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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.

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

**CLASS ACTION**

**PLAINTIFFS' OPPOSITION TO  
DEFENDANT CORECIVIC, INC.'S  
RENEWED MOTION FOR LEAVE  
TO FILE DOCUMENTS UNDER  
SEAL [D.I. 155]**

21  
22 CORECIVIC, INC.,

23 Counter-Claimant,

24 vs.  
25

26 SYLVESTER OWINO and JONATHAN  
27 GOMEZ, on behalf of themselves and all  
others similarly situated,

28 Counter-Defendants.

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

1 **I. Introduction**

2 Plaintiffs Sylvester Owino and Jonathan Gomez file this Opposition to Defendant  
3 CoreCivic, Inc.’s Renewed Motion For Leave To File Documents Under Seal. (D.I. 155.)  
4 In denying in part Plaintiffs’ Motion To Seal Regarding Plaintiffs’ Supplemental Reply  
5 Brief (D.I. 149), this Court noted the absence of articulated, compelling reasons to seal  
6 information identifying CoreCivic’s personnel. (D.I. 152 [Ord.] at 3:17-23.) CoreCivic’s  
7 position in the Renewed Motion is inconsistent with its prior position on the necessity of  
8 sealing its employees’ *full* names: CoreCivic previously sought to seal only *first* names,  
9 and does not articulate a basis for the change in position.<sup>1</sup>

10 **II. CoreCivic Must Provide “Compelling Reasons” To Seal Information from the**  
11 **Public Record in this Case**

12 “[T]he courts of this country recognize a general right to inspect and copy public  
13 records and documents, including judicial records and documents.” *Nixon v. Warner*  
14 *Comm’ns, Inc.*, 435 U.S. 589, 597 (1978). “Unless a particular court record is one  
15 ‘traditionally kept secret,’ a ‘strong presumption in favor of access’ is the starting point.”  
16 *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (citing *Foltz*  
17 *v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). “The presumption  
18 of access is ‘based on the need for federal courts, although independent—indeed,  
19 particularly because they are independent—to have a measure of accountability and for the  
20 public to have confidence in the administration of justice.’” *Ctr. for Auto Safety v. Chrysler*

21 \_\_\_\_\_  
22 <sup>1</sup> To the extent CoreCivic actually intended to seal just the first names and not full names  
23 of its employees (despite numerous references to “full” names in the Renewed Motion),  
24 Plaintiffs acknowledge that redacting first names is consistent with the Parties’ prior  
25 practice under the Protective Order.

26 Plaintiffs also acknowledge, however, that stipulated practices for discovery purposes may  
27 not be sufficient by themselves to redact that same information in public filings, the  
28 determination of which is committed to this Court. *See Cochoit v. Schiff Nutrition Int’l,*  
*Inc.*, Case No. 16-cv-01371, 2018 WL 1895695, at \*2 (C.D. Cal. Apr. 19, 2018)  
29 (“confidential” designation made pursuant to a protective order was insufficient by itself  
30 to warrant sealing, and proffering party’s reliance on protective order resulted in failure to  
31 make particularized showing—much less compelling showing—to restrict public access);  
32 *see also Joint Equity Comm. of Investors of Real Estate Partners, Inc. v. Coldwell Banker*  
*Real Estate Corp.*, Case No. 10-cv-0401, 2012 WL 234396, at \*2–3 (C.D. Cal. Jan. 24,  
33 2012) (same).

1 *Grp., LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016) (quoting *United States v. Amodeo*, 71 F.3d  
2 1044, 1048 (2d Cir. 1995)).

3 A party seeking to seal a judicial record bears the burden of overcoming the strong  
4 presumption of access. *Foltz*, 331 F.3d at 1135. The showing required to meet this burden  
5 depends upon whether the documents to be sealed relate to a motion that is “more than  
6 tangentially related to the merits of the case.” *Ctr. for Auto Safety*, 809 F.3d at 1102. When  
7 the underlying motion relates to the merits of a lawsuit in more than just a tangential degree,  
8 the “compelling reasons” standard applies; but if the underlying motion relates tangentially  
9 to the merits, the lower “good cause” standard applies. *Id.* at 1096–98.

10 “In general, ‘compelling reasons’ sufficient to outweigh the public’s interest in  
11 disclosure and justify sealing court records exists when such ‘court files might have become  
12 a vehicle for improper purposes,’ such as the use of records to gratify private spite, promote  
13 public scandal, circulate libelous statements, or release trade secrets.” *Kamakana*, 447 F.3d  
14 at 1179 (quoting *Nixon*, 435 U.S. at 598). However, “[t]he mere fact that the production of  
15 records may lead to a litigant’s embarrassment, incrimination, or exposure to further litigation  
16 will not, without more, compel the court to seal its records.” *Id.* (citing *Foltz*, 331 F.3d at  
17 1136). The decision to seal documents is “one best left to the sound discretion of the trial  
18 court” upon consideration of “the relevant facts and circumstances of the particular case.”  
19 *Nixon*, 435 U.S. at 599.<sup>2</sup>

