

Federal Court



Cour fédérale

Date: December 15, 2022

Docket: T-1365-20

Toronto, Ontario, December 15, 2022

PRESENT: Madam Associate Judge Martha Milczynski

PROPOSED CLASS ACTION

BETWEEN:

TOPHER'S BEARD COMPANY

Plaintiff

and

OLIN CORPORATION, K.A. STEEL CHEMICALS, INC., OLIN CANADA ULC, 3229897 NOVA SCOTIA CO., OCCIDENTAL PETROLEUM CORPORATION, OCCIDENTAL CHEMICAL CORPORATION, OXY CANADA SALES INC., WESTLAKE CHEMICAL CORPORATION, AXIALL CANADA, INC., SHIN-ETSU CHEMICAL CO., LTD., SHINTECH INCORPORATED, FORMOSA PLASTICS CORPORATION and FORMOSA PLASTICS CORPORATION, U.S.A.

Defendants

ORDER

1. **UPON MOTION** dated April 20, 2022, made in writing by the Plaintiff pursuant to Rule 369 of the *Federal Courts Rules*, SOR/98-106, in which the Plaintiff seeks an Order to discontinue this action against Occidental Petroleum Corporation (“OPC”) and an Order for leave to issue a Fresh as Amended Statement of Claim, to *inter alia*, remove OPC

from the style of cause and to make further amendments in respect of the claims made against the remaining defendants;

AND UPON having reviewed the materials contained in the Plaintiff's motion record;

AND UPON considering OPC's consent to the request to discontinue this action as against it;

AND UPON noting that the Plaintiff and OPC agree that the discontinuance is without prejudice to the Plaintiff's ability to subsequently move for leave to add OPC as a defendant in this action in the future upon discovery of any new material facts or information, and that OPC reserves all rights in the event the Plaintiff seeks to add it as a defendant to this action in the future;

THIS COURT ORDERS that:

2. The action is hereby discontinued, without prejudice and without costs, against Occidental Petroleum Corporation pursuant to rule 334.3 of the *Federal Courts Rules*, SOR/98-106.
3. Leave is granted to issue a Fresh as Amended Statement of Claim, to *inter alia*, remove OPC from the style of cause and make further amendments, in the form attached hereto as Schedule "A".
4. The style of cause shall be amended as follows:

TOPHER'S BEARD COMPANY

Plaintiff

and

**OLIN CORPORATION, K.A. STEEL CHEMICALS, INC., OLIN
CANADA ULC, 3229897 NOVA SCOTIA CO., OCCIDENTAL
CHEMICAL CORPORATION, OXY CANADA SALES INC., WESTLAKE
CHEMICAL CORPORATION, AXIALL CANADA, INC., SHIN-ETSU
CHEMICAL CO., LTD., SHINTECH INCORPORATED, FORMOSA
PLASTICS CORPORATION, FORMOSA PLASTICS CORPORATION,
U.S.A.**

Defendants

5. Notice under rules 334.35 or 334.36 of the *Federal Courts Rules*, SOR/98-106 is not required.
6. This Order is without prejudice to all remaining and future defendants in this proceeding.
7. In the event that the plaintiff subsequently moves for leave to add OPC as a defendant in this action and such relief is granted, service of such claim can be affected by serving a copy of the claim on OPC's counsel of record in this action. Any such motion must be brought on notice to OPC, served on its counsel of record in this action.

“Martha Milczynski”
Associate Judge

Schedule "A"

Court File No.: T-1365-20

FEDERAL COURT

PROPOSED CLASS PROCEEDING

B E T W E E N :

TOPHER'S BEARD COMPANY

Plaintiff

- and -

**OLIN CORPORATION, K.A. STEEL CHEMICALS, INC., OLIN CANADA ULC,
3229897 NOVA SCOTIA CO., OCCIDENTAL CHEMICAL CORPORATION, OXY
CANADA SALES INC., WESTLAKE CHEMICAL CORPORATION, AXIALL
CANADA, INC., SHIN-ETSU CHEMICAL CO., LTD., SHINTECH
INCORPORATED, FORMOSA PLASTICS CORPORATION, FORMOSA
PLASTICS CORPORATION, U.S.A.**

Defendants

FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required prepare a statement of defence in Form 171B prescribed by the *Federal Court Rules*, serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN THIRTY DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the *Federal Court Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: November 13, 2020
Amended: December 15, 2022

Issued by _____
(Registry Officer)

Address of court office 180 Queen Street West, Suite 200
Toronto, Ontario M5V 3L6

TO: OLIN CORPORATION
190 Carondelet Plaza, Suite 1530
Clayton, Missouri, USA 63105

AND TO: K.A. STEEL CHEMICALS, INC.
15185 Main Street, P.O. BOX 729
Lemont, Illinois, USA 60439

AND TO: OLIN CANADA ULC
675 Boulevard Alphonse-Deshaies,
Becancour, Quebec G9H 2Y8

AND TO: 3229897 NOVA SCOTIA CO.
1300-1969 Upper Water Street, Purdy's Wharf Tower II
Halifax, Nova Scotia B3J 3R7

AND TO: OCCIDENTAL CHEMICAL CORPORATION
14555 Dallas Parkway, Suite 400
Dallas, Texas, USA 75254

AND TO: OXY CANADA SALES INC.
14555 Dallas Parkway, Suite 400
Dallas, Texas, USA 75254

AND TO: WESTLAKE CHEMICAL CORPORATION
2801 Post Oak Blvd., Suite 600
Houston, Texas, USA 77056

AND TO: AXIALL CANADA, INC.
Suite 3000, 1 Place Ville Marie
Montreal, Quebec H3B 4N8

AND TO: SHIN-ETSU CHEMICAL CO., LTD.
Asahi Seimei Otemachi Bldg., 6-1, Ohtemachi 2-chome,
Chiyoda-ku, Tokyo 100-0004, Japan

AND TO: SHINTECH INCORPORATED
3 Greenway Plaza, #1150
Houston, Texas, USA 77046

AND TO: FORMOSA PLASTICS CORPORATION
No. 100, Shuiguan Road, Renwu District
Kaohsiung City, Taiwan 814

AND TO: FORMOSA PLASTICS CORPORATION, U.S.A.
9 Peach Tree Hill Road
Livingston, New Jersey, USA 07039

CLAIM

DEFINED TERMS

1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

- (a) “**Caustic Soda**”, also known as sodium hydroxide (NaOH) or lye, is a commodity chemical sold in solid and liquid forms;
- (b) “**Class**” means all persons in Canada, except for the Excluded Persons, who purchased Caustic Soda during the Conspiracy Period;
- (c) “**Class Member**” means any member of the “**Class**”;
- (d) “**Federal Courts Act**” means the *Federal Courts Act*, RSC 1985, c F-7, any amendments thereto, prior applicable legislation in force, and applicable regulations thereunder;
- (e) “**Federal Courts Rules**” means the *Federal Courts Rules*, SOR/98-106, as amended;
- (f) “**Competition Act**” means the *Competition Act*, RSC 1985, c C-34, any amendments thereto, prior applicable legislation in force, and applicable regulations thereunder;
- (g) “**Conspiracy Period**” means a period spanning from October 1, 2015 until February 29, 2020; and

- (h) **“Excluded Persons”** means the Defendants and each Defendant’s past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors, and assigns.

