By Diane Kimberlin

Class Struggles

California courts have yet to offer clear guidance on the **certification of class actions** in wage and hour disputes

The application of standard class action principles to claims that employers have violated California's wage and hour laws has been the subject of much controversy and litigation in recent years and is beginning to reshape employer practices in more than one industry. Lawsuits challenging employers' wage and hour practices on a class-wide basis have targeted a broad range of employers and industries, including fast food restaurants, chain retail stores (including those selling clothing, auto supplies, and home and decorating items, as well as drug stores and video rental stores), car rental companies, grocery stores, and insurance companies.

The lawsuits allege a variety of violations of wage and hour laws. These include requiring hourly nonexempt employees to work "off the clock," failing to provide these employees with proper rest breaks and meal periods, and failing to accurately identify and pay for all time worked.[1] Probably the most common claim brought against employers, and potentially the most costly, is the improper classification of managerial employees as exempt under the "executive" exemption or the misclassification of other employees as exempt under the "administrative" exemption.

Many employers previously unaware of the significant differences between California's wage and hours laws and the federal Fair Labor Standards Act[2] have learned at considerable cost that California's tests for exemption from overtime pay requirements are harder to meet than those under the federal law. Multistate employers, for example, have paid huge settlements in class action litigation because their wage and hour policies had been designed to comply with the FLSA but could not pass muster under

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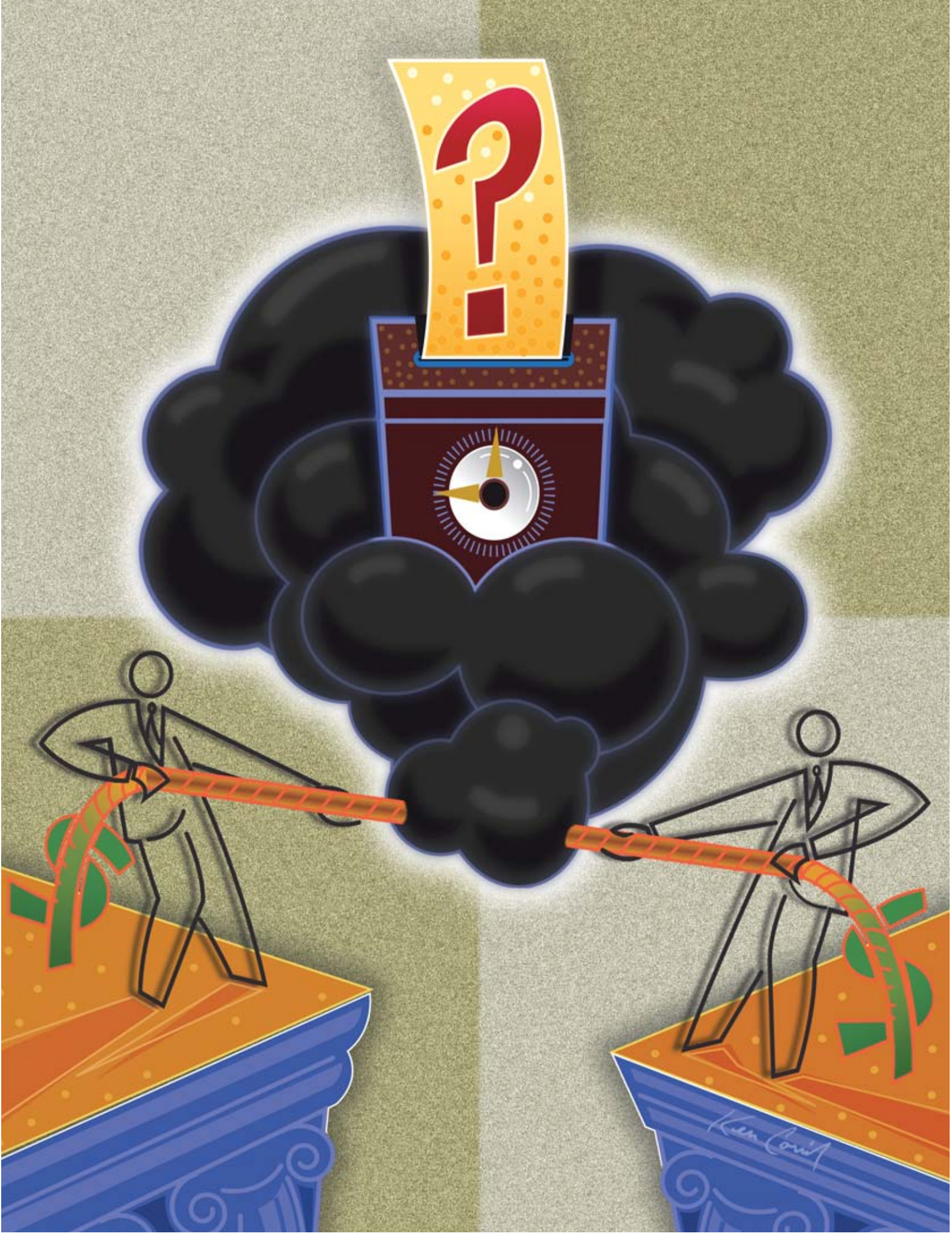

