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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

DAVID MACHLAN, an individual, on behalf of
himself, the general public and those similarly situated

Plaintiff,

v.

PROCTER & GAMBLE COMPANY; NEHEMIAH
MANUFACTURING COMPANY; AND DOES 1
THROUGH 50

Defendants

**ELECTRONICALLY
FILED**

*Superior Court of California,
County of San Francisco*

**12/15/2016
Clerk of the Court**

BY:EDNALEEN ALEGRE

Deputy Clerk

CASE NO. CGC 14-538168

UNLIMITED CIVIL CASE

SECOND AMENDED CLASS
ACTION COMPLAINT FOR
VIOLATION OF THE
CALIFORNIA CONSUMERS
LEGAL REMEDIES ACT;
FALSE ADVERTISING;
FRAUD, DECEIT, AND/OR
MISREPRESENTATION; AND
UNFAIR BUSINESS
PRACTICES

JURY TRIAL DEMANDED

David Machlan, by and through his counsel, brings this Second Amended Class Action Complaint against Defendants Procter & Gamble Company and Nehemiah Manufacturing Company, on behalf of himself and those similarly situated, for violations of the Consumer Legal Remedies Act, false advertising, unfair trade practices, and fraud, deceit and/or misrepresentation. The following allegations are based upon information and belief, including the investigation of Plaintiff's counsel, unless stated otherwise.

INTRODUCTION

1. Defendants deceptively market personal hygiene moistened wipes as "flushable." They charge a premium for these wipes, as compared to both toilet paper and moistened wipes that are not marketed as "flushable." Despite the label, however, the wipes are not actually suitable for flushing down a toilet. Specifically, Defendants' wipes do not dissolve, disintegrate, disperse, or biodegrade like toilet paper upon flushing. Instead, the wipes, when flushed as part of ordinary, consumer use, routinely (1) clog and damage plumbing pipes; (2) fail to properly break down in septic tanks; (3) damage septic pumps; (4) catch on screens in municipal sewage lines and must be removed from the sewer system for disposal in landfills; and (5) damage municipal sewage lines and pumps, often due to the proclivity of the wipes to tangle with each other, tree branches, rocks, and other non-flushable items, and form large masses or ropes. Moreover, because the wipes are capable of causing damage to municipal sewer systems, the mere act of flushing them is a violation of section 305.1 of the California Plumbing Code, which prohibits flushing "any other thing whatsoever that is capable of causing damage to the drainage system or public sewer." Reasonable consumers would not pay a premium to obtain the benefits of a "flushable" wipe if Defendants disclosed the risks of flushing the wipes and that flushing the wipes is in fact illegal.

2. Throughout the class period, Defendants have obtained substantial profits from these deceptive sales of moistened wipes marketed as flushable. This action seeks to require Defendants to pay restitution and damages to purchasers of the Kandoo and Pampers Kandoo Wipes, and to enjoin Defendants from using the word "flushable" on the Kandoo and Pampers Kandoo products, as well as other changed practices, including to affirmatively inform purchasers

1 that such wipes are not suitable for flushing and may cause damage to toilets, plumbing pipes,
2 septic tanks and pumps, and/or municipal sewage lines and pumps.

3 **PARTIES**

4 3. David Machlan (“Plaintiff”) is, and at all times alleged in this Class Action
5 Complaint was, an individual and a resident of San Francisco, California.

6 4. Defendant Procter & Gamble Company (“P&G”) is a corporation incorporated
7 under the laws of the Delaware, having its principal place of business in Cincinnati, Ohio.

8 5. Defendant Nehemiah Manufacturing Company (“Nehemiah”) is a corporation
9 incorporated under the laws of the Delaware, having principal places of business in Cincinnati,
10 Ohio.

11 6. The true names and capacities of Defendants sued as Does 1 through 50, inclusive,
12 are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names pursuant to
13 section 474 of the California Code of Civil Procedure. Plaintiff will seek leave of Court to amend
14 this Class Action Complaint when said true names and capacities have been ascertained.

15 7. The Parties identified in paragraphs 3-4 of this Class Action Complaint are
16 collectively referred to hereafter as “Defendants.”

17 8. At all times herein mentioned, each of the Defendants was the agent, servant,
18 representative, officer, director, partner or employee of the other Defendants and, in doing the
19 things herein alleged, was acting within the scope and course of his/her/its authority as such
20 agent, servant, representative, officer, director, partner or employee, and with the permission and
21 consent of each Defendant.

22 9. At all times herein mentioned, each of the Defendants was a member of, and
23 engaged in, a joint venture, partnership and common enterprise, and acting within the course and
24 scope of, and in pursuance of, said joint venture, partnership and common enterprise.

25 10. At all times herein mentioned, the acts and omissions of each of the Defendants
26 concurred and contributed to the various acts and omissions of each and all of the other
27 Defendants in proximately causing the injuries and damages as herein alleged.

28 11. At all times herein mentioned, each of the Defendants ratified each and every act

1 or omission complained of herein.

2 12. At all times herein mentioned, each of the Defendants aided and abetted the acts
3 and omissions of each and all of the other Defendants in proximately causing the damages, and
4 other injuries, as herein alleged.

5 **JURISDICTION AND VENUE**

6 13. This action is brought by Plaintiff pursuant, *inter alia*, to the California Business
7 and Professions Code, section 17200, *et seq.* Plaintiff and Defendants are “persons” within the
8 meaning of the California Business and Professions Code, section 17201.

9 14. The injuries, damages and/or harm upon which this action is based, occurred or
10 arose out of activities engaged in by Defendants within, affecting, and emanating from, the State
11 of California.

12 15. Defendants have engaged, and continue to engage, in substantial and continuous
13 business practices in the State of California, including in the City and County of San Francisco.

14 16. In accordance with California Civil Code Section 1780(d), Plaintiff previously
15 filed a declaration establishing that, in 2014, he purchased at least one P&G product in San
16 Francisco.

17 17. Plaintiff accordingly alleges that jurisdiction and venue are proper in this Court.

18 **SUBSTANTIVE ALLEGATIONS**

19 **(1) Defendants Deceptively Market and Sell “Flushable” Wipes**

20 18. P&G is a manufacturer and marketer of consumer product goods, including a
21 variety of paper products, such as toilet paper, paper towels, feminine hygiene products, diapers,
22 and baby wipes. Its products are widely available for purchase in supermarkets, drug stores, and
23 other retailers. Among its brands of paper products are Charmin, Pampers, Bounty, and Tampax.

24 19. Nehemiah is also a manufacturer and marketer of consumer product goods. As
25 described in paragraphs 31-43, Nehemiah and P&G have partnered formally and informally on
26 the development, manufacture, and marketing of wipes labeled and sold as “flushable.” Together,
27 Defendants have developed and/or sold flushable wipes under the brand names Pampers Kandoo
28 Flushable Wipes and Kandoo Flushable Wipes (collectively, “Kandoo Wipes”).

1 20. Through the use of intentional misrepresentations and selective omissions,
2 Defendants deceptively mislead consumers to believe that their wipe products are in fact
3 flushable. None of the products are safe and appropriate for flushing down a toilet, as the
4 flushable wipes developed by Defendants do not dissolve, disintegrate, disperse, or biodegrade
5 like toilet paper. Rather, even under optimal, lab-simulated conditions, their flushable wipes take
6 hours to even begin to disperse, and they will never dissolve, but rather, only break apart into
7 smaller pieces that need to be removed from the water and disposed of in a landfill.

8 21. Throughout the class period, on the front of the Kandoo Wipes packages, P&G and
9 Nehemiah advertise the products as “Flushable Wipes.”





22. For the entirety of the class period, on the back of the packages, Defendants further mislead consumers by informing them that the product is “Sewer and Septic Safe.” Elsewhere on the packages, Defendants have stated, also for the entirety of the class period, “SAFE FOR SEWER AND SEPTIC. FOR BEST RESULTS, FLUSH ONLY ONE OR TWO WIPES AT A TIME. DO NOT USE IN BASEMENT TOILETS WITH EJECTOR PUMPS.” Nowhere on any of the packages, at any point during the class period, have Defendants disclosed that the wipes are not suitable for disposal by flushing down household toilets, but rather, are not regarded as flushable by municipal sewage systems as they routinely damage or clog pipes, septic systems, and sewage pumps; and do not dissolve, disperse, disintegrate, or biodegrade like toilet paper. While some minor changes to packaging were made, for example, Defendants removed the “Pampers” trademark from the Kandoo Wipes packaging in late 2014 and made minor artwork changes, the material representations were consistent throughout the class period.

23. Nowhere on the packages of their flushable wipes, including all versions of the Kandoo Wipes, do Defendants disclose that the wipes: (i) are not suitable for disposal by flushing down a toilet; (ii) are not regarded as flushable by municipal sewage system operators; (iii) do not

1 dissolve, disintegrate, disperse, or biodegrade, in the sewer system, but instead catch on screens in
2 municipal sewage lines and/or cause clogs elsewhere in the system and must be removed from the
3 sewer system for disposal in landfills; and (iv) cause damage to toilets, plumbing pipes, and/or
4 septic tanks and pumps.

5 24. Over the class period, Defendants have made small adjustments to the paper and
6 manufacturing process used to make the Kandoo Wipes. Most recently, in 2015, Defendants
7 changed the substrate used to manufacture the wipes. The new substrate, like the substrates used
8 in 2014 and before, is not flushable. As explained herein, all versions of the Kandoo Wipes are
9 not flushable and not dispersible for the same reasons. Namely, they are made from a similar
10 paper that is designed in such a way that will prevent it from breaking down and dispersing
11 properly, as described in paragraphs 58-60. Likewise, the newest version, like the previous
12 version, was not actually designed to be suitable for disposal by flushing down a toilet, but rather,
13 to pass Defendants' flawed, self-serving "flushability" tests, as described in paragraphs 61-72.

14 25. Defendants intend for consumers to understand that their "flushable" wipes,
15 including the Kandoo Wipes, are flushable products, i.e., ones that are specially designed to be
16 suitable to flush in all instances. Defendants have consistently marketed the wipes products in that
17 manner throughout the class period. For example, in marketing all versions of the Kandoo Wipes,
18 Defendants have never advised consumers that the wipes may not be suitable for flushing in
19 certain toilets, plumbing systems, and/or municipal wastewater systems (other than a disclaimer
20 on the back of the package regarding basement toilets connected to ejector pumps, which itself
21 further deceived consumers by implying that the wipes were suitable for flushing in all other
22 toilets). In other words, Defendants sell the products as ones that are specially designed to be
23 suitable to flush by consumers in any home in any location, other than basement toilets connected
24 to ejector pumps, and not as a product intended to work only as promised under unique and
25 specified circumstances.

26 26. While at times, Defendants have printed in small font a disclaimer advising
27 consumers that "for best results," they should flush only one or two wipes at a time, this
28 disclaimer has never appeared on the front of any version of the Kandoo Wipes, nor has it ever

1 appeared in conspicuous location on the package. Rather, when this disclaimer appears on the
2 packaging, Defendants place it on the back of the package, where consumers are unlikely to view
3 it. Moreover, even when flushed in that manner – one or two at a time – Defendants’ flushable
4 wipes, including all versions of the Kandoo Wipes are still not flushable, as they will damage or
5 clog pipes, septic systems, and sewage lines and pumps, and do not dissolve, disperse, or
6 disintegrate, or biodegrade like toilet paper.

