IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

JAMES C. KING, on behalf of himself and all others similarly situated, Plaintiffs,	)	
v.	)	No. 2021-0957
GLENN O. HAWBAKER, INC., Defendant.	)	

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Grine, P.J.

OPINION AND ORDER

Presently before the Court are four motions: (1) Motion for Decertification filed by Defendant, Glenn O. Hawbaker, Inc. ("GOH" or the "Company"); (2) Cross-Motion to Extend the Class Period filed by Plaintiff, James C. King ("King" or the "Class"); (3) Motion for Summary Judgment filed by GOH; and (4) Motion for Partial Summary Judgment filed by the Class. Upon consideration of the summary judgment record and briefs by both parties, and following argument, the Court finds as follows:

I. Motion for Decertification

A. Applicable Legal Principles

> One or more members of a class may sue...as representative parties on behalf of all members in a class action only if:
> (1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;
(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class;
(4) the representative parties will fairly and adequately assert and protect the interests of the class under the criteria set forth in Rule 1709; and
(5) a class action provides a fair and efficient method for adjudication of the controversy under the criteria set forth in Rule 1708.

Pa.R.C.P. 1702. Also, "a class action is a fair and efficient method of adjudicating the controversy" when "common questions of law or fact predominate over any question affecting only individual members..." Pa.R.C.P 1708.

When applying the Rules of Civil Procedure regarding class certification or decertification, a trial court's "decision[] should be made liberally and in favor of maintaining a class action. This is because such suits enable the assertion of claims that, in all likelihood, would not otherwise be litigated." *Sommers v. UPMC*, 185 A.3d 1065, 1074 (Pa. Super. 2018) (quoting *Weinberg v. Sun Co.*, 740 A.2d 1152, 1162 (Pa. Super. 1999), *reversed in part on other grounds*, 565 Pa. 612, 777 A.2d 442 (2001)).

Revoking a certification of a class action is governed by Rule 1710 of the Pennsylvania Rules of Civil Procedure. Pa.R.C.P. 1710 ("An order under this rule may be conditional and, before a decision on the merits, may be revoked, altered or amended by the court on its own motion or on the motion of any party."). The Superior Court has limited decertification to only those cases in which "later developments in the litigation reveal that some prerequisite to certification is not satisfied." *Sommers*, 185 A.3d at 1071 (quoting *Janicik v. Prudential Ins. Co. of Am.*, 451 A.2d 451, 445 (Pa. Super.1982)).

B. Arguments of the Parties

Here, GOH argues that the class should be decertified because (1) King is an inadequate class representative due to the majority of his claims being barred by the statute of limitations; (2)

the record does not show that the class meets the numerosity, commonality, or typicality requirements pursuant to Rule 1702; (3) Class counsel is inadequate due to his handling of the statute of limitations issues; and (4) King cannot point to any evidence that any of the Rule 1708 requirements have been met.

King responds that GOH's motion for decertification should be denied because GOH has failed to present new evidence or later developments after the class certification decision which would permit the Court to revisit the certification decision. King further responds that all the requirements of Rule 1702 have been met.

C. Discussion

i. New Evidence Since Class Certification

The class was certified by Order dated October 11, 2023. Since then, various depositions have been conducted and expert reports provided which develop facts not previously known at the time of certification. In fact, both King and GOH point to new information that would justify revisiting the certification decision.

GOH cites the deposition testimony of Michael Hawbaker regarding the amount of prevailing wage jobs varying from year to year and that each worker worked on different numbers of prevailing wage jobs in varying positions each year. M. Hawbaker Dep. at 23:8-23; 109:4-11; *see also* D. Hawbaker Dep. at 22:25-23:9. King's deposition confirmed that information, as well as the fact that some members of the Class questioned GOH's wage-and-hour practices as early as 2013. King Dep. at 13:20-21, 18:4-5. GOH also cites the deposition testimony of Deputy AG McCarthy regarding the statute of limitations issue and effect of the Tolling Agreement being limited only to the criminal case. McCarthy Dep. at 15:5-13, 21:1-22:3. King points to the post-certification deposition testimony of Michael Hawbaker, who testified that GOH undertook the contractual

obligation of never paying a fringe lower than the law requires as noted in its employee handbook which was given to all employees since 2012. M. Hawbaker Dep. at 103:3-9, 105:4-106:18. Additionally, GOH Controller Traci Capperella testified in her deposition that GOH followed the same fringe benefit practices throughout the 2012–2018 time frame. Capperella Dep. at 50:19-25.

