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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

**DEFENDANT’S REPLY IN  
 SUPPORT OF MOTION FOR  
 JUDGMENT ON THE PLEADINGS.**

Date: October 10, 2019  
 Time: 1:30 p.m.  
 Courtroom: 4D  
 Judge: Honorable Janis L. Sammartino

1 CoreCivic, Inc., a Maryland  
corporation,

2 Counter-Claimant,

3 v.

4 Sylvester Owino and Jonathan Gomez,  
5 on behalf of themselves, and all others  
similarly situated,

6 Counter-Defendants.  
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1 **I. CORECIVIC DID NOT WAIVE ITS PERSONAL JURISDICTION**  
2 **DEFENSE.**

3 Plaintiffs first argue that CoreCivic waived any argument that this Court  
4 lacks personal jurisdiction over the *putative nationwide class* claims by not raising  
5 that challenge in its Motion to Dismiss the *two named Plaintiffs'* individual claims  
6 (Dkt. 18). This argument is belied by the procedural history and the Rules of Civil  
7 Procedure.

8 Rule 12(g)(1) is a permissive rule that allows a party to join all Rule 12(b)  
9 defenses in a single motion. Under Rule 12(g)(2), a party that files a Rule 12(b)  
10 motion may not file a subsequent motion raising certain procedural defenses that  
11 were available but omitted from an earlier motion. Rule 12(h)(1)(A), which  
12 governs defenses under Rules 12(b)(2) through (5), refers back to the availability of  
13 defenses at the time an earlier motion was filed and provides that a party waives  
14 these procedural defenses “in the circumstances described in Rule 12(g)(2) ....”  
15 Read together, personal jurisdiction is waived only if it was both *available* and  
16 omitted from the earlier motion.

17 CoreCivic did not challenge personal jurisdiction over the putative  
18 nationwide class claims in its Motion to Dismiss the two named Plaintiffs'  
19 individual claims because it was not applicable. “A class action complaint is filed  
20 only by a named plaintiff or plaintiffs. Although such an action is often referred to  
21 as a class action when it is filed, it is, at the time of filing, only a would-be class  
22 action. It does not become a class action until certified by the district court.”  
23 *Gibson v. Chrysler Corp.*, 261 F.3d 927, 937 (9th Cir. 2001); *see also Van Slyke v.*  
24 *Capital One Bank*, 503 F. Supp. 2d 1353, 1363 (N.D. Cal. 2007) (“No class has yet  
25 been certified, so these are currently the only plaintiffs.”).

26 Thus, CoreCivic had no good faith basis to challenge personal jurisdiction  
27 over the non-plaintiff, putative class members' claims in its Motion to Dismiss. As  
28 other district courts in California have held, a motion to dismiss putative class

1 members' claims is procedurally improper when raised in a Rule 12(b)(2) motion  
2 because it is premature before certification stage:

3 In this case, Defendant does not contend that the Court  
4 lacks personal jurisdiction over Plaintiff; he argues only  
5 that the Court cannot exercise personal jurisdiction over  
6 claims by out-of-state putative class members. But at this  
7 point in the case, no class has been certified and therefore  
8 the non-California class members have no claims before  
9 the Court. As with most issues relating to putative classes  
10 and class members, the Court believes that this issue is  
11 better resolved at the class certification stage.

12 *Matic v. United States Nutrition, Inc.*, 2019 WL 3084335, at \*10 (C.D. Cal. Mar.  
13 27, 2019); *see Gasser v. Kiss My Face, LLC*, 2018 WL 4538729, \*2 (N.D. Cal.  
14 Sept. 21, 2018) (rejecting same waiver theory because putative class members were  
15 "not yet (and may never be) parties to the action"); *see also Chernus v. Logitech,*  
16 *Inc.*, 2018 WL 1981481, at \*8 (D.N.J. Apr. 27, 2018) ("At this stage of litigation,  
17 no class has been certified, and therefore, to determine whether this Court has  
18 specific jurisdiction over Defendant with respect to the claims of the unnamed class  
19 members prior to class certification would put the proverbial cart before the  
20 horse."). Likewise here, Plaintiffs' waiver argument fails because any personal  
21 jurisdiction challenge to the putative class members' claims was premature and  
22 procedurally improper at the motion-to-dismiss stage—long before Plaintiffs even  
23 moved to certify the putative nationwide classes in April 2019 (Dkt. 84).

