

Cause No. \_\_\_\_\_

JORDAN ROSENBLATT, Individually and  
On Behalf of All Others Similarly Situated,

Plaintiff,

v.

CHRISTOPHER T. FRASER, GERALD G.  
ERMENTROUT, GEORGE W. GILMAN,  
ROBERT HARRER, JOHN C. HUNTER, III,  
FRED C. LEONARD III, MARGARET C.  
MONTANA, KAREN A. TWITCHELL,  
CABOT MICROELECTRONICS  
CORPORATION, and COBALT MERGER  
SUB CORPORATION,

Defendants,

and

KMG CHEMICALS, INC.,

Nominal Defendant.

§ IN THE DISTRICT COURT OF

§ TARRANT COUNTY, TEXAS

§ \_\_\_\_ JUDICIAL DISTRICT

§ JURY TRIAL DEMANDED

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**SHAREHOLDER DERIVATIVE AND CLASS ACTION PETITION**

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1. Pursuant to Rule 190.1 of the Texas Rules of Civil Procedure, plaintiff would show that discovery is intended to be conducted under Level 3 of Rule 190.1 due to the complexity of this case. Plaintiff, by plaintiff's attorneys, submits this Petition based upon breach of fiduciary duties against the defendants named herein.

**NATURE OF THE ACTION**

2. This action stems from a proposed transaction announced on August 15, 2018 (the "Proposed Transaction"), pursuant to which KMG Chemicals, Inc. ("KMG" or the "Company") will be acquired by Cabot Microelectronics Corporation ("Parent") and Cobalt Merger Sub Corporation ("Merger Sub," and together with Parent, "Cabot").

3. On August 14, 2018, KMG's Board of Directors (the "Board" or "Individual Defendants") caused the Company to enter into an agreement and plan of merger (the "Merger Agreement") with Cabot. Pursuant to the terms of the Merger Agreement, shareholders of KMG will receive 0.2 shares of Parent common stock and \$55.65 in cash for each share of KMG common stock they own.

4. In approving the Merger Agreement, the Individual Defendants breached their fiduciary duties, and the merger consideration undervalues the Company. Additionally, Cabot aided and abetted the Individual Defendants' breaches of fiduciary duty.

5. Compounding the unfairness of the Proposed Transaction, defendants issued materially incomplete disclosures in the Form S-4 Registration Statement (the "Registration Statement") filed with the United States Securities and Exchange Commission ("SEC") on September 12, 2018. As set forth below, the Registration Statement fails to disclose material information to stockholders regarding the Proposed Transaction.

6. Plaintiff seeks enjoinder of the Proposed Transaction, which is expected to close near the end of calendar year 2018. Alternatively, plaintiff seeks rescission of the Proposed Transaction in the event defendants are able to consummate it.

### **JURISDICTION AND VENUE**

7. This Court has jurisdiction over each defendant named herein. KMG is a Texas corporation, maintains its principal executive offices at 300 Throckmorton Street, Fort Worth, Texas, and maintains operations in Texas. The Individual Defendants also have sufficient minimum contacts with Texas so as to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

8. Venue is proper in this Court because one or more of the defendants either resides

in or maintains executive offices in this County. Additionally, a substantial portion of the transactions and wrongs complained of herein occurred in this County, including the defendants' primary participation in the wrongful acts detailed herein. Defendants have received substantial compensation in this County by doing business here and engaging in numerous activities that had an effect in this County.

### **PARTIES**

9. Plaintiff is, and has been continuously throughout all times relevant hereto, the owner of KMG common stock.

10. Nominal Defendant KMG is a Texas corporation and maintains its principal executive offices at 300 Throckmorton Street, Fort Worth, Texas. KMG's common stock is traded on the NYSE under the ticker symbol "KMG." KMG is a party to the Merger Agreement.