RELIEF SOUGHT

2. The Plaintiff claims on its own behalf and on behalf of other Class Members:

- (a) an order certifying this action as a class proceeding and appointing the plaintiff as a representative plaintiff for the proposed Class;
- (b) a declaration that the Defendants conspired and agreed with each other and their other unknown co-conspirators to raise, maintain, fix, and/or stabilize the price of Caustic Soda in North America during the Conspiracy Period;
- (c) general damages and special damages at an amount to be determined at trial for loss and damage suffered because of conduct contrary to Part VI of the *Competition Act*;
- (d) costs of the investigation and prosecution of this proceeding pursuant to section 36 of the *Competition Act*;
- (e) pre-judgment interest and post-judgment interest, compounded, or pursuant to sections 36 and 37 of the *Federal Courts Act*;
- (f) the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to Rule 334.38 of the *Federal Courts Rules*; and

(g) such further and other relief as this Honourable Court deems just.

NATURE OF THE ACTION

3. This action arises from a conspiracy to fix, raise, maintain, and/or stabilize prices of Caustic Soda sold in North America.

4. During the Conspiracy Period, the Defendants, their co-conspirators, and their senior executives participated in illegal and secretive meetings and made agreements relating to the prices, market share divisions, and production levels for Caustic Soda. The Defendants and their co-conspirators were aware and intended that the alleged conspiracies would result in increased prices for Caustic Soda.

WHAT IS CAUSTIC SODA?

5. Caustic Soda is used in various industries, including paper, pulp and cellulose; chemical production; recycling; mineral oils; textiles; water treatment; food processing; aluminum; mineral oils; textiles; pharmaceuticals; and soaps and detergents.

6. Caustic Soda is produced, along with chlorine, from the electrolysis of salt water (brine) in an industrial process known as the “chloralkali process” (also known as the “chlor-alkali process” or “chlor alkali process”). Collectively, chlorine and sodium hydroxide are referred to as “chlor alkalis” (also known as the “chlor-alkalis” or “chloralkalis”).

7. There are two types of Caustic Soda: “membrane-grade” Caustic Soda and “diaphragm-grade” Caustic Soda. Most Caustic Soda in North America is produced via

the membrane process. The two grades are functionally interchangeable. However, diaphragm grade Caustic Soda is also known as “standard” grade because it is suitable for use in most applications.

THE PLAINTIFF

8. The Plaintiff, Topher’s Beard Company, is a sole proprietorship owned and operated by Christopher Makkreel pursuant to the laws of the Province of Ontario, with its principal place of business located in Brantford, Ontario. At all material times, Topher’s Beard Company carried on business as a manufacturer and retailer of haircare and bath products.

9. During the Conspiracy Period, Topher’s Beard Company purchased in Canada, on its own behalf or through its agents, Caustic Soda for use in the manufacture of soaps and other bath products.

THE DEFENDANTS

10. Where a particular entity within a corporate family of Defendants engaged in anti-competitive conduct, it did so on behalf of all entities within that corporate family. The individual participants in the conspiratorial meetings and discussions entered into agreements on behalf of, and reported these meetings and discussions to, their respective corporate families. The Defendants named herein are jointly and severally liable for the actions of, and damages allocable to, all members of their respective corporate families.

Olin Defendants

11. Olin Corporation is an American company with a principal place of business in Clayton, Missouri. During the Conspiracy Period, Olin Corporation manufactured, marketed, sold, and/or distributed Caustic Soda that was sold throughout Canada, either directly or indirectly, through the control of its predecessors, affiliates, and/or subsidiaries.

12. K.A. Steel Chemicals, Inc. (“K.A.”) is an American company with a principal place of business in Lemont, Illinois. K.A. is a wholly owned subsidiary of Olin Corporation. During the Conspiracy Period, K.A. manufactured, marketed, sold, and/or distributed Caustic Soda that was sold throughout Canada, either directly or indirectly, through the control of its predecessors, affiliates, and/or subsidiaries.

13. Olin Canada ULC (“Olin Canada”) is a Canadian company with a principal place of business in Montreal, Quebec. Olin Canada is owned directly or indirectly by Olin Corporation. During the Conspiracy Period, Olin Canada manufactured, marketed, sold, and/or distributed Caustic Soda that was sold throughout Canada, either directly or indirectly, through the control of its predecessors, affiliates, and/or subsidiaries.

14. 3229897 Nova Scotia Co. (“3229897”) is a Canadian company with a principal place of business in Becancour, Quebec. 3229897 is owned directly or indirectly by Olin Corporation. During the Conspiracy Period, 3229897 manufactured, marketed, sold, and/or distributed Caustic Soda that was sold throughout Canada, either directly or indirectly, through the control of its predecessors, affiliates, and/or subsidiaries.

15. The business of each of Olin Corporation, K.A, Olin Canada, and 3229897 (collectively, the “Olin Defendants” or “Olin”) is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, market, sale, and/or distribution of Caustic Soda in Canada and for the purposes of the conspiracy described herein.

Occidental Defendants

16. Occidental Chemical Corporation (“Occidental Chemical”) is an American company with a principal place of business in Dallas, Texas. Occidental Chemical is a wholly owned subsidiary of Occidental Petroleum Corporation (“Occidental Petroleum”). During the Conspiracy Period, Occidental Chemical manufactured, marketed, sold, and/or distributed Caustic Soda that was sold throughout Canada, either directly or indirectly, through the control of its predecessors, affiliates, and/or subsidiaries, including Oxy Vinyls, LP (“OxyVinyls”), an entity with no employees, which holds legal title to certain Occidental Chemical chlor alkali facilities solely for corporate organizational purposes.

