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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

STATE OF WASHINGTON,

Plaintiff,

v.

THE GEO GROUP, INC.,

Defendant.

Case No. 3:17-cv-05806-RJB

**DEFENDANT THE GEO GROUP, INC.'S
OPPOSITION TO PLAINTIFF STATE OF
WASHINGTON'S MOTION TO COMPEL
PARTIALLY UNREDACTED LETTER
AND RELATED FINANCIAL
CALCULATIONS**

NOTE ON MOTION CALENDAR:
September 4, 2020

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1 Defendant The GEO Group, Inc. (“Defendant” or “GEO”), by and through its undersigned
 2 counsel, hereby submits its Opposition to Plaintiff State of Washington’s Motion to Compel
 3 Partially Unredacted Letter and Related Financial Calculations. ECF 396.¹

4 I. INTRODUCTION

5 The State has unreasonably delayed bringing this motion. Despite raising the issue over a
 6 year ago, now, months after this case was finalized for trial—the exhibit lists are finalized, and
 7 motions in limine have been decided—the State now seeks to use the delay of trial due to COVID-
 8 19 to reopen discovery to compel the production of Exhibit 365² in an unredacted form. ECF 396.
 9 These dilatory tactics should not be rewarded. Even if the timing and procedure of the State’s
 10 motion were not improper, Exhibit 365 is not relevant to the State’s case.³ Exhibit 365 is a letter
 11 from GEO, to ICE, the entity with whom it contracts for the Northwest ICE Processing Center
 12 (“NWIPC”) asking for legal assistance with this very case. As part of the letter, GEO provided an
 13 estimate of the potential costs to ICE if this case, and many others across the country, are
 14 successful. ECF 362-1. Certainly, a document requesting legal assistance has no place in this case.
 15 As such, the subject letter is currently excluded from trial under two separate orders granting
 16 GEO’s motions in limine. ECF 375 (GEO’s Motion Nos. 3 & 5). Furthermore, the State’s claims
 17 that the letter is relevant are baseless. It is unreasonable for the State to argue that in order to prove
 18 its claim for damages, it needs discovery about GEO’s assessment of the claims filed against it—
 19 which would not exist without the lawsuit. Accordingly, the Court should deny the State’s request
 20 for an unredacted version of Exhibit 365 which contains a rough estimate of the aggregate
 21

22 ¹ While styled as a motion to compel, the State seeks relief from the discovery deadlines entered
 23 into this case and its Motion is therefore brought under LCR 7(d)(2) as a motion for relief from
 deadlines.

24 ² Indeed, even if unredacted, Exhibit 365 was squarely excluded by this Court’s ruling on GEO’s
 25 motion in limine number 3. ECF 397-10 (April 13, 2020 Transcript at 10-11) (“Motion in limine
 26 No. 3 is for exclusion of evidence related to GEO’s legal fees, including any request for
 compensation for legal fees sent to ICE. That motion is granted. I don’t know what kind of a side
 issue that might be, but it is not something that we need to get into.”).

27 ³ Exhibit 365 was submitted to this Court in opposition to GEO’s motion in limine. It can be found
 at ECF 362-1.

1 potential cost to ICE if the actions that have been filed against GEO across the country are
2 successful.

3 **II. BACKGROUND**

4 **A. Procedural History.**

5 This Court already excluded the evidence that is the subject of this motion. Following
6 conferral with the State about excluding Exhibit 365 and related correspondence, GEO brought
7 Motion in Limine No. 3 to exclude the exact information contained in Exhibit 365. ECF 355 at 6.
8 In the State's Opposition to GEO's Motion in Limine No. 3, the State placed Exhibit 365 squarely
9 before this Court for consideration, arguing that the document was relevant to their claims. ECF
10 361 at 7; ECF 362-1. The State did not provide any other documents that it would seek to use if the
11 Motion in Limine were granted in GEO's favor. On April 13, 2020, with full knowledge of Exhibit
12 365 and its contents, this Court granted GEO's motion, stating: "Motion in limine No. 3 is for
13 exclusion of evidence related to GEO's legal fees, including any request for compensation for legal
14 fees sent to ICE. That motion is granted. I don't know what kind of a side issue that might be, but
15 it is not something that we need to get into." ECF 397-10 (April 13, 2020 Transcript at 10-11).⁴
16 The State did not seek clarification or reconsideration of the Court's Order as would have been
17 required by the Local Rules. *See* LCR 7(h)(2) ("The motion shall be filed within fourteen days
18 after the order to which it relates is filed.").

19 As is their pattern in this case, the State once again brings a motion under the assumption
20 that the Local Rules and case deadlines apply to everyone except the State. This motion is
21 untimely and should not be considered for that reason alone. Indeed, the State has a history of
22 flaunting the deadlines and Local Rules in this case. For example, the State filed their *Daubert*
23 motion to exclude the testimony of Gregory Bingham, ECF 331, over four months late without
24 consequence—successfully limiting the scope of Gregory Bingham's testimony such that GEO
25 cannot use it at trial to its prejudice. The Court reasoned that the State's filing was permissible

26
27 ⁴ The Court also granted GEO's Motion in Limine No. 5 to exclude evidence of other lawsuits.
ECF 375.

