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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JASMINE JOHNSON, et al.,

Plaintiffs,

v.

TRUMPET BEHAVIORAL HEALTH,
LLC, et al.,

Defendants.

Case No. [3:21-cv-03221-WHO](#)

**ORDER GRANTING MOTION TO
DISMISS**

Re: Dkt. No. 41

The plaintiffs in this putative wage-and-hour class action seek, among other remedies, equitable restitution under California’s Unfair Competition Law (“UCL”). I previously dismissed the claim with leave to amend for failure to plead a lack of adequate remedies at law, as required by *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834 (9th Cir. 2020). The amended complaint still does not plead that the plaintiffs lack adequate remedies at law, again requiring dismissal. But that dismissal is without prejudice to the plaintiffs’ ability to seek leave to amend if they later learn that they do lack adequate remedies at law.

BACKGROUND

Plaintiffs Jasmine Johnson, Jade Khodar-Fisher, and Brittnie Boruff—who worked for the defendants as physical therapists—allege that the defendants committed a series of labor law violations, including requiring them to perform pre- and post-shift work without pay, rounding down the hours they worked, failing to provide meal and rest breaks, failing to reimburse them for business expenses, and other actions. *See* Second Amended Complaint (“SAC”) [Dkt. No. 31] ¶¶ 14–26. I previously granted two motions to dismiss with leave to amend. In the first order, I explained that the original complaint was “conclusory and pleads only recitations or paraphrasing of the statutory requirements devoid of meaningful factual allegations.” Dkt. No. 21 at 1. In the

1 second order, I denied the motion to dismiss one of the two challenged claims. Dkt. No. 30 at 3–
2 5. But I dismissed the plaintiffs’ eighth cause of action, which alleged a violation of the UCL. *Id.*
3 at 5–6. I explained that the plaintiffs were required to, but did not, plead that they lacked adequate
4 remedies at law and that they had not shown they possessed standing to pursue injunctive relief.
5 *Id.* The plaintiffs filed the SAC on September 27, 2021, and the defendants now move to dismiss
6 only the UCL claim.

7 **LEGAL STANDARD**

8 Under Federal Rule of Civil Procedure 12(b)(6), a district court must dismiss a complaint
9 if it fails to state a claim upon which relief can be granted. To survive a Rule 12(b)(6) motion to
10 dismiss, the plaintiff must allege “enough facts to state a claim to relief that is plausible on its
11 face.” *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible
12 when the plaintiff pleads facts that “allow the court to draw the reasonable inference that the
13 defendant is liable for the misconduct alleged.” *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
14 (citation omitted). There must be “more than a sheer possibility that a defendant has acted
15 unlawfully.” *Id.* While courts do not require “heightened fact pleading of specifics,” a plaintiff
16 must allege facts sufficient to “raise a right to relief above the speculative level.” *See Twombly*,
17 550 U.S. at 555, 570.

18 In deciding whether the plaintiff has stated a claim upon which relief can be granted, the
19 Court accepts the plaintiff’s allegations as true and draws all reasonable inferences in favor of the
20 plaintiff. *See Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). However, the court
21 is not required to accept as true “allegations that are merely conclusory, unwarranted deductions of
22 fact, or unreasonable inferences.” *See In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir.
23 2008).

24 If the court dismisses the complaint, it “should grant leave to amend even if no request to
25 amend the pleading was made, unless it determines that the pleading could not possibly be cured
26 by the allegation of other facts.” *See Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). In
27 making this determination, the court should consider factors such as “the presence or absence of
28 undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies by previous

1 amendments, undue prejudice to the opposing party and futility of the proposed amendment.” See
2 *Moore v. Kayport Package Express*, 885 F.2d 531, 538 (9th Cir. 1989).

3 **DISCUSSION**

4 The defendants argue that, because the plaintiffs’ UCL claim seeks only equitable
5 remedies, the plaintiffs must plead that they lack adequate remedies at law under *Sonner*.
6 According to the defendants, the plaintiffs must not only plead that they lack remedies, they must
7 plead facts demonstrating that to be true. The plaintiffs respond that making this determination
8 would be premature at this early stage. They claim that it is sufficient to plead, as they do, that
9 they seek equitable remedies to the extent their remedies at law are ultimately inadequate. And
10 the defendants reply that this type of conditional pleading is insufficient.

