

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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CULLIGAN SOFT WATER COMPANY; CECIL R. HALL; C&D OF ROCHESTER, LLC; DRIESSEN WATER, INC.; MICHAEL A. BANNISTER; T&B ENTERPRISES, INC.; CALIFORNIA WATER & FILTER, INC.; SHAR SHER I, INC.; WATER QUALITY IMPROVEMENT, INC.; CULLIGAN SOUTHWEST, INC.; CAREY WATER CONDITIONING, INC.; MICHAEL CAREY; ERIC B. CLARKE; CULLIGAN WATER CONDITIONING (BARRIE) LTD.; ARTHUR H. COOKSEY, JR.; CORBETT'S WATER CONDITIONING, INC.; GLEN CRAVEN; CULLIGAN WATER CONDITIONING-HORICON, LLP; HENRY T. WOOD; MAYER SOFT WATER CO., INC.; TIMOTHY FATHEREE AND SUE FATHEREE; CLEAN WATER, INC.; CATHERINE GILBY; CANATXX, INC.; QUALITY WATER ENTERPRISES, INC.; ROBERT R. HEFFERNAN; CHARLES F. HURST; KARGER ENTERPRISES, INC.; KEPPLER WATER TREATMENT, INC.; ROBERT KITZMAN AND TRACY KITZMAN; LADWIG ENTERPRISES, INC.; RICHARD LAMBERT AND MARIANNE CONRAD; LOW COUNTRY WATER CONDITIONING, INC.; GINA LARSON; MICHAEL G. MACAULAY; VETTER'S, INC.; ROBERT W. MCCOLLUM AND BARBARA N. MCCOLLUM; RICHARD C. MEIER; DONALD E. MEREDITH; CLEANWATER CORPORATION OF AMERICA; JOHN MOLLMAN AND JANETTE MOLLMAN; THE GOOD WATER COMPANY LTD.; E&H PARKS, INC.; MAUMEE VALLEY BOTTLERS, INC.; SCHRY WATER CONDITIONING, INC.; SCHRY WATER TREATMENT, INC.; WINSLOW STENSENG; STEWART WATER CONDITIONING, LTD.; BRET P. TANGLEY; B.A.R. WATER CORPORATION; TRILLI HOLDINGS, INC.; BRUCE VAN CAMP; WALTER C. VOIGT AND CHARLOTTE P. VOIGT; MARIN H2O, INC.; ALLAN C. WINDOVER; EVERETT WINDOVER; CULLIGAN SOFT WATER SERVICE (QUE) INC.; G.R. MCCOY; RICHARD N. WENDT; RICHARD SAMPLE AND MARIE SAMPLE; THE WATER MEISTER, INC.; ALEX CONNELLY; GO WATER, INC.; VAN D. WAUGH; MELISSA GRILL; PETRO'S WATER CONDITIONING OF JOHNSON COUNTY, INC.;

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Index No.: 651863/2012

**VERIFIED SHAREHOLDER  
FOURTH AMENDED  
DERIVATIVE COMPLAINT**

**JURY TRIAL DEMANDED**

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WATER TREATMENT SERVICES OF  
SHELBYVILLE, INC.; COUNTRYSIDE  
MANAGEMENT, INC.; GULF COAST WATER  
CONDITIONING, INC.; ADRIAN WATER  
CONDITIONING, INC.; CANNEY'S WATER  
TREATMENT, INC.,

Plaintiffs,

vs.

CLAYTON DUBILIER & RICE, LLC; CLAYTON  
DUBILIER & RICE, INC.; CLAYTON, DUBILIER  
& RICE FUND VI LIMITED PARTNERSHIP;  
GEORGE W. TAMKE; DAVID H WASSERMAN;  
MARK SEALS; BRUNO DESCHAMPS; NATHAN  
K. SLEEPER; MICHAEL J. DURHAM; DANIEL R.  
FREDRICKSON; THOMAS A. HAYS; JAMES  
USELTON; CULLIGAN LTD., as nominal  
defendant; KPMG ADVISORY LIMITED;  
ANGELO, GORDON & CO., L.P.; SILVER OAK  
CAPITAL, L.L.C.; CENTERBRIDGE SPECIAL  
CREDIT PARTNERS, L.P.; CCP ACQUISITION  
HOLDING, L.L.C.; CCP CREDIT ACQUISITION  
HOLDINGS, L.L.C.; CULLIGAN NEWCO, LTD.;  
ADVENT PARTNERS GPE VIII-A CAYMAN  
LIMITED PARTNERSHIP; AP GPE VIII GP  
LIMITED PARTNERSHIP; ADVENT PARTNERS  
GPE VIII-C CULLIGAN (CAYMAN) LIMITED;  
ADVENT INTERNATIONAL CORPORATION;  
and JOHN DOES 1-50 and 53-75,

Defendants.

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Plaintiffs Culligan Soft Water Company, Cecil R. Hall; C&D Of Rochester, LLC; Driessen  
Water, Inc.; Michael A. Bannister; T&B Enterprises, Inc.; California Water & Filter, Inc.; Shar Sher  
I, Inc.; Water Quality Improvement, Inc.; Culligan Southwest, Inc.; Carey Water Conditioning, Inc.;  
Michael Carey; Eric B. Clarke; Culligan Water Conditioning (Barrie) Ltd.; Arthur H. Cooksey, Jr.;  
Corbett's Water Conditioning, Inc.; Glen Craven; Culligan Water Conditioning-Horicon, LLP; Henry  
T. Wood; Mayer Soft Water Co., Inc.; Timothy Fatheree And Sue Fatheree; Clean Water, Inc.;  
Catherine Gilby; Canatxx, Inc.; Quality Water Enterprises, Inc.; Robert R. Heffernan; Charles F.  
Hurst; Karger Enterprises, Inc.; Keppler Water Treatment, Inc.; Robert Kitzman And Tracy Kitzman;  
Ladwig Enterprises, Inc.; Richard Lambert And Marianne Conrad; Low Country Water Conditioning,

Inc.; Gina Larson; Michael G. Macaulay; Vetter's, Inc.; Robert W. Mccollum And Barbara N. Mccollum; Richard C. Meier; Donald E. Meredith; Cleanwater Corporation Of America; John Mollman And Janette Mollman; The Good Water Company Ltd.; E&H Parks, Inc.; Maumee Valley Bottlers, Inc.; Schry Water Conditioning, Inc.; Schry Water Treatment, Inc.; Winslow Stenseng; Stewart Water Conditioning, Ltd.; Bret P. Tangle; B.A.R. Water Corporation; Trilli Holdings, Inc.; Bruce Van Camp; Walter C. Voigt And Charlotte P. Voigt; Marin H2o, Inc.; Allan C. Windover; Everett Windover; Culligan Soft Water Service (Que) Inc.; G.R. McCoy; Richard N. Wendt; Richard Sample And Marie Sample; The Water Meister, Inc.; Alex Connelly; Go Water, Inc.; Van D. Waugh; Melissa Grill; Petro's Water Conditioning Of Johnson County, Inc.; Water Treatment Services Of Shelbyville, Inc.; Countryside Management, Inc.; Gulf Coast Water Conditioning, Inc.; Adrian Water Conditioning, Inc.; and Canney's Water Treatment, Inc. (collectively, "Plaintiffs" or "Minority Shareholders"), by and through their undersigned attorneys, hereby submit this Verified Shareholder Fourth Amended Derivative Complaint (the "Complaint") for the benefit of nominal defendant Culligan Ltd. ("Culligan Ltd" or "the Company") against the officers, directors, voting trustee, and certain lenders, professionals, and purchasers involved with Culligan, seeking to remedy defendants' breaches of fiduciary duties and other wrongdoing which occurred from about 2007 to the present.

### **NATURE AND SUMMARY OF THE ACTION**

1. Culligan is registered trademark used by multiple entities, and is used in connection with the provision of water treatment services and equipment, primarily through franchised dealers. Plaintiffs are 71 of approximately 300 North American independent Culligan Dealers (the "Dealers") who are also minority shareholders in Culligan Ltd, the former parent company of the various Culligan operating subsidiaries. Plaintiffs collectively owned approximately 8% of outstanding Culligan Ltd stock, with a fair value that exceeded \$50,000. Plaintiffs raise derivative causes of action to recover funds siphoned from Culligan Ltd and its subsidiaries.

2. Private equity firm Clayton Dubilier & Rice ("CDR") executed a leveraged buyout of

the entities comprising the Culligan brand, and subsequently stripped Culligan and its operating subsidiaries (“Culligan Entities”) of assets. CDR caused Culligan Ltd to issue and pay an illegal dividend and repayment of capital, unreasonably burdened the Culligan Entities with debt, and fraudulently conveyed the resulting funds and other assets to itself and its affiliates.

3. CDR bought Culligan in 2004 by contributing \$200 million and borrowing \$410 million, secured by the operating assets of the Culligan Entities. In 2006, CDR used money derived from leveraging the Culligan Entities for no consideration, distributed money upwards through Culligan Ltd, and then repaid itself its initial \$200 million investment in Culligan ("Repayment of Capital"). In May 2007, CDR again caused the Culligan Entities to recapitalize (the "2007 Recap"). In the 2007 Recap, CDR caused the Culligan Entities to borrow more than \$850 million (the "2007 Recap Loans"). These entities used approximately half of the borrowed money to refinance their \$400 million of existing debt, the net result being Culligan borrowed an additional \$450 million. CDR then caused Culligan Ltd to declare an additional \$375 million dividend. Almost all this money went to CDR either directly or indirectly.

4. The consolidated Culligan Entities, including Culligan Ltd, had neither retained earnings nor profits sufficient to legally pay either the \$200 million return of capital or the \$375 million dividend, a violation of BCL section 510(b). Given the massive debt undertaken, Culligan was rendered insolvent as it could not pay its obligations as they matured in violation of BCL section 510(a).

5. The Culligan Entities were saddled with over \$850 million of debt and had no hope of repaying these obligations when the principal became due. CDR sold substantial portions of the Culligan Entities’ operating assets just to make interest payments on the recapitalization loans. By 2012, the Culligan Entities owed \$640 million in due or past due principal and had \$130 million with which to pay it.

6. As part of the recapitalization, Culligan Ltd's directors received discounted stock options, options in a Culligan subsidiary, and a special bonus, none of which were available to shareholders generally. These directors, all of whom are direct members of CDR or are controlled by CDR, remained on Culligan Ltd's Board through the initiation of this lawsuit. The majority of Culligan Ltd's Board members were also CDR employees, officers, directors, or similar fiduciaries to CDR itself.

7. Despite the Culligan directors' self-interest, Plaintiffs made several demands on the Culligan Board to initiate this action, commencing in April 2012. These included delivery of multiple formal demand letters several weeks before, and a copy of the proposed complaint to Culligan Ltd's Board and counsel on May 14, 2012. Culligan did not respond. Plaintiffs were forced to file suit on May 30, 2012, as the Culligan Entities were set to file Chapter 11 bankruptcy May 31, 2012.

