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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

STATE OF WASHINGTON,

 Plaintiff,

 v.

THE GEO GROUP, INC.,

 Defendant.

CASE NO. 17-5806 RJB

ORDER ON DEFENDANT’S
MOTION TO COMPEL

This matter comes before the Court on Defendant GEO Group Inc.’s (“GEO”) Motion to Compel Production of Documents and Metadata. Dkt. 215. The Court has considered the pleadings filed in support of and in opposition to the motion and the file herein.

This case arises out of GEO’s alleged failure to compensate immigration detainees at the Northwest Detention Center (“NDC”), a private detention center, in accord with the Washington Minimum Wage Act (“MWA”). Dkt. 1.

I. RELEVANT FACTS AND PROCEDURAL HISTORY

A. FACTS

GEO is a private corporation that has owned and operated the NWDC, a 1,575-bed detention facility in Tacoma, Washington, since 2005. Dkt. 156, at 8-9. GEO operates the NWDC based on

1 a contract with U.S. Immigration and Customs Enforcement (“ICE”). Dkts. 16-2, and 19. Under
2 this contract, GEO provides “detention management services including the facility, detention
3 officers, management personnel, supervision, manpower, training certifications, licenses . . .
4 equipment, and supplies” for immigration detainees awaiting resolution of immigration matters.
5 Dkt. 19, at 49. GEO is also required by the contract to manage a Voluntary Work Program
6 (“VWP”). Dkt. 19, at 86. Detainees who participate in the VWP collect and distribute laundry,
7 prepare and serve food, clean, paint interior walls, and use electric sheers to cut hair. Dkt. 184-1,
8 at 8-19. GEO pays detainees who participate in the VWP at \$1 per day. Dkt. 156, at 10. In
9 accord with the contract with ICE, GEO agreed to comply with “[a]pplicable federal, state and
10 local labor laws and codes.” Dkt. 19, at 48.

11 **B. PROCEDURAL HISTORY**

12 On September 20, 2017, the State filed this case in Pierce County, Washington Superior
13 Court. Dkt. 1-1. The Complaint maintains that the GEO-ICE Contract at least allows for, if not
14 requires, GEO to compensate detainees working in the VWP commensurate with the State
15 MWA. *Id.*, at ¶¶3.3, 3.4, 5.1-6.6. The State alleges that GEO has been unjustly enriched by
16 compensating detainees below that required by state law. *Id.* In its “quasi-sovereign interest,”
17 the State makes a claim against GEO for unjust enrichment, and seeks: (1) an order requiring
18 GEO to disgorge its unjust enrichment from compensating detainees below the minimum wage,
19 (2) declaratory relief that GEO is an “employer” subject to the MWA when managing detainee
20 employees, and (3) injunctive relief for GEO to be enjoined from paying detainees less than the
21 minimum wage. *Id.*

22 In its Answer, GEO makes a counterclaim for unjust enrichment, seeks declaratory and
23 injunctive relief, and asserts thirteen affirmative defenses. Dkt 34.

1 On February 28, 2018, GEO's counterclaim for unjust enrichment was dismissed. Dkt. 44.
2 Further, State's motion to strike the affirmative defenses of laches, unclean hands, failure to join
3 necessary parties (Washington Department of Labor and Industries ("L & I") and ICE), and
4 ripeness, justiciability, and a portion of the offset defense, was denied without prejudice; no
5 finding was made as to the affirmative defense of preemption. *Id.* The remaining affirmative
6 defenses were stricken. *Id.*

7 On August 30, 2018, GEO filed a motion for an order compelling the State to produce
8 information from various State agencies related to State work programs, maintaining that the
9 information was "extremely relevant to GEO's affirmative defenses of unclean hands and
10 laches." Dkt. 113, at 6. The State opposed the motion, arguing that the State Agencies were not
11 parties to the case and that the State agencies were better positioned to respond themselves. Dkt.
12 118.

13 On October 2, 2018, GEO's motion to compel was granted. Dkt. 133. The State was ordered
14 to produce "all relevant, responsive, non-privileged information held by all divisions of the
15 [Attorney General's Office ("AGO")] and agencies of the State." *Id.*, at 7. The order provided
16 that it made "no findings as to the merits of specific discovery requests." *Id.* The October 2,
17 2018 order further ordered that as to "all discovery from AGO divisions, the State should
18 produce metadata in native format, without summarizing or otherwise manipulating the
19 information." *Id.*, at 7-8.

20 On May 13, 2019, GEO's affirmative defenses of laches, unclean hands and failure to join L
21 & I and ICE were dismissed. Dkt. 202.

1 **C. PENDING MOTION**

2 GEO now moves for an order compelling the State to produce:

- 3 (1) relevant information from all agencies for (a) the State's use of work
4 programs at its correctional or rehabilitation facilities, including why it
5 pays some (but not all) work program participants market wages, whether
6 the participants are volunteers, the hours worked, duties performed, and
7 pay rates for participants, and the State's use of contractors to assist in the
8 operation of work programs and (b) the State's assessment of federal
9 and/or state law as it relates to the operation of work program;
- 7 (2) accurate and complete metadata for all of its productions, including
8 custodian and author information, dates of creation and modification, and
9 file path without modification; and
- 9 (3) logged documents on the common interest privilege log that are missing
10 date, author, sender, recipient, or subject matter information and
11 communications between third parties for which no basis for common
12 interest privilege exists.

