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15 Attorneys for Defendant/Counter-Claimant  
 16 CoreCivic, Inc.

17 **UNITED STATES DISTRICT COURT**  
 18 **SOUTHERN DISTRICT OF CALIFORNIA**

19 Sylvester Owino and Jonathan Gomez,  
 20 on behalf of themselves, and all others  
 similarly situated,

21 Plaintiffs,

22 v.

23 CoreCivic, Inc., a Maryland  
 24 corporation,

25 Defendant.

NO. 3:17-cv-01112-JLS-NLS

**DEFENDANT’S REPLY TO  
 PLAINTIFFS’ RESPONSE TO  
 NOTICE OF SUPPLEMENTAL  
 AUTHORITY RE: *MOLOCK***

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 28

1 CoreCivic, Inc., a Maryland  
2 corporation,  
3  
4 Counter-Claimant,  
5  
6 v.  
7  
8 Sylvester Owino and Jonathan Gomez,  
9 on behalf of themselves, and all others  
10 similarly situated,  
11  
12 Counter-Defendants.  
13

14  
15 CoreCivic replies to Plaintiffs’ substantive response (Dkt. 174 at 3) to  
16 *Molock v. Whole Foods Market Group, Inc.*, No. 18-7162, 2020 WL 1146733 (D.C.  
17 Cir. Mar. 10, 2020).

18  
19 **1.** Plaintiffs first argue that *Molock* is not binding. Obviously it is not,  
20 but it *is* persuasive. Plaintiffs concede that *Molock* is the first circuit court decision  
21 to address the split in authority among district courts across the country. Plaintiffs  
22 also make no attempt to challenge *Molock*’s holding or analysis, probably because  
23 *Molock* relied on Supreme Court (*Smith v. Bayer Corp.*) and Ninth Circuit (*Gibson*  
24 *v. Chrysler Corp.*) binding precedent.<sup>1</sup> See *Molock*, at \*2-3. The district court  
25 cases cited by CoreCivic in its earlier briefing align with *Molock*, and, collectively,  
26 they uniformly stand for the proposition that a challenge to personal jurisdiction  
27 over putative class members is not appropriate in a Rule 12(b) motion to dismiss,  
28 and not until and unless the class is certified. (See Dkt. 140 at 7-8, citing *Matic v.*  
*United States Nutrition, Inc.*, 2019 WL 3084335, at \*10 (C.D. Cal. Mar. 27, 2019);  
*Gasser v. Kiss My Face, LLC*, 2018 WL 4538729, \*2 (N.D. Cal. Sept. 21, 2018);  
*Chernus v. Logitech, Inc.*, 2018 WL 1981481, at \*8 (D.N.J. Apr. 27, 2018).)

**2.** Plaintiffs alternatively argue that CoreCivic can never challenge  
personal jurisdiction (either now or if the National Classes are certified) because it

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<sup>1</sup> CoreCivic cited *Gibson* to support its argument that it appropriately and timely  
challenged personal jurisdiction. (Dkt. 140 at 7.)

1 admitted jurisdiction in its original Answer.<sup>2</sup> This is a conclusory rehash of their  
2 earlier misguided waiver arguments (Dkt. 134 at 11-15; Dkt. 140 at 9-12). As  
3 previously explained, CoreCivic admitted only personal jurisdiction of the Named  
4 Plaintiffs' *individual* claims. (Dkt. 44, ¶ 5.) Indeed, that is all it could admit  
5 because the Named Plaintiffs were—and still are—the only parties to this lawsuit.  
6 *See Molock*, at \*3 (“putative class members ... are always treated as nonparties.”).  
7 CoreCivic also denied all remaining allegations pertaining to specific jurisdiction  
8 (Dkt. 44, ¶ 5) and the validity of the putative class claims (*id.*, ¶¶ 10, 13-26). Then,  
9 in its Answer to Plaintiffs' First Amended Complaint, which was filed only 4  
10 months after its original Answer and long before the close of class discovery,  
11 CoreCivic clarified that it admitted personal jurisdiction over only the Plaintiffs'  
12 *individual* claims and denied personal jurisdiction over the putative nationwide  
13 class claims (arising outside of California). (Dkt. 70, ¶ 5.) This clarification was  
14 not even necessary because the National Classes had still not been certified.  
15 Plaintiffs' insistence that CoreCivic needed to secure leave before clarifying this  
16 point in its Answer to their Amended Complaint is therefore a red herring. It is also  
17 incorrect. This Court has the discretion to accept that Answer, *City of W.*  
18 *Sacramento, Cal. v. R & L Bus. Mgmt.*, 2019 WL 2249630, at \*1 (E.D. Cal. May  
19 23, 2019), and it should. Plaintiffs waited nearly a year before lodging an  
20 objection, and even then they have not shown any prejudice. *See id.* at \*2 (in  
21 exercising this discretion, courts should “remain sensitive to equitable  
22 considerations and concerns about appropriate docket management”).

23  
24 <sup>2</sup> To make this point, Plaintiffs once again launch an ad hominem attack, accusing  
25 CoreCivic of deceptively asserting in its Reply to the Motion for Judgment for  
26 Pleadings that it preserved its challenge in its “Answer” but citing to its “Answer to  
27 Plaintiffs' First Amended Complaint, not to its original Answer.” (Dkt. 174 at 2  
28 n.1) This accusation is false. Defendant's Reply stated: “Here, CoreCivic explicitly  
pled the lack of personal jurisdiction over the putative nationwide class claims  
arising at facilities outside California in its Answer to the Amended Complaint,  
thus preserving it for a future Rule 12(c) or Rule 56 motion. (Dkt. 70 at 3, ¶ 6.)”  
(*See* Dkt. 140 at 8-9.)



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NO. 3:17-cv-01112-JLS-NLS

**CERTIFICATE OF SERVICE**

1 CoreCivic, Inc., a Maryland  
 2 corporation,  
 3  
 4 Counter-Claimant,  
 5  
 6 v.  
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 8 Sylvester Owino and Jonathan  
 9 Gomez, on behalf of themselves,  
 10 and all others similarly situated,  
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 12 Counter-  
 13 Defendants.

14 I am a citizen of the United States and am over the age of eighteen years, and  
 15 not a party to the within action. My business address is Struck Love Bojanowski &  
 16 Acedo, PLC, 3100 West Ray Road, Suite 300, Chandler, AZ 85226. On March 24,  
 17 2020, I served the following document(s):

18 **DEFENDANT’S REPLY TO PLAINTIFFS’ RESPONSE TO NOTICE OF**  
 19 **SUPPLEMENTAL AUTHORITY RE: *MOLOCK* and this**  
 20 **CERTIFICATE OF SERVICE**

21  **BY MAIL:** by placing the document(s) listed above in a sealed  
 22 envelope with postage thereon fully prepaid, in the United States Mail at  
 23 Phoenix, Arizona addressed as set forth below.

24  **BY ELECTRONIC SUBMISSION:** per Court Order, submitted  
 25 electronically by CM/ECF to be posted to the website and notice given to all  
 26 parties that the document(s) has been served.

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*Attorneys for Plaintiffs and the Proposed Class*

I declare that I am employed in the office of a member who is admitted pro hac vice in this Court at whose direction the service was made. I declare under penalty of perjury that the forgoing is true and correct.

Executed on March 24, 2020, at Chandler, Arizona.

s/ Nicholas D. Acedo