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24 THE GEO GROUP, INC.

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

Assigned to Hon. Jesus G. Bernal

**DEFENDANT THE GEO GROUP,
INC.’S OPPOSITION TO
PLAINTIFFS’ MOTION TO
EXCLUDE TESTIMONY OF
SERENA MORONES**

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THE GEO GROUP, INC.,

Counter-Claimant,

vs.

RAUL NOVOA, JAIME CAMPOS
FUENTES, ABDIAZIZ KARIM, and
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: March 30, 2021

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1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that Defendant The GEO Group, Inc. (“GEO”), by
3 and through the undersigned counsel, hereby respectfully submits this Opposition to
4 Plaintiffs’ Motion to Exclude Testimony of Serena Morones (“Opposition”). This
5 Opposition is based upon this Memorandum of Points and Authorities, the pleadings
6 and papers on file in this action, and upon such of the argument and evidence as may
7 be presented prior to or at the hearing of this matter.

8

9 Dated: October 26, 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

Plaintiffs’ effort to strike and/or exclude the opinion of GEO’s rebuttal expert Serena Morones is an attempt to challenge the substantive conclusions of her report, not the methodology, scientific validity or reliability of the manner in which she reached those conclusions. Plaintiffs **admit** that Ms. Morones identified legitimate calculation errors in at least one of their expert reports, leading their expert to issue an amended report. (Declaration of Ellen S. Robbins ¶ 4 (hereinafter “**Robbins Decl.**”). This alone warrants the Court’s denial of Plaintiffs’ Motion to Exclude Ms. Morones as GEO’s rebuttal expert. Even beyond this fatal admission, the Motion fails on the merits.

Plaintiffs preliminarily argue that Ms. Morones should be stricken because GEO failed to provide the Nickerson report, the amended Nickerson report, and the material underlying the Nickerson Report, as if Ms. Morones relied upon all such materials in reaching her opinion. While she did not, GEO disclosed **all** of the relevant Nickerson material anyway *prior to her deposition*; thus Plaintiffs’ initial argument is moot.

Plaintiffs next argue that Ms. Morones must be excluded under *Daubert* principles because (1) her opinions are purportedly based on an “unblinking” reliance on information provided by GEO’s counsel and are therefore not “reliable;” and (2) she merely weighs the efficacy of evidence relied upon by Plaintiffs’ damages experts so her opinions are therefore not “relevant.” These arguments also fail as Ms. Morones’ opinions are well supported. Further, any criticisms do not meet the standards required to exclude experts under *Daubert*. As an expert in the field of damage analysis and forensic accounting within the context of complex litigation, Ms. Morones is qualified to provide expert testimony in this matter. Plaintiffs’ Motion should be denied.

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1 **II. RELEVANT BACKGROUND**

2 **A. Ms. Morones’ Qualifications**

3 Ms. Morones is the owner and founder of Morones Analytics, LLC, a Portland,
4 Oregon based firm which specializes in damage analysis for litigation and business
5 valuation. *See* ECF 355-3 at 5. Ms. Morones has more than **30 years of accounting**
6 **experience**, which includes **24 years specializing in analyzing commercial damages**,
7 conducting forensic accounting investigations and performing business valuations. *Id.*

8 Ms. Morones is a Certified Public Accountant licensed in Oregon and has
9 received two professional designations in business valuation: the Accredited Senior
10 Appraiser (ASA) designation from the American Society of Appraisers and the
11 Accredited in Business Valuation (ABV) credential from the American Institute of
12 Certified Public Accountants. *Id.* Ms. Morones is also a Certified Fraud Examiner and
13 holds membership in the Association of Certified Fraud Examiners, the American
14 Institute of CPAs, the Oregon Society of CPAs, and the American Society of
15 Appraisers and the Licensing Executives Society. *Id.*

16 Ms. Morones graduated Cum Laude from the University of Oregon with a
17 Bachelor of Arts in Accounting and earned a Master of Taxation degree from Portland
18 State University. *Id.* at 26. Additionally, Ms. Morones has previously been qualified
19 as an expert in damage assessment matters in federal and state courts, as well as
20 arbitrations in several states. *Id.* at 5. Likewise, other federal courts have denied
21 *Daubert* challenges to Ms. Morones’ prior expert reports, finding her qualifications
22 more than adequate to form the basis for expert testimony as to damages calculations.
23 *See e.g., Wanke Cascade Distribution Ltd. v. Forbo Flooring, Inc.*, No. 3:13-CV-768-
24 AC, 2017 WL 1837862, at *4 (D. Or. May 4, 2017).

25 **B. Ms. Morones’ Opinions**

26 Ms. Morones was retained by GEO to rebut the opinions of Plaintiffs’ damages
27 experts, Michael Childers and Jody Bland. (Robbins Decl. at ¶ 3). While Plaintiffs
28

1 misrepresent that Ms. Morones only reaches four opinions¹ in her report, Ms. Morones
2 actually reaches several opinions as set forth below:

3 **Rebuttal of Jody Bland**

- 4 1. Lack of sufficient calculation details.
- 5 2. Inadequate support for shift length assumptions.
- 6 3. Inadequate support for job mixture assumptions.
- 7 4. Incorrect recreation and kitchen services assumptions.

