

<b>SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES</b>		Reserved for Clerk's File Stamp  <b>FILED</b> Superior Court of California County of Los Angeles <b>03/18/2022</b> Sherri R. Carter, Executive Officer / Clerk of Court By: <u>M. Alaniz</u> Deputy
COURTHOUSE ADDRESS: Stanley Mosk Courthouse 111 North Hill Street, Los Angeles, CA 90012		
PLAINTIFF(S): DURRANI INVESTMENTS CORP., a California Corporation		
DEFENDANT(S): MORGAN GALLACHER, INC., a California corporation		
<b>ORDER OF DISMISSAL</b>		CASE NUMBER: 21STCV34283

On the motion of the Court, and  
 \_\_\_ pursuant to the provisions of section \_\_\_\_\_ of the Civil Code of Procedures,  
 \_\_\_ pursuant to Local Policy and / or Local Rules,  
 it is hereby ordered that the within action is dismissed  
☒ with prejudice as to \_\_\_\_\_ without prejudice as to \_\_\_\_\_  
 \_\_\_ entire action \_\_\_\_\_ complaint only  
 \_\_\_ cross complaint of \_\_\_\_\_  
☒ other DURRANI INVESTMENTS CORP., a California Corporation

It is further ordered that \_\_\_\_\_  
 to recover costs as provided by law  
 \_\_\_ in the sum of \$ \_\_\_\_\_  
 \_\_\_ per filing memorandum of costs (1033 CCP et. Seq.)



*Michael L. Stern*

Dated: 03/18/2022

Michael L. Stern / Judge

Judicial Officer

**ORDER OF DISMISSAL**

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Attorneys for Plaintiff and Cross-Defendant,  
DURRANI INVESTMENTS CORP.,  
DBA CALIFORNIA CHEMICAL

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
**COUNTY OF LOS ANGELES**

DURRANI INVESTMENTS CORP., a  
California company, DBA CALIFORNIA  
CHEMICAL;

Plaintiff,

vs.

MORGAN GALLACHER, INC., a California  
corporation, DBA CUSTOM CHEMICAL  
FORMULATORS, INC.; and Does 1 to 10,  
Inclusive,

Defendants.

Case No. 21STCV34283

**Assigned For All Purposes To:**

Judge: Hon. Michael L. Stern

Dept: 62

**[Demurrer – with Motion to Strike (CCP  
430.10)]**

**NOTICE OF DEMURRER AND  
DEMURRER TO CROSS-COMPLAINT  
OF MORGAN GALLACHER, INC.;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF;  
DECLARATION OF MANBIR S.  
CHOWDHARY**

**Reservation ID#: 712620421688**

**Date of Hearing: March 18, 2022**

**Time: 9:00 a.m.**

**Dept.: 62**

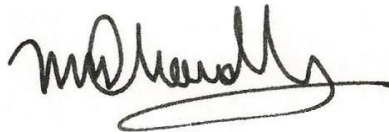
1                   **TO THIS HONORABLE COURT, ALL PARTIES, AND THEIR COUNSEL OF**  
2 **RECORD HEREIN:**

3           NOTICE IS HEREBY GIVEN to Cross-Complainant, MORGAN GALLACHER, INC.,  
4 a California corporation, DBA CUSTOM CHEMICAL FORMULATORS, INC. (hereinafter,  
5 “CCF”) that on March 18, 2022 at 9:00 am in Department 62 of the above-referenced Court,  
6 located at 111 North Hills Street, Los Angeles, CA 90012, or as soon thereafter as the matter  
7 may be heard, Cross-Defendant DURRANI INVESTMENTS CORP., a California company,  
8 DBA CALIFORNIA CHEMICAL (hereinafter, “CAL CHEM”) will and hereby does demur to  
9 the Cross-Complaint on file and that a hearing on CAL CHEM’s Demurrer will take force at the  
10 date, place and time specified above.

11           This Demurrer will be based upon this Notice, the Demurrer, the attached Memorandum  
12 of Points and Authorities, the attached Declaration of Manbir S. Chowdhary, the pleadings,  
13 records and papers on file in this action, and on such other evidence as may be presented at the  
14 time of the hearing on the Demurrer.

15  
16  
17 Dated: February 17, 2022

Respectfully submitted,  
CHOWDHARY LAW, APC

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By: \_\_\_\_\_

Manbir S. Chowdhary, Esq.  
Attorneys for DEFENDANTS DURRANI  
INVESTMENTS CORP. dba CALIFORNIA  
CHEMICAL

1  
2 **DEMURRERS**

3 Cross-Defendant, CAL CHEM, hereby demurs, jointly and severally, generally and  
4 specially, to CCF's Cross-Complaint on the following grounds:  
5

6 **DEMURRER TO FIRST CAUSE OF ACTION**

- 7  
8 1. The First Cause of Action for declaratory relief fails to state facts sufficient to constitute a  
9 cause of action. Code of Civ. Proc. § 430.10(e).  
10 2. The First Cause of Action fails as Cross-Complainant, CCF, does not have the legal  
11 capacity to sue pursuant to Code of Civ. Proc. § 430.10(b).  
12 3. The First Cause of Action is barred by the statute of limitations pursuant to Cal. Penal Code  
13 § 802.

