No. 25-

IN THE

Supreme Court of the United States

JOSE RUIZ, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Petitioner,

v.

THE BRADFORD EXCHANGE, LTD.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

JAMES T. HANNINK
ZACHARIAH P. DOSTART
DOSTART HANNINK LLP
4225 Executive Square
Suite 600
La Jolla, CA 92037
(858) 623-4200

THOMAS D. WARREN
Counsel of Record
WARREN TERZIAN LLP
222 North Pacific Coast Highway
Suite 2000
Los Angeles, CA 90245
(216) 304-4970
tom.warren@warrenterzian.com

121001

COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Under the Judiciary Act of 1789, the equity jurisdiction conferred on federal courts is the same as that possessed by the English High Court of Chancery at the nation's inception. *Trump v. CASA, Inc.*, 606 U.S. 831, 841 (2025). Consistent with equity jurisdiction in the Chancery Court at that time, Section 16 of the Act provides that "suits in equity shall not be sustained" in the federal courts "in any case where plain, adequate and complete remedy may be had at law."

Casting aside this structural limitation on federal judicial authority, the Ninth Circuit held below that defendants can waive the no-adequate-remedy-at-law requirement if they so choose, forcing district courts to adjudicate claims that plainly lack federal equity jurisdiction. If the decision below stands, it would allow a defendant to, among other things, greenlight the issuance of a universal injunction in direct contravention of this Court's decision in *CASA*.

The question presented is:

Can a defendant waive the lack of federal equity jurisdiction where it plainly does not exist, thereby compelling a federal court to exercise equitable powers beyond those conferred by the Judiciary Act of 1789?

LIST OF ALL PARTIES

Petitioner Jose Ruiz was the Plaintiff in the U.S. District Court for the Southern District of California and Plaintiff-Appellee in the U.S. Court of Appeals for the Ninth Circuit.

Respondent The Bradford Exchange, Ltd. was the Defendant in the U.S. District Court for the Southern District of California and Defendant-Appellant in the U.S. Court of Appeals for the Ninth Circuit.

STATEMENT OF RELATED CASES

The proceedings identified below are directly related to the above-captioned case in this Court.

Ruiz v. The Bradford Exchange, Ltd., No. 3:23-cv-01800-WQH-KSC, U.S. District Court for the Southern District of California. Remand order entered May 16, 2024.

Ruiz v. The Bradford Exchange, Ltd., No. 24-3378, U.S. Court of Appeals for the Ninth Circuit. Judgment entered August 28, 2025.

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JURISDICTION

The Ninth Circuit entered its judgment on August 28, 2025. Petitioner timely sought rehearing and rehearing en banc, which was denied on December 31, 2025. Pet. App. 39a–40a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 11 of the Judiciary Act of 1789 provides that federal courts shall have jurisdiction over "all suits … in equity." 1 Stat. 73, 78.

Section 16 of the Judiciary Act of 1789 provides that "suits in equity shall not be sustained in either of the courts of the United States, in any case where plain, adequate and complete remedy may be had at law." 1 Stat. 73, 82.

STATEMENT

A. The Statutory and Doctrinal Framework

The Judiciary Act of 1789, which grants federal courts jurisdiction over "all suits … in equity," 1 Stat. 73,

78, confines federal equity jurisdiction to the remedies "traditionally accorded by courts of equity" at the founding of the Republic. *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 318–19 (1999).

Section 16 of the Act provides that "suits in equity shall not be sustained in either of the courts of the United States, in any case where plain, adequate and complete remedy may be had at law." 1 Stat. 73, 82.

This Court recently reaffirmed that the Judiciary Act's limits on equitable power are structural constraints on the federal courts, not discretionary guidelines: "Observing the limits on judicial authority—including, as relevant here, the boundaries of the Judiciary Act of 1789—is required by a judge's oath to follow the law." *CASA*, 606 U.S. at 858.

B. Factual Background

In May 2020, Petitioner Jose Ruiz purchased a collectible from the website of Respondent The Bradford Exchange ("Bradford") and was charged $40.49. In subsequent months, Bradford charged his PayPal account eleven more times, totaling $223.67, for items he contends he never agreed to purchase. Ruiz contends that Bradford enrolled him in a subscription program without his knowledge or consent. Pet.App. 2a–3a.

C. Proceedings Below

Ruiz filed a putative class-action complaint against Bradford in California state court, seeking restitution under California's False Advertising Law (FAL), Cal.

Bus. & Prof. Code § 17500 et seq., and Unfair Competition Law (UCL), Cal Bus. & Prof. Code § 17200 et seq., which provide only for equitable remedies. *Nationwide Biweekly Admin., Inc. v Superior Court*, 9 Cal. 5th 279, 322, 326 (2020). Ruiz could have pursued a legal claim for damages under California's Consumer Legal Remedies Act (CLRA), Cal. Civ. Code § 1750 et seq., but chose not to because he wished to proceed in state court. Pet.App. 3a.

Bradford removed the case to the United States District Court for the Southern District of California under the Class Action Fairness Act (CAFA), 28 U.S.C. §1332(d). Pet.App. 3a.

Ruiz moved to remand, arguing that the district court lacked equitable jurisdiction because he had not alleged (and could not allege) that he lacked an adequate remedy at law. Bradford opposed remand, arguing that there was no basis to remand, and that even if there was, Bradford could waive the no-adequate-remedy-at-law requirement. Pet.App. 3a–4a.

Rejecting both of Bradford's contentions, the district court granted remand. Applying Ninth Circuit precedent, the district court held that the case lacked equity jurisdiction because Ruiz failed to allege the lack of an adequate remedy at law. It further held that Bradford could not waive the lack of equity jurisdiction. Pet.App. 4a, 24a–38a.

The Ninth Circuit reversed. It agreed that federal courts possess inherent authority to remand for lack of equity jurisdiction, Pet.App. 10a–16a, but held that Bradford could defeat remand by "waiving" the no-adequate-remedy-at-law requirement. Pet.App. 16a–23a. Relying principally on *Pusey & Jones Co. v. Hanssen*, 261

U.S. 491 (1923), and *Twist v. Prairie Oil & Gas Co.*, 274 U.S. 684 (1927), the court concluded that because equitable jurisdiction is "distinct from subject matter jurisdiction," it is waivable. Pet.App. 18a. The court vacated the remand order and remanded to permit Bradford to "perfect its waiver." Pet.App. 23a.

ARGUMENT

I. The No-Adequate-Remedy-at-Law Requirement Is a Structural Limitation on the Power of the Federal Courts, Not a Personal Defense Subject to Waiver.

The Ninth Circuit reasoned that because equitable jurisdiction is "distinct from subject matter jurisdiction," the no-adequate-remedy-at-law requirement must be waivable, just as personal jurisdiction may be waived. Pet. App. 18a–23a. But the question is not how to classify equity jurisdiction relative to other jurisdictional categories. The question is whether the no-adequate-remedy-at-law requirement limits the power of the court or is the defendant's to waive. The text of the Judiciary Act, this Court's earliest decisions, and this Court's modern equity jurisprudence all give the same answer: it limits the power of federal courts.

A. The Judiciary Act and this Court's decisions establish a consistent rule: federal courts must enforce the limits of equity jurisdiction regardless of the parties' positions.

The starting point is the statute. Section 16 of the Judiciary Act does not frame the no-adequate-remedy-at-law requirement as a defense available to a party that

can be waived, but as a command to the court: "suits in equity *shall not be sustained*" where an adequate legal remedy exists. 1 Stat. 73, 82 (emphasis added). "Equitable relief in a federal court is of course subject to restrictions: the suit must be within the traditional scope of equity as historically evolved in the English Court of Chancery; a plain, adequate and complete remedy at law must be wanting." *Guaranty Trust Co. of N.Y. v. York*, 326 U.S. 99, 105 (1945).

The lack of an adequate remedy at law was recognized as a structural limitation on federal equity jurisdiction more than 130 years ago. In *Allen v. Pullman's Palace-Car Co.*, 139 U.S. 658 (1891), this Court reversed the grant of injunctive relief on the ground that the plaintiffs had an adequate remedy at law, even though the objection was raised for the first time on appeal. This Court held that "it would be the duty of the court to recognize the fact and give it effect, though not raised by the pleadings nor suggested by counsel." *Id.* at 662.

This Court's early cases applied similar reasoning to other aspects of equity jurisdiction as well. In *Wylie v. Coxe*, 56 U.S. (15 How.) 415 (1853), this Court held that an objection to equity jurisdiction could not be entertained for the first time on appeal "unless the want of jurisdiction is apparent on the face of the bill." *Id.* at 420 (emphasis added). And in *Lewis v. Cocks*, this Court reversed the judgment below for lack of equity jurisdiction, even though "the objection was not made by demurrer, plea, or answer, nor was it suggested by counsel"; if the lack of equity jurisdiction "clearly exists, it is the duty of the court sua sponte to recognize it and give it effect." 90 U.S. (23 Wall.) 466, 470 (1874).

In *Atlas Life Insurance Co. v. W.I.S., Inc.*, 306 U.S. 563 (1939), this Court identified an additional ground for the sua sponte duty: a court must raise the absence of equity jurisdiction "when the exercise of the equity powers of the federal court affects the relationship of the federal to the state courts." *Id.* at 568 n.1. This Court explained that the no-adequate-remedy-at-law requirement "serves by emphasis of the rule to protect the states from the encroachments which would result from the exercise of equity powers by federal courts failing to observe it." *Id.* at 569. The requirement, in other words, serves federalism interests that no private party is in a position to waive.

This Court's modern equity decisions reinforce the principle that the Judiciary Act imposes structural limits on federal equitable power that bind the courts regardless of the parties' preferences. In *Grupo Mexicano*, this Court held that federal equity is confined to the powers of the English Court of Chancery in 1789. 527 U.S. at 332. And in *CASA*, this Court reaffirmed that the Judiciary Act's limits on equitable power are structural constraints, not matters of discretion, and that "[o]bserving the limits on judicial authority … is required by a judge's oath to follow the law." 606 U.S. at 858.

A limitation that the statute frames as a command to the court, that this Court has enforced on appeal even when no party raised the objection below, and that this Court's modern decisions treat as a structural constraint on judicial power, is not a personal defense. It is a feature of the federal equity system that one litigant's "waiver" cannot override.

II. This Court's Early Twentieth-Century Decisions Did Not Alter the Structural Limitations on Federal Equity Jurisdiction.

The Ninth Circuit rested its holding on a handful of decisions from the 1920s and 1930s that suggest that the lack of equity jurisdiction can be waived. But those cases involved forfeiture, not waiver, and to the extent the waiver language conflicts with this Court's earliest and most recent jurisprudence on the structural limitations on equity jurisdiction, it should be disfavored.

A. The cases on which the Ninth Circuit relied involved forfeiture, not waiver.

The cases on which the Ninth Circuit principally relied—*Pusey & Jones Co. v. Hanssen*, 261 U.S. 491 (1923), and *American Mills Co. v. American Surety Co.*, 260 U.S. 360 (1922)—arose in a common posture: a defendant who failed to timely raise the lack of equity jurisdiction sought to invoke it for the first time on appeal to overturn an unfavorable result. That is forfeiture, not waiver. See *United States v. Olano*, 507 U.S. 725, 733 (1993) ("Waiver is different from forfeiture. Whereas forfeiture is the failure to make the timely assertion of a right, waiver is the 'intentional relinquishment or abandonment of a known right.'") (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)).[1]

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1. The Ninth Circuit also relied on *Twist v. Prairie Oil & Gas Co.*, 274 U.S. 684 (1927). But *Twist* involved whether a claim was legal or equitable in nature; the issue of waiver (or forfeiture) did not arise, and its discussion of waiver was dicta.

Here, neither party is seeking to belatedly invoke the no-adequate-remedy-at-law requirement to undo an unfavorable result. Indeed, the forfeiture doctrine has no application here, as Ruiz pointed out the lack of equity jurisdiction only days after the case was removed.

What Bradford seeks here is the mirror image. Bradford seeks not to *invoke* but instead to *nullify* the no-adequate-remedy-at-law requirement, *in initio litis*—to compel a federal court to undertake proceedings to adjudicate a case even though federal equity jurisdiction is plainly lacking.

And to the extent those decisions (and others of the same era) went further and suggested that the lack of equity jurisdiction is waivable, they departed from this Court's earlier holdings in *Wylie*, *Lewis*, and *Allen*, each of which enforced the limits of federal equity jurisdiction even when raised for the first time on appeal.[2]

B. This Court's modern decisions have returned to the principles established in its earliest equity cases.

Moreover, this Court's modern equity decisions have returned to the principles established in *Wylie*, *Lewis*,

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2. Even the cases that use the word "waiver" reaffirm a federal court's duty to enforce the limitations on equity jurisdiction. *Twist* states that litigants "cannot, of course, compel the trial court to hear in equity" a case that belongs at law. 274 U.S. at 691. And *Atlas Life* held that "[t]he objection should be taken by the court sua sponte, when obvious … or when the exercise of the equity powers of the federal court affects the relationship of the federal to the state courts." 306 U.S. at 568 n.1.

and *Allen*. In *Guaranty Trust*, Justice Frankfurter reaffirmed for a unanimous Court that equitable relief in the federal courts is "subject to restrictions" including that "a plain, adequate and complete remedy at law must be wanting." 326 U.S. at 105. *Grupo Mexicano* held that federal equity is confined to the powers of the English Court of Chancery in 1789. 527 U.S. at 332. And *CASA* reaffirmed that the Judiciary Act's limits on equitable power are structural constraints that bind the courts regardless of the parties' preferences. A rule that allows a private litigant to override Section 16 of the Judiciary Act by "waiving" the no-adequate-remedy-at-law requirement is flatly inconsistent with *CASA*'s holding that "[o]bserving the limits on judicial authority … is required by a judge's oath to follow the law." 606 U.S. at 858.

