STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: December 22, 2015)

WILLIAM CASPERSON, individually and on behalf of a class of persons similarly-situated,	:	
Plaintiff,	:	
	:	
v.	:	**C.A. No. PC 2014-6139**
	:	
AAA SOUTHERN NEW ENGLAND, JOHN DOE COMPANIES, 1 through 10, inclusive, and JOHN DOES, 1 through 10 inclusive,	:	
Defendants.	:	

DECISION

SILVERSTEIN, J. Before the Court for decision is Defendant AAA Southern New England's (hereinafter AAA) Motion to Dismiss the class action Complaint for unpaid wages filed by Plaintiff William Casperson (hereinafter Casperson), individually and on behalf of a class of persons similarly-situated. In his Complaint, Casperson asks that this matter be certified as a class action with Casperson as the class representative. Casperson asserts that (i) AAA wrongfully denied Casperson, and other similarly-situated employees, wages under the Wage Act by failing to pay them one and one-half (1 ½) times the normal rate of pay for hours worked on Sundays and holidays; (ii) AAA wrongfully denied Casperson, and other similarly-situated employees, wages under the Sunday Pay Act by failing to pay them one and one-half (1 ½) times the normal rate of pay for hours worked on Sundays and holidays; and (iii) AAA has been unjustly enriched by the hours that Casperson, and similarly-situated employees, worked on

Sundays and holidays, thus entitling them to such legal and equitable relief as the Court deems proper. The Court has jurisdiction pursuant to G.L. 1956 § 8-2-14.

I

Facts and Travel

AAA is a Delaware corporation duly registered with the State of Rhode Island, which maintains a principal place of business in the City of Providence. Additionally, AAA employs individuals in the State of Rhode Island and is engaged in the motor vehicle service industry, providing "roadside assistance" services to its customers, including, but not limited to, towing, mechanical adjustments, vehicle fuel delivery, battery replacement, vehicle extrication, and lock-out services. Compl. ¶ 3.

On October 19, 2009, AAA hired Casperson as a part-time tow truck driver. At the time of his hire, Casperson earned $11.50 per hour and worked twenty-four hours per week, including Sundays and holidays. In June of 2011, Casperson became a permanent, full-time flatbed driver for AAA. At that time, he earned $12.50 per hour and worked thirty-nine hours per week, including Sundays and holidays. During Casperson's tenure with AAA, he was required to work at least eight hours every Sunday, as well as some holidays. Casperson was terminated from his position with AAA on March 13, 2014. Id. at ¶¶ 12-16.

On December 15, 2014, Casperson filed this action against AAA alleging that it violated (i) Title 28, Chapter 14 of the General Laws of Rhode Island, 1956, entitled the Rhode Island Payment of Wages Act (hereinafter the Wage Act); and (ii) Title 25, Chapter 3 of the General Laws of Rhode Island, 1956, entitled Rhode Island Work on Holidays and Sundays Act (hereinafter the Sunday Pay Act). Casperson further alleges that AAA was unjustly enriched by reason of its failure to pay Casperson one and one-half (1 ½) his normal rate of pay for hours

worked on Sundays and holidays. Casperson also asserts that during all relevant time periods he was an "employee" of AAA within the meaning of both the Wage Act and the Sunday Pay Act. Casperson further claims that as an "employee," both Acts entitle him to one and one-half (1 ½) times his normal rate of pay (hereinafter premium pay) for the hours he worked on Sundays and holidays. Casperson contends that AAA wrongfully denied him this premium pay. Casperson further alleges that AAA wrongfully underpaid him, and other similarly-situated employees, in excess of $5000. Thus, Casperson concludes that AAA violated both the Wage Act and the Sunday Pay Act by failing to compensate him premium pay for the work he performed on Sundays and holidays. Further, Casperson asserts that, through this lack of compensation, AAA was unjustly enriched by the work Casperson performed on Sunday and holidays.

AAA has moved to dismiss this action under Super. R. Civ. P. 12(b)(6) (Rule 12(b)(6)) arguing that (i) Casperson has not asserted a claim upon which relief can be granted as he is not considered an "employee," but instead, is exempt[1] under the Sunday Pay Act; and (ii) his unjust enrichment claim is preempted by the Sunday Pay Act.[2] In its Motion, AAA chiefly relies on an

[1] The Sunday Pay Act defines an "employee" by listing the types of employees that are not entitled to premium pay. See § 25-3-1(3) (stating that "'Employee' means any individual employed by an employer, but shall not include: (i) Any individual employed in agriculture or maritime trades, including commercial fishing or boat repairs; (ii) Any physician, dentist, attorney at law, or accountant; (iii) Any individual engaged in the provision of health care or maintenance; (iv) Any individual employed in a restaurant, hotel, motel, summer camp, resort, or other recreational facility (except health clubs); (v) Any individual employed in the business of offshore petroleum or gas exploration or extraction, or in the business of servicing or supplying persons engaged in exploration or extraction; (vi) Supervisory employees as defined in 29 U.S.C. § 213(a)(1) and regulations issued pursuant to that section; (vii) Any individual employed by an employer holding a license issued pursuant to chapter 23 of title 5; or (viii) Any individual employed as part of a telephonic delivery of customer service, sales operations, and ancillary services related to those services and operations, except for specific employment positions in the telecommunications industry that are part of any collective bargaining agreement or employment contract in effect on July 2, 1998.") (emphasis added).

