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12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **EASTERN DIVISION**

15 **RAUL NOVOA** and **JAIME**
16 **CAMPOS FUENTES**, individually and
17 on behalf of all others similarly situated,
18
19 *Plaintiffs,*
20 v.
21 **THE GEO GROUP, INC.,**
22
23 *Defendant.*

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

**PLAINTIFFS' REPLY IN
SUPPORT OF MOTION FOR
LEAVE TO AMEND THE
SCHEDULING ORDER AND TO
AMEND THE PLEADINGS**

Date: September 16, 2019
Time: 9:00 a.m.
Courtroom: 1
Judge: The Honorable Jesus G. Bernal

1 Defendant The GEO Group, Inc. (“GEO”) fails to provide the Court with any
2 legally-sound reason to deny Plaintiffs leave to amend their complaint. GEO concedes
3 the amended complaint alleges substantially similar allegations and claims, and seeks
4 substantially similar remedies, as all preceding complaints in this docket. *See* ECF No.
5 174, GEO’s Response to Plaintiffs’ Motion (“Resp.”), at 7; 11; 14. Lacking any legal
6 basis to oppose amendment, GEO instead attacks the personal integrity of undersigned
7 counsel and misrepresents the basic facts, claims, and procedural history of this
8 litigation. GEO’s only argument—that the company operates a single, uniform Housing
9 Unit Sanitation Policy (“the HUSP”) at its civil immigration detention centers
10 nationwide—is itself a significant admission that provides good cause to amend. For the
11 reasons that follow and as discussed in Plaintiffs’ Motion for Leave to Amend
12 Scheduling Order and to Amend the Pleadings (“Mot.”), ECF No. 169, Plaintiffs have
13 satisfied the requirements of Rules 16 and 15, and leave to amend should be granted.

14 **A. Plaintiffs have good cause to amend the complaint.**

15 GEO admits it operates a single, uniform corporate HUSP at its civil immigration
16 detention centers nationwide. *See* Resp. at 7 (discussing “GEO’s HUSP”); 8 (discussing
17 “the HUSP”); 12 (same); 13 (“The allegations underlying the HUSP and
18 ‘Uncompensated Work Program’ were already known to Plaintiffs and were litigated by
19 Plaintiffs’ counsel in the *Menocal* case.”). On its own, this concession—that all detained
20 immigrants held in GEO’s civil immigration detention facilities nationwide are subject

1 to the same uniform corporate policy and practice—provides ample good cause to
2 amend. *See* ECF 167-2 (Third Amended Complaint) at ¶ 176 (defining the Nationwide
3 HUSP class).
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5 Even before GEO’s recent admission, Plaintiffs have demonstrated good cause
6 to amend the complaint because the evidence supporting their HUSP and
7 Uncompensated Work Program allegations has come to light only through recent
8 discovery. *See* Mot. at 5-6; 9-10. During the June depositions of Mr. Venturella and Mr.
9 Janecka, Plaintiffs learned that: (a) GEO implements a HUSP at Adelanto; (b) pursuant
10 to that HUSP, GEO requires detained immigrants to engage in labor other than the four
11 tasks enumerated in the Personal Housekeeping Requirement of the 2011 ICE
12 Performance Based National Detention Standards (“PBNDS”), § 5.8.V.C; and (c) GEO
13 obtains compliance with the Adelanto HUSP via threats of serious harm and abuse of
14 legal process. *See* Mot. at 5-6. Plaintiffs also learned that GEO believes the Adelanto
15 HUSP is permissible under PBNDS § 5.8.V.C. *Id.* According to the public record in
16 *Menocal*, GEO applies that same interpretation to its HUSP at the Aurora ICE Processing
17 Center. *See Menocal v. The GEO Group, Inc.*, No. 1:14-cv-02887 (D. Colo.), ECF No. 50-
18 1 at 39-45.
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23 Plaintiffs began an on-the-ground investigation of the Adelanto HUSP and
24 Uncompensated Work Program immediately after the June depositions. Several detained
25 immigrants, including Abdiaziz Karim and Ramon Mancia, came forward with
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1 allegations pertaining to both policies. Both Mr. Karim and Mr. Mancia have performed
2 uncompensated labor for GEO under threat of serious harm pursuant to the Adelanto
3 HUSP and the Uncompensated Work Program Policy. *See* ECF No. 169-2 (Third
4 Amended Complaint) at ¶¶ 135-156; 157-172.

