

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GOPI VEDACHALAM and KANGANA  
BERI, on behalf of themselves  
and all others similarly  
situated,

Plaintiffs,

No C 06-0963 VRW

v

ORDER

TATA AMERICA INTERNATIONAL  
CORPORATION, a New York  
corporation; TATA CONSULTANCY  
SERVICES, LTD, an Indian  
corporation; and TATA SONS, LTD,  
an Indian corporation,

Defendants.

Plaintiffs, on behalf of themselves and others similarly  
situated, allege various California wage and hour violations along  
with collateral claims. Doc #24. Defendants move to dismiss  
plaintiffs' first, second, third, fourth, eighth and ninth claims  
in their entirety under FRCP 12(b)(6). In addition, defendants  
assert that the first, second, third, fourth, fifth, sixth, eighth  
and ninth claims are barred in whole or in part by the relevant  
statutes of limitation. Doc #117. For the reasons set forth  
below, defendants' motion is GRANTED in part and DENIED in part.

1 I

2 Tata America International Corporation, Tata Consultancy  
3 Services, Ltd and Tata Sons, Ltd (collectively "defendants") filed  
4 the instant motion to dismiss on November 19, 2009 as Doc #114 and  
5 Doc #117. As both motions appear to be substantially the same, the  
6 court will refer only to Doc #117. Tata Consultancy Services, Ltd  
7 ("TCS") is an information technology outsourcing and consulting  
8 company incorporated in India. Doc #10 at 4-5. Tata Sons, Ltd is  
9 the parent company of TCS and is also incorporated in India. Id.  
10 Tata America International Corporation is a United States  
11 subsidiary of TCS. Id.

12 Plaintiffs Gopi Vedachalam and Kangana Beri  
13 ("plaintiffs") are the two named plaintiffs in the suit.  
14 Vedachalam is a citizen of India who worked for one or more of the  
15 defendants as a project manager in the United States under an L-1  
16 visa from April 2000 to February 2006. Doc #118 at 9. Beri is a  
17 citizen of India who worked for defendants in New Jersey and  
18 California from April 2003 until September 2004 under an H-4 visa.  
19 Id.

20 According to plaintiffs' first amended complaint ("FAC"),  
21 defendants entered into employment agreements with plaintiffs  
22 entitled "Deputation Terms Agreements" ("DTAs"). Doc #24 at 7. In  
23 defendants' DTA with Beri, defendants agreed Beri would receive a  
24 gross amount of \$50,000 in addition to the compensation she  
25 received in India. Id. Vedachalam alleges he agreed to a salary  
26 of \$74,000 per year as reflected on the visa application defendants  
27 completed. Id. Plaintiffs allege defendants required all non-US  
28 citizen employees to sign over their tax refunds or to pay to

1 receive the forms needed to file their own taxes for the duration  
2 of their employment. Id.

3 Plaintiffs allege on behalf of themselves and putative  
4 nationwide and statewide classes that defendants did not pay  
5 promised gross wages and further reduced the wages by forcing  
6 plaintiffs to turn over their tax returns or pay for their W-2  
7 forms. Id at 3. On behalf of herself and related classes, Beri  
8 further alleges defendants failed to pay statutorily required  
9 overtime and vacation compensation. Id at 4. Plaintiffs allege  
10 violations of Maryland, New Jersey and California common law,  
11 various California Labor Code sections and Cal Bus and Prof Code §  
12 17200.

## 13 II

14 A motion to dismiss under FRCP 12(b)(6) for failure to  
15 state a claim upon which relief can be granted "tests the legal  
16 sufficiency of a claim." Navarro v Block, 250 F3d 729, 732 (9th  
17 Cir 2001). Dismissal can be based on the lack of a cognizable  
18 legal theory or the absence of sufficient facts alleged under a  
19 cognizable legal theory. Balistreri v Pacifica Police Dep't, 901  
20 F2d 696, 699 (9th Cir 1990). Allegations of material fact are  
21 taken as true and construed in the light most favorable to the  
22 nonmoving party. Cahill v Liberty Mutual Ins Co, 80 F3d 336,  
23 337-38 (9th Cir 1996). The court does not, however, "necessarily  
24 assume the truth of legal conclusions merely because they are cast  
25 in the form of factual allegations," Western Min Council v Watt,  
26 643 F2d 618, 624 (9th Cir 1981), as "conclusory allegations without  
27 more are insufficient to defeat a motion to dismiss for failure to  
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1 state a claim." McGlinchy v Shell Chemical Co, 845 F2d 802, 810  
2 (9th Cir 1988).