California law.

California wage and hour laws are more favorable to employees in other respects as well. For example, under California law, the consequences for failure to provide required rest breaks and meal periods include the equivalent of an extra hour of pay for missed breaks.[3] An employer who violates any provision of the "working hours" chapter of the Labor Code[4] or any provision regulating hours and days of work in any wage order issued by the Industrial Welfare Commission[5] may be required to pay civil penalties. The penalty for an initial violation is $50 per affected employee per pay period. For each subsequent violation the penalty doubles to $100 per employee per pay period.[6] "Waiting time penalties" of up to 30 days' wages may be assessed against employers who fail to make timely payment of all wages (including accrued but unused vacation pay) owed to an employee who is discharged or quits.[7] Prevailing plaintiffs are entitled to recover their attorney's fees.[8]

Employers can face very significant liabilities when these remedies are aggregated in potential class-wide recoveries. The fact that under federal and California law individuals acting on behalf of an employer may be held personally liable for unpaid wages and penalties makes inattention to wage and hour compliance a very risky proposition.[9]

A claim may be maintained as a class action under California law "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court…."[10] California courts recognize the similarities between the prerequisites for class actions under state and federal law and may look to decisions of the federal courts for guidance in determining whether a dispute should be certified for class treatment.[11]

Under federal law, class actions are appropriate when: "(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class."[12]

Once the prerequisites are in place, federal law permits class actions if certain other conditions are present. Among these are "that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy…."[13]

The proponent of class certification bears the burden of proving that common questions predominate over individual ones and that the other conditions for a class action are present.[14] In almost all wage and hour cases it is the plaintiffs who wish to certify the case as a class action, so they must bear this burden of proof. One of the most controversial issues facing the courts in recent years has been whether lawsuits alleging violation of wage and hour laws, especially claims that employers have misclassified workers as exempt from the requirement of overtime pay, can meet these standards and be tried as class actions.

Exempt Status

Both California and federal law provide exemptions from overtime pay requirements for executive, administrative, and professional employees. Under both California and federal law, exempt status is an affirmative defense,[15] and the exemptions are to be "narrowly construed."[16] Under California law, the Industrial Welfare Commission may establish exemptions from the state's overtime pay requirements for executive, administrative, and professional employees "provided that the employee is primarily engaged in the duties that meet the test of the exemption, customarily and regularly exercises discretion and independent judgment in performing those duties, and earns a…salary equivalent to two times the minimum wage for full-time employment."[17] The federal exemptions are authorized by the Fair Labor Standards Act and their parameters explained in regulations issued by the U.S. Department of Labor.[18]

The "professional" exemption is not often the subject of litigation. In the broadest terms, under federal and California law, the exemption applies to 1) employees performing work requiring advanced knowledge acquired by a prolonged course of specialized instruction, 2) employees in the artistic and the learned professions (for example, medicine, architecture, and dentistry), 3) employees who are educators, and 4) employees performing certain highly sophisticated work in computer systems analysis, programming, and software engineering.[19]

Under federal and California law, the executive exemption applies only to employees who regularly supervise the work of at least two full-time employees (or their equivalent in part-time employees), who are in charge of a recognized department or business division, and who have the authority to hire and fire employees or to make effective recommendations to do so.[20] An administrative employee is exempt only if his or her primary duties involve the performance of "office or non-manual work directly related to management policies or general business operations of his employer or his employer's customers." An exempt administrative employee also regularly assists an owner, executive, or administrator; or performs technical or specialized work; or executes special assignments under only general supervision.[21] All three exemptions—professional, executive, and administrative —can be lost if the employees in question spend too much time on nonexempt work, including so-called production work.[22]

California and federal law part company on several key points in determining the applicability of the exemptions. But the difference that lies at the heart of much recent litigation is the amount of time an executive or administrative employee may spend on nonexempt tasks and still be exempt.

