

The Honorable Robert J. Bryan

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

STATE OF WASHINGTON,  
  
Plaintiff,

v.

THE GEO GROUP, INC.,  
  
Defendant.

CIVIL ACTION NO. 3:17-cv-05806-RJB

**PLAINTIFF STATE OF  
WASHINGTON'S MOTION TO  
SET NEW MINIMUM WAGE ACT  
LIABILITY TRIAL DATE AND TO  
SET DATE FOR PHASE III OF  
TRIAL**

NOTE ON MOTION CALENDAR:  
July 9, 2021

PLAINTIFF STATE OF WASHINGTON'S  
MOTION TO SET NEW MINIMUM  
WAGE ACT LIABILITY TRIAL DATE  
AND TO SET DATE FOR PHASE III OF  
TRIAL

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**I. INTRODUCTION**

Plaintiff State of Washington respectfully requests that the Court set a new trial date on Minimum Wage Act liability. A trial date as soon as practicable, and in no event later than six months from now, is requested so that Washington’s claims—which challenge ongoing practices at the Northwest Detention Center (NWDC)—do not continue to linger without resolution or judgment. In addition, Washington requests the Court proceed with Washington’s unjust enrichment claim against Defendant The GEO Group, Inc. (GEO) as expeditiously as possible. As this Court previously determined, a non-jury proceeding on Washington’s unjust enrichment claim can move forward regardless of the jury’s verdict (or, as it turned out, the jury’s non-verdict) on the Minimum Wage claim.

**II. FACTUAL & PROCEDURAL BACKGROUND**

Washington filed its Complaint on September 20, 2017, seeking a declaration and injunction requiring that detainee-workers be paid the minimum wage for work performed at the NWDC moving forward, and for disgorgement of unjust gains GEO received by paying them \$1 a day in the past. ECF No. 1-1 at 7.

Although the Court consolidated in part Washington’s liability issues with the Private Class Action, which seeks back wages under the Minimum Wage Act, *see* ECF. No. 218, the Court later recognized Washington’s second claim for unjust enrichment “is essentially an equitable claim.” *See* ECF No. 353 at 5–6. In responding to Washington’s motion to strike GEO’s jury demand, the Court clarified that its consolidation order was limited to the Minimum Wage claim and established a three-phase trial procedure:

First, a consolidated jury trial on MWA liability issues only;

Second, if the Plaintiffs prevail on the MWA claim, a trial, with the same jury, on the Class Plaintiffs’ damages claim;

Third, a non-jury trial on the State’s equitable claim for unjust enrichment and disgorgement.

1 ECF No. 353 at 6. The Court further ruled that the unjust enrichment phase of trial, *i.e.*, Phase  
 2 III, should proceed *regardless* of the outcome of Phase I: “If the Defendant prevails on the MWA  
 3 liability issues, the jury will be excused, and the Court will conduct non-jury proceedings on the  
 4 remaining equitable issues.” ECF No. 353 at 6.

5 Phase I of Washington’s trial against GEO, the consolidated jury trial of Washington’s  
 6 and the Private Plaintiffs’ Minimum Wage Act liability case, commenced on June 1, 2021.  
 7 ECF No. 444 at 3. After two weeks of trial, and two days of deliberation, Phase I of trial ended  
 8 on June 17, 2021, with a hung jury and the Court declaring a mistrial. ECF No. 488.

### 9 III. ARGUMENT

#### 10 A. The Court Should Set a New Trial Date for Minimum Wage Act Liability, Phase I 11 of Trial, Within the Next Six Months

12 Washington seeks a new trial date for Minimum Wage Act liability, as well as new  
 13 pretrial deadlines, as soon as possible, but no later than six months from the Court’s declaration  
 14 of a mistrial. Washington’s case has been pending for nearly four years. Justice continues to be  
 15 denied to unemployed Washingtonians seeking jobs and those who work for \$1 per day while  
 16 detained at the NWDC. A trial date within six months is requested so that the parties may  
 17 effectively incorporate the lessons learned from the mistrial before such lessons are forgotten,  
 18 *i.e.*, including whether there is a need for specific motions in limine, for additional or modified  
 19 jury instructions, and for streamlined exhibit lists. Otherwise, Plaintiffs and Washington  
 20 residents will suffer undue prejudice from any delay in resetting the trial, as GEO’s \$1 a day  
 21 practice continues.

