



IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

Shintech Incorporated.	§	
	§	
<i>Plaintiff,</i>	§	Civil Action No. 3:23-cv-112
	§	
V.	§	HON. JEFFREY V. BROWN
	§	
Olin Corporation	§	
and Blue Cube Operations LLC	§	
	§	
<i>Defendants.</i>	§	

**Plaintiff Shintech Incorporated’s Fourth Amended Complaint**

Plaintiff Shintech Incorporated (“Shintech” or “Plaintiff”) files this Fourth Amended Complaint against Defendants Olin Corporation (“Olin”) and Blue Cube Operations LLC (“Blue Cube”) (collectively, “Defendants”), and respectfully shows the Court as follows:

**Introduction**

1. Shintech bargained with Defendants in 2015-2017 for a ten-year supply contract (“2021 VCM Contract”) commencing January 1, 2021 for Defendants’ vinyl chloride monomer (“VCM”) that is vital to Shintech’s Freeport, Texas plant where Shintech produces different grades of polyvinyl chloride resin (“PVC”). Notwithstanding that Shintech has timely paid Defendant Blue Cube over [REDACTED] [REDACTED] since the 2021 VCM Contract commenced, and contract provisions specifically designed to avoid unplanned supply disruptions for the critically needed VCM, Defendants have refused and failed to deliver the required VCM for reasons not permitted

by the 2021 VCM Contract. Defendants’ unjustifiable cessation of supply is part of Defendants’ big picture business model. In this instance, Olin is using its wholly owned subsidiary, Defendant Blue Cube, to help execute Olin’s business model.

2. More specifically, under the leadership of former CEO Scott Sutton, and Patrick Schumacher, Defendants developed and executed a consistent business model: withdraw supply in an attempt to unilaterally impose price increases, even if that is contrary to Defendants’ existing long term supply contracts. Defendants are well aware that, for many customers, there is no alternative but to pay the extra-contractual price demanded. Defendants’ awareness stems from knowledge that their customers must have the supply or suffer significant harm. In other words, Defendants’ customers have no choice but to capitulate – even where long term contracts are in place.

3. Defendants are not shy about this, with leadership touting that: “Olin people are masters of the ECU.<sup>1</sup> That means we don’t sell excessive volumes into poor quality markets. Instead, *we withdraw supply*, and we generate purposeful activations on both sides of the ECU, up and down our derivative chains, resulting in margin improvements on both sides of the ECU.” In discovery, Olin’s former leader of Defendants’ operations in Freeport, Texas, admitted that some of these “activations” were directed specifically towards Shintech.

4. Mr. Sutton and Mr. Schumacher have also stated Defendants’ intention to “open up” long-term or “legacy” contracts. During Olin’s November 5, 2020 earnings call,

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<sup>1</sup> ECU stands for Electrochemical Unit, a unit of measure reflecting chlor-alkali process outputs.

Olin bragged that its “building phase” was complete and that it was inaugurating its “leading phase” to exploit its “#1 position in every product and geography.” By July 28, 2021, Sutton declared his “strategy is to move Olin’s pricing up as we run our model . . . I mean we’re taking very specific actions and trying to telegraph those actions in advance so that the world understands that this is a purposeful activity.”

5. In the same earnings call, Sutton explained the company’s new approach to pricing the company’s “linchpin” products: “Our pricing in those products is a ratchet. ***Our pricing only turns one way and does not reverse. If necessary, we will sell zero volume*** into the freely negotiated market to preserve our ratchet principle and the value of our broad downstream chains based on those linchpin products.”

6. More recently, the very tactics alluded to by its own executives in various earnings calls, *i.e.*, Olin’s systematic activations, have landed Olin in federal courts across the country. Apparently, Olin is “opening up” long-term supply contracts for chlorine,<sup>2</sup> caustic soda,<sup>3</sup> bleach,<sup>4</sup> and in the present case, VCM. Just a few months ago, Mr. Schumacher wrote one of Olin’s long-term customers and demanded payment for an alleged shortfall. If the customer did not capitulate to Mr. Schumacher’s demands, Olin

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<sup>2</sup> *Albermarle Corporation v. Olin Corporation*, Case No. 1:23-cv-00600-CMH-WEF (E.D.V.A. 2023) (chlorine)

<sup>3</sup> *Innovative Water Care, LLC v. Olin Corporation*, Case No. 1:22-cv-00070-DCLC-CHS, (E.D. Tenn. 2022) (caustic soda).

<sup>4</sup> *Odyssey Manufacturing v. Olin Corporation*, Case No. 8:23-cv-00940-TPB-CPT (M.D. Fla. 2023) (bleach). On June 28, 2023, the District Court for the Middle District of Florida held a hearing on Odyssey Manufacturing’s motion for preliminary injunction. Later that day, the Court issued an order via docket entry, stating that Odyssey had established a likelihood of success on its claim that Olin breached the contract between the parties. *See id.* at Dkt. 41.

was going to “let the nukes fly.” Less than a month from when Mr. Schumacher threatened to let the nukes fly, Olin’s new Chief Executive Officer, Ken Lane,<sup>5</sup> announced a so-called “mutual agreement” under which Schumacher will be leaving Olin.

7. Accordingly, Shintech brings this action seeking permanent injunctive relief to halt the irreparable harm Defendants’ actions threaten and have caused, as well as damages caused by the harm already inflicted.

### **Parties**

8. Plaintiff Shintech is a corporation organized and operating under the laws of the State of Delaware. Shintech’s principal place of business is located at 3 Greenway Plz #1150, Houston, Texas 77046.

9. Defendant Olin is a corporation organized and operating under the laws of the State of Virginia. Olin’s principal place of business is located at 190 Carondelet Plaza Suite 1530, Clayton, Missouri 63105.

10. Defendant Blue Cube is a limited liability company organized and operating under the laws of the State of Delaware. Blue Cube’s principal place of business is located in Freeport, Texas. Upon information and belief, the sole member of Defendant Blue Cube Operations LLC is Blue Cube Holding LLC, and the sole member of Blue Cube Holding LLC is Blue Cube Spinco LLC. The sole member of Blue Cube Spinco LLC is Defendant Olin Corporation.

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<sup>5</sup> Ken Lane’s tenure at Olin began, upon information and belief, around March 18, 2024. So far, for reasons described herein, there has yet to be any indication that the business model implemented by Scott Sutton, at least as it relates to Shintech, will change (other than perhaps the recent announcement ending Schumacher’s tenure).

**Jurisdiction and Venue**

11. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332. There is complete diversity of citizenship between the parties, as Defendants are citizens of Missouri and Virginia, and Plaintiff is a citizen of Delaware and Texas. The amount in controversy exceeds \$75,000.00.

12. This Court has, at a minimum, specific personal jurisdiction over Defendants because their conduct at issue in this action occurred in the State of Texas and Plaintiff's claims herein arise from that conduct. The facts and legal arguments set out in detail by Shintech in its Response to Olin's Motion to Dismiss (Dkt. 19), which are incorporated herein by reference in its entirety for any and all purposes, establish that this Court has personal jurisdiction over Defendants in this lawsuit. On May 8, 2023, the Court agreed with Shintech, concluding that Defendant Olin is subject to personal jurisdiction in this Judicial District for the conduct at issue in this case, and denied Olin's Motion to Dismiss for Lack of Jurisdiction (Dkt. 34).

13. Venue is proper in this Court because all or a substantial part of the events or omissions giving rise to the claims herein occurred in the Galveston Division of the Southern District of Texas. 28 U.S.C. § 1391(b)(2). Venue is also proper in this Court because Defendants are subject to this Court's personal jurisdiction with respect to this civil action, and thus Defendants' "reside" in the Galveston Division of the Southern District of Texas for venue purposes. *Id.* § 1391(b)(1).

## **Factual Background**

### **A. Overview of the Chlor-Alkali Process**

14. The “chlor-alkali” process involves salt (chemical symbol NaCl) (sometimes referred to as Brine) and electricity to produce chlorine (chemical symbol Cl), sodium hydroxide (chemical symbol NaOH) and hydrogen. These chemicals are produced at a ratio of about 1.13 tons of sodium hydroxide to 1 ton of chlorine to 0.03 tons of hydrogen.

15. Sodium hydroxide is commonly referred to as caustic soda, which can be sold by itself or used when manufacturing other products, such as bleach, epoxy products, pulp and paper, soaps, etc.

16. Similarly, chlorine can be sold by itself or used in the manufacture of other products. For example, the chlorine can be combined with ethylene to produce ethylene dichloride (“EDC”).

17. EDC can be sold by itself, such what occurs through Blue Water Alliance JV, LLP (a joint venture between Olin and Mitsui & Co., Ltd.), a company that launched operations, upon information and belief, around late-2022 or early-2023. EDC also can be “cracked” through heating in a furnace to produce vinyl chloride monomer, or VCM. VCM is the chemical Defendants are obligated to supply Shintech under the 2021 VCM Contract.

18. VCM is highly volatile, toxic, and flammable. It is transported via railcar, barge, or pipeline. Substantially all VCM produced is used to produce different grades of PVC in an approximately 1 to 1 ratio (e.g. approximately one pound of VCM makes approximately one pound of PVC when operating conditions permit). Thus, a reliable supply of VCM is essential to producers of PVC resin, like Shintech.

## B. Shintech's Business

19. Shintech sells its grades of PVC that are manufactured in Louisiana and Texas. Like other chemical manufacturing processes, different chemicals may be used to facilitate the process and/or give certain characteristics to Shintech's grades of resin, such as inherent viscosity, bulk density, particle size, etc. Shintech then sells its grades of resin to customers in powder form, and Shintech is the largest such producer in the United States.

## C. PVC Compounds

20. Upon information and belief, while PVC resin can be *sold* by itself, it cannot be *used* alone to make end products (such as pipe, vinyl siding, window profiles, fencing, film wrap, and medical devices) and must be further processed through what is known as the "compounding process." In this downstream compounding process, various plasticizers<sup>6</sup>, stabilizers, lubricants<sup>7</sup>, impact modifiers<sup>8</sup> or other additives<sup>9</sup> are blended/mixed and heated and cooled in equipment to achieve further desired properties, such as flexibility, impact resistance, UV stability, flame resistance, and color. This

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<sup>6</sup> A plasticizer is a substance mixed with the PVC that promotes flexibility and inhibits brittleness. <https://www.teknorapex.com/from-pvc-resin-to-vinyl-compound#:~:text=PVC%20compound%20is%20rigid%20at,more%20flexible%20the%20PVC%20becomes>.

<sup>7</sup> Lubricants are mixed with the PVC during the compounding process to help with melt viscosity, compound flow, and to minimize both processing and molecular friction. *Id.*

<sup>8</sup> Impact modifiers are mixed with the PVC during the compounding process used to improve impact resistance. Examples are acrylics, polystyrenes, and urethanes. <https://additives-pvc.com/pvc-impact-modifier/>.

<sup>9</sup> Other additives may be mixed with the PVC to enhance or create unique properties within the type of PVC compound being produced. <https://www.teknorapex.com/from-pvc-resin-to-vinyl-compound#:~:text=PVC%20compound%20is%20rigid%20at,more%20flexible%20the%20PVC%20becomes>.


resulting material is referred to as a “PVC compound,” which is sold in various formulations and used in the manufacture of other end-use goods such as pipe, vinyl siding, window profiles, fencing, film wrap, medical devices, and many other products. Companies that manufacture these end products use equipment in a downstream process to extrude or calendar the compound into the shape of the various end products. Shintech does not manufacture PVC compound or other downstream consumer products like pipe or fencing. Shintech does sell different grades of its resin to its affiliates such as K-Bin, who uses the PVC to manufacture and sell compounds to third parties. Shintech also sells its PVC to other affiliates who typically use the PVC to manufacture their own PVC compound and use that PVC compound to manufacture and sell pipe, conduit, or other consumer products.