17. Oxy Canada Sales Inc. (“Oxy Canada”) is an American company with a principal place of business in Dallas, Texas. Oxy Canada is owned directly or indirectly by Occidental Petroleum. During the Conspiracy Period, Oxy Canada manufactured, marketed, sold, and/or distributed Caustic Soda that was sold throughout Canada, either directly or indirectly, through the control of its predecessors, affiliates, and/or subsidiaries.

18. The business of each of Occidental Chemical and Oxy Canada (collectively, the “Occidental Defendants” or “Occidental”) is inextricably interwoven with that of the other

and each is the agent of the other for the purposes of the manufacture, market, sale, and/or distribution of Caustic Soda in Canada and for the purposes of the conspiracy described herein.

Westlake Defendants

19. Westlake Chemical Corporation (“Westlake Chemical”) is an American company with a principal place of business in Houston, Texas. During the Conspiracy Period, Westlake Chemical manufactured, marketed, sold, and/or distributed Caustic Soda that was sold throughout Canada, either directly or indirectly, through the control of its predecessors, affiliates, and/or subsidiaries.

20. Axiall Canada, Inc. (“Axiall Canada”) is a Canadian company with a principal place of business in Beauharnois, Quebec. Axiall Canada is owned directly or indirectly by Westlake Chemical. Axiall Canada was formerly a subsidiary of Axiall Corporation, a leading North American manufacturer and international marketer of chemicals including chlor alkalis, which was acquired by Westlake Chemical Corporation in 2016. During the Conspiracy Period, Axiall Canada manufactured, marketed, sold, and/or distributed Caustic Soda that was sold throughout Canada, either directly or indirectly, through the control of its predecessors, affiliates, and/or subsidiaries.

21. The business of each of Westlake and Axiall Canada (collectively, the “Westlake Defendants” or “Westlake”) is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, market, sale, and/or distribution of Caustic Soda in Canada and for the purposes of the conspiracy described herein.

Shin Defendants

22. Shin-Etsu Chemical Co. Ltd. (“Shin-Etsu”) is a Japanese company with a principal place of business in Tokyo, Japan. During the Conspiracy Period, Shin-Etsu manufactured, marketed, sold, and/or distributed Caustic Soda that was sold throughout Canada, either directly or indirectly, through the control of its predecessors, affiliates, and/or subsidiaries.

23. Shintech Incorporated (“Shintech”) is an American company with a principal place of business in Houston, Texas. Shintech is a wholly-owned subsidiary of Shin-Etsu. During the Conspiracy Period, Shintech manufactured, marketed, sold, and/or distributed Caustic Soda that was sold throughout Canada, either directly or indirectly, through the control of its predecessors, affiliates, and/or subsidiaries.

24. The business of each of Shin-Etsu and Shintech (collectively, the “Shin Defendants” or “Shin”) is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, market, sale, and/or distribution of Caustic Soda in Canada and for the purposes of the conspiracy described herein.

Formosa Defendants

25. Formosa Plastics Corporation (“Formosa Plastics”) has a principal place of business in Kaohsiung City, Taiwan. During the Conspiracy Period, Formosa Plastics manufactured, marketed, sold, and/or distributed Caustic Soda that was sold throughout Canada, either directly or indirectly, through the control of its predecessors, affiliates, and/or subsidiaries.

26. Formosa Plastics Corporation, U.S.A. (“Formosa U.S.A.”) has a principal place of business in Livingston, New Jersey. Formosa U.S.A. is a wholly-owned subsidiary of Formosa Plastics. During the Conspiracy Period, Formosa U.S.A. manufactured, marketed, sold, and/or distributed Caustic Soda that was sold throughout Canada, either directly or indirectly, through the control of its predecessors, affiliates, and/or subsidiaries.

27. The business of each of Formosa Plastics and Formosa U.S.A. (collectively, the “Formosa Defendants” or “Formosa”) is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, market, sale, and/or distribution of Caustic Soda in Canada and for the purposes of the conspiracy described herein.

Unnamed Co-Conspirators

28. Various persons, partnerships, sole proprietors, firms, corporations, and individuals not named as Defendants in this lawsuit (collectively, the “Unnamed Co-Conspirators”), the identities of which are not presently known, may have participated as co-conspirators with the Defendants in the unlawful conspiracy alleged in this statement of claim, and have performed acts and made statements in furtherance of the unlawful conduct.

Joint and Several Liability

29. The Defendants named herein are jointly and severally liable for the actions of, and damages allocable to, co-conspirators, including the other named Defendants and Unnamed Co-Conspirators.

PRICES DURING THE CONSPIRACY PERIOD

30. The Defendants and Unnamed Co-Conspirators' illegal price-fixing conspiracy resulted in artificially increased prices for Caustic Soda. This was accomplished by coordinated price increase announcements and artificial restrictions of Caustic Soda supply. But for the illegal price-fixing conspiracy, the price of Caustic Soda would have been lower.

31. During the Conspiracy Period, the Defendants jointly controlled a substantial portion of the Caustic Soda market. The manufacturers of Caustic Soda who were not participants in the conspiracy ("Non-Cartel Firms") constituted a very small share of the market and lacked the ability to increase production of Caustic Soda to a degree that would have allowed them to steal market share from the Defendants in response to the Defendants' higher prices.

32. The Defendants' high market share, combined with high barriers to entry, commodity-like products, and the capacity constraints of Non-Cartel Firms, meant that the Defendants had market power and were able to increase Caustic Soda prices above the competitive level during the Conspiracy Period.

33. Relying on the higher prices set by Defendants, Non-Cartel Firms were able to, and did, maximize their profits by charging higher prices for Caustic Soda than they would have in a competitive market. The Non-Cartel Firms' conduct in charging higher prices was a direct response to the higher Caustic Soda prices caused by the Defendants' collusive conduct and exercise of their collective market power. But for the conspiracy,

the Defendants would have charged lower, competitive prices, and Non-Cartel Firms would have needed to follow those lower prices or risk losing market share.

34. During the Conspiracy Period, persons who directly or indirectly purchased Caustic Soda manufactured by Non-Cartel Firms (“Umbrella Purchasers”) suffered damages measured as the difference between the actual prices paid by them and the “but for” prices that would have obtained in a competitive market.

35. The Defendants were aware and intended that the alleged conspiracy would result in Non-Cartel Firms adjusting their prices to supra-competitive levels in response to the conspiracy prices, and that Umbrella Purchasers would therefore pay supra-competitive prices for Caustic Soda during the Conspiracy Period.

