

The Honorable Robert J. Bryan

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CHAO CHEN, individually and on behalf of
all those similarly situated,

Plaintiff,

v.

THE GEO GROUP, INC., a Florida
corporation,

Defendant.

No. 17-cv-05769-RJB

JOINT STATUS REPORT AND
DISCOVERY PLAN

Plaintiff Chao Chen and Defendant The GEO Group, Inc., by and through their undersigned counsel of record, submit this Joint Status Report pursuant to the Court’s Order dated September 28, 2017. Dkt. No. 4.

1. Nature and Complexity of the Case.

Plaintiff’s Statement of the Case: This is a putative class action arising out of Defendant’s failure to pay civil immigration detainees who perform work for Defendant the minimum wage under Washington law. Plaintiff seeks to certify a class under Fed. R. Civ. P. 23 to recover wages under the Washington Minimum Wage Act (“MWA”), RCW 49.46, et seq., as well as other damages allowable

1 under state law, for the wages that Defendant denied him and the class he
2 represents. Defendant filed a motion to dismiss, which was denied. GEO
3 answered the complaint on December 20, 2017. GEO's counterclaim against
4 Plaintiff Chen constitutes unlawful retaliation under Washington's Minimum
5 Wage Act and forms the basis of a separate claim against the corporation that will
6 be timely added to this litigation. The legal and factual issues in dispute are of
7 moderate complexity given the multi-factor test for employment status under the
8 MWA, the size of the putative class, the transient nature of some of the potential
9 class members, the interplay between state and federal law and actors, and related
10 discovery issues.

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12 GEO's Statement of the Case:

13 Chao Chen a former Department of Homeland Security – Immigration and
14 Custom's Enforcement detainee at the North West Detention Center claims
15 Washington's Minimum Wage Act should apply to him for the hours he and the
16 class he claims should be certified participated in the Voluntary Work Program.
17 GEO denies his claims asserting jurisdictional and multiple other defenses raised
18 in GEO's Answer and Counterclaims to include federal preemption that are
19 incorporated by reference into this JSR. The court issued an early ruling on
20 GEO's motion to dismiss the complaint that advises "the conflict/obstacle
21 preemption issues may become ripe at summary judgment." The United States is
22 a required party that must be joined. Plaintiff may not certify any class as the
23 requirements for class certification do not exist. GEO seeks an order dismissing
24 the complaint in its entirety. GEO further counterclaims against plaintiff and any
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1 putative class members for declaratory relief to the effect that detainees have no
2 minimum wage entitlements under either the Fair Labor Standards Act or
3 Washington's Minimum Wage Act just like Washington's detainees have no such
4 entitlements. Additionally, GEO asserts an unjust enrichment counterclaim for
5 offsets to any wages claimed to be owed for the costs of caring for the detainees
6 and for operating the Voluntary Work Program.
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8 2. Proposed Deadline for Joining Additional Parties. From Plaintiff's perspective, no
9 additional defendants will be joined. Plaintiff relies upon the fact that GEO has
10 filed an Answer and Counter-Claim without naming ICE as a party to demonstrate
11 the corporation itself does not believe the federal agency to be indispensable.
12 Because this case is being pursued as a class action, the deadline for joinder of
13 additional plaintiffs and absent class members will depend on whether and when a
14 class is certified. If a class is not certified, Plaintiff requests a deadline of 30 days
15 before the discovery cutoff to join or add additional plaintiffs. From GEO's
16 perspective plaintiff must join the United States because it is a required party, and
17 further anticipates early on a motion to dismiss because plaintiff refuses to join
18 the United States. The court should not certify any class. A joinder deadline
19 thirty days prior to the discovery cutoff is acceptable to GEO.
20

21 3. Magistrate Judge. No.
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23 4. Proposed Discovery Plan.

24 (A) Initial Disclosure. Initial disclosures were exchanged pursuant to Fed.
25 R. Civ. P 26(a)(1) and the Court's initial scheduling order on
26 December 20, 2017. Counsel for the parties held a Rule 26(f) status

1 conference on December 13, 2017.