C. The lack of federal equity jurisdiction here is apparent on the face of the complaint.

Ruiz's complaint seeks only equitable restitution under the UCL and FAL, which allow only for equitable relief; it does not (and could not) allege the absence of an adequate remedy at law, as Ruiz could have asserted a legal claim for damages under the CLRA. That choice was Ruiz's prerogative.[3] As this Court has unanimously reaffirmed twice in the last year, the plaintiff is "the master of the complaint" who "generally has the right

3. California state courts have jurisdiction over UCL and FAL claims even when an adequate remedy at law exists. *See* Cal. Bus. & Prof. Code §§ 17205, 17534.5 (remedies under UCL and FAL are cumulative to those under other statutes); *California v. Altus Fin.*, 36 Cal.4th 1284, 1303 (2005) ("The fact that there are alternative remedies under a specific statute does not preclude a UCL remedy.").

to choose whether to proceed in federal or state court." *Hain Celestial Group, Inc. v. Palmquist*, 607 U.S. ___ (2026); accord *Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22, 35 (2025).

And the consequence of that choice here is that equity jurisdiction is lacking on the face of the complaint—or, in the words of this Court in *Wylie* nearly 175 years ago, "the want of jurisdiction is apparent on the face of the bill." 56 U.S. at 420. When a removed case plainly lacks equity jurisdiction, "it [is] the duty of the circuit court, upon ascertaining that it was improperly removed, to remand the case." *Cates v. Allen*, 149 U.S. 451, 460 (1893). The district court did exactly that. The Ninth Circuit should have affirmed.

III. The Ninth Circuit's Rule Cannot Be Reconciled with CASA and Has No Principled Stopping Point.

Consider the consequences of the Ninth Circuit's reasoning. Under *CASA*, federal courts lack the equitable power to issue universal injunctions because such relief was not available in the English Court of Chancery in 1789. That limitation is derived from the Judiciary Act's historical scope. If the no-adequate-remedy-at-law requirement—which is expressly codified in the Judiciary Act—can be waived by a defendant's say-so, then the implied limitation recognized in *CASA* would be waivable a fortiori. A governmental defendant could consent to a universal injunction, and the district court would be empowered to issue it. The Ninth Circuit's logic provides no basis whatsoever for distinguishing one structural limitation on federal equity from another.

The Ninth Circuit's analogy to personal jurisdiction only underscores the error. Personal jurisdiction is waivable because it "represents a restriction on judicial power not as a matter of sovereignty, but as a matter of individual liberty." *Ins. Corp. of Ir., Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702–03 (1982). Only the defendant's interest is at stake. The no-adequate-remedy-at-law requirement is different in kind, as the existence of an adequate remedy at law puts the claim beyond the scope of equity jurisdiction that Congress established in the Judiciary Act—a structural limitation that binds the courts regardless of the parties' preferences. *CASA*, 606 U.S. at 858; *Grupo Mexicano*, 527 U.S. at 318–19. No defendant can waive these structural limitations and no federal court may disregard them simply because a defendant would prefer it.

Nine Ninth Circuit judges recently dissented from denial of rehearing en banc in another case, critiquing their Circuit for repeatedly failing to heed this Court's holdings on the limits of federal equitable power. See *Cmty. Legal Servs. in E. Palo Alto v. United States HHS*, 155 F.4th 1099 (9th Cir. 2025) (Bumatay, J., joined by Callahan, Ikuta, R. Nelson, Collins, Lee, Bress, Bennett, and VanDyke, JJ., dissenting from denial of rehearing en banc) (observing that "[i]n recent times, the Court has repeatedly needed to dial back lower court decisions that exceed the judiciary's equitable authority," and that "once again, the Ninth Circuit fails to respect our role and the Supreme Court's guidance"). The decision below fits squarely within that pattern.

IV. The Question Presented Is of Exceptional Importance and This Case Is an Ideal Vehicle.

The Ninth Circuit's rule has consequences that extend well beyond the remand context in which it arose. Any defendant in any federal equity case in the Ninth Circuit may now invoke the decision below to override the no-adequate-remedy-at-law requirement.

The doctrinal stakes are broader still. If a fundamental prerequisite for the exercise of federal equity jurisdiction—codified in the Judiciary Act of 1789—can be waived by a defendant, it is difficult to identify any structural limitation on federal equitable power that remains beyond a defendant's control. Universal injunctions? Back on the table, if the defendant and district court are so inclined.

The vehicle is clean. There is no factual dispute. The question is one of pure law, decided in a published opinion on an undisputed record.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

James T. Hannink
Zachariah P. Dostart
Dostart Hannink LLP
4225 Executive Square
Suite 600
La Jolla, CA 92037
(858) 623-4200

Thomas D. Warren
Counsel of Record
Warren Terzian LLP
222 North Pacific Coast Highway
Suite 2000
Los Angeles, CA 90245
(216) 304-4970
tom.warren@warrenterzian.com

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED AUGUST 28, 2025

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 24-3378
D.C. No. 3:23-cv-01800-WQH-KSC

JOSE RUIZ,

Plaintiff-Appellee,

v.

THE BRADFORD EXCHANGE, LTD.,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of California
William Q. Hayes, District Judge, Presiding

Argued and Submitted March 27, 2025
Pasadena, California

Filed August 28, 2025

Before: Danny J. Boggs,* Michelle T. Friedland, and Daniel A. Bress, Circuit Judges.

Opinion by Judge Bress

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* The Honorable Danny J. Boggs, United States Circuit Judge for the Court of Appeals for the Sixth Circuit, sitting by designation.

Appendix A

OPINION

BRESS, Circuit Judge:

The plaintiff in this case employed a strategy for trying to avoid removal of his putative class action to federal court. His complaint in state court sought only equitable relief, specifically equitable restitution, but not the legal remedy of damages. When the defendant removed the case to federal court under the Class Action Fairness Act (CAFA), the plaintiff moved to remand based on the federal court's lack of "equitable jurisdiction," a doctrine that precludes federal courts from granting equitable relief when the plaintiff has an adequate remedy at law. Does the plaintiff's strategy to avoid federal court jurisdiction work?

We hold that in this situation, district courts are empowered to remand a removed case to state court for lack of equitable jurisdiction, but only after the removing defendant is given the opportunity to waive the adequate-remedy-at-law issue to keep the case in federal court. We vacate the district court's order remanding this case to state court and remand to the district court to permit the defendant to waive the adequate-remedy-at-law objection, as it sought to do below.

I

In May 2020, Jose Ruiz purchased a snow-globe collectible from The Bradford Exchange's (Bradford) website. On the day he made the purchase, he was charged

$40.49. But in the ensuing months, his PayPal account was subsequently charged eleven more times, totaling an additional $223.67. Ruiz alleges he was not informed that he had purchased a subscription for additional collectibles.

Ruiz filed a putative class-action complaint against Bradford, an Illinois corporation, in California state court, alleging claims under California's False Advertising Law (FAL), Cal. Bus. & Prof. Code §§ 17535 & 17600 et seq., and Unfair Competition Law (UCL), *id.* § 17200 et seq. Under the FAL and UCL, Ruiz sought only equitable restitution. *See In re Vioxx Class Cases*, 180 Cal.App.4th 116, 103 Cal. Rptr. 3d 83, 96 (2009) ("The remedies available in a UCL or FAL action are limited to injunctive relief and restitution."); *see also Adir Int'l, LLC v. Starr Indem. & Liab. Co.*, 994 F.3d 1032, 1043 (9th Cir. 2021). Ruiz concedes that he could have sought damages (a legal remedy) under California's Consumer Legal Remedies Act (CLRA), Cal. Civ. Code § 1750 et seq., but he did not.

Bradford removed the case to federal court under CAFA. As a general matter, CAFA creates subject matter jurisdiction in federal court for class actions where (1) there is minimal diversity; (2) the amount in controversy exceeds $5 million; and (3) there are more than 100 members in the proposed class. 28 U.S.C. § 1332(d); *Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1020-21 (9th Cir. 2007). There is no dispute that the district court had subject matter jurisdiction over this case under CAFA.

Ruiz moved to remand the case to state court. He pointed to the fact that California law provided him with

legal remedies that he could have sought, but that he chose to seek only an equitable remedy. Since he had failed to plead that he lacked an adequate remedy at law, Ruiz argued that the district court lacked equitable jurisdiction under our precedents. Ruiz further contended that lack of equitable jurisdiction is a non-waivable defect, leaving the district court no choice but to remand the case to state court.

Bradford opposed remand. It argued that the district court lacked the statutory or common-law authority to remand the case to state court. In the alternative, Bradford argued that if the district court had the power to remand, Bradford should be given the opportunity to waive the adequate-remedy-at-law issue to keep the case in federal court.

The district court granted Ruiz's remand motion. Examining authority from the Supreme Court and this court, the district court concluded that its power to remand a case to state court extended to a lack of equitable jurisdiction. It also ruled that Bradford could not waive its "adequate-remedy-at-law defense."

Bradford appeals. We have jurisdiction under 28 U.S.C. § 1291. *See Harmston v. City & Cnty. of S.F.*, 627 F.3d 1273, 1277 (9th Cir. 2010) (noting that "only remands based on grounds specified in [28 U.S.C.] § 1447(c)" cannot be appealed under 28 U.S.C. § 1447(d) (quoting *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 711-12, 116 S.Ct. 1712, 135 L.Ed.2d 1 (1996))).

Appendix A

II

A

The doctrine of "equitable jurisdiction" places limits on the equitable powers of federal courts. Seven years after holding in *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938), that federal courts sitting in diversity follow state substantive law, *id.* at 78, 58 S.Ct. 817, the Supreme Court clarified in *Guaranty Trust Co. of N.Y.C. v. York*, 326 U.S. 99, 65 S.Ct. 1464, 89 L.Ed. 2079 (1945), that "[e]quitable relief in a federal court" must still "be within the traditional scope of equity as historically evolved in the English Court of Chancery." *Id.* at 105, 65 S.Ct. 1464. Most notably, "a plain, adequate and complete remedy at law must be wanting" for a federal court to exercise its equity powers, even in cases where "a State may authorize its courts to give equitable relief unhampered" by a similar restriction. *Id.* at 105-06, 65 S.Ct. 1464. This limitation on the equitable powers of federal courts therefore applied in diversity cases as well. *Id.* at 106, 65 S.Ct. 1464.

Three key Ninth Circuit precedents considered the doctrine of equitable jurisdiction and set the stage for the issues in this case. The first is *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834 (9th Cir. 2020) (*Sonner I*). In *Sonner I*, the plaintiff filed a class action in federal court seeking both legal and equitable relief. *Id.* at 837-38. After years of litigation, the plaintiff moved, shortly before trial, to amend her complaint to voluntarily dismiss the damages claim, leaving only a claim for equitable restitution. *Id.*

at 838. This maneuver was motivated by the plaintiff's apparent desire for a bench trial, rather than a jury trial, *id.* at 837-38, which the defendant would be guaranteed under the Seventh Amendment for cases seeking legal relief. After the plaintiff dismissed her damages claim, the district court dismissed the restitution claims on state-law principles of equitable jurisdiction, thereby ending the case. *Id.* at 838.

The plaintiff appealed and we affirmed on the alternative ground that the district court lacked equitable jurisdiction as a matter of federal common law. *Id.* at 841-43. Tracing the history of equitable jurisdiction that we discussed above, *Sonner I* explained 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." *Id.* at 841. Thus, "even if a state authorizes its courts to provide equitable relief when an adequate legal remedy exists, such relief may be unavailable in federal court because equitable remedies are subject to traditional equitable principles unaffected by state law." *Id.* Relying on the federal equitable rule "precluding courts from awarding equitable relief when an adequate legal remedy exists," *id.* at 842, we held that, because the plaintiff had not attempted to allege in the operative complaint that she lacked an adequate remedy at law, her suit was properly dismissed once she voluntarily dropped her claims for legal relief. *Id.* at 844-45.

The day after the mandate issued in *Sonner I*, Sonner refiled her same case in state court, and the defendant

subsequently asked the *Sonner I* district court to enjoin the state court proceedings. *Sonner v. Premier Nutrition Corp.*, 49 F.4th 1300, 1303 (9th Cir. 2022) (*Sonner II*). A central question was whether the dismissal in *Sonner I* was on jurisdictional grounds or on the merits—the latter of which would permit an injunction of the state court proceedings under the "relitigation exception" to the Anti-Injunction Act, 28 U.S.C. § 2283. *Id.* at 1303-04. Avoiding resolution of this issue, the district court exercised its discretion to decline to issue the injunction and left it to the state court to determine the preclusive effect of *Sonner I. Id* at 1304.

On appeal, we clarified that the dismissal in *Sonner I* was not for lack of subject matter jurisdiction, but was rather based on Sonner's failure to state a claim upon which relief can be granted. *Id.* at 1304 (citing Fed. R. Civ. P. 12(b)(6)). We explained that in *Sonner I*, "there is no doubt that our dismissal was *not* for lack of subject matter jurisdiction." *Id.* "Instead, we affirmed the district court's dismissal of Sonner's claims for failure to state a claim under Rule 12(b)(6), but on the basis of federal, rather than state, law." *Id.* We further explained that in *Sonner I*, had "we thought dismissal should have been for lack of subject matter jurisdiction, we would have vacated and remanded with instructions to that effect." *Id.* at 1305.

Sonner I referred to equitable jurisdiction as "a threshold jurisdictional question." 971 F.3d at 839. *Sonner II* clarified this phrasing, explaining that "the 'jurisdictional' question we decided [in *Sonner I*] was which forum's laws applied, *not* whether jurisdiction was

lacking." 49 F.4th at 1305. Nevertheless, we ultimately agreed with the district court in *Sonner II* that the state court should determine in the first instance the preclusive effect of the *Sonner I* dismissal. *Id.* at 1307.