Simultaneous Adoption of New Pricing

36. From at least 2011 through 2014, average Caustic Soda prices tended to be flat or declining in the North America. Beginning in the fourth quarter of 2015, this trend changed dramatically. The change is not explained by supply and demand but instead is explained by the Defendants having entered a conspiracy.

37. Over the course of around four years, from the fourth quarter of 2015 until the first quarter of 2020, the Defendants made more than a dozen parallel price increases for Caustic Soda sold in North America:

- (a) Q4 2015: In November 2015, Defendant Olin Corporation implemented a USD\$40 per dry standard ton (“dst”) price increase. Almost immediately thereafter, the Defendants Formosa U.S.A., Occidental Chemical,

Shintech, and Westlake Chemical (and its predecessor Axiall Corporation) each announced price increases in the same amount;

- (b) Q2 2016: In April 2016, the Defendants Formosa U.S.A., Occidental Chemical, Olin Corporation, Shintech, and Westlake Chemical (and its predecessor Axiall Corporation) each announced USD\$30-40 per dst price increases, and subsequently during the quarter they each announced additional price increases totaling approximately USD\$85 per dst;
- (c) Q3 2016: In July and August 2016, the Defendants Formosa U.S.A., Occidental Chemical, Olin Corporation, Shintech, and Westlake Chemical each announced price increases of USD\$40-50 per dst, and in September 2016 they each announced price increases of USD\$60-80 per dst;
- (d) Q4 2016: In the fourth quarter of 2016, the Defendants Formosa U.S.A., Occidental Chemical, Olin Corporation, Shintech, and Westlake Chemical each announced price increases of USD\$40-65 per dst;
- (e) Q1 2017: In February 2017, the Defendants Formosa U.S.A., Occidental Chemical, Olin Corporation, Shintech, and Westlake Chemical each announced price increases of USD\$60-85 per dst depending on grade – diaphragm (USD\$60) or membrane (USD\$85);
- (f) Q2 2017: In May 2017, the Defendants Formosa U.S.A., Occidental Chemical, Olin Corporation, Shintech, and Westlake Chemical each announced price increases of up to USD\$75 per dst;

- (g) Q3 2017: In August and September 2017, at least the Defendants Occidental Chemical, Olin Corporation, Westlake Chemical, and Shintech each announced a USD\$75-100 price increase per dst (depending on grade);
- (h) Q4 2017: In November 2017, over the course of a few business days, the Defendants Formosa U.S.A., Occidental Chemical, Olin Corporation, Shintech, and Westlake Chemical each announced a USD\$70-115 price increase per dst depending on grade – diaphragm (USD\$70) or membrane (USD\$115) - through direct, private contacts with customers;
- (i) Q1 2018: In February 2018, the Defendant Westlake Chemical announced a USD\$40 price increase per dst for all grades of liquid Caustic Soda, and the Defendant Olin Corporation immediately announced a price increase of USD\$85 per dst to its customers. Within a week or two, the Defendants Occidental Chemical, Olin Corporation, Formosa U.S.A., and Shintech each announced price increases of USD\$85 per dst to their customers. By mid-March 2018, Westlake Chemical announced an additional USD\$50 price increase per dst, in essence matching the other Defendants' price increases;
- (j) Q2 2018: In May 2018, the Defendants Olin Corporation and Occidental Chemical each announced a USD\$40 per dst price increase through direct, private contacts with customers. Within days, the Defendants Formosa

U.S.A., Shintech, and Westlake Chemical each announced a USD\$40-45 per dst price increase;

- (k) Q3 2018: In August 2018, the Defendant Olin Corporation announced a price increase of USD\$50 per dst of all of its grades of Caustic Soda. The Defendants Formosa U.S.A., Occidental Chemical, Shintech, and Westlake Chemical implemented the same price increase through direct, private contacts with customers;
- (l) Q4 2018: In November 2018, the Defendant Olin Corporation announced a USD\$40 per dst price increase of all of its grades of Caustic Soda through direct, private contacts with customers. Within a week, the Defendants Occidental Chemical, Formosa U.S.A., and Shintech each announced an identical price increase through direct, private contacts with customers, and the Defendant Westlake Chemical announced a USD\$45 per dst price increase;
- (m) Q1 2019: In February 2019, the Defendant Olin Corporation announced a USD\$50 per dst price increase through direct, private contacts with customers, for all of its grades of Caustic Soda. Almost immediately thereafter, through direct, private contacts with customers, the Defendant Formosa U.S.A. announced a USD\$70 per dst price increase and the Defendant Occidental Chemical announced an USD\$80 per dst price increase. Shortly thereafter, the Defendant Shintech announced an

USD\$80 per dst price increase and the Defendant Westlake Chemical announced a USD\$75 per dst price increase;

- (n) Q2 2019: In May 2019, within days of each other, the Defendants Formosa U.S.A., Occidental Chemical, and Olin Corporation each announced a USD\$60-90 price increase per dst. Within the quarter, the Defendants Shintech, and Westlake Chemical also each announced a USD\$60-90 price increase per dst;
- (o) Q3 2019: In August 2019, within days of each other, the Defendants Occidental Chemical, Olin Corporation, and Westlake Chemical each announced a USD\$30-40 price increase per dst through direct, private contacts with customers. By the end of the quarter, most producers of Caustic Soda for the North American market had announced price increases of USD\$30-\$45 per dst;
- (p) Q4 2019: In November, several producers of Caustic Soda for the North American market announced price increases of USD\$80-\$85/dst. In December, the Defendant Shintech announced a USD\$70 price increase per dst; and
- (q) Q1 2020: In February 2020, within days of each other, the Defendants Formosa U.S.A., Occidental Chemical, Olin Corporation, Shintech, and Westlake Chemical each announced a USD\$30-40 price increase per dst through direct, private contacts with customers.

38. The following table summarizes Defendants' price increase announcements in U.S. dollars per dry standard ton:

	Olin Corporation	Shintech	Occidental Chemical	Formosa U.S.A.	Westlake Chemical
Q4 2015	40	40	40	40	40
Q2 2016	85	70	75	75	75
Q3 2016	170	170	170	150	165
Q4 2016	40	40	40	65	45
Q1 2017*	60/85	60	60/85	85	60/85
Q2 2017	70/70	70	60/75	75	55/75
Q3 2017	80/100	100	80/100		75/95
Q4 2017	70/100	100	80/100	100	85/115
Q1 2018	85	85	85	85	90 (40+50)
Q2 2018	40	40	40	40	45
Q3 2018	50	50	50	50	50
Q4 2018	40	40	40	40	45
Q1 2019	50	80	80	70	75
Q2 2019	60	60-90	90	60	60-90
Q3 2019	30		30		40
Q1 2020	30	35	30-40	30-40	40

*During 2017, Olin Corporation, Occidental Chemical, and Westlake Chemical announced separate increase amounts for membrane and diaphragm grades. Formosa U.S.A. and Shintech manufacture and sell only membrane-grade Caustic Soda in North America.

