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JONATHAN GOMEZ, and the Proposed Class(es)

13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 SYLVESTER OWINO and JONATHAN)
16 GOMEZ, on behalf of themselves and all)
others similarly situated,)

17 Plaintiffs,)

18 vs.)

19 CORECIVIC, INC.,)

20 Defendant.)

21 CORECIVIC, INC.,)

22 Counter-Claimant,)

23 vs.)

24 SYLVESTER OWINO and JONATHAN)
25 GOMEZ, on behalf of themselves and all)
26 others similarly situated,)

27 Counter-Defendants.)
28

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

CLASS ACTION

**SUPPLEMENTAL BRIEF IN
SUPPORT OF PLAINTIFFS'
MOTION FOR CLASS
CERTIFICATION**

Date: December 19, 2019
Time: 2:30 p.m.
Place: Courtroom 4D

Judge: Hon. Janis L. Sammartino
Magistrate: Hon. Nita L. Stormes

DEMAND FOR JURY TRIAL

1 **I. INTRODUCTION**

2 Pursuant to the Court’s Order: (1) Ordering Additional Briefing On Plaintiffs’
3 Motion For Class Certification, And (2) Continuing Hearing (Dkt. 143) (the “Order”),
4 Plaintiffs hereby submit this Supplemental Brief on the issue of Article III standing. As an
5 initial matter, Plaintiffs note that, in addition to their claims for prospective equitable relief,
6 Plaintiffs seek monetary damages, restitution, interest, penalties, punitive damages, and
7 fees and costs. As to these forms of relief, Plaintiffs possess Article III standing because
8 they suffered a particularized and concrete injury-in-fact resulting from CoreCivic’s
9 challenged policies and practices, and the proposed classes should be certified as to claims
10 seeking these forms of relief.

11 Further, Plaintiffs satisfy the requirement of Article III standing for their claims for
12 injunctive and declaratory relief because (1) the statutes under which they brought suit
13 authorize prospective equitable relief without any additional harm beyond the unlawful
14 conduct itself, and (2) the significant likelihood that Plaintiffs will be harmed again in a
15 similar way by CoreCivic’s challenged policies and practices. In the event that the Court
16 finds that Plaintiffs lack Article III standing for their claims for injunctive and equitable
17 relief, Plaintiffs’ counsel have already been retained by another former detainee at Otay
18 Mesa Detention Center who also possesses Article III standing and is willing to join the
19 case as a Plaintiff and serve as a Class Representative. Thus, Plaintiffs should be allowed
20 to amend their First Amended Complaint (“FAC”) to include additional named plaintiffs.

21 **II. ARGUMENT**

22 **A. Plaintiffs Possess Article III Standing To Pursue Their Claims For**
23 **Monetary Damages, Restitution, Interest, Penalties, Punitive Damages,**
24 **And Fees And Costs.**

25 For each of the five proposed classes, Mr. Owino and Mr. Gomez seek monetary
26 damages, restitution, interest, penalties, punitive damages, and fees and costs. [Dkt. 67
27 (FAC) at 15: 49-51, 19:61-62, 20:70, 21:74-75, 22:79, 23:86, 25:92-93, 30:119, 31:127-
28 32:128.] It is undisputed that both Plaintiffs were injured as a direct result of CoreCivic’s

1 challenged policies and practices while they were detained at a CoreCivic facility. First,
2 Plaintiffs were not paid minimum or overtime wages as mandated by the California Labor
3 Code and IWC Wage Order No. 5-2001 for their work, and both were subject to unlawful
4 conditions of employment by CoreCivic’s failure to provide meal and rest periods, or
5 furnish wage statements. Second, CoreCivic obtained both free and undercompensated
6 labor from Plaintiffs through its policy and practice of (1) threatening ICE detainees with
7 discipline if they did not comply with CoreCivic’s orders to work for CoreCivic’s benefit,
8 and (2) depriving ICE detainees of basic living necessities to coerce them into joining
9 CoreCivic’s “Voluntary Work Program” (“VWP”) so that they could afford basic living
10 necessities—which are only available through CoreCivic’s commissary.

11 Both Plaintiffs suffered a concrete and particularized injury-in-fact, which is directly
12 traceable to CoreCivic’s policies and practices and can be redressed by a favorable ruling.
13 Thus, Plaintiffs possess Article III standing to seek monetary damages, restitution, interest,
14 penalties, punitive damages, and fees and costs for CoreCivic’s violations of the California
15 Labor Code, IWC Wage Order No. 5-2001, the Federal TVPA, and the California TVPA.
16 *Wisdom v. Easton Diamond Sports, LLC*, No. CV 18-4078 DSF (SSx), 2019 U.S. Dist.
17 LEXIS 24500, at *4 (C.D. Cal. Feb. 11, 2019) (holding that to have Article III standing, a
18 plaintiff “must demonstrate an (i) injury-in-fact, (ii) that is causally connected to the
19 Defendant, and (iii) likely to be redressed by a favorable decision”) (citing *Lujan v.*
20 *Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). Plaintiffs also possess Article III
21 standing to seek restitution for violations of California’s Unfair Competition Law (Cal.
22 Bus. & Prof. Code § 17200, *et seq.*) (“UCL”), as well as unjust enrichment. *See Torrent v.*
23 *Yakult U.S.A., Inc.*, No. SACV 15-00124-CJC(JCGx), 2016 U.S. Dist. LEXIS 130700, at
24 *7-8 (S.D. Cal. Jan. 5, 2016) (holding that Article III standing exists to pursue “UCL claim
25 and to seek restitution” where plaintiff was injured by defendant’s misrepresentations and
26 the injury can be redressed “by a favorable ruling awarding restitution”).