The Court therefore finds that sufficient new evidence and later developments have occurred to invoke the Court's authority to revisit the certification decision and determine whether the class should be decertified as GOH requests or expanded as King requests.

ii. Numerosity

To satisfy the numerosity criterion of Rule 1702(1), "the class must be both numerous and identifiable, and [w]hether the class is sufficiently numerous is not dependent upon any arbitrary limit but upon the facts of the case." *In re Sheriff's Excess Proceeds Litig.*, 98 A.3d 706, 732 (Pa. Commw. Ct. 2014). "A class is sufficiently numerous when the number of potential plaintiffs would pose a grave imposition on the resources of the court and an unnecessary drain on the energies and resources of the litigants should plaintiffs sue individually." *Id.* (quoting *Keppley v. Sch. Dist. Of Twin Valley*, 866 A.2d 1165, 1171 (Pa. Commw. Ct. 2005)). "The proponent must not plead or prove the actual number of class members, so long as [they are] able to define the class with some precision and provide the court with sufficient indica that more members exist[] than it would be practicable to join." *Id.* (quoting *Keppley*, 866 A.2d at 1171).

Here, the currently certified class is defined as "all current and former hourly wage employees who worked on prevailing wage contracts at GOH in the Commonwealth of Pennsylvania during the period September 1, 2015 through December 31, 2018 (the "Class Period")". The class members are easily identifiable using the payroll and other business records exchanged in discovery in this matter. It would be extremely burdensome and impractical for the

Court to address over 1,200 individual claims when the evidence of GOH's wage and fringe benefit practices would be the same in each matter. Thus, the numerosity requirement is met.

iii. Commonality

The commonality prerequisite requires that there be questions of law or fact common to the class. Pa.R.C.P. 1702(2). "Common questions of law and fact will generally exist if the class members' legal grievances are directly traceable to the same practice or course of conduct on the part of the class opponent." *Clark v. Pfizer Inc.*, 990 A.2d 17, 24 (Pa. Super. 2010). "The common question of fact [requirement] means precisely that the facts must be substantially the same so that proof as to one claimant would be proof as to all. This is what gives the class action its legal viability." *Id.* (*quoting Allegheny County Housing Authority v. Berry*, 487 A.2d 995, 997 (Pa. Super. 1985). "While the existence of individual questions of fact is not necessarily fatal, it is essential that there be a *predominance* of common issues, shared by all the class members, which can be justly resolved in a single proceeding." *Id.* (*quoting Weismer v. Beech–Nut Nutrition Corp.*, 615 A.2d 428, 431 (Pa. Super. 1992) (emphasis in original). "[I]f a common source of liability has been clearly identified, varying amounts of damages among the plaintiffs will not preclude class certification." *Samuel-Bassett v. Kia Motors Am., Inc.*, 613 Pa. 371, 417, 34 A.3d 1, 28 (Pa. 2011).

The class was originally certified based on the following common questions of law and fact:

1. Whether Defendant engaged in a common pattern, scheme, practice or course of conduct that shorted prevailing wage workers of the wages and fringe benefits earned and owed during the Class Period;
2. Whether Defendant engaged in a common pattern, scheme, practice or course of conduct to breach its contract with the Class to pay the prevailing wage as promised in the form of actual wages and fringe benefits;

3. Whether Defendant engaged in a common pattern, scheme, practice or course of conduct to violate the Pennsylvania Wage Payment and Collection Law by failing to timely pay all wages and benefits earned and owed during the Class Period to the Class members;
4. Whether Plaintiff and the Class members are intended third party beneficiaries of the tolling agreement entered into between Defendant and the Office of Attorney General;
5. Whether Defendant failed to keep true and accurate records for all the hours worked by, and all wages and benefits owed to, the Class members in violation of Pennsylvania and Federal law;
6. Whether Plaintiff and Class have suffered damages and the measure thereof; and
7. Whether Defendant can prove by clear and convincing evidence that it had a good faith basis for failing to timely pay all prevailing wages owed to Plaintiff and Class as required by law.

See Order dated October 10, 2023 ("Class Certification Order").

On the record currently before the Court, all these common and predominating questions remain, with the possible exception of the issue of third-party beneficiary status of the tolling agreement in the criminal matter. That issue is better characterized as whether there are any grounds for tolling the statute of limitations in this matter, which is indisputably a common and predominating issue. As discussed more fully below with regard to the motions for summary judgment, there exist genuine issue of material fact regarding the applicability of the discovery rule, namely whether Plaintiff and the Class knew or should have known of their injury and its cause prior to the filing of criminal charges against GOH in April 2021. Thus, the commonality requirement is met.

iv. Typicality

Relative to typicality, the Pennsylvania Supreme Court declared:

> The purpose of the typicality requirement is to ensure that the class representative's overall position on the common issues is sufficiently aligned with that of the absent class members to ensure that her pursuit of her own interests will advance those of the proposed class members. Typicality exists if the class representative's claims arise out of the same course of conduct and involve the same legal theories as those of other members of the putative class. The requirement ensures that the legal theories of the representative and the class do not conflict, and that the interests of the absentee class members will be fairly represented. But, typicality does not require that the claims of the representative and the class be identical, and the requirement may be met despite the existence of factual distinctions between the claims of the named plaintiff and the claims of the proposed class.

