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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

CHEMOIL CORPORATION, a California corporation,

Plaintiffs,

vs.

APEX FUELS, LLC, a Delaware Limited Liability Company; CUNNINGHAM HOLDINGS, INC., a Delaware Corporation, aka APEX FUELS STATIONS and GREGORY S. CUNNINGHAM; and DOES 1 through 50, inclusive,

Defendants.

CUNNINGHAM HOLDINGS, INC., a Delaware corporation,

Cross-Complainant,

vs.

CHEMOIL CORPORATION, a California corporation; CHEMOIL TERMINALS CORPORATION, a California corporation; CHEMOIL NORTH AMERICA CORP. a Connecticut corporation; GLENCORE LTD., INC., a foreign corporation; and ROES 1 – 50, Inclusive.

CASE NO.: MCC1500325

Assigned for all Purposes to
The Honorable Daniel A. Ottolia

VERIFIED CROSS-COMPLAINT OF CUNNINGHAM HOLDINGS, INC. FOR:

1. **Breach of Joint Venture Agreement;**
2. **Breach of Fiduciary Duty;**
3. **Conversion;**
4. **Fraud and Deceit (Concealment);**
5. **Conspiracy to Commit Fraud;**
6. **Fraud and Deceit (False Promise);**
7. **Unjust Enrichment;**
8. **Breach of Implied Covenant of Good Faith and Fair Dealing;**
9. **Intentional Interference with Prospective Economic Advantage.**

TO ALL INTERESTED PARTIES:

Defendant/Cross-Complainant CUNNINGHAM HOLDINGS, INC. alleges as follows:

THE PARTIES

1. Cross-Complainant/Defendant, CUNNINGHAM HOLDINGS, INC. ("Cunningham Holdings" or "Cross-Complainant") is, and at all times mentioned herein, a Delaware corporation, registered to transact business in the state of California, with its principal place of business at 25220 Hancock Avenue, Suite 300, Murrieta, California, 92562.

2. Cross-Complainant is informed and believes and, based thereon, alleges that Cross-Defendant, CHEMOIL CORPORATION ("Chemoil") is, and at all times mentioned herein, was a California corporation with its principal place of business at 301 Tresser Blvd., Stamford, Connecticut, 06901, which did business in California.

3. Cross-Complainant is informed and believes and, based thereon, alleges that Cross-Defendant CHEMOIL TERMINALS CORPORATION ("CTC") is, and at all times mentioned herein, was a California corporation with its principal place of business at 4 Embarcadero Center, San Francisco, California, 94111, which did business in California.

4. Cross-Complainant is informed and believes and, based thereon, alleges that Cross-Defendant GLENCORE LTD ("Glencore") is, and at all times mentioned herein, was a Switzerland foreign corporation, registered to transact business in the state of California, with its principal place of business at 301 Tresser Blvd., Stamford, CT 06901, which did business in California.

5. The true names and capacities of Cross-Defendants sued herein as ROES 1 through 50, inclusive, are unknown to Cross-Complainant at this time and Cross-Complainant therefore sues said Cross-Defendants by such fictitious names. Cross-Complainant will ask leave of this Court to amend this Cross-Complaint when the true identities of said Cross-Defendants have been ascertained. Cross-Complainant is informed and believes and, on that basis, alleges that each of the fictitiously named Cross-Defendants herein are responsible in some actionable manner for the events herein alleged, and that Cross-Complainant's damages herein alleged were proximately

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caused thereby.

6. Cross-Complainant is informed and believes and, on that basis, alleges that, at all times herein mentioned, Cross-Defendants, sued herein as ROES 1 through 50, inclusive, and each of them, were the agents and employees of each of their Co-Cross-Defendants and, in doing the things herein mentioned, were acting on their own behalf and/or within the scope of their authority as such agents and employees and with the permission and consent of their Co-Cross-Defendants. Cross-Complainant is further informed and believes and, on that basis, alleges that, at all times herein mentioned, the Cross-Defendants, and each of them, did ratify, approve, supervise, authorize, direct, and/or consent to the acts of each of their Co-Cross-Defendants and that each Cross-Defendant sued herein is jointly and severally responsible and liable to Cross-Complainant for the damages herein claimed.

7. Cross-Complainant is informed and believes and therefore alleges that there exists, and at all times herein mentioned there existed, a unity of interest and ownership between Glencore, Chemoil, and CTC, as parent corporations and/or wholly owned subsidiaries such that any individuality and separateness between or among Glencore, Chemoil, and/or CTC have ceased, and Chemoil and CTC are alter egos of Glencore in that the separate personalities of the subsidiaries and the parent no longer exists. Chemoil and CTC are and at all times herein mentioned were, mere shells, instrumentalities and conduits through which Glencore carried out the business of these entities in their corporate or alleged names exactly as Glencore would have conducted it, exercising complete control and dominance of such businesses to such an extent that any individuality or separateness of Chemoil and CTC and Glencore does not, and at all times herein mentioned did not exist, and if the acts are treated as those of the subsidiaries alone, an inequitable result will follow.

JURISDICTION AND VENUE

8. The Court has personal jurisdiction over the Cross-Defendants because they are doing business in the State of California.

9. Venue is proper because the acts giving rise to this action occurred in substantial

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part in the County of Riverside, State of California.

GENERAL ALLEGATIONS

10. On January 6, 2009, Gregory S. Cunningham ("Cunningham") formed Cunningham Holdings LLC, for the purpose of operating a downstream petroleum marketing business, operating under the fictitious business name, Apex Fuels.

11. On July 2, 2010, Cunningham formed Cunningham Holdings Inc., a Delaware Corporation, for the purpose of capitalizing, managing, and holding company investments.

12. In or about July 2010, Cross-Complainant acquired a majority membership interest in Cunningham Holdings LLC, a California limited liability company, which distributed fuel and petroleum products and related services and owned the service mark "APEX," which is registered in the United States Patent and Trademark Office.

