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9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **EASTERN DIVISION**

13 **RAUL NOVOA** and **JAIME**
14 **CAMPOS FUENTES**, individually and
on behalf of all others similarly situated,

15 *Plaintiffs,*

16 v.

17 **THE GEO GROUP, INC.,**

18 *Defendant.*

Civil Action No. 5:17-cv-02514-JGB-SHKx

19 **NOTICE OF MOTION AND**
20 **MOTION FOR LEAVE TO**
21 **AMEND THE SCHEDULING**
22 **ORDER AND TO AMEND THE**
23 **PLEADINGS**

Date: September 16, 2019

Time: 9:00 a.m.

Courtroom: 1

Judge: The Honorable Jesus G. Bernal

NOTICE OF MOTION

1
2 Plaintiffs, by and through undersigned counsel, respectfully notice to the Court
3 this Motion for Leave to Amend the Scheduling Order and to Amend the Pleadings for
4 leave to file a Third Amended Complaint, a copy of which is attached hereto as Exhibit
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6 A.

7 This motion is made following the conference of counsel pursuant to L.R. 7-3,
8
9 which took place on August 5, 2019.

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11 Dated: August 16, 2019

/s/ Lydia A. Wright
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1 for profit by GEO. GEO owns at least fourteen civil immigration detention centers in
2 the United States, and operates those facilities pursuant to contracts with the United
3 States Immigration and Customs Enforcement (“ICE”). GEO significantly reduces its
4 labor costs and expenses, and increases its already vast profits, by unlawfully forcing and
5 coercing civil immigration detainees to perform virtually all non-security functions at
6 Adelanto at subminimum wages, or for no compensation at all.
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9 Plaintiffs’ claims in the First Amended Complaint, ECF No. 47, and Second
10 Amended Complaint, ECF No. 108, pertain to the Voluntary Work Program (“Work
11 Program”) at Adelanto, whereby GEO pays detained immigrants only \$1 per day to
12 clean and maintain the Facility. Plaintiffs alleged that GEO maintains a corporate policy
13 and uniform practice of withholding necessary care from its detainees to ensure a ready
14 supply of available labor needed to operate the Facility. As a result, detainees are forced
15 to submit to GEO’s \$1 per day scheme in order to buy the basic necessities – including
16 food, water, and hygiene products – that GEO refuses to provide for them.
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19 Plaintiffs have learned through recent discovery that GEO has two *additional*
20 corporate policies which force detained immigrants to clean and maintain the Facility
21 under threat of serious harm and abuse of process: the Housing Unit Sanitation Policies
22 (“HUSPs”) and the Uncompensated Work Program Policy.
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1 **1. The Housing Unit Sanitation Policies (“HUSPs”).**

2 In June 2019, Plaintiffs deposed both David Venturella, GEO’s Senior Vice
3 President for Client Relations, and James Janecka, the Facility Administrator/Warden of
4 Adelanto. During those depositions, Plaintiffs learned for the first time that GEO
5 promulgates and enforces a corporate policy known as the Housing Unit Sanitation
6 Policy (“HUSP”) at Adelanto. GEO also maintains HUSPs at some of its other civil
7 immigration detention facilities, including the Aurora ICE Processing Center in Aurora,
8 Colorado. *See Menocal v. GEO*, 882 F.3d 905, 910-911 (10th Cir. 2018) (affirming
9 certification of a class of detained immigrants challenging the HUSP under the federal
10 forced labor statute).

11 Under the HUSPs, detained immigrants are forced to perform uncompensated
12 labor, such as cleaning and maintaining areas of its facilities. For instance, the HUSPs
13 require detained immigrants to clean and sanitize walls, bathrooms, showers, toilets,
14 microwaves, furniture, windows and floors in their housing areas—work well outside
15 the narrow scope of mandatory labor permitted by the 2011 ICE Performance Based
16 National Detention Standards (“PBNDS”). *See* PBNDS § 5.8.V.C.

17 In violation of the PBNDS, its contracts with ICE, and the California and federal
18 forced labor statutes, GEO obtains compliance with the HUSPs by threatening
19 detainees who refuse to work with serious harm, including actual or threatened physical
20 restraint; physical assault such as pepper spray or use of force; deprivation of legally
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1 required services such as recreation, law library, and telephone time; solitary
2 confinement; abuse of legal process, including reporting misbehavior to ICE or to the
3 immigration court; and even criminal prosecution.
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5 Prior to the June depositions and GEO's recent document productions in this
6 case, Plaintiffs were unaware that GEO maintains a HUSP at Adelanto, enforces the
7 HUSP through threats of serious harm, and believes the HUSP to be compliant with the
8 PBNDS. Accordingly, Plaintiffs learned only recently that they have a claim for forced
9 labor under the federal forced labor statute, 18 U.S.C. § 1589(a), on behalf themselves
10 and all similarly situated individuals nationwide.
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13 **2. The Uncompensated Work Program Policy.**