**D. Defendants’ Business**

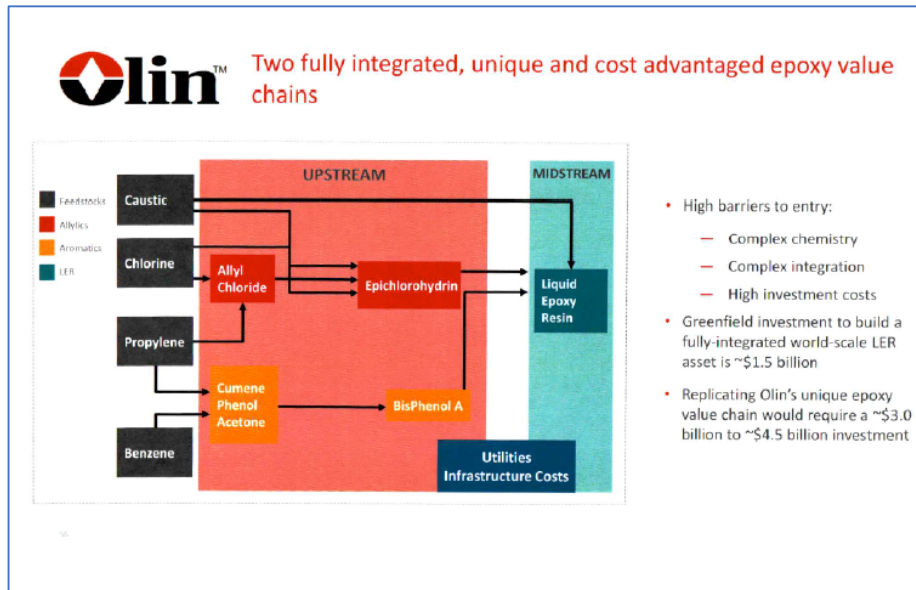
21. As noted above, the chlor-alkali process involves the production of chlorine and caustic soda (and relatively small amounts of hydrogen). According to Olin’s website, it is the “No. 1 Global Chlor Alkali Producer.”

22. However, upon information and belief, the vast majority of VCM produced in the United States is consumed internally by PVC resin producers. Upon information and belief, Defendants are the only U.S. producers of VCM currently without a downstream PVC resin operation. Olin has consistently sought to partner with a PVC resin producer. Additionally, as noted, upon information and belief, in late-2022 or in 2023, Blue Water Alliance began operations of globally trading caustic soda and EDC (the latter, again, is the chemical that ultimately converts to VCM).

23. With respect to caustic soda, Defendants have a number of “Affiliates” who use Defendants’ caustic soda to produce or sell other products, like bleach. Below is a screen shot from one of Defendants’ bleach products, showing caustic soda (sodium hydroxide) as one of the components:

SAFETY DATA SHEET			
<b>Sodium Hypochlorite, 17-30%</b>			
Version	Revision Date:	SDS Number:	Date of last issue: 03-06-2020
4.0	07-15-2021	10000001224	Date of first issue: 07-15-2021
<b>SECTION 3. COMPOSITION/INFORMATION ON INGREDIENTS</b>			
Substance / Mixture	:	Substance	
Substance name	:	Sodium hypochlorite	
CAS-No.	:	7681-52-9	
<b>Components</b>			
Chemical name	CAS-No.	Concentration (% w/w)	
Water	7732-18-5	≥ 65.5 - ≤ 82.9	
Sodium hypochlorite	7681-52-9	≥ 17 - ≤ 30	
Sodium hydroxide	1310-73-2	≥ 0.1 - ≤ 4.5	

24. Similarly, Caustic Soda is used in the production of epoxy products, and per Olin’s website it is the “No. 1 Global Manufacturer of Epoxy Products”:



**E. Shintech has received VCM in Freeport, Texas via pipeline for decades.**

25. Since 1974, Shintech operated a PVC resin plant in Freeport, Texas. Historically, Shintech purchased VCM produced at Dow Chemical's petrochemical complex adjacent to Shintech's Freeport PVC plant. Upon information and belief, Dow produced VCM but did not produce PVC resin. Shintech and Dow had a succession of long-term contracts, typically with ten-year terms. Dow delivered this VCM via a 1.3-mile pipeline connecting its VCM plant to Shintech's PVC resin plant.

26. About 50% of Shintech's supply of VCM for its Freeport PVC plant comes via the short pipeline to the Dow VCM plant. The other approximately 50% of the VCM used at Shintech's Freeport, Texas operations comes from Shintech Louisiana, LLC's VCM plants in Plaquemine, Louisiana. Before VCM production occurring in Louisiana was used to supply Shintech in Freeport, upon information and belief Shintech effectively satisfied its VCM requirements from the Dow VCM plant.

27. The Shintech PVC plant and the Dow VCM plant even underwent several coordinated expansions over the years, as Dow needed Shintech as a customer for its VCM, and Shintech needed Dow's VCM to fully utilize its PVC plant. The Shintech Freeport PVC plant and the Dow Freeport VCM plant had a symbiotic relationship that benefitted both companies.

28. 2011 Dow Contract. In or around 2008, Shintech and Dow executed a contract effective from 2011 to 2020 for the purchase and sale of VCM from Dow's Freeport plant ("2011 Dow Contract"). Because of the long-term nature of that contract, the price Shintech agreed to pay for VCM under the 2011 Dow Contract fluctuated

depending on factors such as (without limitation) certain costs Dow would incur in producing VCM, the price Dow would receive on the sale of caustic soda (known as the “Caustic Netback”), and the price Shintech received for sales of PVC (known as the “PVC Netback”).

29. The 2011 Dow Contract had a provision illustrating that, if Shintech sold or transferred PVC to one of its Affiliates at \$0.40 per pound (as an example), and that Affiliate sold the PVC to a third party that was not an Affiliate for \$.50 per pound (as an example), the price of \$0.50 was included in the PVC Netback calculation, shown below:

**Illustration A:** If SHINTECH sells or transfers PVC to an Affiliate for \$0.40 per pound, and that Affiliate then sells the PVC to a third party that is not an Affiliate of SHINTECH for \$0.50 per pound, then the sale from the SHINTECH Affiliate to the third party that is not an Affiliate of SHINTECH (\$0.50) is included in the PVC Net Back.

30. Under the 2011 Dow Contract, these illustrations were “equally applicable to Dow with regard to the Caustic Netback” and collectively are referred to herein as the “Resell Clause(s).”

31. Additionally, the 2011 Dow Contract identified certain scenarios under which Shintech’s transfers or sales of PVC to Shintech Affiliates who *consumed or converted* the PVC could be part of the PVC Netback calculation (“PVC Consume or Convert Clause”), shown below:

(2) PVC sold or transferred by SHINTECH, or by or through a SHINTECH Affiliate, to another SHINTECH Affiliate who consumes or converts the PVC, so long as the weighted average of the PVC Net Back of those sales and transfers included in this Paragraph 7.C(2) is equal to or greater than the PVC Net Back of those sales included in Paragraph 7.C(1) above.

32. The same was true as to Dow’s transfers or sales of caustic soda to Dow’s Affiliates who consumed or converted the caustic soda (“Caustic Consume or Convert Clause”), shown below:

(2) Caustic soda transferred or sold by DOW, or by or through a DOW Affiliate, to another DOW Affiliate who consumes or converts the caustic soda, so long as the weighted average of the Caustic Net Back of those sales and transfers included in this Paragraph 7.D(2) is equal to or greater than the Caustic Net Back of those sales included in Paragraph 7.D(1) above.

33. Under the 2011 Dow Contract, Shintech was required to provide Dow worksheets on a monthly basis identifying, among other things, PVC sales to Affiliates that *were* included in the PVC Netback calculation and PVC sales to Affiliates that were *not* included in the calculation – depending on whether triggering criteria were met and as shown in the examples below:

	<u>7.F.(a)</u> Domestic total	<u>7.F.(b)</u> Sold to non-Affiliates, included in the PVC Net	<u>7.F.(d)</u> Sold to Affiliates, included in the PVC Net Back
PVC Pound sold			
Delivered selling price			
Sales commissions			
Freight costs			
Terminal costs			
Bagging costs			
Cost of A/R financing			
Net Back			

	<u>7.F.(a)</u> Domestic total	<u>7.F.(b)</u> Sold to non-Affiliates, included in the PVC Net Back	<u>7.F.(e)</u> Sold to Affiliates, not included in the PVC Net Back
PVC Pound sold			
Delivered selling price			
Sales commissions			
Freight costs			
Terminal costs			
Bagging costs			
Cost of A/R financing			
Net Back			

**F. Olin’s Acquisition of Dow Assets and the Interim Contracts**

34. Upon information and belief, in 2015, Dow and Olin announced plans to “merge” their respective chlor-alkali and vinyl chlorinated organics and global epoxy businesses, which included Dow’s caustic, EDC, and VCM plants at Freeport, in a transaction in which Dow’s shareholders would acquire a majority stake in Olin.

35. Upon information and belief, Dow formed and originally owned Blue Cube Operations LLC, into which it transferred its chlor-alkali, EDC, and VCM operations at Freeport, Texas. In Dow’s transaction with Olin, Olin acquired Blue Cube.

36. The 2011 Dow Contract between Dow and Shintech remained in effect after Dow transferred Blue Cube to Olin, and Dow continued to supply VCM under that contract to Shintech from the now-Blue Cube Freeport plant.

37. As part of transitioning from Dow-supplied VCM to Defendant-supplied VCM, Blue Cube and Shintech entered into a series of what are referred to herein as “Interim Contracts.” For example, Interim Contracts were executed in 2016 and 2018.

38. Like the 2011 Dow Contract, both Interim Contracts contained the Resell Clauses (for both PVC and Caustic), the Caustic Consume or Convert Clause, and the PVC Consume or Convert Clause.

39. Upon information and belief, many of the management employees of Dow and Blue Cube responsible for the VCM business continued under the ownership of Blue Cube and Olin, even after Olin acquired Blue Cube from Dow. That includes Defendants’ current employees Damian Gumpel and Joe Roth. In other words, Defendants knew about the existence, terms, and performance of the 2011 Dow Contract when it acquired the

Freeport plants from Dow. They are also familiar with the existence, terms, and performance of the Interim Contracts.

**G. Negotiations of the 2021 VCM Contract**

40. The most economical and safest means of transporting VCM to Shintech’s Freeport plant by far is via the short pipeline to Defendants’ neighboring VCM plant. The only other ways for Shintech to receive VCM is by railcar, which is how it receives its VCM from its related entity in Louisiana. Shintech’s facility lacks waterway access.

41. Here is an illustration showing the proximity of the Shintech Freeport PVC plant and Defendants’ Freeport VCM plant:



42. Substantially all VCM produced is used to produce PVC resin, so Shintech’s proximate plant was a desirable customer for Defendants. Accordingly, both Shintech and Defendants viewed it desirable to put a ten-year contract in place many years before the 2011 Dow Contract expired.

43. Following the announcement in 2015 that Dow was merging its Gulf Coast chlor-alkali assets with Olin, Shintech and Olin began negotiating a new supply contract in late 2015 to continue the supply, purchase, and sale of VCM to Shintech following expiration of the 2011 Dow Contract at the end of 2020 and expiration of the Interim Contracts. Said differently, Defendants would be directly supplying Shintech with VCM starting in 2021. Negotiations for the 2021 VCM Contract started years in advance of when Defendants would begin delivering VCM to Shintech because, if a deal could not be struck, both companies would have to make alterations in their plans for their respective plants.

44. On August 5, 2016, Olin's VP/President Damien Gumpel – who previously worked for Dow and administrated the Dow 2011 Contract and Interim Contracts, sent a draft contract to Shintech titled "Olin Proposal\_Aug 5 2016." This draft contract made no direct reference to Blue Cube (a company already in existence); the parties were Shintech and Olin.

45. On November 9, 2016, Mr. Gumpel wrote that "Olin is pleased to provide [Shintech] with [a] letter of intent with respect to our mutual interest in pursuing long-term supply of [VCM]." Again, Olin failed to reference Blue Cube, and the negotiations continued to discuss a contract between Olin and Shintech.

46. In January and February of 2017, Olin and Shintech continued negotiations. When Olin made clear that its wholly-owned subsidiary, Defendant Blue Cube, would be the "invoicing party," Shintech requested that Olin guarantee performance of the terms Shintech and Olin had been negotiating for months. Olin first confirmed it was open to a parent guarantee, and then - after performance guarantee language was incorporated into

the 2021 VCM Contract as an attachment - Olin confirmed the language was clear that Olin was responsible for the performance of Blue Cube's obligations.

47. The 2021 VCM Contract was signed late February 2017, with VCM being "delivered via the existing pipelines connecting Seller's VCM plant to Customer's PVC plants in Freeport, Texas." Exhibit 1. Olin guaranteed the full and prompt performance of Blue Cube's obligations under the 2021 VCM Contract, and Olin also agreed to "pay all reasonable attorneys' fees incurred or expended by Shintech in enforcing the Obligations." *Id.* at Attachment G, p. 22. The 2021 VCM Contract commenced on January 1, 2021, and remains effective through December 31, 2030 (the "Term").

#### **H. Provisions of the 2021 VCM Contract**

48. As was the case with the 2011 Dow Contract, the new 2021 VCM Contract contemplated very large volumes of VCM to Shintech and very large payments by Shintech. VCM is delivered to Shintech via the pipeline connecting the parties' respective plants often exceeding [REDACTED] pounds per day.

