

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. 3:17-cv-05769-RJB

PLAINTIFF’S REPLY IN  
SUPPORT OF MOTION FOR  
RELIEF FROM DEADLINES  
AND FOR STATUS  
CONFERENCE

**I. INTRODUCTION**

Defendant The GEO Group, Inc. spends the lion’s share of its opposition to Plaintiff Chao Chen’s motion impugning his character. But the only fact of any real consequence to this action in evaluating Mr. Chen is that he participated in the Voluntary Work Program (“VWP”) at the Northwest Detention Center (“NWDC” or the “Tideflats) where GEO paid him less than the minimum wage *for work already performed*. Mr. Chen’s personal characteristics neither diminish the relief at stake—back wages under the Minimum Wage Act—nor his fidelity to the putative class. Even so, GEO’s allegations about Mr. Chen’s moral turpitude have succeeded in quelling his appetite for the instant litigation and he wishes to withdraw as lead plaintiff so that other putative class members and potential class

1 representatives may step to the fore. Substituting other VWP participants as named plaintiffs  
2 in Mr. Chen’s place will not change the contours of the class-wide allegations or even the  
3 class certification analysis, save for Rule 23(a)’s adequacy inquiry, given that so many  
4 detainees were subjected to GEO’s uniform pay practices and policies on the Tideflats.

5 Accordingly, Mr. Chen appeals to the Court’s inherent case scheduling powers and  
6 the interests of justice, and respectfully moves the Court for relief from the following  
7 deadlines and a status conference to establish new dates: (1) joinder, (2) class certification,  
8 and (3) adjudication of Defendant’s recently filed Motion to Deny Class Certification.

## 10 II. LEGAL ARGUMENT

### 11 A. GEO Relies On Inapposite Case Law.

12 The case law cited by GEO in opposition is wholly inapposite. For example, GEO  
13 cites *Wilson v. Frito-Law N. Am., Inc.*, for the proposition that a class representative fails to  
14 act diligently where he has knowledge of disqualifying information but fails to move for  
15 substitution before the joinder deadline. Dkt. No. 75 (“Opp.”) at p. 5. The *Wilson* court  
16 denied the plaintiff’s request for substitution because he waited *two years* after his deposition  
17 at which it became apparent that his claims were not common and typical of the class and  
18 until after the court dismissed his claims on summary judgment before requesting  
19 substitution. 12-CV-01586-JST, 2017 WL 3478776, at \*3-5 (N.D. Cal. Aug. 14, 2017).  
20 Under these circumstances, the court could not find that the plaintiff had acted diligently in  
21 requesting substitution despite acknowledging “it is generally true that courts permit  
22 substitution in the early stages of class action litigation...” *Id.* at \*5.

23 GEO relies upon *Hildebrand* and *Jankanish* for similar propositions, but these cases  
24 are also factually dissimilar to the case at bar. Opp. at pp. 5-6. In *Hildebrand v. Dentsply*

1 *Intern., Inc.*, the plaintiffs lacked standing from the outset to maintain an action in their  
2 individual capacities, but waited until eight months after the joinder deadline and *after* the  
3 defendant’s motion to dismiss before seeking substitution. 264 F.R.D. 192, 198-199 (E.D. Pa.  
4 2010). In *Jankanish v. First Am. Title Ins. Co.*, the plaintiff sought leave to amend the  
5 complaint a month after the joinder deadline to add a new class representative in an attempt  
6 to revive claims the court had previously dismissed as time barred. C08-1147-MJP, 2009 WL  
7 1919117, at \*1 (W.D. Wash. July 2, 2009).