24 Plaintiffs' citation to *McCurley v. Royal Seas Cruises, Inc.*, 331 F.R.D. 142  
25 (S.D. Cal. 2019), does not support their waiver argument. In *McCurley*, the  
26 defendant did not plead personal jurisdiction as a defense in its answer to an  
27 amended complaint, but instead raised it for the first time in opposition to the  
28 plaintiff's motion for class certification. *Id.* at 165.<sup>1</sup> Here, CoreCivic explicitly

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<sup>1</sup> Although the court later admonished the defendant for attempting to file a subsequent motion for leave to amend its answer to include a personal jurisdiction defense, *see McCurley v. Royal Seas Cruises, Inc.*, 2019 WL 3006469, at \*5 (S.D.



1 pled the lack of personal jurisdiction over the putative nationwide class claims  
2 arising at facilities outside California in its Answer to the Amended Complaint,  
3 thus preserving it for a future Rule 12(c) or Rule 56 motion. (Dkt. 70 at 3, ¶ 6.) It  
4 only became an available and actionable defense when Plaintiffs actually moved for  
5 class certification, something they could have abstained from doing at all.

6 **II. CORECIVIC DID NOT ADMIT OR CONSENT TO PERSONAL**  
7 **JURISDICTION OVER THE PUTATIVE CLASS CLAIMS.**

8 Plaintiffs next argue that CoreCivic admitted and conceded personal  
9 jurisdiction over the putative nationwide class claims through its litigation conduct.  
10 Not true. CoreCivic preserved this defense in its Answer to the Amended  
11 Complaint, and timely raised it at the earliest reasonable opportunity in its Motion  
12 for Judgment on the Pleadings once Plaintiffs moved for class certification.

13 In its Answer to the original Complaint, CoreCivic admitted *only* that the  
14 Court had personal jurisdiction over the Plaintiffs' *individual* claims (the only  
15 existing claims at the time). (Dkt. 44, ¶ 5.) But it did *not* consent to personal  
16 jurisdiction over any of the putative class claims. To the contrary, CoreCivic  
17 "denie[d] all remaining allegations" pertaining to specific jurisdiction (*id.*, ¶ 5), as  
18 well as to the validity of the putative class claims (*id.*, ¶¶ 10, 13-26.) Then, in its  
19 non-opposition to Plaintiffs' request to amend their Complaint, CoreCivic again  
20 denied the sufficiency of any class allegations, stating: "CoreCivic does not admit  
21 the sufficiency of the proposed allegations or the validity of the proposed claims,  
22 nor does it waive any defenses." (Dkt. 65 at 1.) In its Answer to Plaintiffs'  
23 Amended Complaint, CoreCivic did not add a new defense, but simply clarified  
24 that it admitted only personal jurisdiction over the Plaintiffs' *individual* claims and  
25 denied personal jurisdiction over the putative nationwide class claims (arising  
26 outside of California). (Dkt. 70, ¶ 5.)

27  
28 Cal. July 10, 2019), the defense is already in CoreCivic's Answer (Dkt. 70 at 3,  
¶ 6).

1 CoreCivic then conducted discovery on the putative nationwide class  
2 allegations in preparation of any motion for class certification, not because it was  
3 consenting to the sufficiency of the class claims or personal jurisdiction over them.  
4 Once Plaintiffs actually moved for class certification, CoreCivic timely raised the  
5 issue, explaining: “Although challenging personal jurisdiction over class claims  
6 before they have been certified may be viewed as premature, courts have approved  
7 such jurisdictional challenges at the class-certification stage.” (Dkt. 117-1.)

