

**FILED**  
San Francisco County Superior Cou.

FEB 25 2021

CLERK OF THE COURT  
BY: [Signature]  
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

DEPARTMENT 613

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

VITOL INC.; SK ENERGY AMERICAS, INC.; SK TRADING INTERNATIONAL CO. LTD.; AND DOES 1-30, INCLUSIVE,

Defendants.

Case No. CGC-20-584456

ORDER OVERRULING DEFENDANTS' DEMURRER TO COMPLAINT

**INTRODUCTION**

This matter came on regularly for hearing on January 22, 2021 and January 27, 2021 in Department 613, the Honorable Andrew Y.S. Cheng, presiding. Deputy Attorney General Tai Milder appeared for the People of the State of California ("the People"). Michael Martinez, Clifford Histed, and Jeffrey M. Davidson appeared for defendants SK Energy Americas, Inc. ("SKEA") and SK Trading International Co. Ltd ("SKTI"). Steven Madison, Amanda K. Bonn, Ethan Glass, and Eliza Finley appeared for defendant Vitol Inc. ("Vitol").

1 Having reviewed and considered the arguments, pleadings, and written submissions of all parties,  
2 the Court **VERRULES** SKEA, STKI<sup>1</sup> and Vitol’s (collectively “Defendants”) demurrer.

3 **REQUEST FOR JUDICIAL NOTICE**

4 As a preliminary matter, Defendants’ Request for Judicial Notice in Support of Defendants’  
5 Demurrer is **GRANTED**. The Court takes judicial notice of the following documents pursuant to Cal.  
6 Evid. Code § 452 (b), (c) and (h):

- 7 • An email exchange between Brad Lucas and David Niemann dated September 3, 2015, attached  
8 as Exhibit A to the Declaration of Amanda Bonn [“Bonn Declaration”]). The Court takes  
9 judicial notice of the existence of the document but not the truth of the statements contained  
10 therein nor the proper interpretation thereof;
- 11 • A report published by the California Energy Commission on October 21, 2019, entitled  
12 “Additional Analysis on Gasoline Prices in California”, attached as Exhibit B to the Bonn  
13 Declaration; and
- 14 • A press release issued by the South Coast Air Quality Management District (“SCAQMD”) dated  
15 April 5, 2016, entitled “SCAQMD Hearing Board Adopts Order to Allow ExxonMobil to  
16 Restart Major Processing Unit”, attached as Exhibit C to the Bonn Declaration.

17 **BACKGROUND**

18 **I. Procedural History**

19 On May 4, 2020, Attorney General Xavier Becerra, the chief law enforcement officer of the State  
20 of California, brought this action on behalf of the People against Vitol, SKEA and SKTI. The People  
21 assert two causes of action for (1) violation of the Cartwright Act (Cal. Bus. and Prof. Code § 16720 et  
22 seq.) and (2) violation of the Unfair Competition Law (Cal. Bus. and Prof. Code § 17200 et seq.) (See  
23 Complaint for Violations of the Cartwright Act and Unfair Competition Law for Damages, Injunctive  
24 Relief, Civil Penalties, and Other Equitable Relief [“Compl.”] ¶¶ 123-136.)

25 Pursuant to Code of Civil Procedure (“C.C.P.”) section 430.10, subdivision (e), Defendants demur  
26 to the People’s Complaint on the following grounds:

27  
28 <sup>1</sup> Defendant SKTI is challenging jurisdiction via a motion to quash, but conditionally joins this demurrer  
if that motion is not granted.

- 1           1.     The People’s first cause of action for violations of the Cartwright Act fails to state facts  
2                   sufficient to constitute a cause of action against Defendants pursuant to Code of Civil  
3                   procedure; and
- 4           2.     The People’s second cause of action for violations of the Unfair Competition Law  
5                   (“UCL”) fails to state facts sufficient to constitute a cause of action against Defendants.

