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12
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

JOINT STATUS REPORT

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

1 Pursuant to the Court’s Order: (1) Denying Without Prejudice Plaintiffs’ Motion For
2 Partial Summary Judgment, (2) Denying Defendant’s Motion For Judgment On The
3 Pleadings, (3) Denying As Moot Plaintiffs’ Motion To Exclude, and (4) Granting In Part
4 And Denying In Part Plaintiffs’ Motion For Class Certification (ECF No. 179) (the
5 “Order”), Plaintiffs Sylvester Owino and Jonathan Gomez (“Plaintiffs”) and Defendant
6 CoreCivic, Inc. (“Defendant”) submit this Joint Status Report regarding the status of this
7 litigation and their anticipated next steps. This Joint Status Report follows the parties’
8 telephonic meet and confer on April 13, 2020.

9 **I. PLAINTIFFS’ STATEMENT**

10 **A. Estimate For Completion Of Discovery And Trial Readiness**

11 Plaintiffs intend to diligently prosecute their claims on behalf of the Certified
12 Classes. This action has been pending since May 31, 2017, and Plaintiffs believe that this
13 matter should be set for trial. Accounting for the impact of the COVID-19 public
14 emergency, Plaintiffs estimate that all non-expert discovery will be complete by February
15 2021 and that this case will be ready for trial by June 1, 2021. Plaintiffs request that the
16 Court set case management, discovery and trial deadlines as soon as practicable.

17 **B. Discovery**

18 With respect to discovery, Judge Stormes set a deadline of June 1, 2020 for the
19 parties to submit a discovery dispute deadline concerning various discovery issues,
20 including any remaining disputes regarding ESI custodians and search terms (ECF No.
21 131). Plaintiffs will continue to meet and confer with Defendant in an effort to reach
22 agreement on all discovery issues subject to the June 1, 2020 deadline as expeditiously as
23 possible.

24 In addition, Plaintiffs have informed Defendant that they are seeking detainee files
25 and disciplinary records for the class members, among other categories of responsive and
26 relevant documents. Plaintiffs’ prior discovery requests encompassed these documents,
27 but Defendant only produced a limited subset of responsive documents and agreed to
28 determine the scope of future productions after the Court ruled on Plaintiffs’ motion for

1 class certification. Given that the Court has certified California-specific classes and a
2 national class, Plaintiffs seek a complete production of records from Defendant from all
3 CoreCivic facilities for the entire class periods, including the following:

- 4 • All disciplinary records for the class members;
- 5 • All detainee files¹ for the class members; and
- 6 • All policies and procedures not previously produced.

7 Defendant agrees with the relevance of the categories of information sought. During
8 the April 13, 2020 meet and confer call, Defendant also stated that it does not believe that
9 discovery should ramp up until after the resolution of Defendant’s anticipated motion for
10 reconsideration and petition for interlocutory appeal (which is discussed further below).
11 Plaintiffs disagree with this position and believe that Defendant should comply with its
12 discovery obligations without delay, including the collection and production of responsive
13 and relevant documents. Plaintiffs will meet and confer with Defendant in an attempt to
14 arrive at a mutually agreeable deadline for the production of complete records, but believe
15 that such a deadline should be within a matter of 2-3 months.

16 Plaintiffs will also meet and confer with Defendant to ensure that Defendant
17 produces documents identifying all class members and their last known addresses and
18 contact information. This includes the need for Defendant to update previously produced
19 documents to identify all class members during the relevant class periods (which run
20 through the present).

21 Plaintiffs will begin additional deposition discovery as soon as the current stay at
22 home orders are lifted.

23 **C. Plaintiffs’ Counsel’s Access To Detained Class Members**

24 Plaintiffs have informed Defendant of their intent to determine a procedure under
25 which (1) class members that are currently detained at a CoreCivic facility are notified of
26

27 ¹ Defendant’s suggestion that they do not know what documents constitute a “detainee
28 file” is belied by the testimony of Defendant’s Rule 30(b)(6) witness, Jason Ellis (and
other CoreCivic witnesses), who testified that Defendant maintains a “detainee file” for
every ICE detainee detained at Defendant’s facilities.

1 their membership in the class(es), and (2) class counsel be granted access to currently
2 detained class members. This is consistent with the guidance provided by the Court at the
3 December 19, 2019 hearing on the motions subject to the Order. Plaintiffs will propose a
4 specific method for notification and access to class members that are presently detained to
5 Defendant.

