

James F. Murphy, Esq.
LEWIS JOHS AVALLONE AVILES, LLP
One CA Plaza, Suite 225
Islandia, New York 11749
Telephone: (631) 755-0101
Facsimile: (631) 755-0117
E-mail: jfmurphy@lewisjohs.com

- and -

Michael R. Reese, Esq.
REESE LLP
100 West 93rd Street, 16th Floor
New York, New York 10025
Telephone: (212) 643-0500
Facsimile: (212) 253-4272
E-mail: mreese@reesellp.com

Counsel for Plaintiff and the Class

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF THE STATE OF NEW YORK

DAWN ROTHFELD, individually and on behalf of
and all others similarly situated,

Plaintiff,

-against-

KIMBERLY-CLARK CORPORATION,

Defendant.

Case No.: 20-CV-05647

**FIRST AMENDED
CLASS ACTION COMPLAINT**

JURY TRIAL DEMANDED

Plaintiff Dawn Rothfeld (“Plaintiff”), individually and on behalf of all others similarly situated as defined below, brings this Amended Class Action Complaint against Kimberly-Clark Corporation (“Defendant”) on behalf of: (1) a New York class of purchasers of the Cottonelle Wipes products (“Products” as defined below) for statutory damages under GBL §§ 349 and 350 (“New York Statutory Damages Class”) and, (2) on behalf of a class of persons in the United States such as Ms. Rothfeld who suffered personal injury, including, but not limited to, urinary tract

infections (“Nationwide Personal Injury Class”)(collectively, “Classes”) after using the Products. Plaintiff alleges the following based upon Plaintiff’s own personal knowledge and the investigation of Plaintiff’s counsel. Plaintiff believes substantial evidentiary support exists for the allegations set forth herein and seeks a reasonable opportunity for discovery.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4 (codified in scattered sections of Title 28 of the *United States Code*), under 28 U.S.C. § 1332(d) because the aggregated claims of the individual members of the Classes exceed the sum or value of \$5,000,000, exclusive of interest and costs, and both Plaintiff and other members of the putative Classes are citizens of states different from Defendant. Furthermore, Plaintiff alleges “the number of members of all proposed plaintiff classes in the aggregate” is greater than 100. *See* 28 U.S.C. § 1332(d)(5)(B).

2. This Court has personal jurisdiction over Defendant for reasons including but not limited to the following: Plaintiff’s claims arise out of Defendant’s conduct within this jurisdiction, including Defendant’s sale of the products at issue in this District.

3. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in this District, including Plaintiff’s purchase of Defendant’s products in this District.

SUBSTANTIVE ALLEGATIONS

4. This is a class action lawsuit seeking recovery for the harms caused by millions of contaminated, dangerous, and worthless flushable wipes manufactured by Kimberly-Clark and sold throughout the state of New York (for the New York Statutory Damages Class) and the United States (for the Personal Injury Class).

5. Kimberly-Clark neglected the safety and sanitation responsibilities it owed to its customers and the public at large.

6. On or about February of 2020, a dangerous bacterial strain called *Pluralibacter gergoviae* contaminated certain lots of Kimberly-Clark's Cottonelle Flushable Wipes and Cottonelle GentlePlus Flushable Wipes products (the "Cottonelle Wipes"; "Wipes" or "Products").

7. Lacking appropriate safeguards to detect and/or remediate bacterial contamination in its products (or otherwise failing to execute them with reasonable care or competence), Kimberly-Clark proceeded to sell the contaminated Cottonelle Wipes to Plaintiff and other consumers throughout New York and the United States through third-party retailers.

8. Indeed, Kimberly-Clark continued its mass distribution of contaminated Wipes for another *seven months*—all the while failing to detect the bacterial contamination, warn the public, or otherwise taking any steps whatsoever to remediate the serious health risks to which it had exposed Plaintiff, similarly situated consumers, and the public at large.