## 6   **II.    The Alleged Fraudulent Scheme**

7           In February 2015, an explosion damaged a large gasoline refinery complex located in Torrance,  
8   California. (See Compl. ¶ 1.) The accident caused an unexpected undersupply of refined gasoline. (See  
9   *id.*) Defendants acted quickly, negotiating large contracts to supply much-needed gasoline and gasoline  
10   blending components for delivery in California. (See *id.* at ¶ 4.) Defendants participated in a scheme to  
11   drive up and manipulate the spot market price so that they could realize windfall profits on these large  
12   contracts to deliver gasoline and gasoline blending components. (See *id.* at ¶ 5.) In the aftermath of the  
13   explosion, the U.S. West Coast trader for Vitol, Brad Lucas (“Lucas”) and senior trader for SK, David  
14   Niemann (“Niemann”), who were friends and former colleagues, reached agreements with each other and  
15   with third parties as part of a scheme to manipulate, raise, fix, and tamper with the spot market price of  
16   gasoline in California using various tactics. (See *id.* at ¶ 6.) They also entered into agreements with each  
17   other to share the profits and disguise or hide the nature of the scheme. (See *id.*)

### 18                                   LEGAL STANDARD

#### 19   **I.    Demurrer**

20           A demurrer lies where “the pleading does not state facts sufficient to constitute a cause of action.”  
21   (Code Civ. Proc. § 430.10(e).) A demurrer admits “all material facts properly pleaded, but not  
22   contentions, deductions, or conclusions of fact or law.” (See *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318;  
23   see also *C&H Foods Co. v. Hartford Ins. Co.* (1984) 163 Cal. App. 3d 1055, 1062 [“material facts allege  
24   in the complaint are treated as true for the purpose of ruling on the demurrer”].) The plaintiff “must set  
25   forth factual allegations that sufficiently state all required elements of [a] cause of action . . . and,  
26   [a]llegations must be factual and specific, not vague or conclus[ory].” (*Rakestraw v. Cal. Physicians’*  
27   *Serv.* (2000) 81 Cal.App.4th 39, 43-44 [internal citations omitted].) The complaint is given “a reasonable  
28   interpretation, reading it as a whole and its parts in their context.” (See *Blank, supra*, 39 Cal.3d at 318;

1 see also *Kruss v. Booth* (2010) 185 Cal.App.4th 699, 713 [the court must “draw[] all reasonable  
2 inferences . . . in favor of the plaintiff”].)

## 3 **II. Cartwright Act**

4 “Section 16720, subdivision (a) [of the Cartwright Act] defines the prohibited kinds of “trusts”  
5 (combinations of capital, skill or acts by two or more persons) as including those created for carrying out  
6 unreasonable restrictions in trade or commerce.” (*Marsh v. Anesthesia Services Medical Group, Inc.*  
7 (2011) 200 Cal.App.4th 480, 493.)

### 8 **DISCUSSION AND ANALYSIS**

#### 9 **I. The People’s First Cause of Action for Violations of the Cartwright Act**

##### 10 **a. Background Law**

11 “The elements of this Cartwright Act claim are (1) the formation and operation of the conspiracy,  
12 (2) the wrongful act or acts done pursuant thereto, and (3) the damage resulting from such act or acts. An  
13 antitrust claim must plead the formation and operation of the conspiracy and the illegal acts done in  
14 furtherance of the conspiracy. California requires a high degree of particularity in the pleading of  
15 Cartwright Act violations, and therefore generalized allegations of antitrust violations are usually  
16 insufficient. ... The absence of factual allegations of specific conduct in furtherance of the conspiracy to  
17 eliminate or reduce competition makes the complaint legally insufficient.” (*Marsh, supra*, 200  
18 Cal.App.4th at 493 [internal quotations and citations omitted].)

19 “Under the traditional rule of reason, inquiry is limited to whether the challenged conduct  
20 promotes or suppresses competition. To determine whether an agreement harms competition more than it  
21 helps, a court may consider the facts peculiar to the business in which the restraint is applied, the nature of  
22 the restraint and its effects, and the history of the restraint and the reasons for its adoption.” (*In re Cipro*  
23 *Cases I & II* (2015) 61 Cal.4th 116, 146 [internal quotations and citations omitted].)

24 “Certain restraints which lack redeeming virtue are conclusively presumed to be unreasonable and  
25 illegal,” and constitute a per se illegal practice. (*Morrison v. Viacom, Inc.* (1998) 66 Cal.App.4th 534,  
26 540.) “[A] horizontal combination (an anticompetitive agreement among competitors who are at the same  
27 level of distribution) is ordinarily illegal per se.” (*Marsh, supra*, 200 Cal.App.4th at 493.) The  
28

1 Cartwright Act “makes a conspiracy among competitors to restrict output and/or raise prices unlawful per  
2 se without regard to any of its effects[.]” (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 851.)