1 because it could be construed as the State’s *single* motion in limine as permitted by LCR 16(b)(4).
 2 ECF 343 at 2. Yet, the State was not held to this ruling. In April, the State improperly filed excess
 3 motions in limine, in direct contravention of the Local Rules. ECF 357; LCR 7(d)(4). Despite the
 4 Court’s acknowledgement of the State’s improper filing, it ruled that there was no prejudice to
 5 GEO in considering the State’s motions, but went on to exclude Julie Williams, a witness that
 6 GEO sought to produce at trial. ECF 397-10 (April 13, 2020 Transcript at 5, 6). To obtain this
 7 result, the State argued Ms. Williams was disclosed in September 2019 “long after the close of
 8 discovery.” ECF 357 at 18. Despite arguing that September 2019 was “long after the close of
 9 discovery” when doing so was beneficial to the State, now, a year later, the State seeks to modify
 10 the case schedule to permit an untimely motion to remove redactions from a document that it has
 11 had for well over a year, since well before the close of discovery, and which this Court has already
 12 excluded as not relevant to the claims and defenses at issue. This untimely request is improper.

13 **B. Discovery.**

14 Discovery in the State’s case ended over a year ago on June 21, 2019; all discovery
 15 motions were due by June 21, 2019. ECF 171. As the State itself concedes, it has been in
 16 possession of the document it seeks in an unredacted format, Exhibit 365, since before the close of
 17 discovery. ECF 397 ¶ 7. On June 5, 2019, within the discovery window (and with time to extend if
 18 necessary) the State raised the issue of Exhibit 365 with GEO’s counsel. ECF 397-2 at 3. On June
 19 10, 2019, GEO expressed its unequivocal intent not to produce Exhibit 365 as not responsive to the
 20 State’s Request for Production 12. *Id.* at 2. The State never sought to extend discovery to file a
 21 motion related to Exhibit 365. Nor did it file a motion within the discovery limits. To the contrary,
 22 the State opposed additional discovery at each opportunity—never once raising the issue of the
 23 instant letter.⁵ Thus, to argue now that modifying the case schedule is appropriate is disingenuous.

24 _____
 25 ⁵ For example, two months prior to the end of discovery, the State filed a motion for summary
 26 judgment. ECF 183. GEO opposed, asking the Court to delay ruling until discovery was closed,
 27 pursuant to Rule 56(d). ECF 188. GEO explained that discovery was ongoing from the State and
 that it needed that discovery to respond. *Id.* The Court denied GEO’s motion under Rule 56(d),
 noting in part that discovery had been ongoing for a year and a half and that “extensive discovery
 has already taken place.” ECF 202. GEO filed a motion to reconsider which the Court also denied.

1 In addition to its June 5, 2019 email, the State raised its intention to seek an unredacted
2 copy of Exhibit 365 at the January 10, 2020 pretrial conference before this Court. ECF 397-7
3 (Trans. Of January 10, 2020 Hearing at 54-55). At that time, the State represented it had already
4 conferred with GEO about the document. *Id.* The Court instructed the State to file a motion. ECF
5 397-7 (Trans. Of January 10, 2020 Hearing at 55). The State did not do so. Thereafter, Brian
6 Evans’ deposition was taken by the State on June 11, 2020. Over two months elapsed before the
7 State brought the instant motion.

8 **C. Brian Evans’ Testimony.**

9 Mr. Evans’ testimony about the letter did not provide a new basis for removing redactions.⁶
10 If anything, it only bolstered GEO’s basis for redaction, as Mr. Evans clarified that all
11 communications about the calculations therein were in the presence of counsel and related to
12 discussions about currently pending litigation with legal counsel:

13 Q. Have you ever been involved in any conversation in-person or in writing about
14 whether GEO should be paying Washington minimum wage for detainee labor?

15 A. You know, just as in my role as a CFO in part of our meetings with the CEO
16 and the general counsel discussing these cases, so that’s part of the legal
17 discussions that we’ve had as a company.

18 *****

19 A: I was just saying the context of what I’ve discussed but it’s always been
20 with general counsel present.

21 Q. Have you ever had any internal discussion or analysis with regard to GEO’s
22 minimum wage applications that took place outside of the presence of your
23 counsel?

24 A: I don’t believe so.

25 *****

26 ECF Nos. 209, 211. The State continued to oppose any efforts to conduct additional discovery.
27 *Nwauzor* ECF 195 at 6 (arguing “enough is enough” and that the discovery cut-off should apply).

⁶ The State misrepresents Mr. Evans testimony to confuse this Court. The exhibit at issue here, Exhibit 365, was not introduced until page 114 of the deposition. Yet, the State misleadingly cites to testimony from prior to the exhibit’s introduction and improperly characterizes that testimony as related to the document the State seeks to unseal. This Court should not entertain such blatant misrepresentations.