9. This despite ample warnings that something was wrong with the Cottonelle Wipes. Throughout this time frame many the Wipes had dark-brown spots on the surface and mildew-like odors emanating from their packaging, both of which are recognized as indicators of bacterial contamination by manufacturers of cosmetics and personal care products. For a leading multinational manufacturer of hygiene and sanitary products, they unquestionably presented cause for prompt and careful investigation.

10. But Kimberly-Clark's investigation was neither prompt nor careful. Only *after* a number of customer complaints regarding skin irritation, infection, and other complications became overwhelming did Kimberly-Clark conduct the investigation and product testing required to discover the bacterial contamination.

11. And so, on or about October 9, 2020, Kimberly-Clark announced a nationwide recall (the “Recall”) for affected lots of the Cottonelle Wipes.

12. The Recall has affected thousands of consumers who purchased the Wipes at retail locations, causing damages that include loss of value, personal injury, and violation of consumer protection and deceptive practices statutes, as detailed herein.

13. Kimberly-Clark has left thousands of consumers holding packages of Cottonelle® Flushable Wipes that are unsuitable for their intended use and, thus, entirely worthless.

14. By this action, Plaintiff seeks to recover, on behalf of herself and other class members of the New York Statutory Damages Class, statutory damages under New York General Business Law §§349 and 350.

15. Plaintiff also seeks to recover by this action, on behalf of herself and class members of the Nationwide Personal Injury Class, damages and costs related to their personal injuries caused by the contaminated Products.

PARTIES

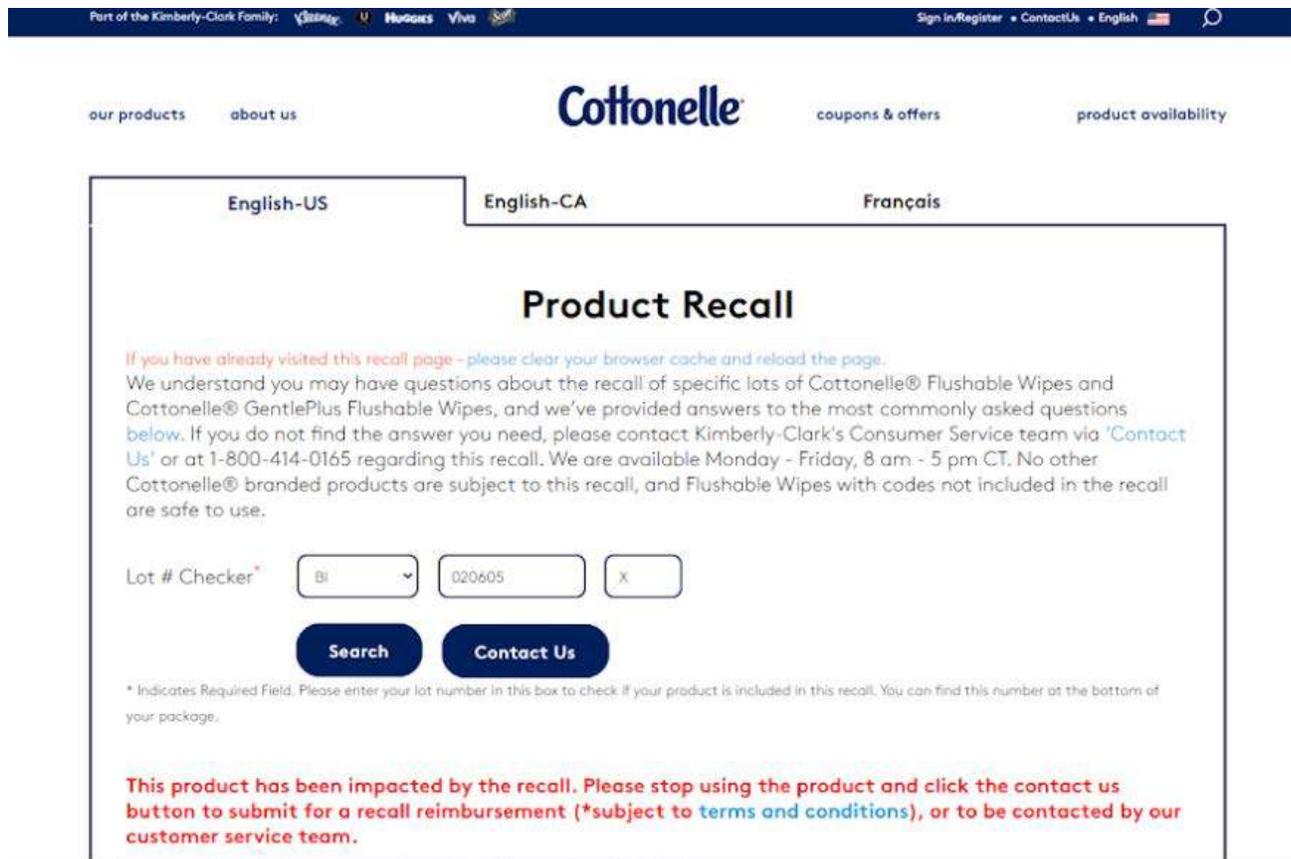
16. Plaintiff, Dawn Rothfeld, is a resident of Oceanside, New York. Plaintiff bought the Product on or about February 2020 through and including October 2020 at Costco in Oceanside, New York. Following the purchase of the Cottonelle Wipes, the plaintiff utilized the same after urinating and after bowel movements on a daily basis through October 2020. Upon utilizing the Cottonelle Wipes, she began to suffer serious injury, including, but not limited to, urinary tract infections; bladder pressure; incomplete bladder emptying; voiding urgency; painful urination; and increased frequency of urination. As a result of her use of Cottonelle Wipes, she was placed on antibiotic therapy and underwent radiological studies, including, but not limited to ultrasounds of the abdomen and ultrasounds of the bladder. Further, as a result of her use of Cottonelle Wipes, she suffered and continues to suffer from pain; weakness; fatigue; stomach