27 Thus, at a minimum, Plaintiffs’ Motion for Class Certification should be granted as
28 to class claims seeking monetary damages, restitution, interest, penalties, punitive

1 damages, and fees and costs. *Tschudy v. J.C. Penney Corp., Inc.*, No. 11-cv-1011 JM
 2 (KSC), 2014 U.S. Dist. LEXIS 174382, at *19 (S.D. Cal. Dec. 17, 2014) (certifying class
 3 action and appointing plaintiffs as class representatives as to their “claims for damages,
 4 penalties, restitution, disgorgement, and fees and costs,” even though plaintiffs were
 5 deemed to “not have standing to seek injunctive relief”).¹

6 **B. Plaintiffs Possess Article III Standing To Pursue Their Claims For**
 7 **Prospective Equitable Relief.**

8 The Court correctly notes that Plaintiffs seek injunctive relief for violations of the
 9 Federal TVPA, California TVPA, and the UCL, as well as declaratory relief through their
 10 claims for violations of the Federal TVPA and California TVPA. [Dkt. 143 at 2:17-20.]
 11 The Court is also correct that Mr. Owino’s and Mr. Gomez’s respective detentions ended
 12 prior to May 31, 2017, when they filed this lawsuit. [*Id.* at 2:23-26.] Even though Plaintiffs
 13 were released from CoreCivic’s custody prior to the filing of their original complaint,
 14 Plaintiffs nevertheless have Article III standing to pursue their claims for prospective
 15 equitable relief.

16 The Supreme Court has recognized that “[t]he violation of a procedural right granted
 17 by statute can be sufficient in some circumstances to constitute injury in fact,” and that “in
 18 such a case, a plaintiff need not allege any *additional* harm beyond the one identified by
 19

20
 21 ¹ In the Order, the Court cites to *Balasanvan v. Nordstrom, Inc.*, 294 F.R.D. 550 (S.D. Cal.
 22 2013) for the proposition that the “[‘Maraventano Plaintiffs’] who were former employees
 23 of the defendant could ‘[]not establish a sufficient likelihood that they w[ould] again be
 24 wronged by [the defendant employer]’s allegedly improper conduct,’ meaning that the
 25 plaintiffs ‘ha[d] no standing to pursue injunctive relief and, therefore, their claims are not
 26 typical of the proposed class.’ *Balasanvan*, 294 F.R.D at 562. Although the Maraventano
 27 Plaintiffs lacked standing to seek injunctive relief, the Court nevertheless certified them as
 28 class representatives as to other forms of relief sought because the Maraventano Plaintiffs’
 individual claims were typical of the proposed class. *Id.* at 574. Indeed, the typicality
 inquiry “refers to the nature of the claim or defense of the class representative, and not to
 the specific facts from which it arose or the relief sought.” *Hanon v. Dataproducts Corp.*,
 976 F.2d 497, 508 (9th Cir. 1992) (internal quotation marks omitted). Even if the Court
 held that Plaintiffs lacked Article III standing to seek prospective injunctive relief, that
 finding would not preclude certification of the five proposed classes as to Plaintiffs’ other
 remedies. Further, this matter is distinguishable from *Balasanvan* in that Plaintiffs were
 involuntarily detained and face the threat of future detainment in the same conditions. In
Balasanvan, the Maraventano Plaintiffs were merely former commission-based employees
 who were not paid for pre- and post-closing hours.

1 Congress.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1543-44 (2016) (citing *Federal*
2 *Election Comm’n v. Akins*, 524 U.S. 11, 20-25 (1998)). As discussed above, Plaintiffs have
3 suffered actual injury as a result of CoreCivic’s challenged policies and practices, and the
4 statutes under which they sue authorize and confer standing for prospective equitable relief
5 for victims of human trafficking and unlawful or unfair business practices based on a past
6 harm. *See, e.g.*, Cal. Civ. Code § 52.5(a) (“A victim of human trafficking . . . may bring a
7 civil action for actual damages, compensatory damages, punitive damages, injunctive
8 relief, any combination of those, or any other appropriate relief.”); Cal. Bus. & Prof. Code
9 § 17203 (“Any person who engages, has engaged, or proposes to engage in unfair
10 competition may be enjoined in any court of competent jurisdiction. The court may make
11 such orders or judgments . . . as may be necessary to prevent the use or employment by any
12 person of any practice which constitutes unfair competition . . .”). No “*additional harm*”
13 is required under *Spokeo*.

14 A narrower construction of Article III standing would be particularly impracticable
15 in the context of human trafficking claims arising from forced labor, as trafficking victims
16 by definition rarely would have the ability, or access to the resources necessary, to pursue
17 a claim for prospective equitable relief while captive or otherwise living under coercion or
18 duress. Because Plaintiffs were actually harmed by conduct proscribed by statute, and
19 those statutes authorize prospective equitable relief, Plaintiffs possess Article III standing
20 to pursue recovery in the form of injunctive and declaratory relief on behalf of themselves
21 and the proposed classes. *See Ingalls v. Spotify USA, Inc.*, 2017 U.S. Dist. LEXIS 110817,
22 *14-18 (N.D. Cal. July 17, 2017) (“If this order were to construe Article III standing as
23 narrowly as defendant advocates, federal courts could never enjoin Section 17200 claims.
24 Such holding ‘would eviscerate the intent of the California Legislature.’” (citing *Ries v.*
25 *Arizona Beverages USA LLC*, 287 F.R.D. 523, 533 (N.D. Cal. 2012)).

