

[California Supreme Court Again Confirms a Penalty is Not Restitution Under the UCL](#)

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Recently, we reported on the California Supreme Court's decision in [Clark v. Superior Court \(National Western Life Insurance Company\)](#), wherein the Court confirmed that the only monetary remedy available under the [Unfair Competition Law, Business & Professions Code section 17200 \(the "UCL"\)](#) is restitution, and that a claim for treble damages is not restitution, nor is the nature of restitution comparable to a penalty.

The Court echoed that holding in a new decision issued November 18, 2010, [Pineda v. Bank of America, N.A.](#) As with *Clark*, *Pineda* was a unanimous opinion by the Court.

At issue in *Pineda* were penalties provided for under [California Labor Code section 203](#) when an employer fails to timely pay final wages to an employee. The first issue addressed by the Court was whether a one-year or three-year statute of limitations applied to a claim for such penalties when an employee sues only to recover the penalties and not the final wages themselves (which had already been paid). On that issue, the Court held that the longer, three-year statute applied.

Turning to the second issue, whether Section 203 penalties can be recovered as restitution under the UCL, the Court explained once again that a penalty is not restitution because it does not function to restore to a plaintiff the status quo or something in which the plaintiff had a vested interest. Relying on its earlier decision in *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000), which held that unpaid overtime wages were able to be recovered as restitution under the UCL, the Court contrasted such unpaid wages to a penalty for not paying wages. The former are considered to be the earned property of the employee and thus restitutionary in nature whereas the latter are not compensation for work performed or restoring to the employee funds in which the employee has a vested ownership interest, but rather a payment to encourage employers to timely pay their employees and to punish them if they do not do so.

One would hope that, with the holdings of the *Clark* and *Pineda* cases, the issue of what is restitution and the limited monetary remedies available for a private action under the UCL can now be laid to rest.