14 **DEMURRER TO SECOND CAUSE OF ACTION**

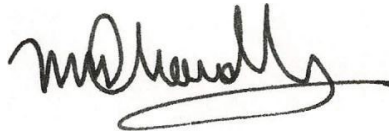
- 15 4. The Second Cause of Action for Unlawful/Unfair Practices (Violation of California  
16 Business and Professions Code §§17200, *et seq.*) fails to state facts sufficient to constitute  
17 a cause of action. Code of Civ. Proc. § 430.10 (e).  
18 5. The Second Cause of Action for Unlawful/Unfair Practices (Violation of California  
19 Business and Professions Code §§17200, *et seq.*) fails as Cross-Complainant, CCF, does  
20 not have the legal capacity to sue pursuant to Code of Civ. Proc. § 430.10(b).  
21 6. The Second Cause of Action for Unlawful/Unfair Practices (Violation of California  
22 Business and Professions Code §§17200, *et seq.*) is barred by the statute of limitations  
23 pursuant to Cal. Penal Code § 802.  
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1 WHEREFORE, the Cross-Defendant, CAL CHEM, prays as follows:

- 2 1. That this demurrer be sustained without leave to amend;
- 3 2. That demurring party be awarded their costs of suit herein; and
- 4 3. For such other and further relief as the Court deems just and proper.
- 5

6 Dated: February 17, 2022

7 Respectfully submitted,  
CHOWDHARY LAW, APC

8 

9 By: \_\_\_\_\_

10 Manbir S. Chowdhary, Esq.  
11 Attorneys for DEFENDANTS DURRANI  
12 INVESTMENTS CORP. dba CALIFORNIA  
13 CHEMICAL  
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## **MEMORANDUM OF POINTS & AUTHORITIES**

### **I. INTRODUCTION**

This is a simple dispute that involves Cross-Complainant, CCF's, breach of the underlying procurement contract with CAL CHEM (*See* Chowdhary Decl. ¶ 5, CCF Cross Complaint, Ex. 1). CAL CHEM sourced, purchased and imported the required amounts of ethanol from its international supplier, in order to guarantee supply and meet its obligations under the 6-month term contract with CCF. Three months into the contract, CCF canceled the agreement and has failed to pay 20% of the total contract value of material not received by CCF, as agreed upon by the parties.

The present Cross-Complaint is a belated attempt, by CCF - a sophisticated chemical manufacturer who has been in business for decades - to generate what it perceives as "leverage" and attempt to renegotiate its monetary obligations on the underlying contract.

Without asserting an actual cause of action for a violation of Cal. Penal Code § 396, due to it being time-barred, CCF now brings a "price gouging" action under the premise of the Unfair Competition Law "UCL". For the reasons set forth herein, Cross-Defendant's demurrer should be sustained without leave to amend.

### **II. LEGAL STANDARD**

A general demurrer searches the complaint "for any and every failure to state a material fact. In other words, the absence of any allegation essential to the cause of action makes the complaint vulnerable to a general demurrer. The ruling on a general demurrer is thus a method of deciding the case on the merits of assumed facts (those alleged) without a trial." (5 Witkin, California Procedure, Pleadings § 905, p. 366; *Banerian v. O'Malley* (1974) 42 Cal.App.3d 604).

### **III. ARGUMENT**

#### **A. CCF's First Cause of Action for Declaratory Relief Cause of Action Fails**

The demurrer should be sustained without leave to amend as to the first cause of action for Declaratory Relief as there is nothing to declare. Here, whether (1) the "liquidated damages" provision in the contract represents an unlawful "penalty clause"; or, (2) whether the contract

price exceeded that allowable under California law (§ 15), are both questions to be adjudicated at trial, by a trier of fact (*See* Chowdhary Decl. ¶ 5, CCF’s Cross-Complaint,<sup>1</sup> at ¶¶ 14, 15). As such, CCF’s cause of action for declaratory relief against the demurring Cross-Defendant, CAL CHEM, would have no practical consequences. (*See Meyer v. Sprint Spectrum L.P.* (2009) 45 Cal. 4th 634, 648 [holding that trial court did not abuse its discretion in sustaining demurrer to declaratory relief action where plaintiffs did not allege that declaratory relief would “have any practical consequences”].).

**B. The Cross-Complaint Fails Because the Alleged Contract Does Not Implicate Consumers or the General Public**

A UCL claim which is based on a breach of a contract that does not implicate the public in general or individual consumers cannot support a § 17200 claim. (*See Linear Technology Corp. v. Applied Materials, Inc.*, (2007) 152 Cal.App.4th 115, 135-[affirming dismissal of UCL claim based on breach of contract where corporate customers sued semi-conductor manufacturer alleging breaches of purchase contracts because “*where a UCL action is based on contracts not involving either the public in general or individual consumers who are parties to the contract, a corporate plaintiff may not rely on the UCL for the relief it seeks.*” (emphasis added)]; see also *Dollar Tree Stores Inc. v. Toyama Partners LLC* (N.D. Cal. 2012) 875 F.Supp.2d 1058, 1083.))

