

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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

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GLADYS HONIGMAN, Individually and on	:	Civil Action No. 2:15-cv-02910-PKC-RML
Behalf of All Others Similarly Situated,	:	
	:	<u>CLASS ACTION</u>
Plaintiff,	:	
	:	
vs.	:	
	:	
KIMBERLY-CLARK CORPORATION,	:	
	:	
Defendant.	:	

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SETTLEMENT AGREEMENT AND GENERAL RELEASE

Representative plaintiffs Dr. D. Joseph Kurtz and Gladys Honigman (together, “Plaintiffs”), on behalf of themselves and all Settlement Class Members (defined below), on the one hand, and defendant Kimberly-Clark Corporation (“Kimberly-Clark” or “Defendant” and, with Plaintiffs, the “Settling Parties”), on the other hand, hereby enter into this stipulation of settlement and general release (“Settlement Agreement”), subject to approval of the Court.

WHEREAS, Kimberly-Clark, along with affiliated entities, manufactures and sells flushable wipes in the United States under the Cottonelle brand name and previously did so under various other Kimberly-Clark brand names, including Scott, Huggies Pull-Ups, Poise, and Kotex (the “Products”).

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

WHEREAS, on May 20, 2015, Ms. Honigman filed a similar class action complaint (the “*Honigman* Complaint” and, together with the *Kurtz* Complaint, the “Complaints”) against Kimberly-Clark in the Court, seeking damages and injunctive relief, asserting claims on behalf of herself and other similarly situated consumers for, *inter alia*, violations of GBL §349, which lawsuit is currently pending as *Honigman v. Kimberly-Clark Corp.*, 2:15-cv-02910-PKC-RML (the “*Honigman* Action” and, together with the *Kurtz* Action, the “Actions”).

WHEREAS, Plaintiffs allege in the Actions that the flushability-related claims made on the labeling and packaging of the Products—including that the wipes were “flushable,” “break up after flushing,” and were safe for sewer or septic systems—were false, deceptive, or misleading.

WHEREAS, on March 27, 2017, the Court in the *Kurtz* Action granted Dr. Kurtz’s motion for class certification (the “Certification Order”), certifying a class to pursue damages and injunctive relief against Kimberly-Clark.

WHEREAS, on June 26, 2020, the U.S. Court of Appeals for the Second Circuit affirmed the Certification Order as to the damages class under Rule 23(b)(3), reversed the Certification Order as to the injunctive relief class under Rule 23(b)(2), and remanded the *Kurtz* Action to the District Court for further proceedings.

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

WHEREAS, the Actions, if they were to continue, would likely result in expensive and protracted litigation, appeals, and continued uncertainty as to outcome.

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

Agreement is fair, reasonable, adequate, and in the best interests of Plaintiffs and the Settlement Class.

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

WHEREAS, while Kimberly-Clark does not dispute that the settlement is fair and reasonable in light of the merits and risks of the case, Kimberly-Clark denies and continues to deny any wrongdoing or legal liability for any alleged wrongdoing; does not admit or concede any actual or potential fault, wrongdoing, or legal liability in connection with any facts or claims that have been or could have been alleged by Plaintiffs in the Actions; and contends that neither Plaintiffs nor any of the Settlement Class Members have been injured or are entitled to any relief.

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

WHEREAS, the agreement reflected in this Settlement Agreement was reached after protracted, arm's-length negotiations, including with JAMS mediator the Honorable Wayne R. Andersen (Ret., N.D. Ill.), for more than a year.

WHEREAS, this Settlement Agreement supersedes and replaces the Memorandum of Understanding to which the Settling Parties previously agreed on December 29, 2021.

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

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

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

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

I. DEFINITIONS

Capitalized terms in this Agreement shall be defined as follows:

1.1 “Actions” means *Kurtz v. Kimberly-Clark Corp., et al.*, 1:14-cv-01142-PKC-RML (E.D.N.Y.) and *Honigman v. Kimberly-Clark Corp.*, 2:15-cv-02910-PKC-RML (E.D.N.Y.).

