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15 Attorneys for Defendant/Counter-Claimant
 16 CoreCivic, Inc.

17 **UNITED STATES DISTRICT COURT**
 18 **SOUTHERN DISTRICT OF CALIFORNIA**

19 Sylvester Owino and Jonathan Gomez,
 20 on behalf of themselves, and all others
 similarly situated,

21 Plaintiffs,

22 v.

23 CoreCivic, Inc., a Maryland
 24 corporation,

25 Defendant.

NO. 3:17-cv-01112-JLS-NLS

DECLARATION OF JACOB B. LEE

Date: October 10, 2019

Time: 1:30 pm

Courtroom: 4D

Judge: Hon. Janis L. Sammartino

1 CoreCivic, Inc., a Maryland
corporation,
2
3 Counter-Claimant,
4
5 v.
6 Sylvester Owino and Jonathan Gomez,
on behalf of themselves, and all others
similarly situated,
7
8 Counter-Defendants.

8 I, Jacob B. Lee, make the following Declaration:

9 1. I am over the age of 18 years and competent to testify to the matters
10 set forth in this Declaration.

11 2. I am counsel of record for Defendant CoreCivic (“CoreCivic”) in the
12 above-referenced matter. I am licensed to practice in Arizona and Nevada, and have
13 been admitted *pro hac vice* in this matter. (Doc. 40.) I make this Declaration in
14 support of CoreCivic’s Memorandum in Opposition to Plaintiffs’ Motion to
15 Exclude Evidence from Class Certification Decision.

16 3. On June 26, 2018, Plaintiffs served their Requests for Production of
17 Documents, Set One.

18 4. Request Nos. 17-19 asked for various documents related to detainee
19 misconduct. During the parties’ meet and confer efforts, the parties agreed that
20 CoreCivic would initially produce policies, procedures, manuals, and rules
21 regarding discipline; disciplinary logs; and detainee files for the named Plaintiffs,
22 the plaintiffs in the *C. Gonzalez* matter (No. 3:17-cv-02573-JLS-NLS, S.D. Cal.),
23 and the detainees who signed a letter posted to Facebook regarding conditions at
24 Otay Mesa Detention Center (“OMDC”).

25 5. The parties agreed that production of detainee files beyond these select
26 few (approximately 41 detainee files) would be deferred to a later date, most likely
27 during merits discovery.
28

1 6. None of the detainees in the disciplinary log excerpts attached to
2 Plaintiffs’ Motion for Class Certification were in these groups, and Plaintiffs did
3 not otherwise request that CoreCivic produce those specific detainee files prior to
4 the class certification discovery deadline.

5 7. Plaintiffs’ Request Nos. 23-24 asked for documents regarding “basic
6 necessities” provided to detainees. During the parties’ meet and confer efforts, the
7 parties agreed that CoreCivic would produce policies, procedures, manuals, and
8 rules regarding detainee property, hygiene supplies, and other similar topics.

9 8. Plaintiffs did not request that CoreCivic produce representative
10 photographs of the clothing and hygiene supplies issued to detainees. Nevertheless,
11 CoreCivic produced a representative photograph of the hygiene supplies issued to
12 detainees at OMDC in its Initial Disclosure Statement, served on July 13, 2018, and
13 Plaintiffs’ counsel observed the hygiene and clothing kits issued to detainees during
14 their tour of OMDC on January 17, 2019.

15 9. After receiving Plaintiffs’ Motion for Class Certification, which sought
16 for the first time to certify classes based upon the alleged deprivation of “basic
17 necessities” to coerce detainees to participate in the Voluntary Work Program
18 (“VWP”), CoreCivic attached representative photographs of clothing and hygiene
19 supplies issued to detainees to its Opposition, and produced them to Plaintiffs
20 before filing.

21 10. Plaintiffs’ Request Nos. 25-26 asked for documents regarding
22 commissary items and pricing. During the parties’ meet and confer efforts, the
23 parties agreed that CoreCivic would produce item lists for each facility.

24 11. Although those lists had not yet been produced as of March 15, 2019,
25 as the parties were focused on other documents, including voluminous policies and
26 procedures, Plaintiffs never raised it as a discovery issue.