11. Defendant Christopher T. Fraser ("Fraser") is Chairman of the Board of KMG.

12. Defendant Gerald G. Ermentrout ("Ermentrout") is a director of KMG.

13. Defendant George W. Gilman ("Gilman") is a director of KMG.

14. Defendant Robert Harrer ("Harrer") is a director of KMG.

15. Defendant John C. Hunter, III ("Hunter") is a director of KMG.

16. Defendant Fred C. Leonard, III ("Leonard") is a director of KMG.

17. Defendant Margaret C. Montana ("Montana") is a director of KMG.

18. Defendant Karen A. Twitchell ("Twitchell") is a director of KMG.

19. The defendants identified in paragraphs 11 through 18 are collectively referred to herein as the "Individual Defendants."

20. Defendant Parent is a Delaware corporation and a party to the Merger Agreement.

21. Defendant Merger Sub is a Texas corporation, a wholly-owned subsidiary of

Parent, and a party to the Merger Agreement.

### **CLASS ACTION ALLEGATIONS**

22. Plaintiff brings this action on his own behalf and as a class action on behalf of all holders of KMG stock (the “Class”). Excluded from the Class are defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any defendant.

23. This action is properly maintainable as a class action.

24. The Class is so numerous that joinder of all members is impracticable. As of August 13, 2018, there were approximately 15,509,733 shares of KMG common stock outstanding, held by hundreds, if not thousands, of individuals and entities scattered throughout the country.

25. Questions of law and fact are common to the Class, including, among others: (i) whether the Individual Defendants have breached their fiduciary duties owed to plaintiff and the Class; (ii) whether Cabot aided and abetted such breaches of fiduciary duties; and (iii) whether defendants will irreparably harm plaintiff and the other members of the Class if defendants’ conduct complained of herein continues.

26. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff’s claims are typical of the claims of the other members of the Class and plaintiff has the same interests as the other members of the Class. Accordingly, plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

27. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for defendants, or adjudications that would, as a practical matter, be



dispositive of the interests of individual members of the Class who are not parties to the adjudications or would substantially impair or impede those non-party Class members' ability to protect their interests.

28. Preliminary and final injunctive relief on behalf of the Class as a whole is entirely appropriate because defendants have acted, or refused to act, on grounds generally applicable and causing injury to the Class.

### **DERIVATIVE AND DEMAND ALLEGATIONS**

29. Plaintiff incorporates all of the allegations in this Complaint as if they were fully set forth herein.

30. In addition to bringing a direct claim against defendants, plaintiff brings this action derivatively in the right and for the benefit of KMG to redress injuries suffered and to be suffered by the Company as a result of the breaches of fiduciary duty and other violations of law by the Individual Defendants.

31. Plaintiff owns and has owned KMG common stock at all times relevant hereto. Plaintiff will adequately and fairly represent the interests of the Company and its stockholders in enforcing and prosecuting its rights. Plaintiff has retained counsel experienced in these types of actions to prosecute these claims on the Company's behalf.

32. Plaintiff made a demand on the Board, imploring it to act in remedying the harms the Company will suffer in the event that the Proposed Transaction is consummated. Plaintiff has not yet received a response to the demand.

33. Given that the parties anticipate that the Proposed Transaction will close near the end of calendar year 2018, plaintiff feels compelled to act to secure the Company's right to relief against the Individual Defendants.

34. Demand is excused because the Company would be irreparably harmed if the stockholder vote on the Proposed Transaction was permitted to proceed without first affording the relief requested herein. Demand is excused where, as here, a demand, or a delay in awaiting a response to a demand, would cause irreparable harm to the corporation.

### **SUBSTANTIVE ALLEGATIONS**

#### ***Background of the Company and the Proposed Transaction***

35. Headquartered in Fort Worth, Texas, with facilities in North America, Europe, and Asia, KMG produces and distributes specialty chemicals and performance materials for the semiconductor, industrial wood preservation, and pipeline and energy markets.

36. KMG is the leading global supplier of high purity process chemicals, serving major semiconductor manufacturers in the U.S., Europe, and Asia.

