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 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

**JOINT MOTION FOR
 DETERMINATION OF
 DISCOVERY DISPUTE NO. 4**

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

1 The parties hereby submit this Joint Motion for Determination of Discovery
2 Dispute No. 4. The parties' Joint Statement is submitted herewith at Attachment A.

3 **I. Plaintiffs' Request for Production of Detainee Files.**

4 **A. Plaintiffs' Position.¹**

5 Plaintiffs have requested from CoreCivic "[a]ll detainee files for detainees
6 that were and/or are in the custody of ICE at Your California and non-California
7 detention facilities during the Relevant Time Period." CoreCivic generally objects
8 to this request as overbroad and unduly burdensome. To alleviate any purported
9 burden on CoreCivic, Plaintiffs have offered² to dramatically limit the scope of this
10 request by allowing CoreCivic to produce a small but representative sampling of
11 detainee files as follows:

- 12 • For facilities that detained less than 10,000 class members during the
13 applicable certified class period, the lesser of 1,250 detainee files or 30%
14 of the detainee files for the class members.
- 15 • For facilities that detained between 10,000 and 49,999 class members
16 during the applicable certified class period, 1,500 detainee files.
- 17 • For facilities that detained between 50,000 and 99,999 class members
18 during the applicable certified class period, 1,750 detainee files.
- 19 • For facilities that detained between 100,000 and 249,999 class members
20 during the applicable certified class period, 2,000 detainee files.
- 21 • For facilities that detained between 250,000 and 500,000 class members
22 during the applicable certified class period, 2,250 detainee files.
- 23 • For facilities that detained over 500,000 class members during the
24 applicable certified class period, 3,000 detainee files.

23 ¹ In response to this issue, CoreCivic submitted two declarations of counsel with six
24 pages of incomplete or disputed characterizations of the parties' meet and confer
25 discussions, as well as additional argument. CoreCivic first shared these
26 declarations with Plaintiffs' counsel at 7:01 pm PT on the date of this joint filing.
27 Plaintiffs object to this method of obtaining additional pages of briefing in violation
28 of the Court's Civil Case Procedures.

26 ² Contrary to CoreCivic's contention below, CoreCivic has never proposed a
27 sampling based on generally accepted statistical principles and never proposed an
28 specific alternative method for sampling.

1 Based on information produced by CoreCivic to date, this modified request
2 would require CoreCivic to produce less than three percent (3%) of detainee files
3 for the class members. Plaintiffs' proposal allows the parties to rely on a sample of
4 detainee files that is representative of the detainee files for the entire class³
5 Moreover, Plaintiffs' proposal is manifestly reasonable, as it seeks a much smaller
6 percentage of files than those sought and approved in other cases. *See, e.g., Soto v.*
7 *Castlerock Farming & Transp., Inc.*, 282 F.R.D. 492, 503 (E.D. Cal. 2012)
8 (ordering production of "random sample of 50% of the timekeeping and payroll
9 records" during the relevant time period); *see also Sansone v. Charter Commc'ns,*
10 *Inc.*, No. 17-CV-01880-WQH-JLB, 2019 WL 460728, at *3-7 (S.D. Cal. Feb. 6,
11 2019) (ordering production of contact information for 10% and 20% of classes).

12 Under Plaintiffs' proposal, the samples would be randomly selected through
13 a mutually agreed method, with both parties agreeing that they will mutually only
14 use the detainee files previously produced in the action, the detainee files produced
15 through the random sampling method, and the detainee files produced as otherwise
16 provided in response to other discovery (*e.g.*, under the parties' ESI protocol or as
17 otherwise provided below). The sampling and production will be based on updated
18 detainee rosters for each facility that conform to the certified class period applicable
19 to the facility up to the present date. The parties would further stipulate that the
20 results of this sample are representative such that the absence of detainee files not
21 previously produced or produced pursuant to such stipulation will not be the basis

22 _____
23 ³ The sample sizes requested accord with generally accepted statistical principles,
24 with the exception of the first category (facilities with less than 10,000 class
25 members). For those facilities, CoreCivic would in fact need to produce much
26 *larger* sample size than that proposed by Plaintiffs in order to achieve a
27 representative sample, due to the manner in which sample size varies as a function
28 of population size (*i.e.*, a much larger percentage of the population is necessary to
produce a representative sample for a small population than for a large population).
Nonetheless, in order to minimize the burden on CoreCivic to produce documents
corresponding to relatively small facilities, Plaintiffs have agreed to allow
CoreCivic to produce only "the lesser of 1,250 detainee files or 30% of the detainee
files for the class members."

1 of proof of any parties’ defenses or claims. If a randomly selected detainee file no
2 longer exists or is otherwise unavailable, a replacement detainee file will be
3 selected based on the same method for determining the random sample. Plaintiffs
4 may request, and CoreCivic will produce, specific additional detainee files based on
5 the agreement of the parties or a showing of good cause to the Court.

6 CoreCivic has indicated that it is generally amenable to the above approach.
7 However, CoreCivic contends that production of detainee file samples is premature
8 pending CoreCivic’s Motion for Reconsideration (Doc. 181), and CoreCivic’s
9 forthcoming Rule 23(f) Petition to the Ninth Circuit. CoreCivic further argues that
10 sampling and production should be delayed until after CoreCivic obtains updated
11 detainee rosters for the facilities at issue.

12 Plaintiffs disagree that it is premature to order production of samples of
13 detainee files. It is well-established that “[t]o relieve the burden on a party, a court
14 may order a ‘sampling’ of records.” *Soto*, 282 F.R.D. at 503. No just cause for
15 delay exists, as courts have ordered discovery through sampling even prior to class
16 certification. *Id.* (ordering production of “random sample of 50% of the
17 timekeeping and payroll records” prior to class certification); *see also Sansone*,
18 2019 WL 460728, at *3-7 (ordering defendants to produce sampling of information
19 “prior to class certification”). Additionally, Plaintiffs’ request for detainee files was
20 propounded over a year ago on March 15, 2019. Given that classes have been
21 certified and the parties are now conducting merits discovery, there exists no cause
22 to further delay production of documents.

23 CoreCivic argues that it needs clarification regarding the “scope of the
24 classes and claims that were certified by the Court—i.e., whether the National and
25 California Forced Labor Classes are limited to detainees who cleaned the common
26 living areas of a facility because of CoreCivic’s sanitation and disciplinary policies,
27 or whether the classes and claims extend beyond the common living areas to other
28 areas of the facility.” However, the certification order is clear: the class includes

1 ICE detainees that “cleaned areas of the facility above and beyond the personal
2 housekeeping tasks enumerated in the PBNDS” “under threat of discipline.” [ECF
3 179 at 12:5-20.] The sanitation and discipline policies are evidence of a common
4 policy and practice requiring detainees to clean under threat of discipline, but those
5 policies do not somehow constitute a limitation. Nor are classes limited to the
6 cleaning of “common living areas”—the certification order includes any “areas of
7 the facility” not addressed by the PBNDS’ personal housekeeping requirements.

8 Thus, the sampling of CoreCivic’s detainee files is ripe for resolution.⁴
9 Plaintiffs respectfully request that the Court order CoreCivic to produce detainee
10 files in accordance with the tiered sampling approach outlined above.

11 **B. Defendant’s Position.**

12 **1.** As previously discussed in the parties’ April 15, 2020 Joint Status
13 Report (Doc. 180) and the parties’ May 29, 2020 Joint Statement Regarding
14 Proposed Case Management Schedule (submitted to chambers in preparation for the
15 June 4, 2020 Case Management Conference), Plaintiffs’ request is premature.
16 Discovery should be stayed until the Court rules on CoreCivic’s Motion for
17 Reconsideration of the class-certification Order, filed on April 15, 2020 (Doc.
18 181),⁵ and forthcoming Rule 23(f) petition to appeal (if necessary). The Court must
19 also clarify the scope of the Forced Labor class claims—i.e., whether they are
20 limited to detainees who cleaned common living areas because of CoreCivic’s

21 _____
22 ⁴ Below, CoreCivic bristles at not having received Plaintiffs’ portion of this Joint
23 Motion until after 5:00 pm on May 29, 2020. However, Plaintiffs’ similarly did not
24 receive CoreCivic’s portion of this Joint Motion until around 3:34 pm that same
25 day. Moreover, the issues raised herein by Plaintiffs have been discussed in meet
26 and confer correspondence initiated by Plaintiffs’ counsel. Plaintiffs first attempted
27 to discuss this issue during a meet and confer call as early as April 13, 2020, but
28 CoreCivic was not prepared to discuss this issue at this time. Further, in spite
asserting objections to Plaintiffs’ request, CoreCivic never reached out to Plaintiffs
to meet and confer over this issue after serving its objections. Plaintiffs’ counsel
again initiated meet and confer correspondence on May 19, 2020, after which the
parties reached an impasse.

⁵ Plaintiffs’ response is due on or before June 4, 2020; CoreCivic’s reply is due on
or before June 11, 2020; oral argument is set for June 18, 2020.

1 sanitation and disciplinary policies (Doc. 179 at 39-42), or whether they extend
2 beyond the common living areas to other areas of the facility. This dispute arose
3 during the parties' meet-and-confer and will need to be resolved by the Court.

