No. _____

In the Supreme Court of the United States

CORECIVIC, INC.,

Petitioner,

v.

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

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

DANIEL P. STRUCK
NICHOLAS D. ACEDO
STRUCK LOVE BOJANOWSKI & ACEDO, PLC
3100 West Ray Road
Suite 300
Chandler, AZ 85226

ROMAN MARTINEZ
Counsel of Record
CHARLES S. DAMERON
ANTHONY J. JEFFRIES
LATHAM & WATKINS LLP
555 Eleventh Street, NW
Suite 1000
Washington, DC 20004
(202) 637-3377
roman.martinez@lw.com

Counsel for Petitioner

QUESTIONS PRESENTED

Federal Rule of Civil Procedure 23 establishes that a district court may certify a class action "only if," among other things, "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). In the decision below, the Ninth Circuit applied an expressly one-sided, pro-plaintiff standard of review to affirm the district court's certification of multiple classes, including a nationwide class with more than a million members. In approving the proposed classes, the Ninth Circuit found that the legality of petitioner's sanitation and disciplinary policies presented a common question warranting class treatment—even without proof that those policies were uniformly applied to the members of the class.

The questions presented are:

1. Whether courts of appeals reviewing Rule 23 class certification decisions must, as a matter of law, give district court decisions *granting* class certification "noticeably more deference" than rulings *denying* class certification.

2. Whether Rule 23(a)'s commonality requirement is satisfied through the assertion of a purportedly class-wide policy without significant proof that such policy is *uniformly applied* class-wide.

PARTIES TO THE PROCEEDINGS

Petitioner CoreCivic, Inc. was defendant-appellant in the Ninth Circuit below.

Respondents Sylvester Owino and Jonathan Gomez were plaintiffs-appellees in the Ninth Circuit below.

RULE 29.6 STATEMENT

Pursuant to this Court's Rule 29.6, Petitioner CoreCivic, Inc. respectfully submits the following corporate disclosure statement.

CoreCivic, Inc. is a publicly owned corporation. It has no parent company, and no publicly held corporation owns 10% or more of its stock.

LIST OF RELATED PROCEEDINGS

The following proceedings are directly related to this petition:

Owino v. CoreCivic, Inc., No. 21-55221, U.S. Court of Appeals for the Ninth Circuit, judgment entered June 3, 2022, rehearing denied December 20, 2022.

Owino v. CoreCivic, Inc., No. 3:17-cv-1112, U.S. District Court for the Southern District of California, class certification granted April 1, 2020, reconsideration denied January 13, 2021.

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

APPENDIX

TABLE OF CONTENTS—Continued

Page

TABLE OF CONTENTS—Continued

TABLE OF CONTENTS—Continued

Page

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

STATUTES

OTHER AUTHORITIES

TABLE OF AUTHORITIES—Continued

Page(s)

PETITION FOR A WRIT OF CERTIORARI

Petitioner CoreCivic, Inc. respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The amended opinion of the court of appeals on rehearing (App. 1a-40a) is reported at 60 F.4th 437. The order of the court of appeals denying rehearing (App. 2a) is available at 60 F.4th 437. The opinion of the district court granting class certification (App. 41a-120a) is available at 2020 WL 1550218. The opinion of the district court denying reconsideration is available at 2021 WL 120874.

JURISDICTION

The court of appeals entered its judgment on June 3, 2022 (App. 1a-2a) and issued its amended opinion and denied rehearing on December 20, 2022 (App. 2a). On February 24, 2023, Justice Kagan extended the time to file this petition through April 19, 2023. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Federal Rule of Civil Procedure 23(a) provides that "[o]ne or more members of a class may sue or be sued as representative parties on behalf of all class members only if," among other things, "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). Rule 23(f) provides that "[a] court of appeals may permit an appeal from an order granting or denying class-action certification under this rule." Fed. R. Civ. P. 23(f).

INTRODUCTION

In recent years, this Court has emphasized that certification of a class action is an "exception to the usual rule" of individual adjudication and must rest on "rigorous analysis." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348, 350-51 (2011) (citations omitted). This petition addresses the Ninth Circuit's disregard of those admonitions. On two legal issues at the heart of class-action practice, the decision below follows distorted Ninth Circuit precedent that conflicts with the decisions of other courts of appeals and eases certification of dubious classes. Certiorari is warranted to ensure that requests for class certification are analyzed under the same legal rules across the country.

First, the decision below implicates a circuit split as to the proper standard of appellate review for class-certification rulings. For over a decade, the Ninth and Second Circuits have applied an unabashedly one-sided version of abuse-of-discretion review expressly granting "noticeably *more* deference" to district court rulings granting class certification than to decisions denying class certification. App. 7a (emphasis added) (citation omitted). That results-oriented standard directly conflicts with the evenhanded approach applied by all other courts of appeals. And it is plainly wrong. Neither the Ninth nor Second Circuit has ever offered a reasoned justification for giving more deference to pro-certification decisions, and none exists. Easing the standard of review where the district court grants class certification treats certification as the rule rather than the exception. It has no basis in Rule 23 or this Court's precedent, and it raises serious due-process and fairness concerns.

Second, the decision below is the latest in a series of exceptionally lax Ninth Circuit commonality determinations under Rule 23(a). In *Wal-Mart*, this Court emphasized that a class action resting on allegations of the defendant's alleged "policy" must be backed by "'[s]ignificant proof'" that the policy actually "ties all [of the class members'] claims together." 564 U.S. at 353, 357 (alteration in original) (citation omitted). Most circuits therefore require significant proof that an alleged policy is "consistently and uniformly applied" to the members of the proposed class. *Parent/Professional Advocacy League v. City of Springfield*, 934 F.3d 13, 29 (1st Cir. 2019). The Ninth Circuit has repeatedly flouted *Wal-Mart*'s commonality test by certifying classes based on an alleged "policy" without any proof that the policy is uniformly applied to putative class members.

Here, the Ninth Circuit's flawed Rule 23 jurisprudence led it to affirm multiple classes that never should have been certified. Respondents allege that CoreCivic maintains an unlawful policy of requiring immigration detainees to clean the common spaces of detention facilities. They sought certification of multiple classes, including a nationwide class of detainees held in 24 different facilities across the country. The district court found that CoreCivic's written policies were ambiguous at best, and respondents' only additional evidence supporting commonality was the testimony of four detainees about how those policies were applied *at a single facility*. Such evidence of a purportedly common "policy" is far less weighty than the proof this Court rejected as insufficient in *Wal-Mart*. As Judge VanDyke and five of his colleagues noted in their dissent from denial of rehearing en banc, the Ninth

Circuit "created a new rule of commonality that authorizes class certification so long as a movant can offer anecdotal evidence of misconduct limited to a small fraction of a class, coupled with written policies that at most are unclear about the complained-of conduct." App. 34a.

The Ninth Circuit affirmed the district court's class certification ruling only by applying its "highly deferential" pro-certification standard of review (which the court invoked three times) and declining to require significant proof that the policies in dispute were *uniformly applied* to all class members. App. 10a. That decision implicates two circuit splits and embraces a mode of class-certification analysis that defies *Wal-Mart*. Certiorari is warranted.

STATEMENT OF THE CASE

A. CoreCivic's Detention Facilities And Sanitation Policy

The immigration laws sometimes require the federal government to detain people who have entered the country unlawfully. To discharge that obligation, U.S. Immigration and Customs Enforcement (ICE) often relies on private companies to provide "appropriate places of detention for aliens detained pending removal or a decision on removal." 8 U.S.C. § 1231(g)(1). During the class period, CoreCivic operated 24 such facilities, located in 11 states, including two different facilities in California. App. 3a.

ICE has promulgated mandatory detention standards, including the Performance-Based National Detention Standards, that prescribe "personal housekeeping" requirements for detainees as to their "immediate living areas," as well

as disciplinary standards for refusals to comply with personal housekeeping requirements. U.S. Immigration and Customs Enforcement, Performance-Based National Detention Standards 2011, at 406 (revised Dec. 2016), https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf (emphasis omitted). And they require that detention facilities offer voluntary work programs to detainees. *Id.* at 405.

Consistent with those standards, CoreCivic maintains a Sanitation and Hygiene Policy that requires all detainees to "perform a daily cleaning routine of their cells" (their "assigned living area"). App. 156a-57a. A detainee can be disciplined if they refuse to clean their *assigned* living areas. *Id.* at 96a. Detainees must also help "maintain[]" *common* living areas "in a clean and sanitary manner" by not leaving trash, "[t]owels, blankets, clothing, or any personal belongings" in common areas, and by keeping "walls in the common area . . . free of writing." *Id.* at 154a.

As ICE requires, CoreCivic also operates a voluntary work program through which detainees can earn an allowance by volunteering to, for example, work in the kitchen or laundry room, or as a cleaning porter. *Id.* at 128a-29a. Participants are called "[d]etainee/inmate *workers*." *Id.* at 154a (emphasis added). They "perform the daily cleaning routine of the common area" by removing trash, sweeping and mopping floors, and cleaning and scrubbing bathroom fixtures. *Id.* at 154a-55a.

CoreCivic's Sanitation and Hygiene Policy thus imposes different duties on detainees depending on whether they volunteer for the work program. As CoreCivic's managing director of operations and nine supervisory officials at various CoreCivic detention

facilities averred below, the policy "does not . . . require" non-participating detainees "to clean up after other detainees in the common living areas," but "only requires detainees to clean up after themselves in the common living areas." *Id.* at 163a. And even if a detainee creates a mess in the common living area, "[d]etainees participating in the [Volunteer Work Program] will clean up the mess if a detainee refuses to do so." *Id.*; *see also, e.g.*, *id.* at 172a, 184a.

B. Respondents' Claims And Motion For Class Certification

Respondents are two former ICE detainees at CoreCivic's Otay Mesa Detention Center in San Diego, California. In 2017 they sued CoreCivic, asserting that CoreCivic had a "uniform policy" of requiring "ICE detainees to clean areas of CoreCivic facilities beyond their immediate living area under threat of discipline" in violation of the federal Trafficking Victims Protection Act (TVPA) and the California Trafficking Victims Protection Act (CTVPA). 7-ER-1551.

Based on that allegedly nationwide policy, respondents later moved to certify two classes of detainees who had allegedly been forced to "clean[ ] areas of the [CoreCivic] facilities above and beyond the personal housekeeping tasks enumerated in the ICE PBNDS [Performance-Based National Detention Standards]." 7-ER-1557. This included a "National Forced Labor Class" composed of all ICE detainees who had been detained at a CoreCivic facility in the United States between 2008 and the present; and a "CA Forced Labor Class" composed of all ICE detainees who had been detained at CoreCivic's California facilities. *Id.* Respondents also sought

certification of a "CA Labor Law Class" comprising all ICE detainees who participated in voluntary work programs at CoreCivic's California facilities. *Id.* Respondents sought restitution, treble damages, and punitive damages. 12-ER-2973.

In advance of their class-certification motion, respondents received extensive class discovery, including the names and last known addresses of over 470,000 ICE detainees who had been housed at CoreCivic facilities nationwide between 2013 and 2018. Dkt. 68 at 12, No. 17-01112 (S.D. Cal.). Yet, in support of class certification, respondents presented only four declarations from ICE detainees who had been housed at the same Otay Mesa facility where respondents had been housed—two of which came from respondents themselves.

Using identical language, respondents asserted that while Otay Mesa detainees are "required to keep their immediate living areas clean," there were also "many instances of when detainees . . . would have to work to clean the common areas in the living pod beyond just maintaining their own living area" under threat of punishment. App. 128a, 138a. The two other declarants asserted—in identical language, and without elaboration—that during their detention at Otay Mesa, they were likewise coerced to "perform[ ] cleaning tasks [of] communal and private areas without payment." *Id.* at 146a, 150a. Respondents did not present any testimonial or documentary evidence regarding the application of CoreCivic's sanitation or disciplinary policies in this way at any CoreCivic facility other than Otay Mesa.

CoreCivic opposed certification on multiple grounds, including the failure to satisfy Rule 23(a)'s commonality requirement and Rule 23(b)(3)'s

predominance requirement. As to the former, CoreCivic argued that respondents failed to establish "that all members of th[e] Class are subject to the same sanitation and disciplinary policies." 3-ER-453. As CoreCivic noted, "the only evidence [respondents] have to support their claim that detainees are actually forced to clean common areas . . . are the declarations of four detainees [at the single Otay Mesa facility]." 3-ER-454. CoreCivic explained that those four declarations do not constitute significant proof of such a policy as to more than a million detainees scattered across "24 [different] facilities" nationwide, or even as to the thousands of detainees in CoreCivic facilities in California. 3-ER-454-55. That evidentiary defect meant that respondents' nationwide forced-labor class and California forced-labor class flunked Rule 23(a). *Id.*

The district court nonetheless certified a nationwide forced-labor class, a California forced-labor class, and a California labor-law class. As to commonality and predominance, the district court acknowledged that the content of CoreCivic's sanitation policies was "not clear from the face of the policies." App. 94a. It further noted that there was a "dispute of fact" regarding the content and application of CoreCivic's policies, given that the declarations of CoreCivic officials at several facilities established that "the sanitation policies did not require detainees to clean up after others," but that "several detainees" at Otay Mesa "testified that they were required . . . to clean common areas." *Id.* at 95a. Yet the district court held that it "cannot resolve factual disputes of this nature at this stage," so it concluded that, "for purposes of class certification, Plaintiffs sufficiently have established that [CoreCivic] instituted uniform

sanitation and disciplinary policies that were applied class-wide." *Id.* at 95a-97a. It further held that individual questions of causation did not predominate over that common question. *Id.* at 111a-14a.

CoreCivic sought and obtained interlocutory review pursuant to Rule 23(f).

C. The Ninth Circuit's Decision

The Ninth Circuit affirmed in an opinion that repeatedly stressed the "significant deference" owed to the district court. App. 2a; *see also id.* at 7a, 10a. As the panel explained, Ninth Circuit precedent prescribes that class-certification determinations are reviewed for abuse of discretion, and that in "reviewing a *grant* of class certification, we accord the district court noticeably more deference than when we review a denial of class certification." *Id.* at 7a (emphasis added) (quoting *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1171 (9th Cir. 2010)). The panel offered no justification for placing its thumb on the scale in favor of class certification.

The panel then turned to commonality for the California forced-labor class. Whereas the district court had found that the meaning of CoreCivic's written policies was not "clear," the Ninth Circuit reasoned that the "policies appear to go beyond those minimal tidying responsibilities laid out in the ICE Standards." *Id.* at 9a. It then noted that the "persuasive weight of the text of these policies is augmented by the statements of ICE detainees themselves," and that a CoreCivic manager had testified that CoreCivic facilities cannot opt out of CoreCivic policies. *Id.*

The panel recognized that the written policies themselves did not establish commonality. *Id.* at 9a-

10a. But it observed that respondents had adduced "the written policies *as well as* the testimony of [the four] former ICE detainees," and it concluded that in light of "the highly deferential" standard applied to the district court's determination, respondents had provided "significant proof of [a] class-wide policy." *Id.* at 10a. Without further analysis, the Ninth Circuit held that its decision on commonality for the California forced-labor class also supported certification for the nationwide class. *Id.* at 13a. It then concluded that the district court did not abuse its discretion in holding that common questions predominate over individual questions, partly because the TVPA does not require "a subjective, individualized inquiry" as to causation, and partly because CoreCivic's common policies gave rise to a class-wide inference of causation. *Id.* at 13a-14a. The Ninth Circuit also affirmed the certification of the California labor-law class. *Id.* at 15a-21a.

The Ninth Circuit denied rehearing en banc, with Judges VanDyke, Ikuta, Callahan, Bennett, R. Nelson, and Bumatay dissenting. Judge VanDyke's opinion noted that the panel erred with respect to Rule 23(a)'s commonality requirement. Specifically, the panel had "concluded that the nationwide class here shared a common question based on the declarations of four detainees, all from the same facility, together with corporate policies that are at best ambiguous as to the misconduct claimed in those declarations." *Id.* at 34a.

As Judge VanDyke explained, respondents' declarations "merely provide anecdotal support indicating that CoreCivic may have had an *unwritten* policy requiring all detainees to clean the common living area *at that one facility*," that is, at Otay Mesa.

Id. at 38a. But that hardly provides significant proof of commonality as to the hundreds of thousands of detainees spread "across all CoreCivic facilities," and the "panel could not properly assume that one facility's unwritten practice was adopted and applied in every one of CoreCivic's other facilities." *Id.* Judge VanDyke noted that he "would say that the panel here repeated our error in [*Wal-Mart v.*] *Dukes*, but it did worse. At least in *Dukes*, we had anecdotal evidence from *multiple* locations nationwide." *Id.* at 40a.

Judge VanDyke concluded that the panel "created a new rule of commonality that authorizes class certification so long as a movant can offer anecdotal evidence of misconduct limited to a small fraction of a class, coupled with written policies that at most are unclear about the complained-of conduct." *Id.* at 34a.[1]

REASONS FOR GRANTING THE PETITION

I. The Standard-Of-Review Issue Warrants Certiorari

A. The Circuits Are Split Over The Standard Of Review In Class-Certification Appeals

The Ninth Circuit expressly rested its decision below on the court's "highly deferential" version of abuse-of-discretion review, App. 10a—under which district court rulings *granting* class certification must be given "noticeably more deference" than "denial[s] of class certification." *Id.* at 7a (quoting *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1171

[1] Judge VanDyke and four colleagues also dissented from the panel's conclusion on predominance. App. 32a-33a. The dissent explained that the panel effectively "remov[ed] the TVPA's actual causation requirement" and replaced it with "*probable* causation applied to an abstract reasonable person." *Id.* at 33a.

(9th Cir. 2010)). That one-sided standard of review is a fixture of the Ninth Circuit's Rule 23 case law. *See, e.g.*, *id.* at 7a-8a; *Van v. LLR, Inc.*, 61 F.4th 1053, 1062 (9th Cir. 2023); *Senne v. Kan. City Royals Baseball Corp.*, 934 F.3d 918, 926 (9th Cir. 2019). It also implicates an entrenched circuit split.

Like the Ninth Circuit, the Second Circuit "accord[s] the district court noticeably more deference" when reviewing a grant of class certification than when reviewing a denial of class certification. *Levitt v. J.P. Morgan Sec., Inc.*, 710 F.3d 454, 464 (2d Cir. 2013) (quoting *Millowitz v. Citigroup Glob. Mkts., Inc. (In re Salomon Analyst Metromedia Litig.*), 544 F.3d 474, 480 (2d Cir. 2008)). This rule has prevailed in the Second Circuit for thirty years, since *Lundquist v. Security Pacific Automotive Financial Services Corp.*, 993 F.2d 11, 14 (2d Cir.) (per curiam), *cert. denied*, 510 U.S. 959 (1993). *See Universities Superannuation Scheme Ltd. v. Petróleo Brasileiro S.A. (In re Petrobras Sec.)*, 862 F.3d 250, 260 n.11 (2d Cir. 2017); *see also, e.g.*, *Haley v. Teachers Ins. & Annuity Ass'n of Am.*, 54 F.4th 115, 120 (2d Cir. 2022) (applying the rule); *Barrows v. Becerra*, 24 F.4th 116, 130 (2d Cir. 2022) (same); *Roach v. T.L. Cannon Corp.*, 778 F.3d 401, 405 (2d Cir. 2015) (same).

No other circuit applies that one-sided standard. Rather, every other circuit applies an evenhanded abuse-of-discretion standard that does not vary depending on whether the district court granted or denied certification. *See, e.g.*, *Matamoros v. Starbucks Corp.*, 699 F.3d 129, 138 (1st Cir. 2012) ("We review the grant or denial of class certification for abuse of discretion."); *Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 259 F.3d 154, 165 (3d

Cir. 2001) (same); *Bridging Cmtys. Inc. v. Top Flite Fin. Inc.*, 843 F.3d 1119, 1124 (6th Cir. 2016) (same), *cert. denied*, 138 S. Ct. 80 (2017); *Cordoba v. DIRECTV, LLC*, 942 F.3d 1259, 1267 (11th Cir. 2019) (same).

This circuit split is widely recognized in the leading class-action treatises. *See* 3 William Rubenstein, *Newberg & Rubenstein on Class Actions* § 7.53 & n.7 (6th ed. 2022) ("Two circuits (the Second and the Ninth) show more deference to a grant of class certification than a denial of class certification."); 2 Joseph M. McLaughlin, *McLaughlin on Class Actions* § 7.15 & nn.29-31 (19th ed. 2022) (noting the Second and Ninth Circuits' rule and stating that "[o]ther courts do not employ a less deferential standard to a denial of certification"); *see also* 5 James Wm. Moore et al., *Moore's Federal Practice – Civil* § 23.88[5] & n.43 (2023). Scholars have drawn attention to the split as well. *See* Tobias Barrington Wolff, *Discretion in Class Certification*, 162 U. Pa. L. Rev. 1897, 1903-04 (2014); David C. Miller, *Abuse of Discretion and the Sliding Scale of Deference: Restoring the Balance of Power Between Circuit Courts and District Courts for Rule 23 Class Certification Decisions in Oil and Gas Royalty Litigation*, 103 Iowa L. Rev. 1811, 1828 (2018).

Needless to say, there is no reason for federal courts of appeals to apply different standards when reviewing Rule 23 certification rulings. Only this Court can resolve the split.

B. The Ninth Circuit's Pro-Certification Standard Of Review Is Wrong

Neither the Second nor the Ninth Circuit has ever provided a reasoned explanation for their imbalanced

deference regime. Instead, as one Second Circuit panel noted, the idea "apparently arose from a misreading of earlier Second Circuit cases." *Petrobras*, 862 F.3d at 260 n.11. And "no Second Circuit case provides any reasoning or justification for the idea that we review denials of class certification with more scrutiny than grants." *Id.*; *see also Salatino v. Chase*, 939 A.2d 482, 485 & n.2 (Vt. 2007) (rejecting Second Circuit rule and noting that no Second Circuit case offers "any reason that a denial of class certification should be scrutinized more closely than a grant").

As the *Petrobras* panel also emphasized, a pro-plaintiff abuse-of-discretion standard "is out of step with recent Supreme Court authority" emphasizing "that courts must 'conduct a rigorous analysis' to determine whether putative class plaintiffs meet Rule 23's requirements." 862 F.3d at 260 n.11 (quoting *Comcast Corp. v. Behrend*, 569 U.S. 27, 35 (2013), and citing *Wal-Mart*, 564 U.S. at 351). Indeed, the panel went so far as to say that the distinction between review of pro-plaintiff and pro-defendant certification rulings is "one that need not and ought not be drawn." *Id.* Nonetheless, the Second Circuit has continued to apply its unbalanced test. *See Haley*, 54 F.4th at 120; *Barrows*, 24 F.4th at 130.

The Ninth Circuit uncritically adopted the Second Circuit's rule in *Wolin*, 617 F.3d at 1171 (quoting *In re Salomon*, 544 F.3d at 480). But in the years since then, it has never provided any justification for the rule whatsoever. And none exists. Rule 23 is "neutral" between the parties, granting plaintiffs and defendants an equal opportunity to challenge a district court's certification order. *See* Robert H. Klonoff, *The Decline of Class Actions*, 90 Wash. U. L.

Rev. 729, 740 (2013) (noting Rule 23(f)'s "neutral language"); Miller, 103 Iowa L. Rev. at 1825, 1828-29. There is no textual justification for systematically favoring class representatives in class-certification appeals.

The notion that a district court decision certifying a class should categorically receive less scrutiny on appeal than a decision denying class certification turns Rule 23 on its head. Class adjudication is the "exception," not the rule, in an adversarial system built around individual litigants. *Wal-Mart*, 564 U.S. at 348 (citation omitted). Yet by specifically easing the standard of review where the district court grants class certification, the Ninth and Second Circuits treat class certification as the rule rather than the exception. As the *Petrobras* panel recognized, 862 F.3d at 260 n.11, giving extra deference to a grant of class certification flouts this Court's repeated instruction that courts must conduct "a rigorous analysis" to determine whether "the prerequisites of Rule 23(a) have been satisfied." *Comcast*, 569 U.S. at 33 (quoting *Wal-Mart*, 564 U.S. at 350-51). Reviewing courts must verify that the trial court did so, not rubber-stamp the certification of a class while more closely scrutinizing the denial of class certification.

A biased standard of review that categorically favors representative parties raises serious due-process concerns. As to absent class members, class actions abridge the "requirement that a man ought to have his day in court" with respect to his individual claims, Zechariah Chafee, Jr., *Some Problems of Equity*, Thomas M. Cooley Lectures 2d, at 203 (1950), and certification of a class action is appropriate only where reviewing courts have applied exacting scrutiny to the case for certification presented by

putative class representatives. More generally, "equal—not unequal—justice under law is the goal of our society." *Associated Press v. United States*, 326 U.S. 1, 6 (1945). The Second and Ninth Circuit's pro-certification standard, by contrast, systematically disadvantages both class-action defendants and absent class members.[2]

Unsurprisingly, commentators have widely panned the Ninth and Second Circuits' approach. As one scholar noted, the standard of review applied in the Ninth and Second Circuits is "strange[ ]," and has "no[ ] apparent" justification. Wolff, 162 U. Pa. L. Rev. at 1903-04. A treatise has described the rule as "a vestige of [a] certification-friendly approach" that "must be considered obsolete under the Supreme Court's recent pronouncements requiring denial of certification unless a specific showing has been made demonstrating compliance with each of the requirements of Rule 23." 2 *McLaughlin on Class Actions* § 7:15. This unbalanced approach should fall.

C. This Issue Is Important, And This Case Is The Right Vehicle To Address It

Standards of review are implicated in every case; they are the lens through which the court of appeals analyzes the district court's decision. For that reason, this Court regularly grants certiorari to resolve questions about the appropriate standard of review in various contexts. *See, e.g.*, *U.S. Bank Nat'l Ass'n ex rel. CWCapital Asset Mgmt. LLC v. Vill. at Lakeridge,*

---

[2] The one-sided standard of review is especially concerning given that the Ninth Circuit is less likely than any other circuit to grant Rule 23(f) petitions submitted by a defendant. *See* Bryan Lammon, *An Empirical Study of Class-Action Appeals*, 22 J. App. Prac. & Process 283, 310 tbl. 5 (2022).

LLC, 138 S. Ct. 960, 963 (2018) (status as bankruptcy "insider"); *Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 574 U.S. 318, 322 (2015) (factfinding in connection with patent claim construction); *Highmark Inc. v. Allcare Health Mgmt. Sys., Inc.*, 572 U.S. 559, 560-61 (2014) (determination that patent litigation is "objectively baseless" for purpose of attorneys' fees); *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 138-39 (1997) (*Daubert* rulings); *Icicle Seafoods, Inc. v. Worthington*, 475 U.S. 709, 710 (1986) (status as a "seaman" under the Fair Labor Standards Act).

Resolving this particular circuit conflict is especially important because the two courts on the short side of the split—the Ninth and Second Circuits—are the federal judiciary's leading class-action appellate courts. In recent years, those circuits have decided over 46% of all Rule 23(f) petitions. *See* Bryan Lammon, *An Empirical Study of Class-Action Appeals*, 22 J. App. Prac. & Process 283, 303, 310 tbl.5 (2022). Last year, they issued more decisions in class action and collective litigation cases—110 and 62 decisions in the Ninth and Second Circuits, respectively—than any other circuit. *See* Duane Morris LLP, *Class Action Review—2023*, at 422-48 (2023), https://www.duanemorrisclassactionreview.com. The standard of review for class-certification decisions carries special weight in those circuits, and it is vital that those circuits should apply the *correct* standard of review.

This case is also the ideal vehicle for resolving this question. It is not always clear whether the standard of review affected the outcome of a case. But here it *is* clear: The Ninth Circuit panel invoked its biased deference rule *sua sponte*, and it repeatedly relied on that rule in multiple places in its opinion. App. 2a, 7a,

10a. Throughout, the panel made absolutely clear that it was affirming the district court's finding of commonality "[i]n view of the highly deferential" standard of review. *Id.* at 10a. And it twice emphasized the standard of review in affirming the district court's erroneous predominance determination. *Id.* at 13a-14a.[3]

In short, the standard-of-review question implicates a clear and recognized circuit split; it is important for class-action jurisprudence in the circuits, especially in view of the central role played by the Ninth and Second Circuits with respect to class-action litigation; and it is squarely presented in this case. This Court should grant certiorari to resolve it.

II. The Rule 23(a) Commonality Issue Warrants Certiorari

Beyond embracing a one-sided standard of review, the Ninth Circuit endorsed a deeply flawed approach

---

[3] The one-sided abuse-of-discretion standard of review appears to have led the Ninth Circuit to uphold, as part of its predominance analysis, the district court's plainly erroneous holding that the the TVPA does not require "a subjective, individualized inquiry" as to causation. App. 13a; *see also id.* at 111a. As Judge VanDyke's dissent pointed out, the panel and the district court reached this flawed conclusion by conflating the TVPA's objective "serious harm" requirement set forth in 18 U.S.C. § 1589(c)(2) with its "separate"—and inherently individualized—"requirement [in 18 U.S.C. § 1589(a)] that such harms *actually cause* a victim to labor or provide services." *Id.* at 28a; *see also id.* at 30a-34a (noting that this holding creates a circuit split). The Ninth Circuit likewise relied on the standard of review in upholding the district court's erroneous application of a "class-wide causation inference" that CoreCivic's policies were the reason every single class member cleaned common areas outside their own immediate living space. *Id.* at 13a-14a.

to commonality under Rule 23(a). Specifically, the court found that CoreCivic's policies presented a common issue for both of the forced labor classes, even without significant proof that those policies are uniformly applied as alleged by respondents, either nationwide or across California. As the six dissenting judges recognized, this decision is the latest in a long line of Ninth Circuit cases refusing to take seriously this Court's seminal decision in *Wal-Mart*. And it cleaves the Ninth Circuit from other courts of appeals that faithfully apply *Wal-Mart*'s significant-proof requirement to ensure that a policy is uniformly applied and causes "the same injury" to class members. 564 U.S. at 349-50 (citation omitted).

A. The Circuits Are Split On The Standard For Proving That A Defendant's "Policy" Presents A Common Issue

Class actions often challenge a defendant's purported policy or practice across multiple facilities and jurisdictions. At the certification stage, commonality under Rule 23(a) requires that the policy or practice actually exist and that it be applied to class members the same way across the board: If so, the case presents a common issue potentially susceptible to class-wide resolution; but if not, a class action will devolve into a multiplicity of mini-trials.

At the class-certification stage, most circuits require the representative plaintiff to adduce significant proof that the policy or practice is "uniformly applied" in a way that imposes similar harms on each individual class member. *Parent/Professional Advocacy League v. City of Springfield*, 934 F.3d 13, 29 (1st Cir. 2019). But the Ninth Circuit has persistently failed to require

significant proof of uniform application, and did not purport to assess uniformity here. Instead, as Judge VanDyke noted, the Ninth Circuit held that evidence of "written policies," coupled with "anecdotal evidence" as to the application of such policies with respect to "a small fraction of the class," suffices for purposes of Rule 23(a). App. 34a. That approach is an outlier that warrants certiorari.

1. In *Wal-Mart*, this Court reiterated that class adjudication is proper only when the class representative has "'the same interest and suffer[s] the same injury" as the class members.'" 564 U.S. at 348-49 (quoting *E. Tex. Motor Freight Sys. Inc. v. Rodriguez*, 431 U.S. 395, 403 (1977)). To that end, Rule 23(a) requires a showing of commonality—that there are "questions of law or fact common to the class," Fed. R. Civ. P. 23(a)(2)—in order for a class to be certified. A class action must rest on a "common contention" that is "capable of classwide resolution," meaning that "determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart*, 564 U.S. at 350.

Wal-Mart further emphasized that Rule 23 is not a "mere pleading standard." *Id.* It requires the representative plaintiff "to *prove* that there are *in fact* . . . common questions of law or fact." *Id.* And, crucially, where a representative plaintiff seeks to hold a defendant liable for a "general policy" on behalf of a class, the plaintiff must adduce "[s]ignificant proof" of a policy that "ties all [the class members'] . . . claims together." *Id.* at 353, 357 (alteration in original) (citation omitted).

In the wake of *Wal-Mart*, federal courts of appeals across the country came to recognize its core

principle: A representative plaintiff for a putative class cannot obtain class certification merely by alleging that the defendant has a policy or practice that affects all of the members of the class. Rather, as the First Circuit has noted, the plaintiff must adduce significant proof that the defendant has a "*uniformly applied*, official policy," or a "well-defined practice (or set of practices) *that is consistently and uniformly applied*," and that "drives" the class members' causes of action in unison because it causes "similar . . . effects . . . across the class." *Parent/Professional Advocacy League*, 934 F.3d at 29 (emphasis added). The Fourth Circuit has likewise recognized that it is the "uniformity of shared injuries" caused by a defendant's policy that makes such a policy a proper basis for a finding of commonality. *Brown v. Nucor Corp.*, 785 F.3d 895, 910 (4th Cir. 2015).

The Third Circuit's recent decision in *Allen v. Ollie's Bargain Outlet, Inc.*, provides a good example of this rule in operation. 37 F.4th 890 (3d Cir. 2022). In that case, a defendant retailer operating "over four hundred retail stores" across 29 states was sued by two plaintiffs who use wheelchairs and who shopped at two of the defendant's stores in Pennsylvania. *Id.* at 892-93. In those two stores, plaintiffs encountered "an obstacle course" of "pillars, clothing racks, and boxes" blocking the aisles. *Id.* at 892. The plaintiffs sued under Title III of the Americans with Disabilities Act, and sought certification of a nationwide class of "every similarly disabled individual who shops at any Ollie's store in the United States." *Id.* Plaintiffs asserted that Ollie's had adopted nationwide "visual store standards" that "emphasize placing as much stock as possible on the

sales floor," and that this company-wide policy was the cause of the inaccessible aisles that plaintiffs had encountered. *Id.* at 902.

The Third Circuit held that plaintiffs had failed to prove commonality for a nationwide class. *Id.* at 901. As the court noted, "[i]t is not enough that Ollie's has corporate policies and that some or all stores in Pennsylvania pay inadequate attention to aisle accessibility. Stitching together a corporate-wide class requires more." *Id.* Specifically, it requires a showing that the defendant's policy is uniformly applied such that it causes a common injury for all class members—the imposition of inaccessible aisles "across Ollie's stores in the United States." *Id.* at 902. And in *Ollie's*, the plaintiffs had not made that showing because the only substantial "proof" that the defendant's policy "cause[d] inaccessible aisles" was "limited to stores in Pennsylvania." *Id.* The only evidence the plaintiffs adduced "from outside Pennsylvania" were a few "customer emails reporting inaccessible aisles," and the Third Circuit found that those scattered "anecdotes" did not amount to proof of a uniform policy at "over four hundred stores in twenty-nine states." *Id.* The Third Circuit therefore rejected plaintiffs' nationwide class. *Id.*

Two recent class actions arising in the prison-litigation context illustrate the same principle. In *Ross v. Gossett*, the Seventh Circuit approved certification of a class of Illinois prisoners held at four Illinois correctional facilities. 33 F.4th 433, 435, 442 (7th Cir. 2022). The district court recognized that commonality was satisfied because each of the defendant prison supervisors had "acted pursuant to a common policy and implemented the same or similar procedures at each of the four institutions,

and . . . the [plaintiffs'] challenge was to the constitutionality of that common plan as enacted." *Id.* at 437. The Seventh Circuit affirmed because the defendants had "concede[d] that the [challenged practices] were conducted according to a uniform plan created and implemented by the [defendants], and that the plan was executed in a uniform manner under their supervision." *Id.* at 438. Thus, the evidence that had been "lacking in *Wal-Mart*—that the alleged discriminatory actions were undertaken pursuant to a uniform policy—[wa]s not only present in [*Ross*], it [was] undisputed." *Id.*

A recent Fifth Circuit decision concerning a certified class of prisoners in Texas undertook a similar analysis. In *Yates v. Collier*, the district court certified a class comprising all inmates at a 1,400-inmate prison, the Wallace Pack Unit. 868 F.3d 354, 358 (5th Cir. 2017). Plaintiffs claimed that the summer heat at the prison—where individual prisoners' cells were not air-conditioned—gave rise to an Eighth Amendment violation. *Id.* In determining whether the class met the Rule 23(a) commonality standard, the Fifth Circuit recognized that the "putative class members are all exposed to essentially the same temperatures," and that it was undisputed that, "absent mitigation measures, *every inmate* in the Pack Unit is at a substantial risk of serious harm due to the heat." *Id.* at 362. Defendants argued that various heat-mitigation measures at the prison destroyed commonality, because the efficacy of such measures "will largely depend on the age and health of each particular individual." *Id.* In defendants' view, class certification was appropriate only if the plaintiffs proved "that even the youngest, healthiest, and most acclimatized inmates face a substantial

threat of serious harm *despite* [defendants'] existing heat-mitigation measures." *Id.* at 363.

The Fifth Circuit did not disagree with defendants' legal argument. It held that certification was appropriate because the policy *did* inflict uniform harms across the proposed class: "[T]he district court found, based on . . . expert testimony, that [defendants'] heat-mitigation measures . . . were ineffective to reduce the risk of serious harm to a constitutionally permissible level for *any* inmate, including the healthy inmates." *Id.* As the Fifth Circuit explained, those findings were based on highly particularized and credible lay and expert witness testimony, which had led the district court to conclude that the defendants' efforts "mitigated the risk of high temperature for . . . *none of*" the class members, and thus that the class members had all suffered the same harm. *Id.* at 365.