37. KMG formulates and blends acids, solvents, and other wet chemicals used to etch and clean silicon wafers in the production of semiconductors, photovoltaics (solar cells), and flat panel displays.

38. KMG's Flowchem subsidiary is a leading global supplier of pipeline performance products, serving midstream crude oil and refined fuel pipeline operators worldwide. Flowchem specializes in the manufacture and distribution of drag-reducing agents ("DRAs") for optimizing pipeline flow and lowering pipeline operating costs.

39. KMG's Val-Tex and Sealweld subsidiaries are leading global providers of high-performance products and services for industrial valve and actuator maintenance. The Company's comprehensive product portfolio includes valve lubricants, cleaners and sealants, as well as related products such as fittings, adapters, and application equipment. KMG also offers

routine and emergency valve maintenance services and technician training for many of the world's leading pipeline operators.

40. KMG is the leading North American manufacturer of pentachlorophenol, a specialty chemical used to preserve and protect wooden utility poles in the U.S. and Canada.

41. On August 14, 2018, KMG's Board caused the Company to enter into the Merger Agreement with Cabot.

42. Pursuant to the terms of the Merger Agreement, shareholders of KMG will receive 0.2 shares of Parent common stock and \$55.65 in cash for each share of KMG common stock they own.

43. According to the press release announcing the Proposed Transaction:

Cabot Microelectronics Corporation (Nasdaq: CCMP), the world's leading supplier of chemical mechanical planarization (CMP) polishing slurries and second largest CMP pads supplier to the semiconductor industry, and KMG Chemicals, Inc. (NYSE: KMG), a global provider of specialty chemicals and performance materials, have entered into a definitive agreement under which Cabot Microelectronics will acquire KMG in a cash and stock transaction with a total enterprise value of approximately \$1.6 billion. Under the terms of the agreement, KMG shareholders will be entitled to receive, per KMG share, \$55.65 in cash and 0.2000 of a share of Cabot Microelectronics common stock, which represents an implied per share value of \$79.50 based on the volume weighted average closing price of Cabot Microelectronics common stock over the 20-day trading period ended on August 13, 2018. The transaction has been unanimously approved by the Boards of Directors of both companies and is expected to close near the end of calendar year 2018.

The combined company is expected to have annual revenues of approximately \$1 billion and approximately \$320 million in EBITDA, including synergies, extending and strengthening Cabot Microelectronics' position as one of the leading suppliers of consumable materials to the semiconductor industry. Additionally, the combined company will be a leading global provider of performance products and services for improving pipeline operations and optimizing throughput. . . .

#### Transaction Highlights

The purchase price represents a total enterprise value for KMG of approximately \$1.6 billion, inclusive of KMG's net debt, or approximately 10.9x KMG's

estimated FY18 adjusted EBITDA post \$25 million of estimated annual cost synergies.

Under the terms of the transaction, KMG shareholders will receive a combination of \$55.65 in cash and 0.2000 shares of Cabot Microelectronics common stock per share of KMG common stock.

The transaction is expected to be significantly accretive to Cabot Microelectronics' free cash flow and accretive to adjusted earnings per share in year one, excluding any acquisition and integration related costs. Cabot Microelectronics expects to achieve \$25 million of annual run-rate cost synergies within the first two years after closing the transaction.

The transaction is subject to the satisfaction of customary closing conditions, including HSR clearance and approval by KMG shareholders. Cabot Microelectronics expects to finance the cash portion of the transaction consideration through a combination of existing cash and additional debt supported by commitments from its key lenders.

After the close of the transaction, it is intended that Mr. Fraser becomes an advisor to Cabot Microelectronics during the integration. His extensive experience across the electronic chemicals and performance materials industries is expected to benefit the combined company with its integration efforts, customer and supplier relationships, and revenue expansion.

