

## [Unfair Competition Law Cases Still Occupy Numerous Spaces on the California Supreme Court's Docket](#)

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In November 2004, the voters of California passed Proposition 64, which was intended to rein in certain abuses in and bring some clarity to the Unfair Competition Law, [California Business & Professions Code sections 17200 et. seq.](#) (“the UCL”). Five years later, and after a number of decisions issued by the California Supreme Court construing the changes made by Prop 64, that clarity is still elusive.

Take, for example, the Court’s May 18, 2009 decision [In re Tobacco II Cases, 46 Cal. 4th 298 \(2009\)](#), which concluded that the new standing requirements for a UCL claim created by Prop 64 only require the named plaintiff/class representative to establish standing and not absent class members. In the months since the issuance of *Tobacco II*, a number of decisions have considered whether the Court’s conclusion as to “standing” applies to a trial court’s determination when it comes to considering the issue of “commonality” (i.e., whether common issues predominate over individual issues) for purposes of a class certification motion. Our firm’s blogs have reported on two intermediate appellate cases that found “*Tobacco II* to be irrelevant because the issue of ‘standing’ simply is not the same thing as the issue of ‘commonality.’” See [Cohen v. DIRECTV, Inc.](#), 178 Cal. App. 4th 966 (2009); [Kaldenbach v. Mutual of Omaha Life Insurance Co.](#), 178 Cal. App. 4th 830 (2009).

*Cohen* is now the subject of a Petition for Review pending before the Supreme Court, along with several requests for depublication of the intermediate court’s opinion. The court is expected to decide whether the case is to be accepted for review or depublished by March 1, 2010.

But *Cohen* is just one case on the Supreme Court’s plate. The following are cases now actual pending before the Supreme Court that address issues relating to the UCL, along with the date the Court accepted review and the issue(s) presented on the Court’s website:

### ***Loeffler v. Target Corporation*, Case No. S173972 (June 19, 2009)**

Does article XIII, section 32 of the California Constitution or Revenue and Taxation Code section 6932 bar a consumer from filing a lawsuit against a retailer under the Unfair Competition Law (Bus. & Prof. Code sections 17200 et seq.) or the Consumers Legal Remedies Act (Civ. Code, section 1750 et seq.) alleging that the retailer charged sales tax on transactions that were not taxable? [The Court also issued a “grant and hold” on November 19, 2009 in ***Yabsley v. Cingular Wireless*, Case No. S173972**, pending consideration and disposition of a related issue in *Loeffler v. Target Corp.*]

### ***Clark v. Superior Court (National Western Life Insurance Co.)*, Case No. S174229 (September 9, 2009)**

Is Civil Code section 3345, which permits an enhanced award of up to three times the amount of a fine, civil penalty, or “any other remedy the purpose or effect of which is to punish or deter” in

actions brought by or on behalf of senior citizens or disabled persons seeking to “redress unfair or deceptive acts or practices or unfair methods of competition,” applicable in an action brought by senior citizens seeking restitution under the Unfair Competition Law?

***Kwikset Corp. v. Superior Court*, Case No. S171845** (June 10, 2009)

Does a plaintiff's allegation that he purchased a product in reliance on the product label's misrepresentation about a characteristic of the product satisfy the requirement for standing under the Unfair Competition Law that the plaintiff allege a loss of money or property, or is such a plaintiff unable to allege the required loss of money or property because he obtained the benefit of his bargain by receiving the product in exchange for the payment?

***Pineda v. Bank of America*, Case No. S170758** (April 22, 2009)

Can penalties under Labor Code section 203 (late payment of final wages) be recovered as restitution in an Unfair Competition Law action?

***Sullivan v. Oracle Corp.*, Case No. S170577** (April 22, 2009)

Request that the Supreme Court decide questions of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. (*Sullivan v. Oracle Corp.*, 547 F.3d 1177 (9th Cir. 2008) (now withdrawn)) The questions presented are: (1) Does the California Labor Code apply to overtime work performed in California for a California-based employer by out-of-state plaintiffs in the circumstances of this case, such that overtime pay is required for work in excess of eight hours per day or in excess of forty hours per week? (2) Does the UCL apply to the overtime work described in question one? (3) Does the UCL apply to overtime work performed outside of California for a California-based employer by out-of-state plaintiffs in the circumstances of this case if the employer failed to comply with the overtime provisions of the federal Fair Labor Standards Act (29 U.S.C. section 207 *et seq.*)?

***Clayworth v. Pfizer, Inc.*, Case No. S166435** (November 19, 2008)

This case presents the following issues: (1) When plaintiffs pay overcharges on goods or services as a result of the anticompetitive conduct of defendant sellers but recover the overcharges through increased prices at which the goods or services are sold to end users, may defendants assert a “pass-on” defense and argue that plaintiffs were not injured because they did not suffer financial loss as a result of the anticompetitive conduct? (2) Is restitution available under the Unfair Competition Law to plaintiffs who recovered from third persons the overcharges paid to defendants? (3) When plaintiffs recover from third persons the overcharges paid to defendants, have they suffered actual injury and lost money or property for purposes of establishing standing under the Unfair Competition Law, as amended by Proposition 64?