8 It would be inequitable to find either waiver or consent given Plaintiffs’ own  
9 litigation conduct. CoreCivic explicitly challenged personal jurisdiction over any  
10 certified nationwide class claims on October 26, 2018. (Dkt. 70.) Because  
11 Plaintiffs’ Amended Complaint superseded the original complaint, CoreCivic  
12 believed in good faith that it did not need leave to amend its Answer to simply  
13 clarify that point. *See Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir.  
14 1997) (“It is well-established in our circuit that an amended complaint supersedes  
15 the original, the latter being treated thereafter as non-existent.”) (internal quotation  
16 marks and citation omitted); *see also Ramirez v. Cty. of San Bernardino*, 806 F.3d  
17 1002, 1008 (9th Cir. 2015) (“In other words, the original pleading no longer  
18 performs any function.”) (internal quotation marks and citation omitted).

19 If Plaintiffs took issue with CoreCivic’s Answer to the Amended Complaint,  
20 they should have raised an objection at that time. Had they done so, CoreCivic  
21 could have then sought leave, a request that is typically granted with “extreme  
22 liberality” in the Ninth Circuit. *See Morongo Band of Mission Indians v. Rose*, 893  
23 F.2d 1074, 1079 (9th Cir 1990); *see also Pearson v. P.F. Chang’s China Bistro,*  
24 *Inc.*, 2015 WL 12910713, at \*\*1-2 (S.D. Cal. Feb. 23, 2015) (explaining that  
25 “delay, by itself, is insufficient to justify denial of leave to amend” and that “it is  
26 the consideration of prejudice to the opposing party that carries the greatest  
27 weight.”) (internal quotation marks omitted); *Aventis Pharma S A v. Amphastar*  
28 *Phars., Inc.*, 2004 WL 7338732, at \*4 (C.D. Cal. July 29, 2004) (denying motion to

1 strike amended answer and granting a “belated” motion for leave to amend where  
2 there was no showing of undue delay, bad faith, futility, and prejudice). Indeed,  
3 CoreCivic did not oppose Plaintiffs’ request to file an Amended Complaint  
4 precisely because of this liberal pleading standard. (Dkt. 65.) Plaintiffs, on the  
5 other hand, sat on their hands only to now object—nearly a year after CoreCivic  
6 filed its Answer.

7 Plaintiffs’ argument that an answer to an amended complaint must be limited  
8 to the amended allegations is also unavailing. District courts approach this issue in  
9 one of three ways: (1) liberally, which permits a defendant to freely amend its  
10 answer without regard to the amended complaint; (2) moderately, which permits the  
11 defendant to amend its answer to reflect those changes in the amended complaint;  
12 or (3) narrowly, which limits the answer only to the scope of the amended  
13 allegations of the complaint. *City of W. Sacramento, California v. R & L Bus.*  
14 *Mgmt.*, 2019 WL 2249630, at \*1 (E.D. Cal. May 23, 2019).

15 The Ninth Circuit has not instructed district courts on which approach to  
16 take, leaving it entirely in their discretion. Although many courts in this Circuit  
17 have elected to take the moderate approach, a recent district court correctly chose  
18 the liberal approach, noting that, while many courts apply the “moderate approach,”  
19 it was important to “remain sensitive to equitable considerations and concerns about  
20 appropriate docket management ....” *City of W. Sacramento*, 2019 WL 2249630, at  
21 \*2. Thus, it allowed the defendant to amend its answer to add a counter-claim  
22 because there was no risk of repetitive amendments. *Id.* The same has been true  
23 here; for the last year, the parties conducted discovery on the allegations in the  
24 Amended Complaint and the Answer to that Complaint. Plaintiffs have not even  
25 attempted to show any prejudice. This Court should follow the liberal approach  
26 and allow the Answer to stand.<sup>2</sup> See *M.M. v. Lafayette Sch. Dist.*, 681 F.3d 1082,

27  
28 <sup>2</sup> Even under the moderate approach, CoreCivic’s personal-jurisdiction clarification  
did not exceed the scope of the amended allegations. The Amended Complaint

1 1091 (9th Cir. 2012) (“It is well established that a district court has broad discretion  
2 to control its own docket.”).