Under the FLSA any employee earning a salary of at least $250 per week qualifies for the so-called short test to determine exempt status under the executive or administrative exemptions.[23] Because the salary required for application of the short test is minimal, the vast majority of cases determining exempt status under the FLSA use this test. It requires that the employee's "primary duty" consist of either managerial or administrative work that "includes" the exercise of discretion and independent judgment.[24] The federal law permits a finding that an employee's primary duty consists of those tasks most important to the employer, even if they do not take up the majority of the employee's time.[25] In other words, it permits a qualitative analysis of the primary duty standard.

California law, in contrast, requires a purely quantitative analysis. An employer must show that its exempt employees spend more than 50 percent of their time engaged in exempt tasks.[26] The California Supreme Court described how this analysis should be undertaken in its decision in *Ramirez* v. *Yosemite Water Company*:[27]

> [The trial court should inquire] into the *realistic* requirements of the job. In so doing, the court should consider, first and foremost, how the employee actually spends his or her time. But the trial court should also consider whether the employee's practice diverges from the employer's realistic expectations, whether there was any concrete expression of employer displeasure over an employee's substandard performance, and whether these expressions were themselves realistic given the actual overall requirements of the job.[28]

The *Ramirez* court remanded the case to the trial court with instructions to:

> [I]temize the types of activities that it considers to be [exempt], and the approximate average times that it finds

> the employee spent on each of these activities. Because the question whether a particular activity is [exempt] is a mixed one of law and fact, this itemization will enable an appellate court to review whether the trial court's legal classifications are correct, and whether its factual findings are supported by substantial evidence.[29]

Ramirez claimed that he was incorrectly classified as an exempt outside salesman. The court's reasoning, however, applies equally to the determination of exemptions under the executive and administrative tests. The *Ramirez* decision was seized upon by defense counsel opposing attempts to certify claims for overtime for class treatment. Employers argued that such a fact-intensive analysis, used in the service of a test in which exempt status can turn on the proper characterization of tasks consuming only a small percentage of an employee's time, is inherently inappropriate for application to class-wide claims.

This argument was advanced both on demurrers and in opposition to motions for class certification.[30] Trial courts were not often persuaded by this argument, and a number of cases were certified for class treatment. Several employers sought review of class certification orders by writ. When the appellate courts proved unwilling to issue writs, many employers settled rather than wait for the chance of relief on appeal.

The *Sav-On* Analysis

Earlier this year, however, in the case of *Sav-On Drug Stores, Inc.* v. *Superior Court*,[31] a California appellate court for the first time considered the propriety of class certification in a case challenging the exempt status of a company's managerial employees. The court noted, "Relief by extraordinary writ is appropriate to prevent a burdensome trial in a massive class action."[32]

The *Sav-On* court reversed the trial court's order granting certification of a class of approximately 1,400 managers employed in approximately 300 Sav-On stores. The court determined that the plaintiffs had not met their burden of proving that common issues predominated over questions that would require individualized proof at trial. Assertions in the plaintiffs' declarations that managers' job duties did not vary from store to store were found to be unsupported by personal knowledge. The plaintiffs also sought to persuade the court that the predominance of common questions was shown by the company's use of uniform job descriptions and the same performance review form for all the stores, a compensation system that applied to all members of the putative class, class-wide training programs, a minimum work week of 48 hours for class members, and the classification of all managers and assistant managers as exempt. In addition, they pointed to the absence of a compliance program to train employees to differentiate between exempt and nonexempt tasks and the fact that Sav-On had not undertaken empirical studies or surveys to identify the amount of time the managers and assistant managers spent on the component tasks of their jobs.