26 ///

27 ///

28 ///

1 **C. Plaintiffs Can Plead Article III Standing To Pursue Their Claims For**
2 **Prospective Equitable Relief Based On The Threat Of Repeated Injury.**

3 Plaintiffs' claims for prospective equitable relief are further supported by the threat
4 of repeated injury caused by CoreCivic. The Ninth Circuit recognizes that Article III
5 standing exists where, as here, there is "a sufficient likelihood that [plaintiff] will again be
6 wronged in a similar way." *Davidson v. Kimberly-Clark Corp.*, 873 F.3d 1103, 1113 (9th
7 Cir. 2017) (citing *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983)). In determining
8 whether an injury is similar, the Ninth Circuit has instructed that courts "must be careful
9 not to employ too narrow or technical an approach. Rather, we must examine the questions
10 realistically: we must reject the temptation to parse too finely, and consider instead the
11 context of the inquiry." *Id.* (citing *Armstrong v. Davis*, 275 F.3d 849, 867 (9th Cir. 2001)).

12 Plaintiffs respectfully submit to the Court that they can amend the FAC to add the
13 following allegations, which would clarify Plaintiffs' standing to pursue claims for
14 prospective equitable relief:

- 15 • Mr. Owino is currently seeking asylum, and therefore does not have lawful
16 status in the United States. [Supplemental Declaration of Sylvester Owino
17 ("Owino Decl."), ¶ 5.] Consequently, Mr. Owino is subject to detainment by
18 ICE at any time.
- 19 • Mr. Gomez currently holds a green card, but that has not precluded him from
20 detainment by ICE. [Supplemental Declaration of Jonathan Gomez ("Gomez
21 Decl."), ¶¶ 5 – 6.]
- 22 • The Trump Administration has detained and continues to detain immigrants
23 based on their immigration status, even when they are seeking asylum. *See,*
24 *e.g.*, Christina Goldbaum, "I Don't Want to Die': Asylum Seekers Once in
25 Limbo, Face Deportation Under Trump," N.Y. Times (online, April 21, 2019),
26 *available at* [https://www.nytimes.com/2019/04/21/nyregion/asylum-seekers-](https://www.nytimes.com/2019/04/21/nyregion/asylum-seekers-deportation.html)
27 [deportation.html](https://www.nytimes.com/2019/04/21/nyregion/asylum-seekers-deportation.html) (last visited November 15, 2019).
- 28 • Consistent with this reality, Mr. Owino has been detained by ICE for an

1 extensive period of time, and has been transferred between various detention
2 facilities during that time. [Owino Decl., ¶¶ 3 – 4.] And as noted above, Mr.
3 Gomez was detained by ICE despite having a valid green card. [Gomez Decl.,
4 ¶¶ 5 – 6.]

- 5 • Mr. Owino has spent nine and a half years in ICE custody. For seven of those
6 nine and a half years, Mr. Owino was detained and transferred among
7 CoreCivic facilities and subject to CoreCivic’s challenged policies and
8 practices. [Owino Decl., ¶¶ 3 – 4, 7.]
- 9 • Mr. Gomez has spent 15 months in ICE custody, was detained at a CoreCivic
10 facility during all of that time, and was subject to CoreCivic’s challenged
11 policies and practices. [Gomez Decl., ¶¶ 3, 8.]
- 12 • Mr. Owino and Mr. Gomez have reasonable, deeply held concerns and fears
13 that they will be detained in the future based on their prior periods of
14 detainment and the current policies of the Trump administration. [Owino
15 Decl., ¶¶ 6 – 11; Gomez Decl., ¶¶ 6 – 13.]
- 16 • Based on Mr. Owino and Mr. Gomez’s prior experience, they also have a
17 reasonable belief that they will be detained at a CoreCivic facility because
18 both Mr. Owino and Mr. Gomez are residents of San Diego County,
19 California, and Otay Mesa Detention Center would almost certainly be their
20 initial point of detainment. [Owino Decl., ¶ 11; Gomez Decl., ¶ 13.]
- 21 • CoreCivic’s challenged policies and practices continue to this date.

22 As a result, there is a “sufficient likelihood” that both Plaintiffs will be detained at a
23 CoreCivic facility in the future and subject to CoreCivic’s challenged policies and
24 practices. *See Davidson*, 873 F.3d at 1113. The fact that Mr. Owino has already been
25 detained at a CoreCivic facility for an extensive period of time, combined with his current
26 unlawful status in the United States while he awaits adjudication of his asylum petition,
27 “strongly undermines” any “contention that a repeat detention is ‘highly unlikely.’”
28 *Creedle v. Miami-Dade Cty.*, 349 F. Supp. 3d 1276, 1288 (S.D. Fla. 2018). The same is

1 true for Mr. Gomez who, in spite of holding a green card, has still been subject to
2 detainment by ICE. *See id.*

3 **D. If The Court Finds That Plaintiffs Do Not Possess Article III Standing,**
4 **The Deficiency Is Readily Curable By The Addition Of A New Plaintiff**
5 **And Class Representative.**

6 As noted in Plaintiffs' Reply Brief in Support of Motion for Class Certification [Dkt.
7 127:9-12], Plaintiffs' counsel have been retained by a former detainee and putative class
8 member, Achiri Nelson Geh, who was subject to and harmed by the same policies and
9 practices as Plaintiffs while detained at Otay Mesa Detention Center between April 24,
10 2017 and October 28, 2019. [Declaration of Achiri Nelson Geh ("Geh Decl."), ¶¶ 2 – 15.]