discomfort; nausea; vomiting; difficulty walking; stress; anxiety; apprehension; mental distress; fear; tension; and severe emotional trauma. To date, Plaintiff has no less than \$240 out of pocket medical costs related to her use of the contaminated Cottonelle Wipes.

17. The Products Plaintiff bought were part of Defendant's recall. Specifically, as seen below Plaintiff bought Lot # BI 020605. Plaintiff confirmed this was a recalled lot on Defendant's website.



Picture of Product bought by Plaintiff



Confirmation that Plaintiff's Purchase Part of Recall

18. Defendant Kimberly-Clark Corporation is a corporation formed and existing under the laws of Delaware, with its principal place of business located in Irving, Texas.

FACTUAL ALLEGATIONS

A. The Cottonelle Wipes and Kimberly-Clark's Misrepresentations About Them

19. From its statements of broad corporate principles to its packaging designs for particular products, Kimberly-Clark drives home a consistent message about what consumers can expect of its Cottonelle-branded products: they're quality, clean, gentle, refreshing, hygienic, and—most importantly—safe.

20. Kimberly-Clark describes “Cottonelle® Flushable Wipes [as] fresh, gentle and effective for a truly refreshing clean. They are designed with CleaningRipples™ Texture and the cleansing power of water to deliver long-lasting freshness.”

21. In similar fashion, Kimberly-Clark describes “Cottonelle® GentlePlus™ Flushable Wipes [as] made with 95% pure water and enriched with Aloe & Vitamin E to deliver a gentle clean for sensitive skin. They are designed with CleaningRipples™ Texture and the cleansing power of water for a truly refreshing clean. Additionally, they’re hypoallergenic, chlorine-free and paraben-free.”