3 "Generally, a district court may not consider any  
4 material beyond the pleadings in ruling on a Rule 12(b)(6) motion."  
5 Hal Roach Studios, Inc v Richard Feiner & Co, 896 F2d 1542, 1555  
6 n19 (9th Cir 1990). The court may however consider "documents  
7 whose contents are alleged in a complaint and whose authenticity no  
8 party questions, but which are not physically attached to the  
9 pleading." See Lapidus v Hecht, 232 F3d 679, 682 (9th Cir 2000)  
10 (internal quotation omitted).

11  
12 A

13 Before turning to the merits of defendants' motion to  
14 dismiss, the court must determine which state law should govern the  
15 breach of contract claims. Defendants have submitted the  
16 deputation agreements and supporting document for both plaintiffs.  
17 Doc #115 Exhs B, C, E, F, G, H. Because the FAC refers to the  
18 content of the agreements, and because plaintiffs do not object to  
19 the authenticity of the agreements, see Doc #120, the court will  
20 consider the agreements.

21 Vedachalam's 2001 DTA includes a choice-of-law provision  
22 for "the laws of the State of Maryland." Doc #115 Exh E at 6 ¶3.  
23 Vedachalam's 2000 DTA contains a choice-of-law provision for the  
24 "laws of the place of deputation," which in Vedachalam's case is  
25 California. Doc #115, Exh F at 9 ¶2. Beri's 2003 DTA includes a  
26 choice-of-law provision for the laws of Maryland to govern any  
27 disputes arising from the agreement. Doc #115 Exh G at 9 ¶3. To  
28 the extent other agreements have been provided to the court, they

1 do not include choice-of-law provisions.

2 A federal court sitting in diversity applies the choice-  
3 of-law rules of the state in which it sits. Klaxon Co v Stentor  
4 Electric Mfg Co, 313 US 487 (1941). California applies the  
5 principles set forth in section 187 of the Restatement (Second) of  
6 Conflict of Laws to determine whether to enforce a contractual  
7 choice-of-law provision. Nedlloyd Lines BV v Sup Ct of San Mateo  
8 County, 3 Cal 4th 459, 464-65 (1992). New Jersey and New York have  
9 both adopted section 187 and Maryland courts apply it as well.  
10 Homa v American Express Co, 558 F3d 225, 227-28 (2009); S Leo  
11 Harmonay, Inc v Binks Mfg Co, 597 F Supp 1014, 1025 (1984);  
12 National Glass, Inc v JC Penney Properties, Inc, 336 Md 606, 610  
13 (1994).

14 Under California choice-of-law rules the court must apply  
15 the law designated by a contractual provision unless (1) the chosen  
16 state has no substantial relationship to the parties or transaction  
17 or (2) such application would run contrary to a California policy  
18 or evade a California statute. General Signal v MCI  
19 Telecommunications Corp, 66 F3d 1500, 1506 (9th Cir 1995) (citing  
20 Nedlloyd Lines BV v Superior Court, 3 Cal 4th 459, 466 (1992)).  
21 Given that the dispute involves a defendant incorporated in New  
22 York and employees in California and New Jersey, it does not appear  
23 that a "substantial relationship" to the state of Maryland exists.  
24 Moreover, both plaintiffs lived and worked California, neither  
25 worked in New York at any time and no employment contract contains  
26 a New York or New Jersey choice-of-law provision.

27 Because the choice-of-law provisions designating Maryland  
28 law will not be enforced, the court must consider "(a) the place of

1 contracting, (b) the place of negotiation of the contract, (c) the  
2 place of performance, (d) the location of the subject matter of the  
3 contract and (e) the domicile, residence, nationality, place of  
4 incorporation and place of business of the parties. These contacts  
5 are to be evaluated according to their relative importance with  
6 respect to the particular issue." Stonewall Surplus Lines Ins Co v  
7 Johnson Controls, 14 Cal App 4th 637, 646 (1993) (quoting  
8 Restatement (Second) of Conflict of Laws, § 188(2) (1971)).  
9 Because plaintiffs live and work in California, performed the DTA  
10 contracts in California and claim injuries which occurred in  
11 California and form the basis for statutory claims under California  
12 law, this court will apply California law to plaintiffs' claims.  
13 The court may, however, on an appropriate motion under Civ LR  
14 7-9(a), revisit this determination if discovery uncovers relevant  
15 information and, if appropriate under FRCP 15(a)(2), grant  
16 plaintiffs leave to amend their complaint accordingly.