6 **D. Plaintiffs' Motion For Partial Summary Judgment**

7 Plaintiffs informed Defendant that they are considering filing a renewed Motion for
8 Partial Summary Judgment, which was denied without prejudice in the Order. Plaintiffs
9 requested that Defendant identify the specific discovery that it believes is “essential to
10 oppose summary judgment” so that the parties’ can complete any “essential” discovery as
11 efficiently as possible prior to Plaintiffs filing a renewed Motion. Defendant was not in a
12 position during the April 13, 2020 meet and confer discussion to identify such discovery
13 and, to date, has not identified any “essential” discovery needed to oppose Plaintiffs’
14 Motion for Partial Summary Judgment.

15 Plaintiffs also oppose Defendant’s request for the Court to issue an order providing
16 that the parties are limited to filing one dispositive motion after the close of fact discovery
17 (which Defendant did not raise and the parties did not discuss on their meet and confer
18 call). Such an atypical limitation would be unwarranted here, particularly given that
19 discrete legal issues exist that can be adjudicated at this time based on undisputed material
20 facts concerning Defendant’s operations. As Plaintiffs explained to Defendant on the April
21 13, 2020 meet and confer call, an adjudication of the legal issue of whether certain ICE
22 detainees were “employees” of Defendant under California law would significantly
23 advance the resolution of this case and conserve both the parties’ and Court’s resources if
24 the Court determines that there is no genuine dispute of material fact that would preclude
25 the adjudication of a discrete legal issue.

26 **E. Defendant’s Motion For Reconsideration And Petition For**
27 **Interlocutory Appeal**

28 Defendant informed Plaintiffs of its intent to file a motion for reconsideration of the

1 Order and to seek interlocutory appeal of the Order. Plaintiffs will oppose both and will
2 also oppose any request for a stay by Defendant in conjunction with the same.

3 **F. Settlement And ADR**

4 Plaintiffs inquired if Defendant is interested in participating in settlement
5 discussions at this time. Defendant declined to participate in settlement discussions.
6 Plaintiffs are amenable to participating in settlement discussions or any ADR-procedures
7 ordered by the Court, including mediation and/or an Early Neutral Evaluation.

8 **II. DEFENDANT'S STATEMENT**

9 **A. Relief From The Order Granting Class Certification**

10 Defendant will be filing a Motion for Reconsideration challenging the Court's
11 certification of the California Forced Labor Class, the National Forced Labor Class, and
12 the California Labor Law Class on the same date this Joint Status Report is filed.
13 Depending on the outcome of that Motion, Defendant intends to raise those and other issues
14 in a Rule 23(f) Petition to the Ninth Circuit.

15 **B. Discovery And Related Deadlines**

16 Because the Motion for Reconsideration and Rule 23(f) Petition, if granted, would
17 substantially narrow the scope of necessary merits discovery, Defendant requests that such
18 discovery be stayed pending their resolution. This will allow the parties and the Court (to
19 the extent it must resolve discovery disputes) to avoid the unnecessary waste of time and
20 resources, as the National Forced Labor Class includes over 1.1 million detainees, for
21 whom Plaintiffs have requested complete "detainee files."² At a conservative estimate of
22 50 pages per file, production of just the "detainee files" (a term Plaintiffs have not defined,
23 and which could therefore theoretically include much more than 50 pages per file), this
24

25
26 ² During the April 13, 2020 telephonic meet and confer, counsel for Defendants
27 acknowledged that certain disciplinary records and policies and procedures are relevant
28 and that the parties would need to work out how to go about producing them. As noted here
and in Defendant's response to Plaintiffs' Second Set of Requests for Production,
Defendant does not concede the relevance of the complete "detainee files," and did not do
so during the meet and confer.