It is undisputed that the present case is based on a breach of contract between two corporate entities. (¶¶ 1, 5). The food grade ethanol here was sold directly to CCF – not the general public or individual consumers. (*See* ¶¶ 5, 6). On the face of the pleading, it is clear that the general public or individual consumers are *not* parties to the alleged contract at issue and CCF cannot explain how any amendment would remedy this defect (*See* ¶¶ 1, 5; and, Ex. 1 to CCF Cross-Complaint).

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<sup>1</sup> All citations are to CCF’s Cross-Complaint, unless otherwise stated.

1 **C. CCF Lacks Standing Under the UCL Because it Fails to Allege that it “Lost Money**  
2 **or Property” “As a Result of” Cal Chem’s Business Practices**

3 CCF lacks UCL standing because it has not alleged the necessary elements under  
4 California law. To satisfy the narrower standing requirements imposed by Proposition 64, a party  
5 must (1) establish a loss or deprivation of money or property sufficient to qualify as injury in  
6 fact, i.e. economic injury, and (2) show that the economic injury was the result of, i.e., caused by,  
7 the unfair/unlawful business practice. *Bowers v. AT&T Mobility, LLC*, 196 Cal. App. 4th 1545,  
8 1553 (2011) (citing *Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310, 320 (2011)); see also Cal.  
9 Bus. & Prof. Code § 17204. First, CCF fails to allege that it lost money or property sufficient to  
10 constitute an "injury in fact." CCF only conclusorily states - without any factual support that it  
11 "suffered financial harm" (§ 18). Second, CCF fails to state any facts to establish CAL CHEM’s  
12 allegedly unfair or unlawful business practice *caused* CCF to suffer “financial harm”.

13 Where a party - like CCF here - alleges only a vague and merely conjectural harm, its  
14 claim should be dismissed. *See Bower*, 196 Cal. App. 4th at 1554 ("As to the injury in fact, or  
15 economic injury, requirement, the injury must be an invasion of a legally protected interest  
16 which is (a) concrete and particularized; and (b) actual or imminent, not conjectural or  
17 hypothetical.") (internal citations omitted). CCF’s bare bones allegation of its "injury" here is  
18 simply conjectural or hypothetical at best. *CCF has not alleged that it personally expended*  
19 *money, that it was unable to utilize the ethanol purchased, or unable to make a profit from the*  
20 *ethanol purchased, or that it was denied any money to which it has a cognizable claim.* Rather,  
21 the Cross-Complaint only makes the conclusory allegation that CCF “suffered financial harm” (§  
22 18). CCF fails to allege any *facts* to support this conclusion.

23 Additionally problematic is the fact that CCF fails to plead facts establishing how its  
24 alleged "financial harm" *was caused* by Cross-Defendant’s business practices. There is no  
25 causation when the complaining party would suffer the same harm whether or not a defendant  
26 complied with the law. *Daro v. Superior Court*, 151 Cal. App. 4th 1079, 1099 (2007) (finding  
27 lack of causation and thus no UCL standing when tenants would suffer the same injury-and still  
28 face eviction-regardless of whether the owners complied with or violated the law).

1 Here, CCF alleges no facts to establish how CAL CHEM's complained-of practices  
2 diverted customers, sales or profits from CCF. Unlike in *Law Offices of Mathew Higbee v.*  
3 *Expungement Assistance Servs.*, 214 Cal. App. 4th 544 (2013) - which CAL CHEM anticipates  
4 CCF will rely on - *CCF never alleges any facts regarding whether it incurred additional costs;*  
5 *how it expended additional money; how it lost sales, profits, or customers; whether it was unable*  
6 *to manufacture the ethanol purchased from CAL CHEM; or how its own business diminished in*  
7 *value.* CCF therefore fails to allege sufficient facts to establish both elements of UCL standing.

8  
9 **D. CCF's UCL Claim Also Fails Because CCF Does Not Allege an Entitlement to**  
10 **Restitution or an Injunction**

11  
12 1. CCF Has Not Alleged an Entitlement to Restitution

13 CCF fails to allege facts supporting an entitlement to restitution, which is "[t]he only  
14 monetary remedy available in a private action under unfair competition law." *Clark v. Superior*  
15 *Court*, 50 Cal. 4th 605,613 (2010) (citing *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal.  
16 4th 1134, 1146, 1148 (2003)); see *Feitelberg v. Credit Suisse First Boston, LLC*, 134 Cal. App.  
17 4th 997, 1012 (2005) ("Restitution thus is available where a defendant has wrongfully acquired  
18 funds or property in which a plaintiff has an ownership or vested interest.") (internal quotation  
19 marks omitted). "The object of restitution is to restore the status quo by returning to the plaintiff  
20 funds in which he or she has an ownership interest." *Korea Supply*, 29 Cal. 4th at 1149. The  
21 "notion of restoring something to a victim of unfair competition [has two requirements: (1) the]  
22 offending party must have obtained something to which it was not entitled *and* ;(2)] the victim  
23 must have given up something which he or she was entitled to keep." *Feitelberg*, 134 Cal. App.  
24 4th at 1012 (emphasis in original).