1.2 “Claims Administrator” means Kroll Settlement Administration or another third-party administrator agreed to by the Settling Parties in writing and approved by the Court.

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

1.4 “Claim Form” means the form that Settlement Class Members must submit to obtain Settlement Benefits, in substantially the same form as Exhibit 1 attached to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement.

1.5 “Claim Period” means the period of time during which a Settlement Class Member must submit a valid Claim Form to be eligible to receive the Settlement Benefit as part of the Settlement, unless otherwise ordered by the Court, which shall be for not more than sixty (60) consecutive days and commence not less than forty-five (45) days before the Final Approval hearing. If the Claim Period ends on a weekend or holiday, the Claim Period shall extend to the next business day.

1.6 “Class Notice” means the Long Form Notice, the Summary Notice, and the Online Notice, as set forth in Exhibits B1, B2, and B3 attached hereto, and as described in the Notice Plan, as set forth in Exhibit A attached hereto.

1.7 “Class Representative Payments” means any awards approved by the Court that are payable to the Plaintiffs to compensate them for their efforts in bringing the Actions and/or

achieving the benefits of this settlement on behalf of the Settlement Class, as further discussed in Section 6.2.

1.8 “Complaints” means the Class Action Complaints filed in the Actions.

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

1.10 “Defendant” or “Kimberly-Clark” means Kimberly-Clark Corporation.

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

1.12 “Defense Counsel” means the law firm of Sidley Austin LLP.

1.13 “Effective Date” means the later of: (a) the expiration of the time to appeal the Final Judgment and Order with no appeal having been filed; (b) if any such appeal is filed, the termination of such appeal on terms that affirm the Final Judgment and Order or dismiss the appeal with no material modification of the Final Judgment and Order; or (c) the expiration of the time to obtain any further appellate review of the Final Judgment and Order; provided, however, that a modification or reversal on appeal of the amount of the attorneys’ fees and expenses awarded by the Court to Settlement Class Counsel, or the amount of any Class Representative Payment, shall not prevent this settlement from becoming final and effective if all other aspects of the Final Judgment and Order have been affirmed.

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

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

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

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

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

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

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

1.21 “Online Notice” means the Court-approved forms of online notice to Settlement Class Members in substantially the same form as Exhibit B3.

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

1.23 “Plaintiffs” means Dr. D. Joseph Kurtz and Gladys Honigman.

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

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

1.26 “Products” means Kimberly-Clark’s flushable wipes sold in the United States during the Settlement Class Period under the Cottonelle, Scott, Huggies Pull-Ups, Poise, or Kotex brands.

1.27 “Proof of Purchase” means: (i) either the actual label or bar code portion of the package of the Product (not a photocopy or digital image file); or (ii) an original or photocopy or digital image of an itemized sales receipt generated by a retail seller showing the date and place of purchase, name of the Product purchased, and the amount paid. The Product package and/or sales

receipt must be provided to and validated by the Claims Administrator to qualify as Proof of Purchase.

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

1.29 “Releasing Parties” means the parties granting a release, including Plaintiffs, all Settlement Class Members, and Defendant.

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

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

1.32 “Settlement Class” means all individuals over the age of 18 who purchased the Products not for the purpose of resale, during the Settlement Class Period. Excluded from the Class are: (1) the Honorable Pamela K. Chen, the Honorable Robert M. Levy, the Honorable Wayne R. Andersen (Ret.), and any member of their immediate families; (2) any of Kimberly-Clark’s officers, directors, employees, or legal representatives; and (3) any person who timely opts out of the Settlement Class.

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

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

1.35 “Settlement Class Period” means the period between February 21, 2008 and the date the Preliminary Approval Order is issued.

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

1.37 “Settling Parties” means Plaintiffs and Kimberly-Clark.