4 Resolution of these class issues will necessarily impact the scope of merits
5 discovery that must be completed, and may in fact substantially narrow the scope of
6 discovery that must be done. *See Soto*, 282 F.R.D. at 503 ("Plaintiff is not entitled
7 to discovery for the claims he is unable to pursue on behalf of a class."). In light of
8 Rule 26(b)(1)'s mandate that discovery be "proportional to the needs of the case,"
9 considering the parties' resources, the importance of the discovery in resolving the
10 issues, and whether the burden or expense of the proposed discovery outweighs its
11 likely benefit, all merits discovery, including the production of thousands of
12 detainee files, should be stayed pending resolution of these issues. Conservation of
13 the parties and Court's resources is vitally important in a case such as this, which
14 involves matters of first impression (the applicability of federal and state labor laws
15 to immigration detainee labor) and class members at more than 20 facilities over a
16 12 to 14-year period. Given the scope of Plaintiffs' claims, discovery will be a
17 time-consuming, expensive, and a difficult proposition under the best of
18 circumstances—and has been to date.⁶ Moreover, CoreCivic will bear the brunt of
19 this disproportionate burden. The Court should thus deny Plaintiffs' request for an
20 order compelling CoreCivic to immediately begin producing detainee files, and stay
21 further discovery until the issues identified above are resolved.

22 **2.** As stated in the parties' May 29, 2020 Joint Statement Regarding
23 Proposed Case Management Schedule, CoreCivic requests that the Court suspend
24 the chambers rule requiring discovery dispute motions to be filed within 45 days of
25 the "trigger date," which, here, is the date of service of the initial response.
26 Although CoreCivic understands the value of the rule in a typical case, this is not

27 _____
28 ⁶ The Court is familiar with the extent of the document production that has already
occurred so far in this case. (Doc. 68, 74, 76, 78, 79, 88.)

1 your typical case, and the parties will continue to be faced with complex factual and
2 legal issues that cannot be resolved within the timeframe set by the chambers rule.
3 This discovery dispute is a prime example. As discussed below, the parties have
4 generally agreed to a tiered sampling of detainee files, but developing the contours
5 of that agreement has been cut short to comply with the chambers rule. Allowing
6 the parties to continue to work together in good faith to resolve these and other
7 discovery issues, and to bring any issues they are unable to resolve to the Court's
8 attention as the disputes actually arise through the close of fact discovery will allow
9 the parties to keep the case moving forward without having to repeatedly request
10 extensions of the deadline, as they have done multiple times already in this case.

11 **3.** There is no dispute for the Court to resolve. The chronology of events
12 is outlined in the Declaration of Jacob B. Lee Regarding Plaintiffs' RFP Re: ESI &
13 Detainee Files ("Lee Dec. I").⁷ In summary, it was CoreCivic who proposed the
14 random sampling method, which Plaintiffs ultimately agreed to during the meet-and
15 -confer last week. (Lee Dec. I, ¶¶ 2–8.) Although the parties still needed to work
16 out the specifics of this compromise, CoreCivic believed that a discovery dispute
17 motion would not be necessary, and that the parties could continue to work towards
18 a complete agreement in good faith. (*Id.*, ¶¶ 9–13.) But on May 29, 2020,
19 Plaintiffs informed CoreCivic that they intended to file a discovery dispute motion.
20 (*Id.*, ¶ 14.) In light of this near-complete agreement, there is really nothing for the
21 Court to resolve at this time. Rather, the Court should allow the parties to continue
22 to work out the specifics of the sampling method and bring any actual issues that
23 cannot be resolved to the Court's attention when they are ripe.⁸

24 ⁷ CoreCivic sent the declarations to Plaintiffs at 7:00 p.m. at Plaintiffs' request, but
25 had previously sent Plaintiffs the substance of the declarations in CoreCivic's
original positions on Friday, May 29 and the morning of Monday, June 1.

26 ⁸ CoreCivic notes that Plaintiffs misplace reliance on *Soto* and *Sansone*. The
27 ordered sampling in those cases occurred pre-certification only because it was
28 *necessary* for class certification. *Soto*, 282 F.R.D. at 503-04; *Sansone*, 2019 WL
460728, at *7, 9. Moreover, in *Soto*, the court ordered production of 50% of the
records from only four months out of each year, not 50% of all records, as Plaintiffs

1 4. Plaintiffs have failed to satisfy *their* burden in establishing that the
2 requested sample sizes are proportional to the needs of the case. *See Sansone*, 2019
3 WL 460728, at *7 (declining to “blindly order production of contact information for
4 all of the Commissions subclass members without first considering the size of the
5 subclass”). Nor can they, as the total number of detainee files potentially at issue is
6 not known, and cannot be known until CoreCivic produces the updated detainee
7 rosters. Counsel for CoreCivic is in the process of securing those rosters, and will
8 produce them to Plaintiffs once received. (Lee Dec. I., ¶ 8.) Until the parties know
9 the total number of detainees at issue, they cannot determine a proportional number
10 of files to produce. Indeed, Plaintiffs do not provide any evidence, declaration or
11 otherwise, establishing that their proposed tiers are proportional or reasonable. And
12 yet, Plaintiffs demand that CoreCivic immediately start producing files consistent
13 with their proposed tiers. The Court should deny their request.

14 **II. ESI Search Terms and Custodians.**

15 **A. Plaintiffs’ Position.**

16 The parties are unable to agree on a protocol for production of electronically
17 stored information (“ESI”) maintained by CoreCivic. Plaintiffs and CoreCivic each
18 circulated respective proposed ESI protocols agreeing to revisit the topic after the
19 Court’s Order on various significant or dispositive motions. Following the Court’s
20 Order certifying the National and CA Forced Labor Classes and the CA Labor Law
21 Class and denying the parties’ dispositive motions (without prejudice as to
22 Plaintiffs’ motion for partial summary judgment), Plaintiffs issued a revised
23 proposal that adopted CoreCivic’s original proposal in its entirety, subject to the
24 inclusion of additional custodians and search terms.

25 Plaintiffs’ current proposal concerning ESI is attached hereto as **Appendix 1**.

26 _____ contend. 282 F.R.D. at 504. In *Sansone*, the classes were much smaller than the
27 classes at issue here (8,150 and 2,184), and thus the 10% and 20% samples yielded
28 a much smaller and manageable sample size (815 and 436, respectively). 2019 WL
460728, at *7, 9.

1 The additional custodians and search terms proposed by Plaintiffs are highlighted in
2 yellow in Appendix 1 for reference. The non-highlighted portions of the Appendix
3 were either originally proposed by CoreCivic or have been agreed on by the parties.

4 Despite previously meeting and conferring on these issues, and despite
5 Plaintiffs agreeing to adopt CoreCivic's proposed ESI protocol with a limited
6 number of additional custodians and search terms, CoreCivic contends that the
7 scope of the claims and classes at issue needs to be resolved before further ESI
8 discovery. Similarly, while CoreCivic has not yet asserted objections to the search
9 terms contained in the current proposed ESI protocol, CoreCivic maintains that it
10 cannot evaluate Plaintiffs' proposed search terms at this juncture.

11 Plaintiffs disagree with these contentions. The Court has already granted
12 Plaintiffs' motion for class certification and defined certified classes and the claims
13 that they can pursue. No additional "clarity" is needed, as the Court's Order is clear
14 as to the claims and classes at issue. Accordingly, the time is ripe for the parties to
15 agree on an ESI protocol and for CoreCivic to produce documents responsive to
16 Plaintiffs' discovery requests. While CoreCivic has not asserted objections or
17 identified issues with the additional highlighted search terms proposed by Plaintiffs,
18 Plaintiffs note that all of the search terms are narrowly tailored to seek information
19 relevant to labor performed by detainees at CoreCivic facilities, CoreCivic's
20 voluntary work program, and disciplinary action against CoreCivic detainees (*see*
21 Appendix 1)—information that is plainly relevant to the parties' claims and
22 proportional to the needs of this case.⁹ Fed. R. Civ. P. 26(b)(1)

23 With respect to document custodians, CoreCivic objects that the document
24

25 ⁹ "Electronically stored information is discoverable under the same relevance
26 standards of Rule 26, 'regardless of their present format and level of accessibility.'" *Toranto v. Jaffurs*, No. 16CV1709-JAH (NLS), 2018 WL 4613149, at *3 (S.D. Cal.
27 Sept. 26, 2018). Even where the information is "inaccessible" (*i.e.*, where
28 "expenditure of resources required to access the contents [of ESI] is itself unreasonable"), courts will normally "order production as long as relevance is met." *Id.*

1 custodians should be limited to individuals who held “facility leadership positions,”
2 while excluding all non-leadership employees of CoreCivic. This limitation is
3 inappropriate, as the non-leadership positions that CoreCivic seeks to exclude are
4 involved in the day-to-day enforcement of CoreCivic’s policies and supervision of
5 CoreCivic’s detainees. As a result, documents maintained by individuals in non-
6 leadership positions are likely to offer unique insight into CoreCivic’s operations
7 that cannot be gleaned solely from documents maintained by CoreCivic’s
8 leadership staff. Accordingly, the discovery pertaining to non-leadership
9 employees of CoreCivic are both relevant to Plaintiffs’ claims and proportional to
10 the needs of this case. Fed. R. Civ. P. 26(b)(1).

11 CoreCivic contends that documents maintained by leadership personnel
12 necessarily encompass documents maintained by non-leadership personnel.
13 However, CoreCivic has represented that it has not actually performed document
14 searches to confirm that this is the case. Thus, Plaintiffs cannot accept CoreCivic’s
15 assumption that all correspondence among non-leadership CoreCivic employees
16 would be subsumed by correspondence among leadership personnel—nor will this
17 be true in instances where non-leadership personnel communicated amongst each
18 other. Even if CoreCivic’s assumption were true, Plaintiffs’ right to seek discovery
19 and verify that assumption falls well within the bounds of permissible discovery.