6 Based on all this newly-acquired evidence—the deposition testimony of Mr.
7 Venturella and Mr. Janecka; counsel’s investigation of the Adelanto HUSP and
8 Uncompensated Work Program; the allegations of Mr. Karim, Mr. Mancia, and other
9 immigrants currently or recently detained at Adelanto; and GEO’s ongoing document
10 production, discussed below—Plaintiffs timely sought leave to amend the complaint.
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13 GEO’s arguments in opposition to amendment lack substance in both law and
14 fact.¹ First, GEO resorts to *ad hominem* attacks on Plaintiffs’ counsel, contending
15 erroneously that the undersigned have long known of “the HUSP” because “they are
16 the same counsel as the *Menocal* case where these exact facts and allegation [sic] already
17 exist.” Resp. at 20. *See Menocal v. GEO Grp., Inc.*, 882 F.3d 905, 920 (10th Cir.), *cert.*
18 *denied*, 139 S. Ct. 143 (2018). In reality, solo practitioner R. Andrew Free is the only
19 attorney representing plaintiffs in both *Novoa* and *Menocal*. Mr. Free has scrupulously
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25 ¹ GEO substituted its fourth set of counsel on August 1, 2019. *See* ECF Nos. 160-166.
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1 complied with the protective orders in each case which govern the sharing of discovery.²

2 Next, GEO argues by assertion that Plaintiffs were on notice of “the HUSP”
 3 because, according to GEO, *Novoa* and *Menocal* involve the “exact facts and allegation[s]”
 4 and “the same claims.” Resp. at 8; 20. Here, again, GEO is simply wrong. *Novoa* is the
 5 only lawsuit against GEO raising claims for wage theft, unfair business practices, and
 6 unjust enrichment under California labor law, forced labor under the California forced
 7 labor statute, and/or attempted forced labor under the federal forced labor statute.³ In
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12 ² GEO’s other accusations of “gamesmanship” by undersigned counsel are similarly
 13 without merit. First, GEO argues that counsel’s use of the term “disciplinary
 14 segregation” is somehow suspect, but “disciplinary segregation” is a term of art used in
 15 civil immigration detention settings, including by GEO itself. Resp. at 15; see PBNDS
 16 § 2.12, Special Management Units, *available at* <https://www.ice.gov/doclib/detention-standards/2011/2-12.pdf>. Next, GEO fails to provide any rationale for its apparent
 17 position that Plaintiffs are not entitled to seek discovery regarding the HUSPs and the
 18 Uncompensated Work Program. Resp. at 8-9. Finally, GEO does not and cannot point
 19 to any evidence supporting its assertion that Plaintiffs “wanted to wait for decisions in
 20 dispositive motions in related cases before adding the new allegations.” Resp. at 10.
 21 There are no recent decisions or even motions—dispositive or otherwise—in *Menocal* or
 22 *Nwauzor* that have any bearing on the claims set forth in the Third Amended Complaint.
 23 GEO also fails to explain the benefit it believes counsel obtained by seeking amendment
 24 in this case rather than in *Nwauzor*, where a class has already been certified and affirmed
 25 by the Ninth Circuit. See *Nwauzor v. The GEO Group, Inc.*, No. 17-cv-5769 (W.D. Wash.
 26 Aug. 6, 2018), *petition for permission to appeal denied*, No. 18-80095 (9th Cir. Nov. 8, 2018).

³ See ECF No. 108 (Second Amended Complaint); *Menocal*, No. 1:14-cv-02887, ECF
 No. 1 (Complaint) (alleging only a wage violation under Colorado law, a completed
 violation of the federal forced labor statute, and unjust enrichment under Colorado law
 based on the Aurora HUSP); *Nwauzor v. The GEO Group, Inc.*, No. 3:17-cv-05769 (W.D.
 Wash.), ECF No. 84 (Amended Complaint) (alleging only a wage violation and unjust
 enrichment under Washington law based on GEO’s Voluntary Work Program at the
 Tacoma ICE Processing Center).

1 fact, *Novoa* is the only putative class action against GEO alleging attempted forced labor
 2 at all. If the pending motion is granted, *Novoa* will be the only case alleging that GEO
 3 operates HUSPs (or, based on GEO's recent admission, a single HUSP) nationwide or
 4 an Uncompensated Work Program at any of its facilities. *See* Mot. at 4-5.