49. Because of the importance of the operations of Shintech's plant to Blue Cube's plant, and vice versa, Shintech and Defendants were both well-aware of the severe consequences any disruption of Shintech's VCM purchases or Defendants' VCM supply could have to one another. For example, if Shintech were to suddenly cease purchasing VCM, Defendants may have difficulty quickly finding another outlet for such a large percentage of their VCM production at Freeport. Likewise, if Defendants were to suddenly cease delivering VCM to Shintech's Freeport plant, Shintech would have grave difficulty

in acquiring VCM to replace the magnitude of Defendants' supply. The 2021 VCM Contract contains provisions to avoid and minimize such disruptions.

50. Offtake Requirements. By June 30 of each year, Shintech submits its "Nomination" of VCM it desires to purchase, which shall not be less than [REDACTED] pounds for the years 2021 - 2023. By August 31, Blue Cube is required to submit its "Commitment," which also shall not be less than [REDACTED] Shintech's Nomination and Blue Cube's Commitment (performance of which Olin guaranteed) are referred to as the "Supply and Purchase Amount."

51. Pricing. The 2021 VCM Contract contains a detailed pricing mechanism for calculating the price of VCM. Exhibit 1 at Attachment C, p. 11. Components of the VCM price include (without limitation) a margin share in Shintech's PVC sales, deductions from the VCM price based on Defendants' and Defendants' affiliates' caustic soda sales, as well as costs to produce other products in the chain preceding VCM (*e.g.*, chlorine). Nothing in the 2021 VCM Contract contemplates the profits, revenues, or costs associated with manufacturing and selling PVC compounds or other products made from PVC (sewer pipe, decking, siding, etc.) are components of determining the price of VCM. The same is true regarding transactions between Shintech and its Affiliates who consumed or converted Shintech's PVC: indeed, *the PVC Consume or Convert Clause (as well as the Caustic Consume or Convert Clause) – both of which existed in the 2011 Dow Contract and Interim Contracts - were removed entirely from the 2021 VCM Contract.* However, the Resell Clauses remained in the 2021 VCM Contract, with essentially identical language to the 2011 Dow Contract and the Interim Contracts.

52. Invoicing and True Ups. Under the 2021 VCM Contract, each month, Blue Cube invoices Shintech at an estimated price for the VCM being sold. Blue Cube is expressly required to select a price that will “minimize the subsequent price adjustments.” For purposes of this lawsuit, Blue Cube has, throughout 2023 and continuing to-date, selected a price contravening this provision by routinely inflating the VCM price. This has resulted in Shintech being entitled to a credit for the overcharges.

53. In particular, twenty-six days after the end of each month, the parties must provide each other various inputs for calculating the VCM price: As defined by the 2021 VCM Contract, Shintech provides the PVC Netback input, while Blue Cube provides (or is supposed to provide) the Caustic Netback input. These inputs are used to adjust the VCM price Shintech paid. These adjustments must occur monthly and quarterly. Blue Cube must then “issue the appropriate debit or credit” to Shintech within five (5) business days. Exhibit 1 at Attachment B.

54. Again, Olin guaranteed the performance of Blue Cube’s obligations under the 2021 VCM Contract and also agreed to pay Shintech’s reasonable attorneys’ fees incurred or expended in enforcing those obligations.

55. End of Year True-Up for Excess Volumes. For VCM that Shintech receives exceeding [REDACTED] pounds per year, Shintech is required to pay a [REDACTED]. This additional volume for the [REDACTED] is finalized at the end of year; however, the parties plan for certain monthly volumes, with volumes exceeding [REDACTED] per month anticipated to be excess/additional volumes above [REDACTED] pounds. For example, if Shintech receives [REDACTED] of VCM during the month of January, Shintech pays

a [REDACTED] However, if by the end of the year, Defendants did not supply a total of [REDACTED] pounds, Shintech is entitled to a credit such that the quantity invoiced to Shintech equals [REDACTED] pounds (in simple terms, Shintech is essentially refunded the premium(s) it paid throughout the year).

56. Audit. If either party disputes the accuracy of the PVC Net Back or the Caustic Net Back reported by the other party, the disputing party has a “right to request and receive a statement of audit” performed by the other party’s independent public accountant. The audit must be requested by April 30 of each year, for the preceding year. Because the data utilized in the PVC Netback and Caustic netback calculation contains highly confidential competitive information, whether those netbacks were accurately and consistently determined in accordance with generally accepted accounting principles was to be determined by an independent public accountant who would provide a statement to that effect. *See* Exhibit 1 at Attachment E.

57. Capacity Reservation Fee. By January 2 of each year, Shintech is required to pay a [REDACTED] “Capacity Reservation Fee.” Shintech pays this amount just to *reserve the right to* obtain VCM from Defendants. That is separate from the price Shintech pays for the actual VCM received (which in 2021 and 2022, Shintech paid several hundred million dollars each year for VCM). If Shintech does not receive the Supply and Purchase Amount for any calendar year, certain scenarios exist where Shintech is entitled to reimbursement for the unamortized annual balance of the Capacity Reservation Fee.

58. Performance Guarantee. At Attachment G to the 2021 VCM Contract, Olin “guarantee[d] the full and prompt performance of the obligations of Blue Cube,” and

Shintech was not required to pursue any other remedies before invoking the benefits of the guarantees contained in Attachment G. Even more specifically, Shintech was not required to make demand upon, institute suit, or otherwise pursue or exhaust its remedies against Blue Cube, but could instead maintain an action on the Guaranty without joining Blue Cube and without bringing a separate action against Blue Cube. Olin agreed to pay any and all reasonable attorneys' fees incurred or expended by Shintech in enforcing the obligations.

59. Dispute Resolution. Attachment F to the 2021 VCM Contract contains a Dispute Resolution Clause, which in short contemplates that controversies, claims or disputes between the parties be referred to senior executives who are at a higher-level of management than persons with day-to-day responsibilities of administering the 2021 VCM Contract. Attachment F permits, however, a party to apply to a Court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other interim or conservatory relief. Separately in the 2021 VCM Contract, each party is provided the remedy of specific performance.

60. Major Turnaround. The 2021 VCM Contract anticipates that approximately every three years Blue Cube would conduct a "Major Turnaround" on its VCM facility that would substantially reduce, if not eliminate entirely, VCM deliveries to Shintech during the Major Turnaround. The 2021 VCM Contract specifically provides that a "Major Turnaround will not last more than six (6) weeks in duration." Exhibit 1, A(5), pp. 1-2.

61. The 2021 VCM Contract's Supply and Purchase Amount, Capacity Reservation, Audit, Dispute Resolution, Specific Performance, and Major Turnaround

provisions were agreed to by the parties in part specifically to avoid disruptions in the supply of VCM by Blue Cube (guaranteed by Olin) vital to Shintech.

### **Performance of the 2021 VCM Contract**

62. Interactions with Olin. For the last 3+ years, Shintech's dealings under the 2021 VCM Contract have largely been with employees of Olin, some of whom also - upon information and belief - are employees of Blue Cube. Almost all such dealings with Defendants have been, when in writing, from @olin.com domain emails coupled with Olin's logo. In those situations, persons with those @olin.com domain emails still appear to also speak on behalf of Blue Cube, while arguably on behalf of Olin too.

63. Indeed, Olin employees perform multiple services for Blue Cube and other of Olin's Affiliates. As one example, Kyle Wilson was the primary person responsible for calculating Blue Cube's Caustic Netback for significant periods under the 2021 VCM Contract, as an Olin employee. As another example, Olin enters into contracts expressly on behalf of itself and its Affiliates, with such contracts covering the sale of multiple products. Upon information and belief, Olin sales representatives (or sales representatives employed by other of Defendants' Affiliates) oversee accounts of customers who purchase caustic soda as well as other products produced within the Olin network.

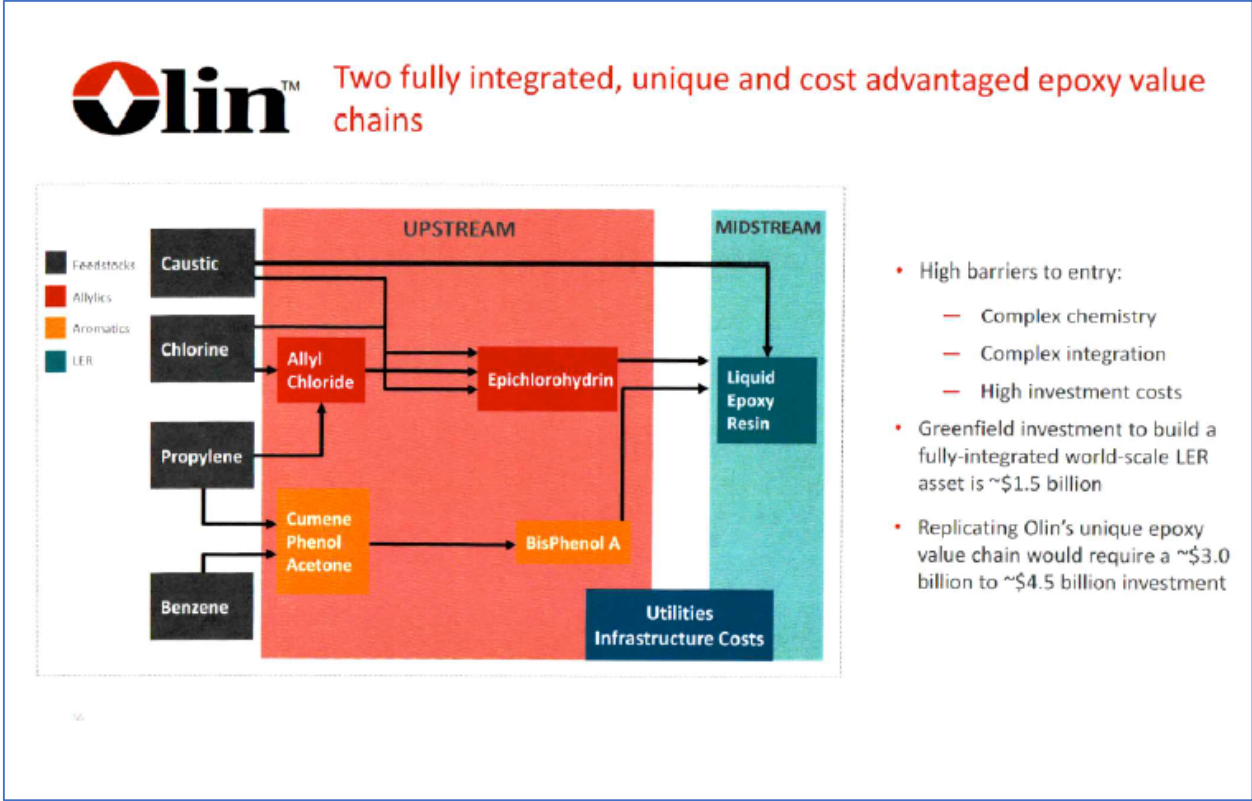
64. Audit. Neither party has ever invoked its Audit rights under Attachment E to the 2021 VCM Contract. However, at various points during the first two years, Olin conducted internal audits of the 2021 VCM Contract.

