification issues. The resulting notice program was described and complimented at length in the Court's Memorandum and Pretrial Order 1415, approving the settlement.

Ms. Finegan designed the Notice programs for multiple state antitrust cases filed against the Microsoft Corporation. In those cases, it was generally alleged that Microsoft unlawfully used anticompetitive means to maintain a monopoly in markets for certain software, and that as a result, it overcharged consumers who licensed its MS-DOS, Windows, Word, Excel and Office software. The multiple legal notice programs designed by Jeanne Finegan and listed below targeted both individual users and business users of this software. The scientifically designed notice programs took into consideration both media usage habits and demographic characteristics of the targeted class members.

***In re: Florida Microsoft Antitrust Litig. Settlement***, No. 99-27340 CA 11 (11<sup>th</sup> Judicial Dist. Ct. of Miami-Dade County, Fla.).

***In re: Montana Microsoft Antitrust Litig. Settlement***, No. DCV 2000 219 (First Judicial Dist. Ct., Lewis & Clark Co., Mt.).

***In re: South Dakota Microsoft Antitrust Litig. Settlement***, No. 00-235(Sixth Judicial Cir., County of Hughes, S.D.).

***In re: Kansas Microsoft Antitrust Litig. Settlement***, No. 99C17089 Division No. 15 Consolidated Cases (Dist. Ct., Johnson County, Kan.)

*“The Class Notice provided was the best notice practicable under the circumstances and fully complied in all respects with the requirements of due process and of the Kansas State. Annot. §60-22.3.”*

***In re: North Carolina Microsoft Antitrust Litig. Settlement***, No. 00-CvS-4073 (Wake) 00-CvS-1246 (Lincoln) (General Court of Justice Sup. Ct., Wake and Lincoln Counties, N.C.).

***In re: ABS II Pipes Litig.***, No. 3126 (Sup. Ct. of Cal., Contra Costa County).

The Court approved regional notification program designed to alert those individuals who owned structures with the pipe that they were eligible to recover the cost of replacing the pipe.

***In re: Avenue A Inc. Internet Privacy Litig.***, No: C00-1964C (W.D. Wash.).

***In re: Lorazepam and Clorazepate Antitrust Litig.***, No. 1290 (TFH) (D.C.C.).

***In re: Providian Fin. Corp. ERISA Litig.***, No C-01-5027 (N.D. Cal.).

***In re: H & R Block., et al Tax Refund Litig.***, No. 97195023/CC4111 (MD Cir. Ct., Baltimore City).

***In re: American Premier Underwriters, Inc, U.S. Railroad Vest Corp.***, No. 06C01-9912 (Cir. Ct., Boone County, Ind.).

***In re: Sprint Corp. Optical Fiber Litig.***, No: 9907 CV 284 (Dist. Ct., Leavenworth County, Kan).

***In re: Shelter Mutual Ins. Co. Litig.***, No. CJ-2002-263 (Dist.Ct., Canadian County. Ok).

***In re: Conseco, Inc. Sec. Litig.***, No: IP-00-0585-C Y/S CA (S.D. Ind.).

***In re: Nat’l Treasury Employees Union, et al.***, 54 Fed. Cl. 791 (2002).

***In re: City of Miami Parking Litig.***, Nos. 99-21456 CA-10, 99-23765 – CA-10 (11<sup>th</sup> Judicial Dist. Ct. of Miami-Dade County, Fla.).

***In re: Prime Co. Incorporated D/B/A/ Prime Co. Personal Comm.***, No. L 1:01CV658 (E.D. Tx.).

***Alsea Veneer v. State of Oregon A.A.***, No. 88C-11289-88C-11300.

**INTERNATIONAL EXPERIENCE**

*In re Purdue Pharma L.P., No. 19-23649* (Bankr. S.D.N.Y. 2019).

*Imerys Talc America, Inc.* No. 19-10289 Bankr. D.Del 20201

*Bell v. Canadian Imperial Bank of Commerce, et al*, Court File No.: CV-08-359335 (Ontario Superior Court of Justice); (2016).

*In re: Canadian Air Cargo Shipping Class Actions* (Ontario Superior Court of Justice, Court File No. 50389CP, Supreme Court of British Columbia.

*In re: Canadian Air Cargo Shipping Class Actions* (Québec Superior Court).

*Fischer v. IG Investment Management LTD.*, No. 06-CV-307599CP (Ontario Superior Court of Justice).

*In Re Nortel I & II Securities Litigation*, Civil Action No. 01-CV-1855 (RMB), Master File No. 05 MD 1659 (LAP) (S.D.N.Y. 2006).

*Frohlinger v. Nortel Networks Corporation et al.*, Court File No.: 02-CL-4605 (Ontario Superior Court of Justice).

*Association de Protection des Épargnants et Investisseurs du Québec v. Corporation Nortel Networks*, No.: 500-06-0002316-017 (Superior Court of Québec).

*Jeffery v. Nortel Networks Corporation et al.*, Court File No.: S015159 (Supreme Court of British Columbia).

*Gallardi v. Nortel Networks Corporation*, No. 05-CV-285606CP (Ontario Superior Court).

*Skarstedt v. Corporation Nortel Networks*, No. 500-06-000277-059 (Superior Court of Québec).

**SEC ENFORCEMENT NOTICE PROGRAM EXPERIENCE**

*SEC v. Vivendi Universal, S.A., et al.*, Case No. 02 Civ. 5571 (RJH) (HBP) (S.D.N.Y.).  
The Notice program included publication in 11 different countries and eight different languages.

*SEC v. Royal Dutch Petroleum Company*, No.04-3359 (S.D. Tex.)