8 **Rebuttal of Michael Childers**

- 9 1. Inadequate support for hours.
- 10 2. Inaccurate 2011 hours.
- 11 3. Inaccurate subcontractor scenario calculations.
- 12 4. Inaccurate employee scenario wage & benefits rates.

13 *See* ECF 355-3.

14 **II. LEGAL STANDARD**

15 Under the Federal Rules of Evidence, a witness may qualify as an expert
16 through “knowledge, skill, experience, training, or education.” Fed. R. Evid. 702; *see*
17 *also Cooper-Harris v. United States*, No. 212CV00887CBMAJWX, 2013 WL
18 12125527, at *1 (C.D. Cal. Feb. 8, 2013). “The fields of knowledge which may be
19 drawn upon are not limited merely to the ‘scientific’ and ‘technical’ but extend to all
20 ‘specialized’ knowledge.” *Butler v. Home Depot, Inc.*, 984 F. Supp. 1257, 1261 (N.D.

21
22 ¹ Plaintiffs reductively summarize Ms. Morones’ opinions as follows: “a) ‘Mr. Bland
23 may have failed to reduce his damages for the actual amounts paid to detainees.’ *Id.* at
24 ¶ 23; b) Bland relies on ‘limited sources’ regarding detainee jobs and shift lengths, and
25 in particular fails to consider assumptions disclosed by an expert in a different case
26 against GEO. *Id.* at ¶¶ 25-31; c) ‘Mr. Childers may have extrapolated the four months
27 of data over the full year of 2011, despite the damage period beginning in May 2011
28 for the Forced Labor Class.’ *Id.* at ¶ 50; and d) Childers’ disgorgement analysis
improperly relies on data from the Bureau of Labor and Statistics, instead of wage
rates reflected in wage determination schedules issued by the Department of Labor. *Id.*
at ¶ 56.” (ECF 355 at 2-3).

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1 Cal. 1997) (quoting advisory committee notes in Rule 702). “[I]n considering the
2 admissibility of testimony based on some ‘other specialized knowledge,’ Rule 702
3 generally is construed liberally.” *United States v. Hankey*, 203 F.3d 1160, 1168 (9th
4 Cir. 2000).

5 Once a court determines an expert is qualified to testify, the court must conduct
6 “a preliminary assessment of whether the reasoning or methodology underlying the
7 testimony is ... valid and of whether that reasoning or methodology properly can be
8 applied to the facts in issue.” *United States v. Freeman*, 498 F.3d 893, 901 (9th Cir.
9 2007) (quoting *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 592–93 (1993)).
10 The proponent of expert testimony bears the burden of establishing by a
11 preponderance of the evidence that the testimony is admissible, but “[a] review of the
12 caselaw after *Daubert* shows that the rejection of expert testimony is the exception
13 rather than the rule.” Fed. R. Evid. 702 (advisory committee notes, 2000
14 amendments); see also *Jacques v. Clean-Up Grp., Inc.*, 96 F.3d 506, 516 (1st Cir.
15 1996) (exclusionary rules are “liberal” and “relevant evidence generally is admitted”).

16 “To be admissible, expert testimony must (1) address an issue beyond the
17 common knowledge of the average layman, (2) be presented by a witness having
18 sufficient expertise, and (3) assert a reasonable opinion given the state of the pertinent
19 art or scientific knowledge.” *United States v. Vallejo*, 237 F.3d 1008, 1019 (9th Cir.),
20 *opinion amended on denial of reh’g*, 246 F.3d 1150 (9th Cir. 2001). The fact that an
21 expert’s opinion may represent a minority view is best resolved through the adversary
22 procedures of trial, not pretrial exclusion. *Daubert v. Merrell Dow Pharm., Inc.*, 43
23 F.3d 1311, 1318 n.11 (9th Cir. 1995) (“Of course, the fact that one party’s experts use
24 a methodology accepted by only a minority of scientists would be a proper basis for
25 impeachment at trial”).

26 In connection with rebuttal experts, “[t]he critical question is whether the report
27 and its opinions solely rebut or contradict the opinions of Plaintiffs’ experts.” *Estate*
28 *of Goldberg v. Goss-Jewett Co., Inc.*, No. 514CV01872DSFAFMX, 2019 WL

1 8227387, at *2 (C.D. Cal. Oct. 29, 2019). “Rebuttal testimony ‘is intended solely
 2 to contradict or rebut evidence on the same subject matter identified by another
 3 party.’” *Rodriguez v. Walt Disney Parks & Resorts U.S., Inc.*, No.
 4 817CV01314JLSJDEX, 2018 WL 3532906, at *1 (C.D. Cal. July 2, 2018).
 5 “Rebuttal expert reports are proper if they contradict or rebut the subject matter of the
 6 affirmative expert report.” *Nunez v. Harper*, No. 2:13-CV-00392-GMN, 2014 WL
 7 979933, at *1 (D. Nev. Mar. 12, 2014), *order clarified*, No. 2:13-CV-0392-GMN-
 8 NJK, 2014 WL 2808982 (D. Nev. June 20, 2014); *see also Lindner v. Meadow Gold*
 9 *Dairies, Inc.*, 249 F.R.D. 625, 635–36 (D. Haw. 2008) (“Rule 26(a)(2)(C) defines
 10 rebuttal experts as presenting evidence [that] is intended solely to contradict or rebut
 11 evidence on the same subject matter identified by an initial expert witness...”).