[2] In the papers filed with this Court, both AAA and Casperson focus most of their attention on the alleged violations of the Sunday Pay Act and briefly address the unjust enrichment claim, but

opinion letter written by Sean M. Fontes, Executive Counsel of the Rhode Island Department of Labor and Training (hereinafter DLT),[3] on May 1, 2014 (hereinafter Letter). Mot. to Dismiss, Ex. A.

The Letter was in response to a request from AAA, in which AAA inquired about the status of both its company and its roadside service technicians under the Sunday Pay Act. According to the Letter, the DLT stated that it had "reviewed the issue of whether or not AAA is required to pay its emergency roadside service technicians premium pay" and concluded that "AAA is not required to . . . because [these technicians] perform a service that is 'ancillary' to a 'telephonic delivery of customer service' pursuant to R.I.G.L. § 25-3-1(3)(viii)." Mot. to Dismiss, Ex. A. In the Letter, the DLT reasoned that, "[b]ased upon the facts presented by [AAA], AAA has a call center operation which receives calls for emergency roadside assistance. The call center operators then contact the roadside service technicians who provide the assistance" and that such assistance "is 'ancillary' to the call center operations, since emergency roadside service technicians could not perform their work without the operations of the call center." Id. The DLT based the Letter entirely on facts submitted by AAA and concluded that AAA emergency roadside service technicians, such as Casperson, are not "employees" under the Sunday Pay Act and therefore are not entitled to receive premium pay for work performed on Sundays and/or holidays. Casperson objected to AAA's Motion, asserting that the Letter is not legally binding on this Court.

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altogether fail to mention any violation of, or defense to, the Wage Act. Accordingly, this Court will proceed by addressing each issue, but will give most consideration to those of major contention.

[3] The DLT is a department of state government charged with protecting Rhode Island's workforce by enforcing labor laws, prevailing wage rates, and workplace health and safety standards, and is also tasked with the responsibility of enforcing and administering both the Wage Act and the Sunday Pay Act. See §§ 25-3-1(1); 25-3-6; 28-14-1; 28-14-19.

At issue is whether (i) the Court may take judicial notice of the Letter that AAA attached to its Motion; (ii) the Letter—if capable of judicial notice—is legally binding on the Court, therefore warranting dismissal of Casperson's Complaint; and (3) AAA was unjustly enriched as a result of its failure to provide Casperson with premium pay for the hours he worked on Sundays and holidays.

II

Standard of Review

The criteria that the Court considers in determining whether to grant a motion to dismiss is well settled in this jurisdiction. A Rule 12(b)(6) motion to dismiss "test[s] the sufficiency of the complaint." Domestic Bank v. Urbaez, 2011 WL 282334, at *2 (R.I. Super. Jan. 25, 2011) (citing Toste Farm Corp. v. Hadbury, Inc., 798 A.2d 901, 905 (R.I. 2002)). Although generally a court's review on a motion to dismiss is confined to the four corners of the complaint, Rhode Island law allows courts to "consider not only the complaint . . . but also . . . matters susceptible to judicial notice." R.I. Res. Recovery Corp. v. Van Liew Trust Co., 2011 WL 1936011, *5 (R.I. Super. May 13, 2011).[4] A complaint is only required to "give the opposing party fair and adequate notice of the type of claim being asserted." Haley v. Town of Lincoln, 611 A.2d 845, 848 (R.I. 1992). Consequently, a "plaintiff is not required to plead the ultimate facts that must be proven" in order to survive a motion to dismiss, but instead, must only assert any set of facts that the plaintiff could prove to support his or her claims for relief. Id.; see e.g., Chhun v. Mortg. Elec. Registration Sys., Inc., 84 A.3d 419, 422 n.5 (R.I. 2014); Collins v. Fairways Condos. Ass'n, 592 A.2d 147, 148 (R.I. 1991). Furthermore, the Court must "assume that all allegations

[4] However, "[i]f a trial justice, in ruling on a motion to dismiss, considers matters outside [this] scope . . . the motion is converted into a motion for summary judgment." Foley v. St. Joseph Health Servs. of R.I., 899 A.2d 1271, 1275 (R.I. 2006) (internal citations omitted).

in the complaint are true, and resolve any doubts in a plaintiff's favor." R.I. Affiliate, Am. Civil Liberties Union, Inc. v. Bernasconi, 557 A.2d 1232, 1232 (R.I. 1989); see also Warren Educ. Ass'n v. Lapan, 103 R.I. 163, 170, 235 A.2d 866, 871 (1967) ("in order to justify a dismissal of a complaint under this rule the trial justice … [must] accord[] the plaintiff the benefit of every inference in viewing the allegations of his complaint in their most promising light"). Therefore, the Court may only grant a Rule 12(b)(6) motion to dismiss "when it is clear beyond a reasonable doubt that the plaintiff would not be entitled to relief from the defendant under any set of facts that could be proven in support of the plaintiff's claim." Palazzo v. Alves, 944 A.2d 144, 149-50 (R.I. 2008). As a result, "[t]he standard for granting a motion to dismiss is a difficult one for the movant to meet." Pellegrino v. R.I. Ethics Comm'n, 788 A.2d 1119, 1123 (R.I. 2002).