27 12. Moreover, Plaintiffs did not seek to certify a “basic necessities” class
28 in their Complaint or otherwise disclose that they intended to certify one until they

1 filed their Motion for Class Certification; thus, CoreCivic had no notice that the
2 commissary lists were relevant to class certification until it received the Motion for
3 Class Certification on April 15, 2019. CoreCivic therefore attached the lists to its
4 Opposition and produced them to Plaintiffs before filing.

5 13. On February 13, 2019, Plaintiffs served their Requests for Production
6 of Documents, Set Two.

7 14. Request No. 38 asked for all detainee files for all detainees that were
8 in ICE custody at any CoreCivic facility during the “Relevant Time Period.”

9 15. On March 8, 2019, Plaintiffs’ counsel requested that CoreCivic
10 prioritize the production of 60 detainee files from San Diego Correctional Facility
11 (“SDCF”) and California City Correctional Center (“CaCCC”). The list did not
12 include any of the declarants Plaintiffs relied on in their Motion for Class
13 Certification and Reply or any of the detainees on the disciplinary log excerpts.

14 16. On March 15, 2019, CoreCivic served its response to the Second
15 Requests for Production, asserting various objections, including that the requested
16 production would be unduly burdensome and disproportionate to the needs of the
17 case. CoreCivic proposed that Plaintiffs review the previously-produced detainee
18 rosters and identify a targeted group of detainees from each facility for whom
19 detainee files should be produced, and invited Plaintiffs to meet and confer
20 regarding the appropriate size of each group, to be produced if and to the extent the
21 Court were to certify one or more classes.

22 17. Instead, the parties jointly moved to extend the deadline to raise a
23 discovery dispute with the Court at Plaintiffs’ request.

24 18. The parties later jointly moved to extend the deadline again until after
25 the Court rules on the Motion for Class Certification.

26 19. On July 13, 2018, Plaintiffs served their Rule 26(a) Initial Disclosures.
27 Plaintiffs disclosed themselves, the *C. Gonzalez* plaintiffs, and unidentified
28

1 California and nationwide putative class members as persons likely to have
2 discoverable information.

3 20. On January 25, 2019, CoreCivic served its First Interrogatories to
4 Plaintiffs Owino and Gomez. On February 25, 2019—three weeks prior to the class
5 certification discovery deadline, and seven weeks prior to the class certification
6 motion deadline—both Plaintiffs served their responses.

7 21. Interrogatory No. 1 asked Plaintiffs to identify the witnesses they may
8 or will call at trial or any hearing or deposition, including for class certification;
9 Plaintiffs objected to the request as overbroad, unduly burdensome, harassing, and
10 premature. Plaintiffs identified only themselves, the *C. Gonzalez* plaintiffs, and
11 “[c]urrently unknown members of the putative classes.”

12 22. Plaintiffs never supplemented their responses to identify the particular
13 detainees they intended to rely on in their Motion for Class Certification, either
14 before the March 15, 2019 deadline or the April 15, 2019 deadline.

15 23. Interrogatory Nos. 2 and 4-19 are contention interrogatories asking
16 Plaintiffs to state the bases for various claims asserted in their Complaint, including
17 the witnesses Plaintiffs may or will call in support of them; each Plaintiff refused to
18 identify specific witnesses, stating instead: “Plaintiff will not identify specific
19 individuals who ‘may’ be able to support Plaintiff’s allegations because such a
20 request is overbroad, unduly burdensome, and harassing.” Plaintiffs again identified
21 only the detainees listed in response to Interrogatory No. 1.

22 24. On April 15, 2019, Plaintiffs filed their Motion for Class Certification.
23 Plaintiffs attached the declarations of two detainees, neither of whom had been
24 disclosed previously as witnesses Plaintiffs intended to rely on for class
25 certification.

26 25. Plaintiffs also attached four disciplinary log excerpts regarding
27 disciplinary reports issued to detainees at Eloy Detention Center (“EDC”) and
28 Stewart Detention Center (“SDC”); Plaintiffs had not previously disclosed any of

1 these detainees as witnesses they intended to rely on for class certification or
2 otherwise requested that CoreCivic produce their disciplinary files.

3 26. CoreCivic attached the disciplinary files for these detainees to its
4 Opposition, and produced the files to Plaintiffs before filing.

