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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Bottom Line Recoveries LLC,

No. CV-14-00443-PHX-JAT

10 Plaintiff,

ORDER

11 v.

12 Lockheed Martin Corporation,

13 Defendant.
14

15 Pending before the Court is Defendant's Motion to Dismiss Second Claim for
16 Relief (Unjust Enrichment) of Amended Complaint, (Doc. 30). The Court will deny the
17 Motion.

18 **I. BACKGROUND**

19 Plaintiff is an accounting consultant firm that offers services such as account
20 payable auditing and recovery of payable mistakes. (Doc. 1 ¶ 2). Defendant is an
21 international corporation engaged in the research, design, development, and
22 manufacturing of advanced technology systems. (Doc. 1 ¶ 4; Doc. 24 ¶ 4). In July 2010,
23 Plaintiff and Defendant entered into a Services Agreement under which Plaintiff agreed
24 to identify opportunities for Defendant to recover credits, overpayments, and other
25 payment errors made by Defendant's suppliers. (Doc. 32 at 2; Doc. 30 at 1–2). In return,
26 Defendant agreed to pay Plaintiff 10% of the recovered amount. (Doc. 32 at 2; Doc. 30 at
27 1–2). Both parties agree that the Services Agreement is binding, (Doc. 1 ¶ 25; Doc. 24 ¶
28 25), and that disputes arising under the Services Agreement are governed by Maryland

1 law, (Doc. 1 ¶ 13; Doc. 24 ¶ 13). However, the parties disagree on the number of
2 payment errors that Plaintiff identified and accordingly disagree on the amount
3 Defendant owes Plaintiff. Defendant asserts that it paid Plaintiff 10% of all of the
4 payment errors that Defendant was able to recover. (Doc. 31 at 2). Plaintiff claims that
5 Defendant still owes Plaintiff \$1,511,628.67. (Doc. 32 at 2).

6 On March 5, 2014, Plaintiff filed its Complaint against Defendant asserting two
7 causes of action, breach of contract and unjust enrichment. (Doc. 1). On May 15, 2014,
8 Defendant filed the instant motion requesting the Court to dismiss Plaintiff's unjust
9 enrichment claim under Federal Rule of Civil Procedure ("Rule") 12(b)(6). (Doc. 30).
10 Plaintiff responded on May 30, 2014, (Doc. 32), and Defendant filed a reply to Plaintiff's
11 response on June 9, 2013, (Doc. 34).

12 **II. LEGAL STANDARD**

13 The Court may dismiss a complaint for failure to state a claim under Rule 12(b)(6)
14 for two reasons: (1) lack of a cognizable legal theory and (2) insufficient facts alleged
15 under a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699
16 (9th Cir. 1990). To survive a 12(b)(6) motion for failure to state a claim, a complaint
17 must meet the requirements of Rule 8(a)(2). Rule 8(a)(2) requires a "short and plain
18 statement of the claim showing that the pleader is entitled to relief," so that the defendant
19 has "fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atl.*
20 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47
21 (1957)).

22 Although a complaint attacked for failure to state a claim does not need detailed
23 factual allegations, the pleader's obligation to provide the grounds for relief requires
24 "more than labels and conclusions, and a formulaic recitation of the elements of a cause
25 of action will not do." *Twombly*, 550 U.S. at 555 (internal citations omitted). The factual
26 allegations of the complaint must be sufficient to raise a right to relief above a
27 speculative level. *Id.* Rule 8(a)(2) "requires a 'showing,' rather than a blanket assertion,
28 of entitlement to relief.

1 To survive a motion to dismiss, a complaint must contain sufficient factual matter,
2 which, if accepted as true, states a claim to relief that is “plausible on its face.” *Ashcroft*
3 *v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555). Facial plausibility
4 exists if the pleader pleads factual content that allows the court to draw the reasonable
5 inference that the defendant is liable for the misconduct alleged. *Id.* Plausibility does not
6 equal “probability,” but plausibility requires more than a sheer possibility that a
7 defendant acted unlawfully. *Id.* “Where a complaint pleads facts that are ‘merely
8 consistent’ with a defendant’s liability, it ‘stops short of the line between possibility and
9 plausibility of entitlement to relief.’” *Id.* (citing *Twombly*, 550 U.S. at 557).

10 In deciding a motion to dismiss under Rule 12(b)(6), a court must construe the
11 facts alleged in the complaint in the light most favorable to the drafter of the complaint
12 and the court must accept all well-pleaded factual allegations as true. *See Shwarz v.*
13 *United States*, 234 F.3d 428, 435 (9th Cir. 2000). Nonetheless, courts do not have to
14 accept as true a legal conclusion couched as a factual allegation. *Papasan v. Allain*, 478
15 U.S. 265, 286 (1986).