20 Nor is there merit to CoreCivic’s contention that the addition of non-
21 leadership employees as custodians would “cover[] essentially every employee in
22 every facility.” Organizational charts produced by CoreCivic contradict this
23 assertion, and Plaintiffs are prepared to provide these for the Court if requested.
24 CoreCivic also misses the mark with its argument below that non-leadership
25 “officers do not write a report or send an email every time they tell a detainee to
26 clean up the mess he left at the microwave.” If few responsive documents exist,
27 then including additional custodians imposes little burden on CoreCivic.
28 Conversely, if responsive documents exist, then CoreCivic must produce

1 responsive documents maintained by such custodians. In either case, Plaintiffs are
2 allowed to test CoreCivic's implausible assumption that non-leadership employees
3 have no documents responsive or relevant to Plaintiffs' discovery.

4 CoreCivic next advances the frivolous argument that "Plaintiffs did not
5 attach any documents they obtained solely through CoreCivic's ESI productions to
6 their Motion for Class Certification, and they have not identified any particular
7 documents that resulted from the test run that they are likely to use either in
8 dispositive motion briefing or at trial." However, what Plaintiffs attached to their
9 *class certification* motion does not operate as a limitation on what Plaintiffs may
10 pursue by way of *merits* discovery. Further, Plaintiffs' review of the test run
11 documents confirm a high rate of relevant and responsive documents. Beyond that,
12 Plaintiffs are not obligated to divulge to CoreCivic what documents Plaintiffs
13 intend to use in dispositive motion briefing or at trial.

14 Finally, to the extent CoreCivic rests on objections of undue burden, these
15 objections are without merit. The parties have already engaged in discussions
16 regarding review of documents assisted by artificial intelligence ("AI-assisted
17 review"), and Plaintiffs are willing to continue to meet and confer about appropriate
18 methods for review, taking into account the size of the class.

19 For these reasons, Plaintiffs respectfully request that the Court adopt the ESI
20 protocol attached hereto as Appendix 1 in its entirety.

21 **B. Defendant's Position.**

22 **1.** For the reasons stated above, Plaintiffs' request for an order
23 compelling CoreCivic to immediately begin producing ESI consistent with their
24 proposed ESI protocol is premature. Plaintiffs' position that "[n]o additional
25 'clarity' is needed, as the Court's Order is clear as to the claims and classes at
26 issue," is belied by the fact that both sides have read the Order and come to
27 different conclusions as to its scope.

28 CoreCivic's concerns regarding the unnecessary expenditure of time and

1 resources are especially compelling with regard to ESI, as a search limited to the
2 email accounts and networked user folders for six individuals holding facility
3 leadership positions at OMDC for a period of two years, and using CoreCivic's
4 proposed terms, resulted in 180,000 hits, all of which must be reviewed for
5 privilege and other issues. (Doc. 88.) Expanding that search to encompass all
6 individuals who held at least 35 different positions at over 20 facilities for a 12 to
7 14-year period would result in an incalculable number of hits that must be reviewed
8 and produced by CoreCivic—a massive expenditure of time and resources, and a
9 waste of time and resources if those hits are ultimately not relevant to any classes
10 and claims that survive certification review.¹⁰

11 **2.** Plaintiffs have again failed to establish proportionality. The
12 chronology of events is discussed in the Lee Declaration. In summary, because an
13 initial test search produced 180,000 hits (based on six individual, not custodial
14 positions), CoreCivic sought to fine-tune the search terms to generate more relevant
15 and responsive hits and fewer irrelevant and non-responsive hits. (Doc. 88; Lee
16 Dec. I, ¶¶ 15-19.) In response, Plaintiffs proposed to significantly broaden the
17 search criteria. (*Id.*, ¶ 20.) During the meet and confer last week, CoreCivic agreed
18 to add three custodial positions and several corporate positions, as well as use
19 wildcard root expanders to its original proposed search terms, but could not fully
20 evaluate either Plaintiffs' proposed new search terms or the continued viability of
21 CoreCivic's own proposed search terms until the classes and claims still at issue in
22 this lawsuit are definitively established. (*Id.*, ¶¶ 21-23.)

23 Plaintiffs complain that CoreCivic has not performed any test searches to
24 confirm that the email accounts and user folders of the lower-level employees they
25

26 ¹⁰ For the reasons stated above, the Court should suspend the chambers rules
27 requiring discovery dispute motions to be filed within 45 days. CoreCivic cannot
28 fully and fairly evaluate Plaintiffs' proposed custodians and search terms until the
classes and claims that remain at issue have been conclusively identified, which
cannot be accomplished within the timeframe set by the chambers rule.

1 seek to add would not yield useful results that could not otherwise be obtained from
2 the custodial positions proposed by CoreCivic, and argue they are entitled to “seek
3 discovery and verify [CoreCivic’s] assumption.” But these complaints ignore the
4 realities of the operations of a secure detention facility, which follows a quasi-
5 military structure in which each staff member is part of a clearly defined chain of
6 command. Staff members at the bottom of the chain of command, such as
7 detention officers, are indeed responsible for most day-to-day interactions with
8 detainees. But these officers do not write a report or send an email every time they
9 ask a detainee to clean up their own mess, and Plaintiffs provide no evidence to
10 suggest otherwise. Instead, these officers only do so when an issue arises, such as
11 when a detainee refuses to clean up after himself and becomes belligerent and
12 combative, which may result in disciplinary report. If that occurs, the officer will
13 send a disciplinary report up the chain of command to one or more of the
14 individuals in positions previously proposed by CoreCivic, such as the Unit
15 Manager, Chief of Unit Management, Chief of Security, Assistant Warden, or
16 Warden. Thus, that email will be captured by a search of those individuals’ email
17 accounts and user folders, without needing to spend the time and resources to also
18 search the email accounts and user folders of the detention officer who sent the
19 email.

20 By limiting the search to the positions CoreCivic identified, the parties will
21 be likely to capture the information necessary to prove their claims and defenses
22 without imposing an overbroad and undue burden on CoreCivic. There is no way
23 to estimate the number of hits that would result from Plaintiffs’ proposed ESI
24 protocol, but the test run suggests it would be astronomical, and beyond Rule
25 26(b)(1)’s proportionality requirement. Plaintiffs provide no basis to believe their
26 protocol is reasonable and would be proportional to the needs of this case.

27 **III. Defendant’s Request for Production of Plaintiffs’ Social Media and**
28 **Other ESI.**

1 **A. Defendants' Position.**

2 CoreCivic requests an order compelling Plaintiffs to produce their social
3 media information and other ESI as requested in CoreCivic's Requests for
4 Production Nos. 4 and 5. The Declaration of Jacob B. Lee Regarding Defendant's
5 RFP Re: Social Media & Other ESI sets forth the chronology of events. (Lee Dec.
6 II, ¶¶ 2-11.)

7 **1. Plaintiffs' social media information is relevant and discoverable.**

8 Discovery requests for social media information are analyzed under the
9 relevancy standards of Rule 26, which is quite broad. *See Marquez v. Board of Cty.*
10 *Comm'rs*, No. CIV 11-0838 JAP/KBM, 2015 WL 13638613, at *2 (D.N.M. Jan 13,
11 2015). Plaintiffs, as the class representatives, are seeking unspecified compensatory
12 and punitive damages "in an amount to be determined at trial." (*See, e.g.*, Doc. 67
13 at ¶¶ 49, 61.) Relevant information therefore includes, but is not limited to, any
14 content discussing or depicting (1) Plaintiffs' detention at, and experiences in,
15 SDCF, either directly or indirectly; (2) Plaintiffs' employment, including but not
16 limited to any job losses or loss of wages that are alleged to have been caused by
17 their detention and/or any physical, mental, or emotional injuries they claim to have
18 suffered as a result of that detention; (3) Plaintiffs' physical state around the time of
19 their detention, including whether any injuries they claim to have suffered were
20 caused by their detention or by another incident or pre-existing condition; and (4)
21 Plaintiffs' mental and emotional state after their detention, and whether any
22 referenced mental or emotional distress is or was caused by the detention or
23 "alternative potential stressor[s]" / "other potential sources/causes of distress." *See*
24 *Giacchetto v. Patchogue-Medford Union Free School Dist.*, 293 F.R.D. 112, 116
25 (E.D.N.Y. 2013). Relevant information also includes content regarding Plaintiffs'
26 mental state, their emotions and feelings surrounding their detention, relationships
27 between Plaintiffs and their family and friends, and Plaintiffs' lifestyles before and
28

1 after their detention. *See Michael Brown, Sr. v. City of Ferguson*, No.
2 4:15CV00831 ERW, 2017 WL 1386544, at *2 (E.D. Mo. Jan. 27, 2017); *see also*
3 *Holter v. Wells Fargo and Co.*, 21 F.R.D. 340, 344 (D. Minn. 2011).

4 It is well-settled that Plaintiffs' social media information, including but not
5 limited to their posts/status updates and direct messages, are relevant and
6 discoverable. *See Marquez*, 2015 WL 13638613, at *2-3 (granting defendants'
7 motion to compel plaintiff's social medial information because of its relevance to
8 the subject matter of the case and plaintiff's credibility, and listing cases); *see also*
9 *Howell v. Buckeye Ranch, Inc.*, No. 2:11-cv-1014, 2012 WL 5265170, at *1 (S.D.
10 Ohio Oct. 1, 2012) ("Relevant information in the private section of a social media
11 account is discoverable."). This is especially true when the plaintiff is making
12 claims of emotional distress and economic losses. *See, e.g., Hinostroza v. Denny's*
13 *Inc.*, No. 2:17-cv-02561-RFB-NJK, 2018 WL 3212014, at *6-7 (D. Nev. June 29,
14 2018) (citing cases); *Roberts v. Clark Cty. School Dist.*, 312 F.R.D. 594, 608 (D.
15 Nev. 2016); *Holter*, 21 F.R.D. at 344; *Giacchetto*, 293 F.R.D. at 116-17; *Brown*,
16 2017 WL 386544 at *1-2; *Waters v. Union Pacific Railroad Co.*, No. 15-1287-
17 EFM-KGG, 2016 WL 3405173, at *2-3 (D. Kan. June 21, 2016); *E.E.O.C. v.*
18 *Simply Storage Management, LLC*, 270 F.R.D. 430, 434-436 (S.D. Ind. 2010);
19 *Sourdoff v. Texas Roadhouse Holdings, LLC*, No. 3:10-CV-0408 (TJM/DEP), 2011
20 WL 7560647, at *1 (N.D.N.Y. Oct. 24, 2011); *Robinson v. Jones Lang LaSalle*
21 *Ams., Inc.*, No. 12-CV-127, 2012 WL 3763545, at * 1 (D. Or. Aug. 29, 2012).