3 **b. Analysis**

4 **i. Formation and Operation of the Conspiracy**

5 **A. The People’s Allegations**

6 The People allege that in February 2015, Defendants reached agreements with each other and with  
7 third parties as part of a scheme to raise, fix and tamper with the price of finished gasoline in California  
8 by using various tactics. (See Compl. ¶ 80.) The goal of the scheme was to drive up or stabilize the  
9 OPIS-reported price during pricing windows and to realize supra-competitive profits while limiting bona  
10 fide market risk. (See *id.*) There were two primary components of Defendants’ scheme: (1) engage in  
11 trades that were reported to OPIS for the purpose of inflating the OPIS-published price in the Spot Market  
12 Report and (2) execute facilitating trades to hide or disguise the nature of the scheme, to limit or eliminate  
13 bona fide market risk on the reported trades, and to share profits with each other. (See *id.* at ¶ 81.)

14 While engaging in this scheme, the People allege Defendants entered into covert agreements to  
15 share profits. (See *id.* at ¶ 98.) Within SK, these agreements were sometimes referred to as an “alliance”  
16 or “joint ventures” (“JVs”). (See *id.*) Defendants took steps not to reveal the nature of these agreements  
17 to other market participants. (See *id.*) The coordination between Vitol and SK began with Regular  
18 CARBOB (“Regular”) in late 2014 and then expanded to include Premium CARBOB (“Premium”) in  
19 February 2015. In April 2015, Defendants held an in-person meeting in Houston, Texas. (See *id.* at ¶  
20 99.) At some point in mid-to-late-2015, Defendants expanded their JVs to include alkylate cargoes. (See  
21 *id.* at ¶ 100.) Under this arrangement, Vitol or SK would import a cargo, but Defendants would work  
22 together to boost the profits from selling the alkylate while seeking to conceal the cooperation. (See *id.*)

23 **B. Application**

24 Defendants contend that the Complaint failed to allege any direct evidence that SKEA and Vitol  
25 conspired to manipulate OPIS-reported prices. However, Defendants fail to cite a single case holding the  
26 People must plead “direct evidence” in order to state a claim under the Cartwright Act. “Rather, in order  
27 to sufficiently state a cause of action, the plaintiff must allege in its complaint certain facts in addition to  
28 the elements of the alleged unlawful act so that the defendant can understand the nature of the alleged

1 wrong and discovery is not merely a blind ‘fishing expedition’ for some unknown wrongful acts.” (See  
2 *Cellular Plus, supra*, 14 Cal.App.4th at 1236 [citation omitted].) “It is important to acknowledge the  
3 practical inability of a typical plaintiff to allege at the outset of its Cartwright Act claim the full details of  
4 an alleged price fixing agreement. Because of the well-known wrongfulness of price fixing agreements,  
5 conspirators rarely make such agreements in the open or document their illicit agreements. Rather, it is  
6 usually the situation that such agreements are made covertly, thereby making it difficult for a plaintiff to  
7 allege the full details of such price fixing agreement prior to its ability to engage in the ‘rock-turning’  
8 allowed by discovery.” (See *id.* at 1239; see also *Saxer v. Philip Morris, Inc.* (1975) 54 Cal.App.3d 7, 27  
9 [“Antitrust schemes generally are conceived in secrecy and live their lives in relative obscurity”].)

10 The People allege a number of specific factual allegations over and above the statutory elements  
11 of the Cartwright Act. The Complaint alleges the timeframe during which the conspiracy formed and  
12 operated. (See Compl. ¶¶ 7, 64-67, 74, 78-79, 80, 99-100, 102.) It identifies the companies and  
13 individuals who carried out the alleged conspiracy. (See *id.* at 6, 50-51, 57-58, 68, 74, 80-82, 102, 105,  
14 109.) It explains how Defendants’ alleged market manipulation scheme operated and the various methods  
15 by which Defendants executed their coordinated manipulation scheme. (See *id.* at ¶¶ 80-104.) The  
16 Complaint also alleges the purpose of the scheme. (See *id.* at ¶¶ 5, 80-83.) The People sufficiently allege  
17 the formation and operation of a conspiracy.

## 18 **ii. Wrongful Acts**

### 19 **A. The People’s Allegations**

20 The People allege Defendants committed the following wrongful acts. Defendants engaged in  
21 trades to move up or inflate the OPIS-reported price during the pricing windows for large contracts and  
22 selectively reported transactions and loss-leader transactions that were reported to OPIS to drive up,  
23 stabilize or arrest the decline of the OPIS-reported price. (See Compl. ¶ 82.) Defendants executed  
24 facilitating trades that were related to the OPIS-reported transactions. (See *id.* at ¶ 91.) These facilitating  
25 trades were executed for various purposes, including to hide or disguise the nature of the scheme, to limit  
26 or eliminate bona fide market risks on reported trades, and to share profits with each other and with third-  
27 parties. (See *id.*) Defendants entered into covert agreements to share profits and when they shared the  
28

1 profits from the alkylate cargoes, it aligned their incentives to inflate the OPIS-reported prices during the  
2 pricing window for that alkylate. (See *id.* at 101.)

