

EXHIBIT 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

D. JOSEPH KURTZ, Individually and on Behalf of All Others Similarly Situated,	:	Civil Action No. 1:14-cv-01142-PKC-RML
	:	
Plaintiff,	:	<u>CLASS ACTION</u>
	:	
vs.	:	
	:	
KIMBERLY-CLARK CORPORATION, et al.,	:	
	:	
Defendants.	:	

SETTLEMENT AGREEMENT AND GENERAL RELEASE

Representative plaintiff Dr. D. Joseph Kurtz (“Plaintiff”), on behalf of himself and all Settlement Class Members (defined below), on the one hand, and defendant Costco Wholesale Corporation (“Costco” or “Defendant”) and non-party Nice-Pak Products, Inc. (“Nice-Pak”) (collectively, the “Settling Parties”), on the other hand, hereby enter into this stipulation of settlement and general release (“Settlement Agreement”), subject to approval of the Court.

WHEREAS, Costco, along with affiliated entities, sells flushable wipes in the United States under the Kirkland Signature Moist Flushable Wipes brand name (the “Product”).

WHEREAS, Nice-Pak, which is not a party to this Action, manufactured the Product for Costco and is indemnifying Costco in this litigation.

WHEREAS, on February 21, 2014, Dr. Kurtz filed a class action complaint (the “Complaint”) against Costco and Kimberly-Clark Corporation (“Kimberly-Clark”) in the United States District Court for the Eastern District of New York (the “Court”), seeking damages and injunctive relief, asserting claims on behalf of himself and other similarly situated consumers for, *inter alia*, violations of General Business Law (“GBL”) §349, which lawsuit is currently pending as *Kurtz v. Kimberly-Clark Corp., et al.*, 1:14-cv-01142-PKC-RML (the “Action”).

WHEREAS, Plaintiff alleges in the Action that the flushability-related claims made on the labeling and packaging of the Product—including that the wipes were “flushable,” and safe for sewer or septic systems—were false, deceptive, or misleading.

WHEREAS, on March 27, 2017, the Court granted Plaintiff’s motion for class certification (the “Certification Order”), certifying a class to pursue damages and injunctive relief against Costco.

WHEREAS, on June 26, 2020, the U.S. Court of Appeals for the Second Circuit affirmed the Certification Order as to the damages class under Rule 23(b)(3), reversed the Certification

Order as to the injunctive relief class under Rule 23(b)(2), and remanded the Action to the District Court for further proceedings.

WHEREAS, notice of pendency and certification of the Action has not yet been provided to members of the certified class.

WHEREAS, the continuation of the Action would likely result in expensive and protracted litigation, appeals, and uncertainty as to outcome.

WHEREAS, Plaintiff believes the claims against Costco alleged have merit, but based on extensive discovery and motion practice, including reviewing thousands of pages of documents produced by Costco and Nice-Pak, deposing Fed. R. Civ. P. 30(b)(6) witnesses, subpoenaing third-parties, submitting numerous briefs and expert reports in support of class certification (including in the District Court and on appeal in the Second Circuit), presenting witnesses during evidentiary hearings before the Court, and Settlement Class Counsel's work with consultants who have studied flushable wipes, Plaintiff and Settlement Class Counsel are of the view that a settlement of the claims against Costco on the terms reflected in this Settlement Agreement is fair, reasonable, adequate, and in the best interests of Plaintiff and the Settlement Class.

WHEREAS, Plaintiff recognizes the tremendous time and expense that would be incurred by further litigation and the uncertainties inherent in any such litigation, including the possibilities that summary judgment will be entered against Plaintiff, and/or that Plaintiff will be unable to prove liability or damages at trial on a classwide or individual basis, and recognize that the Plaintiff's and the Settlement Class Members' interests would be best served by a settlement of the litigation.

WHEREAS, while Costco does not dispute that the settlement is fair and reasonable in light of the merits and risks of the case, Costco denies and continues to deny any wrongdoing or

legal liability for any alleged wrongdoing; 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 Plaintiff in the Action; and contends that neither Plaintiff nor any of the Settlement Class Members have been injured or are entitled to any relief.

WHEREAS, Costco and Nice-Pak further contend that the Product is subject to the primary jurisdiction of the U.S. Federal Trade Commission (“FTC”). As part of a two-year investigation, Nice-Pak submitted its testing methodology and results relating to its “Sigma” technology flushable wipes to the FTC to substantiate its flushability claims for that product formulation. The FTC analyzed the composition, performance, labeling, and testing of the “Sigma” product formulation and did not seek any revisions to Nice-Pak labeling relating to its flushability claims for the “Sigma” technology flushable wipes nor any subsequent product formulation. The FTC and Nice-Pak entered into and finalized a Consent Order on October 30, 2015, which Costco and Nice-Pak contend permits Costco and Nice-Pak to continue labeling, advertising, and marketing the Product as “flushable.” Plaintiff has opposed the application of the primary jurisdiction argument.

WHEREAS, to avoid the costs, disruption, and distraction of further litigation, and without admitting the validity of any allegations made by Plaintiff, or any liability with respect thereto, Costco has concluded that it is desirable to settle the claims against it, which will be dismissed and released on the terms reflected in this Settlement Agreement.

WHEREAS, the agreement reflected in this Settlement Agreement was reached after protracted, arm’s-length negotiations, including most recently mediator Michael Ungar, Esq.

WHEREAS, this Settlement Agreement supersedes and replaces the Confidential Settlement Term Sheet to which the Settling Parties previously agreed on November 18, 2022.

WHEREAS, the Settling Parties agree, subject to approval by the Court, that the claims against Costco shall be fully and finally compromised, settled, and released on the terms and conditions set forth in this Settlement Agreement.

WHEREAS, this Settlement Agreement is contingent upon the issuance by the Court of both Preliminary Approval and Final Approval. Should the Court not issue Preliminary Approval and Final Approval, the Settling Parties do not waive, and instead expressly reserve, all rights to prosecute and defend the Action as if this settlement was never reached, except as expressly set forth in Section 7.3 below.

WHEREAS, this Settlement Agreement reflects a compromise between the Settling Parties, and shall in no event be construed as or be deemed an admission or concession by any Settling 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 Defendant, and all such allegations are expressly denied by Defendant. Nothing in this Settlement Agreement shall constitute an admission of liability or be used as evidence of liability, by or against any Settling Party hereto.

NOW THEREFORE, in consideration of the promises and mutual covenants set forth herein, and of the releases and dismissals of claims described below, it is hereby STIPULATED AND AGREED, by and among the Settling Parties, through their respective attorneys, subject to approval of the Court pursuant to Fed. R. Civ. P. 23(e) and satisfaction of all the terms and conditions set forth herein, that the Plaintiff's Released Claims and Defendant's Released Claims (both defined below) shall be compromised, settled, released, and dismissed with prejudice, upon and subject to the following terms.

I. DEFINITIONS

Capitalized terms in this Agreement shall be defined as follows:

1.1 “Action” means *Kurtz v. Kimberly-Clark Corp., et al.*, 1:14-cv-01142-PKC-RML (E.D.N.Y.).

1.2 “Claims Administrator” means Gilardi or A.B. Data, or another third-party administrator agreed to by the Settling Parties in writing and approved by the Court. Class Counsel and Costco may, by agreement, substitute a different organization as Settlement Administrator, subject to approval by the Court if the Court has previously approved the Settlement preliminarily or finally. In the absence of agreement, either Settlement Class Counsel or Costco may move the Court to substitute a different organization as Settlement Administrator, upon a showing of good cause.

1.3 “Claim Filing Deadline” means the date by which a Claim Form must be received via electronic submission or United States First Class Mail to be considered timely, unless otherwise ordered by the Court. The Claim Filing Deadline shall be clearly set forth in the Long Form Notice, the Summary Notice, and the Claim Form. If the Claim Filing Deadline is on a weekend or holiday, the Claim Filing Deadline shall extend to the next business day following the weekend or holiday.

1.4 “Claim Form” means the form that Settlement Class Members who are former Costco members and/or non-members must submit to obtain Settlement Benefits, in substantially the same form as Exhibit 1 attached to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement.

1.5 “Claim Period” means the period of time during which a Settlement Class Member who is a former Costco member and/or non-member must submit a valid Claim Form to be eligible

to receive the Settlement Benefit as part of the settlement, unless otherwise ordered by the Court, which shall be for not more than sixty (60) consecutive days and commence not less than forty-five (45) days before the Final Approval hearing. If the Claim Period ends on a weekend or holiday, the Claim Period shall extend to the next business day.

1.6 “Class Notice” means the Long Form Notice and the Summary Notice, as set forth in Exhibits B1 and B2 attached hereto, respectively, and as described in the Notice Plan, attached hereto as Exhibit A.

1.7 “Class Representative Payment” means any award approved by the Court that is payable to Plaintiff to compensate him for his effort in bringing the Action and/or achieving the benefits of this settlement on behalf of the Settlement Class, as further discussed in Section 6.2.

1.8 “Complaint” means the Class Action Complaint filed in the Action.

1.9 “Court” means the United States District Court for the Eastern District of New York.

1.10 “Defendant” or “Costco” means Costco Wholesale Corporation.

1.11 “Defendant’s Released Claims” means any and all claims Costco and Nice-Pak may have against Plaintiff, Settlement Class Members, and/or Settlement Class Counsel, including claims for damages or injunctive relief arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement, or resolution of the Action, including, but not limited to, Unknown Claims.

1.12 “Defense Counsel” means the law firm of Tucker Ellis LLP.

1.13 “Effective Date” means the later of: (a) the expiration of the time to appeal the Final Judgment and Order with no appeal having been filed; (b) if any such appeal is filed, the termination of such appeal on terms that affirm the Final Judgment and Order or dismiss the appeal

with no material modification of the Final Judgment and Order; or (c) the expiration of the time to obtain any further appellate review of the Final Judgment and Order; provided, however, that a modification or reversal on appeal of the amount of the attorneys' fees and expenses awarded by the Court to Settlement Class Counsel, or the amount of any Class Representative Payment, shall not prevent this settlement from becoming final and effective if all other aspects of the Final Judgment and Order have been affirmed.

1.14 "Final Approval" means issuance of the Final Judgment and Order by the Court, substantially in the form of Exhibit D, granting final approval of this Settlement Agreement and the releases herein, as binding upon the Settling Parties.

1.15 "Final Judgment and Order" means an order by the Court, substantially in the form of Exhibit D, granting final approval of this Agreement as binding upon the Settling Parties; holding this Agreement to be final, fair, reasonable, adequate, and binding on all Settlement Class Members who have not excluded themselves; ordering that the Settlement Benefits be provided as set forth in this Agreement; ordering the releases as set forth in Section VII of this Agreement; entering judgment in this case; and retaining continuing jurisdiction over the interpretation, implementation, and enforcement of the settlement.

1.16 "Household" means, without limitation, all persons who share a single physical address.

1.17 "Long Form Notice" means the Court-approved form of notice to Settlement Class Members in substantially the same form as Exhibit B1.

1.18 "Notice Date" means the date on which the Settlement Administrator commences dissemination of the Class Notice, which shall be not less than forty-five (45) days before the Final Approval hearing, and consistent with the Preliminary Approval Order.

1.19 “Notice Plan” means the procedure for providing notice to the class, as set forth in Exhibit A.

