

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No: 500-06-001108-204

**SUPERIOR COURT  
(CLASS ACTION CHAMBER)**

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██████████ **BUTTERS**, natural person,  
residing at ██████████  
██████████, province of Quebec, ██████████

*Petitioner*

-vs.-

**KIMBERLY-CLARK  
CORPORATION**, legal person duly  
constituted, having its address of  
service at 1209 Orange Street,  
Wilmington, DE 19801 USA

and

**KIMBERLY-CLARK CANADA INC.**,  
legal person duly constituted, having  
its address for service at 50  
Burnhamthorpe Road West, Suite  
#1402, Mississauga Ontario L5B 3Y5  
Canada

*Respondents*

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**APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION &  
TO OBTAIN THE STATUS OF REPRESENTATIVE PLAINTIFF**  
(Art. 571 C.C.P. and following)

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**TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT, SITTING IN AND  
FOR THE DISTRICT OF MONTREAL, YOUR PETITIONER RESPECTFULLY ALLEGES AS  
FOLLOWS:**

**I. GENERAL PRESENTATION**

A) The Action

1. Petitioner wishes to institute a class action on behalf of the following group, of which he is a member, namely:

- all residents in Quebec who purchased and/or used Cottonelle Flushable Wipes and Cottonelle Gentle Plus Flushable Wipes (collectively, the "Wipes") between February 7, 2020 and the date this action is authorized as a class proceeding (the "Class", "Class Members" and "Class Period")
2. Petitioner contends that starting in February 2020, certain batches of Wipes were mixed with a bacterium, dangerous to human health, called *pluralibacter gergoviae* and then sold to consumers on the open market. The Respondents design, develop, manufacture, market, label and sell the Wipes in Quebec. The Respondents exposed the Petitioner and Class Members to serious skin infections, related bodily injury, psychological injury and other losses in mixing the Wipes with *pluralibacter gergoviae*.
  3. On October 21<sup>st</sup>, 2020, a voluntary product recall was officially posted on the governmental healthycanadians.gc.ca website, a copy of the webpage being joined as **Exhibit P-1**;
  4. Currently, the following products have been implicated in Quebec, as indicated on that website:

036000449327	Cottonelle® Flushable Wipes, Flip Top, 42 Count
036000359701	Cottonelle® Flushable Wipes, Flip Top, 2 PK x 42 Count
036000434781	Cottonelle® Flushable Wipes, Flip Top, 4 PK x 42 Count
036000486742	Cottonelle® Flushable Wipes, Flip Top, CA Pallet 10 PK x 56 Count
036000497762	Cottonelle® GentlePlus Flushable Wipes, Flip Top, 42 Count
036000489859	Cottonelle® GentlePlus Flushable Wipes, Flip Top, 2 PK x 42 Count

#### B) The Respondents

5. The Defendant Kimberly-Clark Corporation is a corporation incorporated pursuant to the laws of Delaware with an address of service at 1209 Orange Street, Wilmington, DE 19801 USA, as shown on a copy of a corporation search joined as **Exhibit P-2**;
6. The Defendant Kimberly-Clark Canada Inc. is a corporation incorporated under the laws of Ontario with an address for service at 50 Burnhamthorpe Road West, Suite #1402, Mississauga Ontario L5B 3Y5 Canada, as shown on a copy of a corporation search joined as **Exhibit P-3**;
7. Collectively, Kimberly-Clark Corporation and Kimberly-Clark Canada Inc. are interchangeably referred to as Kimberly-Clark, or the Respondents.

#### C) The Respondents and the Wipes

8. Kimberly-Clark manufactures personal care and tissue products, including adult care, baby & child care, family care and feminine care products, and distributes them worldwide. Kimberly-Clark has a number of brands including, Kleenex, Scott, Cottonelle, Huggies, Pull-Ups, GoodNites, Depend and Kotex.