5 27. On August 1, 2019, Plaintiffs filed their Reply in Support of Motion
6 for Class Certification. Plaintiffs attached as exhibits various documents that had
7 not been attached to their Motion for Class Certification. Plaintiffs also attached the
8 declarations of two more detainees, neither of whom had been disclosed as a
9 witness Plaintiffs intended to rely on for class certification.

10 28. Declarant SJ was not an ICE detainee, and therefore was not included
11 in Plaintiffs' "disclosure" of putative class members.

12 29. Rather, she admits she was a City of Mesa detainee at Central Arizona
13 Florence Correctional Complex ("CAFCC"), which does not house female ICE
14 detainees.

15 30. Maricopa County Superior Court records show that she pleaded guilty
16 to making a false terrorism report, a third degree felony, and false emergency
17 reporting, a class one misdemeanor, in October 2018.

18 I declare under penalty of perjury that the foregoing is true and correct to the
19 best of my knowledge.

20 EXECUTED this 5th day of September, 2019 at Chandler, Arizona.

21
22 s/ Jacob B. Lee
23 JACOB B. LEE

24 3617650.1

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15 Attorneys for Defendant/Counter-Claimant
 16 CoreCivic, Inc.

17 **UNITED STATES DISTRICT COURT**
 18 **SOUTHERN DISTRICT OF CALIFORNIA**

19 Sylvester Owino and Jonathan
 20 Gomez, on behalf of themselves,
 and all others similarly situated,

21 Plaintiffs,

22 v.

23 CoreCivic, Inc., a Maryland
 24 corporation,

25 Defendant.

NO. 3:17-cv-01112-JLS-NLS

CERTIFICATE OF SERVICE

1 CoreCivic, Inc., a Maryland
 2 corporation,
 3
 4 Counter-Claimant,
 5
 6 v.
 7
 8 Sylvester Owino and Jonathan
 9 Gomez, on behalf of themselves,
 10 and all others similarly situated,
 11
 12 Counter-
 13 Defendants.

14 I am a citizen of the United States and am over the age of eighteen years, and
 15 not a party to the within action. My business address is Struck Love Bojanowski &
 16 Acedo, PLC, 3100 West Ray Road, Suite 300, Chandler, AZ 85226. On September
 17 5, 2019, I served the following document(s):

18 **DEFENDANT’S MEMORANDUM IN OPPOSITION TO**
 19 **PLAINTIFFS’ MOTION TO EXCLUDE EVIDENCE FROM**
 20 **CLASS CERTIFICATION DECISION, DECLARATION OF**
 21 **JACOB B. LEE, and this CERTIFICATE OF SERVICE**

22 **BY MAIL:** by placing the document(s) listed above in a sealed
 23 envelope with postage thereon fully prepaid, in the United States Mail at
 24 Phoenix, Arizona addressed as set forth below.

25 **BY ELECTRONIC SUBMISSION:** submitted electronically by
 26 CM/ECF to be posted to the website and notice given to all parties that the
 27 document(s) has been served.

28 LAW OFFICE OF ROBERT L. TEEL
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Attorneys for Plaintiffs and the Proposed Class

I declare that I am employed in the office of a member who is admitted pro hac vice in this Court at whose direction the service was made. I declare under penalty of perjury that the forgoing is true and correct.

Executed on September 5, 2019, at Chandler, Arizona.

s/ Jacob B. Lee

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15 Attorneys for Defendant/Counter-Claimant
 16 CoreCivic, Inc.

17 **UNITED STATES DISTRICT COURT**
 18 **SOUTHERN DISTRICT OF CALIFORNIA**

19 Sylvester Owino and Jonathan Gomez,
 20 on behalf of themselves, and all others
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21 Plaintiffs,

22 v.

23 CoreCivic, Inc., a Maryland
 24 corporation,

25 Defendant.

Case No. 3:17-cv-01112-JLS-NLS

**DEFENDANT’S MEMORANDUM
 IN OPPOSITION TO PLAINTIFFS’
 MOTION TO EXCLUDE
 EVIDENCE FROM CLASS
 CERTIFICATION DECISION**

Date: October 10, 2019

Time: 1:30 pm

Courtroom: 4D

Judge: Hon. Janis L. Sammartino

1 CoreCivic, Inc., a Maryland
corporation,
2
3 Counter-Claimant,
4
5 v.
6 Sylvester Owino and Jonathan Gomez,
on behalf of themselves, and all others
similarly situated,
7
8 Counter-Defendants.