**FEDERAL TRADE COMMISSION NOTICE PROGRAM EXPERIENCE**

*FTC v. TracFone Wireless, Inc.*, Case No. 15-cv-00392-EMC.

*FTC v. Skechers U.S.A., Inc.*, No. 1:12-cv-01214-JG (N.D. Ohio).

*FTC v. Reebok International Ltd.*, No. 11-cv-02046 (N.D. Ohio)

*FTC v. Chanery and RTC Research and Development LLC [Nutraquest]*, No :05-cv-03460 (D.N.J.)

**BANKRUPTCY EXPERIENCE**

Ms. Finegan has designed and implemented hundreds of domestic and international bankruptcy notice programs. A sample case list includes the following:

**In Re: PG&E Corporation** Case No. 19-30088 Bankr. N.D. Cal. 2019). Hearing Establishing, Deadline for Filing Proofs of Claim, (II) establishing the Form and Manner of Notice Thereof, and (III) Approving Procedures for Providing Notice of Bar Date and Other Information to all Creditors and Potential Creditors PG&E. *June 26, 2019, Transcript of Hearing p. 21:1*, the Honorable Dennis Montali stated:  
*...the technology and the thought that goes into all these plans is almost incomprehensible. He further stated, p. 201:20 ... Ms. Finegan has really impressed me today...*

**Imerys Talc America, Inc.** No. 19-10289 Bankr. D.Del 20201.

**In re AMR Corporation [American Airlines], et al.**, No. 11-15463 (SHL) (Bankr. S.D.N.Y.)  
*"due and proper notice [was] provided, and ... no other or further notice need be provided."*

**In re Jackson Hewitt Tax Service Inc.**, et al., No 11-11587 (Bankr. D.Del.) (2011).

The debtors sought to provide notice of their filing as well as the hearing to approve their disclosure statement and confirm their plan to a large group of current and former customers, many of whom current and viable addresses promised to be a difficult (if not impossible) and costly undertaking. The court approved a publication notice program designed and implemented by Finegan and the administrator, that included more than 350 local newspaper and television websites, two national online networks (24/7 Real Media, Inc. and Microsoft Media Network), a website notice linked to a press release and notice on eight major websites, including CNN and Yahoo. These online efforts supplemented the print publication and direct-mail notice provided to known claimants and their attorneys, as well as to the state attorneys general of all 50 states. The *Jackson Hewitt* notice program constituted one of the first large chapter 11 cases to incorporate online advertising.

**In re: Nutraquest Inc.**, No. 03-44147 (Bankr. D.N.J.)

**In re: General Motors Corp. et al**, No. 09-50026 (Bankr. S.D.N.Y.)

This case is the 4<sup>th</sup> largest bankruptcy in U.S. history. Ms. Finegan and her team worked with General Motors restructuring attorneys to design and implement the legal notice program.

**In re: ACandS, Inc.**, No. 0212687 (Bankr. D.Del.) (2007)

*"Adequate notice of the Motion and of the hearing on the Motion was given."*

**In re: United Airlines**, No. 02-B-48191 (Bankr. N.D Ill.)

Ms. Finegan worked with United and its restructuring attorneys to design and implement global legal notice programs. The notice was published in 11 countries and translated into 6 languages. Ms. Finegan worked closely with legal counsel and UAL's advertising team to select the appropriate media and to negotiate the most favorable advertising rates. [www.pd-ual.com](http://www.pd-ual.com).

**In re: Enron**, No. 01-16034 (Bankr. S.D.N.Y.)

Ms. Finegan worked with Enron and its restructuring attorneys to publish various legal notices.

**In re: Dow Corning**, No. 95-20512 (Bankr. E.D. Mich.)

Ms. Finegan originally designed the information website. This Internet site is a major information hub that has various forms in 15 languages.

**In re: Harnischfeger Inds.**, No. 99-2171 (RJW) Jointly Administered (Bankr. D. Del.)

Ms. Finegan designed and implemented 6 domestic and international notice programs for this case. The notice was translated into 14 different languages and published in 16 countries.

**In re: Keene Corp.**, No. 93B 46090 (SMB), (Bankr. E.D. MO.)



Ms. Finegan designed and implemented multiple domestic bankruptcy notice programs including notice on the plan of reorganization directed to all creditors and all Class 4 asbestos-related claimants and counsel.

**In re: Lamonts**, No. 00-00045 (Bankr. W.D. Wash.)

Ms. Finegan designed and implemented multiple bankruptcy notice programs.

**In re: Monet Group Holdings**, Nos. 00-1936 (MFW) (Bankr. D. Del.)

Ms. Finegan designed and implemented a bar date notice.

**In re: Laclede Steel Co.**, No. 98-53121-399 (Bankr. E.D. MO.)

Ms. Finegan designed and implemented multiple bankruptcy notice programs.

**In re: Columbia Gas Transmission Corp.**, No. 91-804 (Bankr. S.D.N.Y.)

Ms. Finegan developed multiple nationwide legal notice notification programs for this case.

**In re: U.S.H. Corp. of New York, et al.** (Bankr. S.D.N.Y.)

Ms. Finegan designed and implemented a bar date advertising notification campaign.

**In re: Best Prods. Co., Inc.**, No. 96-35267-T, (Bankr. E.D. Va.)

Ms. Finegan implemented a national legal notice program that included multiple advertising campaigns for notice of sale, bar date, disclosure and plan confirmation.

**In re: Lodgian, Inc., et al.**, No. 16345 (BRL) Factory Card Outlet – 99-685 (JCA), 99-686 (JCA) (Bankr. S.D.N.Y.).

**In re: Internat'l Total Servs, Inc., et al.**, Nos. 01-21812, 01-21818, 01-21820, 01-21882, 01-21824, 01-21826, 01-21827 (CD) Under Case No: 01-21812 (Bankr. E.D.N.Y.).

