

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

**THE GEO GROUP, INC.'S NOTICE OF
SUPPLEMENTAL AUTHORITY**

The GEO Group, Inc. ("Defendant" or "GEO"), by and through undersigned counsel, hereby provides the following Notice of Supplemental Authority pursuant to W.D. Wash. LCR 7(n):

- Excerpts from a hearing transcript held before the Honorable Magistrate Judge Hegarty in the District of Colorado in the case captioned *Menocal v. The GEO Group, Inc.*, Case Number 1:14-cv-02887-JLK-MEH. **Ex. A.**

During that hearing, Judge Hegarty considered what is marked as Exhibit 365 in this action, whose redactions are currently at issue. *See* ECF 421. The hearing transcript provides additional information about the genesis of the letter and the calculations at issue. In *Menocal*, the Court ordered GEO to produce the letter unredacted but found that the underlying calculations remained privileged work product and/or subject to protection under Federal Rule of Civil Procedure 408.

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1 Respectfully submitted, this 16th day of October, 2020.

2 By: s/ Adrienne Scheffey

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

PROOF OF SERVICE

I hereby certify on the 16th day of October, 2020, pursuant to Federal Rule of Civil Procedure 5(b), I electronically filed and served the foregoing **THE GEO GROUP, INC.’S NOTICE OF SUPPLEMENTAL AUTHORITY** via the Court’s CM/ECF system on the following:

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EXHIBIT A

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UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

ALEJANDRO MENOCA, MARCOS	.	Case No. 14-cv-02887-JLK-MEH
BRAMBILA, GRISEL	.	
XAHUENTITLA, HUGO	.	
HERNANDEZ, LOURDES ARGUETA,	.	
JESUS GAYTAN, OLGA	.	
ALEXAKLINA, DAGOBERTO	.	
VIZGUERRA, DEMETRIO VALERGA,	.	
on their own behalf and on	.	
behalf of all others	.	Alfred A. Arraj Courthouse
similarly situated,	.	901 19th Street
	.	Denver, CO 80294
Plaintiffs,	.	
	.	
vs.	.	
	.	
THE GEO GROUP, INC.,	.	
	.	
Defendants.	.	
	.	October 1, 2020
.....	.	2:07 p.m.

**TRANSCRIPT OF PROCEEDINGS HELD BEFORE THE HONORABLE
MICHAEL E. HEGARTY, UNITED STATES MAGISTRATE JUDGE**

APPEARANCES:

For the Plaintiffs:	Outten & Golden, LLP
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1 goes.

2 THE COURT: Okay.

3 MS. SCHEFFEY: And just to clarify, their experts
4 have not provided dollar numbers. They have provided numbers
5 of employees they think it would take to perform certain
6 tasks. So these aren't really even apples and oranges. Any
7 attack we would have would be on their analysis of, you know,
8 it takes 10 people to clean a table, as opposed to 2 people
9 to clean the table.

10 THE COURT: Okay. But articulate specifically why
11 you're redacting. Every single reason why you're redacting.

12 MS. SCHEFFEY: Yeah. So the numbers that were
13 created and put in here are based on the assessment that GEO
14 did to participate in the settlement conference in front of
15 this Court in May 2018.

16 THE COURT: So you produced them at my request to
17 advise me of your position so I could determine what a
18 reasonable settlement would be?

19 MS. SCHEFFEY: Yes, Your Honor. And Dana was
20 here, so I might actually turn it over to him. But yes, my
21 understanding is they put them together for the settlement
22 conference, and then there was an agreement that ICE was
23 necessary.

24 THE COURT: Okay. So you'll have to speak into a
25 microphone.

1 MR. EISMEIER: The settlement conference was on
2 May 2nd, as you'll recall. At that time, you were only
3 acting in the capacity as a settlement judge.

4 And at that conference, without going into what
5 was said, you know, attorney-client, but it was all by saying
6 we're going -- nothing will happen without ICE.

7 And one of the issues that went on through May, as
8 you know, that conference stayed open for some time to decide
9 whether ICE could get involved and whether that would work.

10 So GEO's position is: It went back, and only
11 because of the settlement conference, generated numbers which
12 were based upon obviously calculations that would have been
13 only within GEO, in response to the settlement conference.

14 But for that settlement conference, we wouldn't be
15 having this discussion about this document today.

16 THE COURT: Okay. So why isn't this covered by
17 Rule 408?

18 MR. EISMEIER: From GEO's point of view, it is.
19 It isn't just privilege. It's also 408. So there are layers
20 here.

21 THE COURT: Okay.

22 MS. DEMPSEY: And I would just point the Court to,
23 again, to the testimony of Brian Evans, who was GEO's CFO.
24 He was obviously under oath when he gave that testimony, and
25 he did not say in any way that these calculations were

1 prepared related to settlement.

2 It was, and I quote, "to calculate what the
3 Government could owe us if the Court decided unfavorably
4 against us, because we have a claim under the law against the
5 federal Government for implementing their program."

6 And I can point you to the page number where he
7 gives that testimony. But I think that's entirely consistent
8 with what Mr. Eismeier is representing.

9 THE COURT: Right. But if it was done in
10 connection -- directly connected to an effort to settle the
11 case in front of a judicial officer, and done at my
12 suggestions that they come up with a number to help me be
13 educated and negotiate a settlement, and that's the purpose
14 of it, it's straight up 408 as far as I can see.

15 MS. DEMPSEY: Well, so, for one thing, this is the
16 first time you've heard this argument. And again --

17 THE COURT: No, it's not an argument. I was the
18 first one to mention 408 because it screams 408 if it was
19 produced as part of a settlement effort that I engaged in.
20 This is pretty pedestrian stuff that happens all the time.

21 And you produce a lot of numbers for me in a
22 settlement conference that you never intend to see the light
23 of day, because you're doing it just for purposes of
24 discussion and negotiation, and not for purposes of using it
25 in the litigation.