12 III. ARGUMENT

13 A. GEO has complied with Rule 26(a)(2)(B)

14 As a preliminary matter, Plaintiffs’ assertion that GEO has failed to comply
 15 with its disclosure requirements under Rule 26(a)(2)(B) is incorrect. Under Rule 26, in
 16 addition to an expert report, an expert witness must disclose all “facts or data
 17 considered by the witness in forming them.” Fed. R. Civ. P. 26(a)(2)(B)(ii); *see also*
 18 *Ford v. Saul*, 950 F.3d 1141, 1158 (9th Cir. 2020) (“an expert witness must produce
 19 all data she has considered in reaching her conclusions.”)

20 Here, Plaintiffs’ assertion that GEO’s expert offers her conclusions “based on
 21 material which GEO has refused to produce to Plaintiffs” is a complete
 22 misrepresentation. ECF 355-1. GEO has produced every single document upon which
 23 Ms. Morones relied in preparing her opinion. (Robbins Decl. ¶ 5). While Plaintiffs
 24 decry the fact that Nickerson’s Amended Report was not included with Ms. Morones’
 25 Report and supporting materials produced to Plaintiffs on August 31, 2020, following
 26 a hearing about this very issue, GEO produced the Nickerson report cited in Ms.
 27 Morones’ Report on September 10, 2020. Thereafter, in an abundance of caution,
 28 GEO produced an additional Nickerson Report, not cited in Ms. Morones’ Report, on

1 September 21, 2020. (Robbins Decl. ¶¶ 6-7). GEO fully complied with Rule 26 and
 2 Magistrate Judge Kewalramani’s Order. *See* ECF 315. Plaintiffs never challenged the
 3 order within the fourteen days allotted in Fed. R. Civ. P. 72(a). Plaintiffs’ motion is
 4 nothing more than an improper attempt to get a second bite at the apple here on an
 5 issue previously raised and resolved in this case. Fed. R. Civ. P. 72(a) (“A party may
 6 not assign as error a defect in the order not timely objected to.”). Accordingly, GEO
 7 has complied with all of its disclosure obligations and Rule 26 therefore serves as no
 8 basis to exclude Ms. Morones’ testimony.²

9 Moreover, Plaintiffs wholly mischaracterize the effect of the Nickerson
 10 materials on Ms. Morones’ report. Ms. Morones stated at her deposition that her
 11 knowledge that the expert for the State of Washington relied upon a dramatically
 12 lower shift length as an assumption in calculating possible lost wages in a case
 13 seeking to determine whether detainees are “employees” (the same issue in this case)
 14 was a “useful comparison” in the present case where the expert had assumed a much
 15 higher average shift length. *See* ECF 355-4 at 51 (Morones Dep. 196:10-21). In other
 16 words, Ms. Morones was not relying on the Nickerson report’s substantive data to
 17 reach a substantive damages calculation; she was merely using one expert’s
 18 conclusion in a similarly-situated lawsuit (which she participated in) to demonstrate
 19 the reasonableness of Mr. Childers’ assumptions. Indeed, even absent a citation in her
 20 Report, Plaintiffs would have inevitably reached the issue of her prior expert
 21 experience which included providing a rebuttal report to the *Nickerson* opinion.
 22 Accordingly, Plaintiffs overstate the importance of the Nickerson materials to Ms.
 23 Morones’ report. Indeed, Ms. Morones testified on cross-examination that her
 24 substantive opinions would not change even if she were to disregard the Nickerson

25 _____
 26 ² Further, during the October 2, 2020 hearing on discovery motions, despite the fact
 27 that GEO raised issues regarding Plaintiffs’ compliance with Rule 26(a)(2)(B),
 28 Plaintiffs failed to raise *any issues* regarding GEO’s alleged failure to comply with
 respect to Ms. Morones. That Plaintiffs are raising the issue for the first time in their
 Motion to Exclude is improper.

1 Report. *See* ECF 355-4 at 79 (Morones Dep. 307:14-308:4). Indeed, because the issue
2 of shift length was not the only critique of Mr. Childers’ assumptions, even if Ms.
3 Morones was precluded from discussing the Nickerson Report, she would still be a
4 qualified and reliable rebuttal expert.

