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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **EASTERN DIVISION**

14 **RAUL NOVOA, JAIME CAMPOS**
15 **FUENTES, ABDIAZIZ KARIM, and**
16 **RAMON MANCIA**, individually and
17 on behalf of all others similarly situated,

18 *Plaintiffs,*

19 **THE GEO GROUP, INC.,**

20 *Defendant.*

Civil Action No. 5:17-cv-02514-JGB-SHK_x

**PLAINTIFFS' SUPPLEMENTAL
MEMORANDUM OF LAW
PURSUANT TO LOCAL RULE 37**

Hearing Date: January 21, 2020
Time: 10:00 a.m.

Discovery Cutoff Date: Feb. 12, 2020
Pretrial Conf. Date: June 8, 2020
Trial Date: June 23, 2020

The Honorable Shashi Kewalramani

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1 **I. INTRODUCTION**

2 Defendant argues that it has agreed to comply with Plaintiffs’ requests for financial
3 documents, but still has not produced all responsive documents. It continues to ask for
4 more time to produce documents, but Plaintiffs cannot afford any further delays in light of
5 the February 12, 2020 discovery cut-off. The parties having been working for months on
6 this issue, and Defendant has already produced the requested documents in another case.
7 It should have the requested documents in its possession and be able to readily produce
8 them.

9 Defendant also states that it has not produced all documents identified in its initial
10 disclosures because the documents are currently in dispute in other related discovery
11 requests. But Defendant has not identified what specific documents it is withholding, and
12 Plaintiffs cannot simply rely on Defendant’s word that its initial disclosures will be
13 produced with other relevant discovery. The deadline for initial disclosures has passed and
14 Defendant should be ordered to comply with Rule 26.

15 Defendant also seeks to put the blame on ICE for over-designating documents as
16 confidential, as well as for redacting and withholding documents. However, this does not
17 solve the problems, or mean that the Court is without power to require proper discovery
18 responses. GEO does not explain why ICE has reviewed, redacted, and withheld several
19 documents that have no connection to ICE, or provide any justification for the over-
20 designations and withholdings at issue.

21 Defendant argues against producing paystubs and work schedules for regular
22 employees. But as stated in the Joint Stipulation, such information is relevant and
23 routinely produced for wage claims. Plaintiffs have brought a claim for Defendant’s failure
24 to pay minimum wages. And paystubs will show what detainees should have been paid if
25 they were treated as employees in the free market. Similarly, work schedules will show the
26 hours employees were working, whether shifts were properly staffed, and whether
27 Defendant overly relied on detainees to operate its facility. This is well within the scope of
28 discovery, and Defendant should be ordered to produce relevant documents.

1 **II. LEGAL ARGUMENT**

2 **A. GEO Has Not Met Its Obligation to Produce Financial Documents.**

3 Defendant states that it has agreed to produce financial documents and, thus,
4 Plaintiffs' motion to compel is premature. Not so. On October 14, 2019 and November
5 7, 2019, GEO served two different sets of supplemental responses stating that it would
6 produce the same sort of financial documents it served in *Nwanzor*, a similar case pending
7 in the Western District of Washington. *See* Supplemental Declaration of Theodore Maya
8 ("Supp. Maya Decl."), ¶ 2. On December 3, 2019, the parties had a telephonic meet and
9 confer and GEO represented that it would be producing the financial documents later that
10 week. *See id.*, ¶ 3. The production should have included documents showing profits and
11 losses, operating costs, financial models, a financial analysis of the Voluntary Work
12 Program, profits and/or losses of the Voluntary Work program, and per diem rate
13 calculations and costs of providing services to detainees at the facility pursuant to GEO's
14 contract. *See* Joint Stipulation, Declaration of Theodore Maya ("Maya Decl."), Ex B., pp.
15 9-10.

16 However, on December 10, 2019, GEO served only a two-page financial summary.
17 This was after GEO had promised to produce responsive documents, and long after
18 Plaintiffs first raised the issue with the Court on September 27, 2019. *See* Dkt. 196. And
19 never did GEO state that it needed an entire month to produce financial documents.
20 Plaintiffs cannot continue waiting, given the February 12, 2020 discovery cutoff.

21 To do date, Plaintiffs have not received all responsive documents. GEO states that
22 it produced documents including financial records on December 30, 2019 and produced
23 additional documents on January 2, 2020. *See* GEO's Supp. Response, 2:10 fn 2. But this
24 is far from a statement indicating that all the documents in *Nwanzor* have been produced.
25 And though Defendant is only now producing documents in the eleventh hour, Plaintiffs
26 have conducted a preliminary review and it still does not seem to include all responsive
27 documents. Thus, Plaintiffs respectfully request that the Court order GEO to produce all
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1 responsive by January 28, 2020, to provide Plaintiffs with enough time to review the
2 production and ensure GEO's compliance before the February 12, 2020 discovery cutoff.

3 **B. GEO's Failure to Comply with Rule 26 for Initial Disclosures**

4 Defendant still has not produced several categories of documents it identified in its
5 initial disclosures. GEO states that Plaintiffs fail to articulate any discovery deadline GEO
6 has blown or discovery order that GEO has failed to follow in regard to its initial
7 disclosures. *See* GEO's Supp. Response., 2:24-25. But there is no need for this because
8 the deadline set under Federal Rule of Civil Procedure 26(a)(1)(C) is clear: "within 14 days
9 after the parties' Rule 26(f) conference unless a different time is set by stipulation or court
10 order" GEO seeks to go around this obligation by stating that several categories of
11 documents are the subject of separate meet and confer efforts. But that is a separate issue,
12 and Plaintiffs cannot wait and rely on GEO's word that it will serve these documents if
13 and when it produces related discovery.