1 Q. Yeah, I'm just wondering within your executive team meetings or other
2 meetings, have you had conversations about your obligations to comply with
Washington Minimum Wage Law where counsel wasn't present?

3 A. No. Not that I'm aware of.

4 Ex. A (Evans Dep. 124:5-24; 125:1-11) (emphasis added).

5 Despite this unequivocal statement, counsel for the State continued to push the witness for
6 additional information over GEO's counsel's objections to the disclosure of privileged
7 information. Even so, the additional information Mr. Evans provided about his privileged
8 conversations with legal counsel about pending litigation did not involve relevant information or
9 the types of analysis the State now seeks. Mr. Evans did not conduct an analysis of the financial
10 benefit to GEO of detainee labor:

11 Q. What I'm asking, you, Mr. Evans, is have you ever conducted an analysis of
12 what financial benefit detainee labor provides to GEO and its bottom line?

13 A: I don't believe so. I think in connection with these lawsuits, there has been an
14 evaluation of what it would cost the government if they were to change the
15 program. But I'm not sure if that's -- was part of the -- is, you know, privileged or
whatnot, but there was some analysis done at some point regarding, you know,
advising the government on the cost of what the labor would look like,
potentially, if it was all done by civilian employees.

16 *****

17 Q. Do you have access to those records of what the analysis was and what the cost
18 would be to staff at the prevailing wage rates?

19 A. I do not.

20 ECF 399 at 4; 6 (Evans Dep. 101:11-23; 106:15-18) (emphasis added).

21 Mr. Evans also did not conduct an analysis of the value of detainee labor, but simply a guess of
22 potential costs to ICE if Plaintiffs were to prevail and the Voluntary Work Program were to be
23 eliminated:

24 Q. And by that, the value of the labor that you would need to be paying for at the
25 minimum wage level or the prevailing wage level?

26 A: No, the value that the government is going to have to pay to have their policy
27 changed, if it's changed by the Courts or they change it, whatever, but the change
in the policy to no longer have a Voluntary Work Program, what it would cost at a
certain number of facilities. As I said, I don't know if it's just the four listed here
or the three listed here or all of the ICE facilities.

1 ECF 399 at 17-18 (Evans Dep. 117:21-23-118:1-9).

2
3 Further, Mr. Evans did not conduct any analysis into the NWIPC individually. Despite Mr. Evans’
4 clear statement that he did not know which facilities were included in the calculation, the State
5 misrepresents Mr. Evans’ testimony, arguing that he “testified that he oversaw the calculation of
6 the costs that would be incurred if Plaintiffs prevailed in the detainee wage lawsuits regarding the
7 NWDC and the two other facilities facing similar litigation.” ECF 396 at 6 (emphasis added). Mr.
8 Evans did provide this testimony. Instead he explained on more than one occasion that he did not
9 know if the amount was for four facilities, or all ICE facilities. ECF 399 at 17-18 (Evans Dep.
10 117:21-23; 118:1-9) (“Yes, as I said, and I don’t recall how many facilities, it was just these
11 specific or if, as I said before, it was for -- if we included all ICE facilities.”). Indeed, the State was
12 already aware that the numbers were not broken down by facility and that they included an
13 aggregate that applied to every facility across the country. ECF 397-7 at 5 (January 10, 2020
14 Hearing Transcript) (“Counsel just represented that she thinks it is broken down by state. It is not.
15 It is an aggregate of a number that applies to every facility across the country.”).⁷ Mr. Evans’
16 testimony therefore adds nothing new. This is particularly true where he was not given an
17 opportunity to review the document in its unredacted form prior to providing testimony about the
18 redacted documents.

19 **III. THE STATE CANNOT ESTABLISH GOOD CAUSE**

20 Under LCR 16(b)(6) “[a] schedule may be modified only for good cause and with the
21 judge’s consent. Mere failure to complete discovery within the time allowed does not constitute
22 good cause for an extension or continuance.” As this Court has previously explained, “[f]or
23 purposes of Rule 16, ‘good cause’ means the scheduling deadlines cannot be met despite the
24 party’s diligence The pretrial schedule may be modified if it cannot reasonably be met despite
25

26 ⁷ If this Court were to perform an *in camera* review it would reveal that the amount in the letter is
27 not facility-specific, but instead refers to all ICE facilities nationwide. GEO is amenable to this
solution but does not believe it is necessary.