## **THE PARTIES**

### **PLAINTIFFS**

8. At all times relevant in this Complaint, each Plaintiff was and currently is a shareholder of Culligan Ltd.

9. Plaintiff Culligan Soft Water Service Company is a corporation duly organized and existing under the laws of the state of Minnesota and has its principal place of business in Minnetonka, Minnesota.

10. Plaintiff Cecil R. Hall is an individual who is, and at all times mentioned in this Complaint was, a resident of Wichita, Kansas.

11. Plaintiff C&D of Rochester, LLC is a corporation duly organized and existing under the laws of the state of Minnesota and has its principal place of business in Waseca, Minnesota. The Principals of C&D of Rochester are the grandchildren of Emmett Culligan.

12. Plaintiff Driessen Water, Inc. is a corporation duly organized and existing under the

laws of the state of Minnesota and has its principal place of business in Waseca, Minnesota.

13. Plaintiff Michael A. Bannister is an individual who is, and at all times mentioned in this Complaint was, a resident of Tulsa, Oklahoma.

14. Plaintiff T&B Enterprises, Inc. is a corporation duly organized and existing under the laws of the state of Iowa and has its principal place of business in Carroll, Iowa.

15. Plaintiff California Water & Filter, Inc. is a corporation duly organized and existing under the laws of the state of California and has its principal place of business in Lindsay, California.

16. Plaintiff Shar Sher I, Inc. is a corporation duly organized and existing under the laws of the state of Texas and has its principal place of business in Denison, Texas.

17. Plaintiff Water Quality Improvement, Inc. is a corporation duly organized and existing under the laws of the state of Wisconsin and has its principal place of business in North Fond Du Lac, Wisconsin.

18. Plaintiff Culligan Southwest, Inc. is a corporation duly organized and existing under the laws of the state of Texas and has its principal place of business in San Antonio, Texas.

19. Plaintiff Carey Water Conditioning, Inc. is a corporation duly organized and existing under the laws of the state of Michigan and has its principal place of business in Lansing, Michigan.

20. Plaintiff Michael Carey is an individual who is, and at all times mentioned in this Complaint was, a resident of Daytona Beach, Florida.

21. Plaintiff Eric B. Clarke is an individual who is, and at all times mentioned in this Complaint was, a resident of Bellingham, Washington.

22. Plaintiff Culligan Water Conditioning (Barrie) Ltd is a corporation duly organized and existing under the laws of the Province of Ontario and has its principal place of business in Barrie, Ontario, Canada.

23. Plaintiff Arthur H. Cooksey, Jr., is an individual who is, and at all times mentioned in this Complaint was, a resident of Youngstown, Ohio.

24. Plaintiff Corbett's Water Conditioning, Inc. is a corporation duly organized and existing under the laws of the state of Nebraska and has its principal place of business in Crete, Nebraska.

25. Plaintiff Glen Craven is an individual who is, and at all times mentioned in this Complaint was, a resident of Red Wing, Minnesota.

26. Plaintiff Culligan Water Conditioning-Horicon, LLP is a corporation duly organized and existing under the laws of the state of Wisconsin and has its principal place of business in Horicon, Wisconsin.

27. Plaintiff Henry T. Wood is an individual who is, and at all times mentioned in this Complaint was, a resident of Farmington, New Mexico.

28. Plaintiff Mayer Soft Water Co., Inc. is a corporation duly organized and existing under the laws of the state of Minnesota and has its principal place of business in St. Peter, Minnesota.

29. Plaintiffs Timothy Fatheree and Sue Fatheree are individuals and are now, and at all times mentioned in this Complaint were, residents of Pampa, Texas.

30. Plaintiff Clean Water, Inc. is a corporation duly organized and existing under the laws of the state of Indiana and has its principal place of business in Kendallville, Indiana.

31. Plaintiff Catherine Gilby is an individual who is, and at all times mentioned in this Complaint was, a resident of Beaumont, Texas.

32. Plaintiff Canatxx, Inc. is a corporation duly organized and existing under the laws of the state of Texas and has its principal place of business in Amarillo, Texas.

33. Plaintiff Quality Water Enterprises, Inc. is a corporation duly organized and existing under the laws of the state of California and has its principal place of business in Salinas, California.

34. Plaintiff Robert R. Heffernan is an individual who is, and at all times mentioned in this Complaint was, a resident of Madison, Wisconsin.

35. Plaintiff Charles F. Hurst is an individual who is, and at all times mentioned in this

Complaint was, a resident of Grover Beach, California.

36. Plaintiff Karger Enterprises, Inc. is a corporation duly organized and existing under the laws of the state of Ohio and has its principal place of business in Mansfield, Ohio.

37. Plaintiff Keppler Water Treatment, Inc. is a corporation duly organized and existing under the laws of the state of New York and has its principal place of business in Akron, New York.

38. Plaintiffs Robert Kitzman and Tracy Kitzman, Trustees of the Robert and Tracy Kitzman Trust Dated November 9, 1999, are and at all times mentioned in this Complaint were residents of Morro Bay, California.

39. Plaintiff Ladwig Enterprises, Inc. is a corporation duly organized and existing under the laws of the state of Michigan and has its principal place of business in Jackson, Michigan.

40. Plaintiffs Richard Lambert and Marianne Conrad, are individuals and are now, and at all times mentioned in this Complaint were, residents of Modesto, California.

41. Plaintiff Low Country Water Conditioning, Inc. is a corporation duly organized and existing under the laws of the state of South Carolina and has its principal place of business in Hilton Head Island, South Carolina.

42. Plaintiff Gina Larson is the successor in interest to her deceased husband, Jeffrey L. Larson, is an individual who is, and at all times mentioned in this Complaint was, a resident of Rockford, Illinois.

43. Plaintiff Michael G. Macaulay is an individual who is, and at all times mentioned in this Complaint was, a resident of Temple, Texas.

44. Plaintiff Vetter's, Inc. is a corporation duly organized and existing under the laws of the state of Iowa and has its principal place of business in Coralville, Iowa.

45. Plaintiff Robert W. McCollum and Barbara N. McCollum are individuals and are now, and at all times mentioned in this Complaint were, residents of Piney Flats, Tennessee.

46. Plaintiff Richard C. Meier is an individual who is, and at all times mentioned in this



Complaint was, a resident of Janesville, Wisconsin.

47. Plaintiff Donald E. Meredith is an individual who is, and at all times mentioned in this Complaint was, a resident of Union Grove, Wisconsin.

48. Plaintiff Cleanwater Corporation of America is a corporation duly organized and existing under the laws of the state of Michigan and has its principal place of business in Marlette, Michigan.

49. Plaintiffs John Mollman and Janette Mollman, Trustees of the Mollman Family Trust, and at all times mentioned in this Complaint were, residents of Oklahoma City, Oklahoma.

50. Plaintiff The Good Water Company Ltd is a corporation duly organized and existing under the laws of the Province of Ontario and has its principal place of business in Belleville, Ontario, Canada.

51. Plaintiff E&H Parks, Inc. is a corporation duly organized and existing under the laws of the state of Indiana and has its principal place of business in Lebanon, Indiana.

52. Plaintiff Maumee Valley Bottlers, Inc. is a corporation duly organized and existing under the laws of the state of Ohio and has its principal place of business in Napoleon, Ohio.

53. Plaintiff Schry Water Conditioning, Inc. is a corporation duly organized and existing under the laws of the state of Pennsylvania and has its principal place of business in Ellwood City, Pennsylvania.

54. Plaintiff Schry Water Treatment, Inc. is a corporation duly organized and existing under the laws of the state of Pennsylvania and has its principal place of business in Indiana, Pennsylvania.

55. Plaintiff Winslow Stenseng is an individual who is, and at all times mentioned in this Complaint was, a resident of Harlingen, Texas.

56. Plaintiff Stewart Water Conditioning, Ltd is a corporation duly organized and existing under the laws of the Province of Manitoba and has its principal place of business in Winnipeg,

Manitoba, Canada.

57. Plaintiff Bret P. Tangley is an individual who is, and at all times mentioned in this Complaint was, a resident of Eau Claire, Wisconsin.

58. Plaintiff B.A.R. Water Corporation is a corporation duly organized and existing under the laws of the state of Michigan and has its principal place of business in Coloma, Michigan.

59. Plaintiff Trilli Holdings, Inc. is a corporation duly organized and existing under the laws of the state of Pennsylvania and has its principal place of business in Star Junction, Pennsylvania.

60. Plaintiff Bruce Van Camp is an individual who is, and at all times mentioned in this Complaint was, a resident of Boise, Idaho.

61. Plaintiffs Walter C. Voigt and Charlotte P. Voigt, Trustees of Walter C. Voigt Family Revocable Trust Dated September 28, 1995, are, and at all times mentioned in this Complaint were, residents of Fresno, California.

62. Plaintiff Marin H2O, Inc. is a corporation duly organized and existing under the laws of the state of California and has its principal place of business in San Rafael, California.

63. Plaintiff Allan C. Windover is an individual who is, and at all times mentioned in this Complaint was, a resident of Poestenkill, New York.

64. Plaintiff Everett Windover is an individual who is, and at all times mentioned in this Complaint was, a resident of Colchester, Vermont.

65. Plaintiff Culligan Soft Water Service (Que) Inc. is a corporation duly organized and existing under the laws of the province of Quebec and has its principal place of business in Quebec City, Quebec, Canada.

66. Plaintiff G.R. McCoy, Trustee of the George Randall McCoy Revocable Trust Dated March 20, 1992 as Restated May 10, 2013, is, and at all times mentioned in this Complaint was, a resident of Ocala, Florida.

67. Plaintiff Richard N. Wendt is an individual who is, and at all times mentioned in this Complaint was, a resident of Lake Mills, Wisconsin.

68. Plaintiffs Richard Sample and Marie Sample are individuals who are, and at all times mentioned in this Complaint were, residents of Laredo, Texas.

69. Plaintiff The Water Meister, Inc., is a corporation duly organized and existing under the laws of the state of Wisconsin and has its principal place of business in Rice Lake, Wisconsin.

70. Plaintiff Alex Connelly is an individual who is, and at all times mentioned in this Complaint was, a resident of Sioux Falls, South Dakota.

71. Plaintiff Go Water, Inc. is a corporation duly organized and existing under the laws of the state of West Virginia and has its principal place of business in Clarksburg, West Virginia.

72. Plaintiff Van D. Waugh is an individual who is, and at all times mentioned in this Complaint was, a resident of Owosso, Michigan.

73. Plaintiff Melissa Grill is an individual who is, and at all times mentioned in this Complaint was, a resident of Reno, Nevada.

74. Plaintiff Petro's Water Conditioning of Johnson County, Inc., is a corporation duly organized and existing under the laws of the state of Indiana and has its principal place of business in Franklin, Indiana.