9 Here, unlike *Wilson* and *Hildebrand* in which the plaintiffs unreasonably delayed in  
10 requesting substitution while the defendant’s plaintiff-specific motions were pending or had  
11 been granted, or *Jankanish* in which substitution would have revived expired claims,  
12 Mr. Chen sought relief from the court within days of concluding that his personal and  
13 familial interests overrode his ability to carry on as the named plaintiff in this action.  
14 Moreover, unlike those cases, Mr. Chen has *defeated* GEO’s prior motions to dismiss, and  
15 there are no pending motions, claims, or defenses that hinge upon Mr. Chen continuing as the  
16 named plaintiff. The only arguable exception is GEO’s Motion to Deny Class Certification,  
17 which it rushed to file after learning that Mr. Chen planned to withdraw his pending class  
18 certification motion. *Compare* Dkt. No. 74 (“Whitehead Decl.”) at ¶ 4 (“On Friday, April 27,  
19 2018, I initiated a conference call with [counsel for GEO] to inform them that Mr. Chen no  
20 longer wished to serve as class representative in this case.”) *with* Dkt. No. 69 (Mot. to Deny  
21 Class. Cert., filed April 30, 2018). And even that motion focuses principally on rehashing  
22 GEO’s conflict preemption and contractually based arguments that would be applicable to  
23 any class member, rather than on defenses that would be specific to Mr. Chen.  
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1 In light of these circumstances, Mr. Chen has acted diligently in seeking relief from  
2 the subject deadlines, thus satisfying the threshold question of Rule 16(b)(4).

3 **B. GEO Will Suffer No Prejudice if Substitution is Permitted.**

4 GEO argues that it will be prejudiced if substitution of the named plaintiff is  
5 permitted because it would prolong discovery and because Mr. Chen would benefit unfairly  
6 from someone else's continued litigation. Opp. at p. 12. To start, conducting discovery on  
7 new named plaintiffs would add marginally to GEO's discovery burdens, but may be  
8 possible under the existing discovery deadline. Filing a separate action in the event that  
9 substitution is denied, however, would create greater hardship for GEO as it would  
10 presumably be forced to recreate and reproduce its earlier pleadings, motions, and discovery  
11 responses. In this way, substitution would in fact create less of a burden on the parties and  
12 the Court and streamline this litigation, allowing it to move forward more efficiently and  
13 effectively to resolution than a new action.  
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16 As for GEO's latter point, class actions inherently rely on the work of a few named  
17 plaintiffs to benefit the larger group. The fact that Mr. Chen would revert to an absent class  
18 member in this action would prejudice GEO no more than the existence of any other absent  
19 class member.

20 GEO also argues somewhat opaquely that Mr. Chen's presence exposes "the grave  
21 problem with his class claim" that GEO never could have employed him because of his  
22 background, Opp. at p. 12, but GEO is free to make this argument against the putative class  
23 even absent Mr. Chen.  
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25 In contrast to GEO's lack of prejudice, the absent class members who are dependent  
26 on this action to vindicate their rights would be left without a representative if substitution is

1 denied. Courts routinely allow plaintiffs an opportunity to substitute an adequate class  
2 representative to protect absent class members from this outcome, and to allow for the fair  
3 adjudication and basic management of class actions. *See, e.g., Phillips v. Ford Motor Co.*,  
4 435 F.3d 785, 787 (7th Cir. 2005) (“Substitution of unnamed class members for named  
5 plaintiffs who fall out of the case because of settlement or other reasons is a common and  
6 normally an unexceptionable (‘routine’) feature of class action litigation ... in the federal  
7 courts...”); *In re Motor Fuel Temperature Sales Practices Litig.*, 07-MD-1840-KHV, 2009  
8 WL 3122501, at \*1-3 (D. Kan. Sept. 24, 2009) (granting motion for leave to amend  
9 complaint to substitute new proposed class representatives when original plaintiff’s stated  
10 that “other legal matters preclude him from fulfilling his responsibilities as the class  
11 representative...”).  
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14 **C. Substitution Does Not Diminish the Adequacy of the Proposed Class  
Counsel.**

