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## *Sonner v. Premier Nutrition Corp.*

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## RECENT CASE

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### SONNER V. PREMIER NUTRITION CORP.

#### *Federal Common Law’s Limitation of California UCL and CLRA Equitable Restitution*

*Ruth Dapper, Esq. & Bryce Young, Esq.\**

#### INTRODUCTION

When sitting in diversity jurisdiction, must a federal court apply federal equitable principles when deciding state law claims, even if state law may provide a different outcome? That was the question before the United States Court of Appeals for the Ninth Circuit in the case of *Sonner v. Premier Nutrition Corp.*<sup>1</sup> Although the Ninth Circuit’s published opinion relies on “seventy-five years” of unchanged law,<sup>2</sup> the opinion joins a long list of cases that continue to help clarify the tenets from *Erie Railroad Co. v. Tompkins*<sup>3</sup> and inform the courts and practitioners on the relationship between state and federal authority in diversity jurisdiction.

In short, the Ninth Circuit in *Sonner* confirmed that “a federal court must apply traditional equitable principles before awarding restitution [available under state law].”<sup>4</sup> The reasoning for this outcome is straightforward: “[S]tate law can neither broaden nor restrain a federal court’s power to issue equitable relief.”<sup>5</sup> And this

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1 971 F.3d 834 (9th Cir. 2020). This amended opinion was issued after the panel denied the petition for rehearing. *Id.* at 837.

2 *Id.* at 841.

3 304 U.S. 64 (1938).

4 971 F.3d at 841.

5 *Id.*

outcome has serious teeth—an equitable remedy (and the attendant monetary amounts) available under state law may be barred by federal equitable principles.

## I. CALIFORNIA UNFAIR COMPETITION LAW AND CONSUMERS LEGAL REMEDIES ACT

As relevant here, California’s Unfair Competition Law (UCL) and Consumers Legal Remedies Act (CLRA) are commonly invoked in consumer litigation, including class actions. The UCL prohibits “unlawful, unfair or fraudulent business act[s] or practice[s]” and “unfair, deceptive, untrue or misleading advertising.”<sup>6</sup> The CLRA prohibits “unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or that results in the sale . . . of goods or services to any consumer.”<sup>7</sup> The UCL “is equitable in nature” and UCL remedies are “generally limited to injunctive relief and restitution.”<sup>8</sup> The CLRA has greater flexibility, including restitution of property, actual damages, punitive damages, and “[a]ny other relief that the court deems proper.”<sup>9</sup>

When only equitable relief is sought, a jury trial is not appropriate and instead a bench trial is held.<sup>10</sup>

## II. SONNER V. PREMIER NUTRITION CORP.

### A. *The District Court Permitted Plaintiff to Amend the Complaint to Remove a Prayer for Damages, Leaving Only Equitable Relief*

*Sonner* was filed in the United States District Court for the Northern District of California in early 2013 as a putative class action.<sup>11</sup> The lawsuit centered on alleged false advertising in connection with a dietary product.<sup>12</sup> The action proceeded through litigation over the

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6 CAL. BUS. & PRO. CODE § 17200 (West 2020).

7 CAL. CIV. CODE § 1770 (West 2020).

8 *Chowning v. Kohl’s Dep’t Stores, Inc.*, 735 Fed. App’x 924, 924 (9th Cir. 2018) (quoting *Korea Supply Co. v. Lockheed Martin Corp.*, 63 P.3d 937, 943 (Cal. 2003)).

9 CAL. CIV. CODE § 1780(a)(1)–(5) (West 2020).

10 *See, e.g., Anti-Monopoly, Inc. v. Gen. Mills Fun Grp.*, 611 F.2d 296, 307 (9th Cir. 1979) (affirming district court’s order “concluding that since only equitable claims remained to be tried, trial to a jury would be inappropriate”); *Nationwide Biweekly Admin., Inc. v. Superior Ct.*, 462 P.3d 461, 486 (Cal. 2020) (“For nearly a half century, Court of Appeal decisions have explicitly and uniformly held that actions under the UCL and FAL are equitable in nature and are to be tried by the court and not by a jury.”).

11 *Mullins v. Premier Nutrition Corp.*, No. 13-cv-01271, 2018 WL 510139 (N.D. Cal. Jan. 23, 2018), *aff’d sub nom Sonner v. Premier Nutrition Corp.*, 971 F.3d 834 (9th Cir. 2020).

