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

27 RAUL NOVOA, JAIME CAMPOS  
28 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

**DEFENDANT THE GEO GROUP,  
INC.’S MOTION TO COMPEL  
PRODUCTION OF DOCUMENTS  
AND FURTHER RESPONSES**

Hearing Date: October 2, 2020  
Time: 2:00 p.m.

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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**NOTICE OF MOTION**

In accordance with this Court's September 23, 2020 Order Extending Discovery Motion Deadline to October 2, 2020 and Setting Briefing Schedule on Outstanding Discovery Issues, Defendant The GEO Group, Inc. hereby moves to compel production of documents and further responses to discovery. This Motion is based on this Notice of Motion, the Memorandum of Points and Authorities below, the anticipated arguments of counsel at hearing, the files and pleadings in this action, and any other matter deemed appropriate by this Court.

Dated: September 30, 2020

**AKERMAN LLP**

By: /s/ Ellen S. Robbins  
Ellen S. Robbins  
Alicia Y. Hou  
Adrienne Scheffey  
Attorneys for Defendant  
THE GEO GROUP, INC.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION.**

Defendant The GEO Group, Inc. (“GEO”) brings this Motion to address the numerous deficiencies in Plaintiffs' responses to GEO's discovery in this matter. This Motion follows multiple efforts to meet and confer on the issues outlined below since early September.<sup>1</sup> To date, the issues presented in this Motion remain unresolved. Accordingly, GEO asks that this Court compel Plaintiffs to comply with their basic discovery obligations by producing the documents and information requested below.

**II. LEGAL ARGUMENT**

**A. Plaintiffs Should Be Compelled to Produce All Documents Relating to Their Expert Witnesses as Required by Fed. R. Civ. P. 26.**

Under Rule 26, a party must produce a complete statement of all opinions their expert witnesses will express and the basis and reasons for them, as well as the facts or data considered by the witnesses in forming them and any exhibits that will be used to summarize or support them. Fed. R. Civ. P. 26. Further, Fed. R. Civ. P. 26 requires a party to disclose the expert witnesses' qualifications, including a list of all publications authored in the previous 10 years; a list of all other cases in which, during the previous four years, the witnesses testified as an expert at trial or by deposition; and a statement of the compensation to be paid for the study and testimony in the case.

*Id.*

Consistent with this rule, this Court previously held that experts must produce and disclose all documents relied upon as part of their report. ECF 315. GEO did so. Subsequently, Plaintiffs refused to produce documents relied upon by their experts

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<sup>1</sup> On September 4, 2020, GEO sent Plaintiffs correspondence outlining in detail the deficiencies in Plaintiffs' discovery responses and document productions, which Plaintiffs summarily dismissed claiming disingenuously that Plaintiffs had fulfilled their discovery obligations. On September 14, 2020, the parties engaged in extensive correspondence via email regarding production of Plaintiffs' expert witness documents; ultimately Plaintiffs refused to comply with their production obligations and produced only four retainer agreements, not the key documents sought in GEO's expert subpoenas. Conferal on these issues continued on September 21, 2020 in written correspondence and during the September 22, 2020 discovery conference. The issues regarding the deficiencies in Ms. Schlanger's testimony were discussed at length during her deposition on September 25, 2020. The parties met and conferred again regarding all of these issues via telephonic conference on September 30, 2020.

1 (despite accepting service of subpoenas for the same).<sup>2</sup> As a result, GEO learned  
 2 during the depositions of Plaintiffs' experts that a number of documents that are  
 3 necessary for its analysis of Plaintiffs' experts reports and potential biases were not in  
 4 fact produced. Indeed, during the deposition of Dr. Childers, GEO learned for the first  
 5 time that Mr. Childers had testified as an expert witness on prior occasions within the  
 6 past five years. While this information should have been disclosed as part of his initial  
 7 report, it remains relevant. Likewise, GEO learned during the deposition of Ms.  
 8 Schlanger that she had direct communications with a former DHS official to reach a  
 9 conclusion in her report. Those communications were never disclosed. This  
 10 information also should have been disclosed with Ms. Schlanger's initial report.  
 11 Accordingly, GEO seeks an order from this Court requiring Plaintiffs to produce all  
 12 information relied upon by each of their experts, including, but not limited to:

- 13 • A list of Mr. Childers' prior engagements as an expert witness;<sup>3</sup>
- 14 • Documents relied upon by Mr. Childers and not disclosed, including the
- 15 spreadsheet he testified about during his deposition;
- 16 • Native spreadsheets used by Mr. Childers detailing the calculations upon which
- 17 he relied in reaching his conclusions;
- 18 • Ms. Schlanger's email communications with Ms. Claire Trickler McKnulty as
- 19 disclosed for the first time in her deposition;<sup>4</sup>
- 20 • A list of all documents considered by Ms. Schlanger, including those she
- 21 described in her deposition as not helpful to her report;
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25 <sup>2</sup> GEO served subpoenas on Plaintiffs' experts on September 3, 2020. Plaintiffs responded with objections and provided  
 26 only retainer agreements for their four experts, not the key documents sought in the subpoena.

27 <sup>3</sup> Plaintiffs indicated that failure to produce this was an oversight and that they would provide this list; however, despite  
 the fact that the deposition of Dr. Childers occurred on September 21, 2020, plaintiffs have still not provided the list  
 (although plaintiffs have reiterated that they intend to provide it). GEO raises this issue to preserve it before the deadline.

28 <sup>4</sup> Again here, plaintiffs indicated that they would follow up and produce these documents; however to date, plaintiffs  
 have not produced these communications. Plaintiffs indicated that they followed up again on September 30. GEO raises  
 this issue to preserve it before the deadline.

- All documents relied upon by each of plaintiffs' experts that were not previously disclosed.

**B. Plaintiffs Should Be Compelled to Produce Tax Returns and Other Income Related Information.**

On July 31, 2020, GEO propounded requests for production on Plaintiffs seeking documents evidencing Plaintiffs' income and tax information as follows:

Request For Production No. 20: Any evidence of income Plaintiffs earned outside of the Adelanto Facility.

Request For Production No. 21: Copies of Plaintiffs' federal and state income tax returns, including all schedules, worksheets, W-2 forms and 1099s for 2010 to present.

Request For Production No. 27: All documents evidencing any claims for benefits under any state or federal program for disability, low income, unemployment, or other public benefit that Plaintiffs received.

All four named Plaintiffs, though served separate requests for production, answered identically, asserting that GEO's Requests sought information outside the scope of discovery under FRCP 26(b)(1) and that Plaintiffs "[do] not understand what information is being sought in this Request." Although GEO conferred with Plaintiffs and requested that they review their responses and produce the requested documents well before the close of discovery, Plaintiffs have produced nothing.

The documents GEO requests are limited in scope and unquestionably are relevant to the issues of Plaintiffs' damages and whether Plaintiffs' were "employees" for purposes of California's wage and hour laws. *See Donovan v. Kentwood Dev. Co.*, 549 F. Supp. 480, 488 (D. Md. 1982) (damages for minimum wage violations are calculated by determining the difference between the amount the minimum wage and overtime wage requirements guarantee and the total amount of wages and other credits received on a weekly basis); *see also See Cortez v. Purolator Air Filtration Prod. Co.*, 23 Cal. 4th 163, 177 (2000) (benefits received are relevant for purposes of calculating

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1 damages); *see also* *Dynamex Operations W. v. Superior Court*, 4 Cal. 5th 903, 961  
2 (2018) ("employee" status for wage and hour purposes depends on the nature of the  
3 work and overall arrangement between the parties, and whether "the worker  
4 customarily engaged in an independently established trade, occupation, or business of  
5 the same nature as the work performed for the hiring entity").