14 Plaintiffs also learned during recent discovery that GEO maintains and operates
15 an Uncompensated Work Program at Adelanto, separate and apart from the Work
16 Program authorized by the PBNDS and GEO's contract with ICE. Pursuant to GEO
17 policy and practice, detained immigrants at Adelanto apply for a position in the Work
18 Program by filling out a job application provided by GEO. Then, GEO officials compel
19 the detained immigrants to work for free in the position for an arbitrary period of time
20 – in some cases, for months – until the workers are officially hired into the Work
21 Program and receive compensation of \$1 per day. Like the HUSP, GEO obtains
22 compliance with its Uncompensated Work Program Policy through threats of serious
23 harm and abuse of process. The existence of the Uncompensated Work Program at
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1 Adelanto was not reasonably known to Plaintiffs prior to the recent discovery in this
2 matter.

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4 **B. Procedural Background**

5 On December 19, 2017, Plaintiff Raul Novoa filed a putative class action
6 complaint against GEO. ECF No. 1. On June 21, 2018, the Court denied in part and
7 granted in part Defendant's motion to dismiss. ECF No. 44. Plaintiff filed a First
8 Amended Complaint ("FAC") on July 6, 2018. ECF No. 47. Plaintiff's FAC alleges five
9 causes of action arising from his detention at Adelanto: (1) violation of California's
10 Minimum Wage Law, Cal. Labor Code §§ 1194, 1197, 1197.1; (2) unjust enrichment; (3)
11 violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, et
12 seq.; (4) violation of California's Trafficking Victims Protection Act, Cal. Civ. Code
13 § 52.5; and (5) attempted forced labor under 18 U.S.C. §§ 1589(a), 1594(a). Plaintiff filed
14 a Second Amended Complaint ("SAC") on December 24, 2018 to add Jaime Campos
15 Fuentes as an additional named plaintiff. ECF No. 108.

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19 GEO made its first document production on November 9, 2018, and did not
20 produce documents relevant to the HUSP or Uncompensated Work Program until after
21 Plaintiffs' deadline for amending the pleadings. *See* ECF No. 89. Discovery remains open
22 until October 15, 2019. ECF No. 119. To date, Plaintiffs have deposed three GEO
23 witnesses and noticed a GEO 30(b)(6) deposition for September 3, 2019. GEO has not
24 noticed or taken any depositions in this case.
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II. LEGAL STANDARD

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2 Generally, a court considers a motion for leave to amend pleadings pursuant to
3 the permissive standard of Fed. R. Civ. P. 15(a). *Martinez v. Newport Beach City*, 125 F.3d
4 777, 785 (9th Cir. 1997). However, once the district court enters a scheduling order
5 establishing a deadline for amending pleadings, Fed. R. Civ. P. 16(b) applies. *Coleman v.*
6 *Quaker Oats Co.*, 232 F.3d 1271, 1294 (9th Cir. 2000). This is because once a scheduling
7 order is in place, the court must consider whether to modify the scheduling order to
8 permit an amendment. *Uddin v. Radio Shack, Inc.*, 2013 WL 1767963, at 2 (C.D. Cal. Apr.
9 22, 2013) (citing W. Schwarzer, A. Tashima & M. Wagstaffe, *Federal Civil Procedure*
10 *Before Trial* (2006) § 8:405.).

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12 Rule 16(b)(4) provides that a scheduling order shall be modified “only for good
13 cause.” Rule 16(b)’s “good cause” standard primarily considers the diligence of the party
14 seeking the amendment. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir.
15 1992). Accordingly, while the court may consider the “existence or degree of prejudice”
16 to the opposing party, the focus of the court’s inquiry is upon the moving party’s
17 explanation for failure to timely move for leave to amend. *Id.* “The pretrial schedule may
18 be modified ‘if it cannot reasonably be met despite the diligence of the party seeking the
19 extension.’” *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002) (*quoting*
20 *Johnson*, 975 F.2d at 609). Upon a showing of “good cause,” the party seeking amendment
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1 must then demonstrate that amendment is proper under Rule 15(a). *See Johnson*, 975 F.2d
2 at 607.

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4 Federal Rule of Civil Procedure 15 provides that leave to amend “shall be freely
5 given when justice so requires.” Fed. R. Civ. P. 15(a). The Ninth Circuit has held that
6 “[t]his policy is to be applied with extreme liberality.” *Eminence Capital, L.L.C. v. Aspeon,*
7 *Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (citation omitted). The Ninth Circuit considers
8 a motion for leave to amend under five factors: bad faith, undue delay, prejudice to the
9 opposing party, the futility of amendment, and whether the plaintiff has previously
10 amended his or her complaint. *Nunes v. Ashcroft*, 375 F.3d 805, 808 (9th Cir. 2004). The
11 Ninth Circuit has held that “it is the consideration of prejudice to the opposing party
12 that carries the greatest weight.” *Eminence Capital*, 316 F.3d at 1052. Further, the Ninth
13 Circuit “differentiate[s] between pleadings attempting to amend claims from those
14 seeking to amend parties. Amendments seeking to add claims are to be granted more
15 freely than amendments adding parties.” *Union Pac. R. Co. v. Nevada Power Co.*, 950 F.2d
16 1429, 1432 (9th Cir. 1991) (citation omitted).
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21 III. ARGUMENT