That kind of detailed investigation into the implementation of an alleged policy is necessary to ensure that a defendant's policy is uniform and has generated "similar . . . effects . . . across the class," *Parent/Professional Advocacy League*, 934 F.3d at 29, such that class adjudication is warranted.

2. The Ninth Circuit takes a different approach. Even after *Wal-Mart*, the Ninth Circuit has continued to authorize class certification on the basis of mere *allegations* as to the existence of a policy that purportedly applies uniformly to all members of the class. It will sometimes treat the adjudication of those allegations as a merits question, thus certifying a class to determine whether there is a policy common to the class—an inversion of the Rule 23 inquiry. And even when the Ninth Circuit demands proof of a policy that binds class members together at the class-

certification stage, the standard of proof it imposes is so lax that it cannot be reconciled with the "significant proof" standard prescribed by *Wal-Mart* and adhered to in other circuits. Instead, the Ninth Circuit is content—as it was in this case—to certify a class on the basis of scattered evidence of a "policy" or "policies" that purportedly govern the class as a whole, without proof that those policies are *uniformly applied* to the members of the class.

Here, for example, the Ninth Circuit held that a "class-wide policy" necessarily establishes commonality. App. 8a. But it failed to ask whether the policy asserted by respondents was *uniformly applied* across the dozens of facilities operated by CoreCivic. Instead, it simply noted that CoreCivic has adopted written policies, that CoreCivic managers testified that those policies are "standard policies," and that "former ICE detainees" had testified as to the implementation of those policies. *Id.* at 9a-10a. That should have been the beginning—not the end—of the Ninth Circuit's analysis.

Had the Ninth Circuit inquired into uniform application, it would have had to reverse the district court's grant of class certification. As noted, the district court itself recognized that there is varying evidence regarding the application of CoreCivic's policies: On the one hand, CoreCivic officials at facilities in Arizona, California, Georgia, Ohio, and Texas averred that "the sanitation policies did not require detainees to clean up after others." App. 95a. On the other hand, "several detainees" at a single facility (Otay Mesa) "testified that they were required . . . to clean common areas." *Id.*

That is not "[s]ignificant proof" of uniform application across CoreCivic's 24 facilities

nationwide. *Wal-Mart*, 564 U.S. at 353 (alteration in original) (citation omitted). To the contrary, the evidentiary record here shows that CoreCivic's policies may have been implemented differently at Otay Mesa than elsewhere. At the very least, Plaintiffs introduced no proof establishing that the policy was applied in the same fashion at Otay Mesa as elsewhere. Yet the district court deferred that analysis by concluding that it need not "resolve" those factual questions "at this stage." App. 95a. And the Ninth Circuit embraced that determination by applying its "highly deferential" review of decisions granting class certification. *Id.* at 10a; *see id.* at 7a. As the en banc dissenters explained, the panel's decision was "inconsistent with Rule 23 and [*Wal-Mart*]." App. 34a.

The panel's unwillingness to undertake a rigorous inquiry into uniform application of purported class-wide policies reflects a broader pattern in the Ninth Circuit, even after *Wal-Mart*. Take, for example, *Jimenez v. Allstate Insurance Co.*, 765 F.3d 1161 (9th Cir. 2014), *cert. denied*, 576 U.S. 1028 (2015). In that case, the district court certified a class of California employees who claimed that their employer, Allstate, had "a practice or unofficial policy of requiring its claims adjusters to work unpaid off-the-clock overtime in violation of California law." *Id.* at 1162-63. The Ninth Circuit affirmed on the basis of the plaintiffs' claim that Allstate had an "unofficial policy of discouraging reporting of such overtime," and that "[p]roving at trial whether such informal or unofficial policies existed will drive the resolution" of the class members' claims. *Id.* at 1165-66. The panel waved away Allstate's argument that there was no such policy by reasoning that the argument "is

appropriately made at trial." *Id.* at 1166 n.5. But where an alleged policy of the defendant's is supposed to be the "glue" holding the class members' claims together, *Wal-Mart*, 564 U.S. at 352, that policy needs to be established at the class-certification stage through "[s]ignificant proof," *id.* at 353 (alteration in original) (citation omitted). To defer consideration of that proof to the merits stage is to skip over the Rule 23(a) commonality inquiry entirely.

The Ninth Circuit applied the same hands-off approach on a far larger scale in *Parsons v. Ryan*, 754 F.3d 657 (9th Cir. 2014), where it approved certification of a statewide class comprising every prisoner in the 33,000-prisoner Arizona state prison system, spread across ten different facilities. It reasoned that commonality was established because the district court had "identified 10 statewide . . . policies and practices to which all members of the class are subjected." *Id.* at 678.

But as Judge Ikuta and five other en banc dissenters explained, that approach disregarded the requirement that plaintiffs "share similar potentially viable claims whose 'truth or falsity' can be resolved one way or the other 'in one stroke.'" *Parsons v. Ryan*, 784 F.3d 571, 575 (9th Cir. 2015) (Ikuta, J., dissenting from denial of rehearing en banc). The plaintiffs in *Parsons* had merely *alleged* the policies, and in the most conclusory terms. *See* 754 F.3d at 664. When it came to proving the existence and uniform application of such policies, the plaintiffs introduced evidence showing that the state prison system's healthcare practices were actually *disuniform*: The expert witnesses on whom plaintiffs relied in securing class certification testified that the relevant policies were "centralized" through formal writings, but that

these "written policies and procedures are often viewed by providers and their supervisors as setting unrealistic requirements, and therefore are ignored." *Id.* at 669. Yet the Ninth Circuit affirmed class certification on the basis of that expert testimony, along with the declarations of the named plaintiffs, who described their individual experiences with inadequate prison healthcare. *Id.* at 683. Judge Ikuta's stinging dissent from denial of rehearing en banc explained that while the record "reveal[ed] serious systemwide problems with healthcare in the Arizona prison system," the certified class was composed of "a diverse group of prisoners with different health conditions and needs" who lacked "a common claim." *Parsons*, 784 F.3d at 573. As she explained, the panel's decision was "in defiance" of this Court's ruling in *Wal-Mart*. *Id.*

Things have not improved in the Ninth Circuit since *Parsons*. Rather, *Parsons* has provided a roadmap for continued evasion of the Rule 23(a) commonality standard in that Circuit. In 2019, for example, the Ninth Circuit again affirmed the certification of a statewide class in Arizona on the basis of broadly alleged "policies and practices," without any significant proof that such policies or practices bound the plaintiffs together. *See B.K. ex rel. Tinsley v. Snyder*, 922 F.3d 957, 968-69 (9th Cir. 2019), *cert. denied*, 140 S. Ct. 2509 (2020).

In *B.K.*, the district court "certified a class of all children who are or will be" in the Arizona foster-care system, on the basis of alleged "state-wide policies and practices depriv[ing] them of required medical services, among other things." *Id.* at 963. As in *Parsons*, those supposed "policies" were simply generalized allegations of harm: for example,

"excessive caseworker caseloads," "failure to provide timely access to healthcare," "failure to investigate reports of abuse timely," and other unspecified "investigation delays." *Id.* at 969. Remarkably, the district court held—and the Ninth Circuit agreed—that those vague and disparate theories of harm presented common issues that could be "litigated in 'one stroke.'" *Id.* (quoting *Wal-Mart*, 564 U.S. at 350). Under the commonality standard applied in *Parsons* and *B.K.*, the Ninth Circuit has endorsed a rule of virtually automatic class certification in every case seeking systemwide reform.

This case is the latest installment in that series. Here, the Ninth Circuit relied repeatedly on *Parsons*, *see* App. 10a-11a (citing *Parsons*, 754 F.3d at 678). And—just like in *Parsons* and *B.K.*—the Ninth Circuit failed to critically examine whether the case involves an actual "class-wide policy." Indeed, it never asked or answered the questions that are required under Rule 23(a), and which are asked in other circuits: whether the alleged policy "is consistently and uniformly applied" class-wide and "drives" the class members' claims by causing "similar . . . effects . . . across the class." *Parent/Professional Advocacy League*, 934 F.3d at 29. This Court should resolve that divergence in approach.

B. The Decision Below Is Wrong

The Ninth Circuit's commonality analysis is indefensible. Under Rule 23(a), a representative plaintiff must demonstrate that, for purposes of the litigation, he stands in a similar position to that of the class members he proposes to represent. The point of class adjudication is that the claims of all class members will "generate common *answers* apt to drive

the resolution of the litigation. Dissimilarities within the proposed class are what have the potential to impede the generation of common answers." *Wal-Mart*, 564 U.S. at 350 (quoting Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 85 N.Y.U. L. Rev. 85, 132 (2009)).

That is why simply pointing to a defendant's "policy" does not suffice. A court must still assure itself that litigation concerning that policy will generate common answers in resolving the class members' claims. A court may gain that assurance only where the putative class representative shows that: (1) the policy is real; (2) it is uniformly applied by the defendant to the members of the class; and (3) it imposes similar effects on the members of the class such that they are likely to share common injuries resulting from that policy.

The alleged "policy" holding together the certified class in this case clearly flunks that test. As the district court itself recognized (before erroneously certifying the class), there is a "dispute of fact" in this case about the content and application of CoreCivic's policies. App. 95a. The district court concluded that the written CoreCivic policies are "not clear." *Id.* at 94a. The declarations of CoreCivic officials at various facilities tend to establish that CoreCivic's "policies did not require detainees to clean up after others." *Id.* at 95a. On the other hand, four detainees at Otay Mesa "testified that they were required . . . to clean common areas." *Id.* The time to sort through that factual dispute is at class certification. Yet the district court and Ninth Circuit utterly failed to scrutinize respondents' lack of significant proof that the policy was uniformly applied throughout all CoreCivic facilities, such that detainees at every

facility would have been "required . . . to clean common areas."[4]

The practical consequence of the erroneous class-certification here is that proceedings on the merits will devolve into 24 mini-trials on the application of CoreCivic's sanitation policy at each of the facilities where class members were detained. CoreCivic will call as witnesses at least all of those officials who submitted unrebutted declarations at the class-certification stage to prove that each of their facilities required detainees to clean only their immediate living areas, and will submit other proof as to the implementation of its sanitation policies at all of its facilities. Rebutting that evidence will require respondents to adduce facility-by-facility evidence; it will not be possible for plaintiffs to establish their class-wide subjection to a uniform policy "in one stroke." *Wal-Mart*, 564 U.S. at 350. There will be no efficiency gains from litigating respondents' claims in a sweeping class action. Rule 23(a) exists precisely to screen out such cases.

As Judge VanDyke and five of his colleagues correctly recognized in their dissent from denial of rehearing en banc, this is not a close case under *Wal-Mart*. In *Wal-Mart*, there was "*more* proof of class-wide conduct than the panel had here . . . [including] [1] a company-wide policy giving managers discretion in employment decisions, [2] expert testimony suggesting that Wal-Mart's culture prejudiced

---

[4] The Ninth Circuit's flawed commonality holding also infected its predominance analysis, which relied on CoreCivic's purportedly common policies to draw a "class-wide causation inference" obviating the need to show causation on an individualized basis. App. 13a-14a.

women, [3] statistical disparities between promotions of men and women, and [4] testimony from 120 employees located in different stores nationwide saying they had experienced discrimination." App. 39a-40a (VanDyke, J., dissenting from denial of rehearing en banc).

In this case, by contrast, all the proof that respondents could generate—after *months* of class discovery, including production of the name and address of every detainee in every CoreCivic facility for a five-year period—was four declarations containing "anecdotal evidence from one of dozens of locations, and corporate policies that are at best ambiguous." *Id.* at 40a. Respondents failed to marshal anything close to significant proof establishing commonality under Rule 23(a).

C. The Commonality Issue Is Exceptionally Important, Especially In The Ninth Circuit

The decision below is just the latest example of a Ninth Circuit class-action jurisprudence that has departed from the core tenets of commonality under Rule 23(a). *Supra* at 24-29. Notwithstanding the objections of various members of the Ninth Circuit over the years, *see, e.g.*, App. 21a, 34a (VanDyke, J., dissenting from denial of rehearing en banc, joined by five judges); *Parsons*, 784 F.3d at 572-73 (Ikuta, J., dissenting from denial of rehearing en banc, joined by five judges), the Ninth Circuit has proven unable to police itself on these matters. Only this Court can bring the Ninth Circuit into line with this Court's precedents.

This Court's intervention is warranted. As noted above, by virtue of its sheer size as the most populous

circuit, much of the Nation's class-action litigation already flows through the Ninth Circuit. *See supra* at 17. But the Ninth Circuit's recurring error as to Rule 23(a) greatly enhances the incentives for forum-shopping among representative plaintiffs and plaintiffs' counsel, and will have nationwide consequences if left unchecked. If, as here, plaintiffs can obtain certification of nationwide classes through scattered anecdotal evidence, the Ninth Circuit will see an ever-increasing flow of class-action litigation challenging all manner of alleged corporate and governmental policies on a nationwide basis. The proper application of the Rule 23(a) commonality standard in most circuits will become meaningless in the large number of cases in which plaintiffs can target a national chain or business for its alleged "policies." Those cases will simply be brought in the Ninth Circuit.

The commonality principles at stake in this case matter not only in large damages actions like this one, but also in actions for injunctive relief. As the Ninth Circuit's decisions in *Parsons* and *B.K.* make clear, the Ninth Circuit's lax commonality standard is a windfall for plaintiffs engaged in litigation aimed at changing public policy through judicial decree. Rule 23 provides the appropriate vehicle for "achieving broad injunctive relief" for plaintiffs, but only where its requirements are actually met. Samuel L. Bray, *Multiple Chancellors: Reforming the National Injunction*, 131 Harv. L. Rev. 417, 475-76 (2017). The Ninth Circuit's standard vitiates those requirements, encouraging ever more creative class definitions geared at securing overbroad injunctive relief against public officials and agencies. This case offers the

Court an opportunity to reiterate—and clarify—the important limits of Rule 23(a).

This case is also the right vehicle for addressing the Ninth Circuit's recurring misapplication of Rule 23(a). As in *Wal-Mart*, which involved a sweeping nationwide class composed of 1.5 million employees scattered across Wal-Mart stores nationwide, *see* 564 U.S. at 357, this case involves a sweeping nationwide class of more than a million immigration detainees scattered across dozens of immigration facilities around the country. And the proof of commonality here was far weaker than it was in *Wal-Mart*. App. 39a-40a (VanDyke, J., dissenting from denial of rehearing en banc).

* * *

Certification of a class action under Rule 23 is supposed to be a significant event, not a routine procedural step. This case illustrates how far the Ninth Circuit has strayed from that understanding. In approving certification of classes where there are live factual disputes even as to the existence of common questions—and in granting "noticeably more deference" to decisions granting class certification—the Ninth Circuit has abandoned the safeguards that protect against class-action abuses, and has done so in conflict with other circuits and this Court's precedent. Review is warranted to ensure that Rule 23 applies in the Ninth Circuit the same way it applies everywhere else.

CONCLUSION

The petition should be granted.

Respectfully submitted,

DANIEL P. STRUCK
NICHOLAS D. ACEDO
STRUCK LOVE BOJANOWSKI
& ACEDO, PLC
3100 West Ray Road
Suite 300
Chandler, AZ 85226

ROMAN MARTINEZ
Counsel of Record
CHARLES S. DAMERON
ANTHONY J. JEFFRIES
LATHAM & WATKINS LLP
555 Eleventh Street, NW
Suite 1000
Washington, DC 20004
(202) 637-3377
roman.martinez@lw.com

Counsel for Petitioner

April 18, 2023

APPENDIX

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

Page

TABLE OF CONTENTS—Continued

Page

TABLE OF CONTENTS—Continued

Page

[60 F.4th 437]

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SYLVESTER OWINO; JONATHAN GOMEZ, on behalf of themselves, and all others similarly situated, *Plaintiffs-Appellees,* v. CORECIVIC, INC., a Maryland corporation, *Defendant-Appellant.*	No. 21-55221 D.C. No. 3:17-cv-01112-JLS-NLS ORDER AND AMENDED OPINION

Appeal from the United States District Court
for the Southern District of California
Janis L. Sammartino, District Judge, Presiding

Argued and Submitted February 18, 2022
San Francisco, California

Filed June 3, 2022
Amended December 20, 2022

Before: M. Margaret McKeown and William A. Fletcher, Circuit Judges, and Richard D. Bennett,* District Judge.

---

* The honorable Richard D. Bennett, United States District Judge for the District of Maryland, sitting by designation.

Order;
Opinion by Judge McKeown;
Dissent by Judge VanDyke

ORDER

The opinion filed June 3, 2022, *Owino v. CoreCivic, Inc.*, 36 F.4th 839 (9th Cir. 2022) is amended and superceded by the opinion filed concurrently with this order.

The full court has been advised of the petition for rehearing en banc. A judge of this Court requested a vote on the petition for rehearing en banc. A majority of the non-recused active judges did not vote to rehear the case en banc. Fed. R. App. 35. The petition for panel rehearing and for rehearing en banc is DENIED. No further petitions for panel rehearing or rehearing en banc will be entertained.

OPINION

McKEOWN, Circuit Judge:

This appeal arises from a class action filed by individuals who were incarcerated in private immigration detention facilities owned and operated by a for-profit corporation, CoreCivic, Inc. These individuals—detained solely due to their immigration status and neither charged with, nor convicted of, any crime—allege that the overseers of their private detention facilities forced them to perform labor against their will and without adequate compensation. Our inquiry on appeal concerns only whether the district court properly certified three classes of detainees. Considering the significant deference we owe to the district court when reviewing a class certification, as well as the district court's extensive and reasoned findings, we affirm the certification of all three classes.

BACKGROUND

In 2017, Sylvester Owino ("Owino") and Jonathan Gomez ("Gomez") (collectively "Owino") brought a class action suit against CoreCivic. Both men were previously held in a civil immigration detention facility operated by CoreCivic—Owino from 2005 to 2015, and Gomez from 2012 to 2013. They filed suit "on behalf of all civil immigration detainees who were incarcerated and forced to work by CoreCivic," seeking declaratory and injunctive relief and damages, among other remedies, for "forcing/coercing detainees to clean, maintain, and operate CoreCivic's detention facilities in violation of both federal and state human trafficking and labor laws." Specifically, Owino alleged violations of the Victims of Trafficking and Violence Protection Act of 2000, 18 U.S.C. § 1589 *et seq*. ("TVPA"), California Trafficking Victims Protection Act, Cal. Civ. Code § 52.5 ("CTVPA"), various provisions of the California Labor Code, and other state laws.

Pursuant to 8 U.S.C. § 1231(g), U.S. Immigration and Customs Enforcement ("ICE") contracts with CoreCivic to incarcerate detained immigrants in 24 facilities across 11 states. According to Owino, those incarcerated in these facilities "are detained based solely on their immigration status and have not been charged with a crime." Because of this, ICE states these detainees "shall not be required to work, except to do personal housekeeping." These housekeeping duties are delineated in ICE's Performance-Based National Detention Standards ("Standards"): "1. making their bunk beds daily; 2. stacking loose papers; 3. keeping the floor free of debris and dividers free of clutter; and 4. refraining from hanging/draping clothing, pictures, keepsakes, or other objects

from beds, overhead lighting fixtures or other furniture." Performance-Based National Detention Standards 2011, at 406 (revised Dec. 2016), https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf. The Standards also require facilities to provide detainees with the "opportunity to participate in a voluntary work program" ("Work Program") for which they must be compensated at least $1 per day. *Id.* at 406, 407.

Despite these guidelines, Owino contends that, "as a matter of policy," CoreCivic compelled him and detainees across its facilities to work "as a virtually free labor force to complete 'essential' work duties at their facilities," including such "foundational tasks" as kitchen and laundry services. CoreCivic's written policies require "all" detainees to "maintain[] the common living area [i.e., not the bunk bed area] in a clean and sanitary manner." The policies further require "[d]etainee/inmate workers" to carry out a "daily cleaning routine," to remove trash, sweep, mop, clean toilets, clean sinks, clean showers, and clean furniture, and to undertake "[a]ny other tasks assigned by staff in order to maintain good sanitary conditions." Yet, according to Owino, CoreCivic generally paid ICE detainees either $1 per day or nothing at all. Owino further contends that CoreCivic paid ICE detainees between $.75 and $1.50 per day for work that it "misclassified" as "volunteer," thus failing to pay wages that approximated the minimum hourly wage required by California law.

On April 15, 2019, Owino filed a motion for class certification, seeking to certify five classes:

> 1. California Labor Law Class: All ICE detainees who (i) were detained at a CoreCivic facility located in California between May 31,

2013, and the present, and (ii) worked through CoreCivic's Voluntary Work Program during their period of detention in California.

2. California Forced Labor Class: All ICE detainees who (i) were detained at a CoreCivic facility located in California between January 1, 2006, and the present, (ii) cleaned areas of the facilities above and beyond the personal housekeeping tasks enumerated in the Standards, and (iii) performed such work under threat of discipline irrespective of whether the work was paid or unpaid.

3. National Forced Labor Class: All ICE detainees who (i) were detained at a CoreCivic facility between December 23, 2008, and the present, (ii) cleaned areas of the facilities above and beyond the personal housekeeping tasks enumerated in the Standards, and (iii) performed such work under threat of discipline irrespective of whether the work was paid or unpaid.

4. California Basic Necessities Class: All ICE detainees who (i) were detained at a CoreCivic facility located in California between January 1, 2006, and the present, (ii) worked through CoreCivic's Work Program, and (iii) purchased basic living necessities through CoreCivic's commissary during their period of detention in California.

5. National Basic Necessities Class: All ICE detainees who (i) were detained at a CoreCivic facility between December 23, 2008, and the present, (ii) worked through CoreCivic's Work Program, and (iii) purchased basic living

necessities through CoreCivic's commissary during their period of detention.

A year later—following numerous filings, oral argument, and supplemental briefing—the district court certified three of the proposed five classes: (1) the California Labor Law Class, (2) the California Forced Labor Class, and (3) the National Forced Labor Class. In an extensive and thoughtful order, the district court found the following:

1. California Labor Law Class: Owino and Gomez "adequately have established that they were never paid a minimum wage through the [Work Program]," that they "never received wage statements," and that CoreCivic "failed to pay compensation upon termination" and "imposed unlawful terms and conditions of employment." There were sufficient "common, predominating questions" to certify the class.

2. California Forced Labor Class: Owino and Gomez "sufficiently have demonstrated" that CoreCivic facilities in California "implemented common sanitation and disciplinary policies that together may have coerced detainees to clean areas of [CoreCivic's California] facilities beyond the personal housekeeping tasks enumerated in the ICE [Standards]."

3. National Forced Labor Class: Owino and Gomez "sufficiently have demonstrated" the same regarding CoreCivic facilities nationwide.

Due to the vulnerability of the class members and the "risks, small recovery, and relatively high costs of litigation," the district court concluded that "class-wide litigation is superior" because "no viable alternative method of adjudication exists."

ANALYSIS

We review the district court's class certification for "abuse of discretion." *B.K. ex rel. Tinsley v. Snyder*, 922 F.3d 957, 965 (9th Cir. 2019). As we set out at length in *Snyder*,

> An error of law is a per se abuse of discretion. Accordingly, we first review a class certification determination for legal error under a de novo standard, and if no legal error occurred, we will proceed to review the decision for abuse of discretion. A district court applying the correct legal standard abuses its discretion only if it (1) relies on an improper factor, (2) omits a substantial factor, or (3) commits a clear error of judgment in weighing the correct mix of factors. Additionally, we review the district court's findings of fact under the clearly erroneous standard, meaning we will reverse them only if they are (1) illogical, (2) implausible, or (3) without support in inferences that may be drawn from the record.

Id. at 965–66 (quoting *Sali v. Corona Reg'l Med. Ctr.*, 909 F.3d 996, 1002 (9th Cir. 2018)). Notably, in "reviewing a grant of class certification, we accord the district court noticeably more deference than when we review a denial of class certification." *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1171 (9th Cir. 2010).

In assessing whether to certify a class, the district court determines whether the requirements of Rule 23 are met. Rule 23 provides:

> One or more members of a class may sue or be sued as representative parties on behalf of all members only if: (1) the class is so numerous that joinder of all members is impracticable ["numerosity"]; (2) there are questions of law or fact common to the class ["commonality"]; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class ["typicality"]; and (4) the representative parties will fairly and adequately protect the interests of the class ["adequacy"].

Fed. R. Civ. P. 23(a). Additionally, a proposed class must satisfy one of the subdivisions of Rule 23(b). *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013). Owino seeks to proceed under Rule 23(b)(3), which requires "the court find[] that the [common questions] predominate over any questions affecting only individual members ['predominance'], and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy ['superiority']." Fed R. Civ. P. 23(b)(3). The district court made both findings.

CoreCivic brings three challenges to each of the three certified classes. We review each of these challenges in turn.

I. California Forced Labor Class

A. Class-wide Policy of Forced Labor

We first consider CoreCivic's assertion that Owino failed to present "[s]ignificant proof" of a class-wide policy of forced labor, thus defeating commonality. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 353 (2011). To support the California Forced Labor class, Owino provided the declarations of four detainees, all

from one facility, but this was *not* the extent or the focus of Owino's "significant proof," nor was it the focus of the district court's decision. Rather, Owino centered his argument, and the district court centered its holding, on the text of CoreCivic's corporate policies. The sanitation policy requires detainees to remove trash, wash windows, sweep and mop, "thoroughly" scrub toilet bowls, sinks, and showers, and undertake sundry other cleaning responsibilities across the facility. On their face, these policies appear to go beyond those minimal tidying responsibilities laid out in the ICE Standards. The discipline policy further makes clear that detainees are subject to a range of punishments, including disciplinary segregation, for refusal to "clean assigned living area" or "obey a staff member/officer's order."

The persuasive weight of the text of these policies is augmented by the statements of ICE detainees themselves, who declared that they were in fact required to clean common areas—without payment and under threat of punishment—in line with the policies. Further, one of CoreCivic's own senior managers testified that CoreCivic facilities do not have the ability to opt out of these company-wide, "standard policies."

Commonality is necessarily established where there is a class-wide policy to which all class members are subjected. *Parsons v. Ryan*, 754 F.3d 657, 678 (9th Cir. 2014). And while "the mere existence of a facially defective written policy—without any evidence that it was implemented in an unlawful manner—does not constitute '[s]ignificant proof' that a class of employees were [*sic*] subject to an unlawful practice," *Davidson v. O'Reilly Auto Enters., LLC*, 968 F.3d 955, 968 (9th Cir. 2020) (internal citation

omitted), Owino relied on the written policies *as well as* the testimony of former ICE detainees and CoreCivic's own manager. Although the company "may wish to distance itself from [its employee's] statements," here the "admissions were material and [are] properly before us." *Abdullah v. U.S. Sec. Assocs.*, 731 F.3d 952, 966 (9th Cir. 2013).

In view of the highly deferential abuse of discretion standard and the full scope of evidence in the record, we reject CoreCivic's claim that Owino failed to provide "significant proof" of the class-wide policy necessary to satisfy the commonality requirement.

B. Predominance of Common Questions

We next consider CoreCivic's claim that Owino failed to establish that common questions predominate over individual ones, thus defeating predominance. The predominance inquiry tests "whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016) (quoting *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 623 (1997)). Here, they are.

As the district court noted, the California Forced Labor class members "share a large number of common attributes, including that they are immigrants who are or were involuntarily detained in [CoreCivic's] facilities and subjected to common sanitation and disciplinary policies." The claims of these class members all depend on common questions of law and fact—whether CoreCivic utilized threats of discipline to compel detainees to clean its California facilities in violation of state and federal human trafficking statutes. This is a quintessential "common

question" as defined by the Supreme Court: "the same evidence will suffice for each member to make a prima facie showing [or] the issue is susceptible to generalized, class-wide proof." *Tyson Foods*, 577 U.S. at 453 (citation omitted).

In other words, the question is appropriate for class-wide resolution because either CoreCivic's company-wide policies and practices violated the law and the rights of the class members, or they didn't. *See Parsons*, 754 F.3d at 678 (holding that the "policies and practices to which all members of the class are subjected . . . are the 'glue' that holds together the putative class . . . either each of the policies and practices is unlawful as to every inmate or it is not"); *see also Gonzalez v. U.S. Immigr. & Customs Enf't*, 975 F.3d 788, 808 (9th Cir. 2020).

CoreCivic argues against predominance largely by attempting to reframe the inquiry, asserting that the district court should have asked whether each class member actually has a viable California TVPA claim. However, this is not the applicable test. In *Tyson Foods*, the Supreme Court instructs that

> [t]he predominance inquiry asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues. When one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members.

577 U.S. at 453 (internal citations and quotation marks omitted); *see also Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods*, 31 F.4th 651, 681–82 (9th Cir. 2022) (en banc).

C. Statute of Limitations

Finally, we consider CoreCivic's argument that the district court should have narrowed the proposed California Forced Labor class based on the statute of limitations. While Owino seeks to include all ICE detainees held at a CoreCivic facility in California between January 1, 2006, and the present, CoreCivic argues that because the California TVPA has a seven-year statute of limitations, no detainee who was released before May 31, 2010, can bring a claim. *See* Cal. Civ. Code § 52.5(c). The district court ruled that such a finding was premature at the class certification stage: "If discovery indicates that the class period should be limited, the Court will entertain a motion to that effect; however, at this stage in the litigation and on the record before it, the Court is not inclined to narrow the class period."

We agree with the district court that narrowing the class based on statute of limitations is not required at the certification stage. Along with our sister circuits, we have held this in the context of the predominance inquiry. *See, e.g., Williams v. Sinclair*, 529 F.2d 1383, 1388 (9th Cir. 1975) ("The existence of a statute of limitations issue does not compel a finding that individual issues predominate over common ones."); *see also In re Monumental Life Ins. Co.*, 365 F.3d 408, 420–21 (5th Cir. 2004); *Waste Mgmt. Holdings, Inc. v. Mowbray*, 208 F.3d 288, 296 (1st Cir. 2000). We now clarify that this principle is applicable to certification more broadly. After all, "[e]ven after a certification order is entered, the judge remains free

to modify it in the light of subsequent developments in the litigation." *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 160 (1982). CoreCivic cites no case law to the contrary. We therefore hold that the district court did not abuse its discretion in declining to narrow the California Forced Labor class.

II. National Forced Labor Class

We can dispense with CoreCivic's first two challenges to the National Forced Labor class easily, as these challenges are virtually identical to those directed at the California Forced Labor class. For the same reasons discussed above, the district court did not abuse its discretion in concluding that Owino presented significant proof of a class-wide policy of forced labor. Likewise, the district court did not abuse its discretion in concluding that common questions predominate over individual ones. CoreCivic's argument that the TVPA necessitates a subjective, individualized inquiry fails due to contrary language in the statute, *see, e.g.*, 18 U.S.C. § 1589(c)(2) (defining "serious harm" as that which would compel a "reasonable person" to perform or continue performing labor to avoid incurring such harm), as well as the broader predominance test prescribed by precedent. *Tyson Foods*, 577 U.S. at 453.

The statute's causal element—prohibiting the obtainment of labor "by means of" one of the statutorily enumerated harms, *see* 18 U.S.C. § 1589(a)—may similarly be inferred by class-wide evidence. *See Menocal v. GEO Grp., Inc.*, 882 F.3d 905, 918–20 (10th Cir. 2018); *Rosas v. Sarbanand Farms, LLC*, 329 F.R.D. 671, 689 (W.D. Wash. 2018) ("An allegation that the defendant engaged in a common scheme or practice to coerce labor from putative class members may be sufficient to establish

that the class's claim is susceptible to class-wide resolution."). While class-wide causation depends on the context, *see Poulos v. Caesars World, Inc.*, 379 F.3d 654, 665–66 (9th Cir. 2004) (requiring individualized showing of causation in a "narrow and case-specific" RICO-claim case because "gambling is not a context in which we can assume that potential class members are always similarly situated"), in *Walker v. Life Insurance Co. of the Southwest*, we recognized that reliance can be inferred on a class-wide basis. 953 F.3d 624, 630–31 (9th Cir. 2020). Here, Owino offered as evidence a written discipline policy stating that detainees will be punished if they fail to clean or obey staff orders. The district court did not abuse its discretion in concluding that a factfinder could reasonably draw a class-wide causation inference from this uniform policy.

However, CoreCivic's appeal with respect to personal jurisdiction is not resolved by what we wrote, above, with respect to the National Forced Labor class. *See Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 137 S. Ct. 1773 (2017). The district court ruled that CoreCivic had waived its personal jurisdiction challenge with respect to the claim of the non-California-facility class members, because it did not raise such a defense in its first responsive pleadings (which CoreCivic filed *after* the Supreme Court decided *Bristol-Myers Squibb*). After the district court's ruling and after CoreCivic filed its opening brief in this appeal, the Ninth Circuit squarely addressed this issue: prior to class certification, a defendant does "not have 'available' a Rule 12(b)(2) personal jurisdiction defense to the claims of unnamed putative class members who were

not yet parties to the case." *Moser v. Benefytt, Inc.*, 8 F.4th 872, 877 (9th Cir. 2021).

Although Owino maintains that *Moser* was wrongly decided, we have no authority to ignore circuit precedent. *See Miller v. Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (en banc). Owino's challenge to the merit of CoreCivic's personal jurisdiction defense is an issue for the district court to resolve. *See Moser*, 8 F.4th at 879.

We decline to vacate the certification of the National Forced Labor class, but we hold that CoreCivic retains its personal jurisdiction defense and remand the personal jurisdiction question to the district court for consideration at the appropriate time.

III. California Labor Law Class

A. Damages Capable of Class-wide Measurement

We first consider CoreCivic's arguments that the members of the California Labor Law class have not presented "a fully formed damages model" and thus cannot be certified. Owino claims that CoreCivic misclassified the detainees participating in the Work Program as "volunteers" rather than "employees" and thus failed to pay them the minimum wage required in California for "employees," in violation of California wage and hour law. The district court certified the class, holding that Owino had met the "evidentiary" burden of "present[ing] proof that damages are capable of being measured on a class-wide basis."

We agree with the district court that Owino did not need to present a fully formed damages model "when discovery was not yet complete and pertinent records

may have been still within Defendant's control." Rather, "plaintiffs must show that 'damages are capable of measurement on a classwide basis,' in the sense that the whole class suffered damages traceable to the same injurious course of conduct underlying the plaintiffs' legal theory." *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1120 (9th Cir. 2017) (quoting *Comcast*, 569 U.S. at 34). In other words, "plaintiffs must be able to show that their damages stemmed from the defendant's actions that created the legal liability." *Vaquero v. Ashley Furniture Indus., Inc.*, 824 F.3d 1150, 1154 (9th Cir. 2016) (citation omitted).

There is a clear line of causation between the alleged misclassification of detainee employees as "volunteers" and the deprivation of earnings they may have suffered as a consequence of the violation of California wage and hour laws. *See id.* at 1155 (holding that, "[i]n a wage and hour case . . . the employer-defendant's actions *necessarily* caused the class members' injury"). According to evidence from a CoreCivic manager, spreadsheets of wages paid, and CoreCivic's corporate policy itself, ICE detainees participated in the Work Program across CoreCivic's facilities, for which they were almost never paid more than $1.50 per day. If CoreCivic did indeed misclassify these participants as "volunteers" (e.g., because the detainees should have been considered "employees"), CoreCivic would necessarily have failed to pay the minimum hourly wage required by California law. Thus, any damages that the class members are owed necessarily "stemmed from [CoreCivic's] actions." *Id.*

Owino presented sufficient evidence to show that damages are *capable* of measurement on a class-wide basis. This evidence includes documentation of

"typical" shift lengths, the days worked by ICE detainees, the wages paid, and the job assignments. Additional testimony and CoreCivic records can establish details about which detainees participated in the Work Program, *see Ridgeway v. Walmart Inc.*, 946 F.3d 1066, 1087 (9th Cir. 2020), and as the Supreme Court emphasized in *Tyson Foods*, sufficiently reliable representative or statistical evidence can be used to establish the hours that a class of employees had worked. 577 U.S. at 459.

B. Narrowing the Class

In seeking certification of the California Labor Law class, Owino alleged that detainees' participation in the Program violated a variety of state labor law provisions, as well as California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, *et seq.* CoreCivic notes, correctly: "Other than the California UCL claim [which has a four-year statute of limitations, *id.* § 17208], all other state law claims have a one-, two-, or three-year statute of limitations." CoreCivic thus argues that Owino is barred from representing this class at all, because his last day in the Work Program was May 22, 2013, which is more than four years before he filed the May 31, 2017, complaint. (Owino disputes this date, claiming he worked until his release on March 9, 2015.) CoreCivic further argues that Gomez is time-barred from pursuing non-UCL claims, because his last day in the Work Program was September 7, 2013.