**In re: Decora Inds., Inc. and Decora, Incorp.**, Nos. 00-4459 and 00-4460 (JJF) (Bankr. D. Del.).

**In re: Genesis Health Ventures, Inc., et al**, No. 002692 (PJW) (Bankr. D. Del.).

**In re: Tel. Warehouse, Inc., et al**, No. 00-2105 through 00-2110 (MFW) (Bankr. D. Del.).

**In re: United Cos. Fin. Corp., et al**, No. 99-450 (MFW) through 99-461 (MFW) (Bankr. D. Del.).

**In re: Caldor, Inc. New York, The Caldor Corp., Caldor, Inc. CT, et al.**, No. 95-B44080 (JLG) (Bankr. S.D.N.Y.).

**In re: Physicians Health Corp., et al.**, No. 00-4482 (MFW) (Bankr. D. Del.).

**In re: GC Cos., et al.**, Nos. 00-3897 through 00-3927 (MFW) (Bankr. D. Del.).

**In re: Heilig-Meyers Co., et al.**, Nos. 00-34533 through 00-34538 (Bankr. E.D. Va.).

#### **MASS TORT EXPERIENCE AND PRODUCT RECALL**

**In Re: PG&E Corporation** Case No . 19-30088 Bankr. N.D. Cal. 2019).

**In re Purdue Pharma L.P.**, No. 19-23649 (Bankr. S.D.N.Y. 2019).

**Imerys Talc America, Inc.** No. 19-10289 Bankr. D.Del 2021.

**Reser's Fine Foods.** Reser's is a nationally distributed brand and manufacturer of food products through giants such as Albertsons, Costco, Food Lion, WinnDixie, Ingles, Safeway and Walmart. Ms. Finegan designed an enterprise-wide crisis communication plan that included communications objectives, crisis team roles and responsibilities, crisis response procedures, regulatory protocols, definitions of incidents that require various levels of notice, target audiences, and threat assessment protocols. Ms. Finegan worked with the company through two nationwide, high profile recalls, conducting extensive media relations efforts.

**Gulf Coast Claims Facility Notice Campaign.** Finegan coordinated a massive outreach effort throughout the Gulf Coast region to notify those who have claims as a result of damages caused by the Deep Water Horizon Oil spill. The notice campaign included extensive advertising in newspapers throughout the region, Internet notice through local newspaper, television and radio websites and media relations. The Gulf Coast Claims Facility (GCCF) was an independent claims facility, funded by BP, for the resolution of claims by individuals and businesses for damages incurred as a result of the oil discharges due to the Deepwater Horizon incident on April 20, 2010.

**City of New Orleans Tax Revisions, Post-Hurricane Katrina.** In 2007, the City of New Orleans revised property tax assessments for property owners. As part of this process, it received numerous appeals to the assessments. An administration firm served as liaison between the city and property owners, coordinating the hearing schedule and providing important information to property owners on the status of their appeal. Central to this effort was the comprehensive outreach program designed by Ms. Finegan, which included a website and a heavy schedule of television, radio and newspaper advertising, along with the coordination of key news interviews about the project picked up by local media.

#### ARTICLES/ SOCIAL MEDIA

Interview, "How Marketers Achieve Greater ROI Through Digital Assurance," Alliance for Audited Media ("AAM"), white paper, January 2021.

Tweet Chat: Contributing Panelist #Law360SocialChat, A live Tweet workshop concerning the benefits and pit-falls of social media, Lextalk.com, November 7, 2019.

Author, "Top Class Settlement Admin Factors to Consider in 2020" Law360, New York, (October 31, 2019, 5:44 PM ET).

Author, "Creating a Class Notice Program that Satisfies Due Process" Law360, New York, (February 13, 2018 12:58 PM ET).

Author, "3 Considerations for Class Action Notice Brand Safety" Law360, New York, (October 2, 2017 12:24 PM ET).

Author, "What Would Class Action Reform Mean for Notice?" Law360, New York, (April 13, 2017 11:50 AM ET).

Author, "Bots Can Silently Steal your Due Process Notice." Wisconsin Law Journal, April 2017.

Author, "Don't Turn a Blind Eye to Bots. Ad Fraud and Bots are a Reality of the Digital Environment." LinkedIn article March 6, 2107.

Co-Author, "Modern Notice Requirements Through the Lens of *Eisen* and *Mullane*" – Bloomberg - BNA Class Action Litigation Report, 17 CLASS 1077, (October 14, 2016).



Author, "Think All Internet Impressions Are The Same? Think Again" – Law360.com, New York (March 16, 2016, 3:39 ET).

Author, "Why Class Members Should See an Online Ad More Than Once" – Law360.com, New York, (December 3, 2015, 2:52 PM ET).

Author, 'Being 'Media-Relevant' — What It Means and Why It Matters - Law360.com, New York (September 11, 2013, 2:50 PM ET).

Co-Author, "New Media Creates New Expectations for Bankruptcy Notice Programs," ABI Journal, Vol. XXX, No 9, (November 2011).

Quoted Expert, "Effective Class Action Notice Promotes Access to Justice: Insight from a New U.S. Federal Judicial Center Checklist," Canadian Supreme Court Law Review, (2011), 53 S.C.L.R. (2d).

Co-Author, with Hon. Dickran Tevrizian – "Expert Opinion: It's More Than Just a Report...Why Qualified Legal Experts Are Needed to Navigate the Changing Media Landscape," BNA Class Action Litigation Report, 12 CLASS 464, May 27, 2011.

