

**VII**  
**BUSINESS AND PROFESSIONS CODE § 17200**

Plaintiffs' unfair business practices claim requires only the showing of an unfair, unlawful, or fraudulent business practice by the defendants, which is clearly satisfied in this instance. "We recognize that any business act or practice that violates the Labor Code through failure to pay wages is, by definition (§ 17200), an unfair business practice." (*Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.4th 163, 178-79.) Here, the repeated practice of Labor Code violations by defendants are, as a matter of law, in and of themselves violations of section 17200. Once such a showing has been made, both restitution and disgorgement of profits are to be considered by the court.

It is well-settled law in California that **in a certified class-action lawsuit, the trial court has discretion not only to award restitutionary damages to aggrieved class members, but order a defendant to pay a "fluid recovery" (disgorgement of profits) to those plaintiffs under Business & Professions Code § 17200 as a result of unfair business practices.** See, e.g., *Kraus v. Trinity Management Services, Inc.* (2000) 23 Cal.4th 116, 127-28. In fact,

the purpose [of Bus. & Prof. Code § 17200] is to deter future violations of the unfair business practice statute and to foreclose retention by the violator of its ill-gotten gains. [Internal citations omitted]. The Legislature considered this purpose so important that it authorized courts to order restitution without individualized proof of deception, reliance, and injury if necessary to prevent the use or employment of unfair practice.

(*Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1267.) The deterrent purpose of this statute was reaffirmed by the California Supreme Court in *ABC*

*International Traders, Inc. v. Matsushita Electric Corp.* (1997) 14 Cal.4th 1247, 1268-1272.

Further, when considering the assessment of restitution and disgorgement of profits, **the court is not limited by the normal three-year statute of limitations which govern Labor Code violations.** The plain fact that section 17200 carries its own four-year statute of limitations is dispositive of the issue, and the Supreme Court has specifically and unequivocally rejected the argument that the Labor Code three-year statute of limitations would otherwise bar recovery in that fourth year. (*Cortez v. Purolator Air Filtration Products Co.* 23 Cal.4th at 178-79.) “**Any action on any [§ 17200] cause of action is subject to the four-year period of limitations created by that section.**” *Id.* (*Emphasis in original.*) Therefore, plaintiffs seek restitution of unpaid wages in the fourth year before the filing of this lawsuit, based on an extrapolation of damages as presented by the parties’ joint expert of the first three years’ worth of damages. Such award is necessary to restore plaintiffs’ unpaid wages which arose as a direct consequence of defendants’ unlawful business practices.