On the same day that we issued *Sonner II*, we decided *Guzman v. Polaris Industries Inc.*, 49 F.4th 1308 (9th Cir. 2022). In that case, a class-action plaintiff filed suit in federal court alleging violations of California's UCL, FAL, and CLRA concerning a label on an off-road vehicle. *Id.* at 1310. The district court concluded that the plaintiff's CLRA and FAL claims were time-barred. *Id.* at 1311. Because the CLRA claim had been the plaintiff's only claim for legal relief, this left him with only his UCL claim for equitable relief. *Id.* After dismissing the legal claim as time-barred, the district court granted summary judgment for the defendant on the equitable UCL claim. *Id.* The district court held that even if the legal remedy was time-barred, it still qualified as an adequate remedy at law, thus depriving the court of equitable jurisdiction. *Id.* The court then granted summary judgment for the defendant and dismissed the equitable UCL claim with prejudice. *Id.*

We agreed with the district court that, because the plaintiff "had an adequate remedy at law through his CLRA claim for damages, even though he could no longer pursue it," this meant that the district court was "required to dismiss his equitable UCL claim" for lack of equitable jurisdiction. *Id.* at 1312; *see also id.* (explaining that the plaintiff "cannot have neglected his opportunity to pursue his CLRA damages claim, which was an adequate remedy

at law, and then be rewarded for that neglect with the opportunity to pursue his equitable UCL claim in federal court").

But *Guzman* also held that the district court should have dismissed the case without prejudice. *Id.* at 1313. We reasoned that the lack of equitable jurisdiction was a non-merits determination akin to declining to exercise jurisdiction under abstention principles or the doctrine of *forum non conveniens*, and so the district court was required to dismiss the UCL claim *without* prejudice to refiling in state court. *Id.* at 1314-15. In short, the dismissal for lack of equitable jurisdiction was a "pre-merits determination" that was binding on other federal courts but "not on courts outside the federal system that might properly exercise their own jurisdiction over the claim." *Id.* at 1314.

The *Sonner* cases and *Guzman*, which all concerned lawsuits initially filed in federal court, yield a few key conclusions that are relevant here: federal courts in diversity cases apply federal principles of equitable jurisdiction; a plaintiff who fails to allege the lack of an adequate remedy at law cannot utilize a federal court's equitable jurisdiction; equitable jurisdiction is not a matter of subject matter jurisdiction; and when a case is initially filed in federal court and the defendant demonstrates that equitable jurisdiction is lacking, a court must dismiss the case, but without prejudice.

With this background from our precedents, we turn back to the case before us.

B

As a reminder, the plaintiff in this case sued in state court, foregoing available legal remedies and bringing only equitable claims under the UCL and FAL. The defendant removed the case under CAFA. The plaintiff then moved to remand for lack of equitable jurisdiction, on the theory that he had not alleged he lacked an adequate remedy at law. The first question is whether the district court had the authority to remand the case to state court.

In both *Sonner I* and *Guzman*, the plaintiffs initiated their cases in federal court, so the district courts, when faced with requests for dismissal for lack of equitable jurisdiction, had no alternative other than to dismiss the cases without prejudice; remand was not an option. This case, by contrast, involves a complaint initially filed in state court, which raises the question of whether remand was a potential option. But dismissal on equitable jurisdiction grounds may have been a potential option, too.

Bradford insists that it would not have moved to dismiss the removed case on equitable jurisdiction grounds and that it had not yet done so. But because Ruiz would be proceeding in federal court with equitable claims only and with no suggestion that he lacked an adequate remedy at law, Bradford upon removal could have validly moved to dismiss for lack of equitable jurisdiction. *See Sonner I*, 971 F.3d at 841-42. The only reason Bradford did not pursue that dismissal in district court was by its own election. That is, for its own strategic reasons—a dismissal without prejudice would have led to the plaintiff refiling

in state court—Bradford forwent an available motion to dismiss on equitable jurisdiction grounds. We take up later whether Bradford could waive the lack of equitable jurisdiction. But we must first explain the remand issue that sets up the need for a waiver before the case could remain in federal court.

We first hold that when a case is removed from state court and the district court concludes it lacks equitable jurisdiction, the court has the authority to remand the case to state court. The court is not required to dismiss the case. What would have happened if the district court had dismissed the case? The dismissal would be without prejudice, under our case law. *See Guzman*, 49 F.4th at 1313. So the plaintiff could turn right around and re-file the same case in state court. And once the plaintiff did so, the defendant could then remove the case to federal court again and seek to have it dismissed for lack of equitable jurisdiction. And because that dismissal would be without prejudice, the removal-dismissal loop could continue on indefinitely. This would generate some nice filing fees in district court, but it would create pointless administrative work for judges and court staff, while accomplishing little else. Fortunately, the law does not require this result.

Although the precedents, like the Supreme Court's cases on equitable jurisdiction, are old, the Supreme Court long ago indicated that remand to state court was a permissible response to a lack of equitable jurisdiction. In *Cates v. Allen*, 149 U.S. 451, 13 S.Ct. 883, 37 L.Ed. 804 (1893), a lawsuit was removed from state court on the basis of diversity jurisdiction. As in this case, the plaintiffs had

failed to "exhaust[] the legal remed[ies]" available. *Id.* at 457, 13 S.Ct. 883. The Supreme Court directed that the case be remanded to state court. *Id.* at 460-61, 13 S.Ct. 883 (explaining that the lower court "was not compelled to dismiss the case, but might have remanded it").

Similarly, in *Twist v. Prairie Oil & Gas Co.*, 274 U.S. 684, 47 S.Ct. 755, 71 L.Ed. 1297 (1927), the Supreme Court observed that a case removed to federal court that exceeds the federal equitable power should be "remanded to the state court where the equitable relief sought, although beyond the equitable jurisdiction of the federal court, may be granted by the state court." *Id.* at 690, 47 S.Ct. 755. And somewhat more recently, the Supreme Court noted that "in cases where the relief being sought is equitable in nature or otherwise discretionary, federal courts . . . can . . . decline to exercise jurisdiction altogether by either dismissing the suit or remanding it to state court." *Quackenbush*, 517 U.S. at 721, 116 S.Ct. 1712.

Bradford argues that *Cates* and *Twist* are no longer good law after the Federal Rules of Civil Procedure merged law and equity in the federal courts in 1938. But Bradford does not explain why the merger of law and equity would change the power of a district court to remand for lack of equitable jurisdiction. In fact, the Supreme Court has noted that although the merger means there is only one form of civil action in federal court, the ultimate powers of federal courts were not affected. *See Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663, 679, 134 S.Ct. 1962, 188 L.Ed.2d 979 (2014) ("[T]he substantive and remedial principles applicable prior to the advent of

the federal rules have not changed." (brackets omitted) (quoting 4 C. Wright & A. Miller, Federal Practice and Procedure § 1043, p. 177 (3d ed. 2002))).

Allowing district courts to remand for lack of equitable jurisdiction is consistent with other contexts in which remand has been permitted. *See*, *e.g.*, *Quackenbush*, 517 U.S. at 721, 116 S.Ct. 1712 (abstention doctrines); *Kamm v. ITEX Corp.*, 568 F.3d 752, 755 (9th Cir. 2009) (forum selection clauses). In these contexts as well, allowing remand avoids the perpetual removal-dismissal loops that might otherwise occur if district courts were limited to dismissing an action without prejudice.

Bradford protests that a remand for lack of equitable jurisdiction is not among the bases for remand in 28 U.S.C. § 1447(c). But it acknowledges that the above non-statutory bases for remand have been long permitted. Nor is Bradford correct that the district court here created some new "abstention-adjacent" doctrine in concluding it had the power to remand. The district court simply applied the existing and longstanding doctrine of equitable jurisdiction, and it then remanded in light of that, citing the removal-dismissal loop. Indeed, Bradford does not point to any case in which a federal court has endorsed the sort of perpetual removal-dismissal loop that could result if remand were not permitted here.

We reject Bradford's argument that remand should be disallowed because the perpetual loop is Ruiz's fault for pursuing what Bradford describes as "useless equitable claims for the sole purpose of forum shopping."

Even when a defendant may think certain claims are "useless," it remains true that a "plaintiff is the master of his complaint." *Newtok Vill. v. Patrick*, 21 F.4th 608, 616 (9th Cir. 2021). And plaintiffs are free to selectively plead claims to avoid federal court jurisdiction. *See*, *e.g.*, *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392, 107 S.Ct. 2425, 96 L.Ed.2d 318 (1987).

Ruiz was not required to plead all claims available to him, and defendants are not entitled to engineer a perpetual loop to force plaintiffs to plead causes of actions they have chosen to omit. Although Ruiz's strategic choices do not necessarily mean he can avoid federal court under CAFA, as we discuss below, the federal doctrine of equitable jurisdiction does not require Ruiz to undertake any specific actions in state court. That would be contrary to the overall view in this court's cases that what a state does in terms of equitable jurisdiction is up to the state. *See Guzman*, 49 F.4th at 1314; *Sonner I*, 971 F.3d at 841.

Allowing remands is also more in line with our decision in *Guzman*. If dismissal for lack of equitable jurisdiction must be without prejudice, as *Guzman* holds, it seems inevitable that remands would be both necessary for and incidental to that authority, to avoid the removal-dismissal loop. But the broader logic of *Guzman* supports remand as well. Although we did not address this particular question in *Guzman*, allowing a remand tracks our direction in *Guzman* that when a federal court lacks equitable jurisdiction, litigants should have the opportunity to pursue their cases in state court. 49 F.4th at 1314.

Although not binding on us, we note that district courts in our circuit have overwhelmingly recognized the power to remand to state court when faced with a lack of equitable jurisdiction. *See*, *e.g.*, *Youssef v. Great Am. Life Ins. Co.*, No. 25-cv-02545, 2025 WL 2265431, at *5 (C.D. Cal. Aug. 7, 2025); *White v. BP Prods. N. Am., Inc.*, No. 24-cv-01827, 2024 WL 5247959, at *4-*5 (C.D. Cal. Dec. 26, 2024); *Rogoff v. Transamerica Life Ins. Co.*, No. EDCV 24-1254, 2024 WL 5010642, at *4 (C.D. Cal. Dec. 6, 2024), *appeal filed*, No. 24-7732 (9th Cir. Dec. 24, 2024); *Hendrickson v. Wal-Mart Assocs., Inc.*, No. 23-cv-00110, 2024 WL 4896586, at *4 (S.D. Cal. Nov. 26, 2024); *Haver v. Gen. Mills, Inc.*, 2024 WL 4492052, at *3 (S.D. Cal. Oct. 11, 2024) *appeal filed*, No. 24-6784 (9th Cir. Nov. 11, 2024); *Granato v. Apple Inc.*, No. 22-cv-02316, 2023 WL 4646038, at *5-*6 (N.D. Cal. July 19, 2023); *Linton v. Axcess Fin. Servs.*, No. 23-cv-01832, 2023 WL 4297568, at *4 (N.D. Cal. June 30, 2023); *Clevenger v. Welch Foods Inc.*, No. SACV 23-00127, 2023 WL 2390630, at *5 (C.D. Cal. Mar. 7, 2023). A learned decision from Judge Orrick in *Guthrie v. Transamerica Life Ins. Co.*, 561 F. Supp. 3d 869 (N.D. Cal. 2021), concludes the same after more substantial analysis.

Finally, Bradford's reliance on *Standard Fire Insurance Co. v. Knowles*, 568 U.S. 588, 133 S.Ct. 1345, 185 L.Ed.2d 439 (2013), to preclude remand is unavailing. In that case, the Supreme Court rejected an attempt by the named plaintiff in a putative class action to avoid federal jurisdiction by stipulating to an amount in controversy below CAFA's $5 million jurisdictional threshold. *Id.* at 596, 133 S.Ct. 1345. *Standard Fire* was grounded in

the logic that the named plaintiff could not bind other members of the class before the class was certified. *Id.*

Here, Ruiz's remand request does not depend for its legal effectiveness on any stipulation that would need to bind other members of the putative class. And more generally, *Standard Fire* does not limit plaintiffs' ability to decide which claims to pursue, even in a class action. *See Corber v. Xanodyne Pharms., Inc.*, 771 F.3d 1218, 1223 (9th Cir. 2014) (en banc) (noting that *Standard Fire* "reiterates that plaintiffs are the 'masters of their complaints' who may structure those complaints to avoid federal jurisdiction in some circumstances" (quoting *Standard Fire*, 568 U.S. at 595, 133 S.Ct. 1345)); *Scimone v. Carnival Corp.*, 720 F.3d 876, 886 (11th Cir. 2013) (rejecting the argument that *Standard Fire* creates a "broad rule that CAFA does not allow plaintiffs to structure their lawsuits to avoid CAFA jurisdiction").

For the foregoing reasons, we hold that district courts have the power to remand a removed case to state court for lack of equitable jurisdiction.

C

But that is not the end of the matter. Although the district court had the authority to remand the case to state court, the court erred by ruling that Bradford could not waive the adequate-remedy-at-law impediment, which is waivable.

The cases are once again of a mature vintage, but the Supreme Court has held that equitable jurisdiction is waivable. *See Pusey & Jones Co. v. Hanssen*, 261 U.S. 491, 500, 43 S.Ct. 454, 67 L.Ed. 763 (1923) ("[U]nlike lack of jurisdiction as a federal court . . . lack of equity jurisdiction (if not objected to by a defendant) may be ignored by the court, in cases where the subject-matter of the suit is of a class of which a court of equity has jurisdiction. And where the defendant has expressly consented to action by the court, or has failed to object seasonably, the objection will be treated as waived."); *Am. Mills Co. v. Am. Sur. Co. of N.Y.*, 260 U.S. 360, 363, 43 S.Ct. 149, 67 L.Ed. 306 (1922) (evaluating whether the defendant had waived its adequate-remedy-at-law objection).

Indeed, in *Twist*, the same hoary precedent that Ruiz invokes to support the district court's remand authority, the Supreme Court acknowledged that there are cases where "the defendant waived the objection of lack of equity jurisdiction." 274 U.S. at 691, 47 S.Ct. 755. As *Twist* explained, "[s]uch waiver is possible, because the objection that the bill does not make a case within the equity jurisdiction of a federal court goes not to the power of the court as a federal court, but to the merits." *Id.* Relying on older Supreme Court precedent, the Sixth Circuit has likewise observed that "a party could waive the claim that a court lacked 'equity jurisdiction' (unlike the claim that it lacked subject-matter jurisdiction)." *Digit. Media Sols., LLC v. S. Univ. of Ohio, LLC*, 59 F.4th 772, 779 (6th Cir. 2023) (citing *In re Metro. Ry. Receivership*, 208 U.S. 90, 109-10, 28 S.Ct. 219, 52 L.Ed. 403 (1908)).