Co-Author, with Hon. Dickran Tevrizian, Your Insight, "Expert Opinion: It's More Than Just a Report -Why Qualified Legal Experts Are Needed to Navigate the Changing Media Landscape," <sup>11</sup><sub>SEP</sub> TXLR, Vol. 26, No. 21, May 26, 2011.

Quoted Expert, "Analysis of the FJC's 2010 Judges' Class Action Notice and Claims Process Checklist and Guide: A New Roadmap to Adequate Notice and Beyond," BNA Class Action Litigation Report, 12 CLASS 165, February 25, 2011.

Author, Five Key Considerations for a Successful International Notice Program, BNA Class Action Litigation Report, April, 9, 2010 Vol. 11, No. 7 p. 343.

Quoted Expert, "Communication Technology Trends Pose Novel Notification Issues for Class Litigators," BNA Electronic Commerce and Law, 15 ECLR 109 January 27, 2010.

Author, "Legal Notice: R U ready 2 adapt?" BNA Class Action Report, Vol. 10 Class 702, July 24, 2009.

Author, "On Demand Media Could Change the Future of Best Practicable Notice," BNA Class Action Litigation Report, Vol. 9, No. 7, April 11, 2008, pp. 307-310.

Quoted Expert, "Warranty Conference: Globalization of Warranty and Legal Aspects of Extended Warranty," Warranty Week, warrantyweek.com/archive/ww20070228.html/ February 28, 2007.

Co-Author, "Approaches to Notice in State Court Class Actions," For The Defense, Vol. 45, No. 11, November, 2003.

Citation, "Recall Effectiveness Research: A Review and Summary of the Literature on Consumer Motivation and Behavior," U.S. Consumer Product Safety Commission, CPSC-F-02-1391, p.10, Heiden Associates, July 2003.

Author, "The Web Offers Near, Real-Time Cost Efficient Notice," American Bankruptcy Institute, ABI Journal, Vol. XXII, No. 5., 2003.

Author, "Determining Adequate Notice in Rule 23 Actions," For The Defense, Vol. 44, No. 9 September, 2002.

Author, "Legal Notice, What You Need to Know and Why," Monograph, July 2002.

Co-Author, "The Electronic Nature of Legal Noticing," The American Bankruptcy Institute Journal, Vol. XXI, No. 3, April 2002.

Author, "Three Important Mantras for CEO's and Risk Managers," - International Risk Management Institute, irmi.com, January 2002.

Co-Author, "Used the Bat Signal Lately," The National Law Journal, Special Litigation Section, February 19, 2001.

Author, "How Much is Enough Notice," Dispute Resolution Alert, Vol. 1, No. 6. March 2001.

Author, "Monitoring the Internet Buzz," The Risk Report, Vol. XXIII, No. 5, Jan. 2001.

Author, "High-Profile Product Recalls Need More Than the Bat Signal," - International Risk Management Institute, irmi.com, July 2001.

Co-Author, "Do You Know What 100 Million People are Buzzing About Today?" Risk and Insurance Management, March 2001.

Quoted Article, "Keep Up with Class Action," Kentucky Courier Journal, March 13, 2000.

Author, "The Great Debate - How Much is Enough Legal Notice?" American Bar Association – Class Actions and Derivatives Suits Newsletter, winter edition 1999.

**SPEAKER/EXPERT PANELIST/PRESENTER**

Chief Litigation Counsel Association (CLCA)	Speaker, "Four Factors Impacting the Cost of Your Class Action Settlement and Notice," Houston TX, May 1, 2019
CLE Webinar	"Rule 23 Changes to Notice, Are You Ready for the Digital Wild, Wild West?" October 23, 2018, <a href="https://bit.ly/2RIRvZq">https://bit.ly/2RIRvZq</a>
American Bar Assn.	Faculty Panelist, 4 <sup>th</sup> Annual Western Regional CLE Class Actions, "Big Brother, Information Privacy, and Class Actions: How Big Data and Social Media are Changing the Class Action Landscape" San Francisco, CA June, 2018.
Miami Law Class Action Faculty & Complex Litigation Forum	Panelist, "Settlement and Resolution of Class Actions," Miami, FL December 2, 2016.
The Knowledge Group	Faculty Panelist, "Class Action Settlements: Hot Topics 2016 and Beyond," Live Webcast, <a href="http://www.theknowledgegroup.org">www.theknowledgegroup.org</a> , October 2016.
ABA National Symposium	Faculty Panelist, "Ethical Considerations in Settling Class Actions," New Orleans, LA, March 2016.
S.F. Banking Attorney Assn.	Speaker, "How a Class Action Notice can Make or Break your Client's Settlement," San Francisco, CA, May 2015.
Perrin Class Action Conf.	Faculty Panelist, "Being Media Relevant, What It Means and Why It Matters – The Social Media Evolution: Trends, Challenges and Opportunities," Chicago, IL May 2015.
Bridgeport Continuing Ed.	Speaker, Webinar "Media Relevant in the Class Notice Context." July, 2014.