The *Sav-On* court was not persuaded by these arguments.[33] The court concluded that the plaintiffs had identified issues not likely to be in dispute at a trial on the merits. Also, they had not made an adequate showing that common issues would predominate at a trial on the central disputed issue—that is, how the putative class members spent their time. The court concluded that the "policies, practices, and procedures cited by plaintiffs do not address that issue nor show that the way the [managers and assistant managers] spend their time is so standard or uniform as to be triable on a class-wide basis."[34]

The *Sav-On* court looked to the defendant's showing that its managers and assistant managers faced a wide variety of divergent conditions in its stores. These included the location and square footage of the stores, the number of managers, the size of the staff supervised, the mix of part-time and full-time employees, the hours the stores were open to the public, the rate of turnover among the staff, each store's sales volume, and each manager's style and experience. The court was convinced that these varied conditions resulted in enough of a divergence in how the company's managers spent their workdays that individualized fact questions would need to be litigated regarding each member of the class in order to determine whether or not a particular manager spent more than half of his or her time on exempt tasks.[35]

There is no public policy favoring class actions in the absence of a predominance of common questions, at least in part because a class action "may preclude a defendant from defending each individual claim to its fullest."[36] The *Sav-On* court rejected concerns that class members would be unlikely to seek individual redress of their claims, noting that individual awards might amount to thousands of dollars and that prevailing plaintiffs are entitled to recover their attorney's fees.[37]

Although the *Sav-On* decision was a victory for employers, the court did not hold that claims regarding managerial exemptions from overtime pay can never be determined on a class-wide basis. It acknowledged that the way in which some managers spend their time might be so uniform that their exempt status could be determined on a class basis.[38]

In *Belazi* v. *Tandy Corporation*,[39] a trial court found such a situation shortly after the *Sav-On* decision was issued, in a case involving a challenge to the exempt status of managers working for Radio Shack stores. The company sought to decertify a previously certified class. The plaintiff managers successfully defended the class action status of

their lawsuit. They argued that the company's policies required managers to spend the majority of their time in sales activities; that the company enforced those policies by close, centralized supervision; that sales statistics showed that the managers did, in fact, spend the majority of their time selling; and that the company dictated the vast majority of managerial decisions to free its managers to focus on selling. The plaintiffs also argued that *Sav-On* did not require a demonstration that the duties of the managers must be identical. Instead, according to the plaintiffs, under *Sav-On*, the evidence must justify a reasonable inference that the duties of the managers are so uniform as to be triable on a class basis.[40]

In contrast, Radio Shack, founding its argument on *Ramirez* and *Sav-On*, argued that the court must look "first and foremost" to the actual work duties performed by the class members. It contended that the class certification decision was based on an unwarranted reliance on company policies, which were unknown to or not followed by a significant segment of the class and could not support a finding that common questions predominated. Radio Shack also sought to persuade the court that declarations submitted by class members and others showed wide variations in the amount of time spent by different managers on the component tasks of the job. The company argued that the evidence supported a conclusion that individualized fact inquiries were needed to determine if any given manager was exempt.[41]

The court, while not finding fault with the *Sav-On* court's analysis, determined that the nature of the operations of the Sav-On and Radio Shack companies was sufficiently dissimilar to support a result different from that of *Sav-On*. Finding "a great deal of commonality" in Radio Shack's operations, the time that managers were involved in nonmanagement duties, and the lack of discretion of the managers, the trial court denied the company's motion to decertify the class.[42]

The guidance offered by *Sav-On* was long-awaited; it was also short-lived. On July 17, 2002, the California Supreme Court granted review of the *Sav-On* decision. As expected, the plaintiffs' bar and defense counsel view this development through very different lenses.

The defense bar largely views the *Sav-On* decision as long-delayed recognition that efforts to apply the fact-intensive test of exempt status on a class basis will, except in the unusual case, overwhelm the employer's ability to defend itself with any but the broadest strokes. In large part they view the granting of review as an acknowledgement by the supreme court of the need for definitive guidance on an unusually important issue and predict that the decision of the court of appeal will be affirmed.