That a defendant can waive the objection that the plaintiff has an adequate remedy at law follows from first principles. Subject matter jurisdiction, notably, "can never be forfeited or waived," as it "involves a court's power to hear a case." *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514, 126 S.Ct. 1235, 163 L.Ed.2d 1097 (2006) (quoting *United States v. Cotton*, 535 U.S. 625, 630, 122 S.Ct. 1781, 152 L.Ed.2d 860 (2002)). But the law is clear that "[e]quitable jurisdiction is distinct from subject matter jurisdiction." *Guzman*, 49 F.4th at 1314; *see also id.* ("Subject matter jurisdiction regards 'whether the claim falls within the limited jurisdiction conferred on the federal courts' by Congress, while equitable jurisdiction regards 'whether consistently with the principles governing equitable relief the court may exercise its remedial powers.'" (quoting *Schlesinger v. Councilman*, 420 U.S. 738, 754, 95 S.Ct. 1300, 43 L.Ed.2d 591 (1975))). As we said over seventy years ago, "'equity jurisdiction' does not relate to the power of the court to hear and determine a controversy." *Yuba Consol. Gold Fields v. Kilkeary*, 206 F.2d 884, 887 (9th Cir. 1953). Indeed, this was the central teaching of our decision in *Sonner II*, which clarified that the dismissal in *Sonner I* was not based on lack of subject matter jurisdiction. *See Sonner II*, 49 F.4th at 1303.

Treating the availability of an adequate remedy at law as a non-waivable defect, as Ruiz maintains, would therefore wrongly align the doctrine of equity jurisdiction with subject matter jurisdiction, contrary to precedent. And it would wrongly imply that, as with subject matter jurisdiction, district courts have an independent obligation

to assess equitable jurisdiction—which we have never held.[1]

Treating the adequate-remedy-at-law objection as waivable would also align equitable jurisdiction with abstention and *forum non conveniens*, two doctrines we have already said are comparable. *Guzman* described equitable jurisdiction as a "pre-merits determination to withhold relief," analogous to "when federal courts decline to exercise jurisdiction under abstention principles or the doctrine of *forum non conveniens.*" 49 F.4th at 1314.

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1. Our later decision in *Key v. Qualcomm Inc.*, 129 F.4th 1129 (9th Cir. 2025), described how "where an adequate legal remedy exists, federal courts are precluded from awarding equitable relief, at least in the form of equitable restitution." *Id.* at 1142. *Key* then stated: "This rule is jurisdictional." *Id.* But for this proposition, *Key* cited *Sonner I. See id.* And as we have explained, *Sonner II* explained at length that the dismissal in *Sonner I* was not for lack of subject matter jurisdiction. *See Sonner II*, 49 F.4th at 1303-05. The "jurisdictional" language in *Key* is thus properly understood as referring only to the scope of available equitable relief in federal court, not subject matter jurisdiction. *See Arbaugh*, 546 U.S. at 511, 126 S.Ct. 1235 (cautioning against reliance on "drive-by jurisdictional rulings," which should have "no precedential effect" (quoting *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 91, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998)); *see also*, *e.g.*, *Leeson v. Transamerica Disability Income Plan*, 671 F.3d 969, 971 (9th Cir. 2012) (same). Indeed, in *Key* itself, we concluded that the district court lacked equitable jurisdiction, but when we vacated and remanded on this point, we did not direct the district court to dismiss the claim for lack of subject matter jurisdiction. *Key*, 129 F.4th at 1142, 1147. In any event, *Key* did not consider whether an adequate-remedy-at-law objection is waivable, and so it cannot govern on that point.

Abstention under *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971), is considered waivable. *See, e.g.*, *Ohio C.R. Comm'n v. Dayton Christian Schs., Inc.*, 477 U.S. 619, 626, 106 S.Ct. 2718, 91 L.Ed.2d 512 (1986) ("A State may of course voluntarily submit to federal jurisdiction even though it might have had a tenable claim for abstention."); *Brown v. Hotel & Rest. Emps. & Bartenders Int'l Union Loc. 54*, 468 U.S. 491, 500 n.9, 104 S.Ct. 3179, 82 L.Ed.2d 373 (1984); *Mocek v. City of Albuquerque*, 813 F.3d 912, 935 n.11 (10th Cir. 2015); *Guillemard-Ginorio v. Contreras-Gomez*, 585 F.3d 508, 517 (1st Cir. 2009); *see also S. Cal. Edison Co. v. Lynch*, 307 F.3d 794, 805-06 (9th Cir.), *modified*, 307 F.3d 943 (9th Cir. 2002) (abstention under *Burford v. Sun Oil Co.*, 319 U.S. 315, 63 S.Ct. 1098, 87 L.Ed. 1424 (1943), can be waived). An objection based on *forum non conveniens* is also waivable. *See, e.g.*, *Atl. Marine Constr. Co v. U.S. Dist. Ct. for the W. Dist. of Tex.*, 571 U.S. 49, 64, 134 S.Ct. 568, 187 L.Ed.2d 487 (2013); *Est. of I.E.H. v. CKE Rests., Holdings, Inc.*, 995 F.3d 659, 665 (8th Cir. 2021); *Lony v. E.I. Du Pont de Nemours & Co.*, 935 F.2d 604, 614 (3d Cir. 1991).

That the doctrine of equitable jurisdiction has "jurisdiction" in its name does not undermine the comparison to abstention and *forum non conveniens*. Most notably, personal jurisdiction can be waived, because it "represents a restriction on judicial power not as a matter of sovereignty, but as a matter of individual liberty." *Ins. Corp. of Ir., Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702-03, 102 S.Ct. 2099, 72 L.Ed.2d 492 (1982). Similar to equitable jurisdiction, personal jurisdiction has

been described as "'an essential element of the jurisdiction of a district . . . court,' without which the court is 'powerless to proceed to an adjudication.'" *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 584, 119 S.Ct. 1563, 143 L.Ed.2d 760 (1999) (quoting *Emps. Reins. Corp. v. Bryant*, 299 U.S. 374, 382, 57 S.Ct. 273, 81 L.Ed. 289 (1937)). But that is only true if a defendant does not waive its personal jurisdiction defense.

Allowing a defendant to waive the adequate-remedy-at-law issue is also consistent with a broader rationale for the federal doctrine of equitable jurisdiction, namely, protection of the right to a jury trial. In *Sonner I*, in explaining why federal principles of equitable jurisdiction must prevail in federal court over state rules of equity jurisdiction, we observed that "the principle precluding courts from awarding equitable relief when an adequate legal remedy exists implicates the well-established federal policy of safeguarding the constitutional right to a trial by jury in federal court." 971 F.3d at 842. It did not matter that California may have "streamline[d] UCL and CLRA claims by abrogating the state's inadequate-remedy-at-law doctrine," because "the strong federal policy protecting the constitutional right to a trial by jury outweighs that procedural interest." *Id.* But a defendant's right to a civil jury trial can be waived. *See* Fed. R. Civ. P. 38(d). It would therefore be counterintuitive if the adequate-remedy-at-law objection protecting the waivable jury-trial right could not itself be waived. *Cf. Digit. Media Sols.*, 59 F.4th at 779 (holding that the district court could create a receivership, an equitable remedy, with the consent of the debtor even if the creditor had an adequate remedy at law).

That courts can raise the adequate-remedy-at-law issue *sua sponte* does not make the objection non-waivable. Ruiz cites *Allen v. Pullman's Palace-Car Co.*, 139 U.S. 658, 662, 11 S.Ct. 682, 35 L.Ed. 303 (1891), in which the Supreme Court held that federal courts can raise a lack of equitable jurisdiction even if not raised by a party. *See also S. Pac. R.R. Co. v. United States*, 200 U.S. 341, 349, 26 S.Ct. 296, 50 L.Ed. 507 (1906). But it does not follow from the fact that a court can raise an issue *sua sponte* that the issue is not waivable. We have held that *Younger* abstention may be raised *sua sponte, see H.C. ex rel. Gordon v. Koppel*, 203 F.3d 610, 613 (9th Cir. 2000), even though, as noted above, that doctrine can also be waived. *Ohio C.R. Comm'n*, 477 U.S. at 626, 106 S.Ct. 2718.

We note that there are statements in our cases to the effect that "where an adequate legal remedy exists, federal courts are precluded from awarding equitable relief, at least in the form of equitable restitution." *Key*, 129 F.4th at 1142; *see also*, *e.g.*, *Guzman*, 49 F.4th at 1313 ("In order to entertain a request for equitable relief, a district court must have equitable jurisdiction, which can only exist under federal common law if the plaintiff has no adequate legal remedy."). But these cases involved defendants who were pressing adequate-remedy-at-law objections and seeking dismissals for lack of equitable jurisdiction. These cases did not address whether a defendant could waive the objection.

In this sense, these cases are no different than ones stating that a court is powerless to adjudicate claims against a defendant over which the court lacks personal

jurisdiction—which is true only insofar as the defendant has not waived the objection. And as we have discussed throughout above, our reasoning in *Sonner I, Sonner II*, and *Guzman* supports allowing defendants to waive the adequate-remedy-at-law issue. That is especially so when, at bottom, the plaintiff is seeking the same ultimate relief that would be afforded through claims at law—money—but is bringing claims for equitable restitution to avoid removal.

The upshot of our decision today is the following: if a plaintiff files a lawsuit in state court seeking only equitable relief and the case is properly removed to federal court, a defendant can defeat remand on equitable jurisdiction grounds by waiving the adequate-remedy-at-law issue. Bradford tried to do this in the district court. Bradford made clear that if the district court concluded that it had authority to remand to state court for lack of equitable jurisdiction, it should be given the opportunity to waive the adequate-remedy-at-law impediment. We accordingly vacate the district court's decision and remand so that Bradford can perfect its waiver, assuming Bradford still wishes to do so. If Bradford waives the adequate-remedy-at-law defense, the case may then proceed in federal court in the normal course.

VACATED AND REMANDED.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, FILED MAY 16, 2024

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Case No.: 3:23-cv-01800-WQH-KSC

JOSE RUIZ, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Plaintiff,

v.

THE BRADFORD EXCHANGE, LTD., AN ILLINOIS CORPORATION; AND DOES 1–50, INCLUSIVE,

Defendants.

Filed May 16, 2024

ORDER

HAYES, Judge:

The matter before the Court is the Motion to Remand filed by Plaintiff Jose Ruiz ("Plaintiff"). (ECF No. 4.)

I. PROCEDURAL BACKGROUND

On August 28, 2023, Plaintiff filed a Class Action Complaint against Defendant The Bradford Exchange,

Ltd. ("Defendant") in the Superior Court of California, County of San Diego (Case No. 37-2023-00037208-CU-BT-CTL). (ECF No. 1-2.) Plaintiff asserts claims against Defendant under the False Advertising Law, Cal. Bus. & Prof. Code, §§ 17535 & 17600 et seq. ("FAL") and the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq. ("UCL") based on allegations that Defendant enrolled costumers in an ongoing subscription program without their knowledge or consent. Plaintiff brings the lawsuit on behalf of a putative class of "[a]ll California residents who were both (1) enrolled in a Bradford collection subscription on or after December 1, 2010 and (2) charged for one or more items as part of such subscription within the applicable statute of limitations." (ECF No. 1-2 at 17.) Plaintiff seeks to recover restitution, attorneys' fees, costs, prejudgment interest, and other such relief as the Court may deem just and proper.

On September 28, 2023, Defendant removed the action to this Court pursuant to 28 U.S.C. § 1332. (ECF No. 1.) In the Notice of Removal, Defendant asserts that removal is proper under the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1332(d), "because this case is a class action in which the proposed class exceeds 100 members, at least one member of the putative class is diverse from [Defendant], and the amount in controversy exceeds $5 million." *Id.* at 2.

On October 11, 2023, Plaintiff filed the Motion to Remand, which requests that the Court remand this action to state court on the basis that it lacks equitable jurisdiction. (ECF No. 4.) On October 30, 2023, Defendant

filed a Response in opposition to the Motion to Remand. (ECF No. 7.) On November 6, 2023, Plaintiff filed a Reply. (ECF No. 8.)

On March 4, 2024, Plaintiff filed a Notice of Supplemental Authority. (ECF No. 10.)

II. LEGAL STANDARD

"Under 28 U.S.C. § 1441, a defendant may remove an action filed in state court to federal court if the federal court would have original subject matter jurisdiction over the action." *Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1243 (9th Cir. 2009). "To remove a case from state court to federal court, a defendant must file in the federal forum a notice of removal 'containing a short and plain statement of the grounds for removal.'" *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 83 (2014) (quoting 28 U.S.C. § 1446(a)). "A motion to remand is the proper procedure for challenging removal." *Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009). "The strong presumption against removal jurisdiction means that the defendant always has the burden of establishing that removal is proper." *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (quotation omitted).

CAFA "gives federal courts jurisdiction over certain class actions, defined in § 1332(d)(1), if the class has more than 100 members, the parties are minimally diverse, and the amount in controversy exceeds $5 million." *Dart Cherokee*, 574 U.S. at 84–85 (quoting § 1332(d)(2), (5)(B)). While the strong presumption against removal

jurisdiction does not apply under CAFA, a defendant must still establish that removal is proper. *See id.* at 89 ("[N]o antiremoval presumption attends cases invoking CAFA."); *Abrego v. Dow Chem. Co.*, 443 F.3d 676, 685 (9th Cir. 2006) ("CAFA did not shift to the plaintiff the burden of establishing that there is no removal jurisdiction in federal court.").