15 As one circuit court noted in granting a motion to substitute, “the need to substitute  
16 new plaintiffs as class representatives does not frequently arise at convenient times, such as  
17 prior to the deadlines contemplated in Rules 15 and 16.” *In re Motor Fuel Temperature Sales  
18 Practices Litig.*, 2009 WL 3122501, at \*2. That is certainly the case here, as Plaintiff’s  
19 counsel acknowledges that the timing of Mr. Chen’s request is not ideal. But circumstances  
20 outside counsel’s control—namely, Mr. Chen’s decision not to continue—do not lessen the  
21 qualifications or competency of the law firms representing the putative class who,  
22 collectively, have been appointed class counsel in over 50 cases, including two other class  
23 actions against GEO. *See* Dkt. Nos. 45 (Whitehead Decl.), 46 (Theriot-Orr Decl.), and 47  
24 (Free Decl.).  
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1 Moreover, filing this action with Mr. Chen as a named plaintiff despite his criminal  
2 background does not demonstrate a critical lapse in judgment on the part of the undersigned  
3 counsel as “[m]ost courts have rejected the contention that a proposed representative is  
4 inadequate because of prior unrelated unsavory, unethical, or even illegal conduct.” 1  
5 William B. Rubenstein, *Newberg on Class Actions* § 3:68 (5th ed.) (collecting cases).  
6 Rather, adequacy usually hinges on the absence of conflicts of interest with other class  
7 members, and the ability to vigorously prosecute the case. *Grays Harbor Adventist Christian*  
8 *Sch. v. Carrier Corp.*, 242 F.R.D. 568, 572 (W.D. Wash. 2007). Until his recent deposition,  
9 there was no reason to question either quality in the case of Mr. Chen.  
10

### 11 III. CONCLUSION

12 For the reasons stated above and in his initial moving papers, Plaintiff respectfully  
13 requests relief from the following deadlines and a status conference to establish new dates:  
14 (1) joinder, (2) class certification, and (3) Defendant’s recently filed Motion to Deny Class  
15 Certification.  
16

17 DATED this 11th day of May, 2018.

18 SCHROETER GOLDMARK & BENDER

19 *s/ Jamal Whitehead*

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20 Adam J. Berger, WSBA #20714  
21 Lindsay L. Halm, WSBA #37141  
22 Jamal N. Whitehead, WSBA #39818  
23 810 Third Avenue, Suite 500  
24 Seattle, WA 98104  
25 Tel: (206) 622-8000  
26 Fax: (206) 682-2305  
berger@sgb-law.com  
halm@sgb-law.com  
whitehead@sgb-law.com

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THE LAW OFFICE OF R. ANDREW FREE  
R. Andrew Free (*Pro Hac Vice*)  
P.O. Box 90568  
Nashville, TN 37209  
Tel: (844) 321-3221x1  
Fax: (615) 829-8959  
andrew@immigrantcivilrights.com

SUNBIRD LAW, PLLC  
Devin T. Theriot-Orr, WSBA # 33995  
1001 Fourth Avenue, Suite 3200  
Seattle, WA 98154-1003  
Tel: (206) 962-5052  
Fax: (206) 681-9663  
devin@sunbird.law

*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Devin T. Theriot-Orr, WSBA # 33995  
SUNBIRD LAW, PLLC  
1001 Fourth Avenue, Suite 3200  
Seattle, WA 98154-1003  
Tel: (206) 962-5052  
devin@sunbird.law

*Attorney for Plaintiff*

Joan K. Mell  
III BRANCHES LAW, PLLC  
1019 Regents Boulevard, Suite 204  
Fircrest, WA 98466  
Tel: (253) 566-2510  
joan@3brancheslaw.com

*Attorney for Defendant*

Andrea D' Ambra  
NORTON ROSE FULBRIGHT US LLP  
1301 Avenue of the Americas  
New York, NY 10019  
andrea.dambra@nortonrosefulbright.com

*Attorney for Defendant*

R. Andrew Free  
THE LAW OFFICE OF R. ANDREW FREE  
Admitted *Pro Hac Vice*  
PO Box 90568  
Nashville, TN 37209  
Tel: (844) 321-3221  
andrew@immigrantcivilrights.com

*Attorney for Plaintiff*

Mark Emery  
NORTON ROSE FULBRIGHT US LLP  
799 9<sup>th</sup> Street, Suite 1000  
Washington, D.C. 20001  
mark.emery@nortonrosefulbright.com

*Attorney for Defendant*

Charles A. Deacon  
NORTON ROSE FULBRIGHT US LLP  
300 Covent St.  
San Antonio, TX 78205  
charles.deacon@nortonrosefulbright.com

*Attorney for Defendant*

DATED at Seattle, Washington this 11th day of May, 2018.

*s/ Sheila Cronan*

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Sheila Cronan, Paralegal  
Schroeter Goldmark & Bender  
810 Third Avenue, Suite 500  
Seattle, WA 98104  
Tel: (206) 622-8000  
Fax: (206) 682-2305  
cronan@sgb-law.com