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

1.39 “Unknown Claims” means Plaintiffs’ Released Claims and Defendant’s Released Claims that any of the Releasing Parties do not know or suspect to exist in his, her, or its favor at the time of the release, which if known by him, her, or it, might have affected his, her, or its decision not to object to this settlement or the releases contained herein. With respect to any and all Plaintiffs’ Released Claims and Defendant’s Released Claims, the Releasing Parties stipulate and agree that upon the Effective Date, the Releasing Parties shall, to the fullest extent permitted by law, fully, finally, and forever expressly waive and relinquish with respect to such claims, any and all provisions, rights, and benefits of Section 1542 of the California Civil Code, and any and all similar provisions, rights, and benefits conferred by any law of any state or territory of the United States or principle of common law that is similar, comparable, or equivalent to Section 1542 of the California Civil Code, which provides:

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

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

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

II. SETTLEMENT BENEFITS AND CLAIMS ADMINISTRATION

2.1 Every Settlement Class Member shall have the right to submit a claim for Settlement Benefits. A claim shall be a Valid Claim only if submitted pursuant to, and in compliance with, the procedures set forth herein.

2.2 At the election of the Settlement Class Member, a Claim Form (in substantially the same form as Exhibit 1 attached to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement) may be submitted in paper form via first-class mail or online at the Settlement Website. Claim Forms must be mailed such that they are received by the Claims Administrator (not just postmarked) or submitted online no later than the Claim Filing Deadline. Claim Forms received or submitted online after that date will not be Valid Claims, unless otherwise ordered by the Court for good cause shown. The Claims Administrator will track Claim Forms with unique security identifiers or control numbers issued to Settlement Class Members who seek to file a claim. For Claim Forms submitted online, the Settlement Class Member shall have the opportunity to upload Proof of Purchase image files (*e.g.*, jpg, tif, pdf), but Proof of Purchase in the form of actual labels or bar codes portion of the packages of the Product must be submitted via first-class mail.

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

- (a) The Settlement Class Member’s name and physical address;

- (b) That all sections of the Claim Form are completed truthfully, accurately, and completely;
- (c) The Settlement Class Member's email address, if the Settlement Class Member elects to provide that information;
- (d) The number of packages of the Product purchased during the Settlement Class Period; and
- (e) That the claimed purchases were not made for purposes of resale.

For avoidance of doubt, the Claims Administrator may request and/or require Settlement Class Members to provide additional information on the Claim Form to facilitate the identification of Valid Claims, as well as fraudulent or otherwise invalid claims, and/or to cure a deficiency or infirmity in the Claim Form. Any deficiency or infirmity in the Claim Form must be cured within twenty (20) calendar days of the Settlement Class Member receiving notice of such deficiency or infirmity in the Claim Form. Claim Forms may not be submitted *en masse*, by a third-party, or with the Claim Forms of any other Settlement Class Member.

2.4 Each Settlement Class Member who submits a Valid Claim without Proof of Purchase shall receive a payment of up to seventy cents (\$0.70) for each Product package purchased during the Settlement Class Period, regardless of the price the Settlement Class Member paid for the package or the number of wipes contained in each package, subject to the following limitations: (i) a maximum of seven dollars (\$7.00) (*i.e.*, a maximum of 10 packages) shall be paid on any claim submitted by any one Household for claimed purchases that are not corroborated by Proof of Purchase, and (ii) only one claim may be submitted per Household (either with or without proof of purchase, but not both). Each Settlement Class Member who submits a Valid Claim corroborated by Proof of Purchase shall receive a payment of up to one dollar and ten cents (\$1.10) for each Product

package purchased during the Settlement Class Period, regardless of the price the Settlement Class Member paid for the package or the number of wipes contained in each package, subject to the following limitations: (i) a maximum of fifty dollars and sixty cents (\$50.60) (*i.e.*, maximum of 46 packages) shall be paid on any claim submitted by any one Household for claimed purchases that are corroborated by Proof of Purchase, and (ii) only one claim may be submitted per Household (either with or without proof of purchase, but not both). This Settlement Agreement does not create any vested property interest or unclaimed property rights for Settlement Class Members who do not file Valid Claims.