III. DISCUSSION

Plaintiff does not dispute that the Court has subject matter jurisdiction under CAFA. Instead, Plaintiff contends that remand is appropriate because the Court lacks equitable jurisdiction. Defendant contends that remand is not permitted because the Court has subject matter jurisdiction, and equitable jurisdiction does not provide a basis to remand.

"Equitable jurisdiction is distinct from subject matter jurisdiction, although both are required for a federal court to hear the merits of an equitable claim." *Guzman v. Polaris Industries Inc.*, 49 F.4th 1308, 1313 (9th Cir. 2022). While subject matter jurisdiction concerns "whether the claim falls within the limited jurisdiction conferred on the federal courts by Congress," equitable jurisdiction concerns "whether consistently with the principles governing equitable relief the court may exercise its remedial powers." *Id.*; *see Yuba Consol. Gold Fields v. Kilkeary*, 206 F.2d 884, 887 (9th Cir. 1953) ("Reference to 'equity jurisdiction' does not relate to the power of the court to hear and determine a controversy but relates to whether it ought to assume the jurisdiction and decide the

cause."). In contrast with California state courts, federal courts sitting in diversity can only award equitable relief under state law if there is no adequate legal remedy. *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834, 839 (9th Cir. 2020) (explaining that the California legislature abrogated the inadequate-remedy-at-law requirement for claims seeking equitable restitution under consumer protection statutes). Where "monetary damages provide[ ] an adequate remedy," a federal court may not consider the merits of equitable claims for restitution, disgorgement, or injunctive relief. *Franklin v. Gwinnett Cnty. Pub. Sch.*, 503 U.S. 60, 75–76 (1992). Additionally, certain consumer protection statutes—including the FAL and UCL—provide only equitable remedies. *See In re Vioxx Class Cases*, 180 Cal. App. 4th 116, 130 (Ct. App. 2009) ("The remedies available in a UCL or FAL action are limited to injunctive relief and restitution."). Thus, in federal court, a plaintiff must establish that he lacks an adequate remedy at law before securing relief under the FAL and UCL. *See Sonner*, 971 F.3d at 844.

In this case, Plaintiff seeks restitution under the FAL and UCL to compensate class members for "all amounts that Defendants charged for subscriptions during the four years preceding the filing of this Complaint and continuing until Defendants' statutory violations cease." (ECF No. 1-2 at 19.) Nothing in the Complaint suggests that a damages award would be an inadequate remedy or would fail to make class members whole. *See Treinish v. iFit Inc.*, No. CV 22-4687-DMG (SKx), 2022 WL 5027083, at *3 (C.D. Cal. Oct. 3, 2022) ("*Sonner* makes clear that the key question on whether [a plaintiff] has sufficiently pled that he lacks an adequate remedy at law is whether

damages would fail to make him whole.") (citing *Sonner*, 971 F.3d at 844). In fact, Plaintiff concedes that he could have sought a damages award pursuant to the Consumer Legal Remedies Act ("CLRA") in lieu of restitution. (*See* ECF No. 4-1 at 10 ("Plaintiff could have sought legal remedies, such as (without limitation) damages for violation of the Consumers Legal Remedies Act (Cal. Civ. Code § 1750 et seq.), but he has not done so.").)

Defendant contends that the Court cannot yet determine that it lacks equitable jurisdiction because "discovery may reveal that claims providing legal remedies are inadequate." (ECF No. 7 at 28 (quoting *Arnold v. Hearst Mag. Media, Inc.*, No. 19-1969, 2021 WL 488343, at *8 (S.D. Cal. Feb. 10, 2021)).) But in *Sonner*, the Ninth Circuit concluded that it lacked equitable jurisdiction because "the operative complaint does not allege that Sonner lacks an adequate legal remedy." *Sonner*, 971 F.3d at 844. *Sonner* therefore requires plaintiffs to, at minimum, plead that legal remedies are inadequate before asserting a claim for equitable relief. *See Guthrie v. Transamerica Life Ins. Co.*, 561 F. Supp. 3d 869, 875 (N.D. Cal. 2021) ("[M]any other district judges applying *Sonner* have understood it to require that a plaintiff must, at minimum, *plead* that she lacks adequate remedies at law if she seeks equitable relief."); *Anderson v. Apple Inc.*, 500 F. Supp. 3d 993, 1009 (N.D. Cal. 2020) ("Under *Sonner*, the plaintiffs are required, at minimum, to plead that they lack an adequate remedy at law[.]"). Here, Plaintiff has not alleged that he lacks an adequate remedy at law. Accordingly, the Court finds that it lacks equitable jurisdiction.

Because the Court lacks equitable jurisdiction over Plaintiff's claims, the remaining question is whether the Court may remand the case on this basis. As an initial matter, remand is not permitted under 28 U.S.C. § 1447(c), which authorizes federal courts to remand a case to state court for either (1) lack of subject matter jurisdiction, or (2) any defect in the removal procedure. 28 U.S.C. § 1447(c). Plaintiff concedes—and the Court agrees—that subject matter jurisdiction is present under CAFA. Plaintiff also does not contend that there was a defect in the removal procedure.

The Court's authority to remand, however, is not limited to the grounds stated in 28 U.S.C. § 1447(c). *See Kamm v. ITEX Corp.*, 568 F.3d 752, 755 (9th Cir. 2009) (explaining that a forum selection clause is a valid ground for remand "similar to other grounds for not exercising jurisdiction over a case, such as abstention in favor of state court jurisdiction . . . and related abstention cases, or a refusal to exercise supplemental jurisdiction"). Historically, federal courts have abstained from exercising their jurisdiction based on "considerations of 'proper constitutional adjudication,' 'regard for federal-state relations,' or 'wise judicial administration.'" *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716–17 (1996) (listing historically-recognized abstention doctrines). Consistent with these principles, the Supreme Court has recognized that remand is appropriate if a removed suit seeks relief that is "beyond the equitable jurisdiction of the federal court" but "may be granted by the state court." *Twist v. Prairie Oil & Gas Co.*, 274 U.S. 684, 690 (1927). In *Cates v. Allen*, 149 U.S. 451 (1893), which involved only equitable claims, the suit was removed from state to federal court

based on diversity jurisdiction. While the federal court lacked authority to grant equitable relief because plaintiff had not "exhaust[ed] the legal remedy," the state court maintained equitable jurisdiction under state law. *Id.* at 457. The Court concluded that because "the nature of the controversy was such that the suit was not properly cognizable in [federal courts]," but was cognizable in state courts, the lower court "was not compelled to dismiss the case, but may have remanded it." *Id.* at 460–61.

Here, as in *Cates*, the Court possesses diversity jurisdiction, but the case falls outside the scope of the Court's equitable jurisdiction. The Court therefore has the authority to remand this action to state court, where an inadequate remedy at law is not a barrier to equitable jurisdiction.

This result accords with the long-recognized authority to remand cases based on federal abstention doctrines. The Supreme Court has held that while it is improper to remand a damages action based on abstention principles, it has "long been established that a federal court has the authority to decline to exercise its jurisdiction when it 'is asked to employ its historical powers as a court of equity.'" *Quackenbush*, 517 U.S. at 717 (quoting *Fair Assessment in Real Estate Ass'n, Inc. v. McNary*, 454 U.S. 100, 120 (1981)). In cases where the relief sought is "equitable in nature," then, federal courts "not only have the power to stay the action based on abstention principles, but can also, in otherwise appropriate circumstances, decline to exercise jurisdiction altogether by either dismissing the suit or remanding it to state court." *Id.* at 721.

The Ninth Circuit has also recognized the similarity between abstention principles and equitable jurisdiction. In *Guzman*, the Ninth Circuit stated: "As is the case when federal courts decline to exercise jurisdiction under abstention principles . . . , a federal court that dismisses a claim for lack of equitable jurisdiction necessarily declines 'to assume the jurisdiction and decide the cause.'" *Guzman*, 49 F.4th at 1314; *see also Schlesinger v. Councilman*, 420 U.S. 738, 755 (1975) (stating that abstention "originated as a corollary to the general subordination of equitable to legal remedies"). Although *Guzman* dismissed rather than remanded the case, remand was not an option because the case was originally filed in federal court. *See id.* at 1310. The "strong parallel between a lack of equitable jurisdiction and the born-of-equity abstention doctrines" supports remand here. *Guthrie*, 561 F. Supp. 3d at 872.

Defendant makes several arguments in opposition. First, Defendant contends that equitable jurisdiction does not provide a cognizable basis for remand because it is not a true jurisdictional doctrine, and a lack of equitable jurisdiction does not strip the Court of subject matter jurisdiction. The Court agrees that equitable jurisdiction is distinct from subject matter jurisdiction in that equitable jurisdiction "does not relate to the power of the court to hear and determine a controversy." *Yuba*, 206 F.3d at 887. But "[e]ven when a court has subject matter jurisdiction," as is the case here, there still "remains the question of equitable jurisdiction" before the district court can assume jurisdiction and "properly [ ]

reach the merits."[1] *Guzman*, 49 F.4th at 1314 (quoting *Schlesinger*, 420 U.S. at 754). For this reason, when a court lacks the power to grant an equitable remedy, it may decline to exercise jurisdiction and remand the case to state court, as the Supreme Court stated in *Cates* and *Twist*. Several district courts have applied this precedent to remand equitable claims in similar circumstances. *See Guthrie*, 561 F. Supp. 3d at 872 (applying *Cates, Twist*, and *Quackenbush* to remand a case on the ground that the court did not possess equitable jurisdiction over the plaintiff's UCL claim); *Clevenger v. Welch Foods Inc.*, No. SACV 23-00127-CJC (JDEx), 2023 WL 2390630, at *4 (C.D. Cal. Mar. 7, 2023) (same); *Morgan v. Rohr, Inc.*, No. 20-cv-574-GPC-AHG, 2023 WL 7713582, at *6 (S.D. Cal.

1. Defendant contends that the existence of an adequate remedy at law is a merits question. (ECF No. 7 at 17.) In *Di Giovanni v. Camden Fire Ins. Ass'n*, 296 U.S. 64 (1935), the Supreme Court stated: "Whether a suitor is entitled to equitable relief in the federal courts . . . is strictly not a question of jurisdiction in the sense of the power of a federal court to act. It is a question only of the merits; whether the case is one for the peculiar type of relief which a court of equity is competent to give." *Id.* at 69. Taken in context, *Di Giovanni* was "assessing whether a lack of equitable jurisdiction deprived the court of subject matter jurisdiction, so its reference to 'the merits' is better read to mean 'not concerning subject matter jurisdiction.'" *Guthrie*, 561 F. Supp. 3d at 880 n.4 (citing *Di Giovanni*, 296 U.S. at 69). Further, this statement from *Di Giovanni* is undermined by later Supreme Court authority. In *Schlesinger v. Councilman*, 420 U.S. 738 (1975), the Court stated: "Our holding that the District Court had subject-matter jurisdiction . . . does not carry with it the further conclusion that the District Court properly could reach the merits of [the] claim. . . . There remains the question of equitable jurisdiction." *Id.* at 754.

Nov. 15, 2023) (concluding that "precedent and interests in fairness and economy all favor remand" where the court lacked equitable jurisdiction); *Granato v. Apple Inc.*, No. 5:22-cv-02316-EJD, 2023 WL 4646038, at *5 (N.D. Cal. July 19, 2023) (applying abstention principles to conclude that remand was appropriate where the court lacked equitable jurisdiction).

Next, Defendant contends that *Cates* and *Twist* are not controlling because they predate the 1938 merger of law and equity and enactment of 28 U.S.C. § 1447(c). But Defendant fails to explain how this impacts the holdings of *Cates* and *Twist*. While the merger of law and equity resulted in "one form of action—the civil action," "the substantive remedial principles [applicable] prior to the advent of the federal rules [have] not changed." *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663, 679 (2014) (citations omitted) (alterations in original). Moreover, in *Quackenbush*, which was decided in 1996, the Court reaffirmed federal courts' authority to remand cases "where the relief being sought is equitable or otherwise discretionary." *Quackenbush*, 517 U.S. at 721.

Defendant also contends that remand runs counter to CAFA, which channels certain class action cases to federal court. In 2005, Congress enacted CAFA to "curb perceived abuses of the class action device which, in the view of CAFA's proponents, had often been used to litigate multistate or even national class actions in state courts." *Bridewell-Sledge v. Blue Cross of Cal.*, 798 F.3d 923, 928 (9th Cir. 2015) (citation omitted). But in enacting CAFA, "Congress did not purport to alter traditional equitable

rules." *Guthrie*, 561 F. Supp. 3d at 879. Rather, CAFA amended the federal diversity statute, 28 U.S.C. § 1332, which "now vests original jurisdiction for class actions in federal court where there is minimal diversity and the amount in controversy exceeds $5,000,000." *Progressive West Ins. Co. v. Preciado*, 479 U.S. 1014, 1015 (9th Cir. 2007) (citation omitted). These alterations to the federal diversity statute do not concern equitable jurisdiction, and do not empower courts to consider the merits of class action claims where equitable jurisdiction is lacking. *See Clevenger*, 2023 WL 2390630, at *5 ("[W]hile Defendants argue that granting remand would 'create a massive exception to CAFA,' [ ] nothing in CAFA 'has to do with equitable jurisdiction,' and 'Congress did not purport to alter traditional equitable rules through its enactment.'") (quoting *Guthrie*, 561 F. Supp. 3d at 879).

Defendant cites to *Young v. Anthony's Fish Grottos, Inc.*, 830 F.2d 993 (9th Cir. 1987), for the proposition that a court cannot remand a case on the basis that there is "no effective federal remedy." *Id.* at 998. *Young*, however, concerned whether a state law claim was preempted by federal law, not whether remand is an appropriate remedy for a lack of equitable jurisdiction. Further, the plaintiff in *Young* argued that the lack of an effective federal remedy defeated federal subject matter jurisdiction, whereas the existence of subject matter jurisdiction is not in dispute here.

