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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)

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

27 Counter-Defendants.)
28)

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

CLASS ACTION

**SUPPLEMENTAL BRIEF
REGARDING *NOVOA V. THE GEO
GROUP, INC.* IN SUPPORT OF
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION**

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

DEMAND FOR JURY TRIAL

1 **I. INTRODUCTION**

2 Pursuant to the Court’s Order for Supplemental Briefing (ECF 154), Plaintiffs
3 Sylvester Owino and Jonathan Gomez (“Plaintiffs”) submit this Supplemental Brief
4 regarding the Central District of California’s recent Order Granting Plaintiffs’ Motion for
5 Class Certification in *Novoa v. The GEO Grp., Inc.*, No. EDCV 17-2514 JGB (SHKx),
6 U.S. Dist. LEXIS 222675 (C.D. Cal. Nov. 26, 2019) (ECF 153). *Novoa* demonstrates why
7 Plaintiffs’ proposed CA Labor Law Class should be certified and reinforces the Court’s
8 tentative decision to certify the National Forced Labor and CA Forced Labor Classes.

9 **II. DISCUSSION**

10 *Novoa* is a class action filed by current and former immigration detainees against
11 The GEO Group, Inc. (“GEO”), which operates immigration detention facilities in
12 California and throughout the United States. *Novoa*, U.S. Dist. LEXIS 222675, at *6.
13 GEO, as with CoreCivic, is alleged to have (1) implemented a so-called “voluntary work
14 program” (“VWP”) for ICE detainees that violates California labor law, including by
15 paying ICE detainees \$1.00 per day for their work, (2) forced ICE detainees to clean GEO’s
16 facilities under threat of punishment or discipline, and (3) coerced ICE detainees to join its
17 VWP by withholding basic living necessities. *Id.* at *7-17.

18 The *Novoa* Court certified plaintiffs’ California-specific “Adelanto Wage Class” as
19 to plaintiffs’ claims for (1) violations of California’s Minimum Wage Law; (2) unjust
20 enrichment, and (3) violations of California’s UCL. The *Novoa* Court also certified the
21 Forced Labor Classes for violations of the CTVPA and TVPA. While GEO is a separate
22 and distinct entity from CoreCivic, the policies and practices alleged in *Novoa* are
23 substantively identical to CoreCivic’s admitted enterprise-wide policies and practices that
24 are at issue in Plaintiffs’ pending motion for class certification. As the *Novoa* Court
25 acknowledged, where class claims depend on the legality of a detention facilities’
26 challenged policies and practices, they are uniquely suited for resolution as a class action.

27 **A. *Novoa* Illustrates Why Plaintiffs’ CA Labor Class Should Be Certified.**

28 GEO’s VWP shares the same essential attributes and characteristics of CoreCivic’s

1 VWP and is governed by the same challenged policies and practices. These policies and
2 practices include (1) asserting control over every aspect of work performed by ICE
3 detainees through the VWP, and (2) wrongfully classifying ICE detainees that work
4 through the VWP as “volunteers” as opposed to employees under California law.

5 As with CoreCivic’s VWP, GEO’s VWP entails a wide-range of potential work
6 assignments, including “food service, laundry, dorm cleaning, cores/hallway, court/visit,
7 recreation, floor crew, barbershop, intake, medical detail, paint detail, and warehouse.” *Id.*
8 at *9-10. Irrespective of the nature of the work, GEO “sets work schedules, assigns
9 detainee workers to shifts . . . [and] provides needed equipment and instructions.” *Id.* at
10 *10. In spite of this, GEO does not afford the ICE detainees that work through its VWP
11 the protections required for employees under California law and only pays ICE detainees
12 “\$1.00 per day for participating in the program” through a deposit into the ICE detainees’
13 commissary account. *Id.* In certifying Adelanto Wage Class, the *Novoa* Court found that
14 plaintiffs satisfied the requirements of Rule 23(a) and Rule 23(b)(3). In certifying the
15 Adelanto Wage Class, the *Novoa* Court rejected several arguments advanced by CoreCivic
16 here.