Samuel–Bassett, 34 A.3d at 30–31 (citations and quotation marks omitted).

Here, GOH concedes that its statute of limitations defense applies uniformly to King and all other Class members. Additionally, both the legal theories advanced by King and the proof required to prevail on those claims will be the same for all Class members because the harm alleged derives from GOH's wage and fringe benefit practices which applied uniformly to all Class members. The typicality requirement is therefore met.

v. Adequacy

Rule 1702(4) requires that the representative parties will fairly and adequately assert and protect the interests of the class and directs that the court must consider the under the criteria set forth in Rule 1709 when making a determination on adequacy. Specifically, the court must consider:

> (1) Whether the attorney for the representative parties will adequately represent the interests of the class;
>
> (2) Whether the representative parties have a conflict of interest in the maintenance of the class action; and
>
> (3) Whether the representative parties have or can acquire adequate financial resources to assure that the interests of the class will not be harmed.

Pa.R.C.P. 1709.

GOH argues that King is an inadequate class representative due to the majority of his claims being barred by the statute of limitations. As set forth below at Section III(A)(i) of this Opinion, there exist genuine issues of material fact regarding tolling of the statute of limitations which must be resolved by the factfinder. Therefore, the Court cannot find that King is inadequate as a class representative on this ground.

GOH's challenge to the adequacy of Class counsel rests largely on its statute of limitations defense and its assertion that Class counsel's maintenance of this action despite the statute of limitations issue is an "inexcusable error". The Court disagrees. As noted below in further detail, whether the statute of limitations bars King's and the Class's claims is a factual issue that must be determined by the jury because of the potential tolling of the statute of limitations under the discovery rule. Class counsel's pursuit of that issue can hardly be considered an inexcusable error when there is a genuine issue of material fact to be submitted to a jury.

The Court is not persuaded by GOH's argument that Class counsel advancing litigation costs in this matter renders King or Class counsel inadequate. As the Superior Court noted in *Janicik,* 451 A.2d at 459, it is not uncommon in class action litigation for the Class representative's attorney to advance costs, nor is it barred by the Rules of Professional Conduct. *Id.* Moreover, lack of funding by the representative plaintiff alone is not fatal to a plaintiff's adequacy as the class representative. *Id.* at 460. There is no other evidence before the Court indicating that Class counsel would not adequately represent the interests of the class or that a conflict of interest exists. Class counsel is experienced in class action litigation and has adequately represented the interests of the Class so far in the litigation. Thus, the Court finds the adequacy prong is met.

vi. Fairness and Efficiency

The final general requirement for class certification is that a class action provide "a fair and efficient method for adjudication of the controversy." Pa.R.Civ.P. 1702(5). Several criteria must guide the court in this determination. Pa.R.Civ.P. 1708. They are not exclusive, and their importance may vary according to the circumstances. *Janicik,* 451 A.2d at 461. "In determining fairness and efficiency, the court must balance the interests of the litigants, present and absent, and of the court system." *Id.*

GOH argues that the class should be decertified because the logistics necessary to manage the damages calculations considering the variances between the number and type of prevailing wage jobs worked by the Class members render the case unmanageable as a class action. Additionally, GOH argues that since restitution has already been paid, a large portion of the class is likely not entitled to damages, and therefore the amount to be recovered is not justified in relation to the expense and effort of administering the case as a class action. King responds that the damages all emanate from one uniform accounting scheme by GOH, and the calculation is straightforward, as evidenced by the restitution tables created in the criminal action and the expert reports provided in this action.

As our Supreme Court has explained, "where a theory of liability is capable of class-wide proof, calculations of damages need not be exact." *Braun v. Walmart Stores, Inc.*, 106 A.3d. 656, 666 (Pa. 2014). "Indeed, . . . the propriety of class certification in wage and hour cases that involve recordkeeping violations should be assessed in light of the relaxed burden of proving damages" in such cases. *Id.* (quotation marks and citation omitted). Furthermore, "if a common source of liability has been clearly identified, varying amounts of damages among the plaintiffs will not preclude class certification." *Samuel-Bassett*, 34 A.3d at 28.

As it stands, the certified class is comprised of at least 1,262 plaintiffs, all with claims arising out of the methods GOH used to pay its employees wage and fringe benefits. It is neither surprising nor fatal to the class certification that the individual plaintiffs will likely have different amounts of damages because the common source of harm is the accounting methods used by GOH. If successful on its claims, the Class members' damages can easily be calculated based on GOH's payroll records, as King's expert report shows. In *Braun*, our Supreme Court affirmed the calculation of individual damages for 187,979 class members in a wage-and-hour case based on available payroll records and reasonable estimates in the absence of such records. *Braun*, 106 A.3d at 666. Moreover, the inefficiency that would result from having to handle over 1,200 claims individually would overwhelm the resources of this Court. For these reasons, the Court finds it is both fair and efficient to maintain this action as a class action.