Kimberly-Clark manufactures Wipes under the brand name Cottonelle. Kimberly-Clark recommends using Cottonelle toilet paper and Cottonelle Wipes together. Kimberly-Clark describes the Flushable Wipe product on their home page as “pair Cottonelle® Brand Toilet Paper and Flushable Wipes for a refreshing clean that makes you feel ahhh-mazing”.<sup>1</sup>

9. Kimberly-Clark promotes the Cottonelle Flushable Wipe as “downtherecare to treat the skin you don’t see like the skin you do”<sup>2</sup> on their product home page. Kimberly-Clark promotes that using the Cottonelle Flushable Wipe will make you “feel confident knowing you’ve upped your down there game”.<sup>3</sup>

D) The Respondents Public Recall

10. On October 9, 2020 Kimberly-Clark announced a voluntary product recall of the Wipes sold throughout the United States, Canada, and the Caribbean (the “Recall”).
11. Kimberly-Clark notified its consumers of the Recall of specified lots of the Wipes via a notice posted on its Cottonelle website, which advised the following<sup>4</sup>:

Kimberly-Clark announced a product recall of its Cottonelle® Flushable Wipes and Cottonelle® GentlePlus Flushable Wipes sold throughout the United States, Canada and the Caribbean, due to the detection of some Cottonelle® Flushable Wipes that do not meet our high quality standards. The recall is limited to specific lots of Cottonelle® Flushable Wipes and Cottonelle® GentlePlus Flushable Wipes manufactured between February 7, 2020 – September 14, 2020. Please check your lot number above to see if your product is included. No other Cottonelle® products are affected by this recall and Flushable Wipes not affected are safe to use.

12. The “Frequently Asked Questions” section of the website on this product recall is joined as **Exhibit P-4**. Below is a screen clipping of that page from the Cottonelle website<sup>5</sup>:

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<sup>1</sup> See Cottonelle® downtherecare available at - <https://www.cottonelle.com/en-ca/down-there-care> - (last accessed October 19, 2020)

<sup>2</sup> *Ibid*

<sup>3</sup> *Ibid*

<sup>4</sup> See Cottonelle – Product Recall available at - <https://www.cottonelle.com/en-ca/recallfaq> - (last accessed October 19, 2020)

<sup>5</sup> *Ibid*

## Cottonelle® Product Recall

### Frequently Asked Questions

#### **What is the reason for this Product Recall?**

Kimberly-Clark announced a product recall of its Cottonelle® Flushable Wipes and Cottonelle® GentlePlus Flushable Wipes sold throughout the United States, Canada and the Caribbean, due to the detection of some Cottonelle® Flushable Wipes that do not meet our high quality standards. The recall is limited to specific lots of Cottonelle® Flushable Wipes and Cottonelle® GentlePlus Flushable Wipes manufactured between February 7, 2020 – September 14, 2020. Please check your lot number above to see if your product is included. No other Cottonelle® products are affected by this recall and Flushable Wipes not impacted are safe to use.

#### **How can I tell if my product is impacted by this recall?**

Consumers can identify this product by looking for the specific lot numbers found on the bottom of each package. Please scroll to the top of this webpage to find our lot number checker to see if your product is included in the recall.

#### **Can you describe what the problem is with Cottonelle® Flushable Wipes?**

The affected product could show the presence of a bacterium (*Pluralibacter gergoviae*) which naturally occurs in the environment and in the human body. *Pluralibacter gergoviae* rarely causes serious infections in healthy individuals. However, individuals with weakened immune systems are at a heightened risk of infection.

#### **What, if any, health risks are associated with these products if they are used by consumers? Have you received any notifications of any illnesses to date?**

Any consumer experiencing a health-related issue should immediately seek medical advice and stop using the product. At this time there is a low rate of non-serious complaints, such as irritation and minor infection, reported for the affected wipes.

13. Kimberly-Clark announced in the Recall that the Wipes could show the presence of a bacterium (*Pluralibacter gergoviae*). The Recall states that *Pluralibacter gergoviae* "rarely causes serious infections in healthy individuals. However, individuals with weakened immune systems are at heightened risk of infection."<sup>6</sup>

#### **E) The Respondents' Liability**

14. At all material times, the Respondents owed the Petitioner and Class Members a duty of care in designing, developing, manufacturing, testing, distributing, monitoring and storing the Wipes.
15. Each of the Respondents breached its duty of care to the Petitioner and Class Members, particulars of which include, *inter alia*:
  - a. Failing to implement and observe adequate safeguards to prevent product contamination;

