

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. 17-cv-05769-RJB

PLAINTIFFS’ OPPOSITION TO
DEFENDANT’S MOTION TO
EXCLUDE EXPERT TESTIMONY
OF DR. JEFFREY MUNSON

I. INTRODUCTION

Plaintiffs’ expert Jeffrey Munson, Ph.D, is a professor at the University of Washington and has extensive experience with database management and statistical analysis. He will serve as a “human calculator” at trial, essentially multiplying the minimum wage by estimates about the length of detainee-worker shifts to figure damages owed to the class. The estimates are based on GEO-created documents and information. His work is straight-forward and non-controversial—so much so that GEO’s expert economist does not challenge his methodology.

1 Still, GEO would exclude Dr. Munson from trial because his academic research focuses
 2 on autism spectrum disorder, and not “the area of damages.”¹ While true, Dr. Munson’s
 3 calculations rest upon universal mathematical methods and principles that apply regardless of
 4 the “*thing*” underlying the data analyzed. Put differently, Dr. Munson’s “math” would stand
 5 whether he was computing the statistical output from one of his autism studies or the backpay
 6 at issue here. Moreover, Dr. Munson has served as an expert in many wage-and-hour cases and
 7 has testified at numerous trials. This work is not foreign to him.
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9 If GEO wants to challenge Dr. Munson’s assumptions or his reliance upon the same, it
 10 may do so as argument at trial. But because Dr. Munson satisfies the rules of evidence
 11 governing the admissibility of expert testimony, GEO’s motion to exclude him altogether
 12 should be denied.
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14 II. FACTUAL BACKGROUND

15 A. Dr. Munson is a UW Professor who has rendered expert opinions about damages 16 in many wage-and-hour lawsuits, and he has testified at trial about damages five 17 times in the last five years.

18 Dr. Munson earned his undergraduate degree from Stanford University and his Ph.D.
 19 from the University of Washington, where he completed graduate-level courses in a variety of
 20 statistical techniques. Barnacle Decl., Ex. B (Munson Report) at 13 (Dkt. No. 218-2); Ex. 1
 21 (Munson Dep.) at 14.² He currently works as a research professor at UW in the Department of
 22 Psychiatry and Behavioral Science. Barnacle Decl., Ex. B at 13. Since 1998, he has been
 23 responsible for data analysis and data management of several large, multi-project, collaborative
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25 ¹ Dkt. No. 217 (Mot.) at 1:24

26 ² Except for Dr. Munson’s expert report, which is attached to the Declaration of Colin Barnacle
 in support of GEO’s motion as Exhibit B, all *numbered* exhibits are attached to the
 accompanying declaration of Jamal Whitehead (“Whitehead Decl.”).

1 studies, including the extensive use of multiple software programs for various data analytic
2 tasks. *Id.* For more than a dozen years, Dr. Munson has also performed damages calculations
3 in wage and hour class actions based upon voluminous payroll, timekeeping, and similar data
4 produced by defendant employers. Whitehead Decl., ¶ 2. Dr. Munson has performed damages
5 calculations in approximately forty different wage cases, and testified at trial at least five times
6 in the last five years. Ex. 1 (Munson Dep.) at 19; Barnacle Decl., Ex. B at 26.
7