The district court held that, for the purposes of the certification motion, even if the plaintiffs' claims under the California Labor Code are time-barred, they could still recover for the majority of the alleged violations under the UCL because the UCL prohibits unfair competition, defined as "any unlawful, unfair

or fraudulent business act or practice," Cal. Bus. & Prof. Code § 17200, and naturally this includes such violations of California's wage and hour law. Under this characterization, the class period for all claims seeking remedies under the UCL begins May 31, 2013; the period for waiting-time and failure-to-pay claims begins May 31, 2014; and the period for claims as to the alleged failure to provide wage statements begins May 31, 2016 (for remedies pursuant to Cal. Code Civ. Proc. § 340), or May 31, 2014 (for remedies pursuant to Cal. Code Civ. Proc. § 338).

As to the named plaintiffs, the district court ruled that neither Owino nor Gomez is typical of the members of the California Labor Law class seeking penalties under California Labor Code § 226 (which requires employers to provide wage statements to employees), and that Gomez is not typical of members of the California Labor Law Class seeking waiting-time penalties under California Labor Code § 203. Nonetheless, the court found that Owino is part of the California Labor Law class for the wage claims, for failure to pay compensation upon termination, and for waiting time penalties and actual damages for the failure to provide wage statements, while Gomez is part of the California Labor Law class for the wage claims. Due to CoreCivic's "belated assertion of . . . factual disputes concerning whether Mr. Owino worked during the Class Period for the California Labor Law Class," the district court stated it was "disinclined to resolve this issue at the class certification stage . . . particularly given that Mr. Gomez remains a viable class representative for the majority of the claims of the California Labor Law Class."

Because plaintiffs can recover for almost all of the alleged violations under the UCL, the district court properly rejected CoreCivic's argument against certification as predicated on "a distinction without a difference." The district court appropriately exercised its discretion by declining to resolve a factual matter that CoreCivic raised for the first time in its post-hearing supplemental brief, and which the district court concluded was not dispositive of certification.

We agree with the district court that Owino and Gomez are typical of the class they are seeking to represent and their allegations, if true, fit within the statutes they invoke. Although they may run into statute of limitations issues—some disputed and unproven—narrowing the class based on statute of limitations is not required at the certification stage. *Cf. Int'l Woodworkers of Am. v. Chesapeake Bay Plywood Corp.*, 659 F.2d 1259, 1270 (4th Cir. 1981) ("Courts passing upon motions for class certification have generally refused to consider the impact of such affirmative defenses as the statute of limitations on the potential representative's case.").

C. Failure-to-pay and Waiting-time Claim

Finally, CoreCivic argues that because Owino and Gomez "did not reference their failure-to-pay/waiting-time claim ([Cal. Labor Code] §§ 201–203)" in their motion for class certification, the district court should not have certified that claim as one common to the California Labor Law class. Because the claims are affirmatively interwoven in Owino's pleadings, the district court did not abuse its discretion in certifying this claim.

To begin, the complaint included California Labor Code §§ 201–03 among the causes of action for the California Labor Law class:

> Plaintiffs and Class Members incorporate the above allegations by reference.
>
> California Labor Code §§ 201 and 202 require CoreCivic to pay all compensation due and owing to Plaintiffs and Class Members immediately upon discharge or within seventy-two hours of their termination of employment. Cal. Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by §§ 201 and 202, then the employer is liable for such "waiting time" penalties in the form of continued compensation up to thirty workdays.
>
> CoreCivic willfully failed to pay Plaintiffs and Class Members who are no longer employed by CoreCivic compensation due upon termination as required by Cal. Labor Code §§ 201 and 202. As a result, CoreCivic is liable to Plaintiffs and former employee Class Members waiting time penalties provided under Cal. Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

Owino asserted that CoreCivic violated a dozen provisions of the California Labor Code with respect to the members of the California Labor Law class. The motion for class certification then stated, "Plaintiffs' claims on behalf of the CA Labor Law Class for violations of the California Labor Code . . . all turn on a common legal question: whether ICE detainees that worked through the [Work Program]

at CoreCivic's facilities in California are employees of CoreCivic under California law . . . ." Owino then discussed this question in depth.

CoreCivic has cited no precedent to suggest that Owino must specifically list the citation of each of the dozen provisions of the California Labor Code in the motion for class certification. Such an approach would exalt form over substance and ignore the fair notice Owino provided to CoreCivic throughout the certification proceeding. Rather, because Owino outlined these provisions substantively in the complaint, stated that "all" of the alleged violations of the Labor Code turn on a common question, and discussed the common question at length, Owino sufficiently referenced this matter before the district court.

Conclusion

We affirm the district court's certification of all three classes. We hold that CoreCivic retains its personal jurisdiction defense and remand the personal jurisdiction question to the district court for consideration at the appropriate juncture.

AFFIRMED.

VANDYKE, Circuit Judge, with whom Judges CALLAHAN, BENNETT, R. NELSON, and BUMATAY join, and with whom Judge IKUTA joins except as to Part II-A, dissenting from denial of rehearing en banc:

In affirming certification of the nationwide class in this case, the panel committed two errors that merited en banc review. First, the panel created inter- and intra-circuit conflicts by eliminating the

actual causation requirement for "forced labor" claims under the Victims of Trafficking and Violence Protection Act of 2000 (TVPA). Second, the panel transgressed the holding of *Wal-Mart Stores v. Dukes*, 564 U.S. 338 (2011), disregarding Rule 23's commonality requirement by concluding that a handful of declarations from detainees at only one of the defendant's 24 facilities was "significant proof" of the defendant's *nationwide* "policies and practices." In *Dukes*, the Supreme Court instructed that expert testimony, statistical evidence, and testimony from more than 100 individuals spread across the country were insufficient proof of the nationwide policy asserted in that case. Here, the plaintiffs did not present half as much evidence as was provided in *Dukes*, yet the panel improperly found "significant proof" of a nationwide policy.

We should have taken the opportunity to correct this decision. Uncorrected, it will have sweeping implications for all civil TVPA lawsuits, class actions or otherwise, sowing confusion over whether actual causation is a required showing. It will also doubtless become the new rallying point for class counsel seeking to avoid the minimum commonality required by binding Supreme Court precedent. I respectfully dissent from the denial of en banc rehearing.

I.

The U.S. government contracts with the defendant in this case, CoreCivic, Inc., to hold immigration detainees in 24 facilities across 11 states. Government regulations require immigration detainees to perform personal housekeeping tasks, but prohibit CoreCivic from requiring them to clean areas beyond "their immediate living areas." *Performance-Based National Detention Standards*

2011 § 5.8(II), (V)(C). This case is a class challenge by two former detainees claiming that they and other detainees across all 24 facilities were forced to perform cleaning tasks beyond the personal housekeeping tasks allowed by those standards. *See Owino v. CoreCivic, Inc.*, 36 F.4th 839, 842 (9th Cir. 2022).

The named plaintiffs moved to certify a nationwide class consisting of all CoreCivic detainees detained after December 23, 2008, who were required under threat of discipline to clean areas of CoreCivic facilities beyond their cells. *See id.* at 843. To succeed on their motion, they needed to prove that "questions of law or fact common to the class" existed and that such common questions "predominate[d] over any questions affecting only individual members." Fed. R. Civ. P. 23(a)(2), (b)(3); *see also Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 275 (2014) (requiring the plaintiffs to prove, "not simply plead," that "their proposed class satisfies each requirement of Rule 23"). The named plaintiffs argued that a common question stemmed from CoreCivic's policy requiring all its detainees to clean areas beyond their cells under threat of discipline and that this question predominated over any individualized questions. Because they sought to prove a common question through a nationwide policy, the named plaintiffs needed to provide "significant proof" that this policy existed. *Dukes*, 564 U.S. at 353 (citation omitted). As evidence of CoreCivic's purported nationwide policy requiring all detainees to clean areas beyond their cells, the named plaintiffs proffered CoreCivic's written "Sanitation" and "Disciplinary" policies, plus the declarations of four detainees at one of CoreCivic's 24 detention facilities.

The district court considered whether the written policies unambiguously supported CoreCivic's interpretation and then rejected it because it "*is not clear* from the face of the policies" that the policies "do[] not require detainees to clean the common area," (emphasis added). The court likewise found the policies ambiguous because "[t]here is no indication from the face of the policies that" only the detainees who participated in the voluntary work program ("VWP") were required to clean. The district court's only discussion about who was required to clean under CoreCivic's written policies emphasized their ambiguity. But because the named plaintiffs also offered the four detainee declarations, the court concluded that there was "significant proof" that CoreCivic had "*implemented* common sanitation and discipline policies," (emphasis added), across its 24 facilities. And the court concluded that because the Disciplinary Policy "could reasonably be understood to have subjected detainees to discipline for failure to comply with the uniform sanitation policy," CoreCivic "may have coerced detainees" into cleaning.

The district court also concluded that common questions about CoreCivic's class-wide "policy and practice" predominated over individualized questions. On this point, CoreCivic argued that questions about whether CoreCivic's conduct caused the class members individually to choose to labor for CoreCivic would predominate over any common question. The district court disagreed, concluding that liability under the TVPA attaches even if CoreCivic's actions did not cause the detainees to perform the labor. The court ruled instead that the TVPA requires plaintiffs to show only an "objectively, sufficiently serious threat of harm." Alternatively, the district court

reasoned that, even assuming the TVPA requires a showing of causation, whether each individual class member felt coerced by CoreCivic's policies could be decided on a class basis by inferring whether a reasonable person would have felt coerced.

On appeal, our court affirmed certification. *See Owino*, 36 F.4th at 850. In doing so, the panel rejected CoreCivic's argument that questions about individual causation precluded predominance, never addressing either of our court's precedents holding that a showing of causation is required under the TVPA. *Compare id.* at 847, *with Martinez-Rodriguez v. Giles*, 31 F.4th 1139, 1150 (9th Cir. 2022), *and Headley v. Church of Scientology Int'l*, 687 F.3d 1173, 1179 (9th Cir. 2012). Rather, the panel held that no "subjective, individualized inquiry" into why each class member labored was necessary because the ostensibly "contrary language" in the TVPA requires only that a defendant's threats be objectively serious. *See id.* (citing 18 U.S.C. § 1589(c)(2) (requiring an objectively "serious harm")). Although cursory in its analysis, the necessary import of the panel rejecting CoreCivic's argument—by exclusively citing the TVPA's objectively serious harm requirement—is that the plaintiffs did not need to show that CoreCivic's actions caused them to labor.

The panel also concluded that the named plaintiffs proved the existence of a common question, locating that common question in "CoreCivic's company-wide policies and practices." *Owino*, 36 F.4th at 846. The panel relied on three things evincing the supposed nationwide common "policies and practices": (1) CoreCivic's written policies; (2) CoreCivic's employees' declarations interpreting those written policies; and (3) declarations by four former detainees

that described practices they experienced and observed at a single facility. *See id.* at 845.

As to the first two types of evidence—CoreCivic's written policies and its interpretations thereof—the panel provided little analysis, briefly addressing them in two short paragraphs. *See id.* The panel was nonetheless clear that it relied decisively on its conclusion that CoreCivic's nationwide written policy "requires detainees" to perform a long list of cleaning duties. *Id.* The panel nowhere acknowledged, however, that its list was taken from CoreCivic's policy applicable only to "detainee[] *workers*," (emphasis added), which CoreCivic employees consistently explained meant not *all* detainees, but rather a subset of detainees who had affirmatively volunteered to participate in its paid VWP. Ignoring the district court's conclusion that the written policies are ambiguous, the panel held that the written policies required all detainees to clean and that, when combined with the four detainee declarations, they constituted "significant proof" of a nationwide policy consistent with the plaintiffs' allegations. *See id.*

Accordingly, the panel affirmed certification of the nationwide class. Following CoreCivic's petition for rehearing, the panel amended its opinion in an attempt to clarify its rationale on the TVPA's causation requirement. Unfortunately, as discussed below, the amendment does not fix the panel's errors.

II.

This case deserved en banc review for two independent reasons: (1) it creates inter- and intra-circuit conflict by eliminating the TVPA's actual causation requirement for civil forced labor claims; and (2) it holds that much less evidence of a

nationwide policy than was present in *Dukes* is nonetheless "significant proof" of a nationwide policy, and therefore sufficient to certify a class.

A.

The TVPA prohibits a person from obtaining labor from a victim by improper means. *See* 18 U.S.C. § 1589(a). A defendant who obtains forced labor may be held civilly liable. *See id.*; 18 U.S.C. § 1595(a).[1] But according to the panel decision in this case, the TVPA, in permitting "victim[s]" of "forced labor" to "recover damages," *id.*, is indifferent as to whether anyone *actually* forced someone else to labor. *See Owino*, 36 F.4th at 847. Instead, a plaintiff may satisfy the TVPA's causation requirement by showing that an abstract reasonable person would have labored because of the defendant's conduct. Only by deeming actual causation unnecessary was the panel able to conclude that individualized causation inquiries would not predominate over common questions in the named plaintiffs' class action. *See id.*

The panel's causation conclusion is doubly wrong. First, it is wrong because it creates inter- and intra-circuit conflict by disregarding both our binding circuit precedent, *see, e.g., Martinez-Rodriguez*, 31 F.4th at 1156 (requiring that the plaintiffs provide evidence that the defendant's conduct "proximately caused" the plaintiffs to labor), and the wisdom of our sister circuits' decisions that likewise require a showing of actual causation to prevail in a TVPA forced labor claim, *see, e.g., United States v. Zhong*, 26 F.4th 536, 560 (2d Cir. 2022) (recognizing that unless

---

[1] A defendant who obtains or attempts to obtain forced labor may also be criminally punished. *See* 18 U.S.C. §§ 1589(a), 1594(a).

the prosecution proves a defendant's actions "did, in fact, compel the . . . workers to remain working for [the defendant's company] when they otherwise would have left," the defendant "could not have 'provide[d] or obtain[ed]' their labor th[r]ough these actions or threats" (quoting § 1589(a))); *Menocal v. GEO Group, Inc.*, 882 F.3d 905, 918 (10th Cir. 2018) ("[P]laintiffs must prove that an unlawful means of coercion caused them to render labor.").[2]

Second, even aside from the panel ignoring binding precedent, this case merited en banc review because the text of the TVPA clearly requires causation for a forced labor claim—which is why, until this case, our circuit and other circuits have required it. *See* 18 U.S.C. § 1589(a)(2), (4). The panel confused and conflated the TVPA's requirement that harms or threatened harms be *objectively serious* with the TVPA's separate requirement that such harms *actually cause* a victim to labor or provide services. Actual causation requires proof that the specific victim would not have labored but for the threats or harms. The TVPA requires both objectively serious harms and actual causation. The panel's error in

---

[2] Similar to the panel's amended opinion, the Tenth Circuit in *Menocal* permitted causation to be inferred class-wide. *See* 882 F.3d at 918. But the Tenth Circuit still required actual causation by allowing the defendant to introduce evidence that individual class members were not coerced by the defendant's class-wide conduct. *See id.* at 921. Here, the panel acknowledged no room for a defendant to introduce evidence that individual class members did not labor because of its class-wide conduct, implying that the panel established a conclusive presumption that causation is satisfied for a TVPA claim through evidence of class-wide conduct that would cause a reasonable person to labor. No circuit has departed so far from the TVPA's actual causation requirement.

eliminating the TVPA's causation requirement led the panel to wrongly affirm class certification. Because each class member here must individually prove causation, the panel erred in concluding that common questions predominated. *See Poulos v. Caesars World, Inc.*, 379 F.3d 654, 668 (9th Cir. 2004).

* * *

The panel's elimination of the TVPA's causation requirement runs face-first into at least two of our precedents, as well as the decisions of our sister circuits that have addressed this issue. In our court's 2012 *Headley* decision, for example, lack of individualized causation is precisely what drove our court to affirm summary judgment in favor of the defendant. 687 F.3d at 1173. The plaintiffs in *Headley* argued that they were coerced into laboring by the defendant organization inflicting harm upon them, but our court affirmed summary judgment against the plaintiffs because the "record does not suggest that the defendant[] obtained the [plaintiffs'] labor 'by means of' those[harms]." *Id.* at 1180. The court instead concluded that "the record shows that the adverse consequences cited by the [plaintiffs] are overwhelmingly not of the type that *caused* them to continue their work and to remain with the [organization]." *Id.* (emphasis added). And only months before the panel issued its decision in this case, our court again affirmed that a plaintiff can succeed in a forced labor claim only if he shows that the defendant's unlawful conduct "*caused* the [p]laintiff to provide the labor that [the defendant] obtained." *Martinez-Rodriguez*, 31 F.4th at 1150 (emphasis in original).

In holding that the named plaintiffs need not show that the defendant's conduct caused them to labor before stating a forced labor claim, the panel advanced a novel interpretation of the TVPA's prohibition on forced labor that no federal circuit had previously adopted: holding that a defendant may be civilly liable for forced labor when its conduct did not cause the plaintiff to labor. Three other circuits—five, if we count unpublished decisions—have either explained that a defendant's conduct must actually cause the victim to labor or relied on such causation to uphold a criminal conviction. *See, e.g., Zhong*, 26 F.4th at 560 (2d Cir. 2022); *United States v. Toure*, 965 F.3d 393, 401–02 (5th Cir. 2020) (affirming a forced labor conviction as supported by sufficient evidence, in part, because the defendants' "conduct caused [the victim] to remain with the defendants because [the victim] faced threats of serious harm, or reasonably believed she would face serious harm, if she did not provide them with her labor and services"); *Menocal*, 882 F.3d at 918 (10th Cir. 2018); *see also United States v. Afolabi*, 508 F. App'x 111, 119 (3d Cir. 2013) (unpublished) (explaining that even if the "victims were not actually intimidated" by certain abuses, the victims' testimony that they labored because of the defendant's other illegal and improper conduct "was enough for a jury to find that the Government had satisfied its burden"); *Roman v. Tyco Simplex Grinnell*, 732 F. App'x 813, 817 (11th Cir. 2018) (per curiam) (affirming in an unpublished opinion the district court's dismissal of a complaint because the plaintiff failed to "explain how [the

defendant's] threats led to his forced labor" (citing *Headley*, 687 F.3d at 1179)).[3]

There is a good reason that all the circuits to address the question (we and five others) have uniformly concluded that the TVPA requires actual causation for forced labor claims: the plain text of the TVPA permits civil liability for "forced labor" only when a person obtains that labor "by means of" certain improper conduct, such as "*by means of* serious harm or threats of serious harm to that person or another person . . . [or] *by means of* any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint." 18 U.S.C. § 1589(a)(2), (4) (emphasis added).

The "by means of" phrase that the TVPA invokes is well-recognized as requiring a causal relationship. *See, e.g., Martinez-Rodriguez*, 31 F.4th at 1155 ("[T]he phrase 'by means of' refers to familiar principles of causation and requires a proximate causal link . . . ."); *Sanders v. John Nuveen & Co., Inc.*, 619 F.2d 1222, 1225 (7th Cir. 1980) ("[T]he 'by means of' language in the statute requires some causal connection . . . ."); *Jackson v. Oppenheim*, 533 F.2d 826, 830 (2d Cir. 1976) (explaining that a decision is "effected 'by means of'" an action if that action had "some causal relationship"—even if not a "decisive effect"—"to that decision").

In rejecting "CoreCivic's argument that the TVPA necessitates a subjective, individualized inquiry" into

---

[3] Although some of these decisions arose in a criminal context, the convictions were for forced labor and the courts' reasoning would apply equally to a civil claim for forced labor.

causation, the panel ignored the TVPA's "by means of" language and instead cited the TVPA's provision defining "serious harm" as an objectively serious harm. *Owino*, 36 F.4th at 847 (citing 18 U.S.C. § 1589(c)(2)). The panel was right that the particular provision it cited does not itself require actual causation. But the existence of the TVPA's requirement that harms and threatened harms be objectively serious does not somehow nullify the TVPA's separate requirement that a defendant obtain labor *by means of* such serious harm or threatened harm—the TVPA's causation requirement. In sum, a plaintiff who labored because a defendant threatened harm that would not cause a reasonable person to labor has no forced labor claim because he cannot show an objectively serious threat of harm. And likewise, a plaintiff who labored for a reason wholly unrelated to the defendant's harms or threatened harms has no claim—even if those harms or threatened harms were objectively serious—because he cannot show the defendant obtained the plaintiff's labor *by means of* those threats. The panel was wrong to conclude that plaintiffs in this latter category—plaintiffs who didn't labor because of the defendant's conduct—can succeed in bringing a forced labor claim.

The panel's belated attempt to address this problem by amending its opinion does not, unfortunately, fix it. The amended opinion does just as much damage to the TVPA's causation requirement for forced labor claims as its original opinion, just with different language. In its original opinion, the panel eliminated the TVPA's requirement that a plaintiff show individualized causation—that the defendant caused the specific plaintiff to labor. In its amended opinion, the panel

acknowledges that the TVPA's "by means of" language requires *some form* of causation. But then the panel immediately makes clear that it is really removing the TVPA's actual causation requirement by concluding that causation may be inferred class-wide through a generally applicable policy. To make this leap, the panel must assume both that (1) every person in the class is reasonable and (2) the policy actually causes *every* reasonable person to labor. But it is easily foreseeable that, even assuming plaintiffs' allegations of class-wide threats are true, some portion of the class would clean merely because they liked to live in a clean space. It is reasonable to believe that many normal human beings would voluntarily sweep or wipe down furniture in common areas simply because they enjoy living in a clean environment. The panel's new description of "causation" isn't *actual* causation, it is *probable* causation applied to an abstract reasonable person, and therefore isn't real causation at all. Which brings us right back to the original opinion's conflation of the TVPA's objective standard with its requirement for individualized causation. The panel cannot have it both ways: either the TVPA requires actual causation or it does not. The opinion as now amended forswears it has eliminated causation, but if anything, it is now even clearer that the TVPA's requirement of *actual* causation no longer exists (or at least that panels of our court have taken inconsistent positions).

In any event, the panel's amendment leaves in place the original opinion's statement that the TVPA's objective standard means that the TVPA does not "necessitate[] a subjective, individualized inquiry." *Id.* That incorrect statement of law remains on the books, and, despite the amended opinion's

attempt to have it both ways, will continue—at odds with our own prior precedent—to communicate that actual causation is not required by the TVPA.

By ignoring in- and out-of-circuit precedent and the text of the TVPA, the panel created both intra- and inter-circuit conflict on whether a plaintiff must show actual causation for a forced labor claim under the TVPA. The panel's removal of the TVPA's causation requirement will plague our cases going forward. The court should have granted rehearing en banc to eliminate a conflict in our precedent and restore the correct interpretation of the TVPA.

B.

Even if the panel had not created confusion through its incorrect conclusion that the TVPA requires no proof of actual causation, the panel still erred in certifying this class. Rule 23 requires that the movant prove the class shares a common question of law or fact. *See Halliburton Co.*, 573 U.S. at 275. The panel concluded that the nationwide class here shared a common question based on the declarations of four detainees, all from the same facility, together with corporate policies that are at best ambiguous as to the misconduct claimed in those declarations. *See Owino*, 36 F.4th at 845. The panel thus created a new rule of commonality that authorizes class certification so long as a movant can offer anecdotal evidence of misconduct limited to a small fraction of a class, coupled with written policies that at most are unclear about the complained-of conduct. That rule is inconsistent with Rule 23 and *Dukes*, and charts an attractive and sure-to-be-followed path for those seeking an easy class action certification.

Under *Dukes*, to prove commonality through a policy, a plaintiff must offer "significant proof" that the complained-of practice exists class-wide. 564 U.S. at 353. Although the Supreme Court declined to offer a bright line rule for what counts as "significant proof," we see clearly in *Dukes* what *does not* suffice: the combination of (1) an official policy of discretion that can be used for unlawful activity, (2) expert testimony that the permissive policy is used for unlawful activity, (3) statistical evidence merely suggesting unlawful activity, and (4) testimony of the unlawful activity from more than one-hundred potential class members *spread across multiple locations*. *See id.* at 353–58.

Since the plaintiffs in *Dukes* failed to clear the commonality threshold, a fortiori the named plaintiffs in this case failed. Here, the second and third categories above were completely missing. And the first category of evidence was no better here than it was in *Dukes* because, as the district court acknowledged, the policies relied on by the named plaintiffs were at most "not clear" as to the misconduct alleged. And this case is worse than *Dukes* as to the fourth category because the plaintiffs' testimony here is limited to one out of dozens of locations.

The written policies in this case merit more discussion because, while the panel's analysis of those policies is frustratingly brief, it is nonetheless clear that the panel put decisive weight on those policies. The named plaintiffs attempted to prove that CoreCivic has a policy requiring all detainees to "clean" the common living areas and to threaten those who refuse with discipline. They presented two written policies that the plaintiffs contend require "all

detainees" to clean the common living areas or suffer disciplinary action. But the policies the named plaintiffs cited do not say that; rather, only "detainee[] *workers*" must clean the common living areas and detainees risk disciplinary action only if they refuse to clean their "assigned living area[s]," (emphasis added). At best, these policies are ambiguous about the very thing the named plaintiffs needed to prove: the duties of "[a]ll detainees." Ambiguity is not "significant proof." *Id.* at 353.

The first policy the named plaintiffs cited was the Sanitation Policy. That policy distinguishes the duties of "[a]ll detainees" from the duties of "detainee[] workers." "All detainees . . . are responsible for maintaining the common living area in a clean and sanitary manner." But only "detainee[] workers" clean those areas. CoreCivic officials uniformly testified that the "workers" referenced in the Sanitation Policy are the participants in its voluntary work program. Moreover, because only workers "clean[]," the policy cannot plausibly mean that "all detainees[]" must clean the common living areas. To conclude otherwise renders superfluous the policy's distinction between "all detainees" and "detainee workers." *See DaVita Inc. v. Amy's Kitchen, Inc.*, 981 F.3d 664, 674 (9th Cir. 2020) (presuming that a difference in language carries a difference in meaning); *Rainsong Co. v. FERC*, 151 F.3d 1231, 1234 (9th Cir. 1998) (explaining that interpretations rendering language in a statute or regulation superfluous "are to be avoided" (citation omitted)).

The district court found the Sanitation Policy ambiguous. Because the panel's task was to review for abuse of discretion, it was obligated to defer to this finding unless it was clearly erroneous. *See B.K. by*

next friend Tinsley v. Snyder, 922 F.3d 957, 966 (9th Cir. 2019). That finding was not clearly erroneous, and the panel was thus presented with an ambiguous written policy. An ambiguous policy, however, is not materially different than the policy that was insufficient in *Dukes*: both policies might *allow* the complained-of misconduct, but neither *require* it.

The second written policy the named plaintiffs cited was the Disciplinary Policy, which prohibits detainees from "[r]efus[ing] to clean assigned living area[s]." The Sanitation Policy clarifies that the "assigned living areas" are the detainees' personal cells and contrasts those cells with the "common living area." But if the "assigned living area" that the Disciplinary Policy punishes detainees for not cleaning is the detainees' personal cells, then this policy does not require any cleaning that the named plaintiffs claim was improper. After all, the named plaintiffs had not attempted to certify a class of detainees forced to clean their own cell and have never contended that such a requirement is problematic. This policy is thus, like the Sanitation Policy, unhelpful to proving that all CoreCivic detainees were required by any class-wide written policy to clean the common living area.

In *Dukes*, the plaintiffs at least offered evidence of an official policy of discretion that permitted the unlawful activity. Here, it is a stretch to read CoreCivic's written policies as even *permitting* the conduct complained of by the named plaintiffs. The facilities could require "[a]ll detainees" to clean common living areas only by reading "all detainees" to mean the same thing as "detainee workers" and thus intentionally obfuscating the language of the Sanitation Policy. The most that can be said about

CoreCivic's written policies is that, at best, they might *permit* the complained-of practice. This is what the district court concluded. But that is clearly not enough under *Dukes* to suffice as "significant proof" of a class-wide policy *requiring* all detainees to clean.

Beyond the written policies, the named plaintiffs' only other evidence to satisfy their burden of "significant proof" of a common policy was their four declarations from detainees—all housed at the same, single facility. That is of no help to the named plaintiffs, because the named plaintiffs' declarations merely provide anecdotal support indicating that CoreCivic may have had an *unwritten* policy requiring all detainees to clean the common living area *at that one facility*. Four declarations from one of 24 facilities cannot provide "significant proof" of an unwritten policy that was applied to thousands, and potentially "hundreds of thousands," of detainees across all CoreCivic facilities. Because these four declarations were "concentrated in only" one facility, the other 23 facilities were left with no "anecdotes about [CoreCivic's] operations at all." *Dukes*, 564 U.S. at 358. The panel could not properly assume that one facility's unwritten practice was adopted and applied in every one of CoreCivic's other facilities. And the named plaintiffs offered no evidence whatsoever that it was, falling woefully short of their burden of "significant proof" of a *class-wide* policy.

The panel's opinion ignored these serious problems. It did not engage with the different sections of the Sanitation Policy or consider the testimony from CoreCivic's employees. Instead, the panel referenced portions of the Sanitation Policy that apply only to "detainee workers"—without even acknowledging that the policy distinguishes between

"detainee workers" and "all detainees"—and concluded that the Sanitation Policy, when supplemented with the four detainee declarations, evinced a class-wide policy requiring all detainees to labor. *See Owino*, 36 F.4th at 845. The panel also read the Sanitation Policy to require detainees to "undertake sundry other cleaning responsibilities across the facility," a requirement not appearing in the policy. *Id.* In its short two-paragraph analysis, the panel applied a new rule that flips the script on the *Dukes* commonality rule: a movant for class certification must simply provide some class-wide official policy—however ambiguous as to the claimed misconduct—and a few declarations indicating that the defendant engaged in misconduct somewhere, sometime.

Ultimately, the panel's new rule takes us down a familiar road where the seasoned traveler can easily predict the destination. In 2004, a court in the Northern District of California certified a class of "at least 1.5 million women" who were or had been employed by Wal-Mart. *Dukes v. Wal-Mart Stores, Inc.*, 222 F.R.D. 137, 142, 188 (N.D. Cal. 2004). These plaintiffs sought monetary damages and equitable relief for discrimination in pay and promotions. *See id.* at 141. After first affirming in a panel opinion, we went en banc and affirmed again, holding that the plaintiffs proved that the nearly 1.5 million-member nationwide class shared a common question. In *Dukes* we had *more* proof of class-wide conduct than the panel had here: we relied on a company-wide policy giving managers discretion in employment decisions, expert testimony suggesting that Wal-Mart's culture prejudiced women, statistical disparities between promotions of men and women,

and testimony from 120 employees located in different stores nationwide saying they had experienced discrimination. *Dukes v. Wal-Mart Stores, Inc.*, 603 F.3d 571, 600–13 (9th Cir. 2010) (en banc). That was enough for us.

It was not enough for the Supreme Court. The Court unanimously reversed us, with the majority holding that we erred in concluding that there was even a single common question. The Court reminded us that "there is a wide gap between" an individual's alleged injury, inflicted through a "company . . . policy," and "the existence of a class of persons who have suffered the same injury [such] that" the individual and class claims share "common questions." *Dukes*, 564 U.S. at 352–53 (quotation omitted). And the Court reminded us that a common question can arise from a corporate policy only through "significant proof." *Id.* at 353. Because our opinion affirming the class certification relied solely on an irrelevant policy, immaterial expert testimony, and anecdotal testimony, the Court reversed. *See id.* at 354–60.

I would say that the panel here repeated our error in *Dukes*, but it did worse. At least in *Dukes*, we had anecdotal evidence from *multiple* locations nationwide. We also had statistical evidence and expert testimony that we do not have here. And in *Dukes*, we could rely on an official policy that at least implicitly permitted the unlawful conduct. The panel affirmed in this case by relying solely on anecdotal evidence from one of dozens of locations, and corporate policies that are at best ambiguous on whether CoreCivic had a "policy" that required detainees to labor. *See Owino*, 36 F.4th at 845–46. Our court should have granted rehearing en banc.

[Filed April 1, 2020]
[2020 WL 1550218]

**UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF CALIFORNIA**

SYLVESTER OWINO and JONATHAN GOMEZ, on behalf of themselves and all others similarly situated, Plaintiffs, v. CORECIVIC, INC., a Maryland corporation, Defendant.	Case No.: 17-CV-1112 JLS (NLS) **ORDER: (1) DENYING WITHOUT PREJUDICE PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT, (2) DENYING DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS, (3) DENYING AS MOOT PLAINTIFFS' MOTION TO EXCLUDE, AND (4) GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION FOR CLASS CERTIFICATION** (ECF Nos. 97, 117, 128, 155)
CORECIVIC, INC., Counter-Claimant, v. SYLVESTER OWINO and JONATHAN GOMEZ, on behalf of themselves and all others similarly situated, Counter-Defendants.	

Presently before the Court are Plaintiffs and Counter-Defendants Sylvester Owino and Jonathan

Gomez's Motion for Class Certification ("Cert. Mot.," ECF No. 84), Motion for Partial Summary Judgment ("MPSJ," ECF No. 97), and Motion to Exclude Evidence from Class Certification Decision ("Mot. to Exclude," ECF No. 128), as well as Defendant and Cross-Claimant CoreCivic, Inc.'s Motion for Judgment on the Pleadings ("MJP," ECF No. 117). The Court held a hearing on December 19, 2019. *See* ECF Nos. 154, 159 ("Tr."). Having carefully considered the Parties' arguments, the evidence, and the law, the Court **DENIES WITHOUT PREJUDICE** Plaintiffs' Motion for Partial Summary Judgment (ECF No. 97), **DENIES** Defendant's Motion for Judgment on the Pleadings (ECF No. 117), **DENIES AS MOOT** Plaintiffs' Motion to Exclude (ECF No. 128), and **GRANTS IN PART AND DENIES IN PART** Plaintiffs' Motion for Class Certification (ECF No. 84), as follows.

BACKGROUND

I. Factual Background[1]

Plaintiffs are civil immigration detainees who are involuntary confined at Defendant's detention facilities under the custody of Immigration and Customs Enforcement ("ICE"). *See* Pls.' Stmt. of Facts, ECF Nos. 97-2, 99-1 (sealed), ¶¶ 1, 37, 41.

---

[1] Plaintiffs request the Court to exclude "attachment B to Exhibit 1, and all attachments to Exhibits 4, 6, 7, 8, 11, and 13" filed in support of Defendant's opposition to their Motion for Class Certification "on the grounds that they were not timely produced" by the March 15, 2019 deadline to complete class discovery imposed by Magistrate Judge Nita L. Stormes. *See* ECF No. 128-1 at 1. Because the Court does not rely on any of the attachments Plaintiffs have challenged in ruling on Plaintiffs' Certification Motion, the Court **DENIES AS MOOT** Plaintiffs' Motion to Exclude (ECF No. 128).

During their period of detention, Plaintiffs and other ICE detainees performed work for Defendant through a Voluntary Work Program ("VWP"). *Id.* Defendant paid those participating in the VWP between $0.75 and $1.50 per day, *id.* ¶ 18, which is less than California's minimum wage. *See id.* ¶ 35. Defendant also coerced detainees to perform additional, uncompensated work under threat of punishment. *See id.* ¶¶ 11, 13, 16.

II. Procedural Background

Plaintiffs filed this putative class action on May 1, 2017, alleging seven causes of action for (1) forced labor and violation of the Trafficking Victims Protection Act ("TVPA"), 18 U.S.C. §§ 1589 *et seq.*; (2) forced labor and violation of the California TVPA, Cal. Civ. Code § 52.5; (3) unfair competition, Cal. Bus & Prof. Code §§ 17200 *et seq.*; (4) violations of the California Labor Code; (5) violation of California Industrial Welfare Commission ("IWC") Orders; (6) negligence; and (7) unjust enrichment. *See generally* ECF No. 1. Plaintiffs alleged that the action was being brought on behalf of three classes: (1) a "Nationwide Forced Labor Class" comprised of "[a]ll civil immigration detainees who performed Forced Labor uncompensated work for CoreCivic at any Detention Facility owned or operated by it between November 2, 2004[,] to the applicable opt-out date, inclusive"; (2) a "California Forced Labor Class" comprised of "[a]ll civil immigration detainees who performed Forced Labor uncompensated work for CoreCivic at any Detention Facility located in California owned or operated by it at [any] time during the period from November 2, 2004[,] to the applicable opt-out date, inclusive"; and (3) a "California Labor Law Class" comprised of "[a]ll civil

immigration detainees who performed Dollar-A-Day Work for CoreCivic and were paid one dollar ($1) per day at any Detention Facility located in California owned or operated by it at any time between November 2, 2004[,] to the applicable opt-out date, inclusive." *Id.* ¶ 30.

On August 11, 2017, Defendant moved to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), *see generally* ECF No. 18, a motion that the Court later granted in part and denied in part. *See generally* ECF No. 38. Defendant then answered Plaintiffs' complaint, "admit[ting] that jurisdiction is proper in this Court." *See* ECF No. 44 ¶¶ 2–3, 5. Although Defendant raised several affirmative defenses, it did not raise any jurisdictional defenses. *See id.* at 21–27.

On September 11, 2018, Plaintiffs moved to file an amended complaint "for the purpose of adding a claim for violations of the Private Attorney General Act ("PAGA"), Cal. Labor Code §§ 2698, *et seq.*," ECF No. 64, a request Defendant did not oppose. *See* ECF No. 65. The Court therefore granted Plaintiffs' motion, *see* ECF No. 66, and Plaintiffs filed their First Amended Complaint on October 12, 2018, *see generally* ECF No. 67 ("FAC"), adding a new cause of action for violation of PAGA "[o]n [b]ehalf of Plaintiffs [i]ndividually and the Class." *See id.* ¶¶ 129–38. Again, Plaintiffs alleged three classes: a Nationwide Forced Labor Class, a California Forced Labor Class, and a California Labor Law Class. *See id.* ¶ 30.

