

The Honorable Robert J. Bryan

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UGOCHUKWU GOODLUCK  
NWAUZOR, FERNANDO AGUIRRE-  
URBINA, individually and on behalf of all  
those similarly situated,

Plaintiffs,

v.

THE GEO GROUP, INC., a Florida  
corporation,

Defendant.

No. 3:17-cv-05769-RJB

**REPLY IN SUPPORT OF  
PLAINTIFFS' MOTION TO  
AMEND NOTICE PLAN**

NOTE ON MOTION CALENDAR:  
DECEMBER 27, 2019

**I. INTRODUCTION**

Through its latest counsel (Akerman LLP), GEO makes claims in its opposition that are at odds with the record in the case, the company's previous actions, and the history of dealing between the parties. For instance, GEO contends that Plaintiffs did not seek address information for class members until after the initial notice plan was submitted, but emails between Plaintiffs and GEO's previous counsel (Greenburg Traurig LLP) reveal that Plaintiffs sought this information months beforehand and that GEO resisted production, acquiescing only when Plaintiffs requested judicial relief and when ordered by the Court. Within two days of receiving GEO's supplemental class list with address information, Plaintiffs contacted GEO's

1 then-current attorneys (Holland & Knight LLP) about the problem presently before the Court:  
2 the majority of the address information GEO produced is useless.

3 GEO does not seriously contest this last fact, arguing instead a version of, “it is, what  
4 it is,” when confronted with the reality that each class member has five different addresses on  
5 average. Or how, setting the average aside, some class members have as many as 20 addresses  
6 or no address at all. Under these circumstances, mailing notice to addresses that are dubious at  
7 best is unduly expensive and not likely to achieve actual notice.

8 GEO has already acknowledged as much in *Menocal et al. v. The GEO Group* where  
9 the parties were faced with the same issue—bad addresses—and GEO did not oppose forgoing  
10 direct mail. GEO makes no attempt to reconcile its divergent positions.

11 As for GEO’s objections to the proposed publication notice, they are easily addressed  
12 with a few line edits which Plaintiffs welcome.

## 13 II. REPLY TO GEO’S STATEMENT OF FACTS

14 GEO presents an abridged version of the “procedural history,” arguing that Plaintiffs  
15 did not request class member address information until April 2019. But the parties had  
16 discussed the need for a complete class list with “last known addresses” as early as December  
17 2018. 2nd Whitehead Decl., Ex. 2 at 14.<sup>1</sup> The parties discussed the need for addresses into the  
18 following month, and Plaintiffs included a provision within an earlier draft of the plan  
19 presented to GEO’s counsel requiring GEO to produce last known home addresses, countries

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21 <sup>1</sup> Local Civil Rule 7(b)(3) contemplates filing “supporting material” with reply briefs, so  
22 Plaintiffs have done so here. The materials presented—emails attached to the accompanying  
23 second declaration of counsel—evidence the conversations reflected in counsel’s first  
24 declaration and contextualize the misstatements in GEO’s opposition. In this way, the  
materials do not run afoul of the general rule that new evidence should not be submitted in a  
reply brief. Exhibit 1 is attached to the first declaration of Jamal Whitehead.

1 of citizenship, home country, detention status, and alien numbers. Ex. 2 at 7. GEO, through its  
2 then-counsel (Greenberg Trauig), deleted this proposal, not because the information did not  
3 exist, but because, GEO claimed, the information was in ICE's custody. *Id.* Plaintiffs presented  
4 a preliminary notice plan to the Court acknowledging that additional information was needed  
5 from GEO to refine the plan further. Dkt. No. 137. GEO's counsel signed off on the plan. Dkt.  
6 No. 137 at 7; Ex. 2 at 2.

7 The Court requested an update about the status of the class list, Dkt. No. 163, and the  
8 parties submitted a joint status report, in which Plaintiffs requested that the Court set a deadline  
9 for GEO to produce a class list including: "(1) address prior to detention, (2) forwarding  
10 address at the time of release, (3) telephone number, (4) email address, and (5) alien registration  
11 number or 'A-number.'" Dkt. No. 165 at 2. The Court granted the relief requested ordering  
12 production on April 12 and April 29, 2019, with the latter production to include class member  
13 contact information. Dkt. No. 166. Before production, GEO did not express concern to the  
14 Court or Plaintiffs about missing or incorrect address information. 2nd Whitehead Decl., ¶ 3.

15 Two days after receiving the class list with address information, Plaintiffs contacted  
16 GEO's new counsel (Holland & Knight) about problems with the addresses provided. Ex. 3.  
17 Over the next few months, Plaintiffs worked cooperatively with GEO's then- counsel to refine  
18 the list, but they had no better information. *See* Ex. 4, Ex. 5. The parties agreed that GEO would  
19 confirm at least who was still in custody before Plaintiffs sought to modify the notice plan. *Id.*,  
20 2nd Whitehead Decl., ¶ 5.

21 But GEO switched counsel again (to Akerman), and through its new attorneys  
22 requested more time to confirm who was still in custody. Ex. 5; Ex. 6.; Ex. 7. In October,  
23 Plaintiff broached the subject of amending the notice plan in light of the deficiencies in the

1 class list; GEO did not voice immediate opposition, but came to oppose within a matter of  
2 weeks. Ex. 8; 2nd Whitehead Decl., ¶ 8. When confronted with its conflicting position on the  
3 same issue in *Menocal*, GEO offered no explanation. Ex. 9; Ex. 10.