2 (B) Subjects, timing, and potential phasing of discovery. The parties
3 anticipate conducting discovery regarding all matters raised in the
4 pleadings, including written discovery requests and depositions.
5 Plaintiff anticipates that the principal topics for discovery will include
6 the following: (a) the work performed, hours worked, and payments
7 made to Plaintiff and putative class members during the proposed class
8 period; (b) the control exercised over class member labor by
9 Defendant, and other elements of the test for employee status under the
10 MWA; (c) damages to which Plaintiff and putative class members
11 would be entitled if liability is established; and (d) whether the MWA
12 conflicts with federal immigration law or frustrates federal
13 immigration purposes and objectives. Plaintiff does not anticipate the
14 need to phase discovery, but GEO has reserved the right to seek a
15 phasing order as the litigation progresses. GEO may seek to limit
16 duplication of depositions by plaintiff Chen and Washington State in
17 the corollary case of ECF 3:17-cv-05806-RJB. GEO anticipates
18 discovery applicable to all defenses pled and the counterclaims
19 asserted. GEO expects to discover plaintiff's immigration file to
20 show that plaintiff or any putative class member may not work legally,
21 plaintiff's corrections file and any putative class members' criminal
22 history records to show plaintiff and putative class members were not
23 eligible to work for GEO, plaintiff's tax returns and other records that
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1 are inconsistent with plaintiff's or putative class members' claims to
2 have a working relationship with GEO, e-mails and other digital data
3 regarding the motivations for filing this lawsuit that are in conflict
4 with any expectation of a working relationship with GEO, and
5 documentation regarding the costs of the compensation plaintiff
6 received. The parties agree that the discovery cut-off should be 90
7 days before trial, but that the expert disclosure deadline be at least 60
8 days before the discovery cutoff, with the deadline for rebuttal expert
9 disclosures following 30 days thereafter.

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11 (C) Electronically stored information. Plaintiff intends to seek discovery of
12 electronically stored information, including detainee headcount and
13 location information, surveillance footage, payroll records, detainee
14 commissary records, emails, and other potentially relevant
15 electronically stored information. The parties will conduct ESI
16 discovery in accordance with the Court's model ESI agreement, as
17 modified, to the extent necessary.

18
19 (D) Privilege issues. Currently, the parties dispute whether pricing
20 information contained within Defendant's contract with U.S.
21 Immigration and Customs Enforcement ("ICE") should be made
22 available as part of the public record for this case. The Court has
23 previously stated that this issue is not yet ripe, but Plaintiff anticipates
24 this issue will result in motions practice. GEO anticipates varied
25 privilege issues grounded in privacy and the fact that ICE controls the
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1 information, including detainee files. GEO will demonstrate it has
2 varied contractual limitations that will require court intervention to
3 resolve if ICE is not made a party to this litigation. The parties do not
4 anticipate any other privilege issues at this time but will address any as
5 they arise. The parties generally agree, however, to redact privileged
6 information from discovery and produce a privilege log covering any
7 information redacted or withheld under claim of privilege. Issues of
8 privilege may be further addressed by way of a stipulated
9 confidentiality agreement and/or protective order between the parties.
10

11 (E) Proposed limitations on Discovery. GEO has *Touhy* issues that necessitate
12 ICE involvement prior to disclosure of information specific to detainees.
13 Plaintiff will argue *Touhy* does not apply to allow GEO to unilaterally limit
14 production of discoverable information. *See Menocal v. GEO Group, Inc.*, No.
15 14-cv-02887-JLK, 2017 WL 4334000 (D. Colo. Jun. 6, 2017) (denying
16 GEO's motion for protective order based on *Touhy*, granting Plaintiffs'
17 Motion to Compel, and imposing sanctions on GEO). The parties do not
18 currently seek any discovery limits beyond those imposed by the Local and
19 Federal Rules.
20

21 (F) Discovery orders. GEO contends it will require entry of a protective
22 order and the involvement of ICE to comply with discovery.
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24 5. The parties' views, proposals, and agreements on all items set forth in Local
25 Civil Rule 26(f)(1):

26 (A) Prompt Case Resolution. Plaintiff agrees to work in good faith towards

1 this goal. Given the implication of plaintiff's claims of first impression
2 that conflict with federal standards and the ICE contract, GEO believes
3 that amicable resolution short of trial is not possible.