III

Discussion

A

1

Casperson's Misplaced Reliance on the Wage Act

Casperson claims that AAA violated the Wage Act by failing to pay him premium pay for the work he performed on Sundays and holidays. See Compl. ¶¶ 41-46. In response, AAA does not assert any defense to, or acknowledge, these alleged violations within its Motion. See Mot. to Dismiss.

The Wage Act is a Rhode Island statute, administered by the DLT, regulating certain aspects of employee compensation. See §§ 28-14-1, et seq. [5] It is evident, upon review of the Wage Act, that not a single provision within the Act requires employers to pay their employees premium pay for hours worked on Sundays and/or holidays. See id. Instead, Rhode Island's Sunday Pay Act requires employers to compensate "employees" premium pay for hours worked on Sundays and holidays. See §§ 25-3-1, et seq. (stating that "[w]ork performed by employees on Sundays and holidays must be paid for at least one and one-half (1 1/2) times the normal rate of pay" and defining holidays as "Sunday, New Year's Day, Memorial Day, July 4th, Victory Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving, and Christmas"). Casperson's reliance on the Wage Act is therefore misplaced. Consequently, even when taken in the light most favorable to him, Casperson has not asserted a claim for which relief can be granted under the Wage Act. Accordingly, the Court grants—in part—AAA's Motion to Dismiss; specifically, Count I of Casperson's Complaint pertaining to AAA's alleged violation of the Wage Act.

2

The Court's Resulting Jurisdiction

In his Complaint, Casperson asserts that the Court has jurisdiction over this matter pursuant to § 28-14-19.2. See Compl. ¶ 7. Section 28-14-19.2 states that "[a]ny employee or former employee . . . aggrieved by the failure to pay wages and/or benefits or misclassification in

[5] Specifically, the Wage Act deals with topics enumerated therein, such as the following: form of payment, statement of earnings, establishment of paydays, frequency of payment, deduction and payment of union dues, deduction of payroll, payment on separation by employer, payment in event of industrial dispute, payment of wages of deceased employees, priority of wages due from employer in receivership or insolvency proceedings, payment of undisputed amounts in wage disputes, effect of private agreements, payment of wages directly to employee's account in financial institution, vacation pay, payment of bonuses, filing of claims, garnishment of wages, records of employment, misclassification of employees, and set-off of money owed by employee to employer. See id.

violation of chapters 28-12 and/or [the Wage Act] may file a civil action in any court of competent jurisdiction to obtain relief." Sec. 28-14-19.2. As stated above, the Wage Act is not implicated in this case. Therefore, Casperson's assertion that the Court has jurisdiction pursuant to § 28-14-19.2 is only possible if this matter is governed by § 28-12.

Rhode Island General Law Chapter 28-12, entitled Minimum Wages (hereinafter Minimum Wage Act), governs employee minimum wage and overtime pay. See §§ 28-12-1, et seq. More specifically, the Minimum Wage Act required AAA to pay its employees at a rate of seven dollars and forty cents ($7.40) per hour; seven dollars and seventy-five cents ($7.75) per hour; and eight dollars ($8.00) per hour—commencing on January 1 of 2007, 2013, and 2014 respectively—as well as premium pay for all hours worked in excess of forty (40) hours per week. See §§ 28-12-3; 28-12-4.1. Casperson states, however, that during his tenure at AAA, he was paid above the aforementioned minimum wage and worked—at the very most—thirty-nine (39) hours per week. See Compl. ¶¶ 12-13. Accordingly, Casperson does not allege any violation of the Minimum Wage Act.

Therefore, since neither the Wage Act nor the Minimum Wage Act are implicated within his Complaint—even when taken in the light most favorable to him—Casperson's assertion of jurisdiction pursuant to § 28-14-19.2 fails. Instead, the Court's review of AAA's alleged failure to provide Casperson with premium pay for hours worked on Sundays and holidays is governed by § 25-3-9, which grants a court of "competent jurisdiction" authority to review "violation[s] of the provisions of this chapter." Sec. 25-3-9. Under Rhode Island General Law 1956, Chapter 8-2-14, entitled Jurisdiction of actions at law, the Court has "exclusive original jurisdiction of all other actions at law in which the amount in controversy shall exceed the sum of ten thousand dollars ($10,000); and shall also have concurrent original jurisdiction with the district court in all

other actions at law in which the amount in controversy exceeds the sum of five thousand dollars ($5,000) and does not exceed ten thousand dollars ($10,000)." Sec. 8-2-14(a). Casperson asserts that the "monetary amount sought by the Plaintiff and members of the class in this matter is sufficient to establish the jurisdiction of the Superior Court." Compl. ¶ 7. Therefore, when reading the Complaint in the light most favorable to Casperson and accepting all of his allegations as true, the Court finds that it is a court of "competent jurisdiction" under § 25-3-9 and thus has proper jurisdiction over this claim. See Bernasconi, 557 A.2d at 1232; see also §§ 25-3-9; 8-2-14(a).