44. The Merger Agreement contains a "no solicitation" provision that prohibits the Individual Defendants from soliciting alternative proposals and constrains their ability to communicate and negotiate with potential buyers who wish to submit or have submitted unsolicited alternative proposals. Section 5.4(a) of the Merger Agreement provides:

(a) Except as expressly permitted by this Section 5.4, the Company shall and shall cause each of its controlled Affiliates and its and their respective officers, directors, employees, and shall use reasonable best efforts to cause its financial advisors, investment bankers, attorneys, accountants and other representatives acting on the Company's behalf: (i) to immediately cease and cause to be terminated any solicitation, knowing encouragement, discussions or negotiations with any persons (other than Parent and Parent's Affiliates and its and their respective Representatives) that may be ongoing with respect to a Company Takeover Proposal and (ii) not to, directly or indirectly, (A) solicit, initiate or knowingly encourage or knowingly facilitate any inquiries regarding, or the making of any proposal or offer that constitutes, or would reasonably be expected to lead to, a Company Takeover Proposal, (B) engage in, continue or otherwise participate in any discussions or negotiations regarding, or furnish to any other

person any information in connection with or for the purpose of encouraging or facilitating a Company Takeover Proposal (other than, in response to an unsolicited inquiry, to refer the inquiring person to this Section 5.4 and limiting its communication exclusively to such referral), or (C) approve, adopt, recommend or enter into, or propose to approve, adopt, recommend or enter into, any letter of intent, agreement, commitment, or agreement in principle (whether written or oral, binding or nonbinding) with respect to a Company Takeover Proposal. The Company shall not, and shall cause its Affiliates not to, release any third party from, or waive, amend or modify any provision of, or grant permission under, or fail to enforce, any standstill provision in any agreement to which the Company or any of its Affiliates is a party. . . .

45. Further, the Company must promptly advise Cabot of any proposals or inquiries received from other parties. Section 5.4(d) of the Merger Agreement states:

(d) Without limiting the foregoing, the Company shall promptly (and in no event later than twenty-four (24) hours after, to the knowledge of the Company, its receipt) notify Parent in writing in the event that the Company directly or indirectly receives a Company Takeover Proposal or a request for information relating to the Company or its Subsidiaries or other inquiry or communication that is reasonably likely to lead to or that contemplates a Company Takeover Proposal, including the identity of the person making the Company Takeover Proposal and the material terms and conditions thereof (including an unredacted copy of such Company Takeover Proposal or, where such Company Takeover Proposal is not in writing, a description of the terms thereof). The Company shall keep Parent reasonably informed, on a current basis, as to the status of (including any material developments, discussions or negotiations related thereto) such Company Takeover Proposal (including by promptly (and in no event later than twenty-four (24) hours after receipt) providing to Parent copies of any correspondence, proposals, indications of interest, and/or draft agreements relating to such Company Takeover Proposal). The Company agrees that it and its Affiliates will not enter into any agreement with any person subsequent to the date of this Agreement which prohibits the Company from providing any information to Parent in accordance with, or otherwise complying with, this Section 5.4.

46. Moreover, the Merger Agreement contains a highly restrictive “fiduciary out” provision permitting the Board to withdraw its approval of the Proposed Transaction under extremely limited circumstances, and grants Cabot a “matching right” with respect to any “Company Superior Proposal” made to the Company. Section 5.4(e) of the Merger Agreement provides:

(e) Except as expressly permitted by this Section 5.4(e), the Company Board of Directors shall not (i) (A) fail to include the Company Recommendation in the Proxy Statement/Prospectus when disseminated to the Company's shareholders, (B) change, qualify, withhold, withdraw or modify, or authorize or publicly propose to change, qualify, withhold, withdraw or modify the Company Recommendation, (C) fail to recommend against any Company Takeover Proposal that is a tender or exchange offer subject to Regulation 14D under the Exchange Act in a Solicitation/Recommendation Statement on Schedule 14D-9 within ten (10) Business Days after the commencement (within the meaning of Rule 14d-2 under the Exchange Act) of such tender or exchange offer or after such tender or exchange offer is subsequently amended in any material respect or (D) adopt, approve or recommend to shareholders of the Company, or resolve to or publicly propose or announce its intention to adopt, approve or recommend to shareholders of the Company, a Company Takeover Proposal (any action described in this clause (i) being referred to as a "Company Adverse Recommendation Change"), or (ii) authorize, cause or permit the Company or any of its Subsidiaries to enter into any letter of intent, memorandum of understanding, agreement (including an acquisition agreement, merger agreement, joint venture agreement or other similar agreement), commitment or agreement in principle with respect to any Company Takeover Proposal (other than an Acceptable Confidentiality Agreement entered into in accordance with Section 5.4(c)) (a "Company Acquisition Agreement"). Anything to the contrary set forth in this Agreement notwithstanding, prior to the time that the Company Shareholder Approval is obtained, but not after, the Company Board of Directors may, with respect to a bona fide, unsolicited Company Takeover Proposal that did not result from a material breach by the Company of this Section 5.4, make a Company Adverse Recommendation Change if, and only if, prior to taking such action, (x) the Company Board of Directors has determined in good faith, after consultation with the Company's independent financial advisor and outside legal counsel, that such Company Takeover Proposal constitutes a Company Superior Proposal and that the failure to take such action would be inconsistent with the Company Board of Directors' fiduciary duties under applicable Law and (y) (A) the Company has given Parent at least four (4) Business Days' prior written notice of its intention to take such action, and specifying the reasons therefor, and has provided to Parent the identity of the person making, any such Company Takeover Proposal and a copy of any proposed Company Acquisition Agreements constituting such Company Takeover Proposal (or, if not provided in writing to the Company, a written summary of the material terms thereof) and a written summary of the material terms of any financing commitments relating thereto, (B) if requested by Parent, the Company and its Representatives shall have engaged in good faith in discussions and negotiations with Parent and its Representatives during such notice period regarding changes to the terms of this Agreement proposed in writing by Parent so that the failure to take such action would no longer be inconsistent with the Company Board of Directors' fiduciary duties under applicable Law, (C) following the end of such notice period, the Company Board of Directors shall have considered in good faith any revisions to

the terms of this Agreement committed to in writing by Parent, and shall have determined, after consultation with the Company's independent financial advisor and outside legal counsel, that the Company Superior Proposal would nevertheless continue to constitute a Company Superior Proposal and that the failure to take such action would be inconsistent with the Company Board of Directors' fiduciary duties under applicable Law if the revisions committed to in writing by Parent were to be given effect, and (D) in the event of any change to any of the material financial terms or any other material terms of such Company Superior Proposal, the Company shall, in each case, have delivered to Parent an additional notice consistent with that described in clause (A) above of this proviso and a new notice period under clause (A) of this proviso shall commence (except that the four (4) Business Day notice period referred to in clause (A) above of this proviso shall instead end at the later of (1) 11:59 p.m. (Eastern Time) on the second (2nd) Business Day immediately following Parent's receipt of such notice and (2) the end of the original notice period, during which time the Company shall be required to comply with the requirements of clauses (B), (C) and (D) above of this proviso. The actions of the Company Board of Directors in making a determination that a Company Takeover Proposal constitutes a Company Superior Proposal and the Company's authorizing and providing the notices to Parent required by this Section 5.4(e), if done in accordance with this Section 5.4(e) and so long as the Company Board of Directors determines finally, at the end of any notice periods required pursuant to this Section 5.4(e) with respect to such Company Takeover Proposal, that such Company Takeover Proposal does not constitute a Company Superior Proposal and reaffirms the Company Recommendation, shall not in and of itself, constitute a Company Adverse Recommendation Change, a violation of this Section 5.4 or trigger any rights allowing for a termination of this Agreement. Anything to the contrary contained herein notwithstanding, neither the Company nor any Company Subsidiary shall enter into any Company Acquisition Agreement unless this Agreement has been terminated in accordance with its terms.