### 3 **III. CORECIVIC APPLIED THE CORRECT STANDARD.**

4 Plaintiffs incorrectly argue that extrinsic evidence of personal jurisdiction  
5 may never be considered under Rule 12(c). But Plaintiffs’ own cited treatise  
6 explains that Rule 12(c) is merely a post-pleading vehicle for raising Rule 12(b)  
7 procedural defenses and does not affect the standard of review. *See* 5C Fed. Prac.  
8 & Proc. Civ. § 1367 (3d ed.). Under Rule 12(b)(2), a court may consider extrinsic  
9 evidence to determine personal jurisdiction without converting it to a motion for  
10 summary judgment. The same standard applies to determining personal jurisdiction  
11 under Rule 12(c).<sup>3</sup> *See Hodjera v. BASF Catalysts LLC*, 2017 WL 3263717, at  
12 \*\*1-3 (W.D. Wash. July 31, 2017); *Kelly v. Stephen S. Kelly*, 911 F. Supp. 518,  
13 521-22 (M.D. Fla. 1995); *Kelly v. Jeffery G. Kelly*, 901 F. Supp. 1567, 1569 (M.D.  
14 Fla. 1995). This Court should not ignore facts that defeat personal jurisdiction.

### 15 **IV. BRISTOL-MEYERS APPLIED SETTLED PRINCIPLES OF SPECIFIC 16 JURISDICTION.**

17 Plaintiffs repeatedly accuse CoreCivic of failing to cite “adverse” and  
18 “controlling authority” that have refused to apply *Bristol-Myers* in class actions.  
19 But they cannot deny that neither the Supreme Court nor the Ninth Circuit (the only  
20 *controlling* authority) have decided this issue, or that this Court is not bound by the  
21 rulings of other district courts. Plaintiffs also ignore the fact that CoreCivic *did*  
22 note that there were contrary district court decisions (albeit distinguishable). (*See*

---

23 added a PAGA claim on behalf of “Plaintiffs Individually *and the Class.*” (Dkt. 64-  
24 4 at 37, emphasis added.) Paragraph 31 of the Amended Complaint defines the  
25 “Class” to include all classes, including the putative nationwide classes. (Dkt. 64-4,  
¶ 31.)

26 <sup>3</sup> Plaintiffs cite *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009), where the  
27 Ninth Circuit declined to consider extrinsic evidence in determining a Rule 12(c)  
28 motion. (Dkt. 134 at 11 n. 25.) But, as even Plaintiffs acknowledge, *Fleming* did  
not involve a challenge to personal jurisdiction. (*See id.*)

1 Dkt. 117-1 at 8 n.1 [noting that “[s]ome courts have declined to follow *Bristol-*  
2 *Myers* in putative class actions [including *Branca v. Bai Brands, LLC*, 2019 WL  
3 1082562 (S.D. Cal. Mar. 7, 2019)], but those cases, unlike this one, involved  
4 challenges of specific jurisdiction based on the putative class members’ residency  
5 or claims arising *inside* California.”].)

6 CoreCivic’s Motion urges this Court to reject those distinguishable cases and  
7 follow the line of cases with similar facts that have applied *Bristol-Myers*’  
8 reasoning to class actions. (*Id.* at 7, citing, *e.g.*, *Petersen v. Costco Wholesale Co.*  
9 *Inc.*, 2019 WL 1715485, at \*5 (C.D. Cal., Jan. 17, 2019), and *Reitman v. Champion*  
10 *Petfoods USA, Inc.*, 2018 WL 4945645, at \*6 (C.D. Cal. Oct. 10, 2018).) Plaintiffs  
11 ignore these other district court cases entirely.

12 **A. This Court Lacks Nationwide Personal Jurisdiction.**

13 Plaintiffs’ reliance on *In re Morning Song Bird Food Litigation*, 2018 WL  
14 1382746 (S.D. Cal. Mar. 19, 2018), and *In re Packaged Seafood Products Antitrust*  
15 *Litigation*, 338 F. Supp. 3d 1118 (S.D. Cal. 2018), is misplaced. Both cases  
16 involved particular statutes not at issue here. *In re Morning Song Bird* was a class  
17 action brought under RICO, which provides nationwide personal jurisdiction.<sup>4</sup> *See*  
18 *Doe v. Unocal Corp.*, 27 F. Supp. 2d 1174, 1182 (C.D. Cal. 1998) (“Where a  
19 defendant is properly served in the United States under RICO’s nationwide service  
20 provision, that defendant’s national contacts, rather than its minimum contacts with  
21 the forum state, determine whether the district court has personal jurisdiction over  
22 the defendant.”). Similarly, *In re Packaged Seafood* was a multi-district litigation  
23 case, where this Court found that it lacked personal jurisdiction over the non-  
24 resident plaintiffs’ *state law* claims but had *nationwide* personal jurisdiction over