22. Kimberly-Clark’s product homepage for the Cottonelle Wipes also lists their ingredients, along with the benefits each ingredient brings. Kimberly-Clark represents that the ingredients in the Cottonelle Flushable Wipes, among other things, “helps clean skin,” “helps keep skin soft and smooth,” and “helps provide a pleasant scent.”

23. Over the past two years, Kimberly-Clark has promoted its Cottonelle Flushable Wipes under its “*downtherecare*” marketing campaign. Consistent with Kimberly-Clark’s messaging for the Cottonelle brand generally, the “*downtherecare*” campaign emphasizes the Cottonelle Wipes’ supposed clean, refreshing, and confidence-bringing properties and encourages their use on the most intimate parts of the human body.

24. As explained by Kimberly-Clark’s Chief Brand Manager for Cottonelle, “[t]he *downtherecare* program urges people to rethink [flushable wipes as part of personal care]—by opening an honest dialogue and highlighting the importance of a superior clean that leaves you feeling clean, fresh and confident.”

25. The Cottonelle Wipes’ packaging bears similar representations, emphasizing the products “Cleansing Water & Cleansing Ripples,” as well as the “Refreshingly Clean” feeling they deliver:



26. The Cottonelle Wipes received by Plaintiff and the, Class members, however, differed markedly from Kimberly-Clark's representations, as detailed below.

B. Kimberly Clark's Mass Distribution of Wipes Contaminated with *Pluralibacter gergoviae* to Consumers

27. On or about February of 2020, Kimberly-Clark began distributing retail packages of its Cottonelle Wipes that that it knew or should have known were contaminated with a dangerous bacterium called *Pluralibacter gergoviae*.

28. *Pluralibacter gergoviae* is a pathogen linked to several infections including, but not limited to, lower respiratory tract infections, skin and soft tissue infections and urinary tract infections.

29. An alarming number of consumers who used the Cottonelle Wipes in the eight months preceding the recall reported adverse symptoms consistent with exposure to *P. gergoviae*, including everything from general discomfort to severe infections.

30. Numerous people have reported urinary-tract infections after using the Wipes, which required doctor and hospital visits.

C. The Recall

31. On October 9, 2020, after the flurry of customer complaints continued to intensify, Kimberly-Clark commenced a voluntary nationwide recall on certain lots of Cottonelle Wipes.

CLASS ALLEGATIONS

32. Plaintiff brings this action on behalf of the following Classes:

a) New York Statutory Damages Class

Pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure

Plaintiff seeks certification of:

The New York Statutory Damages Class - All residents of New York who purchased any of Defendants' Cottonelle Wipes between February 7, 2020 and to a date to be determined through discovery that establishes when all recalled Products were removed from sale to consumers.

b) Nationwide Personal Injury Class

Pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure

Plaintiff seeks certification of:

The Nationwide Personal Injury Class - All persons in the United States who suffered a urinary tract infection or other illness between February 7, 2020 and present after using any of Defendants' Cottonelle Wipes that were subject to the Recall.

Excluded from the Classes are: (a) Defendant, Defendant's board members, executive-level officers, and attorneys, and immediately family members of any of the foregoing persons; (b) governmental entities; (c) the Court, the Court's immediate family, and the Court staff; and (d) any person that timely and properly excludes himself or herself from the Class in accordance with Court-approved procedures.

33. Plaintiff reserves the right to alter the definitions of the Classes as Plaintiff deems necessary at any time to the full extent that the Federal Rules of Civil Procedure, the Local Rules of this District, and applicable precedent allow.

34. Certification of Plaintiff's claims for class-wide treatment is appropriate because Plaintiff can prove the elements of Plaintiff's claims on a class-wide basis using the same evidence as individual members of the Classes would use to prove those elements in individual actions alleging the same claims.

A. Numerosity - Rule 23(a)(1)

35. Based on the popularity of the Products, it is readily apparent that the number of consumers in each of the Classes is so numerous that the individual joinder of all of its members is impracticable, if not impossible. Due to the nature of the trade and commerce involved, Plaintiff believes the total number of members in each of the Classes is in the thousands and that members of each of the Class are geographically dispersed (either across the state of New York or across the United States). While the exact number and identities of members of each of the Classes are unknown at this time, such information can be ascertained through appropriate investigation and discovery.

