

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

SANDEE'S CATERING,

Plaintiff,

v.

AGRI STATS, INC. et al.,

Defendants.

No. 20-cv-02295

Hon. Virginia M. Kendall

**MEMORANDUM IN SUPPORT OF**  
**DEFENDANTS' JOINT MOTION FOR JUDGMENT ON THE PLEADINGS**

## **INTRODUCTION**

In its Amended Complaint, Sandee’s reasserts 27 claims for unjust enrichment that remain fatally flawed. Doc. No. 91 (“Am. Compl.”). These claims all continue to suffer from the common defect of not meeting the pleading standard set by [Rule 8 of the Federal Rules of Civil Procedure](#). In addition, 17 of the repled claims fail for state-specific reasons.

Defendants identified the flaws in Sandee’s unjust enrichment claims in their joint Motion to Dismiss Sandee’s initial complaint. Doc. No. 35, 35-1, and 35-2. In its Order on Defendants’ motion, the Court dismissed Sandee’s unjust-enrichment claims because it had not pled sufficient facts to sustain them, and repleading hasn’t helped in that regard. In its Amended Complaint, Sandee’s wrote essentially a few paragraphs of legal conclusions that they cut and paste several times, albeit under the label of a state name. That is not enough to address the Court’s dismissal order nor to provide sufficient factual content to state a claim. Nor did Sandee’s correct the state-specific pleading defects identified in Defendants’ initial motion that doom seventeen of its unjust-enrichment claims. Defendants now bring this motion for judgment on all 27 of the unjust enrichment claims repled in Sandee’s Amended Complaint.<sup>1</sup>

### **I. STANDARD OF REVIEW**

Defendants move for judgment against Sandee’s unjust-enrichment claims pursuant to [Rule 12\(c\) of the Federal Rules of Civil Procedure](#). Such a motion “is governed by the same standards as a motion to dismiss for failure to state a claim under [Rule 12\(b\)\(6\)](#).” *Adams v. City of Indianapolis*, 742 F.3d 720, 727–28 (7th Cir. 2014) (citing *Pisciotta v. Old Nat’l Bancorp*, 499 F.3d 629, 633 (7th Cir. 2007)). Thus, to survive Defendants’ motion, Sandee’s must plead “factual

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<sup>1</sup> In its Amended Complaint, Sandee’s did not pursue and therefore dropped its unjust-enrichment claim under California law which was pled in its original Complaint.

content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 728 (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Sandee’s must plead “sufficient factual matter” that—if “accepted as true”—“state[s] a claim to relief that is plausible on its face.” *Iqbal*, 556 U.S. at 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); see Fed. R. Civ. P. 8. This standard requires “more than a sheer possibility that a defendant has acted unlawfully.” *Iqbal*, 556 U.S. at 678. A complaint that “pleads facts that are ‘merely consistent with’ a defendant’s liability . . . ‘stops short of the line between possibility and plausibility.’” *Id.* (quoting *Twombly*, 550 U.S. at 557). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.*

## II. SANDEE’S UNJUST-ENRICHMENT CLAIMS SHOULD BE DISMISSED BECAUSE ITS AMENDED PLEADING IS NOT RESPONSIVE TO THE COURT’S DISMISSAL ORDER

In its Order, the Court dismissed Sandee’s unjust-enrichment claims for failure to comply with Fed. R. Civ. P. 8. See Doc. No. 88 at 24-25; cf. Doc. No. 35 at 44-52. Specifically, the Court ruled that Sandee’s had “not separated out the claims of the states under which they seek redress,” thus failing to meet Rule 8’s pleading requirements. See Doc. No. 88 at 25. The Court further noted that Sandee’s had not even made “insufficient threadbare allegations” to support its unjust-enrichment claims. *Id.* The Court also noted that Sandee’s failed to account for any consequential differences that may exist among its undifferentiated state-law unjust-enrichment claims, and that the mere assertion that no consequential differences existed was not entitled to deference. See *id.*

Sandee’s Amended Complaint adds, at most, threadbare allegations purporting to state the elements of the unjust enrichment laws of 27 jurisdictions that it seeks to invoke. See Doc. No. 91 at 78-87. This is concededly insufficient under the law cited in the Court’s order, and thus, Sandee’s has not cured its defective pleading as required to comply with Fed. R. Civ. P. 8. See,

e.g., *In re Opana ER Antitrust Litig.*, 162 F. Supp. 3d 704, 726 (N.D. Ill. 2016) (“The bald assertion that the alleged antitrust conduct violates dozens of non-antitrust laws, or the implication that there are no consequential differences between those laws, is not entitled to deference, because ‘the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions.’”). The Defendants are therefore entitled to judgment on Plaintiff’s claims.