Defendant answered Plaintiffs' First Amended Complaint on October 26, 2018. *See generally* ECF No. 70. For the first time, Defendant "admit[ted] only that this Court has specific personal jurisdiction over CoreCivic as to the claims arising out of CoreCivic's

California facilities" and "denie[d] that this Court has general personal jurisdiction over CoreCivic as to claims arising out of CoreCivic's non-California facilities." *Id.* ¶ 5; *see also id.* ¶ 31 ("CoreCivic further affirmatively alleges that this Court lacks personal jurisdiction over CoreCivic as to Plaintiffs' claims arising out of CoreCivic's non-California facilities."). CoreCivic also raised a new affirmative defense in its answer to Plaintiffs' First Amended Complaint: "As a separate defense, and in the alternative, CoreCivic alleges that this Court lacks personal jurisdiction over CoreCivic as to Plaintiffs' claims arising out of Plaintiffs' non-California facilities." *Id.* at 22 ¶ 8.

On April 15, 2019, Plaintiffs filed their Certification Motion, seeking to certify five classes, *see generally* ECF No. 84, and Plaintiffs filed their Motion for Partial Summary Judgment, seeking summary adjudication as to whether Plaintiffs are employees under California law and on Plaintiffs' claims for violation of California Labor Code sections 226 and 1194, on June 5, 2019. *See generally* ECF No. 97. On July 11, 2019, Defendant filed its Motion for Judgment on the Pleadings, "mov[ing] this Court, pursuant to Fed. R. Civ. P. 12(c) to grant judgment on the pleadings and dismiss all putative class claims that arose outside of California for lack of personal jurisdiction." *See* ECF No. 117 at 2. Plaintiffs moved to exclude certain evidence Defendant introduced in its opposition to their Certification Motion on August 1, 2019, "on the grounds that Defendant violated this Court's scheduling order regarding class discovery, as well as two of the Court's discovery orders," by producing documents "to Plaintiffs for the first time months after the close of class discovery." *See* ECF No. 128 at 2.

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

I. Legal Standard

Under Federal Rule of Civil Procedure 56(a), a party may move for summary judgment as to a claim or defense or part of a claim or defense. Summary judgment, or partial summary judgment, is appropriate where the Court is satisfied that there is "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Material facts are those that may affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A genuine dispute of material fact exists only if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* When the Court considers the evidence presented by the parties, "[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Id.* at 255.

The initial burden of establishing the absence of a genuine issue of material fact falls on the moving party. *Celotex*, 477 U.S. at 323. The moving party may meet this burden by identifying the "portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,'" that show an absence of dispute regarding a material fact. *Id.* When a plaintiff seeks summary judgment as to an element for which it bears the burden of proof, "it must come forward with evidence which would entitle it to a directed verdict if the evidence went uncontroverted at trial." *C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (quoting

Houghton v. South, 965 F.2d 1532, 1536 (9th Cir. 1992)).

Once the moving party satisfies this initial burden, the nonmoving party must identify specific facts showing that there is a genuine dispute for trial. *Celotex*, 477 U.S. at 324. This requires "more than simply show[ing] that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Rather, to survive summary judgment, the nonmoving party must "by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts' " that would allow a reasonable fact finder to return a verdict for the non-moving party. *Celotex*, 477 U.S. at 324, 106 S.Ct. 2548; *Anderson*, 477 U.S. at 248, 106 S.Ct. 2505. The non-moving party cannot oppose a properly supported summary judgment motion by "rest[ing] on mere allegations or denials of his pleadings." *Anderson*, 477 U.S. at 256, 106 S.Ct. 2505.

II. Analysis

Plaintiffs seek summary adjudication as to (1) their status as "employees" under California law, and (2) Defendant's liability to them under California Labor Code sections 226 and 1194 and Industrial Welfare Commission ("IWC") Wage Order No. 5-2001. *See* ECF No. 97 at 2. Defendant contends that Plaintiffs' motion must be denied because the "one-way intervention rule" precludes Plaintiffs from seeking summary judgment before class certification.[2] ECF No. 133 at 3–4. Plaintiffs respond

---

[2] Defendant also asks the Court to deny or defer ruling on Plaintiffs' Motion for Partial Summary Judgment until

that "the 'one-way intervention' rule is a procedural red herring." ECF No. 141 at 9.

The one-way intervention rule is intended "to protect defendants from unfair 'one-way intervention,' where the members of a class not yet certified can wait for the court's ruling on summary judgment and either opt in to a favorable ruling or avoid being bound by an unfavorable one." *Villa v. San Francisco Forty-Niners, Ltd.*, 104 F. Supp. 3d 1017, 1021 (N.D. Cal. 2015) (citing *Am. Pipe & Const. Co. v. Utah*, 414 U.S. 538, 547 (1974)). The one-way intervention rule is supported by "[t]he purpose of Rule 23(c)(2)[, which] is to ensure that the plaintiff class receives notice of the action well *before* the merits of the case are adjudicated." *Schwarzschild v. Tse*, 69 F.3d 293, 295 (9th Cir. 1995). This purpose is the result of the "1966 amendments [that] were designed, in part, specifically to mend this perceived defect in the former Rule and to assure that members of the class would be identified before trial on the merits and would be bound by all subsequent orders and judgments." *Am. Pipe & Const. Co.*, 414 U.S. at 547.

While the one-way intervention rule typically precludes a court from ruling on a merits-based motion before the class is certified and notified, *see Schwarzschild*, 69 F.3d at 296, there is an exception "when early resolution of a motion for summary judgment seems likely to protect both the parties and

---

Defendant has had the opportunity to conduct "[e]ssential [m]erits [d]iscovery." ECF No. 133 at 6–10. Although the Court tends to agree with Plaintiffs that Defendant has not made the requisite showing under Federal Rule of Civil Procedure 56(d), *see* ECF No. 141 at 2–8, the Court need not reach the issue because the one-way intervention rule is dispositive.

the court from needless and costly further litigation." *Wright v. Schock*, 742 F.2d 541, 544 (9th Cir. 1984). However, "[d]efendants must consent to this procedure, as the judgment against the individual plaintiff 'will not be res judicata as to other individual plaintiffs or other members of any class that may be certified.'" *Schwarz v. Meinberg*, No. CV1300356BROPLAX, 2016 WL 9115353, at *2 (C.D. Cal. July 15, 2016) (quoting *Wright*, 742 F.2d at 544); *see also Flo & Eddie, Inc. v. Sirius XM Radio, Inc.*, No. 13-5693 PSG (RZX), 2015 WL 4476932, at *4 (C.D. Cal. May 27, 2015).

The Court concludes that the one-way intervention rule applies here. The class was neither certified nor notified prior to Plaintiffs' filing of their Motion for Partial Summary Judgment; consequently, a ruling on the merits is premature because it has the potential to leave Defendant open to "being pecked to death" by plaintiffs seeking an alternative outcome. *See Fireside Bank v. Super. Ct.*, 40 Cal. 4th 1069, 1078 (2007) (quoting *Premier Elec. Constr. Co. v. Nat'l Elec. Contractors Ass'n, Inc.*, 814 F.2d 358, 363 (7th Cir. 1987)). Further, the exception does not apply here because Defendant did not consent to a pre-certification ruling on Plaintiffs' Motion for Partial Summary Judgment. *See* ECF No. 133 at 4 ("CoreCivic has not consented—and does not consent—to the adjudication of these merits issues before a class-certification ruling.") (citing *Gessele v. Jack in the Box, Inc.*, No. 3:10-cv-960-ST, 2012 WL 3686274, at *3 (D. Or. Aug. 24, 2012)).

Because "there is no reason the briefing on the MPSJ could not have been completed already as scheduled," Plaintiffs suggest that the Court defer ruling on its Motion, without allowing Defendant a

second opportunity to brief the merits, until after the class certification procedures have been completed. ECF No. 141 at 9–10. But Plaintiffs do not cite, and the Court has not found, any authority supporting Plaintiffs' request. *See Gomez v. Rossi Concrete Inc.*, No. 08CV1442 BTM CAB, 2011 WL 666888, at *2 (S.D. Cal. Feb. 17, 2011) (denying pre-certification motion for summary judgement without prejudice); *see also Villa*, 104 F. Supp. 3d at 1023 (same). Further, Defendant should not be penalized for asserting its rights under the one-intervention rule.

Consequently, the Court **DENIES WITHOUT PREJUDICE** Plaintiffs' Motion for Partial Summary Judgment. Should Plaintiffs elect to renew their Motion for Partial Summary Judgment following the Court's resolution of their Motion for Class Certification, Defendant must either respond on the merits or "identify specific facts to be obtained in discovery that [a]re essential to oppose summary judgment." *See Leonard v. Baker*, 714 F. App'x 718, 719 (9th Cir. 2018) (citing *Family Home & Fin. Ctr., Inc. v. Fed. Home Loan Mortg. Corp.*, 525 F.3d 822, 827 (9th Cir. 2008)).

DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS

I. Legal Standard

Any party may move for judgment on the pleadings "[a]fter the pleadings are closed—but early enough not to delay trial." Fed. R. Civ. P. 12(c). A motion for judgment on the pleadings attacks the legal sufficiency of the claims alleged in the complaint. *See Patel v. Contemporary Classics of Beverly Hills*, 259 F.3d 123, 126 (2d Cir. 2001). The Court must construe "all material allegations of the

non-moving party as contained in the pleadings as true, and [construe] the pleadings in the light most favorable to the [non-moving] party." *Doyle v. Raley's Inc.*, 158 F.3d 1012, 1014 (9th Cir. 1998). "Judgment on the pleadings is proper when the moving party clearly establishes on the face of the pleadings that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law." *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1550 (9th Cir. 1990). "Analysis under Rule 12(c) is 'substantially identical' to analysis under Rule 12(b)(6) because, under both rules, 'a court must determine whether the facts alleged in the complaint, taken as true, entitle the plaintiff to a legal remedy.'" *Chavez v. United States*, 683 F.3d 1102, 1108 (9th Cir. 2012).

II. Analysis

Defendant requests that the Court "grant judgment on the pleadings and dismiss all putative class claims that arose outside of California for lack of personal jurisdiction." ECF No. 117 at 2; *see also* ECF No. 117-1 at 1, 9. Defendant contends that "courts have approved such jurisdictional challenges at the class-certification stage." ECF No. 117-1 at 1 (citing *Gasser v. Kiss My Face, LLC*, No. 17-CV-01675-JSC, 2018 WL 4538729, at *2 (N.D. Cal. Sept. 21, 2018)).

Plaintiffs urge the Court to "deny Defendant's Motion for Judgment on the Pleadings . . . because it is a procedurally improper, belated personal jurisdiction challenge Defendant should have raised two years ago when litigation began, and which Defendant waived due to its failure to do so." ECF No. 134 at 1. Specifically, Plaintiffs argue that "Defendant waived its challenge by failing to raise it

in the prior Rule 12(b) motion, and through its extensive litigation conduct." *Id.* at 2.

Defendant responds that it did not waive its personal jurisdiction defense because "personal jurisdiction is waived only if it was both *available* and omitted from the earlier motion." ECF No. 140 at 1 (emphasis in original). Defendant contends that the personal jurisdiction defense was not available to it at the time it filed its Rule 12(b) motion to dismiss because "CoreCivic had no good faith basis to challenge personal jurisdiction over the non-plaintiff, putative class members' claims" prior to class certification, *see id.*, rendering "any personal jurisdiction challenge to the putative class members' claims . . . premature and procedurally improper at the motion-to-dismiss stage." *Id.* at 2.

The Court concludes that Defendant has waived any challenge to the Court's personal jurisdiction. "'Lack of personal jurisdiction' is a 'defense to a claim for relief' that the Federal Rules expressly recognize." *McCurley v. Royal Seas Cruises, Inc.*, 331 F.R.D. 142, 164 (S.D. Cal. 2019) (quoting Fed. R. Civ. P. 12(b)(2)). "Challenges to alleged defects in a district court's personal jurisdiction are expressly waived unless a defendant timely asserts the defense in a motion to dismiss or in a responsive pleading." *Id.* (citing Fed. R. Civ. P. 12(h)(1); *Glater v. Eli Lilly & Co.*, 712 F.2d 735, 738 (1983); *Williams v. Life Sav. & Loan*, 802 F.2d 1200, 1202 (10th Cir. 1986); *Braver v. Northstar Alarm Servs.*, 329 F.R.D. 320 (W.D. Okla. 2018)). "An exception to this rule exists when a defense or objection was unavailable at the time the defendant filed its earlier motion or responsive pleading." *Id.* (citing Fed. R. Civ. P. 12(g)(2)). "A defense is considered 'available' unless its legal basis did not

exist at the time of the answer or earlier pre-answer motion." *Id.* at 164–65 (citing *Gilmore v. Palestinian Interim Self-Gov't Auth.*, 843 F.3d 958, 964 (D.C. Cir. 2016); *Tinn v. EMM Labs, Inc.*, No. 07-cv-00963-AC, 2008 WL 3861889, at *3 (D. Or. Aug. 19, 2008)).

Here, "[Defendant] could have asserted a personal jurisdiction challenge to Plaintiffs' initial May . . . 2017 . . . complaint[], . . . which alleged [a] nationwide T[V]PA class[]." *See id.* at 165. *Bristol-Myers Squibb* was decided on June 19, 2017, and Defendant did not respond to Plaintiffs' initial Complaint until August 11, 2017, *see* ECF No. 18, or answer Plaintiff's initial Complaint until June 8, 2018. *See* ECF No. 44. Whether or not a motion to dismiss under Federal Rule of Civil Procedure 12(b)(2) would have been premature, *see* ECF No. 171 at 2–4 (citing *Molock v. Whole Foods Mktg. Grp., Inc.*, No. 187162, 2020 WL 1146733, at *2–3 (D.D.C. Mar. 10, 2020)), the legal basis for the defense was known to the Defendant when it responded to Plaintiff's initial Complaint, thereby rendered the personal jurisdiction defense available. Consequently, "[Defendant]'s failure to assert personal jurisdiction in its first responsive pleadings to [Plaintiffs'] original complaint[] constitutes a waiver of such a defense." *See McCurley*, 331 F.R.D. at 165; *see also Mussat v. Enclarity, Inc.*, 362 F. Supp. 3d 468, 470 (N.D. Ill. 2019) (denying Rule 12(c) motion to dismiss for lack of personal jurisdiction in putative nationwide class action on grounds that defense was waived under Rules 12(g)(2) and 12(h)). The Court therefore **DENIES** Defendant's Motion for Judgment on the Pleadings.

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

I. Legal Standard

Motions for class certification proceed under Rule 23(a) of the Federal Rules of Civil Procedure. Rule 23(a) provides four prerequisites to a class action: (1) the class is so numerous that joinder of all members is impracticable ("numerosity"), (2) there are questions of law or fact common to the class ("commonality"), (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class ("typicality"), and (4) the representative parties will fairly and adequately protect the interests of the class ("adequate representation"). Fed. R. Civ. P. 23(a).

A proposed class must also satisfy one of the subdivisions of Rule 23(b). Here, Plaintiffs seek to proceed under Rule 23(b)(3), which requires that "the court find[] that the [common questions] predominate over any questions affecting only individual members ['predominance'], and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy ['superiority']." The relevant factors in this inquiry include the class members' interest in individually controlling the litigation, other litigation already commenced, the desirability (or not) of consolidating the litigation in this forum, and manageability. Fed. R. Civ. P. 23(b)(3)(A)–(D).

"In determining the propriety of a class action, the question is not whether the plaintiff or plaintiffs have stated a cause of action or will prevail on the merits, but rather whether the requirements of Rule 23 are met." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178

(1974) (internal quotations omitted). "Rule 23 does not set forth a mere pleading standard." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Rather, "[a] party seeking class certification must affirmatively demonstrate his compliance with the Rule—that is, he must be prepared to prove that there are in fact sufficiently numerous parties, common questions of law or fact, etc." *Id.* The court is "at liberty to consider evidence which goes to the requirements of Rule 23 even though the evidence may also relate to the underlying merits of the case." *Hanon v. Dataprods. Corp.*, 976 F.2d 497, 509 (9th Cir. 1992). A weighing of competing evidence, however, is inappropriate at this stage of the litigation. *Staton v. Boeing Co.*, 327 F.3d 938, 954 (9th Cir. 2003).

II. Analysis

Pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3), Plaintiffs seek to certify the following five classes:

1. The California Labor Law Class, comprised of "[a]ll ICE detainees who (i) were detained at a CoreCivic facility located in California between May 31, 2013 and the present, and (ii) worked through CoreCivic's [VWP] during their period of detention in California," ECF No. 84 at 1;[3]

2. The California Forced Labor Class, comprised of "[a]ll ICE detainees who (i) were detained at a

---

[3] Defendant contends that "Plaintiffs exclude Count Nine (Failure to Pay Compensation Upon Termination/Waiting Time Penalties, Cal. Labor Code §§ 201–203) from the list of claims that this Class is pursuing," *see* ECF No. 118 at 12 (citing ECF No. 84-1 at 17); however, Plaintiffs explicitly include Count Nine in their Notice of Motion, *see* ECF No. 84 at 1.

CoreCivic facility located in California between January 1, 2006 and the present, (ii) cleaned areas of the facilities above and beyond the personal housekeeping tasks enumerated in ICE's Performance Based National Detention Standards 2011 (the "ICE PBNDS"), and (iii) performed such work under threat of discipline irrespective of whether the work was paid or unpaid," *id.*;

3. The California Basic Necessities Class, comprised of "[a]ll ICE detainees who (i) were detained at a CoreCivic facility located in California between January 1, 2006 and the present, (ii) worked through CoreCivic's VWP, and (iii) purchased basic living necessities through CoreCivic's commissary during their period of detention in California," *id.* at 1–2;

4. The National Forced Labor Class, comprised of "[a]ll ICE detainees who (i) were detained at a CoreCivic facility between December 23, 2008 and the present, (ii) cleaned areas of the facilities above and beyond the personal housekeeping tasks enumerated in the ICE PBNDS, and (iii) performed such work under threat of discipline irrespective of whether the work was paid or unpaid," *id.* at 2; and

5. The National Basic Necessities Class, comprised of "[a]ll ICE detainees who (i) were detained at a CoreCivic facility between December 23, 2008 to the present, (ii) worked through CoreCivic's VWP, and (iii) purchased basic living necessities through CoreCivic's commissary during their period of detention." *Id.*

A. Preliminary Considerations

Before addressing the Rule 23(a) and Rule 23(b)(3) factors, the Court addresses Defendant's arguments

concerning the certification of the Basic Necessities Classes, Plaintiffs' standing to pursue prospective equitable relief, and the ascertainability of the proposed classes.

1. The Basic Necessities Classes

As an initial matter, Defendant contends that "[t]he Court cannot certify the Basic Necessities Classes because it 'is bound to class definitions provided in the complaint and, absent an amended complaint, will not consider certification beyond it.'" ECF No. 118 at 13 (citing *Reyes v. Educ. Credit Mgmt. Corp.*, 322 F.R.D. 552, 559 (S.D. Cal. 2017) (quoting *Costelo v. Chertoff*, 258 F.R.D. 600, 605 (C.D. Cal. 2009)), *vacated & remanded on other grounds*, 773 Fed. App'x 989 (9th Cir. 2019)); *Bee, Denning, Inc. v. Capital All. Grp.*, 310 F.R.D. 614, 621 (S.D. Cal. 2015)). Defendant notes that, "[a]lthough a Court is not precluded from considering a new class 'that is *narrower* than the class definition originally proposed,' . . . Plaintiffs' Basic Necessities Classes involve an *entirely different* theory of liability, based on factual allegations that simply do not exist in the Complaint." *Id.* at 13–14 (quoting *Bee, Denning*, 310 F.R.D. at 621) (emphasis in original).

Plaintiffs counter that "the CA and National Basic Necessities Classes assert the same theories of liability that Plaintiffs alleged in the FAC—namely, violations of the CA TVPA, Federal TVPA, and UCL, as well as unjust enrichment and negligence." ECF No. 127 at 6. "Further, the Basic Necessities Classes are also defined more narrowly than the Nationwide and California Forced Labor Classes alleged in the FAC, which refer to '[a]ll civil immigration detainees who performed Forced Labor' generally, without any limiting principle," whereas "the Basic Necessities

Classes tether the definition of 'Forced Labor' to ICE detainees that worked through CoreCivic's VWP and purchased basic living necessities at the commissary." *Id.* at 6–7 (quoting FAC ¶ 30; ECF No. 84 at 1–2).

"Generally, a plaintiff may only seek to certify a class as defined in a complaint—courts will not certify classes different from, or broader than, a class alleged in the complaint without plaintiff moving to amend the complaint." *Richie v. Blue Shield of Cal.*, No. C-13-2693 EMC, 2014 WL 6982943, at *13 (N.D. Cal. Dec. 9, 2014) (citing *Savanna Grp., Inc. v. Trynex, Inc.*, No. 10-cv-7995, 2013 WL 66181, at *2 (N.D. Ill. Jan. 4, 2013); *Costelo*, 258 F.R.D. at 604–05). Despite Plaintiffs' assertion that the Basic Necessities Classes are "defined more narrowly" than the Forced Labor Classes alleged in their First Amended Complaint, the Court concludes that those classes are new classes hinging on allegations not appearing in the First Amended Complaint.

The First Amended Complaint's only reference to the commissary is that "Plaintiffs and detainees are/were only allowed to spend their $1 per day at the CoreCivic 'company store' or commissary." FAC ¶ 15. This is entirely different than alleging that Plaintiffs *had to spend* their earnings at the commissary on *basic necessities* that were not provided by Defendant. Indeed, the only mention of "basic necessities" is made in Defendant's Counter-Claim. *See, e.g.*, ECF No. 70 at 31 ¶ 13 ("CoreCivic provides basic necessities to all detainees housed in its California facilities, including but not limited to housing, food, clothing, and recreation."); *id.* at 33 ¶ 23 (same); *id.* at 35 ¶ 33 ("The work performed by these detainees is performed for reasons other than compensation, as detainees participating in the [VWP] do not participate in

commerce and do not depend on the wages they earn for basic necessities such as, for example, housing, food, clothing, and recreation, while detained, as those necessities are provided to them at taxpayer expense."); *id.* at Prayer ¶ D (requesting "an order awarding CoreCivic all costs and expenses incurred in providing basic necessities to Counter-Defendants and the putative class members, including but not limited to housing, food, clothing, and recreation").

If Plaintiffs uncovered the "basic necessities" theory of liability during discovery, they should have diligently sought leave to amend their First Amended Complaint to assert it. *See, e.g.*, *Stuart v. Radioshack Corp.*, No. C-07-4499 EMC, 2009 WL 281941, at *2 (N.D. Cal. Feb. 5, 2009) (granting motion for leave to file second amended complaint "to broaden the scope of the class and then obtain certification of the broader class"); *see also Ortiz v. McNeil-PPC, Inc.*, No. 07CV678-MMA(CAB), 2009 WL 1322962, at *2 (S.D. Cal. May 8, 2009) (denying motion to file amended complaint to obtain class certification where the "[p]laintiffs failed to exercise the requisite diligence in seeking to amend the consolidated complaint"). But this Plaintiffs failed to do. In her July 27, 2018 Scheduling Order, Magistrate Judge Stormes imposed a deadline of October 26, 2018, by which to file "[a]ny motion to join other parties, to amend the pleadings, or to file additional pleadings." ECF No. 57 ¶ 3. On September 11, 2018, Plaintiffs sought leave to file the operative First Amended Complaint, *see* ECF No. 64, which does not mention the provision of—let alone the alleged forced purchase of—basic necessities. *See generally* FAC. Plaintiffs did not seek leave to modify the Scheduling Order to add these allegations either before or after filing the instant

Motion for Class Certification, and they do not even attempt to make a showing of good cause for allowing them to amend their class allegations at this stage. *See Ortiz*, 2009 WL 1322962, at *2 (setting forth good cause standard under Rule 16(b) for modification of scheduling order and concluding that the plaintiffs failed to exercise diligence or make a showing of good cause); *see also infra* note 5.

Accordingly, the Court **DENIES** Plaintiffs' Motion for Class Certification as to the California and Nationwide Basic Necessities Classes, which were neither included in nor narrower than the classes alleged in Plaintiffs' First Amended Complaint. *See, e.g.*, *Davis v. AT&T Corp.*, No. 15CV2342-DMS (DHB), 2017 WL 1155350, at *3–4 (S.D. Cal. Mar. 28, 2017) (declining to certify class where the "proposed class is not simply a narrower version of that proposed in the Complaints" but rather "is an entirely different class" because "the nature of the modification to the class definition (a completely different class), whether additional discovery is required (yes) and whether Defendant will be prejudiced (yes), weigh in favor of declining to address the amended class in this case"); *Romero v. Alta-Dena Certified Dairy, LLC*, No. CV13-04846 R (FFMX), 2014 WL 12479370, at *1 (C.D. Cal. Jan. 30, 2014) ("Plaintiff's proposed 'Mandatory Uniform' and 'Auto Meal Deduction' classes encompass allegations and class definitions that are not found in the operative first amended complaint. Certification of those classes is denied on that basis.") (citing *Johnson v. Harley-Davidson Motor Co. Grp.*, 285 F.R.D. 573, 577 n.2 (E.D. Cal. 2012); *Costelo*, 258 F.R.D. at 604–05); *see also Hoffman v. Blattner Energy, Inc.*, 315 F.R.D. 324, 335 (C.D. Cal. 2016) (denying motion to certify class where the plaintiff

had failed to allege the underlying claim in his operative complaint and denying leave to amend the complaint to add such a claim).

2. Standing

In the context of a putative class action, the plaintiff bears the burden of showing that at least one named plaintiff meets the requirements for Article III standing as to each form of relief sought. *See Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 978 (9th Cir. 2011) (citing *Bates v. United Parcel Serv., Inc.*, 511 F.3d 974, 985 (9th Cir. 2007)).

Here, it is undisputed that Plaintiffs have Article III standing for their claims for monetary damages, restitution, interest, penalties, punitive damages, and fees and costs. *See* ECF No. 144 at 1–2; ECF No. 148 at 2, 8. In addition, however, Plaintiffs seek declaratory relief as to their causes of action for violation of the TVPA and the California TVPA, *see* FAC ¶¶ 35(g), 39(c), 46, 58; *see also id.* Prayer ¶ b, as well as injunctive relief as to their causes of action for violation of the TVPA, the California TVPA, and the UCL. *See* FAC ¶¶ 35(e) & (g), 39(c), 47–48, 59–60, 69; *see also id.* Prayer ¶ c. To establish standing for such prospective equitable relief, the plaintiff must be able to show "a significant likelihood that she will be wronged again in a similar way." *Ellis*, 657 F.3d at 978 (citing *Bates*, 511 F.3d at 985).

Mr. Owino's detention, however, ended on March 9, 2015, *see* ECF No. 84-3 ¶ 2, and Mr. Gomez's on September 18, 2013,[4] *see* ECF No. 84-4 ¶ 2, well

---

[4] Plaintiffs' status as former participants in the VWP presents other issues unrelated to standing. For example, Plaintiffs assert a claim for waiting time penalties, *see* FAC ¶¶ 94–96; however, such penalties "would be due to *severed or*

before their initial complaint was filed on May 31, 2017, *see generally* ECF No. 1, and the operative First Amended Complaint on October 12, 2018. *See generally* ECF No. 67. On November 7, 2019, the Court therefore ordered "the Parties to submit additional briefing on the following issues: (1) Mr. Owino's and Mr. Gomez's standing to pursue each form of relief sought in their First Amended Complaint; (2) the implications of their standing (or lack thereof) on their pending Motion for Class Certification; and (3) the redressability of their standing (or lack thereof) by amendment." ECF No. 143 at 3.

a. Named Plaintiffs' Standing

In their supplemental brief, Plaintiffs contend that, "even through Plaintiffs were released from CoreCivic's custody prior to the filing of their original complaint, Plaintiffs nonetheless have Article III standing to pursue their claims for prospective equitable relief" because "[t]he Supreme Court has recognized that '[t]he violation of a procedural right granted by statute can be sufficient in some circumstances to constitute injury in fact." ECF No. 144 at 3 (alteration in original) (quoting *Spokeo, Inc. v. Robins*, 578 U.S. ____, 136 S. Ct. 1540, 1543 (2016)). "Because Plaintiffs were actually harmed by conduct proscribed by statute, and those statutes

---

terminated class members if Defendant[] were found liable on any of the class claims," *Lusby v. Gamestop Inc.*, 297 F.R.D. 400, 410 (N.D. Cal. 2013) (emphasis added), whereas Plaintiffs seek to certify a class comprised of both *former and current* participants in the VWP. *See* FAC ¶ 30. Accordingly, "[an unspecified portion] of the Class Members would be entitled to certain penalties sought in the Complaint, but the [rest] would not." *See Lusby*, 297 F.R.D. at 410.

authorize prospective relief, Plaintiffs possess Article III standing to pursue recovery in the form of injunctive and declaratory relief on behalf of themselves and the proposed classes." *Id.* at 4 (citing *Ingalls v. Spotify USA, Inc.*, No. C 16-03533 WHA, 2017 WL 3021037, at *7 (N.D. Cal. July 17, 2017)).

Defendant counters that "a statute does not automatically confer Article III standing simply because the statute authorizes prospective relief," ECF No. 145 at 3–4 (citing *Rivas v. Rail Delivery Servs., Inc.*, 423 F.3d 1079, 1083 (9th Cir. 2005)), and "Plaintiffs lack standing because they were not "exposed to a 'real and immediate threat' of future injury at the time they filed their original Complaint." *Id.* at 3 (citing *Nordstrom v. Ryan*, 856 F.3d 1265, 1270 n.2 (9th Cir. 2017)).

Defendant is correct that *Spokeo* does not relieve Plaintiffs seeking prospective equitable relief from establishing a sufficient likelihood of future harm, *see, e.g.*, *Joslin v. Clif Bar & Co.*, No. 4:18-CV-04941-JSW, 2019 WL 5690632, at *2 (N.D. Cal. Aug. 26, 2019) (recognizing after *Spokeo* that, "to show they have standing to seek injunctive relief, Plaintiffs must "demonstrate that [they have] suffered or [are] threatened with a 'concrete and particularized' legal harm, coupled with a 'sufficient likelihood that [they] will again be wronged in a similar way'") (quoting *Bates v. United Parcel Serv., Inc.*, 511 F.3d 974, 985 (9th Cir. 2007)), and the Court concludes that Plaintiffs' have failed to make the requisite showing. There are no allegations in the First Amended Complaint regarding Plaintiffs' likelihood of being detained at a CoreCivic facility in the future. *See generally* FAC; *see also* ECF No. 144 at 5–6 ("Plaintiffs respectfully submit to the Court that they

can amend the FAC to add . . . allegations[that] would clarify Plaintiffs' . . . 'sufficient likelihood' . . . [of] be[ing] detained at a CoreCivic facility in the future."). The Court therefore concludes that Plaintiffs have failed to establish Article III standing to seek injunctive relief in the operative First Amended Complaint.

b. Redressability Through Amendment

Because the Court determines that they have failed to establish standing to seek prospective equitable relief, Plaintiffs request leave to amend their First Amended Complaint to add new allegations regarding the "'sufficient likelihood' that both Plaintiffs will be detained at a CoreCivic facility in the future and subject to CoreCivic's challenged policies and practices," *See* ECF No. 144 at 6 (citing *Davidson v. Kimberly-Clark Corp.*, 873 F.3d 1103, 1113 (9th Cir. 2017)), or to add a new class representative. *See id.* at 7–9. Plaintiffs note that their "counsel have been retained by a former detainee and putative class member, Achiri Nelson Geh, who was subject to and harmed by the same policies and practices as Plaintiffs while detained at Otay Mesa Detention Center [("OMDC")] between April 24, 2017[,] and October 28, 2019." *Id.* at 7. Additionally, "there are putative class members who are presently detained at CoreCivic's facilities who also have Article III standing to assert a claim for prospective equitable relief." *Id.* at 8.

Defendant responds that amendment would be futile because Plaintiffs have "waived any classwide prospective relief" by "fail[ing] to seek certification of the putative classes pursuant to Rule 23(b)(2)." ECF No. 145 at 5. Further, "Plaintiffs do not even try to meet their burden under Rule 15 for amending

pleadings." ECF No. 145 at 7 (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)). In any event, "add[ing] a new class representative cannot resurrect the class claims for prospective relief," *id.* at 6 (citing *Lierboe v. State Farm Mut. Auto. Ins. Co.*, 350 F.3d 1018, 1023 (9th Cir. 2013)), and Mr. Geh—as a former detainee himself—"would not be a proper substitute anyway." *Id.* at 6 n.3. Mr. Owino's and Mr. Gomez's proposed amendments also "fall woefully short of establishing a 'real and immediate threat of repeated injury.'" *Id.* at 7 (quoting *Fortyune v. Am. Multi-Cinema, Inc.*, 364 F.3d 1075, 1081 (9th Cir. 2004)).

On reply, Plaintiffs respond that they have not "'waived' their claims for prospective equitable relief by moving for class certification under Rule 23(b)(3)" because "courts routinely certify classes seeking both damages and prospective equitable relief under Rule 23(b)(3)" and seeking certification under Rule 23(b)(2) would be "questionable . . . given the significance of the proposed classes' claims for damages." ECF No. 148 at 1. Plaintiffs also reiterate that "there is 'a sufficient likelihood that [plaintiff] will again be wronged in a similar way,'" *id.* at 9 (quoting *Davidson*, 873 F.3d at 1113) (alteration in original), and that "other members of the putative class can be substituted into the case as named Plaintiffs in the event the Court finds that Plaintiffs do not possess Article III standing to pursue prospective equitable relief," including Mr. Geh; "all named plaintiffs in the currently stayed action *Gonzalez, et al. v. CoreCivic, Inc.*, Case No. 17-CV-2573 JLS (NLS)"; and any of the "hundreds of putative class members who are currently incarcerated at CoreCivic's facilities." *Id.* at 9–10.

The Court concludes that Plaintiffs cannot cure Mr. Owino's and Mr. Gomez's lack of standing through amendment. First, the Court agrees with Defendant that amendment would be futile as to Mr. Owino and Mr. Gomez because their proposed amendments fail to allege a sufficient likelihood of future harm. Although the Court acknowledges and agrees that Mr. Owino and Mr. Gomez "have reasonable, deeply held concerns and fears that they will be detained in the future," *see* ECF No. 144 at 6 (citing ECF No. 144-1 ¶¶ 6–11; ECF No. 144-2 ¶¶ 6–13), their proposed amendments fall short of establishing that repeat detention is "certainly impending." *See Davidson*, 873 F.3d at 1113. As Defendant notes, Mr. "Owino has been out of ICE custody for four years, [Mr.] Gomez has been out of ICE custody for six years, and neither has been arrested or detained by ICE since—even in the 2 ½ years after filings this lawsuit." ECF No. 145 at 8 (citing ECF No. 144-1 ¶ 3; ECF No. 144-2 ¶ 3). Accordingly, even if the Court were to permit amendment,[5] Plaintiffs' proposed amendments would

---

[5] Defendant is also correct that Plaintiffs have not attempted to make the requisite showing for leave to amend. *See* ECF No. 145 at 7. Although Defendant analyzes the propriety of amendment under Federal Rule of Civil Procedure 15, *see id.*, Magistrate Judge Stormes set a deadline to amend the pleadings of October 26, 2018. *See* ECF No. 57 ¶ 3. Accordingly, Plaintiffs must establish "good cause" to modify Magistrate Judge Stormes' scheduling order pursuant to Federal Rule of Civil Procedure 16(b)(4). *See, e.g.*, *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608–09 (9th Cir. 1992). "Unlike Rule 15(a)'s liberal amendment policy[,] which focuses on the bad faith of the party seeking to interpose an amendment and the prejudice to the opposing party, Rule 16(b)'s 'good cause' standard primarily considers the diligence of the party seeking the amendment." *Id.*

at 609. If the party seeking to modify the scheduling order "was not diligent, the inquiry should end." *Id.* "[C]ourts often find good cause when the motion to amend the scheduling order is based upon new and pertinent information," but not where the amendment is "based on information that ha[s] been available to [the party] throughout the suit." *Lyon v. U.S. Immigration & Customs Enf't*, 308 F.R.D. 203, 216 (N.D. Cal. 2015) (citing *Johnson*, 975 F.2d at 609; *Pumpco, Inc. v. Schenker Int'l, Inc.*, 204 F.R.D. 667, 668 (D. Colo. 2001)); *see also In re W. States Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d 716, 737 (9th Cir. 2013) (affirming district court's denial of leave to amend because "[t]he good cause standard typically will not be met where the party seeking to modify the scheduling order has been aware of the facts and theories supporting amendment since the inception of the action."), *aff'd*, 135 S. Ct. 1591 (2015).