25 First, CCF's request for disgorgement of "unlawfully obtained profits" is not restitution  
26 (See ¶ 20). Neither is disgorgement of "wrongfully obtained revenues, earnings, profits,  
27 compensation, and benefits", as CCF requests in its *Prayer for Relief*, at ¶ 1. Restitution  
28 compels a UCL defendant to return money wrongly obtained through an alleged business  
practice to the person from whom the money was taken. *Korea Supply*, 29 Cal. 4th at 1145. The  
California Supreme Court has repeatedly held that disgorgement of money is *not* restitution to

1 the extent it would require a defendant to surrender all profits earned because of an alleged  
2 business practice, regardless of whether those profits were actually taken from the alleged  
3 plaintiff. *Id.* at 1144-45, 1149-50 (holding broker for manufacturer that unsuccessfully bid for  
4 military equipment contract could not recover against competing successful bidder for the loss of  
5 its expected commission fee); see also *Kraus v. Trinity Mgmt Servs., Inc.*, 23 Cal. 4th 116, 137  
6 (2000) (superseded by statute on other grounds) (holding disgorgement of unfairly obtained  
7 profits into a fluid recovery fund is not an available remedy under the UCL in a representative  
8 action before representative actions were eliminated); *Cortez v. Purolator Air Filtration Prods.*  
9 Co., 23 Cal. 4th 163, 168 (2000) (finding employee in UCL action could recover unlawfully  
10 withheld wages as restitution, but could not recover profits that the employer may have earned  
11 by withholding those wages). Thus, CCF's claim for "unlawfully obtained profits" fails.

12 Second, to the extent CCF seeks the return of "unlawfully obtained profits," CCF's claim  
13 fails because it has not pled facts establishing an ownership or vested interest in such money. *See*  
14 ¶ 20; see also *Feitelberg*, 134 Cal. App. 4th at 1012. Courts have often rejected claims for lost  
15 business opportunities or expected profits, finding that such claims do not amount to a vested or  
16 an ownership interest. *See Korea Supply*, 29 Cal. 4th at 1149; *Madrid v. Perot Sys. Corp.*, 130  
17 Cal. App. 4th 440, 456 (2005) (affirming summary judgment where "even assuming [defendant]  
18 sold confidential information, plaintiff failed to show that such profit, received from third parties,  
19 would qualify as money taken from plaintiff or money in which plaintiff had a vested ownership  
20 interest, so as to be recoverable as restitution in this UCL action"); *Pom Wonderful LLC v.*  
21 *Tropicana Prods., Inc.*, No. CV 09-566-DSF, 2009 WL 10675908, at \*1 (C.D. Cal. Oct. 21,  
22 2009) (defining vested interest as an interest that is "not contingent; unconditional; absolute" but  
23 finding whatever interest a corporation has in a product's market share does not meet the  
24 definition); see *Kelton v. Stravinski*, 138 Cal. App. 4th 941, 949 (2006) (explaining in a non-  
25 UCL context that lost profits are not restitution -- but damages). Thus, CCF's claim for  
26 restitution fails.

2. Plaintiff Fails to Allege an Entitlement to Injunctive Relief

CCF seeks injunctive relief based only on an alleged violation of Cal. Penal Code § 396. (¶¶ 10, 11, 12, 20; and, CCF's *Prayer for Relief* at ¶5).

However, CCF not only fails to allege a Cal. Penal Code § 396 violation in the first instance, or even bring a direct claim under § 396, but also fails to allege sufficient facts to support a likelihood of future harm. Here, the Executive Order N-44-20 (cited in CCF's Cross-Complaint at ¶ 11) expired in March 2021, as did the California's declared State of Emergency – thereby foreclosing the likelihood of future harm.

First, CCF's allegations fail to state a violation of Cal. Penal Code § 396 (*See* ¶¶ 18-20). CCF's allegations do not even state which § 396 subsection CCF believes CAL CHEM has allegedly violated. (*See* ¶ 11, 18-20); *see also Khoury v. Maly's of California*, 14 Cal. App. 4th 612, 619 (1993) (finding demurrer was properly sustained because the complaint "identifies no particular section of the statutory scheme which was violated and fails to describe with any reasonable particularity the facts supporting the violation").

Here, CCF alleges CAL CHEM "increased its prices of the material in the contract in excess of the allowable amount set forth in within [sic] the anti-price gouging statute" and that Cal Chem "engaged in price gouging" (¶ 10). However, there are no allegations as to what Cal Chem allegedly did to increase prices, when it increased its prices, or how it increased prices. Without the facts as to the alleged price increases, the foregoing allegations are conclusory and untethered to the prices prohibited by Cal. Penal Code § 396.

Moreover, CCF's allegations that CCF "increased its prices...in excess of the allowable amount" merely copy words from the statute without factual support; they are therefore legal conclusions. *See Baker v. Miller*, 23 190 Cal. 263, 266-67 (1923) (emphasizing a long-established rule that allegations that state nothing more than the general language of the statute amounts to "a mere conclusion of law without facts to support it"); *see also Berryman v. Merit Prop. Mgmt., Inc.*, 152 Cal. App. 4th. 1544, 1553 (2007) (dismissing unlawful prong of UCL claim where plaintiff alleged only legal conclusion that fees defendants charged were "unauthorized" without any factual allegations).

