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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 WILLIAM INSULATION COMPANY
9 INC,

10 Plaintiff,

v.

11 JH KELLY LLC; and CLEARWATER
12 PAPER CORPORATION,

13 Defendants.

CASE NO. C21-5083 BHS

ORDER ON DEFENDANTS'
MOTIONS TO DISMISS

14 This matter comes before the Court on Defendant JH Kelly, LLC's ("JHK")
15 motion to dismiss, Dkt. 16, and Defendant Clearwater Paper Corporation's
16 ("Clearwater") motion to dismiss, Dkt. 18. The Court has considered the pleadings filed
17 in support of and in opposition to the motion and the remainder of the file and hereby
18 denies JHK's motion and grants Clearwater's motion for the reasons stated herein.

19 **I. FACTUAL AND PROCEDURAL HISTORY**

20 Clearwater, a Delaware corporation headquartered in Washington, engaged JHK, a
21 Washington corporation headquartered in Washington, as the general contractor for
22 construction improvements at its Lewiston, Idaho paper pulp factory. Dkt. 1, ¶¶ 3, 4, 9.

1 JHK engaged Plaintiff Williams Insulation Company, Inc. (“WIC”), a Wyoming
2 corporation headquartered in Washington, as a subcontractor to perform industrial piping
3 insulation, equipment insulation, and abatement work and to erect scaffolding for the
4 project. *Id.*, ¶¶ 2, 10. WIC executed a Master Subcontract agreement (“MSA”), which
5 JHK drafted, an initial addendum, and a second addendum. *Id.*, ¶¶ 14, 20, 22. The second
6 addendum reflected the parties’ agreement that WIC would perform the work for
7 \$2,194,918.00. *Id.*, ¶ 22.

8 WIC alleges that at the time it executed the addenda, the design plans for the
9 project were not finalized, and subsequent changes in the project necessitated an
10 increased scope of work, increased its costs, and required additional manpower. *Id.*, ¶ 23.
11 WIC submitted 43 change orders to JHK, encompassing all changed and additional work
12 on the project. *Id.*, ¶¶ 28–29. WIC alleges that JHK paid only some of these orders in full,
13 even after WIC sent a formal Application and Certificate for Payment. *Id.*, ¶¶ 29, 36.

14 Section 4.9 of the MSA, “Venue,” provides in part that “[i]f any suit or action is
15 filed by any party to enforce this Subcontract or otherwise with respect to the subject
16 matter of this Subcontract, this Subcontract and all Work hereunder shall be interpreted
17 under the laws of the State of Washington” Dkt. 20-2 at 7. Similarly, Section 4.11,
18 “Governing Law,” provides that “[t]he law of the State of Washington shall govern this
19 subcontract.” *Id.*¹

21 ¹ JHK does not dispute WIC’s contention that Court may consider the MSA’s provisions
22 without converting the motions to dismiss into motions for summary judgment, because the
contracts are referenced throughout the Complaint. *See* Dkt. 20 at 3 n.2 (citing *Walker v. Fred*

1 WIC and JHK conducted an unsuccessful mediation over WIC's claims for non-
2 payment. Dkt. 1, ¶ 41. WIC sued, bringing claims for breach of contract, breach of the
3 duty of good faith and fair dealing, and *quantum meruit* against JHK, and for unjust
4 enrichment against both JHK and Clearwater. WIC seeks damages in excess of \$750,000
5 for each claim. *Id.*, ¶¶ 53, 56, 62, 70.

6 On February 25, 2021, JHK moved to dismiss. Dkt. 16. JHK contends that all of
7 WIC's claims against it are barred by WIC's failure to comply with Idaho's contractor
8 registration requirements. Alternatively, JHK contends that the Court should dismiss
9 WIC's unjust enrichment and *quantum meruit* claims because they are incompatible with
10 its breach of contract claim and dismiss WIC's breach of the implied duty of good faith
11 and fair dealing claims because WIC's allegations duplicate its breach of contract claim.

