IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SANDEE'S CATERING, *Plaintiff*, v. AGRI STATS, INC. et al., *Defendants.*	)	No. 20 C 2295 Judge Virginia M. Kendall

MEMORANDUM OPINION AND ORDER

On October 26, 2020, this Court, while largely upholding Plaintiff's Complaint, granted the Joint Defendant's Motion to Dismiss Plaintiff's unjust enrichment claims. The Court found that "[b]y failing to clearly state under which laws or which states Plaintiff wishes to bring its unjust enrichment claims, Plaintiff has not met its Rule 8 pleading requirements." (Dkt. 88 at 24). The Court dismissed Plaintiff's unjust enrichment claims without prejudice, giving leave to Plaintiff to amend its Complaint, which Plaintiff timely did. The Defendants now move for Judgment on the Pleadings for the unjust enrichment claims in Plaintiff's Amended Complaint. (Dkt. 91 ¶¶ 208–52). Plaintiff has brought claims under the laws of Arkansas, Arizona, the District of Columbia, Florida, Iowa, Kansas, Maine, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wisconsin. (*Id.*). The Court denies the Motion for Judgment on the Pleadings as to all unjust enrichment claims, except those under the laws of Florida and North Dakota, which are dismissed with prejudice.

LEGAL STANDARD

A motion for judgment on the pleadings under Rule 12(c) of the Federal Rules of Civil Procedure 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). The only difference between a motion for judgment on the pleadings and a motion to dismiss is timing; the standard is the same. *Federated Mutual Insurance Co. v. Coyle Mechanical Supply Inc*., 983 F. 3d 307, 313 (7th Cir. 20202). "When a plaintiff moves for judgment on the pleadings, the motion should not be granted unless it appears beyond doubt that the nonmovant cannot prove facts sufficient to support its position, and that the plaintiff is entitled to relief." *Scottsdale Ins. Co. v. Columbia Ins. Grp., Inc.*, 972 F.3d 915, 919 (7th Cir. 2020). In order to succeed, "the moving party must demonstrate that there are no material issues of fact to be resolved." *Coyle Mechanical Supply Inc.*, 983 F.3d at 313 (citing *N. Ind. Gun & Outdoor Shows, Inc. v. City of S. Bend*, 163 F.3d 449, 452 (7th Cir. 1998)). As with a motion to dismiss, the Court must determine whether the complaint states a claim to relief that is plausible on its face, drawing all reasonable inferences in the plaintiff's favor. *Gill v. City of Milwaukee*, 850 F.3d 335, 339 (7th Cir. 2017) (citations omitted).

DISCUSSION

The alleged facts in this case have already been discussed at length in this Court's earlier Memorandum Opinion denying in part the Defendants' Motion to Dismiss. (*See* Dkt. 88 at 2–6). Therefore, the Court will focus specifically on the unjust enrichment claims. The Defendants argue generally that Plaintiff has failed to meet the pleading standards required by Fed. R. Civ. P. 8. Defendants also argue that Plaintiff has failed to state a claim under specific state laws. For the reasons discussed below, Plaintiff's unjust enrichment claims may largely proceed.

I. General Pleading Standard

The Court previously dismissed Plaintiff's Unjust Enrichment claims in its Complaint because Plaintiff failed to meet the Rule 8 pleading standards. In particular, Plaintiff failed to clarify under which states it wished to bring unjust enrichment claims. Plaintiff confusingly stated in a footnote in its original Complaint that "[u]njust enrichment claims are alleged herein under the laws of the states for which claims are alleged in Counts Two and Three above," and only outlined the basic elements of an unjust enrichment claim with no distinction between the various state laws. (Dkt. 1 at p. 76 n. 15). The Court found that Plaintiff's Complaint failed "to account for any consequential differences that may exist among the undifferentiated state-law claims. 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." (Dkt. 88 at 25 citing *In re Opana ER Antitrust Litig*., 162 F. Supp. 3d 704, 726 (N.D. Ill. 2016) (internal citations omitted)).