13. On or about September 21, 2012, Marcello Todaro, who was the then president of Cross-Defendant Chemoil ("Todaro"), requested a meeting with Cunningham to discuss potential business transactions and opportunities between Chemoil and Cunningham Holdings, including a prospective joint venture.

14. On or about September 24, 2012, Todaro and Cunningham had a meeting, wherein Todaro represented to Cunningham that he was the former vice-president of World Fuels Services Corp., which was a global leader in the downstream marketing and financing of aviation, marine and ground transportation fuel products and related services. Todaro further represented that he was recently recruited by Chemoil to build a downstream petroleum marketing business, similarly modeled to what he had built at World Fuels Services Corp.

15. During the September 24, 2012, meeting, Todaro also represented that Chemoil, a marine bunker fuel supplier, had neither the systems, marketing expertise, nor internal bandwidth to build a downstream petroleum marketing business within an acceptable timeframe to its board of directors. Todaro represented to Cunningham that he was intrigued by his recent reading of an international white paper, published by SAP, a German multinational software corporation that makes enterprise resource management software, which profiled Apex Fuels, the business

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tradename of Cunningham Holdings. Based on this information, Todaro proposed that Cunningham Holdings and Chemoil explore the possibility of forming a joint venture.

16. On or about October 23, 2012, Cunningham and Todaro had a further meeting to continue to discuss Todaro's proposal that Cunningham Holdings and Chemoil form a joint venture.

17. On October 29, 2012, Todaro provided Cunningham with a Non-Disclosure and Confidentiality Agreement, dated October 29, 2012, entered into by and between Chemoil and Cunningham Holdings, which permitted the parties to exchange confidential information, including trade secrets, business and marketing information, in furtherance of the potential formation of a joint venture (the "NDA").

18. Cunningham executed the NDA on October 29, 2012, and provided Todaro with the executed copy.

19. On November 15, 2012, Todaro and Steven Scoppetuolo, Chemoil's then Chief Financial Officer ("Scoppetuolo"), visited Cunningham Holdings' offices and spent several hours reviewing the functionality of Cunningham Holdings' SAP enterprise resource management systems. At this meeting, Scoppetuolo, who was also formerly employed by World Fuels Services Corp. and was its Chief Financial Officer, represented to Cunningham that during his tenure there, the company had invested over $30 million across a three year span trying to build an SAP based system with similar functionality to what Cunningham Holdings already had in place. Both Scoppetuolo and Todaro were thoroughly impressed and expressed a high desire to move forward with a joint venture between Chemoil and Cunningham Holdings.

20. In or about early December 2012, based on Scoppetuolo and Todaro's representations that they were impressed by Cunningham Holdings' SAP system and were eager to move forward with forming the joint venture, and pursuant to the NDA, Cunningham Holdings began sharing confidential customer bids, trade secrets and other proprietary and confidential information with Chemoil in anticipation of the impending joint venture.

21. On December 11, 2012, Todaro informed Cunningham for the first time that

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Chemoil had recently hired a new *Director of Clean Products Trading* ("Trader") to facilitate the petroleum procurement, supply, and risk management functions for the impending joint venture. Thereafter, Todaro scheduled and facilitated a conference call, on December 17, 2012, to introduce the new Trader, Frank Benson ("Benson"). Cunningham and John Larkin, the vice-president of Cunningham Holdings ("Larkin"), were both present on the conference call. During the conference call, the parties discussed various items, including the previously shared Cunningham Holdings' customer bid opportunity. Additionally, Benson advised Cunningham and Larkin that he intended to relocate his family from Connecticut to Temecula, California, the location of Cunningham Holdings' headquarters.

22. On January 22, 2013, Scoppetuolo presented Cunningham with two draft term sheets, which represented Chemoil's proposed deal structure for the joint venture. Additionally, on the morning of January 22, 2013, Todaro and Scoppetuolo met with Cunningham and Larkin at the Cunningham Holdings' offices and spent several hours discussing the joint venture strategy and a potential timeline. Todaro, Scoppetuolo, Benson, Cunningham and Larkin met for dinner that evening to continue their discussions, which now included the potential for also marketing *renewable* fuel products.

23. In an e-mail to Cunningham and Larkin, dated January 27, 2013, Benson provided specifications for *renewable* diesel. Chemoil represented that *renewable* diesel was approved under California Air Resources Board's Low Carbon Fuel Standard program and, as such, could be sold in its neat form (100%). Chemoil requested that this information be kept confidential.

24. Cross-Complainant is informed and believes and, based thereon alleges, that at the time of the initial transactions between the joint venture partners, no domestic refiner had successfully scaled the production of renewable diesel. Further, based on information and belief, no existing refiner, supplier, trader, or shipper, had imported and/or sold renewable diesel in any measurable, commercial quantity on the United States' West Coast. Additionally, based on information and belief, the California State Water Resources Control Board had not approved *renewable* diesel for use in underground storage tanks until May 30, 2013. Cross-Complainant is

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informed and believes and therefore alleges that Cross-Defendants knew and intentionally omitted facts related to the State Water Resource Control Board's prohibition against storage of renewable diesel in underground storage tanks. As a result, the representations made by Chemoil regarding the ability to sell renewable diesel in *neat* form were untrue at the time they were made. Cross-Complainant is informed and believes and therefore alleges that Chemoil made knowingly false statements and material omissions, in order to induce Cross-Complainant's reasonable reliance.

25. On or about February 1, 2013, Cunningham, Larkin, and Benson attended a meeting at Cross-Defendant CTC's Carson terminal to tour the primary facility where the joint venture intended to store and sell the vast majority of its anticipated petroleum products to the market. Cunningham and Benson discussed the potential economic advantages of blending various percentages of biodiesel into Ultra Low Sulfur Diesel, which would require significant upgrades to the terminal's loading rack piping infrastructure, and also software and hardware upgrades to the terminal's loading rack computer system. The Chemoil representatives agreed that the economic incentives were significant to both parties of the joint venture, but conceded that the improvements would be expensive and would require approval of senior Chemoil management.