B

1

The Court's Consideration of the Letter

In support of its Motion to Dismiss, AAA attaches, and relies upon, the opinion Letter that Sean M. Fontes, Executive Counsel of the DLT, wrote with respect to the "employee" status of AAA's roadside service technicians. See Mot. to Dismiss. AAA asserts that the Letter eliminates any claim that Casperson might have under the Sunday Pay Act, as the Letter is legally binding on the Court and can only be overturned if it is clearly erroneous or unauthorized. See id. AAA claims that the Court can take judicial notice of the Letter. See id. Casperson does not address AAA's assertion that the Court can take judicial notice of the Letter. See Opp'n to Mot.

The Court notes that generally, because "the sole function of a motion to dismiss is to test the sufficiency of the complaint," a court's review in deciding a motion to dismiss is confined to the four corners of the complaint and must be made strictly on the pleadings. Palazzo, 944 A.2d at 149 (internal quotations omitted); see also Barrette v. Yakavonis, 966 A.2d 1231, 1234 (R.I.

2009). This rule, however, is not absolute. See e.g. Bowen Court Assocs. v. Ernst & Young, LLP, 818 A.2d 721, 725-26 (R.I. 2003) (noting that a "justice may properly consider and refer to" documents attached as exhibits to a pleading when deciding a Rule 12(b)(6) motion). Instead, when ruling on a Rule 12(b)(6) motion to dismiss, the Court may "look [] to the allegations of the complaint and to any facts and laws of which the trial court could properly take judicial notice." Berberian v. New England Tel. & Tel. Co., 114 R.I. 197, 199, 330 A.2d 813, 815 (1975); see also Urbaez, 2011 WL 282334, at *2 (this Court stated that in deciding Rule 12 motions, a court may consider not only the complaint, but also, "matters susceptible to judicial notice") (citing Roy v. Gen. Elec. Co., 544 F. Supp. 2d 103, 107 (D.R.I. 2008)). Therefore, the Court may consider the Letter in ruling on AAA's Motion to Dismiss; provided, however, that the Letter is, in fact, susceptible to judicial notice.

A fact that is capable of judicial notice is one that is "not subject to reasonable dispute in that it is . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." R.I. R. Evid. 201. Therefore, under Rhode Island law, courts may take judicial notice of certain readily verifiable adjudicative facts, such as, an individual's status as a licensed professional,[6] prior court judgments,[7] matters pending in another case,[8] Rhode Island laws,[9] well-established scientific theories,[10] and criminal records.[11] See R.I. R.

[6] See Berberian, 114 R.I. at 199, 330 A.2d at 815 (the court took judicial notice of the fact that plaintiff was a member of the Rhode Island Bar).

[7] See City of Pawtucket v. Laprade, 94 A.3d 503, 508 (R.I. 2014) (noting that the court took judicial notice of the Presiding Justice's Order); In re Shawn B., 864 A.2d 621, 624 (R.I. 2005) (noting that the trial justice had taken judicial notice of the defendant's prior conviction).

[8] See Kowalski v. Gagne, 914 F.2d 299, 305 (1st Cir. 1990) (stating that courts "may take judicial notice of proceedings in other courts if those proceedings have relevance to the matters at hand").

[9] See R.I. Econ. Dev. Corp. v. Wells Fargo Secs., LLC, 2013 WL 4711306 (R.I. Super. Aug. 28, 2013) (this Court took judicial notice of Rhode Island Public Laws).

Evid. 201. The Rhode Island Supreme Court has warned, however, that "[t]he power of taking judicial notice should be exercised with caution." See State v. Welch, 117 R.I. 107, 110, 363 A.2d 1356, 1359 (1976); In re Michael A.,552 A.2d 368, 370 (R.I. 1989) (this rule may not be expanded to allow the court to take judicial notice of every document, paper, or report that at some time has been placed in a court file). It is well settled that "[w]here the Federal rule and our state rule are substantially similar, [the Court] will look to the Federal courts for guidance or interpretation of our own rule." Hall v. Kuzenka, 843 A.2d 474, 476 (R.I. 2004) (internal citations omitted). Since "Rhode Island Rule 12(b) is nearly identical to Rule 12(b) of the Federal Rules of Civil Procedure . . . [this Court] will follow the federal courts' construction of that rule," which states that the "tradition [of taking judicial notice] has been one of caution in requiring that the matter be beyond reasonable controversy." Id. at 476-77; Fed. R. Evid. 201, Advisory Committee Note (b). This process, therefore, may only be used when asserting facts '"that reasonable persons would not dispute.'" Laprade, 94 A.3d at 522 (quoting United States v. Harper, 32 M.J. 620, 622 (A.C.M.R. 1991)); see also Lombardi v. Dryden Corp., 114 R.I. 202, 205, 330 A.2d 416, 418 (1975) (stating that it is inappropriate to take judicial notice in circumstances that would "substitute speculation for evidence"); Fed. R. Evid. 201, Advisory Committee Note (b) (stating that judicial notice applies "only in clear cases").