1.20 “Objection Deadline” means twenty-one (21) calendar days before the Final Approval hearing and consistent with the Preliminary Approval Order.

1.21 “Opt-Out Deadline” means twenty-one (21) calendar days before the Final Approval hearing and consistent with the Preliminary Approval Order.

1.22 “Plaintiff” means Dr. D. Joseph Kurtz.

1.23 “Plaintiff’s Released Claims” means any and all claims, suits, debts, liens, demands, rights, causes of action, continuing prosecutions, obligations, controversies, damages, costs, expenses, attorneys’ fees, or liabilities, of any nature, whether arising under local, state, federal, or foreign law, whether by statute, regulation, contract, common law, or equity, that arise from or relate to the claims and allegations in the Complaint, including, but not limited to, Unknown Claims, and the acts, facts, omissions, or circumstances that were or could have been alleged by Plaintiff in the Action related to any wipe products (flushable and non-flushable) currently or formerly manufactured, marketed, or sold by Costco or any of its affiliates. Plaintiff’s Released Claims shall in all respects be construed as broadly as possible as to the claims asserted, consistent with all applicable law, to effect complete finality over the Action with respect to Costco. Once the settlement is approved, the Settlement Class Members will also be bound to the same release.

1.24 “Preliminary Approval” means issuance of an order, substantially in the form of Exhibit C, granting preliminary approval to this Agreement; approving notice to the Settling Class Members; and setting a hearing to consider Final Approval of the settlement and any objections thereto.

1.25 “Product” means Costco’s flushable wipes sold in the New York during the Settlement Class Period under the Kirkland Signature Moist Flushable Wipes brand.

1.26 “Released Parties” means the parties receiving a release, including Plaintiff; Settlement Class Counsel; Costco, Nice-Pak, and their present, former, and future, direct and indirect, parents, subsidiaries, affiliates, assigns, divisions, owners, predecessors, and successors, and all of their respective former, present, and future officers, agents, administrators, directors, employees, shareholders, partners, independent contractors, representatives, insurers, servants, attorneys, assignees, heirs, and executors; Defense Counsel; and all Settlement Class Members, whether specifically named herein and whether or not participating in the settlement by payment or otherwise.

1.27 “Releasing Parties” means the parties granting a release, including Plaintiff, all Settlement Class Members, Costco and Nice-Pak.

1.28 “Settlement Agreement” means this Settlement Agreement, including all exhibits hereto.

1.29 “Settlement Benefits” means the benefits provided to Settlement Class Members as set forth in Part II of this Agreement.

1.30 “Settlement Class” means all individuals over the age of 18 who reside in the United States and purchased the Product in the State of New York during the Settlement Class Period. Excluded from the Class are: (1) the Honorable Pamela K. Chen, the Honorable Robert M. Levy, the Honorable Wayne R. Anderson, mediator David Geronemus, mediator Michael Ungar, Esq., and any member of their immediate families; (2) any of Costco’s and Nice-Pak’s officers, directors, employees, or legal representatives; (3) Product purchases that have already been refunded or voided by Costco or any other retailer; (4) Product purchases that were made for

the purpose of resale, including purchases made by Costco business or commercial members; and
(5) any person who timely opts out of the Settlement Class.

1.31 “Settlement Class Counsel” means the law firm of Robbins Geller Rudman & Dowd LLP.

1.32 “Settlement Class Member” means a person who falls within the definition of the Settlement Class.

1.33 “Settlement Class Period” means the period between July 1, 2011 through May 31, 2017.

1.34 “Settlement Website” means an internet website created and maintained by the Claims Administrator for purposes of administering this Settlement Agreement. The URL of the Settlement Website shall be provided in the language of the Long-Form Notice and Summary Notice.

1.35 “Settling Parties” means Plaintiff, Costco, and Nice-Pak.

1.36 “Summary Notice” means the Court-approved form of summary notice to Settlement Class Members in substantially the same form as Exhibit B2.

1.37 “Unknown Claims” means Plaintiff’s Released Claims and Defendant’s Released Claims that any of the Releasing Parties do not know or suspect to exist in his, her, or its favor at the time of the release, which if known by him, her, or it, might have affected his, her, or its decision not to object to this settlement or the releases contained herein.

1.38 “Valid Claim” means a claim that complies with Part II of this Settlement.

1.39 The plural of any term defined herein includes the singular, and vice versa.

II. SETTLEMENT STRUCTURE, BENEFITS AND CLAIMS ADMINISTRATION

2.1 Every Settlement Class Member shall have the right to receive, or submit a claim for, Settlement Benefits consistent with the procedures set forth below.

2.2 For Settlement Class Members who currently maintain a Costco membership, Costco and Nice-Pak will identify Settlement Class Members and the number of Product units purchased during the Settlement Class Period using available data on Costco memberships and transactions. Costco and/or Nice-Pak will issue automatic payments via check to the mailing address on file with Costco to all Settlement Class Members who currently maintain memberships with Costco and who do not opt-out of the settlement. Costco and Nice-Pak shall also have the right (but not the obligation) to allow Settlement Class Members to elect to receive their payments by direct bank deposit or electronic transfer (*e.g.*, PayPal, Venmo and/or Zelle) and if such election is made, shall pay the Valid Claims of such Settlement Class Members through the method so elected.

2.3 For Settlement Class Members who do not currently maintain Costco memberships, Costco and Nice-Pak will use best efforts to identify those Settlement Class Members using available data on Costco memberships and transactions. The Claims Administrator will then use best efforts to identify the up-to-date contact information for Settlement Class Members who do not currently maintain Costco memberships. Upon receiving notice of the settlement (*see infra* Sections 4.1–4.5), Settlement Class Members will be prompted to provide certain information and answer certain agreed upon questions that verify claim validity in connection with submitting a Claim Form. The Claims Administrator will determine whether the claims are valid. At the election of the Settlement Class Member, a Claim Form (in substantially the same form as Exhibit 1 attached to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement)

may be submitted online at the Settlement Website or in paper form via first-class mail. Claim Forms must be mailed such that they are received by the Claims Administrator (not just postmarked) or submitted online no later than the Claim Filing Deadline. Claim Forms received or submitted online after that date will not be Valid Claims, unless otherwise ordered by the Court and/or for good cause shown. The Claims Administrator will track Claim Forms with unique security identifiers or control numbers issued to Settlement Class Members who seek to file a claim.

2.4 On the Claim Form, the Settlement Class Member must certify the truth and accuracy of the following under penalty of perjury, including by signing the Claim Form physically or by e-signature, or the claim will not be considered a Valid Claim by the Claims Administrator:

- (a) The Settlement Class Member's name and physical address;
- (b) That all information provided on the Claim Form is truthful, accurate, and complete;
- (c) The Settlement Class Member's email address, if the Settlement Class Member elects to provide that information;
- (d) The number of packages of the Product purchased during the Settlement Class Period;
- (e) The number of packages of the Product purchased during the Settlement Class Period that have been refunded or voided by Costco or any other retailer; and
- (f) That the claimed purchases were not made for purposes of resale.

For avoidance of doubt, the Claims Administrator may request and/or require Settlement Class Members to provide additional information on the Claim Form to facilitate the identification of Valid Claims, as well as fraudulent or otherwise invalid claims, and/or to cure a deficiency or

infirmity in the Claim Form. Any deficiency or infirmity in the Claim Form must be cured within twenty (20) calendar days of the Settlement Class Member receiving notice of such deficiency or infirmity in the Claim Form. Claim Forms may not be submitted *en masse*, by a third-party, or with the Claim Forms of any other Settlement Class Member.

2.5 Each Settlement Class Member who currently maintains a Costco membership and who does not opt out of the settlement, and each Settlement Class Member who does not currently maintain a Costco membership but submits a Valid Claim, shall receive a payment of one dollar and thirty cents (\$1.30) for each Product unit purchased during the Settlement Class Period, regardless of the price the Settlement Class Member paid for the Product or the number of wipes contained in each package, subject to the following: (i) a minimum of seven dollars and fifty cents (\$7.50) will be paid to each Settlement Class Member, regardless of the number of Product units purchased by that Settlement Class Member, (ii) a maximum of fifty-five dollars and ninety cents (\$55.90) (*i.e.*, a maximum of 43 Product units) shall be paid to any one Household for such purchases, and (iii) only one claim may be submitted per Household (Household shall be determined based on residential address). Settlement Class Members will be eligible to receive their settlement sums regardless of whether their claims are corroborated by proofs of purchase. All uncashed, unclaimed, or undeliverable checks will revert back to Costco and Nice-Pak and there will be no interest assessed on payments made to Settlement Class Members.

2.6 Costco and Nice-Pak will fund up to, but not in excess of, \$2 million for the relief to Settlement Class Members, inclusive of Settlement administration costs. If the Valid Claims exceed \$2 million including Settlement administration costs, the Claims Administrator shall fulfill all Valid Claims on a *pro rata* basis so that the total amount of payments and administration costs does not exceed \$2 million. The \$2 million cap is separate and apart from, and shall not be affected

in any way by, the amount ultimately paid by Costco and Nice-Pak for any award of attorneys' fees and expenses, and any Class Representative Payment.

2.7 The Claims Administrator shall be responsible for providing notice to the class members, processing Claim Forms and administering the Settlement Website, opt-out process, and Settlement Benefits claims process described herein, while Costco and Nice-Pak shall be responsible for administering automatic payments to current Costco members. The Claims Administrator shall use industry standard efforts to validate claims. The Claims Administrator shall use adequate and customary procedures and standards to prevent the payment of fraudulent claims and pay only Valid Claims. The Claims Administrator will approve Valid Claims and issue payment pursuant to the Settlement Agreement and may reject claims that are invalid or evidence fraud. The determination of the validity of all claims shall occur within 30 days of the end of the Claim Period, except where a corrected claim is timely submitted in which case the determination of the validity of the corrected claim shall occur within 30 days of its submission. The Claims Administrator shall approve or deny all claims, and its decision shall be final, binding, and non-appealable.

2.8 The Claims Administrator and the Settling Parties (or their designated agents) shall have the right to audit claims, and the Claims Administrator may seek additional information from claimants with invalid claims that are otherwise curable in order to provide Settlement Class Members the opportunity to cure such deficiencies. Neither Plaintiff, nor Costco, nor Nice-Pak, nor their respective counsel or agents, shall have any liability whatsoever for any act or omission of the Claims Administrator.

2.9 As to claims that are denied, within thirty (30) days after the Effective Date, the Claims Administrator shall email all Settlement Class Members whose claims are denied to state

the reasons for denial, at the email address (if any) provided by the Settlement Class Member on the Claim Form. If no email address is provided by the Settlement Class Member on the Claim Form, the Claims Administrator shall not have an obligation to provide the Settlement Class Member any notification of the reasons for denial of the claim. Plaintiff's, Costco's, or Nice-Pak's choice not to audit the validity of any one or more Claim Forms shall not constitute or be construed as a waiver or relinquishment of any audit or other rights as to any other Claim Forms, individually or as a group, and similarly shall not be construed as a waiver or relinquishment by Plaintiff, Costco, or Nice-Pak as to any of its audit and other rights under the Settlement Agreement. No person shall have any claim against Plaintiff, Costco, Nice-Pak, Settlement Class Counsel, Defense Counsel, or the Claims Administrator based on any determination of a Valid Claim, or distributions or awards made in accordance with this Settlement Agreement and the exhibits hereto.