5 In any event, to the extent that Plaintiffs argue that Ms. Morones’ testimony
6 should be excluded in its entirety because the Nickerson Report was produced *after* a
7 discovery hearing and not with Ms. Morones’ initial report, their argument is without
8 merit. “An expert may testify to matter beyond the scope of her initial report if there is
9 little or no prejudice or surprise to the opposing party, any such prejudice or surprise
10 can be cured, and the testimony was not willful or in bad faith.” *Wanke Cascade*
11 *Distribution Ltd. v. Forbo Flooring, Inc.*, No. 3:13-CV-768-AC, 2017 WL 1837862,
12 at *4 (D. Or. May 4, 2017). Here, there is no prejudice or surprise. Plaintiffs knew of
13 the opinions Ms. Morones intended to offer at the time of her initial report. Further,
14 they received the Nickerson reports *prior* to Ms. Morones’ deposition. (Robbins Decl.
15 ¶ 8). And, they had the opportunity to depose Ms. Morones on the report, and in fact
16 *did* depose her on the Nickerson report. *See Toomey v. Nextel Commc’ns, Inc.*, No. C-
17 03-2887 MMC, 2004 WL 5512967, at *9 (N.D. Cal. Sept. 23, 2004) (“Harte’s failure
18 to include the reasoning behind this damages calculation was harmless, however,
19 because Nextel had the opportunity to obtain Harte’s explanation at his deposition, but
20 chose not to do so.”). To be clear, during the course of her deposition, Ms. Morones
21 responded to no less than *fifty* questions regarding the Nickerson report. *See* ECF 355-
22 4; *see also* (Robbins Decl. ¶ 9). Thus, there is no basis to exclude Ms. Morones’
23 opinions as Plaintiffs obtained the relevant Nickerson Reports *prior* to deposing Ms.
24 Morones and used the same in her deposition; therefore, plaintiffs cannot establish
25 prejudice.

26 **B. Ms. Morones is qualified to provide expert testimony in this matter**

27 Ms. Morones is qualified to offer her opinions in this matter under any
28 reasonable view of her qualifications. Ms. Morones has considerable experience

1 within the field of accounting, including 24 years specializing in analysis of
2 commercial damages within complex litigation. See ECF 355-3 at 5; see also *id.* at 26;
3 see also ECF 355-4 at 8 (Morones Dep. 23:4-21) (“Forensic accounting encompasses
4 lost earnings calculations, damage calculations, broadly within the training that the
5 AICPA provides. For example, there’s quite a bit of training on lost earnings
6 calculations. So forensic accounting does cover concepts of damage quantification in a
7 wide variety of categories of damage... The forensic accounting profession includes
8 training and the development of expertise in quantifying damages for lost earnings and
9 lost profits.”).

10 In this case, there is a sufficient basis to demonstrate that Ms. Morones has
11 specialized knowledge that qualifies her as an expert in this matter. See *Tardif v. City*
12 *of New York*, 344 F. Supp. 3d 579, 597 (S.D.N.Y. 2018) (holding that expert’s
13 “advanced education [and] work experience qualify as specialized knowledge gained
14 through experience, training, or education’ within the meaning of Rule 702. See Fed.
15 R. Evid. 702. Moreover, the liberal thrust of the Federal Rules of Evidence and their
16 general approach of relaxing the traditional barriers to opinion testimony counsels in
17 favor of admissibility.”) see also *United States v. Hankey*, 203 F.3d 1160, 1169 (9th
18 Cir. 2000) (“FRE 702 works well for this type of data gathered from years of
19 experience and special knowledge”); see also *Smolow v. Hafer*, 513 F. Supp. 2d 418,
20 426 (E.D. Pa. 2007) (finding an accountant was qualified as an expert to testify on
21 subject of costs incurred by state in processing claim for confiscated property, even
22 though he had no experience or training in area of government accounting, where
23 accountant was certified public accountant (CPA) and certified valuation analyst
24 (CVA) with more than twenty years of public accounting experience, serving both for-
25 profit and non-profit entities).

26 Indeed, damages experts with much less experience than Ms. Morones have
27 been admitted for similar purposes. For example, in *Toomey v. Nextel Commc’ns, Inc.*,
28 the proffered expert did not have a “degree in economics, econometrics, or

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1 accounting” but had “taken a variety of college and graduate-level courses in
2 mathematics, accounting, economics, and statistics.” No. C-03-2887 MMC, 2004 WL
3 5512967, at *8 (N.D. Cal. Sept. 23, 2004.) He instead relied upon his employment
4 experience in accounting and valuation. *Id.* The *Toomey* court concluded that given
5 the expert’s “undisputed classwork and job-related experience in mathematics,
6 accounting, forecasting, and billing, the Court cannot say that Harte is unqualified to
7 testify as an expert with respect to the general issue of damages in this action,
8 particularly since all of his relevant calculations involve simple arithmetical
9 computations based on his unchallenged expert knowledge of practices and trends in
10 the communications industry.” *Id.*

11 Ms. Morones’ rebuttal opinions of Plaintiffs’ experts’ calculations are based on
12 purely objective mathematical principles, which opinions she is qualified to offer in
13 light of her significant accounting credentials. Importantly, Plaintiffs do not challenge
14 the mathematical principles or equations upon which she relies, instead tacitly
15 conceding they are accurate through Mr. Bland’s amendments to his report which
16 appear to be made to conform with Ms. Morones methodology. Thus, Ms. Morones
17 opinions should not be excluded.

18 **C. Ms. Morones opinions regarding the deficiencies in Plaintiffs’**
19 **damage calculations are reliable**

20 Plaintiffs’ assertion that Ms. Morones relied on information provided by GEO’s
21 counsel is irrelevant to the issue of reliability. As the Court stressed in *Daubert*
22 “[u]nlike an ordinary witness, see Rule 701, *an expert is permitted wide latitude to*
23 *offer opinions, including those that are not based on firsthand knowledge or*
24 *observation.*” *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 592 (1993)
25 (emphasis added). “Experts of all kinds tie observations to conclusions through the
26 use of what Judge Learned Hand called ‘general truths derived from . . . specialized
27 experience.’” *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 149 (1999). Moreover, as
28 emphasized within the *Daubert* opinion itself, “[t]he inquiry envisioned by Rule 702

1 is, we emphasize, a flexible one.” *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579,
2 594–95 (1993). Accordingly, Ms. Morones’ opinions – based mostly in part on sheer
3 mathematical calculations and general truths derived from specialized experience –
4 are reliable.