Here, AAA requests that the Court take judicial notice of the DLT Letter and, therefore, consider it in ruling on AAA's Motion. See Mot. to Dismiss. Although the existence and origin of the Letter—being actually written by Sean M. Fontes in response to AAA's inquiry—is not subject to reasonable dispute, the opinion contained within the Letter itself is, in fact, subject to

[10] See DiPetrillo v. Dow Chem. Co., 729 A.2d 677, 689 (R.I. 1999) (the Court took judicial notice of well-established scientific theories and methods).
[11] See Dewitt v. Outlet Broad., Inc., 1999 WL 1334932, at *4 (R.I. Super. Dec. 17, 1999) (the court took judicial notice of plaintiff's criminal record).

much reasonable debate. Such debate forms the majority of the parties' contentions as to whether the DLT's opinion contained within the Letter is even accurate, let alone binding on this Court. See Mot. to Dismiss; Opp'n to Motion. Furthermore, the DLT's opinion that AAA is a "call center" and its roadside service technicians are "ancillary" thereto is the crux of the parties' current disagreement. See id. As the Court has previously held, because the contents of the Letter are highly contestable, the Letter is not appropriate for judicial notice. See R.I. Econ. Dev. Corp., 2013 WL 4711306, at *7 (this Court declined to take judicial notice of the defendant's financial statements when it noted that the accuracy of the contents could reasonably be questioned and noted that, although "[t]he financial statements may be appropriate evidence on a Motion for Summary Judgment or at trial, . . . they are not appropriate to consider via judicial notice on a Motion to Dismiss"); see also Valentine v. WideOpen W. Fin., LLC, 288 F.R.D. 407, 413 (N.D. Ill. 2012) ("[a]lthough a court may take judicial notice of matters of public record when ruling on a motion to dismiss, it may not take judicial notice of underlying facts that may be subject to reasonable dispute").[12] Moreover, if the Court were to take judicial notice of the Letter it would essentially be substituting "speculation for evidence," which the Rhode Island Supreme Court has clearly prohibited. Lombardi, 114 R.I. at 205, 330 A.2d at 418. In addition, since AAA's asserted facts and the DLT's resulting opinion in the Letter are not

[12] In Valentine, the court stated that "[e]ven if it were permissible to go beyond the pleadings at this stage, [the defendant's] consent argument would also fail because the facts it submits in support of the motion are contestable . . . [the defendant] contends that because this document is part of the public record and is 'undisputedly authentic,' the [c]ourt may take judicial notice of the fact that [the defendant] obtained consent from its customers. This argument must be rejected. Here, the only fact that may be judicially noticed by the [c]ourt is the fact that [the defendant] submitted the Response . . . The underlying facts asserted in the Response itself cannot be judicially noticed because they are subject to reasonable dispute." 288 F.R.D. at 413-14 (emphasis added); see cf. Roy, 544 F. Supp. 2d at 107-08 (finding that an excerpt from an incentive plan was capable of judicial notice because its authenticity was not subject to reasonable dispute or even questioned).

proper for judicial notice because of their disputed nature, they must be proved at trial. See Welch, 117 R.I. at 111, 363 A.2d at 1359 ("[i]f the facts are not a proper subject for judicial notice, they must be proved").

Therefore, as judicial notice is exercised with caution in Rhode Island and the Letter is subject to much reasonable dispute, the Court finds that it may not take judicial notice of the Letter for the purposes of the present Rule 12(b)(6) motion. See R.I. R. Evid. 201; Welch, 117 R.I. at 111, 363 A.2d at 1359; In re Michael A., 552 A.2d at 370; R.I. Econ. Dev. Corp., 2013 WL 4711306, at *7. Though at some point during litigation the Letter might be both relevant and of significance, its consideration in ruling on this Motion is prohibited. Consequently, since judicial notice of the Letter is improper and Casperson has sufficiently alleged that he (i) was an "employee" of AAA; (ii) was entitled to receive premium pay; and (iii) was not compensated with this premium pay, the Court finds that—in viewing the Complaint in the light most favorable to him—Casperson has stated a claim for relief under the Sunday Pay Act. See Compl; Rule 12(b)(6).

2

The Letter's Legal Effect on this Court

Assuming, arguendo, the Letter is appropriate for judicial notice, the Court would still have to find that it is legally binding in order to warrant dismissal of AAA's alleged violations of the Sunday Pay Act.