B. Commonality and Predominance - Rule 23(a)(2) and (b)(3)

36. Common questions of law and fact exist as to all members of each of the Classes, and these common questions predominate over any questions affecting only individual members of each of the Classes.

37. The common legal and factual questions, which do not vary from Class member to Class member in each of the Classes, and which may be determined without reference to the individual circumstances of any Class member include, but are not limited to, the following:

- a. whether Defendant labeled, marketed, advertised, and/or sold the Products to Plaintiff and other consumers; and
- b. whether Defendant participated in and pursued the common course of conduct complained of herein.

C. Typicality - Rule 23(a)(3)

38. Plaintiff's claims are typical of those of other members of each of the Classes because Plaintiff, like all members of the Classes, purchased the Product in a typical consumer setting and sustained damages from Defendant's wrongful conduct. The claims of the members of the class arise from the same course of conduct by Defendant, and the relief sought is common to Plaintiff and members of the New York Statutory Damages Class members and is also common to Plaintiff members of the Nationwide Personal Injury Class.

39. Furthermore, there are no defenses available to Defendant that are unique to Plaintiff.

D. Adequacy of Representation - Rule 23(a)(4)

40. Plaintiff will fairly and adequately protect the interests of the members of each the Classes. Plaintiff has no interests that conflict with those of the Classes.

41. Plaintiff has retained counsel competent and experienced in litigating complex class actions. The undersigned counsel has represented consumers in a wide variety of actions where they have sought to protect consumers from fraudulent and deceptive business practices.

E. Superiority - Rule 23(b)(3)

42. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Individual joinder of all members of each of the Classes is impracticable. Even if individual members of each of the Classes had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed. Individual litigation magnifies the delay and expense to all parties in the court system of resolving the controversies engendered by Defendant's common course of conduct. The class action device allows a single court to provide the benefits of unitary adjudication, judicial economy, and the fair and efficient handling of all each of the Classes members' claims in a single

forum. The conduct of this action as a class action conserves the resources of the parties and of the judicial system and protects the rights of the Classes. Furthermore, for many, if not most, a class action is the only feasible mechanism that allows an opportunity for legal redress and justice. Furthermore, given the large number of consumers of the Products, allowing individual actions to proceed in lieu of a class action would run the risk of yielding inconsistent and conflicting adjudications.

F. Declaratory and Injunctive Relief - Rule 23(b)(2)

43. This action is maintainable as a class action under Rule 23(b)(2) because Defendant has acted or refused to act on grounds generally applicable to the Classes, thereby making appropriate final injunctive relief respecting the Classes as a whole.

G. Notice

44. Plaintiff and Plaintiff's counsel anticipate that notice to the proposed Classes will be effectuated through recognized, Court-approved notice dissemination methods, which may include United States mail, electronic mail, Internet postings, and/or published notice.

CLAIMS

FIRST CLAIM

VIOLATION OF NEW YORK GBL § 349

(On Behalf of Plaintiff and the Other Members of the New York Statutory Damages Class)

45. Plaintiff repeats and realleges each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.

46. New York General Business Law Section 349 ("GBL § 349") declares unlawful "[d]eceptive acts or practices in the conduct of any business, trade, or commerce or in the furnishing of any service in this state . . ."

47. The conduct of Defendant alleged herein constitutes recurring, “unlawful” deceptive acts and practices in violation of GBL § 349, and as such, Plaintiff and the other members of the New York Statutory Damages Class Members seek monetary damages and the entry of preliminary and permanent injunctive relief against Defendant, enjoining it from inaccurately describing, labeling, marketing, and promoting the Products and to install proper controls and monitoring to ensure that its Products are not subject to contamination in the future.