22 A. Plaintiffs have good cause for amendment under Rule 16(b).

23 “The district court may modify the pretrial schedule if it cannot reasonably be
24 met despite the diligence of the party seeking the extension.” *Johnson*, 975 F.2d at
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1 609 (internal quotation marks and citation omitted). The focus of the Rule 16(b) inquiry
2 is the moving party’s reasons for seeking modification. *Id.*

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4 As explained above, Plaintiffs have ample good cause to amend the complaint
5 because the evidence supporting their new forced labor allegations has come to light
6 only through recent discovery, including GEO’s ongoing document production and the
7 depositions of Mr. Venturella on June 12, 2019 and Mr. Janecka on June 25, 2019. That
8 evidence was unavailable when Plaintiffs filed the SAC, and Plaintiffs have moved
9 quickly and diligently to amend the complaint following discovery of that information.

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11 **B. Rule 15(a) is satisfied.**

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13 If “the moving party has shown good cause under Rule 16(b), it must then
14 demonstrate that its motion is also proper under Rule 15.” *Rodarte v. Alameda Cty.*, No.
15 14-CV-00468-KAW, 2015 WL 5440788, at *2 (N.D. Cal. Sept. 15, 2015); *accord Johnson*,
16 975 F.2d at 608. As noted above, leave to amend under Rule 15 is generally granted
17 “unless amendment would cause prejudice to the opposing party, is sought in bad faith,
18 is futile, or creates undue delay.” *Johnson*, 975 F.2d at 607. Not all factors carry equal
19 weight. *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003).
20 Prejudice to the opposing party must be given the greatest weight. *Id.* Absent prejudice,
21 or a strong showing of bad faith, undue delay, or futility of amendment, there exists a
22 presumption under Rule 15(a) in favor of granting leave to amend. *Id.* (citation omitted).
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1 Each factor weighs in favor of granting leave to amend. First, Plaintiffs' proposed
2 amendments do not prejudice GEO in any way. Plaintiffs have already alleged causes of
3 action against GEO for forced labor and attempted forced labor. The proposed
4 amendments amplify existing allegations or add new allegations, but they do not change
5 the basic nature of this case. There is no unfair surprise or other prejudice to GEO in
6 presenting these allegations. Moreover, trial is not until February 25, 2020, and discovery
7 remains open for nearly two more months, until October 15, 2019. As a result, GEO
8 has ample time to conduct any discovery it deems necessary to respond to Plaintiffs'
9 new or amplified allegations.
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13 Indeed, courts regularly grant leave to amend under Rule 15 under far more severe
14 circumstances. *See, e.g., Tahvar v. Creative Labs, Inc.*, No. CV05-3375FMC(AJWX), 2007
15 WL 1723609, at *5 (C.D. Cal. June 14, 2007) (finding no undue prejudice even though
16 the discovery cut-off “[was] only weeks away,” defendant would have to take new
17 depositions of named plaintiffs, and defense experts would have to “alter their
18 analyses”); *Genentech, Inc. v. Abbott Labs.*, 127 F.R.D. 529, 531 (N.D. Cal. 1989) (finding
19 no undue prejudice even though amendment would require defendant to depose
20 “numerous witnesses across the country who have been previously questioned and
21 would necessitate additional document searches and written discovery”).
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25 Further, there is no bad faith or undue delay here. Plaintiffs have moved diligently
26 to investigate and pursue theories that came to light only during recent discovery.

1 Plaintiffs brought the pending motion in good faith and as soon as reasonably possible
2 after the facts became available to them as a result of discovery.

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4 Finally, amendment will not be futile because the evidence and the law supports
5 Plaintiffs' proposed amended claims. The permissive standard of Rule 15(a) is satisfied,
6 such that leave to amend is appropriate.

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8 **IV. CONCLUSION**

9 Plaintiffs respectfully request that the Court grant the pending Motion for Leave
10 to Amend the Scheduling Order and to Amend the Pleadings. Plaintiffs further request
11 that the Court permit Plaintiffs to file the Third Amended Complaint, Exhibit A, into
12 the record.
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14
15 Dated: August 16, 2019

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CERTIFICATE OF SERVICE

I, Lydia A. Wright, electronically submitted the foregoing document with the clerk of the court for the U.S. District Court, Central District of California, using the electronic case filing system. I hereby certify that I have provided copies to all counsel of record electronically or by another manner authorized by Fed. R. Civ. P. 5(b)(2).

Dated: August 16, 2019

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