AAA argues that the Letter is legally binding evidence that Casperson, and other similarly-situated service technicians, are not "employees" as defined by the Sunday Pay Act and, therefore, are not entitled to receive premium pay for the work performed on Sundays and holidays. See Mot. to Dismiss. AAA further asserts that since the General Assembly entrusted

the DLT with enforcing and administering the Sunday Pay Act, its opinion contained within the Letter is controlling on the Court and "must be upheld unless . . . clearly erroneous or unauthorized." See id. AAA also argues that the Letter is not a rule promulgation. See id. Instead, AAA asserts that the DLT has the explicit authority to issue binding opinions—such as the Letter—interpreting an individual's status as an "employee" under the Sunday Pay Act. See id. AAA additionally contends that, in light of the Letter, Casperson is not an "employee" within the definition of the Sunday Pay Act and therefore has no claim for relief. See id. As a result, AAA concludes that Casperson's Complaint fails to state a claim for which relief can be granted, requiring that it be dismissed. See id.

Conversely, Casperson declares that he is considered an "employee" under the Sunday Pay Act. See Compl. ¶¶ 25, 52, 55. Casperson asserts that AAA is in the business of providing roadside—not call center—assistance, and therefore, his employment as a roadside service technician is not an ancillary service, but instead, that roadside service is the central service that AAA provides. See Opp'n to Mot. Casperson further argues that the opinion contained within the Letter was unauthorized, as the Sunday Pay Act does not grant DLT the authority to issue binding advisory opinions. See id. Moreover, Casperson declares that if the Letter is deemed controlling on his status as an "employee," it is an official ruling and therefore violates the statutory procedures that the DLT must follow. See id.

Under the Sunday Pay Act, employers must compensate "employees" with premium pay for hours worked on Sundays and holidays. See § 25-3-1. The Sunday Pay Act categorically provides that certain individuals are not considered "employees" and thus are not entitled to receive premium pay; including, among others, those that are employed as part of a "telephonic delivery of customer service . . . and ancillary services related to those services and operations."

Sec. 25-3-1(3)(viii).[13] Thus, under the Sunday Pay Act, if an individual is employed by a company engaged in the telephonic delivery of customer service, or is performing any ancillary service related thereto, he or she is not considered an "employee" and is not entitled to premium pay for work performed on Sundays and holidays. See §§ 25-3-1, et seq. In addition to the categories explicitly listed within the Sunday Pay Act, the DLT has the express authority to exempt—by regulation—certain employers, whether due to the size or nature of their operations, from being required to pay their employees premium pay for hours worked on Sundays and holidays. See § 25-3-7. The Sunday Pay Act mandates certain procedures, as set out under the provisions of title 42, chapter 35 of the General Laws of Rhode Island, 1956, titled the Administrative Procedures Act (hereinafter APA), that the DLT must follow in order to exempt employers from the premium pay requirement. See § 25-3-7.

When the General Assembly vests an administrative agency with the authority to enforce a regulatory statute, and that agency follows the appropriate APA procedures in order to interpret and apply that statute to a particular factual situation, a reviewing court must accord the agency's interpretation weight and deference. See Labor Ready Ne., Inc. v. McConaghy, 849 A.2d 340 (R.I. 2004); see also Lerner v. Gill, 463 A.2d 1352 (R.I. 1983) (noting that when the General Assembly does not explicitly grant an agency the power to interpret and define certain legislation, and the agency does so without following the APA, a court may substitute its judgment for that of the agency). In Lerner, the Rhode Island Supreme Court addressed the issue

[13] As stated above, rather than defining the term "employee" in order to show who is entitled to receive premium pay, the Sunday Pay Act provides a list of those individuals who are not considered "employees" under the Sunday Pay Act and are therefore not entitled to premium pay. See § 25-3-1(3)(viii). As a result, if an individual does not fall within one of the listed categories, he or she is considered an "employee" and is entitled to premium pay for hours worked on Sundays and/or holidays. See id.

of an agency's interpretation of a statute and a court's coinciding level of deference and drew a distinction between an actual legislative rule and merely an interpretive ruling by stating:

> "A legislative rule is the product of an exercise of delegated legislative power to make laws through rules whereas an interpretive rule is any rule an agency issues without exercising the delegated legislative power to make law through rules. The validity of a legislative rule depends upon whether it is within the power granted by the Legislature, issued pursuant to proper procedure, and reasonable as a matter of due process. Once the validity of such a rule is established, it is as binding on a court as a valid statute. Interpretive rules, on the other hand, do not have the force of law. Courts may substitute their judgment for that of the administrative agency in deciding whether or not to enforce an interpretive rule. Although a court may choose to defer to an agency's judgment, it is not required to do so." 463 A.2d at 1358 (emphasis added).

The Court went on to state that in determining "whether a rule is to be classified as legislative or interpretive, one must consider the power assigned to the administrative agency. If a statute expressly delegates power to interpret and define certain legislation to an agency, regulations promulgated pursuant to that power are legislative rules having the force of law. If the lawmaking branch has not conferred such authority upon the agency," the interpretation "is not to be considered controlling by the courts." Id.