48. Defendant misleadingly, inaccurately, and deceptively presented the Products to consumers.

49. Defendant’s improper consumer-oriented conduct—including labeling and advertising the Product —is misleading in a material way in that it, *inter alia*, induced Plaintiff and the other New York Statutory Damages Class members to purchase and pay a premium for Defendant’s Products and to use the Products when they otherwise would not have.

50. Defendants made the untrue or misleading statements and representations willfully, wantonly, and with reckless disregard for the truth.

51. Plaintiff and New York Statutory Damages Class members have been injured inasmuch as they paid a premium for Products that presented a health risk or were otherwise unsafe for use. Accordingly, Plaintiff and the other New York Statutory Damages Class members received less than what they bargained or paid for.

52. Defendant’s advertising and products’ packaging and labeling induced the Plaintiff and the other New York Statutory Damages Class members to buy Defendants’ Products and to pay a premium price for them.

53. Defendant’s deceptive and misleading practices constitute a deceptive act and practice in the conduct of business in violation of New York General Business Law §349(a) and Plaintiff and the other New York Statutory Damages Class members have been damaged thereby.

54. As a result of Defendants' recurring, "unlawful" deceptive acts and practices, Plaintiff and the other New York Statutory Damages Class members are entitled to monetary and compensatory damages, injunctive relief, restitution and disgorgement of all moneys obtained by means of Defendants' unlawful conduct, interest, and attorneys' fees and costs.

55. Plaintiff and the other New York Statutory Damages Class members seek actual damages under GBL § 349 or statutory damages of \$50 per unit purchased pursuant to GBL § 349, whichever is greater.

SECOND CLAIM

VIOLATION OF NEW YORK GBL § 350

(On Behalf of Plaintiff and the Other New York Statutory Damages Class Members)

56. Plaintiff repeats and realleges each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.

57. N.Y. Gen. Bus. Law § 350 provides, in part, as follows:

False advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state is hereby declared unlawful.

58. N.Y. Gen. Bus. Law § 350-a(1) provides, in part, as follows:

The term 'false advertising, including labeling, of a commodity, or of the kind, character, terms or conditions of any employment opportunity if such advertising is misleading in a material respect. In determining whether any advertising is misleading, there shall be taken into account (among other things) not only representations made by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertising fails to reveal facts material in the light of such representations with respect to the commodity or employment to which the advertising relates under the conditions proscribed in said advertisement, or under such conditions as are customary or usual . . .

59. Defendant's labeling and advertisements contain untrue and materially misleading statements concerning Defendant's Products.

60. Plaintiff and the other New York Statutory Damages Class members have been injured inasmuch as they relied upon the labeling, packaging and advertising and paid a premium for the Products. Accordingly, Plaintiff and the other New York Statutory Damages Class members received less than what they bargained or paid for.

61. Defendant's advertising, packaging and product labeling induced the Plaintiff and the other New York Statutory Damages Class members to buy Defendant's Products.

62. Defendant made the untrue and misleading statements and representations willfully, wantonly, and with reckless disregard for the truth.

63. Defendant's conduct constitutes multiple, separate violations of N.Y. Gen. Bus. Law § 350.

64. Defendant made the material misrepresentations described in this Complaint in Defendants' advertising, and on the Products' packaging and labeling.

65. Defendant's material misrepresentation was substantially uniform in content, presentation, and impact upon consumers at large. Moreover, all consumers purchasing the Products were and continue to be exposed to Defendant's material misrepresentations.

66. As a result of Defendant's recurring, "unlawful" deceptive acts and practices, Plaintiff and the other New York Statutory Damages Class members are entitled to monetary and compensatory damages, injunctive relief, restitution and disgorgement of all moneys obtained by means of Defendant's unlawful conduct, interest, and attorneys' fees and costs.

67. Plaintiff and the other New York Statutory Damages Class members seek actual damages under GBL § 350 or statutory damages of \$500 per unit purchased pursuant to GBL § 349, whichever is greater.