Here, Plaintiffs have not "specifically request[ed] that the court modify the scheduling order," *Wolf v. Hewlett Packard Co.*, No. CV1501221BROGJSX, 2016 WL 8931307, at *4 (C.D. Cal. Apr. 18, 2016) (citing *C.F. v. Capistrano Unified Sch. Dist.*, 647 F. Supp. 2d 1187, 1190 (C.D. Cal. 2009)), nor have they attempted to show due diligence. *See Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1294–95 (9th Cir. 2000) (affirming denial of motion to amend where plaintiffs "failed to show diligence"). That alone suffices to end the Court's good cause inquiry, *see Johnson*, 975 F.2d at 609; *see also Hoffman*, 315 F.R.D. at 336; however, despite Plaintiffs' well-founded objections to access to Defendant's detainees, *see* Tr. at 53:21–57:12, they have been in possession of all facts relevant to their standing since the inception of this suit and, pursuant to Federal Rule of Civil Procedure 11, had an affirmative duty to investigate the theoretical underpinnings of their complaint—including their standing—before filing. *See Soto v. Castlerock Farming & Transp., Inc.*, No. 1:09-CV-00701 AWI, 2011 WL 3489876, at *7 (E.D. Cal. Aug. 9, 2011) ("Plaintiffs have known the causes of action since at least the filing of the first complaint in 2005, and named [the named plaintiffs] as the class representatives in 2009. Plaintiffs were obligated to know at that time whether they adequately represented the claims they brought in that complaint.") (citing Fed. R. Civ. P. 11(b)(3)); *see also Kunimoto v. Fidell*, 26 Fed. App'x 630, 631–32 (9th Cir. 2001) (affirming imposition of Rule 11 sanctions where complaint was filed by

fail to establish Article III standing to pursue their claims for prospective equitable relief. *See, e.g.*, *Mendia v. Garcia*, 165 F. Supp. 3d 861, 895 (N.D. Cal. 2016) ("Although Plaintiff articulates his fear of being subject to another immigration detainer, he does not explain why or how this is likely to occur again."); *Diamond v. Corizon Health, Inc.*, No. 16-CV-03534-JSC, 2016 WL 7034036, at *5 (N.D. Cal. Dec. 2, 2016) ("Plaintiffs . . . fail to demonstrate a risk of repeated injury because the repeated injury would require a string of contingencies to occur to Plaintiffs. Plaintiffs' alleged threat of injury would first require their arrest and placement in custody at an Alameda County jail.").

Second, the proposed amendment would also be futile as to Mr. Geh. Although Mr. Geh was detained when this action and the operative First Amended Complaint were filed, that does not mean that he would have standing as of the date of a future amendment to add him as a named plaintiff. While generally "[s]tanding is determined by the facts that exist at the time the complaint is filed," *Gonzalez v. Immigration & Customs Enf't*, No. CV1304416BROFFMX, 2014 WL 12605369, at *3 (C.D. Cal. Oct. 24, 2014) (quoting *Clark v. City of Lakewood*, 259 F.3d 996, 1006 (9th Cir. 2001) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 569 n.4

---

plaintiffs lacking standing). Accordingly, denial of leave to amend to cure Plaintiffs' standing is appropriate. *See, e.g.*, *In re W. States*, 715 F.3d at 737; *Johnson*, 975 F.3d at 609–10; *Wolf*, 2016 WL 8931307, at *6 (denying leave to amend where "it appears Plaintiff has been aware of the facts giving rise to the need for amendment since the inception of this action" and "Plaintiff therefore fails to establish good cause"); *Soto*, 2011 WL 3489876, at *7.

(1992)), "[t]he standing of a later-added plaintiff is determined as of the date of the amended complaint which brought him into the action." *Id.* (citing *Lynch v. Leis*, 382 F.3d 642, 647 (6th Cir. 2004)). Consequently, Mr. Geh "has no standing" because "he is not *currently* detained [at OMDC] or in ICE custody." *See* ECF No. 145 at 6 n.3 (emphasis in original) (citing ECF No. 144-3 ¶¶ 2, 16).

Third, Defendant is correct that substitution of one of the named plaintiffs in the *Gonzalez* action or another current CoreCivic detainee would be improper under these circumstances. *See* ECF No. 145 at 6. "In a complaint involving multiple claims, *at least one named plaintiff* must have Article III standing for each asserted claim." *Hoffman*, 315 F.R.D. at 333 (emphasis in original) (citing *In re Carrier IQ, Inc., Consumer Privacy Litig.*, 78 F. Supp. 3d 1051, 1070 (N.D. Cal. 2015); Newberg on Class Actions § 2:5 (5th ed.)). "A finding that no class representative has standing with respect to a given claim requires dismissal of that claim." *Id.* (quoting Newberg on Class Actions § 2:5 (5th ed.)); *see also Lierboe*, 350 F.3d at 1023 (remanding with instructions to dismiss where the named plaintiff never had standing to assert claim). Because neither Mr. Owino nor Mr. Gonzalez had standing to assert claims for prospective equitable relief when they initiated this case, the Court **DISMISSES WITHOUT PREJUDICE** Plaintiffs' first, second, and third causes of action to the extent they seek injunctive and/or declaratory relief.[6] *See, e.g.*, *Davis*

[6] The Court therefore does not reach Defendant's argument that Plaintiffs have "waived any classwide prospective

v. Homecomings Fin., No. C05-1466RSL, 2007 WL 1600809, at *4–5 (W.D. Wash. June 1, 2007) (decertifying class and concluding that "substitution is not warranted because this is not a case where the named plaintiff had a valid claim that later became moot"); *In re Admin. Comm. Erisa Litig.*, No. C03-3302 PJH, 2005 WL 3454126, at *8 (N.D. Cal. Dec. 16, 2005) (denying motion for class certification and dismissing complaint where named plaintiff failed to establish standing); *Williams v. Boeing Co.*, No. C98-761P, 2005 WL 2921960, at *10 (W.D. Wash. Nov. 4, 2005) (decertifying class as to certain claims and concluding that "intervention would not be appropriate" because "the named Plaintiffs have not demonstrated standing in the first instance to maintain such claims"), *aff'd in part, dismissed in part*, 517 F.3d 1120 (9th Cir. 2008).

c. Implications for Class Certification

Because Plaintiffs have failed to establish standing to pursue injunctive or declaratory relief, the Court **DENIES** Plaintiff's Certification Motion as to Plaintiffs' claims for prospective equitable relief and **DISMISSES WITHOUT PREJUDICE** those claims. *See supra* Section II.A.2.b; *see also, e.g.*, *Slayman v. FedEx Ground Package Sys., Inc.*, 765 F.3d 1033, 1047–48 (9th Cir. 2014) (reversing certification of class claims for prospective relief where named plaintiffs were no longer employed by defendant at time class was certified and therefore lacked standing) (citing *Bd. of Sch. Comm'rs of Indianapolis v. Jacobs*, 420 U.S. 128, 129 (1975) (per curiam), *Kuahulu v. Emp'rs Ins. of Wausau*, 557 F.2d

---

relief" by "fail[ing] to seek certification of the putative classes pursuant to Rule 23(b)(2)." ECF No. 145 at 5.

1334, 1336–37 (9th Cir. 1977)); *Gustafson v. Goodman Mfg. Co. LP*, No. CV-13-08274-PCT-JAT, 2016 WL 1029333, at *8 (D. Ariz. Mar. 14, 2016) ("If a plaintiff lacks standing or has no claim 'she cannot represent others who may have such a claim, and her bid to serve as a class representative must fail.'") (quoting *Lierboe*, 350 F.3d at 1022; *Pence v. Andrus*, 586 F.2d 733, 736–37 (9th Cir. 1978)); *see also B.C. v. Plumas Unified Sch. Dist.*, 192 F.3d 1260, 1264 (9th Cir. 1999) (affirming district court's dismissal of class claims for injunctive relief where named plaintiff was no longer a student of the defendant school district and therefore lacked standing to seek injunctive relief); *Balasanyan v. Nordstrom, Inc.*, 294 F.R.D. 550, 562 (S.D. Cal. 2013) (concluding that named plaintiffs who were former employees of the defendant could "[]not establish a sufficient likelihood that they w[ould] again be wronged by [the defendant employer]'s allegedly improper conduct," meaning that the plaintiffs "ha[d] no standing to pursue injunctive relief and, therefore, their claims are not typical of the proposed class").

But "CoreCivic does not dispute that Plaintiffs possess Article III standing to seek monetary damages, restitution, interest, penalties, punitive damages, and fees and costs for the putative classes. Nor does CoreCivic dispute in its Supplemental Brief that the Court can and should certify the . . . proposed classes as to claims seeking these remedies." ECF No. 148 at 2. The Court therefore concludes that it may continue the class certification analysis as to Plaintiffs' remaining claims. *See, e.g.*, *Balasanyan*, 294 F.R.D. at 562 (granting class certification as to remaining claims despite denying certification as to

claims for injunctive relief, for which the named plaintiffs failed to establish standing).

3. Ascertainability

Defendant challenges the "ascertainability" of Plaintiffs' proposed classes, contending that the Class definitions are over-inclusive and too vague and that the Class periods are overly broad. *See* ECF No. 118 at 14–18. Plaintiffs respond that "the Ninth Circuit has expressly rejected imposing an 'ascertainability' requirement for class certification." ECF No. 127 at 7 (citing *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1124 n.4 (9th Cir.), *cert. denied*, 138 S. Ct. 313 (2017)).

Plaintiffs are correct: In *Briseno*, the Ninth Circuit clarified that "ascertainability" is not a pre-requisite to class certification and that "the types of alleged definitional deficiencies other courts have referred to as 'ascertainability' issues . . . [are addressed] through analysis of Rule 23's enumerated requirements." 844 F.3d at 1124 n.4 (citing *Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1136–39 (9th Cir. 2016); *Probe v. State Teachers' Ret. Sys.*, 780 F.2d 776, 780 (9th Cir. 1986)). The Court therefore addresses Defendant's challenges to the breadth and vagueness of the Class definitions and periods below.

B. Rule 23(a) Requirements

1. Numerosity

"[A] proposed class must be 'so numerous that joinder of all members is impracticable.'" *Rannis v. Recchia*, 380 Fed. App'x 646, 650 (9th Cir. 2010) (quoting Fed. R. Civ. P. 23(a)(1)). While "[t]he numerosity requirement is not tied to any fixed numerical threshold[,] . . . [i]n general, courts find the

numerosity requirement satisfied when a class includes at least 40 members." *Id.* at 651.

Plaintiffs claim that Rule 23(a)'s numerosity requirement is satisfied because "the CA Labor Law Class has at least 8,346 putative class members" and, "[w]hile the exact size of the other [two] proposed classes are not currently known, general knowledge and common sense indicate that they are large enough to satisfy the numerosity requirement of Rule 23(a)." ECF No. 87 at 15 (citing Ridley Decl. Exs. 45–50 & 88, ECF Nos. 85-46–51 & 85-89 (public redacted versions), ECF Nos. 87-33–38 & 87-76 (sealed versions)). This is because "[t]he CA Forced Labor Class and the National Forced Labor Class arise out of CoreCivic's policy and practice of requiring '***all***' ICE detainees at its facilities to perform cleaning work outside of the ICE detainees' immediate living areas under threat of discipline," meaning those "classes will necessarily include several thousands of former and current ICE detainees, and the requirement of numerosity is satisfied." *Id.* at 16 (emphasis in original).

Defendant counters that Plaintiffs have failed to meet their burden because "[a] higher level of proof than mere common[-]sense impression or extrapolation from cursory allegations is required." ECF No. 118 at 18 (quoting *Allen v. Similasan Corp.* ("*Similasan*"), 306 F.R.D. 635, 681 (S.D. Cal. 2015)) (alteration in original). Regarding the California Labor Law Class, for example, the exhibits to which Plaintiffs cite "identify only 55 detainees who received an account deposit for 'Job Pay[,]'" and "Plaintiffs fail to identify the number of detainees who were eligible for, but did not receive, a rest period, meal period, or overtime wages." *Id.* at 18–19. Similarly, Plaintiffs'

"speculation [regarding the sizes of the Force Labor Classes] does not satisfy the numerosity requirement." *Id.* at 20 (citing *Schwartz v. Upper Deck Co.*, 183 F.R.D. 672, 681 (S.D. Cal. 1999)).

Plaintiffs rejoin that "[t]he numerosity requirement is satisfied for each proposed class." ECF No. 127 at 9. As for the California Labor Law Class, "Plaintiffs filed excerpts of the OMS reports because their size renders them nearly impossible to file on the public docket." *Id.* As for the Forced Labor Classes, "each will necessarily include several thousands of former and current ICE detainees" because they "arise out of CoreCivic's policy and practice of requiring '***all***' ICE detainees to perform cleaning work outside of the ICE detainees' immediate living areas under threat of discipline." *Id.* at 10 (emphasis in original).

The Court concludes that Plaintiffs have satisfied Rule 23(a)'s numerosity requirement for the California Labor Law Class, the California Forced Labor Class, and the Nationwide Forced Labor Class. Plaintiffs need not prove the identity of each class member at the class certification stage, *see, e.g.*, *Allen v. Hyland's Inc.* ("*Hyland's*"), 300 F.R.D. 643, 658 (C.D. Cal. 2014), and the Court concludes that it is readily apparent from the number of ICE detainees Defendant has housed in its various facilities in California and nationwide over the years at issue that the classes are so numerous that it would be impracticable to join all parties here. *See, e.g.*, *Similasan*, 306 F.R.D. at 644 (concluding that it was "readily apparent that the class is so numerous that it would be impracticable to join all parties" where the "[d]efendant sells its Products through at least thirteen retailers"); *Hyland's*, 300 F.R.D. at 660

(finding that numerosity "is easily satisfied given that the putative class action includes consumers of twelve products sold nationwide over the course of several years").

2. Commonality

Rule 23(a)(2) requires that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). To satisfy this requirement, "[a]ll questions of fact and law need not be common to satisfy the rule. The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). The common contention, however, "must be of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart*, 564 U.S. at 350.

Plaintiffs argue that their "claims all hinge on common contentions that are capable of classwide resolution." ECF No. 87 at 16. Defendant contends that Plaintiffs have failed to establish that Defendant has policies or practices common to all putative class members, *see* ECF No. 118 at 25–29, and that individual questions predominate. *See id.* at 29–33. Because Plaintiffs and Defendant have collapsed their arguments concerning the predominance of common issues under Rule 23(b)(3) with their discussion of commonality under Rule 23(a)(2), *compare* ECF No. 87 at 24; *and* ECF No. 127 at 10–12, *with* ECF No. 118 at 24–33, the Court discusses both commonality and predominance under the "far more demanding" Rule 23(b)(3) predominance analysis. *See infra* Section II.C.1; *see also* ECF No.

118 at 25 (quoting *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 624 (1997)).

3. Typicality and Adequacy

The Ninth Circuit has explained that "representative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." *Staton*, 327 F.3d at 957; *Hanlon*, 150 F.3d at 1019. The test of typicality "is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Schwartz v. Harp*, 108 F.R.D. 279, 282 (C.D. Cal. 1985).

Rule 23(a)(4) also requires that "the representative parties will fairly and adequately protect the interests of the class." "To determine whether the representation meets this standard, [courts] ask two questions: (1) Do the representative plaintiffs and their counsel have any conflicts of interest with other class members, and (2) will the representative plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Staton*, 327 F.3d at 957.

a. Representative Plaintiffs

Plaintiffs contend that their "own claims are typical of the classes that they seek to represent" because, "[l]ike the putative class members, Plaintiffs were also subject to CoreCivic's uniform policies and practices." ECF No. 87 at 22. Further, Plaintiffs urge that they will adequately represent the proposed Classes because "Plaintiffs each seek relief on behalf of the class as a whole and have no interest

antagonistic to other class members." *Id.* at 23. Defendant raises several challenges to Mr. Owino's and Mr. Gomez's adequacy and typicality, *see* ECF No. 118 at 20–24, which the Court addresses in turn.

i. Membership in the Proposed Classes

First, Defendant argues that neither Mr. Owino nor Mr. Gomez has demonstrated through his declaration that he is a member of any of the proposed classes he seeks to represent. *See* ECF No. 87 at 21–22, 23. Plaintiffs respond that they need "not specifically define the dates and times on which the labor law violations occurred" and that "CoreCivic failed to submit any documents or records establishing that Plaintiff did not work during the applicable limitations period in spite of the fact that CoreCivic employed Mr. Owino and Mr. Gomez and w[as] better positioned (and required by California law) to maintain such employment records." ECF No. 127 at 12.

The Forced Labor Classes: The Court concludes that both Mr. Owino and Mr. Gomez have adequately established for purposes of class certification that they are members of the California and National Forced Labor Classes. For example, Mr. Owino and Mr. Gomez both attest that "[d]etainees were . . . responsible for removing trash from the common areas of the living pods *on a daily basis*, sweeping and mopping floors, and cleaning toilet bowls, sinks, showers, and furniture," ECF No. 84-3 ¶ 20 (emphasis added); ECF No. 84-4 ¶ 16 (emphasis added), and that they "were not paid for working to clean the common areas when instructed by OMDC staff." ECF No. 84-3 ¶ 21; ECF No. 84-4 ¶ 17. Further, the detainees "almost always complied," ECF No. 84-3 ¶ 23; ECF No. 84-4 ¶ 19, "to avoid any punishment," ECF No.

84-3 ¶ 24; *see also* ECF No. 84-4 ¶ 20, because non-compliant detainees "could be subject to more random and frequent searches and cell tossing," "removed from the general living pod and placed in more restrictive housing," or saddled with a disciplinary note in their files that "could negatively impact [their] case before the judge." ECF No. 84-3 ¶ 23; ECF No. 84-4 ¶ 19.

The California Labor Law Class: The Court concludes that Mr. Owino and Mr. Gomez adequately have established that they were never paid a minimum wage through the VWP program, *see* ECF No. 84-3 ¶ 10; ECF No. 84-4 ¶ 8, and that they never received wage statements. *See* ECF No. 84-3 ¶ 13; ECF No. 84-4 ¶ 10. As such, the Court also concludes that they have established for purposes of class certification that Defendant failed to pay compensation upon termination and imposed unlawful terms and conditions of employment.[7]

As for the claims for failure to pay overtime wages and failure to provide mandated meal and rest periods, however, the Court concludes that Mr. Owino has established that he is a member of the class for his work in the kitchen but that Mr. Owino and Mr. Gomez have failed to establish that they are members of the class for any other positions they held while detained by Defendant.[8] As for Mr. Owino's work in

---

[7] Mr. Owino's and Mr. Gomez's claims for waiting time penalties, however, may not be typical of those of the Class to the extent Mr. Owino and Mr. Gomez seek to represent *current* detainees still participating in the VWP. *See supra* note 4.

[8] There also may exist typicality issues where, as here, the representative plaintiffs seek to represent a class comprised of individuals holding positions that differ from their own. *See, e.g.*, *Kelley v. SBC, Inc.*, No. 97-CV-2729 CW, 1998 WL 1794379,

the kitchen, he attests that he "worked in the kitchen on and off throughout each period of detention at OMDC." ECF No. 84-3 ¶ 5. His "normal shift in the kitchen was from 3:00 a.m. – 12:00 p.m., five days per week," *id.* ¶ 6, and that his "usual schedule would be to work from 3:00 a.m. until about 6:30 a.m." and from 7:00 a.m. to "12:00 p.m. without any other scheduled rest break." *Id.* ¶ 7. Although there was typically a meal "break" between 6:30 a.m. and 7:00 a.m., the kitchen crew had to use at least some of that time to prepare their own meals. *Id.* Further, "there were many instances where [Mr. Owino] and other kitchen workers would work more than [their] shift[,] . . . including up to 14 working hours in a day." *Id.* ¶ 6. Mr. Owino was paid $1.00 per day, *id.* ¶ 10, regardless of the length of his shift or any extra hours worked. *See id.* ¶ 11. His pay was also capped at $5.00 per week, meaning that when he worked a sixth and/or seventh day each week, he would not receive any additional payment. *See id.* ¶ 22. Accordingly, Mr. Owino has proven that, as a member of the kitchen crew, he may not have been paid overtime, provided with mandatory rest periods, and provided with proper meal periods.

But the declarations fail to provide sufficient detail as to Mr. Owino's work as a chemical porter and cleaner or as to Mr. Gomez's work as a cleaner for the Court to conclude that they are members of the California Labor Class as to the overtime and rest and

---

at *15 (N.D. Cal. Nov. 18, 1998) ("[T]he typicality requirement is not met for a class that would include both employees in Plaintiffs' positions, in which there is substantial diversity, and other positions that named Plaintiffs do not hold. The Court thus finds that Plaintiffs meet the typicality requirement only as to a class comprised of the positions that they held.").

meal break claims as to those positions. Mr. Owino and Mr. Gomez both attest that there was "no set shift" for these positions and that they were expected to "work 'until the job was done[,]'" without any "scheduled rest or meal breaks." ECF No. 84-3 ¶¶ 8–9; ECF No. 84-4 ¶ 7. From the limited evidence in the record, it appears that the "typical" schedule for these positions was between two and six hours per shift, *see* ECF No. 118-5 at 479 ¶¶ 40–42;[9] however, a rest period is only mandated for shifts lasting at least three-and-a-half hours, IWC Order No. 5-2001, Section 12(A), while a meal break is only required for shifts lasting at least five hours. *See* Cal. Labor Code § 512(a). Plaintiffs therefore have failed to establish that they were entitled to overtime or meal or rest periods for work performed as chemical porters or cleaners.

ii. Statute of Limitations

Second, Defendant contends that both Mr. Owino and Mr. Gomez may be time-barred from pursuing claims under the California Labor Code and IWC Orders. *See* ECF No. 118 at 23–24. Plaintiffs counter that "possible differences in the application of a statute of limitations to individual class members, including the named plaintiff, does not preclude certification of a class action so long as the necessary commonality and, in the 23(b)(3) class action, predominance, are otherwise present." ECF No. 127 at 13 (quoting *Dibb v. Allianceone Receivables Mgmt., Inc.*, No. 14-5835 RJB, 2015 WL 8970778, at *8 (W.D. Wash. Dec. 16, 2015)).

---

[9] Pin citations to Defendant's exhibits refer to the pagination provided by Defendant at the bottom of each page.

The Court must first determine the applicable class periods. Plaintiffs claim that their "claims for unpaid wages and for violations of the UCL are all governed by a four[-]year statute of limitations." ECF No. 160 at 3 (citing *White v. Home Depot U.S.A., Inc.*, No. 17-cv-00752-BAS-AGS, 2019 WL 1171163, at *24 (S.D. Cal. Mar. 13, 2019)). Defendant responds that the California Labor Code claims are time-barred and that Plaintiffs can pursue only the UCL claim. *See* ECF No. 164 at 2–3 (citing *Mendoza v. Bank of Am. Corp.*, No. 19-cv-02491-LB, 2019 WL 4142140, at *9 (N.D. Cal. Aug. 30, 2019); *Vasquez v. Randstad US, L.P.*, No. 17-CV-04342-EMC, 2018 WL 327451, at *4 (N.D. Cal. Jan. 9, 2018); *Van v. Language Line Servs., Inc.*, No. 14-CV-03791-LHK, 2016 WL 3143951, at *30 (N.D. Cal. June 6, 2016), *aff'd in part*, 733 F. App'x 349 (9th Cir. 2018); *Cortez v. Purolator Air Filtration Prods. Co.*, 23 Cal. 4th 163, 178–79 (2000)).

For purposes of the Certification Motion, this is a distinction without a difference: Even if Plaintiff's claims under the California Labor Code are time-barred, they still may recover for the majority of the alleged violations under the UCL. Accordingly, the Class Period for the California Labor Class to the extent it is predicated on Defendant's alleged failure to pay wages, including the meal and rest break claims, *see Tompkins v. C & S Wholesale Grocers, Inc.*, No. 2:11-CV-02836-GEB, 2012 WL 639349, at *5 (E.D. Cal. Feb. 27, 2012) (citing *Tomlinson v. Indymac Bank, F.S.B.*, 359 F. Supp. 2d 891, 898 (C.D. Cal. 2005)), begins May 31, 2013. *Magadia v. Wal-Mart Assocs., Inc.*, 384 F. Supp. 3d 1058, 1076 (N.D. Cal. 2019) (citing *Cortez v. Purolator Air Filtration Prods. Co.*, 23 Cal. 4th 163, 179 (2000)). The waiting time claims and wage statement claims, however, seek

remedies that cannot be pursued under the UCL. *See, e.g.*, *Gomez v. J. Jacobo Farm Labor Contractor, Inc.*, No. 115CV01489AWIBAM, 2019 WL 5787805, at *25–26 (E.D. Cal. Nov. 6, 2019) (wage statement claims); *Pineda v. Bank of Am., N.A.*, 50 Cal. 4th 1389, 1401–02 (2010) (waiting time claims). Consequently, the Class Period for the California Labor Law Class to the extent it is predicated on Defendant's alleged failure timely to pay compensation upon termination begins May 31, 2014, *see Hassan v. Praxair, Inc.*, No. LACV1802811JAKAFMX, 2019 WL 3064435, at *5 (C.D. Cal. Mar. 4, 2019), and there are two Class Periods for Defendant's alleged failure to provide wage statements, *see Troester v. Starbucks Corp.*, No. CV1207677CJCPJWX, 2019 WL 2902487, at *2 (C.D. Cal. May 21, 2019) (collecting cases): (1) for purposes of penalties, the Class Period begins May 31, 2016, pursuant to California Code of Civil Procedure section 340; and (2) for purpose of actual damages, the Class Period begins May 31, 2014, pursuant to California Code of Civil Procedure section 338. *See Gomez*, 2019 WL 5787805, at *23; *Troester*, 2019 WL 2902487, at *2; *Franke v. Anderson Merchandisers LLC*, No. CV173241 DSFAFMX, 2017 WL 3224656, at *8 (C.D. Cal. July 28, 2017).

Mr. Gomez was released from detention on September 18, 2013, *see* ECF No. 84-4 ¶ 2, and Mr. Owino was released on March 9, 2015.[10] *See* ECF No.

---

[10] Defendant argued for the first time in its post-hearing supplemental brief that, "[a]lthough Mr. Owino's last stay at SDCF was from February 9, 2015 to March 9, 2015 (Dkt. 147-1, ¶ 7), the last day he worked at SDCF (the only CoreCivic facility he was detained at) was . . . May 22, 2013 (Dkt. 118-7 at 155, CCOG0000246[3])." *See* ECF No. 164 at 2. If this is true, Mr. Owino will not be a member of the California Labor Law Class,

84-3 ¶ 2. On the current record, it appears that Mr. Owino is part of the California Labor Law Class for the wage claims, for failure to pay compensation upon termination, and for waiting time penalties and actual damages for the failure to provide wage statements, whereas Mr. Gomez is only part of the California Labor Law Class for the wage claims. Mr. Owino's inability to pursue penalties under Section 226 and Mr. Gomez's inability to pursue waiting time penalties under Section 203 and either penalties or actual damages under Section 226 present a legitimate challenge to their typicality. *See Lindblom v. Santander Consumer USA, Inc.*, No. 15-CV-0990-BAM, 2018 WL 573356, at *5 (E.D. Cal. Jan. 26, 2018) ("[T]his Court and other courts in this Circuit routinely preclude potentially time-barred plaintiffs from serving as class representatives when they seek to represent members with timely claims.") (collecting cases); *Deirmenjian v. Deutsche Bank, A.G.*, No. CV0600774MMMRCX, 2010 WL 11505699, at *25 (C.D. Cal. May 13, 2010) ("Because none of the proposed class representatives appears to have a

---

the Class Period for which begins May 31, 2013. *See supra* page 31. Although the Court permitted Plaintiffs to file a response to Defendant's supplemental brief, thereby mitigating any due process concerns, the Court is disinclined to resolve this issue at the class certification stage given Defendant's belated assertion of this defense and factual disputes concerning whether Mr. Owino worked during the Class Period for the California Labor Law Class, *see* ECF No. 169 at 1, 3–4; *compare* ECF No. 84-3 ¶ 5 ("During each period of detention at OMDC, I performed work through the 'Volunteer Work Program.'"), *with* ECF No. 118-7 at 774 (claiming to show that Mr. Owino's last date of payment through the VWP was May 22, 2013), particularly given that Mr. Gomez remains a viable class representative for the majority of the claims of the California Labor Law Class.

viable claim, the court finds that the typicality requirement is not satisfied."); *Blackwell v. SkyWest Airlines, Inc.*, 245 F.R.D. 453, 463 (S.D. Cal. 2007) ("Plaintiff experienced no harm within the one year statute of limitations because she did not receive a pay stub that allegedly failed to document exact work hours. . . . Plaintiff therefore lacks standing.") (citing *Sosna v. Iowa*, 419 U.S. 393, 402–03 (1975)); *see also Troester*, 2019 WL 2902487, at *2 ("[W]hether [the named plaintiff] can represent . . . class members [who may pursue penalties under Section 226] is a typicality issue for class certification."); *Burton v. Mountain W. Farm Bureau Mut. Ins. Co.*, 214 F.R.D. 598, 609 (D. Mont. 2003) ("[The proposed class representative's] claim is time-barred and she cannot serve as a class representative.").

Accordingly, the Court concludes that neither Mr. Owino nor Mr. Gomez is typical of the members of the California Labor Law Class seeking penalties under Section 226 and that Mr. Gomez is not typical of members of the California Labor Law Class seeking waiting time penalties under Section 203 or penalties or actual damages under Section 226.

iii. Non-California Facilities

Finally, as to the National Forced Labor Class, Defendant urges that because both Mr. Owino and Mr. Gomez were detained at California facilities, "they cannot say that they suffered the same or similar injury as putative class members at these facilities" and "they also have no incentive to pursue a class action on behalf of detainees in facilities they never stepped foot in." ECF No. 118 at 24. Defendant also contends that Plaintiffs have failed to meet their burden to establish uniform policies as to sanitation and discipline because Plaintiffs have introduced

evidence concerning the policies of only ten of Defendant's twenty-four nationwide facilities and the declarations of only four detainees, all of whom are from Defendant's California facilities. *Id.* at 26.

Plaintiffs rejoin that they "and the putative class members all worked as a direct result of . . . threats" of discipline and that "Plaintiffs can adequately represent the interests of a national class because they were subjected to CoreCivic's enterprise-wide policies and practices and their claims are typical of the class." ECF No. 127 at 14 (citing *Evans v. IAC/Interactive Corp.*, 244 F.R.D. 568, 573, 576 (C.D. Cal. 2007)). Further, "CoreCivic fails to address, and effectively concedes, that (1) its facilities use template policies and procedures that are create by CoreCivic's Facility Support Center, which functions as CoreCivic's 'corporate office,' and (2) the use of the template policies and procedures are mandatory such that facilities do not have the ability to 'opt out' of them." ECF No. 127 at 10–11 (citing Ridley Decl. Ex. 3 at 50:15–51:25, 54:24–55:4, 59:1–5, 68:1–9; Ridley Decl. Ex. 6 at 59:8–12). "CoreCivic[] . . . also overlooks Mr. Ellis' testimony that the VWP, sanitation, and discipline policies on which Plaintiffs rely are 'standard policies' that are applicable across CoreCivic's facilities." *Id.* at 11 (citing Ridley Decl. Ex. 3 at 75:9–25, 77:13–17).

The Court concludes that Plaintiffs adequately have established standardized policies concerning the cleaning of common areas under threat of discipline across Defendant's non-California facilities. The policies from ten of Defendant's twenty-four facilities, *see* ECF No. 118 at 3; *see also* Ridley Decl. Exs. 9, 12–29, coupled with the testimony from Defendant's Rule 30(b)(6) witness that Defendant uses template

policies throughout its facilities from which the facilities cannot opt out, *see* Ridley Decl. Ex. 3 at 49:21–51:147 54:24–55:13, 59:1–5, 68:1–9, 75:9–25, 77:13–17, compel the Court to conclude that Plaintiffs have met their burden at the class certification stage as to the standardization of Defendant's policies across its facilities. *See Alba*, 2007 WL 953849, at *2 (noting that contention that policy was applied differently in California "goes to the merits of the dispute"). Consequently, for purposes of class certification, the Court concludes that Plaintiffs have established that their claims under the TVPA are typical of those of the putative members of the National Forced Labor Class given the uniformity of policies across Defendant's facilities for the cleaning of common areas and discipline for failure to comply. *See infra* Section II.C.1.a.2; *see also Balasanyan*, 294 F.R.D. at 562 (concluding that California plaintiffs were typical of proposed nationwide class over the defendant employer's argument "that Plaintiffs have failed to show that their experiences are typical of the experiences of more than 60,000 draw commission salespeople in 30 different states at 117 stores" because the defendant "offer[ed] no additional information as to why Plaintiffs fall short of typicality"); *In re AutoZone, Inc., Wage & Hour Emp't Practices Litig.*, 289 F.R.D. 526, 535 (N.D. Cal. 2012) ("Plaintiffs are typical of the proposed class [of current and former employees from hundreds of retail auto parts stores in California] because they were subject to the same policy as the proposed class."), *aff'd*, No. 17-17533, 2019 WL 4898684 (9th Cir. Oct. 4, 2019); *Dilts v. Penske Logistics, LLC*, 267 F.R.D. 625, 633 (S.D. Cal. 2010) ("Plaintiffs have provided evidence that indicates that they were subject to all of

these alleged wrongs and that the relevant policies were common across Defendant's California facilities.").

b. Plaintiffs' Counsel

Plaintiffs' counsel indicates that it "does not have any conflicts with other class members and will prosecute the action vigorously on behalf of both the named and absent class members," ECF No. 87 at 23–24 (citing Ridley Decl. ¶¶ 2–16; Teel Decl. ¶ 4), and that its attorneys "are well qualified, have significant experience in prosecuting complex litigation cases, and have previously been certified as class counsel in a class action involving claims against a prison technology company on behalf of detainees/prisoners." *Id.* at 24 (citing Ridley Decl. ¶¶ 2–16; Teel Decl. ¶¶ 9–25). Further, "CoreCivic does not dispute the adequacy of Plaintiffs' proposed class counsel." ECF No. 127 at 12. Consequently, the Court concludes that Plaintiffs' counsel "will fairly and adequately protect the interests of the class." *See* Fed. R. Civ. P. 23(a)(4).

C. Rule 23(b)(3) Requirements

Rule 23(b)(3) states that a class may be maintained if the requirements of Rule 23(a) are fulfilled and if "the court finds that the questions of law or fact common to the class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

1. Predominance of Common Issues

The predominance analysis focuses on "the legal or factual questions that qualify each class member's case as a genuine controversy" to determine "whether

proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prods.*, 521 U.S. at 623; *see also* Fed. R. Civ. P. 23(b)(3) (to certify a class, the court must find that "questions of law or fact common to class members predominate over any questions affecting only individual members"). "Considering whether questions of law or fact common to class members predominate begins . . . with the elements of the underlying cause of action." *Erica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 809 (2011) (quotation marks omitted). A court must analyze these elements to "determine which are subject to common proof and which are subject to individualized proof." *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 267 F.R.D. 291, 310–11 (N.D. Cal. 2010), *abrogated on other grounds by In re ATM Fee Antitrust Litig.*, 686 F.3d 741 (9th Cir. 2012).

a. Uniformity of Defendant's Policies

As an initial matter, Defendant contends that, "to certify a claim based on a policy or practice, a plaintiff must present 'significant proof' that a policy or practice in fact exists *and* that the entire class was subjected to it." ECF No. 118 at 25 (citing *Wal-Mart*, 564 U.S. at 353; *Ellis*, 657 F.3d at 983) (emphasis in original). Defendant challenges Plaintiffs' proof regarding the uniformity of its sanitation and disciplinary policies and overtime and break policies. *See id.* at 25–29.

i. California Labor Law Class: Overtime and Rest and Meal Break Policies

Defendant argues that Plaintiffs have failed to "provide any evidence to support any . . . policies" that Defendant does "not pay[] overtime wages and

refus[es] to provide rest and meal breaks, in violation of California's labor laws." ECF No. 118 at 28. In fact, Defendant argues, its policy explicitly "*prohibit[s]* detainees from working more than eight hours in a day or forty hours in a week." *Id.* (emphasis in original).

Plaintiffs counter that "the common policies and practices alleged by Plaintiffs are either confirmed by CoreCivic in its Opposition Brief or established by CoreCivic's own written policies and Mr. Ellis' testimony." ECF No. 127 at 10. "At best, CoreCivic has created a dispute of material fact concerning the existence of the policies and practices that are the subject of Plaintiffs' class claims[, b]ut merely denying the existence of a policy or practice in the face of overwhelming evidence to the contrary is not sufficient to defeat class certification." *Id.* (citing *Howell v. Advantage RN, LLC*, No. 17-CV-0883 JLS (BLM), 2018 WL 3437123, at *2 (S.D. Cal. July 17, 2018); *Tourgeman v. Collins Fin. Servs., Inc.*, No. 08-CV-1392 JLS (NLS), 2011 WL 5025152, at *3 (S.D. Cal. Oct. 21, 2011)). "Moreover, CoreCivic's denial of the existence of the policies and practices identified by Plaintiffs create 'a viable common question' of whether such a policy existed, 'and the truth or falsity of that claim will drive the resolution of this case.'" *Id.* (citing *Ruiz v. XPO Last Mile, Inc.*, No. 5CV2125 JLS (KSC), 2016 WL 4515859, at *7 (S.D. Cal. Feb. 1, 2016)).