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<sup>6</sup> *Ibid*

- b. Failing to implement and observe adequate methods for detecting the presence of bacterial contamination prior to mass distribution of the Flushable Wipes;
  - c. Failing to ensure that the Wipes were fit for its intended purpose, both before releasing it into the stream of commerce and on an ongoing basis thereafter; and
  - d. Failing to warn the Respondent and Class Members that the Wipes included *Pluralibacter gergoviae*, with its known adverse consequence on human health.
16. As a result of the Respondents' negligence in the design, development, manufacturing, testing, distributing, marketing, monitoring, storing, labelling, promotion and sale of the Wipes, the Petitioner and other Class Members have suffered and continue to suffer serious and prolonged loss and damages, including:
  - a. Monetary damages for having purchased goods unfit for use;
  - b. Personal injury, including any and all costs associated with health screening tests, medicine and/or treatment;
  - c. Loss of income earning capacity, past and future;
  - d. Cost of future care;
  - e. Out-of-pocket expenses; and
  - f. Moral damages for the serious and prolonged fear and anxiety of not knowing if they've contracted health related issues from the *Pluralibacter gergoviae* bacteria.
17. At all material times, the Respondents actions or inactions were in a close and proximate relationship to the Petitioner and other Class Members. The damages and losses suffered by the Petitioner and other Class Members are the reasonably foreseeable consequences of the Respondents' aforementioned conduct and/or failure to adequately perform their obligations including a failure to warn.
18. The Class Members are "consumers" under the *Quebec Consumer Protection Act*, CQLR c P-40.1 ("CPA") and the Respondents are "merchants" under the CPA;
19. Prior to issuing the product recall, the Respondents described, represented and marketed to the Class Members that the Wipes were safe to use for personal care, even after becoming aware of complaints and concerns from customers about adverse consequences from use of the Wipes;
20. The Wipes did not conform to the description made of them in the contracts between the Class Members and the Respondents;
21. Further, the Wipes are goods which formed part of the contracts and, because they possibly contained *Pluralibacter gergoviae*, were unfit for the purposes for which such goods are ordinarily used, which is a both contractual breach by the Respondents of their

obligations to provide a product of sound quality and a breach of the *Consumer Protection Act*, CQLR c P-40.1;

22. Under the *Competition Act*, R.S.C., 1985, c. C-34, s 52(1), and the *Consumer Protection Act*, CQLR c P-40.1, s. 219, a manufacturer must not make a false or misleading representation. By marketing the Wipes as being safe to use, the Respondents misled consumers into believing the Wipes were safe for personal use, when they were neither safe nor suitable for this purpose. Having previously established in the marketplace that the Wipes were safe to use, the Respondents' failure to inform consumers about the presence of the bacterium, *pluralibacter gergoviae*, further misled consumers as to a material aspect of the Wipes and caused the Class members to suffer a direct loss or damage as a result of the Respondents' conduct;
23. Had the Respondents properly disclosed the bacterial issue surrounding the Wipes to the public, given that it is a personal care item, no customer would have purchased the Wipes;
24. Through the sale of the Wipes, the Respondents has been unjustly enriched as it has received the full proceeds, the Class members have suffered a corresponding monetary detriment, and there is no juristic reason for the foregoing.

## **II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER**

25. Petitioner used a package of Cottonelle® Flushable Wipes, Flip Top, 4 PK x 42 Count during the month September 2020 and in October 2020 up and until he learned about the bacterial issue with the wipes;
26. Following use of the wipes, he noticed subsequently the appearance of a rash locally in the coccyx area where the many wipes from that package had repeatedly made contact with the skin over days and weeks, the cause of which seemed inexplicable to him at the time;
27. This caused him constant physical discomfort throughout the day and sleep disturbance for several weeks until well after he discontinued use, on top of undue anxiety and worry as he was unaware of the nature and source of the rash;
28. To this day, there remains aesthetic consequences in the form of a scar and discoloration on the skin of his coccyx area at the site where the infectious rash was;
29. He purchased hydrocortisone and other over-the counter medicine to attempt to self-medicate the rash;
30. When he learned about the issue with the Wipes, he completely ceased use, and would have never bought the Wipes if he had been aware of the bacterial issue.

## **III. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP**

31. Each Class Member has purchased and/or used the Wipes on their own body.

32. Each of the Class Members' damages would not have occurred, but for the acts and negligence of the Respondents in:
- a. failing to implement and observe adequate safeguards to prevent product contamination;
  - b. failing to implement and observe adequate methods for detecting the presence of bacterial contamination prior to mass distribution of the Flushable Wipes;
  - c. failing to ensure that the Wipes were fit for its intended purpose, both before releasing it into the stream of commerce and on an ongoing basis thereafter; and
  - d. failing to warn the Respondent and Class Members that the Wipes included.
33. In consequence of the foregoing, each member of the class is justified in claiming at least one or more of the following as damages:
- a. Physical and psychiatric injuries, including pain, suffering, anxiety, loss of quality and enjoyment of life and increased risk of health problems;
  - b. Out-of-pocket expenses incurred or to be incurred, including those connected with hospital stays, medical treatment, medications, medical monitoring services;
  - c. Loss of earning capacity, past and future;
  - d. Refund of the purchase prices of the Wipes; and
  - e. Punitive damages.
34. All of these damages to Class Members are a direct and proximate result of the purchase and/or use of the Wipes and Respondents' unlawful conduct.