INTRODUCTION

9 Plaintiffs’ Motion to Exclude Evidence From Class Certification Decision
10 (“Motion to Exclude”) fails to show that Defendant, CoreCivic, violated either the
11 original Scheduling Order or the Court’s Orders regarding the parties’ Joint
12 Motions for Determination of Discovery Disputes (“Joint Motions”). CoreCivic
13 produced the challenged exhibits in direct response to arguments and evidence
14 raised for the first time in Plaintiffs’ Motion for Class Certification. CoreCivic had
15 no prior notice that Plaintiffs would rely on that evidence, and thus could not have
16 produced the exhibits prior to the March 15, 2019 class discovery deadline.¹
17 Moreover, Plaintiffs’ request to exclude the exhibits is hypocritical, given that
18 Plaintiffs never disclosed certain evidence used to support their Motion for Class
19 Certification and Reply, including the names of: two detainees who submitted
20 declarations in support of their Motion; any of the detainees listed in the
21 disciplinary log excerpts filed in support of their Motion; and two detainees who
22 submitted untimely and improper declarations in support of their Reply. Plaintiffs’
23 Motion to Exclude was clearly an attempt to create additional work for CoreCivic
24 while its Response to their Motion for Partial Summary Judgment was due. Finally,
25 Plaintiffs fail to demonstrate any prejudice resulting from the exhibits. The Court
26 should deny the Motion to Exclude.

27 ¹ Plaintiffs concede these documents “were not . . . the subject of, class discovery.”
28 (Doc. 128-1 at 1:8-9.)

BACKGROUND

I. Plaintiffs' Requests For Production Of Documents

The Court's July 27, 2018 Scheduling Order set a general class discovery deadline of March 15, 2019. (Doc. 57.) Plaintiffs argue that Attachment B to Exhibit 1, and all attachments to Exhibits 4, 6, 7, 8, 11, and 13,² submitted in support of CoreCivic's Opposition to Plaintiffs' Motion for Class Certification, should have been produced by the March 15 deadline. But they fail to identify any Requests for Production to which the exhibits were responsive, or demonstrate that CoreCivic failed to produce the exhibits despite their efforts to obtain them.

On June 26, 2018, Plaintiffs served their Requests for Production of Documents, Set One. (Declaration of Jacob B. Lee, Ex. 1, ¶3.) Request Nos. 17-19 asked for various documents related to detainee misconduct. (Id. at ¶4.) During the parties' meet and confer efforts, the parties agreed that CoreCivic would initially produce: policies, procedures, manuals, and rules regarding discipline; disciplinary logs; and detainee files for the named Plaintiffs, the plaintiffs in the *C. Gonzalez* matter (No. 3:17-cv-02573-JLS-NLS, S.D. Cal.), and the detainees who signed a letter posted to Facebook regarding conditions at Otay Mesa Detention Center ("OMDC"). (Id.) The parties agreed that production of detainee files beyond these 41 detainee files would be deferred. (Id. at ¶5.) None of the detainees in the disciplinary log excerpts attached to Plaintiffs' Motion for Class Certification were in these groups, and Plaintiffs did not otherwise request that CoreCivic produce those specific files prior to the class certification discovery deadline. (Id. at ¶6.)

² Attachment B to Ex. 1, Attachments D-E to Ex. 4, and the attachments to Ex. 6, 7, and 13 are representative photographs of clothing and hygiene supplies issued to ICE detainees at CoreCivic facilities. Attachments A-C to Ex. 4 and the attachments to Ex. 11 are disciplinary records for detainees in the disciplinary log excerpts attached to Plaintiffs' Motion for Class Certification. The attachments to Ex. 8 are representative commissary item/price lists for seven CoreCivic facilities.