39. The price increases in the United States also resulted in, and/or were concurrent with, price increases in Canada. The Defendants' price increase announcements generally refer to increases in both the United States, per dst, and Canada, per dry metric ton ("dmt").

For example:

- (a) In November 2015, when Olin Corporation and Occidental Chemical each announced a \$40 price increase per dst in the United States, they also announced a \$45 price increase per dmt in Canada;
- (b) In November 2017, when Westlake Chemical announced a \$115 price increase per dst in the United States for membrane grades, it also announced a \$130 price increase in Canada;
- (c) In February 2018, when Westlake Chemical announced a \$40 price increase per dst in the United States, it also announced a \$45 price increase in Canada per dmt. During that same time, when Olin announced a \$85 price increase per dst in the United States, it also announced a \$100 price increase in Canada per dmt;
- (d) In May 2018, when Occidental Chemical announced a \$40 price increase per dst in the United States, it also announced a \$45 price increase per dmt in Canada. During that same time, when Olin Corporation announced a \$40 price increase per dst in the United States, it also announced a \$50 price increase per dmt in Canada;
- (e) In August 2018, when Olin Corporation announced a \$50 price increase per dst in the United States, it also announced a \$60 price increase per dmt in Canada;

- (f) In November 2018, when Olin Corporation announced a \$40 price increase per dst in the United States, it also announced a \$50 price increase per dmt in Canada;
- (g) In May 2019, when Occidental Chemical announced a \$90 price increase per dst in the United States, it also announced a \$100 price increase per dmt in Canada. During that same time, when Olin Corporation announced a \$60 price increase per dst in the United States, it also announced a \$75 price increase per dmt in Canada;
- (h) In August 2019, when Olin Corporation announced a \$30 price increase per dst in the United States, it also announced a \$40 price increase per dmt in Canada. During that same time, when Westlake Chemical announced a \$40 price increase per dst in the United States, it also announced a \$45 price increase per dmt in Canada; and
- (i) In February 2020, when Olin Corporation announced a \$30 price increase per dst in the United States, it also announced a \$45 price increase per dmt in Canada. During that same time, when Westlake Chemical announced a \$40 price increase per dst in the United States, it also announced a \$45 price increase per dmt in Canada.

40. The Defendants' lockstep increases during the Conspiracy Period were made with prior knowledge and were coordinated. During at least the four years preceding the alleged conspiracy, there were no instances where the Defendants issued price announcements

within days of each other. Starting in Q4 2015, the Defendants issued price announcements within days of each other.

41. The parallel price increases occurred beginning in late 2015 despite the economic realities that the industry faced at the time, with many years of flat or declining prices, sluggish demand, shrinking end-user markets, overcapacity, and poor financial performance in the industry immediately preceding them. Just three months before the first increase Axiall Corporation's CEO predicted that he could see no improvement to Caustic Soda pricing without a change in both supply and demand. Between the fourth quarter of 2012 and the third quarter of 2015, average North American undiscounted quarterly Caustic Soda prices declined approximately 6%.

42. The Defendants' lockstep price increase announcements were effective in increasing prices despite the existence of excess capacity and flat demand. Prices were increasing at a higher rate than costs, such that the increases could not be fully explained by increasing costs. During the Conspiracy Period, average quarterly North American undiscounted Caustic Soda prices increased significantly. Average North American undiscounted contract prices of Caustic Soda exceeded USD\$800 per dst during the Conspiracy Period, hitting highs over 35% higher than the average North American undiscounted contract prices of Caustic Soda in any of the four consecutive quarters preceding the start of the Conspiracy Period.

COMMON MOTIVE TO CONSPIRE

43. The Defendants were motivated to conspire and increase prices because of years of decreasing prices, stagnant demand, shrinking end-user markets, excess capacity, and poor industry financial performance.

44. From at least 2011 through 2014, average Caustic Soda prices tended to be flat or declining in the North America. Industrial production, a proxy for demand, only saw slow growth from mid-2009 until November 2014, then declined through 2015. Defendants' Caustic Soda margins declined approximately 25-30% between 2012 and 2014.

45. Additionally, structural factors in the Caustic Soda industry made collusion by Defendants a viable option. Industries conducive to collusion include those that are highly concentrated, contain high barriers to entry, have inelastic demand, and involve commodity-like products that lack economic substitutes. The Caustic Soda industry demonstrated these characteristics.

Market Concentration

46. During the Conspiracy Period, the Defendants controlled a significant share of the North American Caustic Soda market. Collectively, the Defendants are the major producers and suppliers of Caustic Soda in North America. For example, Olin, Occidental, and Westlake are the three largest manufacturers of chlor alkalis in the Americas and own over 81% of the large chlor alkali plants in the US and Canada.

47. The market for Caustic Soda in North America has become significantly more concentrated over time through consolidation. Olin purchased Dow Chemical's chlor

alkali business in a deal that closed in October 2015. At the time of the transaction, Dow Chemical was the largest North American producer of Caustic Soda. After the deal, Olin became the largest Caustic Soda producer in the North America while one major competitor was eliminated through the consolidation. Likewise, Westlake became the third largest North American producer of Caustic Soda producer through a series of consolidations. Westlake Chemical purchased Axiall Corporation in October 2016, and Axiall Corporation had formed in January 2013 through the merger of Georgia Gulf and PPG Industries. The consolidation of Georgia Gulf and PPG Industries into Westlake Chemical eliminated two competitors in the North American market for Caustic Soda.

48. Given the concentration in the market, it would have been difficult for the proposed Class to avoid the effects of the Defendants' conspiracy.

Barriers to Entry

49. The market for the manufacture of Caustic Soda is subject to high barriers to entry. For any prospective manufacturer of Caustic Soda, setting up competitive manufacturing operations and supply chain operations presents enormous logistical and financial hurdles, which require building plants, acquiring the necessary production technology, hiring and retaining skilled and knowledgeable employees, obtaining regulatory permissions, and securing the raw materials and supply chain commitments necessary to manufacture competitive grades. These costs could be billions of dollars. These barriers to entry make it less likely that new competitors will enter the Caustic Soda market and undercut the Defendants' cartel prices.