6 Based on its fiction that *Novoa* and *Menocal* are the same case, GEO falsely claims
 7 that “[t]here has been extensive discovery. There is not much at this point that remains
 8 unknown between the respective sides in this dispute.” Resp. at 5. Not so. GEO has
 9 represented that its document production will number hundreds of thousands of pages.
 10 *See* ECF 119-1. However, as the chart below demonstrates, the company has produced
 11 less than 30,000 pages to date. In fact, Plaintiffs are still waiting for GEO to produce
 12 documents listed in its August 16, 2018 Rule 26 Initial Disclosures. GEO's failure to
 13 comply with its discovery obligations has been the subject of several discovery
 14 conferences with Magistrate Judge Kewalramani. *See, e.g.*, ECF Nos. 90; 118; 147; 172.

GEO's Document Productions to Date	
Date	Pages Produced
November 9, 2018	675 pages
November 19, 2018	125 pages
December 22, 2018: Deadline to Amend the Pleadings	
February 1, 2019	3,998 pages
April 12, 2019	180 pages
May 16, 2019	1,016 pages
June 15, 2019	808 pages
June 27, 2019	1,689 pages
July 18, 2019	523 pages
July 29, 2019	20,708 pages

1 GEO produced only 171 documents, totaling 800 individual pages, prior to the
2 December 22, 2018 deadline to amend the pleadings. The company did not produce the
3 set of documents that comprise the Adelanto HUSP and Uncompensated Work
4 Program Policy until after that deadline. In fact, GEO waited until July 29, 2019—its
5 most recent production—to produce the detained immigrant work rosters that Plaintiffs
6 first requested on July 27, 2018. Those documents demonstrate that GEO operates an
7 Uncompensated Work Program that is distinct from the Work Program, because only
8 Work Program workers are paid \$1 per day for their labor. Detained immigrants in the
9 Uncompensated Work Program do the same work under the same conditions, but are
10 not paid for their labor. *See* Mot. at 6-7 (discussing the Uncompensated Work Program).
11 Accordingly, and contrary to GEO's assertions, there is much that remains unknown.⁴

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15 Simply put, Plaintiffs had no way to know the facts and theories raised by the
16 amendment in their original or subsequent pleadings. *See AmerisourceBergen Corp. v.*
17 *Dialysist West, Inc.*, 465 F.3d 946, 953 (9th Cir. 2006) (citations omitted). Plaintiffs moved
18 quickly, diligently, and in good faith to amend the complaint based on recently-

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23 ⁴ The cases relied upon by GEO are inapposite. *See Schwerdt v. Int'l Fid. Ins. Co.*, 28 F.
24 App'x 715 (9th Cir. 2002) (unpublished) (finding no good faith where, unlike here,
25 plaintiff sought leave to amend only after summary judgment ruling and 111 days after
26 learning the basis for the amendment); *Sako v. Wells Fargo Bank, Nat. Ass'n*, No.
14CV1034-GPC JMA, 2015 WL 5022326 (S.D. Cal. Aug. 24, 2015) (unpublished)
(finding no good faith because plaintiff's pre-lawsuit demand letter demonstrated
knowledge of the facts and specific claims underlying her amended complaint).

1 discovered evidence. *See* Exhibit A (identifying the pages, line numbers, wording, and
2 effect of each amendment). Accordingly, Plaintiffs have demonstrated good cause under
3 Rule 16, and leave to amend should be granted.
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5 **B. GEO does not and cannot demonstrate the presence of a single adverse**
6 **factor required to defeat the pending motion.**

