

The Honorable Benjamin H. Settle

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

No. 3:24-cv-05029-BHS

STATE OF WASHINGTON,
DEPARTMENT OF HEALTH,

Plaintiff,

v.

THE GEO GROUP, INC.,

Defendant.

Case Nos. 3:24-cv-05029-BHS
3:24-cv-05095-BHS

PLAINTIFFS' RESPONSE TO
GEO'S SURREPLY

NOTE ON MOTION CALENDAR:
April 19, 2024

No. 3:24-cv-05095-BHS

STATE OF WASHINGTON,
DEPARTMENT OF LABOR AND
INDUSTRIES,

Plaintiff,

v.

GEO SECURE SERVICES, LLC;
THE GEO GROUP, INC.,

Defendants.

1 GEO's surreply seeks to strike two declarations from the Department of Health, relating
 2 to events that occurred at the NWIPC since Plaintiffs' motion for preliminary injunction was
 3 first filed. Although the two declarations are directly relevant to the irreparable harm and public
 4 interest prongs of the preliminary injunction analysis, GEO seek to exclude them as hearsay.
 5 Plaintiffs DOH and L&I provide three short responses.

6 First, LCR 7 expressly permits a moving party to file with its reply brief "any supporting
 7 material of the type described in subsection (1)"—which includes affidavits and declarations.
 8 LCR 7(b)(3). Here, DOH and L&I submitted Ms. Muñiz's and Ms. Eckmann's declarations with
 9 their reply brief in support of their motion for preliminary injunction. These declarations
 10 identified an additional basis for why the NWIPC presents a potential threat to public health.
 11 Dkt. #42, ¶¶ 5, 13; Dkt. #43, ¶ 4. The additional basis arose following the death of a detainee
 12 and reports of suicidal ideation, and directly responds to GEO's arguments in its opposition brief
 13 that Plaintiffs failed to make such a showing of a public health threat. *See* Dkt. #37 at 6, n.3.
 14 GEO further argued that "the public interest and balance of equities favor denial of the Motion."
 15 No. 3:24-cv-05029-BHS, Dkt. #38 at 7; No. 3:24-cv-05095-BHS, Dkt. #37 at 7. The declarations
 16 directly refute these points. Moreover, GEO filed a surreply and had an opportunity to respond
 17 to Plaintiffs' declarations. No. 3:24-cv-05029-BHS, Dkt. #45 at 3-4; No. 3:24-cv-05095-BHS,
 18 Dkt. #46 at 3-4. This Court may therefore consider them. *See Enter. Mgmt. Ltd., Inc. v. Construx*
 19 *Software Builders, Inc.*, No. 2:19-CV-1458-DWC, 2024 WL 895358, at *3 (W.D. Wash. Mar. 1,
 20 2024).¹

21 Second, the rules of evidence do not strictly apply in the context of a motion for
 22 preliminary injunction. *See Flynt Distrib. Co., Inc. v. Harvey*, 734 F.2d 1389, 1394 (9th

24 ¹ GEO's other cited cases are inapposite. For example, in *Kogan v. Allstate Fire & Casualty Insurance*
 25 *Co.*, No. C15-5559BHS, 2017 WL 11679256 (W.D. Wash. Feb. 13, 2017), this Court noted that it "is not usually a
 26 stickler for striking arguments" but the parties' filing was "too much," given "the streak of three surreplies on three
 motions[.]" *Id.* at *2. There is no such streak here. Instead, DOH and L&I offer declarations on issues that have
 arisen since filing their motion for preliminary injunction that also directly respond to GEO's arguments raised in
 its opposition.

1 Cir. 1984); *see also* 11a Charles Alan Wright & Arthur R. Miller, *Federal Practice and*
 2 *Procedure: Application for a Preliminary Injunction* § 2949 (3d ed. Apr. 2023 update). Courts
 3 routinely consider hearsay evidence in determining whether to grant a preliminary injunction
 4 since to hold otherwise would be at odds with the summary nature of the remedy and would
 5 undermine the ability of courts to provide provisional relief. *See Mullins v. City of New York*,
 6 626 F.3d 47 (2d Cir. 2010); *see also G.G. ex rel. Grimm v. Gloucester Cnty. Sch. Bd.*, 822 F.3d
 7 709 (4th Cir. 2016), *vacated in part*, 580 U.S. 1168 (2017) (concluding the federal district court
 8 erred in excluding movant's evidence because, in preliminary injunction proceedings, the court
 9 can look to, and rely on, hearsay or other inadmissible evidence). Regardless of whether the
 10 declarations contain hearsay, in the context of a preliminary injunction, the Court has discretion
 11 to weigh the evidence as required to reflect its reliability. *A.H.R. v. Wash. State Health Care*
 12 *Auth.*, 469 F. Supp. 3d 1018, 1030 (W.D. Wash. 2016).

13 Third, Plaintiffs do not offer Ms. Muñiz's and Ms. Eckmann's declarations solely for the
 14 truth of the matter asserted—but also to show the effect on the listener. In other words, they
 15 further demonstrate why the Department of Health seeks access to the facility. As GEO
 16 concedes, a man died while in solitary confinement at the NWIPC after Plaintiffs' filed their
 17 motion for preliminary injunction. Coupled with the hundreds of complaints about the food, the
 18 cleanliness, and the conditions at the NWIPC, a detainee's possible suicide provides additional
 19 support that the facility merits inspection. To determine whether a preliminary injunction is
 20 necessary, this Court can and should consider Ms. Muñiz's and Ms. Eckmann's declarations.

21 DATED this 22nd day of April 2024.

22 I certify that this memorandum contains 690
 23 words, in compliance with the Local Civil Rules.

24 ROBERT W. FERGUSON
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CERTIFICATE OF SERVICE

I hereby declare that on this day I electronically filed the foregoing document with the Clerk of the Court using the Court's CM/ECF System, which will serve a copy of this document upon all counsel of record.

DATED this 22nd day of April 2024, at Olympia, Washington.

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