Based on the foregoing, GOH's Motion for Decertification is denied.

II. Cross-Motion to Extend the Class Period

As noted in Section I(C)(i) of this Opinion, there is sufficient new evidence since certification to authorize the Court to revisit the certification decision to determine whether the class period should be expanded. Turning then to the requirements of Rule 1702, the Court further finds that it is appropriate to expand the relevant time period for the class back to January 1, 2012 in light of the following:

A. Numerosity

The business record evidence obtained post-certification demonstrates that at least 712 GOH employees worked over 40 hours per year on prevailing wage jobs during the period January 1, 2012 through December 31, 2015. Graupensperger Dep. at 89-91. The numerosity requirement is met because King has sufficiently defined the class and demonstrated that there are more members

of the class than it would be practicable to join. The Superior Court has found smaller class sizes meet the numerosity requirement. *See Sommers*, 185 A.3d at 1069 ("at least 330" members of the class); *ABC Sewer Cleaning Co. v. Bell of Pa.*, 438 A.2d 616, 619 (Pa. Super. 1981) (250 members sufficient). Moreover, the Court specifically finds that 712 plaintiffs is sufficiently numerous to significantly strain the resources of the court if they were to be handled independently, particularly because the evidence presented in each case would be the same as to the conduct by GOH which underlies King's and the Class member's claims.

B. Commonality

The commonality and predominance requirements are met not only because the issue of tolling of the statute of limitations applies to all prospective class members from 2012 to 2018, but also because the harm alleged to the class members all arises from the same course of conduct by GOH. The summary judgment record demonstrates that the fringe benefit practices of GOH were uniform from 2012 to 2018, so proof of the claim of one plaintiff will necessarily prove the claims of the other class members. *See Sommers,* 185 A.3d at 1076-77 (a common corporate policy and practice is a predominating issue); *Samuel-Bassett*, 34 A.3d at 22 ("proof as to one claimant would be proof as to all").

C. Typicality

King undoubtedly meets the typicality requirement, as discussed above with regard to the decertification motion. The summary judgment record indicates that King worked at GOH as early as 2011, and GOH concedes that its statute of limitations defense applies uniformly to King and all other Class members.

D. Adequacy, Fairness and Efficiency

The Court incorporates its analysis from Section I(C)(v) and (vi) regarding the adequacy of King and Class counsel and the fairness and efficiency of administering the case as a class action in finding that these two requirements are met for purposes of expanding the Class Period.

Consistent with the above, King's Cross-Motion to Extend the Class Period is granted, and a new class certification order will be issued.

III. Summary Judgment Motions

Summary judgment is governed by Pennsylvania Rule of Civil Procedure 1035.1, *et seq.* Pursuant to Rule 1035.2, after the relevant pleadings are closed, any party may move for summary judgment in either of the following circumstances:

> (1) whenever there is no genuine issue of any material fact as to a necessary element of a cause of action or defense which could be established by additional discovery or expert report, or
>
> (2) if, after completion of discovery relevant to the motion, . . . an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

Pa.R.C.P. 1035.2(1)-(2). The moving party bears the burden of demonstrating the absence of any issue of material fact and its right to judgment in its favor. *Azaravich v. Wilkes-Barre Hospital Company, LLC*, 318 A.3d 876, 881 (Pa. Super. 2024), *app. denied,* 2025 WL 468770 (Pa. 2025).

When the non-moving party will bear the ultimate burden of proof at trial, the moving party can meet the summary judgment burden under Rule 1035.2(2) by establishing the absence of *prima facie* evidence to support the non-moving party's claim. *See Ertel v. Patriot-News Co.*, 674 A.2d 1038, 1041-43 (Pa. 1996), *cert denied*, 519 U.S. 1008 (1996). Once that burden is met, to avoid summary judgment, the non-moving party must come forward with admissible trial evidence such as would warrant a jury determination in his or her favor. *Id.*

The court may not decide issues of fact in the context of a summary judgment ruling. *See e.g.*, *Krepps v. Snyder*, 112 A.3d 1246, 1259-60 (Pa. Super. 2015), *appeal denied*, 125 A.3d 778 (Pa. 2015). Rather, the court must confine its inquiry to whether there are genuine issues of material fact to be resolved by the trier of fact. *Id.* When considering a motion for summary judgment, the court must view the record in the light most favorable to the non-moving party, *Herold v. University of Pittsburgh*, 2025 WL 258783, at *4 n.7 (Pa. 2025), and "evaluate all the facts and make reasonable inferences in a light most favorable to the non-moving party." *Khalil v. Williams*, 278 A.3d 859, 871 (Pa. 2022). A "court may grant summary judgment only when the right to such a judgment is clear and free from doubt." *Gallagher v. GEICO Indemnity Company*, 201 A.3d 131, 136-137 (Pa. 2019).