### 3 **B. Application**

4 Defendants argue that the complaint fails to plead an antitrust conspiracy to manipulate OPIS-  
5 reported prices because joint ventures to import alkylate cargo during a shortage and thus increase supply  
6 are not per se unlawful and do not suggest the existence of an OPIS-manipulation conspiracy. While, as  
7 Defendants assert, a joint venture is not itself per se unlawful, the People do not allege that the joint  
8 ventures alone were per se unlawful, rather the People allege the joint ventures were part of Defendants'  
9 "scheme", which constitutes a per se violation of Section 16720. (See Compl. ¶ 128.) Moreover, the  
10 People allege that the joint ventures were effectively a sham or pretext for cooperation and were a method  
11 of engaging in prearranged transactions and competition. (See *id.* at ¶¶ 103-104.) The Court cannot  
12 currently determine the legitimacy of Defendants' joint venture.

13 Defendants ask the Court to view the People's allegations regarding each component of the  
14 alleged scheme in a vacuum. However, it is improper to dissect a Cartwright Act claim in such a manner.  
15 (See *In re Automobile Antitrust Cases I & II* (2016) 1 Cal.App.5th 127, 152 ["plaintiffs in an antitrust  
16 action for unlawful conspiracy should be given the full benefit of their proof without tightly  
17 compartmentalizing the various factual components and wiping the slate clean after scrutiny of each.  
18 Thus, the character and the effect of a conspiracy are not to be judged by dismembering it and viewing its  
19 separate parts, but only by looking at it as a whole."] [internal quotations and citations omitted].) The  
20 People allege a single coordinated, overarching conspiracy to manipulate the California spot market,  
21 which employed a variety of trading techniques to execute and then obscure the overall scheme. One  
22 element of the scheme was shared floating price contracts for which Defendants manipulated final  
23 settlement prices. (See *id.* at ¶¶ 80-83.) Another aspect of the broad coordinated scheme was  
24 Defendants' use of facilitating trades to conceal the nature of their market-spiking OPIS-reported trades.  
25 (See *id.* at ¶¶ 95-97.) Defendants also allegedly employed other facilitating trades, such as wash or  
26 round-trip trades where the first leg was reported to OPIS, but the second leg—which effectively  
27 cancelled out the first, thereby eliminating any bona fide market risk—was not. (See *id.* at ¶¶ 92-94.)  
28 While procompetitive joint ventures are not generally per se unlawful, the People allege that Defendants'

1 joint ventures were a method of engaging in prearranged transactions and competition. (See *id.* at ¶ 101,  
2 103.) The People sufficiently allege that Defendants’ scheme to fix, maintain, control, increase, inflate,  
3 tamper with, or otherwise manipulate and make artificial the benchmark prices of imported gasoline-  
4 related products is per se unlawful. (See *Marsh, supra*, 200 Cal.App.4th at 493; *Aguilar, supra*, 25  
5 Cal.4th at 851.)

6 Moreover, the People’s allegations sufficiently put Defendants on notice of the alleged wrongs to  
7 prevent discovery from being a blind “fishing expedition” for some unknown wrongful acts. (See  
8 *Cellular Plus, supra*, 14 Cal.App.4th at 1236.)

9 **iii. Resulting Damage**

10 **A. The People’s Allegations**

11 The People allege the trades at issue in this case involve the California spot markets. (See Compl.  
12 ¶ 31.) Spot markets are referred to as “physical” markets because market participants use them to obtain  
13 supplies of actual product. (See *id.* at ¶ 32.) The prices on the California spot markets are greatly  
14 influenced by the prices on the New York Mercantile Exchange (“NYMEX”) with a “spread” or  
15 “differential” expressed in cents per gallon. (See *id.* at ¶¶ 33-34.)