5 In fact, as stated by the Ninth Circuit in *United States v. Sandoval-Mendoza*, an
6 expert opinion is reliable where the underlying knowledge upon which it is based “has
7 a reliable basis in the knowledge and experience of [the relevant] discipline.” *United*
8 *States v. Sandoval-Mendoza*, 472 F.3d 645, 654 (9th Cir. 2006); *see also Coppi v. City*
9 *of Dana Point*, No. SACV111813JGBRNBX, 2014 WL 12589639, at *6 (C.D. Cal.
10 Feb. 24, 2014) (“Expert opinion testimony is ... *reliable* if the knowledge underlying
11 it ‘has a reliable basis in the knowledge and experience of [the relevant] discipline.’”)
12 Meanwhile, “[r]ebuttal expert reports are proper if they contradict or rebut the subject
13 matter of the affirmative expert report.” *Nunez v. Harper*, No. 2:13-CV-00392-GMN,
14 2014 WL 979933, at *1 (D. Nev. Mar. 12, 2014), *order clarified*, No. 2:13-CV-0392-
15 GMN-NJK, 2014 WL 2808982 (D. Nev. June 20, 2014); *see also Lindner v. Meadow*
16 *Gold Dairies, Inc.*, 249 F.R.D. 625, 635–36 (D. Haw. 2008) (“Rule 26(a)(2)(C)
17 defines rebuttal experts as presenting evidence [that] is intended solely to contradict or
18 rebut evidence on the same subject matter identified by an initial expert witness...”)

19 Here, Plaintiffs concede that Ms. Morones properly rebutted Mr. Bland’s expert
20 report by identifying significant calculation errors in the report of Plaintiffs’ expert
21 Jody Bland, even causing Mr. Bland to issue an amended report. Accordingly, Ms.
22 Morones has demonstrated that she maintains a reliable basis in the knowledge and
23 experience of the relevant discipline (damage calculations) by virtue of her extensive
24 training and experience.

25 Plaintiffs nonetheless contend that Ms. Morones should be excluded, claiming
26 that she relied on certain information provided by GEO’s counsel without purportedly
27 conducting an independent investigation. Plaintiffs mischaracterize Ms. Morones’
28 testimony, her Report, as well as the applicable law. Indeed, as is clear in Ms.

1 Morones’ Report, she criticizes the hourly rates used by Mr. Childers (from the
2 Bureau of Labor and Statistics (“BLS”)), instead finding that the Service Contract Act
3 (“SCA”) schedules were more reliable, *consistent with the approach in the Bland*
4 *report*. ECF 355-3 at 21 fn. 58. Ms. Morones did not exclusively rely upon a
5 representation of counsel in selecting these rates, but instead, the rates used by Ms.
6 Morones were derived from her review of the ICE Contract Amendment. ECF 355-3
7 at 21 fn. 58; *see also* Exhibit 1. In contrast, Mr. Childers' use of the BLS rates lacked
8 any supporting evidence that those rates would be applicable to a federal contractor.
9 *Id.*

10 Rather than acknowledge that Mr. Bland’s report and the ICE Contract
11 Amendment support the use of the SCA rates, Plaintiffs criticize the depth of Ms.
12 Morones’ investigation into the facts, arguing that Ms. Morones should have
13 confirmed with an employee of GEO that the SCA data, as opposed to the BLS data,
14 constituted the correct wage rate. But there is no requirement that Ms. Morones seek
15 additional evidence to support her opinions when the documents are clear, as they
16 were here in the Contract Amendment. *See* Exhibit 1. Ms. Morones testified that while
17 she did not ask anyone at GEO specifically, she relied on the wage schedules based on
18 her “own review of [GEO’s] contract and seeing the schedules.” *See* ECF 355-4 at 24
19 (Morones Dep. 86:11-13). Plaintiffs do not explain why Ms. Morones’ personal
20 review of the underlying evidence is insufficient. Nor do Plaintiffs attempt to
21 distinguish Mr. Bland’s reliance upon the SCA rates from Ms. Morones reliance upon
22 the same.³ Nor was Ms. Morones obligated to perform an exhaustive search for
23 support for Mr. Childers' conclusions. Indeed, Plaintiffs fail to identify legal authority
24 that would support their position that it is permissible for Plaintiffs’ experts to rely on

25 ³ Mr. Bland’s report provides two measures of damages for each plaintiff class “[t]he
26 first measure of damages is based on California Minimum Wage rates, and *the second*
27 *is based on the wages and benefits provided in Service Contract Act ('SCA') Wage*
28 *Determination schedules.*” *See* ECF 355-3 at 8 (citing Expert Report of Jody Bland
dated August 17, 2020, page 6).