1 the diligence of the party seeking the extension. **If the party seeking the modification was not**
 2 **diligent, the inquiry should end and the motion to modify should not be granted.**” *Paz v. City*
 3 *of Aberdeen*, No. C13-5104 RJB, 2013 WL 6163016, at *2 (W.D. Wash. Nov. 25, 2013) (emphasis
 4 added). Here, because the State was not diligent, it cannot show good cause. The State has been
 5 aware of the document in question since *at the latest* June 5, 2019.⁸ On June 10, 2019, GEO stated
 6 its position that the document was not responsive to the State’s discovery requests. Discovery was
 7 open and motions could still be timely brought. Inexplicably, the State did not bring a motion to
 8 compel. Yet again, six months later, on January 10, 2020, this Court instructed the State to file a
 9 motion if it sought to remove the redactions from Exhibit 365. The State did not do so. Instead, it
 10 waited over eight months to file the present motion. In so doing, it ensured GEO could not adjust
 11 its strategy, exhibits, or motions in limine to address the new information. There was no reason the
 12 State could not have filed this motion earlier other than to preclude GEO from adjusting its
 13 litigation strategy to address any ruling. Accordingly, because the State has been aware of this
 14 document and GEO’s intent to stand by the redactions for well over a year, the State cannot show
 15 “good cause for failing to complete discovery, [] when the burdens of which it now complains
 16 were largely anticipated in advance.” *MMMT Holdings Corp. v. NSGI Holdings, Inc.*, No. C12-
 17 01570RSL, 2014 WL 2573290, at *4 (W.D. Wash. June 9, 2014).

18 Moreover, even if the State were not dilatory, the document the State seeks to compel is not
 19 relevant to their previously propounded discovery. In support of its motion, the State argues that
 20 the letter to ICE is responsive to Request for Production No. 43. ECF 396 at 8. That request seeks:

21 “To the extent not previously produced and to the extent they exist, please
 22 produce all documents that contain financial analysis, financial models, analysis
 23 of profits earned, valuation of the work performed, or other assessments of the
 24 Voluntary Work Program at the NWDC from 2005 to present.”

25 ECF 133 at 9-10.

26 ⁸ Conspicuously absent from the State’s Declaration and Motion is the date that the State first
 27 came into possession of the FOIA documents. The FOIA documents themselves are stamped with
 a bates stamp beginning “2018” but were not produced to GEO until June 2019. ECF 362-1.

1 As is clear from the face of the document and Mr. Evans' testimony that the letter at issue
2 does not contain an analysis of the profits earned, a valuation of the work performed, or an
3 assessment of the Voluntary Work Program as it stands at the NWIPC. Rather, it "implore[s] DOJ
4 to take over the defense of these lawsuits and reimburse GEO for its costs." In so doing, it advises
5 ICE of the potential cost were the lawsuits to be successful *across the country*. It does not provide
6 any information that is specific to the NWIPC or the claims in this case. Further, the information is
7 wholly speculative as it estimates what could happen if the Plaintiffs across the country are
8 successful, therefore it cannot be considered to be a "valuation of the work performed." Thus, it is
9 not responsive to RFP 43.

10 The State also argues that the letter from GEO to ICE, seeking legal assistance in this case,
11 is relevant to RFP 52, which sought documents related to:

12 "[The] per diem rate calculations and models related to GEO Group's NWDC
13 Contract(s) from 2005 to the present, including . . . 'Voluntary Work Program'
14 costs and expenses; labor costs and payroll expenses (excluding Voluntary Work
15 Program); . . . and all other costs of providing services."

16 ECF 133 at 10

17 Exhibit 365 is likewise not responsive to RFP 52. The letter seeking a reimbursement of legal costs
18 and assistance with GEO's legal defense is not related to GEO's current or past contracts with ICE.
19 Instead, it is based upon a hypothetical cost if litigation nationwide were to be successful.
20 Additionally, there can be no argument the calculations constitute GEO's present "labor costs and
21 payroll expenses" as the very reason the suit is before this Court is because the State and GEO
22 believe that the Voluntary Work Program Stipend should be set at different rates. In short, the
23 redacted portion of the letter is not relevant to the State's previously propounded discovery
24 requests. Because it is not relevant to the State's requests, the State's claims related to privilege
25 logs are without merit as only relevant documents must be logged. Should the Court determine at
26 this belated stage that the document is relevant, then GEO will properly log its privileges.

27 Additionally, Brian Evans' testimony does not constitute newly discovered evidence. Mr.
Evans provided his best guess as to what he remembered comprised the redacted portion of the

1 letter, explaining he didn't "recall how many facilities, it was just these specific or if, as I said
2 before, it was for -- if we included all ICE facilities. And it was -- it was from our perspective, to
3 let them know what costs they would be incurring if the plaintiffs were to prevail[.]" He also
4 unambiguously stated that all conversations about the calculations were had in the presence of
5 counsel. Plaintiffs have previously been informed that the numbers were not specific to the
6 NWIPC, thus Mr. Evans' testimony does not add anything new.

7 At bottom, the State seeks an estimate of the cost to the government (and GEO) should the
8 instant case (and the others around the country) be successful. The State does not seek financial
9 records or analysis conducted by GEO in the regular course of business. It does not seek
10 information limited to this case or the NWIPC. Nor does it seek analysis of the value of labor
11 performed by the detainees across the country. Rather, the State seeks the analysis performed by
12 GEO's counsel of the potential costs to ICE if the pending class actions nationwide are successful.
13 That information is not relevant to the State's prior requests or this case and would serve only to
14 confuse and prejudice the jury. Thus, the State cannot establish good cause and its' motion should
15 be denied.