## B

19 A claim for breach of contract must allege: a contract,  
20 plaintiff's performance, defendant's breach and damages. Poseidon  
21 Development, Inc v Woodland Lane Estates, LLC, 152 Cal App 4th  
22 1106, 1112 (2007). Resolution of contractual claims on a motion to  
23 dismiss is proper if the terms of the contract are unambiguous.  
24 Keen v American Home Mortg Servicing, Inc, -- F Supp 2d --, 2009 WL  
25 3380454, \*9 (ED Cal 2009)(Damrell, J). A contract provision will  
26 be considered ambiguous when it is capable of two or more  
27 reasonable interpretations. Id.

28 Defendants assert Vedachalam has failed to allege in the

1 first claim the existence of a valid contract, because Vedachalam's  
2 DTAs lack a salary provision. Doc #117 at 21. Defendants believe  
3 the visa application completed on behalf of Vedachalam, which  
4 includes salary information, should not be read to supplement the  
5 terms of the contract because it was not a binding contract between  
6 the parties. Id. Vedachalam contends that the visa application is  
7 merely evidence of the employment agreement between defendants and  
8 him. Doc #118 at 14. But the court need not consider the visa  
9 application, because the lack of a written salary figure in  
10 Vedachalam's DTA does not resolve the question whether the parties  
11 had a contract. Vedachalam sets forth facts which, if true,  
12 indicate a contract existed between the parties. The salary  
13 provision is not a necessary predicate to the existence of a  
14 contract. Defendants do not move to dismiss Beri's breach of  
15 contract claim. Accordingly, defendants' motion to dismiss  
16 plaintiffs' first claim for breach of contract is DENIED.

## C

19 Plaintiffs allege in their second claim that defendants'  
20 conduct in withholding plaintiffs' tax refund checks establishes a  
21 claim for conversion. Doc #24 at 16. "To state a claim for  
22 conversion under California law, a plaintiff must establish: (1)  
23 the plaintiff's ownership or right to possession of a certain piece  
24 of property; (2) the defendant's conversion of the property by a  
25 wrongful act or disposition of property rights; and (3) damages."  
26 Firoozye v Earthlink Network, 153 F Supp 2d 1115, 1129 (ND Cal  
27 2001)(Breyer, J). Defendants assert that plaintiffs have failed to  
28 plead a claim for conversion because plaintiffs never had the right

1 to the tax refunds and retention of the refunds was not a wrongful  
2 act. Doc #117 at 17-18. Furthermore, according to defendants, the  
3 claim for conversion is deficient as a matter of law because it is  
4 based upon the same conduct that underlies the fourth claim of  
5 relief for violation of Cal Labor Code § 221. Id.

6 Under California law, where a statute creates a right  
7 that did not exist at common law and provides a comprehensive and  
8 detailed remedial scheme for its enforcement, the statutory remedy  
9 is exclusive. Rojo v Kliger, 52 Cal 3d 65, 79 (1990). When the  
10 statute merely recognizes a claim that preexisted in common law,  
11 all forms of relief granted to civil litigants are available unless  
12 a contrary legislative intent appears. Brewer v Premier Golf  
13 Props, 168 Cal App 4th 1243, 1252 (2008).

14 A claim for unpaid wages under the Labor Code cannot form  
15 the basis for a claim of conversion because of the Labor Code's  
16 detailed remedial scheme for violation of its own provisions.  
17 Green v Party City Corp, 2002 WL 553219, \*13-14 (CD Cal  
18 2002)(Snyder, J); see also In re Wal-Mart Stores, Inc Wage and Hour  
19 Litigation, 505 F Supp 2d 609, 618 (ND Cal 2007)(Armstrong, J).  
20 The Labor Code is cumulative of claims, like conversion, which are  
21 based on wage violations, because the Labor Code provides a  
22 sufficient remedy for such violations.

23 To the extent plaintiffs desire to plead conversion in  
24 the alternative, the argument is unavailing. Plaintiffs argue they  
25 had a right to tax refunds because they are in fact wages owed to  
26 them, and that claim is precluded by Cal Labor Code § 221. If the  
27 funds are not in fact wages owed to the plaintiffs, then plaintiffs  
28 have not alleged any possessory right to the refunds, a required

1 element of conversion.