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1 BLS wage determinations (with no evidence that those rates are paid at Adelanto,) but
2 it is apparently impermissible for Ms. Morones to rely on SCA wage determinations.
3 In fact, as a rebuttal witness, Ms. Morones was obligated to use comparative data. *See*
4 *Amos v. Makita U.S.A., Inc.*, No. 2:09-CV-01304-GMN, 2011 WL 43092, at *2 (D.
5 Nev. Jan. 6, 2011) (“Rebuttal expert testimony is limited to presenting evidence that
6 ‘is intended solely to contradict or rebut evidence of the same subject matter identified
7 by an initial expert witness.’”) Ms. Morones’ use of these numbers to demonstrate
8 variability between *one of* Plaintiffs’ experts’ data and the wage rates explicitly noted
9 in the ICE contract (upon which Mr. Bland also relied) cannot constitute “unblinking
10 reliance” on counsel-provided information. *See* ECF 355-4 at 80 (Morones Dep.
11 311:18-313:14); *see also* ECF 355-4 at 81 (Morones Dep. 315:17-20) (“I reviewed the
12 reports and analyzed the support, checked the math, pointed out areas that I thought
13 the support was weak or the math was incorrect”).

14 The same analysis applies for the shift lengths and meal break data, which data
15 Plaintiffs assert Ms. Morones should have independently verified with a GEO
16 employee. *See* ECF 355-1 at 10. Specifically, Plaintiffs argue Ms. Morones did not
17 “independently” corroborate certain facts related to shift lengths and meal breaks.
18 However, clear from Ms. Morones deposition testimony is that she in fact did
19 independently confirm the basis for her opinions. Ms. Morones relied on the
20 scheduling materials and other evidence in this case to conclude that any five-hour
21 shift would include a meal break. *See* ECF 355-4 at 34 (Morones Dep. 128:2-8); *see*
22 *also* ECF 355-4 at 67 (Morones Dep. 258:1-260:25); *see also* ECF 355-3 at 16, fn. 48.
23 Plaintiffs did not offer any evidence to the contrary through either their experts or at
24 Ms. Morones’ deposition. Any critique of whether that evidence was *sufficient* is an
25 issue that can be addressed on cross-examination, but is certainly not a basis to
26 exclude her testimony. This is exactly the type of critique that goes to the weight, not
27 the admissibility, of expert testimony.

28 Plaintiffs also argue that Ms. Morones should be excluded because opinions

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1 that “merely parrot the opinions of others” should be rejected as held by this Court in
2 *Linares v. Crown Equip. Corp.*, No. EDCV161637JGBKKX, 2017 WL 10403454, at
3 *12 (C.D. Cal. Sept. 13, 2017). Ms. Morones does not merely parrot the opinions of
4 others. Any argument to the contrary ignores the substance of Ms. Morones' expert
5 report (and Plaintiffs' underlying basis for the instant motion). Ms. Morones presents
6 evidence which directly contradicts and rebuts the opinions put forth in Mr. Bland and
7 Mr. Childers’ reports. Beyond the calculation errors that Ms. Morones identified, Ms.
8 Morones demonstrates that Mr. Bland’s calculations with respect to the California
9 Minimum Wage Approach for the Forced Labor Class and the SCA Wage Approach
10 for the Minimum Wage Class (as shown in Table 1 of Mr. Bland’s report) were unable
11 to be replicated using the calculation details that Bland provided. *See* ECF 355-3 at 6-
12 7.

13 Similar criticisms are levied against the expert report produced by Michael
14 Childers; for example, Ms. Morones notes that Childers provides two measures of
15 unjust enrichment, one based on the cost of using employees in place of detainee
16 labor, and the other based on the cost of subcontracted employees in place of detainee
17 labor. *See* ECF 355-3 at 18. Under both measures, Ms. Morones notes that Childers’
18 opinions were based on mathematical errors and incorrect assumptions. *See id.* at 16-
19 19 (citing inaccuracies in the assumption underlying purported hours works by
20 detainees, improper calculation of minimum wage rates, and inaccurate employee
21 benefit calculations). Here, Ms. Morones’ opinions (that the calculations underlying
22 Bland's and Childers’ opinions are flawed) are reliable in that the underlying
23 knowledge upon which Ms. Morones' opinions are based has a reliable basis in the
24 knowledge and experience of the relevant discipline – *accounting and damage*
25 *computation*. *See* ECF 355-4 at 8 (Morones Dep. 22:6-24.) Accordingly, Ms.
26 Morones’ testimony is reliable and should not be excluded. *See United States v.*
27 *Sandoval-Mendoza*, 472 F.3d 645, 654 (9th Cir. 2006); *see also Coppi v. City of Dana*
28 *Point*, No. SACV111813JGBRNBX, 2014 WL 12589639, at *6-8 (C.D. Cal. Feb. 24,

1 2014) (denying motion to exclude expert testimony where “knowledge underlying
2 [testimony] has a reliable basis in the knowledge and experience of the relevant
3 discipline”).

