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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. C17-5806RJB

ORDER

This matter comes before the Court on the Order Re: Proposed Order (Dkt. 306). Both parties have responded to the Proposed Order (Dkt. 306-1). The Court appreciates the parties’ efforts regarding the Court’s reconsideration of the thorny question of the application of the law of intergovernmental immunity.

The Court is not satisfied that the record supports the Proposed Order (Dkt. 306-1) and particularly notes the following:

1) The Court’s proposed “comparison” at pages 8 and 9 of the Proposed Order is not supported by the record as was questioned in Footnote 3 of the Proposed Order. Neither the state’s civil detainees and ICE’s civil detainees, nor the State’s Civil Commitment Center and the Northwest Detention Center are shown to be “similarly situated” by the record, and it follows that the record does not support a finding that

1 application of the Minimum Wage Act impermissibly discriminates against the Defendant,
2 The GEO Group, Inc., and through it, the United States. Material issues of fact remain
3 regarding the proper comparators for determination of whether the State discriminates
4 against the Defendant in the State's proposed application of the Minimum Wage Act.

5 2) Dismissal of the State's unjust enrichment claim is beyond the pleadings
6 and is not supported by the record.

7 3) The Court is mindful that, in the Order Denying Defendant The GEO
8 Group, Inc.'s Motion for Summary Judgment on Plaintiff's First Cause of Action (Dkt
9 162) at Page 9, Line 11, it inartfully stated "The doctrine of intergovernmental immunity
10 does not shield Defendant from application of the MWA." That sentence should have
11 read, "The doctrine of intergovernmental immunity has not been shown, on the motion for
12 summary judgment, to shield Defendant from application of the Minimum Wage Act."

13 The Court's intent, hopefully, was made clear by the Order Denying Defendant GEO's
14 Motion for Reconsideration of Order Denying Motion for Summary Judgment on First
15 Cause of Action (Dkt. 165) at Page 2, Line 18: "We should keep in mind that these issues
16 are raised here in a summary judgment motion. There are, at least, material issues of fact
17 that prevent summary judgment. Exactly what issues and what instructions will be
18 presented to a jury remain to be seen." The application of the defense of
19 intergovernmental immunity remains an undecided issue.

20 THEREFORE, IT IS NOW ORDERED THAT the Proposed Order Granting
21 Summary Judgment of Dismissal (Dkt. 306-1) shall NOT issue.

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

3 Dated this 9th day of October, 2019.

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5 ROBERT J. BRYAN
6 United States District Judge

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