1 Plaintiffs' Request Nos. 23-24 asked for documents regarding "basic
2 necessities" provided to detainees. (Id. at ¶7.) During the parties' meet and confer
3 efforts, the parties agreed that CoreCivic would produce policies, procedures,
4 manuals, and rules regarding detainee property, hygiene supplies, and other similar
5 topics. (Id.) Plaintiffs did not request that CoreCivic produce representative
6 photographs of the clothing and hygiene supplies issued to detainees. (Id. at ¶8.)
7 Nevertheless, CoreCivic produced a representative photograph of the hygiene
8 supplies issued to detainees at OMDC in its Initial Disclosure Statement, served on
9 July 13, 2018, and Plaintiffs' counsel observed the hygiene and clothing kits issued
10 to detainees during their tour of OMDC on January 17, 2019. (Id.) After receiving
11 Plaintiffs' Motion for Class Certification, which sought for the first time to certify
12 classes based upon the alleged deprivation of "basic necessities" to coerce detainees
13 to participate in the Voluntary Work Program ("VWP"), CoreCivic attached
14 representative photographs of clothing and hygiene supplies issued to detainees to
15 its Opposition, and produced them to Plaintiffs before filing. (Id. at ¶9.)

16 Plaintiffs' Request Nos. 25-26 asked for documents regarding commissary
17 items and pricing. (Id. at ¶10.) During the parties' meet and confer efforts, the
18 parties agreed that CoreCivic would produce item lists for each facility. (Id.)
19 Although those lists had not yet been produced as of March 15, 2019, as the parties
20 were focused on other documents, including voluminous policies and procedures,
21 Plaintiffs never raised it as a discovery issue, such that the Court's Orders regarding
22 the parties' Joint Motions did not address them. (Doc. 69, 80; Ex. 1 at ¶11.)
23 Moreover, Plaintiffs did not seek to certify a "basic necessities" class in their
24 Complaint or otherwise disclose that they intended to certify one until they filed
25 their Motion for Class Certification; thus, CoreCivic had no notice that the
26 commissary lists were relevant to class certification until it received the Motion for
27 Class Certification. (Ex. 1 at ¶12; Doc. 1, 84-1.) CoreCivic therefore attached the
28 lists to its Opposition and produced them to Plaintiffs before filing. (Ex. 1 at ¶12.)

1 On February 13, 2019, Plaintiffs served their Requests for Production of
2 Documents, Set Two. (Id. at ¶13.) Request No. 38 asked for all detainee files for all
3 detainees that were in ICE custody at any CoreCivic facility during the “Relevant
4 Time Period.” (Id. at ¶14.) On March 8, 2019, Plaintiffs’ counsel requested that
5 CoreCivic prioritize the production of 60 detainee files from San Diego
6 Correctional Facility (“SDCF”) and California City Correctional Center
7 (“CaCCC”). (Id. at ¶15.) The list did not include any of the declarants Plaintiffs
8 relied on in their Motion for Class Certification and Reply or any of the detainees
9 on the disciplinary log excerpts. (Id.)

10 On March 15, 2019, CoreCivic served its response to the Second Requests
11 for Production, asserting various objections, including that the requested production
12 would be unduly burdensome and disproportionate to the needs of the case. (Id. at
13 ¶16.) CoreCivic proposed that Plaintiffs review the previously-produced detainee
14 rosters and identify a targeted group of detainees from each facility for whom
15 detainee files should be produced, and invited Plaintiffs to meet and confer
16 regarding the appropriate size of each group, to be produced if and to the extent the
17 Court were to certify one or more classes. (Id.) Instead, the parties jointly moved to
18 extend the deadline to raise a discovery dispute with the Court at Plaintiffs’ request.
19 (Id. at ¶17; Doc. 91-92.) The parties later jointly moved to extend the deadline
20 again until after the Court rules on the Motion for Class Certification. (Ex. 1 at ¶18;
21 Doc. 130-131.)

22 **II. The Parties’ Joint Motions For Determination Of Discovery Disputes**

23 On October 15, 2018, the parties filed their first Joint Motion regarding
24 CoreCivic’s production of documents in response to Plaintiffs’ Requests for
25 Production. (Doc. 68.) On October 26, 2018, the Court set the following production
26 deadlines:

- 27 • November 9, 2018—documents to identify putative class members;

- 1 • January 15, 2019—documents to establish dates and hours worked by
2 putative class members, work performed, compensation accrued,
3 amount of compensation delivered, and policies and procedures; and
- 4 • March 15, 2019—remaining documents responsive to Plaintiffs’
5 Requests for Production.