7 27. Defendants’ misrepresentations appear in all their advertising for their flushable
8 wipes that are currently on the market. For example, during the class period, Defendants advertise
9 the Kandoo products on at least two of their websites. On one, Defendants falsely inform
10 consumers that “Flushable Wipes” are “Flushable & Biodegradable” and “Safe for sewer and
11 septic systems.” *See* <http://www.kandookids.com> (last accessed March 14, 2014). On the other,
12 Defendants simply state that “Kandoo Flushable Toilet Wipes clean up to 30% better than toilet
13 paper.” *See* <http://www.pampers.com/flushable-wipes-kandoo> (last accessed March 14, 2014). On
14 neither website do Defendants disclose that the wipes are not suitable for disposal by flushing
15 down a toilet, and rather, are not regarded as flushable by municipal sewage systems as the
16 flushable wipes routinely damage or clog pipes, septic systems, and sewage pumps and do not
17 dissolve, disperse, disintegrate, or biodegrade like toilet paper.

18 28. In marketing the flushable wipes to consumers as a product to use as part of a
19 bathroom routine or as part of potty training, Defendants know that consumers will be more likely
20 to purchase the product in addition to, or instead of, toilet paper if they believe the product is
21 suitable for flushing down a toilet. Thus, for their flushable wipes, Defendants intend for
22 consumers to rely on the representation that the product is “Flushable.” Defendants further intend
23 for consumers to rely on the omissions that the flushable wipes are not suitable for disposal by
24 flushing down a toilet, and that the wipes are: (i) are not suitable for disposal by flushing down a
25 toilet; (ii) are not regarded as flushable by municipal sewage system operators; (iii) do not
26 dissolve, disintegrate, disperse, or biodegrade in the sewer system, but instead catch on screens in
27 municipal sewage lines and/or cause clogs elsewhere in the system and must be removed from the
28 sewer system for disposal in landfills; and (iv) cause damage to toilets, plumbing pipes, and/or

1 septic tanks and pumps.

2 29. Because consumers believe the wipes are suitable for flushing down a toilet and
3 purchase them for that convenience, Defendants are able to charge a premium for their flushable
4 wipes. A consumer can buy 350 Kandoo Wipes for \$13.59 on Amazon.com. In contrast, a 448
5 count package of P&G's Pampers® Sensitive Wipes, a non-flushable product, sells for \$10.97 on
6 Amazon.com. A 448 count package of Huggies Soft Skin Baby Wipes, a non-flushable product
7 manufactured by another company, sells for \$11.97. A 350 count package of the non-flushable
8 Seventh Generation® "Original Soft and Gentle Free & Clear Baby Wipes" sells for \$12.99 on
9 Amazon.com.

10 30. If consumers knew that Defendants' flushable wipes are not suitable for disposal
11 by flushing down a toilet; (ii) are not regarded as flushable by municipal sewage system
12 operators; (iii) do not dissolve, disintegrate, disperse, or biodegrade in the sewer system, but
13 instead catch on screens in municipal sewage lines and/or cause clogs elsewhere in the system
14 and must be removed from the sewer system for disposal in landfills; and (iv) cause damage to
15 toilets, plumbing pipes, and/or septic tanks and pumps, they would not pay a premium for the
16 product, but rather, would opt to purchase cheaper, non-flushable items and dispose of them in
17 trash cans.

18 **(2) Defendants Collaborate on "Flushable" Products**

19 31. P&G runs a program called "Connect + Develop," through which it partners with
20 smaller manufacturers, licensing to them smaller product lines for them to develop in conjunction
21 with P&G. In addition to licensing the product, P&G provides Connect + Develop participants
22 with its research and development and marketing expertise to help them bring new products to
23 market faster.

24 32. Nehemiah became a participant in P&G's Connect + Develop program pursuant to
25 a Trademark Patent & Know-How License Agreement dated August 31, 2009 (the "2009 License
26 Agreement"). Pursuant to that agreement, Nehemiah licensed trademarks and intellectual property
27 associated with several P&G products, including the Kandoo Wipes and associated Kandoo and
28 Pampers trademarks, as well as patents and trade secrets that cover the wipes. The agreement to

1 license this intellectual property was renewed on March 22, 2013 (the “2013 License
2 Agreement”). At that same time, Nehemiah purchased from P&G the Kandoo trademarks, but
3 P&G retained the other trademarks or any patents or trade secrets.

4 33. The 2009 and 2013 License Agreements provide P&G with vast control over the
5 Kandoo Wipes and associated intellectual property. For example, Nehemiah’s license under the
6 agreement was *revocable* while P&G was granted an *irrevocable* license to use any
7 improvements made solely by Nehemiah. Under the 2009 agreement, P&G retained the express
8 right to use its Pampers trademarks on any product, including “toilet wipes,” and nothing in the
9 2013 Licensing Agreement is contrary to that express reservation. Finally, P&G could terminate
10 either agreement. After termination, Nehemiah would be at risk of suit for patent infringement or
11 infringement of other intellectual property rights if it continued to make or sell the Kandoo Wipes
12 under *any* name, but P&G would have free rein to sell such wipes, as long as it did so under a
13 name other than “Kandoo.”

14 34. The 2009 and 2013 License Agreements further allow P&G to instruct Nehemiah
15 to cease selling or marketing the Kandoo Wipes in certain circumstances.

16 35. The License Agreements also contain a number of provisions that contemplate a
17 partnership in developing the Kandoo Wipes, as well as provide P&G considerable about of
18 control and authority. For example, under Section 7.6.2 of the 2013 License Agreement,
19 Nehemiah was required to submit for P&G’s approval all advertising and customer service
20 materials, and to adhere to P&G’s “brand equity and design guidelines.” Similar language
21 appeared in the 2009 License Agreement. With respect to product design, both agreements gave
22 P&G the right to test the Kandoo Wipes in a laboratory of its choosing. The License Agreements
23 also established that Defendants would work together on product launches, and required that
24 Nehemiah spend a certain minimum amount on advertising the Kandoo Wipes. Nehemiah was
25 also required to share certain research, customer feedback, and sales information with P&G.
26 Section 7.11.1 and Schedule 7.11.1 of the 2013 License Agreement gave P&G the right to review
27 and approve “Sustainability/Environment Claims” made about the Kandoo Wipes, and a similar
28 requirement existed in the 2009 License Agreement.

1 36. Pursuant to the License Agreements, the two parties collaborated to manufacture
2 and market the Kandoo Wipes. P&G initially invented the product, and licensed all know-how,
3 including technical information as well as marketing research, to Nehemiah. Over the years, P&G
4 has provided and continues to provide support in a variety of ways. For example, it tested and
5 continues to test all the Kandoo Wipes in its Flushability Lab. It also shared responsibility with
6 Nehemiah for the marketing of the product. For example, for much of the class period, P&G
7 owned the website www.kandookids.com, where Defendants marketed the Kandoo Wipes. P&G
8 also marketed the Kandoo Wipes on its www.pampers.com website.

9 37. Beyond what was contemplated in the Licensing Agreements, P&G and
10 Nehemiah have collaborated and continue to collaborate extensively on the development of
11 flushable wipes generally. Defendants worked closely together on flushability issues as part of
12 their work in a trade association, as discussed in paragraphs 40-43.

13 38. In March 2013, P&G sold to Nehemiah the “Kandoo” trademarks, but it retained
14 ownership of the “Pampers” trademarks. For over a year, both trademarks appeared on all
15 packaging, and P&G continued to (i) receive royalties from the sales of the products and (ii)
16 collaborate on their development and marketing. Over that period, Nehemiah changed the
17 packaging to remove “Pampers” from it, but all other aspects of the wipe and its packaging
18 remained unchanged.

19 39. While the effect of the sale of the Kandoo trademark and the package change
20 create the impression that P&G’s role has diminished, the practical effect of the Licensing
21 Agreements is such that P&G continues to retain the ability to manufacture and market a
22 flushable wipes product that is identical, or substantially similar, to that which Nehemiah sells.
23 For example, under the License Agreements, which are still in effect even though the Pampers
24 trademark does not currently appear on packages sold in stores, P&G may demand that Nehemiah
25 turn over all information and know-how about its flushable wipes, and P&G can utilize that
26 information in developing new flushable wipes that it can sell as “Pampers” wipes, or under any
27 other brand name it wishes. P&G can also instruct Nehemiah to cease selling its product if it is
28 advantageous to P&G to do so.

1 40. Nehemiah and P&G continue to collaborate in other ways. Both Defendants are
2 members of the Association of the Nonwoven Fabrics Industry (“INDA”), as well as the
3 Flushability Working Group, whose membership is made up of representatives of manufacturers
4 of flushable wipes and suppliers of the substrates used to develop flushable wipes. At P&G’s
5 urging, Nehemiah joined INDA and the Flushability Working Group in 2011. Nehemiah
6 continues to be an active member of INDA and the Flushability Working Group.

7 41. Through INDA, P&G and Nehemiah collaborate on numerous matters of joint
8 interest. For example, representatives of both Defendants participate in lengthy email discussions
9 with other INDA members, as well as in separate correspondence, about matters of interest to the
10 industry. For example, Defendants regularly discuss with each other, and with members of INDA,
11 the status of legislative efforts to regulate or ban the use of the term “flushable.” INDA has
12 mounted a lobbying effort to stop such legislation from passing, and Defendants have consistently
13 supported each other’s positions in regards to these kinds of legislative affairs.

14 42. More importantly, INDA publishes a reference document for the industry called
15 “Guidance Document for Assessing the Flushability of Nonwoven Disposable Products”
16 (“Guidelines”). The Guidelines, described in more detail in paragraphs 47, and 61-72, are a series
17 of voluntary tests that INDA members are encouraged to use to evaluate whether their products
18 are in fact “flushable.” Each test, as well as the pass/fail criteria, has been designed after months
19 of discussion by the various Flushability Working Group members, each of whom lobby the other
20 members to adopt standards that their products can readily meet. Because P&G and Nehemiah’s
21 products are jointly designed and derived from shared know-how, the two Defendants routinely
22 take identical positions as to what the standards should be.

23 43. The Flushability Working Group meets regularly. Emails are exchanged on a
24 routine basis, and conference calls are held multiple times a year. Additionally, in person
25 meetings are held to discuss the development of new editions of the INDA Guidelines. Most
26 recently, the INDA Flushability Working Group members met in March and June of 2015 to
27 discuss plans to develop the Fourth Edition of the INDA Guidelines. Both P&G and Nehemiah
28 had representatives in attendance at these meetings, and the two Defendants continue to consult

on INDA related issues outside of formal INDA channels.

(3) Defendants' Wipes Are Not Flushable

(3)(a) "Flushable" Means "Suitable For Disposal by Flushing Down a Toilet"

44. As defined by Webster's Dictionary, "flushable" means "suitable for disposal by flushing down a toilet."

45. Many objects and materials theoretically will pass from the toilet to sewer pipes after being flushed, such as food scraps, jewelry, small toys, golf balls or cotton swabs, but that does not make such objects or materials "flushable." Rather, the word "flushable" means not just that the object or material is capable of passing from the toilet to sewer pipes, but that the object or material is *appropriate or suitable* to flush down a toilet for purposes of disposal via the sewer or septic system. In essence, "flushable" means that a product dissolves, disintegrates, disperses, or biodegrades, so that it can safely pass from home toilet to its endpoint, either by properly disintegrating in a septic tank or quickly and efficiently dispersing and passing without incident to the municipal sewer system, and this definition is one that is uniformly accepted by wastewater treatment system operators and the wipes industry.