Many in the plaintiffs' bar see something far different. They point toward recent decisions by the supreme court establishing the right of workers to be paid for time spent "under the control" of the employer even if not actively engaged in "work."[43] They note that the supreme court recognizes that wages are a vested property right recoverable under the restitutionary remedies afforded by Business and Professions Code Section 17200[44] and point to the court's emphasis in *Ramirez*[45] on the remedial nature of the laws regulating wages, hours, and working conditions for the protection and benefit of employees. Citing the *Ramirez* court's directive on remand that the lower court should look at the average amount of time spent on the plaintiff's various activities, plaintiffs' counsel predict that the supreme court will endorse the use of statistics and sampling, rather than requiring exactitude, and will overrule the appellate court to permit class-based determinations of exempt status so as not to frustrate California's public policies favoring worker protection.[46]

Representative Actions

The remedies of Business and Professions Code Sections 17200 et seq.—California's Unfair Competition Law—often are pursued by employees. Indeed, plaintiffs wishing to mount a wide-scale challenge to the exempt status of a category of employees have not relied solely on attempts to certify their claims for class treatment. Many, if not most, have also asserted claims that the employer's alleged failure to pay appropriate wages to the putative class constitute an unlawful or unfair business practice in violation of Section 17200. Section 17200 permits a "representative" plaintiff to bring an action on behalf of all "similarly situated" individuals. Employees may seek restitution of allegedly unpaid wages, and they benefit from the four-year statute of limitations under Business and Professions Code Section 17208.[47]

Often, these Business and Professions Code claims are overlaid with class action allegations. In its recent decision in *Corbett* v. *Superior Court*,[48] the California Court of Appeal for the First Appellate District ruled, in a case of first impression, that there is no inherent incompatibility between representative actions under the unfair competition laws and class actions. A trial court may certify claims under the Unfair Competition Law for class treatment so long as the requirements of Code of Civil Procedure Section 382 are met. Plaintiffs in a "pure" representative action brought under Business and Professions Code Section 17200 may be awarded restitution, but the remedy of disgorgement of ill-gained profits into a "fluid recovery fund" is not available. The ruling in *Corbett* is important because it makes disgorgement into a fluid recovery fund available in an action under Section 17200, so long as plaintiffs can make the showing needed to certify a class.

Whether representative actions under Section 17200 will be subject to the same analysis used in *Sav-On* is a question on the horizon for practitioners. Because claims under Section 17200 are actions in equity, a defendant may persuade a court to decline to entertain an action as a representative suit if the defendant can show the potential for harm.[49] In several cases the courts have determined that the need to examine individual transactions closely renders a case unsuitable for treatment as a representative action under California's Unfair Competition Law.[50]

Logic suggests that the competing concerns animating the argument over the proper parameters of class litigation of exempt status and similar claims will be brought to bear on Business and Professions Code claims. Employers may argue they will be as prejudiced in their efforts to defend against a representative action under Section 17200 as they would be in a formal class action.

For example, in *South Bay Chevrolet* v. *General Motors Acceptance Corporation*,[51] a car dealer challenged the methods used by the defendant to calculate interest on inventory. The court rejected the attempt to recover restitution and disgorgement on behalf of nonparty dealerships, noting that the dealerships differed in financial sophistication, intelligence, attention to detail, experience in the business, and other factors. The court determined that South Bay had failed to prove that the other businesses it sought to represent were similarly situated regarding the issues critical to determining the dispute.[52]

In *Bronco Wine Company* v. *Frank A. Logoluso Farms*,[53] the court concluded that the defendant winery had engaged in unfair business practices in the execution of its contracts to purchase grapes from a variety of growers. The trial court ordered restitution of substantial sums to nonparty growers. However, the court of appeal determined that such a judgment might violate state and federal due process rights because a nonjoined party would be denied notice and an opportunity to be heard. The court determined that "without jurisdiction over the parties an in personam judgment is invalid," noting that none of the nonparties in whose favor the court ordered restitution were afforded an opportunity to present their claims before the trial court through counsel of their own choice.[54]

Likewise, the *Bronco* court noted that the determination of whether the business practices at issue were unfair was "a far more complex factual issue" than was presented in several other cases in which the courts were faced with purely legal questions and the amount of restitution could be determined by a simple arithmetical calculation.[55] The *Bronco* court concluded, "One must question the utility of a procedure that results in a judgment that is not binding on the nonparty and has serious and fundamental due process deficiencies for parties and nonparties."[56]

The concerns articulated by the *Bronco* court have their counterparts in many of the issues under review in *Sav-On*. Should the *Sav-On* decision be affirmed and class certification become more difficult to obtain, unfair and unlawful competition claims will more likely be presented as pure representative actions. And the courts will likely see increased litigation regarding whether wage and hour claims, especially those involving fact-intensive inquiries like challenges to exempt status, can be presented on a representative basis without infringing on due process considerations. ■

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[1] California and federal law require payment for all hours persons are "suffered or permitted" by their employers to work. California law also counts time spent "under the control" of the employer as time worked. 29 U.S.C. §203(g); Morillion v. Royal Packing Co., 22 Cal. 4th 575 (2000).