4 A review of all of the criticisms levied against Ms. Morones make clear that it
5 is not her methodology that Plaintiffs challenge (nor her qualifications), but rather
6 Plaintiffs disagree with Ms. Morones’ substantive opinions. Such criticisms are not a
7 basis for a motion to exclude, but instead are best addressed through cross-
8 examination. *See United States v. Prime*, 431 F.3d 1147, 1153 (9th Cir. 2005) (“As
9 long as the process is generally reliable, any potential error can be brought to the
10 attention of the jury through cross-examination and the testimony of other experts”);
11 *see also Primiano v. Cook*, 598 F.3d 558, 564 (9th Cir. 2010), *as amended* (Apr. 27,
12 2010) (inquiry into whether an expert is qualified “is a flexible one. Shaky but
13 admissible evidence is to be attacked by cross examination, contrary evidence, and
14 attention to the burden of proof, not exclusion”); *see also W. Air Charter, Inc. v.*
15 *Schembari*, No. LACV17420JGBKSX, 2019 WL 6998769, at *4 (C.D. Cal. Jan. 11,
16 2019) (denying Plaintiffs’ motion to exclude expert’s rebuttal report, noting that
17 “Plaintiff is free to challenge the basis of his conclusions during cross-examination”).

18 Lastly, the cases Plaintiffs cite to are inapposite. Plaintiffs cite to *Building*
19 *Indus. Ass’n of Wash. v. Wash. State Bldg. Code Council*, 683 F.3d 1144 to support
20 their contention that Ms. Morones should be excluded because she did not conduct an
21 independent analysis of any evidence or facts at issue. Putting aside the fact that
22 Plaintiffs are wrong and misrepresent Ms. Morones’ deposition testimony, *Building*
23 *Indus.* is inapplicable here. In *Building Indus.*, the Court excluded an expert who
24 failed to provide *any* qualifications allowing him to provide expert testimony about
25 the accuracy of a scientific model. *Id.* at 1154. Moreover, the Court in *Building Indus.*
26 held that the plaintiff “did not seriously” contend on appeal that its expert declaration
27 should have even been admitted. *Id.* Unlike the disqualified expert declaration in
28 *Building Indus.*, Ms. Morones has presented evidence demonstrating she is eminently

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1 qualified to provide damages assessment testimony. *See* ECF 355-3 at 5; *see also id.*
2 at 26. Also unlike the *Building Indus.* expert, Ms. Morones has provided all of the
3 data underlying her opinion. *See id.* 38-59.

4 Plaintiffs also cite to the case *Roman v. MSL Capital, LLC*, 2019 WL 1449499,
5 at *4 (C.D. Cal. Mar. 29, 2019) (Bernal, J.) in furtherance of their contention that Ms.
6 Morones should be excluded because she did not state steps she took to analyze the
7 facts of this case. In *Roman*, this Court properly excluded the testimony of an expert
8 who failed to articulate the precise methodology he relied on to render his opinion. *Id.*
9 Here, Ms. Morones identifies the precise steps and accounting methodology she used
10 to rebut the Plaintiffs’ experts’ reports. For example, in paragraph 35 of her expert
11 report, Ms. Morones states:

12 “in order to calculate the significance of the variance between
13 the periods summarized in Table 4 of the Bland Report, and to
14 demonstrate the sensitivity of Mr. Bland’s analysis, I use the
15 job type mixture from the “January-18” column of the Bland
16 Report for the full damage period for each class. This change
17 yields damage calculations approximately \$506,000 and
18 \$1,107,000 lower than the corresponding damage conclusions
19 reached by Mr. Bland, as shown at Schedule 3 and summarized
20 in the tables below.”

21 ECF 355-3 at 14. Ms. Morones then provides evidence of her calculations in table
22 format. *See id.* at 15. Ms. Morones offers similar articulations of her methodology for
23 each opinion she renders. *See id.* at 17; *see also id.* at 21; *see also id.* at 22. Indeed,
24 based upon Ms. Morones calculations, Mr. Bland was able to replicate her
25 calculations and address errors in his report. Thus, any suggestion that Ms. Morones is
26 similar to the property manager expert proffered in *Roman* is unreasonable given Ms.
27 Morones’ clear articulation of the methodology she employed in rendering her rebuttal
28 opinions.

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1 **D. Ms. Morones opinions regarding the deficiencies in Plaintiffs’**
2 **damage calculations are relevant to the issues in this action.**

3 The Ninth Circuit has made abundantly clear that expert testimony on monetary
4 damages is relevant for the purposes of litigation. *See Alaska Rent-A-Car, Inc. v. Avis*
5 *Budget Grp., Inc.*, 738 F.3d 960, 969 (9th Cir. 2013) (“Given that the judge is ‘a
6 gatekeeper, not a fact finder,’ the gate could not be closed to this relevant opinion
7 offered with sufficient foundation by one qualified to give it.”); *see also Longlois v.*
8 *Stratasys, Inc.*, 88 F. Supp. 3d 1058, 1064 (D. Minn. 2015) (employer’s proposed
9 expert testimony of accountant regarding hours worked admissible in employee’s
10 wage and hour action under Fair Labor Standards Act).