22 Facebook usage in particular "depicts a snapshot of the user's relationships
23 and state of mind at the time of the content's posting." *See Bass v. Miss Porter's*
24 *School*, No. 3:08CV1807 (JBA), 2009 WL 3724968, at *1 (D. Conn. Oct. 27,
25 2009). Because a person's social media posts are akin to a written diary, it is well-
26 settled that "[r]elevant information in the private section of [an individual's] social
27 media account is discoverable." *Howell*, 2012 WL 5265170, at *1. Many courts
28 have gone so far as to require production of the plaintiff's user names and

1 passwords. *See, e.g., Largent v. Reed*, No. 2009-1823, 2011 WL 5632688 (Pa. Ct.
2 Com. Pl. Nov. 8, 2011) (granting the defendant's motion to compel and requiring
3 the plaintiff to turn over Facebook username e-mail and password); *see also*
4 *Ledbetter v. Wal-Mart Stores, Inc.*, No. 06-CV-01958, 2009 WL 1067018 (D. Colo.
5 Apr. 21, 2009) (denying the plaintiff's request for a protective order regarding
6 social media content); *McMillen v. Hummingbird Speedway, Inc.*, No. 113-2010
7 CD, 2010 WL 4403285 (Pa. Com. Pl. Sept. 9, 2010) (denying plaintiff's request for
8 a protective order for his user name and log-in information on social media sites).

9 To the extent Plaintiffs believe their social media accounts are private, many
10 courts "do not consider social media content as private." *Marquez*, 2015 WL
11 13638613, at *1-3 (listing cases); *see also Tapia v. City of Albuquerque*, CIV 13-
12 0206 JB/GBW, 2014 WL 1285647 (D.N.M. Mar. 31, 2014) ("[O]nly the most
13 ignorant or gullible think what they post on the internet is or remains private[.]").
14 Indeed, the entire purpose of social media is to facilitate the sharing of information.
15 *See Romano v. Steelcase Inc.*, 30 Misc. 3d 426, 434, 907 N.Y.S.2d 650, 656 (Sup.
16 Ct. 2010); *see also Simply Storage Management*, 270 F.R.D. at 434 ("[A] person's
17 expectation and intent that her communications be maintained as private is not a
18 legitimate basis for shielding those communications from discovery."); *E.E.O.C. v.*
19 *Original Honeybaked Ham Co. of Georgia*, No. 11-CV-02560-MSK-MEH, 2012
20 WL 5430974, at *2 (D. Colo. 2012) ("[S]toring such information on Facebook and
21 making it accessible to others presents an even stronger case for production, at least
22 as it concerns any privacy objection[.]"). A user's utilization of the platform's
23 privacy settings does not change this. *See Simply Storage Management*, 270 F.R.D.
24 at 434; *see also Romano*, 907 N.Y.S.2d at 656.

25 **2. Plaintiffs' other ESI is relevant and discoverable.**

26 Plaintiffs have taken the position that CoreCivic is required to produce
27 extensive ESI based on nothing but their assumption that relevant information is
28 likely to exist. And yet, they have also refused to produce their own ESI, expecting

1 CoreCivic to just accept their assurances that no relevant or responsive information
2 is contained within that ESI. Plaintiffs' ESI—including emails, text messages, and
3 instant messages—are relevant and discoverable for the same reasons their social
4 media information is relevant and discoverable, as set forth above.

5 Plaintiffs' contention that they have no relevant social media information or
6 other ESI is unsupported by any evidence, and is in fact contradicted by the above-
7 referenced Facebook post and comments to it. It is improper for Plaintiffs or their
8 counsel to be the final arbiters of relevance in this case, and CoreCivic should not
9 have to simply take their word that they have no relevant social media information
10 or other ESI. *See Fox v. Transam Leasing, Inc.*, 12-2706-CM-GLR, 2013 WL
11 5276111, *2 (D. Kan. Sept. 18, 2013) (where plaintiffs offered no evidence to
12 support their objection that the requested social media lacked relevant information,
13 the court ordered full production or, in the alternative, disclosure of limited
14 information identified by the court as relevant).

15 This is especially true here, where publicly visible comments to Plaintiff
16 Owino's December 24, 2015 post referenced immigration proceedings and
17 detention several times, as well as a request from Plaintiff Owino that the other
18 party contact him on his phone to discuss "immigration or CCA stuff."¹¹ The
19 existence of this account and the comments to the post suggest a strong likelihood
20 that relevant information regarding Plaintiffs' claims and alleged damages exists in
21 their social media accounts and other ESI. It also casts serious doubt on the
22 accuracy of Plaintiffs' claims that they have no relevant or responsive documents,
23 as well as the diligence of their search in preparation of their amended responses
24 (which Plaintiffs did not describe, making only vague assertions that they had done
25 so). Plaintiffs also fail to show that their text messages and emails are not
26 "reasonably accessible" under the Order Regarding Discovery of Electronically

27
28 ¹¹ CoreCivic was formerly Corrections Corporation of America ("CCA").

1 Stored Information as Modified by the Court, as they fail to show that the data
2 CoreCivic seeks is “neither synched to nor retrievable from another source or
3 device,” or that they conducted a sufficient search for relevant and responsive
4 information before claiming they did not have any, as required by the Order for data
5 to be “not reasonably accessible.” (Doc. 63. at 8:22-26.)

6 The Court should require Plaintiffs to (1) identify, either under oath or under
7 penalty of perjury, all social media accounts, telephone numbers, and email
8 accounts they have held during the time period of their claims, and (2) produce all
9 information from those sources for the time period of their claims, again verifying
10 either under oath or penalty of perjury that they have produced all such information
11 without limitation or withholding.

12 **B. Plaintiffs’ Position.**

13 **1. Plaintiffs cannot produce non-existent documents.**

14 Plaintiffs’ amended responses to Request Nos. 4 and 5 state, “After a diligent
15 search and inquiry, Plaintiffs respond that they have no responsive documents in
16 their possession, custody, or control.” Unsatisfied with this response, CoreCivic
17 brings this motion to compel Plaintiffs to produce documents that do not exist.
18 Although social media information may be discoverable under the standards of
19 Rule 26 and Rule 34 in certain cases, the Court need not address considerations
20 such as relevance or proportionality in this Motion. A document must exist before
21 a party can produce it in litigation. *See Acosta v. JY Harvesting, Inc.*, 2017 WL
22 3437654, at *3 (S.D. Cal. Aug. 10, 2017) (“The Court cannot compel production of
23 that which does not exist or is not in the possession and control of Respondents.”).

24 Courts generally accept a party’s assertion that it could not locate responsive
25 documents after conducting a reasonable and diligent search. *See, e.g., Thomas v.*
26 *Saafir*, Case No. C 06-0184, 2007 WL 1063474, at *2 (N.D. Cal. Apr. 9, 2007)
27 (party satisfied Rule 34 obligations by stating that the party conducted a “diligent
28 search and reasonable inquiry of all available sources” but could not locate the

1 requested documents). This presumption must be overcome by the party seeking
2 discovery. *See, e.g., Greene v. Philadelphia Housing Auth.*, 484 Fed. Appx. 681,
3 868 (3d Cir. 2012) (when a party states that it does not have any responsive
4 documents, the court presumes the party is responding truthfully, unless evidence
5 suggests otherwise); *Hagemeyer N.A., Inc. v. Gateway Data Sciences Corp.*, 222
6 F.R.D. 594, 599 (E.D. Wis. 2004) (burden is on requesting party to overcome
7 responding party's assertion that a document does not exist). Here, Plaintiffs'
8 amended responses indicate that no responsive documents exist, and CoreCivic has
9 not made a sufficient showing to put the statement in doubt.

10 **2. CoreCivic Fails to Make a Sufficient Showing.**

11 CoreCivic argues that Plaintiffs' statement is false by pointing to a single
12 post on Owino's Facebook page dated December 24, 2015. CoreCivic divines from
13 this single Facebook post that Owino's social media accounts and other ESI are
14 likely to have discoverable information. However, the post does not support
15 CoreCivic's argument. *First*, Owino did not create the post in the first instance;
16 rather, a third party posted on Owino's Facebook page in response to a photograph
17 that Owino uploaded. Simply because a third party posted on Owino's Facebook
18 page does not make the entirety of Owino's social media and personal ESI subject
19 to carte blanche discovery. *Second*, the post relates to the *third party's* legal
20 proceedings (which appear to be deportation proceedings) and not to this lawsuit.
21 *Third*, the third party made the post in late December 2015 or January 2016—about
22 1.5 years before Plaintiffs filed this case—which further underscores its irrelevance
23 to this action.¹² *Fourth*, although CoreCivic observes that the post references
24 immigration proceedings and detention, those comments were made in the context
25 of the third party's immigration-related case, not this lawsuit. Thus, the Facebook

26
27 ¹² Although the precise date of the post is not apparent, it must have been made in
28 between December 24, 2015 (when Owino uploaded the photograph) and February
1, 2016 (the date of the third party's deportation hearing).