16 Unlike the NYMEX, spot market trades in California for both Regular and Premium are traded  
17 through non-public transactions, sometimes called over-the-counter (“OTC”) trades. (See *id.* at ¶ 37.)  
18 The OTC transactions do not occur on a centralized open exchange like the NYMEX, so prices on the  
19 California spot markets are not immediately public. (See *id.*) Instead, market participants rely on price-  
20 reporting services that report spot market prices from sources that participate in the market, such as  
21 traders, refiners and brokers. (See *id.*) OPIS is the most widely used reporting service in California. (See  
22 *id.* at ¶ 38.) OPIS is a subscription service that publishes a daily OPIS West Coast Spot Market Report  
23 (the “Spot Market Report”), which is the industry pricing benchmark used by both buyers and sellers in  
24 California. (See *id.*)

25 According to the People, as a core component in the scheme, Defendants engaged in trades to  
26 move up or inflate the OPIS-reported price during the pricing windows for large contracts. (See *id.* at ¶  
27 82.) Because there is far less trading of Premium, the People allege individual Premium trades reported to  
28 OPIS could have a significant impact on the spot market price. (See *id.*) Defendants’ manipulation of the



1 OPIS-reported benchmark price of Regular and Premium was so effective that “those prices moved higher  
2 or stayed higher to a degree that is nearly inexplicable when compared to the supply and demand  
3 fundamentals prevailing at the time of the pricing windows.” (*Id.* at ¶ 107.)

4 The People allege that Defendants’ gains came at the expense of consumers across California.  
5 (See *id.* at ¶ 110.) The spot market price translates to the “rack” market prices, which are the wholesale  
6 prices that are paid when a gasoline tanker truck is filled up. (See *id.* at ¶ 111.) Inflated rack market  
7 prices then directly translate into inflated prices in the retail market and ultimately what is paid at the  
8 pump. (See *id.*) While Defendants engaged in the scheme to target certain contracts, the impact of the  
9 scheme on the wider gasoline market was foreseeable to Defendants. (See *id.* at ¶ 112.) The illicit  
10 agreements and spot market manipulation rippled throughout the California gasoline market such that  
11 consumers paid more than they should have at retail gas stations. (See *id.* at ¶ 114.)

#### 12 **B. Application**

13 The alleged injuries must not be “secondary, consequential, or remote, but the direct result of the  
14 unlawful conduct and [] the kind of injuries the antitrust laws seeks to prevent.” (*Cellular Plus, supra*, 14  
15 Cal.App.4th at 1233.) “In order to allege a sufficient ‘antitrust injury,’ [the People] must also allege such  
16 injuries were sustained ‘by reason of’ the unlawful price fixing.” (*Id.* at 1234.) “[A]n ‘antitrust injury’ is  
17 the type of injury the antitrust laws were intended to prevent, and which flows from the invidious conduct  
18 which renders defendants’ act unlawful.” (*Id.* at 1232 [internal quotations and citation omitted].)

19 First, the Court finds that the People’s alleged injury, payment of inflated prices for finished  
20 gasoline as a result of Defendants’ conspiracy to manipulate and inflate the spot market prices, is the kind  
21 of injury the Cartwright Act was intended to prevent. (See Bus. & Prof. Code § 16720, subd. (e)(4)  
22 [defining a trust as a “combination of capital, skill or acts by two or more persons . . . [t]o make or enter  
23 into or execute or carry out any contracts, obligations or agreements of any kind or description, by which  
24 they . . . [a]gree to pool, combine or directly or indirectly unite any interests that they may have connected  
25 with the sale or transportation of any such article or commodity, that its price might in any manner be  
26 affected.”]; see also *Flagship Theatres of Palm Desert, LLC v. Century Theatres, Inc.* (2011) 198  
27 Cal.App.4th 1366, 1380 [higher prices may evidence conduct that actually rendered the relevant market  
28 uncompetitive (or less competitive)].)

1 Second, the Court finds the People sufficiently allege that California consumers' injury flows from  
2 the alleged invidious conduct which renders Defendants' acts unlawful, i.e., an anti-competitive scheme  
3 to engage in trades to inflate the California spot market prices. The People allege Defendants caused  
4 California consumers to pay higher retail gas prices because Defendants' conspiracy to target certain  
5 Regular, Premium and alkylate contracts had a market-wide impact. Specifically, the People allege the  
6 inflated spot market prices translated to an inflated "rack market" price which, in turn, directly translated  
7 to an inflated retail price paid by California consumers. (See Compl. ¶¶ 111-114.) While it is true that  
8 proximate causation is required for a Cartwright Act claim, the People's causation theory alleges a  
9 sufficiently direct link between Defendants' conduct and California consumers' injury. (See *Saxer, supra*,  
10 54 Cal.App.3d at 23 ["The alleged antitrust violation need not be the sole or controlling cause of the  
11 injury in order to establish proximate cause, but only need to be a substantial factor in bringing about the  
12 injury]; see also *Sun Microsystems Inc. v. Hynix Semiconductor Inc.* (N.D. Cal. 2009) 608 F.Supp.2d  
13 1166, 1205 [where the price-fixing activity was not directly aimed at plaintiff but rather based on the fact  
14 that defendants' conspiracy to fix prices *in turn* caused an increase in plaintiffs' prices, the court found  
15 that plaintiff's causation theory satisfied proximate causation required under the Cartwright Act].)