75. Plaintiff Water Treatment Services of Shelbyville, Inc., is a corporation duly organized and existing under the laws of the state of Indiana and has its principal place of business in Shelbyville, Indiana.

76. Plaintiff Countryside Management, Inc. is a corporation duly organized and existing under the laws of the state of Indiana and has its principal place of business in Winona, Minnesota.

77. Plaintiff Gulf Coast Water Conditioning, Inc. is a corporation duly organized and existing under the laws of the state of Florida and has its principal place of business in Largo, Florida.

78. Plaintiff Adrian Water Conditioning, Inc. is a corporation duly organized and existing

under the laws of the state of Michigan and has its principal place of business in Adrian, Michigan.

79. Plaintiff Canney's Water Treatment, Inc. is a corporation duly organized and existing under the laws of the state of Michigan and has its principal place of business in Allegan, Michigan.

## **DEFENDANTS**

### **NOMINAL DEFENDANT**

80. Nominal Defendant Culligan Ltd, on whose behalf this derivative action is brought, is a corporation organized and existing under the laws of Bermuda with its principal offices located at 375 Park Avenue, New York, New York. Upon information and belief, Plaintiffs allege that Culligan has been managed and directed from, and has conducted its business from, New York, and has no contacts with Bermuda except that Bermuda is its state of incorporation. Prior to the 2012 Restructuring discussed below, Culligan Ltd's sole asset was 100% of the equity of Culligan Investments, S.ár.l., a Luxembourg entity ("Culligan Investments"). In turn, Culligan Investments owned all of the equity, directly or indirectly, in all of the other Culligan Entities, including its primary operating company, Culligan International Company ("Culligan International"). Following the 2012 Restructuring, Culligan Ltd entered liquidation proceedings in Bermuda, which are ongoing. According to the liquidator, KPMG Advisory Limited, Culligan Ltd has no liabilities to outside creditors remaining, and all assets of and rights in the company are to be distributed to shareholders.

### **CDR/DIRECTOR DEFENDANTS**

81. Defendant Clayton Dubilier & Rice, Inc. is a Delaware corporation, with its principal place of business at 375 Park Avenue, New York, New York. Upon information and belief, Plaintiffs allege that Defendant Clayton Dubilier & Rice, LLC, a Delaware limited liability company, with its principal place of business at 375 Park Avenue, New York, New York, is the successor in interest of Clayton Dubilier & Rice, Inc., and hereby name it in that capacity and individually (collectively referred to as "CDR"). CDR is a private equity fund. Buying corporations, managing them, and seeking returns on capital through distributions and dividends are recognized aspects of CDR's

business. CDR is the Voting Trustee of a Voting Trust and in that capacity votes shares of Culligan Ltd stock.

82. Defendant Clayton, Dubilier & Rice Fund VI Limited Partnership ("CDR Fund VI") is a Cayman Islands partnership, with its principal place of business in the state of New York at 375 Park Avenue, New York, New York, in the county of New York. CDR manages and controls CDR Fund VI. Prior to the 2012 Restructuring discussed below, CDR Fund VI owned approximately 90% of Culligan's stock.

83. Defendant George W. Tamke is an individual who is, and at all times mentioned in this Complaint was, a resident of New York, New York. At all times relevant, Tamke was the Chairman, a Director and a shareholder of Culligan Ltd, and a partner of CDR. Plaintiffs are informed and believe that, at all times relevant, Tamke was a director of Clayton Dubilier & Rice, Inc.

84. Defendant David H. Wasserman is an individual who is, and at all times mentioned in this Complaint was, a resident of Reston, Virginia. Wasserman was the Deputy Chairman, a Director and a shareholder of Culligan Ltd, and a partner of CDR. Plaintiffs are informed and believe that, at all times relevant, Wasserman was a director of Clayton Dubilier & Rice, Inc.

85. Defendant Mark Seals is an individual who is, and at all times mentioned in this Complaint was, a resident of Chicago, Illinois. Seals was the Chief Executive Officer and a shareholder of Culligan Ltd. Seals was a Director of Culligan at all relevant times, but was not a Director at the time this action was filed.

86. Defendant Bruno Deschamps is an individual who is, and at all times mentioned in this Complaint was, a resident of New York, New York. Deschamps was a Director and a shareholder of Culligan Ltd, and a partner of CDR at times here relevant. Deschamps was a Director of Culligan at all relevant times, but was not a Director at the time this action was filed. Plaintiffs are informed and believe that, until at least 2007, Deschamps was a director of Clayton Dubilier & Rice,

Inc.

87. Defendant Nathan K. Sleeper is an individual who is, and at all times mentioned in this Complaint was, a resident of New York, New York. Sleeper was a Director and a shareholder of Culligan, and a partner of CDR. Plaintiffs are informed and believe that, at all times relevant, Sleeper was a director of Clayton Dubilier & Rice, Inc.

88. Defendant Michael J. Durham is an individual who is, and at all times mentioned in this Complaint was, a resident of McHenry, Illinois. Durham was a Director and a shareholder of Culligan Ltd. Durham served on multiple boards of directors of other companies owned or controlled by CDR, including Hertz and Kinko's.

89. Defendant Daniel R. Fredrickson is an individual who is, and at all times mentioned in this Complaint was, a resident of Matherville, Illinois. Fredrickson is a Director and a shareholder of Culligan Ltd. Fredrickson served on other boards of directors of other companies owned or controlled by CDR, including Kinko's.

90. Defendant Thomas A. Hays is an individual who is, and at all times mentioned in this Complaint was, a resident of New York, New York. Hays was a Director and a shareholder of Culligan.

91. Defendant James Uselton is an individual who is, and at all times mentioned in this Complaint was, a resident of New York, New York. Uselton was a Director and a shareholder of Culligan.

92. Defendants Tamke, Wasserman, Seals, Deschamps, Sleeper, Durham, Fredrickson, Hays and Uselton are collectively referred to as the "Director Defendants." Plaintiffs are informed and believe that the Directors regularly met, conducted business and made all material business decisions regarding Culligan at or from CDR's offices at 375 Park Avenue, New York.

#### **LENDER DEFENDANTS/NEWCO**

93. Defendant Angelo, Gordon & Co., L.P., is a Cayman Islands partnership, with its

principal place of business at 245 Park Avenue, New York, New York. Commencing in approximately 2010, Angelo, Gordon & Co., L.P. purchased portions of Culligan's debt.

94. Defendant Silver Oak Capital, L.L.C., is a Delaware limited liability company, with its principal place of business in the state of New York, in the county of New York. Commencing in approximately 2010, Silver Oak Capital, L.L.C. purchased portions of Culligan's debt. Silver Oak Capital, L.L.C., is an affiliate of Angelo, Gordon & Co. Angelo, Gordon & Co. and Silver Oak Capital, L.L.C. are both collectively referred to as "Angelo."

95. Defendant Centerbridge Special Credit Partners, L.P., is a Delaware partnership, with its principal place of business in the state of New York, in the county of New York. Commencing in approximately 2010, Centerbridge Special Credit Partners, L.P. purchased portions of Culligan's debt.

96. Defendant CCP Credit Acquisition Holdings, L.L.C. is a Delaware limited liability company, with its principal place of business in the state of New York, in the county of New York. Commencing in approximately 2010, CCP Credit Acquisition Holdings, L.L.C. purchased portions of Culligan's debt.

97. Defendant CCP Acquisition Holding, L.L.C. is a Delaware limited liability company, with its principal place of business in the state of New York, in the county of New York. Commencing in approximately 2010, CCP Acquisition Holding, L.L.C. purchased portions of Culligan's debt.

98. Centerbridge Special Credit Partners, L.P., CCP Credit Acquisition Holdings, L.L.C., and CCP Acquisition Holding, L.L.C. are collectively referred to as "Centerbridge."

99. Collectively, Angelo and Centerbridge are referred to as the "Lender Defendants."

100. Defendant Culligan Newco Limited ("Newco") is a Cayman Islands exempt limited company, with its principal place of business in Illinois. Newco is the holding company that acquired Culligan Ltd's assets as part of the 2012 Restructure.

**ADVENT DEFENDANTS**

101. Defendant Advent International Corporation (“AIC”) is a Delaware corporation, with its principal place of business in the state of Massachusetts.

102. Defendant Advent Partners GPE VIII-C Culligan (Cayman) Limited (“GPE VIII-C”) is a company organized and existing under the laws of the Cayman Islands, with its principal place of business in Massachusetts. Defendant Advent Partners GPE VIII-A Cayman Limited Partnership (“GPE VIII-A”) is a limited partnership organized and existing under the laws of the Cayman Islands, with its principal place of business in Massachusetts. Defendant AP GPE VIII GP Limited Partnership (“GPE VIII-GP”) is a limited partnership organized and existing under the laws of the Cayman Islands, with its principal place of business in Massachusetts. Collectively, GPE VIII-A, GPE VIII-C, and GPE VIII-GP are referred to as “GPE VIII.” Plaintiffs are informed and believe GPE VIII are private equity funds owned and operated by Advent. AIC and GPE VIII are collectively referred to as “Advent.”

103. Commencing in approximately 2016, Advent acquired the Culligan assets from the Lender Defendants and Newco. Plaintiffs are informed and believe GPE VIII acquired the Culligan assets from Newco, leaving Advent currently in possession of the Culligan assets. Each of the Advent Defendants owns part of or controls the operating entities formerly owned by Culligan Ltd and Culligan Newco.

**PROFESSIONAL DEFENDANTS**

104. Plaintiffs are informed and believe that Defendant KPMG Advisory Limited (“KPMG Bermuda”) is a satellite office or controlled affiliate of KPMG LLC, which is an audit, tax and advisory firm, headquartered in the United States, that maintains an office in New York and encompasses a global network of professional firms with over 162,000 employees operating in 155 countries. Plaintiffs are informed and believe that at all times here relevant, KPMG Bermuda served as auditors, accountants and advisers to Culligan Ltd, each of its subsidiaries, and each of the CDR



and Director Defendants, and currently serves as the liquidator of Culligan Ltd. Plaintiffs are informed and believe that KPMG Bermuda has received millions of dollars in fees from CDR and companies CDR controls. KPMG Bermuda is hereby substituted as Doe Defendant 52.

105. Plaintiffs are currently unaware of the true names of the lenders involved in the 2007 Recap Loans. Plaintiffs therefore sue said Defendants by their fictitious names as John Doe 1 through John Doe 50, inclusive (the "2007 Recap Lenders"). This information is exclusively within the possession and knowledge of the Defendants, and discovery will be necessary to ascertain these identities. Plaintiff will seek leave of court to amend this Complaint when said Defendants' names are ascertained.

#### **JURISDICTION AND VENUE**

106. This Court has subject matter jurisdiction of this action pursuant to N.Y. Const. art. VI §7 and N.Y. Jud. Law §140-b.

