

1 Korey A. Nelson (admitted *pro hac vice*)
knelson@burnscharest.com

2 Lydia A. Wright (admitted *pro hac vice*)
lwright@burnscharest.com

3 **BURNS CHAREST LLP**
4 365 Canal Street, Suite 1170
5 New Orleans, LA 70130
6 Telephone: (504) 799-2845
7 Facsimile: (504) 881-1765

8 Counsel for Plaintiff
Additional Counsel on Signature Page.

9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **EASTERN DIVISION**

13 **RAUL NOVOA**, individually and on
14 behalf of all others similarly situated,

15 *Plaintiff,*

16 v.

17 **THE GEO GROUP, INC.,**

18 *Defendant.*

Civil Action No. 5:17-cv-02514

**PLAINTIFF’S ANSWER AND
AFFIRMATIVE DEFENSES TO
GEO’S CONDITIONAL
COUNTERCLAIMS**

**PLAINTIFF’S REPLY
COUNTERCLAIM FOR
RETALIATION**

19
20 Plaintiff Raul Novoa (“Plaintiff”) answers Conditional Counterclaims filed by
21 Defendant The GEO Group, Inc. (“GEO”) (ECF No. 45) and states his affirmative
22 defenses as follows:
23
24
25
26

FIRST CAUSE OF ACTION

Unjust Enrichment/Offset

1
2
3
4 8. Plaintiff lacks knowledge sufficient to form a belief regarding the
5 allegations in this paragraph and they are therefore denied.

6 9. Plaintiff lacks knowledge sufficient to form a belief regarding allegations
7 in the first sentence of this paragraph and they are therefore denied. Plaintiff denies the
8 second sentence of paragraph 9.

9
10 10. Denied as alleged.

11 11. Plaintiff lacks knowledge sufficient to form a belief regarding the
12 allegations in this paragraph and they are therefore denied.

13
14 12. Plaintiff lacks knowledge sufficient to form a belief regarding the
15 allegations in this paragraph and they are therefore denied.

16
17 13. Denied.

18 14. Plaintiff admits that he participated in the VWP at various times while
19 detained at the Adelanto Facility. The remainder of the paragraph is denied.

20
21 15. Admit.

22 16. Denied.

23 17. Denied as stated.

24
25 18. Denied.

1 to form a belief regarding the remaining allegations in this paragraph and they are
2 therefore denied.

3
4 27. Plaintiff lacks knowledge sufficient to form a belief regarding the
5 allegations in this paragraph and they are therefore denied.

6 28. Plaintiff lacks knowledge sufficient to form a belief regarding the
7 allegations in this paragraph and they are therefore denied.

8
9 29. Denied.

10 30. Denied as alleged.

11 31. Plaintiff admits that he and the putative class members participated in the
12 Voluntary Work Program at the Adelanto Facility. The remainder of the paragraph is
13 denied.

14
15 32. Plaintiff admits that he filed this lawsuit and that it presents an actual
16 controversy that can be finally resolved by this Court. The remainder of the paragraph
17 is denied.

18
19 33. Admitted.

20
21 34. Plaintiff and the putative class members are or were federal immigration
22 detainees housed at the Adelanto Facility. The remainder of the paragraph is denied.

23 35. This paragraph calls for a legal conclusion to which no response is required.
24 To the extent any response is required, Plaintiff denies.
25

1
2
3
4
PRAYER FOR RELIEF

To the extent Defendant’s prayer for relief contains any facts, Plaintiff denies.

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
AFFIRMATIVE DEFENSES

1. GEO’s counterclaims fail to state a claim upon which relief can be granted.
2. The relief GEO seeks is barred by the doctrine of estoppel
3. The relief GEO seeks is barred by the doctrine of illegality.
4. The relief GEO seeks is barred by laches.
5. The relief GEO seeks is barred by GEO’s unclean hands.
6. The relief GEO seeks is barred by the doctrine of waiver.
7. GEO has failed to joined an indispensable party.
8. The relief GEO seeks is barred by the statute of limitations.
9. GEO’s claims against putative class members are unripe and nonjusticiable unless and until a class is certified.
10. The relief GEO seeks is contrary to public policy.
11. The relief GEO seeks should be limited by the corporation’s failure to mitigate its damages.