2.10 Valid Claims for Settlement Class Members who do not currently maintain a Costco membership shall be paid by the Claims Administrator by check and mailed to the address provided on the Claim Form, as updated in the National Change of Address Database. Valid Claims for Settlement Class Members who are current Costco members shall be paid by Costco and/or Nice-Pak by check and mailed to the current address on file with Costco. The Claims Administrator shall also have the right (but not the obligation) to allow Settlement Class Members to elect to receive their payments by direct bank deposit or electronic transfer (*e.g.*, PayPal, Venmo and/or Zelle) and if such election is made, may pay the Valid Claims of such Settlement Class Members through the method so elected. All Valid Claims shall be paid by the Claims Administrator within sixty (60) days after the Effective Date except that, in the event of an appeal from Final Approval that challenges only the award of attorneys' fees and expenses and/or the Class Representative Payment and does not challenge any other aspect of the settlement, all Valid

Claims shall be paid within ninety (90) days after Final Approval, unless otherwise ordered by the Court.

2.11 All settlement checks shall be subject to a one hundred fifty (150)-day void period, after which the checks shall no longer be negotiable. If a settlement check is not negotiated within this period, the Settlement Class Member shall not be entitled to any further payment under this Settlement Agreement.

2.12 No deductions for taxes will be taken from any Settlement Benefits at the time of distribution. Settlement Class Members are responsible for paying all taxes due on such Settlement Benefits. Under no circumstance shall Costco or Nice-Pak be held liable for any tax payments with respect to the Settlement Benefits, if any. All Settlement Benefit payments shall be deemed to be paid solely in the year in which such payments are actually issued. Neither Settlement Class Counsel nor Defense Counsel purport to provide legal advice on tax matters.

2.13 Other than provided in Section 6.4 herein, Costco and Nice-Pak shall bear all fees and expenses incurred by the Claims Administrator, as well as the cost of paying Valid Claims (including automatic payments to current Costco members).

III. PRELIMINARY APPROVAL

3.1 As soon as practicable after the execution of this Settlement Agreement, Settlement Class Counsel shall move for a Preliminary Approval Order, substantially in the form of Exhibit C, preliminarily approving this Settlement Agreement and this settlement as fair, reasonable, and adequate; certifying the Settlement Class for purposes of settlement only; approving Notice to the Settlement Class Members as described in Part IV below and Exhibit A hereto; preliminarily enjoining Settlement Class Members from commencing or prosecuting any action asserting any of

the Plaintiff's Released Claims; and setting a hearing to consider Final Approval of the settlement and any objections thereto.

3.2 Defense counsel may, but is not required to, file a brief in further support of preliminary approval.

IV. NOTICE, OPT OUTS, AND OBJECTIONS

4.1 Notice. No more than fourteen (14) calendar days after the Preliminary Approval Order is issued, the Claims Administrator shall establish the Settlement Website, which shall contain: (a) the Long Form Notice; (b) answers to frequently asked questions; (c) a Contact Information page that includes the address for the Claims Administrator and addresses and telephone numbers for Settlement Class Counsel; (d) this Settlement Agreement; (e) the signed order of Preliminary Approval; (f) a downloadable and online version of the Claim Form; and (g) a downloadable and online version of the form by which Settlement Class Members may opt out of the Settlement Class. The Claims Administrator shall add to the Settlement Website all other material settlement-related filings, including Plaintiff's application for attorneys' fees and expenses and Class Representative Payment, the memorandum in support of the motion for final approval, and any orders with respect to such application and motions.

4.2 The Settlement Website shall remain accessible until 180 days after all Settlement Benefits are distributed.

4.3 The Claims Administrator will give notice of the settlement to all Settlement Class Members via email, where such email addresses are available. If no current email address is available for a Settlement Class Member, Costco and Nice-Pak will give notice of the settlement to Settlement Class Members via first-class mail.

4.4 Notice shall be provided according to the Notice Plan attached hereto as Exhibit A, and substantially in the forms attached hereto as Exhibits B1 and B2, except as may be modified by the Court.

4.5 The Claims Administrator, on behalf of and solely under the supervision of Costco and Nice-Pak, shall provide notice as required by the Class Action Fairness Act, 28 U.S.C. §1715 (“CAFA”). Costco and Nice-Pak shall pay all costs of CAFA notice.

4.6 Settlement Class Counsel, Costco, and Nice-Pak shall supervise the Claims Administrator in the performance of the notice functions set forth in this Part IV, with the exception of providing CAFA notice, which Costco and Nice-Pak shall solely supervise.

4.7 At least seven (7) days before the Final Approval hearing, the Claims Administrator shall certify to the Court that it has complied with the notice requirements set forth herein.

4.8 Opt-Out Requests. If any Settlement Class Member wishes to opt-out (in other words, be excluded from) the settlement, the Class Member may do so by completing the online exclusion form at the Settlement Website or downloading and submitting the exclusion form to the Claims Administrator via first-class mail at [address]. Opt-out requests must be received by the Opt-Out Deadline or they shall not be valid. Settlement Class Members who elect to opt-out from the settlement shall not be permitted to object to or intervene in this Settlement, or to submit a claim for a Settlement Benefit. So-called “mass” or “class” opt-outs shall not be allowed. For the avoidance of doubt, any Settlement Class Member who does not timely opt-out of this settlement will be deemed a member of and will be included within the Settlement Class, and subject to the releases contained in Section VII, without any action on his or her part.

4.9 Plaintiff affirmatively supports this settlement and agrees not to opt-out of this settlement. Any such request shall be void and of no force or effect.

4.10 None of Plaintiff, Settlement Class Counsel, Costco, Nice-Pak, or Defense Counsel shall in any way encourage any Settlement Class Member to opt-out or discourage any Settlement Class Member from participating in the settlement. This section shall not restrict Settlement Class Counsel from advising Settlement Class Members consistent with counsel's duty to the Settlement Class Members.

4.11 The Claims Administrator shall deliver to the Settling Parties a copy of any requests for exclusion in a timely manner. Settlement Class Counsel shall file a list of all requests for exclusion with the Court no later than seven (7) calendar days prior to the Final Approval hearing.

4.12 Costco and Nice-Pak shall have the unilateral right to terminate the Settlement Agreement in the event that more than 3,500 individuals exclude themselves from the Settlement Class, by providing notice of termination within three (3) calendar days of delivery by the Claims Administrator of the list of individuals who made timely requests for exclusion.

4.13 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.

4.14 Objections. Any Settlement Class Member, on his or her own, or through an attorney hired at his or her own expense, may object to the terms of the settlement. Any such objection must be mailed to the Claims Administrator or Settlement Class Counsel no later than the Objection Deadline. To be effective, any such objection must be in writing and include the contents described below:

(a) The case name and number, *Kurtz v. Kimberly-Clark Corp., et al.*, 1:14-cv-01142-PKC-RML (E.D.N.Y.);

(b) The name, address, telephone number, and, if available, the email address of the person objecting, and if represented by counsel, of his/her counsel;

(c) A statement of all grounds for the objection, accompanied by any legal support for such objection;

(d) A statement as to whether he/she intends to appear at the Final Approval hearing, either with or without counsel;

(e) A statement of his/her membership in the Settlement Class, including all information required by the Claim Form;

(f) A detailed list of any other objections submitted by the Settlement Class Member, or his/her counsel, to any class actions submitted in any court, whether state or otherwise, in the United States in the previous five (5) years. If the Settlement Class Member or his/her counsel has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he/she shall affirmatively state so in the written materials provided in connection with the objection to this Settlement; and

(g) The objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation).

4.15 Any Settlement Class Member who fails to timely submit a written objection containing all the information listed in the items 4.14(a) through (g) herein shall not be permitted to object to the settlement and shall be foreclosed from seeking any review of the settlement or the terms of the Settlement Agreement by any means, including but not limited to an appeal. If any objection is received by the Claims Administrator, the Claims Administrator shall immediately forward the objection and all supporting documentation to counsel for the Settling Parties.

4.16 A Settlement Class Member who is not a current Costco member and who objects to the settlement may also submit a Claim Form on or before the Claim Filing Deadline, which shall be processed in the same way as all other Claim Forms. Likewise, a Settlement Class Member who is a current Costco Member and who objects to the settlement will also receive an automatic settlement payment pursuant to Section 2.5 above. A Settlement Class Member shall not be entitled to an extension to the Claim Filing Deadline merely because the Settlement Class Member has also submitted an objection.

V. CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS

5.1 Solely for the purpose of effectuating the settlement set forth in this Settlement Agreement and subject to Court approval, the Settling Parties consent and stipulate that: (1) a Settlement Class shall be certified in accordance with the definition of the Settlement Class set forth in this Settlement Agreement; (2) Plaintiff shall represent the Settlement Class for settlement purposes; and (3) Settlement Class Counsel shall be appointed as the attorneys for the Settlement Class.

5.2 If this Settlement Agreement fails to receive Final Approval or to be executed, or is terminated pursuant to Section 8.1 of this Settlement Agreement, then Defendant retains all rights it had immediately preceding the execution of this Settlement Agreement to object to the propriety of class certification in all other contexts and for all other purposes, and the Action will continue as if the Settlement Class had never been certified.

5.3 The fact that Defendant conditionally consented herein to certification of the Settlement Class for purposes of settlement shall not be used against Defendant by any Settling Party or non-party for any purpose in this Action or any other action, lawsuit, or proceeding of any kind whatsoever.

VI. ATTORNEYS' FEES, EXPENSES, AND CLASS REPRESENTATIVE PAYMENT

6.1 Settlement Class Counsel may apply to the Court for an award from Costco and Nice-Pak of their attorneys' fees and expenses in a total amount not to exceed \$3,000,000. The attorneys' fees and expenses awarded by the Court shall be the total obligation of Costco and Nice-Pak to pay attorneys' fees and expenses of any kind to Settlement Class Counsel in connection with the Action and this Settlement Agreement.

6.2 Plaintiff may additionally apply to the Court for a Class Representative Payment of up to \$10,000 for Dr. Kurtz as compensation for his time and effort undertaken in the Action as to Costco. Any Class Representative Payment awarded by the Court shall be the total obligation of Costco and Nice-Pak to pay money to Plaintiff in connection with the Action and this Settlement Agreement, other than amounts due to the Plaintiff for any Valid Claims submitted pursuant to Part II of this Settlement Agreement.

6.3 Settlement Class Counsel and Plaintiff 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.

6.4 Within thirty (30) calendar days of entry of the order awarding attorneys' fees and expenses and Class Representative Payment, Costco and Nice-Pak shall make an initial payment of \$250,000 of the awarded attorneys' fees and expenses and the Class Representative Payment to Settlement Class Counsel. Costco and Nice-Pak shall continue to pay \$250,000 per quarter (measuring the specific start date by adding three months to the initial payment) until the full amount of the awarded attorneys' fees and expenses is reached. Costco and Nice-Pak may accelerate and prepay some or all of the awarded attorneys' fees and expenses for any reason.

Plaintiff and Nice-Pak will execute a confession of judgment in the event of failure of performance as an assurance of payment.