11 In *Sonner*, the Ninth Circuit held that “a federal court must apply traditional equitable
12 principles before awarding restitution under the UCL.” 971 F.3d at 841. State law may not, the
13 court explained, expand or contract the bounds of federal equitable powers. See *id.* at 841–44.
14 One “basic doctrine of equity jurisprudence [is] that courts of equity should not act when the
15 moving party has an adequate remedy at law.” *Morales v. Trans World Airlines, Inc.*, 504 U.S.
16 374, 381 (1992) (internal quotation marks, alteration, and citations omitted). Accordingly, *Sonner*
17 held that a federal plaintiff must “establish that she lacks an adequate remedy at law before
18 securing equitable restitution for past harm under the UCL.” *Sonner*, 971 F.3d at 844.

19 The court went on to apply that principle to the facts there. In the district court, the
20 plaintiff had sought (among other things) damages under California’s Consumers Legal Remedies
21 Act (“CLRA”) and equitable restitution under the UCL. *Id.* at 838. Two months before trial, the
22 plaintiff sought and obtained leave to amend the complaint to drop the CLRA claim so that the
23 UCL equitable restitution claim could be decided by the judge, rather than the damages claim
24 being decided by the jury. *Id.* The district court then held that the plaintiff could not secure
25 equitable restitution because her legal remedy, CLRA damages, was available. *Id.* Applying
26 federal equitable principles, the Ninth Circuit agreed that the plaintiff failed to show that she
27 lacked an adequate remedy at law. *Id.* at 845. It explained that “[i]nitially, the operative
28 complaint does not allege that *Sonner* lacks an adequate legal remedy.” *Id.* It cited a Supreme

1 Court case, *O’Shea v. Littleton*, 414 U.S. 488 (1974), which it characterized as “holding that a
2 complaint seeking equitable relief failed because it did not plead ‘the basic requisites of the
3 issuance of equitable relief’ including ‘the inadequacy of remedies at law.’” *Id.* (quoting *O’Shea*,
4 414 U.S. at 502). It then explained that “[m]ore importantly,” the plaintiff “concede[d] that she
5 seeks the same sum in equitable restitution as ‘a full refund of the purchase price’—
6 \$32,000,000—as she requested in damages to compensate her for the same past harm.” *Id.*
7 Accordingly, she “fail[ed] to explain how the same amount of money for the exact same harm is
8 inadequate or incomplete, and nothing in the record supports that conclusion.” *Id.*

9 *Sonner’s* core holding is that a plaintiff in federal court must “establish that she lacks an
10 adequate remedy at law before *securing* equitable restitution for past harm under the UCL and
11 CLRA.” *Id.* (emphasis added). But most district courts applying *Sonner* have also “understood it
12 to require that a plaintiff must, at a minimum, *plead* that she lacks adequate remedies at law if she
13 seeks equitable relief.” *Guthrie v. Transamerica Life Ins. Co.*, ___ F. Supp. 3d ___, 2021 WL
14 4314909, at *4 (N.D. Cal. Sept. 23, 2021) (Orrick, J.) (collecting citations). I have too. *See id.*;
15 *Brown v. Madison Reed*, No. 21-CV-01233-WHO, 2021 WL 3861457, at *12 (N.D. Cal. Aug. 30,
16 2021); *Anderson v. Apple Inc.*, 500 F. Supp. 3d 993, 1009 (N.D. Cal. 2020) (Orrick, J.). That is
17 why I dismissed this claim previously. The plaintiffs failed to plead that they lacked adequate
18 remedies at law, yet they sought equitable restitution under the UCL. Dkt. No. 30 at 5–6.

19 Now, the plaintiffs rely on several allegations to meet this pleading requirement. They
20 plead that, as an alternative *if* they are unable to obtain legal remedies, they request restitution
21 “because an adequate remedy at law does not exist for the violations alleged herein.” SAC ¶ 111;
22 *see also id.* at 32 (prayer for relief). They plead that one common question to the class is whether
23 class members “*in the alternative*, are entitled to equitable relief pursuant to [the UCL] as
24 Plaintiffs requests [sic] restitution of wage wrongfully withheld because an adequate remedy of
25 law does not exist for the alleged violations herein.” *Id.* ¶ 42n (emphasis added). And they plead
26 that they “request[] restitution of wages wrongfully withheld *in instances where an adequate*
27 *remedy at law does not exist* for the violations alleged herein.” *Id.* ¶¶ 110, 116 (emphasis added).