11 If the Court determines that neither Plaintiff has standing to seek prospective
12 equitable relief, Mr. Geh, who is already a member of all five putative classes, should be
13 permitted to join the case as a named Plaintiff and to serve as a Class Representative in this
14 action. "Standing is satisfied if at least one named plaintiff meets the requirements" of
15 Article III. *McCurley v. Royal Seas Cruises, Inc.*, 331 F.R.D. 142, 160 (S.D. Cal. Mar. 27,
16 2019) (citing *Stearns v. Ticketmaster Corp.*, 655 F.3d 1013, 1021 (9th Cir. 2011); *In re*
17 *Cathode Ray Tube (CRT) Antitrust Litig.*, 308 F.R.D. 606, 619 (N.D. Cal. 2015)). Here,
18 Mr. Geh was detained at Otay Mesa Detention Center at the time Plaintiffs filed their
19 original complaint on May 31, 2017 and their operative FAC on October 12, 2018. [Dkt.
20 1, 67.] As a result, Mr. Geh would possess Article III standing to seek prospective equitable
21 relief because "[a] plaintiff's standing is assessed as of the time an action was initiated and
22 is unaffected by subsequent developments." *Hernandez v. Lynch*, No. EDCV 16-00620-
23 JGB (KKx), 2016 U.S. Dist. LEXIS 191881, at *37 (C.D. Cal. Nov. 10, 2016) (citing *D'Lil*
24 *v. Best W. Encina Lodge & Suites*, 538 F.3d 1031, 1036 (9th Cir. 2008)).

25 The fact that Mr. Geh was recently released from CoreCivic's custody further
26 supports Mr. Geh's standing to pursue prospective equitable relief. Like Mr. Owino, Mr.
27 Geh is an asylum seeker and does not have lawful status in the United States and can be
28 imminently detained at any time. [Geh Decl., ¶¶ 16 – 17.] Moreover, Mr. Geh is currently

1 required to wear an ankle bracelet so that ICE can confirm his location at all times, which
2 makes the threat of future detainment at a CoreCivic facility even more tangible and easy
3 to effectuate. [*Id.*] Based on Mr. Geh’s prior periods of detention at a CoreCivic facility,
4 he possesses a reasonable belief that he will be detained again and sent to a CoreCivic
5 facility, where he will again be exposed to CoreCivic’s unlawful policies and practices
6 concerning detainee labor. [*Id.*]

7 Mr. Geh’s recent release from his detainment at a CoreCivic facility also does not
8 moot Mr. Geh’s claims for prospective equitable relief because his claims are necessarily
9 “transitory” and may evade review. *See Wade v. Kirkland*, 118 F.3d 667, 670 (9th Cir.
10 1997) (holding that the release of a pre-trial detainee appears to present the “classic
11 example of a transitory claim” that would allow the Court to “validly certify a class on
12 remand, even though the named plaintiff’s claims are already moot, since the relation back
13 doctrine will relate to [the plaintiff’s] standing at the outset of the case” (quotation and
14 citation omitted)); *Hernandez*, 2016 U.S. Dist. LEXIS 191881, at *39 (holding that “where
15 a plaintiff’s claim becomes moot while he seeks to certify a class” because the plaintiff has
16 been released from custody, “his action will not be rendered moot if his claims are
17 ‘inherently transitory’ (such that the trial court could not have ruled on the motion for class
18 certification before his or her claim expired), as similarly-situated class members would
19 have the same complaint” (citing *Pitts v. Terrible Herbst, Inc.*, 653 F.3d 1081, 1090-91
20 (9th Cir. 2011))).

21 Finally, Plaintiffs note that there are putative class members who are presently
22 detained at CoreCivic’s facilities who also have Article III standing to assert a claim for
23 prospective equitable relief. If the Court is not inclined to permit Mr. Geh to join the case
24 as a Plaintiff and serve as a Class Representative, Plaintiffs’ counsel request the
25 opportunity to investigate and interview putative class members presently detained who
26 would have standing to serve as a Plaintiff and Class Representative for prospective
27 equitable relief.² To date, CoreCivic has effectively blocked Plaintiffs’ counsel from
28

² Plaintiffs further note that at least three members of Plaintiffs’ putative classes from the

1 accessing and interviewing presently detained putative class members, and Plaintiffs’
2 counsel respectfully request an order permitting them to speak with detained putative class
3 members during a site inspection that will be scheduled as soon as possible at CoreCivic’s
4 Otay Mesa Detention Center.

5 **III. CONCLUSION**

6 For the reasons discussed above, Plaintiffs respectfully submit to the Court that they
7 possess Article III standing to assert the relief sought in their First Amended Complaint.
8 If the Court ultimately finds to the contrary, Plaintiffs respectfully request that the Court
9 permit Mr. Geh to intervene as a Plaintiff and Class Representative in this action, or order
10 any further relief that the Court deems just and appropriate.

11 DATED: November 15, 2019

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JONATHAN GOMEZ, and the Proposed
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27 _____
28 stayed *Gonzalez, et al., v. CoreCivic, Inc.* action, Case No. 17-CV-2573 JLS (NLS), filed
suit while they were detained at CoreCivic’s Otay Mesa Detention Center. These three
putative class members could also join the Plaintiffs in the instant action in order to
preserve the claims for prospective equitable relief.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on November 15, 2019, to all counsel of record who are deemed to have consented to electronic service via the Court’s CM/ECF system per Civil Local Rule 5.4.