20 **III. CoreCivic Seeks To Seal Its Employees’ Full Names, Despite Previously**  
21 **Seeking To Seal Only First Names, and Provides No Basis To Change Position**

22 CoreCivic seeks to seal from the public record the *full* names of its employees  
23 working in the Otay Mesa Detention Center. (D.I. 155 [Mot.] at 2:15-19.)<sup>3</sup> However,  
24

25 <sup>2</sup> The exhibits in question are related to Plaintiffs’ Supplemental Reply Brief (D.I. 148), as  
26 requested by this Court (D.I. 143; D.I. 146), which collectively relate to Plaintiffs’ Motion  
27 for Class Certification (D.I. 84). CoreCivic does not dispute that the Motion for Class  
28 Certification relates to the merits of the lawsuit in more than a tangential degree, thus  
requiring “compelling reasons” as the standard to seal information. (D.I. 155 [Mot.] at  
4:15-23.)

<sup>3</sup> Although not expressly stated in the Renewed Motion, Plaintiffs presume that  
CoreCivic’s request would also apply to employees in other detention facilities, including

1 CoreCivic’s position is inconsistent with its prior position and practice regarding sealing  
2 of this information.

3 *First*, although CoreCivic observes that the Protective Order includes certain  
4 employee identifying information within the definition of “Confidential Information” (D.I.  
5 155 [Mot.] at 2:20 – 3:12), the Protective Order notably *excludes* the employees’ last names  
6 (and applies the same standard to contractors). (D.I. 60 [Prot. Ord.] at ¶ 14 [“The parties  
7 recognize that [“Confidential Information”] containing the address, identifying  
8 information (*does not include* last name of current and former CoreCivic employees and  
9 contractors) . . . .” (emphasis added)].) CoreCivic specifically added this provision to the  
10 Protective Order, which should be evident by the type of information the provision  
11 designates as “Confidential.” However, CoreCivic offers no reason to depart from the  
12 terms it previously requested.

13 *Second*, in a prior sealing motion in this case, CoreCivic requested that this Court  
14 seal only the *first* names of its employees from the public record. (*See* D.I. 104 [Mot. To  
15 Seal] at 12:16-17 [“CoreCivic requests [that] these exhibits . . . be filed with all staff first  
16 names redacted.”].) Similar to its departure from the Protective Order’s terms, CoreCivic  
17 offers no basis supporting its change in position from the same request in prior pleadings.

18 *Third*, although CoreCivic identifies alleged concerns with security and safety of its  
19 detention facilities and operations, as well as its employees’ privacy, as bases to support  
20 sealing its employees’ full names (*see* D.I. 155 [Mot.] at 4:15 – 7:4), these were the same  
21 reasons previously asserted to seal only the first names of CoreCivic’s employees. (*See*  
22 D.I. 104 [Mot. To Seal] at 12:17-21 [contending that first names constitute “security-  
23 sensitive, privacy-protected information to which detainees at CoreCivic’s facilities are not  
24 privy, and which are not divulged to current or former detainees in order to protect the  
25 employees’ privacy and security”]; *id.* at 12:21 – 13:10 [further asserting that placing full  
26 names on the public docket may allow current and former detainees to discover correctional  
27

28 \_\_\_\_\_  
the any third-party contractors referenced in a publicly filed document.

1 officers' full names].) CoreCivic previously offered these same reasons to support limited  
2 sealing, but now uses those reasons to broaden the scope of sealing present and past  
3 information without justification for the change.<sup>4</sup>

4 *Fourth*, undercutting CoreCivic's "security and safety" rationale is CoreCivic's  
5 concession that current detainees already have access to the employees' last names because  
6 correctional officers' name badges include last names. (D.I. 155 [Mot.] at 6:7-10; D.I. 155-  
7 1 [Warden Decl.] at ¶ 7 (first names do not appear on OMDC officers' name badges, and  
8 officers are not allowed to use first names in front of detainees).) If current detainees  
9 already have access to the last names of CoreCivic's correctional staff by virtue of day-to-  
10 day interaction with them, it is not apparent why including at least last names in the public  
11 record would provide current and former detainees with more information than they  
12 already have available to them.

13 *Fifth*, redacting full names of employees is inconsistent with CoreCivic's prior  
14 practice and treatment of such information in this case. For example, although the  
15 Warden's Declaration is signed "C. LaRose"—perhaps to emphasize the importance of  
16 keeping certain information confidential (*see* D.I. 155-1 [Warden Decl.]—the Declaration  
17 underscores that last names in the public record is perfectly acceptable, and further  
18 illustrates that even first initials of first names do not require redaction.

19 Curiously, and regardless of whether that was the intended result of the Warden's  
20 signature, Warden LaRose's full name already appears in the public record. (*See* D.I. 111-  
21 10.) Moreover, it appears there because CoreCivic *did not oppose* the filing of various  
22 policies in the public record—in fact affirmatively consenting to such filing—even when  
23 those policies included the full name of a correctional officer or business / administrative  
24 employee. (*See* D.I. 101 [Mot. To Seal] at 2:12-14]; *see also* D.I. 110-2 to -5, -19 to -22  
25 [warden full names, or first initial and middle initial, at top of policies]; D.I. 110-25  
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27 <sup>4</sup> Notably, the Court observed in its recent Order that the Renewed Motion may impact  
28 documents already filed on the public docket. (D.I. 152 n.1.) Although the Court's Order  
may intimate the lack of compelling reasons to seal the same information in prior filings,  
CoreCivic's Renewed Motion pivots from its prior position and seeks to have full names  
redacted in all publicly filed documents.

