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25 THE GEO GROUP, INC.

26 **UNITED STATES DISTRICT COURT**  
27 **CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION**

28 RAUL NOVOA, JAIME CAMPOS  
FUENTES, ABDIAZIZ KARIM, and  
RAMON MANCIA, individually and on  
behalf of all others similarly situated

Plaintiff,

vs.

THE GEO GROUP, INC.,

Defendant.

Case No. 5:17-cv-02514-JGB-SHKx

Assigned to Hon. Jesus G. Bernal

**DEFENDANT THE GEO GROUP,  
INC.'S REPLY TO PLAINTIFFS'  
OPPOSITION TO GEO'S MOTION  
TO CONTINUE TRIAL AND  
PRETRIAL DATES AND REOPEN  
DISCOVERY**

1 THE GEO GROUP, INC.,  
 2 Counter-Claimant,  
 3 vs.  
 4 RAUL NOVOA, JAIME CAMPOS  
 5 FUENTES, ABDIAZIZ KARIM, and  
 6 RAMON MANCIA, individually and on  
 behalf of all others similarly situated,  
 Counter-Defendant.

TAC Filed: September 16, 2019  
 SAC Filed: December 24, 2018  
 FAC Filed: July 6, 2018  
 Complaint Filed: December 19, 2017  
 Trial Date: February 2, 2021

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1 Defendant The GEO Group, Inc. submits the following Reply in support of its  
2 Motion to Continue Trial, Pretrial Dates, and Reopen Discovery.

3 **I. INTRODUCTION.**

4 GEO has not delayed. Plaintiffs wholly mischaracterize the procedural posture  
5 of this case and conveniently ignore the fact that GEO has been diligent and acting in  
6 good faith to meet its discovery obligations, including responding to the litany of  
7 controversies Plaintiffs have manufactured on a near *weekly* basis for the last several  
8 months. *See* ECF 300-1, at ¶ 14.

9 Plaintiffs’ tired theme continues to be that GEO conveniently caused all of the  
10 delay in this case, that GEO has failed to be diligent, that GEO has been derelict in its  
11 obligations—in short, that GEO is the only blameworthy party. Plaintiffs take no  
12 responsibility whatsoever for the delay they have caused in failing to finalize their  
13 class notice plans. They also disguise their near weekly and voluminous discovery  
14 conferrals as “vigorous” prosecution of their case—leaving out the fact that many of  
15 their perceived discovery deficiencies were revivals of previously-resolved issues  
16 and/or just plain made up. *See* ECF 300-1, at ¶¶14-17.

17 If deadlines are not extended in this action, Plaintiffs will have successfully  
18 shortchanged due process and have been rewarded for their bad faith litigation antics.  
19 To be sure, just this morning on September 21—seven days **after** the discovery  
20 cutoff—Plaintiffs sought to raise six new discovery issues before Magistrate  
21 Kewalramani. (Declaration of Alicia Y. Hou (Hou Decl.) ¶ 3). Plaintiffs cannot take  
22 the hardline position that deadlines in this matter should not be moved and that they  
23 will be prejudiced, and then raise purported discovery issues before the Court one  
24 week after the discovery cutoff (which cutoff includes hearing discovery motions).  
25 GEO respectfully requests the Court grant its Motion to Continue Trial and set forth a  
26 new scheduling order to allow for this lawsuit to proceed fairly.