VII. RELEASES

7.1 Release by Plaintiff and the Settlement Class Members

(a) Upon the Effective Date, each Settlement Class Member, as well as Plaintiff, releases and discharges Costco and Nice-Pak and their present, former, and future, direct and indirect, parents, subsidiaries, affiliates, assigns, divisions, owners, predecessors, and successors, and all of their respective former, present, and future officers, agents, administrators, directors, employees, shareholders, partners, independent contractors, representatives, insurers, servants, attorneys, assignees, heirs, and executors, and Defense Counsel, of and from all Plaintiff's Released Claims, including Unknown Claims, provided, however, that Plaintiff's Released Claims shall not include any claims to enforce the terms of this Settlement Agreement.

(b) Nothing in this Section 7.1 shall operate to bar or release any claim for personal injury arising out of the use of the Product, nor shall anything in this Section 7.1 operate to bar any defense, cross-claim, or counter-claim in any action initiated by any of the Released Parties against any Settlement Class Member.

(c) Upon entry of the Preliminary Approval Order, pending determination of whether the settlement shall receive Final Approval, Plaintiff and all Settlement Class Members are barred and enjoined from commencing, prosecuting, instigating, assisting, or in any way participating in the commencement or prosecution of any action asserting any of Plaintiff's Released Claims, either directly, representatively, derivatively, or in any other capacity, against any of the Released Parties.

7.2 Release by Costco and Nice-Pak. Upon the Effective Date, Costco, Nice-Pak and their subsidiaries and affiliates, and all of their respective officers and employees, release and forever discharge Plaintiff, the Settlement Class Members, and Settlement Class Counsel from all Defendant's Released Claims, including claims arising from or relating to the institution, prosecution, or settlement of the claims against Costco and Nice-Pak and any defenses or compulsory counterclaims Costco and Nice-Pak has or may have to the claims in the Complaint or Plaintiff's and the Settlement Class's settlement of the claims, except that Defendant's Released Claims shall not include any claims to enforce the terms of this Settlement Agreement.

7.3 No Admission of Liability. This Settlement Agreement reflects, among other things, the compromise and settlement of disputed claims among the Settling Parties hereto, and neither this Settlement Agreement nor the releases given herein, nor any consideration therefor, nor any actions taken to carry out this Settlement Agreement are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or the validity of any claim, or defense, or of any point of fact or law (including but not limited to matters respecting class certification) on the part of any Settling Parties. Costco and Nice-Pak expressly deny the allegations of the 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 Released Parties, or be offered or received in evidence as an admission, concession, presumption, or inference of any wrongdoing by the Released Parties in any proceeding between the Settling Parties, other than such proceedings as may be necessary to consummate, interpret, or enforce this Settlement Agreement or for Costco or Nice-Pak to pursue insurance coverage for the Action and for the Settling Parties' obligations under this Settlement Agreement. Similarly, 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 weakness or infirmity of any claim asserted in the Complaint by Plaintiff in any proceeding, other than such proceedings as may be necessary to consummate, interpret, or enforce this Settlement Agreement.

VIII. WITHDRAWAL OR TERMINATION

8.1 The Settling Parties shall each have the right to terminate this Settlement Agreement, except with respect to subparagraphs (c) and (h) below for which only Defendant, in the exercise of its sole discretion, shall have the right to terminate this Settlement, by providing written notice of their election to do so to the other within thirty (30) days of:

(a) the Court declining to enter the Preliminary Approval Order in substantially the form attached hereto as Exhibit C or failing to maintain preliminary approval of the Settlement Agreement in a form materially similar to the one set forth in this Settlement Agreement;

(b) the Court refusing to approve this Settlement Agreement or any material part of it;

(c) the Court requiring a notice program in addition to or in any form materially different from the Notice Plan, Long Form Notice and the Summary Notice, which are attached hereto as Exhibits A, B1 and B2;

(d) the Court materially modifying the Settlement Agreement in any manner, including, without limitation, one that increases the financial costs to Defendant, to be determined in Defendant's sole discretion;

(e) the Court declining to enter Final Approval in substantially the form attached hereto as Exhibit D or failing to maintain final approval of the Settlement Agreement in a form materially similar to the one set forth in this Settlement Agreement;

(f) in the event that the Court enters an order and final judgment in a form other than that provided above (“Alternative Judgment”) and neither of the Settling Parties elect to terminate this Settlement, the date that such Alternative Judgment is modified or reversed in any material respect by any court;

(g) this Settlement Agreement not being upheld on appeal in any material respect; and/or

(h) more than 3,500 members of the Settlement Class exclude themselves from the settlement.

8.2 This Settlement Agreement was entered into only for purposes of settlement. In the event that Preliminary Approval or Final Approval of this settlement and this Settlement Agreement does not occur for any reason, or if Final Approval is reversed on appeal, then no term or condition of this Settlement Agreement, or any draft thereof, or discussion, negotiation, documentation, or other part or aspect of the Settling Parties’ settlement discussions shall have any effect, nor shall any such matter be admissible in evidence for any purpose in the Action, or in any other proceeding; and the Action shall continue as if the settlement had not occurred. Alternatively, in the event that the Court declines to enter the Preliminary Approval order or declines to grant Final Approval (or enters any order that substantially increases the cost or burden of the settlement to Costco beyond what is set forth in this Settlement Agreement), the Settling Parties may, but are not required to, modify this Settlement Agreement. Such a modification shall be binding only if it is in writing and executed by Settlement Class Counsel and Defense Counsel.

8.3 In the event that this Settlement Agreement (including the settlement provided for herein) is not finally approved, or is terminated or cancelled, or fails to become effective for any reason whatsoever, the Action shall revert to the status as it existed prior to the date of this

Settlement Agreement, and the Claims Administrator shall return to Costco any amounts Costco and Nice-Pak had already deposited that are not required to pay for notice and administration then-completed or incurred but not yet paid, and taxes, if any, owed on the Settlement Benefits.

IX. ADDITIONAL PROVISIONS

9.1 Finality. The Settling Parties intend this settlement to be a final and complete resolution of all disputes between them with respect to the Action. The Final Judgment will contain a finding that, during the course of the Action, the Settling Parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11.

9.2 Best Efforts. Subject to the limitations expressed herein, Settlement Class Counsel and Defense Counsel shall use their best efforts to cause the Court to give Preliminary Approval to this Settlement Agreement and settlement as promptly as practicable, to take all steps contemplated by this Settlement Agreement to effectuate the settlement on the stated terms and conditions, and to obtain Final Approval of this Settlement Agreement.

9.3 Time for Compliance. If the date for performance of any act required by or under this Agreement falls on a Saturday, Sunday, or court holiday, that act may be performed on the next business day with the same effect as if it had been performed on the day or within the period of time specified by or under this Agreement. The Settling Parties reserve the right, by agreement and subject to the Court's approval if the deadline is contained in a Court order, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Settlement Agreement, without notice to Class Members except that the Claim Administrator shall ensure that such dates are posted on the Settlement Website.

9.4 Governing Law. This Settlement Agreement is intended to and shall be governed by the laws of the State of New York, without regard to conflicts of law principles.

9.5 Entire Agreement. The terms and conditions set forth in this Settlement Agreement constitute the complete and exclusive statement of the agreement between the Settling Parties hereto relating to the subject matter of this Settlement Agreement, superseding all previous negotiations and understandings, and may not be contradicted by evidence of any prior or contemporaneous agreement. The Settling Parties further intend that this Settlement Agreement constitutes the complete and exclusive statement of its terms as between the Settling Parties hereto, and that no extrinsic evidence whatsoever may be introduced in any agency or judicial proceeding, if any, involving this Settlement Agreement. Any amendment or modification of the Settlement Agreement must be in writing signed by each of the Settling Parties and their counsel. Amendments and modifications may be made without notice to the Class Members unless notice is required by law or by the Court.

9.6 Advice of Counsel. The determination of the terms of, and the drafting of, this Settlement Agreement have been by mutual agreement after negotiation, with consideration by and participation of all Settling Parties hereto and their counsel. Any presumption that uncertainties in a contract are interpreted against the party causing an uncertainty to exist is hereby waived by all Settling Parties.

9.7 Binding Agreement. This Settlement Agreement shall be binding upon and inure to the benefit of the respective heirs, successors, and assigns of the Settling Parties hereto.

9.8 No Waiver. The waiver by any Party of any provision or breach of this Settlement Agreement shall not be deemed a waiver of any other provision or breach of this Settlement Agreement.

9.9 Execution in Counterparts. This Settlement Agreement shall become effective upon its execution by all of the undersigned. The Settling Parties may execute this Settlement

Agreement in counterparts and/or by fax or electronic mail, and execution of counterparts shall have the same force and effect as if all Settling Parties had signed the same instrument.

9.10 Captions. Captions and section numbers herein are inserted merely for the reader's convenience, and in no way define, limit, construe, or otherwise describe the scope or intent of the provisions of this Settlement Agreement.

9.11 Enforcement of this Agreement. The Court shall retain jurisdiction to enforce, interpret, and implement this Settlement Agreement.

9.12 Representation by Class Counsel. Class Counsel represent that, except as to the claims subject of this Settlement Agreement, they have not been retained to file a lawsuit nor agreed to serve as co-counsel in a lawsuit against Defendant arising out of the subject of the Action.

9.13 Notices. All notices to the Settling Parties or counsel required by this Settlement Agreement shall be made in writing and communicated by mail and fax or email to the following addresses:

If to Plaintiff or Settlement Class Counsel:

ROBBINS GELLER RUDMAN & DOWD LLP
VINCENT M. SERRA
FRANCIS P. KARAM
WILLIAM A. MASSA
58 S. Service Road, Suite 200
Melville, NY 11747
Telephone: 631/367-7100
email: vserra@rgrdlaw.com
fkaram@rgrdlaw.com
wmassa@rgrdlaw.com

If to Defense Counsel:

TUCKER ELLIS LLP
KARL A. BEKENY
JENNIFER L. MESKO
NATHAN NASRALLAH
950 Main Avenue, Suite 1100

Cleveland, OH 44113
Telephone: 216/592-5000
email: karl.bekeny@tuckerellis.com
jennifer.mesko@tuckerellis.com
nathan.nasrallah@tuckerellis.com

9.14 Protective Orders. All orders and designations regarding the confidentiality of documents and information (“Protective Orders”) remain in effect, and all Settling Parties and counsel remain bound to comply with the Protective Orders, including the provision to certify the destruction of “Confidential” documents.

9.15 No Rescission on Grounds of Mistake. The Settling Parties acknowledge that they have made their own investigations of the matters covered by this Agreement to the extent they have deemed it necessary to do so. Therefore, the Settling Parties agree that they will not seek to set aside any part of this Settlement Agreement on the grounds of mistake. Moreover, the Settling Parties understand, agree, and expressly assume the risk that any fact not recited, contained, or embodied in this Settlement Agreement may turn out hereinafter to be other than, different from, or contrary to the facts now known to them or believed by them to be true, and further agree that this Settlement Agreement shall be effective in all respects notwithstanding and shall not be subject to termination, modification, or rescission by reason of any such difference in facts.

9.16 Integration of Exhibits. The exhibits to this Settlement Agreement are an integral and material part of the settlement and are hereby incorporated and made a part of this Settlement Agreement. Any presumption that uncertainties are interpreted against the drafter is hereby waived by all Settling Parties.

9.17 No Third-Party Beneficiaries. Nothing in this Settlement Agreement is intended to (nor does it) effect Kimberly-Clark, its insurers, or any of its employees, shareholders, owners, members, partners, related entities, or affiliates. Neither Kimberly-Clark nor any of its insurers,

nor any of their related entities, employees, agents, shareholders, owners, members, partners, or affiliates are intended or incidental beneficiaries to any part of this Settlement Agreement.