65. Treatment of Affiliate Transactions for the PVC Netback and Caustic Netback. Under the 2021 VCM Contract, in addition to their own sales, the parties include

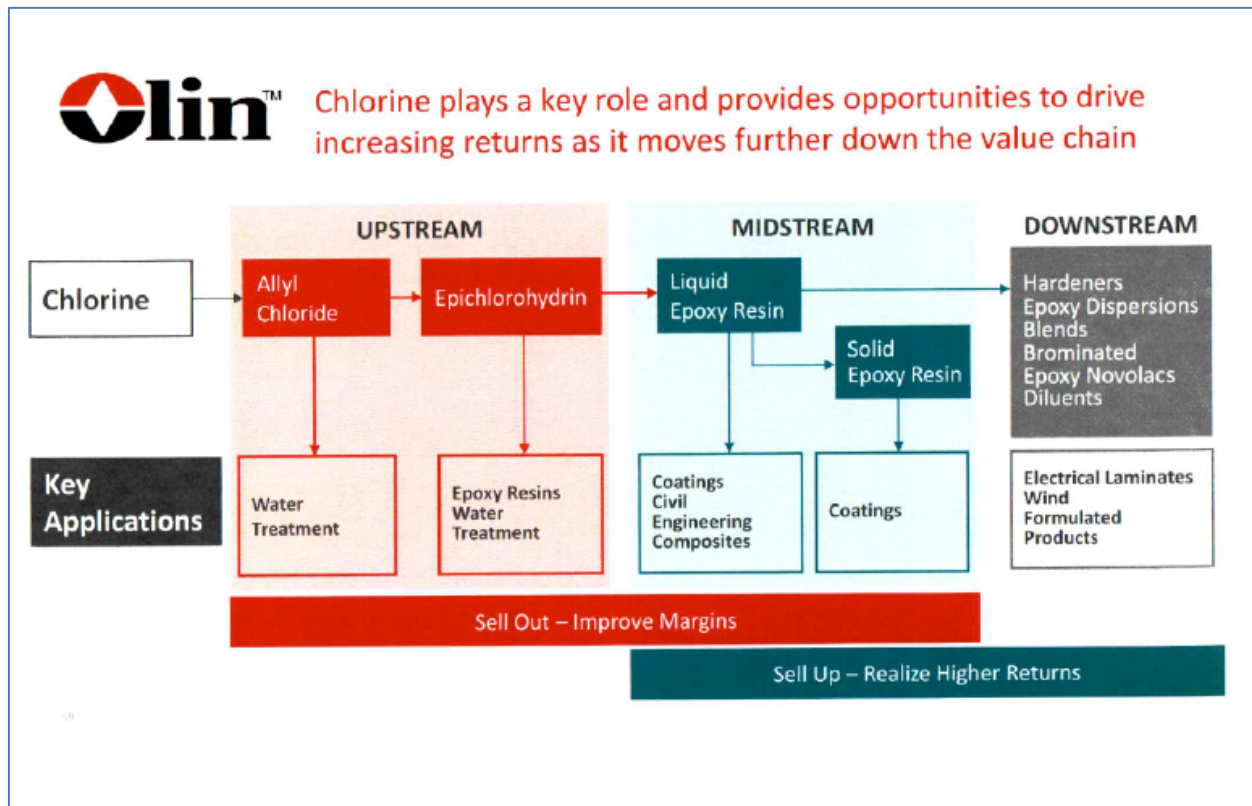
- in their respective Netback calculations - the weighted average price at which PVC or caustic soda is sold by one of their Affiliates to an unaffiliated third party. However, this only occurs when the Affiliate resells the same product it received from Shintech or Blue Cube. With respect to Shintech, that occurs when Shintech's overseas Affiliates resell Shintech's resin on the export market. With respect to Defendants, this occurs when an Affiliate resells caustic soda, such as what happened with a new Defendant Affiliate who began selling caustic soda in late-2022/early-2023 (two years after the VCM Contract began).

66. Said differently, neither Shintech nor Defendants include in their respective PVC Netback or Caustic Netback calculation, transactions involving Affiliates who use the PVC or caustic soda (as the case may be) to manufacture other products, whether that be: (1) in the case of a Shintech Affiliate, compound or pipe; or (2) in the case of a Defendant Affiliate, bleach or epoxy resins (as examples). Olin's Board of Directors Orientation materials state that Olin is the #1 North American Bleach Producer and holds the #1 Epoxy Position.

67. Here is a screenshot from Olin's 2019 Investor Day Presentation showing how Caustic Soda feeds directly into Olin's Liquid Epoxy Resin product line:



68. The following screenshot then shows how Liquid Epoxy Resin feeds into other products like hardeners, epoxy dispersions, blends, brominated, epoxy novolacs, and diluents:



69. Nor does either party include in their respective PVC Netback or Caustic Netback calculation sales of the downstream products manufactured by those downstream Affiliates (e.g., compound or pipe for Shintech’s Affiliates; bleach or epoxy products for Defendants’ Affiliates). Indeed, in October 2023, counsel for Defendants stated at least twice in open court that sales of pipes or window blinds or other consumer products were **not** part of the PVC Netback calculation. Defendants’ counsel affirmed this position in correspondence dated December 2023. Defendants have since completely disavowed these admissions, presumably based on a misleading and erroneous argument that Defendants did not have knowledge, at the time these admissions were made, of the existence of Shintech’s Affiliates who consumed or converted Shintech’s PVC in downstream manufacturing processes.

70. Shintech's 2021 Offtake. The parties' Supply and Purchase Amount for 2021 was [REDACTED] pounds. Shintech paid the Monthly Adjusted Additional Quantity Price premiums for certain months in 2021. By the end of 2021, however, Shintech did not receive the Supply and Purchase Amount. Shintech requested and received a credit note essentially reimbursing Shintech for the premiums paid during months of that year where Shintech more than [REDACTED] pounds of VCM from Defendants.

71. Shintech's 2022 Offtake. The Supply and Purchase Amount for the year 2022 was [REDACTED] pounds of VCM. Shintech paid the Monthly Adjusted Additional Quantity Price premiums for certain months in 2022 where Shintech took more than [REDACTED] [REDACTED] pounds of VCM. By the end of 2022, Shintech did not receive [REDACTED] pounds of VCM. In January 2023, Shintech requested, but has not received, a credit note seeking reimbursement for the premiums paid during months of that year where Shintech took more than [REDACTED] pounds.

72. Shintech's 2023 Offtake. Shintech paid the Capacity Reservation Fee for 2023 and nominated [REDACTED] billion pounds of VCM for delivery in 2023. As its "Sellers Commitment," Blue Cube agreed to supply [REDACTED] pounds in 2023, thus constituting the parties' Supply and Purchase Amount for 2023.

73. Reporting and True-Ups. Starting in the second half of last year, Defendants stopped timely reporting information that they are plainly required to report under the 2021 VCM Contract. Again, the 2021 VCM Contract requires Defendants to provide Shintech the Caustic Netback by the 26<sup>th</sup> day after each Supply Month. Defendants failed to timely report this information multiple times starting in 2023.

74. Moreover, during each month of 2023, Blue Cube invoiced Shintech at an “estimated price” for VCM in a manner resulting in tens of millions of dollars of price adjustments that should have been reconciled in the form of a credit to Shintech. Defendants have refused to issue any such credits and wrongfully holds Shintech’s money. Again, Olin guaranteed Blue Cube’s performance under the 2021 VCM Contract.

75. More particularly, since around January 2023, Defendants’ estimated VCM price has exceeded the actual price of VCM, resulting in credits owed to Shintech. Defendants have refused to issue such credits. Shintech has repeatedly requested that Defendants comply with their obligations to issue price adjustments – via email to Defendants, payment demand, and even through invoking the VCM Contract’s performance guaranty. Shintech has also requested that Defendants explain their methodology for the estimated VCM price. Defendants have not done so and, in November 2024, Defendants communicated their intent to withhold the credits owed to Shintech until the conclusion of the lawsuit – which may take years if Defendants appeal. Thus, absent Court intervention, Defendants will continue to wrongfully withhold monies owed to Shintech. Defendants refuse to issue Shintech the required credits while Defendants’ own financial reporting to its creditors and public investors shows a troubling downward trend.

76. The 2021 VCM Contract plainly requires that a monthly price adjustment be made by the 26<sup>th</sup> day of each month, and further adjustments made after the end of a calendar quarter using Defendants’ “final quarterly ‘caustic Net Back.’” Again, the purpose of these price adjustments is to reconcile the estimated price Shintech pays for VCM throughout a month to the actual VCM price, which can only be determined when

pricing information about the components of the pricing mechanism settle. The parties systematically adjusted the VCM price for the first two years of the 2021 VCM Contract. Defendants admit, however, they failed to timely report the Caustic Netback numbers starting in 2023 and have issued no price adjustments since 2022. Shintech has repeatedly requested Defendants issue the credits via routine correspondence between the parties (thus, Defendants have actual notice of Shintech's claim) and via payment demand and payment guarantee. But even as recently as November 2024, Defendants refused to do so. Defendants have not explained how they are estimating the VCM price or how the invoice price they select is being made to minimize subsequent price adjustments (as the VCM Contract plainly requires Defendants to do). Due to Defendants' refusal to comply with the 2021 VCM Contract and issue credits beginning in 2023, Defendants continue to hold nearly \$70 million in Shintech's money.

### **Facts Underlying Shintech's Lawsuit**

#### **A. Defendants Demand a Price Increase and Refuse to Supply VCM Following Completion of the Major Turnaround.**

77. In late January 2023, Shintech requested a \$2.4 million credit note for the 2022 End of Year True-Up under the 2021 VCM Contract, based on Shintech not receiving the 2022 Supply and Purchase Amount of [REDACTED] pounds.

78. Neither Blue Cube nor Olin has paid this credit for 2022. Instead, on March 13, 2023, Olin's Vice President and President, Chlor Alkali Products and Vinyls, Patrick Schumacher, wrote Shintech and disputed Shintech's request for a 2022 End-of-Year credit. Upon information and belief and in light of Mr. Schumacher's conduct throughout

this dispute, Mr. Schumacher appears to have authority to act on behalf of both Olin and Blue Cube. This activation of Shintech was a bad faith breach of the VCM Contract.

79. At the time of Mr. Schumacher's March 13, 2023 email activating Shintech, Defendants' Major Turnaround for the year 2023 was underway. Upon information and belief, the actual maintenance work for the 2023 Major Turnaround was scheduled to start around March 6, 2023.

80. Because the 2021 VCM Contract does not permit Defendants to conduct a Major Turnaround exceeding 42 days, VCM supply was to resume on or around April 17, 2023. However, in late-2022, Shintech agreed to Defendants' request to extend that timeline such that Shintech would receive VCM starting April 28. Olin's initial internal milestones for completing the 2023 Major Turnaround work show the resumption of VCM supply on April 28.

81. However, prior to Mr. Schumacher's March 13 email activating Shintech, Defendants already and secretly decided to delay the completion of the 2023 Major Turnaround and, consequently, delay the date by which VCM supply to Shintech would resume. Defendants took this action because it was better economically for Olin to not supply Shintech with VCM than it was for Olin to supply Shintech VCM, notwithstanding Defendants' obligations under the 2021 VCM Contract. This activation was a bad faith breach of the VCM Contract.

82. In his March 13, 2023 activation email, Mr. Schumacher claimed to have "backtested pricing to the start of 2021" for Shintech's PVC Net Back values, finding they resulted in an alleged shortfall to Olin for the period December 2022 through February

2023. Mr. Schumacher's specific complaint was that Shintech was improperly giving weight to export sales when calculating the PVC Netback. Mr. Schumacher's email said nothing about whether Shintech was allegedly excluding transactions from the PVC Netback Calculation, such as transactions involving Shintech Affiliates who consumed or converted Shintech's PVC. Nor did Mr. Schumacher's email say anything about Shintech allegedly improperly excluding downstream sales of products like compound or pipe.

83. Mr. Schumacher's March 13 email also asserted that "we have gone back to check on the caustic soda netback imbedded in the VCM price and found it to be too high," such that Defendants had made errors. Mr. Schumacher claimed "we have given Shintech credit for at least \$5mm" for the years 2021 and 2022 which "must be reversed." Said another way, Defendants activation of Shintech was based on *Defendants own alleged miscalculations*.

84. In the email, Schumacher asserted that in total "Olin has been shortchanged" millions of dollars (including for Defendants' own alleged errors calculating the Caustic Netback). Consistent with Olin's new business model of withholding supply via activations – Mr. Schumacher asserted "we will not provide product following our turnaround unless these matters have been fully resolved. **Consider any existing volume nominations cancelled.**"<sup>10</sup> (emphasis added). Again, Defendants admit that this decision was based in part on their own alleged errors in calculating the Caustic Netback, which to-

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<sup>10</sup> The "turnaround" referenced was Defendants' ongoing "Major Turnaround" allowed once every three years under the VCM Contract. Planning for this 2023 Major Turnaround began no later than August 2022. Blue Cube's 2023 Major Turnaround began around March 5, 2023. Again, per the parties' agreement and specifically Shintech's accommodation to extend the Major Turnaround to a period of 51-55 days, the Major Turnaround was required to end by April 28, 2023.

date Defendants have been unable or unwilling to validate, despite Shintech's repeated efforts to validate the alleged errors through discovery. As just one example, starting this past summer, Defendants' witnesses have systematically disavowed the ability to recall the substance within virtually any document they authored or received, significantly impeding Shintech's ability to obtain discovery on the claims and defenses in this case.

85. In his March 13, 2023 email, Mr. Schumacher also repudiated the dispute resolution procedure, stating "*we will NOT be following the contract resolution mechanism*, which [according to Mr. Schumacher] contemplated the resolution of smaller day to day disagreements between cooperative parties." This statement was part of Defendants' activation of Shintech and bad faith breach of the VCM Contract.

86. Upon information and belief, this is the same Patrick Schumacher who, last month, told one of Olin's customers that, if the customer did not pay an alleged shortfall, he was going to "let the nukes fly." Upon information and belief, this statement was made as part of Defendants' business model of activating their customers.

