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18 **UNITED STATES DISTRICT COURT**

19 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

20 DEBORAH WESCH, DARIUS CLARK, JOHN  
21 H. COTTRELL, WILLIAM B. COTTRELL,  
22 GREG HERTIK, DAVID LUMB, KYLA  
23 ROLLIER and JENNY SZETO, individually and  
24 on behalf of all others similarly situated,

25 Plaintiffs,

26 v.

27 YODLEE, INC.,

28 Defendant.

Civil Case No.: 3:20-cv-05991-SK

**DEFENDANT YODLEE, INC.'S  
MOTION FOR RECONSIDERATION**

Judge: Hon. Sallie Kim

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that Defendant Yodlee, Inc. (“Yodlee”), hereby moves pursuant to  
3 Federal Rule of Civil Procedure 54(b) for an order reconsidering the Court’s December 13, 2022 Order,  
4 ECF 266.

5 Yodlee’s Motion is based on this Notice of Motion and Motion, the Memorandum of Points and  
6 Authorities, the pleadings and papers on file in this action, and any other matter that the Court may  
7 properly consider.

8 **STATEMENT OF ISSUES TO BE DECIDED**

9 1. Whether the Court made a clear error of law in denying summary judgment for Yodlee  
10 on Plaintiffs’ fraud claim by holding that Plaintiffs could show “unjust enrichment” as a proxy for  
11 “damages for fraud.” ECF 266 at 24.

**MEMORANDUM OF POINTS AND AUTHORITIES**

1  
2 With respect to its order denying in part summary judgment to Yodlee, ECF 266, the Court  
3 should reconsider its fraud damages analysis, which is contrary to governing California law. Although  
4 holding that Plaintiffs failed to meet their burden of proof to withstand summary judgment on the  
5 element of damages as to the fraud claim, the Court nonetheless stated that Plaintiffs might still be able  
6 to show, as their “damages for fraud,” a right to recover for “unjust enrichment.” *Id.* at 24. This was  
7 legal error, because under California law “damages” are distinct from, and not interchangeable with, the  
8 restitution remedy available on an unjust enrichment claim. Plaintiffs have pled fraud and unjust  
9 enrichment as different claims, as they must, because the former sounds in law while the latter sounds in  
10 equity. *See McKesson HBOC, Inc. v. N.Y. State Common Ret. Fund, Inc.*, 339 F.3d 1087, 1095 (9th Cir.  
11 2003) (“unjust enrichment is grounded in equity”). Plaintiffs can seek restitution, not damages, for  
12 unjust enrichment. Plaintiffs can seek damages, not restitution, for fraud. But any potential for recovery  
13 for unjust enrichment cannot, as a matter of law, also substitute for Plaintiffs’ failure to present evidence  
14 of damages on their separate claim of fraud. For this reason, the Court should grant reconsideration and  
15 dismiss Plaintiffs’ fraud claim in its entirety.

**I. STANDARD OF REVIEW**

16  
17 Where a court’s ruling has not resulted in a final judgment or order, reconsideration of the ruling  
18 may be sought under Rule 54(b), which provides that “any order” which does not terminate the action is  
19 subject to revision “at any time” before the entry of judgment. Fed. R. Civ. P. 54(b). “Reconsideration  
20 is appropriate if the district court (1) is presented with newly discovered evidence, (2) *committed clear*  
21 *error or the initial decision was manifestly unjust*, or (3) if there is an intervening change in controlling  
22 law.” *School Dist. No. 11 v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993) (emphasis added). As  
23 relevant here, reconsideration is appropriate where “the district court committed manifest legal error.”  
24 *Feliz ex rel. Estate of Clevenger v. Cnty. of Orange*, 552 F. App’x 652, 653 (9th Cir. 2014).

1 **II. ARGUMENT**

2 **A. The Court Should Reconsider Its Ruling That Plaintiffs Can Recover for Unjust**  
3 **Enrichment on Their Fraud Claim, Which Is Contrary to State Law.**

4 In its early summary judgment motion, Yodlee moved for judgment on Plaintiffs' fraud claim on  
5 several grounds, including that Plaintiffs could not establish any cognizable damages for fraud, an  
6 essential element of the claim. *See* ECF 107-4 at 10; *see also* ECF 189-3 at 13. In its December 13,  
7 2022 Order, the Court found that "Plaintiffs provide no evidence to support their allegations" of  
8 damages, and specifically rejected the grounds Plaintiffs had proffered to the Court. ECF 266 at 24.  
9 The Court further stated that "Plaintiffs cannot meet their burden to withstand summary judgment on  
10 this issue." *Id.*

11 Upon finding that Plaintiffs had failed to carry their burden of showing that they suffered  
12 damages, the Court dismissed the fraud claim—except apparently for a portion that the Court indicated  
13 could be pursued through Plaintiffs' separate unjust enrichment claim. *See* ECF 266 at 24 ("Plaintiffs  
14 cannot show damages for fraud, other than unjust enrichment, discussed below in Section C."). The  
15 Court's conclusion that the fraud claim survives exclusively (and in part) under an unjust enrichment  
16 theory is a mistake of law and should be reconsidered, because unjust enrichment constitutes equitable  
17 relief and cannot serve as a substitute for proof of damages on Plaintiffs' legal claim of fraud.

