

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

IN RE: BANK OF AMERICA
CALIFORNIA UNEMPLOYMENT
BENEFITS LITIGATION

Case No.: 21-md-2992-LAB-MSB

ORDER:

**1) GRANTING LEAVE TO FILE
MOTION FOR
RECONSIDERATION,
(Dkt. 141); and**

**2) SETTING BRIEFING
SCHEDULE**

Plaintiffs filed an Ex Parte Application for Leave to File a Motion for Reconsideration (“Application”). (Dkt. 141). Plaintiffs seek leave to file a motion for reconsideration of the Court’s May 25, 2023 Order dismissing with prejudice their claims under California’s Unfair Competition Law (“UCL”), Bus. & Prof. Code §§ 17200 *et seq.* (Dkt. 126 at 31–33). Plaintiffs’ Application is unopposed.

The Court’s May 25 Order relied on the Ninth Circuit’s decision in *Sonner v. Premier Nutrition Corp.*, which held that a plaintiff “must establish that she lacks an adequate remedy at law before securing equitable restitution for past harm under the UCL.” 971 F.3d 834, 844 (9th Cir. 2020). Applying *Sonner* to Plaintiffs’ claims, the Court found that Plaintiffs failed to state a claim under the UCL

1 because they “plead[ed] claims for equitable relief under the UCL but [didn’t]
2 allege inadequate legal remedies.” (See Dkt. 126 at 33). The Court dismissed
3 Plaintiffs’ UCL claims with prejudice. (*Id.*).

4 Before a party may file a motion for reconsideration, the party must first
5 obtain leave of Court. See Standing Order in Civil Cases 3(e). The Court will grant
6 leave to file a motion for reconsideration only if the moving party can show:
7 “(1) there is new evidence; or (2) a change in controlling law; or (3) the Court
8 committed clear error in making the earlier ruling.”¹ *Id.*

9 Plaintiffs argue the Court made four clear errors of law when dismissing their
10 UCL claims with prejudice:

11 (1) overlooking that Plaintiffs’ UCL claim sought
12 *prospective injunctive relief* based on future irreparable
13 harms for which no legal remedies exist; (2) overlooking
14 that Plaintiffs’ UCL claim alleged that the Bank’s
15 challenged practices, even if not “unlawful,” are
16 nonetheless actionable under the UCL as “*unfair*”
17 practices, for which no legal remedies are available;
18 (3) dismissing the UCL claim *without leave to amend* even
19 though, if amendment were permitted, Plaintiffs could
20 allege inadequate legal remedies; and (4) dismissing the
UCL claim *with prejudice* to Plaintiffs’ ability to refile that
claim in state court, which is contrary to Ninth Circuit
precedent governing dismissals for lack of equitable
jurisdiction.

21 (Dkt. 141 at 1 (emphasis in original) (internal citations omitted)).

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26 ¹ The undersigned judge’s Standing Order in Civil Cases also requires the moving
27 party to file their application for leave within 28 days of the order sought to be
28 reconsidered and to file a declaration with any such application, as required by
Civil Local Rule 7.1(i). Plaintiffs’ Application satisfies both requirements.

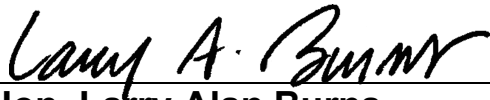
1 The Court has carefully read its May 25 Order, (Dkt. 126), and Plaintiffs'
2 Application, (Dkt. 141), and finds the May 25 Order didn't adequately address:
3 (1) the distinction between the prospective injunctive relief sought by the MCC
4 and the "equitable restitution for past harm" sought in *Sonner*, 971 F.3d at 844;
5 (2) the availability of legal remedies for Defendant Bank of America, N.A.'s
6 ("BANA") allegedly "unfair" practices; (3) whether the MCC's UCL claim should
7 have been dismissed with leave to amend; and (4) whether Ninth Circuit
8 precedent requires dismissals for lack of equitable jurisdiction be without
9 prejudice.

10 Plaintiffs' Application is **GRANTED**, and the Court **ORDERS** as follows:

- 11 1) Plaintiffs may file their motion for reconsideration on or before
12 **August 7, 2023**. Plaintiffs' brief supporting their motion must not
13 exceed 20 pages.
- 14 2) BANA may file an opposition to Plaintiffs' motion on or before **August**
15 **14, 2023**. BANA's opposition must not exceed 20 pages.
- 16 3) Plaintiffs may file a reply to any opposition on or before **August 21,**
17 **2023**. Plaintiffs' reply must not exceed 10 pages.
- 18 4) The Court sets **August 28, 2023 at 11:30 a.m.** as a hearing date for
19 Plaintiffs' motion for reconsideration.

20 **IT IS SO ORDERED.**

21 Dated: August 1, 2023

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23 **Hon. Larry Alan Burns**
24 United States District Judge
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