6 Further, documents showing evidence of income plaintiffs earned outside of the  
7 Adelanto Facility are indisputably relevant to the issue of whether plaintiffs should be  
8 considered employees, and to demonstrate how the amounts plaintiffs actually earned  
9 outside of the Adelanto Facility compare to the amounts plaintiffs' experts opine they  
10 should have received for work allegedly performed. There is a compelling need for  
11 plaintiffs tax documents, as they are relevant to demonstrate whether plaintiffs  
12 reported their VWP stipend as wages on their tax returns, which directly relates to the  
13 issue of whether plaintiffs considered themselves to be employees or to have received  
14 remuneration. And benefits-related documents are relevant to plaintiffs' unjust  
15 enrichment claim by demonstrating plaintiffs' income status outside the Adelanto  
16 Facility. Benefits documents may also provide helpful information about Plaintiffs'  
17 ability to obtain work outside of the facility, including disability status and  
18 unemployment status. Certainly, Plaintiffs cannot claim in good faith to have expected  
19 a job paying the prevailing wage rates if their records show they applied for disability  
20 or unemployment status when not housed at Adelanto. Finally, depending upon the  
21 benefits received, these documents may also shed light on Plaintiffs' claims for lost  
22 wages.

23 Here, GEO's requests are not unduly burdensome, overly broad, or  
24 disproportional to the needs to the case. The information GEO has requested is both  
25 relevant to the subject matter of this lawsuit and calculated to lead to the discovery of  
26 admissible evidence that would assist in resolving material class issues in this case.  
27 Accordingly, this Court should compel Plaintiffs to produce documents responsive to  
28 Requests Nos. 20, 21 and 27 without further delay.

1           **C.     Plaintiffs Should Be Compelled to Resolve the *Touhy* Issues Relating**  
2           **to the Testimony of Ms. Schlanger.**

3           Prior to Ms. Schlanger’s deposition, the Parties received a letter from DHS  
4 indicating that her testimony had not been authorized by DHS to be submitted to a  
5 Court. Specifically, DHS stated that Ms. Schlanger’s testimony had not been  
6 authorized under *United States ex. rel. Touhy v. Ragen*, 340 U.S. 462 (1951). DHS  
7 further explained that Ms. Schlanger’s testimony had not been cleared by the ethics  
8 department of DHS. In light of this letter, GEO asked Plaintiffs’ counsel and the  
9 deponent if they were able to continue with the deposition or if, instead, it needed to  
10 be rescheduled. Plaintiffs stated they did not believe the *Touhy* regulations asserted in  
11 the letter covered her deposition testimony. Plaintiffs also took the position that if  
12 *Touhy* applied, it was *GEO’s* obligation to obtain *Touhy* authorization as the party  
13 seeking to submit her testimony to the Court.<sup>5</sup> Because the deponent and Plaintiffs did  
14 not believe DHS’s objection prevented them from providing deposition testimony,  
15 GEO proceeded with the deposition. Nevertheless, the witness and Plaintiffs’ counsel  
16 objected numerous times to questions on the basis of *Touhy*. As a result, Plaintiffs  
17 used the *Touhy* regulations to impede testimony contrary to their own representations  
18 at the outset of the deposition. In addition, rather than simply marking answers  
19 confidential for review by ICE, the witness refused to answer questions she believed  
20 touched upon *Touhy*, requiring GEO to hold the deposition open. Accordingly, GEO  
21 seeks an order from this Court that Plaintiffs address and resolve the *Touhy* issues  
22 related to Ms. Schlanger’s proposed testimony in this case and an order that GEO be  
23 permitted to re-depose Ms. Schlanger for no more than three hours after the *Touhy*  
24 issues are resolved.

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28 <sup>5</sup> Of course, GEO does not seek to introduce Ms. Schlanger’s testimony to this Court absent introduction by Plaintiffs, and therefore Plaintiffs hold the *Touhy* burden.



1                   **III. CONCLUSION**

2                   In light of the foregoing, this Court should grant GEO's Motion to Compel  
3 Production of Documents and Further Responses and issue an order compelling  
4 Plaintiffs to comply with their discovery obligations by producing the documents and  
5 information requested herein.

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8 Dated: September 30, 2020

**AKERMAN LLP**

9 By: /s/ Ellen S. Robbins  
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12 Adrienne Scheffey  
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