9.18 Publicity. Before the Effective Date, the Parties shall not publish or release any statement or information to the media or the public relating to the Parties' settlement discussions. To the extent Plaintiff, Settlement Class Counsel, Costco, Nice-Pak, or Defense Counsel make any public statements regarding the settlement of this litigation, any such statements shall be both truthful and consistent with the public record related to the approval of the Settlement Agreement. If any media outlet contacts any of the Parties or counsel for the Parties seeking information or a statement regarding the settlement or the Action, any information provided must be both truthful and consistent with the public record and terms of the settlement. Plaintiff and Settlement Class Counsel, on the one hand, and Costco, Nice-Pak, and Defense Counsel, on the other hand, shall make no statements, including statements to the press or any other public statements, that disparage each other or any Released Party regarding this Settlement Agreement or the Action or the subject matter thereof, or accuse each other or any Released Party of any wrongdoing regarding this Settlement Agreement or the Action or the subject matter thereof. Any discussions, negotiations, documents, statements, or actions relating to the settlement of this Action are prohibited from disclosure in any other case, unless that information appears as part of the public record.

IN WITNESS HEREOF the undersigned, being duly authorized, have caused this Settlement Agreement to be executed on the dates shown below and agree that it shall take effect on the last date it is executed by all of the undersigned.

APPROVED AS TO FORM:

DATED: April 25, 2023

ROBBINS GELLER RUDMAN & DOWD LLP



VINCENT M. SERRA

DATED: _____

TUCKER ELLIS LLP

KARL A. BEKENY

APPROVED AND AGREED:

DATED: April 25, 2023



DR. D. JOSEPH KURTZ

DATED: _____

COSTCO WHOLESALE CORPORATION

By: _____

Name: _____

Title: _____

DATED: _____

NICE-PAK PRODUCTS, INC.

By: _____

Name: _____

Title: _____

VINCENT M. SERRA

DATED: 4/27/2023

TUCKER ELLIS LLP



KARL A. BEKENY

APPROVED AND AGREED:

DATED: _____

DR. D. JOSEPH KURTZ

DATED: _____

COSTCO WHOLESALE CORPORATION

By: _____

Name: _____

Title: _____

DATED: _____

NICE-PAK PRODUCTS, INC.

By: _____

Name: _____

Title: _____

DATED: 4/26/2023

COSTCO WHOLESALE CORPORATION

By: [Signature]

Name: DAVE SCHMIDTGEN

Title: ASST. GM

DATED: _____

NICE-PAK PRODUCTS, INC.

By: _____

Name: _____

Title: _____

VINCENT M. SERRA

DATED: _____

TUCKER ELLIS LLP

KARL A. BEKENY

APPROVED AND AGREED:

DATED: _____

DR. D. JOSEPH KURTZ

DATED: _____

COSTCO WHOLESALE CORPORATION

By: _____

Name: _____

Title: _____

DATED: _____

NICE-PAK PRODUCTS, INC.

By: Shawn A. Smith

Name: SHAWN A. SMITH

Title: EVP & General Counsel

EXHIBIT A

SETTLEMENT WEBSITE

No more than fourteen (14) calendar days after the Preliminary Approval Order is issued, the Claims Administrator shall establish the Settlement Website, which shall contain (a) the Long Form Notice; (b) the Summary Notice; (c) answers to frequently asked questions; (d) contact information for the Claims Administrator and Settlement Class Counsel; (e) this Settlement Agreement; (f) the signed order of Preliminary Approval; (g) a downloadable and online version of the Claim Form; and (h) a downloadable and online version of the form by which Settlement Class Members may opt out of the Settlement Class. The Claims Administrator shall add to the Settlement Website all other settlement-related materials filed by the Settling Parties or the Court, including Plaintiff's application for an award of attorneys' fees and expenses and award to Plaintiff, the memorandum in support of the motion for final approval, and any orders with respect to such applications and motions.

EMAIL & MAIL NOTICE

The Claims Administrator will give notice of the settlement to all Settlement Class Members via email, where such email addresses are available. If no current email address is available for a Settlement Class Member, Costco and Nice-Pak will give notice of the settlement to Settlement Class Members via first-class mail.

TOLL-FREE INFORMATION LINE

A toll-free telephone helpline will be established and maintained by the Claims Administrator. It will be available 24 hours a day for callers to obtain information about the Settlement.

Those who call the toll-free information line or who write to the Claims Administrator may request a printed copy of the Long Form Notice and Claim Form, which the Claims Administrator shall provide by first-class mail or email.

CAFA NOTICES

Within ten (10) days after the Settlement Agreement is filed in court, the Claims Administrator shall provide the notices to the appropriate state and federal officials as required by the Class Action Fairness Act, 28 U.S.C. §1715, *et seq.* (“CAFA”).

CERTIFICATION OF COMPLIANCE

At least seven (7) days prior to the hearing on Final Approval, the Claims Administrator shall certify to the Court that it has complied with the notice requirements set forth herein.

EXHIBIT B1

CLASS ACTION SETTLEMENT NOTICE

Your legal rights are affected whether you act, or do not act. Read this notice carefully.

Attention Purchasers of Kirkland Signature Moist Flushable Wipes Between July 1, 2011 and May 31, 2017: You may be entitled to payment from a proposed class action settlement.

A federal court has authorized this notice. This is not a solicitation from a lawyer.

- A settlement (the “Settlement”) has been reached in the class action case of *Kurtz v. Kimberly-Clark Corp., et al.*, No. 1:14-cv-01142-PKC-RML (“Action”), pending in federal court in the Eastern District of New York (the “Court”).
- You may be included in a class certified by the Court for purposes of settlement (the “Settlement Class”) if you are an individual over the age of 18 who resides in the United States and who purchased in the State of New York any Kirkland Signature Moist Flushable Wipes (the “Product”), not for the purpose of resale, between July 1, 2011 and May 31, 2017.
- This Settlement will resolve claims of all Settlement Class members against Costco Wholesale Corporation (“Costco” or “Defendant”) involving the Product. The lawsuit contends that the Product was inappropriately labeled and marketed as “flushable” and safe for sewer or septic systems. Costco denies these allegations and maintains that the wipes performed as advertised.
- In connection with this Settlement, each Settlement Class member who currently maintains a Costco membership and who does not opt out of the settlement, and each Settlement Class member who does not currently maintain a Costco membership but submits a valid claim may be entitled to: one dollar and thirty cents (\$1.30) per package of Product purchased, with a minimum recovery of seven dollars and fifty cents (\$7.50) per Household, provided at least one Product package was purchased, and a maximum recovery of fifty-five dollars and ninety cents (\$55.90) per Household (“Household” means, without limitation, all persons who share a single physical address). Recovery is limited to one claim per Household, regardless of how many persons reside at an address.
- Plaintiffs’ counsel (“Class Counsel”) who brought the lawsuit will ask the Court for up to \$3,000,000 to be paid to them by Costco and non-party Nice-Pak Products, Inc. (“Nice-Pak”) as attorneys’ fees and expenses for investigating the facts, litigating the lawsuits, and negotiating the Settlement. They will additionally ask for \$10,000 for the named plaintiff, Dr. D. Joseph Kurtz (“Plaintiff”), who initially brought this lawsuit, to compensate them for taking on this litigation on behalf of the Settlement Class.
- The Settlement has been preliminarily approved by the Court. This notice summarizes the Settlement. For the precise terms and conditions of the Settlement,

EXHIBIT B1 - LONG FORM NOTICE

please: (i) see the settlement agreement, which is available at www._____.com; (ii) contact the Claims Administrator by calling 1 (____) ____-____ or writing to _____; or (iii) contact Class Counsel, Vincent M. Serra at Robbins Geller Rudman & Dowd LLP, 58 South Service Road, Suite 200, Melville, New York 11747.

- **PLEASE DO NOT CALL THE COURT OR THE COURT CLERK’S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.**

YOUR RIGHTS AND OPTIONS IN THIS SETTLEMENT		DEADLINE
SUBMIT A CLAIM FORM	<p>Submit a claim for payment online or by mail, if you do not currently maintain a Costco membership.</p> <p>Be bound by the Settlement and give up your right to sue or continue to sue Costco for the claims released by the Settlement.</p> <p>This is the only way to receive a payment from the Settlement, if you do not currently maintain a Costco membership.</p>	<p>Must be received or submitted online by [60 days after Notice Program starts]</p>
EXCLUDE YOURSELF (or “OPT OUT”)	<p>Remove yourself from the Settlement Class and receive no payment by submitting a request for exclusion (or “opt out”).</p> <p>This is the only option that allows you to bring or join another lawsuit against Costco related to the Product.</p> <p>You may not submit a claim or object to the Settlement if you exclude yourself, and will receive no payment from this Settlement if you exclude yourself.</p>	<p>Must be received by [21 days before Final Approval hearing]</p>
OBJECT OR COMMENT	<p>Write to the Court about what you do or do not like about the Settlement, the amount of attorneys’ fees and expenses, or the awards to Plaintiff.</p> <p>You may still submit a claim even if you object or comment and/or receive Settlement benefits.</p> <p>If you submit a claim and/or receive Settlement benefits, you will still be bound by the Settlement even if you object or comment.</p> <p>You cannot both request exclusion and also object.</p>	<p>Must be received by [21 days before Final Approval hearing]</p>
GO TO THE FINAL APPROVAL HEARING	<p>Ask to speak in Court about the fairness of the Settlement, the amount of attorneys’ fees, or the awards to the Plaintiff.</p> <p>You may still submit a claim and/or receive Settlement benefits, even if you go to the hearing.</p> <p>If you want your own attorney to represent you, you</p>	<p>Hearing is [Date of Final Approval hearing]</p> <p>If you want to speak, you must submit a request to speak by [21 days</p>

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	must pay for that attorney.	before Final Approval hearing]
DO NOTHING	<p>If you are a current Costco member and Settlement Class member, you will automatically receive a payment.</p> <p>If you do not currently maintain a Costco membership, you will receive no payment.</p> <p>You will release your claims, and have no right to sue later for the claims released by the Settlement.</p>	

- These rights and options—and the deadlines to exercise them—are explained in this notice. The deadlines may be moved, canceled, or otherwise modified, so please check the Settlement website at www.com regularly for updates and further details.
- The Court in charge of this lawsuit still has to decide whether to finally approve the Settlement. Settlement payments will be made only if the Court approves the Settlement and after any appeals are resolved in favor of upholding the Settlement. This can take time. Please be patient.

Final Approval Hearing

On _____, at _____, the Court will hold a hearing (the “Final Approval Hearing”) to determine: (1) whether the Settlement is fair, reasonable, and adequate and should receive final approval; (2) whether the application for an award of attorneys’ fees and expenses brought by Class Counsel should be granted; and (3) whether the application for an award to Plaintiff who brought the lawsuit should be granted. The hearing will be held in a Courtroom to be determined at the United States District Court, Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York, 11201, before the Honorable Pamela K. Chen. This hearing date may change without further notice to you. Consult the Settlement website at www.com, or the Court docket in this lawsuit at ecf.nyed.uscourts.gov (perform a case number query using 1:14-cv-01142), for updated information on the hearing date and time.