25 \_\_\_\_\_  
26 <sup>4</sup> In fact, in *In re Morning Song Bird*, the district court acknowledged that *Bristol-*  
27 *Myers* was “arguably instructive to federal courts evaluating the exercise of  
28 personal jurisdiction under [California’s long arm statute],” but it declined to  
extend the same analysis to a class action, noting that the Supreme Court left open  
the question. 2018 WL 1382746, \*5.

1 their *federal* antitrust claims. 338 F. Supp. 3d at 1173. Thus, it exercised pendent  
2 personal jurisdiction over the state-law claims, finding they arose from the same  
3 nucleus of operative facts as the federal claims. *Id.*

4 Unlike those cases, this Court lacks nationwide personal jurisdiction over the  
5 putative nationwide class members' TVPA claims. Nationwide personal  
6 jurisdiction exists only upon service or waiver of service "when authorized by a  
7 federal statute." Fed.R.Civ.P. 4(k)(1)(C). "For a claim that arises under federal  
8 law, serving a summons or filing a waiver of service establishes personal  
9 jurisdiction over a defendant if: (A) the defendant is not subject to jurisdiction in  
10 any state's courts of general jurisdiction; and (B) exercising jurisdiction is  
11 consistent with the United States Constitution and laws." Fed.R.Civ.P. 4(k)(2).

12 Here, nationwide personal jurisdiction does not exist under Rule 4(k)(1)(C),  
13 because the TVPA itself expressly limits the filing of a cause of action to "an  
14 *appropriate* district court." 18 U.S.C. § 1595(a) (emphasis added). That language  
15 implies a limitation on the Court's exercise of personal jurisdiction over a non-  
16 resident defendant. *See United States ex rel. Silingo v. Mobile Med. Examination*  
17 *Servs., Inc.*, 2015 WL 12752552, at \*4 (C.D. Cal. Sept. 29, 2015) (defining  
18 "appropriate district court" in service requirement of the False Claim Act as  
19 limiting "the exercise of personal jurisdiction"). Nationwide personal jurisdiction  
20 also fails under Rule 4(k)(2), because CoreCivic is subject to general jurisdiction in  
21 Maryland and Tennessee, and exercising personal jurisdiction elsewhere would be  
22 inconsistent with the Congressional intent against nationwide personal jurisdiction  
23 under § 1595, which limits the filing of TVPA to the "appropriate district court."

24 **B. This Court Lacks Pendent Personal Jurisdiction.**

25 Plaintiffs concede that "pendent jurisdiction involves state-law claims," but  
26 ask the Court to exercise pendent personal jurisdiction over the putative class  
27 members' *federal* claims anyway. (Dkt. 134 at 23 n.31.) But this Court lacks the  
28 predicate requirement of nationwide personal jurisdiction over Plaintiffs' TVPA

1 claims. *See Action Embroidery Corp. v. Atl. Embroidery, Inc.*, 368 F.3d 1174,  
2 1181-82 (9th Cir. 2004) (“Pendent personal jurisdiction is typically found where  
3 one or more federal claims for which there is nationwide personal jurisdiction are  
4 combined in the same suit with one or more state or federal claims *for which there*  
5 *is not nationwide personal jurisdiction.*”) (emphasis added).

6 Moreover, the challenged putative class claims do not arise out of the same  
7 nucleus of operative facts as Plaintiffs’ individual claims, but are instead based on  
8 distinct conduct at different facilities in different states and at different times. This  
9 Court should further decline pendent personal jurisdiction for all the reasons that  
10 counsel against the exercise of specific jurisdiction over those putative class claims.  
11 *See id.* at 1181 (holding a “district court may have discretion to dismiss the pendent  
12 claims where ‘considerations of judicial economy, convenience and fairness to  
13 litigants’ so dictate”). As discussed in the Motion and below, those settled  
14 principles show that this Court lacks personal jurisdiction over those claims.