12 On March 2, 2021, Clearwater also moved to dismiss. Dkt. 18. Clearwater
13 contends that WIC cannot maintain an unjust enrichment claim against it because Idaho's
14 statutory mechanic's lien is the exclusive remedy available.

15 On March 15, WIC responded to JHK's motion. Dkt. 20. On March 19, 2021, JHK
16 replied. Dkt. 21. On March 22, 2021, WIC responded to Clearwater's motion. Dkt. 22.
17 On March 26, 2021, Clearwater replied. Dkt. 23.

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22 *Meyer, Inc.*, 953 F.3d 1082, 1085 n.1 (9th Cir. 2020); *Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th
Cir. 2005)).

1 **II. DISCUSSION**

2 **A. Standard on Motion to Dismiss**

3 Motions to dismiss brought under Rule 12(b)(6) of the Federal Rules of Civil
4 Procedure may be based on either the lack of a cognizable legal theory or the absence of
5 sufficient facts alleged under such a theory. *Balistreri v. Pacifica Police Department*, 901
6 F.2d 696, 699 (9th Cir. 1990). Material allegations are taken as admitted and the
7 complaint is construed in the plaintiff’s favor. *Keniston v. Roberts*, 717 F.2d 1295, 1301
8 (9th Cir. 1983). To survive a motion to dismiss, the complaint does not require detailed
9 factual allegations but must provide the grounds for entitlement to relief and not merely a
10 “formulaic recitation” of the elements of a cause of action. *Bell Atlantic Corp. v.*
11 *Twombly*, 550 U.S. 544, 555 (2007). Plaintiffs must allege “enough facts to state a claim
12 to relief that is plausible on its face.” *Id.* at 570.

13 **B. Choice-of-law for Claims Against JHK**

14 JHK argues that WIC cannot recover, notwithstanding the contract’s choice of
15 Washington law, because WIC violated Idaho law when it provided construction services
16 in Idaho without registering there as a contractor. WIC counters that the contract selects
17 Washington law, and Washington law permits its claim. The Court must determine
18 whether there is an actual conflict of laws and, if so, whether the MSA’s choice-of-law
19 provision, selecting Washington law, is effective.

20 ““When parties dispute choice of law, there must be an actual conflict between the
21 laws or interests of Washington and the laws or interests of another state before
22 Washington courts will engage in a conflict of laws analysis.”” *Erwin v. Cotter Health*

1 | *Ctrs.*, 161 Wn.2d 676, 692 (2007) (quoting *Seizer v. Sessions*, 132 Wn.2d 642, 648
2 | (1997)). “If the result for a particular issue ‘is different under the law of the two states,
3 | there is a real conflict.’” *Id.* (quoting *Seizer*, 132 Wn.2d at 648).

4 | Washington law provides that every contractor shall register, and it is a gross
5 | misdemeanor for any contractor to “[a]dvertise, offer to do work, submit a bid, or
6 | perform any work as a contractor without being registered as required by this chapter.”
7 | RCW 18.27.020. It further provides that contractors may not “bring or maintain any
8 | action in any court of this state” for payment or breach of contract without proving they
9 | were properly registered. RCW 18.27.080. However, the Washington Supreme Court
10 | held that this provision does not bar suits by subcontractors against prime contractors
11 | because it is intended to protect the public rather than other contractors. *Bremmeyer v.*
12 | *Peter Kiewit Sons Co.*, 90 Wn.2d 787, 791 (1978) (“we are convinced that the legislature
13 | did not intend to protect prime contractors from actions initiated by unregistered
14 | subcontractors.”).

15 | The Idaho Contractor Registration Act (“ICRA”) provides in relevant part that:

16 | No person engaged in the business or acting in the capacity of a contractor,
17 | unless otherwise exempt, may bring or maintain any action in any court of
18 | this state for the collection of compensation for the performance of any act
19 | or contract for which registration is required by this chapter without
alleging and proving that he was a duly registered contractor, or that he was
otherwise exempt as provided for in this chapter, at all times during the
performance of such act or contract.