7 **1. Plaintiffs face the risk of undue prejudice, not GEO.**

8 GEO contends that “the amendment would require the assertion of new
9 defenses.” *Resp.* at 19. GEO cites no legal authority supporting its assertion that this
10 constitutes undue prejudice. Indeed, courts routinely find no undue prejudice to
11 defendants under far more severe circumstances than those presented here. *See Mot.* at
12 11. To the extent GEO simply is objecting to the fact that responding to nationwide
13 class allegations would involve time and effort on its part, that is true of any federal class
14 action, regardless of whether the allegations are in the original or an amended complaint.
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17 Similarly, GEO’s argument that amendment “constitutes unfair surprise” falls flat
18 considering the company’s concessions that the amended complaint asserts substantially
19 similar facts as all preceding complaints in this docket and “each of Plaintiffs’ complaints
20 since 2017 have alleged forced labor.” *See Resp.* at 7; 11; 13. In fact, GEO itself relies on
21 caselaw granting leave to amend where, as here, “the initial complaint made Defendant
22 sufficiently aware of the nature of Plaintiff’s claims so that the modified pleadings in the
23 proposed amended complaint will not prejudice Defendant.” *Kobler v. Flava Enterprises,*
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1 *Inc.*, No. 10-CV-730-IEG NLS, 2011 WL 666899 (S.D. Cal. Feb. 17, 2011) (unreported).
2 *See also Union Pac. R. Co. v. Nevada Power Co.*, 950 F.2d 1429, 1432 (9th Cir. 1991) (granting
3 leave to amend).⁵ GEO simply fails to demonstrate the risk of undue prejudice.
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5 On the other hand, in the absence of the proposed amendment, the breadth of
6 GEO's violations of the California and federal forced labor statutes cannot be fully,
7 fairly, or completely determined. Well-established judicial policy favors resolution of all
8 disputed matters in the same lawsuit, and GEO suggests no reason to multiply this
9 litigation by requiring detained immigrants to file another nearly identical case to bring
10 their HUSP and Uncompensated Work Program allegations to light. Considering GEO's
11 admission that it operates a single corporate HUSP nationwide, tens of thousands of
12 potential class members face the risk of undue prejudice should leave to amend be
13 denied.
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17 **2. Amendment will not cause undue delay, particularly since the Court has**
18 **already granted a 120-day extension of pre-trial deadlines.**

19 Plaintiffs have no dilatory motive in seeking amendment, and no undue delay will
20 result. GEO stipulated to a 120-day extension of the remaining pre-trial dates in this
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23 ⁵ The other case relied upon by GEO is easily distinguishable. *See Arredondo v. Delano*
24 *Farms Co.*, No. 1:09-CV-01247 MJS, 2015 WL 6167448 at *1 (E.D. Cal. Oct. 20, 2015)
25 (unreported) (denying leave where, unlike here, “[o]ver six years of extensive litigation
26 have ensued and included significant discovery and discovery disputes, contested motions for class certification and class decertification, and a trial over whether certain Defendants were joint employers.”).

1 case, in part due to the ongoing disputes over GEO’s dilatory production of documents.
2 *See* ECF No. 171. The Court granted that stipulation on September 3, 2019. ECF No.
3 180. As a result, trial is set for June 23, 2020 and discovery remains open until February
4 12, 2020.⁶ Accordingly, GEO has ample time to seek any discovery it deems necessary
5 to respond to Plaintiffs’ new or amplified allegations.
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8 **3. Amendment will not result in futility for lack of merit.**

9 The test for futility is identical to the test used when considering the sufficiency
10 of a pleading challenged under Rule 12(b)(6). *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209,
11 214 (9th Cir. 1988). As a result, leave to amend should only be denied if there is no set
12 of facts which could be proved under the amendment to the pleadings which would
13 constitute a valid and sufficient claim or defense. *Baker v. Pac. Far E. Lines*, 451 F. Supp.
14 84, 89 (N.D. Cal. 1978) (citation omitted). GEO has raised no challenge to the merits of
15 Plaintiffs’ Third Amended Complaint. Amendment is not futile, and GEO has not and
16 cannot demonstrate otherwise.
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19 **4. Plaintiffs have not failed to cure any pleading deficiencies.**

20 Finally, GEO argues that amendment should be denied because Plaintiffs have
21 amended the pleadings twice before. Resp. at 20. Under Rule 15, leave to amend a
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25 ⁶ GEO fails to explain why it believes it “will be forced to start from scratch on new
26 discovery” if the pending motion is granted. The company has not noticed a single deposition in this case. *See* Mot. at 5.

1 pleading may be denied if previous amendments have repeatedly failed to cure
2 deficiencies. *Foman v. Davis*, 371 U.S. 178, 182 (1962). That is not the case here. Indeed,
3 GEO does not even attempt to identify a single pleading deficiency in any prior
4 complaint. Further, while Plaintiffs have amended the complaint twice—first, as a matter
5 of course before a responsive pleading was served, and then within the deadline to
6 amend set by Court Order, ECF No. 89—Plaintiffs have never before sought leave to
7 amend. This factor, like the others, weighs in favor of granting leave to amend.
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10 CONCLUSION

11 For the reasons stated above and in Plaintiffs’ Motion for Leave to Amend the
12 Scheduling Order and to Amend the Pleadings, ECF No. 169, Plaintiffs respectfully
13 request that their Motion is granted. Plaintiffs further request that the Court permit
14 Plaintiffs to file into the record their Third Amended Complaint, ECF No. 169-2.
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18 Dated: September 3, 2019 /s/ Lydia Wright

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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: September 3, 2019

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