

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

REPLY IN SUPPORT OF JOINT
MOTION TO CONSOLIDATE

NOTE ON MOTION CALENDAR:
March 15, 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.

I. INTRODUCTION¹

GEO does not dispute that the actions filed by the Washington Department of Health and the Washington Department of Labor and Industries involve the same facility, the same contract with Immigration and Customs Enforcement (ICE), the same Performance Based National Detention Standards (PBNDS), and that GEO raises the same constitutional defenses. Instead, GEO quibbles that the “events involve different participants and witnesses.”² While it is true some (but not all) of the participants are different, the identities of the participants are not material to the cases. Both matters involve a common set of facts that are almost entirely undisputed—both L&I and DOH employees tried to enter the Northwest ICE Processing Center in order to inspect the NWIPC and GEO personnel refused their entry. L&I sought to conduct a workplace safety inspection and DOH sought to investigate detainee complaints about health and hygiene. GEO attributes its denial to ICE but the contract and the PBNDS support the state agencies’ entry. Because the cases share a common defendant,³ and common facts and legal questions, the Court should consolidate these matters for purposes of judicial economy under Federal Rule of Civil Procedure 42(a).

II. ARGUMENT

Federal Rule of Civil Procedure 42(a) provides: “When actions involving a common question of law or fact are pending before the court, . . . it may order all the actions consolidated.” To that end, these cases should be consolidated to save both the Court and the parties’ time and expense, and to ensure consistent decisions on the same issues. *Huene v. United States*, 743 F.2d 703, 704 (9th Cir. 1984) (in exercising discretion to consolidate, the court “weighs the saving of time and effort consolidation would produce against any inconvenience, delay, or expense that

¹ No consolidation is necessary if DOH’s and L&I’s motions to remand are granted.

² Dkt. #35 at 9, *Dep’t of Health v. The Geo Grp., Inc.*, No. 24-cv-05029 (W.D. Wash. Mar. 11, 2024); Dkt. #36 at 9, *Dep’t of Lab. & Indus. v. Geo Secure Servs., LLC*, No. 24-cv-05095 (W.D. Wash. Mar. 11, 2024).

³ The uncommon defendant, GEO Secure Services, LLC, is wholly owned by The GEO Group, Inc. Dkt. #5, *Dep’t of Lab. & Indus. v. Geo Secure Servs., LLC, et al.*, No. 24-cv-05095 (W.D. Wash. Feb. 2, 2024) (corporate disclosure statement).

1 it would cause.”); *Amazon.com, Inc. v. AutoSpeedstore*, No. C22-1183 MJP, 2022 WL
 2 11212033, at *1 (W.D. Wash. Oct. 19, 2022) (“The Court usually considers several factors in
 3 analyzing consolidation, including judicial economy, whether consolidation would expedite
 4 resolution of the case, whether separate cases may yield inconsistent results, and the potential
 5 prejudice to a party opposing.”).

6 **A. This Case Involves Common Laws and Facts Centering Around the Authority of**
 7 **Two State Agencies to Investigate a Federal Contractor**

8 While L&I and DOH filed separate state court actions to seek entry to the NWIPC, both
 9 actions are now before this Court, presenting the same issue about a state agency’s authority to
 10 inspect the same federal contractor’s facility, the same defenses by the same defendant, on
 11 similar case schedules. Should this Court consolidate, it could address these issues at the same
 12 time, benefiting from the briefing of all affected parties.

13 GEO’s citations do not suggest otherwise. In *P.S. v. City of San Fernando*, for example,
 14 the court *granted* consolidation where the case arose out of the same facts and involved different
 15 legal claims and at least one different defendant. No. CV 21-4918 PA (PVCx), 2022 WL
 16 3016257, at *2 (C.D. Cal. Apr. 11, 2022). And other cases likewise support consolidation in such
 17 circumstances. *See e.g., Whittington v. United States*, No. C14-5117 BHS, 2014 WL 2700307,
 18 at *1 (W.D. Wash. May 21, 2014) (finding consolidation appropriate where complaints
 19 presented “identical questions of law and only slightly different questions of fact”).