20 | Idaho Code § 54-5217(2). Unlike Washington, the Idaho Supreme Court held that this
21 | registration requirement bars claims against all categories of defendants. *Stonebrook*
22 | *Constr., LLC v. Chase Home Fin., LLC*, 277 P.3d 374, 377–78 (Idaho 2012). If Idaho law

1 applies, WIC's claim is barred because WIC did not register as a contractor in Idaho. If
2 Washington law applies, WIC's claim may go forward because it is a suit by a
3 subcontractor against a prime contractor. *Bremmeyer*, 90 Wn.2d at 791. Therefore, an
4 actual conflict exists.

5 Next, the Court considers whether the parties' choice-of-law provision, selecting
6 Washington law, is effective. *See Erwin*, 161 Wn.2d at 693. Washington follows Section
7 187 of the *Restatement (Second) Conflict of Laws* (1971) to resolves conflict of laws
8 issues where "the parties have made an express contractual choice of law to govern their
9 rights and duties." *Id.* at 694. Restatement Section 187, Law of the State Chosen by the
10 Parties, provides:

11 (1) The law of the state chosen by the parties to govern their
12 contractual rights and duties will be applied if the particular issue is one
13 which the parties could have resolved by an explicit provision in their
14 agreement directed to that issue.

15 (2) The law of the state chosen by the parties to govern their
16 contractual rights and duties will be applied, even if the particular issue is
17 one which the parties could not have resolved by an explicit provision in
18 their agreement directed to that issue, unless either

19 (a) the chosen state has no substantial relationship to the parties or
20 the transaction and there is no other reasonable basis for the parties' choice,
21 or

22 (b) application of the law of the chosen state would be contrary to a
fundamental policy of a state which has a materially greater interest than
the chosen state in the determination of the particular issue and which,
under the rule of § 188, would be the state of the applicable law in the
absence of an effective choice of law by the parties.

Restatement (Second) of Conflict of Laws § 187.

1 JHK contends that the Idaho contractor registration requirement is not something
2 the parties could have chosen to disregard with a specific provision in their contract, so
3 subsection (2)(b) applies and mandates the application of Idaho law. Dkt. 16 at 6–7. WIC
4 counters that proper analysis under that subsection would maintain the parties’ choice of
5 Washington law. Dkt. 20 at 11.

6 JHK contends that application of Washington law would be contrary to a
7 fundamental policy of Idaho. Dkt. 16 at 7. It emphasizes the Idaho Supreme Court’s
8 reliance on the Idaho legislature’s findings that ““it is in the public interest to provide a
9 mechanism to remove from practice incompetent, dishonest, or unprincipled practitioners
10 of construction,”” and thus the legislature “adopted harsh penalties for contractors that do
11 not comply.” *Stonebrook*, 277 P.3d at 379–80 (quoting I.C. § 54–5202). JHK argues that
12 Idaho thus has a materially greater interest than Washington in the application of its law
13 because the work was performed there, and application of Idaho law would thus
14 appropriately penalize WIC’s failure to register. Dkt. 16 at 7–8.

15 WIC counters that the analysis should end at the first step, whether the parties’
16 choice is contrary to a fundamental policy of a state, because the ICRA only prohibits
17 recovery “in any court of this state.” Dkt. 20 at 11. Moreover, WIC argues that as both
18 JHK and Clearwater are headquartered in Washington, Idaho’s interest in regulating
19 access to its state courts by unregistered contractors does not materially outweigh
20 Washington’s interest in regulating the business dealings of its residents (though WIC is
21 a Wyoming resident). *Id.*

1 JHK retorts that the Court should not read the “in any court of this state” language
2 to limit the ICRA’s reach to Idaho state courts for multiple reasons including that not
3 applying the ICRA would frustrate the Idaho legislature’s intent, that substantive state
4 law should apply in choice-of-law, and that Washington’s link to the parties and the
5 transaction is minor. Dkt. 21 at 5–6 (distinguishing *Nelson v. Kaanapali Properties*, 19
6 Wn. App. 893 (1978)). WIC’s arguments and authorities are more persuasive than JHK’s.