Important Dates

- _____ Objection Deadline
- _____ Exclusion Deadline
- _____ Final Approval Hearing
- _____ Claim Form Deadline

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How Do I Know If I Am Affected By The Litigation And The Settlement?

The lawsuit involves wipes labeled as “flushable” and sold under the brand name Kirkland Signature Moist Flushable Wipes. For purposes of Settlement only, the Court has certified the Settlement Class. You are a member of the Settlement Class (“Settlement Class Member”) if, between July 1, 2011 and May 31, 2017, you (a person, not a commercial entity) reside in the United States and purchased one or more units of the Product in the State of New York, not for purpose of resale.

The Settlement Class excludes: (1) the Honorable Pamela K. Chen, the Honorable Robert M. Levy, mediator David Geronemus, mediator Michael Ungar, Esq., and any member of their immediate families; (2) any of Costco’s and Nice-Pak’s officers, directors, employees, or legal representatives; (3) Product purchases that have already been refunded or voided by Costco, Nice-Pak, or any other retailer; (4) Product purchases that were made for the purpose of resale, including purchases made by Costco business or commercial members; and (5) any person who timely opts out of the Settlement Class.

If you are a Settlement Class Member, you will be bound by the Settlement and judgment in this lawsuit, unless you request to be excluded, regardless of whether you submit a claim for monetary payment.

If the Settlement does not become effective (for example, because it is not finally approved, or the approval is reversed on appeal), then this litigation will continue on behalf of purchasers in New York. Specifically, a class of people who purchased the Product in New York between February 21, 2008 and March 1, 2017 (the “Certified Class”) has already been certified by the Court. To be clear, the Certified Class is somewhat different than the Settlement Class. The New York Class is defined as “All persons and entities who purchased Kirkland Signature Flushable

EXHIBIT B1 - LONG FORM NOTICE

Wipes in the State of New York between July 1, 2011 and March 1, 2017.” Members of the Certified Class have the same rights as all Settlement Class Members, as explained in this notice, except that they will remain part of the Action even if this Settlement is not approved, as specified in the section “Special Notice for Members of the Certified Class.”

What Is The Lawsuit About?

Plaintiff asserts that labeling on the Product that stated that the Products were “flushable” and were safe for sewer or septic systems, is false or misleading, and that the Product damaged or clogged plumbing pipes, septic systems, and sewage lines and pumps. Plaintiff alleges that Costco is liable for violation of New York General Business Law §349. Plaintiff seeks to pursue his claims on behalf of himself and others who purchased the Products in New York.

Costco denies that there is any factual or legal basis for Plaintiff’s allegations. Costco contends that the labeling of the Product was truthful and not misleading, and that the Product did not cause property damage in well-maintained plumbing systems. Costco therefore denies any liability. Costco also denies that Plaintiff or any other members of the Settlement Class have suffered injury or are entitled to monetary or other relief. Costco further contends that, following a two-year investigation, the U.S. Federal Trade Commission finalized a Consent Order with Nice-Pak on October 30, 2015, which permits Costco and Nice-Pak to continue labeling, advertising, and marketing the Product as “flushable.”

The Court has not determined the merits of these arguments, or whether Plaintiff or Costco are correct.

What Does Plaintiff Seek To Recover In The Lawsuit?

The lawsuit contends that, if Costco had not engaged in the labeling, marketing, and advertising that Plaintiff challenges, the price of the Product would have been lower. Plaintiff seeks to recover, on behalf of a class of individuals who purchased the Product in New York (except for purchases made for resale), the dollar amount of the price “premium” that is attributable to the alleged misrepresentations, or statutory damages under New York General Business Law §349, and Plaintiff originally sought to pursue claims for property damage that they allegedly incurred as a result of using Costco’s flushable wipes.

Costco denies that there is any legal entitlement to a refund, damages, or any other monetary relief.

Why Is This Lawsuit Being Settled?

Class Counsel has investigated the manufacturing, marketing, labeling, and performance of the Product. Costco has produced thousands of pages of documents for review by Plaintiff's counsel. Plaintiff's counsel have taken depositions of Costco and Nice-Pak employees. The parties also have exchanged written responses to questions posed by the other party. Plaintiff's counsel have also obtained documents from third-parties, including wastewater treatment professionals and INDA (the trade association for manufacturers of flushable wipes). Plaintiff's counsel also retained two experts to evaluate the Product and the Class's damages, and have had extensive consultations with wastewater professionals. Plaintiff and his expert witnesses have been deposed. One of Plaintiff's expert witnesses submitted six separate expert declarations, and both expert witnesses and a wastewater professional provided testimony before the Court at evidentiary hearings.

Since the initiation of this litigation, Plaintiff and Costco, through their counsel, have participated in substantial settlement discussions, both formal and informal, including before a third-party mediator. This Settlement was reached following those efforts.

After taking into account the risks and costs of further litigation, Plaintiff and his counsel believe that the terms and conditions of this Settlement are fair, reasonable, adequate, and equitable, and that this Settlement is in the best interest of the Settlement Class Members. This Settlement provides immediate monetary relief to the Settlement Class without the cost, time, and expense of litigating, which can take years.

What Is The Settlement?

Costco and Nice-Pak will provide monetary payments to Settlement Class Members and to Class Counsel and Plaintiff, as described in the next sections.

What Can I Get In The Settlement?

Each Settlement Class Member who currently maintains a Costco membership and who does not opt out of the settlement, and each Settlement Class Member who does not currently maintain a Costco membership but submits a valid claim, shall receive a payment of one dollar and thirty cents (\$1.30) for each Product unit purchased during the Settlement Class Period (July 1, 2011 and May 31, 2017), regardless of the price the Settlement Class Member paid for the Product or the number of wipes contained in each package, subject to the following: (i) a minimum of seven dollars and fifty cents (\$7.50) will be paid to each Settlement Class Member, regardless of

EXHIBIT B1 - LONG FORM NOTICE

the number of Product units purchased by that Settlement Class Member; (ii) a maximum of fifty-five dollars and ninety cents (\$55.90) (*i.e.*, a maximum of 43 Product units) shall be paid to any one Household for such purchases; and (iii) only one claim may be submitted per Household (Household shall be determined based on residential address). Settlement Class Members will be eligible to receive their settlement sums regardless of whether their claims are corroborated by proofs of purchase.

There is a \$2 million cap on cash payments to Settlement Class Members, inclusive of class settlement administration costs, and thus individual cash payment amounts may be reduced *pro rata* (proportionately) so that the total amount of all payments and administration costs to Settlement Class Members does not exceed the cap.

How Do I Make A Claim?

To make a claim, if you do not currently maintain a Costco membership, you must fill out the claim form available at www. .com. You can print the claim form and mail it to the Claims Administrator at [address], or you can submit the claim form online. Claim forms must be submitted online or received, not just postmarked, by [60 days after notice plan/claim period starts]. If you currently maintain a Costco membership, you do not need to submit a claim. Costco will identify Settlement Class Members and the number of Product units purchased and issue the appropriate check to the mailing address on file.

What Does Plaintiff And Their Counsel Get?

To date, Class Counsel have not been compensated for their work on this with respect to Costco. As part of the Settlement, Class Counsel may apply to the Court to award them up to \$3,000,000.00 from Costco and Nice-Pak to pay their attorneys' fees and expenses. The Court will determine how much to award Class Counsel.

In addition, Plaintiff Dr. Kurtz may apply to the Court for an award of \$10,000. This award is designed to compensate Plaintiff for his time and effort in pursuing the lawsuit against Costco on behalf of the Settlement Class. The Court will determine how much to award Plaintiff.

Neither an award of attorneys' fees and expenses to Class Counsel nor any awards to Plaintiff will affect compensation to Settlement Class Members from the Settlement.

Plaintiff and their counsel will file a motion with the Court on or before [35 days before Final Approval hearing], in support of their applications for attorneys' fees and expenses and awards to Plaintiff. A copy of that motion will be available on the Settlement website.

EXHIBIT B1 - LONG FORM NOTICE

The Court will determine the amount of fees and expenses awarded to the attorneys, and the amount of Plaintiff's award.

What Claims Are Released By The Settlement?

This Settlement releases all "Plaintiff's Released Claims" by Settlement Class Members (whether or not they file a valid claim) against Costco and its affiliates. "Plaintiff's Released Claims" is defined in the Settlement Agreement as any and all claims, suits, debts, liens, demands, rights, causes of action, continuing prosecutions, obligations, controversies, damages, costs, expenses, attorneys' fees, or liabilities, of any nature, whether arising under local, state, federal, or foreign law, whether by statute, regulation, contract, common law, or equity, that arise from or relate to the claims and allegations in the Complaint, including, but not limited to, Unknown Claims, and the acts, facts, omissions, or circumstances that were or could have been alleged by Plaintiff in the Action related to any wipe products (flushable and non-flushable) currently or formerly manufactured, marketed, or sold by Costco or any of its affiliates. Plaintiff's Released Claims shall in all respects be construed as broadly as possible as to the claims asserted, including but not limited to all property damage, consistent with all applicable law, to effect complete finality over the Action with respect to Costco. Once the settlement is approved, the Settlement Class Members will also be bound to the same release. For further information regarding the releases, please see Section VII of the Settlement Agreement, available at www._____.com.

Can I Exclude Myself From The Settlement?

You can exclude (or "opt out") yourself from the Settlement Class if you wish to retain the right to sue Costco separately for the claims released by the Settlement. If you exclude yourself, you cannot file a claim or object to the Settlement, and will not be entitled to any monetary payments from the Settlement. You do not need to exclude yourself if you merely want to retain a right to sue for personal injury arising out of your use of the Product.

To exclude yourself, you must complete and submit the online exclusion request form at the Settlement website (www._____.com), or download and submit the online exclusion request form to the Claims Administrator via first-class mail at [address]. Exclusion requests must be made online or received (not postmarked) by mail by [21 days before Final Approval hearing].

So-called "mass" or "class" opt outs shall not be allowed.

Can I Object To or Comment on The Settlement?

You can ask the Court to deny approval of the Settlement by submitting an objection. If the Court denies approval to the entire Settlement, no Settlement payments will be made, and the lawsuit will continue. If that is what you want to happen, you must object.

You can also ask the Court to disapprove the requested payments to Plaintiff and to their counsel. Even if those payments are disapproved or adjusted, no additional money will be paid to Settlement Class Members.

You can also tell the Court what you like about the Settlement.

You can exercise any of the above options regardless of whether or not you file a claim, but not if you exclude yourself from the Settlement Class. If you exclude yourself from the Settlement Class by submitting an opt-out request, you cannot object or comment on the Settlement.

Any objection must include: (1) the case name and number, *Kurtz v. Kimberly-Clark Corp., et al.*, No. 1:14-cv-01142-PKC-RML (E.D.N.Y); (2) your name, address, and telephone number and, if available, your email address, and if you are represented by counsel, the name of your counsel; (3) a statement of all grounds for the objection, accompanied by any legal support for such objection; (4) a statement as to whether you intend to appear and be heard at the Final Approval Hearing, either with or without counsel; (5) a statement of your membership in the Settlement Class, including all information required by the claim form; (6) a detailed list of any other objections submitted by you or your counsel to any class actions submitted in any court, whether state or otherwise, in the United States in the previous five (5) years. If you and/or your counsel have not objected to any other class action settlement in any court in the United States in the previous five (5) years, you shall affirmatively state so in the written materials provided in connection with the objection to this Settlement; and (7) your signature and the signature of your duly authorized counsel or other duly authorized representative (along with documentation setting forth such representation). Failure to include this information and documentation may be grounds for overruling and striking your objection.