17 First, with respect to Rule 23(a)(3)’s typicality requirement, it is irrelevant that
18 Plaintiffs worked in most, but not all, of the possible job assignments available through
19 CoreCivic’s VWP when they were assigned duties as a kitchen worker, janitor and porter.
20 [ECF 84-3 (Owino Decl.) at ¶¶ 5, 8-9; ECF 84-4 (Gomez Decl.) at ¶ 5.] This is because
21 “[t]he key inquiry for typicality” is whether Plaintiffs suffered an injury resulting from
22 CoreCivic’s VWP. *Novoa*, U.S. Dist. LEXIS 222675, at 37-38. In *Novoa*, even though
23 plaintiffs’ “situations were not identical, they all have the same theory of injury, which if
24 proven, could establish their California wage law, unfair competition, and unjust
25 enrichment claims.” *Id.* at *38. Here, Plaintiffs and the putative class members were all
26 injured by CoreCivic’s policies and practices depriving ICE detainees of the protections
27 for employees such as the right to be paid minimum wage and to receive accurate and
28

1 complete wage statements.¹

2 Further, as confirmed by CoreCivic’s Rule 30(b)(6) witness, CoreCivic’s policies
 3 and practices that result in an employer-employee relationship are the same for every ICE
 4 detainee and do not depend on the ICE detainee’s job assignment. Specifically, for every
 5 ICE detainee in the VWP, CoreCivic controls (1) the wages paid to ICE detainees, (2) their
 6 hours and shifts, (3) the decision to hire or fire an ICE detainee, (4) evaluations of the ICE
 7 detainees’ job performance, (5) the training provided to ICE detainees, (6) the provision of
 8 tools and equipment necessary for ICE detainees to complete their job assignments, (7)
 9 whether bonuses or other incentives will be provided and the amount and form of the
 10 bonuses, and (8) the supervision of ICE detainees for the entire duration of their shifts.
 11 [ECF 85 (Ridley Decl.) at Ex. 3 (Ellis Dep. (Vol. 1)), at 100:22-125:19; *see also id.* at Ex.
 12 6 (Figueroa Dep.) at 151:18-153:18.] Where, as here, there is a common policy or practice,
 13 the “typicality requirement can be met notwithstanding varying fact patterns supporting
 14 class member claims.” *Novoa*, U.S. Dist. LEXIS 222675, at *42 (citing *In re Hyundai &*
 15 *Kia Fuel Econ. Litig.*, 926 F.3d 539, 560 (9th Cir. 2019)).

16 Second, the *Novoa* Court rejected GEO’s contention that its statute of limitations
 17 defense defeated typicality. As the *Novoa* Court explained, “this action does not involve a
 18 sole named plaintiff whose claims are obviously time barred and where denial of class
 19 certification . . . would be warranted.” *Id* at *43. Here, Plaintiffs’ claims for unpaid wages
 20 and for violations of the UCL are all governed by a four year statute of limitations. *White*
 21 *v. Home Depot U.S.A., Inc.*, No. 17-cv-00752-BAS-AGS, 2019 U.S. Dist. LEXIS 40810,
 22 at *64 (S.D. Cal. March 13, 2019) (“The limitations period applicable to wage claims is
 23 generally three years . . . As a practical matter, however, the limitations period is four years
 24 if the plaintiff raises a claim pursuant to California’s Unfair Competition Law . . . ”)
 25 (citations omitted). Mr. Owino was released on March 9, 2015 and Mr. Gomez was
 26 released on September 18, 2013, and their claims are both timely under a four-year statute

27
 28

¹ Similarly, it is irrelevant that the Plaintiffs had different jobs in the VWP as their injury (and the injury of the putative class) is based on CoreCivic’s policies and procedures.

1 of limitation based on the May 31, 2017 filing date of the original complaint. [ECF 84-3
 2 (Owino Decl.) at ¶ 2; ECF 84-4 (Gomez Decl.) at ¶ 5.] Even if some of Plaintiffs' claims
 3 were time-barred, the proposed classes can be certified conditioned on the addition of
 4 Achiri Geh, who worked through the VWP between April 2017 and October 2019, as an
 5 additional Plaintiff and Class Representative. *Nat'l Fed'n of the Blind v. Target Corp.*, 582
 6 F.Supp.2d 1185, 1201 (N.D. Cal. 2007) (providing that if Rule 23 is satisfied, "the court
 7 may certify the class conditioned upon the substitution of another named plaintiff.").