Bridgeport Continuing Ed.	Faculty Panelist, "Media Relevant in the Class Notice Context." Los Angeles, California, April 2014.
CASD 5 <sup>th</sup> Annual	Speaker, "The Impact of Social Media on Class Action Notice." Consumer Attorneys of San Diego Class Action Symposium, San Diego, California, September 2012.
Law Seminars International	Speaker, "Class Action Notice: Rules and Statutes Governing FRCP (b)(3) Best Practicable... What constitutes a best practicable notice? What practitioners and courts should expect in the new era of online and social media." Chicago, IL, October 2011. <b>*Voted by attendees as one of the best presentations given.</b>
CASD 4 <sup>th</sup> Annual	Faculty Panelist, "Reasonable Notice - Insight for practitioners on the FJC's <i>Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide</i> . Consumer Attorneys of San Diego Class Action Symposium, San Diego, California, October 2011.
CLE International	Faculty Panelist, Building a Workable Settlement Structure, CLE International, San Francisco, California May, 2011.
CASD	Faculty Panelist, "21 <sup>st</sup> Century Class Notice and Outreach." 3 <sup>rd</sup> Annual Class Action Symposium CASD Symposium, San Diego, California, October 2010.
CASD	Faculty Panelist, "The Future of Notice." 2 <sup>nd</sup> Annual Class Action Symposium CASD Symposium, San Diego California, October 2009.
American Bar Association	Speaker, 2008 Annual Meeting, "Practical Advice for Class Action Settlements: The Future of Notice In the United States and Internationally – Meeting the Best Practicable Standard." Section of Business Law Business and Corporate Litigation Committee – Class and Derivative Actions Subcommittee, New York, NY, August 2008.
Women Lawyers Assn.	Faculty Panelist, Women Lawyers Association of Los Angeles "The Anatomy of a Class Action." Los Angeles, CA, February, 2008.
Warranty Chain Mgmt.	Faculty Panelist, Presentation Product Recall Simulation. Tampa, Florida, March 2007.
Practicing Law Institute.	Faculty Panelist, CLE Presentation, 11 <sup>th</sup> Annual Consumer Financial Services Litigation. Presentation: Class Action Settlement Structures – Evolving Notice Standards in the Internet Age. New York/Boston (simulcast), NY March 2006; Chicago, IL April 2006 and San Francisco, CA, May 2006.
U.S. Consumer Product Safety Commission	Ms. Finegan participated as an invited expert panelist to the CPSC to discuss ways in which the CPSC could enhance and measure the recall process. As a panelist, Ms Finegan discussed how the CPSC could better motivate consumers to take action on recalls and how companies could scientifically measure and defend their outreach efforts. Bethesda, MD, September 2003.

Weil, Gotshal & Manges	Presenter, CLE presentation, "A Scientific Approach to Legal Notice Communication." New York, June 2003.
Sidley & Austin	Presenter, CLE presentation, "A Scientific Approach to Legal Notice Communication." Los Angeles, May 2003.
Kirkland & Ellis	Speaker to restructuring group addressing "The Best Practicable Methods to Give Notice in a Tort Bankruptcy." Chicago, April 2002.
Georgetown University Law	Faculty, CLE White Paper: "What are the best practicable methods to Center Mass Tort Litigation give notice? Dispelling the communications myth – A notice Institute disseminated is a notice communicated," Mass Tort Litigation Institute. Washington D.C.
American Bar Association	Presenter, "How to Bullet-Proof Notice Programs and What Communication Barriers Present Due Process Concerns in Legal Notice," ABA Litigation Section Committee on Class Actions & Derivative Suits. Chicago, IL, August 6, 2001.
McCutchin, Doyle, Brown	Speaker to litigation group in San Francisco and simulcast to four other McCutchin locations, addressing the definition of effective notice and barriers to communication that affect due process in legal notice. San Francisco, CA, June 2001.
Marylhurst University	Guest lecturer on public relations research methods. Portland, OR, February 2001.
University of Oregon	Guest speaker to MBA candidates on quantitative and qualitative research for marketing and communications programs. Portland, OR, May 2001.
Judicial Arbitration & Mediation Services (JAMS)	Speaker on the definition of effective notice. San Francisco and Los Angeles, CA, June 2000.
International Risk Management Institute	Past Expert Commentator on Crisis and Litigation Communications. <a href="http://www.irmi.com">www.irmi.com</a> .
The American Bankruptcy Institute Journal (ABI)	Past Contributing Editor – Beyond the Quill. <a href="http://www.abi.org">www.abi.org</a> .

**BACKGROUND**

Ms. Finegan's past experience includes working in senior management for leading Class Action Administration firms including The Garden City Group (GCG) and Poorman-Douglas Corp., (EPIQ). Ms. Finegan co-founded Huntington Advertising, a nationally recognized leader in legal notice communications. After Fleet Bank purchased her firm in 1997, she grew the company into one of the nation's leading legal notice communication agencies.

Prior to that, Ms. Finegan spearheaded Huntington Communications, (an Internet development company) and The Huntington Group, Inc., (a public relations firm). As a partner and consultant, she has worked on a wide variety of client marketing, research, advertising, public relations and Internet programs. During her tenure at the Huntington Group, client projects included advertising (media planning and buying), shareholder meetings, direct mail, public relations (planning, financial communications) and community outreach programs. Her past client list includes large public and privately held companies: Code-A-Phone Corp., Thrifty-Payless Drug Stores, Hyster-Yale, The Portland Winter Hawks Hockey Team, U.S. National Bank, U.S. Trust Company, Morley Capital Management, and Durametal Corporation.

Prior to Huntington Advertising, Ms. Finegan worked as a consultant and public relations specialist for a West Coast-based Management and Public Relations Consulting firm.

Additionally, Ms. Finegan has experience in news and public affairs. Her professional background includes being a reporter, anchor and public affairs director for KWJJ/KJIB radio in Portland, Oregon, as well as reporter covering state government for KBZY radio in Salem, Oregon. Ms. Finegan worked as an assistant television program/promotion manager for KPDX directing \$50 million in programming. She was also the program/promotion manager at KECH-22 television.

Ms. Finegan's multi-level communication background gives her a thorough, hands-on understanding of media, the communication process, and how it relates to creating effective and efficient legal notice campaigns.