46. For example, in 2003, Defendants published a document entitled "Protocols to Assess the Breakdown of Flushable Consumer Products." There, Defendants stated that a "flushable" product is one that "is able to pass through the toilet bowl and household drain line, is compatible with onsite and municipal wastewater treatment systems, and disintegrates such that it is not recognizable in the environment over a reasonable period of time."

47. Defendants' definition of flushable in the 2003 Protocols is consistent with industry usage throughout the class period. Each version of the INDA Guidelines has used a definition of "flushable" that is similar as the one used by Defendants. For example, in the most recent edition of the INDA Guidelines, the Third Edition published in June 2013, INDA included the following:

Definition of Flushability

For a product to be deemed flushable there must be evidence indicating that it:

- Clears toilets and properly maintained drainage pipe systems when the suppliers' recommended usage instructions are correctly followed;
- Passes through wastewater conveyance systems and is compatible with wastewater treatment, reuse and disposal systems without causing system blockage, clogging or other operational problems;
- Is unrecognizable in effluent leaving onsite and municipal wastewater treatment systems.

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5 [http://www.inda.org/wp-content/uploads/2013/06/GD3-and-Code-of-Practice_Executive-](http://www.inda.org/wp-content/uploads/2013/06/GD3-and-Code-of-Practice_Executive-Summary_June-2013-FINAL.pdf)
6 [Summary_June-2013-FINAL.pdf](http://www.inda.org/wp-content/uploads/2013/06/GD3-and-Code-of-Practice_Executive-Summary_June-2013-FINAL.pdf) (last accessed March 24, 2015). Earlier editions of the
7 Guidelines contained similar definitions.

8 48. The Industry’s definition of the term “flushable” is consistent with the generally
9 accepted consumer understanding of the word. Reasonable consumers understand “flushable” to
10 mean suitable for disposal by flushing down a toilet.

11 49. The State of California also accepts that the term “flushable” considers the entire
12 process from home toilet to wastewater treatment. To ensure that only “flushable” products are
13 flushed, the State of California has made it illegal “to deposit, by any means whatsoever, into a
14 plumbing fixture, floor drain, interceptor, sump, receptor, or device, which is connected to a
15 drainage system, public sewer, private sewer, septic tank, or cesspool, any ashes; cinders; solids;
16 rags; inflammable, poisonous, or explosive liquids or gases; oils; grease; or any other thing
17 whatsoever that is capable of causing damage to the drainage system or public sewer.” California
18 Code of Regulations, Title 24, Part 5, Chapter 3, California Building Standards, Sec. 305.1.

19 **(3)(b) Products That Do Not Dissolve, Disintegrate, Disperse, or Biodegrade Upon**
20 **Flushing Are Not Flushable**

21 50. The only products that uniformly do not damage plumbing pipes and pumps,
22 septic tanks, and/or municipal sewage lines and pumps are products such as toilet paper that
23 dissolve, disintegrate, disperse, or biodegrade quickly in wastewater into unrecognizable particles
24 within a minute or two of being flushed. The benefits of a product that dissolves, disintegrates,
25 disperses, or biodegrades are that it will not tangle with other items in the sewer, cause clogs or
26 damage to plumbing pipes, septic or municipal sewer pumps, or otherwise need to be removed
27 from screens in the wastewater treatment system or filtered out of wastewater prior to treatment.
28 On the other hand, products that do not dissolve, disintegrate, disperse, or biodegrade cannot

1 safely be flushed or be considered flushable. When these materials remain intact or in larger
2 pieces, they are prone to tangling with one another and with other debris, forming large ropes or
3 masses that can cause pipe blockages. In addition, larger pieces are more likely to get caught on
4 screens and filters in the municipal wastewater system and must be removed and disposed of in a
5 landfill. Large pieces also clog municipal sewer pumps, resulting in damage and the need for
6 costly repairs. Many wipes are made from substrates that are made with plastics, and as such, they
7 will never actually biodegrade, but instead, the plastics not only leech into the public water
8 supply, but bind the fibers in the substrate together permanently so that the waste can only be
9 disposed of in a landfill. As a result of the potential for damage resulting from flushing non-
10 dispersing products, any product that does not dissolve, disintegrate, disperse, or biodegrade in
11 wastewater is not flushable, and is “capable of causing damage to the drainage system or public
12 sewer,” rendering it illegal to flush under California law.

13 51. Because products that do not dissolve, disintegrate, disperse, or biodegrade like
14 toilet paper can and do cause damage to septic systems and public wastewater systems, water
15 treatment professionals and organizations unanimously agree that to be labeled “flushable,” a
16 product must dissolve, disintegrate, disperse, or biodegrade like toilet paper. These organizations
17 have routinely criticized the labeling of non-dispersing wipes, such as Defendants’ flushable
18 wipes, as flushable. For example, the Water Environment Federation (“WEF”), a nonprofit
19 association of water quality professionals, has explained which products should be labeled as
20 “flushable”:

21 The industry reference for dispersability is two-ply toilet paper ... [which] starts
22 to break apart when the toilet is flushed and is indistinguishable in the wastewater
23 system in a matter of seconds...Anything labeled as flushable should start to
 break apart during the flush and completely disperse within 5 minutes... Our
 mantra is, ‘It’s not flushable if it’s not dispersible’ . . .

24 See <http://news.wef.org/stop-dont-flush-that/> (last accessed February 26, 2014) (internal
25 quotations omitted). WEF further reports that consumers flush nondispersible wipes because they
26 are “misabeled” as “flushable,” when they do not dissolve, disintegrate, disperse, or biodegrade
27 like toilet paper. *Id.*

28 52. Municipal wastewater treatment operators and water protection organizations, and

1 related associations, are in agreement with WEF that the only product other than human
2 excrement *suitable* for disposal down a toilet is toilet paper. For example, the California
3 Association of Sanitation Agencies has stated:

4 Many personal hygiene wipes and cleaning products are marketed as being
5 “flushable.” But despite the confusing and misleading labels you should never
6 flush “flushable” or “disposable” products. No matter what a label says, the only
7 items you should flush are human waste and toilet paper. Just because something
8 disappears down your toilet doesn’t mean it won’t cause a problem in your sewer
9 pipe—or further down the line at wastewater treatment facilities. Items labeled as
10 “flushable” or “disposable” (even “bio-degradable” ones) can get caught on roots
11 in sewer pipes and contribute to blockages, back-ups, and overflows.

12 Dispose of them in the trash, not the toilet!

13 See <http://www.casaweb.org/flushable-wipes> (last accessed February 24, 2015).

14 53. San Francisco Public Utilities Commission officials have stated that with the
15 exception of toilet paper and human waste, “Everything else should go in the trash” and should
16 not be flushed. See [http://www.sfexaminer.com/sanfrancisco/flushable-wipes-cause-problematic-](http://www.sfexaminer.com/sanfrancisco/flushable-wipes-cause-problematic-backups-at-local-sewage-plants/Content?oid=2514283)
17 [backups-at-local-sewage-plants/Content?oid=2514283](http://www.sfexaminer.com/sanfrancisco/flushable-wipes-cause-problematic-backups-at-local-sewage-plants/Content?oid=2514283) (last accessed February 24, 2015).

18 54. The East Bay Municipal Utility District states:

19 **Non-Flushable Wipes and Products**

20 *No matter if the label says “disposable” or “flushable,” cleaning and personal*
21 *hygiene products should never be flushed.*

22 “Disposable” or “flushable” wipes and other products don't breakdown in the
23 sewer. Instead, they get tangled and clumped in hair and debris creating massive
24 obstructions in the sewers. **Remember... your toilet is not a trash can!**

25 See [https://www.ebmud.com/water-and-wastewater/pollution-prevention/residential-pollution-](https://www.ebmud.com/water-and-wastewater/pollution-prevention/residential-pollution-prevention)
26 [prevention](https://www.ebmud.com/water-and-wastewater/pollution-prevention/residential-pollution-prevention) (last accessed February 26, 2015).

27 55. The City of Carlsbad Wastewater Superintendent Don Wasko has stated:

28 They may be called flushable, but they can do severe damage to our sewer
system. . . These cloth wipes don’t break down in the sewer system the same way
that toilet paper does.

See <http://news.carlsbadca.gov/news/flushable-wipes-and-other-things-you-should-not-flush> (last
accessed February 24, 2015).

56. And in Contra Costa, County, the Central Contra Costa Sanitary District has said

1 that pre-moistened wipes are not flushable because “they don’t break down as quickly as toilet
2 paper and that’s really the standard for flush-ability, as far as we’re concerned.” *See*
3 [http://sanfrancisco.cbslocal.com/2013/07/17/cleaning-wipes-used-in-homes-and-offices-clogging-](http://sanfrancisco.cbslocal.com/2013/07/17/cleaning-wipes-used-in-homes-and-offices-clogging-bay-area-sewer-pipes/)
4 [bay-area-sewer-pipes/](http://sanfrancisco.cbslocal.com/2013/07/17/cleaning-wipes-used-in-homes-and-offices-clogging-bay-area-sewer-pipes/) (last accessed March 30, 2015).

5 57. Wastewater treatment operators outside of California have issued similar
6 statements. For example, operators of the wastewater treatment system in Pima County, Arizona,
7 issued a release stating that, “Unfortunately, disposable wipes are rarely, if ever, biodegradable in
8 the sanitary sewer system. They just aren’t in there long enough to break down.” *See*
9 [http://www.insidetucsonbusiness.com/blogs/save-yourself-stop-flushing-flushable-](http://www.insidetucsonbusiness.com/blogs/save-yourself-stop-flushing-flushable-wipes/article_e4db48de-312f-11e3-843e-001a4bcf887a.html)
10 [wipes/article_e4db48de-312f-11e3-843e-001a4bcf887a.html](http://www.insidetucsonbusiness.com/blogs/save-yourself-stop-flushing-flushable-wipes/article_e4db48de-312f-11e3-843e-001a4bcf887a.html) (last accessed March 30, 2015).

11 **(3)(c) Defendants’ Wipes Are Not a Flushable Product.**

12 58. Even though Defendants advertise their wipes as “flushable,” and intend for this
13 representation to mean that they are suitable for disposal by flushing down a toilet without
14 harming septic tanks or sewer systems, the wipes are not in fact flushable.

15 59. First, Defendants’ wipes are not designed to dissolve, disintegrate, disperse, or
16 biodegrade in water, but rather are specially manufactured to remain strong and durable while
17 wet. In fact, throughout the class period, all of Defendants’ flushable wipes, including the newest
18 version of the Kandoo Wipes, are made from a spunlaced wetlaid paper, which is made by
19 mechanically intertwining wood and pulp fibers using water jets. In reality, this kind of paper
20 blend is never suitable for flushing down a toilet, since it does not break up after flushing, and
21 routinely clogs pipes and pumps. And because plastics are used in manufacturing Defendants’
22 substrate, the Kandoo Wipes will never biodegrade.

23 60. Likewise, at all times during the class period, a consumer who purchases any
24 version of the Kandoo Wipes will find, upon opening the package, sheets of moist paper,
25 dampened by a coating of wet lotion. Unlike toilet paper, which is a dry paper product designed
26 to fall apart or disintegrate in water, all of the Kandoo Wipes are sold as pre-moistened products,
27 and thus, the spunlaced wetlaid paper used to make them is designed to withstand months of
28 soaking in a wet environment. Because weeks, months, or longer pass between the time all of the

1 Kandoo Wipes are manufactured and the time at which the wipes will ultimately used by a
2 consumer, the paper used to manufacture all versions of the wipes was selected because it was
3 strong enough to sit in a still, wet environment for extremely long periods of time. In all cases,
4 Defendants first considered whether the paper used to make the Kandoo Wipes was in fact strong
5 enough to withstand months of soaking in wet environment. The end result is that because all
6 versions of the Kandoo Wipes can sit in a wet environment for months, no version can possibly
7 dissolve, disintegrate, disperse, or biodegrade when placed in more water. To the contrary,
8 Defendants' wipes are specifically designed not to dissolve, disintegrate, disperse, or biodegrade
9 —i.e., Defendants specifically design their wipes to be unflushable.