16 **III. ANALYSIS**

17 **A. Choice of Law**

18 A federal court sitting in diversity jurisdiction must apply the forum state’s choice
19 of law rules to determine the controlling substantive law. *Klaxon v. Stentor Elec. Mfg.*
20 *Co. Inc.*, 313 U.S. 487, 495–96 (1941); *see Zinser v. Accufix Research Inst., Inc.*, 253
21 F.3d 1180, 1187 (9th Cir. 2001). Because Plaintiff filed the Complaint in the District of
22 Arizona, Arizona choice of law rules apply. Under Arizona law, a court will enforce a
23 choice of law provision that the parties have contracted for unless doing so is “contrary to
24 the fundamental policy of a state with a materially greater interest in the issue.” *See Landi*
25 *v. Arkules*, 835 P.2d 458, 462 (Ariz. Ct. App. 1992). Here, the Services Agreement states
26 that all conflicts arising under the Services Agreement are governed by Maryland law.
27 (Doc. 1 ¶ 13; Doc. 24 ¶ 13). While Arizona has an interest in the issue, neither party has
28 objected to using Maryland law and both parties repeatedly refer to Maryland law in the

1 motion, response, and reply at issue. Accordingly, the Court applies Maryland
2 substantive law.

3 **B. Unjust Enrichment under Maryland Law**

4 Defendant asserts that Plaintiff’s claim for unjust enrichment should be dismissed
5 under Rule 12(b)(6) because both parties agree that a valid contract—the Services
6 Agreement—governs the parties’ relationship. (Doc. 30). Accordingly, Defendant
7 concludes that Plaintiff cannot bring an unjust enrichment claim. (*Id.*) Plaintiff argues
8 that its unjust enrichment claim is proper because the Services Agreement “does not fully
9 address a subject matter” relevant to Plaintiff’s cause of action. (Doc. 32 at 3).
10 Specifically, Plaintiff contends that it is entitled to bring an unjust enrichment claim as
11 well as its breach of contract claim because it is “quite clear, given the parties’ pre-
12 litigation positions that Defendant [will] argue that the Services Agreement [does] not
13 cover some or all of the audit services performed by [Plaintiff].” (*Id.*)

14 Under Maryland law, unjust enrichment consists of three elements: “(1) a benefit
15 conferred on the defendant by the plaintiff, (2) an appreciation or knowledge of the
16 defendant of the benefit, and (3) the acceptance or retention by the defendant of the
17 benefit under such circumstances as to make it inequitable for the defendant to retain the
18 benefit without the payment of its value.” *Hill v. Cross Country Settlements, LLC*, 936
19 A.2d 343, 351 (Md. 2007); *see generally Alts. Unlimited, Inc. v. New Baltimore City Bd.*
20 *of Sch. Comm’rs*, 843 A.2d 252, 300 (Md. Ct. Spec. App. 2004). The absence of a
21 contract is not an element of unjust enrichment. *See generally Berry & Gould, P.A. v.*
22 *Berry*, 757 A.2d 108, 113 (Md. 2000); *Everhart v. Miles*, 422 A.2d 28, 31 (Md. Ct. Spec.
23 App. 1980).

24 Here, Plaintiff pleaded all three elements of unjust enrichment. (Doc. 1 ¶ 30–33).
25 Plaintiff also pleaded facts that support its claim for unjust enrichment. Specifically,
26 Plaintiff pleaded that (1) it spent over a year providing audit services for Defendant and
27 identified 492 claims for which Defendant was entitled to recovery (Doc. 1 ¶ 14–15); (2)
28 Defendant acknowledged that Plaintiff performed audit services, but only paid Plaintiff

1 for 400 of the claims Plaintiff identified (*Id.* at ¶ 17–19); and (3) it would be unjust for
2 Defendant to retain the benefit of Plaintiff’s audit services without paying for them (*Id.* at
3 ¶ 19–21). In deciding a 12(b)(6) motion to dismiss for failure to state a claim, the Court
4 must construe all facts in the light most favorable to the plaintiff. At this stage in the
5 litigation it is unclear whether the Services Agreement addresses all of the services
6 Plaintiff provided. Moreover, because Plaintiff is not required to plead the absence of a
7 contract, Plaintiff’s claim for unjust enrichment, though improbable, is sufficient to
8 satisfy the pleading requirements of Rule 8(a)(2).

9 Additionally, Rule 8(d)(3) permits a party to state as many separate claims or
10 defenses regardless of consistency because a party may not be sure in advance which
11 legal theory will succeed. At this stage in the litigation, the Court views the inconsistency
12 between Plaintiff’s two claims as permissible under Rule 8(d)(3). Therefore, Plaintiff’s
13 claim for unjust enrichment cannot be dismissed for failure to state a claim under Rule
14 12(b)(6).

15 **IV. CONCLUSION**

16 Based on the foregoing,

17 **IT IS ORDERED** that Defendant’s Motion to Dismiss Second Claim for Relief
18 (Unjust Enrichment) of Complaint, (Doc. 30), is denied.

19 Dated this 4th day of December, 2014.

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24 James A. Teilborg
25 Senior United States District Judge
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