11 Here, Ms. Morones' opinion as to whether Plaintiffs’ experts’ opinions are
12 adequately supported bears on whether detainees should have been compensated at a
13 particular rate of pay under Plaintiffs’ theory of the case, the average shift length, and
14 what amount of backpay would be warranted—a fact of consequence in this action.
15 *See United States v. Kallin*, 50 F.3d 689, 696 (9th Cir. 1995), *as amended* (Mar. 17,
16 1995) (fact is of consequence in determining an action if it tends to prove a fact in
17 issue); *see also Fed. R. Evid. 401*; *see also Huddleston v. United States*, 485 U.S. 681,
18 690, 108 (1988). Moreover, as the Court emphasized in *United States v. Hobson*,
19 “[t]he test of relevancy . . . is any tendency to make the existence of any fact that is of
20 consequence to the determination of the action more or less probable than it would be
21 without the evidence.” *United States v. Hobson*, 519 F.2d 765, 776 (9th Cir. 1975).
22 Where, as here, Ms. Morones' opinions bear directly on the reliability of Plaintiffs’
23 measure of damages, the evidence is relevant and should therefore be admitted. *See id*;
24 *see also Jacques v. Clean-Up Grp., Inc.*, 96 F.3d 506, 516 (1st Cir. 1996)
25 (exclusionary rules are “liberal” and “relevant evidence generally is admitted”); *see*
26 *also Fed. R. Evid. 402*.

27 Plaintiffs’ assertion that Ms. Morones “undertook no independent evaluation of
28 any facts or evidence at all” is simply false. As previously stated, Ms. Morones

1 independently assessed the calculations put forth by Plaintiffs’ experts, reviewed
2 relevant evidence in this action, and determined that the final damage figures reached
3 thereunder were flawed. *See* ECF 355-3 at 6-7; *see also* ECF 355-3 at 11 (conclusions
4 reached by Ms. Morones based upon review of detainee shift length documents
5 “referenced in Exhibit 1 of the Bland Report”); *see also* ECF 355-03 at 16-19
6 (analysis of Childers’ report and supporting exhibits revealed “assumptions are
7 inadequately supported as described in my response to the opinions of Jody”); *see also*
8 ECF 355-4 at 42 (Morones Dep. 108:9-12) (“Based on my calculation, extrapolating
9 from a later period, that’s my calculation of what the wage determination schedule
10 rate would be for that period”). Further, Ms. Morones reviewed dozens of documents
11 produced in this case in order to reach her conclusions. *See* ECF 355-3 at 28-30. From
12 there, Ms. Morones noted certain criticisms of Plaintiffs’ experts based upon
13 assumptions that were not supported by the documents. Thus, there can be no question
14 that Ms. Morones independently assessed the facts and data.

15 An expert can use assumptions, inferences, and comparisons in rendering an
16 expert or rebuttal opinion. *See Mighty Enterprises, Inc. v. She Hong Indus. Co.*, 745 F.
17 App’x 706, 709 (9th Cir. 2018) (“An expert can use assumptions, inferences, and
18 comparisons. Such assumptions are admissible; their reliability is impeachable”); *see*
19 *also United States v. Tsosie*, 791 F. Supp. 2d 1099, 1112 (D.N.M. 2011) (experts may
20 rely on reasonable assumptions to reach the conclusions within the opinion).

21 Here, Ms. Morones was entitled to make assumptions *based upon the*
22 *underlying documents* as to whether or not the data relied upon by Plaintiffs’ experts
23 was correct. As stated within her report, “due to the lack of sufficient detail to support
24 Mr. Bland’s calculation, I cannot conclusively determine whether he appropriately
25 reduces his damage conclusion by the amounts paid to detainees as described in his
26 report.” *See* ECF 355-3 at 10; *see also* ECF 355-3 at 11 (“Mr. Bland assumes certain
27 events correspond to the start and end time of a job. For example, to support the shift
28 length of laundry workers, Mr. Bland references the activity ‘Laundry Pickup’ and the

1 activity ‘Shoe & Clothing passed out to housing units’ as support for the shift start and
2 shift end times. Mr. Bland thus assumes that all laundry workers begin their work
3 when laundry is picked up and continue working until laundry is returned. Mr. Bland
4 does not consider that the delivery of clean laundry could take place long after the
5 cleaning work is complete”); *see also* ECF 355-4 at 27 (Morones Dep. 99:12-23)
6 (Bureau of Labor Statistics relied upon by Mr. Childers were less relevant than
7 evaluation of “cost in the market” as evidenced by GEO contract showing the actual
8 rates used). Given Ms. Morones' determination that Plaintiffs’ experts’ opinions were
9 based on several assumptions that were not adequately supported by the evidence in
10 this case, it was perfectly reasonable for her to conclude that these assumptions could
11 be incorrect. Accordingly, Ms. Morones' opinions regarding the deficiencies in
12 Plaintiffs’ damage calculations are relevant to this action and should not be excluded.

13 **IV. CONCLUSION**

14 For the reasons discussed herein, this Court should deny Plaintiffs’ Motion to
15 Exclude the Testimony of Serena Morones as Plaintiffs have failed to put forth any
16 legitimate bases for excluding her testimony in this action, particularly where they
17 have conceded Ms. Morones properly identified calculation errors contained within
18 Plaintiffs’ expert reports.

19
20 Dated: October 26, 2020

AKERMAN LLP

21 By: /s/ Ellen S. Robbins
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23 Alicia Y. Hou
24 Adrienne Scheffey
25 Attorneys for Defendant
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27
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