8 For example, in *Pellino v. Brink's, Inc.*, 267 P.3d 383, 399 (Wash. Ct. App. 2011), the
9 Washington Court of Appeals upheld Dr. Munson's testimony regarding his calculation of
10 damages in a class-action wage dispute. In addition, his expert testimony has been admitted
11 and endorsed by the Yakima Superior Court in *WA State Nurses Assoc. v. Yakima Reg'l Med.*
12 *& Cardiac Ctr.*, No. 15-2-01109-9 and by the King County Superior Court in *Espinoza v. MH*
13 *Janitorial Serv.*, No. 14-2-26201-9, *Hill, et al. v. Garda CL NW, Inc.*, No. 09-2-07360-1, and
14 *Bruner v. Davis Wire Corp.*, No. 12-2-15676-0. Barnacle Decl., Ex. B at 26. He has offered
15 deposition testimony in Pierce County Superior Court in *Rojas v. Damco Distribut. Serv.,*
16 *Inc./Damco USA, Inc.*, No. 17-2-14133-5, in King County Superior Court in *Hardie et al. v.*
17 *Best Parking Lot Cleaning Inc.*, No. 17-2-27730-4, and in U.S. District Court for the Western
18 District of Washington in *Mendis v. Schneider Nat'l Carriers, Inc.*, No. C15-0144-JCC and
19 *Southwell v. Mortgage Investors Corp. of Ohio, Inc.*, No. C13-1289 MJP. Barnacle Decl., Ex.
20 B at 26.
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23 **B. Dr. Munson analyzed the economic damages owed to the Class, using data and**
24 **information produced by GEO and standard mathematical principles.**

25 Plaintiffs retained Dr. Munson to assess the economic damages sustained by detained
26 persons participating in the "Voluntary Wage Program" (VWP) at the Northwest Detention
Center (NWDC). Barnacle Decl., Ex. B (Munson Report) at 2. To render his opinions,

1 Dr. Munson analyzed monthly bills submitted by GEO to U.S. Immigration and Customs
2 Enforcement (ICE) for reimbursement of the wages GEO paid the detainee workers.
3 Dr. Munson also reviewed a summary chart of “Detainee Worker Average Hours” prepared by
4 Michael Heye—one of GEO’s classifications officers at NWDC. Ex. 2 (Heye Dep.) at 94-95.
5 According to Heye, the document reflects the number of pods, workers and total assignments
6 in the VWP each day, as well as the average length of shift. *Id.* This document came to be
7 known as “Exhibit 20” because it was first used in the deposition of Ryan Kimble during
8 discovery in the State of Washington’s case, but was later marked as “Exhibit 325” during
9 Heye’s deposition. Dr. Munson refers to this document as “Exhibit 20” in his report. Barnacle
10 Decl., Ex. B.
11

12 Relying upon the documents created and produced by GEO, Dr. Munson extracted
13 GEO’s monthly payments to the detainee workers during the Class Period. Barnacle Decl.,
14 Ex. B at 4. Because each dollar requested represented one detainee worker shift, he was able
15 to determine the number of detainee worker shifts each month. *Id.* at 5. He then multiplied the
16 monthly worker pay by the corresponding Washington State minimum wage. *Id.* The product
17 was the amount of pay VWP participants would be entitled to if they received minimum wage
18 and if each shift lasted one hour. *Id.* He then multiplied that amount by 1.72—the average shift
19 length per detainee as reflected in Exhibit 20. *Id.* Finally, from the values obtained, he
20 subtracted the amount of money the workers were actually paid as reflected on the invoices to
21 derive the amount owed in aggregate to the class.³ *Id.*
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25 ³ After the expert report deadline, GEO produced banking data showing the amounts paid to
26 individual detainee workers for their work in the VWP. Dr. Munson has analyzed this data
and anticipates supplementing his report to refine his aggregate damages calculations and to
determine individual damages owed to the Class Members. Whitehead Decl., ¶ 3.

1 **III. LEGAL ARGUMENT**

2 GEO argues that Dr. Munson’s “psychology background does not provide a reliable
3 background for his opinions,” Mot. at 3, but this misstates the nature of Dr. Munson’s work
4 and the admissibility standard for expert testimony.

5 Under the federal rules, an expert is qualified to testify if:

- 6
- 7 (a) the expert’s scientific, technical, or other specialized
8 knowledge will help the trier of fact to understand the
9 evidence or to determine a fact in issue;
 - 10 (b) the testimony is based on sufficient facts or data;
 - 11 (c) the testimony is the product of reliable principles and
12 methods; and
 - 13 (d) the expert has reliably applied the principles and methods to
14 the facts of the case.