A. GOH's Motion for Summary Judgment

i. Statute of Limitations

The applicable statutes of limitations for the Prevailing Wage Act ("PWA") claims and the Davis-Bacon Act ("DBA") claims are six months and two years, respectively. *See* 43 P.S. § 165-13; 29 U.S.C. § 255(a). The statute of limitations for a Wage Payment and Collection Law ("WPCL") claim is three years. 43 P.S. § 260.9a(g). The statutes of limitations for breach of contract, unjust enrichment, and restitution claims are all four years. *See* 42 Pa.C.S. § 5525(a).

GOH argues that the majority of the Class's claims are barred by the applicable statutes of limitations because the latest date the claims could accrue was December 31, 2018, the final day of the certified Class Period. GOH further argues that the latest date King's claims could have accrued was July 28, 2017, the last day he worked for the Company.

King argues that the claims could not have accrued before April 8, 2021, when the affidavit of probable cause was filed in the criminal action, which revealed the results of a forensic analysis of GOH's fringe benefit practices. According to King, the statutes of limitations were tolled for

various reasons, including discovery rule tolling, fraud and concealment tolling, extraordinary circumstances tolling, wrong forum tolling, and by agreement based on the Class being third party beneficiaries of the tolling agreement reached in the criminal action.

"Generally, a cause of action accrues, and thus the applicable limitations period begins to run, when an injury is inflicted." *In re Risperdal Litig.*, 223 A.3d 633, 640 (Pa. 2019) (cleaned up). An injury is inflicted "when ... the corresponding right to institute a suit for damages arises." *Gleason v. Borough of Moosic*, 15 A.3d 479, 484 (Pa. 2011).

The discovery rule is an exception that tolls the statute of limitations when an injury or its cause is not reasonably knowable. *In re Risperdal Litig.*, 223 A.3d at 640. "The discovery rule will toll the applicable statute until a plaintiff could reasonably discover the cause of his action, including in circumstances where the connection between the injury and the conduct of another are not readily apparent." *Id.* Pennsylvania's reasonable diligence standard is objective; the question is not what the plaintiff actually knew of the injury or its cause, but "what he might have known by exercising the diligence required by law." *Gleason,* 15 A.3d at 485.

The requirement of reasonable diligence is not an absolute standard but, rather, is "what is expected from a party who has been given reason to inform himself of the facts upon which his right of recovery is premised." *Fine v. Checcio*, 870 A.2d 850, 858 (Pa. 2005). "While reasonable diligence is an objective test, [i]t is sufficiently flexible...to take into account the difference[s] between persons and their capacity to meet certain situations and the circumstances confronting them at the time in question." *Id.* (internal quotation omitted). In determining whether reasonable diligence has been exercised, a court must determine whether the plaintiff exhibited "those qualities of attention, knowledge, intelligence and judgment which society requires of its members for the protection of their own interests and the interests of others." *Id.* "[D]iscovery rule determinations

are fact-intensive inquiries that should typically be left for juries to decide, and summary judgment is appropriately granted only in cases where reasonable minds would not differ in finding that the plaintiff knew or should have known, based upon the exercise of reasonable diligence, of his injury and its cause. *Gleason*, 15 A.3d at 485 (quoting *Fine*, 870 A.2d at 859).

Here, genuine issues of material fact exist regarding the applicability of GOH's statute of limitations defense. Given the record currently before the Court, reasonable minds could differ over whether King and the Class knew or should have known of their injury and its cause prior to the filing of criminal charges against GOH in April 2021, when the results of the forensic audit of GOH's practices became public.

In his deposition, King testified that he and other co-workers voiced concerns regarding GOH's wage-and-hour practices as early as 2013. King Dep. at 17:13 – 18:4; 20: 12-25. While King was employed by GOH, inspectors from PennDOT would perform periodic wage checks. Id. at 78:24-79:10; 81:23-24. None of the PennDOT inspectors found any violations of the Prevailing Wage Act as a result of the wage checks. Id. at 87:11-88:23. During the Class Period (2015–2018), the Department of Labor ("DOL") conducted numerous investigations of the Company's wage and benefits practices and found no violations. Graupensperger Dep. at 84:6-14; 84:22. As part of those investigations, GOH provided documentation to investigators to prove it was complying with its wage and fringe benefit obligations on prevailing wages contracts. *See* Exhibit M of Second Supplemental Appendix. This documentation included annual "Benefits Analysis" spreadsheets, which purported to represent the Company's actual hourly costs for fringe benefits paid to employees working on prevailing wage projects. Graupensperger Dep. Ex. G-5. However, the data provided was not the actual cost and included items that were not eligible for deductions. Graupensperger Dep. at 97:2-21; Capperella Dep. at 145:23-148:5. Based on the incorrect