16 IV. COMMON INTEREST PRIVILEGE

17 This Court has previously addressed the common interest privilege in this case, finding that
18 the State was entitled to claim a common interest with *unnamed* "human rights advocates" and
19 "detainees." ECF 243. In so holding, the Court did not require the State to demonstrate a written
20 agreement, much less identify the specific parties with whom the State claimed a common interest.
21 *Id.* Despite prevailing on this issue previously, the State now seeks an inconsistent ruling here—
22 asking GEO to provide an unredacted copy of a letter to ICE, its client, with whom it discussed
23 this lawsuit.⁹

24 _____
25 ⁹ To the extent the State's motion seeks documents beyond the letter which Mr. Evans testified
26 were created at the direction of counsel, and that this Court reopens discovery and orders
27 production of the same (to the extent they exist), GEO reserves the right to raise additional
privileges as to those documents which are not currently before it and have not been assessed by
GEO.

1 The work product doctrine “reflects the strong public policy against invading the privacy of
2 an attorney’s course of preparation” *Hausman v. Holland Am. Line-U.S.A.*, No. CV11-1308 BJR,
3 2015 WL 8327934, at *1 (W.D. Wash. Dec. 9, 2015) (quotations omitted) “The work-product
4 doctrine, therefore, serves to protect “written materials that lawyers prepare in anticipation of
5 litigation.” *Id* (citations omitted). Voluntary disclosure of work-product to a third party does not
6 automatically waive the work-product *W. Challenger, LLC v. DNV GL Grp.*, No. C16-0915-JCC,
7 2017 WL 5009977, at *2 (W.D. Wash. Nov. 2, 2017) (citing Wright, Miller, Kane & Marcus, 8
8 Fed. Prac. & Proc. Civ. § 2024 (3d ed.)); *see also Samuels v. Mitchell*, 155 F.R.D. 195, 200 (N.D.
9 Cal. 1994) (“the work product privilege is not automatically waived by any disclosure to third
10 persons.”). Two parties may share documents covered by the work product doctrine where they
11 have shared interests. *In re Superior Nat. Ins. Gr.*, 518 B.R. at 577. “[T]he shared interest may be
12 only financial or commercial in nature,” and no waiver will occur so long as there is a reasonable
13 basis for believing that the common interest recipient will keep the disclosed material
14 confidential.” *Id*.

15 “Rather than a separate privilege, the ‘common interest’ or ‘joint defense’ rule is an
16 exception to ordinary waiver rules designed to allow attorneys for different clients pursuing a
17 common legal strategy to communicate with each other.” *In re Pacific Pictures Corp.*, 679 F.3d
18 1121, 1129 (9th Cir. 2012). “The common interest privilege may be used to protect work-product
19 that is disclosed to third parties.” *Eagle Harbor Holdings, LLC v. Ford Motor Co.*, No. C11-5503
20 BHS, 2015 WL 196713, at *2 (W.D. Wash. Jan. 14, 2015). As is applicable here, the “common
21 interest doctrine would preserve privilege if the documents were shared with the expectation of
22 confidentiality and sharing was necessary to accomplish the privilege holder’s purpose in seeking
23 legal advice.” *In re Superior Nat. Ins. Gr.*, 518 B.R. 562, 577 (Bankr. C.D. Cal. 2014). In this
24 District, “[t]he common interest privilege applies where: (1) the communication was made by
25 separate parties in the course of a matter of common interest; (2) the communication was designed
26 to further that effort; and (3) the privilege has not been waived.” *Microban Sys., Inc. v. Skagit Nw.*
27 *Holdings, Inc.*, No. C15-932-MJP, 2016 WL 7839220, at *1 (W.D. Wash. Aug. 17, 2016).

1 Here, GEO has a shared commercial interest with ICE. GEO's Contract with ICE requires
2 it to obtain approval prior to incurring additional costs under its contract with ICE. ECF No. 246-3
3 (Ex. 3, Contract attached to SMJ, at 52). Further, GEO has an obligation to notify ICE of any
4 litigation and cooperate with the "Government legal staff and/or the United States Attorney"
5 regarding the requests about any litigation. ECF No. 246-3 (Ex. 3, Contract attached to SMJ, at 53)
6 In addition, F.A.R. 52.233-1 also requires that GEO submit any request for additional payment to
7 the government. *See also* 41 U.S.C. § 7103(a).