87. On March 17, 2023, Shintech responded and provided notification that Shintech categorically rejected the unilateral attempt "to cancel the existing nomination and threat to suspend deliveries following the [Major] [T]urnaround" based on Schumacher's allegations of the incorrect calculation of the PVC Netback and Caustic Netback and of Shintech's allegedly improper credit note request for the 2022 End-of-Year True Up. Shintech stated such actions were not allowed under, *and were an anticipatory breach of*, the 2021 VCM Contract. In this response to the substance of Schumacher's March 13 email, Shintech invoked the Dispute Resolution Procedure.

88. Olin’s Senior Counsel Dustin Manning, Olin VP/President Schumacher, and General Counsel Chemicals Matthew Martin acknowledged Olin’s and Blue Cube’s receipt of Shintech’s notification on March 21, 2023. Mr. Manning “reiterate[d] the points” from Schumacher’s March 13 email, *i.e.*, that Olin would “suspend performance under the [VCM] Contract until” the parties’ pricing and accounting disputes were resolved. *Id.* Upon information and belief and in light of Mr. Manning’s conduct throughout this dispute, Mr. Manning appears to have authority to act on behalf of both Olin and Blue Cube. Thus, Mr. Manning affirmed Mr. Schumacher’s activation of Shintech and bad faith breach of the VCM Contract.

89. Shintech wrote back on March 31, 2023 and emphasized that the 2021 VCM Contract’s Dispute Resolution Procedure (set forth at Attachment F thereto) was the proper and contractually required way to address the parties’ difference of opinion. Shintech again “demand[ed] that [Schumacher] retract [his] threats and confirm in writing, by no later than April 5, 2023, that [Defendants] will resume deliveries of product immediately following completion of” the Major Turnaround.

90. On April 6, 2023, Defendants identified three Olin representatives (Schumacher; Olin’s Business Director Pedro Dias Jorge; and Olin’s Business Director Soo Tan) who would “attend the meeting on behalf of Olin.” Mr. Manning failed to retract Mr. Schumacher’s repudiation of the 2021 VCM Contract.

91. Defendants’ April 6, 2023 letter attached several charts, one of which purported to show a deviation between Shintech’s PVC Netback and market indices CDI and Export FAS. These indices specifically track the market for PVC suspension grade

resin, rather than products which have resin as one of the ingredients (such as compound or pipe).

92. In any event, nothing in Defendants' April 6 letter alleged that Shintech was excluding transactions from the PVC Netback Calculation, such as transactions involving Shintech Affiliates who consumed or converted Shintech's PVC. Nor did the April 6 letter allege that Shintech was improperly excluding downstream sales of products like compound or pipe.

93. In any event, with Defendants' breach for unjustifiably withholding supply looming, Shintech filed this lawsuit seeking specific performance and injunctive relief on April 13, 2023, as allowed by the dispute resolution procedure. *See* Exhibit 1 at Attachment F. That same day, Shintech wrote Defendants advising them of the lawsuit and Shintech's intention to seek preliminary injunctive relief. Shintech also nominated Toshiaki Ansai, Shintech's Vice President, David Tidholm, Shintech's Vice President, and General Counsel, and Yoshiaki Tamaru, Shintech's Plant Controller, to attend the dispute resolution meeting. The parties eventually agreed to meet May 12, 2023. Schumacher himself "confirm[ed] the meeting for May 12," stating "we can be available at 9:00am" and offering "our Houston offices" as the meeting place.

**B. Defendants Unjustifiably and Strategically Extend the Major Turnaround to Gain Leverage over Shintech.**

94. Again, the 2021 VCM Contract provides that a "Major Turnaround will not last more than six (6) weeks in duration." In October 2022, Defendants recognized this and requested an extension to 51-55 days. Shintech accommodated this request. The

Major Turnaround was thus set to end no later than April 28, 2023, requiring VCM supply to resume.

95. Specifically, near the beginning of the Major Turnaround, Defendants made calculated business decisions to operate other assets at Olin's Freeport Texas complex for a longer period of time, knowing this would delay their ability to resume VCM supply to Shintech. Yet, on March 13, 2023, the same day Schumacher sent the email described above, cancelling all existing nominations of VCM, Defendants represented that the Major Turnaround was progressing according to schedule. This representation was false and further evidences that Defendants' activation of Shintech was a bad faith breach of the VCM Contract.

96. Then on March 22, 2023, Defendants again represented to Shintech that the Major Turnaround was on schedule. This representation was also false, further evidencing Defendants' activation of Shintech was a bad faith breach of the VCM Contract.

97. Starting March 29, 2023, Defendants refused to provide any further updates on the completion of its Major Turnaround, further evidencing Defendants' bad faith performance of the VCM Contract.

98. On April 17, 2023, after Shintech filed this lawsuit seeking injunctive relief, Olin's Senior Counsel Dustin Manning acknowledged Defendants' receipt of Shintech's April 13 letter and advised that the Turnaround at "Olin's VCM Plant" was "currently not expected to be complete until May 6, 2023 at the earliest."

99. When supply did not resume by April 29, Shintech provided yet another written notification of default that same day and demanded an immediate cure.

100. After Shintech filed this lawsuit, Defendants took additional actions and inactions that purposefully delayed the completion of the Major Turnaround. As of April 19, 2023, Defendants were approximately 80% complete with the Major Turnaround and, upon information and belief, could have completed the Major Turnaround by May 5, 2023 at the latest. But Defendants did not want to exceed their budget by around 2% to complete the Major Turnaround by that date. The overall message being delivered to Defendants' personnel who were responsible for carrying out the Major Turnaround was to keep costs down, which was a decision in Defendants' reasonable control.

**C. Injunction Hearing and Dispute Resolution**

101. On Wednesday, May 10, 2023, the Court held a hearing on Shintech's Motion for Preliminary Injunction. During the Hearing, the Court noted that based on the briefing, Shintech satisfied three of the four elements necessary for a preliminary injunction, *i.e.*, substantial likelihood of success on the merits, balance of the equities, and public interest. The fourth element—irreparable harm—was a “really close call.”

102. Two days later, on Friday, May 12, the parties met at Shintech's office in Houston, Texas. Shintech sent its three representatives designated under the Dispute Resolution Procedure. However, contrary to the April 6 representation from Olin's Senior Counsel Dustin Manning of who would appear, neither Patrick Schumacher nor Soo Tan (two of Olin's three nominated executives) attended. Instead, Defendants sent Pedro Dias Jorge and one of Defendants' outside counsel representing both Defendants in this litigation to Shintech's office.

103. On May 18, 2023 the Court issued a Memorandum Opinion and Order denying Shintech’s Motion for Preliminary Injunction. The Court noted that irreparable harm was not shown because, “[p]resumably, Shintech could avoid all the harms it identifies by paying Blue Cube the amount in dispute.” Dkt. 54 at 21. The Court further noted that if Shintech prevailed at trial, this “overpayment would be recoverable as damages with interest” in the lawsuit. *Id.*

104. Accordingly, on May 22, 2023, Shintech stated that if VCM supply resumed, Shintech would pay \$18,000,000 under protest within 48 hours. Mr. Schumacher responded, making clear that his March 13, 2023 repudiation was not conditional by stating that “VCM supply will not be resuming.” After Shintech’s Vice President, Toshiaki Ansai, pressed for a further explanation, Mr. Schumacher stated:

My original email didn’t say you could pay under protest—now you are attempting to misreport the history which is clear in the email. It only said we were owed that money and would run when you righted the wrong. This amount has since become closer to \$30mm by the way as we’ve collected more data and continued to suffer additional months of bad PVC pricing.

105. Then, about four hours later, Schumacher followed up with a laundry list of reasons why VCM supply would not be resuming, including that Shintech should first pay the [disputed] \$18 million and *then* seek resumed VCM supply. Shintech promptly responded that it would pay the \$18 million under protest if VCM supply would resume and be maintained within 24 hours of receiving payment.

106. During these communications Mr. Ansai stated multiple times that Shintech was not making an offer to settle the case but was instead making a business decision allowing for the resume of VCM supply as quickly as possible to stop the harm to Shintech.

107. Later during the evening of May 23, 2023, the parties were informed they were ordered to mediate and promptly began making arrangements to mediate with Magistrate Judge Edison.

108. The next morning, on May 24, 2023, Mr. Schumacher changed course and promised to resume VCM supply within 24 hours of receiving \$18 million from Shintech, acknowledging that such payment would be made under protest. Shintech promptly wired \$18 million to Defendants, the amount Mr. Schumacher demanded, and Mr. Schumacher confirmed receipt.

109. Later in the evening on May 24, 2023, the parties were informed they would not be mediating with Magistrate Judge Edison, and the mediation was cancelled.

110. The following morning, May 25, 2023, Mr. Schumacher emailed Mr. Ansai and noted Defendants faced a “major issue in the plant restart” allegedly due to “moisture from a quench tank that’s never seen moisture [getting] into one of the distillation columns.” According to Mr. Schumacher, the VCM plant would now not be operational for an additional 10-14 days.

111. The dispute resolution period for this dispute ended on May 31, 2023.

112. On Friday, June 16, 2023, Defendants advised that they would be able to supply about [REDACTED] of VCM per day, less the half of the required daily supply under the 2021 VCM Contract. Accordingly, this reduced supply resumed on or around June 17, 2023. The same day, June 16, 2023, Mr. Schumacher sent a letter to Shintech asserting that “unforeseen” and “unplanned equipment failures beyond our reasonable control” excused Blue Cube’s performance retroactively to May 25, 2023 – which was the

day following Shintech's payment of \$18 million under protest, which Shintech made in return for Mr. Schumacher's promise to resume product flow within 24 hours of receiving funds from Shintech.

113. VCM supply resumed at reduced rates until around July 12, 2023, when Mr. Schumacher abruptly wrote Shintech stating that VCM production was stopping again for approximately 3 weeks, citing back to his June 16 letter about alleged equipment failures. Mr. Schumacher refused Shintech's request to have Defendants' team of engineers contact Shintech's operations people to give an estimated time for repairs, works, ramp-up, and running at normal rates.

114. Olin has asserted in this lawsuit that its performance is excused under the 2021 VCM Contract's force majeure clause, presumably citing Mr. Schumacher's June 16 letter asserting "unplanned equipment failures beyond our reasonable control" retroactively to May 25. Defendants admit that in June 2023 they declared force majeure under Section 5 of the 2021 VCM Contract.

115. Shintech received minimal to no supply of VCM for the period of approximately July 13 – July 24. Shintech did receive some VCM supply from July 25-26, but supply was again reduced significantly or did not occur from approximately July 28-31. Thereafter, for the remainder of 2023, supply of VCM was inconsistent. For example, Defendants abruptly and significantly lowered supply again in mid-October. Through 2023, Olin did not declare the end of this alleged force majeure event, and VCM provided to Shintech fell well below the 2023 Supply and Purchase Amount.

**D. The Refusal to Supply VCM and Partial Supply of VCM Have Harmed Shintech.**

116. Defendants' refusal and failure to supply VCM has caused Shintech certain irreparable harm and monetary damages. Again, Olin guaranteed Blue Cube's performance under the 2021 VCM Contract.

117. Upon information and belief, Defendants are the only producer of VCM in the United States currently without a downstream PVC operation and all other U.S. producers of VCM do so for purposes of their own PVC production. However, upon information and belief, Defendants efforts to find a partner in the PVC market were active and ongoing for the last few years.

118. Shintech was unable to secure alternative sources of supply. As an example, one of Shintech's main PVC competitors, Westlake Chemical Corporation ("Westlake"), reached out to ask if *Shintech* had any VCM to sell. On June 26, 2023, Shintech reached out to Westlake and other of Shintech's competitors who are known to produce VCM for consumption, such as Occidental Petroleum Corp. ("Oxy") and Formosa Plastics Corporation ("Formosa"), inquiring about available quantities of VCM for Shintech to purchase to make up for the shortfall caused by Defendants. Neither had any available volume of VCM to sell to Shintech. Shintech's competitors have contacted at least one Shintech customer, proposing to supply PVC resin and noting that Defendants' failure/refusal to supply VCM resulted in Shintech cutting export sales and delaying domestic shipments.

119. VCM may only be delivered to Shintech’s Freeport PVC plant by either the pipeline from Blue Cube’s VCM plant or by specialized rail cars. Because of the limited availability of VCM qualified rail cars, and the constraints of the rail connections and unloading facilities, even if Shintech could acquire other supplies of VCM (including from Shintech in Louisiana), it would be unable to get more than a small fraction of the [REDACTED] pounds a day it should be receiving under the 2021 VCM Contract. In short, buying and moving sufficient volumes of VCM from alternative sources to cover the supply shortfall caused by Defendants is not realistically possible.