26. To help offset the cost of the terminal modifications and for the benefit of the joint venture, Cunningham agreed to pay to Chemoil $277,560.00, in exchange for long-term marketing and throughput rights of blended renewable fuels for the joint venture.

27. Chemoil represented that renewable diesel was a superior product compared to petroleum-based diesel fuel, but renewable diesel was not subject to federal excise tax and therefore, the joint venture should expect significant profit margins. Cross-Defendants then traded renewable fuels and sent invoices *without* federal excise tax to Cross-Complainant, thereby reinforcing the representation that such sales of renewable fuels were not subject to such tax. Cross-Complainant is informed and believes that Chemoil representatives knew or should have known that those statements were false when made.

28. To formalize the continued business of the joint venture, the parties agreed to form

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a business entity to carry out the operations of the joint venture. Under the agreement, Chemoil would handle bulk fuel procurement and risk management and provide the primary terminal assets to the new business entity. Cunningham Holdings would transfer and assign certain assets, marketing expertise, and provide systems capabilities to the joint venture.

29. The parties agreed to form Apex Fuels, LLC, to carry out the operations of the joint venture for its tax advantages to be realized by the parties in relation to the parties' respective contributions. On February 13, 2013, Apex Fuels, LLC, was incorporated in the state of Delaware, and registered with the state of California on March 21, 2013.

30. On April 1, 2013, in formalizing the joint venture, the parties agreed that Cunningham's contribution to the limited liability company was valued at $12 million. Chemoil purchased 35% interest in the venture and negotiated for an option to purchase an additional 16% interest. Chemoil confirmed in writing to potential suppliers that Chemoil owned 35% of the joint venture and that Chemoil would provide a one hundred percent (100%) parent cross-corporate guaranty ("Corporate Guaranty") for credit extended to the joint venture.

31. Cross-Complainant is informed and believes, and therefore alleges, that at all times Chemoil was acting at the direction and supervision of Glencore. Specifically, Chemoil's chief executive officer, Thomas Reilly ("Reilly"), stated that Glencore typically requires a majority interest in its joint ventures, but agreed to a smaller initial interest, if an option to increase ownership to a majority interest at a later date was acceptable to Cunningham.

32. Upon the formation of the limited liability company, the parties mutually agreed to a business plan for the joint venture, which included projections for revenues to be generated from sales of gasoline and diesel fuel. At no time did Chemoil representatives disclose their intent to limit fuels supplied to the joint venture to *renewable* fuels, such as renewable diesel and biodiesel, for which there was no established market. Cross-Complainant is informed and believes, and therefore alleges, that Cross-Defendants intentionally omitted this material fact in order to induce Cross-Complainants reasonable reliance.

33. On May 15, 2013, representatives of Chemoil and Cunningham Holdings met to

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outline and ratify the joint marketing strategy of the joint venture. Specifically, the parties: (1) determined the target markets of the joint venture, (2) agreed to a unified message to notify customers and vendors of the ownership and formation of the joint venture, and (3) established target profit margins for the joint venture. Cross-Complainant is informed and believes, and therefore alleges, Cross-Defendants omitted material facts in order to induce cross-complainants continued participation in the joint venture, specifically, Cross-Defendants failed to disclose the true product costs and resulting profit margins.

34. Following first quarter results in 2013, Cross-Defendants summoned Cunningham to San Francisco to discuss the joint venture's financial performance. When Cross-Defendant's chief executive officer, Thomas Reilly, expressed concerns about the initial profitability of the joint venture, Cunningham pointed out that Chemoil failed to supply any petroleum products as agreed, and instead only supplied renewable diesel and biodiesel, for which there was not a mature market. Further, Cunningham reiterated his grave concerns related to Chemoil's apparent misrepresentations and omissions of fact with regard to the federal excise tax exemptions.

35. Despite Cunningham's best efforts to develop a new market for renewable diesel, Chemoil threatened Cross-Complainant with a "nuclear option," meaning that it would declare a breach of obligations and sue Cross-Complainant for its alleged damages.

36. In a gesture of goodwill, Cross-Complainant agreed to Cross-Defendant's demands for a Special Distribution of $274,500.80 with a single condition that Cross-Defendant Chemoil increase the trade credit facility provided to the joint venture to $10 million in order to support the anticipated growth trajectory of the business.

37. In early December 2013, Chemoil representatives, having knowledge of expiring renewable fuels blender's tax credits, approached Cunningham about a bulk purchase to be completed prior to the end of the year. Specifically, Chemoil requested Cunningham prepare and send a formal expression of interest in the bulk purchase of up to 500,000 barrels of renewable diesel and up to 250,000 barrels of biodiesel, to be purchased prior to December 31, 2013. On December 27, 2013, Chemoil and Apex entered into separate agreements for the purchase of: (a)

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360,000 barrels of renewable diesel in Carson, CA; (b) 40,000 barrels of biodiesel in Carson, CA, (c) 48,000 barrels of renewable diesel in Deer Park, TX (the "Vopak Deal").

38. At the time of the discussions, Cunningham informed Chemoil representatives that the joint venture entity had applied for a Texas supplier's license, on December 5, 2013; however, as of the date of the agreements, December 27, 2013, the license had not yet been issued, which would prevent the joint venture from immediately becoming a terminal position holder. In order to induce Cunningham, Chemoil represented that it had the authority to sublet storage tanks to the joint venture in Texas, which, per the terms of the agreement, would be assigned to the joint venture upon its receipt of a Texas supplier's license, for a nominal fee of one dollar. Cross-Complainant is informed and believes and therefore alleges that Cross-Defendants intentionally omitted its plan or scheme to fraudulently report to taxing authorities the position holder status of the joint venture as of December 31, 2013.

