

The Honorable Robert J. Bryan

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

STATE OF WASHINGTON,

Plaintiff,

v.

THE GEO GROUP, INC.,

Defendant.

NO. 3:17-cv-05806-RJB

**PLAINTIFFS' RESPONSE TO
DEFENDANT THE GEO
GROUP, INC.'S MOTION FOR
A MISTRIAL**

NOTE ON MOTION CALENDAR:
June 17, 2021

1 GEO's motion for a mistrial should be denied. This was a two-week trial, and the jury
 2 has been deliberating for approximately two days of combined time. This case was originally
 3 scheduled for the presentation of evidence through this week, so there is no reason to hurry the
 4 jury's work. And the jury appears to agree that it is making progress, twice responding to the
 5 Court's polling that there is a reasonable probability of a verdict. The jury should be given time
 6 and space to work, and GEO's motion is premature.

7 But should the Court consider GEO's motion, it should be denied. The authority GEO
 8 cites is inapposite. In *Jazzabi v. Allstate Insurance Co.*, 278 F.3d 979, 985 (9th Cir. 2002), the
 9 Ninth Circuit rejected an approach that would have allowed a hung jury on an affirmative civil
 10 defense to result in full *liability* attaching and the case proceeding to the damages phase. *Id.*
 11 (reaching only the unsurprising conclusion that a jury "must unanimously reject an affirmative
 12 defense before the jury can . . . go on to determine damages"). No such suggestion has been
 13 made by the Court or the Plaintiffs here. Instead, the jury should continue to deliberate, and
 14 should answer one or both questions before it.

15 GEO next cites *United States v. Southwell* for the proposition that "a jury united as to
 16 guilt but divided as to an affirmative defense (such as insanity) is necessarily a hung jury."
 17 432 F.3d 1050, 1055 (9th Cir. 2005). *Southwell* was a criminal case in which the Ninth Circuit
 18 held that the district court's failure to answer a jury's question as to whether they could convict
 19 even if they did not agree unanimously that the defendant was sane or insane violated a
 20 defendant's constitutional right to a unanimous jury verdict. But of course, this case is not a
 21 criminal matter, so *Southwell* has no applicability. At most, *Southwell* stands for the same
 22 proposition as *Jazzabi*—that accepting a partial verdict should not allow an affirmative defense
 23 to simply be ignored. No one is suggesting that outcome here.

24 GEO's larger objection is that it is improper for the Court to accept a unanimous verdict
 25 on the first question if the jury cannot reach unanimity on the second question. GEO is wrong.
 26 While the Federal Rules of Civil Procedure are silent on the question of partial verdicts, it is

1 within the district court’s “discretion” to “accept[] [a] partial verdict.” *Sanchez v. City of*
 2 *Chicago*, 880 F.3d 349, 360-61 (7th Cir. 2018). Case law broadly supports a trial judge’s
 3 authority to “accept[] a jury’s conclusions on some, but not all, issues raised at trial.” *Id.*
 4 (collecting cases). “This is not surprising, given that the Civil Rules call for interpretations that
 5 secure ‘the just, speedy, and inexpensive determination of every action and proceeding.’” *Id.*
 6 (citing Fed. R. Civ. P. 1). As long as the Court does not accept a partial verdict “prematurely,”
 7 the Court would be “entitled to take the practical step of accepting a partial verdict and [would]
 8 not abuse its discretion in doing so.” *Id.* at 361.

9 Of course, if the jury cannot reach a unanimous verdict on the second question, GEO
 10 “may be entitled to a retrial of *“th[at] issue[].”* *California v. Altus Fin. S.A.*, 540 F.3d 992,
 11 1005 (9th Cir. 2008) (emphasis added); *see also Quaker City Gear Works, Inc. v. Skil Corp.*,
 12 747 F.2d 1446, 1453 (Fed. Cir. 1984) (“A party may request reconsideration by the jury of
 13 unresolved factual issues in such case, or may be entitled to a retrial *of those issues*”) (emphasis
 14 added). But the Federal Rules contain no requirement that Court throw the baby out with the
 15 bathwater, and the Court enjoys the discretion to accept a unanimous verdict on the first
 16 question even if it does not reach a verdict on the second question.

17 Finally, there can be no reasonable dispute that the questions are factually and legally
 18 distinct. The first question asks only if the detainee workers were employed by GEO within the
 19 definitions of the Minimum Wage Act. The answer to this question hinges solely on the
 20 relationship between the detainee workers and GEO. The second question asks, *if* the detainee
 21 workers are employees, whether the Minimum Wage Act unfairly discriminates against GEO
 22 because of its status as a federal contractor. The answer to that question hinges on a different set
 23 of considerations—namely a consideration of the Wash. Rev. Code § 49.46.010(3)(k) exemption
 24 and a comparison of GEO and its work program to the State and its various inmate work
 25 programs. The jury can readily reach a unanimous verdict on the first question without
 26

1 considering or reaching consensus on the facts relevant to the second, and it should be permitted
2 to do so.

3 GEO's motion for a mistrial should be denied.

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5 DATED this 17th day of June 2021.

6 Respectfully submitted,

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CERTIFICATE OF SERVICE

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Dated this 17th day of June 2021.



CAITILIN HALL
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