[2] The Fair Labor Standards Act, 29 U.S.C. §§201 *et seq*. The FLSA and the regulations interpreting its requirements can be found on the U.S. Department of Labor's Web site at www.dol.gov.

[3] LAB. CODE §226.7.

[4] LAB. CODE §§500-558.

[5] The California Industrial Welfare Commission issues wage orders that set forth conditions for employment in various industries. 8 CAL. CODE REGS. §§11010-11170. The wage orders can be found on the commission's Web site at www.dir.ca.gov/iwc/iwc.html.

[6] LAB. CODE §558(a)(1) and (2).

[7] LAB. CODE §203. These penalties apply when an employer "willfully" fails to pay wages on the cessation of employment. The meaning of "willful" is under review by the California Supreme Court in Smith v. Rae Venter, 89 Cal. App. 4th 239 (2001).

[8] LAB. CODE §§218.5, 1194; Earley v. Superior Court, 79 Cal. App 4th 1430 (2000); *see* 29 U.S.C. §216(b).

[9] LAB. CODE §558(a); Donovan v. Agnew, 712 F. 2d 1509, 1511 (1st Cir. 1983) (corporate officer with operational control is jointly and severally liable under the FLSA for unpaid wages); Bureerong v. Uvawas, 922 F. Supp. 1450, 1467 (C.D. Cal. 1996) ("[E]mployer" includes "any person acting directly or indirectly in the interest of an employer in relation to an employee[.]' 29 U.S.C. §203(d).") Likewise, the California labor commissioner takes the position that liability may be assessed against individuals for wages owed by a corporation under California law. *See* letter of June 18, 2002, from Miles Locker, Attorney for the Labor Commissioner, to Hon. John M. Watson, Judge of the Orange County Superior Court (on file with author).

[10] CODE CIV. PROC. §382.

[11] *See, e.g.*, City of San Jose v. Superior Court, 12 Cal. 3d 447 (1974).