THIRD CLAIM

NEGLIGENCE

(On Behalf of Plaintiff and the Other Nationwide Personal Injury Class Members)

68. Plaintiff repeats and realleges each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.

69. At all relevant times, the Defendant had a duty toward Plaintiff and the Class to provide uncontaminated Wipes.

70. Defendant acted carelessly and negligently in manufacturing and/or selling wipes that were contaminated.

71. Defendant was careless and negligent by failing to assure that its wipes that were sold to the public were not contaminated.

72. Plaintiff and other Class members are entitled to compensation for their injury suffered as a result of Defendant's negligence, including, but not limited, reimbursement for medical costs.

FOURTH CLAIM

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(On Behalf of Plaintiff and the Other Nationwide Personal Injury Class Members)

73. Plaintiff repeats and realleges each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.

74. Defendant, as the designer, manufacturer, marketer, distributor, and/or seller of the Cottonelle Wipes, impliedly warranted that the Wipes were of merchantable quality and, among other warranties, that the Wipes would pass without objection in the trade or industry, and were fit for the ordinary purpose for which they are used.

75. Because of the bacterial contamination described herein, the Wipes cannot perform their ordinary purpose and would not pass without objection in the trade and industry.

76. Defendant breached its implied warranties by selling, marketing, and promoting the Wipes with a defect that consisted of harmful or hazardous bacteria.

77. Any language used by Defendant to attempt to exclude or limit the availability of implied warranties, remedies, or the period within which to bring claims, is barred by their direct misrepresentations to consumers regarding the existence and nature of the defect. In addition, and in the alternative, any such limitation is unconscionable and void because of Defendant's knowledge of the defect at the time of sale, it fails to conform to the requirements limiting implied warranties under the applicable law, and because any such limitation creates a warranty that fails of its essential purpose.

78. By virtue of the defective design or manufacture, Defendant knew or should have known that the Wipes were at all times defective, including at the time Plaintiff and other class members purchased the Wipes.

79. The practices of Defendant in manufacturing and selling defective Wipes also constitute a breach of implied warranty of merchantability under the various state statutes where the Plaintiff and other class members reside, and where Defendant resides and/or transacts business.

80. As a direct and proximate cause of Defendant's breach of implied warranties, Plaintiffs and class members have sustained damages, including, but not limited, reimbursement for medical costs.

FIFTH CLAIM

BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE

(On Behalf of Plaintiff and the Other Nationwide Personal Injury Class Members)

81. Plaintiff repeats and realleges each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.

82. Defendant marketed, distributed, and sold the Wipes with implied warranties that they were fit for the particular purposes of skin hygiene and personal care.

83. At the time the Wipes were sold, Defendant knew, or should have known, that Plaintiffs and the class members would rely on Defendant's skill and judgment regarding the efficacy and quality of the Wipes, including their cleaning, sanitary, and hygienic properties.

84. In reliance on Defendant's skill and judgment and the implied warranties of fitness for a particular purpose, Plaintiff and the class members purchased the Wipes.

85. The Wipes were manufactured or designed defectively and delivered to consumers in a defective condition. Therefore, they were defective immediately upon purchase, and Defendant breached the implied warranty of fitness for a particular purpose to Plaintiffs and all class members.

86. Any language used by Defendant to attempt to limit the availability of implied warranties, remedies, or the period within which to bring claims, is barred by their direct misrepresentations to consumers regarding the nature of the defect. In addition, and in the alternative, any such limitation is unconscionable and void because of Defendant's knowledge of the defect at the time of sale, it fails to conform to the requirements limiting remedies under applicable law, and because any such limitation creates a warranty that fails of its essential purpose.

87. By virtue of the defective design or manufacture, Defendant knew or should have known that the Wipes were at all times defective, including at the time Plaintiff and other class members purchased the Wipes.