15 **C. Exercising Personal Jurisdiction Over the Putative Nationwide**  
16 **Class Claims Would Violate Due Process.**

17 **1. CoreCivic is not “at home” in California.**

18 Plaintiffs incorrectly argue that general jurisdiction exists simply because  
19 CoreCivic has “continuous and systematic” business contacts in California  
20 *unrelated* to their claims. But Plaintiffs ignore *Williams v. Yamaha Motor Co.*, 851  
21 F.3d 1015, 1021 (9th Cir. 2017), where the Ninth Circuit explained that the  
22 Supreme Court “rejected a theory that would permit ‘the exercise of general  
23 jurisdiction in every State in which a corporation engages in a substantial,  
24 continuous, and systematic course of business....’” *Id.* (citing *Daimler AG v.*  
25 *Bauman*, 571 U.S. 117, 137 (2014)).

26 In *Daimler*, the Supreme Court rejected general jurisdiction based solely on  
27 “doing business” in the forum. The Supreme Court explained that “the words  
28 ‘continuous and systematic’ were used ... to describe instances in which the

1 exercise of *specific* jurisdiction would be appropriate ....” *Id.* 571 U.S. at 139 &  
2 n.18 (citation omitted and emphasis added). “General jurisdiction instead calls for  
3 an appraisal of a corporation’s activities in their entirety, nationwide and  
4 worldwide” to determine whether those activities are so substantial in the forum as  
5 to render it “at home” there. It further explained that “[a] corporation that operates  
6 in many places can scarcely be deemed at home in all of them. Otherwise, ‘at  
7 home’ would be synonymous with ‘doing business’ tests framed before specific  
8 jurisdiction evolved in the United States.” *Id.* at 139 n.20. The Supreme Court thus  
9 refused to look beyond the two paradigms of general jurisdiction (place of  
10 incorporation and principal place of business) and find “general jurisdiction in  
11 every State in which a corporation ‘engages in a substantial, continuous, and  
12 systematic course of business,’” holding such a “formulation ... is unacceptably  
13 grasping.” *Id.* at 138.

14 Here, CoreCivic’s unrelated business contacts with CDCR are insufficient to  
15 establish that it is “at home” in California so as to permit anyone to sue it there for  
16 conduct occurring anywhere in the world. *See Daimler*, 571 U.S. at 139 (“It is one  
17 thing to hold a corporation answerable for operations in the forum State, quite  
18 another to expose it to suit on claims having no connection whatever to the forum  
19 State.”) (internal citation omitted).<sup>5</sup>

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23 <sup>5</sup> For instance, the Supreme Court has rejected a court’s exercise of general  
24 jurisdiction based on far more “continuous and systematic” business contacts than  
25 Plaintiffs allege here. *See, e.g., BNSF Ry. Co. v. Tyrell*, 137 S. Ct. 1549, 1554  
26 (2017) (holding Montana court lacked general jurisdiction over railroad company  
27 that operated railroad lines in 28 States, had 2,061 miles of railroad track (about 6%  
28 of its total track mileage of 32,500), employed 2,100 workers (less than 5% of its  
total work force of 43,000), generated less than 10% of its total revenue, and  
maintained only one of its 24 automotive facilities in Montana (4%)).



1                   **2. The Court lacks specific jurisdiction over putative class**  
 2                   **claims arising at facilities outside California.**

3                   Plaintiffs argue that CoreCivic purposefully directed its activities at  
 4 California based on the allegations of their individual claims. But Plaintiffs have  
 5 not argued, much less shown jurisdictional facts, that CoreCivic’s conduct at  
 6 facilities in other states was purposefully directed at California.

7                   Plaintiffs’ list of conclusory arguments regarding the other factors are  
 8 unavailing. That Plaintiffs sued CoreCivic in California to take advantage of its  
 9 more favorable laws does not somehow make it a “minimal burden” on CoreCivic  
 10 to litigate a nationwide class action based on conduct that allegedly occurred at 21  
 11 facilities in 10 *other* states.<sup>6</sup> Nor does it make it “more convenient and efficient” to  
 12 litigate claims having no ties to the forum simply because CoreCivic has already  
 13 been sued here. And it certainly does not diminish those 10 other states’ competing  
 14 interests in regulating conduct that allegedly occurred in their jurisdictions.

