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

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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 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 168), Plaintiffs
3 Sylvester Owino and Jonathan Gomez (“Plaintiffs”) submit this Supplemental Brief
4 regarding the timeliness of Mr. Owino’s claims. CoreCivic’s conclusory assertion that the
5 last day Mr. Owino worked at CoreCivic’s Otay Mesa facility was “during a prior stay”
6 from March 3, 2010 to May 23, 2013 is entirely devoid of merit and, even if true, does not
7 impact the Court’s ability to certify the proposed classes in their entirety.

8 Mr. Owino’s previously-submitted declaration confirms that he worked at
9 CoreCivic’s Otay Mesa facility during each of his periods of detention there, including in
10 2015. CoreCivic’s own records confirm this, as they show that Mr. Owino signed a work
11 agreement, accepted various job duties, and completed required training for his work
12 assignments *in 2015* for the Otay Mesa facility. CoreCivic also admits that Mr. Gomez is
13 an appropriate class representative for the putative classes’ UCL claim and does not dispute
14 that the Court can certify the putative classes in their entirety conditioned on Mr. Geh’s
15 addition as an additional Plaintiff and Class Representative.

16 Further, CoreCivic’s own records are admittedly incomplete, and Mr. Owino’s
17 previously-submitted declaration demonstrates CoreCivic’s pattern of failing to pay
18 detainees for all of the days that they work through the VWP. CoreCivic’s attempt to
19 obtain a ruling in its favor on a statute of limitations affirmative defense based on the
20 absence of documents showing payment to Mr. Owino in 2015 within its own *admittedly*
21 *incomplete* records should be disregarded.

22 Finally, even if CoreCivic’s argument had merit (which it does not) and the Court
23 declined to certify the putative classes conditioned on the addition of Mr. Geh as a Plaintiff
24 and Class Representative, CoreCivic’s statute of limitations defense would not preclude
25 the Court from certifying the proposed classes with Mr. Owino as a class representative.
26 Ninth Circuit case law confirms that defenses based on the statute of limitations do not
27 preclude class certification and, in any event, the statute of limitations would have been
28 tolled during Mr. Owino’s civil detention.

1 **II. DISCUSSION**

2 **A. Mr. Owino’s Claims Are Timely.**

3 Mr. Owino affirmed that he worked through the Voluntary Work Program “[d]uring
4 each period of detention at OMDC,” including during his period of detention from
5 February 9, 2015 to March 9, 2015. [ECF 84-3 at 3.] CoreCivic’s argument is also directly
6 contradicted by CoreCivic’s own documents, which confirm Mr. Owino’s participation in
7 the VWP in 2015. CoreCivic’s own records demonstrate that Mr. Owino (1) signed a work
8 agreement for the VWP on February 10, 2015, (2) accepted his various job duties through
9 written acknowledgments, and (3) was required to participate in and complete all
10 applicable training for his work assignments. [Supp. Ridley Decl., at Ex. A (VWP
11 Agreement); ECF 127-2.] These records, which bear Mr. Owino’s signature and were
12 maintained by CoreCivic in his detainee file, undermine CoreCivic’s reliance on self-
13 serving reports that it generated for purposes of this litigation.

14 In short, any absence of a records showing payment for work performed in 2015 is
15 merely further evidence of CoreCivic’s failure to comply with California labor law and
16 undoubtedly bears on damages. It does not support CoreCivic’s argument that Mr.
17 Owino’s claims are barred by the statute of limitations, particularly in the face of reliable
18 evidence to the contrary.

19 **B. CoreCivic Does Not Dispute That The Proposed Classes Can Be**
20 **Certified With Mr. Gomez And Mr. Geh As Class Representatives.**

21 Even if CoreCivic’s statute of limitations argument had merit as to Mr. Owino
22 (which it does not), that would not preclude the Court from certifying the proposed classes.
23 First, CoreCivic does not dispute that Mr. Gomez “may serve as a class representative” for
24 Plaintiffs’ UCL claim. [ECF 164 at n. 2.] There is no dispute that the proposed classes’
25 UCL claims should proceed with Mr. Gomez as a class representative.