18 The Court's damages analysis appropriately focused on Plaintiffs' compensatory theories of  
19 damage—that they purportedly lost indemnity rights, that they purportedly lost the ability to monetize  
20 their own data, and that they purportedly suffered an increased risk of identity theft and fraud. *Id.* The  
21 Court found that Plaintiffs failed to proffer cognizable *evidence* in support of their allegation of  
22 damages. *Id.* Plaintiffs' failure to come forward with proof on this necessary element of their fraud  
23 claim should have been decisive. *See Andrew v. Bank of Am., NA*, 2016 WL 69914, at \*5 (N.D. Cal.  
24 Jan. 6, 2016) ("[T]he plaintiff 'must suffer actual monetary loss to recover on a fraud claim . . . .'");  
25 *Hynix Semiconductor Inc. v. Rambus, Inc.*, 527 F. Supp. 2d 1084, 1100 (N.D. Cal. 2007) ("[D]amages  
26 are essential to a claim for fraud[.]"); *Churchill v. Winter Chevrolet*, 2005 WL 8162543, at \*16 (N.D.  
27 Cal. June 9, 2005) ("Plaintiff has not shown a genuine issue of material fact on the question of whether  
28 he suffered out-of-pocket losses as a result of Defendants' alleged fraud. Accordingly, Plaintiff's fraud

1 claim fails.”); *Stone v. Foster*, 106 Cal. App. 3d 334, 345 (1980) (“[T]here was no showing of damage in  
2 any manner. It is manifest that these representations do not support a claim of fraud.”). Accordingly,  
3 the Court’s reasoning that “Plaintiffs cannot meet their burden to withstand summary judgment on this  
4 issue” should have resulted in judgment for Yodlee on Plaintiffs’ fraud claim. ECF 266 at 24. The  
5 Court, however, opined that Plaintiffs could “show damages for fraud” through “unjust enrichment,” and  
6 for that reason denied summary judgment to Yodlee on the fraud claim. *Id.* This was legal error.

7 Under California law, only compensatory damages can support a fraud claim, which sounds in  
8 law. See *IntegrityMessageBoards.com v. Facebook, Inc.*, 2020 WL 6544411, at \*7 (N.D. Cal. Nov. 6,  
9 2020) (“[D]amages for deceit ‘must be measured by the actual losses suffered because of the  
10 misrepresentation. . . .’ ‘[A]ctual damages,’ including in the context of claims for deceit: ‘[a]re those  
11 which compensate someone for the harm from which he or she has proven to currently suffer or from  
12 which the evidence shows he or she is certain to suffer in the future.’”); *Flexible Funding Ltd. v. Hare*,  
13 2019 WL 12872785, at \*15 (N.D. Cal. Oct. 25, 2019) (“[D]amages for fraud . . . are limited to  
14 compensating the plaintiff for its actual consequential harm.”). Restitution, the remedy for unjust  
15 enrichment, is different and distinct, as California courts have repeatedly held. See *DeNike v. Mathew*  
16 *Enter., Inc.*, 76 Cal. App. 5th 371, 379 (Cal. Ct. App. 2022) (“[D]amages and restitution are different  
17 remedies, serving different purposes . . . .”); *Lee v. Luxottica Retail N. Am., Inc.*, 65 Cal. App. 5th 793,  
18 797 (Cal. Ct. App. 2021) (noting that “damages” and “restitution” are separate remedies); see also  
19 *Master Replicas, Inc. v. Levitation Arts, Inc.*, 2009 WL 10670674, at \*3 n.4 (C.D. Cal. May 13, 2009)  
20 (“A claim for unjust enrichment is permitted in cases where the defendant tortfeasor has been benefitted  
21 by her wrong and the plaintiff brings an action for restitution, rather than compensatory damages. Stated  
22 differently, compensatory damages are not a remedy for unjust enrichment.”). Because damages do not  
23 equate to restitution, it is contrary to California law to allow Plaintiffs to “show damages for fraud”  
24 based on a theory of unjust enrichment. *Cf.* ECF 266 at 24.

25 Accordingly, the Court should reconsider its decision that Plaintiffs can “show damages for  
26 fraud” based on a theory of unjust enrichment.

1           **B.     Upon Reconsideration, the Court Should Grant Summary Judgment and Dismiss**  
2           **the Fraud Claim.**

3           Once the Court reconsiders its decision, it should grant summary judgment for Yodlee on  
4 Plaintiffs' fraud claim. As explained, the Court properly found that Plaintiffs could not establish any of  
5 their theories of compensatory damages. ECF 266 at 24. Because Plaintiffs could not establish  
6 damages, they failed to show a required element of fraud, requiring dismissal of this claim. *See Andrew*,  
7 2016 WL 69914, at \*5; *Hynix Semiconductor Inc.*, 527 F. Supp. 2d at 1100; *Churchill*, 2005 WL  
8 8162543, at \*16; *Stone*, 106 Cal. App. 3d at 345. Accordingly, the Court should dismiss the fraud claim  
9 in its entirety.

10          **III.    CONCLUSION**

11           For the foregoing reasons, the Court should grant reconsideration and grant summary judgment  
12 dismissing Plaintiffs' fraud claim in its entirety.

1 DATED: January 6, 2023

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