/s/ Eileen R. Ridley
Eileen R. Ridley

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13 JONATHAN GOMEZ, and the Proposed Class(es)

14 **UNITED STATES DISTRICT COURT**
15 **SOUTHERN DISTRICT OF CALIFORNIA**

16 SYLVESTER OWINO and JONATHAN GOMEZ, on behalf of themselves and all
17 others similarly situated,

Plaintiffs,

vs.

18 CORECIVIC, INC.,

19 Defendant.

20
21 CORECIVIC, INC.,

Counter-Claimant,

22 vs.

23
24 SYLVESTER OWINO and JONATHAN GOMEZ, on behalf of themselves and all
25 others similarly situated,

26 Counter-Defendants.

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

CLASS ACTION

**DECLARATION OF PLAINTIFF
SYLVESTER OWINO IN SUPPORT
OF PLAINTIFFS' SUPPLEMENTAL
BRIEFING REGARDING STANDING**

Date: December 19, 2019
Time: 1:30 p.m.
Place: Courtroom 4D

Judge: Hon. Janis L. Sammartino
Magistrate: Hon. Nita L. Stormes

1 I, Sylvester Owino, declare as follows:

2 1. I am above the age of eighteen (18). I am a named Plaintiff in the above-
3 captioned action. I am familiar with the action, including the facts and claims at issue. The
4 facts stated herein are of my own personal knowledge and experience, and if called upon
5 to do so, I could and would competently testify thereto under oath.

6 2. I submit this Declaration in support of Plaintiffs' Supplemental Briefing
7 Regarding Standing. (*See* D.I. 143.)

8 3. Although I was detained by the United States' Immigration and Customs
9 Enforcement ("I.C.E.") only once, the result of that detention was that I spent almost 9.5
10 years in I.C.E. custody between November 7, 2005, and March 9, 2015. Of those 9.5 years,
11 seven were spent detained in and transferred among CoreCivic's detention facilities,
12 including CoreCivic's detention facilities in San Diego, California—the San Diego
13 Correctional Facility, and its successor the Otay Mesa Detention Center. (I collectively
14 refer to CoreCivic's facilities in San Diego as "OMDC" because my experiences were the
15 same in both facilities.) To my knowledge, both of these facilities were owned, operated,
16 and/or managed by CoreCivic (or its predecessor, Corrections Corporation of America)
17 during all periods in which I was detained.

18 4. I was housed at OMDC for most of my period of detention, although I was
19 transferred to other facilities for shorter periods of time (most of which were owned by
20 CoreCivic). For example, from the start of my detention in 2005 until 2007, I was housed
21 in OMDC. For three months in 2007, I was transferred to a facility in El Centro, California,
22 after which I was transferred back to OMDC. In 2008, I was transferred for three months
23 to a detention facility in Florence, Arizona, after which I returned to OMDC until 2013. In
24 2015, I was transferred to the Etowah Detention Center in Alabama, and was returned to
25 OMDC in February 2015 before I was released from I.C.E.'s custody. The reasons for
26 these transfers is detailed below. However, my detention under I.C.E.'s custody and being
27 housed in CoreCivic's facilities was always related to my immigration status and was not
28 related to any criminal charge or conviction.

1 5. I have since been released from I.C.E. custody and CoreCivic’s detention
2 facilities. However, since my release from I.C.E. custody through the present, I have not
3 had and do not presently have lawful status within the United States. Instead, I am currently
4 seeking asylum in the United States, and my wife is petitioning to have my status adjusted.
5 It is my understanding that a potential consequence of not having lawful status within the
6 United States means that I can again be detained by I.C.E. at any time, and placed back
7 into a CoreCivic facility.

8 6. Despite that I am currently not in I.C.E.’s custody, I have had and still have
9 deeply held, sincere concerns and fears about potentially being detained again by I.C.E.
10 and housed in a CoreCivic detention facility such as OMDC.

11 7. My concerns and fears stem from my time spent in CoreCivic’s detention
12 facilities and the experiences I had during my time there, including working for low pay
13 (or no pay), working long hours without meal or rest breaks, being ordered to work on days
14 off, and always living day-to-day knowing that if I did not work when CoreCivic ordered,
15 I ran a high risk of disciplinary action, including segregation from the general population
16 or termination from my job (which deprived me of any money to purchase additional
17 hygiene supplies due to the sparse supply rations CoreCivic provided to detainees).

18 8. Moreover, given the increase in immigration “enforcement” by the Trump
19 Administration and its various anti-immigrant policies—which target primarily people of
20 color or those who speak English as a secondary language (if they speak English at all)—
21 there is a real risk that I might be stopped, questioned, or detained by State or Federal
22 officials. Indeed, my seven years in I.C.E. custody while housed in a CoreCivic detention
23 facility has taught me through experience that individuals who “look like immigrants” can
24 easily be targeted and locked away—isolated from society for long periods of time. This
25 risk is significantly greater given that I currently do not have lawful status to be in the
26 United States while my asylum case is pending, and that I can be removed from the country
27 at any time and without reason.

28 ///

1 9. In addition, my past comments speaking out about CoreCivic and I.C.E.,
2 combined with the fact that I am named Plaintiff in this litigation, further add to my concern
3 that I.C.E. may seek to detain me again, or “make an example” out of me to any current or
4 former detainees who dare to speak out against I.C.E. It would not be the first time this
5 has happened.