47. Further locking up control of the Company in favor of Cabot, the Merger Agreement provides for a "termination fee" of \$38,765,000 payable by the Company to Cabot if the Individual Defendants cause the Company to terminate the Merger Agreement.

48. By agreeing to all of the deal protection devices, the Individual Defendants have locked up the Proposed Transaction and have precluded other bidders from making successful competing offers for the Company.

49. The consideration to be provided to plaintiff and the Class in the Proposed Transaction appears inadequate.

50. Among other things, the intrinsic value of the Company is materially in excess of the amount offered in the Proposed Transaction.

51. Accordingly, the Proposed Transaction will deny Class members their right to share proportionately and equitably in the true value of the Company's valuable and profitable business, and future growth in profits and earnings.

***The Registration Statement Omits Material Information***

52. Defendants filed the Registration Statement with the SEC in connection with the Proposed Transaction.

53. As set forth below, the Registration Statement omits material information with respect to the Proposed Transaction.

54. The Registration Statement omits material information regarding the Company's and Cabot's financial projections and the analyses performed by the Company's financial advisor in connection with the Proposed Transaction, KeyBanc Capital Markets Inc.'s ("KBCM").

55. With respect to the Company's financial projections, the Registration Statement fails to disclose: (i) unlevered free cash flows for years 2019 through 2023 and all underlying line items; (ii) all line items used to calculate Adjusted EBITDA; (iii) EBITDA; and (iv) a reconciliation of all non-GAAP to GAAP metrics.

56. With respect to Cabot's financial projections, the Registration Statement fails to disclose: (i) unlevered free cash flows for years 2019 through 2023 and all underlying line items; (ii) all line items used to calculate EBITDA; and (iii) a reconciliation of all non-GAAP to GAAP metrics.

57. With respect to KBCM's Comparable Public Companies Analyses, the Registration Statement fails to disclose the individual multiples and financial metrics for the



companies observed by KBCM in the analyses.

58. With respect to KBCM's Selected Precedent Transactions Analyses, the Registration Statement fails to disclose the individual multiples and financial metrics for the transactions observed by KBCM in the analyses.

59. With respect to KBCM's Premia Paid Analysis, the Registration Statement fails to disclose the transactions observed by KBCM in the analysis and the premiums paid in such transactions.

60. With respect to KBCM's Discounted Cash Flow Analysis for the Company, the Registration Statement fails to disclose: (i) the standalone, unlevered, after-tax free cash flows that KMG could generate during KMG's fiscal years 2019 through 2023 and all underlying line items; (ii) the terminal values for KMG; (iii) KMG's fiscal year 2023 projected EBITDA; and (iv) the inputs and assumptions underlying the discount rates ranging from 9.5% to 11.5%.

61. With respect to KBCM's Discounted Cash Flow Analysis for Cabot, the Registration Statement fails to disclose: (i) the standalone, unlevered, after-tax free cash flows that Cabot could generate during Cabot's fiscal years 2019 through 2023 and all underlying line items; (ii) the terminal values for Cabot; and (iii) the inputs and assumptions underlying the discount rates ranging from 11.8% to 13.8%.

62. The disclosure of projected financial information is material because it provides stockholders with a basis to project the future financial performance of a company, and allows stockholders to better understand the financial analyses performed by the company's financial advisor in support of its fairness opinion. Moreover, when a banker's endorsement of the fairness of a transaction is touted to shareholders, the valuation methods used to arrive at that opinion as well as the key inputs and range of ultimate values generated by those analyses must

also be fairly disclosed.

63. The above-referenced omitted information, if disclosed, would significantly alter the total mix of information available to the Company's stockholders.

### **COUNT I**

#### **(Breach of Fiduciary Duty Against the Individual Defendants Brought Directly on Behalf of Plaintiff and the Class)**

64. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

65. Plaintiff brings this claim directly on behalf of himself and the Class.

66. The Individual Defendants have violated their fiduciary duties owed to the public stockholders of KMG.

67. The Individual Defendants have breached their fiduciary duties owed to the shareholders of KMG, and have engaged in self-dealing and are not acting in good faith, because, among other reasons: (i) they failed to secure adequate value for KMG stockholders; and (ii) they failed to disclose material information to the Company's stockholders in the Registration Statement.