6 (Doc. 69.) There was no discussion, in either the Joint Motion or the Order, of
7 disciplinary reports, representative photographs of clothing and hygiene supplies, or
8 commissary item/price lists. (Doc. 68, 69.)

9 On February 28, 2019, the parties filed their second Joint Motion regarding,
10 in relevant part, production of policies and procedures that had not been produced
11 as of January 15, 2019. (Doc. 78.) On March 1, 2018, the Court found that
12 CoreCivic was in substantial compliance with the January 15, 2019 deadline and
13 declined to set the interim deadline Plaintiffs requested, instead requiring that the
14 remaining policies and procedures be produced by the March 15, 2019 deadline.
15 (Doc. 80.) There was no discussion, in either the Joint Motion or the Order, of
16 disciplinary reports, representative photographs of clothing and hygiene supplies, or
17 commissary item/price lists. (Doc. 78, 80.)

18 **III. Plaintiffs’ Rule 26(a) Disclosures And Discovery Responses**

19 On July 13, 2018, Plaintiffs served their Rule 26(a) Initial Disclosures. (Ex. 1
20 at ¶19.) Plaintiffs disclosed themselves, the *C. Gonzalez* plaintiffs, and unidentified
21 California and nationwide putative class members as persons likely to have
22 discoverable information. (Id.)

23 On January 25, 2019, CoreCivic served its First Interrogatories to Plaintiffs
24 Owino and Gomez. (Id. at ¶20.) On February 25, 2019, both Plaintiffs served their
25 responses. (Id.) Interrogatory No. 1 asked Plaintiffs to identify the witnesses they
26 may or will call at trial or any hearing or deposition, including for class
27 certification; Plaintiffs objected to the request as overbroad, unduly burdensome,
28 harassing, and premature. (Id. at ¶21.) Plaintiffs identified only themselves, the

1 C. Gonzalez plaintiffs, and “[c]urrently unknown members of the putative classes.”
2 (Id.) Plaintiffs never supplemented their responses to identify particular detainees
3 they intended to rely on in their Motion for Class Certification. (Id. at ¶22.)

4 Interrogatory Nos. 2 and 4-19 are contention interrogatories asking Plaintiffs
5 to state the bases for various claims asserted in their Complaint, including the
6 witnesses Plaintiffs may or will call in support of them; each Plaintiff refused to
7 identify specific witnesses, stating instead: “Plaintiff will not identify specific
8 individuals who ‘may’ be able to support Plaintiff’s allegations because such a
9 request is overbroad, unduly burdensome, and harassing.” (Id. at ¶23.) Plaintiffs
10 again identified only the detainees listed in response to Interrogatory No. 1. (Id.)

11 On April 15, 2019, Plaintiffs filed their Motion for Class Certification. (Doc.
12 84.) Plaintiffs attached the declarations of two detainees, neither of whom had been
13 disclosed previously as witnesses Plaintiffs intended to rely on for class
14 certification. (Doc. 84-5 and 84-6; Ex. 1 at ¶24.) Plaintiffs also attached four
15 disciplinary log excerpts regarding disciplinary reports issued to detainees at Eloy
16 Detention Center (“EDC”) and Stewart Detention Center (“SDC”); Plaintiffs had
17 not previously disclosed any of these detainees as witnesses they intended to rely
18 on for class certification or otherwise requested that CoreCivic produce their
19 disciplinary files. (Doc. 87, Ex. 30-33; Ex. 1 at ¶25.) CoreCivic attached the
20 disciplinary files for these detainees to its Opposition, and produced the files to
21 Plaintiffs before filing. (Ex. 1 at ¶26; Doc. 128-1 at 1:27-2:4.)

22 On August 1, 2019, Plaintiffs filed their Reply in Support of Motion for
23 Class Certification. (Doc. 127.) Plaintiffs attached as exhibits various documents
24 that had not been attached to their Motion for Class Certification. (Doc. 127-2 and
25 127-3.) Plaintiffs also attached the declarations of two more detainees, neither of
26
27
28

1 whom had been disclosed as a witness they intended to rely on for class
2 certification. (Doc. 127-4 and 127-5; Ex. 1 at ¶27.)³

3 LEGAL ARGUMENT

4 Neither the original Scheduling Order nor either of the Orders on the parties'
5 first two Joint Motions address the exhibits Plaintiffs complain were untimely
6 disclosed. The Scheduling Order set only a general class certification discovery
7 deadline (Doc. 57), and the Orders on the Joint Motions dealt with detainee rosters,
8 payment logs, and policies and procedures. (Doc. 69, 80.)

