

# An 'Equitable' Result for Class Action Defendants in 'Sonner v. Premier Nutrition Corp.'

'Sonner' undoubtedly limits plaintiffs' ability to seek equitable remedies in lieu of damages, and it represents a sea change in Ninth Circuit class action practice.

By Alex Smith

*This is the latest in the series of Consumer Law Watch columns from lawyers at Jenner & Block tracking the latest in privacy/cybersecurity, fintech, food and beverage, trade secrets, and other developments affecting consumer law in California.*

As the California Supreme Court recently emphasized, California's Unfair Competition Law provides courts with "broad equitable authority to protect consumers from unfair or deceptive business practices and advertising." *Nationwide Biweekly Admin. v. Superior Court*, 9 Cal. 5th 279, 326 (2020). It is therefore unsurprising that plaintiffs in false advertising lawsuits routinely assert claims under the UCL, allege that the defendant's advertising or labeling was deceptive, and seek restitution—an equitable remedy—to compensate them for the money they allegedly lost as a result.

Earlier this month, however, the U.S. Court of Appeals for the Ninth Circuit held that federal courts cannot entertain equitable claims under the UCL when the plaintiff has an adequate remedy at law. *See Sonner v. Premier Nutrition*, — F.3d— (9th Cir. 2020). Because the restitutionary relief available under the UCL overlaps with the damages available

under the Consumers Legal Remedies Act and the common law, the Ninth Circuit's decision in *Sonner* could significantly limit plaintiffs' ability to assert claims under the UCL—as well as other equitable claims—in federal court. And in the unlikely event that a consumer class action goes to trial in federal court, *Sonner* all but guarantees that the defendant will be entitled to a jury trial.

The Ninth Circuit's Opinion in *Sonner*

In 2013, Vincent Mullins filed a putative class action in the Northern District of California in which he alleged that Premier Nutrition's dietary supplement—"Joint Juice"—did not provide the health benefits it promised. In 2014, Kathleen Sonner substituted for Mullins as the named plaintiff and filed an amended complaint, which sought restitution under the UCL and CLRA, as well as damages under the CLRA. The district court certified a class in 2016.

Less than two months before trial, Sonner sought leave to file a second amended complaint to drop her CLRA claim. As Sonner acknowledged, the purpose of this maneuver was to permit her to try



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(courtesy photo)

her equitable claims to the court, rather than to a jury. Over Premier Nutrition's objection, the district court granted Sonner's motion and vacated the jury trial. Premier Nutrition then moved to dismiss Sonner's remaining claims under the UCL and the False Advertising Law. Under both "federal equitable principles and California law," Premier argued that Sonner could not prevail on her equitable claims under the UCL and CLRA without showing that she lacked an adequate remedy at law. Slip Op. at 6. The district court agreed: it held that California law required Sonner to "establish that she lacked an adequate legal remedy for the same past harm for which she sought equitable restitution," construed

her voluntary abandonment of her CLRA claim as evidence that she could not satisfy this requirement, and dismissed her lawsuit. *Id.* at 6-7.

The Ninth Circuit affirmed. It began by rejecting Sonner's argument that "state law alone" determines whether a plaintiff can seek restitution or other equitable remedies in a diversity action. Instead, it emphasized that "federal courts in diversity are bound by traditional federal equitable principles, including the requirement that the party pursuing equitable relief establish that it lacks an adequate legal remedy." *Id.* at 8.

Relying principally on *Guaranty Trust of New York v. York*, 326 U.S. 99 (1945), the Ninth Circuit emphasized that a federal court's ability to provide equitable relief is limited to cases where the plaintiff lacks an adequate legal remedy. Although the *Erie* doctrine generally requires federal courts to apply state substantive law, the Ninth Circuit emphasized that "the Supreme Court has never repudiated its statements in *York*—offered seven years after *Erie*—that state law can neither broaden nor restrain a federal court's power to issue equitable relief." Slip Op. at 11. And it noted that this conclusion "mirrors those of several other circuits"—which, like the Ninth Circuit, concluded that "state law cannot circumscribe a federal court's equitable powers even when state law affords the rule of decision." *Id.* at 15. The Ninth Circuit accordingly sidestepped the question of whether California state law requires the plaintiff to demonstrate an inadequate remedy at law. Instead, it 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." *Id.* at 17.

The Ninth Circuit then held that Sonner had not established that she lacked an adequate legal remedy. As the Ninth Circuit explained, "Sonner concedes that she seeks the same sum in equitable restitution as a 'full refund of the purchase price'—\$32,000,000—as she requested in damages to compensate her for the same past harm." Thus, it concluded that Sonner had "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." *Id.* at 18.

#### Implications for Practitioners

As a practical matter, *Sonner* safeguards a defendant's right to a jury trial in virtually all consumer class actions seeking monetary relief. As the California Supreme Court recently reiterated, California law provides no right to a jury trial under the UCL or its companion statute, the FAL. See *Nationwide Biweekly*, 9 Cal. 5th at 334. Consistent with that guidance, some plaintiffs attorneys have attempted to abandon their legal claims because they believe they will fare better in a bench trial than in a jury trial. *Sonner* will put an end to this practice: so long as a defendant demands a jury trial, a plaintiff cannot circumvent that demand by choosing to pursue only her equitable claims. In so holding, the Ninth Circuit reaffirmed what the Supreme Court made clear long ago: while federal courts can entertain claims that sound in equity, "the constitutional right to a trial by jury cannot be evaded." *York*, 326 U.S. at 105.

*Sonner* may also allow defendants to seek dismissal of claims for restitution under the UCL—as well as claims for restitution under the FAL and CLRA and claims for unjust enrichment—at the pleading stage. Although plaintiffs will likely maintain that *Sonner* does not bar them from pleading equitable claims for restitution (either in lieu of or in addition to legal claims), the opinion suggests otherwise. Notably, the Ninth Circuit found it significant that "the operative complaint does not *allege* that Sonner lacks an adequate legal remedy." Slip Op. at 18 (emphasis added). The Ninth Circuit also suggested that a plaintiff must "*plead* 'the basic requisites of the issuance of equitable relief' including 'the inadequacy of remedies at law[.]'" *Id.* (quoting *O'Shea v. Littleton*, 414 U.S. 488, 502 (1974)) (emphasis added). It is difficult to imagine how a plaintiff can satisfy this pleading requirement while also asserting claims for damages. And while a plaintiff may be tempted to plead *only* equitable claims, a defendant can readily argue that the plaintiff still has an adequate remedy at law, particularly given the close overlap between the damages and restitutionary relief available under California law.

There may still be a role for the UCL in federal court, particularly when plaintiffs seek injunctive relief in addition to damages. But *Sonner* undoubtedly limits plaintiffs' ability to seek equitable remedies in lieu of damages, and it represents a sea change in Ninth Circuit class action practice.

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