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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UGOCHUKWU GOODLUCK
NWAUZOR, FERNANDO AGUIRRE-
URBINA, individually and on behalf of all
those similarly situated,

Plaintiffs,

v.

THE GEO GROUP, INC.,

Defendant.

Case No: 3-17-cv-05769-RJB
**GEO’S ANSWER TO PLAINTIFFS’
FIRST AMENDED COMPLAINT**

JURY DEMAND

THE GEO GROUP, INC.,

Counterplaintiff,

v.

UGOCHUKWU GOODLUCK
NWAUZOR, FERNANDO AGUIRRE-
URBINA, individually and on behalf of all
those similarly situated,

Counterdefendants.¹

Case No: 3-17-cv-05769-RJB
GEO’S COUNTERCLAIMS

JURY DEMAND

¹ Filed under a new caption per ECF Docket Nos. 83 and 84. GEO recognizes that there is a pending counterclaim against putative class member Chao Chen (ECF 33), which is not superseded by the instant answer and counterclaim.

1 The GEO Group, Inc. (“GEO”) answers the First Amended Class Action Complaint for
2 Damages (the “Complaint,” Doc. 84) as follows:

3 1.1 Paragraph 1.1 of the Complaint states Plaintiffs’ understanding of the nature of the action
4 rather than alleging any facts to admit or deny. Paragraph 1.1 is denied to the extent Paragraph
5 1.1 alleges any facts. Civil immigration detainees who participate in the voluntary work program
6 are not employed by GEO, and they have no basis to claim minimum wage payments
7 individually or as a class.
8

9 1.2 Paragraph 1.2 states Plaintiffs’ understanding of the nature of the action rather than
10 averring any facts to admit or deny. Paragraph 1.2 is denied to the extent Paragraph 1.2 alleges
11 any facts. Washington’s Minimum Wage Act (“MWA”) does not establish an employment
12 relationship between detainees and GEO. Voluntary Work Program participants choose to
13 perform self-care tasks like meal preparation, basic housekeeping chores, and grooming to
14 eliminate idle time while in detention. The Voluntary Work Program operates in the secured
15 environment of the detention facility, which is administered pursuant to federal detention
16 standards. Competitive employment opportunities covered by the Minimum Wage Act serve no
17 purpose in this environment and conflict with federal immigration and detention policies.
18 Washington excludes its own detainees from the definition of “employee” under the MWA.
19 Federal immigration detainees similarly have no right to claim competitive wages while detained
20 at government expense.
21

22 2.1 Paragraph 2.1 alleges that his federal court has diversity jurisdiction over this case based
23 on its allegations of Plaintiffs’ and GEO’s citizenship. However, GEO has no basis to affirm or
24 deny the factual averments regarding jurisdiction under the Class Action Fairness Act, 28 U.S.C.
25
26
27

1 § 1332(d), and therefore denies them. GEO denies that the Court has subject matter jurisdiction
2 over this suit because GEO has immunity from suit.

3 2.2 Paragraph 2.2 is admitted to the extent that if the Court has jurisdiction, venue is proper
4 in Tacoma. Any remaining factual averments of paragraph 2.2 are denied.
5

6 3.1 Paragraph 3.1 is admitted with regard to the fact that ICE detained Mr. Nwauzor at
7 NWDC for a period of time. GEO is without sufficient information to admit or deny
8 Mr. Nwauzor's residence in Kent, WA. Based on information and belief, he is of foreign
9 citizenship, and has been granted asylum in the United States. All facts not expressly admitted
10 are denied.
11

12 3.2 Paragraph 3.2 is admitted with regard to the fact that ICE detains Mr. Aguirre-Urbina at
13 NWDC. GEO is without sufficient information to admit or deny Mr. Aguirre-Urbina's foreign
14 citizenship or any other facts pled in paragraph 3.2 of his complaint. All facts not expressly
15 admitted are denied.
16

17 3.3 Paragraph 3.3 is admitted to the extent that GEO is a corporation with a principal place of
18 business in Florida and that it transacts business in Tacoma, Pierce County, Washington. GEO
19 denies that it is an employer under the MWA with respect to detainees housed at NWDC. All
20 other facts not expressly admitted are denied.
21

22 4.1 Paragraph 4.1 is admitted in so far as GEO is a publicly traded corporation that is listed
23 on the New York Stock Exchange and that provides correctional, detention, and other services
24 for profit. All other facts not expressly admitted are denied.
25

26 4.2 Paragraph 4.2 is admitted in that GEO operates NWDC in Tacoma, Washington subject
27 to federal controls. GEO operates NWDC to enable ICE to meet its immigration processing

1 needs to include approximately 1,500 beds. All other facts not expressly admitted are denied.