12 *Sonner*, 971 F.3d at 837–39 (discussing procedural history of underlying district court’s order).

course of the next few years, and, in April 2016, the district court certified a class of California consumers who had purchased the product.<sup>13</sup>

UCL and CLRA claims were pleaded throughout the various iterations of the operative complaints.<sup>14</sup> Less than two months before the jury trial was to begin, Plaintiff Kathleen Sonner sought to drop her claim seeking damages pursuant to the CLRA as an apparent tactic to avoid a jury trial.<sup>15</sup> Defendant Premier Nutrition Corporation (“Premier”) opposed Sonner’s request to amend the complaint, arguing the amendment was futile because restitution under the UCL and CLRA cannot properly be pleaded while an adequate remedy at law exists (e.g., CLRA monetary damages).<sup>16</sup> The court permitted Sonner to amend the complaint to remove the request for CLRA damages, but warned Sonner that the court would not later permit her to amend her complaint again in order to re-plead for CLRA damages.<sup>17</sup>

Sonner filed an amended complaint removing the CLRA damages prayer.<sup>18</sup> Sonner thus had two remaining claims: violation of the UCL

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13 *Id.*

14 *Id.*

15 *Id.* at 838 (“[W]hy would Sonner voluntarily abandon an ostensibly viable claim on the eve of trial after more than four years of litigation? The answer is also obvious: to request that the district court judge award the class \$32,000,000 as restitution, rather than having to persuade a jury to award this amount as damages.”); Memorandum of Plaintiff in Support of Motion for Leave to File Second Amended Complaint at 6, *Mullins*, 2018 WL 510139 (No. 13-cv-01271) (arguing against the court holding a jury trial due to the proposed amendment); *id.* at Exhibit B, 21 (showing proposed removal of jury demands and claim to damages).

16 *See* Memorandum of Defendant in Support of Motion to Dismiss Plaintiff’s Claims for Equitable Restitution at 4, *Mullins*, 2018 WL 510139 (No. 13-cv-01271) (“Before a party can avail herself of a court’s equitable jurisdiction, she must first demonstrate that her remedy at law is inadequate.”); Memorandum of Defendant in Opposition to Plaintiff’s Motion for Leave to File a Second Amended Complaint at 3, *Mullins*, 2018 WL 510139 (No. 13-cv-01271) (“Courts routinely recognize that equitable claims under [UCL and CLRA]—which are the claims that would remain at issue in Plaintiff’s proposed amended complaint—are deficient and subject to dismissal where there is a legal remedy, such as monetary damages, available to the plaintiff.”).

17 *See* Memorandum of Defendant in Support of Motion to Dismiss Plaintiff’s Claims for Equitable Restitution, *supra* note 16, at Exhibit B, 18. In the transcript of the proceedings on the motion to amend, the court stated, “And if I grant [plaintiff’s motion to amend the complaint to remove the damages prayer], we are never going to hear again anything about a damage claim under the CLRA” and plaintiff’s counsel responded, “I completely agree.” *Id.* Plaintiff’s counsel then addressed that if plaintiff were able to amend the complaint and defendant were to successfully move to dismiss that amended complaint, plaintiff would then move to amend again “and presumably but maybe not be granted leave to amend to put back in the rest of it.” *Id.* The court responded, “I wouldn’t put a lot of money on that one.” *Id.*

18 *Sonner*, 971 F.3d at 838.

and violation of the CLRA.<sup>19</sup> As relief, her prayer included two forms of equitable relief: (1) equitable restitution and disgorgement and (2) injunctive relief.<sup>20</sup> Sonner sought \$32,000,000 as restitution damages—this was the same monetary amount she had requested as CLRA monetary damages from the prior complaint.<sup>21</sup> With CLRA damages no longer pleaded in the operative complaint, the court vacated the jury trial.<sup>22</sup>

*B. The District Court Determined a Claim for Equitable Restitution Required a Showing That No Adequate Remedy at Law Existed*

Premier moved to dismiss the new complaint's claims for equitable restitution, arguing under Federal Rules of Civil Procedure 12(b)(1) and (b)(6) that Sonner needed to establish that she lacked an adequate legal remedy and thus could not pursue her claims of restitution under UCL and CLRA.<sup>23</sup>