39. Cross-Complainant is informed and believes that Cross-Defendants attempted to induce the terminal owner, Vopak, to back-date a sublet agreement to make it appear to taxing authorities that the joint venture took possession of the tanks and therefore obtained title to the products prior to December 31, 2013, the date on which the blender's tax credits expired.

40. Under Cunningham's direction and leadership, the joint venture built and established a new market for renewable diesel and biodiesel, displacing more than 65 millions of gallons of petroleum based diesel fuel, positioning itself as a serious competitor to major oil companies like Tesoro and Chevron in southern California. As of April 30, 2014, the joint venture was generating approximately twenty million dollars of revenue, selling at times more than seven million gallons per month.

41. Cross-Complainant is informed and believes and based thereon alleges that, had Cross-Defendants performed as agreed, the joint venture would have generated profits in excess of $800,000,000.00 by the end of fiscal year 2017.

42. In May 2014, Cross-Defendants unilaterally began withholding virtually all supplies of fuels to the joint venture, causing significant, immediate, and irreparable harm.

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43. Having obligations to provide supply and credit resources to the joint venture Cross-Defendants repeatedly represented to Cross-Complainant that it *intended* to continue to supply the joint venture with adequate resources, however, Cross-Defendants wrongfully failed to do so. Cross-Complainant is informed and believes, and therefore alleges, that Cross-Defendants intentionally misrepresented their intentions regarding the joint venture in order to induce Cunningham's continued efforts. Cunningham reasonably relied on Cross-Defendants false promises.

44. Cross-Complainant is informed and believes and therefore alleges that Cross-Defendants engaged in a bad faith scheme to take control of the joint venture and fraudulently establish itself as a secured creditor. Specifically, on or about September 4, 2014, at Cross-Defendants' request, in an ostensible effort to satisfy a Chemoil contract with its direct customer, the joint venture negotiated for the purchase of 15,000 barrels from Cross-Defendants *direct competitor,* another trading firm. At the same time, Cross-Defendants agreed to immediately purchase the barrels from the joint venture. The terms of the sale required the joint venture to immediately wire the sum of $1,828,692.90 to the competing trading firm. Upon receipt of payment, the competing firm caused the barrels to be transferred to a Chemoil owned and controlled tank in Carson, CA. Rather than immediately purchasing the fuel as agreed, following a downward shift in market conditions the next day, Cross-Defendants refused to purchase the barrels, causing serious economic damages to the joint venture, resulting in significant damages to Cross-Complainant.

45. As a result of Cross-Defendants' failure to perform, Cunningham was forced to spend several weeks renegotiating the terms with Chemoil. Chemoil finally agreed to purchase the barrels from the joint venture at a reduced price. However, as part of the negotiations, Chemoil determined it could offset some of the joint venture's losses by blending lower cost biodiesel into the renewable diesel and then reselling the lower cost product back to the joint venture in 1000-barrel lots. Cross-Defendants wrongfully maintained possession and control of the transferred product for nearly a month, forcing the joint venture to accept Cross-Defendants'

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terms.

46. After the joint venture began loading the blended barrels from the Chemoil tank via truck, Chemoil issued invoices to the joint venture. Despite the terms of the renegotiated deal, Chemoil failed and refused to remit payment to the joint venture for the original barrels, causing the joint venture to pay twice for the same product and without nearly $2 million in cash reserves. Cross-Defendants have failed and refused, and continue to fail and refuse to make payment for the products sold by the joint venture to Cross-Defendants, which payment is now due and owing in the sum of $2,428,240.64

47. In order to purchase the original barrels request by Cross-Defendants on September 4, 2014, the joint venture was forced to utilize the $2 million line of credit that it had previously negotiated with Cross-Defendants. Since the line of credit was *"secured"* by a UCC-1 filing statement in favor of Cross-Defendants, Cross-Defendants sought to wrongfully assume control over the joint venture by refusing to pay for the barrels it received and force it to enter into an unfavorable transaction in which Cross-Defendants had no intention of performing, unbeknownst to the joint venture, and in violation of the joint venture agreement and to the detriment of Cross-Complainant.

48. By the fall of 2014, Cross-Defendants were interfering with and significantly impeding the joint venture's ability to conduct business. Furthermore, Cross-Defendants obstructed Cunningham Holding' right to equally manage and conduct the joint venture's business, in an effort to gain an unfair advantage over Cross-Complainant in future negotiations.

49. Specifically, beginning in or about October 2014, Cross-Defendants began interfering with the joint venture's right to sell and market blended renewable fuels, and, in violation of the CTC Agreements, terminated all access to the terminal blending facility as of February 13, 2015.

50. On behalf of Cross-Defendants', Lyon Hardgrave ("Hardgrave"), falsely asserted that a trade was booked obligating the joint venture to cover mark-to-market losses of nearly $500,000 (the "Vopak Hedge"). When Cunningham challenged the existence of the trade,

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Hardgrave did not produce any evidence to support it. Despite the complete absence of any records to support the existence of the purported trade, Cross-Defendants continued to falsely assert the existence of the trade and the financial obligation of the joint venture.

51. On or about November 19, 2014, Cross-Complainant discovered that Cross-Defendants had unilaterally terminated cross-Corporate Guarantees and unilaterally revoked trade credit provided to the joint venture. Such actions were in direct contravention of the joint venture agreements, causing immediate, severe, and irreparable harm to Cross-Complainant.

52. In March 2015, having now obtained an unfair advantage over Cross-Complainant and in order to cover up its IRS blender's credit tax fraud regarding the "Vopak Deal", Cross-Defendants attempted to force Cross-Complainant to falsely acknowledge: (1) that a title transfer occurred before December 31, 2013 and, (2) that a subsequent trade had occurred, causing the joint venture to incur outstanding mark-to-market losses of nearly $500,000 (the "Vopak Hedge"). Specifically, on behalf of Cross-Defendants, Giles Jones, the head of Glencore US ("Jones"), threatened that if Cunningham did not comply with its demands that Glencore would shut down the joint venture.