8 As part of these obligations and in connection with the myriad of cases filed across the
9 country, GEO sought legal assistance from ICE. In so doing, GEO's legal team worked with Mr.
10 Evans, its CFO, to provide a rough estimate of the potential costs to ICE if the plaintiffs across the
11 country are successful so that that ICE could make an informed decision about taking on the
12 defense of the case. Those calculations were created at the direction of counsel for a common
13 interest of GEO and ICE: assessing potential costs to both if the Plaintiffs across the country are
14 successful in their litigation. There can be no question that the letter which contained GEO's
15 counsel's opinion of the potential costs associated with this case is work product. *W. Challenger,*
16 *LLC*, 2017 WL 5009977, at *2. Simply disclosing GEO's opinion as to the estimated costs to ICE,
17 GEO's client, did not destroy the work-product privilege. *Id.*; *see also Microban Sys., Inc.*, 2016
18 WL 7839220, at *1 ("At the time of the communications, the interests of both Microban and Barr
19 were aligned in attempt to determine the value of Microban's intellectual property, and to
20 determine whether litigation would be required to secure the full value of those rights."). There can
21 be no question that the letter at issue sought legal assistance with the instant case and others around
22 the country. GEO asked the Department of Justice to take over defense of the cases. The fact that
23 the DOJ is not a private law firm does not change the nature of the communication. Nor does the
24 fact that the DOJ declined intervene. Indeed, permitting the State to access GEO's assessment of
25 the claims pending against it for use at trial would be contrary to the underlying public policy of
26 the work product doctrine. Additionally, the privilege has not been waived as GEO has objected to
27 the production of the redacted portion of Exhibit 365 each time the issue was raised. Accordingly,

1 GEO's assessment of the case for purposes of seeking legal counsel should remain redacted.
2 Indeed, if a party cannot seek legal assistance under the cloak of confidentiality, it would be
3 detrimental to a fulsome conversation about the pros and cons of representation.

4 **V. TIMELINESS OF RESPONSE**

5 On September 1, 2020, the State filed its Reply in Support of the instant motion arguing
6 that GEO's instant response is untimely under Rule 7(d)(3). ECF 400. The State argued its motion
7 was noted under Rule 7(d)(3). Nothing in the State's initial motion so indicated. Indeed, the
8 Motion itself seeks "relief from a deadline" to reopen discovery. Without this Court's ruling on
9 whether it is appropriate to now change the discovery deadline in this case, the State would be
10 without a remedy. As Local Rule 16(b)(3) makes clear, any motion to compel discovery "shall be
11 filed and served on or before the discovery deadline." Because discovery has long since passed,
12 and because the State's motion explicitly seeks to "modify the case schedule," GEO construed the
13 State's motion as a motion for relief from a deadline noted under Rule 7(d)(2), as required by the
14 Local Rules. ECF 396 at 7. The Local Rules state that motions under Rule 7(d)(2) must be noted
15 for consideration "*no earlier than* the second Friday after filing." LCR 7(d)(2) (emphasis added).
16 Rule 7(d)(2) further states that any opposition motions must be filed no later than the "*Wednesday*
17 *before the noting date.*" LCR 7(d)(2) (emphasis added). Thus the instant motion is timely filed
18 under Rule 7(d)(2). Had the State conferred with GEO about the same to clear up any confusion,
19 GEO would have been more than amenable to the State's extension that they now seek in their
20 Reply, ECF 400. Accordingly, should the Court find it appropriate to grant the State an extension
21 until September 8, 2020 to file what will now be its second reply brief, GEO does not object.

22 **VI. CONCLUSION**

23 For the foregoing reasons, the State's motion to reopen discovery and unredact Exhibit 365,
24 ECF 396, for use at trial should be denied.

1 Respectfully submitted, this 2nd day of September, 2020.

2
3 By: s/ Adrienne Scheffey

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23 *Attorneys for Defendant The GEO Group, Inc.*

PROOF OF SERVICE

I hereby certify on the 2nd day of September, 2020, pursuant to Federal Rule of Civil Procedure 5(b), I electronically filed and served the foregoing **DEFENDANT THE GEO GROUP, INC.’S OPPOSITION TO PLAINTIFF STATE OF WASHINGTON’S MOTION TO COMPEL PARTIALLY UNREDACTED LETTER AND RELATED FINANCIAL CALCULATIONS** via the Court’s CM/ECF system on the following:

Marsha J. Chien
Andrea Brenneke
Lane Polozola
Patricio A. Marquez
OFFICE OF THE ATTORNEY GENERAL
800 Fifth Avenue, Suite 2000
Seattle, Washington 98104

Attorneys for Plaintiff

s/ Toni Domres

Toni Domres

The Honorable Robert J. Bryan

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

STATE OF WASHINGTON,

Plaintiff,

v.

THE GEO GROUP, INC.,

Defendant.

Case No. 3:17-cv-05806-RJB

DECLARATION OF ADRIENNE SCHEFFEY IN SUPPORT OF DEFENDANT THE GEO GROUP, INC.’S OPPOSITION TO PLAINTIFF STATE OF WASHINGTON’S MOTION TO COMPEL PARTIALLY UNREDACTED LETTER AND RELATED FINANCIAL CALCULATIONS

I, Adrienne Scheffey, make the following statement under oath subject to the penalty of perjury pursuant to the laws of the United States and the State of Washington:

1. I am one of the attorneys for The GEO Group, Inc. in the above-captioned matter. I am over the age of eighteen (18), and I am competent to testify in this matter.
2. Prior to filing this declaration, I contacted Carolyn Lee at Veritext to inquire as to the origin of the “Under Protective Order” designations on the Brian Evans deposition.
3. Initially, Veritext indicated the designations were made by an attorney who was not involved in this case, but thereafter stated that was in error.
4. Veritext indicated that the designation was based upon the court reporter’s assessment of the colloquy on the record regarding individuals who were not counsel of record who attended the deposition. Ms. Lee indicated the designations were not made at the request of counsel.