Reviewing Premier's motion to dismiss under a Rule 12(b)(6) standard, the district court noted: "In the Ninth Circuit, the relevant test is whether an adequate damages remedy is available, not whether the plaintiff elects to pursue it, or whether she will be successful in that pursuit."<sup>24</sup> Sonner argued that, because "the UCL and the CLRA expressly provide a statutory right to restitution . . . , a plaintiff seeking relief under those statutes is not required to plead an inadequate remedy at law."<sup>25</sup> The court disagreed, concluding that the authorities cited by Sonner did not shed light on whether the "plaintiff may seek a remedy for past harm when she has an adequate remedy at law for that exact same past harm."<sup>26</sup> Rather, the court determined California law had not removed the inadequate remedy doctrine and then concluded Sonner's choice to not "request damages does not relieve her from having to show that her remedy at law is inadequate. Because she has not done so, and . . . is unable to do so, she may not proceed on her equitable claims for restitution in lieu of a damages claim."<sup>27</sup>

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19 See Memorandum of Plaintiff in Support of Motion for Leave to File Second Amended Complaint, *supra* note 15, at Exhibit B, 17–22.

20 *Id.* at Exhibit B, 21.

21 *Sonner*, 971 F.3d at 837.

22 *Id.* at 838.

23 *Mullins v. Premier Nutrition Corp.*, No. 13-cv-01271, 2018 WL 510139, at \*1 (N.D. Cal. Jan. 23, 2018), *aff'd sub nom* *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834 (9th Cir. 2020).

24 *Id.* at \*2.

25 *Id.* at \*3.

26 *Id.* at \*4; *accord Sonner*, 971 F.3d at 838 ("Specifically, the district court concluded that claims brought under the UCL and CLRA remained subject to California's inadequate-remedy-at-law doctrine, and that Sonner failed to establish that she lacked an adequate legal remedy for the same past harm for which she sought equitable restitution.").

27 *Mullins*, 2018 WL 510139, at \*4.

On this ground, the court granted Premier's motion to dismiss as to the equitable restitution relief and denied Sonner's request to re-plead the CLRA damages.<sup>28</sup> A few months later, the court dismissed the remainder of the lawsuit (solely seeking injunctive relief) and entered judgment with prejudice in favor of Premier Nutrition Corp.<sup>29</sup> Sonner then appealed to the Ninth Circuit the order dismissing her equitable restitution claims.<sup>30</sup>

*C. The Ninth Circuit Determined a Federal Court Must Apply Traditional Equitable Principles Before Awarding Restitution Under the UCL and CLRA (Even If State Law Would Provide Otherwise)*

On appeal, the Ninth Circuit framed the preliminary (and ultimately dispositive) question before it as: “[D]o federal equitable principles independently apply to Sonner’s equitable claims for restitution or must we, as a federal court, follow only the state law authorizing that equitable remedy?”<sup>31</sup> In doing so, the Ninth Circuit noted this was “not the basis for the district court’s decision.”<sup>32</sup>

Sonner argued that state principles alone apply because the case was a diversity action and involved state statutes.<sup>33</sup> Premier argued that Sonner’s claims failed under state law, but also that federal courts in diversity are “bound by traditional federal equitable principles.”<sup>34</sup> These federal principles include, Premier reasoned, the mandate that to successfully pursue equitable relief, the claiming party must establish that it lacks an adequate legal remedy.<sup>35</sup>

To address this question, the Ninth Circuit explained the relevant history of the *Erie* doctrine. “It has long been the province of federal courts sitting in equity to apply a body of federal common law irrespective of state law.”<sup>36</sup> This federal common law had been “narrowed considerably” by the *Erie* doctrine, which has long held that “federal courts exercising diversity jurisdiction must follow state substantive law and federal procedural law when adjudicating state law claims.”<sup>37</sup> To determine “whether a law is substantive or procedural,” courts “generally use the ‘outcome-determination test,’ which asks whether applying federal law instead of state law would ‘significantly

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28 *Id.* at \*5.

29 Answering Brief of Appellant at 4, *Sonner*, 971 F.3d 834 (No. 18-15890).

30 *Sonner*, 971 F.3d at 838–39.

31 *Id.* at 839.

32 *Id.*

33 *Id.*

34 *Id.*

35 *Id.*

36 *Id.* (citing *Russell v. Southard*, 53 U.S. (12 How.) 139, 147 (1851)).