53. Cross-Complainant is informed and believes and based thereon alleges that, beginning in early 2015, Cross-Defendant Chemoil misappropriated trade secrets of the joint venture by providing the same to Cross-Defendant Glencore. Cross-Complainant is further informed and believes and based thereon alleges that, armed with trade secrets of the joint venture, Cross-Defendant Glencore, began competing directly with the joint venture by selling fuel products to past and potential customers of the joint venture.

54. On May 20, 2015, all four Managers of the joint venture met to discuss its future. At the meeting, the parties agreed that there were only two options: (1) a purchase of Cross-Defendants interest by Cross-Complainant; or, (2) the wind down of the joint venture.

55. On or about June 2, 2015, Hardgrave sent Cross-Complainant a proposed "Term Sheet" for the sale of Cross-Defendants' 35% Member Interest in the joint venture (the "Term Sheet"). The *first* condition of the Term Sheet, required the Cross-Complainant to: (1) agree that

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the Vopak Deal occurred before December 31, 2013; (2) purchase the remaining inventory at the Vopak Terminal (the "Vopak Deal"), priced at $2.9155 (the "Vopak Hedge"), from Cross-Defendant, Chemoil, now a wholly-owned subsidiary of Glencore. Cross-Defendants proposed that the joint venture then sell the product directly to Cross-Defendant, Glencore, at $2.9155.

56. Cross-Complainant is informed and believes, and based thereon alleges, that to qualify for the Federal excise tax credit in 2013 under Internal Revenue Service regulations, a blender of biofuels had to blend, sell, and transfer title to the blended gallons prior to December 31, 2013.

57. Cunningham steadfastly declined to accept the terms of Cross-Defendants' Term Sheet based on a firm belief that Cross-Defendants' sole purpose of the Term Sheet was to cover up Cross-Defendant's IRS blender's tax credit fraud in the Vopak Deal. Furthermore, Cross-Complainant is informed and believes and therefore alleges that Cross-Defendant's inexplicably refused to cooperate for more than eight months, with the joint venture's independent audit firm, Swenson Advisors LLP ("Swenson"), specifically refusing to address or confirm Swenson's requests related to any transactions between the parties, most notably, the Vopak Deal.

58. Beginning in January 2015 and continuing through the end of June 2015, Cross-Defendants' representatives, including Glencore's legal counsel, threatened legal action, including submission of a notice of default and acceleration of the loan and security agreements. Cross-Complainant is informed and believes and therefore alleges that Cross-Defendants' actions constituted bad faith, unfair and unlawful business practices.

59. Based on the agreement between the Managers at the May 20, 2015 meeting and Cross-Defendants' subsequent demand that Cross-Complainant and Cunningham engage in illegal tax fraud, followed by repeated threats of a "nuclear option" and then legal demands, the joint venture ceased all sales on June 30, 2015.

60. Notwithstanding the joint venture agreement, Cross-Complainant is informed and believes, and based thereon, alleges that Cross-Defendants secretly obtained the full value of all Renewable Identification Numbers (the "RIN credits") generated from the renewable fuels sold

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through the joint venture entity without any disclosure or transparency to Cross-Complainants. Specifically, Cross-Defendants converted more than 120 million RIN credits into more than $52 million dollars of joint venture profits for Cross-Defendants' exclusive financial gain to the exclusion and detriment of Cross-Complainant.

61. Furthermore, California's Low Carbon Fuel Standard (LCFS) created a market for carbon credits trading (the "CI Credits"), whereby products which qualified for LCFS pathways would generate credits to be sold for a profit. Cross-Complainant is informed and believes, and based thereon, alleges that similar to the RIN trading market, the LCFS market was in its infancy and CI credits could be traded with minimal to no transparency. Cross-Complainant is further informed and believes, and based thereon, alleges that Cross-Defendants failed to provide any disclosure or transparency to Cross-Complainant, while it secretly sold the CI credits, resulting in Cross-Defendants' conversion of profits for their own exclusive benefit, in excess of $17 million dollars.

62. Notwithstanding the Vopak Deal, Cross-Complainant is informed and believes, and based thereon, alleges that Cross-Defendants applied for, received, and converted more than $71 million dollars related to IRS blender's tax credits from fuels procured for and supplied through the joint venture. Specifically, Cross-Defendants' independent audit firm, published the following Chemoil Energy Limited Annual Report 2013, which provides, in pertinent part, that:

> *Profit before tax from continuing operations reached $41.3 million. Our associates and joint ventures performed well, contributing $19.8 million to profits. Profit after tax attributable to equity holders reached $101 million, which includes a tax credit of $60.6 million arising mainly from the tax treatment of biodiesel excise tax credits in the USA. Following a clarification issued by the US internal revenue service in the fourth quarter 2013 we were able to exclude biodiesel excise tax credits for the whole year from our US taxable income. This gives rise to very significant and beneficial tax losses in the U.S which we anticipate will reduce our tax payments in future years.*

63. Cross-Complainant is informed and believes and, based thereon, alleges that Cross-Defendants misrepresented the actual initial costs and resulting final costs, after all RIN credits, CI credits, and IRS blender credits were accounted for, of fuels procured for and sold through the

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joint venture. Cross-Complainant is informed and believes, and therefore alleges that Cross-Defendants converted joint venture profits in excess of $142,227,215.54, for its own use and financial gain.