1 5. I requested that a revised copy be distributed to all counsel of record. Ms. Lee
2 indicated she would not do so without “an agreement from all parties.”

3 6. Attached are true and correct copies of the following exhibits:

4 **EXHIBIT A:** Attached as Exhibit A are true and correct copies of the deposition of Brian
5 Evans, taken by Plaintiffs on June 11, 2020.

6 Dated this 2nd day of September, 2020 at Denver, Colorado.

7 Akerman LLP

8 *s/ Adrienne Scheffey*

9 Adrienne Scheffey (Admitted *pro hac vice*)
Attorney for Defendant The GEO Group, Inc.

AKERMAN LLP

1900 Sixteenth Street, Suite 1700
Denver, Colorado 80202
Telephone: 303-260-7712

DECLARATION OF ADRIENNE SCHEFFEY
(3:17-CV-05806-RJB) – PAGE 2

PROOF OF SERVICE

I hereby certify on the 2nd day of September 2020, pursuant to Federal Rule of Civil Procedure 5(b), I electronically filed and served the foregoing **DECLARATION OF ADRIENNE SCHEFFEY IN SUPPORT OF DEFENDANT THE GEO GROUP, INC.'S OPPOSITION TO PLAINTIFF STATE OF WASHINGTON'S MOTION TO COMPEL PARTIALLY UNREDACTED LETTER AND RELATED FINANCIAL CALCULATIONS** via the Court's CM/ECF system on the following:

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Andrea Brenneke
Lane Polozola
Patricio A. Marquez
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800 Fifth Avenue, Suite 2000
Seattle, Washington 98104

Attorneys for Plaintiff

s/ Toni Domres

Toni Domres

EXHIBIT A

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON,)
)
Plaintiff,)
)
vs.) CIVIL ACTION NO.
) 3:17-cv-05806-RJB
THE GEO GROUP, INC.,)
)
Defendant.)

UGOCHUKWU GOODLUCK NWAUZOR,)
FERNANDO AGUIRRE-URBINA,)
individually and on behalf of)
all those similarly situated,)
)
Plaintiffs,)
) CIVIL ACTION NO.
vs.) 17-cv-05769-RJB
)
THE GEO GROUP, INC., a Florida)
corporation,)
)
Defendant.)

VIDEO-RECORDED VIDEOCONFERENCE DEPOSITION UPON ORAL

BRIAN R. EVANS

(CONTAINS CONFIDENTIAL TESTIMONY SUBJECT TO PROTECTIVE
ORDER AND FOR ATTORNEYS' EYES ONLY)

12:03 P.M. EDT
JUNE 11, 2020
28 ELEUPHERA DRIVE
BOYNTON BEACH, FLORIDA
REPORTED BY: JUDY BONICELLI, CSR, RPR, CCR 2322

A P P E A R A N C E S

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THE GEO GROUP, INC.
4955 Technology Way
Boca Raton, FL 33431
561.443.1789
cwilke@geogroup.com

ALSO PRESENT: Allan Morgan, Videographer (Remotely)
Carolyn Rice (Remotely)
Paige Suelzle (Remotely)

I N D E X

WITNESS: BRIAN R. EVANS

EXAMINATION: PAGE
By MS. BRENNEKE 4

EXHIBIT PREVIOUSLY MARKED PAGE
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for the contract to GEO from
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Exhibit 262 A summary by year of the financial 143
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Exhibit 269 A chart of the ICE reimbursements for 195
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Exhibit 365 A letter dated May 30th, 2018, to 114
Deputy Director Peter Edge at ICE

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BOYNTON BEACH, FLORIDA; JUNE 11, 2020

12:03 P.M. EDT

--oOo--

THE VIDEOGRAPHER: We are on the record at 9:03 a.m. on June 11th, 2020. Audio and video recording will continue to take place unless all parties agree to go off the record.

This is Media Unit 1 of the video-recorded deposition of Brian Evans, taken by counsel for the plaintiff in the matter of State of Washington versus The GEO Group, Inc., filed in the United States Court, Western District of Washington, Case No. 3:17-cv-05806-RJB.

This deposition is being conducted using remote counsel technology, and all participants are attending remotely. My name is Allan Morgan from the firm YOM Veritext, and I'm the videographer. The court reporter is Judy Bonicelli from the firm YOM Veritext.

I am not authorized to administer an oath. I am not related to any party in this action, nor am I financially interested in the outcome. If there are any objections to proceeding, please state them at the time of your appearance, beginning with the noticing attorney.

Will all present please state their name and

1 affiliations for the record.