### **MEMBERSHIPS, PROFESSIONAL CREDENTIALS**

**APR** Accredited. Universal Board of Accreditation Public Relations Society of America

- **Member of the Public Relations Society of America**
- **Member Canadian Public Relations Society**

#### **Board of Directors - Alliance for Audited Media**

Alliance for Audited Media ("AAM") is the recognized leader in cross-media verification. It was founded in 1914 as the Audit Bureau of Circulations (ABC) to bring order and transparency to the media industry. Today, more than 4,000 publishers, advertisers, agencies and technology vendors depend on its data-driven insights, technology certification audits and information services to transact with trust.

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### **SOCIAL MEDIA**

**LinkedIn:** [www.linkedin.com/in/jeanne-finegan-apr-7112341b](http://www.linkedin.com/in/jeanne-finegan-apr-7112341b)

# **EXHIBIT 4**

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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS**

ARMSTRONG, *ET AL.*,

Plaintiffs,

v.

KIMBERLY-CLARK CORP.,

Defendant.

**CLASS ACTION**

Case No. 3:20-CV-3150

**DECLARATION ON BEHALF OF  
AMAZON.COM, INC. REGARDING  
DIRECT NOTICE PROCESS**



1 I, Sarah Arpin hereby declare as follows:

2 1. I am over the age of 18 years. I am a Litigation Paralegal at Amazon.com, Inc.  
3 (“**Amazon**”). My responsibilities include investigating, responding to, and managing lawsuits and  
4 other legal matters involving Amazon. I make this declaration based on knowledge gained as an  
5 employee of Amazon, information collected by other Amazon employees and made available to me,  
6 and through my review of Amazon’s records kept, maintained, and relied upon in ordinary course  
7 of business. I am informed and believe that the facts stated in this declaration are true.

8 2. Amazon received a subpoena from Plaintiffs in the above-captioned matter seeking,  
9 among other things, the production of name and contact information for purchasers of certain  
10 Recalled Products<sup>1</sup> (the “**Products**”) -- for the purpose of providing notice of a class action  
11 settlement.

12 3. Amazon timely served objections to Plaintiffs’ subpoena.

13 4. On numerous occasions in class action cases, Amazon has provided direct notices to  
14 its own customers, via email. Amazon prefers to do so to avoid customer confusion and to avoid  
15 unnecessarily disclosing personally identifying customer information -- including physical  
16 addresses, e-mail addresses, and customer purchase history -- to third parties. *See e.g., In re*  
17 *Midwestern Pet Foods Marketing Sales Practices and Product Liability Litigation*, Case No. 3:21-  
18 *cv-00007-RLY-MPB* (S.D. Cal.), *Apaliski, et al. v. Molekule, Inc.*, Case No. 20-1548-RGA (D.  
19 Del.), *Shin et al. v. Plantronics, Inc.*, Case No. 5:18-cv-05626-NC (N.D. Cal.), *Bechtel et al. v.*  
20 *Fitness Equipment Services, LLC dba Sole Fitness*, Case No. 1:19-cv-00726 (S.D. Ohio), and *In re*  
21 *All-Clad Metal Crafters LLC Cookware Marketing and Sales Practices Litigation*, MDL No. 2988,  
22 Master Case No. 2:21-cv-491-NR (W.D. Penn.).

23 5. Amazon has identified 1,080,663 customers who received recall notices associated  
24 with the Products (the “**Customers**”).

25 6. As discussed with Plaintiffs’ counsel, in exchange for a cost shifting payment of  
26 \$15,000 to account for paralegal time and burden, Amazon is willing to prepare customer data, send  
27

28 <sup>1</sup> “Recalled Products” is defined as Cottonelle Flushable Wipes-branded products manufactured between February 7, 2020, and September 14, 2020, that were subject to a manufacturer recall by the Kimberly-Clark Corporation.



1 an agreed form of notice to the Customers via email, and provide a declaration regarding noticing  
2 results (upon request).

3 7. The successful delivery rate for Amazon-provided direct email notice typically exceeds  
4 99%.

5 I declare under penalty of perjury under the laws of the United States of America that the  
6 foregoing is true and correct, and this declaration was executed this 21st day of September 2023, in  
7 Seattle, Washington.

8 By:

DocuSigned by:  
*Sarah Arpin*  
84583D2B2CC8462

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10 Sarah Arpin  
Litigation Paralegal

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

MELISSA ARMSTRONG, *et al.*, individually  
and on behalf of other similarly situated  
persons,

Plaintiffs,

v.

KIMBERLY-CLARK CORPORATION,

Defendant.

Civil Action No. 3:20-CV-3150-M  
LEAD CASE

(Consolidated With Civil Action No. 3:21-  
CV-01484-M)

**ORDER PERMITTING ISSUANCE OF NOTICE  
OF PROPOSED CLASS ACTION SETTLEMENT**

Before the Court is Plaintiffs' Unopposed Motion for Preliminary Approval and to Direct Notice of Proposed Settlement to the Class (Doc. \_\_). The Parties propose a Settlement of this Action in accordance with a Settlement Agreement dated September 22, 2023 (the "Agreement"), which, together with the Exhibits to the Agreement, sets forth the terms and conditions for a proposed Settlement of this Action and for a dismissal of the Action with prejudice.<sup>1</sup> The Court hereby GRANTS the motion and further orders as follows:

1. Jurisdiction. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2), and personal jurisdiction over the Parties. Additionally, venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2).

2. Giving Notice of the Settlement to the Class is Justified. Pursuant to Federal Rule of Civil Procedure 23(e)(1)(A), the Court finds that it has sufficient information to enable it to determine whether to direct notice of the proposed Settlement to the Settlement Class. The Court

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<sup>1</sup> All defined terms in this order have the same meanings ascribed to them in the Agreement.

thus first considers the fairness, reasonableness, and adequacy of the Settlement under Rule 23(e)(1)(B)(i) and (e)(2).