22
23
24
25
26
PLAINTIFF’S COUNTERCLAIM IN REPLY

Pursuant to Fed. R. Civ. P. 13(a), Plaintiff Novoa, on behalf of himself individually and all others similarly situated, brings the following counterclaim in reply against GEO for retaliation. In this regard, and since the underlying First Amended Class

1 Action Complaint (ECF No. 47) alleges five causes of action, the new cause of action
2 set forth herein will start the sixth cause of action.

3
4 **JURISDICTION**

5 1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331
6 because this action arises under the Trafficking Victims Protection Act, 18 U.S.C. §§
7 1589 *et seq.*

8
9 2. This Court has subject matter jurisdiction pursuant to the Class Action
10 Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one class member is of diverse
11 citizenship from one defendant; there are more than 100 class members; the aggregate
12 amount in controversy exceeds \$5,000,000; and minimal diversity exists.

13
14 3. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because the
15 events or omissions giving rise to the claims occurred in this District.

16
17 4. This Court has personal jurisdiction over GEO because the corporation
18 regularly conducts business in California, and has sufficient minimum contacts with
19 California.

20
21 5. Plaintiff requests that this Court exercise supplemental jurisdiction
22 pursuant to 28 U.S.C. § 1367 over his state law claims.

1 civil immigration detainees at the Adelanto Detention Center (the “Adelanto Facility”)
2 (ECF No. 1). By filing this lawsuit, Plaintiff Novoa engaged in a protected activity.

3
4 11. On July 3, 2018, GEO filed a counterclaim against Plaintiff Novoa and all
5 putative class members for “unjust enrichment/offset” and “declaratory relief.”

6 12. Accordingly, GEO waited more than three years after Plaintiff Novoa was
7 released from the Adelanto Facility, and only after this Court denied in part GEO’s
8 motion to dismiss, to file its counterclaims.

9
10 13. GEO’s motive in bringing these counterclaims is to retaliate against
11 Plaintiff Novoa and deter the class members – thousands of vulnerable and indigent
12 individuals – from exercising their protected right to litigate their claims against GEO.

13
14 14. GEO’s counterclaim targets the entire putative class – *i.e.*, “All civil
15 immigration detainees who performed work for GEO at the Adelanto Detention Center
16 in the Work Program since GEO assumed responsibility for the Facility in May 2011.”

17
18 15. GEO has a strong financial interest in deterring Plaintiff Novoa and the
19 putative class members from prosecuting their case.

20
21 16. GEO represented to the United States Court of Appeals for the Tenth
22 Circuit that a similar federal class action lawsuit currently pending Colorado “poses a
23 potentially catastrophic risk to GEO’s ability to honor its contracts with the federal
24

1 government.” Petition for Permission to Appeal Class Certification at 30, *Menocal et. al.*
2 *v. The GEO Group, Inc.*, No.14-02887 (10th Cir. March 13, 2017).

3
4 17. GEO’s decision to seek equitable relief from Plaintiff Novoa and the
5 putative class now, on the eve of discovery, is evidence of GEO’s retaliatory intent.

6 18. In addition, GEO’s counterclaims are wholly without merit.

7
8 19. First, GEO’s counterclaim for “unjust enrichment/offset” is time-barred
9 because it was filed more than three years after Plaintiff Novoa was released from the
10 Adelanto Facility.

11 20. Second, Plaintiff Novoa and the class members were not “unjustly
12 enriched” at the expense of GEO, because GEO is contractually required to provide for
13 all essential detention services at the Adelanto Facility. These essential detention services
14 include providing detainees with food, shelter, utilities, clothing, bedding, recreation,
15 entertainment, and medical, dental, optical, and mental health services – the exact same
16 services for which GEO now demands restitution from thousands of current and former
17 detainees. GEO – a multibillion-dollar corporation – has made tens of millions of dollars
18 in profits from its contract to run the Adelanto Facility.
19
20
21

22 21. Third, an involuntary detainee cannot simply refuse detention (i.e.
23 “housing”) or the conditions of confinement (i.e. food and utilities). Plaintiff Novoa and
24 the class members had no choice but to accept the “goods and services” provided by
25

1 GEO, pursuant to GEO's contract with the City of Adelanto to operate the Adelanto
2 Facility.

3
4 22. GEO's counterclaims are reasonably likely to deter the protected activity
5 of filing and prosecuting a lawsuit.