information in the Benefit Analysis spreadsheets, GOH provided government agencies with Fringe Benefit Letters and Statements of Compliance that contained false and/or misleading information. Capperella Dep at 59:9-64:23 (admitting that the cost of health plan claims was inflated by using the amount of "total claims" submitted to Cigna rather than the smaller amounts GOH actually "reimbursed Cigna for paying claims . . ."); Graupensperger Dep. at 36:4-37:22 (admitting "the company never paid CIGNA for the total amount of the claim . . . "). GOH Controller Capperella also made false and/or misleading statements in correspondence with a Pennsylvania Labor and Industry ("L&I") investigator by stating that "the $17.50 calculation is what it costs the company per hour for employees only. ALL employees are included in that calculation. If one half of the fringe on any given project is more than our calculated amount, we do pay that in cash (via payroll) to the employee." *See* Second Supp. App. M-9 (capitalization in original). GOH Controller Capperella admitted in deposition testimony that the word "costs" was "possibly misstated," and "I used actual cost; I shouldn't have." Capperella Dep. at 109:22, 111:15.

King informed the foreman of his concerns about the wage and fringe benefit practices, and the foreman addressed the concerns with the HR department, after which King was told it was handled. King Dep. at 29:24-31:11. King did not complain directly to Dan Hawbaker. King Dep. at 63:3-10. King also informed PennDOT inspectors on site that he was concerned he did not receive his full benefits. King Dep. at 86:4-11. He informed the union, which pointed him to L&I. King Dep. at 40:1-4. King contacted L&I and explained his concerns. King Dep. at 39:7. L&I referred the issue to the Office of Attorney General ("OAG"), which King learned about after the fact. King Dep. at 54:13-14, 56:1-4. It was only after the search warrant was executed on GOH's office by the OAG that OAG filed criminal charges against GOH. King did not wait until conclusion of the criminal action before filing this civil action. Instead, he testified that learning of OAG's execution

of the search warrant on GOH's offices was what made him realize there was evidence to validate his concerns. King Dep. at 52:12-16.

It is the province of a jury to determine whether King knew or should have known, based upon the exercise of reasonable diligence, of his injury and its cause prior to the filing of criminal charges against GOH in April 2021. Consequently, GOH's summary judgment challenge based on passage of the statute of limitations is denied.

ii. ERISA Preemption

GOH next argues that summary judgment should be granted in its favor on all of King's claims because they are preempted by ERISA. King responds that the claims are not preempted because (1) this action does not seek employee benefits under an ERISA plan, but rather seeks unpaid wages, interest and statutory damages for GOH's failure to pay prevailing wages and (2) the decision of Chief Judge Brann of the Middle District of Pennsylvania remanding this action back to state court due to the claims not being preempted by ERISA is the law of the case in this matter.

While the Court acknowledges that Chief Judge Brann remanded the case from federal court after finding that King's claims are not completely preempted by ERISA, King is incorrect that said finding constitutes the law of the case for purposes of defeating GOH's summary judgment challenge on preemption grounds. "The law of the case doctrine refers to a family of rules which embody the concept that a court involved in the later phases of a litigated matter should not reopen questions decided by another judge of that same court or by a higher court in the earlier phases of the matter." *Anter Assocs. v. Zoning Hearing Bd. of Concord Twp.*, 79 A.3d 1230, 1233 (Pa. Commw. Ct. 2013). Here, Judge Brann is not a judge of the same court, nor is this court bound by any rulings of the federal district courts. *Hall v. Pennsylvania Bd. of Prob. & Parole*, 851 A.2d 859, 865 (Pa. 2004). Moreover, a remand ruling from federal court on the issue of complete preemption

does not preclude a party from raising an express preemption defense in state court. *Goepel v. Nat'l Postal Mail Handlers Union*, 36 F.3d 306, 316 (3d Cir. 1994). Thus, this Court can consider whether King's claims are preempted by ERISA.

King raises claims for breach of contract, violations of WPCL, restitution, and unjust enrichment seeking unpaid wages, interest, and statutory damages for GOH's failure to comply with the Prevailing Wage Act ("PWA"). "Wages" for purposes of the WPCL include "all earnings of an employee, regardless of whether determined on time, task, piece, commission or other method of calculation" and "fringe benefits or wage supplements," such as bonuses or "any other amount to be paid pursuant to an agreement to the employee...." 43 Pa.C.S. § 260.2a. Contrary to GOH's assertions, King does not seek employee benefits under an employer-sponsored plan governed by ERISA.