15 Fed. R. Evid. 702. “[I]n considering the admissibility of testimony based on some ‘other
16 specialized knowledge,’ Rule 702 generally is construed liberally.” *United States v. Hankey*,
17 203 F.3d 1160, 1168 (9th Cir. 2000). “The determination whether an expert witness has
18 sufficient qualifications to testify is a matter within the district court’s discretion.” *United*
19 *States v. Garcia*, 7 F.3d 885, 889 (9th Cir. 1993) (internal quotation omitted).

20 **A. Dr. Munson’s specialized knowledge about “crunching” large data sets, like
21 payroll information, will help the jury understand the economic damages in this
22 wage and hour case.**

23 Dr. Munson is perfectly suited to assess damages in this case. There are nearly 10,000
24 Class Members and volumes of GEO payroll records and bills to ICE. Dr. Munson loaded this
25 information into a programming language that he uses frequently for his academic research,
26 which provides a wide variety of statistical and graphical analysis tools to him. From there, he
simply calculated economic damages using basic arithmetic. Yes, his academic research
focuses on the developmental trajectory of children, but this requires extensive analysis of
large data sets—precisely the challenge before him here. And to the extent there are any

1 lingering questions about Dr. Munson's field of research and its applicability to this case, Dr.
2 Munson has done this sort of number crunching in many wage and cases.

3 Dr. Munson's testimony will help the jury understand the reams of data reflecting the
4 economic damages in this case. Although it may be possible for the jury to perform the same
5 mathematical calculations as Dr. Munson for a handful of records, it is practically impossible
6 for them to do so for the years of invoices and thousands of Class Members in this case. For
7 this reason, courts have recognized the propriety of experts testifying as "human calculators."
8 *See Wirtz v. Turner*, 330 F.2d 11, 14 (7th Cir. 1964) ("A jury cannot keep in mind all of the
9 figures that might enter into a determination as to whether overtime payments were due.
10 Computations and summaries based upon evidence before the Court, in many instances, would
11 be very helpful to a jury. An expert may testify to computations based on facts which are in
12 evidence as an aid to the jury's determination.").

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15 Here, Dr. Munson has performed calculations that would otherwise be immensely
16 burdensome and time-consuming—if not impossible—for the jury to conduct on its own. His
17 testimony will be a welcome addition at trial.

18 **B. Dr. Munson relied on documents and information prepared by GEO.**

19 GEO argues that Dr. Munson relied on faulty assumptions and unreliable information,
20 but here again, GEO misstates the record. Specifically, GEO claims that Dr. Munson did not
21 determine the accuracy of the information contained in Exhibit 20, and that he incorrectly used
22 averages for the 11 months of missing invoices from GEO to ICE. Exhibit 20, however, is a
23 document that *GEO prepared and produced* estimating the shift-lengths of detainee workers,
24 so GEO's attacks on its accuracy deal self-inflicted wounds only, and do not call into question
25 Dr. Munson's work or qualifications. And despite GEO's litigation argument, the company's
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1 30(b)(6) designee recently testified at deposition that 1.72 hours—the average shift length
2 stated in Exhibit 20—is still accurate. Ex. 3 (GEO 30(b)(6) Dep.) at 17-21 (“The estimated
3 average hours worked by detainees, I believe, was 1.72 hours.”). In fact, GEO’s offset defense
4 *still* relies on this figure. *Id.*

5
6 As for GEO’s argument about the assumptions Dr. Munson applied to compensate for
7 the missing GEO invoices to ICE, Geo’s argument is more an indictment against the
8 Company’s discovery practices than anything else, as GEO has failed to produce complete
9 records to Plaintiffs.