120. Relatedly, Shintech’s Louisiana VCM production (which supplies approximately 50% of the VCM Shintech uses to produce resin at its Freeport, Texas plant) essentially produces at full capacity, so Shintech cannot simply ramp up production in Louisiana to meet the shortfall. Further, Shintech’s Freeport plant does not have port access. It cannot import VCM from overseas.

121. The 2021 VCM Contract plainly contains in multiple places a single unit ratio of VCM to PVC, such that approximately 1 pound of VCM yields approximately 1 pound of PVC when operational conditions permit.

1. Unit Ratio (constant)	
VCM vs. PVC	1.005 lbs VCM/lbs PVC
[REDACTED]	

122. Accordingly, the shortfall in VCM caused by Defendants’ breach of the 2021 VCM Contract and Olin’s refusal/failure to guaranty Blue Cube’s performance impacts

Shintech's ability to manufacture its grades of resin by approximately the equivalent shortfall in VCM.

123. Not only is Shintech losing sales because of Defendants' conduct, but it is in danger of harm to its reputation and goodwill. Shintech prides itself as being a company on which its customers can rely to provide quality products on a timely basis. Defendants' conduct is putting that reputation at risk. Throughout 2023, Shintech received anxious messages from customers regarding Shintech's ability to fill future orders for PVC resin. These inquiries started no later than May 10, 2023—the same day as the hearing on Shintech's Motion for Preliminary Injunction. Other PVC resin producers attempted to leverage Defendants' breaches into longer-term supply arrangements with Shintech's customers.

124. Shintech in 2023 operated its Freeport PVC plant at reduced capacity simply because of Defendants' breaches. The consequences of this extend beyond Shintech itself. As PVC resin production decreases, impacts include reducing headcount, closing facilities where PVC resin is bagged, and partially shutting down production lines—all of which impact Shintech operators, engineers, and other employees.

125. Defendants' wrongful refusal to deliver VCM resulted and (if not brought back and kept to full volume for the remainder of the 2021 VCM Contract's term) will continue to result, in Shintech losing PVC sales. Defendants were undoubtedly aware at the time the 2021 VCM Contract was executed that those lost profits are the natural and necessary result of Defendants' failure to supply VCM, and it is undisputed that the margin on Shintech's resin sales are one component in establishing the price of VCM.

## E. Defendants' Financial Reporting

126. While Defendants hold nearly \$70 million in overpayments made by Shintech, which should be returned pursuant to the VCM Contract's price adjustment process, a disturbing trend is emerging in Defendants' financials. Since the first quarter of 2022, Defendants "CAPV" business segment has reported almost uniform significant decreases in its Earnings Before Interest Tax Depreciation and Amortization ("EBITDA"). This may explain – but it certainly does not justify – why Mr. Schumacher directed CAPV personnel in early March 2023 to take "drastic actions" towards meeting Olin's Q1 2023 EBITDA goal of \$360 million as Olin's sales were plummeting compared to the prior year.<sup>11</sup> Defendants' EBITDA has since fallen off a cliff, dropping from approximately \$450 million in Q1 2022 to approximately \$150 million in Q3 2024. As reported by MacroTrends, Olin's EBITDA Q3 2024 EBITDA declined by 50% compared to 2023:

Olin annual and quarterly EBITDA history from 2010 to 2024. EBITDA can be defined as earnings before interest, taxes, depreciation and amortization.

- Olin EBITDA for the quarter ending September 30, 2024 was **\$0.146B**, a **50.94% decline** year-over-year.
- Olin EBITDA for the twelve months ending September 30, 2024 was **\$0.866B**, a **39.89% decline** year-over-year.

127. Most troublingly, Olin reported an approximately \$25 million loss for Q3 2024. At the same time, Olin is reporting a net increase in cash flow of approximately \$55.6 million through the first three quarters of 2024. Upon information and belief, that increase in cash flow is due, at least in part, to Defendants' wrongful refusal to issue Shintech approximately \$70 million in credits pursuant to the VCM Contract's price

<sup>11</sup> <https://www.chemanalyst.com/NewsAndDeals/NewsDetails/olin-shatters-records-with-stunning-q1-2023-earnings-report-17167>

adjustment process. It currently is unclear the extent to which Defendants may be using Shintech's money to finance Defendants' operations, improve reported financial results, or fund this and other lawsuits with customers.

**Claims for Relief**

**Count One**  
**Declaratory Judgment**

128. Plaintiff repeats and re-alleges the allegations in the preceding paragraphs as if fully set forth herein.

129. There exists between the parties a dispute as to:

- i. Whether Defendants' may legitimately withhold or refuse or fail to supply VCM to Shintech under the 2021 VCM Contract based on a pricing dispute;
- ii. Whether the 2021 VCM Contract permits a unilateral extension of the Major Turnaround;
- iii. Whether "PVC" as used in the 2021 VCM Contract means the grades of polyvinyl chloride resin Shintech manufactures, or if it also means compounds manufactured downstream by Shintech's Affiliate K-Bin, or if it also means other products (e.g. pipe) manufactured downstream by other of Shintech's Affiliates;
- iv. Whether the parties must include in their respective netback calculations transactions involving Affiliates who consume or convert the PVC or caustic soda (as the case may be) when making a different product, as opposed to when the Affiliate resells the PVC or the caustic soda;

- v. Whether the parties must include in their respective netback calculations the sales made by their Affiliates of downstream products;
- vi. Whether, the portion of Attachment C, Section III(A) of the VCM Contract excerpted below, requires the PVC Netback include PVC sold or transferred by Shintech to an Affiliate, or by or through a Customer Affiliate, to a third party who is not a Shintech Affiliate **only when** the PVC sold or transferred by Shintech to an Affiliate is not used by the Affiliate to make other products (*e.g.*, compound or pipe) that are sold by the Affiliate to a third party who is not a Shintech Affiliate:

The PVC Net Back shall only include PVC first sold by Customer, or by or through a Customer Affiliate, to a third party that is not a Customer Affiliate.

**Illustration A:** If Customer sells or transfers PVC to an Affiliate for \$0.40 per pound, and that Affiliate then sells the PVC to a third party that is not an Affiliate of Customer for \$0.50 per pound, then the sale from the Customer Affiliate to the third party that is not an Affiliate of Customer (\$0.50) is included in the PVC Net Back.

**Illustration B:** If Customer sells or transfers PVC to an Affiliate for \$0.40 per pound, and that Affiliate then sells the PVC to another Customer Affiliate for \$0.50 per pound, and the second Affiliate then resells the PVC to a third party that is not an Affiliate of Customer for \$0.60 per pound, then the sale from the second Affiliate to the third party that is not an Affiliate of Customer (\$0.60) is included in the PVC Net Back.

- vii. Whether Shintech’s lost profits caused by Defendants’ wrongful withholding of and failure to supply VCM fall within the consequential damages waiver set forth in the 2021 VCM Contract, given that the price of VCM is directly dependent on the sale of PVC resin by Shintech;
- viii. Whether the Performance Guarantee obligates Olin to perform Blue Cube’s VCM supply obligations under the 2021 VCM Contract; namely to ensure a continuous supply of VCM;

- ix. Whether Section 7(d) of the 2021 VCM Contract applies to a failure and/or refusal to supply VCM, as opposed to a situation where the VCM supplied does not comply with the contractual quality requirements; and
- x. Whether Defendants' actions respecting the Major Turnaround, as well as allegations contained in and after the June 16, 2023 letter about "equipment failures beyond our reasonable control" were made in good faith or otherwise excuse performance.

130. Shintech requests that the Court declare:

- (i) The 2021 VCM Contract does not permit Defendants to withhold supply of VCM based on a good-faith pricing dispute;
- (ii) Defendants are contractually obligated to continue supplying VCM to Shintech in accordance with the 2021 VCM Contract and the Performance Guarantee for the remainder of the Term;
- (iii) "PVC" as used in the 2021 VCM Contract means the grades of polyvinyl chloride resin Shintech produces and sells;
- (iv) The 2021 VCM Contract does not require the parties to include in their respective netback calculations transactions between the parties' and their Affiliates who use the PVC or caustic soda (as the case may be) in their own process for making a different product, but instead only requires the parties to include in their respective netback calculations transactions where the Affiliate resells the PVC or caustic soda (as the case may be);
- (v) The 2021 VCM Contract does not require the parties to include in their respective netback calculation prices of downstream products sold by the parties' Affiliates;
- (vi) The PVC Netback includes PVC sold or transferred by Shintech to an Affiliate, or by or through a Customer Affiliate, to a third party who is not a Shintech Affiliate **only when** the PVC sold or transferred by Shintech to an Affiliate is not used by the Affiliate to make other

products (*e.g.*, compound or pipe) that are sold by the Affiliate to a third party who is not a Shintech Affiliate;

- (vii) Shintech's lost profits are direct damages and do not fall within the consequential damages waiver set forth in the 2021 VCM Contract;
- (viii) the 2021 VCM Contract's Performance Guarantee obligates Olin to perform Blue Cube's VCM supply and other obligations under the 2021 VCM Contract in the event of Blue Cube's default;
- (ix) Section 7(d) of the 2021 VCM Contract does not apply to Defendants' failure and/or refusal to supply VCM to Shintech;
- (x) Defendants' actions respecting the 2023 Major Turnaround and following the 2023 Major Turnaround were not in good faith and/or performance is not excused; and,
- (xi) Alternatively, and only in the unlikely event Defendants' interpretation of the VCM Contract is correct, thus requiring Shintech to include (in the PVC Netback calculation) sales or transfers to Affiliates who use resin to manufacture other products and/or the downstream sales made by Shintech's Affiliates, then Shintech requests a declaration that Defendants' sales or transfers to Defendants' Affiliates who use caustic soda to manufacture other products must also be included in the Caustic Netback calculation, as well as downstream sales of the products made by Defendants' Affiliates.

**Count Two**  
**Breach of Contract Against Blue Cube**

131. Plaintiff repeats and re-alleges the allegations in the preceding paragraphs as if fully set forth herein.

132. Blue Cube has committed numerous material breaches of the 2021 VCM Contract, entitling Shintech to injunctive relief and damages as set forth below.

**A. Withholding of VCM Supply Based on a Good Faith Pricing Dispute**

133. Blue Cube is obligated to supply VCM to Shintech, as provided by the 2021 VCM Contract.

134. Under the 2021 VCM Contract's plain and unambiguous terms, nothing permits Blue Cube to withhold VCM based on a good faith pricing dispute.

135. Despite this, Blue Cube materially breached the 2021 VCM Contract when Mr. Schumacher repudiated its obligations under the 2021 VCM Contract and in refusing to supply VCM based on a good faith pricing dispute involving unsupported allegations that Shintech had incorrectly calculated the PVC Net Back and that Defendants had incorrectly calculated the Caustic Net Back. Mr. Schumacher demanded that Shintech pay \$18 million for these alleged miscalculations.

136. Although Blue Cube (through Mr. Schumacher) promised to resume VCM supply in exchange for Shintech paying \$18,000,000 under protest, and to resume supply within 24 hours of receiving such payment, VCM supply did not resume until June 17, 2023, despite Shintech's payment under protest of the \$18,000,000, and the supply of VCM is was only at about 50% of the daily rates through July 12, when Defendants again stopped supply.

137. Blue Cube's refusal or failure to fully supply VCM has irreparably harmed Shintech, and Shintech will suffer further certain irreparable harm if this conduct is not enjoined.

138. In the alternative, Blue Cube's refusal or failure to fully supply VCM has caused, and will continue to cause Shintech monetary damages. Due to the way VCM is priced under Attachment C to the 2021 VCM Contract, Blue Cube knew that a failure to supply VCM to Shintech would naturally and necessarily cause lost profits on PVC resin

sales, and the margin of PVC resin sales is shared with Defendants as a component of the VCM pricing formula.

139. Pursuant to Texas Civil Practice and Remedies Code §38.001, *et seq.*, Shintech is entitled to recover and hereby seeks its reasonable and necessary attorneys' fees and costs.

**B. Failure to Provide End-of-Year Credit for 2022**

140. As noted, the 2021 VCM Contract requires an end-of-year true up when the aggregate quantity of Product sold does not equal or exceed [REDACTED] pounds. In such cases, Blue Cube must issue a credit note to Shintech. This occurred for the year 2021, and Blue Cube issued the appropriate credit note. It occurred again for the year 2022, but Blue Cube has refused and otherwise failed to issue a credit note despite Shintech's requests for a \$2,424,435.74 credit note. These actions constitute a breach of contract causing damages to Shintech. Again, Olin guaranteed Blue Cube's performance under the 2021 VCM Contract.