3. First, the Court finds that the Class Representatives and Proposed Class Counsel have adequately represented the Settlement Class. Proposed Class Counsel are highly experienced in complex class actions and data breach litigation, and the Class Representatives' interests align with those of the Settlement Class Members, as they all allege the same injury: economic losses stemming from their purchase of recalled lots of Cottonelle Flushable Wipes.

4. Next, the Court finds that the Settlement is the result of adversarial, arm's-length, informed, and non-collusive negotiations between the Parties. The Parties pursued adversarial litigation for several years prior to reaching the Settlement, and participated in four, full-day mediation sessions guided by the Honorable Justice Deborah Hankinson (Ret.) acting as mediator, which further supports the finding that the Settlement was negotiated at arm's-length.

5. Further, the relief provided to the Settlement Class Members under the Settlement is adequate, taking into account the substantial risks of continued litigation. The Settlement requires Kimberly-Clark to pay a non-reversionary amount of at least \$6 million in new dollars, and up to \$13.5 million, to pay valid claims to Settlement Class Members who purchased recalled Cottonelle Flushable Wipes. Together with the \$4 million Kimberly-Clark previously paid as part of its refund program, the Settlement will ensure that at least \$10 million, and up to \$17.5 million, will be spent in connection with reimbursing customers who purchased recalled lots of Cottonelle Flushable Wipes.

6. In addition, the proposed method for distributing relief to the Settlement Class Members is adequate and effective. For Settlement Class Members whose contact information could be obtained via subpoena, notice will be provided directly via email or U.S. Mail. Notice

will also be provided by publication that will include display banner ads that target Cottonelle product purchasers, keyword search advertisements utilized on Google Ads, and social media advertising on platforms including Facebook, Instagram and YouTube.

7. The Settlement's provisions for awards of attorneys' fees and expenses and service payments to the Class Representatives, to be paid by Kimberly-Clark, are reasonable, subject to the Court's review of a timely filed fee application. The Settlement provides that Plaintiffs' Counsel will seek attorneys' fees and expenses in an amount not to exceed \$3,650,000, and that Kimberly-Clark shall pay any award of attorneys' fees and expenses separately from the amounts allocated to pay valid claims (provided, however, that if the amount payable for approved Claims is less than the Minimum Settlement Amount, Kimberly-Clark shall receive a credit towards its other obligations: first to Notice and Administration Expenses, and second to attorneys' fees and expenses). The Settlement also provides that Class Counsel will seek service awards for the Settlement Class Representatives in the amount of \$2,500.00 each. As these awards do not diminish the recovery available to the Settlement Class Members, the Settlement's provision for these awards supports a finding that the Court will likely be able to approve the Settlement. Further, the proposed Settlement treats all Settlement Class Members equitably relative to each other.

8. The Court thus finds that it will likely be able to certify the following class for settlement purposes only:

All persons in the United States and United States territories who purchased recalled lots of Cottonelle Flushable Wipes ("Wipes") between February 7, 2020 and December 31, 2020 for personal use and not for resale, and any persons residing in the same household.<sup>2</sup>

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<sup>2</sup> Excluded from the Settlement Class are: (1) Kimberly-Clark, its subsidiaries, parent companies, successors, predecessors, and any entity in which Kimberly-Clark or its parents have a controlling interest and their current or former officers, directors, and employees; (2) the Court and its officers and employees; and (3) any Settlement Class Members who submit a valid Request for Exclusion on or before the Opt-Out Deadline.

9. Settlement Class Representatives. For purposes of the Settlement only, the Court finds and determines, pursuant to Rule 23(a) of the Federal Rules of Civil Procedure, that plaintiffs identified in the Settlement Agreement (“Settlement Class Representative”) will fairly and adequately represent the interests of the Settlement Class in enforcing their rights in the Action and appoints them as Settlement Class Representatives. The Court preliminarily finds that they are similarly situated to absent Settlement Class Members and are therefore typical of the Settlement Classes, and that they will be adequate class representatives.

10. Class Counsel. For purposes of the Settlement, the Court appoints J. Austin Moore of Stueve Siegel Hanson LLP; Joshua L. Hedrick of Hedrick Kring Bailey PLLC; Michael R. Reese of Reese LLP; and Jordan S. Palatiello of Lewis Johns Avallone Aviles, LLP as Interim Class Counsel pursuant to Federal Rule of Civil Procedure 23(g)(3) to act on behalf of the Settlement Class Representatives and the Settlement Class pending final approval of the Settlement.

11. Settlement Administrator. The Court appoints Kroll Settlement Administration, LLC as Settlement Administrator to administer the Notice Plan and the processing of claims. The Court directs that the Settlement Administrator effectuate the Settlement Agreement in coordination with counsel for the Parties, subject to the jurisdiction and oversight of this Court.

12. Notice Plan. The Notice Plan submitted with the Motion to for Preliminary Approval and to Direct Notice of Proposed Settlement to the Class (Doc. \_\_) satisfies the requirements of Federal Rule of Civil Procedure 23 and is thus approved. Non-material modifications to the notices may be made without further order of the Court.

The Court finds that the proposed form, content, and method of giving notice to the Settlement Class as described in the Notice Plan: (a) constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated, under the circumstances, to apprise Class

Members of the pendency of the Action, the terms of the proposed Settlement, and their rights under the proposed Settlement, including their rights to object to or exclude themselves from the proposed Settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to Class Members; and (d) satisfy the requirements of Federal Rule of Civil Procedure 23, the constitutional requirement of due process, and any other legal requirements. The Court further finds that the notices are written in plain language, use simple terminology, and are designed to be readily understandable by Settlement Class Members.