2 Here, plaintiffs' conversion claim is based on unpaid  
3 wages due to withholding plaintiffs' tax refund checks. The same  
4 actions underlie the alleged violations of Cal Labor Code § 221.  
5 Doc #24 at 19. As the Labor Code provides plaintiffs with the  
6 exclusive remedy for defendants' alleged conduct, defendants'  
7 motion to dismiss plaintiffs' conversion claim is GRANTED.

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9 D

10 Defendants move to dismiss plaintiffs' third claim for  
11 unjust enrichment. Plaintiffs claim defendants were unjustly  
12 enriched through their retention of plaintiffs' tax refund checks.  
13 As with the plaintiffs' second claim, the Labor Code preempts state  
14 common law claims like conversion and unjust enrichment, because  
15 the allegations underlying the claims rest on statutory violations.  
16 Helm v Alderwoods Group, Inc, 2009 WL 2337529 at \*12-14 (ND Cal  
17 2009)(Illston, J).

18 The elements of an unjust enrichment claim are the  
19 receipt of a benefit and the unjust retention of the benefit at the  
20 expense of another. Peterson v Cellico Partnership, 164 Cal App 4th  
21 1583, 1592 (2008). Here, plaintiffs' unjust enrichment claim  
22 alleges that defendants knowingly failed to pay plaintiffs all  
23 compensation due to them by forcing plaintiffs to turn over their  
24 tax refunds. Doc #24 at 17-18. The same actions underlie the  
25 alleged violations of Cal Labor Code § 221. Doc #24 at 19. The  
26 proof required for an unjust enrichment claim is strikingly similar  
27 to the proof required for the conversion claim, which the court has  
28 already found to be preempted by the Labor Code. See Webb v

1 Directors Guild of America, Inc, 2007 WL 5022165, \*7 (CD Cal  
2 2007)(Morrow, J). Accordingly, defendants' motion to dismiss  
3 plaintiffs' third claim for unjust enrichment is GRANTED.

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5 E

6 Plaintiffs fourth claim is for violation of Cal Labor  
7 Code § 221. Plaintiffs must allege defendants collected or  
8 received any part of their wages which were already earned. Cal  
9 Labor Code § 221. Plaintiffs assert that defendants required them  
10 to sign over their tax refunds or to pay to receive their W-2  
11 forms. Doc #24 at 19. Central to plaintiffs' section 221 claim is  
12 the contention that the tax refunds denied to plaintiffs came from  
13 an amount wrongfully withheld from plaintiffs' wages in excess of  
14 plaintiffs' tax liability. Therefore, according to plaintiffs, the  
15 refunds were not separate from the salaries that defendants would  
16 have a right to but rather were wages owed to plaintiffs. Doc #118  
17 at 21. Defendants argue the refunds were a "gross up" over the  
18 promised salaries and not wages within the meaning of section 221.  
19 Doc #117 at 23.

20 Defendants also introduce TCS's "Overseas Deputation  
21 Manual" ("Manual") as proof of agreements with plaintiffs that all  
22 tax refunds would be paid to defendants. Doc #115, Exh D.  
23 Defendants claim this practice is within the meaning of Cal Labor  
24 Code § 224 which allows deductions when "expressly authorized in  
25 writing by the employee." Doc #117 at 25. Plaintiffs dispute the  
26 authenticity of the Manual and allege they never received it. Doc  
27 #118 at 11. The court does not need to consider the Manual in  
28 reaching its conclusion because the defendants' arguments do not

1 provide a basis to dismiss plaintiffs' section 221 claim.

2 To withhold wages with employee consent two conditions  
3 must be met: the deduction (1) is authorized in writing, and (2)  
4 does not reduce the employee's standard wage. Koehl v Verio, 142  
5 Cal App 4th 1313, 1337 (2006). Section 221 of the Labor Code was  
6 enacted to prevent employers from making secret deductions or  
7 keeping "kick-backs" to make it appear employees' wages were paid  
8 when they were not. Kerr's Catering Service v Department of Indus  
9 Relations, 57 Cal 2d 319, 328 (1962). Plaintiffs' complaint sets  
10 forth facts which, if true, indicate their standard wages were  
11 involuntarily reduced through defendants' practice of withholding  
12 earnings above the actual taxation rate and then forcing employees  
13 to turn over those wages in the form of refund checks.  
14 Accordingly, defendants' motion to dismiss plaintiffs' fourth claim  
15 is DENIED.