Defendants now argue that Plaintiff has failed to cure the earlier defects. Plaintiff, however, has followed the Court's instruction and has separated out its state law unjust enrichment claims, clarifying under which state laws they wish to bring its claims. Defendant faults Plaintiff for repeating language across the unjust enrichment claims of various jurisdictions, seeking to require Plaintiff to further differentiate their claims. This is more than the pleading standards require. Rule 8(a) requires "a short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 8(a)(2), such that the defendant is given "fair notice of what the claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citation omitted). Second, the factual allegations in the complaint must be sufficient to

raise the possibility of relief above the "speculative level." *E.E.O.C. v. Concentra Health Servs., Inc*., 496 F.3d 773, 776 (7th Cir. 2007) (quoting *Twombly*, 550 U.S. at 555). "A pleading that offers 'labels and conclusions' or a 'formulaic recitation of the elements of a cause of action will not do.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555).

Here, while Plaintiff may repeat key language throughout the unjust enrichment claims, the Amended Complaint nonetheless meets the Rule 8 pleading standards. It informs Defendants of the cause of action, provides a factual basis for the claim, and raises the possibility of relief. A complaint must be "read sensibly and as a whole," *Engel v. Buchan*, 710 F.3d 698, 710 (7th Cir. 2013), and while there are repetitions in the Amended Complaint, that may be more a result of the similarities of unjust enrichment laws across jurisdictions, than any pleading deficiencies on the part of Plaintiff. When viewing the Complaint as a whole and reading the unjust enrichment claims together with the factual background, the Complaint adequately alleges unjust enrichment claims across various jurisdictions. The Court denies dismissal on this ground.

II. State-Specific Claims

Having declined to dismiss on general pleading standards, the Court will now review the merits of state-specific claims. Defendants argue that: (1) unjust enrichment is not a standalone basis for recovery in Mississippi and New Hampshire; (2) Plaintiff has not alleged that it conferred a "direct benefit" as required under the laws of Arizona, Florida, Maine, Michigan, North Carolina, North Dakota, Rhode Island, and Utah; (3) Sandee's has failed to allege a duty owed to it by Defendants as required under South Carolina law; and (4) Sandee's fails to allege that it lacks an adequate remedy at law as required under the laws of Arizona, Kansas, Minnesota, Nebraska, Nevada, New Hampshire, North Dakota, South Dakota, Tennessee, and Utah. The Court grants

the dismissal as to Florida and North Dakota, but otherwise will allow the unjust enrichment claims to proceed.

A. Unjust Enrichment Forms a Standalone Basis for Recovery (MS & NH)

Defendants first argue that unjust enrichment does not form a standalone basis for recovery in Mississippi and New Hampshire. As to Mississippi, the authority on whether an unjust enrichment claim may form a standalone basis for recovery is split. As discussed in a similar antitrust case, "with respect to Mississippi, there is considerable authority that supports the existence of an independent state law claim for unjust enrichment." *In re Processed Egg Prod. Antitrust Litig*., 851 F. Supp.2d 867, 913 (E.D. Pa. 2012); *see also In re Loestrin 24 FE Antitrust Litig*, 410 F.Supp.3d 352, 381 (D. R.I. 2019) ("A simple search yields many cases out of the Mississippi Supreme and Appellate Courts within the past decade recognizing unjust enrichment as a cause of action under Mississippi law.").

Yet, while this view is more popular, other courts have reached the opposite conclusion. One court in this district analyzed the issue and found that "'[u]nder Mississippi law, unjust enrichment is not an independent theory of recovery.' Such a claim 'depends upon a showing of some legally cognizable wrong.'" *See In re Potash Antitrust Litig.*, 667 F. Supp. 2d 907, 948 (N.D. Ill. 2009), *aff'd sub nom. Minn-Chem, Inc. v. Agrium, Inc*., 683 F.3d 845 (7th Cir. 2012) (citing *Cole v. Chevron USA*, 554 F.Supp.2d 655, 671–73 (S.D.Miss.2007). In *In re Potash*, the Court dismissed the unjust enrichment claim, finding that the indirect purchaser plaintiffs had failed to allege *any* legally cognizable Mississippi claim and therefore could not bring a Mississippi claim. *Id.* *In re Potash* is distinguishable because here, Plaintiff has made out an antitrust claim under Mississippi laws. (*See* Dkt. 88 at 16 – 17, upholding Plaintiff's Mississippi state antitrust claim). As *In re Potash* is distinguishable, and because more recent cases have also

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