10 61. Second, while Defendants acknowledge and admit that a “flushable” product must
11 be one that is compatible with wastewater treatment facilities, as well as home plumbing and
12 septic systems, Defendants have for years intentionally ignored wastewater treatment operators
13 and organizations which state that only dispersible products are flushable. For example, Robert
14 Villee, the Executive Director of the Plainfield Area Regional Sewage Authority in New Jersey,
15 and liaison to the INDA Flushability Working Group, has recommended that manufacturers of
16 “flushable” wipes move to a standard by which a wipe disperses into particles smaller than one
17 inch within thirty minutes of flushing. But instead of using standards and guidelines
18 recommended by those actually treating wastewater, Defendants have elected to test
19 “flushability” using the flawed INDA Guidelines, which Defendants participated in drafting, and
20 which were written by Defendants to ensure that their wipes can pass them. Thus, while the
21 flushable wipes may be able to pass a self-serving set of standards and guidelines, the standards
22 and guidelines are heavily flawed and do not adequately measure whether a product is safe for
23 disposal by flushing down a toilet.

24 62. For example, Defendants' flushable wipes, including all versions of the Kandoo
25 Wipes, purportedly have passed the “Slosh Box Disintegration Test” or “FG502” test appearing
26 in the Third Edition of the Guidelines. The FG502 test purports to measure dispersability, as it
27 assesses the potential for a product to disintegrate when it is submerged in water and subjected to
28 agitation. To conduct the test, the subject material is placed in a box of tap water. Testers then

1 mechanically agitate the water, and time how long it takes for the test material to disintegrate. But
2 the test is rigged such that even non-dispersible products pass it: Defendants and INDA have
3 agreed that the standard for “passing” this test is not whether the product actually is flushable,
4 i.e., whether it dissolves, disintegrates, disperses, or biodegrades like toilet paper, nor does
5 passage require that the product break down during or shortly after a flush. Rather, the test only
6 requires that after **three hours of agitation** in the slosh box, more than **25%** of the wipe must
7 pass through a 12.5 millimeter (roughly a half inch) sieve **80%** of the time. *See*
8 [http://www.njwea.org/pdf/2013-guidelines-for-assessing-the-flushability-of-disposable-](http://www.njwea.org/pdf/2013-guidelines-for-assessing-the-flushability-of-disposable-nonwoven-product.pdf)
9 [nonwoven-product.pdf](http://www.njwea.org/pdf/2013-guidelines-for-assessing-the-flushability-of-disposable-nonwoven-product.pdf) (last accessed March 24, 2015) (emphasis added). In other words, the
10 FG502 test is still passed even if *after more than **three hours of agitation**, nearly **three-quarters***
11 *of the material is **unable** to pass through the sieve*. In “real world” terms, this means that wipes
12 that pass the Slosh Box Disintegration Test can still be 75% intact, which makes them highly
13 prone to catching on pipes, turbines, screens, debris, or other items in the wastewater treatment
14 system, preventing wastewater from moving through sewer pipes efficiently, and must be
15 removed from the wastewater system and disposed of in landfills.

16 63. When subjected to the Slosh Box Disintegration Test, a typical piece of toilet
17 paper begins to dissolve, disintegrate, disperse, or biodegrade as soon as the water in the slosh
18 box begins to move, and is completely dispersed within in a few seconds. *See*
19 [http://www.consumerreports.org/cro/video-hub/home--garden/bed--bath/are-flushable-wipes-](http://www.consumerreports.org/cro/video-hub/home--garden/bed--bath/are-flushable-wipes-flushable/16935265001/22783507001/)
20 [flushable/16935265001/22783507001/](http://www.consumerreports.org/cro/video-hub/home--garden/bed--bath/are-flushable-wipes-flushable/16935265001/22783507001/) (last accessed March 30, 2015). Thus, when flushed down
21 a toilet, toilet paper will typically dissolve, disintegrate, disperse, and biodegrade within seconds
22 after flushing. *Id.* Defendants’ flushable wipes require hours of sloshing to even start to break
23 apart, i.e., they do not efficiently disperse. However, Defendants and INDA have agreed that non-
24 dispersible products such as those made by Defendants can be labeled as “flushable” provided
25 they pass the Slosh Box test standard. Thus, while all versions of the Kandoo Wipes have
26 purportedly passed the Slosh Box test, none actually dissolve, disintegrate, disperse, or
27 biodegrade completely or efficiently.

28 64. Wastewater treatment operators uniformly criticize the Slosh Box Disintegration

1 Test as it does not properly mimic the real world force and movement of products through the
2 wastewater system. As one professional noted, the test is “a lot more turbulent than the flow that
3 you find in a wastewater pipe.” [http://www.nytimes.com/2015/03/15/nyregion/the-wet-wipes-](http://www.nytimes.com/2015/03/15/nyregion/the-wet-wipes-box-says-flush-but-the-new-york-city-sewer-system-says-dont.html?_r=0)
4 [box-says-flush-but-the-new-york-city-sewer-system-says-dont.html?_r=0](http://www.nytimes.com/2015/03/15/nyregion/the-wet-wipes-box-says-flush-but-the-new-york-city-sewer-system-says-dont.html?_r=0) (last accessed March
5 24, 2015). Another explained that the Slosh Box Disintegration Test is “way more violent than
6 you would see in a sewer” and that it “is not acceptable to the wastewater industry because it is
7 too long (three hours), too aggressive, and does not replicate the flow conditions in a gravity
8 sewer.”
9 http://www.aeanj.org/aea-uploads/28932_Fall_low_res.pdf (last accessed March 24, 2015).
10 Because sewer systems typically move sewage to the plant via gravity, the water flow is more
11 gentle and therefore not as hard on the wipes as the agitating water in the Slosh Box
12 Disintegration Test, meaning that the wipes will not break down as quickly in actual conditions as
13 they do in Defendants’ lab simulated tests.

14 65. The Slosh Box Disintegration Test is further flawed because wastewater utility
15 officials say that wipes can reach a sewage treatment pump in as quickly as a few minutes, much
16 faster than the hours needed for Defendants’ wipes to begin to break down. *See*
17 [http://www.washingtonpost.com/local/trafficandcommuting/flushable-personal-wipes-clogging-](http://www.washingtonpost.com/local/trafficandcommuting/flushable-personal-wipes-clogging-sewer-systems-utilities-say/2013/09/06/9efac4e6-157a-11e3-a2ec-b47e45e6f8ef_story.html)
18 [sewer-systems-utilities-say/2013/09/06/9efac4e6-157a-11e3-a2ec-b47e45e6f8ef_story.html](http://www.washingtonpost.com/local/trafficandcommuting/flushable-personal-wipes-clogging-sewer-systems-utilities-say/2013/09/06/9efac4e6-157a-11e3-a2ec-b47e45e6f8ef_story.html) (last
19 accessed March 30, 2015). Further, the moist lotion used in manufacturing the wipes results in
20 them traveling faster through sewer pipes than ordinary products. *See*
21 [http://www.woai.com/articles/woai-local-news-119078/disposable-wipes-causing-nightmare-for-](http://www.woai.com/articles/woai-local-news-119078/disposable-wipes-causing-nightmare-for-san-11718265/)
22 [san-11718265/](http://www.woai.com/articles/woai-local-news-119078/disposable-wipes-causing-nightmare-for-san-11718265/) (last accessed February 26, 2014).

23 66. Defendants are currently in consultation with each other, and with INDA, about
24 modifying the Slosh Box Disintegration Test in connection with their discussions about the future
25 Fourth Edition of the INDA Guidelines. Defendants continue to discuss amongst themselves and
26 with INDA, how to maintain an achievable industry standard while attempting to placate the
27 wastewater treatment community and regulators.

28 67. Because the wipes are always intact after a few minutes, and largely intact even

1 after hours of agitation, they arrive at wastewater treatment facilities intact, where they create the
2 problems described below in paragraphs 73-86.

3 68. The other tests run as part of the INDA Guidelines are similarly flawed. For
4 example, both the Slosh Box Disintegration Test described in paragraphs 62-64 and the “Aerobic
5 Biodisintegration” FG505 test, assess the wipes’ ability to disintegrate under constantly agitated
6 water. *See* [http://www.njwea.org/pdf/2013-guidelines-for-assessing-the-flushability-of-](http://www.njwea.org/pdf/2013-guidelines-for-assessing-the-flushability-of-disposable-nonwoven-product.pdf)
7 [disposable-nonwoven-product.pdf](http://www.njwea.org/pdf/2013-guidelines-for-assessing-the-flushability-of-disposable-nonwoven-product.pdf) (last accessed March 24, 2015). Since Defendants’ flushable
8 wipes are unlikely to be subjected to the same agitating water in actual conditions as they are
9 subjected to in Defendants’ lab, the tests are not reliable predictors of whether their wipes are
10 suitable for flushing down a toilet. The result is that many of Defendants’ wipes, including all
11 versions of the Kandoo Wipes, have the propensity to arrive at the sewage treatment plant intact
12 or insufficiently broken down.

13 69. The tests are further flawed in that they fail to take into account the wipes’
14 propensity for “ragging.” After being flushed down the toilet, Defendants’ flushable wipes,
15 including all versions of the Kandoo Wipes, have a propensity to tangle amongst one another and
16 with other debris, and form long ropes that can fill sewer lines for tens of feet. *See*
17 [http://www.hsconnect.com/page/content.detail/id/590706/Concerns-on-wipes-no-laughing-](http://www.hsconnect.com/page/content.detail/id/590706/Concerns-on-wipes-no-laughing-matter.html?nav=5005)
18 [matter.html?nav=5005](http://www.hsconnect.com/page/content.detail/id/590706/Concerns-on-wipes-no-laughing-matter.html?nav=5005) (last accessed March 30, 2015). The tests, however, assume that wipes are
19 passing through pipes and pumps one at a time, instead of in clumps of rags and ropes. For
20 example, while the Slosh Box Disintegration Test only considers what one wipe will do, there
21 will often be multiple wipes in a pipe at a time. The bigger the mass of wipes, the slower the
22 dispersal time. *See* [http://www.washingtonpost.com/local/trafficandcommuting/flushable-](http://www.washingtonpost.com/local/trafficandcommuting/flushable-personal-wipes-clogging-sewer-systems-utilities-say/2013/09/06/9efac4e6-157a-11e3-a2ec-b47e45e6f8ef_story.html)
23 [personal-wipes-clogging-sewer-systems-utilities-say/2013/09/06/9efac4e6-157a-11e3-a2ec-](http://www.washingtonpost.com/local/trafficandcommuting/flushable-personal-wipes-clogging-sewer-systems-utilities-say/2013/09/06/9efac4e6-157a-11e3-a2ec-b47e45e6f8ef_story.html)
24 [b47e45e6f8ef_story.html](http://www.washingtonpost.com/local/trafficandcommuting/flushable-personal-wipes-clogging-sewer-systems-utilities-say/2013/09/06/9efac4e6-157a-11e3-a2ec-b47e45e6f8ef_story.html) (last accessed March 30, 2015).