4 (B) Alternative Dispute Resolution. Plaintiff believes that mediation
5 should be conducted in accordance with LCR 39.1, and held 30 days
6 before the dispositive motion deadline. GEO asserts that plaintiff
7 presents a case of first impression that conflicts with federal labor
8 standards and the ICE contract, which precludes any possibility of
9 alternative dispute resolution.
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11 (C) Related Cases. *Washington v. The GEO Group, Inc.*, No. 17-cv-05806-
12 RJB (W.D. Wash.); *Menocal v. The GEO Group, Inc.*, No. 14-cv-
13 02887-JLK; *Novoa v. The GEO Group, Inc.*, No. 17-cv-02514 (C.D.
14 Cal.); *Figgs v. The GEO Group, Inc.*, No. 33C01-1712-CT-0000052
15 (Henry Cty. Cir. Ct., Ind.)
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17 (D) Discovery Management. The parties agree to cooperate in good faith
18 during discovery, to use best efforts to comply with discovery
19 requests, and to act reasonably in propounding discovery.
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21 (E) Anticipated Discovery Sought. The parties anticipate the need for
22 written discovery, depositions, and other discovery, as described more
23 fully above in Section 4(B) above.

24 (F) Phasing Motions on Potentially Dispositive Issues. Plaintiff believes
25 that class certification will be the early focus of discovery and motions
26 practice, and that dispositive motions will follow soon thereafter.

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Defendant reserves the right to seek a phasing motion of some kind in the future.

(G) Preservation of Discoverable Information. The parties have discussed the need to preserve any potentially discoverable information and have agreed to preserve it. Counsel have informed their respective clients that related discoverable information must be preserved.

(H) Privilege Issues. The parties will work cooperatively in conducting discovery and resolving issues of privilege before seeking court intervention.

(I) Model Protocol for Discovery of ESI. The parties will adhere to the Model Protocol, as modified, to the extent necessary.

(J) Alternatives to Model Protocol. None.

6. The date by which discovery can be completed. The parties propose that the discovery cut-off in this case be 90 days before trial, but that the expert disclosure deadline be 60 days before the discovery cutoff, with rebuttal expert disclosures following 30 days thereafter.

7. Bifurcation. No.

8. Pretrial Statements and Pretrial Orders. At this time, the parties believe the pretrial statements and pretrial order called for by Local Civil Rules 16(e), (h), (i), and (l), and 16.1 should be required. These pretrial requirements may, however, be modified to address efficiently the key information that should be disclosed before trial.

9. Other suggestions for simplifying the case. None.

10. The date the case will be ready for trial. Plaintiff proposes a trial date in

1 January 2019. Defendant will not be ready for trial until April 2019.

2 11. Whether the trial will be jury or non-jury trial. Defendant has requested a jury
3 trial.

4 12. Number of trial days. Three weeks.

5 13. Names, addresses, and telephone numbers of all trial counsel.

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17 14. The dates on which trial counsel may have complications to be considered in
18 setting a trial date.

19 Plaintiff's Counsel: Counsel presently has no scheduled conflicts..

20 Defense Counsel: Counsel is presently scheduled to be in trial on the following dates:

- 21 • April 29, 2019.

22 15. Service. Defendant waived service of the summons and complaint. Dkt. No.

23 18.

24 16. Scheduling Conference. No.

25 17. Filing Dates for Corporate Disclosure Statements. GEO filed its corporate
26 disclosure statement on 12/19/17.

18. Electronic Service. Counsel for the parties agree to accept service by
electronic means, provided that documents other than those filed with the court, will be
deemed served on the next business day if received after 5:00 p.m.

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DATED this 28th day of December, 2017.

SCHROETER GOLDMARK &
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