Here, no language or provision within the Sunday Pay Act expressly provides DLT the authority to interpret an individual's status as an "employee" under the Sunday Pay Act. See §§ 25-3-1, et seq. Instead, the General Assembly explicitly delegated to the DLT power to "promulgate any regulations as shall be necessary" in administration of the Sunday Pay Act. Sec. 25-3-6. In order to promulgate such regulations, however, the DLT must do so in accordance with the APA. See id. Furthermore, although the DLT has the ability to promulgate regulations in order to enforce the Sunday Pay Act, the DLT did not promulgate any such

regulation with the issuance of its Letter.[14] See Lerner, 463 A.2d at 1358. Instead, the DLT solely relied on AAA's assertions and issued an opinion as to the status of AAA and its roadside service technicians. The DLT's interpretation is merely an "opinion regarding the application of a statute to a particular situation" and "[a]lthough [the Court] may choose to defer to [the] agency's judgment, it is not required to do so." See Lerner, 463 A.2d at 1358; see also Great Am. Nursing Ctrs. v. Norberg, 567 A.2d 354, 356-57 (R.I. 1989) ("an interpretive rule is not specifically authorized by a legislative enactment; rather, it is promulgated by an administrative agency for the purposes of guidance and definition" and "enjoys no such presumption, and moreover, a court considering enforcement of such [interpretive] rule may substitute its own judgment for that of the administrative agency's judgment"); but see Labor Ready Ne., 849 A.2d 340 (the Rhode Island Supreme Court noted that, given the procedural posture[15] of the case, when an agency issues an administrative decision regarding the interpretation of a statute, the trial court must give deference to that decision). As a result, although AAA may seek clarification from the DLT, such opinion does not equate to a ruling, does not have the force of law, and does not constitute authority binding on this Court.[16] See Lerner, 463 A.2d at 1358 (the

[14] AAA seemingly argues that the General Assembly intentionally granted the DLT authority to interpret the Sunday Pay Act and, thus, the DLT's interpretation as it is included in its Letter is binding on this Court. See Mot. to Dismiss. AAA, however, fails to point to any provision within the Sunday Pay Act granting the DLT this authority. See id. In order to issue regulations in relation to the Sunday Pay Act, the DLT must abide by the APA. See § 25-3-6 (the "director may promulgate any regulations as shall be necessary for the full and proper implementation of this chapter . . . only in accordance with the procedures established by chapter 35 of title 42"); see also § 25-3-7 ("[w]henever . . . any class of employers . . . should be exempted from the provisions of this chapter, the director may do so by regulations adopted in accordance with the provisions of § 25-3-6").

[15] In Labor Ready Ne., a contested case was first brought before the DLT's Hearing Officer, who then gave a recommendation to the DLT's Director, which was ultimately adopted. See Labor Ready Ne., 849 A.2d 340.

[16] The Court expressly notes that if AAA wants the DLT to issue an actual ruling on the status of itself and its roadside service technician employees, it—like Casperson—can go before the DLT

Court noted that without the explicit authority to do so, the board's interpretation of the statue was not a formal rule and was not controlling on the Court). Therefore, the Court need not afford deference to the DLT's opinion. See § 42-35-15(g); see also Lerner, 463 A.2d at 1358.

Additionally, the question as to whether AAA is a company engaged in the telephonic delivery of customer service and whether its roadside service technicians are ancillary thereto is a question of fact for the jury to decide. See Le Blanc v. Balon, 104 R.I. 517, 517, 247 A.2d 92, 93 (1968) (finding that the question of who is a motor vehicle "helper" within the meaning of the act "is a question of fact"); see also Walsh v. DiNitto, 107 R.I. 356, 359, 267 A.2d 714, 716 (1970) (explaining that questions of fact are for the jury to decide). As a result, both parties should have an equal and fair opportunity to present evidence pertaining to this issue to the trier of fact. Though at some point during litigation the Letter might be both relevant and of significance, AAA's sole reliance on it as controlling law is misplaced.

Therefore, since the DLT's interpretive Letter is not considered controlling on the Court, and Casperson asserts that he is an "employee" under the Sunday Pay Act, has worked on Sundays and holidays, and has not been compensated premium pay for the work that he performed on those Sundays and holidays, the Court finds that—in viewing the Complaint in the light most favorable to him—Casperson has stated a claim for relief under the Sunday Pay Act. See Compl.; Rule 12(b)(6). Accordingly, the Court denies AAA's Motion to Dismiss Count II of Casperson's Complaint.

Board and request such a ruling, in which case the DLT would be required to follow the proper administrative procedures, including giving Casperson an opportunity to be heard. See §§ 25-3-6; 42-35-9. If either party is then dissatisfied with the decision, such party can appeal the matter to this Court. See § 25-3-5; see also Labor Ready Ne., 849 A.2d 340.

C

Unjust Enrichment

AAA argues that Casperson's claim for relief under the Sunday Pay Act preempts his unjust enrichment claim. Alternatively, Casperson claims that even if he is not entitled to relief under the Sunday Pay Act, he is nonetheless entitled to relief under the common law theory of unjust enrichment; as such claim is not preempted by the Sunday Pay Act. Neither party has presented any Rhode Island case law in support of these propositions.