26 Second, CoreCivic does not dispute that Achiri Nelson Geh’s addition as a Plaintiff
27 and Class Representative would cure any contrived statute of limitations defense advanced
28 by CoreCivic. As noted in prior briefing, Plaintiffs’ counsel have been retained by a former

1 detainee and putative class member, Achiri Nelson Geh, who was subject to and harmed
2 by the same policies and practices as Plaintiffs while detained at CoreCivic’s Otay Mesa
3 facility between April 24, 2017 and October 28, 2019. [144-3 at 2:5-4:27.] These harms
4 include CoreCivic’s imposition of terms and conditions of employment that violate
5 California labor law when Mr. Geh worked through the VWP from April 2017 to
6 November 2018, including the payment of \$1.50 for each day worked. [*Id.* at 3:1-27.]

7 Thus, even if the Court had statute of limitations concerns with respect to Mr. Owino
8 acting as a class representative, the proposed classes could still be certified at this time
9 conditioned on the addition of Mr. Geh as an additional Plaintiff and Class Representative.
10 *Nat’l Fed’n of the Blind v. Target Corp.*, 582 F.Supp.2d 1185, 1201 (N.D. Cal. 2007)
11 (providing that if Rule 23 is satisfied, “the court may certify the class conditioned upon the
12 substitution of another named plaintiff.”); *see also Kremens v. Bartley*, 431 U.S. 119
13 (1977) (where named plaintiffs’ claims were determined to be moot, ordering substitution
14 of class representatives); *Gibson v. Local 40*, 543 F.2d 1259, 1263 (9th Cir. 1976) (“In any
15 event, failure of proof as to the named plaintiffs would not bar maintenance of the class
16 action or entry of judgment awarding relief to the members of the class.”).

17 **C. CoreCivic’s Admittedly Incomplete Records Cannot Support A Statute**
18 **Of Limitations Defense.**

19 CoreCivic’s argument is predicated on the absence of an entry reflecting payment to
20 Mr. Owino in its own admittedly incomplete records as conclusive evidence that Mr.
21 Owino did not, in fact, work while detained in 2015. While CoreCivic maintains
22 documents sufficient to show which detainees worked through the VWP, the nature of the
23 work performed, the length of the shifts worked by detainees for particular work
24 assignments, and the amount of pay received by the detainees (if any), CoreCivic has gone
25 through great lengths to emphasize to the Court that its records are not complete.
26 Specifically, CoreCivic readily concedes (in a misguided attempt at defeating class
27 certification) that (1) it violated California Labor Code § 226(a) with respect to Mr. Owino
28 (and the putative class members), and (2) its “records submitted in this case... do not

1 indicate the start and stop times for each day worked.”¹ [ECF 85-45 at 5; ECF 164 at 5:11-
 2 13.] CoreCivic cannot now use its own violations of California labor law as the evidentiary
 3 basis for its statute of limitations argument.²

4 Further, due to CoreCivic’s failure to comply with California labor law, Mr. Owino
 5 (and the putative class members) would not always get paid for their work. Mr. Owino
 6 “recall[s] from personal experience and from speaking with other detainees that the
 7 payments would not always process to my account or to their account” and, at times, the
 8 issue “would not be fixed and I did not get paid for that particular day (or that the other
 9 detainee who I was helping did not get paid).” [ECF 84-3 at 5.] As a result, CoreCivic’s
 10 reliance on its own admittedly incomplete records is not persuasive or reliable evidence
 11 supporting a statute of limitations defense.³ This is bolstered by the fact that detainees that
 12 worked through the VWP were not always paid for their work as a direct consequence of
 13 CoreCivic’s rampant violations of California labor law.

14 **D. CoreCivic’s Statute Of Limitations Defense As To Mr. Owino Does Not**
 15 **Pose An Obstacle To Mr. Owino Serving As A Class Representative.**

16 CoreCivic’s statute of limitations defense, in the class certification context, are
 17 without consequence in any event for two reasons. First, a defendant’s “statute of
 18 limitations defense does not automatically preclude certification where common questions
 19 otherwise predominate.” *Nitsch v. Dreamworks Animation SKG Inc.*, 315 F.R.D. 270, 308
 20 (N.D. Cal. 2016).

21 Second, the statute of limitations on Mr. Owino’s claims were tolled during the
 22 period of his detention because (1) his detention and conditions of confinement at
 23

24 _____
 25 ¹ This contention is immaterial for purposes of class certification, as CoreCivic’s own
 26 declarants have established the lengths of each shift worked by detainees at CoreCivic’s
 27 Otay Mesa facility. [See, e.g., ECF 118-5 at 119-20.]