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1 **II. LEGAL ARGUMENT**

2 **A. Good Cause Exists to Grant GEO's Motion**

3 **i. Plaintiffs Mischaracterize the Facts**

4 Class Notice. Plaintiffs decidedly omit any explanation as to why they waited  
5 nine months to file their motion to approve class notice. **Plaintiffs' delay and**  
6 **Plaintiffs' delay alone has puts the parties at odds with the current scheduling**  
7 **order.** Instead of taking any responsibility for their own delay and accepting the fact  
8 that the scheduling order is no longer tenable, Plaintiffs' present two unworkable  
9 options to the Court to circumvent the scheduling issue (again, which they alone  
10 created). The first would be to shorten the 75 day notice period to 45 days—  
11 shortchanging due process. The second would be for the Court to reserve ruling on  
12 the dispositive motions until after the opt-out period. This would be incredibly unfair  
13 to GEO as prospective class members will have the opportunity to evaluate the  
14 strength of GEO's key legal positions prior to deciding whether they would like to be  
15 included in the class. *See Schwarzschild v. Tse*, 69 F.3d 293, 295 (9th Cir. 1995)  
16 (“The purpose of Rule 23(c)(2) is to ensure that the plaintiff class receives notice of  
17 the action **well before** the merits of the case are adjudicated”); *see also Darrington v.*  
18 *Assessment Recovery of Wash., LLC*, No. C13-0286-JCC, 2014 WL 3858363, at \*3  
19 (W.D. Wash. Aug. 5, 2014). (“[T]he notice requirement for 23(b)(3) class actions is  
20 rooted in due process and clearly mandatory under Rule 23(c)(2)(B).”)

21 Class Discovery. Plaintiffs should not be allowed to lay their delay at GEO's  
22 feet. The only fair solution would be to reopen discovery on a limited basis for GEO  
23 to conduct class discovery and continue all dates as set forth in the underlying motion.  
24 Plaintiffs gloss over the undisputable timing hurdles GEO has had to contend with  
25 since the current scheduling order took effect:

- 26 • January 8 2020 – operative scheduling order takes effect (*see* ECF 247);
- 27 • January 8, 2020 through January 22, 2020 – discovery stay in effect (*see*  
28 ECF 247);

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- Late February / early March – COVID-19 takes hold of the nation;
- April 6, 2020 – Plaintiffs bring an *Ex Parte* Application for TRO re. COVID-19 issues. GEO focuses all efforts on this TRO and COVID-19 related issues (*see* ECF 252);
- April 22, 2020 – Order denying Plaintiffs’ TRO (*see* ECF 268);
- May 2020 through September 2020 – Plaintiffs commence nearly *weekly* discovery conferrals before the Court; the majority of these discovery issues were previously resolved and/or immaterial. Plaintiffs disguise these conferrals as “vigorous” prosecution of this case; however Plaintiffs clearly sought to abuse the discovery process and bury GEO’s counsel with manufactured discovery issues as a bad-faith litigation strategy, (*see* ECF 300-1, at ¶ 14);
- May 22, 2020 – Court issues order in connection with Plaintiffs’ outstanding RFPs, ordering Parties to *further* meet and confer on e-discovery search terms related to several key RFPs (*see* ECF 274);
- Early August 2020 – Parties finally reach agreement on several search terms and GEO begins the process of reviewing over hundreds of thousands of documents to produce by September 7, 2020 – the substantial compliance deadline ordered by Magistrate Judge Kewalramani (*see* ECF 311-1, at ¶ 5).

Fact Witness Depositions. Plaintiffs point to GEO’s decision to not depose various fact witnesses as evidence that GEO has somehow delayed. This makes no sense. GEO’s strategic decision to no longer depose various fact witnesses should not be indicative of GEO “sitting on its hands.”

Expert Depositions. Plaintiffs’ accusation that GEO has not noticed any depositions of any of the four experts is misleading. The parties did not even agree to expert deposition dates until September 10, 2020—after lengthy conferrals and two hearings before Magistrate Kewalramani. GEO’s counsel served deposition notices on September 14, 2020 – surely a reasonable timeframe given that the parties had only

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1 agreed to dates merely *four days prior*. Again, Plaintiffs seek to create issues and  
2 controversies where none exist. Further, other than the production of four engagement  
3 letters, Plaintiffs refused to produce documents in response to Defendants' subpoenas  
4 seeking documents relied upon by Plaintiffs' experts, despite their agreement to extend  
5 expert discovery beyond the September 14 cutoff and despite the Court's admonition  
6 that these documents should be produced without the need for a subpoena. (Hou Decl.  
7 ¶ 4).

