

1 proposes to prove its case, or what defenses the defense may raise. Therefore, statements and
2 assumptions in this order, in part, may be subject to corrections.

3 Dr. Lewin is clearly an expert on human resource matters, but there are many parts of Dr.
4 Lewin's report that make most of his proposed testimony inadmissible.

5 First, Dr. Lewin uses the wrong standard for determining whether an employment
6 relationship existed. This is a Minimum Wage Act (MWA) case, and Washington law applies,
7 as found in the statute, RCW 49.46.010 and case law. *See, for example, Anfinson v. FedEx*
8 *Ground Package Sys., Inc.*, 174 Wn.2d 851, 870 (2012); *Becerra v. Expert Janitorial, LLC*, 181
9 Wn.2d 186, 196-97 (2014)

10 Second, his opinions are based on the Immigration and Customs Enforcement (ICE) and
11 GEO Group, Inc. (GEO) contract documents, and other documents that are part of the ICE-GEO
12 relationships. It is doubtful that those documents need explaining or interpreting by an expert.
13 Furthermore, I believe that this case is only partly about the ICE-GEO relationship. The case is
14 also about what actually goes on at the Northwest Detention Center (NWDC), and whether an
15 employer-employee relationship was created even when such an employer-employee relationship
16 may not have been planned or intended by ICE or GEO.

17 Third, there may be an issue about the voluntariness of the work performed. To say the
18 Voluntary Work Program (VWP) is voluntary does not necessarily mean that in all cases that is
19 so. There may also be an issue of whether GEO follows the contract documents in using
20 detainees to do work that should have been done by GEO's non-detainee workforce.

21 Fourth, Dr. Lewin's opinions are, "Based on my vast research, teaching and consulting
22 experience regarding employment, employment relationships, and human resource management .
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24

1 . . .” Accordingly, his opinions have an “*ipse dixit*” quality that cannot reasonably be examined
2 or tested.

3 Fifth, Dr. Lewin’s opinions are, in part, based on observations and, apparently, reports of
4 what may have happened in other settings and other institutions. That is of doubtful evidentiary
5 value, because this case concerns what happened – and is happening – here, not elsewhere.

6 Sixth, many of Dr. Lewin’s opinions are couched in terms of factual findings about the
7 GEO workplace. Many of his opinions are on issues of fact in the case. Similarly, some of his
8 opinions are conclusions of law, beyond his area of expertise, i.e., whether the Minimum Wage
9 Act applies – the ultimate issue.

10 Seventh, some of the recited factual bases for his opinions are not accurate – i.e., “the rate
11 is set via a Federal Statute and federal standards,” and “GEO neither determines detainee work
12 activities nor the compensation paid to detainees for such work.”

13 It appears to the court that very little, if any, of the material in Dr. Lewin’s Report is
14 admissible in evidence. Nevertheless, the court is loath to exclude him as a witness entirely.
15 There may be some admissible information or opinions that he may testify to, depending in part
16 on plaintiff’s case in chief.

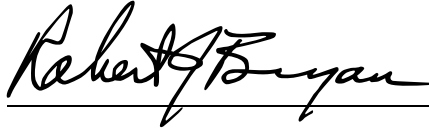
17 Whether a party wishes to, or needs to, depose a proffered “expert” is up to counsel.
18 How to use the maximum number of depositions is up to counsel, and this dispute over expert
19 testimony does not justify increasing the maximum number of depositions allowed. Plaintiff’s
20 request for an extra deposition is DENIED.

21 Therefore, Plaintiff State of Washington’s Motion to Exclude Expert Testimony of David
22 Lewin, PH.D (Dkt. 151) is DENIED WITHOUT PREJUDICE, but rulings at trial, if Dr. Lewin
23 is offered as a witness, will be consistent with this opinion.

1 IT IS SO ORDERED.

2 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
3 to any party appearing *pro se* at said party's last known address.

4 Dated this 13th day of December, 2018.

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6 ROBERT J. BRYAN
7 United States District Judge