7 First, JHK contends that substantive state laws, even if they limit their application
8 to actions brought “in any court of this state,” should still be applied in choice-of-law
9 analysis. *See* Dkt. 21 at 6 (citing *Bledsoe v. Crowley*, 849 F.2d 639, 641 (D.C. Cir.
10 1988)). *Bledsoe* is distinguishable for two reasons. First, *Bledsoe* involved a Maryland
11 tort reform statute which provided that “an action or suit of that type may not be brought
12 or pursued in any court of this State except in accordance with this subtitle.” 849 F.2d at
13 640–41 (citation omitted). The District Court of Maryland and Maryland Court of
14 Appeals construed this limiting language as intended to exempt minor claims in state
15 district courts, rather than to intended to apply to federal courts sitting in diversity. *Id.* at
16 643 (citations omitted). Here, there is no such authoritative construction concluding that
17 the Idaho legislature did not intend to limit application to suits in its state courts (and the
18 legislature’s use of this language in other statutes is not to the contrary). Second and more
19 importantly, the parties in this case bargained for the application Washington law, unlike
20 the parties in *Bledsoe*.

21 Second, as WIC points out, the Washington Court of Appeals has applied
22 Washington law against a more directly analogous and onerous statute, even where the

1 parties' contract did not include a Washington choice of law provision. Dkt. 20 at 10
2 (citing *Nelson*, 19 Wn. App. at 899–900). In *Nelson*, a Washington-registered contractor
3 performed construction in Hawaii for a joint venture between a Washington corporation
4 and a Hawaiian corporation. 19 Wn. App. at 894. Hawaii law provided that an
5 unregistered contractor could not recover “in a civil action,” purporting to deny the
6 plaintiff recovery in any court. *Id.* at 896, 899.

7 Under the “significant relationship” test (applicable absent an effective choice of
8 law by the parties), the Court of Appeals noted that generally the place of performance
9 would be the most significant contact. *Id.* at 897–898. However, the factors in section 196
10 and comment d of the *Restatement (Second) Conflicts* (1969) (evaluating whether or
11 when the local law of the state where services were rendered should not apply) indicated
12 that Washington law should apply. *Id.* at 898–99. Washington had a close relationship to
13 the transaction and the parties, applying Washington law would protect the parties’
14 expectation that the construction would occur and payment be rendered, and the public
15 policy of each state (to protect the public from unreliable or unscrupulous contractors)
16 did not conflict. *Id.* The Court of Appeals concluded that “[t]he significance of the place
17 of contracting, the domicile and residence of the parties . . . the expectation interests of
18 the parties, and the policy of Washington in providing a forum [for a dispute primarily
19 between Washington domiciliaries] far outweigh the significance of the place of
20 performance and the public policy of Hawaii in applying its rule.” *Id.* at 899–900.

21 Here, the expectation interest of the parties is even stronger, given the choice of
22 law in the contract. It is not clear that the fundamental policy of Idaho extends to lawsuits

1 outside its state courts, and as applied to the facts of this case, the public policy interests
2 of Washington and Idaho in regulating contractors are relatively similar. *Compare Erwin*,
3 161 Wn.2d at 696 (when registration law intends to protect from perils of incompetent or
4 untrustworthy practitioners, but defendant does not contend plaintiff is incompetent or
5 untrustworthy, interest of state requiring registration is not impacted) *with Stonebrook*,
6 277 P.3d at 379 (Idaho’s interest in imposing harsh penalties on unregistered contractors
7 is to remove from practice incompetent, dishonest, or unprincipled practitioners). And
8 JHK is a Washington corporation which drafted a contract selecting Washington law.
9 Therefore, the Court concludes that the application of Washington law is not contrary to
10 the fundamental policy of Idaho, and even if it is, Idaho does not have a materially
11 greater interest than Washington in determining whether WIC can recover under the
12 contract. *See Erwin*, 161 Wn.2d at 695–96 (whether state registration law bars recovery
13 under contract goes to substantial validity of parties’ agreement to pay fees, analyzed
14 under Section 187(2) of the Restatement; when the first two questions of the section are
15 answered in the negative, parties’ choice of Washington law stands).