2 4.3 Paragraph 4.3 is admitted in that ICE contracts with GEO to operate NWDC where
3 immigrants who are undocumented—the majority of whom have criminal histories—await
4 deportation or other resolution of their immigration status. The contract obligates GEO to
5 comply with applicable laws. All other facts not expressly admitted are denied.
6

7 4.4 Paragraph 4.4 is denied.

8 4.5 Paragraph 4.5 is admitted to the extent the detainee handbook speaks for itself.
9 Paragraph 4.5 is otherwise denied.
10

11 4.6 Paragraph 4.6 is denied.

12 4.7 Paragraph 4.7 is admitted in that detainees who choose to participate in the federally-
13 mandated Voluntary Work Program receive a \$1 allowance for each day of participation
14 regardless of tasks performed, work accomplished, or duration of participation. The \$1
15 allowance per detainee is passed through from ICE to detainees by GEO into a detainee trust
16 account. GEO does not advance the allowances to detainees. Paragraph 4.7 is otherwise denied.
17

18 4.8 Paragraph 4.8 is denied.

19 4.9 Paragraph 4.9 is admitted in that detainees who participate in the Voluntary Work
20 Program are not employed by GEO, and GEO does not compensate any detainee as if the
21 detainee were employed by GEO and/or entitled to a minimum wage. Paragraph 4.9 is otherwise
22 denied.
23

24 4.10 Paragraph 4.10 admitted in that Plaintiffs were and are not employed by GEO and were
25 and are not compensated by GEO at all. Paragraph 4.10 is specifically denied in that neither
26 Plaintiffs nor putative class members “performed work for GEO at NWDC,” and is otherwise
27

1 denied.

2 4.11 Paragraph 4.11 is admitted to the extent that the 2018 state rate for work covered by the
3 MWA is \$11.50 per hour. Paragraph 4.11 is otherwise denied.

4
5 4.12 Paragraph 4.12 is denied.

6 5.1 Paragraph 5.1 is denied to the extent it makes any factual averments.

7 5.2 Paragraph 5.2 is denied.

8 5.3 Paragraph 5.3 is denied.

9
10 5.4 Paragraph 5.4 is denied.

11 5.5 Paragraph 5.5 is denied.

12 5.6 Paragraph 5.6 is denied.

13 5.7 Paragraph 5.7 is denied.

14
15 6.1 Paragraph 6.1 is denied.

16 6.2 Paragraph 6.2 is denied.

17 6.3 Paragraph 6.3 is denied.

18 6.4 Paragraph 6.4 is denied.

19
20 7.0 To the extent Plaintiffs' prayer for relief avers any facts their prayer for relief is denied in
21 its entirety.

22 AFFIRMATIVE DEFENSES

23 8.1 GEO has immunity from this lawsuit.

24 8.2 Plaintiff seeks relief barred by the statute of limitations.

25
26 8.3 Plaintiffs' claim is pre-empted by federal law.

27 8.4 Plaintiff has failed to join parties that should be joined under Federal Rule of Civil

1 Procedure 19, including the Department of Homeland Security and ICE and the U.S. Attorney
2 General.

3 8.5 Plaintiffs' requested relief violates the law, and is otherwise impossible to attain in
4 conformance with the law. Neither Plaintiffs nor putative class members have a legal right to
5 work at minimum wage rates because none has sought approval from ICE for employment with
6 GEO, and none are qualified to work for GEO under ICE's contract terms. Plaintiffs'
7 participation in the Voluntary Work Program was voluntary.
8

9 8.6 Plaintiffs' claim is not ripe.

10 8.7 Plaintiffs' claim is not justiciable.

11 8.8 Plaintiffs have unclean hands.

12 8.9 GEO is entitled to an offset from any award to Plaintiffs and/or putative class members of
13 payment for unpaid minimum wages, for costs incurred in caring for the Plaintiffs and other
14 detainees who participated in the voluntary work program and for the costs of operating the
15 voluntary work program.
16
17

18 GEO requests that Plaintiffs take nothing by way of their First Amended Complaint and
19 that judgment be entered in favor of GEO.
20

21 CONDITIONAL COUNTERCLAIMS

22 JURISDICTION

23 9.1 To the extent this Court holds that it has subject matter jurisdiction despite GEO's
24 derivative sovereign immunity, the Court will have jurisdiction over the parties and subject
25 matter over this counterclaim. GEO asserts its counterclaim only in the event that the Court
26 denies its motion to dismiss for lack of subject matter jurisdiction. GEO does not waive and
27

1 expressly reserves its objection to subject matter jurisdiction with respect to Plaintiffs' claim.