Defendant also cites district court cases that have denied motions to remand where the court lacked equitable jurisdiction. These cases are inapposite. In all but one of

the cases, the complaint contained both equitable and legal claims, and several courts denied the motions to remand on the ground that partial remand is not permitted. *See Kim v. Walmart, Inc.*, No. 2:22-cv-08380-SB-PVC, 2023 WL 196919, at *3 (C.D. Cal. Jan. 13, 2023) (declining to remand because the case involved "both legal and equitable claims" and "Plaintiff cites no authority that permits the Court to enter a partial remand in this case"); *Treinish*, 2022 WL 5027083, at *5 (distinguishing *Guthrie* on the ground that it "involved a situation where only the equitable claims remained, and therefore remand was the only option for those claims to be heard at all"); *Demaria v. Big Lots Stores – PNS, LLC*, No. 2:23-cv-00296-DJC-CKD, 2023 WL 6390151, at *8 (E.D. Cal. Sept. 29, 2023) (declining to partially remand an action where non-equitable claims remained and distinguishing *Guthrie* on this ground). By contrast, the present case involves only equitable claims which, if dismissed, would leave the Court without a case to decide. The remaining case, *Favell v. Univ. of S. Cal.*, No. CV 23-3389-GW-MARx, 2023 WL 4680357 (C.D. Cal. July 5, 2023), is unpersuasive. Although *Favell* concerned only equitable claims, it relied on the same inapplicable line of cases cited by Defendant. *See id.* at *2.

Further, these cases reason that in lieu of remand, a plaintiff should move to dismiss without prejudice and re-file the case in state court. *See, e.g.*, *Treinish*, 2022 WL 5027083, at *3 ("If there is no federal equitable jurisdiction over Plaintiff's UCL claim, Defendant is free to file a motion to dismiss under Rule 12 to dismiss the claim without prejudice to refile in state court."). But this course of action could place the case in the "perpetual loop" of "(1) [P]laintiff's re-filing in state court, followed

by (2) removal by [D]efendant[ ] and then (3) dismissal by this Court." *Guthrie*, 561 F. Supp. 3d at 880. This scenario played out in *Clevenger*. In that case, the court dismissed a removed case for lack of equitable jurisdiction. *Clevenger*, 2023 WL 2390630, at *1. Plaintiff then refiled the case in state court, but defendant again removed the case and moved to dismiss. *Id.* The court, however, remanded the case to state court, reasoning that "a defendant should not be able to avail itself of federal jurisdiction only to turn around and argue that jurisdiction does not exist in order to have the case dismissed." *Id.* at *5. Defendant contends that this "perpetual loop" would be a consequence of Plaintiff's own "strategic decision to forego potentially viable legal claims in a transparent attempt to avoid CAFA jurisdiction." (ECF No. 7 at 25.) But Plaintiff, as the master of his complaint, can include certain claims while foregoing others, even if these decisions affect the jurisdictional posture of the case. *See Newtok Village v. Patrick*, 21 F.4th 608, 616 (9th Cir. 2021) ("A plaintiff is the master of his complaint and responsible for articulating cognizable claims.").[2]

The Court finds that because it lacks equitable jurisdiction, the case should be remanded. The Motion to Remand is granted.

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2. Defendant contends that if the Court concludes that it has the authority to remand the case, it should be allowed to waive its adequate-remedy-at-law defense. (ECF No. 29 at 7.) This argument is unavailing in light of *Guzman*, which held that the district court erred in granting summary judgment when it lacked equitable jurisdiction. *Guzman*, 49 F.4th at 1315. Because Plaintiff's equitable claims cannot be adjudicated in federal court, remand should follow.

IV. CONCLUSION

IT IS HEREBY ORDERED that the Motion to Remand (ECF No. 4) is granted. This case is remanded to the Superior Court for the State of California, County of San Diego, where it was originally filed as Case No. 37-2023-00037208-CU-BT-CTL.

APPENDIX C — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED DECEMBER 31, 2025

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 24-3378
D.C. No. 3:23-cv-01800-WQH-KSC
Southern District of California, San Diego

JOSE RUIZ,

Plaintiff-Appellee,

v.

THE BRADFORD EXCHANGE, LTD.,

Defendant-Appellant.

Filed December 31, 2025

ORDER

Before: BOGGS, FRIEDLAND, and BRESS, Circuit Judges.*

All judges unanimously voted to deny the petition for panel rehearing. Judge Friedland and Judge Bress voted

* The Honorable Danny J. Boggs, United States Circuit Judge for the Court of Appeals, for the 6th Circuit, sitting by designation.

to deny the petition for rehearing en banc, and Judge Boggs so recommended. The petition was circulated to the judges of the Court, and no judge requested a vote for en banc consideration. Fed. R. App. P. 40. The petition for panel rehearing and rehearing en banc, Dkt. 45, is denied.

APPENDIX D — CLASS ACTION COMPLAINT FILED IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO, FILED AUGUST 28, 2023

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

CASE NO. 37-2023-00037208-CU-BT-CTL

JOSE RUIZ, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Plaintiff,

vs.

THE BRADFORD EXCHANGE, LTD., AN ILLINOIS CORPORATION; AND DOES 1-50, INCLUSIVE,

Defendants.

Filed August 28, 2023

CLASS ACTION

COMPLAINT FOR:

(1) FALSE ADVERTISING
[Bus. & Prof. Code, §§ 17535 & 17600 et seq.]; and

(2) UNFAIR COMPETITION
[Bus. & Prof. Code, § 17200 et seq.]

Appendix D

INTRODUCTION

1. This class action complaint alleges that defendant The Bradford Exchange, Ltd. ("Bradford") violates California law by enrolling consumers in automatic renewal subscriptions without first providing the clear and conspicuous disclosures mandated by California law; charging consumers for automatic renewal subscriptions without first obtaining the consumer's affirmative consent to an agreement that contains clear and conspicuous disclosure of required automatic renewal offer terms; and failing to provide an acknowledgment that includes the required clear and conspicuous disclosures. This conduct constitutes false advertising, based on violation of the California Automatic Renewal Law (Bus. & Prof. Code, § 17600 et seq.), and it also violates the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.). This action seeks restitution for Plaintiff and other affected California consumers.

THE PARTIES

2. Plaintiff Jose Ruiz ("Ruiz") is an individual residing in Orange County, California.

3. The Bradford Exchange, Ltd. is an Illinois corporation that does business in San Diego County, and throughout California, including but not limited to the online marketing and sale of a variety of merchandise.

4. Plaintiff does not know the names of the defendants sued as DOES 1 through 50 but will amend this complaint

when that information becomes known. Plaintiff alleges on information and belief that each of the DOE defendants is affiliated with the named defendant in some respect and is in some manner responsible for the wrongdoing alleged herein, either as a direct participant, or as the principal, agent, successor, alter ego, or co-conspirator of or with one or more of the other defendants. For ease of reference. Plaintiff will refer to the named defendant and the DOE defendants collectively as "Defendants."

5. Venue is proper in this judicial district because Bradford conducts business in San Diego County and because Bradford has not designated a principal office in California, such that venue is proper in any county designated by Plaintiff.

SUMMARY OF APPLICABLE LAW

Automatic Renewal Law (Bus. & Prof. Code, § 17600 et seq.)

6. In 2009, the California Legislature passed Senate Bill 340, which took effect on December 1, 2010 as Article 9 of Chapter 1 of the False Advertising Law. (Bus. & Prof. Code, § 17600 et seq. ("ARL").) (Unless otherwise indicated, all statutory citations are to the California Business and Professions Code.) SB 340 was introduced because:

> It has become increasingly common for consumers to complain about unwanted charges on their credit cards for products or services that the consumer did not explicitly request or

> know they were agreeing to. Consumers report they believed they were making a one-time purchase of a product, only to receive continued shipments of the product and charges on their credit card. These unforeseen charges are often the result of agreements enumerated in the "fine print" on an order or advertisement that the consumer responded to.

(See Exhibit 1 at p. 4.)

7. The Assembly Committee on Judiciary provided the following background for the legislation:

> This non-controversial bill, which received a unanimous vote on the Senate floor, seeks to protect consumers from unwittingly consenting to "automatic renewals" of subscription orders or other "continuous service" offers. According to the author and supporters, consumers are often charged for renewal purchases without their consent or knowledge. For example, consumers sometimes find that a magazine subscription renewal appears on a credit card statement even though they never agreed to a renewal.

(See Exhibit 2 at p. 8.)

8. The ARL seeks to ensure that, before there can be a legally-binding automatic renewal or continuous service arrangement, there must first be clear and conspicuous

disclosure of certain terms and conditions and affirmative consent by the consumer. To that end, section 17602(a) makes it unlawful for any business making an automatic renewal offer or a continuous service offer to a consumer in California to do any of the following:

a. Fail to present the automatic renewal offer terms or continuous service offer terms in a clear and conspicuous manner before the subscription or purchasing agreement is fulfilled and in visual proximity to the request for consent to the offer. (§ 17602(a)(1).) For this purpose, "clear and conspicuous" means "in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks, m a manner that clearly calls attention to the language." (§ 17601(c).) The statute defines "automatic renewal offer terms" to mean the "clear and conspicuous" disclosure of the following: (a) that the subscription or purchasing agreement will continue until the consumer cancels; (b) the description of the cancellation policy that applies to the offer; (c) the recurring charges that will be charged to the consumer's credit or debit card or payment account with a third party as part of the automatic renewal plan or arrangement, and that the amount of the charge may change, if that is the case, and the amount to which the charge will change, if known; (d) the length of the automatic renewal term or that the service is continuous, unless the length of the term is chosen by the consumer; and (e) the minimum purchase obligation, if any. (§ 17601(b).)

b. Charge the consumer's credit or debit card or the consumer's account with a third party for an automatic renewal or continuous service without first obtaining the consumer's affirmative consent to the agreement containing the automatic renewal offer terms or continuous service offer terms. (§ 17602(a)(2).)

c. Fail to provide an acknowledgment that includes the automatic renewal or continuous service offer terms, cancellation policy, and information regarding how to cancel in a manner that is capable of being retained by the consumer. (§ 17602(a)(3).) Section 17602(b) requires that the acknowledgment specified in section 17602(a)(3) include a toll-free telephone number, electronic mail address, or another "cost-effective, timely, and easy-to-use" mechanism for cancellation.

9. As a species of false advertising, violation of the ARL gives rise to equitable relief, including restitution, pursuant to the general remedies provision of the False Advertising Law, section 17535. The remedies of the FAL are cumulative to each other and to the remedies available under all other laws of California. (§ 17534.5.)

10. If a business sends any goods, wares, merchandise, or products to a consumer under an automatic renewal or continuous service agreement without first obtaining the consumer's affirmative consent to an agreement containing clear and conspicuous disclosure of all automatic renewal offer terms, such material is an "unconditional gift" to the consumer. (§ 17603.)

Appendix D

Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.)

11. The Unfair Competition Law ("UCL") defines unfair competition as including any unlawful, unfair, or fraudulent business act or practice; any unfair, deceptive, untrue, or misleading advertising; and any act of false advertising. (§ 17200.)

12. Violation of the UCL gives rise to equitable relief, including restitution. (§ 17203.) The remedies of the UCL are cumulative to each other and to the remedies available under all other laws of California. (§ 17205.)

BACKGROUND

13. Through the website www.bradfordexchange.com (the "Bradford website"), as well as other websites operated by Bradford (including but not limited to www.hamiltoncollection.com), Bradford markets and sells a range of items that Bradford refers to as "collectibles," including items such as coins, jewelry, sports memorabilia, holiday decorations, and others. When multiple items share a common theme, Bradford refers to the group of items as a "collection."

14. The Bradford website frequently displays multiple "collection" items together, along with a displayed price. Although the Bradford website does not make it clear, the displayed price is the dollar amount Bradford charges for each single item, not for the collection. When a consumer responds by submitting an order, Bradford ships a single item to the consumer and charges the displayed

price to the consumer's credit card, debit card, or third party payment account; and, in addition, Bradford enrolls the consumer in an ongoing "subscription" program under which Bradford subsequently ships additional items on a periodic basis and posts additional charges to the consumer's credit card, debit card, or third party payment account. In this way, many consumers make what they believe to be a one-time purchase, yet later discover subsequent charges on their credit card, debit card, or other payment account for a purported "subscription" that was never authorized.

15. In recent years, many consumers have reported being charged by Bradford for a purported collection subscription that was never authorized. Indeed, there are hundreds of complaints about Bradford posted on the Better Business Bureau ("BBB") website (https://www.bbb.org/us/il/niles/profile/collectibles/the-bradford-exchange-0694-1000008317 [as of August 28, 2023]), many of which involve customers who report being charged for a collection subscription that they did not authorize, after making what they thought was a one-time purchase. The following consumer complaints, set forth verbatim from the BBB website, are illustrative:

> **Peter v. (Feb. 6, 2023).** When buying one collection item, the Bradford Exchange signs you up for a recurring purchase without telling you. Not clear or even mentioned in the order webpage nor the confirmation emails inform you that you are signing up for a recurring purchase. I have 6 charges on my account

> now adding up to $1000! I am now in a holding pattern until the last items arrive so that I can return them. What a terrible business model!

A true and correct printout of that complaint is attached as Exhibit 3.

> **Elene C. (Jan. 4, 2023).** Disingenuous is the adjective which jumps to mind: you order ONE item from them, and then they keep on sending you (or your chosen recipient) unauthorized items and charging you on a monthly basis. When you query this, they tell you it's a subscription service because the item you ordered happens to be part of a collection and they assume you want the whole collection mailed to you for the next 24 months?! But their original confirmation email for the order you placed for the single item does not advise about this "subscription service". Scam is what I would call it. Ridiculous way to try to make money. Appalling and distasteful practice.

A true and correct printout of that complaint is attached as Exhibit 4.

> **Alex Z. (Nov. 29, 2022).** Do not order. They are thieves. They will keep charging your credit card for things you did not order. Good luck calling them they will just argue and not help you. This place needs a nice class action law suit.

A true and correct printout of that complaint is attached as Exhibit 5.