16 JHK also argues that the contract’s choice-of-law provision does not apply to
17 WIC’s claim because the parties clearly agreed that WIC would comply with Idaho law.
18 Dkt. 21 at 3–4. JHK cites Article 6.3 of the MSA, which provides that WIC will provide
19 proof of registration within five days of execution of the subcontract and prior to starting
20 work and provides that failure to do so is grounds for termination of the subcontract. *Id.*
21 This is not persuasive because JHK did not and does not seek to terminate the contract
22 under this provision. Additionally, the plain language of the contract’s choice-of-law

1 provisions is not limited to contract interpretation as JHK contends—as noted, the
2 contract states that suits related “to the subject matter of this Subcontract, this
3 Subcontract *and all Work hereunder* shall be interpreted under the laws of the State of
4 Washington” Dkt. 20-2 at 7 (emphasis added). Similarly, the MSA’s governing law
5 provision provides that Washington law governs “this subcontract.” *Id.* These provisions
6 are at the very least ambiguous as to whether they limit choice-of-law to contract
7 interpretation and are thus construed against the drafter, JHK. *Pierce County v. State*, 144
8 Wn. App. 783, 813 (2008).

9 As the Washington Supreme Court concluded in *Erwin*, quoting the Washington
10 Court of Appeals, “the interest of the parties are best served by leaving them exactly
11 where they placed themselves—litigating this dispute in Washington’ and under
12 Washington law.” 161 Wn.2d at 700 (citation omitted). Therefore, JHK’s motion to
13 dismiss WIC’s claims on the basis of WIC’s failure to comply with the ICRA is

14 **DENIED.**

15 **C. Breach of the Duty of Good Faith and Fair Dealing Claim Against JHK**

16 WIC’s breach of the duty of good faith and fair dealing allegations, that JHK
17 failed to timely pay for additional work requested, do not go beyond its breach of contract
18 claims. JHK contends that allegations supporting a claim for breach of the duty of good
19 faith and fair dealing must “[g]enerally” go beyond what is alleged in support of a breach
20 of contract claim. Dkt. 16 at 14. However, JHK cites only authority relying on California
21 law for this proposition. *Id.* (citing *In re Facebook, Inc. Internet Tracking Litig.*, 956 F.3d
22 589, 611 (9th Cir. 2020) (citing *Careau & Co. v. Sec. Pac. Bus. Credit, Inc.*, 222 Cal.

1 App. 3d 1271, 1395 (1990)); *Cal Shoppers, Inc. v. Royal Globe Ins. Co.*, 175 Cal. App.
2 3d 1, 54 (1985)). Without Washington authority on this issue, JHK has not established
3 that WIC fails to state a claim for breach of the duty of good faith and fair dealing where
4 it alleges that JHK induced it to perform work and refused to pay. Therefore, JHK's
5 motion to dismiss WIC's breach of the duty of good faith and fair dealing claim is

6 **DENIED.**

7 **D. Equitable Claims Against JHK and Clearwater**

8 **1. JHK**

9 "Unjust enrichment is the method of recovery for the value of the benefit retained
10 absent any contractual relationship because notions of fairness and justice require it."

11 *Young v. Young*, 164 Wn.2d 477, 484 (2008); *see also* 25 Wash. Prac., Contract Law and
12 Practice § 14:7 (citing *Bircumshaw v. State*, 194 Wn. App. 176 (2016) ("Restitution [the
13 remedy to prevent unjust enrichment] is not available for breach of a fully performed
14 contract when the only outstanding performance is the payment of money.")). JHK is
15 correct that quasi-contract or implied contract claims may be alternatives to failed
16 contract existence claims like fraud in the inducement or illegality of contract, but they
17 are not alternatives to failed breach of contract claims. *Wodija v. Wash. State Emps.*
18 *Credit Union*, No. C15-5693 BHS, 2016 WL 3218832, at *4 (W.D. Wash. June 9, 2016).
19 However, WIC is correct that Federal Rule of Civil Procedure 8(d)(2) permits pleading in
20 the alternative.