20 In comparison, *Flintkote Co. v. Allis-Chalmers Corp.*, the court denied consolidation of
 21 two actions arising out of two different contracts with “practically no overlap in the alleged
 22 defective equipment” at two different plants. 73 F.R.D. 463, 465 (S.D.N.Y. 1977). Likewise, in
 23 *Jackson v. Berkey*, this Court denied consolidation when a pro se inmate challenged unrelated
 24 events at three separate facilities. No. 3:19-cv-06101-BHS-DWC, 2020 WL 1974247, at *2
 25 (W.D. Wash. Apr. 24, 2020).
 26

Here, the DOH and L&I cases present similar legal issues and facts. The case involves the authority of two state agencies to investigate a federal contractor and the contractor's wholly owned facility. DOH and L&I have statutory authority to do so under state law: RCW 43.70.170, 49.17.060, 49.17.075 and 49.17.070.⁴ While these are different statutes, the legal issues are the same because GEO raises the same Supremacy Clause defenses against all state laws. *See* Dkt. #7 at 5–8, *Dep't of Health v. The Geo Grp., Inc.*, No. 24-cv-05029 (W.D. Wash. Jan. 18, 2024); Dkt. #30 at 6–9, *Dep't of Lab. & Indus. v. Geo Secure Servs., LLC*, No. 24-cv-05095 (W.D. Wash. Mar. 4, 2024). Judicial economy and prudence counsel consolidation. If any discovery is necessary to consider the scope of such state laws (beyond their straightforward applications to the NWIPC), it is unclear why discovery could not be done while consolidated.

Although GEO identifies minor factual differences and procedural postures between the two cases, none are material to this Court's analysis. For example, while DOH and L&I attempted to access the facility on different dates and the identities of the participants differed slightly, each inspection was substantially the same—e.g., Bruce Scott, GEO's facility administrator, denied both DOH and L&I inspectors' access to the NWIPC. Dkt. #3, *Dep't of Health*, No. 24-cv-05029; Dkt. #2, *Dep't of Lab. & Indus.*, No. 24-cv-05095 (W.D. Wash. Feb. 2, 2024). While an ICE agent was present during one of L&I's attempts to enter, that factual difference is insignificant because GEO defenses are carbon copies regardless, *i.e.*, GEO's defense is that it is ICE that prohibits state inspectors' access to the facility. *See* Dkt. #1, *Dep't of Health*, No. 24-cv-05029 (W.D. Wash. Jan. 9, 2024) (basing removal to federal court on derivative sovereign immunity, intergovernmental immunity, and federal preemption defenses); Dkt. #1, *Dep't of Lab. & Indus.*, No. 24-cv-05095 (W.D. Wash. Feb. 2, 2024) (same).

⁴ Both agencies also relied on RCW 70.395, which this Court recently enjoined in part. *See The Geo Grp., Inc. v. Inslee*, No. C23-5626 BHS, 2024 WL 1012888 (W.D. Wash. Mar. 8, 2024).

B. There Is No Prejudice When a Court Considers the Same Central Issue, the Same Defenses About the Same Facility Involving Many of the Same Defendant Witnesses

Nor will GEO face any prejudice from consolidation. These are cases for injunctive relief and will not be heard by a jury, so there is no danger of juror confusion to the extent that any factual differences exist (which they do not). GEO argues that consolidation “will allow the State to conflate the facts and law relevant to its two separate lawsuits.” Dkt. #35 at 10, *Dep’t of Health v. The Geo Grp., Inc.*, No. 24-cv-05029 (W.D. Wash. Mar. 11, 2024); Dkt. #36 at 10, *Dep’t of Lab. & Indus. v. Geo Secure Servs., LLC*, No. 24-cv-05095 (W.D. Wash. Mar. 11, 2024). GEO calls it “conflat[ion]” but consolidating the case reflects judicial economy to address the central issue: whether state agencies have the authority to seek entry of the same federal contractor’s facility. That different statutes support such entry with denials of entry on different occasions doesn’t take away from the central issue, and this Court is well equipped to address any minor differences.