All written objections, requests to appear, and supporting papers must be mailed to the Claims Administrator or counsel for Plaintiff at the addresses shown on the Settlement website, who will then file all objections, requests to appear, and supporting papers with the Court.

EXHIBIT B1 - LONG FORM NOTICE

Documents must be *received*, not merely postmarked, on or before [21 days before Final Approval hearing].

You may also appear at the Final Approval Hearing, either in person or through your own counsel. If you appear through your own counsel, you are responsible for paying that counsel. To appear at the Final Approval Hearing, you need to file a written objection to the Settlement and a written request to the Court for permission to appear, which must be filed with or received by the Court before [21 days before Final Approval hearing].

When Will The Court Decide If The Settlement Is Approved?

The Court will hold a Final Approval hearing on [hearing date] to consider whether to finally approve the Settlement. The Final Approval Hearing will be held in the United States District Court, Eastern District of New York, before the Honorable Pamela K. Chen, in a Courtroom to be determined. The hearing is open to the public. However, only persons who have filed an objection and a request to appear at the hearing—due 21 days before the Final Approval Hearing—may actually address the Court. This hearing date may change without further notice to you.

Consult www._____.com or the Court docket in this lawsuit at ecf.nyed.uscourts.gov (perform a case number query using 1:14-cv-01142) for updated information on the Final Approval Hearing date and time.

Special Notice For Members Of The Certified Class

As noted above, the Certified Class is different than the Settlement Class and includes “All persons and entities who purchased Kirkland Signature Flushable Wipes in the State of New York between July 1, 2011 and March 1, 2017.” This section provides further information about the rights specific to members of the Certified Class.

All sections of this notice apply to you. You have the right to make a claim under this Settlement, object to the Settlement, or exclude yourself, just like other members of the Settlement Class. If the Settlement is not approved, or if the Effective Date does not occur for any other reason, as further explained in the Settlement Agreement, and you have not excluded yourself from the Settlement Class, the litigation will continue on your behalf as a member of the Certified Class in the Action. The Court has already appointed Plaintiff Dr. D. Joseph Kurtz and Class Counsel to represent the interests of the Certified Class.

EXHIBIT B1 - LONG FORM NOTICE

If the litigation continues, and a judgment is obtained against the Certified Class in favor of Costco, that judgment will prevent you from bringing a separate lawsuit against Costco for the claims that were or could have been litigated in this lawsuit. If the litigation continues, and a judgment is obtained against Costco in favor of the Certified Class, and you are entitled to any portion of that judgment, you will receive further notification about your rights.

How Do I Get More Information?

You can inspect many of the court documents connected with this lawsuit at www._____.com. Other papers filed in this lawsuit are available by accessing the Court docket in this lawsuit at ecf.nyed.uscourts.gov (perform a case number query using 1:14-cv-01142), or by visiting the office of the Clerk of the United States District Court, Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York, 11201, from 8:30 a.m. to 4:45 p.m., Monday through Friday, excluding federal holidays.

You can also obtain additional information by contacting the Claims Administrator through the Settlement website (www._____.com) or by calling 1 () ____ - ____ or writing to _____ or by emailing to _____.

EXHIBIT B2

**Purchasers of Kirkland Signature Moist Flushable Wipes
Between July 1, 2011 and May 31, 2017
A Proposed Class Action Settlement May Affect Your Rights**

WHO IS AFFECTED?

A settlement (the “Settlement”) has been reached in class action lawsuits involving Costco Wholesale Corporation’s (“Costco”) flushable wipes sold under the Kirkland Signature Moist Flushable Wipes brand (the “Product”). The lawsuit claims that the Product is not actually flushable. Costco denies these allegations and maintains that the Product performs as advertised. You may be included in a class certified by the Court for purposes of settlement only (the “Settlement Class”) if you purchased the Product in the State of New York between July 1, 2011 and May 31, 2017.

WHAT DOES THE SETTLEMENT PROVIDE?

Each Settlement Class Member who currently maintains a Costco membership and who does not opt out of the settlement, and each Settlement Class Member who does not currently maintain a Costco membership but submits a valid claim, shall receive a payment of one dollar and thirty cents (\$1.30) for each Product unit purchased during the Settlement Class Period (July 1, 2011 and May 31, 2017), regardless of the price the Settlement Class Member paid for the Product or the number of wipes contained in each package, subject to the following: (i) a minimum of seven dollars and fifty cents (\$7.50) will be paid to each Settlement Class Member, regardless of the number of Product units purchased by that Settlement Class Member; (ii) a maximum of fifty-five dollars and ninety cents (\$55.90) (*i.e.*, a maximum of 43 Product units) shall be paid to any one Household for such purchases; and (iii) only one claim may be submitted per Household (Household shall be determined based on residential address). Settlement Class Members will be eligible to receive their settlement sums regardless of whether their claims are corroborated by proofs of purchase. Because there is a \$2 million cap on payments to Settlement Class Members, inclusive of class settlement administration costs, depending on the number of Valid Claims, individual cash payment amounts may be reduced *pro rata* (proportionately) so that the total amount of all payments to Settlement Class Members and class settlement administration costs does not exceed the cap.

WHAT ARE MY OPTIONS?

If you are not a current Costco member, you must **submit a claim** online by [date] or by mail so that it is received (not merely postmarked) no later than [date] to receive a payment. You can **opt out of the Settlement Class** and keep your right to sue Costco on the released claims by submitting an opt-out request by [date]. The Settlement will release all claims related to Plaintiff’s contentions that Costco’s marketing, advertising, and sale of the Product was false or misleading. There is no release of claims for personal injury arising out of the use of the Product. You can also **object to the Settlement** by filing an objection by [date], which does not affect your ability to file a claim. If you opt-out, you may not submit a claim or object to the Settlement and you will receive no payment from this Settlement. For details on how to opt out, object, or to file a claim, please visit www._____.com or contact the Claims Administrator. If you **do nothing** you will not receive a payment and you will be bound by the decisions of the Court.

FINAL APPROVAL HEARING AND ATTORNEYS' FEES

On [Month Day, Year at __:__.m. ET] the Court will hold a hearing to consider whether to finally approve the Settlement. If the Settlement is approved, the attorneys for the Settlement Class will ask the Court for an award from Costco and non-party Nice-Pak Products, Inc. of up to \$3,000,000 in attorneys' fees and expenses, and a payment of \$10,000 for Plaintiff Dr. D. Joseph Kurtz. Note that the hearing date may change without further notice to you although any such change will be reflected on the Settlement website (www._____.com). You may attend the hearing, but you do not have to. Plaintiff's motion for final approval of the Settlement and Settlement Class counsel's application for an award of attorneys' fees and expenses and award to Plaintiff will be posted on the Settlement website after they are filed.

MORE INFORMATION

This is only a summary. For more information, please visit: www._____.com or contact the Claims Administrator by calling 1-____-____-____ or writing to _____, _____, _____. You may also contact Plaintiff's counsel Vincent M. Serra at Robbins Geller Rudman & Dowd LLP, 58 South Service Road, Suite 200, Melville, New York 11747. The case name is *Kurtz v. Kimberly-Clark Corp., et al.*, 1:14-cv-01142-PKC-RML (E.D.N.Y.).

EXHIBIT C

EXHIBIT C - PROPOSED ORDER GRANTING PRELIMINARY APPROVAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

_____	X	
D. JOSEPH KURTZ, Individually and on	:	Civil Action No. 1:14-cv-01142-PKC-RML
Behalf of All Others Similarly Situated,	:	
	:	<u>CLASS ACTION</u>
Plaintiff,	:	
	:	
vs.	:	
	:	
KIMBERLY-CLARK CORPORATION, et al.,	:	
	:	
Defendants.	:	
_____	X	

**[PROPOSED] ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT**

WHEREAS, the action is pending before this Court entitled *Kurtz v. Kimberly-Clark Corp., et al.*, No. 1:14-cv-01142-PKC-RML (the “Action”);

WHEREAS, Plaintiff having made application, pursuant to Federal Rule of Civil Procedure 23(e), for an order preliminarily approving a class action settlement with defendant Costco Wholesale Corporation (“Costco”) and non-party Nice-Pak Products, Inc. (“Nice-Pak,” and together with Plaintiff and Costco, the “Settling Parties”), in accordance with a settlement agreement filed with the Court on [date] (“Settlement Agreement”), which, together with the exhibits annexed thereto, sets forth the terms and conditions for a proposed settlement of the Action and for dismissal of the Action with prejudice upon the terms and conditions set forth therein (“Settlement”); and

Having considered all matters submitted to it including the complete record of the Action, and good cause appearing therefore, the Court grants preliminary approval of the Settlement and hereby finds and concludes as follows:

1. The capitalized terms used in this Order shall have the same meaning as defined in the Settlement Agreement except as otherwise expressly provided.

EXHIBIT C - PROPOSED ORDER GRANTING PRELIMINARY APPROVAL

2. **Preliminary Approval of Settlement.** The Court preliminarily approves the Settlement as within the range of possible final approval, and as meriting submission to the Settlement Class for its consideration. The Settlement Agreement was reached as a result of arm's-length negotiations between the Settling Parties and their counsel. The Settling Parties and their counsel had sufficient information to evaluate the strengths and weaknesses of the cases and to conduct informed settlement discussions. Neither the Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by the Released Persons of the truth of any of the allegations made in the Action, or of any liability, fault, or wrongdoing of any kind whatsoever on the part of the Released Persons.

3. **Conditional Certification of Class.** For purposes of the settlement only, the Court conditionally certifies the Settlement Class, which consists of all individuals over the age of 18 who reside in the United States and purchased the Product in the State of New York between July 1, 2011 and May 31, 2017. Excluded from the Class are: (1) the Honorable Pamela K. Chen, the Honorable Robert M. Levy, mediator David Geronemus, mediator Michael Ungar, Esq., and any member of their immediate families; (2) any of Costco's and Nice-Pak's officers, directors, employees, or legal representatives; (3) Product purchases that have already been refunded or voided by Costco, Nice-Pak, or any other retailer; (4) Product purchases that were made for the purpose of resale, including purchases made by Costco business or commercial members; and (5) any person who timely opts out of the Settlement Class.

4. **Claim Form and Notices.** The Court approves, as to form and content, Notices that are substantially similar to the forms attached as Exhibits B1 and B2 to the Settlement Agreement, as well as a Claim Form that is substantially similar to the form attached hereto as Exhibit 1. The Claim Form and all the notices are written in plain English and are easy to comprehend. The

EXHIBIT C - PROPOSED ORDER GRANTING PRELIMINARY APPROVAL

Settling Parties shall have discretion to jointly make non-material minor revisions to the Claim Form and Notices before publishing. Responsibility for settlement administration, including, but not limited to, notice and related procedures, shall be performed by the Claims Administrator, Costco and/or Nice-Pak subject to the oversight of the Settling Parties and this Court as described in the Settlement Agreement.