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17 F

18 Plaintiffs' eighth claim alleges violations of Cal Labor  
19 Code §§ 226 and 1174. Plaintiffs assert that defendants knowingly  
20 and intentionally failed to provide timely, accurate, itemized wage  
21 statements as required by the Labor Code and changed employees' tax  
22 exemptions without consent. Doc #24 at 24. The inaccuracies were  
23 a result of incorrect reporting of hours worked by Beri as well as  
24 a failure to take into account tax refund checks for both  
25 plaintiffs. Id. Defendants argue that neither section 226 nor  
26 section 1174 create a private right of action under which  
27 plaintiffs can state a claim. Doc #117 at 27.

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Despite defendants' contention, Cal Labor Code § 226(a) explicitly states it operates with § 226(e). In Wang v Chinese Daily News, Inc the court held, "[e]ven if Plaintiffs were unable to prove injury pursuant to Section 226(e), the finding of a violation of Section 226(a) would entitle Plaintiffs to injunctive relief and recovery of costs and attorney's fees." 435 F Supp 2d 1042, 1050 n6 (CD Cal 2006)(Marshall, J). See also Dunlap v Superior Court, 142 Cal App 4th 330, 341 (2006).

Defendants also claim plaintiffs fail to allege injury suffered as a result of defendants' violation of section 226. Doc #121 at 18. But failure to provide accurate wage statements alone has been held to be an injury to employees. Perez v Safety-Kleen Systems, Inc, 253 FRD 508, 517 (ND Cal 2008)(Hamilton, J)(citing Wang, 435 F Supp 2d at 1050). For these reasons, defendants' motion to dismiss plaintiffs' Cal Labor Code § 226 claim is DENIED.

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Plaintiffs allege defendants violated Cal Labor Code § 1174. Plaintiffs do not, however, claim standing under either Cal Labor Code § 1174.5 or the Private Attorney General Act, Cal Labor Code § 2699.3. Plaintiffs do not cite any cases to support a private cause of action arising out of section 1174, nor is it clear what relief plaintiffs request pursuant to a violation of this statute. Because plaintiffs appear to lack standing to pursue a claim under section 1174, defendants' motion to dismiss plaintiffs' Cal Labor Code § 1174 claim is GRANTED.

1 G

2 Plaintiffs also allege in their ninth claim that  
3 defendants' actions are unlawful, deceitful and unfair business  
4 practices under Cal Bus and Prof Code ("UCL") § 17200. Doc #24 at  
5 24-25. Section 17200 of the UCL prohibits unlawful, unfair and  
6 fraudulent business practices. The "unlawful" prong borrows  
7 violations from other laws and treats them as independently  
8 actionable unlawful practices. Wang v Massey Chevrolet, 97 Cal App  
9 4th 856, 871 (2002). A cause of action for an unlawful act under  
10 section 17200 must be based on some predicate act involving a  
11 violation of some other statute. Cel-Tech Communications v LA  
12 Cellular Tel Co, 20 Cal 4th 163, 181 (1999).

13 Plaintiffs' FAC claims defendants' violations of Cal  
14 Labor Code §§ 201-203, 221, 226, 227.3, 510, 1174 and 1194 provide  
15 the bases for liability under the UCL as unlawful business  
16 practices. Id. Plaintiffs have since withdrawn claims that  
17 sections 201-203 and 226 are predicate violations. Doc #118 at 25,  
18 n23. Of the remaining claims, defendants appear only to challenge  
19 section 221, which is based on the "tax payment arrangement"  
20 between the parties. Doc #117 at 25-26. But section 221 has been  
21 held to provide the basis for a section 17200 claim. Hudgins v  
22 Neiman Marcus Group, Inc, 34 Cal App 4th 1109, 1126 (1995).  
23 Insofar as the plaintiffs have pled a violation of section 221,  
24 they have properly pled a section 17200 claim. Accordingly,  
25 defendants' motion to dismiss plaintiffs' ninth claim is DENIED.