107. This Court has personal jurisdiction of defendants Culligan, each of the CDR Defendants, the Lender Defendants, Newco, Advent, and the 2007 Recap Professionals pursuant to CPLR 301 because each of these defendants is present in the State of New York and pursuant to CPLR 302(a)(1) because the causes of action pleaded herein arise from the transaction of business by each of these defendants within the State of New York.

108. This Court has personal jurisdiction of defendants Tamke, Deschamps, Sleeper, Hays, and Uselton pursuant to CPLR 301 because each individual is a resident of the State of New York and pursuant to CPLR 302(a)(1) because the causes of action pleaded herein arise from the transaction of business by each of these individual defendants within the State of New York, as directors of Culligan. This Court has personal jurisdiction of defendants Wasserman, Seals, Durham, and Fredrickson pursuant to CPLR 302(a)(1) because the causes of action pleaded herein arise from the transaction of business by each of these individual defendants within the State of New York as officers or directors of Culligan Ltd and/or partners or advisors of CDR, and upon information and

belief, Plaintiffs allege that, each of these individual defendants has travelled to New York in furtherance of the complained of acts.

109. Venue is proper in New York County pursuant to CPLR 503(a) because several parties, including CDR, all have their principal offices in New York County and therefore are deemed to reside there. Venue is also proper pursuant to CPLR 503(c) because the transactions and occurrences at issue in this case arose in New York County.

## **BACKGROUND**

### **THE LBO, 2007 RECAP, AND ILLEGAL DIVIDEND**

110. In 2004, CDR purchased Culligan through a leveraged buyout (the "LBO"). In conjunction with the LBO, CDR created Culligan Ltd as a holding company to acquire all of the operating companies and intermediary holding companies previously owned by Vivendi/Veolia, a French conglomerate (all acquired entities are referred to collectively as the "Culligan Entities"). Culligan Ltd is a holding company that does not directly conduct any business operations, but relies on payments from the Culligan Entities, primarily Culligan International Company, to pay its obligations and which are the sole source of its revenues. The boards of directors of all the Culligan Entities, including Culligan Ltd, were made up of the same general group of people, who were CDR personnel or controlled by CDR personnel, including the Director Defendants. Plaintiffs are informed and believe many of the same individuals served on the board of Clayton, Dubilier & Rice, Inc. at all relevant times.

111. For handling the LBO, CDR paid itself an excessive management fee of approximately \$15 million. CDR also paid itself a \$1 million dollar annual management fee thereafter (the "Management Fees"). Culligan could not realistically afford these fees, and CDR provided Culligan Ltd no value for them. Significant bonuses, fees and other commissions were paid to CDR and its affiliates as part of the 2007 recapitalization, discussed below.

112. CDR leveraged the Culligan Entities into massive debt and took the borrowed money

for itself, its principals, and its affiliates. As alleged above, in the Repayment of Capital, 2007 Recap, and 2007 Recap Loans, CDR: (a) took money out of Culligan in 2006 to repay itself for its initial \$200 million investment in Culligan; (b) recapitalized the Culligan Entities in 2007 to borrow more than \$850 million; and (c) refinanced \$400 million of existing Culligan debt, with the net result that Culligan borrowed an additional \$450 million.

### **The Illegal Dividend**

113. As part of the 2007 Recap, Culligan declared a \$375 million shareholder dividend (the "Dividend"), which directly and indirectly benefitted each of the Directors, CDR, and CDR Fund VI. 92% of the Dividend went to CDR Fund VI, CDR, and the Director Defendants. In other words, each of the CDR and Director Defendants had a direct financial interest in the Dividend and in approving the 2007 Recap, despite the fact that approving the related distributions violated BCL 510(a) and (b). Collectively, the Repayment of Capital and the Dividend are referred to as the "Distributions."

114. The loans relating to the initial LBO purchase contained restrictions limiting Culligan's ability to issue dividends. Many of these restrictions were removed in the 2007 Recap Loans as part of the scheme to funnel money to the Director Defendants and CDR. These Defendants had a direct interest in removing such protective covenants, as they would have otherwise been unable to proceed with the Distributions.

115. Per BCL §510(b), dividends may only be paid (1) out of surplus, so that the net assets of the corporation remaining after such declaration, payment or distribution shall at least equal the amount of its stated capital, or (2) in case there shall be no such surplus, out of its net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year.

116. The consolidated Culligan Entities, including Culligan Ltd, had neither surplus nor profits to pay any distributions, much less distributions exceeding \$575 million. The Culligan Entities had retained *deficits* exceeding \$26 million in 2006, \$437 million as of June 30, 2007 (a month after the 2007 Recap), and \$510 million as of December 31, 2007. In June 2007, after the

Distributions were completed, the Culligan Entities, including Culligan Ltd, had net assets of *negative* \$343.2 million, stated capital of \$229.4 million, a retained *deficit* of \$551.3 million, and other accumulated losses of \$21.3 million. The Culligan Entities had a profit of \$16 million in 2006, and a loss of \$109 million in 2007. These figures are taken directly from the audited and unaudited consolidated financial statements for the consolidated Culligan Entities, including Culligan Ltd, its subsidiary Culligan Holding S.ar.l, and Culligan Holding S.ar.l's subsidiaries. This information was available to Defendants when they declared and paid the Distributions. No director acting in good faith and exercising required diligence would have approved such transactions in light of such information.

117. Plaintiffs neither participated in nor acquiesced to the Dividend or Repayment of Capital. Plaintiffs were not given financial information about Culligan's solvency, and played no part in the planning or discussion over the Dividend, the Repayment of Capital, or the 2007 Recap. Instead, Defendant concealed Culligan's financial condition from Plaintiffs. Plaintiffs simply received checks with cover letters stating that these distributions would not affect operating plans and that Culligan was a "strong, healthy company" with "strong cash flow and a solid business model." These representations were untrue.

118. The Dividend, the Repayment of Capital and the excessive Management Fees (collectively, "the Conveyances") could not have been paid in the usual course of business. The Directors of Culligan Ltd either conveyed the assets to intentionally defraud the Company and its creditors, or failed to exercise due care in the management of the Company's business by failing to properly inform themselves of applicable legal requirements, risks of taking on such debt, and risks of distributing the proceeds of such debt without adequate net profits, reserves and/or operating capital. These Defendants did not properly analyze whether or not such debt could be repaid in the usual course of business once mature, or knowingly disregarded that inevitability.

119. Culligan Ltd and the Culligan Entities derived absolutely no benefit from the

Conveyances. The Conveyances did not aid Culligan, which at the time was a privately-held company, in attracting investment. Nor did the Conveyances allow Culligan to attract customers or raise funds for corporate purposes. No money accrued to Culligan through or as a result of the Conveyances. Instead, the Conveyances stripped Culligan of assets, and left the company with massive debt and on the verge of bankruptcy, and now in a state of dissolution with no meaningful assets at all. The Conveyances solely benefited the CDR and Director Defendants at Culligan's expense by illegally draining funds from Culligan. At the times the Conveyances were declared and made, the CDR and Director Defendants had totally abandoned Culligan's interests, and were acting adversely to those interests.

120. As a direct result of the Conveyances, Culligan Ltd and its subsidiaries were unable to pay their liabilities as they became due in the usual course of business. When those debts became due, Culligan Ltd and its subsidiaries were forced to restructure. Such restructure was not in the usual course of business. Neither Culligan Ltd nor its subsidiaries received adequate or fair value in exchange for such Conveyances, or in the restructuring necessitated by the Conveyances.

121. The participants in the 2007 Recap, including CDR, the Director Defendants, Culligan Ltd's officers, CDR Fund VI, and the 2007 Recap Professionals, knew or should have known of the illegality of the planned transaction to funnel the loan proceeds out of the Culligan Entities, including Culligan Ltd, and the financial effect that would result from the \$200 million Repayment of Capital and \$375 million Dividend, but nevertheless caused or allowed it to happen. They also knew or should have known that the debts were encumbering the Culligan Entities' assets but these entities were receiving no value in return.

122. The 2007 Recap and Conveyances directly caused Culligan Ltd's insolvency. Had CDR not siphoned off Culligan's assets by making the Conveyances and burdening it with massive additional debt, Culligan Ltd would have been able to service its initial debt following the LBO.

123. These actions constituted self-dealing and illegal misconduct by the Director

Defendants and CDR, and were done by principals of CDR in pursuance of a recognized business system of CDR.

### **The Lenders and New Debt Restructuring**

124. The Director Defendants and CDR securitized the 2007 Recap loans by encumbering assets belonging to several of the Culligan Entities. These subsidiaries took on liens or other debt obligations without receiving fair consideration, and many became primary obligors or guarantors of the 2007 Recap Loans. In addition, some of the Culligan Entities' unsecured debt was refinanced and became secured debt without consideration to the subsidiaries whose assets were pledged, including Culligan International Company, which is the primary operating company under the Culligan umbrella. Neither Culligan Ltd, nor the Culligan Entities who granted the security for the 2007 Recap Loans, received fair consideration in exchange for the liens granted to the 2007 Recap Lenders.

125. In or about 2010, hedge funds began buying up Culligan's debt obligations at a deep discount. By May 2012, Angelo bought approximately 81.7% of Culligan's first tier debt at an average rate of 71 cents on the dollar, and Centerbridge bought approximately 92% of Culligan's second tier unsecured debt at an average of 44 cents on the dollar. At the time Angelo and Centerbridge purchased this debt, they knew that it was heavily discounted due to the fact that Culligan had overleveraged itself by payment of the illegal Dividend and Repayment of Capital. This information and Culligan Ltd's lack of liquidity/solvency was available through subscription services, such as Moody's.

126. Pursuant to an Offering Memorandum and Disclosure Statement dated May 15, 2012, Culligan proposed an out-of-court restructuring. Culligan Ltd was on the verge of bankruptcy when the restructure occurred, and the restructure contained the same terms as a pre-packaged bankruptcy plan offered as the only alternative. Plaintiffs allege on information and belief that Culligan completed this restructuring (the "2012 Restructure") on or about June 19, 2012. The salient terms of the restructuring were:

- a. Culligan Ltd transferred 100% of the equity in Culligan Investments, one of the Culligan subsidiaries, into a new company (called “Culligan Newco Ltd” in the 2012 Restructure documents, hereinafter “Newco.”). This constituted a transfer of all of the operating assets of all of the Culligan Entities. No consideration was received for this transfer.
- b. Centerbridge exchanged its second lien debt (face value \$225 million, acquired at an estimated 40% of that number) for 47% of the equity in Newco.
- c. Centerbridge paid \$92 million in cash for an additional 51% of Newco’s equity. The \$92 million cash went primarily to pay down the first lien debt held by Angelo.
- d. \$100 million of Culligan’s \$135 million in available operating cash was used to pay down the first lien debt held by Angelo.
- e. The remaining balance of the first lien notes of \$350 million was split into two new notes of \$175 million, each due in five and six years, respectively. Although the face value of the debt has been reduced from \$540 million, the debt service payments remained the same, as the new notes had significantly higher interest rates, with such interest being paid to Angelo and Centerbridge. In other words, the total amount to be paid on these notes was the same as before the restructure.
- f. The then-current equity holders in Culligan Ltd (including the CDR Defendants and Plaintiffs) received an aggregate of 2.27% of the equity in Newco. This left Plaintiffs with 0.16% of the equity in Culligan, 50 times less than their original equity stake in the company. However, there was a continuity of ownership in the transaction: Culligan Newco owned all of the operating assets constituting the Culligan system; Culligan Ltd still owned a stake in Newco; and, the CDR Defendants still owned over 90% of Culligan Ltd.
- g. Culligan Ltd ceased to do ordinary business upon the restructure and entered a state of dissolution. Newco assumed the liabilities formerly held by Culligan Ltd that were ordinarily necessary for the uninterrupted continuation of the business of Culligan Ltd, and retained

management, personnel, physical location, assets, and general business operation of the Culligan Entities, including Culligan Newco.