9 At the time the Scheduling Order was entered, Plaintiffs had identified only
10 three putative classes, none of which had anything to do with the provision of
11 "basic necessities" to detainees, or the alleged withholding of such necessities to
12 coerce detainees into participating in the VWP. (Doc. 1 at ¶¶30-32.) There was
13 therefore no reason for CoreCivic to anticipate that it needed to produce either
14 representative photographs of the clothing and hygiene supplies it provides to
15 detainees or commissary lists by the March 15, 2019 deadline (i.e., Attachment B to
16 Ex. 1, Attachments D-E to Ex. 4, and the attachments to Ex. 6, 7, and 13). *See* Fed.
17 R. Civ. P. 26(a)(1)(A)(ii) (requiring a party to disclose "all documents,
18 electronically stored information, and tangible things that the disclosing party has in
19 its possession, custody, or control and may use to support its claims or defenses").

20 Nor was there any reason for CoreCivic to anticipate that it needed to
21 produce either the photographs or the commissary lists in response to Plaintiffs'
22 Requests for Production. The photographs were never discussed at all. (Ex. 1 at

23
24 ³ Declarant SJ was not an ICE detainee, and therefore was not included in
25 Plaintiffs' "disclosure" of putative class members. (Ex. 1 at ¶28.) Rather, she
26 admits she was a City of Mesa detainee at Central Arizona Florence Correctional
27 Complex ("CAFCC"), which does not house female ICE detainees. (Doc. 127-5 at
28 ¶2; Ex. 1 at ¶29.) Maricopa County Superior Court records show that she pleaded
guilty to making a false terrorism report, a third degree felony, and false emergency
reporting, a class one misdemeanor, in October 2018. (Ex. 1 at ¶30.)

1 ¶¶7-8.) Although the commissary lists were discussed, Plaintiffs never made them a
2 priority, including by raising their non-production as a discovery issue. (Id. at ¶¶10-
3 11.) Rather, the focus of CoreCivic’s productions and the parties’ disputes was
4 primarily the policies and procedures. (Id. at ¶¶4-11.)

5 Plaintiffs did not propose the “basic necessities” classes until April 15, 2019,
6 a full month after the close of class certification discovery. (Doc. 84-1 at 13:25-
7 14:20.) It was only in preparing its Opposition to the Motion for Class Certification
8 that CoreCivic realized the need for the representative photographs and commissary
9 lists, and produced them accordingly.⁴ (Ex. 1 at ¶¶9, 12.)

10 Similarly, there was no reason for CoreCivic to anticipate that it needed to
11 produce the detainee disciplinary files by the March 15, 2019 deadline (i.e.,
12 Attachments A-C to Ex. 4 and the attachments to Ex. 11). *See* Fed. R. Civ. P.
13 26(a)(1)(A)(ii). Plaintiffs did not disclose their intent to rely on the detainees in the
14 disciplinary log excerpts until they filed their Motion for Class Certification on
15 April 15, 2019. (Ex. 1 at ¶¶4-6; Doc. 84-1 at 10:11-28). Indeed, the parties agreed
16 to initially produce only 41 files, none of which included the detainees on the
17 disciplinary log excerpts, and to defer the rest. (Id.) Plaintiffs’ subsequent request
18 that CoreCivic produce 60 more specific detainee files did not include the detainees
19 in the disciplinary log excerpts. (Id. at ¶15.) After receiving Plaintiffs’ Motion for
20 Class Certification, which relied on those detainees, CoreCivic produced the
21 relevant files prior to filing its Opposition. (Id. at ¶¶25-26.) CoreCivic therefore did
22 not violate any applicable orders, and Plaintiffs have not shown otherwise.