GEO cites some cases where courts have denied consolidation based on prejudice, but they present stark contrasts to the parallel postures of the cases here. *See id.* at 10–11. For example, in *Houston v. Howell*, the district court denied a pro se plaintiff’s motion to consolidate his § 1983 action with four other cases. No. 2:19-cv-01371-JAD-DJA, 2020 WL 2572528, at *7 (D. Nev. May 20, 2020). Three of the cases that the plaintiff sought to consolidate were habeas cases, not § 1983 cases, and “[h]abeas cases are subject to distinct procedural rules.” *Id.* The fourth case, was also a § 1983 case, but involved different defendants and claims that did not appear related to “most of the claims” in the other action. *Id.* Moreover, the plaintiff had improperly joined claims in the fourth case, and consolidation of those improperly joined claims would create greater confusion and make the cases “even more unwieldy for the court and the parties.” *Id.*

Likewise, in *Southwest Marine, Inc. v. Triple A Machine Shop, Inc.*, the district court appropriately denied consolidation where the earlier-filed action and a second case did not “state

1 the same causes of action” and did not “involve the same alleged fraudulent scheme.” 720 F.
 2 Supp. 805, 807 (N.D. Cal. 1989). The court then explained that the facts needed to prove the
 3 claims in the two actions were not in common, nor did the actions “necessarily concern the same
 4 Navy contracts.” *Id.* By contrast, here, we have the same defendant asserting the same defenses
 5 arising under the same contract it has with ICE.

6 The other cases GEO relies on denied consolidation because the cases were on divergent
 7 tracks with different procedural postures, and consolidation would delay the case ready for
 8 disposition.⁵ See *Sajfr v. BBG Commc’ns, Inc.*, No. 10-CV-2341-H (NLS), 2011 WL 765884,
 9 at *2 (S.D. Cal. Feb. 25, 2011) (declining to consolidate cases that were at different phases of
 10 the pretrial process—one case was filed over six months before the second case and had a
 11 summary judgment motion pending. thus consolidation “could inhibit efficient resolution of
 12 the[] matters”); *Cleveland v. Ludwig Inst. for Cancer Rsch. Ltd.*, No. 19cv2141 JM(JLB), 2021
 13 WL 2780234, at *2 (S.D. Cal. July 2, 2021) (two cases not appropriate for consolidation because
 14 they were “at very different phases of the pretrial process,” the first case had been filed over a
 15 year before the second with pretrial discovery set to close).

16 But again, here, DOH and L&I sought to inspect roughly around the same time period,
 17 brought state court actions (which GEO removed within a month of each other), and both cases
 18 are in the pre-discovery phase. Compare Dkt. #6, *Dep’t of Health*, No. 24-cv-05029 (W.D.
 19 Wash. Jan. 11, 2024) (setting joint status report and discovery plan deadline for April 10, 2024);
 20 with Dkt. #9, *Dep’t of Lab. & Indus.*, No. 24-cv-05095 (W.D. Wash. Feb. 7, 2024) (setting
 21 May 7, 2024 deadline). There is no risk of delay.

22 In sum, consolidating the DOH and L&I actions are appropriate. Both the DOH and L&I
 23 actions share a common defendant and common questions of law and fact. Consolidation would
 24

25 ⁵ Even so, “[t]he fact that the cases are at different discovery stages is not fatal to the consolidation motion.”
 26 *Monzo v. Am. Airlines, Inc.*, 94 F.R.D. 672, 673 (S.D.N.Y. 1982). Rather, “cases at different stages of litigation are
 routinely consolidated.” *Internet Law Library, Inc. v. Southridge Cap. Mgmt., LLC*, 208 F.R.D. 59, 62 (S.D.N.Y.
 2002).

1 reduce duplicative efforts to try both cases separately and will not increase delay or expenses.
 2 *See* Mtn. to Consolidate at 4–5 (citing cases); *see also Spigen Korea Co., Ltd. v. Ultraproof, Inc.*,
 3 No. CV 17-1161-DOC (DFMx), 2017 WL 5508664, at *2–3 (C.D. Cal. Oct. 20, 2017) (granting
 4 motion to consolidate where the cases involved a common party, common issues of fact or law,
 5 and would not delay of resolution of the cases given both cases were in the pre-discovery or
 6 early discovery stages of litigation). Judicial economy is served by consolidation.

7 **III. CONCLUSION**

8 DOH and L&I ask the Court to grant their joint motion and consolidate the cases under the
 9 earlier filed action, No. 3:24-cv-05029-BHS.

10 DATED this 15th day of March 2024.

11 I certify that this memorandum contains 1,937
 12 words, in compliance with the Local Civil Rules.

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CERTIFICATE OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed 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 15th day of March 2024, at Olympia, Washington.

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