68. As a result of the Individual Defendants' breaches of their fiduciary duties, plaintiff and the Class will suffer irreparable injury in that they have not and will not receive their fair portion of the value of KMG's assets and cannot cast an informed vote on the Proposed Transaction.

69. Unless enjoined by this Court, the Individual Defendants will continue to breach their fiduciary duties owed to plaintiff and the Class, and may consummate the Proposed Transaction, to the irreparable harm of the Class.

70. Plaintiff and the members of the Class have no adequate remedy at law.

## **COUNT II**

### **(Breach of Fiduciary Duty Against the Individual Defendants Brought Derivatively on Behalf of KMG)**

71. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

72. Plaintiff brings this claim derivatively on behalf of KMG.

73. The Individual Defendants have violated the fiduciary duties owed to KMG.

74. By the acts, transactions, and courses of conduct alleged herein, defendants, individually and acting as a part of a common plan, will unfairly allow the Company to be acquired by Cabot for inadequate consideration.

75. The Individual Defendants have violated their fiduciary duties by entering into the Merger Agreement.

76. By reason of the foregoing acts, practices, and course of conduct, the Individual Defendants have failed to exercise ordinary care and diligence in the exercise of their fiduciary obligations toward the Company, have engaged in self-dealing, and are not acting in good faith.

77. Unless the Proposed Transaction is enjoined by the Court, the Individual Defendants will continue to breach their fiduciary duties owed to the Company and may consummate the Proposed Transaction, all to the irreparable harm of the Company.

78. The Company has no adequate remedy at law. Only through the exercise of this Court's equitable powers can the Company be fully protected from the immediate and irreparable injury, which the defendants' actions threaten to inflict.

## **COUNT III**

### **(Aiding and Abetting the Board's Breaches of Fiduciary Duty Against Cabot Brought Directly on Behalf of Plaintiff and the Class)**

79. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

80. Plaintiff brings this claim directly on behalf of himself and the Class.

81. Defendant Cabot knowingly assisted the Individual Defendants' breaches of fiduciary duties in connection with the Proposed Transaction, which, without such aid, would not have occurred.

82. As a result of this conduct, plaintiff and the other members of the Class have been and will be damaged in that the Proposed Transaction undervalues the Company.

83. Plaintiff and the members of the Class have no adequate remedy at law.

#### **COUNT IV**

##### **(Aiding and Abetting the Board's Breaches of Fiduciary Duty Against Cabot Brought Derivatively on Behalf of KMG)**

84. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

85. Plaintiff brings this claim derivatively on behalf of KMG.

86. Defendant Cabot knowingly assisted the Individual Defendants' breaches of fiduciary duties in connection with the Proposed Transaction, which, without such aid, would not have occurred.

87. As a result of this conduct, the Company has been and will be damaged.

88. The Company has no adequate remedy at law.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, plaintiff prays for judgment and relief as follows:

A. Ordering that this action may be maintained as a class and derivative action and certifying plaintiff as the Class representative and plaintiff's counsel as Class counsel;

B. Preliminarily and permanently enjoining defendants and all persons acting in concert with them from proceeding with, consummating, or closing the Proposed Transaction;

C. In the event defendants consummate the Proposed Transaction, rescinding it and setting it aside or awarding rescissory damages to plaintiff and the Class;

D. Directing defendants to account to plaintiff and the Class for their damages sustained because of the wrongs complained of herein;

E. Awarding plaintiff the costs of this action, including reasonable allowance for Plaintiff's attorneys' and experts' fees; and

F. Granting such other and further relief as this Court may deem just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury.

Dated: October 5, 2018

**KENDALL LAW GROUP, PLLC**

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