21 If JHK concedes that in fact what is at issue is a fully performed contract where
22 the only outstanding performance is the payment of money, then these quasi-contractual

1 claims would not be available. However, if JHK contends that extra work WIC allegedly
2 performed occurred outside the written contractual relationship, these quasi-contractual
3 claims for recovery could be available. *See Mod. Builders, Inc. of Tacoma v. Manke*, 27
4 Wn. App 86, 93–94 (1980) (“Quantum meruit may substitute for the contract price and
5 form the basis of total recovery only when substantial changes occur as work progresses
6 which are not covered by the original contract and which were not within the
7 contemplation of the parties when the contract was formed.”). Of course, double recovery
8 would not be permitted. Therefore, JHK’s motion to dismiss as to WIC’s unjust
9 enrichment and *quantum meruit* claims is **DENIED**.

10 **2. Clearwater**

11 Clearwater argues that WIC has an adequate remedy at law—a mechanic’s lien—
12 and cannot pursue its unjust enrichment claim because neither Washington nor Idaho
13 permits equitable recovery in unjust enrichment when an adequate legal remedy exists.
14 Dkt. 18 at 3. Both Washington and Idaho statutorily provide that unpaid subcontractors
15 may file a mechanic’s lien against the owner’s property to secure payment. RCW
16 60.04.011, *et seq.*; Idaho Code § 45-501, *et seq.* WIC contends that “Washington courts
17 often find that where a subcontractor seeks to recover against an owner for extra-
18 contractual work on a project, unjust enrichment is considered a legal rather than an
19 equitable claim.” Dkt. 22 at 9 (citing *Auburn Mech., Inc. v. Lydig Constr., Inc.*, 89 Wn.
20 App. 893 (1998)).

21 However, *Auburn Mechanical* considered whether actions for money owed a
22 subcontractor for extra work allegedly performed, on claims not exclusive to equity,

1 entitled the plaintiff to a jury. 89 Wn.App. at 314–17. More directly analogous
2 Washington authority holds that unjust enrichment is unavailable if adequate legal
3 remedies exist. *Seattle Pro. Eng’g Emps. Ass’n v. Boeing Co.*, 139 Wn.2d 824, 839
4 (2000), *opinion corrected on denial of reconsideration*, 1 P.3d 578 (2000).² Idaho
5 similarly holds that mechanic’s liens are the exclusive remedy for subcontractors who
6 lack express contracts with owners. *Great Plains Equip., Inc. v. Nw. Pipeline Corp.*, 970
7 P.2d 627, 641 (Idaho 1999).

8 WIC also argues that it has no adequate legal remedy because “a universal
9 requirement, regardless of the state involved, is that mechanic’s lien rights can only be
10 asserted in the state and county where the property is located,” so it cannot invoke
11 Washington’s mechanic’s lien statute, and its lack of registration bars it from invoking
12 Idaho’s. Dkt. 22 at 10. However, as Clearwater points out, WIC’s inability to invoke
13 Idaho’s mechanic’s lien is a problem of its own making, which does not render the
14 statutory remedy inadequate. Dkt. 23 at 3 (citing, among others, *United States v. Elias*,
15 921 F.2d 870, 874 (9th Cir. 1990), *overruled on other grounds by United States v.*
16 *Clagett*, 3 F.3d 1355 (9th Cir. 1993) (“Failure to comply with a remedy at law does not
17 make it inadequate so as to require the district court to exercise its equitable
18 jurisdiction.”)).