1 post has no bearing on CoreCivic’s discovery requests, and an unsolicited post from
2 a third party does not make an entire social media account relevant or discoverable.

3 **3. CoreCivic’s “dissatisfaction” with the amended responses.**

4 CoreCivic protests that it should not have to take Plaintiffs’ word that they do
5 not have documents response Request Nos. 4 – 5, while CoreCivic has to produce
6 ESI that Plaintiffs requested. The argument is without merit. Just because one
7 party has ESI to produce does not mean that another party does. In any event,
8 Plaintiffs’ “assumption” that CoreCivic has relevant ESI is supported by written
9 discovery, depositions, and document productions—in addition to the fact that
10 CoreCivic did not state that it has no ESI. *See also Greene*, 484 Fed. Appx. at 868;
11 *Cf. Hubbard v. Potter*, 247 F.R.D. 27, 29 (D.D.C. 2008) (courts will not order a
12 party to produce more documents after an assertion that production is complete).

13 **4. CoreCivic presents no evidence as to Gomez or Owino’s ESI.**

14 The single Facebook post has no bearing on any other social media platforms
15 that Owino might use, or on any personal ESI that CoreCivic sought in Request
16 Nos. 4 and 5 (e.g., blogs, webpages, emails, instant messages, etc.). In fact, there is
17 a presumption in this case that text messages will not be produced because they are
18 not readily accessible. (*See* D.I. 63 at 8.) Nor is there any basis to employ a “get
19 one, get all” approach to the various mediums and platforms that CoreCivic
20 included in its discovery requests. Absent a particular showing that Plaintiffs’
21 amended responses were inaccurate for a particular medium, there is no basis to
22 keep second-guessing discovery responses.

23 Moreover, CoreCivic points to no evidence suggesting Gomez’s amended
24 responses are in any way incomplete or incorrect. Instead, CoreCivic simply
25 changes pronouns from *he* to *they*, *Owino* to *Plaintiffs*, without any basis for doing
26 so. The Court should deny CoreCivic’s Motion as to Gomez on this basis alone.

27 **5. CoreCivic’s discovery requests are improper.**

28 Request Nos. 4 and 5 themselves are improper for various reasons. *First*, the

1 requests are overbroad and unduly burdensome because (1) they seek production of
2 “any and all” documents from a litany of mediums, which is not sufficiently
3 particular for Rule 34. *See Mailhoit v. Home Depot U.S.A., Inc.*, 285 F.R.D. 566,
4 571 (C.D. Cal. 2012) (finding that a document request seeking “profiles, postings or
5 messages (including status updates, wall comments, causes joined, groups joined,
6 activity streams, blog entries)” from any social networking site from October 2005
7 through the present “that reveal, refer, or relate to any emotion, feeling, or mental
8 state of Plaintiff, as well as communications by or from Plaintiff that reveal, refer,
9 or relate to events that could reasonably be expected to produce a significant
10 emotion, feeling, or mental state,” failed to satisfy Rule 34’s reasonable
11 particularity requirement). *Second*, the requests are overbroad in time: Request No.
12 5 has no time period, and Request No. 4 goes back more than ten years.

13 *Third*, Request No. 4 is unduly burdensome and seeks irrelevant information
14 because CoreCivic wants Plaintiffs to download *all* Facebook and social media
15 information for each social media account. The request is not limited in time or
16 scope, and instead seeks to give CoreCivic carte blanche access to Plaintiffs’
17 respective social media platforms, including the abundance of information not
18 relevant to this lawsuit. *See, e.g., Mailhoit*, 285 F.R.D. at 570–71 (“[T]he Federal
19 Rules do not grant a requesting party “a generalized right to rummage at will
20 through information that [the responding party] has limited from public view” but
21 instead require “a threshold showing that the requested information is reasonably
22 calculated to lead to the discovery of admissible evidence.” (citation
23 omitted)); *Mackelprang v. Fidelity Nat’l Title Agency of Nevada, Inc.*, 2007 WL
24 119149 at *7 (D. Nev. Jan. 9, 2007) (ordering production of all private email
25 messages would cast too wide a net).

26 **IV. Conclusion.**

27 For these reasons, the parties ask the Court to resolve this Joint Motion.
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Dated: June 1, 2020

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Attachment A

1 **JOINT STATEMENT**

2 **Plaintiffs’ Request for Production No. 38:**

3 All detainee files for detainees that were and/or are in custody of ICE at Your
4 California and non-California detention facilities during the Relevant Time Period.

5 **Defendant’s Response to Request for Production No. 38:**

6 Objection: Vague and ambiguous as to “California and non-California
7 detention facilities,” as that term is defined in the Requests for Production, as
8 “contract detention facilities” (as used in the definition of “California and non-
9 California detention facilities”) is a term of art that applies only to facilities in
10 which CoreCivic has contracted directly with ICE (as opposed to ICE entering into
11 an Intergovernmental Services Agreement (“IGSA”) with a local government
12 entity, which then contracts with CoreCivic to provide the services specified in the
13 IGSA), such that the scope of the request is unclear. Vague, ambiguous, overbroad,
14 and unduly burdensome as to “detainees” and “detainee files,” which are not
15 defined. Overbroad and unduly burdensome as to time, as the “Relevant Time
16 Period,” as that term is defined in the Requests for Production, exceeds both the
17 applicable statutes of limitations for Plaintiffs’ claims and CoreCivic’s document
18 retention periods, and has not been certified as the applicable class period by the
19 Court. Unduly burdensome to the extent the request seeks production of detainee
20 files for ICE detainees at facilities other than OMDC and/or SDCF, as no other
21 facilities are implicated by the Complaint, as the Court has not certified a class
22 extending beyond those facilities. Overbroad and unduly burdensome where
23 CoreCivic has previously identified over 1.1 million ICE detainees who were
24 detained at 24 CoreCivic facilities during the Relevant Time Period, all of whose
25 “detainee files” are indiscriminately sought by this request without any explanation
26 as to the necessity of producing each and every file, a showing of the files’
27 importance to resolving the issues in this matter, or a showing that the likely benefit
28 of producing such files outweighs the burden and/or expense of doing so. Unduly

1 burdensome to the extent the request is duplicative of Requests Nos. 2, 4, 10, 17,
2 19–21, 28–30, 32.

3 Without waiving these objections, see detainee files previously produced as
4 CCOG00002338–2465; CCOG00023012–25030; CCOG00025257–532;
5 CCOG00043011–45298; CCOG00045409–46598; CCOG00046853–53850;
6 CCOG00054010–57263; and CCOG00072962–74452, which include the detainee
7 files specifically requested by Plaintiffs on February 6, 2019 in conjunction with
8 their request to depose the wardens of OMD, WTDF, SDC, and HPC. The
9 number of additional responsive documents is not known at this time, but is
10 expected to be prohibitively large. At a conservative estimate of 50 pages per
11 “detainee file” (and assuming each identified detainee has only one file, as opposed
12 to numerous files, one for each time they were apprehended and detained), this
13 request seeks over 1.1 million “detainee files” consisting of nearly 57 million pages
14 of documents. CoreCivic cannot reasonably produce such an enormous volume of
15 documents in this matter, and is not required to do so pursuant to Fed. R. Civ. P.
16 26(b)(1), which limits discovery to that which is proportional to the needs of the
17 case, which is determined in part by “the importance of the discovery in resolving
18 the issues, and whether the burden or expense of the proposed discovery outweighs
19 its likely benefit.” CoreCivic therefore requests that Plaintiffs review the
20 previously-produced detainee rosters and identify a targeted group of specific
21 detainees from each facility for whom “detainee files” should be produced, and
22 invites Plaintiffs to meet and confer with CoreCivic regarding the appropriate size
23 of each group.

24 Upon completion of this process, CoreCivic will begin production of the
25 targeted files if and to the extent a class is certified by the Court, consistent with the
26 limits of any such class certified by the Court, by the close of discovery deadline to
27 be set by the Court after such certification. To the extent the targeted files are
28 maintained electronically, CoreCivic will produce them electronically. To the

1 extent the files are maintained in hardcopy format only, CoreCivic will either scan
2 and produce them electronically or make them available for inspection at dates and
3 locations to be determined, depending on the number of files and the scope of the
4 production at issue.

5 **Plaintiffs' Reason to Compel Production:**

6 This request seeks detainee files maintained by CoreCivic for the class
7 members at issue in this action. Based on the detainee files produced to date, these
8 files contain, *inter alia*, information pertaining to detainees' participation in the
9 voluntary work program, work agreements signed by detainees, training records for
10 detainee work assignments, labor performed by detainees, disciplinary records
11 pertaining to detainees, records of complaints by detainees to CoreCivic personnel,
12 payment records for work performed, demographic information for the class
13 members, and other categories of relevant and responsive
14 information. Accordingly, the request seeks information directly relevant to
15 Plaintiffs' claims. CoreCivic does not contest the relevance of the information
16 sought by request. Further, Plaintiffs have agreed to allow CoreCivic to satisfy this
17 request by producing representative samples of detainee files, as set forth in greater
18 detail in the joint motion. Accordingly, CoreCivic's objections of overbreadth
19 and undue burden are without merit.

20 **Defendant's Basis for Objections:**

21 Plaintiffs' request to immediately start producing between 1,250 and 3,000
22 detainee files for every facility that housed ICE detainees during the relevant time
23 period is premature, unduly burdensome, and not proportional to the needs of the
24 case. Discovery in this regard should be stayed pending the Court's ruling on
25 CoreCivic's Motion for Reconsideration of the class certification order and
26 clarification of the scope of the Forced Labor classes. Resolution of these issues
27 may significantly narrow the scope of merits discovery, thus rendering production
28 of tens of thousands of particular detainee files unnecessary. Moreover, Plaintiffs'

1 request for immediate production is premature where it is currently unknown
2 whether the sample size offered by Plaintiffs is statistically sound—the total
3 number of current detainee files is not known, and Plaintiffs have not shown that
4 their proposed tiers are proportional even based on the detainee rosters produced to
5 date. Defendants agree to a sampling method for production but must first
6 accurately determine the detainee file pool size based upon current detention
7 numbers. Because the parties are working to determine this information, which will
8 in-turn determine sampling sizes, a Court order regarding production is unnecessary
9 at this juncture.