8 GEO's Written Discovery. Plaintiffs falsely state that GEO has not initiated a  
9 Rule 37-1 conferral as to any of Plaintiffs' responses. GEO's counsel sent  
10 correspondence seeking conferral on Plaintiffs' deficient responses to GEO's Requests  
11 for Production on August 31, 2020 – to date, plaintiffs have failed to respond and  
12 these issues remain outstanding. GEO's counsel sent correspondence seeking  
13 conferral on Plaintiffs' deficient responses to GEO's Requests for Admissions and  
14 Interrogatories on September 4, 2020 – to date, plaintiffs have failed to respond and  
15 these issues remain outstanding. *See* ECF 311-1, at ¶ 13.

16 Settlement Conference. Again, Plaintiffs falsely state that GEO has failed to  
17 respond. GEO has engaged in several conferrals with Plaintiffs on the topic of  
18 mediation and continue to do so. GEO most recently responded to Plaintiffs on  
19 September 16, 2020. (Hou Decl. ¶ 5).

20 No Prejudice. Plaintiffs will suffer no prejudice given a short extension of the  
21 deadlines. The sole basis upon which Plaintiffs claim they will be prejudiced is that a  
22 delay in adjudication "ensures that [GEO] continues to benefit from free or nearly free  
23 detainee labor, and that immigrants detained in GEO's facilities continue to face  
24 serious harm as a result." *See* ECF 323, at p. 6. Indeed, the claims at issue in this case  
25 are significant and complex. Accordingly, fair adjudication of them is of great  
26 importance to *all parties* to this action. As the Ninth Circuit has consistently held, the  
27 district court abuses its discretion "when the denial of a continuance has affected the  
28 defendant's ability to present an adequate defense or has compromised his right to a

1 fair trial." *United States v. Zamora-Hernandez*, 222 F.3d 1046, 1054 (9th Cir. 2000);  
2 *see also United States v. 2.61 Acres of Land*, 791 F.2d 666, 671 (9th Cir.1985) (court  
3 abused its discretion where denial of a continuance prevented the defendant from  
4 introducing any evidence on its behalf); *see also Armant v. Marquez*, 772 F.2d 552,  
5 557 (9th Cir.1985) (finding prejudice where the denial of a continuance prevented the  
6 defendant from preparing his own defense); *see also United States v. Pope*, 841 F.2d  
7 954, 958 (9th Cir.1988) (denial of a brief continuance inappropriate where it  
8 prevented defendant from introducing "the only testimony that could plausibly have  
9 helped him"). In short, a modest continuance of four months to allow for due process  
10 is prudent, imperative, and would benefit both sides to this action.

11 **ii. Plaintiffs Mischaracterize the Law**

12 While Plaintiffs are correct in their assertion that modification of a scheduling  
13 order requires a showing of "good cause" (*see Fed. R. Civ. P. 16(b)(4)*), Plaintiffs'  
14 assertion that there is "no good cause where moving party delayed in taking any  
15 depositions until late in the discovery process" is a misstatement of the law. The cases  
16 Plaintiffs cite to are inapposite.

17 While the court in *Krueger v. Wyeth* held that good cause for modification of  
18 the scheduling order at issues had not been shown by the moving party in that case,  
19 Plaintiffs have conveniently omitted a key fact relied upon by the *Kreuger* court in  
20 reaching its decision – the Court in *Krueger* emphasized that the plaintiff seeking an  
21 amendment to the scheduling order offered *no explanation* as to why modification was  
22 appropriate. *See Krueger v. Wyeth, Inc.*, No. 03CV2496-JAH MDD, 2012 WL  
23 4338710, at \*3 (S.D. Cal. Sept. 20, 2012) ("Plaintiff has not explained why she  
24 delayed in taking any depositions in this case until late in the discovery process (only  
25 one deposition had been taken by May 2012, just one month before the scheduled  
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1 close of fact discovery)"). Here, unlike the movant in *Krueger*, GEO offers *numerous*  
 2 bases on which modification should be granted. *See* ECF 311-1.<sup>1</sup>