Overtime Wages: The Court concludes that Plaintiffs have met their burden for class certification of establishing that Defendant implemented common policies and practices in California as to the failure to pay overtime wages. Plaintiffs have introduced several of Defendant's policies, handbooks, and a

VWP Agreement Form. *See* Ridley Decl. Exs. 9, 11, 12, 14, 19, 21, 24, 27. The VWP is among the "standard policies" created by template by Defendant's own Facility Support Center's policies and procedures department from which Defendant's facilities cannot "opt out." *See* Ridley Decl. Ex. 3 at 49:21–51:147 54:24–55:13, 59:1–5, 68:1–9, 75:9–25, 77:13–17. Not only do these policies not provide for payment of overtime, *see generally* Ridley Decl. Exs. 9, 12, 14, 19, 21, 24, 27, but it is clear that no overtime wages—if earned—were ever paid because "[c]ompensation [was] $1.00 per day." Ridley Decl. Ex. 9. Accordingly, the Court concludes that Plaintiffs have established a uniform policy as to the payment of overtime wages.[11] *See Alba v. Papa John's USA, Inc.*, No. CV 05-7487 GAF (CTX), 2007 WL 953849, at *1 (C.D. Cal. Feb. 7, 2007); *see also id.* at *2 ("[To the extent d]efendant[] contend[s] that the policy was applied . . . in accordance with California . . . law, that contention goes to the merits of the dispute and not to the question of whether common issues predominate") (citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177–78 (1974); *Staton*, 327 F.3d at 954).

Rest and Meal Breaks: The Court concludes, however, that Plaintiffs have failed to establish a uniform policy as to the provision of meal and rest breaks. To establish the existence of uniform policies, Plaintiffs cite to their own declarations and the deposition testimony of Jason Ellis and Fred

---

[11] The Court reiterates that this issue is distinct from that of whether Plaintiffs have established their entitlement to overtime wages, *i.e.*, whether there exist uniform policies *requiring* detainees to work overtime. *See infra* Section II.C.1.b.

Figueroa, two of Defendant's employees. *See* ECF No. 87 at 7 (citing ECF No. 84-3 ¶¶ 7–9; ECF No. 84-4 ¶ 7; Ridley Decl. Ex. 3 (ECF No. 85-4) at 129:23–130:15; Ridley Decl. Ex. 6 (ECF No. 85-7) at 34:2–8). Mr. Owino, for example, attests that, as a member of the kitchen crew, he received only one, thirty-minute meal "break," during which he was required to prepare his own meal, and no rest breaks while working a 3:00 a.m. to 12:00 p.m. shift. ECF No. 84-3 ¶ 7. As a chemical porter and cleaner, he would work shifts of an unspecified length with "no scheduled rest or meal breaks." ECF No. 84-4 ¶¶ 8–9. Similarly, Mr. Gomez worked as a cleaner for shifts of an unspecified length without "scheduled rest or meal breaks." ECF No. 84-4 ¶ 7. Mr. Ellis testified both that he was "not sure if there are -- there are breaks or not" and that he was "sure there would be breaks, some breaks at least" but that he "d[id]n't know the length of those breaks or -- or the duration." Ridley Decl. Ex. 3 at 129:23–130:15. Mr. Figueroa testified that the "outside crew" works between 7:30 a.m. and 3:00 p.m. with "a lunch break in the middle" and "no regularly scheduled break." Ridley Decl. Ex. 6 at 34:2–8.

On this record, the Court concludes that Plaintiffs have failed to establish a uniform policy as to the denial of rest and meal breaks. In the absence of a written policy, "Plaintiffs must show 'substantial evidence' of a systematic policy" depriving detainees of rest and meal breaks. *See Nevarez v. Costco Wholesale Corp.*, No. 2:19-CV-03454-SVW-SK, 2019 WL 7421960, at *7 (C.D. Cal. Dec. 26, 2019) (citing *In re AutoZone*, 289 F.R.D. at 539; *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1051 (2012)). As discussed above, *see supra* Section II.B.3.a.1,

Plaintiffs have failed to meet this burden. Indeed, Plaintiffs have introduced no evidence that detainees in the VWP holding positions other than the morning kitchen shift were deprived of a legally mandated rest or meal break. *See id.* As for that one shift, Plaintiffs have introduced the sworn testimony of only one detainee, Mr. Owino, to support an allegedly systemic policy of depriving those detainees of legally mandated breaks. ECF No. 84-3 ¶ 7. The Court cannot conclude that Mr. Owino's testimony as to his "normal shift," *see id.* ¶ 6, amounts to "substantial evidence," particularly given the testimony of D. Topasna, Chief of Unit Management at the San Diego Correctional Facility ("SDCF") and OMDC, *see* Def.'s Ex. at 472 ¶ 3, that Defendant's practice was that the breakfast shift went from 3 a.m. to 8:30 a.m. with "a meal break and . . . multiple rest periods."[12] *Id.* at 479 ¶ 39. The Court therefore concludes that, based on the current record, Plaintiffs have failed to establish that Defendant has a uniform policy or practice of denying detainees legally mandated rest and meal breaks.

ii. Forced Labor Classes: Sanitation and Discipline Policies

Defendant also contends that Plaintiffs have failed to introduce significant proof that the putative class members were subjected to uniform sanitation and disciplinary policies that forced detainees to clean common areas under threat of discipline. *See* ECF No. 118 at 25–26. Specifically, the written policies

---

[12] Although not evidence, this is consistent with Defendant's counsel's representation at the hearing that whether breaks were provided was determined by the individual supervising officer. *See* Tr. at 31:6–33:17.

themselves require only that the detainees clean their assigned living areas, whereas detainees in the VWP program are required to clean the common areas, *see id.* at 25, and detainees are not disciplined with segregation for failing to clean. *See id.* at 25–26. Further, the only evidence that detainees are forced to clean common areas under threat of disciplinary segregation comes from the declarations of four detainees, which "is not 'significant proof' that more than 120,000 detainees were subject to their claimed policy." *See id.* at 26.

Plaintiffs dispute Defendant's reading of the sanitation policy, contending that there is insufficient evidence that the cleaning policies of which Plaintiffs complain apply only to those participating in the VWP. *See* ECF No. 127 at 3–4. Further, Defendant's own witness confirmed that "any of the types of discipline is possible," *see id.* at 4 (citing Ridley Decl. Ex. 3 at 157:5–16), and this threat of discipline was conveyed to all detainees at intake through the admission handbook and reinforced through Defendant's enforcement of the policy, as attested to by half-a-dozen detainees. *See id.* at 5 (citing Pl.'s Exs. 27–29; Ortiz Decl. ¶ 4; Nunez Decl. ¶ 4; Owino Decl. ¶¶ 23–24; Gomez Decl. ¶¶ 19–20; Santibanez Decl. ¶¶ 3–4; Jones Decl. ¶¶ 3–8).

The Court concludes that Plaintiffs sufficiently have demonstrated for purposes of class certification that Defendant implemented common sanitation and discipline policies that together may have coerced detainees to clean areas of Defendant's facilities beyond the personal housekeeping tasks enumerated in the ICE PBNDS. First, Defendant's sanitation policies provide that "[a]ll detainees/inmates assigned to a unit are responsible for maintaining the common

living area in a clean and sanitary manner" and that "[d]etainee/inmate workers will be assigned to each area on a permanent basis to perform the daily cleaning routine of the common area," including trash removal, sweeping and mopping, cleaning and scrubbing of bathroom facilities, and wiping off of furniture. Ridley Decl. Ex. 12 (ECF No. 87-7) at 1–2 (OMDC in California); Ridley Decl. Exs. 13 (ECF No. 87-8) and 18 (ECF No. 87-13) at 1–2 (Stewart Detention Center in Georgia); Ridley Decl. Exs. 14 (ECF No. 87-9) and 19 (ECF No. 87-14) at 1–2 (SDCF in California); Ridley Decl. Ex. 15 (ECF No. 87-10) at 1–2 (North Georgia Detention Center); Ridley Decl. Ex. 16 (ECF No. 87-11) at 1–2 (Northeast Ohio Correctional Center); Ridley Decl. Ex. 17 (ECF No. 87-12) at 1–2 (T. Don Hutto Residential Center in Texas); Ridley Decl. Ex. 20 (ECF No. 87-15) at 1–2 (La Palma Correctional Center in Arizona). Although Defendant is adamant that these policies "do[ ] not require detainees to *clean* the common areas of the housing units," *see, e.g.*, ECF No. 118 at 4 (emphasis in original), this is not clear from the face of the policies. For example, as for the "COMMON LIVING AREAS," the policies note not only that "[a]ll detainees/inmates assigned to a unit are responsible for maintaining the common living area in a clean and sanitary manner," but also that "[t]he officer assigned to that unit will see that all materials needed to carry out this cleaning assignment are provided." *See, e.g.*, Ridley Decl. Ex. 12 at 1. Further, the policies outline a "CLEANING PROGRAM FOR OTHER AREAS," indicating that "[a]ll floors will be swept and mopped on a daily basis," "[t]oilet bowls and sinks will be cleaned daily," "[t]he showers and floors will be mopped and scrubbed daily," "[a]ll furniture will be

dusted on a daily basis and cleaned when necessary," "[a]ll trash will be emptied daily," "[w]indows will be washed weekly or more often when erquired," "[w]alls and doors will be wiped daily," and "[a]ll equipment will be dusted or cleaned on a daily basis." *Id.* at 1–2. There is no indication from the face of the policies that these tasks are to be performed only by those participating in the VWP, and there exists a dispute of fact based on the declarations submitted by staff of Defendant, who testified that the sanitation policies did not require detainees to clean up after others, *see* ECF No. 123 ¶¶ 6–21; ECF No. 118-2 at 68–70 ¶¶ 5–20, 130–33 ¶¶ 9–25, 136–38 ¶¶ 6–20; ECF No. 118-5 at 466–69 ¶¶ 6–22, 473–6 ¶¶ 6–23, and those submitted by several detainees, who testified that they were required—separate and apart from the VWP—to clean common areas, including windows, floors, toilets, sinks, showers, and furniture, without payment and under threat of punishment. *See* ECF No. 84-3 ¶¶ 17–24; ECF No. 84-4 ¶¶ 13–20; ECF No. 84-5 ¶¶ 3–4, 6; ECF No. 84-6 ¶¶ 3–4, 5.[13] As Plaintiffs note, the Court cannot resolve factual disputes of this nature at this stage in the litigation. *See* ECF No. 127 at 11 (citing *Howell v. Advantage RN, LLC*, No. 17-CV-0883 JLS (BLM), 2018 WL 3437123, at *2 (S.D. Cal. July 17, 2018)).

Second, Defendant's policies and the declarations of putative class members support Plaintiffs' contention that Defendant may have procured this labor under threat of punishment. For example, the Detainee Admission and Orientation Handbook for

---

[13] There are two paragraphs numbered "5" in the Declaration of Jonathan Ortiz Dubon. The Court cites to the second paragraph 5.

OMDC indicates that "**[i]t is expected that staff will receive your full cooperation while you are in this facility**," Ridley Decl. Ex. 21 (ECF No. 85-22) at 8 (emphasis in original); detainees are to "[o]bey all orders as given by staff members," *id.*; and detainees are to "***ADHERE TO ALL OTHER RULES AS INSTRUCTED BY ANY STAFF MEMBER***." *Id.* at 39 (emphasis in original). As for disciplinary action, the OMDC handbook notes that "[r]efusal to clean assigned living area" or "[r]efus[al] to obey a staff member/officer's order" may be sanctioned with, among other things, "[d]isciplinary transfer (recommended)," "[d]isciplinary [s]egregation (up to 72 hours)," "[l]oss of privileges (e.g., commissary, vending machines, movies, recreation, etc.)," "[c]hange housing," or "[r]estrict to housing pod." *Id.* at 45. The same recommended disciplinary actions can be found in handbooks from other of Defendant's facilities, both within and outside of California. *See* Ridley Decl. Ex. 22 (ECF No. 85-23) at 29 (Florence Correctional Center in Arizona); Ridley Decl. Ex. 23 (ECF No. 85-24) at 29 (SDCF in California); Ridley Decl. Ex. 24 (ECF No. 85-25) at 49 (Laredo Processing Center in Texas); Ridley Decl. Ex. 25 (ECF No. 85-26) at 17 (Eloy Detention Center in Arizona); Ridley Decl. Ex. 26 (ECF No. 85-27) at 17 (Houston Processing Center in Texas). At this stage, this suffices to show that Defendant had a uniform disciplinary policy that could reasonably be understood to have subjected detainees to discipline for failure to comply with the uniform sanitation policy. This conclusion is bolstered by the declarations of Plaintiffs and other putative class members, who attest that failure to abide by an order to clean the commons areas could result in disciplinary action consistent with the

uniform disciplinary policy or even other retaliatory measures. *See, e.g.*, ECF No. 84-3 ¶¶ 19, 23–24; ECF No. 84-4 ¶¶ 15, 19–20; ECF No. 84-5 ¶¶ 3–4; ECF No. 84-6 ¶¶ 3–4.

The Court therefore concludes that, for purposes of class certification, Plaintiffs sufficiently have established that Defendant instituted uniform sanitation and disciplinary policies that were applied class-wide and, taken together, may have coerced detainees under threat of discipline into performing cleaning duties beyond those permitted by ICE.

b. The California Labor Law Class

Plaintiffs urge that the claims of the California Labor Law Class "all turn on a common legal question: whether ICE detainees that worked through the VWP at CoreCivic's facilities in California are employees of CoreCivic under California law and entitled to the protections for employees set forth in the California Labor Code and the IWC's Wage Order No. 5-2001." ECF No. 87 at 17. Although Defendant "does not dispute that [whether detainees who participate in the VWP are CoreCivic's employees under California law] is a common question," it does contest whether it is "a 'significant aspect of the case.'" ECF No. 118 at 32 (quoting *Hanlon*, 150 F.3d at 1022). Defendant asserts that "[t]here are many other individual questions needed to fully resolve the putative class member[s'] claims," including detainees' status as authorized or unauthorized aliens, hours worked, whether detainees received meal and/or rest periods, the amount of damages, and the amount of any offset. *See id.* at 32–33.

Plaintiffs claim that Defendant "misses the mark entirely" because "Plaintiffs and the putative class members were subjected to the same generally applicable policies and practices while involuntarily confined at CoreCivic as ICE detainees," meaning "[t]heir claims depend on whether the challenged policies and practices are unlawful and will 'prevail or fail in unison' based on the Court's adjudication of that issue." ECF No. 127 at 12 (citing *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 460 (2013)).

Plaintiffs are correct that "[c]ertification is appropriate where the legality of a particular policy presents a 'significant question of law' that is 'apt to drive the resolution of the litigation.'" *Boyd v. Bank of Am. Corp.*, 300 F.R.D. 431, 437 (C.D. Cal. 2014) (quoting *Abdullah v. U.S. Sec. Assoc.*, 731 F.3d 952, 963 (9th Cir. 2013) (citing *Wal-Mart*, 564 U.S. at 350)); *see also Moore v. Ulta Salon, Cosmetics & Fragrance, Inc.*, 311 F.R.D. 590, 604–05 (C.D. Cal. 2015) ("The factual issue of whether [the defendant's] policies actually require—or are interpreted to require—[the alleged labor law violation] is one that is common to the class as a whole, and it is capable of resolution by common proof."); *Alba*, 2007 WL 953849, at *14 ("Whether the [defendant's] policy satisfies the right to meal and rest periods under California law is a question of law . . . common to the proposed subclass."). Nevertheless, the Court must "take into consideration all factors that militate in favor of, or against, class certification." *Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 946 (9th Cir. 2009) (citing *In re Wells Fargo Home Mortg. Overtime Pay Litig.*, 571 F.3d 953, 958–59 (9th Cir. 2009)).

"Considering whether 'questions of law or fact common to the class predominate' begins, of course, with the elements of the underlying cause of action." *Soares v. Flowers Foods, Inc.*, 320 F.R.D. 464, 478 (N.D. Cal. 2017) (quoting *Erica P. John Fund*, 563 U.S. at 809). "[T]he Court identifies the substantive issues related to plaintiff's claims . . . then considers the proof necessary to establish each element of the claim or defense; and considers how these issues would be tried." *Id.* (quoting *Gaudin v. Saxon Mortg. Servs., Inc.*, 297 F.R.D. 417, 426 (N.D. Cal. 2013)). "The predominance inquiry requires that plaintiff demonstrate that common questions predominate as to each cause of action for which plaintiff seeks class certification." *Gaudin*, 297 F.R.D. at 426 (citing *Amchem Prods.,* 521 U.S. at 620). Further, "[a] court evaluating predominance 'must determine whether the elements necessary to establish liability,'" here, employee status, "'are susceptible to common proof or, if not, whether there are ways to manage effectively proof of any element that may require individualized evidence.'" *Villalpando v. Exel Direct Inc.*, 303 F.R.D. 588, 608 (N.D. Cal. 2014) (quoting *Ayala v. Antelope Valley Newspapers, Inc.*, 59 Cal. 4th 522, 533 (2014)).

Here, Plaintiffs urge that their "claims for violations of the California Labor Code and violations of the IWC's Wage Order No. 5-2001 all hinge on the common legal issue of whether CoreCivic's classification of ICE detainees that worked through the VWP as 'volunteers' was correct or whether the ICE detainees were employees of CoreCivic under California law." *See* ECF No. 87 at 18. Strictly speaking, this does not suffice to meet Plaintiffs' burden. *See, e.g.*, *Abikar v. Bristol Bay Native Corp.*, No. 317CV01036 GPCAGS, 2018 WL 6593747, at *7

(S.D. Cal. Dec. 14, 2018) (concluding that the plaintiffs failed to meet their burden of establishing predominance under Rule 23(b)(3) where their "predominance assertion ma[de] no reference to their underlying claims"); *accord Celena King v. Great Am. Chicken Corp.*, No. CV 17-4510-GW(ASX), 2019 WL 6348463, at *3 (C.D. Cal. July 18, 2019) (denying class certification where the plaintiff failed to address predominance as to each cause of action). Nonetheless, "public policy favor[s] disposition of cases on their merits," *Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998); consequently, the Court analyzes each of Plaintiff's claims.

i. Minimum Wage

Plaintiffs' fourth cause of action is for failure to pay minimum wage in violation of California Labor Code sections 1194, 1197, and 1197.1 and IWC Wage Order No. 5-2001. *See* FAC ¶¶ 71–75. Whether asserted under the California Labor Code or the UCL, *see supra* Section II.B.3.a.ii, the Court concludes that common issues predominate as to the minimum wage claim.

Here, there are common, predominating questions concerning Defendant's classification of detainees participating in the VWP as volunteers and, consequently, whether those detainees were paid according to California's minimum wage statutes and regulations. Previously, the Court expressed concern regarding whether this claim was susceptible to common proof, *see, e.g.*, Tr. at 6:17–20; however, upon further reflection and review of the record, the Court concludes that "[m]ethods of common proof could be devised" to determine whether detainees participating in the VWP were paid a minimum wage. *See Kamar v. Radio Shack Corp.*, 254 F.R.D. 387, 402

(C.D. Cal. 2008), *aff'd*, 375 F. App'x 734 (9th Cir. 2010). Although Defendant does not maintain detailed time-keeping records for its detainees, *cf. Novoa v. GEO Group, Inc.*, No. EDCV172514 JGBSHKX, 2019 WL 7195331, at *3 (C.D. Cal. Nov. 26, 2019), there still exist records for days on which detainees worked, *see, e.g.*, Ridley Decl. Exs. 45–50, and—even if the records currently before the Court are not complete—there appear to be set schedules for the various positions held by participants in the VWP. *See, e.g.*, Def.'s Exs. at 479–80 ¶¶ 39–42. Together, this evidence may allow the trier of fact to determine which participants in the VWP were paid less than the minimum wage—and by how much—based on the difference between the payment received and the number of hours per shift for the position, thereby "avoid[ing] testimony by every class member." *See Kamar*, 254 F.R.D. at 402. The Court therefore concludes that there exist common, predominating questions for the California Labor Law Class as to Plaintiffs' minimum wage cause of action.

ii. Overtime

Plaintiff's fifth cause of action is for failure to pay overtime wages in violation of California Labor Code sections 204, 510, and 1194 and IWC Wage Order No. 5-2001. *See* FAC ¶¶ 76–79. The Court concludes that Plaintiffs have not met their burden of establishing that common issues predominate as to this claim.

Not only have Plaintiffs failed to establish that there exists a common policy that detainees were required to work overtime, *see supra* Section II.B.3.a.i, but it is not clear to the Court that Plaintiffs' claim is susceptible to common proof. Should the Court determine that the members of the California Labor Law Class were employees rather

than detainees, there must be some means of determining on a class-wide basis which detainees are entitled to overtimes wages, which is a question of liability and not damages. In the absence of a written policy or schedule mandating overtime or substantial evidence that the shifts actually worked by detainees entitled them to overtime, Plaintiffs have failed to establish that the overtime claim is susceptible to common proof.[14] *See, e.g.*, *Washington v. Joe's Crab Shack*, 271 F.R.D. 629, 642 (N.D. Cal. 2010) ("Plaintiff has provided no evidence of any company-wide or class-wide policy of requiring 'off-the-clock' work, and the individualized assessment necessary to ascertain whether there were in fact any employees who were told to work 'off-the-clock' would not be susceptible to common proof.").

This issue is exacerbated by the breadth of the defined California Labor Class as "*[a]ll* ICE detainees . . . detained at a CoreCivic facility located in California . . . [who] worked through CoreCivic's voluntary work program." *See* ECF No. 87 at 14. Essentially, Plaintiffs seek to certify a class comprised of an untold number of unenumerated positions, including cleaners, laundry workers, kitchen crews, clerical workers, barbers, librarians, and landscapers. *See* FAC ¶ 14. "Because it is highly unlikely that all positions and job duties at Defendant['s facilitie]s are identical, and that all Class Members would be seeking the same relief, the

---

[14] To be clear, the Court does not conclude that Plaintiffs *cannot* establish that their overtime claims are susceptible to common proof. For example, the overtime claims may be susceptible to common proof if Plaintiffs can adduce additional evidence as to a written or unspoken policy applying throughout California requiring VWP participants to work overtime.

Court is not persuaded[, at least on the current record,] that there are no dissimilarities in the proposed class that could 'impede the generation of common answers apt to drive the resolution of the litigation.'" *See Lusby v. Gamestop Inc.*, 297 F.R.D. 400, 410–11 (N.D. Cal. 2013) (quoting *Wal-Mart*, 564 U.S. at 350 (quoting Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U. L. Rev. 97, 132 (2009))) (citing *Nielson v. Sports Authority*, No. C 11-4724 SBA, 2012 WL 5941614, at *3 (N.D. Cal. Nov. 27, 2012); *Tijero v. Aaron Brothers, Inc.*, No. C 10-01089 SBA, 2013 WL 60464, at *4 (N.D. Cal. Jan. 2, 2013); *Kelley v. SBC, Inc.*, No. C 97-2729 CW, 1998 WL 1794379, at *14 (N.D. Cal. Nov. 18, 1998)).

For all these reasons, the Court concludes that Plaintiffs have failed to establish that common issues predominate as to the California Labor Law Class for the overtime claims.

iii. Meal Breaks

Plaintiff's sixth cause of action is for failure to provide mandated meal breaks in violation of California Labor Code sections 226.7 and 512 and IWC Wage Order No. 5-2001. FAC ¶¶ 80–83. Again, the Court concludes that Plaintiffs have not met their burden of establishing that common issues predominate as to this claim.

As with the overtime claims, *see supra* Section II.C.1.b.ii, Plaintiffs have failed to introduce evidence of a common policy that detainees in the VWP were denied meal breaks, *see supra* Section II.B.3.a.i, or that the meal break claims are susceptible to common proof. Should the Court determine that the members of the California Labor Law Class were employees

rather than detainees, there must be some means of determining on a class-wide basis which detainees were entitled to a meal break and which detainees did not receive the mandated meal break. Again, these are questions going to liability and not only to damages. Because Plaintiffs have failed to introduce evidence concerning the entitlement to meal breaks for the various positions held through the VWP or a common policy or systematic practice concerning the deprivation of such breaks, they have failed to establish that common issues predominate as to meal break claims of the California Labor Law Class. *See, e.g.*, *Chavez v. AmeriGas Propane, Inc.*, No. CV1305813MMM MANX, 2015 WL 12859721, at *14 (C.D. Cal. Feb. 11, 2015) ("[T]his does not suffice to show that the company had a uniform corporate policy of preventing [the class members] from taking required meal breaks, such that a violation of the wage and hour laws could be proved on a classwide basis."); *Washington*, 271 F.R.D. at 641–42 ("[The defendant's] time records will not show when . . . breaks were taken . . . . For this reason, individualized analyses must be conducted to determine whether and when . . . breaks were not taken. Moreover . . . , the inquiries would not answer the critical question of *why* rest breaks were not taken—a question that will necessitate an individualized inquiry.") (footnote omitted) (emphasis in original). Accordingly, the Court concludes that Plaintiffs have failed to establish that common issues predominate as to the California Labor Law Class for the meal break claims.[15]

---

[15] Again, the Court reiterates that it does not conclude that Plaintiffs cannot establish that their meal break claims are

iv. Rest Breaks

Plaintiff's seventh cause of action is for failure to provide mandated rest breaks in violation of California Labor Code section 226.7 and IWC Wage Order No. 5-2001. FAC ¶¶ 84–86. For the same reasons the Court concludes that Plaintiffs have failed to establish that Plaintiffs have not met their burden of establishing that common issues predominate as to the meal break claims, *see supra* Section II.C.1.b.iii, the Court also concludes that Plaintiffs have failed to establish that common issues predominate as to the California Labor Law Class for the rest break claims.

v. Wage Statements

Plaintiffs' eighth cause of action is for failure to provide timely and accurate wage statements in violation of California Labor Code section 226. FAC ¶¶ 87–93. Defendant does not oppose certification of the California Labor Law Class as to this claim, *see generally* ECF No. 118; *see also* ECF No. 127 at 1, arguing only that it is time-barred because Plaintiffs seek only penalties. *See, e.g.*, ECF No. 118 at 17. The Court concludes that whether Defendant provided wage statements to the participants in the VWP is susceptible to common proof. Accordingly, to the extent the wage statement claims are not time-barred,[16] the Court concludes that there exist

---

susceptible to common proof, *see supra* note 15, although the weight of authority tends to indicate that it may be more difficult for Plaintiffs to meet their burden as to these claims.

[16] Defendant contends that the wage statement claims are time-barred because Plaintiffs appear to seek only penalties. *See, e.g.*, Tr. at 37:21–38:2 (citing FAC ¶ 92). Whether Plaintiffs

common, predominating questions for the California Labor Law Class as to Plaintiffs' claims concerning Defendant's failure to provide wage statements.

vi. Payment of Compensation Upon Termination

Plaintiffs' ninth cause of action is for failure to pay compensation upon termination/waiting time penalties pursuant to California Labor Code sections 201 through 203. FAC ¶¶ 94–96. Defendant does not appear to contend that common issues do not predominate, *see generally* ECF No. 118 at 32–33; rather, Defendant appears to contest only the timeliness of this claim. *See id.* at 17; *see also supra* Section II.B.3.a.ii. The Court concludes that whether Defendant paid compensation to the participants in the VWP upon termination is susceptible to common proof. Accordingly, the Court concludes that there exist common, predominating questions for the California Labor Law Class as to Plaintiffs' claims concerning Defendant's failure to pay compensation upon termination.

vii. Unlawful Conditions of Employment

Plaintiffs' tenth cause of action is for imposition of unlawful terms or conditions of employment pursuant to California Labor Code section 432.5. FAC ¶¶ 97–101. As with the wage statement claims, *see supra* Section II.C.1.b.v, Defendant does not oppose certification of the California Labor Law Class as to this claim, *see generally* ECF No. 118; *see also* ECF No. 127 at 1, although it does contend that the only applicable underlying claim is for failure to pay

---

seek solely penalties or other remedies for their wage statement claims is beyond the scope of the Certification Motion.

minimum wages.[17] *See, e.g.*, Tr. at 38:18–39:2. The Court concludes that whether Defendant has imposed unlawful conditions of employment upon the participants in the VWP for the alleged violations of the California Labor Code that are susceptible to common proof is itself susceptible to common proof. Accordingly, the Court concludes that there exist common, predominating questions for the California Labor Law Class as to Plaintiffs' claims concerning Defendant's imposition of unlawful conditions of employment.

viii. Conclusion

The Court therefore concludes, pursuant to any limitations discussed above, that Plaintiffs have established that common questions predominate as to the California Labor Law Class's causes of action for failure to pay minimum wage, failure to provide wage statements, failure to pay compensation upon termination, and imposition of unlawful conditions of employment based on those violations, as well as any viable derivative causes of action. *See infra* Section II.C.1.e.

c. The National Forced Labor Class

Plaintiffs argue that the claims of the National Forced Labor Class hinge upon whether "CoreCivic's policy and practice of forcing ICE detainees to clean

---

[17] Plaintiffs allege that the agreement "include[d] numerous terms that are prohibited by law, including but not limited to agreeing to work for less than minimum wage or without appropriate overtime compensation." FAC ¶ 99. Whether the other claims the Court has certified as part of the California Labor Law Class, namely, the wage statement claims and failure to pay compensation upon termination claims, were among the terms in the written agreement is beyond the purview of this Order.

areas of the facility above and beyond personal housekeeping tasks enumerated in the ICE PBNDS under treat of discipline, including solitary confinement, . . . constitute[s] a violation of the Federal TVPA's prohibition on obtaining labor or services by means of force or serious harm[;] threats of force or serious harm[;] or by means of any scheme, plan, or pattern intended to cause a person to believe that serious harm would result if that person did not perform such labor or services." ECF No. 87 at 21. Defendant responds that "a common question cannot simply be whether all putative class members have 'suffered a violation of the same provision of law,'" ECF No. 118 at 29 (citing *Wal-Mart*, 564 U.S. at 350), and that "resolving whether each putative class member was in fact a victim of a TVPA . . . violation requires the resolution of many individualized inquiries that are particular to each class member," essentially, "*why* did you work?," a question that "will require delving into each class member's subjective state of mind." *Id.* at 29–30. Plaintiffs reply that their "claims under the CA and Federal TVPA do not turn on 'individualized inquiries[,]'" because "[w]here liability depends on a threat of disciplinary action, the statutes both call for the application of an objective standard to determine whether a 'reasonable person'—in this case, ICE detainees involuntarily confined in a prison-like facility—would perform the work mandated by CoreCivic." ECF No. 127 at 12 (citing Cal. Penal Code § 236.1(h)(4); 18 U.S.C. § 1589(c)(2)).

The Court allowed both sides to present additional briefing on *Novoa*, 2019 WL 7195331, in which the district court certified classes similar to the proposed California and National Forced Labor Classes here.

See id. at *10, *16 & n.11, *20; *see also* ECF Nos. 153, 160, 164. In its supplemental brief, Defendant urges the Court to conclude that *Novoa* is distinguishable based on the fact that "there is no undisputed written policy in this case" and that "*Novoa* adopted *Menocal*[*v. GEO Group, Inc.*, 320 F.R.D. 258 (D. Colo. 2017)]'s predominance analysis, which is . . . inapplicable here" because the Plaintiffs here "do not even allege that they were aware of the written policies or worked because of them." *See* ECF No. 164 at 4–5. Further, *Menocal* was "based on unique Tenth Circuit jurisprudence permitting classwide causation evidence . . . , which the Ninth Circuit has not adopted," *id.* at 5 n.4 (citing *CGC Holding Co. v. Broad & Cassel*, 773 F.3d 1076 (10th Cir. 2014); *Poulos v. Caesars World, Inc.*, 379 F.3d 668 (9th Cir. 2004)), and "[w]hether the labor was obtained 'by means of' or 'accomplished through' the threat is still an individualized, subjective inquiry." *Id.* at 5 n.5 (citing *David v. Signal Int'l, LLC*, No. 08-1220, 2012 WL 10759668, at *20–22 (E.D. La. Jan. 4, 2012)).

Finally, on March 19, 2020, Defendant requested that the Court consider the recent decision in *Barrientos v. CoreCivic, Inc.*, No. 18-15081, 2020 WL 964358 (11th Cir. Feb. 28, 2020), in which the Eleventh Circuit affirmed the district court's denial of Defendant's motion to dismiss a TVPA claim asserted by ICE detainees in Georgia and "h[e]ld that the TVPA applies to private for-profit contractors operating federal immigration detention facilities." *Id.* at *9; *see also* ECF No. 172.[18] Defendants contend

---

[18] To the extent Defendant requests the opportunity to further brief *Barrientos*, *see* ECF No. 172 at 3, the Court only granted additional briefing on *Novoa* at the request of

that *Barrientos* "supports Defendant's argument that the putative National Forced Labor Class cannot be certified because each class member must *individually* establish that their allegation of forced labor rises to the level of an actionable claim under the [TVPA], a determination that cannot be made for all class members in one stroke." ECF No. 172 at 1. Not surprisingly, Plaintiffs respond that "*Barrientos* supports the Court's tentative decision to certify Plaintiffs' Forced Labor [C]lasses" and that Defendant "misrepresents the holding of *Barrientos*[,] . . . which was expressly 'limited to the legal question of the TVPA's applicability to private contractors operating federal immigration detention facilities[.]'" ECF No. 173 at 1 (quoting *Barrientos*, 2020 WL 964358, at *1).

Having carefully reviewed the Parties' arguments and the additional authorities submitted by each side, the Court ultimately agrees with Plaintiffs. First, the Court concludes that *Barrientos* offers little guidance here. Not only is *Barrientos* not binding on this Court, but Plaintiffs are correct that "the discrete legal issue before [the Eleventh Circuit]" has no bearing on the Parties' arguments for and against class certification. *See* 2020 WL 964358 at *6; *see also* ECF No. 173 at 1. Defendant's attempt to divine from *Barrientos* whether the Eleventh Circuit would conclude that individual questions predominate such that class certification of a TVPA would be improper is nothing

---

Defendant, *see* Tr. at 57:21–22, whereas Plaintiffs have indicated their belief that additional briefing on *Barrientos* is not required. *See* ECF No. 173 at 1–2. The Court therefore **DENIES** Defendant's request to further brief *Barrientos*.

more than unsubstantiated tea-leaf reading and is therefore of minimal relevance here.

Second, the Court rejects Defendant's contention that "[w]hether the labor was obtained 'by means of' or 'accomplished through' the threat is still an individualized, subjective inquiry." *See* ECF No. 164 at 5 n.5 (citing *David*, 2012 WL 10759668, at *20–22). As an initial matter, the court in *David* concluded that "individual issues with respect to coercion and consent will predominate Plaintiffs' § 1589 forced labor claims." *See* 2012 WL 10759668, at *22. The Court is not convinced that this analysis applies within the Ninth Circuit, where a TVPA claim requires the plaintiff to establish that the employer intended to cause the victim to believe that he or she would suffer serious harm by means of an objectively, sufficiently serious threat of harm. *See United States v. Dann*, 652 F.3d 1160, 1170 (9th Cir. 2011); *accord Tanedo v. E. Baton Rouge Par. Sch. Bd.*, No. LA CV10-01172 JAK, 2011 WL 7095434, at *8 (C.D. Cal. Dec. 12, 2011); *see also Novoa*, 2019 WL 7195331, at *16 n.11.

Even if coercion and/or consent were a relevant determination such that there exists a subjective inquiry, however, the court in *David* acknowledged that a TVPA claim may be suitable for class certification under certain circumstances resembling those here. *See* 2012 WL 10759668, at *21. Indeed, the court in *David* concluded that certification was not appropriate on the facts of that case, which "involve[d] paid workers who in fact could leave their jobs at any time, . . . were for the most part paid well, free to come and go as they pleased, and some [of whom] even took vacations and bought cars." *Id.* Further, "the 'threats' that Plaintiffs allege were

made to compel them to work were often made to individuals, not to the class as a whole," meaning that "[t]he pressure to work for [the defendant] arguably came at least in part from a set of circumstances that each plaintiff individually brought upon himself." *Id.* Here, by contrast, the putative class members were not paid more than a dollar or two a day and were not free to come and go as they pleased. *See, e.g.*, FAC ¶ 10. Further, Plaintiffs allege that the threats were communicated to the class as a whole through Defendant's uniform disciplinary policy. *Id.* ¶ 42(c). Consequently, *David* does not support Defendant's contention.

On the other hand, two district courts applying Ninth Circuit precedent have concluded that individual issues do not predominate where "the class members share a large number of common attributes— . . . allowing the fact-finder to use a common 'reasonable person' standard for all class members." *See Tanedo*, 2011 WL 7095434, at *8; *see also Novoa*, 2019 WL 7195331, at *16 (adopting analysis of *Menocal*); *Menocal*, 320 F.R.D. at 267 ("The circumstances here—namely the class members' detainment, the imposition of a uniform policy, and the numerous other questions common to the class—certainly make it beneficial to permit such an inference [of causation on a class-wide basis]."). As in *Tanedo* and *Novoa*, the putative class members share a large number of common attributes, including that they are immigrants who are or were involuntarily detained in Defendant's facilities and subjected to common sanitation and disciplinary policies.