10 In any event, damages experts routinely rely on assumptions provided by counsel. *Tuf*
11 *Racing Prod. v. Am. Suzuki Motor Corp.*, 223 F.3d 585, 591 (7th Cir. 2000) (admitting expert
12 opinion based on financial information furnished by party and assumptions given by party’s
13 counsel); *Loeffel Steel Prod., Inc. v. Delta Brands, Inc.*, 372 F. Supp.2d 1104, 1118-19 (N.D.
14 Ill. 2005) (admitting expert opinion based on measurements provided by party’s employees
15 despite allegations of bias and unreliability). Indeed, “it is well-settled that a damages expert
16 ... can testify as to damages while assuming the underlying liability.” *Sancom, Inc. v. Qwest*
17 *Comm’n Corp.*, 683 F. Supp.2d 1043, 1068 (2010). Here, Dr. Munson’s reliance on GEO’s
18 work-product and the assumptions he made about the missing invoices are no different than
19 any other expert answering a hypothetical question posed by counsel.
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22 Even if there were legitimate questions about the reliability of the information relied
23 on by Dr. Munson, they do not affect the admissibility of his testimony. “As a general rule,
24 questions relating to the bases and sources of an expert’s opinion affect only the weight to be
25 assigned that opinion rather than its admissibility.” *Loeffel Steel Prod.*, 372 F. Supp.2d at 1119.
26 “[T]he judge is supposed to screen the jury from unreliable nonsense opinions, but not exclude

1 opinions merely because they are impeachable. The district court is not tasked with deciding
 2 whether the expert is right or wrong, just whether his testimony has substance such that it
 3 would be helpful to a jury.” *Alaska Rent-A-Car, Inc. v. Avis Budget Grp. Inc.*, 738 F.3d 960,
 4 969-70 (2013) (holding that defendant’s challenges to the testimony and opinions of plaintiff’s
 5 damages expert went to its weight and credibility, not to its admissibility). *Id.* at 970.

6
 7 **C. Dr. Munson’s methodology is sound, as he applied basic arithmetic to GEO’s
 payroll data and other information to calculate damages owed to the Class.**

8 GEO goes on to challenge Dr. Munson’s methodology on the basis that he failed to
 9 obtain a sample of a subset of detainees and apply that sample to the larger population. Yet in
 10 reviewing Dr. Munson’s work, GEO’s damages expert does not challenge Dr. Munson’s
 11 methodology beyond the same argument above about the accuracy of Exhibit 20. Ex. 4
 12 (Morones Report) at 13. In fact, in reaching her conclusion that the average shift length for
 13 detainee workers was slightly shorter than the time reflected on Exhibit 20, GEO’s expert
 14 applies the same methodology as Dr. Munson. *Id.* at 8, 12.

15
 16 Even assuming for argument’s sake there were legitimate challenges to Dr. Munson’s
 17 methodology, those critiques would go to the weight of his testimony, not its admissibility:
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19 [T]he test under *Daubert* is not the correctness of the expert’s conclusions but
 20 the soundness of his methodology. Under *Daubert*, the district judge is
 21 “a gatekeeper, not a fact finder.” When an expert meets the threshold
 established by Rule 702 as explained in *Daubert*, the expert may testify and
 the jury decides how much weight to give that testimony.

22 *Primiano v. Cook*, 598 F.3d 558, 564-65 (9th Cir. 2010), as amended (Apr. 27, 2010).

23 **CONCLUSION**

24 Dr. Munson has the requisite skill and experience to testify about damages in this case,
 25 as he has done in many other wage and hour actions, and his testimony will be useful to the
 26 jury. GEO has failed to show any fundamental flaws in Dr. Munson’s methodology or in the

1 GEO-produced documents and information upon which he has relied. Accordingly, this Court
2 should deny GEO's motion to exclude Dr. Munson from trial.

3 DATED this 13th day of January, 2020.

4 SCHROETER GOLDMARK & BENDER

5 *s/ Jamal N. Whitehead*

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CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2020, 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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