28 The defendants make two arguments for dismissal: (1) that the plaintiffs must plead *facts*

1 illustrating why they lack adequate remedies at law and (2) that the plaintiffs cannot meet
 2 *Sonner*’s rule with this form of conditional pleading. While I do not address the defendants’ first
 3 argument, I agree with them on the second. I do not necessarily read *Sonner* to impose as onerous
 4 a requirement as some other courts have—for example, requiring a plaintiff to allege “specific
 5 *facts—e.g., that she would receive less compensation via damages than restitution—showing that*
 6 *[their remedies at law] are necessarily inadequate or incomplete.” See, e.g., Nacarino v. Chobani,*
 7 *LLC*, No. 20-CV-07437-EMC, 2021 WL 3487117, at *12 (N.D. Cal. Aug. 9, 2021) (internal
 8 quotation marks and citations omitted) (emphasis added). But the fundamental thing that *Sonner*,
 9 by its own terms, requires at the pleadings stage is that the complaint “allege that [the plaintiff]
 10 lacks an adequate legal remedy.” *Sonner*, 971 F.3d at 844. The plaintiffs do not do so. All of
 11 their allegations are, instead, conditional: They allege only that they seek equitable relief *to the*
 12 *extent* legal remedies are inadequate or *if* legal remedies are inadequate. But that is not an
 13 allegation that they actually lack adequate remedies at law. The Hon. Jacqueline Scott Corley
 14 recently addressed this issue and explained that such conditional pleading does not satisfy
 15 *Sonner*’s rule. *See In re California Gasoline Spot Mkt. Antitrust Litig.*, No. 20-CV-03131-JSC,
 16 2021 WL 1176645, at *7 (N.D. Cal. Mar. 29, 2021).

17 The plaintiffs respond that “[t]he main difference between the present case and *Sonner* is
 18 that while *Sonner* was decided on the pleadings, it was also decided at the eve of trial when
 19 discovery had already completed.” Dkt. No.43 at 4 (emphasis omitted). That is true; as I have
 20 previously observed, “[t]he *facts* of *Sonner*—where the plaintiff on the eve of trial sought to
 21 secure a bench trial under the UCL by foregoing CLRA damages claims that had to be tried to a
 22 jury—are inapposite considering the allegations and the posture of” a complaint this early in the
 23 case. *In re JUUL Labs, Inc., Mktg., Sales Pracs., & Prod. Liab. Litig.*, 497 F. Supp. 3d 552, 638
 24 (N.D. Cal. 2020) (Orrick, J.) (emphasis added). And because *Sonner* was decided at a later
 25 posture, I agree with the plaintiffs that, if a plaintiff pleads that she lacks an adequate legal
 26 remedy, *Sonner* will rarely (if ever) require more this early in the case. But, despite these
 27 differences in posture between *Sonner* and a case like this, I and other judges have explained that
 28 one aspect of *Sonner*’s reasoning *is* purely about pleading requirements and does not turn on its

1 more developed posture. *See, e.g., Sharma v. Volkswagen AG*, 524 F. Supp. 3d 891, 906 (N.D.
2 Cal. 2021) (Tigar, J.); *IntegrityMessageBoards.com v. Facebook, Inc.*, No. 18-CV-05286-PJH,
3 2020 WL 6544411, at *4 (N.D. Cal. Nov. 6, 2020). That is the only requirement I apply in this
4 Order. Relatedly, the plaintiffs argue that it is too early to determine whether the plaintiffs’ legal
5 remedies will ultimately be adequate, so it makes sense to defer this determination. Dkt. No. 43 at
6 5. That argument has significant force, but the plaintiffs’ objection is to *Sonner* itself, which I am
7 bound by.

8 If, later in the case, the plaintiffs conclude that they do lack adequate remedies at law, they
9 should move for leave to amend to re-plead the UCL claim. For the reasons explained above, it
10 would not be surprising for a more developed record to reveal the inadequacy of legal remedies
11 that is less apparent today. I would be inclined to grant leave to amend if the plaintiffs can make
12 this allegation, but because this is the third attempt at amendment the plaintiffs must seek leave the
13 next time. *Cf. Phan v. Sargento Foods, Inc.*, No. 20-CV-09251-EMC, 2021 WL 2224260, at *6
14 (N.D. Cal. June 2, 2021) (“[T]he Court . . . dismisses the claim for relief [under *Sonner*] but
15 without prejudice so that Plaintiff may bring the claim back in should Plaintiff find facts, during
16 discovery, showing that the legal remedy would not be adequate.”).

17 **CONCLUSION**

18 The motion to dismiss the eighth cause of action is GRANTED without prejudice to the
19 plaintiffs’ ability to seek leave to re-plead it later.

20 **IT IS SO ORDERED.**

21 Dated: January 7, 2022

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24 William H. Orrick
25 United States District Judge
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