2.5 A \$20 million cap on all claims made shall apply. If the Valid Claims exceed the \$20 million cap, the Claims Administrator shall fulfill all Valid Claims on a *pro rata* basis so that the total amount of payments does not exceed the \$20 million cap. The \$20 million cap is separate and apart from, and shall not be affected in any way by, the amount ultimately paid by Kimberly-Clark for any award of attorneys' fees and expenses, Class Representative Payments, and settlement administration costs.

2.6 The Claims Administrator shall be responsible for processing Claim Forms and administering the Settlement Website, opt-out process, and Settlement Benefit claims process described herein. The Claims Administrator shall use industry standard efforts to validate claims and supporting documentation. The Claims Administrator shall use adequate and customary procedures and standards to prevent the payment of fraudulent claims and pay only Valid Claims. The Claims Administrator will approve Valid Claims and issue payment pursuant to the Settlement Agreement and may reject claims that are invalid or evidence fraud. The determination of the validity of all claims shall occur within 30 days of the end of the Claim Period, except where a corrected claim is timely submitted in which case the determination of the validity of the corrected

claim shall occur within 30 days of its submission. The Claims Administrator shall approve or deny all claims, and its decision shall be final, binding, and non-appealable.

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

2.8 As to claims that are denied, within thirty (30) days after the Effective Date, the Claims Administrator shall email all Settlement Class Members whose claims are denied to state the reasons for denial, at the email address (if any) provided by the Settlement Class Member on the Claim Form. If no email address is provided by the Settlement Class Member on the Claim Form, the Claims Administrator shall not have an obligation to provide the Settlement Class Member any notification of the reasons for denial of the claim. Plaintiffs' or Kimberly-Clark's choice not to audit the validity of any one or more Claim Forms shall not constitute or be construed as a waiver or relinquishment of any audit or other rights as to any other Claim Forms, individually or as a group, and similarly shall not be construed as a waiver or relinquishment by Plaintiffs or Kimberly-Clark as to any of its audit and other rights under the Settlement Agreement. No person shall have any claim against Plaintiffs, Kimberly-Clark, Settlement Class Counsel, Defense Counsel, or the Claims Administrator based on any determination of a Valid Claim, or distributions or awards made in accordance with this Settlement Agreement and the exhibits hereto.

2.9 Valid Claims shall be paid by check to the Settlement Class Member and mailed to the address provided on the Claim Form, as updated in the National Change of Address Database.

The Claims Administrator shall also have the right (but not the obligation) to allow Settlement Class Members to elect to receive their payments by direct bank deposit or electronic transfer (*e.g.*, PayPal) and if such election is made, shall pay the Valid Claims of such Settlement Class Members through the method so elected. All Valid Claims shall be paid by the Claims Administrator within sixty (60) days after the Effective Date except that, in the event of an appeal from Final Approval that challenges only the award of attorneys' fees and expenses and/or the Class Representative Payments and does not challenge any other aspect of the Settlement, all Valid Claims shall be paid within ninety (90) days after Final Approval, unless otherwise ordered by the Court.

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

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

2.12 Other than provided in Section 6.4 herein, Kimberly-Clark shall bear all fees and expenses incurred by the Claims Administrator, as well as the cost of paying Valid Claims.

III. PRELIMINARY APPROVAL

3.1 As soon as practicable after the execution of this Settlement Agreement, Settlement Class Counsel shall move for a Preliminary Approval Order, substantially in the form of Exhibit C, preliminarily approving this Settlement Agreement and this settlement as fair, reasonable, and

adequate; certifying the Settlement Class for purposes of settlement only; approving Notice to the Settlement Class Members as described in Part IV below and Exhibit A hereto; preliminarily enjoining Settlement Class Members from commencing or prosecuting any action asserting any of the Plaintiffs' Released Claims; and setting a hearing to consider Final Approval of the settlement and any objections thereto.