141. Pursuant to Texas Civil Practice and Remedies Code §38.001, *et seq.*, Shintech is entitled to recover and hereby seeks its reasonable and necessary attorneys' fees and costs.

**C. Failure to Report Information and Provide Credits for Q1 2023 – Q3 2024**

142. The 2021 VCM Contract also requires monthly and quarterly adjustments to the VCM price selected by Defendants. The contract requires that the estimated invoice price "shall be selected by [Defendants'] to minimize the subsequent price

adjustments.” Throughout 2023 and continuing through today, Olin is selecting a price that does *not* minimize the subsequent price adjustments, *i.e.*, Defendants are artificially inflating the VCM price Shintech pays on a monthly basis and then refusing to issue Shintech credits when the actual VCM price becomes known or knowable. The 2021 VCM Contract requires Blue Cube to “issue the appropriate debit or credit” within five business days. Blue Cube failed to issue a credit note for the required adjustments through the first quarter of 2023, which are approximately \$5.8 million. These actions constitute a breach of contract causing Shintech damages. Olin guaranteed Blue Cube’s performance under the 2021 VCM Contract.

143. Since the first quarter of 2023, this breach has continued and will continue unless the Court intervenes. The price adjustments accumulating during Q2 2023 entitle Shintech to a credit of approximately \$408,000. The price adjustments accumulating during Q3 2023 entitle Shintech to a credit of approximately \$6,000,000. The price adjustments accumulating during Q4 2023 entitle Shintech to a credit of approximately \$12,600,000. The price adjustments accumulating during Q1 2024 entitle Shintech to a credit of approximately \$17,460,000. The price adjustments accumulating during Q2 2024 entitle Shintech to a credit of approximately \$18,200,000. The price adjustments accumulating during Q3 2024 entitle Shintech to a credit of approximately \$10,200,000.

<b>Quarter</b>	<b>Credit Owed</b>
<b>Q1 2023</b>	\$5,800,000
<b>Q2 2023</b>	\$408,000

<b>Q3 2023</b>	\$6,000,000
<b>Q4 2023</b>	\$12,600,000
<b>Q1 2024</b>	\$17,460,000
<b>Q2 2024</b>	\$18,200,000
<b>Q3 2024</b>	\$10,200,000
<b>Total</b>	<b>\$70,668,000</b>

144. Defendants, in breach of the terms of the 2021 VCM Contract, have refused to issue the credits identified above, which exceed \$70 million and continue to accumulate. Defendants further stopped timely reporting the Caustic Netback as required by the 2021 VCM Contract, thus delaying the contractual price adjustments and credits process.

145. Shintech has repeatedly requested these credits from Defendants, even suggesting that Defendants issue the credits under protest (similar to what Shintech did when paying Defendants \$18 million in May 2023). In response, Olin’s Business Director of Chlorine/HCl & Vinyls, Jorge Pedro Dias (apparently speaking on behalf of both Defendants) stated he spoke with “senior management” and that Defendants were not going to issue any credits while this litigation was pending. Olin’s Director of Chemicals PCI Sales and AR, Rosanne Richter, re-affirmed this May 10. Thus, there is no debate that both Defendants have actual notice of these breaches, and based on Defendants’ response, it is anticipated that these breaches will be continuing in nature through trial. Indeed, on May 16, 2024, Shintech supplemented its July 7, 2023, Payment Demand and Notice of Further Default, advising Defendants of these continuing breaches, requesting that they stop immediately, and demanding that (i) Blue Cube promptly pay Shintech’s demand; and

(2) Olin cure Blue Cube's breaches. Such breaches were not cured and Shintech's demand was not paid, and thus on May 24, 2024, Shintech made written demand for payment directly to Olin. A similar pattern has continued, *i.e.*, Shintech has continued to request in writing that Defendants issued required credit notes, and Defendants have continued to refuse to do so. Thus, there is no debate that Defendants have actual notice of these breaches, and there is no debate based on Defendants' responses that these breaches will be continuing until the Court intervenes.

146. Significantly, the amounts of the credits were based, upon information and belief, on a new methodology Defendants use for calculating the Caustic Netback, which Shintech disputes. Upon information and belief, Defendants implemented this new methodology around the time Mr. Schumacher asserted that Defendants had been improperly calculating the Caustic Netback. In other words, it is possible that the credits owed are larger than what Shintech requested and that additional amounts owed will form part of Shintech's damages at trial.

147. Pursuant to Texas Civil Practice and Remedies Code § 38.001, *et seq.*, Shintech is entitled to recover and hereby seeks its reasonable and necessary attorneys' fees and costs.

**D. Capacity Reservation Fee**

148. As noted, Shintech pays a [REDACTED] "Capacity Reservation Fee" each year, just to *reserve the right to* obtain VCM from Defendants. Shintech paid the Capacity Reservation Fee for 2023 and nominated [REDACTED] pounds of VCM for delivery in 2023. As its "Sellers Commitment," Blue Cube agreed to supply [REDACTED] pounds in

2023, thus constituting the parties' Supply and Purchase Amount for 2023. Shintech received significantly lower volumes of VCM throughout 2023, thus entitling Shintech to reimbursement for the unamortized annual balance of the Capacity Reservation Fee. Blue Cube has refused and otherwise failed to pay this amount, which is a breach of the 2021 VCM Contract.

149. Pursuant to Texas Civil Practice and Remedies Code § 38.001, *et seq.*, Shintech is entitled to recover and hereby seeks its reasonable and necessary attorneys' fees and costs.

**E. Attempt to Unilaterally Extend Major Turnaround**

150. When supply of VCM did not resume following the required conclusion of the Major Turnaround on April 29, 2023, Mr. Schumacher's March 13 repudiation on behalf of Blue Cube and Olin matured into a material breach of the 2021 VCM Contract.

151. The 2021 VCM Contract provides that a "Major Turnaround will not last more than six (6) weeks in duration." In October 2022, Defendants recognized this and requested an extension to 51-55 days. Shintech agreed. The Major Turnaround was thus set to end no later April 28, 2023, requiring VCM supply to resume April 29. Supply did not resume until June 17, 2023, and then only at reduced rates with no reliable estimate of when full rates would resume.

152. Further, Mr. Schumacher subsequently promised on behalf of Defendants to resume VCM supply within 24 hours of receiving \$18,000,000 from when Shintech paid under protest. Supply did not resume with those 24 hours, but rather only resumed on or

around June 17, 2023 — and even then only partial supply of VCM resumed through July 12, 2023.

153. Further, Blue Cube’s actions with respect to the Major Turnaround, including Mr. Schumacher’s June 16, 2023 letter asserting “unplanned equipment failures beyond our reasonable control” excused performance, were not made in good faith.

154. The attempt to unilaterally extend the Major Turnaround has caused Shintech certain irreparable harm for which there is no adequate remedy at law. Therefore, Shintech is entitled to permanent injunctive relief.

155. In the alternative and additionally, the unilateral extension of the Major Turnaround has caused Shintech monetary damages. Due to the way VCM was priced under Attachment C to the 2021 VCM Contract, Defendants knew that a failure to supply VCM to Shintech would naturally and necessarily cause lost profits on PVC resin sales and margin on such sales is a component in calculating the VCM price. While it is possible that some of these damages may be quantified up to the point of trial, the 2021 VCM Contract does not end until the end of 2030.

156. Pursuant to Texas Civil Practice and Remedies Code § 38.001, *et seq.*, Shintech is entitled to recover and hereby seeks its reasonable and necessary attorneys’ fees and costs.

**F. Alternative Claim, Defendants’ Failure to Include Downstream Sales in the Caustic Netback**

157. If in the unlikely event Defendants’ interpretation of the VCM Contract is correct, thus requiring Shintech to include (in the PVC Netback calculation) sales or

transfers to Affiliates who use resin to manufacture other products and/or the downstream sales made by Shintech's Affiliates, then Defendants' sales or transfers to Defendants' Affiliates who use caustic soda to manufacture other products must also be included in the Caustic Netback calculation, as well as downstream sales of the products made by Defendants' Affiliates with or from, in whole or in part, Defendants' caustic soda. That would include, without limitation, products like bleach and products manufactured in Olin's epoxy business such as epichlorohydrin and liquid epoxy resins.

158. Defendants have admittedly failed to include in the Caustic Netback sales or transfers to Defendants' Affiliates who use caustic soda to manufacture other products, as well as downstream sales of the products made by Defendants' Affiliates with or from, in whole or in part, Defendants' caustic soda. That would include, without limitation, products like bleach and products manufactured in Olin's epoxy business such as epichlorohydrin and liquid epoxy resins. Defendants' failure has caused monetary damage to Shintech.

**G. Breach of Obligation of Good Faith**

159. Under the Texas Business and Commerce Code, every contract imposes an obligation of good faith in its performance, and this obligation may not be disclaimed by agreement. Good faith means honesty in fact and the observance of reasonable commercial standards of fair dealing.

160. Blue Cube has neither acted with honesty-in-fact nor observed reasonable commercial standards of fair dealing under the 2021 VCM Contract. Without limitation, this includes Mr. Schumacher abruptly cancelling Shintech's 2023 nominations of VCM

based on a pricing dispute comprised of Defendants' own alleged miscalculations, which the 2021 VCM Contract does not permit. These actions are an extension of Defendants' business model in leveraging Defendants' status in the market to coerce pricing concessions from customers.

161. Blue Cube's failure to exercise good faith includes simultaneous statements that Defendants would not follow the 2021 VCM Contract's dispute resolution procedure and subsequent decision to not send two of the three representatives previously designated to meet with Shintech. It includes Defendants' refusal to invoke the 2021 VCM Contract's audit procedure.

162. Blue Cube also failed to act with honesty-in-fact and to observe reasonable commercial standards for fairly dealing with Shintech regarding the Major Turnaround, including the March 29 decision to cease updates on the status of the Major Turnaround, decision to "keep the spend down" for completing the Major Turnaround, promise to resume VCM supply within 24 hours of Shintech's \$18 million payment under protest, and June 16 letter asserting "unplanned" equipment failures asserted retroactively to May 25, 2023.

163. Blue Cube has also failed to act with honesty-in-fact and to observe reasonable commercial standards for fairly dealing with Shintech regarding the 2021 VCM Contract's requirements to timely report information and issue credits associated with Defendants revamped methodology for calculating the Caustic Netback. Again, the credits Shintech requested were based on calculations performed subsequent to Shintech's receipt of Defendants' own (untimely) reporting. Defendants are essentially leveraging the fact

that Shintech needs Defendants' supply of VCM by withholding amounts owed to Shintech, in hopes that Shintech further capitulates and accedes to Defendants' extra-contractual and bad faith demands. Again, Olin guaranteed the performance of Blue Cube's obligations under the 2021 VCM Contract.

164. This conduct described above constitutes a breach of the 2021 VCM Contract causing Shintech damages.

165. Pursuant to Texas Civil Practice and Remedies Code § 38.001, *et seq.*, Shintech is entitled to recover and hereby seeks its reasonable and necessary attorneys' fees and costs.

**Count Three**  
**Breach of Contract and Guarantee by Olin**

166. Plaintiff repeats and re-alleges the allegations in the preceding paragraphs as if fully set forth herein.

167. As noted, on March 13, 2023, Olin's Vice President and President, Chlor Alkali Products and Vinyls, Patrick Schumacher, wrote Shintech on behalf of Olin and Blue Cube. Mr. Schumacher alleged that pricing errors by both Shintech and Defendants resulted in \$18 million in revenue that Olin was shortchanged. Mr. Schumacher cancelled Shintech's 2023 nominations of VCM, stating "we will not provide product following our turnaround unless these matters have been fully resolved. Mr. Schumacher also stated "we will NOT be following the contract resolution mechanism."

168. On March 17, 2023, Shintech’s General Counsel notified Mr. Schumacher that the substance of his March 13 email were “properly considered as an anticipatory breach of Contract by Olin.”

169. On March 31, 2023, Shintech again demanded that the March 13 threats be retracted and that VCM deliveries would resume immediately following completion of the Major Turnaround.

170. On, April 6, 2023, Shintech notified Blue Cube and Olin for a third time that Shintech intended to specifically enforce “Olin/Blue Cube’s obligations under the Contract.”

171. On April 29, 2023, the day VCM supply was contractually required to resume (but did not), Shintech sent yet another letter to Olin reiterating its demand that Defendants perform their obligations under the 2021 VCM Contract, which Shintech expressly noted “includes the Guaranty.”