14 GEO states that Plaintiffs are just speculating that additional documents
15 must exist. Not so. Plaintiffs have identified GEO's records from the Adelanto
16 Facility, including but not limited to records pertaining to Raul Novoa's commissary
17 purchases (item 7); food, hygiene, and sanitation records for the Adelanto Facility
18 (item 8); and ICE policies and regulations related to the Voluntary Work Program
19 (item 9). It is disingenuous for GEO to seek more specificity, when such documents
20 are in its sole possession, and when there is no such requirement under Rule 26.

21 **C. GEO's Inadequate Privilege Logs**

22 Since the present motion was filed, GEO has produced several privilege/redaction
23 logs, but they are inadequate, fail to support the withholding of information vaguely
24 described therein, do not identify the attorneys or other employees who sent or received
25 identified emails, and do not include bates numbers that would allow for easy correlation to
26 documents produced. In general, the logs fail to "describe the nature of the documents,
27 communications, or tangible things not produced or disclosed . . . in a manner that, without
28 revealing information itself privileged or protected, will enable other parties to assess the

1 claim.” Fed. R. Civ. P. 26(b)(5)(ii). *See* Supp. Maya Decl., ¶4, Ex. A. Examples are attached
2 to the Supplemental Maya Declaration, with highlighting added by counsel to direct the
3 Court’s attention to obviously inadequate entries.

4 **D. GEO’s Blanket Confidentiality Designations**

5 GEO states that it has no control over the confidentiality designations of
6 documents it has produced, and that documents are withheld, designated, and/or
7 redacted by ICE. GEO cannot simply put the blame on ICE and sidestep its
8 discovery obligations. ICE is not a party to this litigation and several of the
9 documents marked confidential or withheld on the basis of privilege do not seem to
10 involve any of its personnel. For example, ICE withheld an email sent on July 25,
11 2017 solely between GEO employees because the “E-mail communication [is]
12 protected by statutory and/or regulatory provisions related to a detainee’s trip to the
13 hospital for pelvic pain.” And the email is relevant to the claims of this case.

14 The privilege logs that have been provided also do not identify the attorneys
15 or ICE employees that sent or received the emails and documents. As a result, it is
16 impossible to evaluate GEO’s or ICE’s various assertions of privilege. And ICE has
17 heavily redacted several documents that seem directly relevant to this case and
18 involve only GEO’s personnel.

19 ICE cannot be withholding or redacting documents that are only, if at all,
20 tangentially related to the department. This appears to be a tactic by GEO to
21 suppress relevant evidence.

22 **E. Discovery Regarding GEO’s Employees and Other Third Parties**

23 Plaintiffs seek paystubs for GEO’s regular employees (RFP No. 27). Their
24 relevance is addressed at length in the Joint Stipulation submit by the parties.
25 Plaintiffs seek such information to determine the difference between the wages
26 detainees receive and what they would have been paid as regular employees. GEO
27 states that there is no need for such information because the notion that immigrant
28 detainees would (or should) be paid the same compensation as GEO’s employees is

1 far-fetched and pure speculation. *See* GEO's Supp. Response, 5:11-13. Not so.
 2 That GEO failed to pay detainees proper wages is one of Plaintiffs' principle claims.
 3 *See* Complaint, ¶ 190 (Count I, California Minimum Wage Law). To understand
 4 what detainees should have been paid, Plaintiffs will need to look at the wages of
 5 similar employees. This compelling need outweighs any potential concerns
 6 regarding privacy, which can be ameliorated by redacting personal and/or identifying
 7 information. Courts recognize this and routinely produce this information for a
 8 wage claim. *See Romo v. GMRI, Inc.*, No. EDCV-12-0715-JLQ, 2013 WL 11310656,
 9 at 5 (C.D. Cal. Jan. 25, 2013) ("Perhaps the most critical information Plaintiff seeks
 10 are wage (wage statements)/payroll and time (daily time sheets) records. . . *This type of*
 11 *evidence is routinely held discoverable in wage and hour labor litigation.*").

12 Plaintiffs also seek the work schedules of regular employees (RFP No. 35). Also
 13 discussed at length in the Joint Stipulation, such information is relevant because it will show
 14 whether Adelanto was understaffed and being predominantly operated by detained workers.
 15 GEO states that there are ample ways of exploring this theory without obtaining work
 16 schedules. *See* GEO's Supp. Response, 5:10-11. Plaintiffs disagree and assert that work
 17 schedules are the *best* way of obtaining the needed information. And as stated above, any
 18 personal information can be redacted to reduce any privacy concerns, and such information
 19 is routinely held discoverable. *See Romo*, No. EDCV-12-0715-JLQ, 2013 WL 11310656, at 5.

20 **III. CONCLUSION**

21 For all these reasons, Plaintiffs respectfully request that the Court grant Plaintiffs'
 22 Motion to Compel.

23 Respectfully submitted,

24 Dated: January 9, 2020

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