25 70. In the Third Edition of the INDA Guidelines, the FG507 test, or the Municipal
26 Pump Test, was introduced. Prior to 2013, “flushable” wipes were not even tested for their
27 compatibility with municipal sewer pumps, even though a wipe’s ability to pass through these
28 pumps without causing damage, clogs, and excessive power draws, is a critical component to

1 consider when analyzing whether a product is compatible with wastewater treatment systems.

2 71. The newly added Municipal Pump Test is flawed, however. For example, to
3 conduct the FG507 test, Defendants and INDA have agreed to only introduce one wipe every ten
4 seconds into the pump to assess whether the pump can process the wipes. *See*
5 [http://www.njwea.org/pdf/2013-guidelines-for-assessing-the-flushability-of-disposable-](http://www.njwea.org/pdf/2013-guidelines-for-assessing-the-flushability-of-disposable-nonwoven-product.pdf)
6 [nonwoven-product.pdf](http://www.njwea.org/pdf/2013-guidelines-for-assessing-the-flushability-of-disposable-nonwoven-product.pdf), p. 18 (last accessed March 24, 2015). Because Defendants' non-
7 dispersible wipes are likely to entangle with other wipes and debris, they are unlikely to enter the
8 pump one at a time. Instead, they reach the pump in larger clumps, increasing the likelihood that
9 they will break or clog it.

10 72. In addressing criticism about their wipes and the INDA Guidelines, Defendants
11 have taken the position that they are working hard to balance the concerns raised by wastewater
12 treatment organizations with consumers' demand for flushable moist toilet wipes, and that the
13 products they sell represent the best balance of those considerations. But the technology exists to
14 manufacture pre-moistened wipes that are actually flushable, and Defendants have simply elected
15 to use non-flushable substrate. For example, Haso USA, has designed a wipe that appears to out-
16 perform Defendants' products in its speed of dissolution and disintegration, and in its
17 dispersability. Initial testing found that the Haso product performs comparably to 2-ply toilet
18 paper when subjected to the Slosh Box Disintegration Test. Those same studies also found that
19 the Haso product began dispersing within five seconds of being submerged in water and broke
20 into 1 inch pieces within five minutes, ten times quicker than the next fastest dispersing flushable
21 wipe currently on the market. *See* [http://www.storebrands.info/store-brand-insights/store-brand-](http://www.storebrands.info/store-brand-insights/store-brand-news/haso-usa-develops-industrys-first-fully-dispersible-flushable-baby-wipe)
22 [news/haso-usa-develops-industrys-first-fully-dispersible-flushable-baby-wipe](http://www.storebrands.info/store-brand-insights/store-brand-news/haso-usa-develops-industrys-first-fully-dispersible-flushable-baby-wipe) (last accessed
23 September 5, 2015). But rather than invest in developing a truly flushable product, however,
24 Defendants continue to manufacture their wipes using a non-flushable substrate that will not
25 dissolve, disintegrate, disperse, or biodegrade when flushed.

26 **(4) Because Defendants' Flushable Wipes Are Not Suitable For Flushing Down a Toilet,**
27 **They Wreak Havoc When Flushed.**

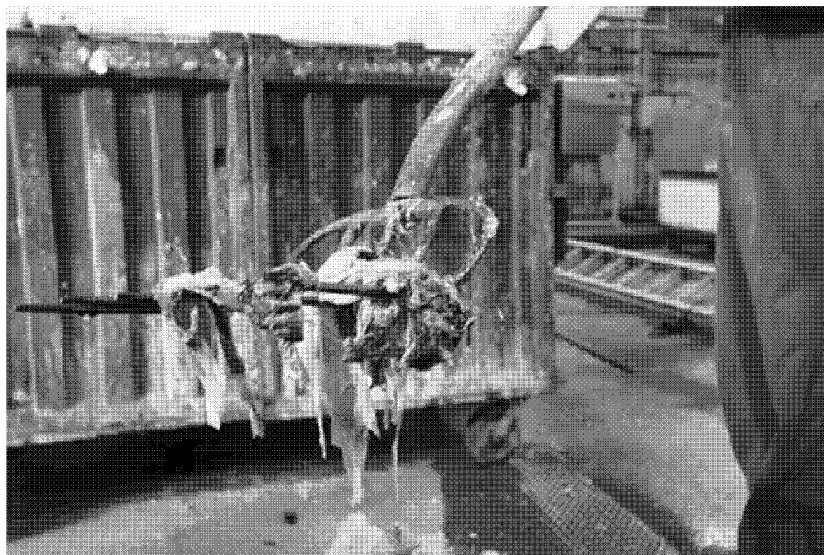
28 73. Consumers and municipalities all over the country have complained about the

1 damage caused when flushing Defendants' flushable wipes.

2 74. When consumers flush non-dispersible "flushable" wipes, such as those
3 manufactured by Defendants, municipalities pay heavy costs, which are ultimately passed on to
4 taxpayers. For example, in Bakersfield, California, crews of three or four workers must regularly
5 visit the city's 52 sewage lift stations to cut up the balls of wipes that clog the lift stations. If they
6 do not, there is a risk that back flow damage will spill inside homes. As a result of all the
7 problems he has observed, Mike Connor, Street Superintendent at Public Works in Bakersfield
8 has stated, "There's no safe brand for disposables, none of them break down." *See*
9 [http://www.turnto23.com/news/local-news/bakersfield-sewer-systems-keep-getting-clogged-](http://www.turnto23.com/news/local-news/bakersfield-sewer-systems-keep-getting-clogged-because-of-flushable-bathroom-wipes-092413)
10 [because-of-flushable-bathroom-wipes-092413](http://www.turnto23.com/news/local-news/bakersfield-sewer-systems-keep-getting-clogged-because-of-flushable-bathroom-wipes-092413) (last accessed March 25, 2015).

11 75. In Orange County, California, the Sanitation District recorded 971 "de-ragging"
12 maintenance calls to remove wipes from ten pump stations in a single year at a cost of \$320,000.
13 [http://www.contracostatimes.com/news/ci_24156213/popular-bathroom-wipes-blamed-sewer-](http://www.contracostatimes.com/news/ci_24156213/popular-bathroom-wipes-blamed-sewer-clogs)
14 [clogs](http://www.contracostatimes.com/news/ci_24156213/popular-bathroom-wipes-blamed-sewer-clogs) (last accessed March 25, 2015).

15 76. The San Francisco Public Utilities Commission has documented the pipe-clogging
16 wipes that the crews must break up:



1
2 [http://www.sfexaminer.com/sanfrancisco/flushable-wipes-cause-problematic-backups-at-local-](http://www.sfexaminer.com/sanfrancisco/flushable-wipes-cause-problematic-backups-at-local-sewage-plants/Content?oid=2514283)
3 [sewage-plants/Content?oid=2514283](http://www.sfexaminer.com/sanfrancisco/flushable-wipes-cause-problematic-backups-at-local-sewage-plants/Content?oid=2514283) (last accessed March 25, 2015). The City of San Francisco
4 spends \$160,000 a year to remove wipes and debris. *Id.*

5 77. In 2012, thirty percent of the sewage overflows in Contra Costa County were
6 caused by “flushable wipes.” [http://articles.chicagotribune.com/2013-10-08/news/ct-tl-1010-s-](http://articles.chicagotribune.com/2013-10-08/news/ct-tl-1010-s-tinley-park-flushables-20131009_1_baby-wipes-flushable-toilet-paper)
7 [tinley-park-flushables-20131009_1_baby-wipes-flushable-toilet-paper](http://articles.chicagotribune.com/2013-10-08/news/ct-tl-1010-s-tinley-park-flushables-20131009_1_baby-wipes-flushable-toilet-paper) (last accessed March 25,
8 2015). At one sanitation district in Contra Costa County, workers take apart pumps approximately
9 30 times a year to detangle debris. Before flushable wipes were introduced, such repairs were
10 necessary just six times a year. *See* [http://www.casaweb.org/news/unwelcome-junk-keeps-sewer-](http://www.casaweb.org/news/unwelcome-junk-keeps-sewer-line-workers-busy)
11 [line-workers-busy](http://www.casaweb.org/news/unwelcome-junk-keeps-sewer-line-workers-busy) (last accessed March 25, 2015).

12 78. Outside of California, the story is much the same. New York City has spent \$18
13 million in the five years prior to March 2015 on wipe-related equipment problems, noting that the
14 volume of materials extracted from screening machines at the city’s wastewater treatment plants
15 have more than doubled since 2008 due to consumers flushing non-dispersible wipes.
16 [http://www.nytimes.com/2015/03/15/nyregion/the-wet-wipes-box-says-flush-but-the-new-york-](http://www.nytimes.com/2015/03/15/nyregion/the-wet-wipes-box-says-flush-but-the-new-york-city-sewer-system-says-dont.html?_r=1)
17 [city-sewer-system-says-dont.html?_r=1](http://www.nytimes.com/2015/03/15/nyregion/the-wet-wipes-box-says-flush-but-the-new-york-city-sewer-system-says-dont.html?_r=1) (last accessed March 25, 2015).

18 79. The city of Vancouver, Washington, has been forced to spend more than \$1
19 million over the last five years to respond to problems created from the increased use of
20 “flushable” wipes. *See* <http://www.kctv5.com/story/23508880/flushable-wipes-clog-sewer-lines>
21 (last accessed March 25, 2015). In particular, the city has spent \$810,000 in 2014 on new
22 equipment, \$140,00 on electricity wasted through inefficiencies created by running clogged
23 pumps, \$480,000 in field labor to unclog pumps, and about \$100,000 in engineering and
24 administrative support. *See* [http://news.wef.org/wipes-in-pipes-cause-costly-problems-for-water-](http://news.wef.org/wipes-in-pipes-cause-costly-problems-for-water-resource-recovery-facilities/)
25 [resource-recovery-facilities/](http://news.wef.org/wipes-in-pipes-cause-costly-problems-for-water-resource-recovery-facilities/) (last accessed March 25, 2015).

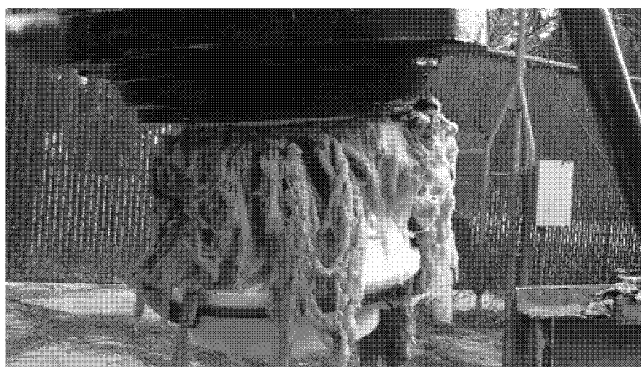
26 80. In Illinois, the Downers Grove Sanitary District spent \$30,000 in 2014 to repair a
27 pump clogged by wipes, and an additional \$5,000 to install vibration monitoring equipment to
28 alert staff to new blockages. *See* <http://news.wef.org/wipes-in-pipes-cause-costly-problems-for->

1 water-resource-recovery-facilities/ (last accessed March 25, 2015). Despite this upgrade, the
2 wipes continue to accumulate in the lift station, and additional equipment may need to be
3 installed. *Id.*

4 81. Outside of Washington, D.C., the Washington Suburban Sanitary Commission has
5 spent more than \$1 million over five years installing heavy duty grinders to try to address the
6 problem. [http://www.contracostatimes.com/news/ci_24156213/popular-bathroom-wipes-blamed-](http://www.contracostatimes.com/news/ci_24156213/popular-bathroom-wipes-blamed-sewer-clogs)
7 [sewer-clogs](http://www.contracostatimes.com/news/ci_24156213/popular-bathroom-wipes-blamed-sewer-clogs) (last accessed March 25, 2015). In addition, the organization has started using a
8 modified shopping cart to catch the wipes before they reach the pumps and clog equipment,
9 which arrive intact at the treatment facility:



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22 82. Once at the municipal treatment plant, the wipes clog pipes and pumps. It can take
23 hours to unclog them, and is very expensive. The city of Jacksonville Beach estimates that the
24 consumers are paying for the wipes multiple times – in plumbing costs and increased tax
25 expenditures. *See* [http://www.news4jax.com/news/officials-flushable-wipes-clog-pipes/-](http://www.news4jax.com/news/officials-flushable-wipes-clog-pipes/-/475880/23740904/-/t5h2vrz/-/index.html)
26 [/475880/23740904/-/t5h2vrz/-/index.html](http://www.news4jax.com/news/officials-flushable-wipes-clog-pipes/-/475880/23740904/-/t5h2vrz/-/index.html) (last accessed March 25, 2015). Jacksonville Beach has
27 released a photo that demonstrates the extent to which the wipes have clogged the pumps:
28



Id.