64. Based thereon, Cross-Complainant is informed and believes, and therefore, alleges that when Cross-Defendants' executives approached Cross-Complainant to form a joint venture, Cross-Defendants had no intention of performing their obligations as represented and promised, and instead withheld from Cross-Complainant their scheme to: (1) form a business vehicle to transfer large quantities of renewable fuels in order to capitalize, for their exclusive use, on the significant tax credit opportunities; (2) use for their own benefit the SAP systems perfected by Cross-Complainant, which were necessary for the mass movement of product in a transaction intense environment; and (3) using Cross-Complainant's downstream marketing and distribution expertise for their own self-dealing and benefit, to the exclusion of Cross-Complainant.

65. Cross-Complainant is informed and believes and, based thereon, alleges that Cross-Defendants violated its fiduciary duties of disclosure, loyalty and care owed to Cross-Complainant.

66. Consequently, as a result of Cross-Defendants' actions set forth herein, including their failure to perform, breach of the joint venture agreement and their misrepresentations of material facts and nondisclosure of material facts, Cross-Complainant has suffered damages, in an amount according to proof at trial, but not less than $92,806,555.

FIRST CAUSE OF ACTION
(For Breach of Joint Venture Agreement Against Chemoil, Glencore and ROES 1-50 inclusive)

67. Cross-Complainant incorporates herein by this reference paragraphs 1 through 66 of this Cross-Complaint, as though fully set forth herein.

68. In or about February 2013, Cross-Complainant and Cross-Defendants entered into an oral joint venture agreement to form a business enterprise, which would purchase petroleum and renewable fuels products from Chemoil at a low cost, and utilizing Cross-Complainant's system and marketing expertise, distribute such petroleum products and sell and market blended

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renewable fuels and that the parties would share in the profits therefrom in proportion to their respective ownership in the joint venture.

69. Pursuant to the terms of the joint venture agreement, Cross-Complainant performed all acts on its part to be performed under the joint venture agreement, satisfying all the terms, conditions and covenants required on its part to be performed, except where the actions of Cross-Defendants have prevented Cross-Complainant from doing so, thus excusing Cross-Complainant's further performance of such obligations under the terms of the joint venture agreement.

70. Cross-Defendants breached the joint venture agreement herein by failing and refusing to comply with the terms of the joint venture agreement, in that Cross-Defendants, among other things, deprived Cross-Complainant of its ownership share in the joint venture profits, misrepresented its true intentions and true costs, and obstructed Cross-Complainants' right to equally manage and conduct the joint venture's business.

71. Cross-Defendants have further breached the joint venture agreement by failing to provide Cross-Complainant with an accurate accounting of the financial affairs of the joint venture, in particular as to the amount of RIN and CI credits belonging the joint venture that were traded by Cross-Defendants.

72. Cross-Defendants have further breached the joint venture agreement by converting assets of the joint venture for their own use.

73. Other wrongful acts and/or omissions constituting breach by Cross-Defendants of the joint venture agreement are presently unknown, but will be proven at trial. If necessary, Cross-Complainant will seek leave of court to amend this Cross-Complainant once such additional facts are ascertained.

74. As a direct result of the breaches of the joint venture agreement by Cross-Defendants, Cross-Complainant has been damaged in amount according to proof at trial, but not less than $92,806,555 in past losses and $800,000,000 in future lost earnings.

SECOND CAUSE OF ACTION

(For Breach of Fiduciary Duty Against Chemoil, Glencore and ROES 1-50 inclusive)

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75. Cross-Complainant incorporates herein by this reference paragraphs 1 through 74 of this Cross-Complaint, as though fully set forth herein.

76. As a joint venture partner, Cross-Defendants owed to Cross-Complainant, a joint venture partner, at all times, a duty of disclosure, loyalty and care. Pursuant to such fiduciary duties, Cross-Defendants were required to act in the utmost good faith towards Cross-Complainant, and to avoid acts and omissions adverse to Cross-Complainant's interests. By virtue of this fiduciary relationship, Cross-Complainant reposed trust and confidence in the integrity of Chemoil. Cross-Complainant provided no cause for Cross-Defendants to act in any manner inconsistent with this fiduciary relationship.

77. Cross-Defendants breached their fiduciary duties, including the duties of disclosure, loyalty and care to Cross-Complainant by engaging in the conduct alleged above, including, among other things, intentionally omitting material facts, failing to account for profits diverted from the joint venture for their sole benefit, interfering with and impeding the joint venture's ability to carry on its business, disrupting and/or abandoning the venture for the purpose of benefiting itself, failing to exercise reasonable care and skill to effectuate the purposes of the joint venture and engaging in self-dealing.

78. Cross-Complainant did not consent to Cross-Defendants' wrongful conduct.

79. As a direct and proximate result of Cross-Defendants' violation of fiduciary duties, as set forth herein, Cross-Complainant has sustained damages in amount according to proof at trial, but not less than $92,806,555 in past losses and $800,000,000 in future lost earnings.

80. The aforementioned conduct constituted malice, oppression or fraud. Such conduct by Cross-Defendants was ratified and approved by managing officers and/or directors so as to justify an award of exemplary and punitive damages against Cross-defendants and each of them.

THIRD CAUSE OF ACTION

(For Conversion Against Chemoil, Glencore and ROES 1-50 inclusive)

81. Cross-Complainant incorporates herein by this reference paragraphs 1 through 80 of this Cross-Complaint, as though fully set forth herein.

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82. At all relevant times, Cross-Complainant had a right to possess 65% of all profits realized by the financial transactions of all RIN credits, CI credits, and IRS blender credits generated by activities of the joint venture.

83. Cross-Defendants intentionally and substantially interfered with Cross-Complainant's property by taking possession of 100% of all profits realized by the financial transactions of all RIN credits, CI credits, and IRS blender credits.

84. Cross-Complainant did not consent to Cross-Defendants' wrongful conduct.

85. As a direct and proximate result of Cross-Defendants' actions, as herein alleged, Cross-Complainant has sustained damages in amount according to proof at trial, but not less than $92,806,555.