10
11 **Defendant’s Request for Production No. 4:**

12 Produce any and all diaries, journals, notes, videotapes, DVDs, daily logs,
13 blog entries, web pages, Twitter, Facebook, and/or other social media accounts or
14 pages owned, maintained, and/or operated by you, or on your behalf, pertaining to
15 the incident, this lawsuit, damages, or the pursuit of a potential claim against any
16 entity or person arising out of the incident, from the date of the incident to the
17 present, whether prepared prior to or following the date of the incident, in their
18 native format. Produce and authenticate the contents of all Facebook accounts by
19 using Facebook’s “Download Your Information” tool, accessible through the
20 “Account Settings” drop down menu, and produce the information in the format
21 which contains all metadata. In addition, produce an executed authorization for
22 each social media account. A blank form of the authorization is attached hereto.

23 **Plaintiffs’ Response to Request for Production No. 4:**

24 Plaintiffs, and each of them, incorporate each general objection set forth
25 above. Plaintiffs further object that the Request is overbroad and unduly
26 burdensome in terms of scope, time, and information sought. Plaintiffs further
27 object that the Request seeks information that is not relevant to the subject matter,
28 claims, issues, and defenses in this lawsuit, and is not reasonably tailored to lead to

1 the discovery of admissible evidence. Plaintiffs further object that the Request
2 seeks to invade the attorney-client privilege, attorney work product doctrine, or
3 other applicable privilege or protection. Plaintiffs further object that the Request
4 seeks documents that are publicly available or are in CoreCivic's possession,
5 custody, or control. In addition, Plaintiffs further object that the Request seeks
6 private information of Plaintiffs that is unrelated to this lawsuit, and as a result will
7 not sign any authorization form that gives CoreCivic unfettered access to this
8 information.

9 Subject to these general and specific objections, Plaintiffs respond to this
10 Request as follows: Plaintiffs will comply with this Request and produce all non-
11 privileged documents in their possession, custody, or control, that have not already
12 been produced by CoreCivic in this action. Plaintiffs will not produce any social
13 media accounts or permit carte blanche or unfettered access to any social media
14 accounts absent CoreCivic establishing a particularized need to retrieve certain
15 social media posts.

16 **Plaintiffs' Amended Response to Request for Production No. 4:**

17 Plaintiffs, and each of them, incorporate each general objection set forth
18 above. Plaintiffs further object that the Request is overbroad and unduly
19 burdensome in terms of scope, time, and information sought. Plaintiffs further
20 object that the Request seeks information that is not relevant to the subject matter,
21 claims, issues, and defenses in this lawsuit, and is not reasonably tailored to lead to
22 the discovery of admissible evidence. Plaintiffs further object that the Request
23 seeks to invade the attorney-client privilege, attorney work product doctrine, or
24 other applicable privilege or protection. Plaintiffs further object that the Request
25 seeks documents that are publicly available or are in CoreCivic's possession,
26 custody, or control. In addition, Plaintiffs further object that the Request seeks
27 private information of Plaintiffs that is unrelated to this lawsuit, and as a result will
28 not sign any authorization form that gives CoreCivic unfettered access to this

1 information.

2 Subject to these general and specific objections, Plaintiffs respond to this
3 Request as follows: After a diligent search and inquiry, Plaintiffs respond that they
4 have no responsive documents in their possession, custody, or control related to any
5 “diaries, journals, notes, videotapes, DVDs, daily logs.”

6 Plaintiffs will not produce any social media accounts (including webpages
7 and blogs), or permit carte blanche or unfettered access to any social media
8 accounts, absent CoreCivic establishing a particularized need to retrieve certain
9 social media posts.

10 In any event, after a diligent search and inquiry, Plaintiffs respond that they
11 have no responsive documents in their possession, custody, or control related to
12 “blog entries, web pages, Twitter, Facebook, and/or other social media accounts or
13 pages owned, maintained, and/or operated by you, or on your behalf.”

14 **Defendant’s Reason to Compel Production:**

15 Plaintiffs’ social media account information is relevant and discoverable
16 where Plaintiffs are seeking economic and emotional distress damages. Defendants
17 are entitled to determine whether Plaintiffs’ social media accounts include any
18 content discussing or depicting information related to their claims to include: (1)
19 Plaintiffs’ detention at, and experiences in, SDCF, either directly or indirectly; (2)
20 Plaintiffs’ employment, including but not limited to any job losses or loss of wages
21 that are alleged to have been caused by their detention and/or any physical, mental,
22 or emotional injuries they claim to have suffered as a result of that detention; (3)
23 Plaintiffs’ physical state around the time of their detention, including whether any
24 injuries they claim to have suffered were caused by their detention or by another
25 incident or pre-existing condition; and (4) Plaintiffs’ mental and emotional state
26 after their detention, and whether any referenced mental or emotional distress is or
27 was caused by the detention or an alternative stressor.

28

1 **Plaintiffs' Basis for Objections:**

2 Plaintiffs' amended responses state that after a diligent search and inquiry,
3 Plaintiffs have no responsive documents in their possession, custody, or
4 control. Thus, the Court need not address relevance or proportionality: If a
5 document does not exist, a party cannot produce it. CoreCivic relies only on single
6 post on Owino's Facebook page that was made by a third party—1.5 years before
7 Plaintiffs filed this lawsuit—and the post relates to the third party's legal
8 proceedings (which appear to be deportation proceedings). Even though the post
9 references immigration proceedings and detention, those comments are in the
10 context of the third party's case, not this lawsuit. Thus, the Facebook post has no
11 bearing on CoreCivic's discovery requests or this case. CoreCivic also points to no
12 evidence suggesting Gomez's amended responses are in any way incomplete or
13 incorrect. Instead, CoreCivic simply lumps Gomez in with Owino's Facebook
14 account without any basis for doing so. The request is also, on its face, overbroad
15 and unduly burdensome and impermissibly seek carte blanche access to Plaintiffs'
16 respective social medial platforms.

17
18 **Defendant's Request for Production No. 5:**

19 Produce any and all journals, diaries, chronologies, notes, memos, letters,
20 correspondence, emails, text messages, instant messages, or other documents
21 drafted by you, or anyone on your behalf, that refer to, describe, or document this
22 lawsuit or any events that are the subject of this lawsuit, including descriptions of
23 the incident itself or that support any of the claims made in this lawsuit against
24 CoreCivic.

25 **Plaintiffs' Response to Request for Production No. 5:**

26 Plaintiffs, and each of them, incorporate each general objection set forth
27 above. Plaintiffs further object that the Request is overbroad and unduly
28 burdensome. Plaintiffs further object that the Request seeks to invade the attorney-

1 client privilege, attorney work product doctrine, or other applicable privilege or
2 protection. Plaintiffs further object that the Request seeks documents that are
3 publicly available or are in CoreCivic's possession, custody, or control.

4 Subject to these general and specific objections, Plaintiffs respond to this
5 Request as follows: Plaintiffs will comply with this Request and produce all non-
6 privileged documents in their possession, custody, or control, that have not already
7 been produced by CoreCivic in this action.

8 **Plaintiffs' Amended Response to Request for Production No 5:**

9 Plaintiffs, and each of them, incorporate each general objection set forth
10 above. Plaintiffs further object that the Request is overbroad and unduly
11 burdensome. Plaintiffs further object that the Request seeks to invade the attorney-
12 client privilege, attorney work product doctrine, or other applicable privilege or
13 protection. Plaintiffs further object that the Request seeks documents that are
14 publicly available or are in CoreCivic's possession, custody, or control.

15 Subject to these general and specific objections, Plaintiffs respond to this
16 Request as follows: After a diligent search and inquiry, Plaintiffs respond that they
17 have no responsive documents in their possession, custody, or control.

18 **Defendant's Reason to Compel Production:**

19 Plaintiffs' emails, text messages, and instant messages are relevant and
20 discoverable where Plaintiffs are seeking economic and emotional distress
21 damages. Defendants are therefore entitled to determine whether Plaintiffs'
22 communications include any content discussing information related to their claims
23 to include: (1) Plaintiffs' detention at, and experiences in, SDCF, either directly or
24 indirectly; (2) Plaintiffs' employment, including but not limited to any job losses or
25 loss of wages that are alleged to have been caused by their detention and/or any
26 physical, mental, or emotional injuries they claim to have suffered as a result of that
27 detention; (3) Plaintiffs' physical state around the time of their detention, including
28 whether any injuries they claim to have suffered were caused by their detention or

1 by another incident or pre-existing condition; and (4) Plaintiffs’ mental and
2 emotional state after their detention, and whether any referenced mental or
3 emotional distress is or was caused by the detention or an alternative
4 stressor. Plaintiffs have not shown that this ESI is not “reasonably accessible”
5 under the Court’s August 22, 2018 Order. (Doc. 63 at 8:22-26.)