5. **Notice Plan.** The Court finds that the Settling Parties' plan for providing notice to the Settlement Class (as set forth in the Settlement Agreement and the Notice Plan attached as Exhibit A to the Settlement Agreement) is reasonably calculated to provide notice to the Settlement Class of: (a) the pendency of the Actions, (b) certification of the Settlement Class, (c) the existence and terms of the Settlement Agreement, (d) Settlement Class Members' rights to make claims, exclude themselves, or object, and (e) the matters to be decided at the Final Approval hearing, and satisfies the due process requirements of the New York and United States Constitutions, Rule 23 of the Federal Rules of Civil Procedure, and any other applicable law. The Settling Parties and the Claims Administrator shall comply with the Notice Plan attached as Exhibit A to the Settlement Agreement.

6. **Claims Administrator.** The Court designates, and approves, Gilardi or A.B. Data, or any other third-party administrator agreed to by the Settling Parties in writing and approved by the Court, to serve as Claims Administrator. Class Counsel and Costco may, by agreement, substitute a different organization as Claims Administrator, subject to approval by the Court. In the absence of agreement, either Settlement Class Counsel or Costco may move the Court to substitute a different organization as Claims Administrator, upon a showing of good cause. The Claims Administrator shall provide notice in compliance with 28 U.S.C. § 1715. As set forth in the Notice Plan, the Claims Administrator shall do the following:

EXHIBIT C - PROPOSED ORDER GRANTING PRELIMINARY APPROVAL

(a) No more than fourteen (14) calendar days after this Order is issued, the Claims Administrator shall establish the Settlement Website, which shall contain: (a) the Long Form Notice; (b) answers to frequently asked questions; (c) a Contact Information page that includes the address for the Claims Administrator and addresses and telephone numbers for Settlement Class Counsel; (d) this Settlement Agreement; (e) this Order; (f) a downloadable and online version of the Claim Form; and (g) a downloadable and online version of the form by which Settlement Class Members may opt out of the Settlement Class. The Claims Administrator shall add to the Settlement Website all other material settlement-related filings, including Plaintiff's application for an award of attorneys' fees and expenses and award to Plaintiff, the memorandum in support of the motion for final approval, and any orders with respect to such applications and motions. The Settlement Website shall remain accessible until 180 days after all Settlement Benefits are distributed.

(b) The Claims Administrator shall set up a toll-free number as further described in the Notice Plan.

7. **Final Approval hearing.** A Final Approval hearing shall be held before this Court at [] on [], 2022 [at least 95 days after the date of this Order] in a Courtroom to be determined, at the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn NY 11201, to address: (a) whether Settlement should be finally approved as fair, reasonable, and adequate, and whether the Final Approval Order should be entered; and (b) whether Class Counsel's application for an award of attorneys' fees and expenses and award to Plaintiff should be approved.

8. **Filing of Claims.** Valid and completed Claim Forms must be sent by U.S. mail such that they are received (not just postmarked) by sixty (60) days after the Claims Administrator causes the Notice Plan to be published, or submitted online by the same date. The Claims Administrator

EXHIBIT C - PROPOSED ORDER GRANTING PRELIMINARY APPROVAL

and/or Costco and/or Nice-Pak shall provide declarations to the Court, no later than seven (7) calendar days before the Final Approval hearing, regarding the number and anticipated dollar amount of claims received to date (including the number of Settlement Class Members receiving automatic payments from Costco).

9. Requests for Exclusion.

(a) Any Settlement Class Member who desires to be excluded from the Settlement Class, and therefore not be bound by the terms of the Settlement Agreement, must submit a request for exclusion to the Claims Administrator, pursuant to the instructions set forth in the Long Form Notice. The request must be submitted online or received by the Claims Administrator (not just postmarked) by _____, 2023 [21 calendar days before the Final Approval hearing].

(b) No one shall be permitted to exercise any exclusion rights on behalf of any other person, whether as an agent or representative of another or otherwise, except upon proof of a legal power of attorney, conservatorship, trusteeship, or other legal authorization, and no one may exclude other persons within the Settlement Class as a group, class, or in the aggregate. Any Settlement Class Member who elects to be excluded shall not receive any benefits of the Settlement, shall not be bound by the terms of the Settlement Agreement, and shall have no standing to object to the Settlement or intervene in the litigation.

(c) No later than fourteen (14) calendar days prior to the Final Approval hearing, the Claims Administrator shall prepare and deliver to the Settling Parties a list of the names of the Persons who, pursuant to the Long Form Notice, have excluded themselves from the Settlement Class in a valid and timely manner. Plaintiff's Counsel shall file that list with the Court no later than seven (7) calendar days prior to the Final Approval hearing. The Court retains jurisdiction to resolve any disputed exclusion requests.

EXHIBIT C - PROPOSED ORDER GRANTING PRELIMINARY APPROVAL

10. **Objections.**

(a) Any Settlement Class Member who does not submit a valid and timely request for exclusion may submit an objection to the Settlement. The written objection must satisfy the requirements described in the Long Form Notice. An objection must be received by the Claims Administrator or Settlement Class Counsel (and not just postmarked) no later than _____, 2022 [21 calendar days prior to the Final Approval hearing], or it will be rejected.

(b) Any Settlement Class Member shall have the right to appear and be heard at the Final Approval hearing, either personally or through an attorney retained at the Settlement Class Member's own expense, provided they file a request to be heard and/or objection as described in the Long Form Notice. Additionally, if the Settlement Class Member wishes to object to the Settlement at the Final Approval hearing (either personally or through counsel), the Settlement Class Member must submit a timely written objection as set forth in the prior paragraph of this Order or demonstrate good cause excusing the Objector from compliance. Immediately upon receipt of any objection, the Claims Administrator shall forward the objection and all supporting documentation to counsel for the Settling Parties. No later than _____, 2023 [14 calendar days prior to Final Approval hearing], Settlement Class Counsel shall file all such objections and supporting documentation with the Court. Any Party may submit a response to any objection to the Court by no later than _____, 2023 [7 calendar days prior to Final Approval hearing].

11. **Final Approval, Attorneys' Fees, and Class Representative Payment.** Plaintiff shall file his motion for final approval of the Settlement and Class Counsel shall file its application for any award of attorneys' fees and expenses, and award to Plaintiff, no later than _____, 2023 [35 calendar days before the Final Approval hearing], and file the reply in support of that motion and application and in response to any objection and request to intervene no later than _____, 2023

EXHIBIT C - PROPOSED ORDER GRANTING PRELIMINARY APPROVAL

[7 calendar days prior to the Final Approval hearing]. Those motions and applications and all supporting documentation shall simultaneously be posted to the Settlement Website. Defendant shall have no obligation to make a separate filing in support of the motion for final approval, but may do so if it so desires.

12. In the event that the proposed Settlement is not finally approved by the Court, or in the event that the Settlement Agreement becomes null and void or terminates pursuant to its terms, this Order and all orders entered in connection herewith shall become null and void, shall be of no further force and effect, and shall not be used or referred to for any purposes whatsoever in these cases or in any other case or controversy; in such event, the Settlement Agreement and all negotiations and proceedings directly related thereto shall be deemed to be without prejudice to the rights of any and all of the Settling Parties, who shall be restored to their respective positions as of the date and time immediately preceding the execution of the Settlement Agreement.

13. Class Representative and all Settlement Class Members are preliminarily enjoined and barred from commencing or prosecuting any action asserting any of the Plaintiff's Released Claims (which do not include personal injury claims), either directly, representatively, derivatively, or in any other capacity, whether by a complaint, counterclaim, defense, or otherwise, in any local, state, federal, or foreign court, or in any agency or other authority or forum wherever located. Any person or entity who knowingly violates such injunction shall pay the attorneys' fees and costs incurred by any Released Party as a result of the violation.

14. Counsel for the Parties are hereby authorized to utilize all reasonable procedures in connection with the administration of the Settlement that are not materially inconsistent with either this Order or the terms of the Settlement Agreement. The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to Settlement Class Members. The Final

EXHIBIT C - PROPOSED ORDER GRANTING PRELIMINARY APPROVAL

Approval hearing may, from time to time and without further notice to the Settlement Class Members, be continued by Order of the Court. However, any continuance by the Court will be noted on the Settlement Website.

15. Costco maintains all defenses to certification and this Order shall not be used as evidence or be interpreted in any way to be relevant to whether litigation classes or the previously certified classes should have been certified for class treatment.

IT IS SO ORDERED.

DATED: _____

THE HONORABLE PAMELA K. CHEN
UNITED STATES DISTRICT JUDGE

EXHIBIT 1

EXHIBIT 1 – CLAIM FORM

**MUST BE
SUBMITTED
NO LATER THAN,
MONTH X, 2023**

For Office Use Only

Class Member ID:
3100000000000

**Costco Class Action Settlement
[Downloadable] Claim Form**

To make a claim under the Settlement, if you do not currently maintain a Costco membership, you must complete this form, print it, and mail it to the address below. Alternatively, you can complete and submit the online claim form at www._____.com/claimform. All information will be kept private. Your claim form must be received, not just postmarked, by _____, 2023 [60 days after notice starts]. It will not be disclosed to anyone other than the Court, the Claims Administrator, and the Settling Parties in this case, and their counsel, and will be used only for purposes of administering this Settlement.

This Settlement involves flushable wipes sold under the Kirkland Signature Moist Flushable Wipes brand name (the “Product”). After the Settlement’s Effective Date, each Settlement Class Member who currently maintains a Costco membership and who does not opt out of the settlement, and each Settlement Class Member who does not currently maintain a Costco membership but submits a Valid Claim, shall receive a payment of one dollar and thirty cents (\$1.30) for each Product unit purchased during the Settlement Class Period, regardless of the price the Settlement Class Member paid for the Product or the number of wipes contained in each package, subject to the following: (i) a minimum of seven dollars and fifty cents (\$7.50) will be paid to each Settlement Class Member, regardless of the number of Product units purchased by that Settlement Class Member, (ii) a maximum of fifty-five dollars and ninety cents (\$55.90) (i.e., a maximum of 43 Product units) shall be paid to any one Household for such purchases, and (iii) only one claim may be submitted per Household (Household shall be determined based on residential address). Settlement Class Members will be eligible to receive their settlement sums regardless of whether their claims are corroborated by proofs of purchase.

Because there is a \$2 million cap on payments to Settlement Class Members, inclusive of class settlement administration costs, depending on the number of Valid Claims, individual cash payment amounts may be reduced *pro rata* (proportionately) so that the total amount of all payments to Settlement Class Members and class settlement administration costs does not exceed the cap.

Please save a copy of this completed form and your Proof of Purchase for your records. **For further information, visit www._____.com. In order to receive a payment, you must complete all of the information below and on the following pages, as well as sign and date the form.**

Name: _____		
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>
Street Address: _____		
City: _____		
State: _____	Zip Code: _____ - _____	(zip4 optional)
Email Address: _____ @ _____		

While providing your email address is optional, it will facilitate processing your claim in the event of any deficiencies.

EXHIBIT 1 – CLAIM FORM

I purchased: [Insert total number here] packages of the Product between July 1, 2011 and May 31, 2017. [Insert number] of these Product purchases have been refunded or voided by Costco or any other retailer.

These purchases were not made for purpose of resale to others. I certify under penalty of perjury under the laws of the United States that all of the foregoing is true and correct.

SIGNATURE: _____	PRINTED NAME: _____
DATED: ____ / ____ / ____	

Mail, WITH YOUR PROOF OF PURCHASE, IF ANY, to: Costco Settlement Claims Administrator, [address]