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

IV. NOTICE, OPT OUTS, AND OBJECTIONS

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

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

4.3 Notice shall be provided according to the Notice Plan attached hereto as Exhibit A, and substantially in the forms attached hereto as Exhibits B1, B2, and B3, except as may be modified by the Court.

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

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

4.6 At least seven (7) days before the Final Approval hearing, the Claims Administrator shall certify to the Court that it has complied with the notice requirements set forth herein, and that the notice provided sufficient reach and frequency to alert Settlement Class Members to the pendency of the Actions, this Settlement Agreement, and their rights thereunder.

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

4.8 Plaintiffs affirmatively support this settlement and agree not to opt-out of this settlement. Any such request shall be void and of no force or effect.

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

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

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

4.12 If a Settlement Class Member submits both a Claim Form and an opt-out request, the Claim Form shall take precedence and be considered valid and binding, and the opt-out request shall be deemed to have been sent by mistake and rejected.

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

(a) The case names and numbers, *Kurtz v. Kimberly-Clark Corp., et al.*, 1:14-cv-01142-PKC-RML (E.D.N.Y.) and/or *Honigman v. Kimberly-Clark Corp.*, 2:15-cv-02910-PKC-RML (E.D.N.Y.);

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

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

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

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

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

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

4.14 Any Settlement Class Member who fails to timely submit a written objection containing all the information listed in the items 4.13(a) through (g) herein shall not be permitted to object to the Settlement and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by any means, including but not limited to an appeal. If any objection is received by the Claims Administrator, the Claims Administrator shall immediately forward the objection and all supporting documentation to counsel for the Settling Parties.

4.15 A Settlement Class Member who objects to the Settlement may also submit a Claim Form on or before the Claim Filing Deadline, which shall be processed in the same way as all other Claim Forms. A Settlement Class Member shall not be entitled to an extension to the Claim Filing Deadline merely because the Settlement Class Member has also submitted an objection.

V. CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS

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

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

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

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

6.1 Settlement Class Counsel may apply to the Court for an award from Kimberly-Clark of their attorneys' fees and expenses in a total amount not to exceed \$4,100,000. The attorneys' fees and expenses awarded by the Court shall be the total obligation of Kimberly-Clark to pay attorneys'

fees and expenses of any kind to Settlement Class Counsel in connection with the Actions and this Settlement Agreement.

6.2 Plaintiffs may additionally apply to the Court for Class Representative Payments of \$10,000 for Dr. Kurtz and \$5,000 for Ms. Honigman as compensation for their time and effort undertaken in the Actions. Any Class Representative Payments awarded by the Court shall be the total obligation of Kimberly-Clark to pay money to Plaintiffs in connection with the Actions and this Settlement Agreement, other than amounts due to the Plaintiffs for any Valid Claims submitted pursuant to Part II of this Settlement Agreement.

6.3 Settlement Class Counsel and Plaintiffs agree that the denial, downward modification, or failure to grant the request for attorneys' fees or expenses or the request for Class Representative Payments shall not constitute grounds for modification or termination of the Settlement Agreement.

6.4 Within thirty (30) calendar days of entry of the order awarding attorneys' fees and expenses and Class Representative Payments, Kimberly-Clark shall pay the amount of the awarded attorneys' fees and expenses and Class Representative Payments to Settlement Class Counsel, not to exceed the limits set forth in Sections 6.1 and 6.2.

VII. RELEASES

7.1 Release by Plaintiffs and the Settlement Class Members

(a) Upon the Effective Date, each Settlement Class Member, as well as each Plaintiff, releases and discharges Kimberly-Clark and its present, former, and future, direct and indirect, parents, subsidiaries, affiliates, assigns, divisions, owners, predecessors, and successors, and all of their respective former, present, and future officers, agents, administrators, directors, employees, shareholders, partners, independent contractors, representatives, insurers, servants, attorneys, assignees, heirs, and executors, and Defense Counsel, of and from all Plaintiffs' Released

Claims, including Unknown Claims, provided, however, that Plaintiffs' Released Claims shall not include any claims to enforce the terms of this Settlement Agreement.