Interchangeability of Commodity Products

50. Caustic Soda is a commodity chemical. Similar grades sold by the Defendants are interchangeable. For example, each Defendant makes and sells 50% Caustic Soda Solution, or a liquid 50% grade. This consists of 49-51% sodium hydroxide (Caustic Soda), 49-51% water, and ~1% sodium chloride. As a result, price is the primary factor driving customer choice between Caustic Soda of the different manufacturers and is the most important competitive factor for manufacturers of Caustic Soda.

Demand Inelasticity

51. The demand for Caustic Soda is relatively inelastic. Caustic Soda is used by a wide variety of customers in many different end-markets. The closest comparable chemical product to Caustic Soda, soda ash aka sodium carbonate (Na_2CO_3), is not an economic substitute for Caustic Soda. Though both compounds are sodium derivatives, they have unique and different classifications with soda ash being a weak chemical base and Caustic Soda having much stronger basicity. Soda ash is also more expensive. In the absence of an economic substitute, when Defendants increased prices during the Conspiracy Period, all or nearly all Class Members paid supra-competitive prices.

ACTS CONTRARY TO ECONOMIC SELF-INTERESTS OF CONSPIRATORS

52. The Defendants engaged in conduct that contravened each Defendant's self-interest and would be irrational in a competitive market in the absence of similar behavior by rivals.

53. The Defendants put their collective interest as an industry ahead of their own individual economic self-interest through the collective imposition of artificial supply constraints, and a refusal to compete on price for each other's customers. Refusal to compete for business or to react competitively to another Defendant's supply cutbacks is clearly contrary to any manufacturer's individual self-interest absent agreement.

Artificial Supply Constraints

54. In 2014 and early 2015, the Defendants Westlake Chemical and Occidental Chemical added new chlor alkali production capacity, before the Defendant Olin Corporation announced that it intended to acquire Dow Chemical's chlor alkali assets.

55. With capacity additions having created significant excess capacity and putting pressure on prices, beginning in late 2015, the Defendants cooperated to shut down or idle hundreds of thousands of tons of production capacity in tandem with their price increases.

56. On November 2, 2015, shortly before announcing its first price increase and less than one month after it completed its acquisition of Dow Chemical's chlor alkali business, Olin Corporation announced that it would shut down between 250,000 and 450,000 tons of capacity in 2016, and then kept its word by shutting down 433,000 tons of capacity in the first quarter of 2016. At the same time, Axiall Corporation (which was engaged in takeover discussions with the Defendant Westlake) joined it by cutting production by 78,000 dst/year. Occidental Chemical joined them by reducing Caustic Soda output by 150,000 dst/year. Other temporary shutdowns for outages and plant maintenance throughout 2016 by Olin Corporation, Occidental Chemical, Formosa U.S.A., and

Westlake Chemical and maintenance issues may even have further reduced late 2016 capacity by as much as 10%.

57. Olin Corporation's 2016 shutdown of capacity and price increases could have led the other Defendants to "steal" Olin Corporation's market share, but instead they immediately increased prices and also announced production cuts, consistent with collusion. While it was against one Defendant's self-interest to shut down capacity if its rivals were well-positioned to step into the void, it was in the collective interest of a cartel of all Defendants to reach an agreement or understanding to keep North American supply low and increase prices in concert.

58. Defendants continued to operate at only 80-85% capacity between 2015 and 2018, while proclaiming to customers that price increases were due to supply shortages. The Defendants coordinated temporary shutdowns to create illusory market-wide supply tightness used to justify their price increases.

59. On December 18, 2019, the Defendant Olin Corporation announced plans for a further permanent shutdown of an additional 230,000 mt/year of its North American chlor alkali capacity at its Freeport, Texas plant.

Refusal to Compete on Price

60. Contemporaneous with their price increases, Defendants changed their behavior to avoid competing on price for each other's customers.

61. During the Conspiracy Period, Defendants who were previously receptive to bid requests now (i) ignored or refused to place bids (including for prior customers of that

Defendant), (ii) placed bids that were clearly not competitive, or (iii) declined to bid because supply was limited and/or previously allocated to another customer.

62. Customer turnover was lower after Olin's acquisition of Dow Chemical's Caustic Soda business in October 2015, and Westlake's acquisition of Axiall Corporation's business in August 2016, than in the years before.

63. In a commodity industry where excess capacity exists and where competition is primarily based on price, such behavior is inconsistent with an individual Defendant's economic self-interest in a competitive market. However, such conduct is consistent with, and indicative of, an agreement or understanding among the Defendants to support each other's price increases, *e.g.*, by refusing to undercut another Defendant's pricing in return for the same consideration.

HIGH LEVEL OF INTERFIRM COMMUNICATIONS

64. The Defendants engaged in facilitating practices to implement, enforce and confirm their agreement to fix, maintain, increase, or control the price of Caustic Soda, including sharing competitively sensitive information and activities that assisted competitors in the monitoring one another's prices.

65. The Defendants exchanged commercially sensitive, confidential, non-public business information (*e.g.*, concerning prices and supply) both directly and indirectly.

66. The Defendants coordinated their price increases at least through the following mechanisms: (i) advance public announcements of price changes and supply cuts; (ii)

industry meetings; (iii) information sharing through co-producer supply agreements; and (iv) coordination through third-party analysts and consultants.

Advance Public Announcements of Price Changes

67. The Defendants coordinated their conspiracy in part by signaling the need for supply cutbacks and price increases in their public statements. In a competitive environment, Defendants would not want to signal opportunities for competitors to undercut them in price or to fill gaps left by a capacity reduction with a competitive product.

68. As detailed above, many of the Defendant's lockstep price increases between 2015 and 2020 began with a public announcement of an advance price increase by one Defendant, and the initial price increase communication on each occasion was often followed shortly thereafter by one or public announcements of advance price increase by other Defendants.

69. These behaviours started with the initial industry-wide price announcements in November 2015, which began with Olin Corporation issuing an advance announcement of a price increase. Olin Corporation's competitors (the other Defendants) did not try to undercut it but rather reacted by matching the price increase, consistent with conspiracy and collusion.