21 ² WIC argues that *Seattle Professional Engineering Employees Association* is inapposite
22 because it refers to a statutory remedy exclusive to employees. Dkt. 22 at 9. However, as noted,
both Washington and Idaho have mechanic’s lien statutes. RCW § 60.04.011, *et seq.*; Idaho
Code § 45-501, *et seq.*

1 WIC also argues that it should be able to recover in equity under Washington law
2 based on the “interrelated” nature of the contract between WIC and JHK and that the
3 contract between JHK and Clearwater extends the Washington choice-of-law provision in
4 WIC’s contract with JHK to WIC’s relationship with Clearwater. However, WIC and
5 Clearwater have no contract, and there is no basis for the Court to conclude that
6 provisions in WIC contract with JHK should be applied against Clearwater or for the
7 Court to assume a Washington choice-of-law provision exists in the contract between
8 JHK and Clearwater which WIC can somehow invoke. WIC further argues that JHK has
9 a statutory duty in both Idaho and Washington to maintain copies of its subcontractor’s
10 certificates of registration, it owed a duty to Clearwater to do so, and Clearwater should
11 not benefit from JHK’s failure. The Court agrees with Clearwater that this argument is
12 nonsensical. If JHK were indeed somehow responsible for WIC’s failure to register, that
13 would be relevant to a claim by WIC against JHK, not against Clearwater—and would
14 not make the statutory remedy any less adequate. In sum, WIC’s arguments related to the
15 contracts are unpersuasive and unsupported by authority.

16 As WIC is responsible for the inadequacy of its statutory remedy, the Court
17 concludes that a remedy in equity is not appropriate. Therefore, Clearwater’s motion to
18 dismiss WIC’s unjust enrichment claim is **GRANTED**. However, as it is not clear that
19 WIC’s claims against Clearwater cannot be saved by amendment, as discussed below, the
20 Court grants leave to amend.

1 **E. Leave to Amend**

2 In the event the court finds that dismissal is warranted, the court should grant the
3 plaintiff leave to amend unless amendment would be futile. *Eminence Capital, LLC v.*
4 *Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). “[A] proposed amendment is futile
5 only if no set of facts can be proved under the amendment to the pleadings that would
6 constitute a valid and sufficient claim or defense.” *Miller v. Rukoff-Sexton, Inc.*, 845 F.2d
7 2019, 214 (9th Cir. 1988), *overruled on other grounds by Ashcroft v. Iqbal*, 556 U.S. 662
8 (2009).

9 Clearwater is correct that WIC does not allege facts to support a claim that
10 Clearwater was acting as a general contractor under the Washington Contractor’s
11 Registration Act, RCW 18.27.020, such that Clearwater may be directly liable to WIC.
12 While it is not clear that WIC could make these allegations, and it would thus appear the
13 mechanic’s lien would remain an exclusive, unavailable remedy, it is not clear that “no
14 set of facts could be proved” under an amended pleading that would constitute a valid
15 claim. *Miller*, 845 F.2d at 214. Therefore, as leave to amend should be granted with
16 “extreme liberality,” *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079
17 (9th Cir. 1990), WIC’s request for leave to amend as to this claim is **GRANTED**.

18 **F. Fees**

19 JHK and Clearwater seek fees for their motions, and WIC seeks fees for being
20 required to respond. The MSA between JHK and WIC requires that the prevailing party
21 in any dispute related to the MSA or projects completed under it receive their attorney’s
22 fees and costs. Dkt. 1, ¶ 43. While WIC is the prevailing party as to JHK’s motion,

1 neither party has yet prevailed in the dispute, so the Court finds it prudent to reserve this
2 question for later in the litigation.

3 Clearwater does not cite any authority in support of its request for fees for its
4 motion, and WIC does not cite any authority in support of its request for fees for having
5 to respond. The Court thus declines to award any.

6 **III. ORDER**

7 Therefore, it is hereby **ORDERED** that JHK's motion to dismiss, Dkt. 16, is
8 **DENIED**, and Clearwater's motion to dismiss, Dkt. 18, is **GRANTED**. WIC may file an
9 amended complaint as set out herein no later than May 28, 2021.

10 Dated this 11th day of May, 2021.

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BENJAMIN H. SETTLE
United States District Judge