In particular, Sandee’s new allegations are simply separated “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,” that “do not suffice” to state a claim. *See* Doc. No. 88 at 24, citing *Toulon v. Cont’l Cas. Co.*, 877 F. 3d 725, 734 (7th Cir. 2017) (quoting *Iqbal*, 556 U.S. at 678). In its Amended Complaint, Sandee’s first repleads the same generalized allegations of unjust enrichment, untethered to any specific jurisdiction, that the Court previously found insufficient under Rule 8 to state a claim. *Compare* Amended Complaint ¶¶ 210 – 225 with Complaint ¶¶ 217 – 232. From there, Sandee’s simply repeats these same generalized allegations, with a state’s label attached to each. The conclusory state-by-state allegations are formulaic and often identical or nearly so, with no specific factual detail of alleged misconduct in each of the states alleged. For example, fifteen of the purported claims follow a pattern formula that tracks the allegations for the first state alphabetically, Arkansas:

Defendants unlawfully overcharged members of Damages Class which made purchases of turkey in Arkansas at prices that were more than they would have been but for Defendants’ actions. Plaintiff and Class Members have conferred an economic benefit upon Defendants in the nature of revenue to which Defendants are not entitled resulting from unlawful overcharges to the economic detriment of Plaintiff and Class Members. Defendants accepted and retain the benefit bestowed upon them by Plaintiff and Class Members. Under the circumstances, it would be inequitable for Defendants to retain such benefits without compensating Plaintiff and Class Members.<sup>2</sup>

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<sup>2</sup> *Compare* Am. Comp. ¶ 226 (Arkansas), with ¶ 228 (D.C.), ¶ 229 (Florida), ¶ 231 (Kansas), ¶ 232 (Maine), ¶ 233 (Michigan), ¶ 234 (Minnesota), ¶ 236 (Missouri), ¶ 244 (Oregon), ¶ 245 (R.I.), ¶ 247 (S.D.), ¶ 249 (Utah), ¶ 250 (Vermont), ¶ 251 (West Virginia), and ¶ 252 (Wisconsin).

Claims under the other states' laws are variations of the same legal conclusions, and none adds any state-specific factual allegations of any Defendant's conduct with particularity.

Plaintiff Sandee's has replied its initial inadequate allegations of unjust enrichment, and has in slightly different formulations repeated those inadequate allegations under the names of the various jurisdictions in which it asserts claims for unjust enrichment, but the amended pleading still lacks the "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Adams*, 742 F.3d at 728 (citations and quotations omitted). Because Sandee's amended pleading still fails to plead the specifics of an unjust enrichment claim under any state's laws, Defendants are entitled to a judgment of dismissal of the unjust enrichment claims.

### **III. SEVENTEEN OF SANDEE'S UNJUST ENRICHMENT CLAIMS REMAIN SUBJECT TO DISMISSAL FOR INDEPENDENT REASONS**

Seventeen of Sandee's replied claims should also be dismissed because Sandee's failed to cure certain state-specific deficiencies identified by Defendants in their initial motion to dismiss.

#### **A. Sandee's Cannot Recover Under the Laws of Two States Because Unjust Enrichment Is Not a Standalone Basis for Recovery (MS & NH)**

Sandee's claims for unjust enrichment under the laws of Mississippi and New Hampshire should be dismissed because these states do not recognize unjust enrichment as a standalone cause of action. See *Mosley v. GEICO Ins. Co.*, No. 3:13CV161-LG-JCG, 2014 WL 7882149, at \*5 (S.D. Miss. Dec. 16, 2014) (holding that, under Mississippi law, "unjust enrichment is considered to be a remedy, rather than an independent theory of recovery"); *Cole v. Chevron USA, Inc.*, 554 F. Supp. 2d 655, 671, 673 (S.D. Miss. 2007) (dismissing claim under Mississippi law because unjust enrichment depends on a showing of some other "legally cognizable wrong," and is "not an independent theory of recovery"); *Gen. Insulation Co. v. Eckman Constr.*, 992 A.2d 613, 621 (N.H.



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