15                   While Plaintiffs argue that their nationwide class claims are based on a  
 16 “common” or “national” policy, there is no evidence the alleged policy was created  
 17 in California. If such a policy exists, and CoreCivic created it, then the conduct  
 18 giving rise to the claims occurred in Tennessee, where CoreCivic is principally  
 19 located. Thus, California has no more *meaningful* connection to the putative  
 20 nationwide class claims than the 10 other states where CoreCivic has ICE facilities.  
 21 The Court therefore lacks specific jurisdiction for *those* claims under the same  
 22 settled principles that the Supreme Court applied in *Bristol-Myers*.

23                   **D. Plaintiffs Fail to Meaningfully Distinguish *Bristol-Myers*.**

24                   Plaintiffs try to avoid this result but fail to meaningfully distinguish *Bristol-*  
 25 *Myers*, which applied these settled principles:

26                   Our settled principles regarding specific jurisdiction  
 27 control this case. In order for a court to exercise specific

28 <sup>6</sup> Those states include Arizona, Florida, Georgia, Mississippi, New Jersey, New Mexico, Nevada, Ohio, Tennessee, and, Texas.

1 jurisdiction over a claim, there must be an “affiliation  
2 between the forum and the underlying controversy,  
3 principally, [an] activity or an occurrence that takes place  
4 in the forum State.” When there is no such connection,  
5 specific jurisdiction is lacking regardless of the extent of a  
6 defendant’s unconnected activities in the State.

7 *Bristol-Myers Squibb Company v. Superior Court of California*, 137 S. Ct. 1773,  
8 1781 (2017) (internal citations omitted).

9 Plaintiffs misconstrue dictum that the Supreme Court left “open the question  
10 whether the Fifth Amendment imposes the same restrictions on the exercise of  
11 personal jurisdiction by a federal court,” *Bristol-Myers*, 137 S. Ct. at 1784, as  
12 permitting the federal court’s exercise of personal jurisdiction in any federal district  
13 court so long as the lawsuit raises a federal question because there is no inter-  
14 sovereign immunity concerns. But that statement did not refer to the federal court’s  
15 authority to hear a federal question (subject matter jurisdiction) but rather the  
16 plaintiff’s theory of *nationwide* personal jurisdiction noted in *Omni Capital Int’l,*  
17 *Ltd. v. Rudolf Wolff & Co., Ltd.*, 484 U.S. 97, 103 n.5 (1987). In *Omni*, the plaintiff  
18 argued that the district court should consider a British company’s aggregate  
19 contacts with the United States rather than the state forum in which the federal  
20 court sits to determine personal jurisdiction. The Supreme Court, however,  
21 expressly declined to address that theory. 484 U.S. at 103 n.5.

22 Whether this Court may exercise personal jurisdiction over an alien  
23 corporation under the Fifth Amendment is irrelevant because CoreCivic is a  
24 Maryland corporation and principally located in Tennessee. And as discussed  
25 above, this Court lacks nationwide personal jurisdiction over CoreCivic. *See Am.*  
26 *Tel. & Tel. Co. v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 590 (9th Cir. 1996)  
27 (“As the advisory committee notes [to Rule 4(k)(2)] explain, however, the new rule  
28 authorizes jurisdiction in federal question cases over defendants who have  
significant nationwide contacts *but are not subject to jurisdiction in any state.*”)  
(emphasis added).

1 Plaintiffs do not dispute that *Bristol-Myers*' reasoning applies to class actions  
2 where federal courts sit in diversity. (Dkt. 134 at 13). Plaintiffs argue, however,  
3 that *Bristol-Myers* does not "categorically apply" to federal question cases.  
4 Plaintiffs quote the analysis in *Sloan v. General Motors LLC*, 287 F. Supp. 3d 840,  
5 859 (N.D. Cal. 2018), that the same inter-sovereignty concerns discussed in *Bristol-*  
6 *Myers* do not apply to federal courts deciding a federal question. But Plaintiffs fail  
7 to quote the holding that immediately follows that quote: "Without those same  
8 federalism concerns, the due process analysis falls back on whether 'the  
9 maintenance of the suit ... offend[s] traditional notions of fair play and substantial  
10 justice,' which itself focuses on the burden on the defendant (other than a concern  
11 about subjecting it to the power of a foreign sovereign)." *Sloan*, 287 F. Supp. 3d at  
12 859. Because *Bristol-Myers* was a straightforward application of those traditional  
13 principles of specific jurisdiction, its reasoning applies with equal force here.