127. Under the 2012 Restructuring, all parties involved in the Conveyances and 2012 Restructuring agreed to unconditionally release each other from claims (the “Releases”). The purportedly released parties include Culligan Ltd, Culligan Ltd’s current and former officers, directors and shareholders, the 2007 Recap Lenders, CDR, CDR’s affiliates, insiders, and professionals, and Angelo and Centerbridge. The only parties that were “carved out” of the Releases were the minority shareholders of Culligan Ltd, as they were the only parties not otherwise covered under the broad description of the parties under the Releases. Immediately before the 2012 Restructure was consummated, Culligan Ltd owned and controlled all of Newco, which in turn was completely controlled by CDR. When agreeing to the 2012 Restructure, Culligan Ltd’s Board of Directors and CDR were effectively agreeing to release themselves from all liability by and through the Releases. Immediately upon consummation of the 2012 Restructure, Centerbridge became the 97% controlling owner of Newco, and owed a fiduciary duty to Culligan Ltd and its minority shareholders in that capacity. Centerbridge and Angelo knew the effect of these Releases, and required similar releases for their own benefit. CDR, the Director Defendants, Angelo, and Centerbridge each intentionally attempted to release themselves and their affiliates from all liability, for their own benefit and in an attempt to foreclose the rights of minority shareholders and those of Culligan Ltd. Each of these Defendants worked in concert and provided substantial assistance in the other Defendants’ actions: but for their wrongful and self-serving mutual agreements to release each other from liability, the releases would not have been executed.

128. The Releases do not apply to fraud, gross negligence, or intentional misconduct.

129. All Defendants knew that executing the Releases would contribute to the CDR Defendants’ and Director Defendants’ scheme, furthering their breaches of the fiduciary duties owed to Culligan Ltd and its shareholders.



### **The Advent Sale**

130. In or around November 2016, Centerbridge sold Culligan Newco and all of its assets and subsidiaries to Advent. Advent acquired the Culligan assets through GPE VIII. As of the time of this Amended Complaint, Advent currently possesses the Culligan assets, formerly owned by Culligan Newco, and Culligan Ltd prior to that. On information and belief, there was a continuity of ownership in the transaction between the acquiring and selling parties; Newco ceased to do ordinary business upon the acquisition and entered a state of dissolution; Advent assumed the liabilities held by Newco, and formerly held by Culligan Ltd, that were ordinarily necessary for the uninterrupted continuation of the Culligan business; and Advent retained the same management, personnel, physical location, assets, and general business operation as before the acquisition.

131. Plaintiffs are informed and believe that, following the Advent Sale, Centerbridge reacquired a portion of Culligan's assets, a portion of the equity in Culligan, or both. Plaintiffs are further informed and believe that continuity of ownership in the transaction still exists between the acquiring and selling parties, and the same management, personnel, physical location, assets, and general business operation are in place at Culligan as were before either sale.

### **PREREQUISITES FOR DERIVATIVE ACTION**

132. At all relevant times mentioned in this Complaint, Plaintiffs are and were each an owner of record or beneficial owner of shares of stock of Culligan Ltd.

133. Plaintiffs bring this action derivatively in the right and for the benefit of Culligan Ltd and its subsidiaries to redress Defendants' breaches of their fiduciary duty, their waste of Culligan's corporate assets, their fraudulent or illegal conveyances, and other violations of law.

134. Plaintiffs will adequately and fairly represent the interests of Culligan Ltd and its shareholders in enforcing and prosecuting their rights in this derivative action.

### **DEMAND ON THE CULLIGAN BOARD WAS EXCUSED DUE TO FUTILITY.**

135. The demand requirement in a derivative suit is excused when, as is the case here (1) a

majority of directors are interested in the transaction, *or* (2) the directors failed to inform themselves to a degree reasonably necessary about the transaction, *or* (3) the directors failed to exercise their business judgment in approving the transaction.

**Each Director Defendant Was Interested In The Challenged Transactions, As Each Received Direct Financial Benefits Not Available To Shareholders Generally And Each Was Employed Or Controlled By CDR**

136. At all times here relevant, Culligan Ltd's Board consisted of the Director Defendants, to wit: George Tamke, David Wasserman, Mark Seals, Bruno Deschamps, Nathan Sleeper, Michael Durham, Daniel Fredrickson, Thomas Hays, and James Uselton.

137. Each of the above-listed Director Defendants was interested in the transaction, and received direct financial benefits from the 2007 Recap and Conveyances not available to stockholders generally. As part of the 2007 Recap, Culligan Ltd reduced the exercise price of stock options already held by each Director Defendant, and awarded each Director Defendant a further "special bonus" in cash, stock, or a mixture of the two. In addition, each Director Defendant received and exercised stock options in a Culligan subsidiary. The reduction in exercise price, subsidiary stock options, and "special bonus" were not made available to Plaintiffs or Culligan Ltd shareholders generally. The subsidiary stock options awarded to the Director Defendants in the 2007 Recap were converted into options in Culligan Ltd, thereby diluting the overall interests of all shareholders, including the Plaintiffs. The cash portion of the "special bonus" alone totaled \$9.4 million. These self-dealing transactions formed a material benefit to the Director Defendants at the expense of the Plaintiffs and remaining shareholders. Further, each Director Defendant sought and received the Releases, which were not available to shareholders generally.

138. Director Defendants Tamke, Wasserman and Sleeper were principals and senior advisors at CDR at all times here relevant. Plaintiffs are informed and believe each also served on the Board of Clayton, Dubilier & Rice, Inc. at all relevant times.

139. Director Defendant Deschamps was a CDR partner or otherwise affiliated with CDR,

until 2007. Deschamps served on other boards of companies owned or controlled by CDR and its affiliates, including Hertz and Kinko's. Plaintiffs are informed and believe Deschamps also served on the Board of Clayton, Dubilier & Rice, Inc. until at least 2007.

140. Director Defendants Tamke, Wasserman, Durham, Fredrickson, Seals, and Hays also served on the Board of Kinko's, and Donald J. Gogel, CEO of CDR, was an executive officer at Kinko's, while Director Defendants Sleeper, Tamke, Durham, and Wasserman serve on the Board of Hertz. Each received compensation and stock options in these capacities and thus received direct financial benefits from companies all controlled by CDR. By these affiliations, each of these Defendants lacked independence from CDR to act in the best interests of Culligan Ltd when in conflict with CDR's interests.

141. Director Defendant Durham was appointed by CDR, and served on several boards of companies which CDR controls, including Hertz and Kinko's. These boards paid Durham hundreds of thousands of dollars per year in fees. By these affiliations, Durham lacked independence from CDR to act in the best interests of Culligan Ltd when in conflict with CDR's interests.

142. Director Defendant Fredrickson was appointed by CDR, and served on other boards of companies which CDR controls or controlled, including Kinko's. These boards paid Fredrickson hundreds of thousands of dollars per year in fees. By these affiliations, Fredrickson lacked independence from CDR to act in the best interests of Culligan Ltd when in conflict with CDR's interests.

143. Director Defendant Hays was appointed by CDR, and served on other boards of companies which CDR controls or controlled, including Kinko's. These boards paid Hays hundreds of thousands of dollars per year in fees. By these affiliations, Hays lacked independence from CDR to act in the best interests of Culligan Ltd when in conflict with CDR's interests.

144. Director Defendant Uselton was on the Board and served only at the pleasure of CDR and CDR Fund VI. CDR controls CDR Fund VI, votes all shares and elects the Board, and can

remove Uselton at its whim. Plaintiffs are informed and believe that Director Defendant Uselton has additional ties and contacts with the CDR Defendants, or other Director Defendants, which compromised his independence at all times here relevant. Once Plaintiffs obtain necessary discovery, they will seek leave to amend, if necessary, to include such additional facts.

145. Plaintiffs are informed and believe that other Director Defendants beyond those specifically identified as such in paragraphs 136-144 are or were also employed by CDR. Defendants admit in the Bissel Rejection (defined below) that, of the above members of Culligan Ltd's Board of Directors, only three were not employed by CDR. Plaintiffs are unaware of which of the remaining Director Defendants were employed by CDR, but will ascertain that information through discovery. This makes the majority of Culligan Ltd directors interested in the challenged transactions above and beyond the direct interest from stock and cash bonus benefits all the Director Defendants received, as CDR received a direct benefit from the Conveyances. Furthermore, the remaining three directors were controlled by CDR, and consequently lack independence. The above-named directors comprised a majority of Clayton, Dubilier & Rice, Inc.'s Board of Directors, thus creating a direct conflict of interest when voting on matters that would benefit Clayton, Dubilier & Rice, Inc., at the expense and risk of Culligan Ltd. In addition, CDR, Culligan Ltd., and Newco all used the same counsel (Debevoise) and same accountants (KPMG) who themselves had a conflict of interest when advising as to the challenged transactions.

146. Plaintiffs are informed and believe that each Director Defendant participated in, voted for, or concurred in the illegal Distributions and other Conveyances alleged herein, or recklessly or negligently disregarded the same, and shared in the proceeds of these Conveyances. Defendants are jointly and severally liable for the amount of the Distributions and the other Conveyances pursuant to NY BCL 719. As specified above, in approving the Conveyances, a majority of Culligan Ltd's Board of Directors was comprised of individuals that also controlled Clayton, Dubilier & Rice, Inc.'s Board of Directors. They were therefore conflicted and unable to act independently when approving

transactions that paid millions of dollars to Clayton, Dubilier & Rice, Inc., at the expense and ultimate demise of Culligan Ltd.

**Each Director Defendant Failed To Inform Himself Of Culligan's Financial Condition Before Approving The Challenged Transactions, Or Participated In An Ultra Vires Action.**

147. BCL 510(b) specifies that distributions can only be paid (1) out of surplus, so that the net assets of the corporation remaining after such declaration, payment or distribution shall at least equal the amount of its stated capital, or (2) in case there shall be no such surplus, out of its net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year.