1 [admission form listing last name of admitting officer]; D.I. 111-2 to -4 [deposition  
2 transcripts listing full names of CoreCivic wardens or corporate employees]; D.I. 111-6 to  
3 1-14 [warden full names, or administrative / business names, at top of policies].) The same  
4 is true when CoreCivic proffered evidence in support of its own pleadings. (*See, e.g.*, D.I.  
5 118 [Opp. Class Cert.]

6 *Sixth*, CoreCivic goes to extensive lengths in its Renewed Motion that it has not done  
7 in prior motions to seal to outline the potential security risks associated with disclosing this  
8 information to inmates or detainees, particularly those with criminal histories.<sup>5</sup> CoreCivic  
9 simply relies on generic statements about potential risks, oftentimes failing to differentiate  
10 between “inmates” (detained as convicted felons) and “detainees” (civilly detained while  
11 their immigration status is adjudicated). CoreCivic fails to provide any concrete,  
12 quantitative data relevant to instances at OMDC, or CoreCivic’s facilities generally, to  
13 warrant lumping all “detainees” into the same group with “inmates” (although it might  
14 further reflect the general application of CoreCivic’s policies to all detainees).<sup>6</sup>

15 The only evidence CoreCivic offers is from OMDC’s current Warden who has  
16 worked in “corrections” for 23 years (mostly in Ohio), with the last four years of his career  
17 specifically working for CoreCivic, and the last three months as the Warden of OMDC.  
18 (D.I. 155-1 [Warden Decl.] at ¶¶ 2 – 3.) The Warden’s testimony is anecdotal, with no  
19 information specifically tied to CoreCivic’s facilities, let alone OMDC.<sup>7</sup> Nor does the  
20

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21 <sup>5</sup> One might wonder whether CoreCivic’s aside is simply to highlight the criminal histories  
22 of some detainees (inmates or civil) while critical motions are pending before the Court.  
23 Such irrelevant argument is counter to the acknowledged reality that, for this matter, the  
24 detainees are in custody for civil immigration issues—not criminal charges or convictions.

24 <sup>6</sup> For example, although CoreCivic references Plaintiff Owino’s criminal conviction from  
25 over 16 years ago, it does not cite any altercation between Owino and correctional staff, or  
26 any threats Owino made towards staff, throughout Owino’s 9.5 years of detention or the  
27 almost five years since his release. Nor does that irrelevant reference change the fact that  
28 CoreCivic housed for *civil immigration issues*.

27 <sup>7</sup> Plaintiffs do not intend to minimize any reaction the Warden or his family may have felt  
28 in response to any threats described in the Warden’s Declaration, but the Warden’s  
Declaration does not link any of his experiences in 23 years of corrections to his time with  
CoreCivic, let alone OMDC, or to any civil detainees.



1 Warden provide any context in which these threats took place. For example, the Warden  
2 states he received threats “from inmates,” but does indicate (1) whether “detainees” made  
3 similar threats; (2) whether these threats occurred at OMDC or even at another CoreCivic  
4 facility; (3) when these threats occurred (i.e., recently or at the start of his 23-year career  
5 in corrections); or (4) the circumstances surrounding the threats (e.g., a “threat” uttered out  
6 of frustration or anger, or a direct and credible threat). The same ambiguities exist for  
7 people purportedly watching the Warden’s house, or threat anonymous letters, and these  
8 ambiguities further compound when the Warden has numerous years of experience spread  
9 over state correctional facilities and private prisons, and further between populations of  
10 convicted felons and civil immigration detainees.

11 In fact, one might seriously question whether civil detainees committed any of these  
12 actions. “Inmates” are criminal convicts who may be detained in CoreCivic’s custody for  
13 extensive periods of time—decades, depending on the conviction—and as a result may  
14 have deep animosity towards their captors. But civil detainees are detained while their  
15 immigration status is adjudicated, and if a civil detainee “loses” his or her immigration  
16 proceeding, then the detainee is *deported*. Many of the threats the Warden describes  
17 require physical presence in the United States, which highlights further ambiguity as to  
18 whether these threats can actually be attributed to “detainees” in any significant degree, or  
19 whether they likely come from convicted felons who are released into the community based  
20 on terms associated with their conviction, sentence, and probation / parole.

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1 **IV. Conclusion**

2 CoreCivic ultimately bears the burden to demonstrate compelling reasons to seal the  
3 requested information, but for the reasons set forth above, CoreCivic’s present attempt is  
4 inconsistent with its prior position and practice regarding this information, and CoreCivic  
5 does not articulate a basis for its change in position.

6  
7  
8 DATED: December 30, 2019

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies I served a true and correct copy of the above and foregoing document was served on December 30, 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/ Nicholas J. Fox*  
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