28 ² In effect, CoreCivic attempts to use *its own failure* to maintain these records as both a
 shield against Plaintiffs’ Labor Code claims and a sword in support of its statute of
 limitations defense. Even more nonsensical is CoreCivic’s assertion that *detainees* must
 produce records of when they worked because CoreCivic’s records are allegedly
 incomplete. [ECF 164 at 5:5-16.]

³ CoreCivic has previously relied on the same inaccurate and incomplete reports with
 respect to Mr. Owino. [See ECF 148 at n. 5.]

1 CoreCivic indisputably hindered and obstructed his ability to evaluate or pursue potential
2 claims, and (2) he relied on CoreCivic’s representations that the conduct alleged in
3 Plaintiffs’ Complaint was lawful and mandatory for detainees. Equitable tolling “operates
4 independently of the literal wording of the Code of Civil Procedure to suspend or extend a
5 statute of limitations as necessary to ensure fundamental practicality and fairness.” *Jones*
6 *v. Blanas*, 393 F.3d 918, 928 (9th Cir. 2004) (*quoting Lantzy v. Centex Homes*, 31 Cal. 4th
7 363, 370 (2003)). The Ninth Circuit further explained in *Jones* that “civil detainees litigate
8 under serious disadvantages. The civilly confined are limited in their ability to interview
9 witnesses and gather evidence, their access to legal materials, their ability to retain counsel,
10 and their ability to monitor the progress of their lawsuit and keep abreast of procedural
11 deadlines.” *Id.* at 929 (citing *Rand v. Rowland*, 154 F.3d 952, 958 (9th Cir. 1998)). These
12 concerns are compounded where, as here, a civil detainee is subject to CoreCivic’s repeated
13 commands that he work for \$1 per day or no pay at all over an eight year period. In these
14 situations, “California’s equitable tolling doctrine operates to toll a statute of limitations
15 for a claim asserted by a continuously confined civil detainee who has pursued his claim
16 in good faith.” *Id.* at 930.

17 **III. CONCLUSION**

18 For the foregoing reasons, CoreCivic’s statute of limitations defense should be
19 disregarded, and the proposed classes should be certified in their entirety with Mr. Owino
20 serving as a class representative.
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1 DATED: March 9, 2020

FOLEY & LARDNER LLP

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Geoffrey Raux
Nicholas J. Fox
Alan R. Ouellette

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6 /s/ Eileen R. Ridley

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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 March 9, 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.

/s/ Eileen R. Ridley
Eileen R. Ridley

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

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28

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

CLASS ACTION

**DECLARATION OF EILEEN R.
RIDLEY IN SUPPORT OF
PLAINTIFFS' SUPPLEMENTAL
BRIEF IN SUPPORT OF MOTION
FOR CLASS CERTIFICATION**

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

DEMAND FOR JURY TRIAL

1 I, Eileen R. Ridley, declare as follows:

2 1. I am an attorney at law duly licensed to practice in the State of California and
3 before this Court. I am a partner at the law firm of Foley & Lardner LLP, counsel of record
4 for Plaintiffs and Counter-Defendants Sylvester Owino and Jonathan Gomez, as well as
5 the putative classes (“Plaintiffs”). I am one of the attorneys principally responsible for the
6 representation of Plaintiffs in this lawsuit, and as a result I am familiar with the case file,
7 documents, and history related to this action. I make this Supplemental Declaration based
8 upon my own personal knowledge and am willing to testify, under oath, to the truth of the
9 matter asserted herein if called to do so.

10 2. Attached hereto as **Exhibit A** is a true and correct copy of an excerpt of
11 Defendant CoreCivic, Inc.’s detainee file for Sylvester Owino, Bates labelled
12 CCOF00025454.

13 3. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the
14 laws of the United States of America that the foregoing is true and correct. Executed this
15 9th day of March, 2020, in San Francisco, California.

16
17 /s/ Eileen R. Ridley
18 Eileen R. Ridley
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The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on March 9, 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.