148. Culligan's consolidated financial statements reveal that, at the time the Distributions were declared and paid, the Culligan Entities did not have a surplus large enough to pay the Distributions and leave net assets equal or greater than its stated capital left over. The financial statements further show that the Culligan Entities did not have net profits in 2006 or 2007 large enough to legally pay the Dividend. Both the then-current and subsequent financial statements show this lack of surplus or net assets above stated capital, and the then-current financial statements were available to Defendants at the time the Distributions were declared and paid.

149. As set forth in Paragraph 116, above, at the time of the Distributions, Culligan Ltd suffered *negative* retained earnings and operating losses. Thus, even a cursory reading of Culligan's consolidated financial statements would have shown that issuing the Dividend was illegal under BCL section 510(b), and was unlawfully injurious to Culligan Ltd.

150. Plaintiffs are informed and believe that the Directors did not review Culligan Ltd's financial statements before approving the Distributions, but instead "rubber-stamped" their approval at the direction of CDR. Plaintiffs are further informed and believe that at least one Director questioned whether the Dividend was legal and sought opinion letters from legal and accounting professionals ("Opinion Letters") as to whether Culligan Ltd could legally issue the Dividend, but that no Director independently reviewed Culligan Ltd's financial statements to determine the legality

of the Dividend.

151. Either the Director Defendants did not review the Opinion Letters, in which case the Director Defendants further failed to inform themselves to a degree reasonably necessary about the transaction, or the Director Defendants reviewed the Opinion Letters and proceeded to declare and pay the illegal Distributions anyway, and failed to exercise their business judgment in approving the illegal Distributions. Discovery will demonstrate the extent to which the Director Defendants failed to consider the Opinion Letters, or knowingly or negligently ignored the Opinion Letters.

152. The illegal Distributions were against New York's public Policy, constituted a crime under New York Penal Law 190.35, and were so egregious on their face that the Board's approval could not have been an exercise of sound independent business judgment. These acts were not the result of informed independent business judgment, but rather, the acts of self-interested individuals to enhance themselves and their interests at the expense of Culligan Ltd and its minority shareholders.

153. In April and May 2012, Plaintiffs sent multiple letters to Culligan's counsel, management, and Board requesting the Board investigate and provide Plaintiffs information about the challenged transactions. The Director Defendants repeatedly ignored Plaintiffs' requests, and refused to look into the matter or inform themselves to a degree reasonably necessary to determine whether to take action over the transactions.

**ALTHOUGH DEMAND WAS FUTILE, PLAINTIFFS NEVERTHELESS MADE DEMANDS UPON THE BOARD, WHICH WERE IGNORED**

154. Despite the futility of demanding action, Plaintiffs made multiple demands upon Culligan Ltd's Board in April and May 2012 to investigate and correct the malfeasance surrounding the Conveyances. True and correct copies of these demands are attached as Exhibit A and incorporated herein (collectively referred to as the "Demands"). Each Demand was sent to Culligan Ltd, to the attention of or with a copy to George Tamke, its Chairman and CEO. As Plaintiffs have no right of inspection as minority shareholders under Bermuda law, the only way to get information

about the challenged transactions from the Director Defendants, who had ignored Plaintiffs' requests for information to that point, was to make demand on the Culligan Board.

155. The Demands challenged the Board's independence and the propriety of the 2007 Recapitalization and Distributions, alleged breaches of fiduciary duty and self-dealing, and requested prompt investigation and restitution of the improper Distributions.

156. As early as April 2012, Plaintiffs' counsel was acting in the capacity of counsel for an unofficial committee of creditors in response to Culligan's imminent bankruptcy. Under the 2012 Restructure, the Culligan Entities were to file for bankruptcy protection on May 31, 2012 unless all bondholders consented to the 2012 Restructure Agreement. Plaintiffs' counsel exchanged correspondence seeking information and action from Culligan Ltd's counsel, which was also counsel to CDR. Culligan Ltd's Board of Directors refused to take action or provide substantive responses. Exhibit B, incorporated herein, includes true and correct copies of relevant portions of those communications.

157. On or about May 26, 2012, after receiving no substantive response to the prior demands, Plaintiffs delivered a draft complaint to Culligan Ltd's Board of Directors, explaining that it would be filed immediately if the Board failed to take action in response to the Demands.

158. Culligan did not respond to the Demands before May 31, 2012.

159. Because of the imminent bankruptcy filing, Plaintiffs filed suit in this action May 30, 2012 - the last day before the Culligan Entities would be filing for bankruptcy as stated in the Offering Memorandum described in Paragraph 126, above.

160. Filing the complaint as of May 30, 2012 was necessary and reasonable. Plaintiffs had sought information and action from the Board for nearly two months, with no substantive response. It would have been futile for Plaintiffs to wait for a response to the Demands beyond May 30, 2012. Culligan's scheduled bankruptcy would have barred filing of Plaintiffs' complaint, and further caused the Board itself to dissolve and be replaced by a Debtor In Possession. Had Plaintiffs waited another

day to allow Culligan's Board to investigate and respond to the Demands, there would have been no Board upon which to make a demand.

161. After the initial filing of this action, Rolin Bissel of Young, Conaway, Stargatt & Taylor, LLP ("Young Conaway") responded to Plaintiff's Counsel Bryan Dillon's letter of May 19, 2012 rejecting the demands therein (the "Bissel Rejection"). On June 6, 2012, counsel for Culligan Ltd "responded" to the Demands of Plaintiffs Robert Heffernan, Cecil Hall, and Culligan Softwater merely by forwarding a copy of the letter previously sent to Mr. Dillon.

162. If Plaintiffs are successful in this action, the recovery will be of substantial benefit to Culligan Ltd and its shareholders, and such action is necessary and proper to protect the interests of the company and its shareholders.

163. Plaintiffs, as minority shareholders in Nominal Defendant Culligan Ltd, are therefore compelled to bring this derivative action for the benefit of Nominal Defendant Culligan Ltd in order to protect the rights of the Company and its shareholders.

**FIRST CAUSE OF ACTION**  
**(Breach of Fiduciary Duty - Against Director Defendants, CDR as the Voting Trustee)**

164. Plaintiffs repeat and re-allege the allegations set forth in Paragraphs 1-163 as if fully set forth herein.

165. Director Defendants were Directors of Culligan Ltd at all times relevant to the claims in this Complaint. This cause of action is also alleged against Defendants Tamke and Seals in their individual capacities as officers of Culligan Ltd at the times here relevant.

166. Each of Defendants Tamke and Seals, as officers, and each of the Director Defendants, owed a fiduciary duty to Culligan Ltd and the Culligan Entities.

167. The nominal Plaintiffs' shares are held in a voting trust, of which CDR is the voting trustee. As voting trustee, CDR owed a fiduciary duty to both Culligan Ltd and to the Plaintiffs as minority shareholders.



168. As fiduciaries, the Director Defendants and CDR were required to exercise prudent supervision over management, policies, practices, controls, and the financial and corporate affairs of Culligan Ltd, and to refrain from engaging in self-interested transactions to the detriment of Culligan Ltd and its minority shareholders.

169. By incurring more than \$450 million in additional debt via the 2007 Recap, and issuing and paying the Conveyances (and in particular the Distributions), the Director Defendants and CDR each breached their fiduciary duties to the Culligan Ltd and its shareholders. Such actions also constitute a crime under New York Penal Law 190.35.

170. In exchange for the Distributions they received, the Director Defendants provided no value to Culligan Ltd or its subsidiaries, but merely increased these entities' debt, rendering Culligan Ltd and its subsidiaries insolvent as defined by BCL 102(a)(8).

171. The management services CDR provided did not amount to fair consideration for the fees Culligan Ltd paid to CDR and the Director Defendants. Instead, the Conveyances were acts of self-dealing and were undertaken for the personal gain of the Defendant Directors, CDR, and CDR Fund VI at the expense of Culligan Ltd and its minority shareholders. By approving and paying the Conveyances, the Director Defendants acted in bad faith and for a dishonest purpose.

172. By authorizing and paying the Conveyances, the Defendant Directors breached their fiduciary duties as Directors of Culligan Ltd. The Defendant Directors further breached their fiduciary duties by approving the Releases in the 2012 Restructuring. Plaintiffs, derivatively on behalf of Culligan Ltd, are therefore entitled to judgment pursuant to N.Y. Bus. Corp. Law §§ 626 and 720.

173. As a direct and proximate result of the breaches of duties and mismanagement of Culligan Ltd by said Defendants, specifically by approving and issuing the Conveyances, Culligan Ltd has sustained damages in an amount exceeding \$575 million. Said Defendants are liable to Culligan Ltd.

174. The Director and CDR Defendants knew that the massive debt load they caused Culligan Ltd and its subsidiaries to incur would render it insolvent and unable to pay loan balances as they matured, and would stifle the company's growth, reinvestment and business strategies, as represented to its creditors and minority shareholders. By authorizing and paying the Conveyances, the Director Defendants and CDR acted willfully, knowingly, maliciously, wantonly, with gross-negligence and/or with a conscious disregard for the rights of Culligan Ltd, the Culligan Entities and Culligan Ltd's minority shareholders. The conduct of the Director Defendants, Culligan Ltd's officers, and CDR involved such wanton dishonesty as to imply a criminal indifference to their civil obligations. Accordingly, Plaintiffs, on behalf of Culligan Ltd and its subsidiaries, are entitled to recover punitive damages in an amount to be proven at trial.

175. Plaintiffs, on behalf of Culligan Ltd, have no adequate remedy at law.

**SECOND CAUSE OF ACTION  
(Illegal Distributions - Against Director Defendants)**

176. Plaintiffs repeat and re-allege the allegations set forth in Paragraphs 1-175 as if fully set forth herein.

177. The Director Defendants declared and issued the Dividend and the Repayment of Capital.

178. The Director Defendants issued the Dividend and Repayment of Capital while Culligan Ltd and its subsidiaries were insolvent, or would become insolvent as a result of the Dividend and the Repayment of Capital, in violation of BCL 510(a). The Dividend and Repayment of Capital were not paid out of surplus, and Culligan Ltd and its subsidiaries did not have sufficient net profits in the relevant years to make the Dividend and Repayment of Capital in violation of BCL 510(b).

179. By issuing the Dividend and Repayment of Capital, the Director Defendants violated New York Business Corporation Law §§ 719(a)(1) and 510(a) and (b). There was no chance Culligan

Ltd or its subsidiaries could pay the loan principal in the usual course of business.

180. Pursuant to New York Business Corporation Law § 719, the Director Defendants are jointly and severally liable to Culligan Ltd for the benefit of its creditors and shareholders in an amount that exceeds \$575 million to be proven at trial.

181. As a direct and proximate result of the actions of the Director Defendants in approving and issuing the Dividend and the Repayment of Capital, Culligan Ltd was damaged in an amount exceeding \$575 million.

