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Consumer class actions – Ninth Circuit holds that federal and not state law controls the award of equitable restitution under California's UCL and CLRA

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Takeaway: Federal courts sitting in diversity are supposed to apply state law. There is a critical distinction, however, between substantive rights created by state law, on the one hand, and remedies (especially equitable remedies) a federal court is authorized to provide, on the other. In class action litigation, it is common for class plaintiffs to seek equitable relief under state law claims, including, notably, claims under consumer protection statutes such as California's Unfair Competition Law ("UCL") and Consumers Legal Remedies Act ("CLRA"). As demonstrated in a recent Ninth Circuit case, the required application of federal common law to equitable remedies can have unintended (and dramatic) consequences in class action litigation.

In *Sonner v. Premier Nutrition Corp.*, __ F.3d __, 2020 WL 4882896 (9th Cir. Aug. 20, 2020), Kathleen Sonner claimed that Premier Nutrition falsely advertised the health benefits of Joint Juice, a dietary supplement beverage marketed by Premier. On the eve of trial after years of litigation (and after the grant of class certification), Ms. Sonner voluntarily dismissed her sole state law damages claim (asserted under the CLRA), electing to proceed only with state law equitable claims for restitution and injunctive relief under the CLRA and UCL.

She apparently dropped her damages claim for a strategic purpose – to secure a bench trial of her equitable claims and avoid a jury trial on her damages claim. The amounts of the damages claim she dropped and the equitable restitution claims she continued to pursue on behalf of the class were the same: $32,000,000.

When she announced this plan to the district court, Premier Nutrition objected on futility grounds, arguing that she could not proceed solely on equitable claims when she had an adequate remedy at law. And the district court warned class counsel that it would not permit Ms. Sonner to amend her complaint to re-allege her damages claim, if it turned out that Premier Nutrition was right. Undeterred, class counsel amended the complaint, dropping Ms. Sonner's claim for class damages, and Premier Nutrition then moved to dismiss. Basing its decision on California law, the district court dismissed the complaint on the ground that Ms. Sonner could not seek equitable relief, because she had an adequate remedy at law (damages), one that she voluntarily discarded.

Ms. Sonner appealed and the Ninth Circuit affirmed, albeit on an "alternative ground." That alternative ground – based on U.S. Supreme Court precedent – was that a federal court sitting in diversity was required to follow federal (and not state) law in awarding equitable relief. The Ninth Circuit held "that federal courts must apply equitable principles derived from federal common law to claims for equitable restitution under California's [UCL] and [CLRA]." 2020 WL 4882896, at *1.

Under federal common law, a federal court sitting in diversity may not award equitable relief to a plaintiff when the plaintiff has an adequate remedy at law. Because Ms. Sonner had an adequate remedy at law, she could not proceed on her equitable claims. Those claims were properly dismissed.

Moreover, dismissal with prejudice was warranted, given that the district court had warned class counsel that it would not permit another amendment to re-assert the claim for damages, in the event class counsel rolled the dice and lost.

Given that federal common law supplied the rule of decision, the panel declined to resolve the issue under California law of whether a plaintiff with an adequate legal remedy could nevertheless seek injunctive relief under the CLRA and UCL. It appears that Ms. Sonner had a good argument that her pursuit of equitable restitution was cognizable under *California* law – but federal common law controlled. Her failure to appreciate a federal court's obligation to apply federal law when determining the availability of equitable remedies, even where the federal court sits in diversity, doomed her case.