FOURTH CAUSE OF ACTION

(For Fraud and Deceit Against Chemoil, Glencore and ROES 1-50 inclusive)

86. Cross-Complainant incorporates herein by this reference paragraphs 1 through 85 of this Cross-Complaint, as though fully set forth herein.

87. As alleged in paragraphs 23, 24, 27, 32, 33 and elsewhere in this Cross-Complaint, Cross-Defendants disclosed some facts to Cross-Complainant but intentionally failed to disclose other material facts, making their disclosures deceptive.

88. Cross-Complainant did not know of the concealed facts.

89. Cross-Defendants intended to deceive Cross-Complainant by concealing the facts.

90. Had the omitted information been disclosed, Cross-Complainant reasonably would have behaved differently.

91. As a direct and proximate result of Cross-Defendants' false promises, intentional omissions and deception, as set forth herein, Cross-Complainant has sustained damages in amount according to proof at trial, but not less than $92,806,555 in past losses and $800,000,000 in future lost earnings.

92. In committing the aforesaid acts against Cross-Complainant, Cross-Defendants, and each of them, acted fraudulently and with malice and oppression and, by reason thereof,

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Cross-Complainant is entitled to exemplary and punitive damages against said Cross-Defendants in a sum sufficient to punish said Cross-Defendants and deter them and others from such conduct in the future, all according to proof.

FIFTH CAUSE OF ACTION

(For Conspiracy to Commit Fraud, Against Chemoil, Glencore and ROES 1-50 inclusive)

93. Cross-Complainant incorporates herein by this reference paragraphs 1 through 92 of this Cross-Complaint, as though fully set forth herein.

94. Cross-Complainant is informed and believes, and based thereon, alleges that Cross-Defendants agreed and knowingly and willfully conspired among themselves to fraudulently induce Cross-Complainant to enter into the joint venture agreement, transfer assets to the joint venture and enter into the Operating Agreement and First Amendment to Operating Agreement.

95. Cross-Complainant is further informed and believes, and based thereon, alleges that each and every Cross-Defendant was aware of each and every other Cross-Defendants' plan to commit fraud and deceit against Cross-Complaint by making false promises to Cross-Complainant and concealing material facts from Cross-Complainant, as alleged hereinabove, in order to induce Cross-Complainant to agree to the joint venture, transfer assets to the joint venture and enter into the Operating Agreement and First Amendment to Operating Agreement, and that Cross-Defendants and each of them agreed and intended that the fraud and deceit be committed.

96. Cross-Defendants did the acts and things herein alleged pursuant to, and furtherance of, the conspiracy and above-alleged agreements.

97. Cross-Defendants furthered the conspiracy by cooperation with and/or lent aid and encouragement and/or ratified the acts of each said Cross-Defendants.

98. As a proximate result of the wrongful acts herein alleged, Cross-Complainant has been damaged in a sum according to proof at trial, but not less than $92,806,555 in past losses and $800,000,000 in future lost earnings.

99. In committing the aforesaid acts against Cross-Complainant, Cross-Defendants, and each of them, acted fraudulently and with malice and oppression and, by reason thereof,

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Cross-Complainant is entitled to exemplary and punitive damages against said Cross-Defendants in a sum sufficient to punish said Cross-Defendants and deter them and others from such conduct in the future, all according to proof.

SIXTH CAUSE OF ACTION

(For False Promise Against Chemoil, Glencore and ROES 1 -50 inclusive)

100. Cross-Complainant incorporates herein by this reference paragraphs 1 through 99 of this Cross-Complaint, as though fully set forth herein.

101. As alleged in paragraphs 28, 30 and elsewhere in this Cross-Complaint, Cross-Defendants made false promises to Cross-Complainant.

102. Cross-Defendants did not intend to perform the promises when made to Cross-Complainant.

103. Cross-Defendants intended that Cross-Complainant rely on the promises.

104. Cross-Complainant reasonably relied on Cross-Defendants' false promises.

105. Cross-Defendants did not perform the promised acts.

106. As a proximate result of the wrongful acts herein alleged, Cross-Complainant has been damaged in a sum according to proof at trial, but not less than $92,806,555 in past losses and $800,000,000 in future lost earnings.

107. In committing the aforesaid acts against Cross-Complainant, Cross-Defendants, and each of them, acted fraudulently and with malice and oppression and, by reason thereof, Cross-Complainant is entitled to exemplary and punitive damages against said Cross-Defendants in a sum sufficient to punish said Cross-Defendants and deter them and others from such conduct in the future, all according to proof.

SEVENTH CAUSE OF ACTION

(For Unjust Enrichment Chemoil, Glencore and ROES 1-50 inclusive)

108. Cross-Complainant incorporates herein by this reference paragraphs 1 through 107 of this Cross-Complaint, as though fully set forth herein.

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109. Cross-Defendants have received a benefit as a result of their wrongful conduct, unlawful and unfair business practices, false promises and omissions and other inequitable conduct, as alleged hereinabove, which induced Cross-Complainant to disclose confidential trade secret information, enter in the joint venture agreement, Operating Agreement, and First Amendment to Operating Agreement, and transfer money, assets and intangible property to the joint venture.

110. Cross-Defendants have been unjustly enriched hundreds of millions of U.S. dollars as a result of such conduct and have benefited from the money, assets and intangible property, including, but not limited to, the RIN credits, CI credits, and IRS blender credits, the "APEX" service mark, the SAP system and Cross-Complainant's expertise, provided by Cross-Complainant.

111. Cross-Defendants accepted and retained those benefits, and used those benefits to obtain secret profits undisclosed to Cross-Complainant. Such retention without payment to Cross-Complainant would result in unjust enrichment to Cross-Defendants at the expense of Cross-Complainant.

112. As a result of Cross-Defendants' wrongful conduct, Cross-Complainant is entitled to restitution by disgorging of all benefits and other compensation obtained by Cross-Defendants.