2 MS. BRENNEKE: My name is Andrea
3 Brenneke. I'm here on behalf of the State of
4 Washington.

5 MR. POLOZOLA: Lane Polozola also here
6 representing the State of Washington.

7 THE REPORTER: I'm sorry this is the
8 court reporter. Mr. -- Lane, I didn't hear that.

9 MR. POLOZOLA: Can you hear now?

10 THE REPORTER: We can hear but it's
11 shaky.

12 MR. POLOZOLA: Lane Polozola on behalf
13 of the State of Washington as well.

14 MS. MELL: I'm Joan Mell. I'm on behalf
15 of the GEO Group.

16 MS. SCHEFFEY: Adrienne Scheffey also on
17 behalf of the GEO Group.

18 MS. WILKE: My name is Cheryl Wilke.
19 I'm vice president and corporate counsel for GEO Group.

20 MR. WHITEHEAD: Good morning. This is
21 Jamal Whitehead, class counsel for the private
22 plaintiffs in this separately-captioned matter of
23 Nwauzor v. GEO, Cause No. 17-cv-5769.

24 MS. ULREY: And Page Ulrey, also for the
25 private plaintiffs.

1 MR. EVANS: I'm Brian Evans. I'm the
2 senior vice president and CFO for the GEO Group.

3 THE VIDEOGRAPHER: Will the court
4 reporter please swear in the witness.

5 THE REPORTER: I'm sorry, Schroeter
6 Goldmark, I didn't get your name.

7 MS. ULREY: Page Ulrey, P-a-g-e, last
8 name, U-l-r-e-y.

9 THE REPORTER: Thank you.

10 MS. ULREY: Thank you.

11 BRIAN R. EVANS,

12 sworn as a witness by the Certified Court Reporter,
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MS. BRENNEKE:

16 Q. Hello, Mr. Evans. Thank you for being here.
17 My name is Andrea Brenneke, and I'm joined by my
18 colleague and co-trial counsel Lane Polozola. We also
19 have Jamal Whitehead, who is the counsel for the
20 private plaintiffs who will be conducting some
21 questioning.

22 I am going to start just by recognizing that
23 this is a remote deposition in the time of Corona and
24 it is actually my first time doing this so if it's a
25 little bit rocky at times, or if you have any trouble

Page 6

1 for detainee labor in Washington?

2 A. Not that I'm aware of, no.

3 Q. How about in any other states?

4 A. No.

5 Q. Have you ever been involved in any
6 conversation in-person or in writing about whether GEO
7 should be paying Washington minimum wage for detainee
8 labor?

9 A. You know, just as in my role as a CFO in part
10 of our meetings with the CEO and the general counsel
11 discussing these cases, so that's part of the legal
12 discussions that we've had as a company.

13 MS. SCHEFFEY: And to the extent any of
14 those conversations were in the presence of Ms. Wilke,
15 Mr. Carrillo or any other counsel, I would ask that you
16 do not discuss them.

17 THE WITNESS: I was just saying the
18 context of what I've discussed but it's always been
19 with general counsel present.

20 BY MS. BRENNEKE:

21 Q. Have you ever had any internal discussion or
22 analysis with regard to GEO's minimum wage applications
23 that took place outside of the presence of your
24 counsel?

25 MS. SCHEFFEY: Object to form.

1 You may answer.

2 THE WITNESS: I don't believe so. Can
3 you just say the question again one more time just so I
4 can make sure I'm clear in my answer?

5 BY MS. BRENNEKE:

6 Q. Yeah, I'm just wondering within your executive
7 team meetings or other meetings, have you had
8 conversations about your obligations to comply with
9 Washington Minimum Wage Law where counsel wasn't
10 present?

11 A. No. Not that I'm aware of. Some of the
12 discussion around this letter and the preparation of
13 the information here would have been analysis but there
14 was no discussion as to whether or not the law was
15 actually applicable. It was just to do a theoretical
16 analysis to government to show them what it would look
17 like if we were unsuccessful in defending the
18 government's policy. So is that a clear distinction?

19 Q. Yeah, I think so.

20 So why was it that you all decided to send
21 this letter on May 30th, 2018, to Peter Edge?

22 MS. SCHEFFEY: Object to form and I
23 would also note that the record is clear that Mr. Evans
24 is not on that letter.

25 You may answer if you know.

REPORTER'S CERTIFICATE

I, JUDY BONICELLI, the undersigned Certified Court Reporter, pursuant to RCW 5.28.010 authorized to administer oaths and affirmations in and for the State of Washington, do hereby certify:

That the sworn testimony and/or proceedings, a transcript of which is attached, was given before me at the time and place stated therein; that any and/or all witness(es) were duly sworn to testify to the truth; that the sworn testimony and/or proceedings were by me stenographically recorded and transcribed under my supervision, to the best of my ability; that the foregoing transcript contains a full, true, and accurate record of all the sworn testimony and/or proceedings given and occurring at the time and place stated in the transcript; that I am in no way related to any party to the matter, nor to any counsel, nor do I have any financial interest in the event of the cause.

WITNESS MY HAND and DIGITAL SIGNATURE this 24th day of June 2020.



JUDY BONICELLI, RPR, CCR

Washington Certified Court Reporter, CCR 2322