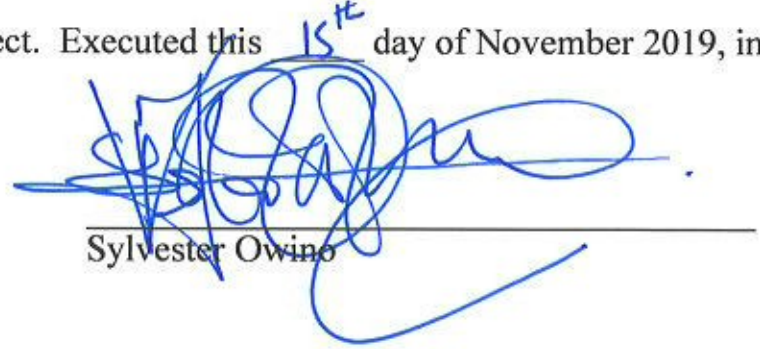
6 10. Finally, I also have a wife and little daughter who depend on me. If I am
7 detained again by I.C.E., my wife will have to raise our child by herself, and my daughter
8 will grow up with me absent from her life for a long period of time. The fear of further
9 and continued detention does not impact just me, but my family as well.

10 11. I sincerely believe that there is a high risk I.C.E. can and will attempt to detain
11 me again, and should I.C.E. detain me, I believe that I would be re-housed in OMDC
12 (operated by CoreCivic) given that I live in San Diego County and OMDC is also located
13 in San Diego County, and given that I was previously housed at OMDC during my prior
14 detention. If I am sent to OMDC (or another CoreCivic facility), I will again be exposed
15 to CoreCivic’s policies and practices concerning detainee labor that are the subject of this
16 lawsuit.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 15th day of November 2019, in San Diego, California.



Sylvester Owino

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on November 15, 2019, to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Civil Local Rule 5.4.

/s/ Eileen R. Ridley
Eileen R. Ridley

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11 Attorneys for Plaintiffs SYLVESTER OWINO,
12 JONATHAN GOMEZ, and the Proposed Class(es)

13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 SYLVESTER OWINO and JONATHAN)
16 GOMEZ, on behalf of themselves and all)
others similarly situated,)

17 Plaintiffs,)

18 vs.)

19 CORECIVIC, INC.,)

20 Defendant.)

21 CORECIVIC, INC.,)

22 Counter-Claimant,)

23 vs.)

24 SYLVESTER OWINO and JONATHAN)
25 GOMEZ, on behalf of themselves and all)
26 others similarly situated,)

27 Counter-Defendants.)
28

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

CLASS ACTION

**DECLARATION OF PLAINTIFF
JONATHAN GOMEZ IN SUPPORT
OF PLAINTIFFS' SUPPLEMENTAL
BRIEFING REGARDING STANDING**

Date: December 19, 2019
Time: 1:30 p.m.
Place: Courtroom 4D

Judge: Hon. Janis L. Sammartino
Magistrate: Hon. Nita L. Stormes

1 I, Jonathan Gomez, declare as follows:

2 1. I am above the age of eighteen (18). I am a named Plaintiff in the above-
3 captioned action. I am familiar with the action, including the facts and claims at issue. The
4 facts stated herein are of my own personal knowledge and experience, and if called upon
5 to do so, I could and would competently testify thereto under oath.

6 2. I submit this Declaration in support of Plaintiffs' Supplemental Briefing
7 Regarding Standing. (*See* D.I. 143.)

8 3. I was detained by the United States' Immigration and Customs Enforcement
9 ("I.C.E.") on one occasion, and spent about 15 months in I.C.E.'s custody (from June 19,
10 2012 – September 18, 2013). During my detention I was housed in CoreCivic's detention
11 facilities in San Diego, California—the San Diego Correctional Facility, and its successor
12 the Otay Mesa Detention Center. (I collectively refer to CoreCivic's facilities in San Diego
13 as "OMDC" because my experiences were the same in both facilities.) To my knowledge,
14 both of these facilities were owned, operated, and/or managed by CoreCivic (or its
15 predecessor, Corrections Corporation of America) during all periods in which I was
16 detained.

17 4. My detention in CoreCivic's facilities under the custody of I.C.E. was related
18 to my immigration status and was not related to any criminal charge or conviction.

19 5. I have since been released from I.C.E.'s custody and CoreCivic's detention
20 facilities. I currently have a valid green card, and have had one for many years—including
21 when I was detained in 2012.

22 6. Despite that I have lawful status in the United States due to my green card,
23 there is no guarantee that I will not be wrongfully detained again by I.C.E. or housed in a
24 CoreCivic facility such as OMDC. For example, I was detained by I.C.E. in June 2012
25 based on my alleged "unlawful" status and presence in the United States—despite that I
26 possessed a valid green card and could lawfully be in the country. As a result of this
27 wrongful detention, I was housed at OMDC for 15 months before I was released, during
28

1 which time I was subject to CoreCivic’s policies and practices that are involved in this
2 lawsuit.

3 7. Even though I am currently not in I.C.E.’s custody, I have had and still have
4 deeply held, sincere concerns and fears about potentially being detained again by I.C.E.
5 and housed in a CoreCivic detention facility such as OMDC. For example, I do not believe
6 that I can realistically travel outside of the United States (even with my family). Despite
7 that I have a valid green card, I genuinely fear that if I leave the country, I.C.E. or Customs
8 (or another Federal agency) will make an issue of my past record and will detain me. I do
9 not want my family to go through that again. As a result of that fear, my wife and I do not
10 make plans to travel outside of the United States, even though it is one of her dreams to
11 travel internationally.