6 **Plaintiffs’ Basis for Objections:**

7 Plaintiffs’ amended responses state that after a diligent search and inquiry,
8 Plaintiffs have no responsive documents in their possession, custody, or
9 control. Thus, the Court need not address relevance or proportionality: If a
10 document does not exist, a party cannot produce it. CoreCivic again relies only on
11 single post on Owino’s Facebook page that was made by a third party—1.5 years
12 before Plaintiffs filed this lawsuit—and the post relates to the third party’s legal
13 proceedings (which appear to be deportation proceedings). Even though the post
14 references immigration proceedings and detention, those comments are in the
15 context of the third party’s case, not this lawsuit. This single Facebook post also
16 has no bearing on personal ESI that CoreCivic seeks (e.g., blogs, webpages, emails,
17 instant messages, etc.). In fact, there is a presumption in this case that text
18 messages will not be produced because they are not readily accessible. (See ECF
19 63 at 8.) In addition, CoreCivic points to no evidence suggesting Gomez’s
20 amended responses are in any way incomplete or incorrect. Instead, CoreCivic
21 simply lumps Gomez in with Owino’s Facebook account without any basis, and
22 CoreCivic does not even try to link the post to personal ESI. The request is also, on
23 its face, overbroad and unduly burdensome because it seeks production of “any and
24 all” documents from a litany of mediums included in the requests, which is not
25 sufficiently particular for Rule 34, and has no limiting time period.

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Appendix 1

1 **ESI Custodians:**

2 **Relevant Time Period For ESI Collection**

3 For California facilities, all periods of time between January 1, 2006 to the present where the
4 facility housed ICE detainees.

5 For non-California facilities, all periods of time between December 23, 2008 to the present where
6 the facility housed ICE detainees.

6 **Plaintiffs’ Proposed ESI Custodians**

7 All individuals that held or currently hold the following positions (or the equivalent position if
8 there are facility-specific variations in job titles) during the Relevant Time Period:

- 9 • Warden
- 10 • Assistant Warden
- 11 • Chief of Unit Management
- 12 • Chief of Security
 - 13 ○ Complex Chief of Security
 - 14 ○ Assistant Chief of Security
- 15 • Business Manager
- 16 • Quality Assurance Manager
 - 17 ○ Manager, Quality Assurance
 - 18 ○ Complex Quality Assurance
 - 19 ○ Quality Assurance Coordinator
 - 20 ○ Senior QA Manager
- 21 • Quality Assurance Coordinator
- 22 • Unit Manager
- 23 • Jobs Coordinator
- 24 • Operations Manager
- 25 • Program Director
- 26 • Program Facilitators
- 27 • Program Manager

28 This first list is consistent with CoreCivic’s original proposal. In addition, Plaintiffs’ propose as
ESI custodians all individuals that held or currently hold the following positions (or the
equivalent position if there are facility-specific variations in job titles) during the Relevant Time
Period:

- Chief of Unit
- Unit Officers
- Detention Officers
- House Officers
- Pod Control Officers
- Shift Supervisor
- Assistant Shift Supervisor
- Mailroom Supervisor
- Laundry Supervisor

- Food Service Director
- Food Service Manager
- Food Service Supervisor/Lead Supervisor
- Finance Manager*¹³
- Facility Manager
- Grievance Coordinator*
- Safety/Grievance Manager
- Mailroom Manager/Supervisor/Director
- Manager Maintenance
- Assistant Manager Maintenance
- Maintenance Supervisor
- Case Manager
- Case Management Coordinator

For the Facility Support Center, CoreCivic previously proposed the following custodians:

- Natasha Metcalf—VP, Partnership Development (previously known as VP, Customer Contracts), 8/9/08 to present
- Ashley Odubeko—Director, Partnership Development, 4/29/13 to 3/11/16
- Miriam Linville—Coordinator, Partnership Development, 3/31/14 to 7/31/17; Coordinator, Correctional Programming, 7/31/17 to present
- Bart Verhulst—Managing Director, 1/23/07 to 11/15/08; Vice President, Federal and Local Partnership Relations (previously known as Vice President, Customer Relations), 11/15/08 to present
- Kim Porter—Senior Director, Partnership Relations (previously known as Senior Director, Customer Relations), 11/17/03 to present
- Steve Conry—Vice President, Facility Operations, 3/20/06 to 3/24/18; Vice President, Operations Administration, 3/24/18 to present
- Jason Ellis—Managing Director, Operations, 9/1/14 to present (various positions from Correctional Officer to Warden to temporary assignment as Senior Director, Security before that)
- Charles Martin—Managing Director, Operations (previously known as Managing Director, Operations (Eastern)), 3/28/02 to 10/30/14 (Warden and Senior Divisional Director before that)
- Don White—Managing Director, Operations Support, 5/11/09 to present
- John Gimesh—Senior Director, Food Service, 7/10/10 to 10/14/16; Director, Food Service (previously known as Food Service Manager (Exempt)), 1/20/03 to 7/10/10
- Christopher Cox—Senior Director, Food Service, 4/10/17 to 5/17/18

This proposal is acceptable, so long as it is augmented to including all individuals that held or currently hold these positions (or the equivalent positions if the titles changed over time) during the Relevant Time Period. This would include Steve Luttrell, the current food service director of the FSC. [Ellis Vol. 1 at 265.] In addition, Plaintiffs reserve the right to add additional job titles/individuals as ESI custodians as discovery and fact investigation progress.

¹³ The * designation indicates that following the circulation of the most recent proposal, CoreCivic has agreed to include this category of document custodian.

1 **ESI Search Terms:**

2 Plaintiffs propose the following searches. The columns represent an “AND.” The line break
 3 between the terms within the columns represent an “OR.” In other words, for there to be a hit,
 4 there needs to be at least one term from each column. The asterisk (*) is used as a wildcard
 5 symbol to broaden the term to include all words that start with the same letters.

6 **Search 1:**

6 Detainee* 7 Resident* 8 ICE	[CoreCivic’s original proposed Search Terms modified to broaden them with an “*”] Work* Labor* Detail* Job* Assign* Clean* [Plaintiffs’ Additional Proposed Search Terms] Sanit* Wipe* Duty Duties Mop* Scrub* Sweep* Swept Trash* Tidy Tidie*	[CoreCivic’s original proposed Search Terms with a few minor variations, modified to broaden them with an “*”] \$1* Compensat* Pay* Paid Unpaid Uncompensated Free Force* Refus* Wage* Hour* Clean* Kitchen Laundry Porter Punish* Segregat* SHU Secure Housing Restrictive Housing RH Fire* Terminate* Housekeep* Laundr* Disciplin* Free* Lose Lost Sanit* Griev* Kite Kyte Sanction* Wait* /1 List* Waitlist* Remov* Food Service Worker*
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		[Plaintiffs' Additional Proposed Search Terms]
		Assign*
		Job*
		Detail*
		Labor*
		Work*
		Solitary
		Wipe*
		Food
		Roster*
		Schedule*
		Meal*
		Violat*
		Chore*
		Infraction*
		Infringe*
		Rule*
		Break*
		Command*
		Order*
		Furniture*
		Couch*
		Table*
		Scrub*
		Shower*
		Sink*
		Toilet*
		Floor*
		Mop*
		Sweep*
		Swept
		Unit*
		Common area*
		Common room*
		Living area*
		Common living area*
		Dayroom*
		Day-room*
		Duty
		Duties
		Responsi*
		Shift*
		Bonus
		Tidy
		Tidie*
		Mandatory
		Cell*
		Pod*
		Hire*
		Consequence*

1 **Search 2:**

<p>2 Voluntary Work Program 3 VWP 4 Work Program 5 WP</p>	<p>[CoreCivic’s original proposed Search Terms with a few minor variations, modified to broaden them with an “*”]</p> <p>\$1* Compensat* Pay* Paid Unpaid Uncompensated Free Force* Refus* Wage* Hour* Detail* Clean* Kitchen* Laundr* Porter* Punish* Segregat* Secure Housing SHU Restrictive Housing RH Fire* Terminat* Houskeep* Laundry Disciplin* Free* Lose* Lost Sanit* Griev* Kite* Kyte* Sanction* Wait* List* Remov* Food Serv* Work*</p> <p>[Plaintiffs’ Additional Proposed Search Terms]</p> <p>Assign* Job* Detail* Labor* Work* Solitary</p>
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1	Wipe*
2	Food
3	Roster*
4	Schedule*
5	Meal*
6	Violat*
7	Chore*
8	Infraction*
9	Infringe*
10	Rule*
11	Break*
12	Command*
13	Order*
14	Furniture*
15	Couch*
16	Table*
17	Scrub*
18	Shower*
19	Sink*
20	Toilet*
21	Floor*
22	Mop*
23	Sweep*
24	Swept
25	Unit*
26	Common area*
27	Common room*
28	Living area*
	Common living area*
	Dayroom*
	Day-room*
	Duty
	Duties
	Responsi*
	Shift*
	Bonus
	Tidy
	Tidie*
	Mandatory
	Cell*
	Pod*
	Hire*
	Consequence*

23 Searches 3 and 4 proposed by CoreCivic are acceptable, with the modifications to broaden the
 24 terms with the use of a “*”

25 **Search 3:**

26 Detainee*	Require*	Clean*	Common /1 area*
Resident*	Schedule*	Sanit*	Dayroom*
ICE	Assign*	Tidy	Day-room*
Cell(s)	Mandat*	Tidie*	Shower*
		Sweep*	Toilet*
		Swept	Sink*

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		Trash*	Floor* Table*
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Search 4:

Detainee* Resident* ICE	Disciplin* Sanction* Punish* Consequence*	Extra Dut* Extra-Dut*
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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

**DECLARATION OF JACOB B. LEE
 REGARDING PLAINTIFFS' RFP
 RE: ESI & DETAINEE FILES**

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 I, Jacob B. Lee, make the following Declaration:

16 1. I am over the age of 18 years and competent to testify to the matters
17 set forth in this Declaration. I am counsel of record for CoreCivic in this matter, and
18 make this Declaration in support of CoreCivic’s position as to the parties’ Joint
19 Motion for Determination of Discovery Dispute No. 4 based on my own personal
20 knowledge and my review of the relevant documents as maintained by my office in
21 the usual course of business.