16 At the demurrer stage, the Court declines to decide between the parties' competing theories  
17 regarding the causes of the higher prices (defendants' conduct or factors beyond defendants' control).

18 The Court overrules the demurrer to the People's first cause of action.

## 19 **II. The People's Second Cause of Action for Violations of the UCL**

20 The People bring a claim under the UCL alleging unlawful conduct based on (1) the Cartwright  
21 Act, (2) the federal Commodity Exchange Act and (3) the California Commodity Law.

### 22 **a. Background Law**

23 Pursuant to the UCL, "unfair competition shall mean and include any unlawful, unfair or  
24 fraudulent business act or practice[.]" (Bus. & Prof. Code § 17200.) The scope of the UCL is broad.  
25 (See *Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180.)  
26 "By proscribing 'any unlawful' business practice, Bus. & Prof. Code, § 17200, borrows violations of  
27 other laws and treats them as unlawful practices that the unfair competition law makes independently  
28 actionable." (*Id.* [internal quotations and citations omitted].) Additionally, the statutory language

1 referring to “any unlawful, unfair or fraudulent” practice makes clear that a practice may be deemed  
2 unfair even if not specifically proscribed by some other law. (See *id.*) “[The UCL] provides its own  
3 distinct and limited equitable remedies for unlawful business practices, using other laws only to define  
4 what is ‘unlawful.’” (*Rose v. Bank of America, N.A.* (2013) 57 Cal.4th 390, 397.)

5 **b. Analysis**

6 For the same reasons previously discussed, the People’s allegations are sufficient to state a UCL  
7 claim based on antitrust liability under the Cartwright Act. (See *Krantz v. BT Visual Images, L.L.C.*  
8 (2001) 89 Cal.App.4th 164, 179 [a claim for relief under the UCL will “stand or fall depending on the fate  
9 of the antecedent substantive causes of action”]; *Cf. SC Manufactured Homes, Inc. v. Liebert* (2008) 162  
10 Cal.App.4th 68, 93 [“In that plaintiff cannot allege a Cartwright Act violation . . . the cause of action for a  
11 violation of the UCL also cannot stand.”].) Because there is alleged antitrust liability sufficient to support  
12 the UCL cause of action, the Court need not address the federal Commodity Exchange Act and the  
13 California Commodity Law. (See generally, Weil & Brown, et al., CALIFORNIA PRACTICE GUIDE:  
14 CIVIL PROCEDURE BEFORE TRIAL ¶ 7:41 (Rutter: 2015) [if the essential facts of “some” valid cause  
15 stated, demurrer overruled]; see also *Quelimane Co., Inc. v. Stewart Title Guar. Co.* (1998) 19 Cal.4th 19  
16 Cal.4th 26, 38 [“If the complaint states a cause of action under any theory, regardless of the title under  
17 which the factual basis for relief is stated, that aspect of the complaint is good against a demurrer.”].)

18 The Court overrules the demurrer to the People’s second cause of action.

19  
20 **CONCLUSION**

21 Defendants’ demurrer to the People’s complaint is **OVERRULED**. Defendants’ answer to the  
22 complaint must be filed no later than **March 25, 2021**.

23 IT IS SO ORDERED.

24 Dated: February 25, 2021

25 

26 ANDREW Y.S. CHENG  
27 Judge of the Superior Court  
28


**CERTIFICATE OF ELECTRONIC SERVICE**  
(CCP 1010.6(6) & CRC 2.260(g))

I, KEITH TOM, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On February 25, 2021, I electronically served the ATTACHED DOCUMENT(S) via File&ServeXpress on the recipients designated on the Transaction Receipt located on the File&ServeXpress website.

Dated: February 25, 2021

T. Michael Yuen, Clerk

By:   
\_\_\_\_\_  
KEITH TOM, Deputy Clerk