172. Olin breached the Performance Guarantee by failing to cure Blue Cube’s defaults under and other breaches of the 2021 VCM Contract as described above in Count Two. Without repeating those obligations in full here, Olin breached its obligations under the Guarantee requiring the “full and prompt performance of the obligations of Blue Cube,” when VCM supply did not resume on April 29, 2023, the planned completion date for the Major Turnaround. This included, without limitation, Olin’s obligations to:

- a. Ensure supply of VCM to Shintech resume on April 29, 2023, following the Major Turnaround’s required completion date of April 28, 2023, and not be unilaterally extended by Blue Cube;

- b. Ensure supply of VCM resume within 24 hours of when Shintech paid \$18 million under protest;
- c. Pay Shintech the pro-rata return of the 2023 Capacity Reservation Fee and the other credits claimed herein;
- d. Act in good faith in its performance of the Performance Guarantee.

173. Shintech has performed all conditions precedent for Olin's performance under the Guarantee, including providing several notices of Blue Cube's default and demanding that Olin cure. It is undisputed that Olin personnel have actual notice of Shintech's repeated requests for payment as Olin personnel have themselves noted Olin's refusal to perform. Alternatively, any conditions precedent have been waived or otherwise are excused.

174. Olin's breach of its Performance Guarantee by failing to cure Blue Cube's default and by failing to act in good faith in its performance of the Performance Guarantee has caused, and continues to cause Shintech certain irreparable harm for which there is no adequate remedy at law. Therefore, Shintech is entitled to permanent injunctive relief, which includes ensuring Olin supplies VCM to Shintech during periods where Blue Cube does not.

175. In the alternative and additionally, Olin's failure to cure Blue Cube's default and failure to act in good faith in its performance of the Performance Guarantee has caused Shintech monetary damages. Due to the way the parties priced VCM under Attachment C, Defendants knew that a failure to supply VCM to Shintech would naturally and necessarily cause lost profits on PVC resin sales, and margin on such sales is a component of

calculating the VCM price. While it is possible that some of these damages may be quantified up to the point of trial, the 2021 VCM Contract does not end until the end of 2030.

176. On July 7, 2023, Shintech sent a payment demand to Olin pursuant to the Performance Guarantee in the amount of \$27,380,000 through June 30, 2023. That amount included payment associated with the failure/refusal to supply any VCM to Shintech for the period of April 29 through June 16, 2023, the unjustified partial supply of VCM to Shintech for the period June 17 through June 30, 2023, and a pro-rata return of the 2023 Capacity Reservation Fee that Shintech paid. To date, Olin has not paid.

177. In that same July 7, 2023 letter, Shintech provided additional notification of Blue Cube's default with respect to the \$18 million Shintech paid under protest on May 24, 2023, an approximately \$5.8 million credit Blue Cube owed to Shintech through the first quarter of 2023 for price adjustments under the VCM Contract, and the approximately \$2.4 million Blue Cube owed to Shintech for the 2022 end-of-year true up, demanding Blue Cube pay those amounts totaling \$26,200,000.00 As noted above, since then, Blue Cube has failed to make additional price adjustments and issue additional credits to Shintech accumulating from Q2 2023 through Q3 2024. Shintech's July 7, 2023 letter noted that should Blue Cube not pay the amounts Shintech requested, Shintech would follow-up with a separate demand that Olin pay those amounts. In April 2024, and after speaking with "senior management," Olin's Business Director of Chlorine/HCl/Vinyls, Pedro Dias Jorge, stated Defendants were not going to issue any credits during the course of this litigation - even under protest. Defendants are intentionally breaching the VCM

Contract in bad faith. Shintech's July 7 letter did not consider other damages to Shintech which were not quantifiable at this time, including without limitation loss of customer good will and reputation harm. Shintech's July 7 letter was made without prejudice, and Shintech reserved all rights.

178. As noted above, Shintech wrote Defendants on May 16, 2024 about these breaches, demanded that they cease immediately, requested that Blue Cube promptly pay Shintech's demand, and requested that Olin otherwise cure Blue Cube's breaches to ensure Shintech's demand was paid. When that did not happen, Shintech demanded payment from Olin on May 24, 2024. Shintech has since continued to request in writing to Olin personnel that price adjustments be performed and credits issued pursuant to the VCM Contract. Olin personnel have continued in their refusal to do so.

179. Pursuant to the terms of the Performance Guarantee and Texas Civil Practice and Remedies Code § 38.001, *et seq.*, Shintech is entitled to recover and hereby seeks its reasonable and necessary attorneys' fees and costs.

**Count Four**  
**Money Had Received Against Defendants**

180. Plaintiff repeats and re-alleges the allegations in the preceding paragraphs as if fully set forth herein.

181. As alleged above, on May 24, 2023 Shintech paid \$18,000,000 under protest in exchange for Mr. Schumacher's express promise to resume VCM supply within 24 hours of receiving such payment under protest, which was acknowledged. VCM supply only partially resumed for the period of around June 17 – July 12, 2023.

182. Shintech has not miscalculated the PVC Net Back payments.

183. The \$18,000,000 Shintech paid should be returned to Shintech in equity and good conscience.

184. Further, Shintech paid a Capacity Reservation Fee to reserve the right to purchase VCM in 2023. Shintech is entitled to the return of at least 1/12 of this fee, representing the month or more Shintech has been without VCM supply following the deadline for completion of the Major Turnaround for calendar year 2023. Shintech is further entitled to the return of this portion of the Capacity Reservation Fee pursuant to the 2021 VCM Contract and representative of the VCM volumes not supplied from April 29 through June 30, 2023.<sup>12</sup>

185. Shintech also has been overpaying Defendants' "estimated VCM price" which, as described above, is inflated and more than what Shintech should have paid at the time of true-ups. Defendants are refusing to issue credits to Shintech for these overpayments totaling approximately \$70 million through Q3 2024.

186. Accordingly, Shintech seeks the return of money had and received with respect to overpayments made.

**Count Five**  
**Unjust Enrichment Against Defendants**

187. Plaintiff repeats and re-alleges the allegations in the preceding paragraphs as if fully set forth herein.

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<sup>12</sup> Defendants' retention of the full Capacity Reservation Fee for 2023 also constitutes a breach of the 2021 VCM Contract, Section 2(b).

188. In addition, or in the alternative, Defendants are liable under the principle of unjust enrichment. Shintech has correctly calculated and paid for VCM pursuant to the 2021 VCM Contract. Allowing Defendants to retain the \$18,000,000 Shintech paid under protest and the full Capacity Reservation Fee and for the approximately \$70 million in credits (through Q3 2024) associated with Defendants' failure to select an invoice price minimizing subsequent price adjustments and failure to issue credits gives Defendants an undue advantage, would be unconscionable, and otherwise is an unjust enrichment to Defendants to the detriment of Shintech and Shintech is entitled to recover such overpayments.

**Application for Injunctive Relief**

189. Shintech incorporates the preceding paragraphs.

190. The 2021 VCM Contract expressly states that Shintech is entitled to specific performance in the event of a breach. Specifically, Section 7(b) of the 2021 VCM Contract provides: "Except to the extent expressly limited herein, each Party reserves all rights and remedies available to it under applicable law, including, but not limited to, the remedy of specific performance." Exhibit 1, p. 6.

191. The Uniform Commercial Code ("UCC") governs the 2021 VCM Contract. The UCC "seeks to further a more liberal attitude than some courts have shown in connection with the specific performance of contracts of sale." UCC § 2-716, Cmt 1. Section 2-716 is codified into Texas law by Texas Business and Commercial Code § 2.716, which provides that "[s]pecific performance may be decreed where the goods are unique or in other proper circumstances."

192. VCM is a “unique” product within the meaning of Texas Business and Commercial Code § 2.716. The circumstances of the parties’ contractual and business relationship are also unique. The supply of VCM to Shintech is through a 1.3 mile long pipeline that connects the parties’ respective plants. Shintech has received its VCM supply in this manner for decades, and has therefore structured its operations around such supply. Further, VCM is a highly toxic chemical that is difficult to transport and is not readily available in sufficient quantities on the open market.

193. The refusal and/or failure to supply VCM in accordance with the 2021 VCM Contract and unilateral extension of the Major Turnaround has caused, and will continue to cause, Shintech damages that cannot fully be quantified, and for which there is no remedy at law.

194. Without supply of VCM, Shintech reduced PVC resin production at its Freeport, Texas VCM Plant, and will be unable to fill orders as they come due. This threatens to damage Shintech’s reputation and goodwill, as customers have already reached out, anxiously inquiring about Shintech’s ability to supply PVC resin.

195. Further, the 2021 VCM Contract contains a provision by which the parties waived the right to recover consequential damages. *See* Exhibit 1, p. 6. To the extent Defendants attempt to argue that any portion of Shintech’s money damages are deemed consequential and thus unrecoverable (which such damages are not consequential), Shintech has no adequate remedy at law.

196. As this Court indicated at the May 10<sup>th</sup> preliminary injunction hearing, Shintech is likely to succeed on the merits. There is no contractual right to withhold supply

of VCM based on a good faith pricing dispute, nor is there any basis for unilaterally extending the Major Turnaround under the 2021 VCM Contract. Similarly, there is no contractual right to inflate the VCM price and refuse to issue credits for overpayments.

197. The equities likewise favor Shintech. If Defendants are enjoined, Shintech will pay several hundred million dollars for VCM, and Defendants will only be required to perform their contractual obligations, including without limitation supplying VCM to Shintech, charging no more than an estimated price calculated to minimize subsequent price adjustments, timely reporting information to Shintech, and timely issuing price adjustments and credits as the VCM Contract requires. This applies to Blue Cube and, as guarantor of Blue Cube's obligations, Olin. Defendants should not be permitted to continue to charge an overly inflated VCM price and hold Shintech's overpayments as ransom for the VCM Defendants are obligated to provide. Shintech's entitlement to specific performance of the 2021 VCM Contract includes enforcement of its pricing terms.

198. The public interest will also be served by an injunction. VCM is a highly-volatile, heavily regulated substance, which is dangerous to the public if not safely produced and transported. Shintech cannot turn up the volume on Louisiana production capacity without extensive permitting, design, and construction processes ensuring safe operations. VCM is required to make PVC resin, used in downstream PVC compounds and other products such as blood bags, tubing, CPR mannequins, respirator masks, PPE, IV bags, blister pack for medications, various housing and building products, municipal water and sewer systems, windows, etc. When VCM supply drops, PVC resin supply drops, causing the price for PVC resin and products containing PVC resin to go up. A PVC

resin shortage delays access to these products. Cutting Shintech's VCM supply will have a noticeable impact on the PVC resin market nationwide. Further, it is always in the public interest to enforce valid contractual obligations. The public interest is therefore served by the issuance of a permanent injunction.

199. Based on the foregoing, after a trial on the merits, Shintech is entitled to a permanent injunction of specific performance requiring Defendants to continue supplying VCM (whether under the 2021 VCM Contract or the Performance Guarantee) to Shintech in accordance with the 2021 VCM Contract for the remainder of the Term.

200. Shintech also is entitled to specific performance and a permanent injunction related to Defendants' obligations to charge no more than an estimated price calculated to minimize subsequent price adjustments, to timely report information to Shintech under the VCM Contract, and to issue price adjustments/credits, including for the \$70 million currently held and which, absent Court intervention, will quickly exceed \$100 million, given the current trend. The Court, in equity, should intervene and prevent any further injustice.

### **Jury Demand**

201. Shintech hereby demands a trial by jury.

### **Prayer**

**Wherefore**, Plaintiff prays that the Court enter judgment against Defendants and award the following relief:

A. Declarations as set forth above;

- B. Specific performance and permanent injunction requiring Defendants to specifically perform their obligation to supply or otherwise ensure the supply of VCM under the 2021 VCM Contract for the remainder of the 2021 VCM Contract's term, to charge no more than an estimated price calculated to minimize subsequent price adjustments, and to provide credits under the 2021 VCM Contract for Defendants inflated VCM price as required under the 2021 VCM Contract;
- C. Return of money had and received and/or disgorgement of the \$18,000,000 payment Shintech made under protest for the resumption of VCM Supply and;
- D. Damages naturally and necessarily flowing from Defendants' breaches of the 2021 VCM Contract and the Guarantee;
- E. Plaintiff's reasonable attorneys' fees under Texas Civil Practice and Remedies Code § 38.001 and the Performance Guarantee;
- F. All costs of suit;
- G. Pre- and post-judgment interest; and
- H. All other and further relief, at law and in equity, to which Plaintiff may show itself to be justly entitled.

Dated: December 4, 2024.

Respectfully submitted,

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**Certificate Of Service**

I hereby certify that on December 4, 2024, a true and correct copy of the foregoing document was served upon Defendants' counsel via ECF and electronic email.

/s/ David W. Salton  
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