83. In Hillsborough, Florida, the sewage treatment facility has hooked ropes to pumps that are plagued by clogs from the wipes. Every day, teams of plant maintenance mechanics and other workers remove the wipes using the hooks, so that they can cut and untangle the wipes, which resemble “mop strings,” using pliers, screwdrivers, and cutters.

<http://www.tampabay.com/news/humaninterest/flushable-bathroom-wipes-get-blame-for-sewer-clogs/2144911> (last accessed March 25, 2015).

84. In San Antonio, Texas, the San Antonio Water System has said that flushable wipes are clogging up sewers in ways in which sewer workers have never seen before. *See* <http://www.woai.com/articles/woai-local-news-119078/disposable-wipes-causing-nightmare-for-san-11718265/> (last accessed March 25, 2015). Sewer workers are responding to dozens of clogs, and to repair, they retrieve large “rope like mass[es]” from the pipes. *Id.*

85. In Arkansas, the Jacksonville Wastewater Utility has found that wipes wreak the most havoc on pumps, causing thousands of dollars in damages. Years ago, the city would remove pump clogs once or twice a year, but since the flushable wipes have become popular among consumers, the town must remove pump clogs several times a month. *See* <http://www.arkansasmatters.com/story/wastewater-treatment-facilities-waging-war-with-wipes/d/story/1ZNQd1uAZECshHMb5daErA> (last accessed March 25, 2015). The city spends thousands of dollars a year to address pump clogs. *Id.*

86. Defendants repeatedly have insisted that these problems are caused by other non-flushable products, and not their wipes. But sewer officials have noted that the growing problems with sewer clogs have coincided with the growing sales of flushable wipes.

http://www.contracostatimes.com/news/ci_24156213/popular-bathroom-wipes-blamed-sewer-

1 clogs (last accessed March 25, 2015). Sewer officials in Vancouver, Washington dyed several
2 kinds of wipes to see what happens once they enter the sewer system, and found that wipes
3 labeled “flushable” were still intact after traveling a mile through sewage pipes.

4 **(5) Defendants Intend To Continue To Market And Sell Non-Flushable Products as**
5 **“Flushable”**

6 87. Defendants’ marketing campaign has been extremely successful. The market for
7 flushable wipes is projected to grow 12.1% annually to reach \$2.4 billion by 2018.
8 <http://www.giiresearch.com/report/apex279326-future-flushable-wipes.html> (last accessed March
9 25, 2015). Kandoo is a popular brand, and is sold in grocery stores and big box stores throughout
10 California and the country. Because of the big potential for sales, Defendants have no incentive to
11 stop selling “flushable” products, to change their packaging or add reasonable disclaimers for fear
12 of discouraging sales.

13 88. Because Defendants know consumers rely on representations about flushability on
14 product packaging, even when presented with warnings from local wastewater treatment
15 authorities, Defendants have opposed both mandatory and voluntary standards that would require
16 Defendants to provide more information to consumers about the risks associated with flushing
17 their flushable wipes. For example, while the INDA Guidelines and industry definition of
18 “flushable” is conditioned upon usage instructions being correctly followed, INDA does not
19 encourage, nor do Defendants actually print, disclaimers and usage instructions in a conspicuous
20 location on the front of the package where consumers are most likely to read the information.

21 89. The INDA Guidelines are voluntary. While wastewater treatment professionals
22 and legislatures want, at a minimum, for the guidelines to be mandatory, so far, INDA has not
23 acceded to their requests.

24 90. Defendants, through INDA, have also opposed legislative efforts to regulate the
25 labeling of products as flushable, even where those laws put in place weakened standards for
26 “flushability.” For example, in 2010, a bill was proposed in the California Senate that would
27 regulate the use of the term “flushable.” That bill, A.B. 2256, made it unlawful to label as
28 flushable any product that did not adhere to the same INDA Guidelines that Defendants have
claimed that they follow. But INDA opposed the measure, and the legislative history

1 demonstrates that Defendants did not file any statement of support. *See*
2 [http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_2251-](http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_2251-2300/ab_2256_cfa_20100617_172920_sen_comm.html)
3 [2300/ab_2256_cfa_20100617_172920_sen_comm.html](http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_2251-2300/ab_2256_cfa_20100617_172920_sen_comm.html) (last accessed March 24, 2015). Similar
4 bills have been proposed in other states, including Maine and New Jersey, though all have been
5 opposed by INDA and none have been successful.

6 91. Wastewater treatment operators have criticized the industry's failure to accept that
7 dispersability is an essential part of flushability, and have stated that the Third Edition of the
8 INDA Guidelines "may be a step backwards" from previous editions. *See*
9 http://www.weat.org/Presentations/04%20Villemore_Non-dispersibles.pdf (last accessed March 31,
10 2015).

11 92. Despite the regulatory pressure, P&G has both the financial motivation and
12 technological know how to introduce new flushable products into the market. As discussed in
13 paragraphs 32-39, P&G retains the knowledge and right to introduce a new flushable wipe that
14 utilizes the same technology used in the manufacture of the Kandoo Wipes. It also can market
15 that wipe under the "Pampers" brand name, or any brand name other than "Kandoo" that it elects.
16 Because Nehemiah recently voluntarily ceased using the "Pampers" trademark on the sale of the
17 Kandoo Wipes, P&G is no longer receiving the same royalties from the sale of the toddler wipes
18 as it had throughout the first four years of the class period. That, combined with the fact that the
19 market for flushable wipes is booming and the fact that P&G would need to invest very little up-
20 front costs in research and development but could instead piggyback on Nehemiah's work,
21 provides P&G tremendous financial motivation to introduce a new product that is substantially
22 similar to the Kandoo Wipes.

23 93. In addition to P&G's independent motivations for developing new wipes, both
24 Defendants have an incentive to continue to partner and collaborate on the Kandoo Wipes and on
25 flushability issues generally. Due to the success of the Kandoo Wipes and its role on the
26 Flushability Task Force, Nehemiah has developed deep expertise on issues relating to
27 flushability, expertise that P&G has sought out, as discussed in paragraph 37. Nehemiah in turn
28 benefits from P&G, as Nehemiah is a small but growing company, and owes much of its growth

1 to programs like Connect + Develop and other work that P&G has provided to it over the years.
2 Together, Defendants continue to participate actively in INDA and work together on developing
3 flushability guidelines. Their partnership has enabled them to jointly develop litigation strategies
4 and respond to government inquiries. And both Defendants are based in Cincinnati, and pride
5 themselves on their ties to their community. In other words, Defendants' interests are intrinsically
6 bound together. Should Nehemiah be ordered to remove the word "flushable" from its wipes, the
7 Defendants' deep ties to one another would enable them to quickly reshuffle the deck to allow for
8 P&G to relaunch the same product.

9 **PLAINTIFF'S EXPERIENCE**

10 94. Plaintiff is a parent, and first saw Defendants' Kandoo Wipes at his children's
11 preschool. He noticed they were smaller than the moist wipes he had used at home, but decided to
12 buy Defendants' Kandoo Wipes for home use because he thought it would be more convenient to
13 be able to flush the wipes and he did not like the smell that resulted from throwing non-flushable
14 wipes in the trash.

15 95. On January 6, 2014, Plaintiff purchased one 350-count package of Pampers Wipes
16 from www.diapers.com. He paid \$12.32, less a promotion of \$1.23, for a total of \$11.09, to
17 purchase the Pampers Wipes. The wipes were 6.7 inches by 4.1 inches, or 27.45 square inches,
18 each. Prior to purchasing Kandoo Wipes, Plaintiff had purchased Babyganics brand non-flushable
19 wipes. Plaintiff preferred the Babyganics wipes because at 50.4 square inches each, they were
20 larger, and therefore he needed fewer wipes per use, and because they did not contain certain
21 chemicals. Because Defendants had represented that the Kandoo Wipes were "flushable,"
22 Plaintiff made the decision to purchase the Kandoo Wipes even though each wipe was half the
23 size of the Babyganics wipes, and therefore significantly more expensive per square inch.

24 96. He began using the Kandoo Wipes. After his children went to the bathroom, he
25 would use 1-2 wipes to clean and dry them. He immediately had problems flushing the wipes, as
26 the toilet clogged and backed up. After he unclogged the toilet, he noticed that the toilet paper had
27 partially decomposed, but the wipes were completely intact. Concerned about a risk of expensive
28 plumbing repairs, he stopped flushing the wipes.

97. Plaintiff later learned that use of flushable wipes such as those manufactured and marketed by Defendants has damaged home plumbing systems and wastewater treatment facilities in municipalities all over the country. Had he known of risk of clogging, as well as expensive plumbing repairs and damage that flushable wipes cause, Plaintiff would not have purchased the Kandoo Wipes, or at minimum, would not have paid a premium for them.

98. Had Defendants not misrepresented (by omission and commission) the true nature of their “Flushable” wipes, Plaintiff would not have purchased Defendants’ wipes.

99. Plaintiff continues to desire to purchase wipes suitable for flushing from Defendants. He regularly visits stores where Defendants' "flushable" wipes are sold. Without purchasing and attempting to flush a Flushable Wipe, Plaintiff is unable to determine if the wipes are flushable. Plaintiff understands that the design and construction of the Flushable Wipes may change over time or Defendants may respond to pressure from wastewater treatment operators, legislators, government agencies, competitors, or environmental organizations. But as long as Defendants continue to use the word "flushable" to describe non-flushable wipes, then when presented with Defendants' packaging, Plaintiff will have no way of determining whether the representation "flushable" is in fact true. Thus, Plaintiff is likely to be repeatedly presented with false or misleading information when shopping and unable to make informed decisions about whether to purchase the wipes. He is further likely to be repeatedly misled by Defendants' conduct, unless and until Defendants are compelled to ensure that their wipes packaged as flushable truly are dispersible and suitable for flushing.

CLASS ALLEGATIONS

100. Plaintiff brings this action against Defendants on behalf of himself and all others similarly situated, as a class action pursuant to section 382 of the California Code of Civil Procedure and section 1781 of the California Civil Code. Plaintiff seeks to represent a group of similarly situated persons, defined as follows:

All persons and businesses who on or after March 21, 2010 and before [date of Preliminary Approval], purchased, in California, other than for purpose of resale, any pre-moistened wipes bearing the word “flushable” and the brand name “Kandoo®” on the package label.