12 Dkt. 215. It argues that the information sought is relevant to the State's unjust enrichment
13 claim and to GEO's preemption claim. *Id.* GEO maintains that the State has not produced
14 metadata as ordered by the Court on October 2, 2018 and asserts that it should be ordered to do
15 so. *Id.* As it relates to the State's common interest privilege log, GEO asserts that it includes
16 unknown third parties and fails to provide basic information that is necessary for GEO to assess
17 the validity of the log. *Id.* GEO argues that either the State should be ordered to produce an
18 updated privilege log or produce each of the documents for which the State has failed to meet its
19 burden. *Id.*

20 The State opposes the motion. Dkt. 219. In regard to documents related to work programs,
21 the State maintains that it has turned over documents responsive to GEO's requests for
22 production. *Id.* The State argues that GEO's motion fails to identify any particular request for
23 production to which the State did not respond. *Id.* In regard to the metadata, the State asserts
24 that it has turned over the metadata it has, when it was available. *Id.* It further maintains that it

1 organized the documents in a “form . . . in which it is ordinarily maintained [and is] reasonable
2 useable.” *Id.* The State argues that the motion to compel regarding the privilege log should be
3 denied because it produced a new updated privilege log. *Id.*

4 GEO has filed a reply (Dkt. 225) and the motion is ripe for decision.

5 **II. DISCUSSION**

6 **A. DISCOVERY GENERALLY AND MOTION TO COMPEL STANDARD**

7 Fed. R. Civ. P. 26 (b)(1) provides:

8 Unless otherwise limited by court order, the scope of discovery is as follows:
9 Parties may obtain discovery regarding any nonprivileged matter that is relevant
10 to any party’s claim or defense and proportional to the needs of the case,
11 considering the importance of the issues at stake in the action, the amount in
12 controversy, the parties’ relative access to relevant information, the parties’
resources, the importance of the discovery in resolving the issues, and whether the
burden or expense of the proposed discovery outweighs its likely benefit.
Information within this scope of discovery need not be admissible in evidence to
be discoverable.

13 “The court should and ordinarily does interpret ‘relevant’ very broadly to mean matter that is
14 relevant to anything that is or may become an issue in the litigation.” *Oppenheimer Fund, Inc. v.*
15 *Sanders*, 437 U.S. 340, 351, n.12 (1978)(quoting 4 J. Moore, Federal Practice ¶ 26.56 [1], p. 26-
16 131 n. 34 (2d ed. 1976)). Rule 37 (a)(1) provides:

17 On notice to other parties and all affected persons, a party may move for an order
18 compelling disclosure or discovery. The motion must include a certification that
19 the movant has in good faith conferred or attempted to confer with the person or
party failing to make disclosure or discovery in an effort to obtain it without court
action.

20 **B. MOTION TO COMPEL DOCUMENTS REGARDING WORK PROGRAMS**

21 GEO’s motion to compel documents regarding the work programs (Dkt. 215) should be
22 denied. The State argues that it reviewed thousands of pages of discovery from five agencies
23 and produced hundreds of pages responsive to the requests for production. GEO fails to identify
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1 a specific response for production to which the State did not respond. In its reply, it identifies
2 “discovery categories” and then collectively cites 17 requests for production that it asserts
3 applies. Dkt. 225, at 3. This is not sufficient and the motion should be denied.

4 Moreover, while analysis under Rule 26 (b)(1) is difficult when it is not entirely clear
5 which request for production the State allegedly has not complied with, GEO has generally failed
6 to demonstrate that further information regarding the State’s work program is relevant and
7 proportional to the needs of the case. This is particularly true “considering the importance of the
8 issues at stake in the action, the amount in controversy, the parties’ relative access to relevant
9 information, the parties’ resources, the importance of the discovery in resolving the issues, and
10 whether the burden or expense of the proposed discovery outweighs its likely benefit.” The
11 motion to compel further documentation on the State’s work programs should be denied.

12 **C. MOTION TO COMPEL ACCURATE METADATA**

13 GEO’s motion for an order compelling the State to produce accurate metadata (Dkt. 215)
14 should be denied. The State indicates that it has complied with the October 2, 2018 Order to the
15 extent that it was able, particularly as it relates to the custodians. Further, GEO has not shown
16 that the information is relevant and proportional to the needs of the case.

17 **D. MOTION TO COMPEL RELATED TO COMMON PRIVILEGE LOG**

18 “Common interest is a long-recognized extension of the traditional common law doctrine
19 of attorney-client privilege, which was pioneered by the Ninth Circuit to protect the
20 confidentiality of communications passing from one party to the attorney for another party where
21 the parties have undertaken a joint defense effort.” *See Chandola v. Seattle Hous. Auth.*, C13-
22 557 RSM, 2014 WL 4685351, at *7 (W.D. Wash. Sept. 19, 2014). “[A] shared desire to see the
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1 same outcome in a legal matter is insufficient to bring a communication between two parties”
2 within the common interest rule. *In re Pac. Pictures Corp.*, 679 F.3d 1121, 1129 (9th Cir. 2012).
3 “Instead, the parties must make the communication in pursuit of a joint strategy in accordance
4 with some form of agreement—whether written or unwritten.” *Id.*

5 GEO’s motion to compel either an updated common privilege log or the documents for
6 which the State has failed to meet its burden (Dkt. 215) should be denied. The State has now
7 produced an updated log. Moreover, it appears that the parties have not met and conferred as to
8 this recent log as required under Fed. R. Civ. P. 37(a)(1). GEO’s motion should be denied.

9 **III. ORDER**

10 Therefore, it is hereby **ORDERED** that:

- 11 • GEO’s Motion to Compel Production of Documents and Metadata (Dkt. 215) **IS**
12 **DENIED.**

13 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
14 to any party appearing pro se at said party’s last known address.

15 Dated this 1st day of July, 2019.

16 

17 ROBERT J. BRYAN
18 United States District Judge