EIGHTH CAUSE OF ACTION

(For Breach of Implied Covenant of Good Faith and Fair Dealing Against Chemoil, Glencore and ROES 1-50 inclusive)

113. Cross-Complainant incorporates herein by this reference paragraphs 1 through 112 of this Cross-Complaint, as though fully set forth herein.

114. Cross-Defendants owed to Cross-Complainant a duty of good faith and fair dealing, by virtue of the contractual relationship with Cross-Complainant, pursuant to the joint venture agreement. Cross-Defendants breached this duty and unfairly interfered with Cross-Complainant's rights to receive benefits under the joint venture agreement by, among other things: depriving Cross-Complainant of its ownership share in the joint venture; obstructing Cross-Complainant's right to equally manage and conduct the joint venture's business; failing to provide fuel at a "fair"

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price; trading RIN's and carbon credits belonging to the joint venture for Cross-Defendants' own benefit and profit; and receiving back-end tax credits and incentives for Cross-Defendants' own benefit and profit.

115. Chemoil engaged in such conduct in bad faith for the purpose of receiving secret benefits and profits belonging to the joint venture to the detriment of Cross-Complainant. Such conduct by Chemoil was willful and intentional.

116. Pursuant to the terms of the joint venture agreement, Cross-Complainant performed all acts on its part to be performed under the joint venture agreement, satisfying all the terms, conditions and covenants required on its part to be performed, except where the actions of Cross-Defendants have prevented Cross-Complainant from doing so, thus excusing Cross-Complainant's further performance of such obligations under the terms of the joint venture agreement.

117. As a proximate result of the wrongful acts herein alleged, Cross-Complainant has been damaged in a sum according to proof at trial, but not less than $92,806,555 in past losses and $800,000,000 in future lost earnings .

NINTH CAUSE OF ACTION

(For Intentional Interference with Prospective Economic Advantage, Against Chemoil, Glencore and ROES 1-50 inclusive)

118. Cross-Complainant incorporates herein by this reference paragraphs 1 through 117 of this Cross-Complaint, as though fully set forth herein.

119. Cross-Complainant at all times relevant herein had business relationships with retail petroleum station businesses that marketed under the "APEX" service mark owned by Cross-Complainant. Such economic relationships had a high probability in resulting in future economic benefit and advantages to Cross-Complainant.

120. Cross-Defendants were fully aware that Cross-Complainant had business relationships with retail petroleum businesses that marketed under the "APEX" service mark.

121. Cross-Complainant is informed and believes, and based thereon, alleges that Cross-Defendants in an effort to interfere and disrupt Cross-Complainant's economic relationships, caused written correspondence to be sent to these retail petroleum businesses falsely stating that

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these "Apex Fuels Stations" owed the sum of $3,019,173 to the joint venture and that Chemoil had a first priority security interest in the accounts receivable of the joint venture; and, therefore these "Apex Fuels Stations" had an outstanding balance owed to Chemoil in excess of $3,019,173; and that if the entire outstanding balance was not paid by July 31, 2015, Chemoil would initiate proceedings to collect the outstanding amount.

122. Cross-Complainant is informed and believes, and based thereon, alleges that the purpose of the communications was an attempt to interfere with the economic business relations between Cross-Complainant and the retail petroleum businesses in order to cause the retail petroleum business to stop conducting business with Cross-Complainant and to cease marketing under the "APEX" service mark.

123. As a result of the communications sent by Cross-Defendants to the retail petroleum businesses, many of these businesses stopped conducting business with Cross-Complainant and stopped marketing under the "APEX" service mark.

124. In performing the aforementioned acts, Cross-Defendants did so with the intention of frustrating Cross-Complainant, causing Cross-Complainant financial difficulties, and depriving Cross-Complainant of its economic relations with said third party retail businesses. Furthermore, such conduct was in violation of the NDA in that Cross-Defendants used confidential business and marketing information of Cross-Complainant disclosed pursuant to the NDA for its own benefit and use.

125. As a proximate result of Cross-Defendants' conduct, Cross-Complainant has suffered and continues to suffer damages in a sum according to proof at trial.

PRAYER

Cross-Complainant prays for judgment against each Cross-Defendant as follows:

1. For compensatory damages, in an amount to be proven at trial, but not less than $92,806,555 in past lost earnings;

2. For compensatory damages, in an amount to be proven at trial, but not less than $800,000,000 in future lost earnings;

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3. For any and all special, incidental and/or consequential damages, according to proof;

4. For exemplary and punitive damages, in an amount sufficient to punish and deter Cross-Defendants' misconduct (Civ. C. §3294);

5. For an accounting between Cross-Defendants and Cross-Complainant;

6. For the amount found to be due thereon to Cross-Complainant as a result of the accounting and interest thereon;

7. For Restitution by disgorging of all benefits and other compensation wrongfully obtained by Cross-Defendants;

8. For imposition of a resulting trust for all moneys, profits or property held by Cross-Defendants on behalf of Cross-Complainant (Civ. C. §2223);

9. For interest on compensatory damages as provided by law;

10. For costs of suit, including reasonable attorney's fees; and

11. For such other and further relief as the Court deems just and proper.

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DEMAND FOR JURY TRIAL

Defendant and Cross-Complainant hereby demands a trial by jury on all issues triable by a jury in the above-entitled action.

DATED: December 28, 2015

WALKER TRIAL LAWYERS, LLP

By: _____

Barry M. Walker
Larissa A. Branes
Attorney for Cross-Complainant,
CUNNINGHAM HOLDINGS, INC.

VERIFICATION

I, GREGORY S. CUNNINGHAM, am the Chief Executive Officer of CUNNINGHAM HOLDINGS, INC., Cross-Complainant in the above-entitled action. I have read the foregoing Verified Cross-Complaint of Cunningham Holdings, Inc. and know the contents of the Verified Cross-Complaint. The same is true of my own knowledge, except as to those matters that are alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: December 28, 2015

GREGORY S. CUNNINGHAM

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