88. The practices of the Defendant in manufacturing and selling defective Wipes also constitute a breach of implied warranty of fitness under the applicable state statutes where the Plaintiffs reside, and where Defendant resides and transacts business.

89. As a direct and proximate cause of Defendant's breach of implied warranties, Plaintiffs and class members have sustained damages, including, but not limited, reimbursement for medical costs.

SIXTH CLAIM

STRICT PRODUCT LIABILITY

(On Behalf of Plaintiff and the Other Nationwide Personal Injury Class Members)

90. Plaintiff repeats and realleges each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.

91. At all times relevant to the claims asserted herein, Defendant was engaged in the business of designing, manufacturing, maintaining, selling, distributing, and/or supplying the Cottonelle Wipes.

92. Defendant placed the Cottonelle Wipes in the stream of commerce by distributing them to various retailers throughout the United States, including, where the Cottonelle Wipes were ultimately used by Plaintiff and other class members.

93. The Wipes used by Plaintiff and the other Personal Injury Class members were in a defective condition that rendered them unreasonably dangerous at the time Defendant designed, manufactured, maintained, sold, distributed, and/or supplied them—namely, because they were contaminated with the harmful bacterium *Pluralibacter gergoviae*.

94. Defendant expected the Cottonelle Wipes to reach Plaintiffs without substantial change to the condition in which the Wipes were sold or otherwise Defendant parted possession with them.

95. The Wipes did, in fact, reach Plaintiff and the other Personal Injury Class members without substantial change to the condition in which Defendant sold or otherwise parted with possession of them.

96. Defendant's defective design and/or manufacture of the Wipes was the direct, producing, substantial, and proximate cause of the damages sustained by Plaintiff and the other members of the Personal Injury Class, as detailed herein.

97. Defendant had actual, subjective awareness of the risks of harm the foregoing conduct posed to the rights, safety, and welfare of Plaintiff and the other Personal Injury class members, but consciously disregarded such risks, and otherwise acted with gross neglect, malice, and/or recklessness, such that Plaintiff and the other Personal Injury Class members are entitled to compensation, including but not limited to, medical costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the members of the Class, respectfully requests the Court to enter an Order:

- A. certifying the proposed Classes under Federal Rule of Civil Procedure 23(a), (b)(2), and (b)(3), as set forth above;
- B. declaring that Defendant is financially responsible for notifying the members of the Classes of the pendency of this suit;
- C. declaring that Defendant has committed the violations of law alleged herein;
- D. providing for any and all injunctive relief the Court deems appropriate;
- E. awarding monetary damages, including but not limited to any statutory, compensatory, incidental, or consequential damages in an amount that the Court or jury will determine, in accordance with applicable law;
- F. providing for any and all equitable monetary relief the Court deems appropriate;
- G. awarding punitive or exemplary damages in accordance with proof and in an amount consistent with applicable precedent;
- H. awarding Plaintiff her reasonable costs and expenses of suit, including attorneys' fees;

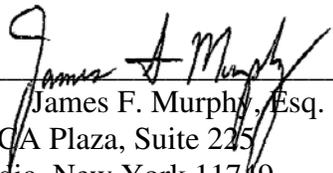
- I. awarding pre- and post-judgment interest to the extent the law allows; and
- J. providing such further relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury of all claims and causes of action so triable in this lawsuit.

Dated: Islandia, New York
March 17, 2021

LEWIS JOHS AVALLONE AVILES, LLP

By:  _____
James F. Murphy, Esq.
One CA Plaza, Suite 225
Islandia, New York 11749
T: (631) 755-0101
F: (631) 755-0117
E-mail: jfmurphy@lewisjohs.com

- and -

Michael R. Reese, Esq.
REESE LLP
100 West 93rd Street, 16th Floor
New York, New York 10025
Telephone: (212) 643-0500
Facsimile: (212) 253-4272
E-mail: mreese@reesellp.com

Counsel for Plaintiff and the Proposed Classes