[12] FED. R. CIV. P. 23(a).
[13] FED. R. CIV. P. 23(b)(3).
[14] Washington Mut. Bank v. Superior Court, 24 Cal. 4th 906, 913 (2001).
[15] Ramirez v. Yosemite Water Co., 20 Cal. 4th 785, 795-96 (1999); Nordquist v. McGraw-Hill Broad. Co., 32 Cal. App. 4th 555, 562 (1995); Corning Glass Works v. Brennan, 417 U.S. 188, 196-197, 94 S. Ct. 2223, 2229, 41 L. Ed. 2d 1 (1974).
[16] Ramirez, 20 Cal. 4th at 794; *see also* A. H. Phillips Inc. v. Walling, 324 U.S. 490, 493, 65 S. Ct. 807, 808, 89 L. Ed. 1095 (1945).
[17] LAB. CODE §515(a). These are minimum requirements applicable to all exemptions. Further requirements are set forth in the various wage orders issued by the Industrial Welfare Commission.
[18] 29 U.S.C. §213(a)(1); 29 C.F.R. §§541.1-541.3, 541.99–541.315.
[19] *See* 29 C.F.R. §541.3(a)-(e); *see, e.g.*, Wage Order 1, 8 CAL. CODE REGS. §11010(1)(A)(3)(a)-(j).
[20] *See, e.g.*, Wage Order 1, 8 CAL. CODE REGS. §11010(1)(A)(1)(a)–(f); 29 C.F.R. §§541.1, 541.102-116.
[21] *See, e.g.*, Wage Order 1, 8 CAL. CODE REGS. §11010(1)(A)(2)(a)-(g); 29 C.F.R. §§541.2, 541.214(a).
[22] *See, e.g.*, Bell v. Farmers Ins. Exch., 87 Cal. App. 4th 805, 819 (2001).
[23] 29 C.F.R. §541.119(a) (executive exemption); 29 C.F.R. §541.214(a) (administrative exemption).
[24] *Id.*
[25] Rutlin v. Prime Succession, Inc., 220 F. 3d 737, 742 (6th Cir. 2000) (professional employee); Schaefer v. Ind. Mich. Power Co., 197 F. Supp. 2d 935, 941 (W.D. Mich. 2002); Kemp v. State of Montana Bd. of Personnel Appeals, 5 Wage & Hour Cas. (BNA) 2d 1302 (Mont. Sup. Ct. 1999) (restaurant manager was exempt employee even though she spent 80 percent of her time in production work; her managerial duties were relatively more important than her cooking duties).
[26] LAB. CODE §515(a); wage orders issued by the California Industrial Welfare Commission (*see, e.g.*, Wage Order 1, 8 CAL. CODE REGS. §11010(1)(A)(1)(e), §11010(2)(K)). *See also* Ramirez v. Yosemite Water Co., 20 Cal. 4th 785, 797 (1999).
[27] Ramirez, 20 Cal. 4th at 802.
[28] *Id.* (emphasis in original).
[29] *Id.* at n.5.
[30] A demurrer is a proper vehicle for presentation of an argument that the litigation cannot proceed as a class action. Vasquez v. Superior Court, 4 Cal. 3d 800, 815, 820 (1971); Silva v. Block, 49 Cal. App. 4th 345, 350 (1996); Bartlett v. Hawaiian Village, Inc., 87 Cal. App. 3d 435, 437-38 (1978).
[31] Sav-On Drug Stores, Inc. v. Superior Court, 97 Cal. App. 4th 1070 (2002), *review granted*, 2002 Cal. App. LEXIS 4528, 2002 C.D.O.S. 6437, 2002 *Daily Journal* D.A.R. 8095 (2002).
[32] *Id.*, 97 Cal. App. 4th at 1078 (citing City of Glendale v. Superior Court, 18 Cal. App. 4th 1768, 1776-77 (1993); TJX Cos., Inc. v. Superior Court, 87 Cal. App. 4th 747, 753 (2001)).
[33] *Id.* at 1080.
[34] *Id.* at 1080-81.
[35] *Id.* at 1078-79.
[36] *Id.* at 1084 (citing City of San Jose v. Superior Court, 12 Cal. 3d 447, 458, 459 (1974)).
[37] *Id.* at 1084, LAB. CODE §1194. Employees with claims for unpaid wages, overtime pay, and other wage and hour matters may also take advantage of the "speedy, informal, and affordable" alternative of filing individual claims with the California labor commissioner. Cuadra v. Millan, 17 Cal. 4th 855, 858 (1998), *disapproved on other grounds*, Samuels v. Mix, 22 Cal. 4th 1, n.4 at 16 (1999); LAB. CODE §98.1.
[38] Sav-On, 97 Cal. App. 4th at 1082.
[39] Belazi v. Tandy Corp., Orange County Superior Court Case No. 00CC03817 (May 23, 2002).
[40] *Id.* The description of the position of the parties is based upon the transcript of the May 23, 2002, oral argument before Judge C. Robert Thompson on the defendant's motion to decertify the class.
[41] *Id.*
[42] *Id.* at 22.
[43] Morillion v. Royal Packing Co., 22 Cal. 4th 575 (2000).
[44] Cortez v. Purolator Air Filtration Prods. Co., 23 Cal. 4th 163 (2000).
[45] Ramirez v. Yosemite Water Co., 20 Cal. 4th 785, 794 (1999).
[46] The author is indebted to her sometime opposing counsel, René L. Barge, of Spiro Moss Barness Harrison & Barge, for the articulation of the plaintiffs' perspective.
[47] Cortez, 23 Cal. 4th at 178-79.
[48] Corbett v. Superior Court,, 101 Cal. App. 4th 649 (2002).
[49] Kraus v. Trinity Mgmt. Servs., Inc., 23 Cal. 4th 116, 138 (2000).
[50] Prata v. Superior Court, 91 Cal. App. 4th 1128, 1143 (2001); South Bay Chevrolet v. General Motors Acceptance Corp., 72 Cal. App. 4th 861, 895-97 (1999); Bronco Wine Co. v. Frank A. Logoluso Farms, 214 Cal. App. 3d 699, 720-21 (1989); Lazar v. Trans Union LLC, 195 F.R.D. 665, 673-74 (C.D. Cal. 2000).
[51] South Bay Chevrolet, 72 Cal. App. 4th 861.
[52] *Id.* at 899.
[53] Bronco Wine Co., 214 Cal. App. 3d 699.
[54] *Id.* at 717-19.
[55] *Id.* at 720.
[56] *Id.*