1 Second, even if CCF had alleged a § 396 violation, CCF’s request for injunctive  
2 relief (at ¶ 20; and, CCF’s *Prayer for Relief* at ¶ 5) would still be improper because CCF fails to  
3 allege that these violations "will probably recur." *Madrid*, 130 Cal. App. 4th at 465 (finding  
4 plaintiff failed to present a viable claim for injunctive relief and rejecting plaintiff’s argument  
5 that it was sufficient to make conclusory allegations about how defendants’ conduct was ongoing  
6 and likely to recur). There are no factual allegations that establish that CAL CHEM will violate  
7 the statute in the future. Thus, CCF has not sufficiently alleged either remedy under the UCL.

8  
9 **E. The Cross-Complaint Fails Because the Contract Does Not Involve a Consumer  
Good or Sale to Consumer**

10 CCF’s Cross-Complaint alleges that the product sold under the contract is “antibacterial”  
11 in nature and/or “medical supplies” (¶ 10). The pleading however, and contract attached to the  
12 Cross Complaint as Ex. 1, clearly identifies the product at issue, namely, “ethanol”. (See ¶ 5,  
13 “odorless food grade ethanol”, and Ex. 1 to Cross-Complaint, “Ethanol”). Here, ethanol was  
14 clearly sold to CCF (See ¶¶ 5, 6, Ex. 1) – not an “antibacterial” or “medical supplies”. Critically,  
15 ethanol is *not* listed under Cal. Penal Code § 396(j)(6).  
16

17 **F. The Statute of Limitations for the Underlying Criminal Statute Has Expired,  
18 Therefore There Cannot Be a Violation of Cal. Penal Code § 396**

19 CCF’s UCL claim is predicated on an alleged violation of Cal. Penal Code § 396. (¶¶ 17-  
20 20). Pursuant to Cal. Penal Code § 396(h), “A violation [of § 396] is a misdemeanor punishable  
21 by imprisonment in a county jail for a period not exceeding one year, by a fine of not more than  
22 \$10,000, or by both that fine and imprisonment”. Accordingly, the proscribed statute of  
23 limitations is one year from the date of the commission of the alleged offense. Cal. Penal Code §  
24 802.

25 While Cal. Penal Code § 396(i), contemplates its use for UCL claims, here, the Cross-  
26 Complaint is time-barred because CCF filed its cross-claims on January 18, 2022, well over one  
27 year from the alleged breach in September 2020. Even if CCF were to receive the benefit of the  
28 doubt and the statute of limitations be applied from the end of the fixed-term contract, i.e. Jan 15,

2021 - CCF is still barred from bringing its counter claims as the one-year limitations period has clearly lapsed. As such, there can be no violation of Cal. Penal Code § 396.

To the extent that CCF's UCL claim is predicated on a time-barred misdemeanor under Cal. Penal Code § 396, the claim is not viable. As the first and second causes of action are facially time-barred, the Demurrer should be sustained without leave to amend.

**G. Authority Does Not Exist Allowing the UCL to Extend the Statute of Limitations on an Already Time-Barred Criminal Misdemeanor**

The general rule is that an Unfair Competition Law (UCL) cause of action borrows the substantive portion of the borrowed statute to prove the "unlawful" prong of that statute, *but not the limitations procedural part of the borrowed statute*. *Blanks v. Seyfarth Shaw LLP* (App. 2 Dist. 2009) 171 Cal.App.4th 336 (emphasis added).

CCF is likely to cite *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th at 179 for the proposition that a UCL cause of action is subject to a four-year limitations period. In *Cortez* the California Supreme Court held that the UCL's four-year statute of limitations applied, rather than the three-year statute of limitations under the provisions of the Labor Code that formed the basis of the claim. Any action on any UCL cause of action is subject to the four-year period of limitations created by that section." *Id.* at 179.

In analyzing the holding in *Cortez*, however, the court in *Blanks* noted, that the "general rule is that a UCL cause of action borrows the substantive portion of the borrowed statute to prove the 'unlawful' prong of that statute, but *not* the limitations procedural part of the borrowed statute." *Blanks v. Shaw*, 171 Cal.App.4th 336, 363, (2009) (emphasis added).

In *Blanks*, the Court of Appeal held that the one-year statute of limitation under the Talent Agencies Act ("TAA"), Cal. Labor Code 1700 et seq., applied and *not* the four-year statute of limitations under the UCL. *Id.* at 346.

First, while CCF may point to *Cortez* for the proposition that the UCL extends the statutory period of underlying claims, *the holding in Cortez does not state that the UCL serves to revive criminal misdemeanors under the California Penal Code that are already time-barred*

1 *at the time of filing.* To allow CCF to revive a time-barred criminal misdemeanor, under the  
2 pretext of the UCL, would set an inequitable and dangerous precedent.

3 Second, the holding in *Cortez* involved a UCL claim predicated on statutory wage  
4 violations - not misdemeanor crimes under the California Penal Code, as here. *See Cortez*,  
5 *supra*, at 168.

6 Third, there is no direct claim here under Cal. Penal Code § 396. This is because CCF  
7 knows it has blown the one-year statute of limitations. Now CCF uses the UCL as an end-run to  
8 circumvent procedural requirements. Courts have rejected situations similar to the instant case,  
9 where a plaintiff attempts to avoid a time-barred predicate statute by alleging violations in terms  
10 of the UCL (*See Cross-Complaint*, ¶ 17-20).