It is well settled in Rhode Island that "[t]o recover for unjust enrichment, a claimant must prove: (1) that he or she conferred a benefit upon the party from whom relief is sought; (2) that the recipient appreciated the benefit; and (3) that the recipient accepted the benefit under such circumstances 'that it would be inequitable for [the recipient] to retain the benefit without paying the value thereof.'" Emond Plumbing & Heating, Inc. v. BankNewport, 105 A.3d 85, 90 (R.I. 2014) (quoting Dellagrotta v. Dellagrotta, 873 A.2d 101, 113 (R.I. 2005)). However, unjust enrichment is not an available means of recovery when a contract exists. See Colleen P. Murphy, Esq., Recognizing Restitutionary Causes of Action & Remedies in Civil Litigation, R.I.B.J., March/April 2015, at 15 (unjust enrichment is recognized "as a distinctive cause of action" and is an available means of recovery only when a contract does not exist); see also GMAC Commercial Mortg. Corp. v. Gleichman, 84 F. Supp. 2d 127, 143 n.12 (D. Me. 1999) (quoting Nadeau v. Pitman, 731 A.2d 863, 866 (Me. 1999)) (stating that "unjust enrichment describes recovery for the value of the benefit retained when there is no contractual relationship" and that "[t]he existence of a contractual relationship, precludes recovery on a theory of unjust enrichment") (internal quotations omitted). Furthermore, an individual cannot recover under the theory of unjust enrichment when a statute creates a new right and simultaneously provides a

remedy in the event that the newly created right is violated. See Short v. Flynn, 118 R.I. 441, 443-44, 374 A.2d 787, 788 (1977) (explaining that when an act creates "an entirely new right of action . . . such an action cannot [] be maintained except to the extent and in the manner provided in that Act") (internal citations omitted); see also Inman v. Tripp, 11 R.I. 520, 526 (1877) (the Rhode Island Supreme Court noted that "[w]here a statute creates a new right" and "gives the remedy . . . the remedy given is the only remedy"); Lipsitt v. Plaud, 994 N.E.2d 777, 784 n.11 (Mass. 2013) (Massachusetts Supreme Judicial Court dismissed the common law claims with respect to improper tip-pooling and violations of the minimum wage status as such claims were preempted by the Massachusetts Tip Act and reasoned that this was a "situation[] where an employee would have no recognized cause of action but for the statutes' imposition of obligations on employers").

As a contractual relationship did exist between Casperson and AAA surrounding the terms of employment, Casperson's equitable claim for unjust enrichment fails. See Recognizing Restitutionary Causes of Action & Remedies in Civil Litigation, R.I.B.J. at 15. Furthermore, the Sunday Pay Act creates a new right that entitles employees to receive premium pay for all hours worked on Sunday and holidays. See § 25-3-3. The Sunday Pay Act also provides a remedy in the event that said employee is not compensated premium pay. See §§ 25-3-8; 25-3-9. As a result, Casperson has no right to recover under the theory of unjust enrichment because he has no cause of action—other than under the Sunday Pay Act—entitling him to premium pay for the work he performed. See Inman, 11 R.I. 520; see also § 25-3-3. Any recovery available to Casperson is limited by the remedy provided for under the Sunday Pay Act. See Inman, 11 R.I. 520. Accordingly, Casperson's unjust enrichment claim fails and, for such reasons, this Court

grants AAA's Motion to Dismiss Count III of Casperson's Complaint, alleging that AAA was unjustly enriched.[17]

IV

Conclusion

After carefully considering the arguments that the parties advanced in their papers, and after a review of the applicable case law and authority on the issues presented herein, the Court grants AAA's Motion to Dismiss Counts I and III of Casperson's Complaint, claiming violations of the Wage Act and unjust enrichment. The Court denies AAA's Motion to Dismiss Count II of Casperson's Complaint, asserting violations of, and relief under, the Sunday Pay Act. For the foregoing reasons, AAA's Motion to Dismiss pursuant to Rule 12(b)(6) is granted in part and denied in part.

Counsel for the parties shall submit the appropriate order consistent with this Decision for entry.

[17] Dismissing this claim does not leave Casperson without any recourse. Instead, if the Court finds in favor of Casperson, he will certainly be entitled to the increased wage rate provided for under the Sunday Pay Act. However, if the Court finds in favor of AAA, Casperson will neither be entitled to the increased rate under the Sunday Pay Act, nor to a claim for unjust enrichment, as AAA was in no way unjustly enriched.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Casperson v. AAA Southern New England, et al.**
CASE NO:	**PC-2014-6139**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**December 22, 2015**
JUSTICE/MAGISTRATE:	**Silverstein, J.**
ATTORNEYS:	
For Plaintiff:	**V. Edward Formisano, Esq.**
For Defendant:	**Robert G. Flanders, Jr., Esq.**