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

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

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

7.3 No Admission of Liability. This Settlement Agreement reflects, among other things, the compromise and settlement of disputed claims among the Settling Parties hereto, and neither this Settlement Agreement nor the releases given herein, nor any consideration therefor, nor any actions

taken to carry out this Settlement Agreement are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or the validity of any claim, or defense, or of any point of fact or law (including but not limited to matters respecting class certification) on the part of any Settling Parties. Kimberly-Clark expressly denies the allegations of the Complaints. Neither this Settlement Agreement, nor the fact of settlement, nor the settlement proceedings, nor settlement negotiations, nor any related document, shall be used as an admission of any fault or omission by the Released Parties, or be offered or received in evidence as an admission, concession, presumption, or inference of any wrongdoing by the Released Parties in any proceeding, other than such proceedings as may be necessary to consummate, interpret, or enforce this Settlement Agreement. Similarly, neither this Settlement Agreement, nor the fact of settlement, nor the settlement proceedings, nor settlement negotiations, nor any related document, shall be used as an admission of any weakness or infirmity of any claim asserted in the Complaints by Plaintiffs in any proceeding, other than such proceedings as may be necessary to consummate, interpret, or enforce this Settlement Agreement.

VIII. WITHDRAWAL OR TERMINATION

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

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

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

(c) the Court requiring a notice program in addition to or in any form materially different from the Notice Plan and Long Form Notice, the Summary Notice, and Online Notice, which are attached hereto as Exhibits A, B1, B2 and B3;

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

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

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

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

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

8.2 This Settlement Agreement was entered into only for purposes of settlement. In the event that Preliminary Approval or Final Approval of this settlement and this Settlement Agreement does not occur for any reason, or if Final Approval is reversed on appeal, then no term or condition of this Settlement Agreement, or any draft thereof, or discussion, negotiation, documentation, or other part or aspect of the Settling Parties' settlement discussions shall have any effect, nor shall any such matter be admissible in evidence for any purpose in the Actions, or in any other proceeding;

and the Actions shall continue as if the settlement had not occurred. Alternatively, in the event that the Court declines to enter the Preliminary Approval order or declines to grant Final Approval (or enters any order that substantially increases the cost or burden of the settlement to Kimberly-Clark beyond what is set forth in this Settlement Agreement), the Settling Parties may, but are not required to, modify this Settlement Agreement. Such a modification shall be binding only if it is in writing and executed by Settlement Class Counsel and Defense Counsel.

8.3 In the event that this Settlement Agreement (including the settlement provided for herein) is not finally approved, or is terminated or cancelled, or fails to become effective for any reason whatsoever, the Actions shall revert to their status as they existed prior to the date of this Settlement Agreement, and the Claims Administrator shall return to Kimberly-Clark any amounts Kimberly-Clark had already deposited that are not required to pay for notice and administration then-completed or incurred but not yet paid.

IX. ADDITIONAL PROVISIONS

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

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

9.3 Time for Compliance. If the date for performance of any act required by or under this Agreement falls on a Saturday, Sunday, or court holiday, that act may be performed on the next

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

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

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

9.6 Advice of Counsel. The determination of the terms of, and the drafting of, this Settlement Agreement have been by mutual agreement after negotiation, with consideration by and participation of all Settling Parties hereto and their counsel. Any presumption that uncertainties in a

contract are interpreted against the party causing an uncertainty to exist is hereby waived by all Settling Parties.

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

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

9.9 Execution in Counterparts. This Settlement Agreement shall become effective upon its execution by all of the undersigned. The Settling Parties may execute this Settlement Agreement in counterparts and/or by fax or electronic mail, and execution of counterparts shall have the same force and effect as if all Settling Parties had signed the same instrument.