2 9.2 To the extent GEO is subject to jurisdiction in this Court, jurisdiction over GEO's
3 counterclaim is grounded in diversity pursuant to 28 § U.S.C. 1332. Counterplaintiff resides at
4 its principal place of business in Boca Raton, FL. Counterdefendants are Ugochukwu Nwauzor
5 and Fernando Aguirre-Urbina, who allege that they are a residents of the State of Washington.
6 The amount in controversy on the counterclaims exceeds \$75,000.00.
7

8 PARTIES

9 (Counterclaimant)

10
11 10.1 GEO is a corporation with a principal place of business in Boca Raton, FL. GEO is
12 responsible for operating NWDC for the exclusive use and benefit of ICE, under terms set out in
13 the contracts between GEO and ICE, applicable regulations and detention facility standards, and
14 the laws of the United States.
15

16 10.2 GEO is the defendant named in Plaintiffs' complaint.

17 (Counterdefendants)

18 10.3 Plaintiff Ugochukwu Nwauzor is the first counterdefendant. He was formerly detained at
19 NWDC, and during that time received material support in the form of food, clothes, lodging,
20 medicine, health care services, dental and mental health services, and other services provided by
21 GEO and paid for by the federal government through ICE's contract with GEO.
22

23 10.4 Mr. Nwauzor entered America after leaving his native country, Nigeria. Although he
24 traveled throughout much of South and Central America, the United States was always his
25 destination. He entered the United States from Mexico, where he was interviewed by DHS
26 personnel. He had no visa or other means to properly enter the United States. Because he sought
27

1 asylum, he was placed in detention, and was eventually transferred to NWDC while his asylum
2 application was processed. Mr. Nwauzor was granted asylum and has been released from ICE
3 custody.

4
5 10.5 Plaintiff Fernando Aguirre-Urbina is the second counterdefendant. He is currently
6 detained at NWDC because he is fighting his deportation. He receives material support in the
7 form of food, clothes, lodging, medicine, health care services, dental and mental health services,
8 and other services provided by GEO and paid for by the federal government through ICE's
9 contract with GEO.

10
11 10.6 Before his detention at NWDC, Mr. Aguirre-Urbina pled guilty to criminal charges and
12 spent time in jail. Those criminal charges involved distributing drugs. Mr. Aguirre-Urbina did
13 not work while in jail.

14
15 10.7 While detained at NWDC, neither Mr. Nwauzor nor Mr. Aguirre-Urbina had work
16 authorization.

17 10.8 Because Mr. Nwauzor and Mr. Aguirre-Urbina were in the custody of the federal
18 government while at NWDC and participating in the VWP, Washington's Minimum Wage Act
19 does not apply to them.

20
21 CAUSES OF ACTION

22 Unjust Enrichment/Offset

23 11.1 As required by its contract with ICE, GEO operates the Voluntary Work Program at
24 NWDC, which is intended to offset the cost of detention to taxpayers and to reduce detainees'
25 idle time. The Voluntary Work Program does not, and is not intended to, create an
26 employer/employee relationship between GEO and detainees housed at NWDC.

1 11.2 Because the program is purely voluntary, detainees are not required to participate.

2 11.3 Further, because the program is intended to promote institutional maintenance and reduce
3 detainee idleness, it includes none of the traditional performance metrics of a standard job.
4
5 Consequently, GEO does not do background checks or any of the normal vetting process that
6 would be done before a new employee would be hired. GEO does not require detainees to file
7 job applications, accept any such applications from non-detainees, or require detainees to prove
8 their work eligibility as required by federal law. Similarly, GEO does not evaluate or rate
9 detainee performance, or discipline or fire detainees for slow performance. GEO has no capacity
10 to prevent a detainee from participating in the program at-will. GEO also lacks authority to
11 determine what assignments may be given to particular detainees, because ICE reserves this
12 function.
13

14 11.4 Also as required by its contract with ICE, GEO provides basic necessities to all detainees
15 housed at NWDC, which necessities include food, shelter, utilities, clothing, bedding, recreation,
16 entertainment, or medical, dental, optical or mental health services. Detainees do not pay GEO
17 or the federal government for these services.
18