/s/ Eileen R. Ridley
Eileen R. Ridley

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RECEIVING & DISCHARGE CHECKLIST


Inmate/Resident Name: Nombre del Detenido:	OWINO, SYLVESTER	Inmate/Resident #: Numero del Detenido:	[REDACTED]
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RECEIVING CHECKLIST:

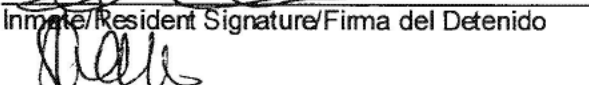
- | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> Verification of Commitment Papers
<input checked="" type="checkbox"/> Searched at intake
<input checked="" type="checkbox"/> Shower at Intake
<input checked="" type="checkbox"/> Issue of Clean, laundered clothing
<input checked="" type="checkbox"/> Disposition of all monies at intake
<input checked="" type="checkbox"/> Medical, dental, mental health screening
<input checked="" type="checkbox"/> Assignment of CCA Number
<input checked="" type="checkbox"/> Personal Property Inventoried (copy given to inmate/resident) | <input checked="" type="checkbox"/> Assignment to a Housing unit
<input checked="" type="checkbox"/> Photograph/I.D. Card
<input checked="" type="checkbox"/> Classification Booking Sheet
<input checked="" type="checkbox"/> Hygiene items Issued
<input checked="" type="checkbox"/> Explanation of Mail and Visiting Procedures
<input checked="" type="checkbox"/> Issue of Lock (if applicable)
<input checked="" type="checkbox"/> Telephone Calls
Other: _____ |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

INMATE/RESIDENT HANDBOOK ACKNOWLEDGMENT: BY SIGNING BELOW, I ACKNOWLEDGE RECEIVING AN INMATE/RESIDENT HANDBOOK ON THIS DATE.

ACUSE DE RECIBO MANUAL POR DETENIDOS: POR MI FIRMA, YO RECIBO UN MANUAL POR DETENIDOS EN ESTE DIA.



 Inmate/Resident Signature/Firma del Detenido



 Receiving Officer (Signature)

2/10/2015

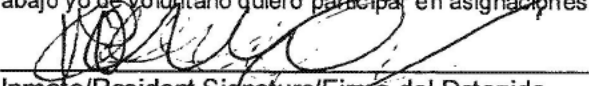
 Date/Fecha

VOLUNTARY WORK RELEASE

As a pre-trial or un-sentenced detainee, I understand that I may not be compelled to work other than to perform housekeeping tasks in my own cell and the community living area. I would like to volunteer for work assignments in addition to my housekeeping tasks. I am aware that I will be working with inmates/residents who are serving a sentence for convictions of crimes. By signing below I am volunteering to participate in work assignments.

LIBERACION VOLUNTARIA DE TRABAJO

Como un detenido antes de prueba o sin sentencia, yo entiendo que no puedo ser obligado a trabajar en ninguna area nada mas que sea la limpieza de mi propia celda y el area comun. Me gustaria ser voluntario para asignaciones de trabajo junto de mi tarea de limpieza de mi celda. Yo estara trabajado con presos que estan cumpliendo su sentencia por convicciones de crimen. Por mi firma abajo yo de voluntario quiero participar en asignaciones de trabajo.



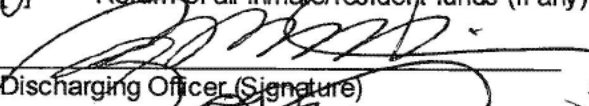
 Inmate/Resident Signature/Firma del Detenido

2/10/2015

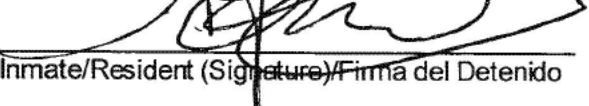
 Date/Fecha

DISCHARGE CHECKLIST:

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> Verification of identity of inmate/resident
<input checked="" type="checkbox"/> Return of all inmate/resident personal property (if any)
<input checked="" type="checkbox"/> Completion of all pending actions with CCA
<input checked="" type="checkbox"/> Return of all inmate/resident funds (if any) | <input checked="" type="checkbox"/> Verification of proper release authority
<input checked="" type="checkbox"/> Return of all CCA issued property
<input checked="" type="checkbox"/> Inmate/resident received all release paperwork
Other: _____ |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|



 Discharging Officer (Signature)



 Inmate/Resident (Signature)/Firma del Detenido

3/9/15

 Date/Fecha

Property of Corrections Corporation of America

Revised: 11/29/2005