14 Plaintiffs confuse and improperly conflate subject matter jurisdiction to hear  
15 a federal question with personal jurisdiction over parties to argue that raising any  
16 federal question in a district court automatically results in personal jurisdiction over  
17 a non-resident defendant. Accepting that argument would render the due process  
18 requirements of personal jurisdiction an empty promise in federal courts whenever  
19 subject matter jurisdiction exists. The obvious danger is forum shopping by  
20 plaintiffs who choose to bring a federal claim in a particular forum just to take  
21 advantage of more favorable state laws regardless of where the claim arose.

22 Plaintiffs' argument that *Bristol-Myers*' due process restrictions apply only to  
23 state courts also fails. Because CoreCivic is not a California citizen, and there is no  
24 federal statute providing for nationwide personal jurisdiction that would implicate  
25 the Fifth Amendment, due process requires that this Court apply California's long-  
26 arm statute in determining personal jurisdiction over CoreCivic. Accordingly, the  
27 same "territorial limitations" on a California court discussed in *Bristol-Myers* apply  
28 equally to this Court. CoreCivic is thus entitled to the due process protections of

1 that limitation on the court’s personal jurisdiction over claims that are brought  
2 individually *or* on behalf of a putative class. *See In re Dental Supplies Antitrust*  
3 *Litig.*, 2017 WL 4217115, at \*9 (E.D.N.Y. Sept. 20, 2017) (“Plaintiffs attempt to  
4 side-step the due process holdings in *Bristol-Myers* by arguing that the case has no  
5 effect on the law in class actions because the case before the Supreme Court was  
6 not a class action. This argument is flawed. The constitutional requirements of due  
7 process does [sic] not wax and wane when the complaint is individual or on behalf  
8 of a class. Personal jurisdiction in class actions must comport with due process just  
9 the same as any other case.”); *see also Roy v. FedEx Ground Package Sys., Inc.*,  
10 353 F. Supp. 3d 43, 56 (D. Mass. 2018) (collecting cases holding the same).

11 **V. ADDITIONAL DISCOVERY WILL NOT CURE THE DEFECT IN**  
12 **PERSONAL JURISDICTION.**

13 Plaintiffs argue in the alternative that they should be permitted additional  
14 discovery on personal jurisdiction, but they have not identified what facts would  
15 cure the jurisdictional defect. There is no dispute that CoreCivic is incorporated in  
16 Maryland and principally located in Tennessee. Nor is there any dispute that the  
17 challenged putative class claims arose from conduct that occurred at facilities  
18 outside California and are not directed at this forum. To the extent Plaintiffs argue  
19 their individual claims are based on a national policy, it is undisputed that such a  
20 policy would have been created in Tennessee. Additional discovery will not change  
21 the fact that this Court lacks both general and specific jurisdiction over the putative  
22 class claims arising outside California.

23 **VI. CONCLUSION**

24 For these reasons, and those stated in its Motion, the Court should dismiss  
25 the putative nationwide class claims arising outside of California for lack of  
26 personal jurisdiction.  
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Dated: September 26, 2019

By s/ Daniel P. Struck

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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**

26  
 27  
 28

1 CoreCivic, Inc., a Maryland  
 2 corporation,  
 3  
 4 Counter-Claimant,  
 5  
 6 v.  
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 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  
 17 September 26, 2019, I served the following document(s):

18  
 19 **DEFENDANT’S REPLY IN SUPPORT OF MOTION FOR**  
 20 **JUDGMENT ON THE PLEADINGS**  
 21 **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  
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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 26, 2019, at Chandler, Arizona.

s/ Daniel P. Struck