182. Plaintiffs, on behalf of Culligan Ltd, have no adequate remedy at law.

**THIRD CAUSE OF ACTION**  
**(Corporate Waste - Against Director Defendants, Tamke, and Seals)**

183. Plaintiffs repeat and re-allege the allegations set forth in Paragraphs 1-182 as if fully set forth herein.

184. Pursuant to NY BCL 720, Plaintiffs allege this cause of action against the Director Defendants on behalf of Culligan Ltd. This cause of action is also alleged against Defendants Tamke and Seals in their individual capacities as officers of Culligan Ltd at the times here relevant.

185. Each of the Director Defendants, and Defendants Tamke and Seals as officers, owed a duty to Culligan Ltd to protect its assets from waste or loss.

186. Each of the Director Defendants, and Defendants Tamke and Seals as officers, breached their duties by diverting Culligan Ltd's assets for improper or unnecessary purposes. Specifically, these Defendants diverted Culligan Ltd's assets through the Conveyances for their own financial gain.

187. By engaging in the conduct alleged herein, each of the Director Defendants, and Defendants Tamke and Seals as officers, wasted the corporate assets of Culligan Ltd and its subsidiaries.

188. As a direct and proximate result of the corporate waste by each of the Director

Defendants, and Defendants Tamke and Seals as officers, Culligan Ltd has suffered and will continue to suffer damages for which each of the Director Defendants, and Defendants Tamke and Seals as officers, are liable.

189. Plaintiffs, on behalf of Culligan Ltd, have no adequate remedy at law.

**FOURTH CAUSE OF ACTION  
(Unjust Enrichment Against Director Defendants, CDR, Tamke, Seals, And CDR  
Fund VI)**

190. Plaintiffs incorporate Paragraphs 1-189 as though fully set forth herein.

191. By their wrongful acts and omissions, each of the Director Defendants, and Defendants Tamke and Seals as officers, CDR Fund VI and CDR were unjustly enriched at the expense, and to the detriment, of Culligan Ltd. Defendants were enriched by receiving over \$575 million from the Repayment of Capital and Dividend, excessive management and transaction fees for which no value was conferred on Culligan Ltd, and negotiating the Releases for no value to Culligan Ltd or its subsidiaries. Culligan Ltd and its subsidiaries were left insolvent. Culligan Ltd is without any appreciable assets and is in a state of liquidation.

192. Plaintiffs, as shareholders and representatives of Culligan Ltd, seek restitution from each of the Director Defendants, Defendants Tamke and Seals as officers, and CDR Fund VI and CDR, and seek an order of this Court disgorging all profits, benefits, and other compensation received and/or obtained by the Director Defendants, CDR Fund VI and CDR, as a result of their wrongful conduct and breaches of fiduciary duties.

193. For clarity, Plaintiffs do not name CDR Fund VI in this cause of action by virtue of their status as a shareholder, but purely as the knowing recipient of an unlawful transfer as described in NY BCL 720(a)(2).

194. Plaintiffs, on behalf of Culligan Ltd, have no adequate remedy at law.

**FIFTH CAUSE OF ACTION**  
**(Constructive Trust - Against Director Defendants, CDR, Tamke, Seals, and CDR Fund VI)**

195. Plaintiffs repeat and re-allege the allegations set forth in Paragraphs 1-194 as if fully set forth herein.

196. This cause of action is also alleged against Defendants Tamke, and Seals in their individual capacities as officers of Culligan Ltd at the times here relevant. Each of these officers and the Director Defendants owed a fiduciary duty to Culligan Ltd and its subsidiaries.

197. As a result of the Conveyances, the Director Defendants and Tamke and Seals, each acquired property in the form of cash from Culligan Ltd in such circumstances that, despite holding legal title to that property, they may not in good conscience retain beneficial interest to. Specifically, they each received, and were unjustly enriched by receiving, excessive Management Fees, directors' fees, salaries and/or bonuses despite providing no value to Culligan Ltd or its subsidiaries.

198. At the time of the Conveyances, the Director Defendants and CDR were in a fiduciary relationship with Culligan Ltd as officers and/or directors and as directors of CDR Fund VI, Culligan Ltd's majority and controlling shareholder.

199. Each of the Director Defendants, Defendants Tamke and Seals as officers, and CDR acquired control over the assets of Culligan Ltd based on the implied promise, contained in the fiduciary duties they owed Culligan Ltd, to run the Company effectively and with due care, and in accordance with applicable law.

200. Control over Culligan Ltd's assets was entrusted to the Director Defendants, Defendants Tamke and Seals, and CDR based on that promise.

201. CDR Fund VI owed a fiduciary duty to Culligan Ltd and all of its shareholders as it was the controlling shareholder of Culligan Ltd. For clarity, Plaintiffs do not name CDR Fund VI in this cause of action by virtue of its status as a shareholder, but purely as the knowing recipient of an unlawful transfer as described in NY BCL 720(a)(2).

202. By violating the above promises and effecting the Conveyances, the Director Defendants, Defendants Tamke and Seals, CDR and CDR Fund VI, were unjustly enriched at the expense and detriment of Culligan Ltd. Specifically and as further described herein, each of the Director Defendants and the officers of Culligan Ltd were direct and indirect recipients of the Management Fees, director fees, salaries and/or bonuses, and each received portions of the illegal Repayment of Capital and Dividend.

203. The Conveyances directly caused the 2012 Restructuring, in which the assets of Culligan Ltd and its subsidiaries were transferred without fair consideration to Angelo and Centerbridge.

204. Each of the above named Director Defendants, CDR, CDR Fund VI, and Culligan Ltd's officers further violated their duties by attempting to release themselves and all of the co-Defendants named herein from liability relating to both the Conveyances and the 2012 Restructuring, as further described in herein. Such releases were attempted for no value or consideration to Culligan Ltd and solely benefitted the Defendants' self-interest at the expense of Culligan Ltd, its subsidiaries and minority shareholders.

205. A constructive trust over the assets and former assets of Culligan Ltd, including those held by CDR Fund VI, is necessary to satisfy the demands of justice.

206. Plaintiffs, on behalf of Culligan Ltd, have no adequate remedy at law.

### **CLAIMS AGAINST PROFESSIONAL ADVISORS**

#### **SIXTH CAUSE OF ACTION (Breach of Fiduciary Duty - Against KPMG Bermuda)**

207. Plaintiffs repeat and re-allege the allegations set forth in Paragraphs 1-206 as if fully set forth herein.

208. KPMG Bermuda acts as the liquidator to Culligan Ltd. In that role, KPMG Bermuda acts as the governing Board of Culligan Ltd.

209. As liquidator, KPMG Bermuda has a fiduciary duty to exercise prudent supervision over the corporate assets of Culligan Ltd committed to its charge. KPMG Bermuda had full knowledge of Plaintiffs' demands herein, and has actively participated with CDR, Culligan Ltd, and the Director Defendants throughout this litigation.

210. KPMG Bermuda breached this fiduciary duty by refusing or failing to commence actions against the CDR and Director Defendants, Lender Defendants, Professional Defendants, and Advent Defendants to recoup corporate assets of Culligan Ltd that had been unlawfully distributed to those parties. By doing so, KPMG Bermuda neglected or failed to perform prudent management of the corporate assets of Culligan Ltd, in violation of BCL 720. By sworn Affirmation in this case (Doc. No. 146) KPMG Bermuda has stated that, at the time Plaintiffs sought commencement of action against the above-listed Defendants, it controlled Culligan Ltd and was the sole authority to speak on behalf of the company.

211. As a direct and proximate result, Culligan has sustained damages in an amount exceeding \$575 million. KPMG Bermuda is liable to Culligan Ltd.

212. Plaintiffs, on behalf of Culligan Ltd, have no adequate remedy at law.

**CLAIMS AGAINST THE LENDER DEFENDANTS, CULLIGAN NEWCO, AND  
ADVENT**

213. This Court has personal jurisdiction over Angelo, Centerbridge, Newco, and Advent pursuant to CPLR 301 because each of these Defendants is present in the State of New York and pursuant to CPLR 302(a)(1) because the causes of action pleaded herein arise from the transaction of business by each of these Defendants within the State of New York.

214. Plaintiffs are informed and believe Angelo and Centerbridge required Culligan Ltd, Newco, and CDR to effect the Releases to gain Angelo and Centerbridge's participation in the 2012 Restructuring. Upon information and belief, Angelo and Centerbridge dictated the terms of the Releases while Angelo and Centerbridge were in control of Culligan Ltd in the timeframe up to and

including the 2012 Restructuring.

**SEVENTH CAUSE OF ACTION  
(Breach of Fiduciary Duty - Against The Lender Defendants)**

215. Plaintiffs repeat and re-allege the allegations set forth in Paragraphs 1-214 as if fully set forth herein.

216. Once Angelo and Centerbridge purchased a majority of Culligan Ltd's debt through the 2012 Restructuring, Angelo and Centerbridge had effective control over Culligan Ltd and the Culligan Entities, and owed those entities and Plaintiffs a fiduciary duty. In addition, Angelo and Centerbridge each owed Culligan Ltd, its subsidiaries, and Plaintiffs a fiduciary duty when Angelo and Centerbridge sought to restructure those entities. Angelo and Centerbridge knew that Culligan Ltd's debt was discounted because Culligan was overleveraged from the illegal Dividend and Repayment of Capital. The Lender Defendants were not innocent arm's-length purchasers. At the time of the 2012 Restructure, Angelo and Centerbridge exerted complete economic control over Culligan Ltd and its subsidiaries by, *inter alia*, threatening to foreclose on the debt and force Culligan Ltd and its subsidiaries into liquidation and bankruptcy. In fact, the 2012 Restructure was structured in the alternative: as an out-of-court restructure, or a pre-packaged bankruptcy if all other junior creditors did not agree. Angelo and Centerbridge dictated the terms of the 2012 Restructure Agreement solely for their own self-interests, and ignored the interests of Culligan Ltd and its shareholders, specifically including the provision of the Releases in favor of themselves and the CDR and Director Defendants.

217. Angelo and Centerbridge breached their fiduciary duties by effecting the 2012 Restructuring. Specifically, Angelo and Centerbridge used their control over Culligan Ltd and the Culligan Entities to engage in a self-interested transaction in which Angelo and Centerbridge received \$180 million in cash, new first lien debt with substantially higher interest, and 97% of the equity in Newco, which owned all of Culligan Ltd's former assets. Neither Culligan Ltd nor the



Culligan Entities received fair consideration in exchange. Culligan Ltd was divested of substantially all of its assets, yet Angelo and Centerbridge effectively received identical debt payments as before the 2012 Restructuring, and Centerbridge received 97% of Newco. Plaintiffs had their ownership stake diluted from just under 8% of Culligan Ltd to an effective 0.16% of Newco, and Culligan Ltd is essentially assetless, has ceased its ordinary business of operating the Culligan brand, and is in a state of liquidation.

218. As a direct and proximate result of Angelo and Centerbridge's breaches, Culligan has sustained damages in an amount exceeding \$575 million. Angelo and Centerbridge are liable to Culligan Ltd.