#### **IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION**

##### **A) The composition of the Class makes it difficult or impracticable to apply the rules for mandates to sue on behalf of others or for consolidation of proceedings**

35. Petitioner is unaware of the specific number of Class Members who purchased and/or used the Wipes on their own body, however it is safe to assume that this number is at least 10 000 people, and likely several hundred thousand of people, as the Respondents have indicated as part of the publication of their product recall to Health Canada, that there were over 2 000 000 Wipes sold in Canada for the relevant period of February 2020 to October alone, as shown on the extract of the Health Canada web page for this recall Exhibit P-1;
36. As well, a Toronto Star article reports this figure of 2 000 000, as shown from the article joined as **Exhibit P-5**;

37. Class members are numerous and are scattered across the entire province of Quebec;
38. Given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondents. Even if Class Members themselves could afford such individual litigation, it would place an unjustifiable burden on the courts. Further, individual litigation of the factual and legal issues raised by the conduct of the Respondents would increase delay and expense to all parties and to the court system;
39. These facts demonstrate that it would be impractical, if not impossible, to contact each and every member of the Class to obtain individual mandates and to join them together in one action;
40. In these circumstances, a class action is the only appropriate procedure and the only viable means for all of the members of the Class to effectively pursue their respective rights and to obtain access to justice;

B) The claims of the members of the Class raise identical, similar or related issues of law or fact

41. Individual questions pale by comparison to the numerous common questions are significant to the outcome of this litigation.
42. The damages sustained by Class Members flow from a common nucleus of operative facts, namely, Respondents' misconduct.
43. The recourses of the members raise identical, similar or related questions of fact or law, namely:
  - a. Were the Wipes subject to a recall?
  - b. Is *pluralibacter gergoviae* hazardous to human health?
  - c. Were the recalled Wipes contaminated with *pluralibacter gergoviae*?
  - d. Were the Respondents negligent insofar as they:
    - i. Failed to implement and observe adequate safeguards to prevent product contamination;
    - ii. Failed to implement and observe adequate methods for detecting the presence of bacterial contamination prior to mass distribution of the Wipes;
    - iii. Failed to ensure that the Wipes were fit for its intended purpose, both before releasing them into the stream of commerce and on an ongoing basis thereafter; and



- iv. Failing to warn the Petitioner and Class Members that the Wipes were contaminated with *pluralibacter gergoviae*?
- e. Is the presence of *pluralibacter gergoviae* a latent defect of the Wipes under section 1726 of the Civil Code of Quebec?
- f. If so, did the Respondents fail to adequately disclose to Class members that the Wipes are defective or did they do so in a timely manner?
- g. Have the Respondents made false and misleading representations concerning the Wipes?
- h. Did the Wipes conform to the description made of them in the contracts between the Class Members and the Respondents?
- i. Did the Respondents breach their duty to inform the members of the Class under the [Civil Code of Quebec](#) and the *Quebec Consumer Protection Act*?
- j. Is the absolute presumption of prejudice under the Consumer Protection Act applicable to the Class Members' claims?
- k. Did the Respondents unjustly enrich themselves through the sale of the Wipes?
- l. Is there joint and several liability as between the Respondents?
- m. Are Class Members entitled to material damages, including a monetary amount equal to the purchase price of the Wipes? Are they entitled to moral damages? And if so, how much?
- n. Can class member recover the costs of investigation under 36 of the *Competition Act*?

**V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

- 44. The action that the Petitioner wishes to institute on behalf of the Class Members is an action in damages and declaratory relief;
- 45. The conclusions that the Petitioner wishes to introduce by way of a motion to institute proceedings are:

**GRANT** the class action of the Petitioner and each of the Class Members;

**DECLARE** that the Respondents have committed false, misleading, and/or deceptive conduct with respect to their manufacturing, marketing, advertising, promoting, packaging, labelling, selling, and/or representing the Wipes as safe;

**CONDEMN** the Respondents solidarily liable to pay to each member of the Class a sum to be determined at trial in compensation of the damages suffered, and **ORDER** collective recovery of these sums;

**CONDEMN** the Respondents solidarily liable to pay punitive damages to each member of the Class, and **ORDER** collective recovery of these sums;