70. Defendants' predictions about what would happen in the future—or what needed to happen in the future—to boost pricing were followed closely by supporting statements and actions by supposed competitors, including:

- (a) On May 1, 2018, the Defendant Olin Corporation announced that it expected “additional improvements in Caustic Soda pricing in the second quarter.” Shortly thereafter, the Defendant Westlake Chemical’s CEO acknowledged to investors that he expected more pricing traction in the second quarter for Caustic Soda. On May 21, 2018, both of Defendants Olin Corporation and Occidental Chemical sent letters to customers announcing an identical \$40 per ton price increase, and within days, the Defendants Formosa U.S.A. and Shintech announced increases at the same amount, while the Defendant Westlake Chemical announced a \$45 per ton increase; and
- (b) On February 5, 2019, the Defendant Olin Corporation made statements to investors that prices would increase in 2019, which were echoed by Westlake Chemical’s CEO to investors on February 19, 2019. Shortly thereafter, the Defendant Olin Corporation sent a price increase letter to its customers of a \$50 per dst increase of all of its grades of Caustic Soda sold in the United States (effective immediately or as contract terms permit) non-publicly (through direct, private contacts with customers). Shortly thereafter, the Defendant Westlake Chemical announced a USD\$75 per dst increase. Around the same time, the Defendants Occidental Chemical, Formosa U.S.A., and Shintech announced price increases of a similar amount.

71. The Defendants made frequent statements about supply and capacity, which served as both public signals to their competitors and indications that they were privy to the future plans of others. For example, less than six weeks before the start of the Conspiracy Period, the CEO of Axiall Corporation (which received Westlake's first public takeover offer only a few months later) told analysts that Caustic Soda markets were "oversupplied", and he openly hoped that Olin would cut production once its proposed acquisition of Dow Chemical was completed. Less than one month after it completed its acquisition of Dow Chemical's chlor alkali business, Olin announced that it was evaluating idling or permanently closing approximately 250,000 to 450,000 tons of its chlor alkali capacity in 2016. As detailed elsewhere herein, Olin's competitors (the other Defendants) did not try to undercut it or fill gaps with their own supply. Instead, they reacted with their own supply cuts.

72. All of the Defendants public signals were intended to affect and did affect the behavior of the co-conspirators.

Trade Associations

73. The Caustic Soda industry is served by several major trade organizations that hold industry-wide meetings several times a year. These meetings facilitated collusion, and the trade associations have themselves functioned as a means by which the conspiracy was effectuated and implemented. Most or all of the Defendants (or their affiliates) are members of the following associations: American Fuel & Petrochemical Manufacturers, The Chlorine Institute, The Vinyl Institute, Association of Chemical Industry of Texas,

Texas Chemical Council, Louisiana Chemical Association, and the European Petrochemical Association.

74. During the Conspiracy Period, these organizations held multiple meetings and conferences attended by at least some Defendants and Unnamed Co-Conspirators. These meetings and conferences and other industry events attended by representatives of all or most of the Defendants, including industry association conferences organised by ICIS (Independent Commodity Intelligence Services), Tecnon OrbiChem, and IHS Markit, provided the Defendants and Unnamed Co-Conspirators with the opportunity to meet, discuss, and agree upon the pricing of Caustic Soda.

75. These meetings provided fertile ground to reach and enforce an anticompetitive agreement and they coincided throughout the Conspiracy Period with the months in which Defendants were implementing quarterly price increases, including:

- (a) Price increase coincided with the meetings of the Vinyl Institute, in which the only full members are the Defendants Formosa U.S.A., Shintech, Westlake Chemical, and the Defendant Occidental Chemical's subsidiary OxyVinyls, in November 2015, September 2016, and November 2017, the lattermost of which involved increase that were announced done via private contact;
- (b) Price increases coincided with meetings of the Chlorine Institute, in which the Defendants Olin Corporation, Occidental, Westlake Chemical, and Formosa U.S.A. are members, with the Defendants increasing prices

during most of the months in which each of its meetings occurred since April 2016; and

- (c) Price increases coincided with major meetings and conferences of the American Fuel & Petrochemical Manufacturers (“AFPM”), in which Defendants Olin Corporation, Occidental Chemical, Westlake Chemical, and Formosa U.S.A. were members, in March 2016, 2017, 2018, and 2019.

76. The Defendants used trade association meetings to make or further anti-competitive price agreements. Additional contacts among Defendants’ representatives with Caustic Soda sales, pricing, production, distribution, marketing, and/or co-producer transaction responsibilities occurred while traveling together en route to industry meetings and in other private circumstances.

Co-Conspirator Supply Agreements

77. The relationship between co-conspirators was fostered by (confidential) swap and sales agreements that bound them together in a web of mutually dependent relationships.

78. From October 1, 2015 until February 29, 2020, the Defendants implemented sales agreements and swap agreements of Caustic Soda and other products (including chlor alkali derivatives) with each other in North America. For example, when Hurricane Harvey temporarily idled some capacity at facilities owned by the Defendants Occidental Chemical and Formosa U.S.A., which created logistical problems, those Defendants received Caustic Soda supply from other (unknown) producers, believed to be other

Defendants (likely Westlake Chemical, which purportedly was able to produce at full capacity after Hurricane Harvey).

79. The Defendants Olin Corporation and Occidental Chemical in particular have extensive co-producer supply agreements and contacts with each other.

80. Details of the co-conspirator swap and sales agreements are confidential and are believed to be known only to a limited number of employees at Defendants' companies, including high-level employees who manage co-producer transactions in addition to their Caustic Soda sales and marketing responsibilities.

81. The agreements allowed Defendants to create artificial supply constraints by idling and shutting down capacity without bearing any risk that their manipulations would actually leave them short of the supply needed to run their businesses. They also provided another means for the exchange of commercially sensitive information.

82. The practice of selling Caustic Soda and other products (including chlor alkali derivatives) to each other, or swapping products with each other, is widespread among the Defendants and their affiliates in North America. The Defendant Olin Corporation, which makes and sells precursor chemicals used to manufacture Polyvinyl chloride ("PVC") but which does not make and sell PVC, supplies one or more of the other Defendants or their affiliates with such products, because the Defendants Formosa U.S.A., Westlake Chemical, Shintech, and Occidental Chemical (via subsidiary OxyVinyls), make and sell PVC.

83. Swaps and sales of products enable the exchange of commercially sensitive information among the Defendants, which serves to foster Caustic Soda industry cooperation.

Coordination and Monitoring Through Third-Party Analysts and Consultants

84. The Defendants conspired, agreed, or arranged to manipulate the IHS Markit price index, which purports to reflect the average undiscounted contract price paid for Caustic Soda and is relied on by many customers to determine whether or not they were paying a competitive price.