Third and finally, the Court disagrees with Defendant that the Ninth Circuit does not permit

"classwide causation evidence," such that *Novoa* and *Menocal* are inapplicable. *See* ECF No. 164 at 5 n.4 (citing *CGC Holding*, 773 F.3d 1076; *Poulos*, 379 F.3d at 668). The cases on which Defendant relies, *CGC Holding* and *Poulos*, were both Racketeer Influences and Corrupt Organizations cases. *See CGC Holding*, 773 F.3d at 1089–93; *Poulos*, 379 F.3d at 664. To the extent those cases have any bearing in the TVPA context, *see Menocal*, 320 F.R.D. at 267 n.5 (acknowledging that *CGC Holding* did "not dictate the outcome in this matter"), the Ninth Circuit's "narrow and case-specific" decision in *Poulos* was based on its determination that "gambling is not a context in which [the court] can assume that potential class members are always similarly situated." 379 F.3d at 665–66. In other contexts, such as consumer protection putative class actions, for example, the Ninth Circuit has recognized that reliance or causation can be inferred on a class-wide basis where the putative class members are similarly situated; in *Walker v. Life Insurance Company of the Southwest*, No. 19-55241, 2020 WL 1329665 (9th Cir. Mar. 23, 2020), for example, the Ninth Circuit reiterated that in the context of UCL actions "the operative question has become whether the defendant so pervasively disseminated material misrepresentations that all plaintiffs must have been exposed to them." *Id.* at *5 (citing *Stearns v. Ticketmaster Corp.*, 655 F.3d 1013, 1020–21 (9th Cir. 2011), *abrogated on other grounds by Comcast Corp. v. Behrend*, 569 U.S. 27 (2013)). The sum total of these authorities is that an inference of class-wide causation may be permissible where, as here, the putative class members share a large number of common attributes such that they are

similarly situated. As discussed above, the Court concludes that this is such a case.

As in *Tanedo*, "[c]ommon questions of fact include . . . whether Defendant[] utilized threats of serious . . . harm to compel Plaintiffs to work" and "[c]ommon questions of law include . . . whether Defendants' conduct violated the TVPA," answers to which "are 'capable of classwide resolution[ ]' and "will determine . . . if the Plaintiffs were threatened with serious . . . harm, an issue central to the TVPA claims." *See* 2011 WL 7095434, at *6 (quoting *Wal-Mart*, 564 U.S. at 350). Accordingly, the Court concludes that the commonality and predominance requirements are satisfied as to the National Forced Labor Class.

d. The California Forced Labor Class

Plaintiffs assert that the claims of the California Forced Labor Class "all depend on resolution of . . . [w]hether CoreCivic's policy and practice requiring ICE detainees in its California facilities to clean areas of the facility above and beyond the personal housekeeping tasks enumerated in the ICE PBNDS under threat of discipline constitutes 'human trafficking' within the meaning of California Penal Code § 236.1(a)." ECF No. 87 at 19. As with the National Forced Labor Class, Defendant contends that there are not common questions of law and fact governing the California Forced Labor Class because "the California facilities do not have a policy or practice of forcing detainees to clean common areas under threat of disciplinary segregation" and "[t]he allegations of four detainees is not 'significant proof' that 'several thousands' . . . of detainees in California facilities were subject to their claimed policy." ECF No. 118 at 27. "Furthermore, resolving whether each putative class member was in fact a victim of a . . .

California TVPA violation requires the resolution of many individualized inquiries that are particular to each class member." *Id.* at 29.

For the same reasons the Court determines that Plaintiffs have established there are common questions of law and fact that predominate as to the National Forced Labor Class, *see supra* Section III.C.1.c, the Court also determines that Plaintiffs have met their burden as to commonality and predominance for the California Forced Labor Class.

e. Derivative Claims

Plaintiffs' third cause of action is for violation of the UCL, FAC ¶¶ 63–70; eleventh cause of action is for negligence, *id.* ¶¶ 102–19; and twelfth cause of action is for unjust enrichment. *Id.* ¶¶ 120–28. Plaintiffs acknowledge that each of these causes of action are derivative of the claims for violations of California labor law, *see, e.g.*, ECF No. 87 at 18, and California and federal TVPA. *See, e.g.*, *id.* at 20. Consequently, to the extent these claims are causes of action not barred by the statute of limitations,[19] the Court concludes that common questions predominate to the same extent discussed above. *See supra* Sections II.C.1.b.i–vii, II.C.1.c–d.

---

[19] For example, Defendant contends that Plaintiff's negligence cause of action is time-barred. *See, e.g.*, ECF No. 118 at 17. Further, "[i]n California, there is not a standalone cause of action for 'unjust enrichment,' . . . [although] a court may 'construe the cause of action as a quasi-contract claim seeking restitution.'" *Astiana v. Hain Celestial Grp., Inc.*, 783 F.3d 753, 762 (9th Cir. 2015) (quoting *Rutherford Holdings, LLC v. Plaza Del Rey*, 223 Cal. App. 4th 221 (2014)) (citing *Durell v. Sharp Healthcare*, 183 Cal. App. 4th 1350 (2010); *Jogani v. Super. Ct.*, 165 Cal. App. 4th 901 (2008)). The Court declines to resolve these issues at this time and on the current record.

2. Superiority

The final requirement for class certification is "that a class action [be] superior to other available methods for fairly and efficiently adjudicating the controversy." Fed R. Civ. P. 23(b)(3). "In determining superiority, courts must consider the four factors of Rule 23(b)(3)." *Zinser*, 253 F.3d at 1190. The Rule 23(b)(3) factors are:

> (A) [T]he class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3). The superiority inquiry focuses "on the efficiency and economy elements of the class action so that cases allowed under [Rule 23(b)(3)] are those that can be adjudicated most profitably on a representative basis." *Zinser*, 253 F.3d at 1190 (internal quotation marks omitted). A district court has "broad discretion" in determining whether class treatment is superior. *Kamm v. Cal. City Dev. Co.*, 509 F.2d 205, 210 (9th Cir. 1975).

Plaintiffs contend that a class action is superior here because "many of the putative class members have a limited understanding of the law, limited English skills, and limited resources to devote to pursuing recovery." ECF No. 87 at 25. "Many former ICE detainees also fear retaliation given their uncertain immigration status or ongoing immigration

proceedings." *Id.* (citing *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1123 (9th Cir. 2017)). "Finally, the class members are geographically dispersed given the number of CoreCivic facilities throughout the United States." *Id.* (citing *In re Monster Worldwide, Inc. Secs. Litig.*, 251 F.R.D. 132, 139 (S.D.N.Y. 2008)).

Defendant claims that "Plaintiffs fail to meaningfully address, much less meet their burden of establishing through evidence, that class treatment is the 'superior' method for resolving all claims efficiently and economically." ECF No. 118 at 33. Specifically, Defendant contends, "[t]he putative National classes have no meaningful ties to California, and Plaintiffs provide no reason why this forum is superior." *Id.* (citing Fed. R. Civ. P. 23(b)(3)(C)). Defendant claims that this action is not manageable as a class action because it involves "*five* classes, which . . . will include more than 120,000 people who are scattered across a multitude of countries." *Id.* at 34. According to Defendant, individualized inquiries as to liability and damages also weigh against class certification here. *See id.* at 34–35.

Plaintiffs note that "damages calculations cannot defeat class certification," ECF No. 127 (quoting ECF No. 118 at 35), and note that "CoreCivic's arguments regarding other pending litigation against CoreCivic—in addition to demonstrating the scope of CoreCivic's enterprise-wide policies and practices—confirms that the class members are geographically dispersed." *Id.* (citing *In re Monster Worldwide, Inc. Secs. Litig.*, 251 F.R.D. at 139). Further, this is the first-filed of the several class actions to which Defendant cites "and is the farthest along." *Id.*

Although Defendant is correct that this action could prove unwieldy, it is also precisely the sort of action where class-wide litigation is superior to other methods of litigation. *See* Tr. at 28:23–29:13 ("[I]f this doesn't happen on a class basis, it doesn't happen. . . . These detainees are not in a position to take any action. . . . [A class action] may be the only way to consider doing this."). Here, "the 'risks, small recovery, and relatively high costs of litigation' make it unlikely that plaintiffs would individually pursue their claims," "considerations . . . [that] vividly point[] to the need for class treatment." *See Just Film, Inc.*, 847 F.3d at 1123; *see also Amchem Prods.*, 521 U.S. at 617 ("The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights.") (quoting *Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 344 (7th Cir. 1997)). Further, "litigation on a classwide basis would promote greater efficiency in resolving the classes' claims." *Id.* at 1123–24 (citing *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996)). Because no viable alternative method for adjudication exists, the Court concludes that class-wide litigation is superior. *See, e.g.*, *Leyva v. Medline Indus. Inc.*, 716 F.3d 510, 515 (9th Cir. 2013) (concluding that district court erred in concluding that class action was not superior where "it appears that no[other means for putative class members to adjudicate their claims] exist[s]"); *see also Bennett v. GoDaddy.com LLC*, No. CV-16-03908-PHX-ROS, 2019 WL 1552911, at *13 (D. Ariz. Apr. 8, 2019) ("Realistically, the only alternative is for Defendant to avoid effectively all liability for its actions. . . . A class action is far superior to the

alternative of most of the allegedly harmed individuals obtaining no relief.") (citing *Carnegie v. Household Int'l, Inc.*, 376 F.3d 656, 661 (7th Cir. 2004)).

CONCLUSION

In light of the foregoing, the Court **DENIES WITHOUT PREJUDICE** Plaintiffs' Motion for Partial Summary Judgment (ECF No. 97), **DENIES** Defendant's Motion for Judgment on the Pleadings (ECF No. 117), **DENIES AS MOOT** Plaintiff's Motion to Exclude (ECF No. 128), and **GRANTS IN PART AND DENIES IN PART** Plaintiffs' Motion for Class Certification (ECF No. 84). Specifically, the Court **CERTIFIES** the California and National Forced Labor Classes in their entirety and the California Labor Law Class as to the causes of action for failure to pay minimum wage, failure to provide wage statements for actual damages, failure to pay compensation upon termination, and imposition of unlawful conditions of employment, pursuant to any limitations detailed above. The Court also **DISMISSES WITHOUT PREJUDICE** Plaintiffs' claims for injunctive relief and **CONCLUDES** that Mr. Gomez is neither an adequate nor typical representative as to the wage statement and failure to pay compensation upon termination claims. The Parties **SHALL MEET AND CONFER**[20] regarding the status of this litigation and their anticipated next steps and **SHALL FILE** a joint status report within

[20] In light of the current COVID-19 public emergency, *see, e.g.*, Order of the Chief Judge No. 18 (S.D. Cal. filed Mar. 17, 2020); Executive Order N-33-20, Executive Department of the State of California (March 19, 2020), the Parties are encouraged to meet and confer telephonically.

fourteen (14) days of the electronic docketing of this Order.

IT IS SO ORDERED.

/s/ Janis L. Sammartino
Hon. Janis L. Sammartino
United States District Judge

[Counsel information omitted.]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SYLVESTER OWINO and JONATHAN GOMEZ, on behalf of themselves and all others similarly situated, Plaintiffs, vs. CORECIVIC, INC., Defendant.	Case No. 17-CV-01112-JLS-NLS **CLASS ACTION** **DECLARATION OF PLAINTIFF SYLVESTER OWINO IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**
CORECIVIC, INC., Counter-Claimant, vs. SYLVESTER OWINO and JONATHAN GOMEZ, on behalf of themselves and all others similarly situated, Counter-Defendants.	Date: July 11, 2019 Time: 1:30 p.m. Place: Courtroom 4D Judge: Hon. Janis L. Sammartino Magistrate: Hon. Nita L. Stormes

I, Sylvester Owino, declare as follows:

1. I am above the age of eighteen (18). I am a named Plaintiff in the above-captioned action. I am

familiar with the action, including the facts and claims at issue. The facts stated herein are of my own personal knowledge, and if called upon to do so, I could and would competently testify thereto under oath.

2. I have been detained by Immigration and Customs Enforcement ("I.C.E.") on several occasions, and have spent nine years in I.C.E. custody. Of those nine years, seven of them were spent detained in CoreCivic's detention facilities, including CoreCivic's detention facilities in San Diego, California (which included the San Diego Correctional Facility and its successor the Otay Mesa Detention Center, which I refer to collectively in this Declaration as "OMDC" because my experiences were the same in both facilities). I was housed at OMDC at various times from approximately November 7, 2005, to March 9, 2015. All of my detentions were related to my immigration status and were not related to any criminal charge or conviction.

3. During the intake process for each period of detention at OMDC, I was required to sign numerous documents. The documents were handed to me at a quick pace and without any explanation as to what they were or what they meant, and I was told to "just sign" the numerous forms as they were given to me. In addition, my experience of being detained in OMDC for seven years showed me that numerous detainees had communication issues with OMDC's staff during the intake process. OMDC staff usually spoke only English, although some OMDC staff also spoke Spanish. Because OMDC staff usually only spoke English and possibly Spanish, any new detainee who did not speak either of those languages would likely have difficulty understanding what

OMDC staff said to him or her, and would have difficulty understanding the numerous documents he or she was signing during the intake process. I know this from personal experience in going through the intake process several times and in interacting with fellow detainees during my seven years in detention.

4. Although the intake documents were not explained to me in any detail, I do recall generally signing some documents during the intake process based on the titles of documents, such as documents related to questions about my background and history, that any personal belongings I had with me would be kept by OMDC, and OMDC rules and safety guidelines. I was told and I understand that these forms were kept in my detainee file, along with any paperwork, documents, or forms that were related to my detention at OMDC.

5. During each period of detention at OMDC, I performed work through the "Volunteer Work Program." I signed up for the "Volunteer Work Program," and was eventually told by staff members at OMDC that I was assigned to the kitchen to work. I worked in the kitchen on and off throughout each period of detention at OMDC, sometimes rotating between other jobs (as discussed below) or being terminated from my job due to disciplinary actions against me (including being placed in more restrictive housing where I was not permitted to work in the kitchen). Before starting work in the kitchen, I signed a work agreement, but similar to the intake process the work agreement was handed to me and I was told to sign without reading the agreement. I also received training by OMDC staff and employees of Trinity as to how to use certain equipment and how to prepare

and handle the food. I was also informed of kitchen rules, including rules for health, safety, and hygiene.

6. As part of my job in the kitchen, I was required to work a set shift. My normal shift in the kitchen was from 3:00 a.m. – 12:00 p.m., five days per week with two days off. However, there were many instances where I and other kitchen workers would work more than our shift. For example, sometimes the breakfast shift that I usually worked, who are all male detainees, would be followed by a lunch shift of all female detainees. Due to the size of some equipment or the weight of certain packages or materials, I would be asked by Trinity's staff to help out with any heavy lifting for the lunch shift to begin preparing the next meal. This could easily turn my 9-hour morning shift into a much longer workday in order to assist others in their shifts, including up to 14 working hours in a day. OMDC staff always supervised us while working, and knew about and approved Trinity's request to have me and other detainees work longer hours in the kitchen for this purpose.

7. In addition, when working in the kitchen, the work only had one quick break to eat their meal and no other scheduled rest breaks. Our usual schedule would be to work from 3:00 a.m. until about 6:30 a.m. to prepare breakfast. Once breakfast was served, the kitchen crew prepared and ate their meal from 6:30 a.m. – 7:00 a.m. (so this was not really a "break" in the true sense because we still had to prepare our own means). When the main breakfast service was done, around 7:00 a.m. we would begin cleaning breakfast service items and preparing for lunch service until the end of our shift at 12:00 p.m. without any other scheduled rest break. And, as noted above, some of us

would work beyond the scheduled end of our shift to assist the next shift.

8. Sometimes during my detention at OMDC, I would also work as a chemical porter, where I prepared and provided cleaning chemicals to be used by the pod porters in cleaning after each meal. Before starting work as a chemical porter, I signed a separate work agreement for that job. I received basic training for this job, and was provided with very basic protective gear to handle the chemicals. In some cases, the bottles of chemicals were not labeled. There was no set shift for my work as a chemical porter, but I would work "until the job was done." I also had no scheduled rest or meal breaks. I would have to prepare the cleaning chemicals in advance of meal periods so that the pod cleaners could use them to clean up after meals. I would also have to prepare more cleaning chemicals if the pod cleaners ran out of cleaning chemicals, for unexpected incidents (such as spills), or when the living pod would go through a "deep clean" because a dignitary or other important person was touring the facility.

9. In addition, I would occasionally work as a general cleaner / janitor, where I would perform a variety of tasks, such as cleaning communal areas of the living pods, interior painting, sweeping and waxing floors, cleaning drains, cleaning up liquid spills, and handing out weekly supplies to detainees. Before starting work as a cleaner / janitor, I again signed a work agreement for that job. There was no set shift for my work as a cleaner / janitor, but I would work "until the job was done." I also had no scheduled rest or meal breaks.

10. While working in each of these jobs, I was paid $1.00 per day for my work. That money was

added to my account that I could then spend at the commissary. However, I recall from personal experience and from speaking with other detainees that the payments would not always process to my account or to their account. In order to figure out why I did not get paid for work (or why other detainees did not get paid for work, and I would help them in this regard), I would contact the unit manager or case manager to ask. Usually the unit manager or case manager would tell me that he would look into it. Sometimes the missing payment issue would be fixed, other times it would not be fixed and I did not get paid for that particular day (or the other detainee who I was helping did not get paid).

11. In addition, when I worked longer than my scheduled shift, such as when I stayed several hours longer to help a female lunch crew in the kitchen with heavy lifting, I was still paid only $1.00 for that day's work. I did not receive any additional money for the extra hours worked.

12. Some jobs might receive "bonuses" or "incentives," such as extra food for kitchen workers or even special meals for kitchen workers. In fact, during part of my time at OMDC, OMDC staff would ask me what types of special food the kitchen workers wanted—such as carne asada or ice cream—so that OMDC staff could order it for us. These meals were much better than the line food served to detainees. However, kitchen workers would not receive special meals if an inspector was touring the facility; instead, we would receive the same meal as all other detainees. But if OMDC passed the inspection, OMCD staff would order us special food as a "thanks" for passing the inspection. Other incentives for detainees to do extra work or odd jobs included a "sack

lunch," which is similar to brown bag lunch that is specially prepared by the kitchen and that is provided in addition to the regular lunch served on the line. I never personally received any extra pay for extra work but am not sure if other detainees did.

13. During each period of my detention at OMDC, I never received any "wage statement" or similar document that provided me with information regarding gross wages earned, total hours worked, applicable deductions, net wages earned, the pay period, and the applicable hourly rates in effect and the corresponding number of hours worked during the pay period.

14. As part my jobs in the kitchen, as chemical porter, and as a general cleaner / janitor, I was told by OMDC staff that I could be removed from those jobs if I missed work without an excuse, if I wasn't working, or if my work was not satisfactory. I witnessed other detainee workers who were removed from their jobs for failing to show up, failing to work, or failing to do their job properly.

15. In addition, I was also removed from jobs as punishment, such as when I got in an argument with an OMDC staff member or refused to follow an order. Such punishment would come in the former of increasing my security classification level and/or placing me in more restrictive housing, which would prohibit me from working certain jobs. I believed and understood that my punishment was to teach other detainees a lesson by making an example out of me so that all detainees kept in line and did what they were told.

16. Also as part my jobs in the kitchen, as chemical porter, and as a general cleaner / janitor, the

working crews were supervised by OMDC staff or employees from Trinity. OMDC staff or employees of Trinity directed us what to do, and many times assigned other tasks to us "as needed" in the areas where we were working.

17. Outside of the "Volunteer Work Program," detainees are required to keep their immediate living areas clean, which includes making the bed every day, tidying up loose items, keeping the floors clean, and not hanging anything from the beds or lights.

18. But there were many instances of when detainees in a living pod would have to work to clean the common areas in the living pod beyond just maintaining their own living area. As noted above, one instance when this would happen would be whenever a "deep clean" was needed, which was usually when a dignitary was going to tour the living pod. The "deep cleaning" included cleaning common areas and all windows—including those on the second story of the facility without any safety apparatus. All detainees in the living pod were expected to help out to get the living pod clean, even if it was a detainee's day off from his work schedule and even if a detainee did not work as part of the "Voluntary Work Program." Detainees were not paid any compensation for these "deep cleanings"—it was just expected that all detainees would clean. However, for smaller tasks, detainees might be get an "sack lunch" as an incentive to do the work.

19. For larger tasks such as "deep cleans" before a dignitary arrived, the entire pod was expected to work and clean. Failure to do so by the entire living pod resulted in consequences for the entire pod, such as being on longer lockdown (which resulted in delays in detainees, including myself, contacting family,

friends, or our attorneys), commissary requests being delivered late, or loss of other privileges, such as time in the yard.

20. Detainees were also responsible for removing trash from the common areas of the living pods on a daily basis, sweeping and mopping floors, and cleaning toilet bowls, sinks, showers, and furniture. Again, detainees were not paid for these cleaning tasks.

21. When detainees needed to clean the living pod common areas or perform any other work, regardless of whether it was the detainee's day off or whether the detainee was even working in the "Volunteer Work Program," the detainees were not paid for working to clean the common areas when instructed by OMDC staff.

22. In addition, for those detainees who had to clean or work on their days off, those detainees were not paid for the additional day(s) of work. The weekly pay cap for workers was $1.00 per day and $5.00 per week (or at least that's what we were told). So, for example, if I worked my usual five days in the kitchen, I would be paid $5.00 for the week. But if I was required to work or clean on the sixth and/or seventh day, I would receive no extra payment.

23. When I or other detainees were told to do extra work, even if on our day off, we almost always complied even if we didn't want to work. If we failed to follow a "direct order" from OMDC staff ("Go clean the pod"), we could be subject to more random and frequent searches and cell tossing, as I witnessed during my detentions at OMDC when other detainees would have their cells checked much more frequently than others. Failing to follow orders could also result

in being removed from the general living pod and placed in more restrictive housing, which could last from several days to several weeks, and which might also result in a loss of job due to a higher security classification. I also witnessed this during my detentions at OMDC where detainees might refuse to clean and the situation escalated to the point of the detainee being relocated to restrictive housing. As noted above, this type of discipline happened to me several times to make an example out of me and teach other detainees a lesson. In addition, we were also told that a disciplinary note could be placed in our detainee file, which could negatively impact our case before the judge. Other times, the entire living pod might suffer some consequences for a single detainee's refusal to work, such as being on lockdown longer than usual, or not permitting us to use the TV.

24. Because I and other detainees observed what happened when others failed to comply with orders, we almost always followed orders to clean or perform other work so as to avoid any punishment.

25. As noted above, I was paid $1.00 per day for my work, and no more than $5.00 per week. I could spend this money at the commissary. Although there were different things to purchase at the commissary, I and other detainees would spend our money on basic hygiene products, such as soap, shampoo, and toothpaste, as well as toothbrushes, deodorant, hair brushes, or shaving cream. This is because the weekly supply distribution for each detainee was two small soaps (hotel-sized), one small shampoo (hotel-sized), a small tube of toothpaste, and two rolls of toilet paper. These hygiene supplies would not last an entire week, and sometimes the supplies would be late and not re-stocked to be delivered on a weekly

basis, so many detainees, including myself, used much of our commissary money to get additional hygiene supplies. And even if we tried to request additional supplies, the supplies might never come, or we would only get supplies after a cell tossing to ensure we were actually out of the supplies we needed.

26. In addition, OMDC has a standard issue of clothing for each detainee, but the standard issue of clothing would get dirty or worn down and would often be of very poor quality. The clothing became quite disgusting and was not replaced with newer, more wearable clothing. We could request to have new clothes, but similar to a request for additional supplies, the request might never be fulfilled, or we would be subjected to additional cell searches. Even if it was fulfilled, the "new" clothes would in fact be old or dirty, likely worn by another current or former detainee. Moreover, even standard issue clothing could simply go missing in the laundry process. However, kitchen workers did receive better / newer clothing an incentive for working in the kitchen.

27. In addition to hygiene supplies, I and other detainees would use our commissary money to buy larger quantities of shampoo simply for the purposes of cleaning our immediate living areas. OMDC did not provide any cleaning supplies to us for this purpose, but we were still required to have clean living quarters. As a result, I and other detainees would use our own shampoo and soap, and the shower towels provided to us be OMDC, to clean our living areas. I and other detainees found that cleaning the floors and other areas of our living spaces with shampoo that we purchased with our commissary money would result in cleaner living spaces and

therefore would result in fewer searches, cell tosses, or disciplinary issues for failing to keep our space clean.

28. I and other detainees had to work so that we would have money to buy some of these basic hygiene supplies, as well as pre-paid phone cards to be able to use the telephone system at OMDC to call family and friends.

29. Commissary purchases are drawn from our accounts at OMDC. One way to add money to that account is to have family or friends deposit money, but very few detainees have outside support. The other way to add money to the account is to work. In order to purchase these supplies, I and other detainees worked so that we could ensure we had enough shower soap, shampoo, and toothpaste for good hygiene, our own cleaning supplies for our cells, and phone cards to call our families.

30. As a Plaintiff in this lawsuit, I understand the general nature of the claims raised and the facts, policies, and procedures that form the basis of those claims. I further understand that, as a Plaintiff and representative of several classes of current and former detainee workers and detainees forced to work, I seek relief in this action on behalf of those classes.

31. I am not antagonistic to other members of the classes in this lawsuit that I seek to represent. On the contrary, the shared and common experiences that all members of the classes have faced, including myself, unite us in challenging the policies and practices at issue in this case. CoreCivic's policies and practices are unlawful, and I seek to obtain relief for

all members of these classes who were subject to these unlawful policies and practices.

32. Accordingly, I will fairly and adequately protect the interests of the classes that I seek to represent.

33. I have spent significant time working with my attorneys in this matter, including providing factual information for the complaint and responding to discovery requests from CoreCivic.

34. Given my dedication to challenging these unlawful policies and seeking relief for all of those detainees who were subjected to the same, I will continue to remain heavily involved and invested in this lawsuit as it progresses, and will prosecute the action vigorously on behalf of all classes.

I submit this Declaration in support of Plaintiffs, Motion For Class Certification.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 13th day of April, 2019, in San Diego, California.

/s/ Sylvester Owino
Sylvester Owino

[Counsel information omitted.]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SYLVESTER OWINO and JONATHAN GOMEZ, on behalf of themselves and all others similarly situated, Plaintiffs, vs. CORECIVIC, INC., Defendant.	Case No. 17-CV-01112-JLS-NLS **CLASS ACTION** **DECLARATION OF PLAINTIFF JONATHAN GOMEZ IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**
CORECIVIC, INC., Counter-Claimant, vs. SYLVESTER OWINO and JONATHAN GOMEZ, on behalf of themselves and all others similarly situated, Counter-Defendants.	Date: July 11, 2019 Time: 1:30 p.m. Place: Courtroom 4D Judge: Hon. Janis L. Sammartino Magistrate: Hon. Nita L. Stormes

I, Jonathan Gomez, declare as follows:

1. I am above the age of eighteen (18). I am a named Plaintiff in the above-captioned action. I am

with the action, including the facts and claims at issue. The facts stated herein are of my own personal knowledge, and if called upon to do so, I could and would competently testify thereto under oath.

2. I was detained by Immigration and Customs Enforcement ("I.C.E."), and spent my period of detention in CoreCivic's detention facilities in San Diego, California (which included the San Diego Correctional Facility and its successor the Otay Mesa Detention Center, which I refer to collectively in this Declaration as "OMDC" because my experiences were the same in both facilities). I was housed at OMDC from approximately June 18, 2012, through September 18, 2013. My detention was related to my immigration status and was not related to any criminal charge or conviction.

3. During the intake process my detention at OMDC, I was required to sign numerous documents. The documents were handed to me at a quick pace and without any explanation as to what they were or what they meant, and I was told to "just sign" the numerous forms as they were given to me. In addition, my experience during my detention showed me that numerous detainees had communication issues with OMDC's staff during the intake process. The intake documents were usually explained in English, although some CoreCivic staff also spoke Spanish. OMDC staff usually spoke only English, although some OMDC staff also spoke Spanish. Because OMDC staff usually only spoke English and possibly Spanish, any new detainee who did not speak either of those languages would likely have difficulty understanding what OMDC staff said to him or her, and would have difficulty understanding the numerous documents he or she was signing during

the intake process. I know this from personal experience in going through the intake process and in interacting with fellow detainees during my detention.

4. Although the intake documents were not explained to me in any detail, I do recall generally signing some documents during the intake process based on the titles of documents, such as documents related to questions about my background and history, that any personal belongings I had with me would be kept by OMDC, and rules and safety guidelines. I was told by OMDC staff that these forms were kept in my detainee file, along with any paperwork, documents, or forms that were related to my detention at OMDC.

5. During my detention at OMDC, I performed work through the "Volunteer Work Program." I signed up for the "Volunteer Work Program," and was eventually told by staff members at OMDC that I was assigned to perform cleaning and janitorial tasks for my living pod. I worked as a cleaner / janitor throughout my detention at OMDC. Before starting work as a clean / janitor, I signed a work agreement. I also received training by OMDC staff as to how to perform my job, including rules and safety guidelines.

6. My job duties as a cleaner / janitor including painting interior areas of the living pod at OMDC, distributing supplies to detainees, cleaning up the common living area for my particular pod, cleaning up after each meal period and before the nightly count, sweeping and waxing floors, cleaning drains, and cleaning up liquid spills or bodily fluids (such as blood after a fight). I also recall instances of being rousted in the middle of the night to clean the bathrooms, including pouring unknown chemicals down the drain

without personal protective equipment and then having to reach down and pull out materials clogging the drain. I also recall having to climb up on ladders to clean the windows in the bathroom or shower areas.

7. There was no set shift for my work as a cleaner / janitor, but I would work "until the job was done," including whatever tasks were assigned to me by OMDC staff. I also had no scheduled rest or meal breaks.

8. While working as a cleaner / janitor, I was paid $1.00 per day for my work. That money was added to my account that I could then spend at the commissary. However, I recall from personal experience and from speaking with other detainees that the payments would not always process to my account or to their account. In order to figure out why I did not get paid for work or why other detainees did not get paid for work, I would contact the unit manager or case manager to ask. Usually the unit manager or case manager would tell me that he would look into it. Sometimes the missing payment issue would be fixed, other times it would not be fixed and I did not get paid for that particular day (or the other detainee who I was helping did not get paid).

9. Sometimes detainee workers might receive "bonuses" or "incentives," such as getting paid an extra $1.00 for cleaning windows (which were on the second floor and could only be reached by a ladder, which did not include safety equipment).

10. During my detention, I never received any "wage statement" or similar document that provided me with information regarding gross wages earned, total hours worked, applicable deductions, net wages

earned, the pay period, and the applicable hourly rates in effect and the corresponding number of hours worked during the pay period.

11. As part my job as a cleaner / janitor, I was told by OMDC staff that I could be removed from my job if I missed work without an excuse, if I wasn't working, or if my work was not satisfactory. Although I was never removed from my job, I witnessed other detainee workers who were removed from their jobs for failing to show up, failing to work, or failing to do their job properly.

12. Also as part my job as a cleaner / janitor, I and other detainee workers were supervised by OMDC staff. OMDC staff directed us what to do, and many times assigned other tasks to us "as needed" in the areas where we were working.

13. Outside of the "Volunteer Work Program," detainees are required to keep their immediate living areas clean, which includes making the bed every day, tidying up loose items, keeping the floors free of debris, and not hanging anything from the beds or lights.

14. But there were many instances of when detainees in a living pod would have to work to clean the common areas in the living pod beyond just maintaining their own living area. One instance when this would happen would be whenever a "deep clean" was needed, which was usually when a dignitary was going to tour the living pod. The "deep cleaning" included cleaning common areas and all windows—including those on the second story of the facility without any safety apparatus. All detainees in the living pod had to help out to get the living pod clean, even if it was a detainee's day off from his work

schedule and even if a detainee did not work as part of the "Voluntary Work Program." Detainees were not paid for these "deep cleanings"— all detainees had to clean.

15. For larger tasks such as "deep cleans" before a dignitary arrived, the entire pod had to work and clean. Failure to do so by the entire living pod resulted in consequences for the entire pod, such as being on longer lockdown (which resulted in delays in detainees, including myself, contacting family, friends, or our attorneys), commissary requests being delivered late, or loss of other privileges, such as time in the yard.

16. Detainees were also responsible for removing trash from the common areas of the living pods on a daily basis, sweeping and mopping floors, and cleaning toilet bowls, sinks, showers, and furniture. Again, detainees were not paid for these cleaning tasks—they just had to do it.

17. When detainees needed to clean the living pod common areas or perform any other work, regardless of whether it was the detainee's day off or whether the detainee was even working in the "Volunteer Work Program," the detainees were not paid for working to clean the common areas when instructed by OMDC staff. There were times when I had to work and clean the pod despite that it was my day off.

18. In addition, for those detainees who had to clean or work on their days off, those detainees were not paid for the additional day(s) of work—we just had to do it. The weekly pay cap for workers was $1.00 per day and $5.00 per week (or at least that's what we were told). So, for example, if I worked my usual five

days as a cleaner / janitor, I would be paid $5.00 for the week. But if I was required to work or clean on the sixth and/or seventh day, I would receive no extra payment.

19. When I or other detainees were told to do extra work, even if on our day off, we almost always complied even if we didn't want to work. If we failed to follow a "direct order" from OMDC staff ("Go clean the pod"), we could be subject to more random and frequent searches and cell tossing, as I witnessed during my detentions at OMDC when other detainees would have their cells checked much more frequently than others. Failing to follow orders could also result in being removed from the general living pod and placed in more restrictive housing, which could last from several days to several weeks, and which might also result in a loss of job due to a higher security classification. I also witnessed this during my detentions at OMDC where detainees might refuse to clean and the situation escalated to the point of the detainee being relocated to restrictive housing. We were also told that a disciplinary note could be placed in our detainee file, which could negatively impact our case before the judge. Other times, the entire living pod might suffer some consequences for a single detainee's refusal to work, such as being on lockdown longer than usual, or not permitting us to use the TV. As a result of the potential of being placed in more restrictive housing, I and other detainees complied with OMDC staff orders, including orders to clean the pods, to avoid a higher security classification and the resulting loss of job, loss of privileges, and being placed in more restrictive housing.

20. Because I and other detainees saw and experienced what happened when we and others

failed to comply with orders, we almost always followed orders to clean or perform other work because of the threat of hardship from these various punishments.

21. As noted above, I was paid $1.00 per day for my work, and no more than $5.00 per week. I could spend this money only at the commissary. Although there were different things to purchase at the commissary, I and other detainees would spend our money on basic hygiene products, such as soap, shampoo, and toothpaste, as well as toothbrushes, deodorant, hair brushes, or shaving cream. This is because the weekly supply distribution for each detainee was two small soaps (hotel-sized), one small shampoo (hotel-sized), a small tube of toothpaste, and two rolls of toilet paper. These hygiene supplies would not last an entire week, and sometimes the supplies would be late and not re-stocked to be delivered on a weekly basis, so many detainees, including myself, used much of our commissary money to get additional hygiene supplies. And even if we tried to request additional supplies, the supplies might never come, or we would only get supplies after a cell tossing to ensure we were actually out of the supplies we needed.

22. In addition, OMDC has a standard issue of clothing for each detainee, but the standard issue of clothing would get dirty or worn down and would often be of very poor quality. The clothing became quite disgusting and was not replaced with newer, more wearable clothing. We could request to have new clothes, but similar to a request for additional supplies, the request might never be fulfilled, or we would be subjected to additional cell searches. Even if it was fulfilled, the "new" clothes would in fact be

old or dirty, likely worn by another current or former detainee. Moreover, even standard issue clothing could simply go missing in the laundry process. To the extent we were allowed, I and other detainees would also purchase clothing items when needed to ensure that we had clean clothes.

23. In addition to hygiene supplies and basic clothing, I and other detainees would use our commissary money to buy larger quantities of shampoo simply for the purposes of cleaning our immediate living areas. OMDC did not provide any cleaning supplies to us for this purpose, but we were still required to have clean living quarters. As a result, I and other detainees would use our own shampoo and soap, and shower towels provided by OMDC, to clean our living areas. I and other detainees found that cleaning the floors and other areas of our living spaces with shampoo that we purchased with our commissary money would result in cleaner living spaces and therefore would result in fewer searches, cell tosses, or disciplinary issues for failing to keep our space clean.

24. I and other detainees had to work so that we would have money to buy some of these basic hygiene supplies and clothing, or otherwise suffer from poor hygiene. I and other detainees would also purchase pre-paid phone cards to be able to use the telephone system at OMDC to call family and friends.

25. Commissary purchases are drawn from our accounts at OMDC. One way to add money to that account is to have family or friends deposit money, but very few detainees have outside support. The only other way to add money to the account is to work. In order to purchase these supplies, I and other detainees worked so that we could ensure we had

enough shower soap, shampoo, and toothpaste for good hygiene.

26. As a Plaintiff in this lawsuit, I understand the general nature of the claims raised and the facts, policies, and procedures that form the basis of those claims. I further understand that, as a Plaintiff and representative of several classes of current and former detainee workers and detainees forced to work, I seek relief in this action on behalf of those classes.

27. I am not antagonistic to other members of the classes in this lawsuit that I seek to represent. On the contrary, the shared and common experiences that all members of the classes have faced, including myself, unite us in challenging the policies and practices at issue in this case. CoreCivic's policies and practices are unlawful, and I seek to obtain relief for all members of these classes who were subject to these unlawful policies and practices.

28. Accordingly, I will fairly and adequately protect the interests of the classes that I seek to represent.

29. I have spent significant time working with my attorneys in this matter, including providing factual information for the complaint and responding to discovery requests from CoreCivic.