22 2. Plaintiffs served their second set of Requests for Production,
23 consisting solely of Request No. 38 for “[a]ll detainee files . . . during the Relevant
24 Time Period” on February 13, 2019.

25 3. CoreCivic served its response on March 15, 2019, asserting various
26 objections, including to overbreadth of the request and the undue burden it would
27 impose on CoreCivic in violation of Rule 26(b)(1), and proposed a compromise in
28 which Plaintiffs identify a targeted group of specific detainees from each facility for
whom detainee files should be produced, and invited Plaintiffs to meet and confer
regarding the appropriate size of such a group. Plaintiffs did not respond to
CoreCivic’s invitation.

1 Instead, after several extensions of the deadline to raise a discovery
dispute regarding this and other issues (Doc. 83, 90, 93-94, 130-131), Plaintiffs
finally contacted CoreCivic to discuss this issue on Tuesday, May 19, 2020.

1 5. Due to deadlines in other matters and the Memorial Day holiday,
2 CoreCivic suggested Tuesday, May 26, 2020 for a telephonic meet and confer;
3 Plaintiffs agreed.

4 6. During the May 26 meet and confer, Plaintiffs stated they may be
5 amenable to a random sampling of detainee files, as long as CoreCivic would agree
6 that the sample was representative of the entire class, and that it would not argue on
7 dispositive motions or at trial that Plaintiffs had failed to prove their case because
8 they did not show that the entire class was injured by CoreCivic's acts and
9 omissions.

10 7. CoreCivic agreed that it would not make such arguments if the parties
11 agreed to a random sampling, as the point of the sampling would be to ensure that
12 the parties have the necessary information they need to prove their claims and
13 defenses without imposing an undue burden on CoreCivic.

14 8. CoreCivic also agreed to produce updated detainee rosters that would
15 include new immigration detainees since CoreCivic last produced such rosters,
16 which CoreCivic stated would take a few weeks to gather and produce.

17 9. The parties did not discuss specifics of the sampling during the
18 conference. Rather, Plaintiffs said they would send a proposal to CoreCivic for
19 review, and asked that CoreCivic do the same.

20 10. CoreCivic received Plaintiffs' proposal the morning of Thursday, May
21 28, 2020.

22 11. CoreCivic responded later that evening that it agreed in principle with
23 a tiered approach to sampling, but that it needed to obtain and produce the updated
24 rosters, determine how many files would be at issue under Plaintiffs' proposal
25 based on the updated rosters, and consult with a statistician as to whether Plaintiffs'
26 proposed numbers are necessary to produce a statistically representative sample, or
27 whether some other number would be sufficient.
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1 12. CoreCivic also pointed out that Plaintiffs’ proposal (like their portion
2 of this Motion) recognized that the parties would still need to discuss and agree
3 upon the sampling method to be used.

4 13. Thus, considering that the parties were working together in good faith
5 to resolve this issue, CoreCivic did not consider a discovery dispute motion to be
6 necessary.

7 14. On the morning of Friday, May 29, 2020, Plaintiffs responded that the
8 parties did not “have an agreement regarding the production of detainee files,” and
9 that they intended to file a discovery dispute motion. CoreCivic did not receive
10 Plaintiffs’ portion of the motion until after 5:00 p.m. that day.

11 15. Plaintiffs served their first set of Requests for Production, including
12 numerous requests seeking “[a]ll Documents and Communications,” including ESI,
13 on June 26, 2018.

14 16. CoreCivic served its initial responses on August 29, 2018.

15 17. Plaintiffs and CoreCivic met and conferred numerous times regarding
16 production of ESI, consisting of both emails and telephone conferences, and
17 ultimately agreed to do a test run of six custodians holding facility leadership
18 positions at OMDC that were most likely to be included in emails pertaining to
19 VWP-related issues for a period of two years using the terms proposed by
20 CoreCivic in Appendix 1.

21 18. Over 180,000 hits resulted from that limited search. As of the close of
22 class certification discovery, CoreCivic produced approximately 11,000 documents,
23 which represented less than 20% of the total documents reviewed, as most hits
24 generated using those terms were neither relevant nor responsive, despite CoreCivic
25 taking a broad view as to what constitutes a “relevant and responsive” document.

26 19. In April 2019, CoreCivic provided Plaintiffs a spreadsheet with
27 detailed statistics for the documents reviewed to date that broke down which
28 documents—relevant and irrelevant, responsive and non-responsive—hit on which

1 search terms in order to allow the parties to fine-tune their search terms to generate
2 more relevant and responsive hits and fewer irrelevant and non-responsive hits.
3 CoreCivic never heard from Plaintiffs regarding the spreadsheet.

4 20. Instead, after several extensions of the deadline to raise a discovery
5 dispute regarding this and other issues (Doc. 83, 90, 93-94, 130-131), Plaintiffs sent
6 a proposed list of custodians and search terms on May 18, 2020. Far from
7 narrowing the scope of the potential search, Plaintiffs' proposed protocol added (1)
8 22 new positions covering essentially every employee in every facility, (2) wildcard
9 root expanders to most of the search terms proposed by CoreCivic, and (3) 109 new
10 search terms, most of which also include wildcard root expanders.

11 21. The parties discussed the protocol during their May 26, 2020
12 telephonic meet and confer.

13 22. CoreCivic objected to most of the additional custodians, as the list
14 CoreCivic had previously proposed included the facility leadership positions most
15 likely to be included on any emails regarding issues related to the VWP.

16 23. On May 28, 2020, CoreCivic agreed, however, to add three facility
17 positions to the list, as well as several corporate positions (CoreCivic had
18 previously proposed to include certain identified corporate employees as
19 individuals, but agreed on May 28, 2020 to expand that list to include all corporate
20 employees who held all but two of those positions). CoreCivic also agreed to the
21 use of the wildcard root expanders to its original proposed search terms, but stated
22 that it could not fully evaluate either Plaintiffs' proposed new search terms or the
23 continued viability of CoreCivic's own proposed search terms until the classes and
24 claims still at issue in this lawsuit are definitively established.

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I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

EXECUTED this 1st day of June, 2020 at Chandler, Arizona.

s/Jacob B. Lee
Jacob B. Lee

3715422.1

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 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

**DECLARATION OF JACOB B. LEE
 REGARDING DEFENDANT’S RFP
 RE: SOCIAL MEDIA & OTHER ESI**

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 I, Jacob B. Lee, make the following Declaration:

16 1. I am over the age of 18 years and competent to testify to the matters
17 set forth in this Declaration. I am counsel of record for CoreCivic in this matter, and
18 make this Declaration in support of CoreCivic’s position as to the parties’ Joint
19 Motion for Determination of Discovery Dispute No. 4 based on my own personal
20 knowledge and my review of the relevant documents as maintained by my office in
21 the usual course of business.

22 2. CoreCivic served its First Request for Production of Documents to
23 Plaintiffs on January 25, 2019.

24 3. Plaintiffs served their initial responses on February 25, 2019.

25 4. CoreCivic asked Plaintiffs to supplement their response to Request No.
26 4 via letter dated March 29, 2019, with citations to legal authority holding that
27 social media information is relevant and discoverable.

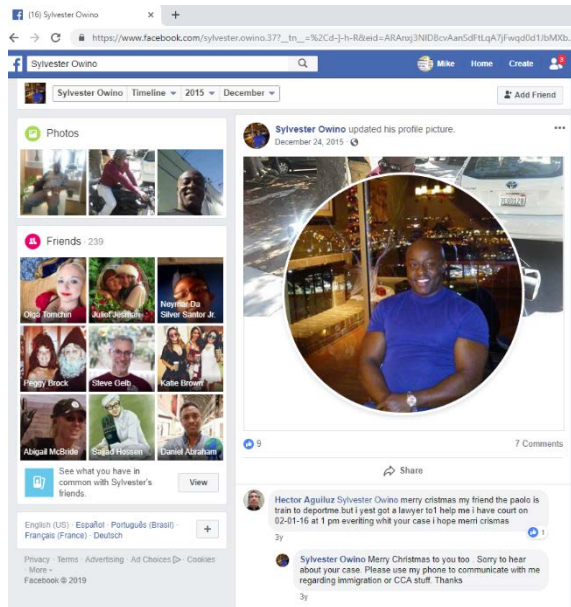
28 5. By Wednesday, April 10, 2019, Plaintiffs had not responded to
CoreCivic’s letter. In response to my request for the status of Plaintiffs’ response,
Nick Fox responded via email that he would “work to have a production of
documents and any amended responses to the document requests by [that]
weekend,” and that he would “turn to the interrogatories shortly after.”

6. By April 23, 2019, CoreCivic still had not received a response to its
March 29, 2019 letter, prompting a second request via email for the status of
Plaintiffs’ response.

1 7. Plaintiffs served their amended responses on April 26, 2019.

2 8. Via letter dated May 22, 2020, CoreCivic again asked Plaintiffs to
3 supplement their response to Request No. 4 and to supplement their response to
4 Request No. 5, providing additional citations to legal authority in support of the
5 requests.

6 9. The letter included a screenshot of Plaintiff Owino’s publicly available
7 Facebook page suggesting that both his social media accounts and his other ESI are
8 likely to have discoverable information:



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19 (See <https://www.facebook.com/sylvester.owino.37>, last accessed May 29, 2020.)

20 10. The parties met and conferred telephonically regarding this and other
21 issues on May 26, 2020.

22 11. Plaintiffs again refused to produce social media information and ESI
23 for either Plaintiff.

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I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

EXECUTED this 1st day of June, 2020 at Chandler, Arizona.

s/Jacob B. Lee
Jacob B. Lee

3715118.1