> **Jeffrey A. (Mar. 30, 2022).** Purchased a few Christmas gifts and paid by credit card. Some months later, my credit card was billed for two items that then showed up. I called Bradford on 3/22 to ask why I was being sent this merchandise, and the *** said I signed up for a series. I don't believe I did so. If they are right, they are misleading at the very least. I told the *** that I wanted no more chargess and no more gifts sent. She agreed. I didn't want to go through the hassle of returning the stuff, so I at the charge. Now, on 3/30, another charge comes through. I called, and *** was not helpful. Beware in dealing with this company. I wish I had never done business with them.

A true and correct printout of that complaint is attached as Exhibit 6.

> **JT. (Dec. 25, 2021).** Purchased a Christmas gift in early December for about $60 + tax/ shipping. Arrived in reasonable time. I paid in full immediately.Three weeks later, I am being charged another $38.33 for something. I don't know why. I didn't sign up for any subscription, I just checked to make sure I didn't miss anything, and I didn't see any subscription boxes anywhere. So I figured I was just buying a this single gift. So why did

> I get charged for something???Now that I'm looking at others' reviews, there is some VERY, VERY shady wording in their description. You are AUTOMATICALLY entered into a subscription service, and they don't outright spell that out for you. You don't have a choice. You have to opt out somehow (other reviews say they are extremely difficult to contact). Very poor design. Very awful company and business practices. The default should NOT be a subscription service. It should be a box or something you have to select. Another thing is I didn't even get an email or ANYTHING telling me this next item is being charged or coming! I only know because I just happened to check my credit card statement! (I would have known when the item arrived.) But I suppose if your intent is to bilk unwitting customers out of their money and hope they don't catch on, then they are probably doing pretty well for themselves.How is this company not been fined into oblivion with their wholly unscrupulous business practices?

A true and correct printout of that complaint is attached as Exhibit 7.

> **Linda B. (Dec. 21, 2021).** I dont know how this company has not been sued for violations of UDAAP laws. I saw an add for a set of FOUR (4) elephant figurines on ******** decided to buy them. I received and paid for the 4 figurines I

agreed to purchase. Then, out of the blue, with no contact from the merchant whatsoever, I received a FIFTH figurine and the $50+ dollars was automatically billed to my credit card that they already had on file. I contacted the company and they advised that *sometimes*, if a collection is popular, they will add additional figurines and send them to the people who had signed up to purchase the collection. This is predatory and abusive behavior! I advised them that I wanted NO MORE ITEMS from their company and revoked their authority to charge my credit/debit card. Later, I received an invoice for a SIXTH figurine, that I never even received! Since they could no longer legally charge my card, they sent an invoice, telling me I owed them for the figurine they claimed they already sent. I finally just spoke to their customer service and had my account cleared of the charge, since I never received the item. But when I asked them to make sure I received no further items or charges, the response was that I wouldnt be receiving anything else BECAUSE THE SIXTH FIGURINE WAS THE LAST IN THE COLLECTION. Not because I asked them to stop. No. The only reason they werent queueing me up for more automatic purchases was because the collection was complete. Its infuriating and absurd. And then they tried to schmooze me into buying the sixth figurine because having the complete collection makes them more valuable. *eyeroll*

A true and correct printout of that complaint is attached as Exhibit 8.

> **Problems with Product/Service. (July 29, 2021).** I ordered a halloween xmas tree in October 2020. I never received the item and was billed anyway. When I notified Bradford Exchange via phone that I did not receive the item I ordered they sent me another item. I returned it to sender and asked Bradford to refund my money. Now every month they **** be and send me items I do not want. I had to finally change my credit card number to stop the billing. I never signed up for a subscription and I never ordered anything other than the tree that I never received. My attempts to correct the situation with Bradford are going unaddressed by them. I want all the money they billed me to be returned. I want the collection letters from ********** to stop. I feel I am being harassed. I'm a doctor and do not appreciate receiving collection notices nor do I understand Bradford's tactics for sending unordered items and billing and then totally disregarding my attempts to cease and desist.

A true and correct printout of that complaint is attached as Exhibit 9.

> **Billing/Collection Issues. (Mar. 2, 2021).** I believe this company to be acting as a fraudulent company. My credit card has been charged over

> $3,000 for items that I continuously return and cancel. I have tried calling, filling out return forms and sent emails in writing that I wish to cancel any further deliveries and stop sending me merchandise. Their Customer Service wont assist over the phone and tell me I need to email and fill out cancellation on return forms. I have done this several times EACH time I get a new delivery and the problem persists. It was meant to be a ONE TIME gift for my daughters and over a year later I am still receiving items and being charged. Going through the hassle of having to cancel my credit shouldn't be my issue for their poor customer service, dysfunctional operations and unethical practices! I will NEVER order anything from this company again and STILL waiting for a REFUND for the 13 items I returned (unopened) and for items to stop arriving at my house!

A true and correct printout of that complaint is attached as Exhibit 10.

> **Ben W. (Jan. 25, 2021).** Scam, these guys sign you up for reoccurring "subscription plans". They do have the text on the page for it, but its designed to make you not pay attention to it. During the entire checkout process(once the item is in your cart) no mention of reoccurring payments, schedules, saving your credit card, or that they will ship products to you without payment and bill you for it. This is a terrible

> business practice designed to make people pay 2-3 times more than they wanted to products they didn't actually want. Then the hassle of the process makes people not fight with them about it.

A true and correct printout of that complaint is attached as Exhibit 11.

> **Advertising/Sales Issues. (Jan. 15, 2021).** Bradford Exchange engaged in the duplicitous practice of signing me up for a subscription without my permission. I purchased one product as a gift and, only by checking my credit card statement, found that the company charged me a second time two weeks later. There was no indication that I had signed up for a subscription and no email confirmation that I would be charged for more than the single product purchase. To be clear, the only email confirmation that I received from the company for for a single purchased item and, at no time did the company indicate that I signed up for a subscription. I called their customer service to complain and was provided with two types of misinformation. Firstly, the representative told me that I did sign up for a subscription. After my complaint, the representative said that he would discontinue my subscription (that I had never agreed to!). Secondly, the representative told me that the second item was being shipped to my house and that I could return the item

> for a full refund. This was also false. The item was shipped to the address to which I sent the initial gift. The item was opened and I was thanked. Now, I cannot return the item and I am out $42 for something that I would never have purchased twice. The Bradford Exchange company should be punished for its illegal business practice.

A true and correct printout of that complaint is attached as Exhibit 12.

> **Erin C. (Jan. 14, 2021).** I ordered ornaments for Christmas. I was charged again around 12/21/2020 for a 'new order'. I called to place a complaint. They told me I signed-up for a monthly subscription; must've been small writing, tricky way to subscribe. They told me it's too late to cancel the last order, I can send it back, refuse it, etc but she has cancelled the subscription going forward. So, I just paid for what they sent and figured I would not get another charge. Here we are 1/14/2021 and there's ANOTHER Charge on my account. Do not trust this company.

A true and correct printout of that complaint is attached as Exhibit 13.

> **Julie H. (Jan. 5, 2021).** I ordered two collector ornaments on October 19 from the The Bradford Exchange, Ltd. https://www.bradfordexchange.

com/ and I received them. The issue was afterwards. The Bradford Exchange signed me up without my knowledge for a subscription of regular shipments of the same ornaments I received 3 more shipments (Nov 13, Dec. 10, and Dec. 11, 2020) of which they charged me $38.54 each time. After I finally reached their customer service on Dec. 21 by phone (the rep was located in Jamaica), the rep said she would cancel the subscription and refund me the three orders they sent without my knowledge. I returned all three on Dec. 21 and I have only received a refund for one of them. Plus they never stopped the subscription and I just got charged for a 4th shipment (Jan 4, 2021). So they still owe me $115.62. I called the customer service back again on Jan 5, 2020 and the rep said he can't refund me the 4th one and would "try" to refund the other two that I had already returned on December 21. He said he would also "try" to stop the subscription. I asked to speak to a supervisor and twice he put me on hold, both times for over 30 minutes and I still never got the supervisor. I also asked on both my calls for customer service to send me emails on all of their correspondence, to confirm cancelation of the false subscription and for any refunds. I have never received even one email from them directly, even for my initial legitimate order. The only emails I got were from PayPal which is how I paid for them. If I had not gotten notices from PayPal of my charges, I would not have

> been alerted to their scam charges! They still owe me for three shipments I never ordered (totaling $115.62) and I still have not gotten a confirmation that they have canceled the false subscription. I am not able to reach the Brradford Exchange management and the reps on the phone said they couldn't refund me even though I returned the additional ornaments that I never ordered. Will they ever refund me and will they ever cancel me out of this ongoing scam? Help!

A true and correct printout of that complaint is attached as Exhibit 14.

> **Ricky C. (Nov. 11, 2020).** If I could give negative stars I would. "Fraudulent, Scammers, Misleading in their advertising", as highlighted in the reviews are all true. I'm embarrassed I fell for their deceptive marketing. In Feb 2020, I purchased 2 Rudolph Christmas trees @ $59.99 ea plus shipping. Throughout the summer, they continued to charge my credit card and send additional items (I never ordered) . At some point (Aug/Sep) they changed tactics and sent me a bill for ~$139.00 for additional stuff. So here we are close to $500.00 for 2 $59.99 items. Now they are turning me over to a collection agency for not paying the -$139.00 for stuff I didn't order. So here I am now wondering how much I will be charged for stuff I didn't order and when it will STOP. I will send the ~$139.00

> and hope this is my last interaction with them. I wish I would have looked them up on the BBB before I made my purchase. I recommend the BBB reassess this company's A+ rating. My experience with them has not been A+. Rest assured, I will never purchase anything from them and I will warn my friends and family to avoid doing any business with The Bradford Exchange.

A true and correct printout of that complaint is attached as Exhibit 15.

> **Thomas P. (Nov. 8, 2020).** Misleading, fraudulent, and unauthorized reoccurring charges: I purchased what was described as a complete train set from the Bradford Exchange website after seeing a cool ad. Well, it turned out to be just one part of a series of 20 parts of a train collectible, which I ultimately found out by having to call their customer service to see what the heck was going on when I just received on tiny part of the train in the mail even though I was charged what I thought was a fair price for an entire set. I then called to cancel all future orders and close my account. The following next two months I was charged $20, each on the 3rd of the month, and received nothing (even though I called to cancel!). So I called to get a refund, and to cancel my account and all reoccurring charges...again. I also requested a confirmation of cancelation and

> wasn't given one. The customer service agent was nice, but seemed to have no idea what was going on or what those charges were for and wouldn't refund me. So I filed a claim with my credit card company for fraudulent charges and they took care of it and are sending me a new card. My entire experience with the Bradford Exchange has been ridiculous. I feel bad for other people, like the elderly, who are likely getting taken advantage with these illegal acts of unauthorized reoccurring charges that are likely the only thing keening this corrupt business afloat. This is wrong. The Bradford Exchange needs to be investigated and shut down

A true and correct printout of that complaint is attached as Exhibit 16.

> **Libby S. (Oct. 15, 2020).** I ordered what I thought was a single item from The Bradford Exchange in May for my mom for Mother's Day. It did not ship til a couple of months later - ok, no big deal. Mom loved it. A month after the first shipped, SURPRISE! I get a notification from my credit card company that another charge has been made. I went back to website and could find NO mention of my order being part of a series. None. Ok, I accept the 2nd shipment and then contact the company by email asking to cancel the order and send no more shipments. Sept brings another charge.

> I email them on Sept 18th and have a reply from a representative confirming my order has been cancelled. Then today (Oct 15th) I get yet another notification from my credit card company that ANOTHER charge has been made by The Bradford Exchange. At this point I am angry. I email the company again but then decide to work with my credit card company and dispute the charges since this company can't seem to figure out how not to keep taking advantage of their customers.

A true and correct printout of that complaint is attached as Exhibit 17.

> **Marylou P. (Oct. 10, 2020).** I bought one piece from an ad in the paper. I paid using credit card. One month later I got a charge for half of total. I wrote them with documents saying I paid for the piece in full. They wrote back and said it was a series of 10 pieces. There is not one place in the ad for the piece that says it is a series, and at a total of $74 each there is no way I signed up for 9 more pieces. I contacted them 4 times. From August 16th to September 28th when I received a package from them. I returned it unopened refused. I had received an email September 26, 2020 saying all future editions are cancelled. I never ordered any just one period. Today October 10, 2020 I get a letter asking me to give them an address to send the piece to. I have written them 5 times, returned

> piece unopened, talked on the phone to a Malik who informed me the series were cancelled and two months later I am still hearing from them. I will never deal with this company again and I am returning the piece I originally bought I hate looking at it.

A true and correct printout of that complaint is attached as Exhibit 18.

> **Angie L. (Sept. 13, 2020).** I ordered a dream catcher in April. I did not get charged or receive the item until a few months later. I was not notified there would be future charges and items sent as it was part of some collection and they automatically enroll you in a subscription plan. The item I ordered was overpriced as it was. I did not consent to further items. They just recently again without my consent or give notice, pull $86 from my bank account automatically for an item I did not ask for. The item shipped without a word from the company warning me I was about to be charged and had unwittingly enrolled in a subscription plan. I feel this company preys on the elderly because they might not notice charges on their account. I wish I would have read the reviews before I ordered. I am now $90 short in my bank account and I do not have a disposable income. I do not make a lot of money and I'm not sure when I will get it back. I not only filed fraud charges with my bank I told them I wanted to press

> charges. The company is utterly evil. Do not buy anything from them they are overpriced and items are not that good quality for the price. Not only that once you buy an item they will have your card info so they can charge whatever you whenever.

A true and correct printout of that complaint is attached as Exhibit 19.

> **Ray W. (July 30, 2020).** Do not do bushiness with this company. They sneakily tricked me into a subscription without my knowledge. Trying to cancel the subscription is a nightmare! I tried to call and after waiting on hold for a long time I finally got through to a person who barely spoke English. Then, before the call was complete or my problem resolved we were disconnected. I have tried email multiple times. I received only one response saying that if I don't want the subscription item to return it. I still have not been able to cancel my unwanted subscription.

A true and correct printout of that complaint is attached as Exhibit 20.