23 Any untimeliness in CoreCivic’s productions was caused by Plaintiffs’
24 failure to timely and fully disclose their putative classes and refusal to timely
25 disclose the witnesses they intended to rely on in seeking to certify those classes.
26 (Ex. 1 at ¶¶12, 19-26.) . Plaintiffs’ Complaint alleged only three classes, none of

27
28 ⁴ Plaintiffs concede this was not “by [itself] improper.” (Doc. 128-1 at 2:16.)

1 which had anything to do with the “basic necessities” classes they asked the Court
2 to certify in their Motion for Class Certification. (Doc. 1 at ¶¶30-32; Doc. 84-1 at
3 13:25-14:20.)

4 Rule 26(a)(1)(A)(i) required Plaintiffs to disclose “the name . . . of each
5 individual likely to have discoverable information—along with the subjects of that
6 information—that the disclosing party may use to support its claims or defenses,”
7 but Plaintiffs disclosed only themselves, the *C. Gonzalez* plaintiffs, and unidentified
8 putative class members. (Ex. 1 at ¶¶19-22.) When CoreCivic asked Plaintiffs to
9 identify the witnesses they intended to rely on for class certification, Plaintiffs
10 refused, objecting—three weeks before the end of class certification discovery, and
11 seven weeks before the class certification motion deadline—that the requests were
12 premature, overbroad, unduly burdensome, and harassing. (Id. at ¶23.) Rule
13 26(e)(1)(A) required Plaintiffs to timely supplement their Rule 26(a) disclosures
14 and discovery responses “if the party learns that in some material respect the
15 disclosure or response is incomplete or incorrect,” but Plaintiffs never did so—
16 either before the March 15, 2019 class certification discovery deadline or before the
17 April 15, 2019 class certification motion deadline. (Id. at ¶22.)

18 And yet, Plaintiffs filed a Motion to Exclude, accusing CoreCivic of not
19 producing exhibits by these same deadlines, even though the only way CoreCivic
20 could have done so would have been to predict that Plaintiffs would add two
21 previously unmentioned putative classes and rely on the declarations and
22 disciplinary reports of previously unidentified detainees. Plaintiffs’ Motion to
23 Exclude is especially egregious because they attached new documents to their
24 Reply, as well as declarations from two previously undisclosed detainees, all of
25 which could have—and should have—been attached to the original Motion for
26 Class Certification. *See Provenz v. Miller*, 102 F.3d 1478, 1483 (9th Cir. 1996) (the
27 Court should not consider new evidence presented in a reply brief without giving
28 the non-movant an opportunity to respond); *see also Wallace v. Countrywide Home*

1 *Loans, Inc.*, No. SACV 08-1463 AG (MLGx), 2009 WL 4349534, at *7 (C.D. Cal.
2 Nov. 23, 2009) (“A district court may refuse to consider new evidence submitted
3 for the first time in a reply if the evidence should have been presented with the
4 opening brief.”) (citing cases).

5 Nor have Plaintiffs shown any prejudice as a result of CoreCivic’s alleged
6 violations. Plaintiffs do not even attempt to do so, instead arguing that the
7 documents should be excluded based solely on the alleged technical violations, an
8 implicit acknowledgement that they suffered no prejudice.

9 Plaintiffs were aware of the types of hygiene supplies CoreCivic gives to ICE
10 detainees as early as July 13, 2018, when they received CoreCivic’s Initial
11 Disclosure Statement, which included a representative photograph of hygiene
12 supplies given to ICE detainees at OMDC. (Id. at ¶9.) Comparison of that
13 photograph to the others listed in Plaintiffs’ Motion to Exclude shows that
14 essentially the same items are given to ICE detainees at all CoreCivic facilities at
15 issue. Plaintiffs’ counsel then saw both the hygiene items and clothing given to ICE
16 detainees at OMDC on January 17, 2019, when they toured OMDC. (Id.) And
17 CoreCivic had no reason to produce the disciplinary files and commissary lists
18 earlier than it did, as Plaintiffs failed to disclose either their intended “basic
19 necessities” classes or the detainees in the disciplinary log excerpts.

20 If Plaintiffs needed more time to review and address these documents in their
21 Reply, they could have requested it. Instead, they filed a Motion to Exclude that
22 fails to show either a violation of any applicable Orders or any harm to Plaintiffs.

23 **CONCLUSION**

24 The Court should deny Plaintiffs’ Motion to Exclude in its entirety.
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