11 In *Silvas v. E\*Trade Mortg. Corp.*, 514 F.3d 1001, 1007, the appellants alleged UCL  
12 claims predicated upon misrepresentations defendant made during the refinancing process. 514  
13 F.3d 1001, 1003 (9th Cir. 2008). “Although both UCL claims were predicated exclusively on  
14 a violation of TILA, Appellants did not assert a claim under TILA itself.” *Id.* The Ninth Circuit  
15 held that section 17200 may not be used to avoid the statute of limitations of the underlying laws  
16 allegedly violated. *Id.* at 1007 Fn. 3 (9th Cir. 2008) (holding that plaintiffs may not extend the  
17 TILA statute of limitations by pleading a UCL claim based on a time-barred TILA claim).

18 *Silvas* is not an anomaly. *See also Camillo v. Wash. Mut. Bank, F.A.*, No. 09-CV-1548,  
19 2009 WL 3614793, at \*6 (E.D. Cal. Oct. 27, 2009) (plaintiff cannot avoid an absolute bar to  
20 relief, i.e., the statute of limitations, by characterizing the claim as one for unfair competition);  
21 *Yeager v. Bowlin*, No. 08-102, 2010 WL 95242, at \*17 (E.D. Cal. Jan. 6, 2010) (the UCL is  
22 subject to the single publication rule, which provides that no person shall have more than one  
23 claim for damages for invasion of privacy, and the limitations period commences upon the first  
24 distribution of the publication to the public); *Jordan v. Paul Fin., LLC*, 745 F. Supp. 2d 1084,  
25 1098 (N.D. Cal. 2010) (explaining that, to the extent plaintiffs sought to plead around TILA’s  
26 one-year statute of limitations by using the UCL, the claim was preempted by TILA); *Arias v.*  
27 *Capital One, N.A.*, No. C 10-1123, 2011 WL 835610, at \*7 (N.D. Cal. Mar. 4, 2011) (holding  
28 that plaintiffs’ UCL claim was not viable because underlying TILA claims were time-barred);

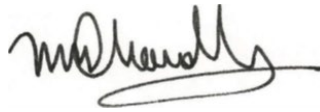
1 *Kohl v. Am. Home Shield Corp.*, No. 11CV0700, 2011 WL 3739506, at \*4 (S.D. Cal. Aug. 24,  
2 2011) (where plaintiff's UCL claim depended entirely on the application of Real Estate  
3 Settlement Procedures Act ("RESPA"), the court concluded that RESPA's one-year statute of  
4 limitations applied to plaintiff's UCL claim). Accordingly, CCF should be prohibited from using  
5 the UCL to circumvent procedural requirements, and revive a time-barred predicate criminal  
6 statute.

#### 7 8 **IV. CONCLUSION**

9 For the foregoing reasons, Cross-Defendant, CAL CHEM, respectfully requests that the  
10 Court sustain the Demurrer in its entirety, without leave to amend, and enter a judgment of  
11 dismissal.

12  
13 Dated: February 17, 2022

CHOWDHARY LAW, APC

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17 \_\_\_\_\_  
18 Manbir S. Chowdhary  
19 Attorneys for Plaintiff and Cross-Defendant,  
20 DURRANI INVESTMENTS CORP.,  
21 DBA CALIFORNIA CHEMICAL  
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I, Manbir S. Chowdhary, hereby declare as follows:

2. On January 31, 2022, pursuant to Code of Civil Procedure section 430.41, I sent an email regarding the substance of Cross-Defendant's Demurrer and Motion to Strike to Michael Bock, counsel of record for Cross-Complainant Morgan Gallacher, Inc. dba Custom Chemical Formulators, Inc. Said communication identified Cross-Defendant's concerns with the Cross-Complaint, the specific causes of action that are subject to the pending motions, in addition to identifying the grounds for the present Demurrer and concurrently filed Motion to Strike.

4. Despite these good-faith meet and confer efforts, the parties failed to reach an agreement concerning Cross-Defendant's objections to the Cross-Complaint.

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

*ms Marshall*

-14-

# **Exhibit A**

EXHIBIT "A" TO DECL. OF MANBIR S. CHOWDHARY

MICHAEL C. BOCK, ESQ. (#223460)  
HEIDI M. PLUMMER, ESQ. (#299467)  
BOCK & PLUMMER, ATTORNEYS AT LAW  
3700 S. Susan Street, Ste 100  
Santa Ana, CA 92704  
Phone: (714) 966-2383  
Fax: (714) 966-2660

Attorneys for Cross-Defendant MORGAN GALLACHER, INC. a California corporation, DBA  
CUSTOM CHEMICAL FORMULATORS, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

STANLEY MOSK

DURRANI INVESTMENTS CORP., a  
California corporation, DBA CALIFORNIA  
CHEMICAL

Plaintiff

vs.

MORGAN GALLACHER, INC. a California  
corporation, DBA CUSTOM CHEMICAL  
FORMULATORS, INC.; and Does 1 through  
10, Inclusive,

Defendant.

) Case No: 21STCV34283

) **CROSS-COMPLAINT OF MORGAN**  
) **GALLACHER, INC dba CUSTOM**  
) **CHEMICAL FORMULATORS, INC. for:**

) 1.)Declaratory Relief

) 2.)Business and Professions Code section 17200

) Date Complaint Filed: September 16, 2021  
) Department: 62

MORGAN GALLACHER, INC. a California  
corporation, DBA CUSTOM CHEMICAL  
FORMULATORS, INC.,

Cross-Complainant,

Vs.