In *Keystone Chapter, Associated Builders & Contractors, Inc. v. Foley,* the Third Circuit engaged in a detailed analysis of whether Pennsylvania's PWA was preempted by ERISA. *Keystone Chapter*, 37 F.3d 945 (3d Cir. 1994). There, the Third Circuit held that the PWA was not preempted because it was not directly or indirectly related to ERISA plans because (1) no element of the PWA is premised on the existence of an ERISA plan (*Id.* at 958); (2) the PWA does not encourage or restrict any kind of conduct toward ERISA plans (*Id.* at 963); and (3) the PWA is an expression of the state's traditional power to regulate wages. *Id.*

Because King's claims are grounded in the underpayment and nonpayment of wages, rather than a denial of employee benefits under an ERISA plan, the Court finds that King's claims are not preempted by ERISA. Thus, summary judgment on this ground is denied.

iii. Davis-Bacon Act ("DBA") Preemption

GOH next argues that King's claims for breach of contract, restitution, and unjust enrichment should all be dismissed because the DBA provides no private right of action and King's claims are DBA claims disguised as contract or quasi-contract claims. King responds that there is no precedent for the proposition that the DBA preempts state court wage-and-hour claims and that the absence of a federal statute providing an enforcement mechanism cannot, as a matter of law, preempt a state law that does provide that mechanism.

GOH has not and cannot cite any precedent for finding that the DBA preempts state law wage-and-hour claims. Neither party disputes, nor can dispute, that the DBA does not provide a private right of action. *See, e.g. Weber v. Heat Control Co.*, 579 F.Supp. 346, 348, (D.N.J.1982), *aff'd*, 728 F.2d 599, 599 (3d Cir.1984); *Livingston v. Shore Slurry Seal, Inc.*, 98 F.Supp.2d 594, 597 (D.N.J. 2000). The Court agrees with King that the absence of a private right of action under the DBA indicates Congress' intent for state wage-and-hour claims to be the vehicle for addressing violations of the DBA. *See Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 251 (1984) (rejecting federal preemption of state claims because Congress failed "to provide a federal remedy" and stating "[i]t is difficult to believe that Congress would, without comment, remove all means of judicial recourse for those injured by illegal conduct.").

Based on the foregoing, GOH's argument for summary judgment based on the claims being preempted by the DBA is rejected.

iv. Failure to State a Claim for Breach of Contract and WPCL Violation

GOH argues that summary judgment should be granted on the breach of contract and WPCL claims because neither King nor the Class were parties to or third-party beneficiaries of the contracts between the Company and government to pay prevailing wages under PWA and/or DBA.

GOH further argues that since the breach of contract claims cannot be sustained, the WPCL claim must also fail.

GOH's argument misses the point by focusing on whether the contract breached was the contract between the Company and the government to pay prevailing wages. The contract at issue in King's contract claims is the promise by GOH to its prevailing wage workers that they would be paid prevailing wages on each of the publicly-funded projects on which they worked. These promises were made in the employee manual, periodic policy statements, Statements of Compliance submitted to the government in order to be paid for the public-works projects, and representations to King and the Class members that they would "never receive[] a fringe lower than the law requires."

A unilateral contract exists "when one party makes a promise in exchange for the other party's act or performance." *Braun v. Wal-Mart Stores, Inc.*, 24 A.3d 875, 939–40 (2011), *aff'd*, 630 Pa. 292, 106 A.3d 656 (2014). Employment handbooks, benefit booklets, and corporate policy statements are all enforceable against an employer "if a reasonable person in the employee's position would interpret [the] provisions as evidencing the employer's intent to . . . be bound legally to [the] representations in the handbook." *Id.* at 941 (*quoting Caucci v. Prison Health Servs., Inc.*, 153 F.Supp. 605, 611 (E.D. Pa. 2001)). Promises by an employer about wages and fringe benefits in an employee handbook are enforceable as a matter of contract. *Id.;* see also *Bauer v. Pottsville Area Emergency Med. Servs., Inc.*, 758 A.2d 1265, 1269 (Pa. Super. Ct. 2000) (provisions concerning full-time employment in handbook were enforceable against employer).

While GOH is correct that an employee "may not rely solely on a handbook as the basis for a claimed contractual right to a benefit when that very handbook explicitly disclaims vesting him with any right to that benefit," *see Somers v. Gen. Elec. Co.*, No. 22-1093, 2022 WL 17337560, at *3 (3d Cir. Nov. 30, 2022), King and the Class in this case do not rely solely on the handbook as the

contract at issue. Issues of material fact exist as to whether the handbook and other representations by GOH about payment of prevailing wages in accordance with the law constitute a contract on which King can base his contract and WPCL claims. As such, summary judgment must be denied.

v. Failure to State a Claim for Restitution

GOH argues that summary judgment should be entered in its favor on the restitution claim because (1) the underlying claims for breach of contract fail; (2) restitution is not a permissible legal remedy for a claim of breach of contract; and (3) King and the Class have already been made whole by the restitution in the criminal matter. As set forth herein, GOH is not entitled to summary judgment on the underlying breach of contract claims so the restitution claim cannot fail on that ground.

The Pennsylvania Supreme Court has explained the available remedies for breach of contract as follows:

> Remedies for breach of contract are designed to protect either a party's expectation interest by attempting to put him in the position he would have been had the contract been performed; his reliance interest by attempting to put him in the position he would have been had the contract not been made; or his restitution interest by making the other party return the benefit received to the party who conferred it.

Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C. v. L. Firm of Malone Middleman, P.C., 137 A.3d 1247, 1251 (Pa. 2016); *see also Trosky v. Civil Serv. Comm'n*, 652 A.2d 813, 817 (Pa. 1995). While GOH is correct that King and the Class cannot recover both expectation damages and restitution, GOH's request for summary judgment on that ground must be denied because of the availability of different remedies for the circumstances at issue and King's right to plead unjust enrichment and restitution in the alternative to breach of contract claims.

GOH's argument that summary judgment should be granted on the restitution claim because King and the Class have already been made whole is also unavailing. It is beyond dispute that the

restitution paid to the Class in the criminal matter was a negotiated component of the plea agreement between the Commonwealth and GOH. It did not include any prejudgment interest or liquidated damages which King and the Class may be entitled to if they prevail on their underlying claims. Additionally, there is a dispute of fact as to what amount actually makes King and the Class whole, with GOH relying on the restitution figure from the criminal matter and King relying on the restitution calculation made by its expert. For these reasons, summary judgment must be denied.

vi. Failure to State a Claim for Unjust Enrichment

GOH argues that summary judgment should be granted on the unjust enrichment claim because King cannot recover on both a breach of contract and unjust enrichment claim and because King fails to establish the elements of unjust enrichment in the employment context. It is undisputed that King is legally barred from recovering on both a contract claim and unjust enrichment claim. *Lugo v. Farmers Pride, Inc.*, 967 A.2d 963, 969 (Pa. Super. 2009). However, GOH "confuses the bar against recovering under both causes of action with a notion that pleading both causes of actions is also prohibited. *Lugo,* 967 A.2d at 969–70 (Pa. Super. 2009). Both the rules of Civil Procedure and case law permit a plaintiff to plead causes of action for breach of contract in the alternative with a cause of action under a theory of unjust enrichment. *Id.* at 970; Pa.R.C.P. No. 1020(c).

To succeed on an unjust enrichment claim, the plaintiff must prove: "(1) benefits [were] conferred on [the] defendant by [the] plaintiff; (2) appreciation of such benefits by [the] defendant; and (3) acceptance and retention of such benefits under such circumstances that it would be inequitable for [the] defendant to retain the benefit without payment of value." *Liberty Mut. Grp., Inc. v. 700 Pharmacy, LLC*, 270 A.3d 537, 554 (Pa. Super. 2022). "In determining if the doctrine applies, our focus is not on the intention of the parties, but rather on whether the defendant has been unjustly enriched." *Id.* GOH cites *McGuckin v. Brandywine Realty Tr.*, 185 F. Supp. 3d 600, 607

(E.D. Pa. 2016) for the proposition that "[i]n the employment context, to state a claim for unjust enrichment, plaintiff must allege that he did more than work to the best of his abilities for defendant as he was engaged to do. *McGuckin v. Brandywine Realty Tr.*, 185 F. Supp. 3d 600, 607 (E.D. Pa. 2016).

GOH's reliance on *McGuckin* is misplaced. Not only is *McGuckin* not binding precedent on this Court because it is a decision of a federal district court, the factual circumstances are also distinguishable. *McGuckin* involved a plaintiff employee who claimed that he was not paid adequately for the work he performed because he was a top performer and generated revenues well in excess of the targets established by his employer. *McGuckin*, 185 F.Supp.3d at 607. In the instant case, King is not arguing that the Company was unjustly enriched by the volume or quality of the work he completed, but rather by the Company retaining the benefit of King's work on prevailing wage jobs without paying King the prevailing wages he was entitled to by law.

Based on the foregoing, GOH is not entitled to summary judgment on this claim.

B. Class Motion for Partial Summary Judgment

In his motion for partial summary judgment, King seeks summary judgment as to liability on the breach of contract, continuing breach of contract, PWPCL violations, restitution, and unjust enrichment claims, liability for liquidated damages, and the issue of tolling of the statute of limitations. Given the Court's ruling that genuine issues of material fact exist regarding the applicability of GOH's statute of limitations defense, summary judgment as to liability on each of King's claims must be denied. Independent of whether disputes of material fact exist as to the substantive merits of King's claims, a jury must determine whether the claims are barred by the statute of limitations or if any tolling rules apply. Consequently, King's motion for partial summary judgment is denied in its entirety.

Consistent with the foregoing, the Court enters the following Order:

ORDER

AND NOW, this 13 day of June, 2025, for the reasons set forth in the accompanying Opinion, the Court rules as follows:

1. Defendant's Motion for Decertification is DENIED.
2. Plaintiff's Cross-Motion to Extend the Certified Class Period Back to January 1, 2012 is GRANTED.
3. Defendant's Motion for Summary Judgment is DENIED.
4. Plaintiff's Motion for Partial Summary Judgment is DENIED.

BY THE COURT:

Jonathan D. Grine, President Judge