37 *Id.* at 839–40 (first discussing *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938); and then citing *Hanna v. Plumer*, 380 U.S. 460 (1965)).

affect' the litigation's outcome."<sup>38</sup> "Thus, the outcome of a case in federal court should generally be 'substantially the same, so far as legal rules determine the outcome of a litigation, as it would be if tried in a State court."<sup>39</sup> Even so, "since *Erie*, the Supreme Court has instructed that a federal court's equitable authority remains cabined to the traditional powers exercised by English courts of equity, even for claims arising under state law."<sup>40</sup>

In addressing the appropriate scope and use of federal common law principles, the Ninth Circuit drew guidance from *Guaranty Trust Co. v. York*, a Supreme Court opinion issued seven years after *Erie*.<sup>41</sup> The *York* Court examined whether a state statute of limitations could defend against a state law equitable claim.<sup>42</sup> The *York* opinion concluded that "[e]quitable relief in a federal court is of course subject to restrictions," and suggested an example of such a restriction would be that "a plain, adequate and complete remedy at law must be wanting."<sup>43</sup> *York* emphasized, therefore, that "[s]tate law cannot define the remedies which a federal court must give simply because a federal court in diversity jurisdiction is available as an alternative tribunal to the State's courts."<sup>44</sup> In summation, *York* guided that "[f]ederal courts must therefore enforce '[s]tate-created substantive rights if the mode of proceeding and remedy [are] consonant with the traditional body of equitable remedies, practice and procedure."<sup>45</sup>

Applying *York's* principles to the present case, the Ninth Circuit held that "a federal court must apply traditional equitable principles before awarding restitution under the UCL and CLRA [because i]t has been a fundamental principle for well over a century that state law cannot expand or limit a federal court's equitable authority."<sup>46</sup>

The Ninth Circuit explained federal courts must "nonetheless apply principles of federal common law" even if the federal application could result in a federal court reaching a decision that may differ from a state court's treatment.<sup>47</sup> "Even assuming California decided as a matter of policy to streamline UCL and CLRA claims by abrogating the state's inadequate-remedy-at-law doctrine, the strong federal policy protecting the constitutional right to a trial by jury outweighs that

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38 *Id.* at 839 (quoting *Gasperini v. Ctr. for Humanities, Inc.*, 518 U.S. 415, 427 (1996)).

39 *Id.* (quoting *Guar. Trust Co. v. York*, 326 U.S. 99, 109 (1945)).

40 *Id.* at 840 (citing *York*, 326 U.S. at 104–07).

41 *See id.* at 841.

42 *Id.* at 840 (citing *York*, 326 U.S. at 100–01, 107).

43 *Id.* (quoting *York*, 326 U.S. at 105) (emphasis omitted).

44 *Id.* (quoting *York*, 326 U.S. at 106).

45 *Id.* (citing *York*, 326 U.S. at 106) (last alteration in original).

46 *Id.* at 841 ("[I]n seventy-five years, the Supreme Court has never repudiated its statement in *York*—offered seven years after *Erie*—that state law can neither broaden nor restrain a federal court's power to issue equitable relief.").

47 *Id.* (citing *York*, 326 U.S. at 105–06).

procedural interest.”<sup>48</sup> This outcome is necessary, concluded the Ninth Circuit, because, “[s]ince *York*, the [U.S. Supreme] Court has never held or suggested that state law can expand a federal court’s equitable powers, even if allowing such expansion would ensure a similar outcome between state and federal tribunals.”<sup>49</sup>

Finally, the Ninth Circuit noted opinions from the Second, Third, Fourth, Fifth, and Tenth Circuit Courts of Appeals “mirror[ed the holding that] state law cannot circumscribe a federal court’s equitable powers even when state law affords the rule of decision.”<sup>50</sup> Several of those opinions had similarly quoted and relied on *York* as well.<sup>51</sup> The Ninth Circuit further noted opinions from the Eighth and Eleventh Circuit Courts of Appeals similarly agreed on the principles, albeit in different contexts.<sup>52</sup>

Applying the now-decided threshold jurisdictional decision, the Ninth Circuit concluded “that the traditional principles governing equitable remedies in federal courts, including the requisite inadequacy of legal remedies, apply when a party requests restitution under the UCL and CLRA in a diversity action.”<sup>53</sup> The Ninth Circuit determined “Sonner fail[ed] to make such a showing” because “the operative complaint does not allege that Sonner lacks an adequate legal remedy.”<sup>54</sup> Moreover, “Sonner concede[d] that she seeks the same sum in equitable restitution as . . . she requested in damages to compensate her for the same past harm.”<sup>55</sup> And she “fail[ed] to explain how the same amount of money for the exact same harm is inadequate or incomplete, and nothing in the record supports that conclusion.”<sup>56</sup>

Accordingly, the Ninth Circuit affirmed—“albeit on alternative grounds” and without addressing California law—the district court’s

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48 *Id.* at 842.