6 23. Plaintiff Novoa's counterclaim in reply of retaliation arises out of the same
7 transaction or occurrence and the same set of aggregate facts that are the subject matter
8 of GEO's counterclaims.

9
10 24. Plaintiff Novoa's counterclaim in reply does not require adding another
11 party over whom the Court cannot acquire jurisdiction.

12
13 25. GEO – a multibillion dollar real estate investment trust that rakes in
14 hundreds of millions of taxpayer dollars in revenue each quarter – is seeking to shift the
15 costs of its compliance its contract and all governing federal, state, and local laws onto
16 Plaintiff Novoa and the putative class, and to strike fear in the hearts of other vulnerable
17 human beings that the company incarcerates for profit.

18
19 **PRAYER FOR RELIEF**

20
21 **WHEREFORE**, Plaintiff Novoa, individually and on behalf of the Class,
22 requests that the Court:

- 23 a. Issue an Order enjoining GEO from continuing to retaliate against
24 Plaintiff Novoa and the putative class members;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

- b. Award declaratory and other equitable relief as is necessary to protect the interests of Plaintiff and Class Members;
- c. Award Plaintiff and Class Members their reasonable expenses and attorney’s fees incurred as a result of defending GEO’s frivolous counterclaims; and
- d. Other and further relief as the Court deems just and equitable.

Dated: July 24, 2018

/s/ Korey Nelson

Korey A. Nelson (admitted *pro hac vice*)
 knelson@burnscharest.com
 LA Bar # 30002
 Lydia A. Wright (admitted *pro hac vice*)
 lwright@burnscharest.com
 LA Bar # 37926
BURNS CHAREST LLP
 365 Canal Street, Suite 1170
 New Orleans, LA 70130
 Telephone: (504) 799-2845
 Facsimile: (504) 881-1765

R. Andrew Free (admitted *pro hac vice*)
 andrew@immigrantcivilrights.com
 TN Bar # 030513
LAW OFFICE OF R. ANDREW FREE
 P.O. Box 90568
 Nashville, TN 37209
 Telephone: (844) 321-3221
 Facsimile: (615) 829-8959

Robert Ahdoot (CA Bar # 172098)
 rahdoot@ahdootwolfson.com
 Tina Wolfson (CA Bar # 174806)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

twolfson@ahdootwolfson.com
Vanessa Shakib (CA Bar # 287339)
vshakib@ahdootwolfson.com
AHDOOT & WOLFSON, PC
10728 Lindbrook Drive
Los Angeles, California 90024-3102
Telephone: (310) 474-9111
Fax: (310) 474-8585

Nicole Ramos (admitted *pro hac vice*)
nicole@alotrolado.org
NY Bar # 4660445
AL OTRO LADO
511 E. San Ysidro Blvd., # 333
San Ysidro, CA 92173
Telephone: (619) 786-4866

Will Thompson (CA Bar # 289012)
wthompson@burnscharest.com
Warren Burns (admitted *pro hac vice*)
wburns@burnscharest.com
TX Bar # 24053119
Daniel H. Charest (admitted *pro hac vice*)
dcharest@burnscharest.com
TX Bar # 24057803
BURNS CHAREST LLP
900 Jackson St., Suite 500
Dallas, Texas 75202
Telephone: (469) 904-4550
Facsimile: (469) 444-5002

Attorneys for Plaintiffs.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

On July 24, 2018, I 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).

/s/ Korey Nelson
Korey A. Nelson (admitted *pro hac vice*)
knelson@burnscharest.com
LA Bar # 30002
Lydia A. Wright (admitted *pro hac vice*)
lwright@burnscharest.com
LA Bar # 37926
BURNS CHAREST LLP
365 Canal Street, Suite 1170
New Orleans, LA 70130
Telephone: (504) 799-2845
Facsimile: (504) 881-1765