DURRANI INVESTMENTS CORP., a  
California corporation, DBA CALIFORNIA  
CHEMICAL, and Does 1-50, Inclusive

Cross-Defendants

COMES NOW, Cross-Complainant MORGAN GALLACHER, INC dba CUSTOM CHEMICAL FORMULATORS, INC (hereinafter, "CCFI") , who alleges as follows:

**I.**

**VENUE, JURISDICTION, AND PARTIES**

1. Cross-Cross-Defendant DURRANI INVESTMENTS CORP., a California corporation, DBA CALIFORNIA CHEMICAL (hereinafter, "DURRANI") alleges that its principal place of business in Los Angeles County, CA. The action now pending between the above-referenced parties was filed in Los Angeles County, California.

2. In terms of both venue and jurisdiction, this action is appropriately filed in Los Angeles County, California. The amount sought exceeds \$25,000.00.

3. The true names and capacities, whether individual, corporate, associate, or otherwise, of Cross-Defendants sued herein as DOES 1-50, inclusive, are currently unknown to Cross-Complainant (except as to Doe No. 1, as discussed above), who therefore are designated by fictitious names pursuant to Code of Civil Procedure section 474. Cross-Complainant is informed and believes, and based thereon alleges, that each of the Cross-Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referenced herein.

4. Cross-Complainant will seek leave of Court to amend this Complaint to reflect the true names and capacities of the Cross-Defendants designated hereinafter as DOES when such identities become known.

**II.**

**GENERAL ALLEGATIONS**  
**As against all Cross-Defendants**

5. On or about June 22, 2020, Cross-Complainant CCFI and Cross-Defendant DURRANI entered into an agreement in regards to the procurement of odorless food grade ethanol. A copy of this written agreement (hereinafter, "CONTRACT") is attached hereto as Exhibit 1.

6. The CONTRACT called for the delivery of "4 FTL" of material per month for a six-month term beginning on July 15, 2020 and ending on January 15, 2020. The purchase price was set at \$8.475 per gallon. A total of 47,982.34 gallons were purchased by CCFI at the stated price during the summer of 2020.

1           7.       The material at issue in the CONTRACT is an antibacterial product, a fact known to  
2 both CCFI and DURRANI. More specifically, DURRANI was fully aware that the ethanol was  
3 necessary for the production of antibacterial supplies during the Covid19 pandemic and that a  
4 number of facilities, including hospitals, urgent care centers, and government facilities, required  
5 antibacterial products in order to combat the transmission of Covid19.

6           8.       DURRANI, knowing that the general populace, government, and medical facilities  
7 were desperately seeking antibacterial products in order to protect lives, greatly increased the price  
8 of its antibacterial agents, including the material at issue in the CONTRACT, and additionally  
9 began inserting, on or about early 2020, “liquidated damages” provisions within its contracts that  
10 were, in fact, punitive in nature. The CONTRACT at issue contains a clause calling for a 20%  
11 cancelation fee of “total contract value of material not received to date of cancelation,” that:

- 12                   a.       Entirely waives the duty to mitigate
- 13                   b.       Is not reasonably to represent any actual loss
- 14                   c.       Is overly punitive and designed to protect a profit margin rather than
- 15                               represent a reasonable calculation of potential damages

16           9.       Cross-Complainant is informed and believes, and thereon alleges, that in fact  
17 DURRANI suffered no actual losses from the cancellation of the CONTRACT, and furthermore has  
18 not suffered any loss of profits, either. Cross-Complainant alleges that the above described  
19 “liquidated damages” provision is, in fact, an unlawful penalty clause pursuant to California Civil  
20 Code section 1671, or otherwise.

21           10.      Cross-Complainant further alleges that the CONTRACT, and the prices set thereon,  
22 violate California Penal Code section 396 (commonly known as the anti-price gouging law). More  
23 specifically, the products at issue are alleged to be “antibacterial” in nature and/or are “medical  
24 supplies” ( subsection (h)(6) of P.C. 396), furthermore the statute by its own terms is to be  
25 “liberally constructed” (P.C. section 396(a)), and DURRANI has increased its prices of the material  
26 described in the CONTRACT in excess of the allowable amount set forth in within the anti-price  
27 gouging statute. Cross-Complainant is generally aware of the market for such products, of past  
28

1 prices, of current prices, and therefore alleges that Cross-Defendant engaged in “price-gouging” as  
2 that term is defined within Penal Code section 396.

3 11. To the extent Defendant DURRANI did not sell the product outlined in the  
4 CONTRACT in the year(s) prior to the CONTRACT being executed, Cross-Complainant alleges  
5 that Defendant DURRANI charged a price in excess of the allowable profit margin for antibacterial  
6 products/medical supplies in violation of California Executive Order N-44-20, which set a “cap” on  
7 the profit margins such as the one at issue in the CONTRACT. The above-described Executive  
8 Order was codified within Penal Code section 396 as of January 1, 2021.