1 For avoidance of doubt, the Class includes purchasers of wipes that bear two or more
2 brand names on the package label, as long as at least one of the brand names is
3 "Kandoo®." The Class excludes any governmental entity, district, or agency; Nehemiah;
4 P&G; any entity in which Nehemiah or P&G has a controlling interest; and any of
5 Defendants' subsidiaries, parents, affiliates, and officers, directors, employees, legal
6 representatives, heirs, successors, or assigns.

7 101. This action has been brought and may properly be maintained as a class action
8 against Defendants pursuant to the provisions of California Code of Civil Procedure section 382
9 because there is a well-defined community of interest in the litigation and the proposed class is
10 easily ascertainable.

11 102. Numerosity: Plaintiff does not know the exact size of the Class, but it is estimated
12 that it is composed of more than 100 persons. The persons in the Class are so numerous that the
13 joinder of all such persons is impracticable and the disposition of their claims in a class action
14 rather than in individual actions will benefit the parties and the courts.

15 103. Common Questions Predominate: This action involves common questions of law
16 and fact to the potential class because each class member's claim derives from the deceptive,
17 unlawful and/or unfair statements and omissions that led Defendants' customers to believe that
18 the Kandoo Wipes were flushable. The common questions of law and fact predominate over
19 individual questions, as proof of a common or single set of facts will establish the right of each
20 member of the Class to recover. Among the questions of law and fact common to the class are:

- 21 a) Whether Defendants' Kandoo Wipes are suitable for flushing down a toilet;
- 22 b) Whether Defendants unfairly, unlawfully and/or deceptively failed to
23 inform class members that their Kandoo Wipes are not suitable for flushing;
- 24 c) Whether Defendants' advertising and marketing regarding their Kandoo
25 Wipes sold to class members was likely to deceive class members or was unfair;
- 26 d) Whether Defendants engaged in the alleged conduct knowingly, recklessly,
27 or negligently;
- 28 e) The amount of revenues and profits Defendants received and/or the amount

1 of moneys or other obligations lost by class members as a result of such wrongdoing;

2 f) Whether class members are entitled to injunctive and other equitable relief
3 and, if so, what is the nature of such relief; and

4 g) Whether class members are entitled to payment of actual, incidental,
5 consequential, exemplary and/or statutory damages plus interest thereon, and if so, what is the
6 nature of such relief.

7 104. Typicality: Plaintiff's claims are typical of the class because, in 2014, he
8 purchased at least one package of the Kandoo Wipes, in reliance on Defendants'
9 misrepresentations and omissions that they were flushable. Thus, Plaintiff and class members
10 sustained the same injuries and damages arising out of Defendants' conduct in violation of the
11 law. The injuries and damages of each class member were caused directly by Defendants'
12 wrongful conduct in violation of law as alleged.

13 105. Adequacy: Plaintiff will fairly and adequately protect the interests of all class
14 members because it is in his best interests to prosecute the claims alleged herein to obtain full
15 compensation due to his for the unfair and illegal conduct of which he complains. Plaintiff also
16 has no interests that are in conflict with or antagonistic to the interests of class members. Plaintiff
17 has retained highly competent and experienced class action attorneys to represent his interests and
18 the interests of the class. By prevailing on his own claim, Plaintiff will establish Defendants'
19 liability to all class members. Plaintiff and his counsel have the necessary financial resources to
20 adequately and vigorously litigate this class action, and Plaintiff and counsel are aware of their
21 fiduciary responsibilities to the class members and are determined to diligently discharge those
22 duties by vigorously seeking the maximum possible recovery for class members.

23 106. Superiority: There is no plain, speedy, or adequate remedy other than by
24 maintenance of this class action. The prosecution of individual remedies by members of the class
25 will tend to establish inconsistent standards of conduct for the Defendants and result in the
26 impairment of class members' rights and the disposition of their interests through actions to
27 which they were not parties. Class action treatment will permit a large number of similarly
28 situated persons to prosecute their common claims in a single forum simultaneously, efficiently,

1 and without the unnecessary duplication of effort and expense that numerous individual actions
2 world engender. Furthermore, as the damages suffered by each individual member of the class
3 may be relatively small, the expenses and burden of individual litigation would make it difficult
4 or impossible for individual members of the class to redress the wrongs done to them, while an
5 important public interest will be served by addressing the matter as a class action.

6 107. Nexus to California. The State of California has a special interest in regulating the
7 affairs of corporations that do business here. Defendants have more customers here than in any
8 other state. Accordingly, there is a substantial nexus between Defendants' unlawful behavior and
9 California such that the California courts should take cognizance of this action on behalf of a
10 class of individuals who reside anywhere in the United States.

11 108. Plaintiff is unaware of any difficulties that are likely to be encountered in the
12 management of this action that would preclude its maintenance as a class action.

13 **CAUSES OF ACTION**

14 **PLAINTIFF'S FIRST CAUSE OF ACTION**

15 **(Violation of the Consumers Legal Remedies Act, California Civil Code § 1750, *et seq.*)** 16 **On Behalf of Himself and the Class**

17 109. Plaintiff realleges and incorporates the paragraphs of this Class Action Complaint
18 as if set forth herein.

19 110. This cause of action is brought pursuant to the California Consumers Legal
20 Remedies Act, California Civil Code § 1750, *et seq.* ("CLRA").

21 111. Defendants' actions, representations and conduct have violated, and continue to
22 violate the CLRA, because they extend to transactions that are intended to result, or which have
23 resulted, in the sale or lease of goods or services to consumers.

24 112. Plaintiff and other class members are "consumers" as that term is defined by the
25 CLRA in California Civil Code § 1761(d).

26 113. The Kandoo Wipes that Plaintiff (and others similarly situated class members)
27 purchased from Defendants were "goods" within the meaning of California Civil Code § 1761(a).

28 114. By engaging in the actions, representations and conduct set forth in this Class
Action Complaint, Defendants have violated, and continue to violate, § 1770(a)(2), § 1770(a)(5),

1 § 1770(a)(7), § 1770(a)(8), and § 1770(a)(9) of the CLRA. In violation of California Civil Code
2 §1770(a)(2), Defendants' acts and practices constitute improper representations regarding the
3 source, sponsorship, approval, or certification of the goods they sold. In violation of California
4 Civil Code §1770(a)(5), Defendants' acts and practices constitute improper representations that
5 the goods they sell have sponsorship, approval, characteristics, ingredients, uses, benefits, or
6 quantities, which they do not have. In violation of California Civil Code §1770(a)(7), Defendants'
7 acts and practices constitute improper representations that the goods they sell are of a particular
8 standard, quality, or grade, when they are of another. In violation of California Civil Code
9 §1770(a)(8), Defendants have disparaged the goods, services, or business of another by false or
10 misleading representation of fact. In violation of California Civil Code §1770(a)(9), Defendants
11 have advertised goods or services with intent not to sell them as advertised. Specifically, in
12 violation of sections 1770 (a)(2), (a)(5), (a)(7) and (a)(9), Defendants' acts and practices led
13 customers to falsely believe that that their Kandoo Wipes were suitable for flushing down a toilet.
14 In violation of section 1770(a)(8), Defendants falsely or deceptively market and advertise that,
15 unlike products not specifically denominated as flushable, the Kandoo Wipes are suitable for
16 flushing down a toilet, when in fact none of the products are suitable for flushing.

17 115. Plaintiff requests that this Court enjoin Defendants from continuing to employ the
18 unlawful methods, acts and practices alleged herein pursuant to California Civil Code
19 § 1780(a)(2). If Defendants are not restrained from engaging in these types of practices in the
20 future, Plaintiff and the other members of the Class will continue to suffer harm.

21 116. On or about March 21, 2014, Plaintiff provided Defendants with notice and
22 demand that within thirty (30) days from that date, Defendants correct, repair, replace or
23 otherwise rectify the unlawful, unfair, false and/or deceptive practices complained of herein.
24 Defendants failed to do so, so Plaintiff seeks, pursuant to California Civil Code § 1780(a)(3), on
25 behalf of himself and those similarly situated class members, compensatory damages, punitive
26 damages and restitution of any ill-gotten gains due to Defendants' acts and practices.

27 117. Plaintiff also requests that this Court award him costs and reasonable attorneys'
28 fees pursuant to California Civil Code § 1780(d).

PLAINTIFF'S SECOND CAUSE OF ACTION
(False Advertising, Business and Professions Code § 17500, *et seq.* ("FAL"))
On Behalf Of Himself and the Class

118. Plaintiff realleges and incorporates by reference the paragraphs of this Class Action Complaint as if set forth herein.

119. Beginning at an exact date unknown to Plaintiff, but within three (3) years preceding the filing of the Class Action Complaint, Defendants made untrue, false, deceptive and/or misleading statements in connection with the advertising and marketing of their Kandoo Wipes.

120. Defendants made representations and statements (by omission and commission) that led reasonable customers to believe that they were purchasing products that were flushable. Defendants deceptively failed to inform Plaintiff, and those similarly situated, that their Kandoo Wipes were not suitable for disposal by flushing down a toilet, and that the Kandoo Wipes are not regarded as flushable by municipal sewage systems; routinely damage or clog pipes, septic systems, and sewage pumps; and do not dissolve, disintegrate, disperse, or biodegrade like toilet paper.

121. Plaintiff and those similarly situated relied to their detriment on Defendants' false, misleading and deceptive advertising and marketing practices, including each of the misrepresentations and omissions set forth in paragraphs 20-22, and 99 above. Had Plaintiff and those similarly situated been adequately informed and not intentionally deceived by Defendants, they would have acted differently by, without limitation, refraining from purchasing Defendants' Kandoo Wipes or paying less for them.

122. Defendants' acts and omissions are likely to deceive the general public.

123. Defendants engaged in these false, misleading and deceptive advertising and marketing practices to increase their profits. Accordingly, Defendants have engaged in false advertising, as defined and prohibited by section 17500, *et seq.* of the California Business and Professions Code.

124. The aforementioned practices, which Defendants have used, and continue to use, to their significant financial gain, also constitute unlawful competition and provide an unlawful

1 advantage over Defendants' competitors as well as injury to the general public.

2 125. As a direct and proximate result of such actions, Plaintiff and the other members of
3 the Class have suffered, and continue to suffer, injury in fact and have lost money and/or property
4 as a result of such false, deceptive and misleading advertising in an amount which will be proven
5 at trial.

6 126. Plaintiff will seek, on behalf of those similarly situated, full restitution of monies,
7 as necessary and according to proof, to restore any and all monies acquired by Defendants from
8 Plaintiff, the general public, or those similarly situated by means of the false, misleading and
9 deceptive advertising and marketing practices complained of herein, plus interest thereon.

10 127. Plaintiff seeks, on behalf of those similarly situated, a declaration that the above-
11 described practices constitute false, misleading and deceptive advertising.

12 128. Plaintiff seeks, on behalf of those similarly situated, an injunction to prohibit
13 Defendants from continuing to engage in the false, misleading and deceptive advertising and
14 marketing practices complained of herein. Such misconduct by Defendants, unless and until
15 enjoined and restrained by order of this Court, will continue to cause injury in fact to the general
16 public and the loss of money and property in that the Defendants will continue to violate the laws
17 of California, unless specifically ordered to comply with the same. This expectation of future
18 violations will require current and future consumers to repeatedly and continuously seek legal
19 redress in order to recover monies paid to Defendants to which Defendants are not entitled.
20 Plaintiff, those similarly situated and/or other consumers nationwide have no other adequate
21 remedy at law to ensure future compliance with the California Business and Professions Code
22 alleged to have been violated herein.