> **Kerri B. (July 17, 2020).** I ordered 3 lanterns for gifts from Bradford Exchange back in November of 2019. I received them and was happy with them. However, in December 2019 I received 3 more lanterns, none of which I ordered. My credit card on file was charged

totaling almost $300 for the 3 extra lanterns. I called to tell them this and had to dispute it with my credit card company who thankfully were wonderful about. Bradford Exchange claimed I was enrolled in this monthly program where every month I received 3 new lanterns. I did not ever agree to this. So the customer service representative assured me I was off the list, and that I wouldn't receive anything again. Then i received a 4th random lantern and was charged again. So I called to dispute this and was unhappy why I received and was charged for yet another lantern that I did not authorize. I was then again assured it would not happen again, and that once I sent back the lantern they would remove the charge. So I mailed and sent back this 4th lantern. Now I have just received a past due notice dated 6/30/20, and the charge has not been removed! I asked specifically when I was on the phone if this would be reported as a delinquency because of this outstanding bill. I was told it would not be with the situation, and I asked the customer service representative to add that to the notes so this would not happen. So apparently now I will have to call and dispute this yet again when all 4 extra lanterns I received were sent back to them and not even opened. I refuse to pay for something I never authorized. This is unacceptable that it keeps happening, and I keep being charged for something I never ordered. They assure you everything is taken

> care of when clearly it is not. Ironically the people who received the lanterns liked them, but I would never buy from this company again and would caution customers against it.

A true and correct printout of that complaint is attached as Exhibit 21.

> **Billing/Collection Issues (June 18, 2020).** I placed an order for 2 items back on 6/1/20. I was charged once the items were (finally) shipped out. I was correctly charged for both items and assumed my experience was done. I was just charged another 24.41 today, 6/18/20. Not idea why. I checked my PayPal and it states it's an "automatic payment". I NEVER approved ANY automatic payment. I simply ordered 2 items and paid for them. Their website it totally deceiving. When it says "39.99" each issue I assume Each issue is for EACH ISSUE I ORDER...not the multiple "issues" you list in fine print!! The photos show ONE item! The item I was ordering. I have no clue whether or not I will be receiving anything further but I did not intend to order or receive anything more than what I placed my order for: 2 separate coins. Nothing more. This is a great scam on behalf of this company. I better get my money back for this!!

A true and correct printout of that complaint is attached as Exhibit 22.

Appendix D

> **Billing/Collection Issues (June 16, 2020).** This is my 2nd compliant I couldn't find the 1st one. I purchased an item using an account from Bradford Exchange. I received the item but was not informed at purchase it was a subscription. I found this out when my account was charged for the next installment. I immediately went to the Bradford site to cancel the order and get a refund since the 1st item was not what I expected and I had never intended on starting a subscription. The site showed no order information only that there was a subscription which I couldn't cancel since the site does not provide me with that option. I also couldn't cancel the order since the site shows no order. I tried contacting the vendor 3 times via their form mail without response. I tried calling twice, I time I was on hold for 35 minutes with no response, the 2nd time 10 minutes no response. After my 1st complaint I suddenly received 2 emails stating they cancelled the subscription and that I just needed to return the item. I replied back asking them for a tracking number since there was no order without getting a reply. I have no item to return, no order to cancel, no refund, and no way to get the company to respond other than lodging a complaint here.

A true and correct printout of that complaint is attached as Exhibit 23.

> **LCCVA49. (May 5, 2020).** Deceptive marketing and billing practices. Poor customer service. It took 20 min for customer service to answer the phone. There is no way to cancel your SUBSCRIPTION online (that basically unbeknownst to you they enrolled you in). You have to call in and wait forever. In this day and age there should be a way to cancel you order and subscription online without having to wait forever for someone to answer. Your account page mentions nothing about being enrolled a subscription plan.

A true and correct printout of that complaint is attached as Exhibit 24.

> **John B. (Mar. 21, 2020).** I would score them 0 stars if available. I ordered a Christmas ornament and they just kept sending me additional ornaments I did not order. I paid for the last 2 through collection agencies. It took long time for me to talk to human being at Bradford exchange to stop shipments. This is pathetic way to do business, I have never received so many unordered shipments from any business in my life.

A true and correct printout of that complaint is attached as Exhibit 25.

16. The frequency of consumer complaints to BBB about Bradford's subscription practices prompted BBB to

post a "Pattern of Complaint" alert stating that customers alleged that Bradford's advertisements were not "clear and conspicuous that they would be billed separately the same amount for each item in the collection." A true and correct copy of that "Alert" from the BBB website is attached hereto as Exhibit 26.

17. The foregoing BBB complaints aptly characterize what happened to Plaintiff when he made a purchase from Bradford in May 2020, as described below.

PLAINTIFF'S PURCHASE FROM BRADFORD

18. On or about May 6, 2020, using his mobile phone. Plaintiff made an online purchase through the Bradford website for "The Nightmare Before Christmas Musical Glitter Globe Train."

19. Attached hereto as Exhibit 27 are four exemplar screenshots of "The Nightmare Before Christmas Glitter Globe Train" as displayed on the Bradford website during 2022. The four screenshots (designated as Screens 1-4) reflect what would be displayed to a consumer when progressively scrolling from the top of the page to the bottom. On information and belief, other than the price, these screens are the same as or substantially similar to the screens as they appeared on the Bradford website in 2020 when Plaintiff made his purchase. The actual website screens as they existed on May 6, 2020, are in Bradford's exclusive possession and will be sought as part of discovery in this action.

20. Attached hereto as Exhibit 28 is an exemplar screenshot as displayed on the Bradford website during 2022, which reflects what would be displayed to a consumer after selecting "The Nightmare Before Christmas Glitter Globe Collection" for purchase. On information and belief, other than the price, this screen is the same as or substantially similar to the screen as it appeared on the Bradford website in 2020 when Plaintiff made his purchase. The actual website screen as it existed on May 6, 2020, is in Bradford's exclusive possession and will be sought as part of discovery in this action.

21. After selecting the "Checkout" button, the consumer is presented with a sequence of screens to insert billing and shipping information, followed by a screen for entry of payment information. Attached hereto as Exhibit 29 is a screenshot of the payment screen as displayed on the Bradford website during 2022. On information and belief, this screen is the same as or 2 substantially similar to the payment screen as it appeared on the Bradford website in 2020 when 3 Plaintiff made his purchase. The actual website payment screen as it existed on May 6, 2020, is in Bradford's exclusive possession and will be sought as part of discovery in this action.

22. On May 6, 2020, Plaintiff paid for the purchase in the amount of $40.49, using his PayPal account. Plaintiff believed this was a one-time transaction and that this payment was the end of his dealings with Bradford. After the online purchase process was complete. Plaintiff received an email from Bradford with the subject line "Thank You for Your Purchase." A true and correct copy of that email is attached hereto as Exhibit 30.

23. When Plaintiff made the purchase on May 6, 2020, Plaintiff was not aware that Bradford would contend that he had given consent to be enrolled in a subscription for which Bradford would post subsequent charges to Plaintiff's PayPal account. In the months following the May 6, 2022 transaction, Bradford made a series of unauthorized charges to Plaintiff's PayPal account, as follows:

Date	Amount
May 27, 2020	$20.24
June 24, 2020	$20.25
June 26, 2020	$20.24
July 24, 2020	$20.25
August 4, 2020	$20.38
August 25, 2020	$20.39
September 2, 2020	$20.38
September 30, 2020	$20.39
November 23, 2020	$20.38
December 18, 2020	$20.39
September 9, 2021	$20.38
Total	$223.67

24. If Plaintiff had known that Bradford was going to enroll him in an automatic renewal or continuous service subscription that would result in subsequent charges, Plaintiff would not have purchased anything from Bradford.

Appendix D

CLASS ACTION ALLEGATIONS

25. Plaintiff brings this lawsuit as a class action under Code of Civil Procedure § 382 on behalf of the following Class: "All California residents who were both (1) enrolled in a Bradford collection subscription on or after December 1, 2010 and (2) charged for one or more items as part of such subscription within the applicable statute of limitations. Excluded from the Class are all employees of Defendants, all employees of Plaintiff's counsel, and the judicial officers to whom this case is assigned."

26. Ascertainability. The members of the Class may be ascertained by reviewing records in the possession of Defendants and/or third parties, including without limitation Defendants' customer, order, and billing records.

27. Common Questions of Fact or Law. There are questions of fact or law that are common to the members of the Class, which predominate over individual issues. Common questions regarding the Class include, without limitation: (1) whether Defendants present all statutorily-mandated automatic renewal or continuous service offer terms, within the meaning of § 17601(b); (2) whether Defendants present automatic renewal or continuous service offer terms in a manner that is "clear and conspicuous," within the meaning of § 17601(c); (3) whether Defendants obtain consumers' affirmative consent to an agreement containing clear and conspicuous disclosure of automatic renewal or continuous service offer terms before charging a credit card, debit card, or a third party payment account; (4) whether Defendants provide consumers with an acknowledgment that includes clear

and conspicuous disclosure of all statutorily-mandated automatic renewal or continuous service offer terms, the cancellation policy, and information regarding how to cancel; (5) Defendants' record-keeping practices; and (6) the appropriate remedies for Defendants' conduct. 28. Numerosity. The Class is so numerous that joinder of all Class members would be impracticable. Plaintiff is informed and believes and thereon alleges that the Class consists of at least 100 members.

29. Typicality and Adequacy. Plaintiff's claims are typical of the claims of the Class members. Plaintiff alleges that Defendants enrolled Plaintiff and Class members in automatic renewal subscriptions without disclosing all terms required by law, and without presenting such terms in the requisite "clear and conspicuous" manner; charged Class members' credit cards, debit cards, or third party payment accounts without first obtaining Class members' affirmative consent to an agreement containing clear and conspicuous disclosure of automatic renewal offer terms; and failed to provide the requisite acknowledgment. Plaintiff has no interests that are adverse to those of the other Class members. Plaintiff will fairly and adequately protect the interests of the Class members.

30. Superiority. A class action is superior to other methods for resolving this controversy. Because the amount of restitution to which the Class members may be entitled is low in comparison to the expense and burden of individual litigation, it would be impracticable for Class members to redress the wrongs done to them without a class action forum. Furthermore, on information and belief, many Class members do not know that their legal

rights haye been violated. Class certification would also conserve judicial resources and avoid the possibility of inconsistent judgments.

FIRST CAUSE OF ACTION

False Advertising (Based on Violation of the California Automatic Renewal Law)

(Bus. & Prof. Code, §§ 17535 & 17600 et seq.)

31. Plaintiff incorporates the previous allegations as though set forth herein.

32. During the applicable statute of limitations period. Defendants enrolled consumers, including Plaintiff and Class members, in automatic renewal and/or continuous service subscriptions and have (a) failed to present the automatic renewal or continuous service offer terms in a clear and conspicuous manner before the subscription agreement is fulfilled and in visual proximity to the request for consent to the offer, in violation of § 17602(a)(1); (b) charged the consumer's credit or debit card or the consumer's third-party payment account for an automatic renewal or continuous service without first obtaining the consumer's affirmative consent to an agreement containing clear and conspicuous disclosure of all automatic renewal or continuous service offer terms, in violation of § 17602(a)(2); and (c) failed to provide an acknowledgment that includes clear and conspicuous disclosure of automatic renewal or continuous service offer terms, the cancellation policy, and information regarding how to cancel, in violation of § 17602(a)(3) and § 17602(b).

33. Plaintiff has suffered injury in fact and lost money as a result of Defendants' violations alleged herein.

34. Pursuant to § 17535, Plaintiff and Class members are entitled to restitution of all amounts that Defendants charged for subscriptions during the four years preceding the filing of this Complaint and continuing until Defendants' statutory violations cease.

SECOND CAUSE OF ACTION

Unfair Competition

(Bus. & Prof. Code, § 17200 et seq.)

35. Plaintiff incorporates the previous allegations as though fully set forth herein.

36. The Unfair Competition Law defines unfair competition as including any unlawful, unfair, or fraudulent business act or practice; any unfair, deceptive, untrue, or misleading advertising; and any act prohibited by Chapter 1 of Part 3 of Division 7 of the Business and Professions Code. (§ 17200.)

37. During the applicable statute of limitations, Defendants committed acts of unfair competition by, inter alia and without limitation: (a) failing to present automatic renewal and/or continuous service offer terms in a clear and conspicuous manner before a subscription is fulfilled, in violation of § 17602(a)(1); (b) charging the consumer's credit card, debit card, or third party payment account

for an automatic renewal or continuous service without first obtaining the consumer's affirmative consent to an agreement containing clear and conspicuous disclosure of automatic renewal or continuous service offer terms, in violation of § 17602(a)(2); and (c) failing to provide an acknowledgment that includes clear and conspicuous disclosure of automatic renewal or continuous service offer terms, cancellation policy, and information regarding how to cancel, in violation of § 17602(a)(3). Plaintiff reserves the right to allege other business practices that constitute unfair competition.

38. Defendants' acts and omissions as alleged herein violate obligations imposed by statute, are substantially injurious to consumers, offend public policy, and are immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits attributable to such conduct.

39. There were reasonably available alternatives to further Defendants' legitimate business interests, other than the conduct described herein.

40. Plaintiff has suffered injury in fact and lost money as a result of Defendants' acts of unfair competition.

41. Pursuant to § 17203, Plaintiff and the Class members are entitled to restitution of all amounts that Defendants charged for subscriptions during the four years preceding the filing of this Complaint and continuing until Defendants' statutory violations cease.

Appendix D

PRAYER

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

On the First Cause of Action:

1. For restitution;

On the Second Cause of Action:

2. For restitution;

On All Causes of Action:

3. For reasonable attorneys' fees, pursuant to Code of Civil Procedure § 1021.5;

4. For costs of suit;

5. For pre-judgment interest; and

6. For such other relief as the Court may deem just and proper.

Dated: August 28, 2023 DOSTART HANNINK LLP

/s/ Zachariah Paul Dostart
ZACH P. DOSTART
Attorneys for Plaintiff