219. Plaintiffs, on behalf of Culligan Ltd, have no adequate remedy at law.

**EIGHTH CAUSE OF ACTION  
(Aiding and Abetting Breach of Fiduciary Duty - Against Lender Defendants)**

220. Plaintiffs repeat and re-allege the allegations set forth in Paragraphs 1-219 as if fully set forth herein.

221. Angelo and Centerbridge substantially assisted the CDR and Director Defendants' breaches of fiduciary duty, and knowingly participated in those breaches. Upon information and belief, Plaintiffs allege Angelo and Centerbridge intentionally acquired Culligan debt at discount prices in a scheme to trade that debt for Newco equity and acquire Culligan's assets. Newco, Angelo, and Centerbridge were able to gain ownership over Culligan's assets at a significant discount because of the wrongdoing of the CDR and Director Defendants, and Angelo and Centerbridge knew the Dividend and Repayment of Capital were illegal.

222. Through the Releases, CDR, the Director Defendants, Angelo and Centerbridge each intentionally attempted to release themselves, their respective current and former officers, directors and their affiliates from all liability, for their own benefit and in an attempt to foreclose the rights of minority shareholders and those of Culligan Ltd. Each of these Defendants worked in concert and

provided substantial assistance in the other Defendants' actions: but for their wrongful and self-serving mutual agreements to release each other from liability, the Releases would not have been executed.

223. Prior to the 2012 Restructuring, Plaintiffs informed Defendants CDR, Angelo and Centerbridge that the Releases were so overly broad that they could be advanced as an argument to bar the claims in this lawsuit. CDR, Newco, and Culligan Ltd executed the Releases anyway. Upon information and belief, Angelo and Centerbridge directed CDR, Newco, and Culligan Ltd to effect the Releases. Angelo and Centerbridge therefore knew that their act of agreeing to the Releases amounted to aiding and abetting the Director Defendants in a scheme to avoid liability and again breach their fiduciary duties.

224. As a direct and proximate result of said Defendants' aiding and abetting, Culligan Ltd and its shareholders have suffered damages for which the Lender Defendants are liable.

225. Plaintiffs, on behalf of Culligan Ltd, have no adequate remedy at law.

**NINTH CAUSE OF ACTION  
(Unjust Enrichment - Against The Lender Defendants, Newco, and Advent)**

226. Plaintiffs repeat and re-allege the allegations set forth in Paragraphs 1-225 as if fully set forth herein.

227. By their wrongful acts and omissions, Angelo, Centerbridge, Newco, and Advent were unjustly enriched at the expense of and to the detriment of Culligan Ltd and its subsidiaries. Specifically, Newco, Angelo, and Centerbridge were enriched by purchasing Culligan Ltd's debt at grossly discounted below-market prices, then swapping that debt for a 97% equity stake in Newco, which acquired all of Culligan Ltd's former assets for no consideration, while retaining the same benefits under the debt service instruments which were part of the alleged "swap." Angelo and Centerbridge were enriched by paying themselves \$180 million on their first lien debt, then refinancing their remaining first lien debt to garner the same total payments out of Newco as before

the 2012 Restructuring. Advent was enriched by taking ownership of Culligan Ltd's former assets from Angelo, Centerbridge, and Newco.

228. Newco, Angelo, and Centerbridge were able to gain ownership over Culligan Ltd's assets at a significant discount because of Defendants' wrongdoing, and Angelo, Centerbridge and Advent each knew the Dividend and Repayment of Capital were illegal.

229. The net result of these actions was that Angelo and Centerbridge benefitted from (1) receiving the same aggregate debt service payments they had been receiving prior to the 2012 Restructure; (2) receiving virtually all of the cash Culligan Ltd had left, and receiving a distribution of cash purportedly "contributed" as part of the 2012 Restructure, for no consideration; and (3) obtaining 97% ownership in Newco, which then owned all of Culligan Ltd's former assets.

230. Advent acquired Culligan Ltd's former assets and control over Newco from the Lender Defendants with actual knowledge, constructive knowledge, or conscious disregard that Angelo, Centerbridge, and Newco obtained them wrongfully, and that Plaintiffs had filed this lawsuit seeking a constructive trust over those assets. Lender Defendants and Newco disclosed the facts behind the Conveyances and the lawsuit to Advent before Advent acquired Culligan Ltd's former assets.

231. Culligan Ltd itself is left virtually assetless and in a state of ongoing liquidation. Culligan Ltd ceased to participate in the operation of Culligan's business upon the transfer of ownership of all subsidiaries to Newco. Culligan Ltd's equity in its own (former) assets was largely eliminated, going from 100% to 2.27%. Plaintiffs' shareholder equity in Culligan Ltd's assets was largely eliminated, going from just under 8% to 0.16%, and Plaintiffs' ability to participate in Culligan Ltd going forward was destroyed as Culligan Ltd now owns none of its former operating subsidiaries.

232. Equity and good conscience require Newco, Angelo, Centerbridge, and Advent to return ownership of Culligan Ltd's assets.

233. Plaintiffs, as shareholders and representatives of Culligan Ltd, seek restitution from Newco, Angelo, Centerbridge, and Advent, and an order of this Court disgorging all profits, benefits and other compensation received and/or obtained by Newco, Angelo, Centerbridge, and Advent as a result of their wrongful conduct and breaches of fiduciary duties as herein alleged.

234. Plaintiffs, on behalf of Culligan Ltd, have no adequate remedy at law.

**TENTH CAUSE OF ACTION**  
**(Constructive Trust - Against The Lender Defendants, Newco, and Advent)**

235. Plaintiffs repeat and re-allege the allegations set forth in Paragraphs 1-234 as if fully set forth herein.

236. The Lender Defendants and Newco each received, and were unjustly enriched by receiving, all of Culligan Ltd's assets for insufficient value: The Lender Defendants received most of Culligan Ltd's remaining cash; Newco received all of Culligan Ltd's operating assets; and Centerbridge acquired 97% of the equity in Newco, with no value to Culligan Ltd or its subsidiaries.

237. At the time of the 2012 Restructure, the Lender Defendants controlled Newco and the Culligan Entities. As such, each owed a fiduciary duty to the Culligan Entities, and minority shareholders prior to and as of the closing of the 2012 Restructure.

238. The Lender Defendants and Newco acquired control over the assets of Culligan Ltd based on the implied promise, contained in the fiduciary duties they owed Culligan Ltd, to run the Company effectively and with due care, and in accordance with applicable law.

239. Control over Culligan Ltd's assets was entrusted to Newco and the Lender Defendants based on that promise.

240. The Conveyances directly caused the insolvency of the Culligan Entities, which in turn directly resulted in the 2012 Restructuring. That restructure transferred all of the Culligan Entities' assets, without fair consideration, to Newco, Angelo, and Centerbridge. The Lender Defendants acquired their interests in Culligan Ltd with full knowledge or conscious disregard of the

illegality of the Conveyances.

241. Each of the Lender Defendants and Newco further violated their duties by agreeing to and requiring the Releases. The Releases were for no value or consideration to Culligan Ltd and solely benefitted the Defendants' self-interests at the expense of Culligan Ltd, its subsidiaries and minority shareholders.

242. Advent acquired Culligan Ltd's former assets from the Lender Defendants and Newco with constructive and actual knowledge or conscious disregard that Angelo, Centerbridge, and Newco obtained them wrongfully, and that Plaintiffs had filed this lawsuit seeking a constructive trust over those assets. The Lender Defendants and Newco disclosed the facts behind the Conveyances and the lawsuit to Advent before Advent acquired such assets.

243. By violating the above promises and breaching their duties to Culligan Ltd, its subsidiaries and minority shareholders, and by receiving a transfer of Culligan Ltd's assets based on breaches of fiduciary duty and other wrongful acts known to them, Centerbridge, Angelo, and Newco were unjustly enriched at the expense and detriment of Culligan Ltd and each of its subsidiaries, as further described herein.

244. By receiving Culligan Ltd's former assets, with full knowledge of the underlying facts and circumstances alleged above, Advent was unjustly enriched at the expense and detriment of Culligan Ltd, its shareholders, and each of its subsidiaries, as further described herein.

245. A constructive trust over the assets and former assets of Culligan Ltd, including those held by Newco and/or Advent, is necessary to satisfy the demands of justice.

246. Plaintiffs, on behalf of Culligan Ltd, have no adequate remedy at law.

#### **DEMAND FOR RELIEF**

WHEREFORE, Plaintiffs demand judgment against Defendants for the following:

1. Against all Defendants except Advent and KPMG Bermuda, and in favor of Culligan Ltd, for the amount of damages sustained by Culligan Ltd as a result of the Defendants' breaches of

their fiduciary duties, aiding and abetting breaches of fiduciary duties, waste of corporate assets, illegal payment of the Dividend and Repayment of Capital, fraudulent conveyances, unjust enrichment, and other related wrongs, at least in the aggregate amount of the Repayment of Capital, the Dividend and the Management Fees paid to CDR, to be established by proof at trial, which amount exceeds \$575,000,000;

2. Punitive damages against the Director Defendants, Defendants Tamke, Seals, and CDR;

3. Against the Lender Defendants and Advent, and in favor of Culligan Ltd, based on their mere continuation of the business enterprise of Culligan Ltd, at least in the aggregate amount of the Repayment of Capital, the Dividend and the Management Fees paid to CDR, to be established by proof at trial, which amount exceeds \$575,000,000;

4. Against all Defendants, and in favor of Culligan Ltd, for the damages sustained by Culligan Ltd as a result of Defendants' unjust enrichment, or restitution or other equitable remedy in the alternative, in an amount to be established by proof at trial;

5. On the fifth cause of action, that the Court impose a constructive trust over the assets or former assets of Culligan Ltd held by CDR and the Director Defendants, and those currently held by CDR Fund VI;

6. On the sixth cause of action against KPMG Bermuda, for damages resulting from the illegal payment of the Dividend and the Repayment of Capital, in an amount to be established by proof at trial, which amount exceeds \$575,000,000;

7. On the tenth cause of action, that the Court impose a constructive trust over the former assets of Culligan Ltd held by Centerbridge, Angelo, Newco, and those currently held by Advent;

8. Plaintiffs' costs and disbursements of this action, including reasonable attorney's fees, accountant's fees, expert's fees, and other costs and expenses incurred in the prosecution of this action as provided under BCL 626, along with prejudgment interest; and

9. Any other and further relief that the court deems proper.

Dated: New York, New York  
January 15, 2019

**EINBINDER & DUNN LLP**

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**VERIFICATION**

I, Robert Boerner, being duly sworn, deposes and says: I am President of Culligan Southwest, Inc., a plaintiff in the above-entitled action. I have read the foregoing Fourth Amended Complaint and know the contents thereof. The same are true to my knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters I believe them to be true.

  
\_\_\_\_\_  
Robert Boerner

Date: 1-15-2019

Sworn to Before me  
This 15th Day of January, 2019

  
\_\_\_\_\_  
Notary Public Signature

*Attach seal here:*