**CONDEMN** the Respondents solidarily liable to pay interest and additional indemnity on the above sums according to law from the date of service of the application to authorize a class action;

**ORDER** the Respondents solidarily to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

**CONDEMN** the Respondents solidarily liable to bear the costs of the present action including expert and notice fees;

**RENDER** any other order that this Honourable Court shall determine and that is in the interest of the members of the Class;

A) The Petitioner requests that he be attributed the status of representative of the Class

46. Petitioner is a Class Member;

47. Petitioner is ready and available to manage and direct the present action in the interest of Class Members that he wishes to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefits of the class, as well as, to dedicate the time necessary for the present action before the Courts of Quebec, and to collaborate with his attorneys;

48. Petitioner has the capacity and interest to fairly and adequately protect and represent the interest of Class Members;

49. Petitioner has given the mandate to his attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;

50. Petitioner, with the assistance of his attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other Class Members and to keep them informed;

51. Petitioner has given instructions to his attorneys to put information about this class action on its website and to collect the coordinates of Class Members who wish to be kept informed and participate in any resolution of the present matter, the whole as will be shown at the hearing;

52. Petitioner is in good faith and has instituted this action for the sole goal of having his rights, as well as the rights of other Class Members, recognized and protected so that they may

be compensated for the damages that they have suffered as a consequence of the Respondents' conduct;

53. Petitioner understands the nature of the action;

54. Petitioner's interests are not antagonistic to those of other Class Members and Petitioner's interests do not conflict with the interests of other Class Members;

B) The Petitioner suggests that this class action be exercised before the Superior Court of Justice in the district of Montreal

55. A great number of Class Members likely reside in the judicial district of Montreal and in the appeal district of Montreal, including the Petitioner;

56. The Petitioner's attorneys practice their profession in the judicial district of Montreal;

57. The present motion is well founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present application;

**AUTHORIZE** the bringing of a class action in the form of a motion to institute proceedings in damages and declaratory relief;

**ASCRIBE** the Petitioner the status of representative of the persons included in the class herein described as:

- all residents in Quebec who purchased and/or used Cottonelle Flushable Wipes and Cottonelle Gentle Plus Flushable Wipes between February 7, 2020 and the date this action is authorized as a class proceeding

**IDENTIFY** the principle questions of fact and law to be treated collectively as the following:

- a. Were the Wipes subject to a recall?
- b. Is *pluralibacter gergoviae* hazardous to human health?
- c. Were the recalled Wipes contaminated with *pluralibacter gergoviae*?
- d. Were the Respondents negligent insofar as they:
  - i. Failed to implement and observe adequate safeguards to prevent product contamination;
  - ii. Failed to implement and observe adequate methods for detecting the presence of bacterial contamination prior to mass distribution of the Wipes;

- iii. Failed to ensure that the Wipes were fit for its intended purpose, both before releasing them into the stream of commerce and on an ongoing basis thereafter; and
  - iv. Failing to warn the Petitioner and Class Members that the Wipes were contaminated with *pluralibacter gergoviae*?
- e. Is the presence of *pluralibacter gergoviae* a latent defect of the Wipes under section 1726 of the Civil Code of Quebec?
  - f. If so, did the Respondents fail to adequately disclose to Class members that the Wipes are defective or did they do so in a timely manner?
  - g. Have the Respondents made false and misleading representations concerning the Wipes?
  - h. Did the Wipes conform to the description made of them in the contracts between the Class Members and the Respondents?
  - i. Did the Respondents breach their duty to inform the members of the Class under the [Civil Code of Quebec](#) and the *Quebec Consumer Protection Act*?
  - j. Is the absolute presumption of prejudice under the Consumer Protection Act applicable to the Class Members' claims?
  - k. Did the Respondents unjustly enrich themselves through the sale of the Wipes?
  - l. Is there joint and several liability as between the Respondents?
  - m. Are Class Members entitled to material damages, including a monetary amount equal to the purchase price of the Wipes? Are they entitled to moral damages? And if so, how much?
  - n. Can class member recover the costs of investigation under 36 of the *Competition Act*?

**IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

**GRANT** the class action of the Petitioner and each of the Class Members;

**DECLARE** that the Respondents have committed false, misleading, and/or deceptive conduct with respect to their manufacturing, marketing, advertising, promoting, packaging, labelling, selling, and/or representing the Wipes as safe;

**CONDEMN** the Respondents solidarily liable to pay to each member of the Class a sum to be determined at trial in compensation of the damages suffered, and **ORDER** collective recovery of these sums;

**CONDEMN** the Respondents solidarily liable to pay punitive damages to each member of the Class, and **ORDER** collective recovery of these sums;

**CONDEMN** the Respondents solidarily liable to pay interest and additional indemnity on the above sums according to law from the date of service of the application to authorize a class action;

**ORDER** the Respondents solidarily to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

**CONDEMN** the Respondents solidarily liable to bear the costs of the present action including expert and notice fees;

**RENDER** any other order that this Honourable Court shall determine and that is in the interest of the members of the Class;

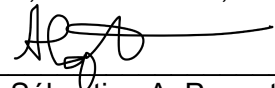
**DECLARE** that all members of the Class that have not requested their exclusion be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by the law;

**FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgment to be rendered herein;

**ORDER** the publication of a notice to the members of the group in accordance with article 579 C.C.P. within sixty (60) days from the judgment to be rendered herein by email to the Quebec Class Members that have joined the Quebec case, by putting the notice up on the Quebec class action registry and the Canadian Bar Association class action database, and by putting the notice up on Class Counsel's website.

**THE WHOLE** with costs, including all publication fees.

Montréal, December 14, 2020



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Me Sébastien A. Paquette  
**Champlain avocats**  
Attorneys for the Petitioner

## SUMMONS

(Articles 145 and following CCP)

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### **Filing of a judicial application**

Take notice that the Petitioner has filed this Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff in the office of the Superior Court in the judicial district of Montreal.

### **Defendants' answer**

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at 1 Rue Notre-Dame Est, Montreal, Québec, H2Y 1R6, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Petitioner's lawyer or, if the Petitioner is not represented, to the Petitioner.

### **Failure to answer**

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

### **Content of answer**

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the case required by the Code, cooperate with the Petitioner in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

### **Change of judicial district**

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

### **Transfer of application to Small Claims Division**

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

### **Calling to a case management conference**

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

### **Exhibits supporting the application**

**Exhibit P-1:** Copy of the Health Canada Product Recall webpage for the Wipes;

**Exhibit P-2:** Copy of a corporate search for Respondent Kimberly-Clark Corporation;

**Exhibit P-3:** Copy of a corporate search for Respondent Kimberly-Clark Canada;

**Exhibit P-4:** Copy of the FAQ section of the Cottonelle Product Recall web page;

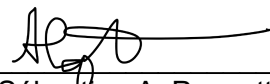
**Exhibit P-5:** Copy of the Toronto Star article on the Product Recall.

The exhibits in support of the application are available upon request.

### **Notice of presentation of an application**

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montréal, December 14, 2020



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Me Sébastien A. Paquette  
**Champlain avocats**  
Attorneys for the Petitioner

**NOTICE OF PRESENTATION**

**(Articles 146 and 574 CCP)**

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**TO: KIMBERLY-CLARK CORPORATION,**  
legal person duly constituted, having its  
address of service at 1209 Orange Street,  
Wilmington, DE 19801 USA

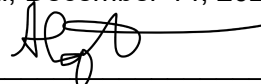
and

**KIMBERLY-CLARK CANADA INC.,** legal  
person duly constituted, having its address  
for service at 50 Burnhamthorpe Road West,  
Suite #1402, Mississauga Ontario L5B 3Y5  
Canada

**TAKE NOTICE** that Petitioner's Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff will be presented before the Superior Court at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, on the date set by the coordinator of the Class Action chamber.

**GOVERN YOURSELF ACCORDINGLY.**

Montréal, December 14, 2020



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Me Sébastien A. Paquette  
**Champlain avocats**  
Attorneys for the Petitioner



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**SUPERIOR COURT**  
(Class actions)  
**DISTRICT OF MONTREAL**

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██████████ **BUTTERS**, natural person,  
residing at ██████████  
██████████, province of Quebec, ██████████

Petitioner

v.

**KIMBERLY-CLARK CORPORATION**,  
legal person duly constituted having its  
address of service at 1209 Orange Street,  
Wilmington, DE, 19801 USA

and

**KIMBERLY-CLARK CANADA INC.**, legal  
person duly constituted having its address  
of service at 50, Burnhamthorpe Road  
West, Suite 1402 Mississauga, Ontario,  
L5B 3Y5

Respondents

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**APPLICATION FOR AUTHORIZATION TO  
INSTITUTE A CLASS ACTION & TO OBTAIN  
THE STATUS OF REPRESENTATIVE  
PLAINTIFF (Art. 571 ss)**

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**COURT COPY**

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