

"It's legal, but it smells like extortion."
Orange County Register editorial.

"If they [the Legislature] do nothing, they'll be sanctioning a truly shameful – un-American, in fact – practice targeting immigrants, just as the Mafia strong-armed immigrants a century ago."

Sacramento Bee political columnist Dan Walters.

"One of the main things that worries me is the possibility of paying \$10,000 every time an attorney in their firm, and I'm certain others to follow who have found a quick ride to 'millionaire-land,' finds a mistake in one of our ads...or anything else they like....Please tell us WHY this kind of outrageous action is tolerated and even supported by our 'superiors' in government?" *Ford Mercury dealer letter to his legislator.*

"Newspapers support strong consumer laws. We believe, however, the case has been made for a serious adjustment of the unfair business practices law." *California Newspaper Publishers Association.*

"Everyone in California has the right to sue any corporation that happens to sell any product or service in that state over the accuracy of any statement bearing on that corporation's activities or on those of the businesses or nations with which it deals...provisions like these vastly increase the litigation exposure of any corporation that speaks (however indirectly) to California audiences." *Harvard Law Professor Laurence H. Tribe.*

These are a small sample of the reactions California plaintiffs' lawyers are generating through their overreaching use of California's "Unfair Competition Law" (UCL), found at Business and Professions Code Section 17200.

This law lets a private lawyer, without a client and without tangible evidence of harm, sue a firm for being "unfair," in hopes of shaking out a hefty chunk of income from a nuisance settlement.

Rental owners have encountered dubious "17200" lawsuits for several years – often linked with Proposition 65 claims.

The law's astounding breadth is

TIME TO END THE LEGAL SHAKEDOWNS

By John H. Sullivan

illustrated by the San Francisco Bay Area lawsuit in which an apartment owner was accused of housing discrimination under both the Unruh Act and Section 17200. The Unruh Act complaint was dismissed because the association bringing the suit could not show that any of its members lived, tried to live, or desired to live in the apartments. However, the suit was still allowed to proceed under the UCL.

Last year thousands of owners of small nail salons, auto repair shops, travel agencies, and convenience stores were sued by attorneys representing no real clients and presenting no evidence of real loss or damages to anyone. But their demands for settlement money were real.

Lawyers who brought the lawsuits against the convenience store owners sent letters all over the state accusing the convenience stores of renting out pirated videos. The lawyers offered no evidence of the violation. Nevertheless, they offered to drop the lawsuits in exchange for a \$2,000 "settlement" and an agreement not to rent or sell the video tapes in the future.

The video suits were "part of an improper scheme to use the courts as an instrument of terror for purposes of extracting monies," a lawyer representing the shops told the court.

"Mass" lawsuits like these against more-vulnerable defendants put the Unfair Competition Law in the spotlight as the 2003 legislative season began. Some legislators are saying that apart from the state budget crisis, 17200 is now the single biggest

issue in the State Capitol.

The plaintiffs' lawyers who make big money on legal shakedowns of all sizes have attempted to "wish" the problem away. One representative, for example, told a reporter that problems with 17200 are "minimal." Legislators who are long time allies of the wealthy trial lawyers are echoing this theme. They want the State Bar or the Attorney General to squash the "few bad apples" who are bringing the most-publicized shakedown lawsuits.

But even Attorney General Bill Lockyer, whose election campaigns have been heavily financed by personal injury lawyers, said in a letter to the Civil Justice Association of California that: "I agree... that there are significant problems with existing law which allow bad actors to take advantage of business owners who are not guilty of any wrongdoing."

The news media is keeping the heat on. With hundreds of small business owners dragged into mass lawsuits, reporters have plenty of victims to talk about. In Los Angeles, KFI Radio's rowdy hosts of the afternoon "John and Ken Show" set up their microphone tent in front of a plaintiffs' law firm as well as for a later show outside an Orange County "town hall" hearing on 17200 called by Assemblyman Lou Correa.

The pair also subjected plaintiffs' lawyer Bruce Busavich, president of the "consumer attorneys" to 19 minutes of double team interrogation interspersed with pieces of monologue like: "There were a couple of attempts in the

Legislature in the past few years, Bruce, to reform this statute and they failed. You guys stopped it, didn't you.... It's got to be illegal to go after a company with bogus charges with no customer complaints. That is nonsense, Bruce, it doesn't exist in any other state.

That's nonsense. This is not a biblical verse you have. This is a law, a man-made law that can be re-written or another law can amend it."

What will all the media attention achieve? The plaintiffs' lawyers and their allies hope it will be nothing – that the State Bar and the Attorney General will disbar or harass the most notorious 17200 lawyers out of action and the public storm will blow over. Then the many lawyers operating under the radar to leverage big settlements will continue on their lucrative path.

Contrary to what some lawyers and their allies want the public to believe, abuse of the Unfair Competition Law is not new. In 1997 the state Law Revision Commission issued a study observing that "the statute's dilemma is no longer theoretical; it is currently functioning in a number of cases to frustrate the just and expeditious resolution of disputes."

A year later, at its annual Maui meeting, the California Trial Lawyers association held a seminar titled "How Business and Professions Code Section 17200 Can Be an 'Added Value' Component of Your Litigation."

Fixing 17200 is not simple. While our Association believes the UCL is a legitimate business and consumer protection tool, the law must be changed to stop 17200 suits by private attorneys who claim to be representing the public but have no client, no real evidence of harm or loss, and whose dominant goal is money. No other state gives private lawyers such wide-open power to attack businesses.

The law must be amended to stop private lawyers from filing a lawsuit over an activity that was already the

subject of an earlier lawsuit or that was already addressed by a government regulatory agency.

A private attorney who puts on the mantle of a "private attorney general" and undertakes to represent the public in a 17200 lawsuit should undergo much more judicial and public scrutiny than an attorney representing a private client. The Attorney General and district attorneys are elected by the people. Private lawyers are not.

Will the Legislature act to stop 17200 abuse? If the past is an indicator of the future, the answer is "no." Plaintiff lawyers killed a reform bill proposed by the Law Revision Commission. Every other proposal for modest 17200 reforms over the past half dozen years have died in the plaintiffs' lawyer-controlled Judiciary Committees.

The Civil Justice Association of California has initiated preliminary research on the public's view of issues surrounding the Unfair Competition Law. The California Apartment Association, I am happy to report, has joined with the many organizations supporting this effort to restore common sense and fairness to the state's business practices law.

Over the period that 17200 reforms

have been proposed, plaintiffs' lawyers in California have contributed at least \$25 million in an effort to elect candidates to the Legislature and statewide offices who will help them maintain their profitable 17200 status quo. Will the Legislature listen only to the lawyers who continue to prosper in their recession-proof legal industry? Or will it also consider the people running businesses of all kinds and sizes – people already facing rising costs and who are going to be asked by the Legislature and Governor to dig into their pockets to help make up the state's budget shortfall? All business people – especially now – should be asking their state leaders to act immediately to protect them from legal predators. **PM**

John H. Sullivan is President of the Civil Justice Association of California (CJAC). CJAC, based in Sacramento, is a non-profit association representing businesses, professionals, and local governments in an effort to restore balance to the civil justice system. It is the lead organization working for reform of the Unfair Competition Law and extensive information on 17200 can be found at the CJAC web site (www.cjac.org). Earlier this year, the California Apartment Association's Thomas K. Bannon was elected to the CJAC Board of Directors.