1 would require Defendant to produce nearly 57,000,000 pages of documents. Requiring
2 Defendant to begin doing so while the class definitions at issue remain in flux would
3 impose an unnecessary and disproportionate burden on Defendant in violation of Rule
4 26(b)(1). This is particularly true where, as here, Plaintiffs have not identified the
5 documents they believe constitute the “detainee file,” and have not provided any
6 explanation as to the necessity of producing each and every file in its entirety or made any
7 showing as to the importance of the files to resolving the issues in this matter or that the
8 likely benefit of producing the files outweighs the burden and/or expense of doing so. For
9 these reasons, as well as the current pandemic that limits both sides’ ability to conduct
10 discovery, the Court should stay any further discovery in this matter until the Motion for
11 Reconsideration and Rule 23(f) Petition are resolved.^{3, 4}

12 Plaintiffs’ proposed timeline for merits discovery (once it begins) is untenable, and
13 would be even without the current pandemic and its associated disruptions. As set forth
14 above, production of just the detainee files would be impossible to complete by February
15 2021, even if the Motion for Reconsideration and Rule 23(f) Petition had already been
16 resolved, given that the files must be gathered, reviewed, and produced from over 20
17 facilities spread across the country, many of which have likely been placed in off-site
18 storage to the extent they still exist at all.⁵ Plaintiffs’ belief that the production could be
19 completed in 2-3 months is unrealistic, especially given that the parties will need to engage
20 in additional discovery beyond mere production of detainee files, including written
21 discovery and depositions on both sides, which Plaintiffs acknowledge. Defendant
22

23
24 ³ This includes any discovery that is the subject of Judge Stormes’s August 19, 2019 Order.
(Doc. 131.)

25 ⁴ Defendant disputes Plaintiffs’ characterization of its previous productions as “only ... a
26 limited subset of responsive documents,” as Defendant has produced 103,855 pages of
27 Bates-numbered images. Of those, Defendant has produced 412 native files such as
28 detainee rosters and disciplinary logs, each with a single Bates number, but that, if printed,
would yield an additional 321,507 pages of information. Nevertheless, Defendant
acknowledges that much remains to be done with respect to discovery—on both sides.

⁵ Defendant’s standard records retention period is three years.

1 estimates the parties will need at least 12 months to complete merits discovery once it
2 begins, and possibly as much as 18-24 months.⁶

3 Plaintiffs' belief that this matter will be ready for trial by June 1, 2021 ignores the
4 reality and logistics of the claims they seek to bring to trial, which encompass more than
5 20 facilities nationwide and seek redress for alleged injuries that occurred as long as 14
6 years ago. It also fails to account for dispositive motion briefing, which both sides will
7 undoubtedly want to engage in. Indeed, Plaintiffs have already stated they intend to re-file
8 their Motion for Partial Summary Judgment ("MPSJ") on the issue of whether Defendant
9 employs(ed) detainees who participate(d) in the Voluntary Work Program. Defendant
10 requests that any Scheduling or Case Management Order the Court issues in this matter
11 limit each side to one dispositive motion, to be filed after the completion of discovery.
12 Although Plaintiffs note that Defendant was "not in a position during the April 13, 2020
13 meet and confer discussion to identify" the discovery it would need in order to respond to
14 the MPSJ, Plaintiffs similarly were unable to articulate any reasons why the issues raised
15 in that motion need to be resolved now, and cannot wait until discovery is complete.⁷ Even
16 now, Plaintiffs offer only vague generalities that early resolution of the MPSJ would
17 advance the case and conserve resources, without explaining how. Resolution of whether
18 Defendant employed Plaintiffs will not terminate the litigation, or even litigation regarding
19 the claims asserted by the California Labor Law Class, as that is but one of many issues
20 that must be resolved in order to fully resolve those claims, including the applicability of
21 Defendant's affirmative defenses, including but not limited to derivative sovereign
22 immunity and intergovernmental immunity.

23 C. Settlement And ADR

24 Plaintiffs correctly state that Defendant is not interested in participating in settlement
25

26 ⁶ In addition to discovery from Plaintiffs, Defendant will need to seek written discovery
27 from and/or depositions of ICE personnel, which will require *Toughy* requests to ICE to
28 get approval for ICE personnel to respond. In Defendant's experience, such requests can
take up to six months to get a response.

⁷ Clearly, the parties discussed the MPSJ during the April 13, 2020 telephonic meet and confer.

1 discussions at this time, such that there is no need to order mediation or any other
2 alternative dispute resolution procedures. Nevertheless, should the Court do so, Defendant
3 will participate in good faith.

4 DATED: April 15, 2020

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9 /s/ Eileen R. Ridley

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1 DATED: April 15, 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 April 15, 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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