19 11.5 Plaintiffs—like all putative class members—were and are not required by GEO to
20 participate in the Voluntary Work Program.
21

22 11.6 At all times relevant to this counterclaim, Plaintiffs—similar to all putative class
23 members—were and are detained by ICE in NWDC and participated in the Voluntary Work
24 Program. Such participation was and is purely voluntary: GEO did not coerce Plaintiffs—or any
25 putative class member—to sign up or participate.
26

27 11.7 Plaintiffs—similar to all putative class members—did not file formal job applications, did
28

1 not compete with non-detainees for participation in the Voluntary Work Program, and did not
2 file papers showing their work eligibility as required for employment under federal law. Indeed,
3 Plaintiffs could not have filed any such papers because neither—similar to all putative class
4 members—were eligible to work while detained at NWDC.
5

6 11.8 Plaintiffs’ performance in the Voluntary Work Program was not evaluated. Plaintiffs
7 never participated in the Voluntary Work Program in excess of eight hours per day, nor did
8 either participate forty hours per week. In fact, Plaintiffs’ participation in the Voluntary Work
9 Program was of short duration—usually under an hour or two a day—when they chose to
10 participate. Plaintiffs’ work performance and efficiency were not evaluated or tracked, and they
11 were and are in no danger of being “fired” for underperformance.
12

13 11.9 Plaintiffs’ participation—similar to all putative class members’ participation—in
14 NWDC’s Voluntary Work Program was temporary and dependent upon their continued
15 detention. Detainees cannot participate after detention ceases.
16

17 11.10 During their detention at NWDC, Plaintiffs—similar to all putative class members—
18 understood and acknowledged the amount they would receive for participation. Each Plaintiff
19 and all putative class members were provided with a National Detainee Handbook, issued to
20 them by ICE, that specifically states that if they wanted to participate in the Voluntary Work
21 Program, they could receive \$1 per day for each day worked. Plaintiffs chose to participate in
22 the Voluntary Work Program despite knowing they would receive no more than \$1.00 per day
23 regardless of their level of participation, and signing a form attesting to this understanding.
24 Detainees signed an agreement stating “Compensation will be \$1.00 per day.” Plaintiffs had,
25 and could have had, no reasonable expectation that they would be entitled to a minimum wage
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27

1 | for the tasks they performed.

2 | 11.11 Plaintiffs—similar to all putative class members—paid neither GEO nor the federal
3 | government for the food, shelter, clothing, bedding, utilities, recreation, entertainment, or
4 | medical, optical, dental, or mental health services provided.
5 |

6 | 11.12 Plaintiffs and any putative class members would unjustly benefit from the receipt of wage
7 | payments under the MWA at rates in excess of \$1.00 for participation in the Voluntary Work
8 | Program if Plaintiffs—and any putative class members—were not required to offset such
9 | payments with the costs and expenses associated with their care while detained. GEO incurred
10 | costs and expenses caring for Plaintiffs and other detainees in excess of \$11.50 per hour for all
11 | the tasks performed or time spent by plaintiff when participating in the Voluntary Work
12 | Program. By contrast, GEO’s actual employees—who were paid minimum wage or more—
13 | resided outside NWDC and did not receive the goods and services provided to NWDC detainees
14 | at no cost.
15 |

16 | 11.13 The amount GEO is paid by ICE under the contract is fixed by the terms of the contract
17 | and cannot be modified without ICE’s approval. Therefore, any requirement that GEO advance
18 | detainees in excess of what GEO received from ICE to hold in trust under the relevant contracts
19 | at the time the minimum wage was allegedly due unjustly enriches Plaintiffs and/or putative
20 | class members. Such a payment would effectively increase GEO’s burden for complying with
21 | its current contracts by unilaterally adding an entirely new service to that contract: employment
22 | of detainees at minimum wages even though employees’ living expenses are already being paid
23 | by GEO out of its contract payments from ICE.
24 |

25 | 11.14 In the event Plaintiffs and/or any class members prevail on their theory that the MWA
26 |

1 applies to detention programs like the voluntary work program at NWDC, GEO is equitably
2 entitled to recover its costs and expenses associated with operating the Voluntary Work Program
3 and caring for Plaintiffs and any putative class members.
4

5 Declaratory Relief – 28 U.S.C. § 2201

6 12.1 At all times relevant to these proceedings, GEO operated a Voluntary Work Program at
7 NWDC as required by its contract with ICE. That Voluntary Work Program was, and is, subject
8 to federal detention standards.
9

10 12.2 The Voluntary Work Program at NWDC is critical to the safe and secure operations of
11 the facility. Specifically, the Voluntary Work Program reduces idle time for detainees and
12 promotes institutional efficiency, just as similar programs do in Washington’s own facilities.