85. IHS Markit, an industry analyst, relies heavily on confidential input from the Defendants, who game the index to artificially increase it, in order to support regular price increases. IHS Markit's executives have a loyal and friendly relationship with Defendants (who are paying clients) and served as a conduit of information among them.

86. The Defendants' manipulations of the index began dramatically impacting the index after Olin's 2015 acquisition of Dow Chemical's chlor alkali product assets. Before 2016, prices in the index tended to move up and down, sometimes significantly, creating "valleys" in the price line. But after Olin's purchase of Dow Chemical's chlor alkali business, Caustic Soda index prices tended to increase, consistently and often dramatically, and at times even month-to-month and not only quarter-by-quarter.

87. The Defendants also used IHS Markit, as well as other consultants and analysts, to exchange confidential, commercially sensitive business information with each other, particularly information concerning capacity and supply (e.g., anticipated production

outages), so as to facilitate the conspiracy. The Defendants coordinated temporary shutdowns to create illusory market-wide supply tightness used to justify their price increases.

THE CONSPIRACY

88. During the Conspiracy Period, the Defendants and Unnamed Co-Conspirators conspired, agreed, or arranged with each other to fix, maintain, increase, and/or control the prices for the supply of Caustic Soda sold to customers in North America. The conspiracy was intended to, and did, cause the Plaintiff and other Class Members to pay supra-competitive prices for Caustic Soda.

89. During the Conspiracy Period, senior executives and employees of the Defendants and Unnamed Co-Conspirators, acting in their capacities as agents for the Defendants and Unnamed Co-Conspirators, engaged in communications, conversations, and meetings with each other at times and places, some of which are unknown to the Plaintiff, and as a result of the communications and meetings, the Defendants and Unnamed Co-Conspirators unlawfully conspired and/or agreed to:

- (a) fix, maintain, increase, or control the prices for the supply of Caustic Soda in North America, including prices for intra-company sales if and where applicable;
- (b) fix, maintain, control, or lessen the production or supply of Caustic Soda in North America;

- (c) participate in meetings, conversations, and communications with respect to the price of Caustic Soda;
- (d) refrain from competing on prices for Caustic Soda;
- (e) exchange information in order to monitor and enforce adherence to the agreed-upon prices for Caustic Soda; and
- (f) not compete among themselves for customers for Caustic Soda in North America.

90. In furtherance of the conspiracy, during the Conspiracy Period, the Defendants, the Unnamed Co-Conspirators, and their servants and agents:

- (a) fixed, maintained, increased, or controlled the prices of Caustic Soda in North America;
- (b) conspired and/or agreed to not compete among themselves for customers for Caustic Soda in North America;
- (c) fixed, maintained, controlled, or lessened the production or supply of Caustic Soda in North America;
- (d) intended that the conspiracy would enhance unreasonably the price of Caustic Soda;
- (e) communicated secretly, in person, by telephone, or electronically, to discuss and fix prices and volumes of sales of Caustic Soda;

- (f) exchanged information regarding the prices and volumes of sales of Caustic Soda for the purposes of monitoring and enforcing adherence to the agreed-upon prices, volumes of sales, customers, and markets;
- (g) agreed to idle capacity in order to restrict supplies of Caustic Soda;
- (h) took active steps to, and did, conceal the unlawful conspiracy from their customers; and
- (i) disciplined any corporation that failed to comply with the conspiracy.

91. The Canadian subsidiaries of the foreign Defendants and Unnamed Co-Conspirators participated in and furthered the objectives of the conspiracy by knowingly modifying their competitive behaviour in accordance with instructions received from their respective parent companies and thereby acted as agents in carrying out the conspiracy and are liable for such acts.

92. The acts alleged in this claim to have been done by each corporate Defendant were authorized, ordered, and done by each corporate Defendant's officers, directors, agents, employees, or representatives while engaged in the management, direction, control, or transaction of its business affairs.

Breaches of Part VI of the *Competition Act*

93. The conduct described above constitutes offences under Part VI of the *Competition Act*, in particular section 45(1) of the *Competition Act*. The Plaintiff claims loss and damage under section 36(1) of the *Competition Act* in respect of such unlawful conduct.

94. Further or alternatively, the subsidiaries of the foreign Defendants that carried on business in Canada implemented a directive, instruction, intimation of policy, or other communication from their related entities identified herein, which communication was for the purpose of giving effect to a conspiracy, combination, agreement, or arrangement entered into outside of Canada that, if entered into in Canada, would have been in contravention of section 45(1). The subsidiaries of the foreign Defendants that carried on business in Canada therefore acted in contravention of section 46(1) of the *Competition Act* and are liable to the Plaintiff and other Class Members pursuant to section 36(1) of the *Competition Act*.

DAMAGES

95. During the Conspiracy Period, the Plaintiff and the Class Members made purchases in Canada of Caustic Soda.

96. The Plaintiff and other Class Members have suffered the following damages as a result of the conspiracy alleged herein:

- (a) price competition has been restrained and/or eliminated with respect to Caustic Soda sold directly or indirectly to the Plaintiff and other Class Members in Canada;
- (b) the prices of Caustic Soda sold directly or indirectly to the Plaintiff and other Class Members in Canada have been fixed, maintained, increased, and/or controlled at artificially inflated levels; and

(c) the Plaintiff and other Class Members have been deprived of free and open competition for Caustic Soda in Canada.

97. By reason of the wrongful conduct alleged herein, the Plaintiff and other Class Members have sustained losses by virtue of having paid higher prices for Caustic Soda than they would have paid in the absence of the illegal conduct of the Defendants and Unnamed Co-conspirators. As a result, the Plaintiff and other Class Members have suffered loss and damage in an amount not yet known but to be determined.

98. The Plaintiff's damages and those of other Class Members have been suffered in Canada.

RELEVANT STATUTES

99. The Plaintiff pleads and relies on the *Federal Courts Act*, the *Competition Act*, and the *Federal Courts Rules*.

PLACE OF TRIAL

100. The Plaintiff proposes that this action be tried at Toronto, Ontario.

November 13, 2020
Amended: December 15, 2022

Siskinds LLP
Barristers & Solicitors
275 Dundas Street, Unit 1
P.O. Box 2520
London, ON N6B 3L1

Charles M. Wright (LSO # 36599Q)
Linda J. Visser (LSO # 52158I)
Bridget M. Moran (LSO # 67366G)
Tel: (519) 672-2121
Fax: (519) 672-6065

Lawyers for the Plaintiff