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III

Defendants additionally move for partial dismissal based on the applicable statute of limitations. If a claim is barred by the statute of limitations, dismissal pursuant to FRCP 12(b)(6) is appropriate. Morales v City of Los Angeles, 214 F3d 1151, 1153 (9th Cir 2000). "A motion to dismiss based on the running of the statute of limitations period may be granted only if the assertions of the complaint, read with the required liberality, would not permit the plaintiff to prove that the statute was tolled." Supermail Cargo, Inc v United States of America, 68 F3d 1204, 1206 (9th Cir 1995) (citation and internal quotation marks omitted). "In fact, a complaint cannot be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts that would establish the timeliness of the claim." *Id* at 1207.

The parties do not put forth arguments regarding when the relevant claims began accruing or whether any claims may have been tolled. Defendants move to dismiss plaintiffs' first, second, third, fourth, fifth, sixth, eighth and ninth claims in whole or in part based on the applicable statute of limitations. As plaintiffs' second and third claims have been dismissed in their entirety, the court now addresses each of the defendants remaining claims in turn.

## A

Defendants assert plaintiffs' first claim for breach of contract is partially barred. The statute of limitations for a breach of contract claim in California is four years. Cal Code Civ Proc § 337. Accordingly, absent tolling, the statute of

1 limitations bars any claims accruing before February 14, 2002 for  
2 Vedachalam and any causes of action accruing before June 5, 2002  
3 for Beri.

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5 B

6 Next, defendants seek to dismiss in part plaintiffs'  
7 fourth and fifth claims for violations of California Labor Code.  
8 Cal Code Civ Proc § 338(a) provides a three-year statute of  
9 limitations for "an action upon a liability created by statute,  
10 other than penalty or fraud." Except as noted below, plaintiffs'  
11 labor code claims are therefore subject to a three year statute of  
12 limitations.

13 Plaintiffs' labor code claims that are predicate  
14 violations for plaintiffs' UCL claim are subject to the statute of  
15 limitations set forth in the UCL, which provides a statute of  
16 limitations of "four years after the cause of action accrued." Cal  
17 Bus & Prof Code § 17208. Pursuant to section 17208, plaintiffs'  
18 fourth claim for violations of Cal Labor Code § 221 and plaintiffs'  
19 fifth claim for violations of Cal Labor Code §§ 510 and 1194 are  
20 subject to a four year statute of limitations. Accordingly, absent  
21 tolling, the statute of limitations bars these causes of action  
22 accruing before February 14, 2002 for Vedachalam and accruing  
23 before June 5, 2002 for Beri.

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25 C

26 Defendants also argue that plaintiffs' sixth claim for  
27 relief is partially time barred. Plaintiffs' sixth claim alleges  
28 violations of Cal Labor Code §§ 201-203. "Cal Labor Code § 201,

1 202, 203 is an action created by statute for purposes of  
2 determining the applicable statute of limitations and therefore  
3 subject to § 338(a)." Medrano v D'Arrigo Bros Co of Cal, 125 F  
4 Supp 2d 1163 (ND Cal 2000)(Fogel, J). Section 203(b) specifies  
5 that the statute of limitations for section 203 is the same as an  
6 underlying action for wages. Nonetheless, defendants contend that  
7 a one year statute of limitations applies. Doc #121 at 19. Murphy  
8 v Kenneth Cole Productions Inc held that the legislature  
9 intentionally provided that a suit to enforce a section 203 penalty  
10 would be subject to a three year statute of limitations rather than  
11 the typical one year limit. 40 Cal 4th 1094, 1109 (2007).  
12 Accordingly, absent tolling, the statute of limitations bars any  
13 causes of action accruing before February 14, 2003 for Vedachalam  
14 and any causes of action accruing before June 5, 2003 for Beri.

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16 D

17 Defendants assert that plaintiffs eighth claim for  
18 violation of Cal Labor Code § 226 is entirely time barred.  
19 Defendants argue that plaintiffs only seek civil penalties under  
20 section 226(e) and therefore such claims are subject to a one year  
21 statute of limitations pursuant to Cal Code Civ Proc § 340(a).  
22 Defendants are correct that recovery under section 226(a) does  
23 constitute a penalty and is therefore governed by a one-year  
24 statute of limitations under Cal Code Civ Proc § 340(a). Blackwell  
25 v SkyWest Airlines, Inc, 245 FRD 453, 462 (SD Cal 2007)(Sabraw, J).  
26 But claims for actual damages and injunctive relief for a violation  
27 of 226(a) are subject to a three year statute of limitations.  
28 Singer v Becton, Dickinson and Co, 2008 WL 2899825 at 5 (SD Cal