9 12. It is alleged that Defendant DURRANI consistently, throughout the state of  
10 emergency that existed in California from March 4, 2020 until the present, has charged prices and  
11 received payment from Cross-Complainant and other similarly situated customers pursuant to  
12 contracts that violate Penal Code section 396. It is alleged that Cross-Defendant DURRANI has  
13 taken advantage of an urgent, statewide need for medical supplies to gouge consumers.

14 **III.**  
15 **FIRST CAUSE OF ACTION**  
16 **DECLARATORY RELIEF**  
17 **As Against all Cross-Defendants**

18 13. Cross-Complainant hereby incorporates paragraphs 1-12, above, as though set forth  
19 in full herein.

20 14. Cross-Complainant alleges that the “liquidated damages” provision in the  
21 CONTRACT represents an unlawful “penalty clause” pursuant to California Civil Code section  
22 396, or otherwise. Cross-Complainant seeks declaratory relief that the clause is void, a nullity, or  
23 otherwise unenforceable.

24 15. Cross-Complainant further alleges that the CONTRACT, as a whole, is void, in  
25 whole or in part, as it is violative of public policy. Specifically, the CONTRACT represents an  
26 attempt to unlawfully price gouge during a state of emergency as: the prices set forth for the  
27 product specified within the CONTRACT:

- 28 a. The product specified in the CONTRACT falls within the ambit of Penal  
Code section 396

b. Is subjected to a stated price that exceeds that allowable under California law

16. A justiciable conflict exists between the parties; a judicial declaration is necessary and appropriate at this time under the circumstances.

**IV.**  
**SECOND CAUSE OF ACTION**  
**(CALIFORNIA BUSINESS & PROFESSIONS CODE (17200, *et seq.*)**  
**As Against all Cross-Defendants**

17. Cross-Complainant hereby incorporates paragraphs 1-16, above, as though set forth in full herein.

18. The actions of Cross-Defendants as alleged within this Cross-Complaint constitute false, fraudulent, unlawful, unfair, and/or deceptive business practices within the meaning of California Business and Professions Code section 17200, *et seq.* It is further alleged that the unlawful contractual provisions contained within the CONTRACT, as discussed herein, above, were replicated in a number of contracts concerning other customers of DURRANI in the state of California. Furthermore, it is alleged that Cross-Complainant have suffered financial harm as a result of DURRANI's actions, and that other third-party customers of DURRANI have suffered similar harm.

19. As a result of their unlawful acts, Cross-Defendants have reaped, and continue to reap, unfair benefits from inserting unlawful contractual terms within their contracts.

20. As a direct and proximate result of the unfair business practices of DURRANI, Cross-Complaint is entitled to injunctive relief and restitution to prevent ongoing harm, to prohibit DURRANI from engaging in unfair and wrongful conduct, and to force DURRANI to disgorge unlawfully obtained profits.

**V.**  
**PRAYER FOR RELIEF**  
**As Against all Cross-Defendants**

Wherefore, Cross-Complainant prays as follows:

1. That Cross-Cross-Defendants be ordered and enjoined to make restitution due to their unfair competition, including disgorgement of wrongfully-

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obtained revenues, earnings, profits, compensation, and benefits, pursuant to  
California Business and Professions Code sections 17200, *et seq.*;

2. For Declaratory Relief
3. For costs of suit
4. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5
5. For such other and further relief as the Court deems just and improper, including the imposition of injunctions upon Cross-Defendants

DATED: January 15, 2022

BOCK & PLUMMER  
ATTORNEYS AT LAW

BY: *//electronically signed//*  
MICHAEL C. BOCK  
Attorneys for Defendant/Cross-Complainant  
CCFI

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

**Civil Division**

Central District, Stanley Mosk Courthouse, Department 62

**21STCV34283**

March 18, 2022

**DURRANI INVESTMENTS CORP., A CALIFORNIA  
CORPORATION vs MORGAN GALLACHER, INC., A  
CALIFORNIA CORPORATION**

9:00 AM

Judge: Honorable Michael L. Stern  
Judicial Assistant: M. Alaniz  
Courtroom Assistant: P. Figueroa

CSR: None  
ERM: None  
Deputy Sheriff: None

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**APPEARANCES:**

For Plaintiff(s): Manbir Chowdhary (Telephonic)

For Defendant(s): Michael Bock (Telephonic)

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**NATURE OF PROCEEDINGS:** Hearing on Demurrer - with Motion to Strike (CCP 430.10)

The matter is called for hearing and argued.

After conferring with counsel, the Court rules as follows:

As to the first cause of action for Declaratory Relief, The Demurrer - with Motion to Strike (CCP 430.10) filed by DURRANI INVESTMENTS CORP., a California Corporation on 02/17/2022 is Sustained without Leave to Amend. The Court finds that there is nothing to declare. "Price gouging" is not something to declare.

As to the second cause of action for 17200, The Demurrer - with Motion to Strike (CCP 430.10) filed by DURRANI INVESTMENTS CORP., a California Corporation on 02/17/2022 is Sustained without Leave to Amend.

The Court orders DURRANI INVESTMENTS CORP., a California Corporation in Cross-Complaint filed by MORGAN GALLACHER, INC., a California corporation on 01/18/2022 dismissed with prejudice.

Clerk is to give notice.

Certificate of Mailing is attached.