FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

KATHLEEN SONNER, on behalf of herself and all others similarly situated, *Plaintiff-Appellant*, v. PREMIER NUTRITION CORPORATION, FKA Joint Juice, Inc., *Defendant-Appellee.*	No. 18-15890 D.C. No. 3:13-cv-01271-RS OPINION

Appeal from the United States District Court
for the Northern District of California
Richard Seeborg, District Judge, Presiding

Argued and Submitted December 3, 2019
San Francisco, California

Filed June 17, 2020

Before: Carlos F. Lucero,[*] Consuelo M. Callahan, and Bridget S. Bade, Circuit Judges.

Opinion by Judge Bade

[*] The Honorable Carlos F. Lucero, United States Circuit Judge for the U.S. Court of Appeals for the Tenth Circuit, sitting by designation.

SUMMARY[**]

Restitution

The panel affirmed on different grounds the district court's dismissal of plaintiff's claims for restitution where plaintiff failed to demonstrate that she lacked an adequate legal remedy.

Plaintiff brought a diversity action and sought $32 million on behalf of a class of consumers, but as equitable restitution rather than as damages. The district court applied its interpretation of California law and dismissed plaintiff's claims for restitution because there was an adequate remedy at law, i.e., damages, available.

The panel held, as a threshold jurisdictional issue, that pursuant to *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938), and *Guaranty Trust Co. of New York v. York*, 326 U.S. 99 (1945), federal courts must apply equitable principles derived from federal common law to claims for equitable restitution under California's Unfair Competition Law and Consumers Legal Remedies Act ("CLRA"). The panel held that state law cannot circumscribe a federal court's equitable powers even when state law affords the rule of decision.

The panel held that the district court did not abuse its discretion in denying plaintiff leave to amend her complaint for a third time to reallege the CLRA damages claim.

[**] This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

COUNSEL

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Xavier Becerra, Attorney General; Nicklas A. Akers, Senior Assistant Attorney General; Michele Van Gelderen, Supervising Deputy Attorney General; Michael Reynolds, Deputy Attorney General; Office of the Attorney General, Los Angeles, California; for Amicus Curiae State of California.

OPINION

BADE, Circuit Judge:

On the brink of trial after more than four years of litigation, Plaintiff-Appellant Kathleen Sonner voluntarily dismissed her sole state law damages claim and chose to proceed with only state law equitable claims for restitution and injunctive relief. A singular and strategic purpose drove this maneuver: to try the class action as a bench trial rather

than to a jury. Indeed, Sonner continued to seek $32,000,000 on behalf of the consumers she represented, but as equitable restitution rather than as damages. But, to Sonner's dismay, the plan backfired when, relying on its interpretation of California law, the district court dismissed her claims for restitution because an adequate remedy at law, i.e., damages, was available.

Pursuant to *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938), and *Guaranty Trust Co. of New York v. York*, 326 U.S. 99 (1945), we hold that federal courts must apply equitable principles derived from federal common law to claims for equitable restitution under California's Unfair Competition Law ("UCL") and Consumers Legal Remedies Act ("CLRA").

I

In March 2013, Vincent Mullins filed a putative class action regarding "Joint Juice," a nutritional product manufactured, marketed, and sold by Defendant-Appellee Premier Nutrition Corporation ("Premier"). After substituting as the proposed class representative and named plaintiff, Sonner amended the complaint in September 2014. In April 2016, the district court certified a class of all California consumers who had purchased Joint Juice since March 1, 2009.

The basis for the lawsuit is false advertising. In its marketing materials, Premier touts Joint Juice as a dietary supplement beverage that supports and nourishes cartilage, lubricates joints, and improves joint comfort.[1] But,

[1] We treat all factual allegations in the operative complaint as true. *See Dougherty v. City of Covina*, 654 F.3d 892, 897 (9th Cir. 2011).

according to Sonner, Joint Juice fails to provide its advertised health benefits.

As originally pleaded, the complaint demanded injunctive relief under the UCL and CLRA, restitution under the UCL and CLRA, and damages under an Illinois consumer protection statute. In the first amended complaint, Sonner dropped her claim under Illinois law and amended the CLRA claim to seek damages because Premier failed to correct the alleged CLRA violations pursuant to California Civil Code § 1782. Both complaints demanded a jury trial.

For years, the litigation proceeded in the typical fashion. Both sides took discovery, engaged in motion practice, and prepared for the looming jury trial. But less than two months before trial was scheduled to begin, and after defeating Premier's summary judgment efforts, Sonner sought leave to file a second amended complaint to drop the CLRA damages claim. This strategy raises an obvious question: why 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.

Premier opposed the motion for leave. Citing futility, Premier urged that Sonner's proposed second amended complaint would require dismissal of the restitution claims pursuant to California's inadequate-remedy-at-law doctrine. Without the CLRA damages claim, Premier argued, the proposed complaint failed to state viable claims for restitution because an adequate legal remedy—damages—was available for that injury.

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