23 **PLAINTIFF'S THIRD CAUSE OF ACTION**
24 **(Fraud, Deceit and/or Misrepresentation)**
 On Behalf of Himself and the Class

25 129. Plaintiff realleges and incorporates by reference the paragraphs of this Class
26 Action Complaint as if set forth herein.

27 130. In 2014, Defendants fraudulently and deceptively led Plaintiff to believe that the
28 Kandoo Wipes were suitable for flushing down a toilet. Defendants also failed to inform Plaintiff

1 that the Kandoo Wipes (i) are not suitable for disposal by flushing down a toilet; (ii) are not
2 regarded as flushable by municipal sewage system operators; (iii) do not dissolve, disintegrate,
3 disperse, or biodegrade in the sewer system, but instead catch on screens in municipal sewage
4 lines and/or cause clogs elsewhere in the system and must be removed from the sewer system for
5 disposal in landfills; and (iv) cause damage to toilets, plumbing pipes, and/or septic tanks and
6 pumps.

7 131. These misrepresentations and omissions were material at the time they were made.
8 They concerned material facts that were essential to the analysis undertaken by Plaintiff as to
9 whether to purchase Defendants' Kandoo Wipes.

10 132. Defendants made identical misrepresentations and omissions to members of the
11 Class regarding Defendants' Kandoo Wipes.

12 133. Plaintiff and those similarly situated relied to their detriment on Defendants'
13 fraudulent misrepresentations and omissions. Had Plaintiff and those similarly situated been
14 adequately informed and not intentionally deceived by Defendants, they would have acted
15 differently by, without limitation, not purchasing (or paying less for) Defendants' Kandoo Wipes.

16 134. Defendants had a duty to inform class members at the time of their purchase of
17 that the Kandoo Wipes were not suitable for flushing down a toilet, and the wipes are not
18 regarded as flushable by municipal sewage systems; routinely damage or clog pipes, septic
19 systems, and sewage pumps; and do not dissolve, disintegrate, disperse, or biodegrade like toilet
20 paper. Defendants omitted to provide this information to class members. Class members relied to
21 their detriment on Defendants' omissions. These omissions were material to the decisions of the
22 class members to purchase the Kandoo Wipes. In making these omissions, Defendants breached
23 their duty to class members. Defendants also gained financially from, and as a result of, their
24 breach.

25 135. By and through such fraud, deceit, misrepresentations and/or omissions,
26 Defendants intended to induce Plaintiff and those similarly situated to alter their position to their
27 detriment. Specifically, Defendants fraudulently and deceptively induced Plaintiff and those
28 similarly situated to, without limitation, to purchase their Kandoo Wipes.

1 136. As a direct and proximate result of Defendants' misrepresentations and omissions,
2 Plaintiff and those similarly situated have suffered damages, including, without limitation, the
3 amount they paid for the Kandoo Wipes.

4 137. Defendants' conduct as described herein was willful and malicious and was
5 designed to maximize Defendants' profits even though Defendants knew that it would cause loss
6 and harm to Plaintiff and those similarly situated.

7 **PLAINTIFF'S FOURTH CAUSE OF ACTION**
8 **(Unfair, Unlawful and Deceptive Trade Practices,**
9 **Business and Professions Code § 17200, *et seq.*)**
10 **On Behalf of Himself and the Class**

11 138. Plaintiff realleges and incorporates by reference the paragraphs of this Class
12 Action Complaint as if set forth herein.

13 139. Within four (4) years preceding the filing of this Class Action Complaint, and at
14 all times mentioned herein, Defendants have engaged, and continue to engage, in unfair, unlawful
15 and deceptive trade practices in California by engaging in the unfair, deceptive and unlawful
16 business practices outlined in this Class Action Complaint. In particular, Defendants have
17 engaged, and continue to engage, in unfair, unlawful and deceptive trade practices by, without
18 limitation, the following:

19 a. deceptively representing to Plaintiff, and those
20 similarly situated, the Kandoo Wipes were suitable for flushing down a toilet;

21 b. failing to inform Plaintiff, and those similarly
22 situated, that the Kandoo Wipes were not suitable for disposal by flushing down a
23 toilet, and the wipes are not regarded as flushable by municipal sewage systems;
24 routinely damage or clog pipes, septic systems, and sewage pumps; and do not
25 dissolve, disintegrate, disperse, or biodegrade like toilet paper.

26 c. labeling the Kandoo Wipes as "flushable," even
27 though, under section 305 of the California Plumbing Code, the wipes are not
28 actually flushable, and accordingly, have caused, induced, abetted, and contributed
to illegal activity, namely, the flushing of non-flushable materials;

- d. engaging in fraud, deceit, and misrepresentation as described herein;
- e. violating the CLRA as described herein; and
- f. violating the FAL as described herein.

140. Plaintiff and those similarly situated relied to their detriment on Defendants' unfair, deceptive and unlawful business practices. Had Plaintiff and those similarly situated been adequately informed and not deceived by Defendants, they would have acted differently by not purchasing (or paying less for) Defendants' Kandoo Wipes.

141. Defendants' acts and omissions are likely to deceive the general public.

142. Defendants engaged in these unfair practices to increase their profits. Accordingly, Defendants have engaged in unlawful trade practices, as defined and prohibited by section 17200, *et seq.* of the California Business and Professions Code.

143. The aforementioned practices, which Defendants have used to their significant financial gain, also constitute unlawful competition and provide an unlawful advantage over Defendants' competitors as well as injury to the general public.

144. As a direct and proximate result of such actions, Plaintiff and the other members of the Class have suffered and continue to suffer injury in fact and have lost money and/or property as a result of such deceptive and/or unlawful trade practices and unfair competition in an amount which will be proven at trial, but which is in excess of the jurisdictional minimum of this Court. Among other things, Plaintiff, and those similarly situated, lost the amount they paid for the Kandoo Wipes.

145. As a direct and proximate result of such actions, Defendants have enjoyed, and continue to enjoy, significant financial gain in an amount which will be proven at trial, but which is in excess of the jurisdictional minimum of this Court.

146. Plaintiff seeks, on behalf of those similarly situated, full restitution of monies, as necessary and according to proof, to restore any and all monies acquired by Defendants from Plaintiff, the general public, or those similarly situated by means of the deceptive and/or unlawful trade practices complained of herein, plus interest thereon.

1 147. Plaintiff seeks, on behalf of those similarly situated, a declaration that the above-
2 described trade practices are fraudulent and/or unlawful.

3 148. Plaintiff seeks, on behalf of those similarly situated, an injunction to prohibit
4 Defendants from continuing to engage in the deceptive and/or unlawful trade practices
5 complained of herein. Such misconduct by Defendant, unless and until enjoined and restrained by
6 order of this Court, will continue to cause injury in fact to the general public and the loss of
7 money and property in that Defendants will continue to violate the laws of California, unless
8 specifically ordered to comply with the same. This expectation of future violations will require
9 current and future consumers to repeatedly and continuously seek legal redress in order to recover
10 monies paid to Defendants to which Defendants were not entitled. Plaintiff, those similarly
11 situated and/or other consumers nationwide have no other adequate remedy at law to ensure
12 future compliance with the California Business and Professions Code alleged to have been
13 violated herein.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff prays, in this state court proceeding, for judgment against
16 Defendants and in favor of Plaintiff and the other members of the Class, on all causes of action,
17 as follows:

18 1. Declaring that Defendants' use of the term "flushable" on the Kando Wipes is
19 unlawful and likely to deceive reasonable consumers;

20 2. Enjoining Defendants, directly or through any corporation, partnership, subsidiary,
21 division, trade name, or other device, in connection with the manufacturing, labeling, packaging,
22 advertising, promotion, offering for sale, sale, or distribution of any wipe from making a
23 "flushable" claim unless the product dissolves, disintegrates, disperses, or biodegrades in a
24 manner similar to that of 2-ply toilet paper;

25 3. Enjoining Defendants, directly or through any corporation, partnership, subsidiary,
26 division, trade name, or other device, in connection with the manufacturing, labeling, packaging,
27 advertising, promotion, offering for sale, sale, or distribution of any wipe from making the
28 following claims:

- a. safe for sewer systems;
- b. safe for septic systems;
- c. breaks apart after flushing;
- d. will not clog household plumbing systems;
- e. will not clog household septic systems;
- f. safe for plumbing;
- g. safe to flush;
- h. dissolves, disintegrates, disperses, or biodegrades when interacting with water; or
- i. flushable

unless the representation is non-misleading, and, at the time the representation is made, Defendants possess and rely upon competent and reliable evidence, that, when considered in light of the entire body of relevant and reliable evidence, is sufficient in quantity and quality based on standards generally accepted in the relevant fields to substantiate that the representation is true. For the purposes of this paragraph, “competent and reliable evidence” means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by qualified persons, using procedures generally accepted in the profession to yield accurate and reliable results. Specifically, any tests, analyses, research, studies, or other evidence purporting to substantiate any of the above representations must at least:

- a. demonstrate that the product dissolves, disintegrates, disperses, or biodegrades in a sufficiently short amount of time after flushing to avoid clogging, or other operational problems in, household and municipal sewage lines, septic systems, and other standard wastewater equipment; and
- b. substantially replicate the physical conditions of the environment in which the product is claimed, directly or indirectly, expressly or by implication, to be properly disposed of; or, if no specific environment is claimed, then in all environments in which the product will likely be disposed of.

4. Enjoining Defendants, directly or through any corporation, partnership, subsidiary,

1 division, or other device, in connection with the manufacturing, labeling, packaging, advertising,
2 promotion, offering for sale, sale, or distribution of any wipe to not provide to others the means
3 and instrumentalities with which to make any representation prohibited by the above. For the
4 purposes of this paragraph, “means and instrumentalities” means any information, including, but
5 not necessarily limited to, any advertising, labeling, or promotional, sales training, or purported
6 substantiation materials, for use by trade customers in their marketing of such product or service.

7 5. Enjoining Defendants to place disclaimers on their packaging for their moist towelette,
8 wipe, toilet tissue or cloth that do not meet the standards set forth in Paragraph 2, that flushing the
9 wipes is a violation of Section 305.1 of the California Plumbing Code, which prohibits flushing
10 “any other thing whatsoever that is capable of causing damage to the drainage system or public
11 sewer.”;

12 6. For reasonable attorneys’ fees according to proof pursuant to, without limitation, the
13 California Legal Remedies Act and California Code of Civil Procedure § 1021.5;

14 7. For costs of suit incurred; and

15 8. For such further relief as this Court may deem just and proper.

16 Notwithstanding the above, Plaintiff excludes any request for declaratory, injunctive relief
17 or other relief that would exceed the scope of the remand of this case from federal court.

18 Plaintiff also seeks a judgment against Defendants in favor of Plaintiff and members of
19 the class:

20 --on all causes of action, for restitution and/or rescission, pursuant to California Civil
21 Code section 1780 and California Business & Professions Code §§ 17200, et seq. and 17500, et
22 seq.

23 --on causes of action 1 and 3, for actual, compensatory and punitive damages, the amount
24 of which is to be determined at trial;

25 --on cause of action 1, for statutory damages as provided by Civil Code section 1780(b),
26 the amount of which is to be determined at trial; and

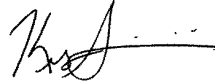
27 -for costs of suit, reasonable attorneys’ fees, and other relief as the court may deem just
28 and proper

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: December 15, 2016

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