49 *Id.* at 841–42.

50 *Id.* at 843 (first citing *Davilla v. Enable Midstream Partners, L.P.*, 913 F.3d 959, 972–73 (10th Cir. 2019); then citing *SSMC, Inc., N.V. v. Steffen*, 102 F.3d 704, 708 (4th Cir. 1996); then citing *Perfect Fit Indus., Inc. v. Acme Quilting Co.*, 646 F.2d 800, 806 (2d Cir. 1981); then citing *Oneida Indian Nation of N.Y. State v. Oneida Cnty.*, 464 F.2d 916, 922 (2d Cir. 1972); then citing *Clark Equip. Co. v. Armstrong Equip. Co.*, 431 F.2d 54, 57 (5th Cir. 1970); and then citing *Hertz v. Record Publ’g Co. of Erie*, 219 F.2d 397, 398 n.2 (3d Cir. 1955)).

51 *See id.* (first citing *Davilla*, 913 F.3d at 972–73; and then citing *SSMC, Inc.*, 102 F.3d at 708).

52 *Id.* (first citing *Nat’l P’ship Inv. Corp. v. Nat’l Hous. Dev. Corp.*, 153 F.3d 1289, 1291–92 (11th Cir. 1998); and then citing *Aviation Supply Corp. v. R.S.B.I. Aerospace, Inc.*, 999 F.2d 314, 316 (8th Cir. 1993)).

53 *Id.* at 844.

54 *Id.*

55 *Id.*

56 *Id.*

dismissal of Sonner’s claims for equitable restitution.<sup>57</sup> “Regardless of whether California authorizes its courts to award equitable restitution under the UCL and CLRA when a plain, adequate, and complete remedy exists at law, we hold that federal courts rely on federal equitable principles before allowing equitable restitution in such circumstances.”<sup>58</sup>

The Ninth Circuit also concluded that the district court did not abuse its discretion in denying Sonner’s request to amend the complaint to reallege CLRA damages, particularly since Sonner “strategically chose” to drop them and the district court had warned her of the risks.<sup>59</sup>

### III. SONNER’S IMPLICATIONS AS TO STATE LAW CLAIMS IN FEDERAL COURT

The *Sonner* opinion accords with other district court decisions in the Ninth Circuit that have dismissed UCL and CLRA claims—including at the pleadings stage—where a party failed to demonstrate a lack of adequate remedy at law,<sup>60</sup> and resolves this issue to the extent there was potentially confusing language among district courts.<sup>61</sup>

Notably for federal courts and practitioners, *Sonner* reaffirms that parties cannot pursue equitable restitution if an adequate remedy *exists*, even if not originally pleaded. Thus, while Sonner abandoned the claim for monetary damages via a motion to amend the complaint, that vehicle was not critical to the determination that a federal court must apply federal common law to assess the availability of an adequate remedy at law before awarding equitable restitution. Instead, the Ninth Circuit focused on whether such an adequate remedy at law exists (whether it has been claimed previously or not). As such, practitioners will want to consider *Sonner* when determining (1) which claims to pursue, (2) whether a jury or bench trial is preferred, and (3) grounds to address in dispositive motion practice. Assuredly, the *Sonner* decision will be on the minds of opposing counsel and will provide a framework for future courts resolving these issues.

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<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 845.

<sup>59</sup> *Id.*

<sup>60</sup> *See, e.g.*, Mullins v. Premier Nutrition Corp., No. 13-cv-01271, 2018 WL 510139, at \*2 n.3 (N.D. Cal. Jan. 23, 2018) (citing numerous orders from the Northern District of California dismissing equitable claims, including those for restitution, where plaintiff had failed to establish that no adequate remedy at law was available), *aff’d sub nom* Sonner v. Premier Nutrition Corp., 971 F.3d 834 (9th Cir. 2020).

<sup>61</sup> *Id.* at \*3–4 (analyzing Plaintiff’s arguments and authority contending “she need not establish an inadequate remedy at law”).