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

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

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

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

If to Plaintiffs or Settlement Class Counsel:

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

If to Defense Counsel:

SIDLEY AUSTIN LLP
EAMON P. JOYCE
787 Seventh Avenue
New York, NY 10019
Telephone: 212/839-8555
email: ejoyce@sidley.com

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

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

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

9.17 No Third-Party Beneficiaries. Nothing in this Settlement Agreement is intended to (nor does it) release, dismiss, or discharge Costco, its insurers, or any of its employees, shareholders, owners, members, partners, related entities, or affiliates. Neither Costco nor any of its insurers, nor any of their related entities, employees, agents, shareholders, owners, members, partners, or affiliates are intended or incidental beneficiaries to any part of this Settlement Agreement.

9.18 Publicity. To the extent Plaintiffs, Settlement Class Counsel, Kimberly-Clark, or Defense Counsel make any public statements regarding the settlement of this litigation, any such statements shall be both consistent with the Court-approved documents that comprise this Settlement Agreement and consistent with the current flushability-related characteristics of the flushable wipe products now manufactured and sold by Kimberly-Clark in the United States, or otherwise agreed on by the Settling Parties in writing in advance. Plaintiffs and Settlement Class Counsel, on the one hand, and Defendant and Defense Counsel, on the other hand, shall make no statements, including statements to the press or any other public statements, that disparage each other or any Released Party regarding this Settlement Agreement or the Actions or the subject matter thereof, or accuse each other or any Released Party of any wrongdoing regarding this Settlement Agreement or the Actions or the subject matter thereof.

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

APPROVED AS TO FORM:

DATED: 3/31/22

ROBBINS GELLER RUDMAN & DOWD LLP



VINCENT M. SERRA

DATED: _____

SIDLEY AUSTIN LLP

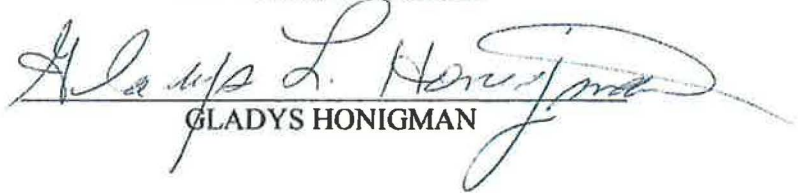
EAMON P. JOYCE

APPROVED AND AGREED:

DATED: _____

DR. D. JOSEPH KURTZ

DATED: 3/30/2022



GLADYS HONIGMAN

DATED: _____

KIMBERLY-CLARK CORP.

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

DATED: _____

ROBBINS GELLER RUDMAN & DOWD LLP

VINCENT M. SERRA

DATED: _____

SIDLEY AUSTIN LLP

EAMON P. JOYCE

APPROVED AND AGREED:

DATED: 3/30/22



DR. D. JOSEPH KURTZ

DATED: _____

GLADYS HONIGMAN

DATED: _____

KIMBERLY-CLARK CORP.

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

ROBBINS GELLERJRUDMAN & DOWD LLP


DATED: _____

VINCENT M. SERRA

April 4, 2022

DATED: _____

SIDLEY AUSTIN LLP



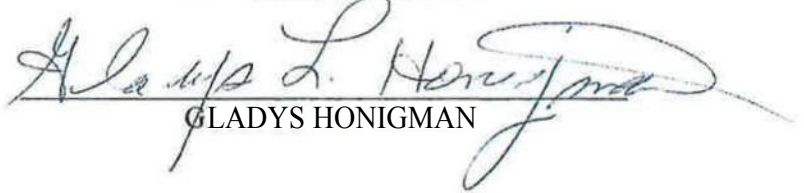
EAMON P. JOYCE

APPROVED AND AGREED:

DATED: _____

DR. D. JOSEPH KURTZ

DATED: 3/30/2022



GLADYS HONIGMAN

DATED: 4/4/2022

KIMBERLY-CLARK CORP.

By: Russell Torres

Name: Russell Torres

Title: Group President, KCNA