8 Third, the *Novoa* Court rejected the argument advanced by GEO (and by CoreCivic
 9 in this case) that individualized inquiries defeated commonality under Rule 23(a)(2) and
 10 predominance under Rule 23(b)(3). The *Novoa* Court found commonality because
 11 "[w]hether GEO may be deemed an 'employer' under the alternative definitions in
 12 Martinez v. Combs, is a dominating question shared by Plaintiffs and the putative . . . class
 13 members." *Novoa*, U.S. Dist. LEXIS 222675, at *50. Further, "[i]t is well-established"
 14 that predominance "in employment cases is rarely defeated on the grounds of differences
 15 among employees so long as liability arises from a common practice or policy of an
 16 employer." *Id.* at *50-51 (quoting *Senne v. Kansas City Royals Baseball Corp.*, 934 F.3d
 17 918, 938 (9th Cir. 2009)). "Blanket corporate policies 'often bear heavily on questions of
 18 predominance and superiority.'" *Id.* at *51. (quoting *In re Wells Fargo Home Mortg.*
 19 *Overtime Pay Litig.*, 571 F.3d 953, 958 (9th Cir. 2009)). The *Novoa* Court held that
 20 plaintiffs' allegation that "GEO exercised control over their hours or working conditions,
 21 and/or 'suffer[ed] to permit [them] to work' under the same uniform policies or company-
 22 wide practices" necessitated a finding of commonality. *Id.* (quoting *Martinez v. Combs*,
 23 49 Cal. 4th 35, 64 (2010)).

24 CoreCivic's failure to maintain employment records as required by California law
 25 also does not preclude a finding of predominance and commonality.² The issues resulting
 26 from CoreCivic's failure to pay minimum wage bears only on damages calculations over
 27 and above the amounts provided for under California's Labor Code and IWC Wage Order
 28

² Labor Code § 226 establishes specific penalties for failure to provide wage statements.

1 5-2001, § 5.A, *See, e.g.*, IWC Wage Order 5-2001, § 5.A (authorizing payment of “half
 2 the usual or scheduled day’s work” in an amount not less than minimum wage). However,
 3 “[t]he mere fact that there might be differences in damage calculations is not sufficient to
 4 defeat class certification.” *Novoa*, U.S. Dist. LEXIS 222675, at *42 (quoting *In re Hyundai*
 5 *& Kia Fuel Econ. Litig.*, 926 F.3d 539, 560 (9th Cir. 2019)).

6 Fourth, *Novoa* confirms that Rule 23(b)(3) superiority requirement is satisfied
 7 because the putative class members’ “[f]ear of negative immigration consequences” and
 8 the reality that they are often “unable to bring their claims due to their tenuous situations
 9 only militates in favor of certification.” *Id.* at *57 (citing *Gunnells v. Healthplan Servs.*,
 10 348 F.3d 417, 426 (4th Cir. 2003)).

11 In short, because Plaintiffs’ and the proposed CA Labor Class’ claims all depend on
 12 the legality of policies and practices that are generally applicable to every ICE detainee
 13 that worked through CoreCivic’s VWP (regardless of the work they did), class action
 14 treatment is appropriate. At a minimum, Plaintiffs’ CA Labor Class should be certified as
 15 to Plaintiffs’ claims for unpaid wages, failure to provide wage statements, unjust
 16 enrichment, and violations of the UCL.

17 **B. The Forced Labor And Basic Necessities Classes Should Be Certified.**

18 The *Novoa* Court certified plaintiffs’ proposed classes for violations of the TVPA
 19 and CTVPA because they are premised on the legality of GEO’s alleged policies or
 20 practices, including the practice of forcing ICE detainees to clean GEO’s facilities without
 21 pay under threat of discipline and by duress and hardship through the practice of
 22 withholding basic living necessities in order to coerce them into joining the VWP. *Novoa*
 23 also confirms that the withholding of basic living necessities is actionable as a violation of
 24 the TVPA and CTVPA and that the claims are capable of classwide resolution. *Id.* at *38,
 25 fn. 11. *Novoa* bolsters the Court’s tentative decision to certify the Forced Labor Classes,
 26 and supports certification of the Basic Necessities Classes.

27 **III. CONCLUSION**

28 For the foregoing reasons, *Novoa* demonstrates why Plaintiffs’ proposed classes

1 should be certified.

2 DATED: January 17, 2020

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on January 17, 2020, 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.

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