3 Plaintiffs provide a similarly reductive characterization of the holding in *New*  
 4 *York Life Insurance Co. v. Morales*. *See* ECF 323, at p. 5. While the court in *New*  
 5 *York Life* did in fact hold that the defendant had not shown good cause for  
 6 modification of the court's scheduling order, the *New York Life* court emphasized that  
 7 it was implausible that the defendant was unaware of the existence and identity of the  
 8 witnesses to be deposed because the witnesses were members of the defendant's own  
 9 family. *See New York Life Ins. Co. v. Morales*, No. CIV.06CV1022-B(BLM), 2008  
 10 WL 2622875, at \*3 (S.D. Cal. July 1, 2008) ("Defendant Lopez cannot plausibly  
 11 claim that he was unaware of the existence of these individuals because they were his  
 12 father-in-law, sister-in-law, and brother-in-law... In other words, these potential  
 13 deponents' identities and possible bases for having knowledge of relevant facts were  
 14 all known extremely early in the case, if not prior to its filing"). Here, GEO does not  
 15 contend that it is unaware of who it needs to depose, or what discovery it needs to  
 16 conduct. GEO's position is clear – due to Plaintiffs' delay in moving for approval of  
 17 class notice, the deadlines must be extended in the interests of justice.

18 As outlined by the Ninth Circuit in *Noyes v. Kelly Services*, the inquiry as to  
 19 whether good cause exists for modifying a scheduling order focuses on the  
 20 "reasonable diligence" of the moving party. *Noyes v. Kelly Servs.*, 488 F.3d 1163,  
 21 1174 (9th Cir. 2007); *see also Kushner v. Nationwide Credit, Inc.*, 256 F.R.D. 684,  
 22 687 (E.D. Cal. 2009) ("Good cause may be found to exist where the moving party  
 23 shows that it diligently assisted the Court with creating a workable scheduling order,  
 24 that it is unable to comply with the scheduling order's deadlines due to matters that

25 \_\_\_\_\_  
 26 <sup>1</sup> On August 7, 2020, Plaintiffs served amended initial disclosures listing additional individuals whom GEO may need to  
 27 depose. GEO also seeks to depose Plaintiff Fernando Munoz-Aguilera who submitted a declaration in support of  
 28 Plaintiffs' motion for class certification, but was never made available for a deposition. Moreover, in the month leading  
 up to the discovery cutoff, Plaintiffs noticed six other depositions – at least two of which were noticed without any  
 conferral as to GEO or the witness's availability. Additionally, well before the discovery cutoff, GEO's counsel sent  
 correspondence seeking conferral on Plaintiffs' deficient responses to GEO's Requests for Production, Requests for  
 Admissions, and Interrogatories. To date, plaintiffs have failed to respond and these issues remain outstanding.



1 could not have reasonably been foreseen at the time of the issuance of the scheduling  
 2 order, and that it was diligent in seeking an amendment once it became apparent that  
 3 the party could not comply with the scheduling order"). Here, GEO moved to modify  
 4 the scheduling order when it became clear that the order was no longer tenable due to  
 5 Plaintiffs' delay in filing their motion to approve class notice – and even further  
 6 exacerbated by COVID-19.

7 **III. CONCLUSION**

8 In light of the foregoing, the Court should grant GEO's Motion to Continue  
 9 Trial and Pretrial Dates and Reopen Discovery and set the impending deadlines in  
 10 accordance with the following:

Event	Current Date	Proposed Date
All Discovery Cutoff (including hearing discovery motions)	Monday, September 14, 2020	Thursday, January 14, 2021
Last Date to Conduct Settlement Conference	Monday, October 12, 2020	Friday, February 12, 2020
Last Date to File Summary Judgment Motions	Wednesday October 14, 2020 <sup>2</sup>	Thursday, February 15, 2021.
Last Date to Hear Non-Discovery Motions	Monday, November 30, 2020	Tuesday, March 30, 2021
Final Pretrial Conference and Hearings on Motions in Limine	Monday, January 4, 2021 at 11:00 AM	Tuesday, May 4, 2021 at 11:00 AM
Trial Date	Tuesday, February 2, 2021 at 9:00 AM	Wednesday, June 2, 2021

23 Dated: September 21, 2020

**AKERMAN LLP**

24  
 25 By: /s/ Ellen S. Robbins  
 26 Ellen S. Robbins  
 27 Alicia Y. Hou  
 Colin L. Barnacle

28 <sup>2</sup> The deadline to file summary judgment motions was incorrectly cited as October 4, 2020 within GEO's Motion. This error was corrected by and through a notice of errata filed on September 18, 2020.

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