12 8. My concerns and fears stem from my time spent in CoreCivic’s detention
13 facilities and the experiences I had during my time there, including working for low pay
14 (or no pay), working long hours without meal or rest breaks, being ordered to work on days
15 off, and always living day-to-day knowing that if I did not work when CoreCivic ordered,
16 I ran a high risk of disciplinary action, including segregation from the general population
17 or termination from my job (which deprived me of any money to purchase additional
18 hygiene supplies due to the sparse supply rations CoreCivic provided to detainees).

19 9. Moreover, given the increase in immigration “enforcement” by the Trump
20 Administration and its various anti-immigrant policies—which target primarily people of
21 color or those who speak English as a secondary language (if they speak English at all)—
22 there is a real risk that I might be stopped, questioned, or detained by State or Federal
23 officials. Indeed, my 15 months in I.C.E. custody while housed in OMDC has taught me
24 through experience that individuals who “look like immigrants” can easily be targeted and
25 locked away—isolated from society for long periods of time.

26 10. In addition, the fact that I am named Plaintiff in this litigation further adds to
27 my concern that I.C.E. may seek to detain me again, or “make an example” out of me to
28 any current or former detainees who dare to speak out against I.C.E.

1 11. I also have a wife and four children (two boys and two girls) who all depend
2 on me. If I am detained again by I.C.E., my wife will have to raise our four children by
3 herself, and my children will grow up with me absent from their lives for long periods of
4 time. The fear of further and continued detention does not impact just me, but my family
5 as well.

6 12. And, as noted above, even with lawful status to be in the United States with
7 my green card, I was wrongfully detained, and firmly believe that I may be detained again.

8 13. I sincerely believe that there is a significant risk that I.C.E. will attempt to
9 detain me again, and should I.C.E. detain me again, I believe that I would be re-housed in
10 OMDC (operated by CoreCivic) given that I live in San Diego County and OMDC is also
11 located in San Diego County, and given that I was previously housed at OMDC during my
12 prior detention. If I am sent to OMDC (or another CoreCivic facility), I will again be
13 exposed to CoreCivic's policies and practices concerning detainee labor that are the subject
14 of this lawsuit.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 15 day of November 2019, in San Diego, California.



Jonathan Gomez

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on November 15, 2019, to all counsel of record who are deemed to have consented to electronic service via the Court’s CM/ECF system per Civil Local Rule 5.4.

/s/ Eileen R. Ridley
Eileen R. Ridley

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13 JONATHAN GOMEZ, and the Proposed Class(es)

14 **UNITED STATES DISTRICT COURT**
15 **SOUTHERN DISTRICT OF CALIFORNIA**

16 SYLVESTER OWINO and JONATHAN GOMEZ, on behalf of themselves and all
17 others similarly situated,

Plaintiffs,

vs.

18 CORECIVIC, INC.,

19 Defendant.

20 CORECIVIC, INC.,

21 Counter-Claimant,

22 vs.

23 SYLVESTER OWINO and JONATHAN GOMEZ, on behalf of themselves and all
24 others similarly situated,

25 Counter-Defendants.

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

CLASS ACTION

**DECLARATION OF
ACHIRI NELSON GEH**

26 Date: December 19, 2019
27 Time: 1:30 p.m.
28 Place: Courtroom 4D

Judge: Hon. Janis L. Sammartino
Magistrate: Hon. Nita L. Stormes

1 I, Achiri Nelson Geh, declare as follows:

2 1. I am over eighteen years of age. I have personal knowledge of the contents
3 of this declaration. If called upon to do so, I could and would testify under oath about the
4 contents of this declaration.

5 2. I was detained at the Otay Mesa Detention Center from approximately April
6 24, 2017 to the end of November, 2018, and then again from August 2019 to October 28,
7 2019. During the period of December 1, 2018 to early August 2019, I was detained at
8 Etowah County Detention Center in Gadsden, Alabama. The Otay Mesa Detention
9 Center is operated by CoreCivic, Inc. The Etowah County Detention Center is operated
10 by the United States Immigration and Customs Enforcement (“ICE”).

11 3. During both periods of my detention at the Otay Mesa Detention Center, I
12 was required to abide by all orders and instructions issued by CoreCivic guards and
13 employees, including to perform cleaning tasks in common and private living areas
14 without pay. If I refused to obey the orders and instructions issued to me by CoreCivic
15 guards and employees, I would be subject to punishment, including being placed in
16 solitary confinement/segregation.

17 4. I understood that I could be punished for refusing to obey any orders and
18 instructions given to me by CoreCivic guards and employees based on my knowledge of
19 the written rules and policies issued by CoreCivic, my personal observation of other
20 detainees who were punished for refusing to follow orders and instructions, from talking
21 with other detainees who informed me that any failure to obey the orders and instructions
22 issued by CoreCivic guards and employees would result in punishment such as
23 segregation, and from my own personal experience of being punished while I was
24 detained.

25 5. In general, if detainees refused to obey orders and instructions given by
26 CoreCivic guards and employees, they would be removed from their living pods and sent
27 to “Echo Unit,” which was a housing pod that had many restrictions, including frequent
28 lockdowns.

1 6. During the first period of my detention at the Otay Mesa Detention Center,
2 from April 2017 to November 2018, I worked for CoreCivic as part of what was called
3 the “Voluntary Work Program” in the kitchen, preparing and serving meals to other
4 detainees. My supervisor was an employee of CoreCivic and CoreCivic’s employees at
5 the detention center determined my pay, hours, work schedule, and training. My job
6 performance was reviewed by my supervisor. If I performed poorly, I could be
7 terminated or punished.