13 12.3 Pursuant to an express authorization from Congress that ICE may authorize allowances to
14 immigration detainees for work performed while detained, ICE authorized an allowance of \$1.00
15 per day for each Voluntary Work Program participant and reimbursed GEO at that rate under its
16 contract.
17

18 12.4 ICE must authorize any increase in the reimbursement rate of \$1.00 per day as expressed
19 in the ICE/GEO contract for NWDC. Without an ICE-approved increase in the reimbursement
20 rate, GEO may not pay detainees in excess of \$1.00 per day for participation in the voluntary
21 work program at NWDC.
22

23 12.5 ICE also prohibits GEO from employing any detainees. ICE must clear any GEO
24 employee working at NWDC via a background check performed by ICE. ICE also requires GEO
25 to immediately suspend any employee found to have a history of arrests.
26

27 12.6 Plaintiffs and any putative class members were participants in the Voluntary Work
28

1 Program at NWDC.

2 12.7 Plaintiffs and any putative class members were not authorized by ICE or any
3 administrative courts to work for GEO or anyone else in the United States.
4

5 12.8 Plaintiffs initiated this lawsuit, claiming the MWA applies to them and a putative class,
6 when it does not. Because Mr. Nwauzor and Mr. Aguirre-Urbina were in the custody of the
7 federal government while at NWDC and participating in the VWP, Washington’s Minimum
8 Wage Act does not apply to them. This matter presents an actual controversy that can be finally
9 resolved by the court.
10

11 12.9 GEO has incurred attorney’s fees and other costs defending against the application of the
12 MWA to ICE detainees.

13 12.10 Detainees at NWDC are in federal custody and housed at a facility operated under a
14 contract with a federal agency, ICE. The Federal Labor Standards Act (“FLSA”) is a federal law
15 that provides minimum wage protections for employment.
16

17 12.11 Ample judicial authority holds that federal immigration detainees are not employed and
18 are not employees under the FLSA because they perform work for institutional maintenance, not
19 compensation. Detainees participating in the Voluntary Work Program do not participate in
20 commerce and do not depend on wages for basic necessities because those necessities—such as
21 food, clothing, shelter, and medical care—are provided to them at taxpayer expense.
22

23 12.12 The Court should declare that there is no employment relationship between GEO and
24 detainees who participate in the Voluntary Work Program. Plaintiffs are not “employees” and
25 GEO is not an “employer” with respect to the Voluntary Work Program, and therefore the
26 MWA’s minimum wage protections—like the FLSA’s minimum wage protections—do not
27

1 apply to Plaintiffs or any putative class members.

2 GEO prays for the following affirmative relief:

- 3 1. Trial by jury.
- 4
- 5 2. For an order that Plaintiffs have failed to state a claim for which relief may be
- 6 granted and/or an order and judgment that Plaintiffs are entitled to no relief.
- 7 3. For an order enjoining Plaintiffs from claiming the MWA applies to them;
- 8
- 9 4. For an order declaring the MWA and FLSA inapplicable to ICE detainees at
- 10 NWDC;
- 11 5. For a declaration that GEO has no employment relationship with any detainees who
- 12 participate in the Voluntary Work Program, including no relationship that requires
- 13 payment of a minimum wage;
- 14 6. For an order awarding GEO all costs and expenses incurred in providing for
- 15 Plaintiffs and/or other putative class members' care, including, but not limited to,
- 16 meals, clothing, toiletries, and room and board;
- 17
- 18 7. For an award of attorney's fees and costs;
- 19
- 20 8. For other and further relief as the court deems just and equitable.
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1 Dated: June 27, 2018
2

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24 **ATTORNEYS FOR DEFENDANT THE**
25 **GEO GROUP, INC.**

CERTIFICATE OF SERVICE

I, Mark Emery, hereby certify as follows:

I am over the age of 18, a resident of Washington, DC, and not a party to the above action. On June 27, 2018, I electronically filed the above GEO’s Answer to Plaintiffs’ First Amended Complaint and Counterclaims with the Clerk of the Court using the CM/ECF system and served via Email to the following:

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I certify under penalty of perjury under the laws of Washington that the above information is true and correct.

DATED this 27th day of June, 2018 at Washington, DC.

 /s/ Mark Emery