The Settlement Administrator and the Parties are directed to carry out the Notice Plan in conformance with the Settlement Agreement and to perform all other tasks that the Settlement Agreement requires.

13. Class Action Fairness Act Notice. Within (10) days after the filing of the Motion for Preliminary Approval and to Direct Notice of Proposed Settlement to the Class (Doc. \_\_), the Settlement Administrator shall serve or cause to be served a notice of the proposed Settlement on appropriate officials in accordance with the requirements under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715(b).

14. Final Approval Hearing. A hearing will be held by this Court in the Courtroom of the Honorable Barbara M. G. Lynn, United States District Court for the Northern District of Texas, Courtroom 1570, 1100 Commerce Street, Dallas, Texas 75242, at \_\_\_\_\_ .M. on \_\_\_\_\_, 202\_ (“Final Approval Hearing”) to determine, among other things, whether: (a) this matter should be finally certified as a class action for settlement purposes pursuant to Fed. R. Civ. P. 23(b)(3) and (e); (b) the Settlement should be approved as fair, reasonable and adequate, and finally approved pursuant to Fed. R. Civ. P. 23(e); (c) this case should be dismissed with prejudice pursuant to the terms of the Agreement; (d) Settlement Class Members should be bound

by the releases set forth in the Agreement; (e) the application for Class Counsel's Fees and Expenses should be approved pursuant to Fed. R. Civ. P. 23(h); and (f) the application for Plaintiffs' Service Awards should be approved.

15. Exclusions and Objections. To validly be excluded from the Settlement, Settlement Class Members wishing to exclude themselves or "opt-out" of the Settlement must submit a Request for Exclusion to the Settlement Administrator postmarked no later than forty (40) days after the Notice Date. The Request for Exclusion must include the name of the proceeding, the individual's full name, current address, personal signature, and the words "Request for Exclusion" or a comparable statement that the individual does not wish to participate in the Settlement at the top of the communication. If the opt-out is untimely or otherwise fails to comply with any of the provisions for a valid opt-out, it shall not be considered a valid opt-out.

16. All those in the Settlement Class who do not opt-out and exclude themselves shall be bound by the terms of the Settlement, including the Release as outlined in the Settlement, upon entry of the Final Judgment.

17. Settlement Class Members who wish to comment on or object to the Settlement may do so by submitting written objections to the Settlement Administrator postmarked no later than forty (40) days after the Notice Date as specified in the Notice.

18. To be valid, an objection must include: (a) the name of the proceedings; (b) the Settlement Class Member's full name, current mailing address, and telephone number; (c) a statement of the specific grounds for the objection, as well as any documents supporting the objection; (d) a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (e) the identity of any attorneys representing the objector; (f) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to

appear at the Final Approval Hearing; and (g) the signature of the Settlement Class Member or the Settlement Class Member's attorney.

19. In accordance with the procedures outlined herein and in the class Notice, any Settlement Class Member who fails to follow these procedures shall be deemed to have waived any objection, shall not be permitted to object to the Settlement, and shall be precluded from seeking any review of the Settlement and/or the Final Judgment by appeal or other means.

20. Continuance of Hearing. The Court reserves the right to adjourn or continue the Final Approval Hearing and related deadlines without further mailed notice to the Settlement Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the website maintained by the Settlement Administrator. The Court may approve the Settlement, with such modifications as may be agreed by the Parties, if appropriate, without further notice to the Settlement Class.

21. Claimants. Settlement Class Members who submit within sixty (60) days of the Notice Date a valid claim form approved by the Settlement Administrator may qualify to receive Settlement benefits. Any such Settlement Class Member who does not submit a timely claim form in accordance with this Order shall not be entitled to receive such benefits but shall nevertheless be bound by any final judgment entered by the Court.

22. Final Approval Briefing. All opening briefs and supporting documents in support of a request for Final Approval of the Settlement and Settlement benefits must be filed and served at least twenty-one (21) days prior to the Final Approval Hearing. All briefing and supporting documents in support of an application for Attorneys' Fees and Expenses and Service Awards must be filed twenty-one (21) days prior to the Opt-Out and Objection Deadlines.

23. Schedule and Deadlines. The Court orders the following schedule for the specified



actions and further proceedings:

EVENT	TIMING
Deadline for Settlement Administrator to disseminate CAFA notices	[10 days from filing of Motion for Preliminary Approval]
Deadline for the Settlement Administrator and Amazon to send Court-approved Notice to Settlement Class (“Notice Deadline”)	[45 days from entry of preliminary approval order]
Notice Date	[the later of: (1) seven days after mailing of all Notices sent by U.S. mail; (2) one day after the date by which all email Notices have been emailed; and (3) one day after the date by which the publication Notice campaign has been initiated, per Ex. 1 ¶ 2.21].
Claim Deadline	[60 days after Notice Date]
Deadline for Plaintiffs’ counsel file Fee Application	[21 days before the Opt-Out and Objection Deadlines, per Ex. 1 ¶ 12.2]
Objection Deadline	[40 days after Notice Date]
Opt-Out Deadline	[40 days after Notice Date]
Deadline for Class Counsel to file with the Court all objections served on the Settlement Administrator	[5 days after Objection Deadline]
Deadline for Plaintiffs’ counsel to file motion for final approval of settlement and responses to any timely submitted Class member objections	[21 days prior to Final Approval Hearing]
Final Approval Hearing	[Approx. 90-120 days after Notice Deadline]

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
 Barbara M. G. Lynn  
 United States District Judge