8 7. I was supposed to work only five days per week, for six hours per day.
9 However, there was almost always a lack of workers for the kitchen. This meant that I
10 typically worked seven days per week, and would have to work more than six hours per
11 day. I would often be forced to work double shifts, starting at 9:00 a.m. to 3:00 p.m., and
12 then again from 3:00 p.m. to 10:30 or 11:00 p.m. on the same day. I worked double
13 shifts more than 50 times while detained at the Otay Mesa Detention Center.

14 8. I was only paid \$1.50 for each day I worked, regardless of how many hours
15 I worked during that day. Occasionally, I would be paid a “bonus” of \$5.00 for working
16 30 consecutive days. I received this bonus on multiple occasions during detention.

17 9. On one occasion, after working for at least seven consecutive days, I told
18 supervisors at CoreCivic that I wanted a day off. They told me that I would be placed in
19 isolation if I did not report to work, so I did. On another occasion, again after working at
20 more seven days in a row, I refused to work. On this occasion, I was removed from the
21 Voluntary Work Program for a period of 30 days and they threatened to move me to Echo
22 Unit. However, I was not moved and was eventually reinstated in my job at the kitchen.
23 After that experience, I knew better than to ever refuse to work again.

24 10. I was not given any documentation as part of my job in the Voluntary Work
25 Program providing me with information regarding gross wages earned, total hours
26 worked, applicable deductions, net wages earned, the pay period or the applicable hourly
27 rates in effect and the corresponding number of hours worked during the pay period.

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1 11. In addition to my work in the kitchen as part of the Voluntary Work
2 Program, I had to perform cleaning work in the private and communal areas of my
3 housing unit without any pay or I would have been punished. I had to clean floors, make
4 my bed, clean the toilet and sink, wipe down walls and clean furniture and air vents.
5 Although I never refused to do this work, I witnessed other ICE detainees refuse who
6 were then placed in isolation by CoreCivic as punishment.

7 12. In addition, whenever there was a visit of the detention center by an official
8 person, all detainees were required to do a “deep clean,” scrubbing walls and floors
9 throughout the detention center for no pay. This happened two to four times during the
10 time of my detention.

11 13. I joined the Voluntary Work Program because it was the only way that I
12 could earn money during my time at the Otay Mesa Detention Center. If I did not join
13 the Voluntary Work Program I would not have been able to purchase supplemental food,
14 clothing, and basic hygiene items from the commissary, or purchase phone cards to call
15 my family.

16 14. During my time at the Otay Mesa Detention Center, CoreCivic provided me
17 with only 2 small bars of soap per week. These would only last two or three days. When
18 I asked CoreCivic employees for new soap, they responded that they had already
19 distributed it for the week. So I had to buy my own from the commissary. This was the
20 same thing with respect to toothpaste. The toothpaste tubes that I was given by
21 CoreCivic were too small and did not last, so I had to use the money I made through the
22 Voluntary Work Program to purchase extra toothpaste to brush my teeth. Purchasing
23 additional hygiene items like soap and toothpaste from the commissary was the only way
24 to avoid not having these items when I ran out during the week.

25 15. I was permitted to make phone calls to family and friends during my time at
26 the Otay Mesa Detention Center. These calls cost me money. Purchasing phone cards at
27 the commissary was the only way I could call my family and friends.

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1 16. My detention at the Otay Mesa Detention Center and the Etowah County
2 Detention Center was related to my immigration status, not any criminal charge or
3 conviction. Through the help of my immigration attorney, I was recently released on a
4 bond as my case remains pending in federal court. I currently wear an ankle bracelet to
5 confirm my location. I am worried that I could be put back in detention at any time, and
6 expect that I would be placed back in the detention center if I do not win my immigration
7 case.

8 17. I understand the general nature of the claims raised and the facts, policies, and
9 procedures that form the basis of the claims asserted in this lawsuit and I have agreed to
10 become an additional named plaintiff in the lawsuit, along with Mr. Gomez and Mr. Owino.
11 I understand that, if I were to become a plaintiff, I would be a representative of several
12 classes of current and former detainee workers and detainees forced to work, and I would
13 be seeking relief in this lawsuit on behalf of those classes.

14 18. I am not antagonistic to any other members of the classes in this lawsuit that
15 I would potentially represent. On the contrary, the shared and common experiences that
16 all members of the classes have faced, including myself, unite us in challenging the policies
17 and practices at issue in this case. CoreCivic's policies and practices are unlawful, and I
18 seek to obtain relief for all members of these classes who were subject to these unlawful
19 policies and practices.

20 19. Accordingly, if I became a plaintiff, I would fairly and adequately protect the
21 interests of the classes that I seek to represent.

22 20. Given my dedication to challenging these unlawful policies and seeking
23 relief for all of those detainees who were subjected to the same, I would set aside the time

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1 necessary to be significantly involved and invested in this lawsuit as it progresses, and to
2 prosecute the action vigorously on behalf of all classes.

3 21. I declare under penalty of perjury under the laws of the United States of
4 America that the foregoing is true and correct.

5 Executed this 14 day of November, 2019, in Oakland, California.

6
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8 _____
Achiri Nelson Geh

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on November 15, 2019, to all counsel of record who are deemed to have consented to electronic service via the Court’s CM/ECF system per Civil Local Rule 5.4.

/s/ Eileen R. Ridley
Eileen R. Ridley

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