### 4 III. LEGAL ARGUMENT

#### 5 A. Direct mail is not practicable under the circumstances because the 6 addresses are inaccurate, as acknowledged by GEO.

7 GEO argues that Plaintiffs should have known the “class members are ‘transient.’”  
8 True, this fact does not come as a surprise to Plaintiffs, which is why the preliminary notice  
9 plan contemplated publication in addition to direct mail. But the fact that GEO (and ICE,  
10 apparently) cannot state definitively where the immigration detainees in its charge went upon  
11 release is almost beyond belief and hamstrings any direct mail campaign. GEO concedes that  
12 the “list is not perfect,” but argues this problem is overcome by the sheer volume of data it has  
13 produced. It is the large number of bad or incomplete addresses, however, that has created the  
14 problem. And contrary to GEO’s claims, Plaintiffs did not request all or merely any address  
15 information associated with the class members, but rather class members’ “last known” or  
16 “forwarding address” at the time of release. Dkt. No. 165 at 2. GEO is unable to identify the  
17 last known or forwarding address, and instead has heaped a mountain of rotten data on  
18 Plaintiffs.

19 GEO suggests that the number of addresses can be “easily narrowed” by filtering out  
20 the foreign addresses, Opp. at 5:17, but this only demonstrates how little GEO understands  
21 about the data it has produced. Indeed, 10,414 of the 46,308 address entries on GEO’s class  
22 list do not identify a specific country. 2nd Whitehead Decl., ¶ 11. Thus, there is no way even  
23 to quickly cull the foreign addresses from the domestic ones, and GEO’s suggestion of an

1 “initial step” falls flat. Under these circumstances, mailing notice would be screaming into the  
2 wind.

3 **B. GEO does not argue that this case is distinguishable from *Menocal*, in**  
4 **which GEO did not dispute that a direct mail campaign was futile given**  
5 **the bad or inadequate addresses for class members.**

6 GEO takes care to distinguish the case law cited in Plaintiffs’ motion about how direct  
7 mail notice is not always practicable, but GEO fails to address, much less distinguish this case  
8 from its direct analog—*Menocal et al. v. The GEO Group*—in which GEO did not challenge  
9 the futility of a direct mail campaign in light of the bad or incomplete class member addresses.  
10 *Menocal et al. v. The GEO Group, Inc.*, 14-cv-02287-JLK-MEH (D. Colo. June 20, 2019)  
11 (“Plaintiffs’ plan to limit notice in this case to publication notice, without a mailed  
12 component, is the best notice practicable under the circumstances and is approved.”). This is  
13 because this case and *Menocal* are indistinguishable on this issue, and the Court should not  
14 tolerate contradictory positions from GEO.

15 **C. Publication notice is the best notice practicable under the circumstances,**  
16 **and beyond a few line edits, GEO does not take issue with Plaintiffs’ digital**  
17 **and radio notice plan.**

18 GEO does not challenge the sufficiency of Plaintiffs’ digital and radio notice plan. *See*  
19 Mot. at 6-7. Instead GEO takes aim at a few sentences on the margin of the plan. To start, GEO  
20 argues that posted notice within its facilities may cause confusion, but this problem is solved  
21 by a properly drafted notice apprising class members of their rights. Moreover, while GEO  
22 raises concerns about *whether* “ICE would permit such a posting,” it stops short of saying that  
23 ICE *will* prohibit posting. This stands in sharp contrast to GEO’s usual tact of representing to  
24 Plaintiffs and the Court what ICE will or won’t do. Lastly on this point, GEO has identified  
only 150 class members that are still in custody, *see* Mot. at 4, and while Plaintiffs’ plan

1 endeavors to contact as many class members as possible, “actual notice” of all members is not  
2 the applicable standard for providing notice to absent class members. *See Silber v. Mabon*, 18  
3 F.3d 1449, 1453-54 (9th Cir. 1994).

4 Next, GEO offers several line edits to the proposed publication notice, arguing that the  
5 following information should be conveyed:

- 6 • informing class members that they can opt-out via mail, email, or fax;
- 7 • including a “disclaimer” that “The Court has not decided whether GEO did  
8 anything wrong. There is no money available now, and no guarantee there will  
9 be. However, your legal rights are affected, and you have a choice to make  
10 now”;
- 11 • Reframing the explanation of the lawsuit to read, “This lawsuit is about whether  
12 GEO, as the owner and operator of the Northwest Detention Center, is an  
13 ‘employer’ and whether the Class Members are ‘employees’ under the  
14 Washington Minimum Wage Act. And if so, whether GEO violated the Act by  
15 failing to pay Class Members the minimum hourly wage under Washington law  
16 for work performed under the \$1-a-day Program. GEO denies the allegations  
17 made in the lawsuit.”

18 Opp. at 9-10.

19 GEO offers no other concerns about the sufficiency of the proposed notice, and  
20 Plaintiffs accept GEO’s proposed changes, as listed above.

#### 21 **IV. CONCLUSION**

22 For the foregoing reasons, and those stated in their motion, Plaintiffs respectfully  
23 request that the Court modify the Notice Plan to eliminate the mailed component of the notice  
24 campaign. To the extent the Court, requires direct mail, GEO should bear the cost of notice.

DATED this 27th day of December, 2019.

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SCHROETER GOLDMARK & BENDER

*s/ Jamal N. Whitehead*

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 27, 2019, I electronically filed the foregoing, together with its supporting pleadings and attachments thereto, with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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DATED at Seattle, Washington this 27th day of December, 2019.

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