#### 22 B. The Court Should Proceed with Phase III of Trial as Soon as Possible

23 Washington also requests that the Court proceed with Phase III of trial as expeditiously  
 24 as possible, ideally within the next month. The same discretion that the Court utilized to  
 25 consolidate the Minimum Wage Act liability trials of the parties, and to trifurcate the trial into  
 26

1 three phases, also affords the Court the discretion to hear Phase III of the trial on Washington’s  
2 unjust enrichment claim before additional time passes.

3 The Federal Rules of Civil Procedure “should be construed, administered, and employed  
4 by the court and the parties to secure *the just, speedy, and inexpensive* determination of every  
5 action and proceeding.” Fed. R. Civ. P. 1 (emphasis added). Courts have the authority to set case  
6 schedules and trial dates, Fed. R. Civ. P. 16, and the discretion to separate issues and claims into  
7 separate trials or phases of trial “[f]or convenience, to avoid prejudice, or to expedite and  
8 economize.” Fed. R. Civ. P. 42(b). *See Richmond v. Weiner*, 353 F.2d 41, 44 (9th Cir. 1965)  
9 (recognizing separate trials may be necessary to “save trial time or effort”); *Davis & Cox v.*  
10 *Summa Corp.*, 751 F.2d 1507, 1517 (9th Cir. 1985) (affirming district court’s order separating  
11 trials given that certain issues “would needlessly have been delayed for a substantial period”).  
12 *See also De Anda v. City of Long Beach*, 7 F.3d 1418, 1421 (9th Cir. 1993) (reviewing district  
13 court’s decision to order separate trials for abuse of discretion).

14 Washington’s case has now been pending for nearly four years—and GEO’s practices  
15 have continued unabated. Although the first phase of trial, the Minimum Wage Act liability case,  
16 resulted in a mistrial, the Court need not further delay in considering Washington’s second claim.  
17 ECF No. 353 at 6 (Court order anticipating Phase III of trial regardless of the jury’s verdict in  
18 Phase I). As Washington has argued previously, unjust enrichment is a well-established,  
19 stand-alone claim that is legally distinct from the Minimum Wage Act claim. *See also*  
20 ECF No. 308 at 23–28. In presenting evidence in Phase I, Washington relied upon the Court’s  
21 order trifurcating the trial and its assurances that Phase III would closely follow Phase I.  
22 Washington’s unjust enrichment claim is based on the same foundation of evidence presented in  
23 Phase I of the trial—regarding detainee work and the benefit of that work to GEO—plus limited  
24 additional evidence regarding remedies. Indeed, the unjust enrichment claim should take no  
25 more than one or two days and is ready to be heard. *See* ECF No. 388 (Final Pretrial Order  
26 identifying the claims and defenses for Phase III of trial). Washington anticipates calling a single

1 witness to testify in Phase III: expert economist, Peter Nickerson, Ph.D. While Defendant GEO  
2 likely will call its rebuttal expert, William Brandt, it is unlikely that either party will present any  
3 witnesses besides these two experts.

4 The Court should set Phase III of trial to be consistent with its prior ruling, to promote  
5 efficiency of trial proceedings, to facilitate a final determination of Washington's equitable  
6 unjust enrichment claim, and to avoid the prejudice to Washington that would arise from  
7 additional delay in having its unjust enrichment claim adjudicated.

8 **IV. CONCLUSION**

9 Washington respectfully moves for a new trial date on Minimum Wage Act liability, as  
10 well as new pretrial deadlines, as soon as possible and in any event within six months.  
11 Washington also requests that Phase III of trial be set as expeditiously as possible to promote  
12 efficiency for the Court and the parties, and to avoid prejudice to the State of Washington.

13  
14 DATED this 24th day of June 2021.

15 Respectfully submitted,

16 ROBERT W. FERGUSON  
17 Attorney General of Washington

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document was electronically filed with the United States District Court using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated this 24th day of June 2021.



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