30. Given my dedication to challenging these unlawful policies and seeking relief for all of those detainees who were subjected to the same, I will continue to remain heavily involved and invested in this lawsuit as it progresses, and will prosecute the action vigorously on behalf of all classes.

I submit this Declaration in support of Plaintiffs' Motion For Class Certification.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 12th day of April, 2019, in San Diego, California.

/s/ Jonathan Gomez
Jonathan Gomez

[Counsel information omitted.]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SYLVESTER OWINO and JONATHAN GOMEZ, on behalf of themselves and all others similarly situated, Plaintiffs, vs. CORECIVIC, INC., Defendant.	Case No. 17-CV-01112-JLS-NLS **CLASS ACTION** **DECLARATION OF NEHEMIAS EMMANUEL NUNEZ CARRILLO**
CORECIVIC, INC., Counter-Claimant, vs. SYLVESTER OWINO and JONATHAN GOMEZ, on behalf of themselves and all others similarly situated, Counter-Defendants.	Judge: Hon. Janis L. Sammartino Magistrate: Hon. Nita L. Stormes

I, Nehemias Emmanuel Nunez Carrillo, declare as follows:

1. I am over eighteen years of age. I have personal knowledge of the content of this declaration.

If requested to do so, I could testify on the content of this declaration, and would testify with respect to this in a competent manner under oath.

2. I was detained at the Otay Mesa detention center between approximately August 2, 2017, and April 18, 2018.

3. During my detention at the Otay Mesa detention center, I was obliged to follow all the orders and instructions issued by the guards and employees of CoreCivic, including performing cleaning tasks and communal and private areas without payment. If I refused to follow the orders and instructions issued by the guards and employees of CoreCivic, I would be subject to punishment, including being placed in an isolation/incommunicado regime.

4. I understood that I could be punished if I refused to obey any order or instruction issued by the guards and employees of CoreCivic. My understanding is based on my knowledge of the written regulations and policies issued by CoreCivic, on my personal observation of other detainees who were punished for refusing to follow orders and instructions, on conversations I had with other detainees who informed me that any failure to observe the orders and instructions issued by the guards and employees of CoreCivic would result in punishment such as segregation, and on my personal experience when I was punished while I was detained. For example, they obliged me to work on my free day, and if I refused they threatened to remove me from the unit and submit me to isolation.

5. From approximately October 2017 to April 2018 I worked in the kitchen for the CoreCivic program known as the "Voluntary Work Program."

I had to apply for this work and my supervisor was an employee of CoreCivic. The employees of CoreCivic who worked in the detention center calculated my salary, working hours, work schedule, and training. My supervisor reviewed my job performance. If I performed my work poorly I could be terminated. I generally worked seven (7) hours a day. I was only paid $1.50 for each day I worked regardless of the number of hours I worked that day

6. I generally worked seven (7) days a week at my job as part of the Voluntary Work Program. This work was different from the unpaid cleaning work I had to do in the living areas. We were required to clean our living area each day, including making our bed and cleaning the floor, the toilet, the basin, the walls, the furniture, and the air outlets. We also had to clean the communal areas when ordered by the CoreCivic guards and employees. We had to do additional cleaning work in the communal areas when visitors came to the detention center. This included when the Director of ICE, the Supervisor of CoreCivic or individuals interested in acquiring CoreCivic franchises visited, and it was my turn to clean the showers, sweep the basketball court known as the yard, vacuum the floors, clean the air conditioning outlets, which tasks were assigned depending on the group I was in.

6. I joined the Voluntary Work Program because it was the only means by which I could earn money during my detention at the Otay Mesa detention center. I would have been unable to buy food, clothing, or basic hygiene items from the store without working in the Voluntary Work Program. Nor would I have been able to buy telephone cards to call my family.

7. During my detention at the Otay Mesa detention center, CoreCivic provided me with a limited amount of clothing, including socks, underwear, and vests. Laundry wasn't done every day, so I frequently had to use soiled clothing for several days. The only way to avoid having to wear dirty clothing was to buy clothing, including underwear, from the store.

8. Aside from clothing, CoreCivic provided me with basic hygiene items such as soap, shampoo, toilet paper, and toothpaste. These items were replaced each week, but I frequently ran out of the items CoreCivic gave us before the end of the week. CoreCivic took a long time to replace hygiene items when they ran out, and we generally had to wait for the weekly issue. So I frequently had to go several days without these articles. The only means of preventing these items running out during the week was to buy additional items from the store.

9. They allowed me to make telephone calls to my friends and family during my detention in the Otay Mesa detention center. These calls cost money. The only means of being certain that I could call my friends and family was to buy phone cards from the store.

10. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 14th day of April, 2019, in Houston, Texas.

/s/ Nehemias Emmanuel Nunez Carrillo
Nehemias Emmanuel Nunez Carrillo

[Counsel information omitted.]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SYLVESTER OWINO and JONATHAN GOMEZ, on behalf of themselves and all others similarly situated, Plaintiffs, vs. CORECIVIC, INC., Defendant.	Case No. 17-CV-01112-JLS-NLS **CLASS ACTION** **DECLARATION OF PLAINTIFF JONATHAN ORTIZ DUBON**
CORECIVIC, INC., Counter-Claimant, vs. SYLVESTER OWINO and JONATHAN GOMEZ, on behalf of themselves and all others similarly situated, Counter-Defendants.	Judge: Hon. Janis L. Sammartino Magistrate: Hon. Nita L. Stormes

I, Jonathan Ortiz Dubon, declare as follows:

1. I am over eighteen years of age. I have personal knowledge of the content of this declaration.

If requested to do so, I could testify on the content of this declaration, and would testify with respect to this in a competent manner under oath.

2. I was detained at the Otay Mesa detention center between approximately April 8, 2017, and November 18, 2017.

3. During my detention at the Otay Mesa detention center, I was obliged to follow all the orders and instructions issued by the guards and employees of CoreCivic, including performing cleaning tasks and communal and private areas without payment. If I refused to follow the orders and instructions issued by the guards and employees of CoreCivic, I would be subject to punishment, including being placed in an isolation/incommunicado regime.

4. I understood that I could be punished if I refused to obey any order or instruction issued by the guards and employees of CoreCivic. My understanding is based on my knowledge of the written regulations and policies issued by CoreCivic, on my personal observation of other detainees who were punished for refusing to follow orders and instructions, on conversations I had with other detainees who informed me that any failure to observe the orders and instructions issued by the guards and employees of CoreCivic would result in punishment such as segregation, and on my personal experience when I was punished while I was detained. For example, I witnessed another transgender detainee who shall hereafter be referred to as "she" who was obliged to work on her free day, and if she refused to do so was to be removed from the unit and put into isolation.

5. From approximately May 2017 to November 2017 I worked in the kitchen for the CoreCivic program known as the "Voluntary Work Program." I had to apply for this work and my supervisor was an employee of CoreCivic. The employees of CoreCivic who worked in the detention center calculated my salary, working hours, work schedule, and training. My supervisor reviewed my job performance. If I performed my work poorly I could be terminated. I generally worked seven (7) hours a day. I was only paid $1.50 for each day I worked regardless of the number of hours I worked that day

5. I generally worked seven (7) days a week at my job as part of the Voluntary Work Program. This work was different from the unpaid cleaning work I had to do in the living areas. We were required to clean our living area each day, including making our bed and cleaning the floor.

We had to do additional cleaning work in the communal areas when visitors came to the detention center. This included cleaning the air filters, the basketball court known as the yard, the toilets, the walls, the showers etc. when the Director of ICE visited.

6. I joined the Voluntary Work Program because it was the only means by which I could earn money during my detention at the Otay Mesa detention center. I would have been unable to buy food, clothing, or basic hygiene items from the store without working in the Voluntary Work Program. Nor would I have been able to buy telephone cards to call my family.

7. During my detention at the Otay Mesa detention center, CoreCivic provided me with a

limited amount of clothing, including socks, underwear, and vests. Laundry wasn't done every day, so I frequently had to use soiled clothing for several days and even wash it myself by hand and hang it out to dry on my bed.

8. They allowed me to make telephone calls to my friends and family during my detention in the Otay Mesa detention center. These calls cost money. The only means of being certain that I could call my friends and family was to buy phone cards from the store.

9. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 14 day of April, 2019, in Houston, Texas.

/s/ Jonathan Ortiz.
Jonathan Ortiz

CONFIDENTIAL

ΔπEXHIBIT 18
Deponent Figueroa
Date 2-19-19 Rptr BAB
WWW.DEPOBOOK.COM

OTAY MESA DETENTION CENTER POLICY 12-100

[Obstructed]	SANITATION AND HYGIENE
SUBJECT:	DAILY HOUSEKEEPING PLAN
SUPERSEDES:	FEBRUARY 20, 2009 (SDCF)
EFFECTIVE DATE:	SEPTEMBER 1, 2015
APPROVED:	SIGNATURE ON FILE JOHN WEAVER WARDEN

12-100.1 POLICY:

The Otay Mesa Detention Center will ensure adequate standards of housekeeping and sanitation conditions within the facility. The Safety Manager will inspect all areas of the institution on a monthly basis. At least annual inspections of the institution will be made by a San Diego County inspector for sanitation and health issues to assure compliance with all applicable laws and regulations.

12-100.2 AUTHORITY:

Contract.

12-100.3 DEFINITIONS:

Common Living Area - Any area in the unit other than the assigned cell that is

used by all detainees assigned to that unit.

12-100.4 PROCEDURE:

A. COMMON LIVING AREAS

1. All detainees/inmates assigned to a unit are responsible for maintaining the common living area in a clean and sanitary manner. The officer assigned to that unit will see that all materials needed to carry out this cleaning assignment are provided. If additional materials are needed, the officer will contact the Unit Manager.
2. Trash will not be thrown anywhere except in the trash containers provided in each unit.
3. Towels, blankets, clothing or any personal belongings will not be left in the common area.
4. The walls in the common area will be kept free of writing.
5. Detainee/inmate workers will be assigned to each area on a permanent basis to perform the daily cleaning routine of the common area.
    a. Sufficient workers will be allowed to each shift so as to provide seven (7) days a week twenty-four (24) hours a day coverage.

b. Work details necessary for the sanitation of the unit will be assigned.

6. Duties to be performed by detainee/inmate workers:
   a. All trash will be removed daily.
   b. All floors will be swept and wet mopped daily, and as required during the day. Offices closed on weekends and holidays are not included.
   c. All toilet bowls, sinks, and showers will be thoroughly cleaned and scrubbed daily.
   d. Furniture is to be wiped off daily.
   e. Any other tasks assigned by staff in order to maintain good sanitary conditions.
7. The unit officer will be responsible for inspecting during assigned shift and logging in the time of their inspection in the unit logbook. The logbook will be reviewed by the Shift Supervisor.

B. PRIVATE LIVING AREAS

1. All detainees/inmates are responsible for maintaining their assigned living area in a clean and sanitary manner.

a. No trash will be allowed to accumulate in cells/ dormitories.
b. Hazardous and combustible materials such as boxes, newspapers and magazines will not be allowed to accumulate within the cells.
c. All personal belongings will be kept in a neat and orderly manner, and must fit in the storage container provided.
d. Windows and window sills in each cell will remain completely free of any material.
e. There will be no writing on the walls.
f. No clotheslines.
g. Nothing taped or pasted on walls or furnishings (beds).
h. No clothing, bedding or towels will be draped or hung on the bed.

2. All detainees/inmates will be required to perform a daily cleaning routine of their cells. Duties to be performed:
   a. Trash will be removed from the cells/dormitories daily.
   b. All floors will be swept daily.

c. Beds must be made anytime the detainee/inmate is not in the bed.

d. Windows will be wiped down in cells.

e. Any other tasks assigned by staff in order to maintain good sanitary conditions in the cells/dormitories.

f. Pod Officers will complete the Daily Cell Inspection sheet.

3. Detainees/inmates assigned to Food Service will be required to have their areas in order with beds made before being released for work. Upon returning from work, materials needed to complete the cleaning routine will be furnished.

C. CLEANING PROGRAM FOR OTHER AREAS

The following should be used as guidelines in assuring that good housekeeping practices are met.

1. All floors will be swept and mopped on a daily basis.
2. Toilet bowls and sinks will be cleaned daily. The showers and floors will be mopped and scrubbed daily.
3. All furniture will be dusted on a daily basis and cleaned when necessary.

4. All trash will be emptied daily.
5. Windows will be washed weekly or more often when required.
6. Walls and doors will be wiped daily.
7. All equipment will be dusted or cleaned on a daily basis.

D. INSPECTION GUIDELINES FOR ALL OTHER AREAS

1. All areas will be clean and orderly.
2. Lighting, heating and ventilation equipment will function properly.
3. No fire or health hazards will be allowed to exist.
4. All plumbing equipment, including toilet, bathing, washing and laundry facilities should operate properly.
5. The floors will be clean, dry and free of hazardous substance.

E. REQUISITIONS OF SANITATION SUPPLIES

1. The Safety Manager will be responsible for ensuring that an appropriate amount of sanitation items are available for distribution.
2. Sanitation supplies will be distributed to the units on a weekly schedule and in a

manner determined by the Safety Manager.

3. Unit officers and department heads will ensure cleaning equipment is used in the proper manner.
4. Cleaning equipment such as brooms, mops, toilet brushes, etc., will be requisitioned on a one-for-one exchange program.
5. Supervision of the requisition of supplies will be provided by the Unit Manager or Shift Supervisor to ensure proper amounts of items are ordered and excess of materials and equipment is avoided.

F. LIQUID AND SOLID WASTE CONTROL

1. Liquid waste is disposed of through the sewer system.
2. Solid waste is taken out of the facility at least daily and placed in the trash dumpster.
3. Medical waste is kept in special containers and disposed of through a service contract.
4. Waste that is considered hazardous, i.e. oils, solvents etc. will not be disposed of using the sewer system. These items must

be taken offsite and disposed in accordance with local and federal laws.

G. VERMIN AND PEST CONTROL

A service contract with a licensed pest control organization provides for regularly scheduled spraying of the facility. In the event of an infestation, the service will becalled immediately.

H. LAUNDRY/ LINEN SCHEDULE

Per Posted Schedule.

12-100.5 REVIEW:

This policy will be reviewed by the Safety Manager, on an annual basis with recommended revisions submitted to the Facility Administrator.

12-100.6 APPLICABILITY:

All staff and detainees.

12-100.7 ATTACHMENTS:

None

12-100.8 REFERENCE:

ACA Standards. The ACA Standards for this facility are: 1A-03, 1A-04 and 4d-02.

[Counsel information omitted.]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Sylvester Owino and Jonathan Gomez, on behalf of themselves, and all others similarly situated, Plaintiffs, v. CoreCivic, Inc., a Maryland corporation, Defendant.	NO. 3:17-cv-01112-JLS-NLS **DECLARATION OF MICHAEL DONAHUE IN SUPPORT OF DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**
CoreCivic, Inc., a Maryland corporation, Counter-Claimant, v. Sylvester Owino and Jonathan Gomez, on behalf of themselves, and all others similarly situated, Counter-Defendants.	

I, Michael Donahue, make the following Declaration:

1. I am over the age of 18 years and competent to testify to the matters set forth in this Declaration. I make this Declaration in support of CoreCivic's Memorandum in Opposition to Plaintiffs' Motion for

Class Certification based on my own personal knowledge and my review of the relevant documents as maintained by CoreCivic in the usual course of business.

2. I have been in corrections for over 30 years. I started as a Correctional Officer with the Connecticut Department of Corrections. I have been employed by CoreCivic since 2009, when I started as an Assistant Warden at CoreCivic's Florence Correctional Center, located in Florence, Arizona. In November 2010, I became Warden at CoreCivic's West Tennessee Detention Facility in Manson, Tennessee, as Warden. In 2012, I became Warden at CoreCivic's Hardeman County Correctional Center, in Whiteville, Tennessee. I served as the Warden of CoreCivic's Eloy Detention Center ("EDC"), located in Eloy, Arizona, from May 2015 until February 2019.

3. I am currently the Warden of CoreCivic's Stewart Detention Center, located in Lumpkin, Georgia. As Warden, I am responsible for managing the operational function of the facility, providing guidance and leadership to facility staff, and maintaining standards of compliance for internal and external stakeholders, including contracting agencies.

Housekeeping

4. I am familiar with the procedures outlined in EDC's Policy 12-100, Daily Housekeeping Plan. This policy is intended to ensure compliance with ICE's Performance-Based National Detention Standards ("PBNDS") as required by the contract with ICE to house immigration detainees at EDC.

5. EDC uses a cell block-style housing unit. Each cell includes its own toilet and sink. A detainee's cell is their assigned living area.

6. Policy 12-100 requires all detainees to maintain the common living area in a clean and sanitary manner. The common living area is defined as "Any area in the unit other than the assigned cell that is used by all inmates/residents assigned to that unit." This includes the dayroom.

7. This policy only requires detainees to clean up after themselves in the common living areas. For example, if a detainee spills a drink on the floor, or if something in the microwave bubbles over, they are expected to clean up the mess, rather than leaving it for someone else to clean up later. Detainees participating in the VWP will clean up the mess if a detainee refuses to do so.

8. The policy does not, however, require detainees to clean up after other detainees in the common living areas. The only detainees who clean up messes other than those they made themselves are those who volunteer to participate in the VWP and are assigned as unit porters. Such detainees are paid $1 per day for their participation. No other detainees are assigned jobs in the common living area.

9. Policy 12-100 states that "Trash will not be thrown anywhere except in the trash containers provided in each unit." This statement refers to each detainee's responsibility to clean up after themselves. Detainees are required to throw their trash in the designated trash containers, not on the floor or anywhere else in the common area. Detainees are also required to keep their assigned living area free of trash. Because detainee cells do not include trash

bins, they must dispose of their personal trash in the dayroom trash container.

10. The only detainees who are required to pick up trash that is not their own are those who volunteer to participate in the VWP and are assigned as unit porters. Similarly, the only detainees who are required to empty the trash containers in the unit are those who volunteer to participate in the VWP and are assigned as unit porters.

11. Policy 12-100 states that "Towels, blankets, clothing or any personal belongings will not be left in the common area." This statement also refers to each detainee's responsibility to clean up after themselves. Detainees are required to keep their own personal belongings in their assigned living areas, and to pick up their own personal belongings from the common living areas. Staff members in the housing units communicate to detainees that their personal belongings must be placed in their cells when not in use.

12. The only detainees who are required to pick up personal belongings that are not their own are those who volunteer to participate in the VWP and are assigned as unit porters.

13. Policy 12-100 states in relation to the common living area that "The walls will be kept free of writing." This statement prohibits detainees from writing on the walls. If a detainee writes on a wall, and a staff member sees them doing so, the detainee is expected to clean off their writing. The same applies to their assigned living areas.

14. The only detainees who are required to clean someone else's writing off the walls are those who

volunteer to participate in the VWP and are assigned as unit porters.

15. Policy 12-100 states that "Inmate/resident workers will be assigned to each area on a regular basis to perform the daily cleaning routine of the common area." This statement refers to detainees who volunteer to participate in the VWP and are assigned as unit porters. Detainees who choose not to participate in the VWP are not expected to assist in the daily cleaning of the common area.

16. The daily cleaning routine performed by VWP unit porters, as stated in Policy 12-100, includes removing trash; sweeping and wet mopping the floors (at least once daily and as needed during the day); cleaning and scrubbing the toilets, sinks, and showers; wiping off furniture; and other tasks assigned by unit staff to maintain clean and sanitary conditions in the unit.

17. These tasks are performed only by detainees who volunteer to participate in the VWP and are assigned as unit porters. Detainees who choose not to participate in the VWP are not required to complete these tasks.

18. Each housing unit at EDC has three to five porters assigned to the unit. The unit porters perform the daily cleaning routine on an as-needed basis during their shift. Their shifts typically run from 8:00 a.m. to 11:00 a.m., from 1:00 p.m. to 4:00 p.m., and from 7:00 p.m. until 11:00 p.m. Each porter typically spends no more than 20 to 30 minutes performing any one cleaning, and no more than three hours total per day.

19. Policy 12-100 states that "All inmates/ residents are responsible for maintaining their

assigned living area in a clean and sanitary manner on a daily basis." Again, the assigned living area at EDC is a detainee's cell.

20. Detainees are not expected to clean beyond their assigned living areas. Within their assigned living area, however, detainees are expected to keep trash and combustible materials such as boxes, newspapers, magazines, and other papers from accumulating; keep their personal belongings in a neat and orderly manner; keep their windows clean and free of any material; and make their beds.

21. Unit staff provide detainees the equipment and supplies necessary to complete these tasks each day. Cleaning chemicals are provided to detainees upon request. Cleaning equipment was available in the mop closet, which detainees had access to.

22. Detainees do not eat their meals in the common area. EDC has a chow hall where detainees eat their meals. Detainees are expected to return their own tray to the tray rack when they were done eating in the chow hall.

Discipline

23. If a detainee participating in the VWP does not show up for their shift, or shows up for their shift but then refuses to work, a detention office will speak to them to identify the issue. No disciplinary action is taken against a detainee participating in the VWP who does not want to work, and no detainees participating in the VWP are ever compelled to work. They are simply removed from the program and a note is put in their file about the removal.

24. If a detainee not participating in the VWP walks away from a mess they made in the common area or refuses to clean their assigned living

area, they may face disciplinary action. Whether disciplinary action is imposed is determined on a case-by-case basis based on considerations including the detainee's disciplinary history, but where it is imposed, typical sanctions include reprimand, loss of commissary, or loss of privileges.

25. Because EDC is a secure detention facility, it is important for detainees to obey staff orders to maintain the safe and orderly operation of the facility. Nevertheless, disciplinary segregation is not given as a sanction for refusal to obey an order except under extreme circumstances, including where a detainee has previously been disciplined many times for refusing to obey an order. Sanctions for refusal to obey an order typically include loss of privileges (commissary, recreation, etc.). A detainee would not be given disciplinary segregation for refusing an order to clean their assigned living area.

26. Disciplinary sanctions for conduct that disrupts or interferes with the security or orderly running of the facility are not very common. Sanctions typically include loss of privileges (commissary, recreation, etc.), but not segregation. When segregation is given as a sanction for disruptive behavior, the behavior at issue is usually related to violence or incitement of a riot.

27. I do not recall segregation ever being used as a sanction for failure to clean one's assigned living area or for refusal to participate in the VWP while I was at EDC.

Commissary/Basic Necessities

28. When new detainees arrive at EDC, they are provided the following clothing and hygiene items consistent with the requirements of the PBNDS:

a. 2 uniforms (shirts and pants);
b. 4 pair of underwear;
c. 4 pair of socks;
d. 1 pair of shoes
e. 1 toothbrush;
f. 1 tube of toothpaste;
g. 1 bar of soap;
h. 1 bottle of shampoo;
i. 1 comb; and
j. 1 roll of toilet paper.

Razors are available upon request.

29. The difference between the shampoo, soap, toothbrush, paste, and comb provided by the facility and the like-items sold at the commissary was brand. The commissary sold brand name basic necessity items typically found at grocery chains, while the facility provided generic basic necessities.

30. If the detainee requested more basic necessities, the facility would provide them. Detainees were not required to participate in the VWP to receive basic necessities.

31. Detainees were not deprived of basic necessities. Detainees could ask for additional basic necessities at any time, and they would receive them.

32. Clothing was laundered twice a week. Blankets were laundered monthly.

33. If clothing was torn or too big, detainees could do a one-for-one exchange, where they would return the item and receive another one.

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

EXECUTED this 9th day of July, 2019 Shelby, Montana.

/s/ Michael Donahue
Michael Donahue

[Counsel information omitted.]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Sylvester Owino and Jonathan Gomez, on behalf of themselves, and all others similarly situated, Plaintiffs, v. CoreCivic, Inc., a Maryland corporation, Defendant.	NO. 3:17-CV-1112 JLS (NLS) **DECLARATION OF F. HOOD IN SUPPORT OF DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**
CoreCivic, Inc., a Maryland corporation, Counter-Claimant, v. Sylvester Owino and Jonathan Gomez, on behalf of themselves, and all others similarly situated, Counter-Defendants.	

I, F. Hood, make the following Declaration:

1. I am over the age of 18 years and competent to testify to the matters set forth in this Declaration. I make this Declaration in support of CoreCivic's Memorandum in Opposition to Plaintiffs' Motion for Class Certification based on my own personal knowledge and my review of the relevant documents

as maintained by CoreCivic in the usual course of business.

2. I have worked for CoreCivic since July 2007. In July 2007, I began as a Detention Officer at CoreCivic's Stewart Detention Center ("SDC") located in Lumpkin, Georgia. CoreCivic owns and operates SDC pursuant to a correctional services agreement with Immigration and Customs Enforcement ("ICE").

3. Since that time I have held various positions including Assistant Shift Supervisor, Shift Supervisor, and Unit Manager.

4. Currently, I am the Assistant Chief of Security ("ACOS"). I have served in this role since May 5, 2016. As the ACOS, I assist in developing policies and procedures to ensure the proper operation of the facility, supervise the enforcement of rules and regulations, cooperate with other managers in their assignment to provide services to inmates/residents, schedule work shifts and provide adequate shift coverage, oversee post assignments, daily inspect of logs, and much more.

Housekeeping

5. I am familiar with the procedures outlined in Policy 12-100, Daily Housekeeping Plan. This policy complies with ICE's Performance-Based National Detention Standards ("PBNDS") as is required by the contract with ICE to house immigration inmates/residents at SDC.

6. Policy 12-100 states that "All inmates/ residents assigned to a unit are responsible for maintaining the common living area in a clean and sanitary manner." The common area is defined as any area in the housing unit outside the inmate/ resident's assigned living area that is used by all

inmates/residents in that unit. This includes the dayroom, sinks, toilets, and showers.

7. The policy only requires inmates/residents to clean up after themselves in the common areas. For example, if an inmate/resident spills a drink on the floor, or if something they were cooking in the microwave bubbles over, they are expected to clean up their mess, rather than leaving it for the assigned porters to clean up later.

8. The policy does not, however, require inmates/residents to clean up after other inmates/residents in common areas. The only inmates/residents who clean up messes other than those they made themselves are those inmates/residents who volunteered to participate in the Voluntary Work Program ("VWP") and are assigned as unit or shower porters. VWP unit porters are paid $2 per day for their participation. VWP shower porters are paid $3 per day for their participation. No other inmates/residents are assigned jobs or required to work in or clean up the common area.

9. Policy 12-100 states that "Trash will not be thrown anywhere except in the trash containers provided in each unit." This statement refers to each inmate/resident's responsibility to clean up after themselves. Inmates/residents are required to throw their trash in the designated trash containers, not on the floor or anywhere else in the common areas. Inmates/residents are also required to keep their assigned living areas free of trash.

10. The only inmates/residents who are required to pick up trash that is not their own are those who volunteer to participate in the VWP and are

assigned as unit/shower porters. Similarly, the only inmates/residents who are required to empty the trash containers in the unit are those who volunteer to participate in the VWP and are assigned as unit/shower porters.

11. Policy 12-100 states that "Towels, blankets, clothing or any personal belongings will not be left in the common area." This statement also refers to each inmate/resident's responsibility to clean up after themselves. Inmates/residents are required to keep their personal belongings in their assigned living areas, and to pick up their own personal belongings from the common areas. Clothing and other personal items left in the common areas are subject to confiscation by staff.

12. The only inmates/residents who are required to pick up personal belongings that were not their own are those who volunteer to participate in the VWP and are assigned as unit/shower porters.

13. Policy 12-100 states that "The walls in the common areas will be kept free of writing." This prohibits inmates/residents from writing on the walls. If an inmate/resident writes on a wall, they are expected to clean off the writing. The same goes for their assigned living areas, each of which is inspected prior to a new inmate/resident moving in.

14. The only inmates/residents who are required to clean someone else's writing off the walls are those who volunteer to participate in the VWP and are assigned as unit/shower porters.

15. Policy 12-100 states that "Inmate/resident workers will be assigned to each area on a permanent basis to perform the daily cleaning routine of the common area." This statement refers to inmates/

residents who volunteer to participate in the VWP and are assigned as unit/shower porters. Inmates/residents who choose not to participate in the VWP are not expected to assist in the daily cleaning of the common area.

16. The daily cleaning routine performed by VWP unit/shower porters, as stated in Policy 12-100, includes removing the trash; sweeping and wet mopping the floors (at least once daily and as needed during the day); cleaning and scrubbing the toilets, sinks, and showers; wiping off furniture; and other tasks as assigned by unit staff to maintain clean and sanitary conditions in the unit.

17. These tasks were performed only by inmates/residents who volunteer to participate in the VWP and are assigned as unit/shower porters. Inmates/residents who choose not to participate in the VWP are not required to complete these tasks.

18. It is rare to not have enough VWP porters to complete the daily cleaning routine. If this occurs, staff perform the daily cleaning routine.

19. Each housing pod at SDC has two unit porters and two shower porters assigned to it. The porters perform the daily cleaning routine two to three times per day. Each porter typically spends approximately two to three hours at most performing these tasks each day.

20. Policy 12-100 states that "All inmates/ residents are responsible for maintaining their assigned living area in a clean and sanitary manner on a daily basis." In a dorm setting, the assigned living area includes an inmate/resident's bed and the immediate area around it. In a cell setting, the

assigned living area includes an inmate/resident's cell.

21. Inmates/residents are not required to clean beyond their assigned living areas. Within their assigned living areas, however, inmates/residents are expected to keep trash and combustible materials such as boxes, newspapers, magazines, and other papers from accumulating; keep their personal belongings in a neat and orderly manner; keep their window sills (if they have them) free of any material; keep the walls (if they have them) free of writing; sweep their floors; and make their beds.

Discipline

22. Prohibited acts and sanctions are divided into categories based on their severity. Among the "high moderate" offenses are 306 (refusal to clean assigned living area), 307 (refusal to obey a staff member/officer's order), and 399 (conduct that disrupts or interferes with the security or orderly running of the facility). These categories and offense codes are required by ICE and ICE's PBNDS.

23. Disciplinary violations range from 100-series ("greatest" offenses) to 400-series ("low moderate" offenses). 300-series offenses are considered lower-level offenses for which the disciplinary process is handled in-unit. Sanctions for these offenses typically include loss of privileges (commissary, recreation, etc.), loss of job, restriction to housing unit, and a reprimand or warning.

24. When a staff member observes a violation of faciliy rules/policies, they may issue a disciplinary report and submit it to their supervisor. If the supervisor decides to proceed with the disciplinary report, within 24 hours of the incident, the supervisor

will serve the disciplinary report on the inmate/resident, advise him of the infraction, and obtain his side of the story. The supervisor then orders an investigation.

25. The disciplinary and investigation reports for these offenses are submitted to the Unit Disciplinary Committee ("UDC"). The UDC decides whether a violation occurred and, if so, the appropriate sanction to be imposed under the circumstances, including whether the inmate/resident is a repeat offender and the severity of the offense.

26. Disciplinary segregation is typically reserved for the most severe offenses that impact the safety and security of the institution, such as assaults or possession of contraband/weapons.

27. ICE reviews all disciplinary segregation placements. Additionally, each week, CoreCivic and ICE meet to discuss all disciplinary segregation placements and whether the inmate/resident should remain in disciplinary segregation housing or be released.

28. I was provided and have reviewed Exhibit 31 to the April 15, 2019 Declaration of Eileen R. Ridley in Support of Plaintiffs Motion for Class Certification, which are excerpts from the SDC Disciplinary Log. (Doc. 85-32.)

29. **Attachment A** is a true and correct copy of SDC records pertaining to the May 17, 2013 Disciplinary Report for **Begin Confidential Information*** REDACTED ***End Confidential Information**, who was charged with disobeying staff directives to stand for count, and which corresponds to the entry identified as Row 198 on Doc. 85-32.

30. **Attachment B** is a true and correct copy of SDC records pertaining to the May 20, 2014 Disciplinary Report for **Begin Confidential Information*** REDACTED ***End Confidential Information**, who was charged with refusing to pick up trash and remove paper from the light of the cell in which he was assigned, and which corresponds to the entry identified as Row 652 on Doc. 85-32.

31. **Attachment C** is a true and correct copy of SDC records pertaining to the August 27, 2018 Disciplinary Report for **Begin Confidential Information*** REDACTED ***End Confidential Information**, who was charged for refusing to obey an order to sit in a certain location in the chow hall, and which corresponds to the entry identified as Row 2341 on Doc. 85-32.

32. In my twelve years working for CoreCivic, I have never seen disciplinary segregation given as a sanction for an inmate/resident's refusal to clean their assigned living area.

33. Most often, if an inmate/resident refuses to clean his assigned living area, he is given a verbal warning, which usually resolves the issue.

34. Nor has an inmate/resident ever been placed in disciplinary segregation or given any other disciplinary sanction for refusing to participate in the VWP, volunteering for the VWP and then refusing to report to their assigned work location, or volunteering for the VWP and then refusing to complete their assigned task. Facility supervisors are trained and instructed that participation in the VWP is strictly voluntary.

35. If an inmate/resident refuses to work, or no longer wishes to participate in the VWP, he is simply removed from the program. No disciplinary report or other sanction is issued.

36. Inmates/residents who volunteer to participate in the VWP, and whose job assignment is outside their housing unit, are called out and escorted from their housing units to their work areas according to a set schedule. This is done to ensure that inmates/residents do not work more than they are permitted to work by policy, and to ensure that they are paid for the days they work.

37. Because SDC is a secure detention facility, it is important for inmates/residents to obey staff orders to maintain the safe and orderly operation of the facility. Nevertheless, disciplinary segregation is not given as a sanction for refusal to obey an order except under extreme circumstances. Sanctions for refusal to obey an order typically include loss of privileges (commissary, recreation, etc.) or restriction to housing unit.[1]

38. Disciplinary sanctions for conduct that disrupts or interferes with the security or orderly running of the facility are rare. When they are given, it is usually related to count procedures (failure to stand for count, not being in the inmate/resident's designated area during count, etc.). Sanctions

---

[1] Disciplinary segregation is a form of separation from the general population in which inmates/residents are confined for a period of time in a segregation cell. While in segregation, an inmate/resident's property and privileges are restricted. Restriction to housing unit requires an inmate/resident to remain in their housing unit for a period of time, but does not restrict them from any in-unit activities or privileges.

typically include loss of privileges (commissary, recreation, etc.) or restriction to housing unit, but not segregation.

Commissary/Basic Necessities

39. When new inmates/residents arrive at SDC, they are provided the following clothing and hygiene items consistent with the requirements of the PBNDS.[2]

a. 3 uniforms (shirts and pants);
b. 1 pair of standard issued detainee shoes and 1 pair of Crocs;
c. 4 pair of underwear;
d. 4 pair of socks;
e. 1-4 oz. container of soap;
f. 1-1.5 oz. tube of toothpaste;
g. 1 toothbrush;
h. 1-4 oz. container of shampoo;
i. 1 comb; and
j. 1 packet of lotion.

Razors are available upon request. **Attachment D** is a photograph that accurately depicts the hygiene and clothing items provided to new inmates/residents at SDC. **Attachment E** is a photograph depicting only the hygiene items issued to all detainees.

40. Hygiene items are issued to inmates/residents twice a week.

41. Inmates/residents are informed during orientation that if they run out of a hygiene item in between the distribution times discussed above, or if

---

[2] SDC only houses male detainees, and therefore does not issue bras or feminine hygiene products.

an item of clothing gets worn out, all they have to do is ask for a new one and return the empty container (toilet paper roll, shampoo bottle, damaged clothing, etc.) and it will be provided to them. This is also covered in the inmate/resident handbook and during regular town hall meetings. (*See, e.g.*, Doc. 85-25 at CCOG00019523.)

42. An inmate/resident's clothing and towels are washed twice a week. Blankets are washed once a week. Each inmate/resident is provided a mesh laundry bag with their initial clothing issue. On laundry days, a laundry officer comes through every housing unit to pick up laundry bags. All laundry is returned to the inmate/resident that same day. Additionally, staff make regular rounds to inspect clothing, and will replace worn out clothing upon request.

43. In addition to the standard issue hygiene and clothing, SDC has a commissary where inmates/residents can purchase certain food, hygiene, clothing, and other items. The commissary inventory is set by CoreCivic's Facility Support Center.

44. The hygiene and clothing items available from the commissary are different than those provided for free to all inmates/residents. For example, soap available from the commissary is generally larger than the soap provided for free, and is available in a variety of types, scents, brands, etc.

45. In addition to the food items inmates/residents can purchase from commissary, they are provided three meals per day that are approved by a registered dietician to ensure they provide sufficient calories and nutrients, and that they provide sufficient variety.

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

EXECUTED this ___ day of July, 2019 at Lumpkin, Georgia.

/s/ F. Hood 7/11/19

F. Hood

[Counsel information omitted.]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Sylvester Owino and Jonathan Gomez, on behalf of themselves, and all others similarly situated, Plaintiffs, v. CoreCivic, Inc., a Maryland corporation, Defendant.	NO. 3:17-cv-01112-JLS-NLS **DECLARATION OF CHUCK KEETON IN SUPPORT OF DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**
CoreCivic, Inc., a Maryland corporation, Counter-Claimant, v. Sylvester Owino and Jonathan Gomez, on behalf of themselves, and all others similarly situated, Counter-Defendants.	

I, Chuck Keeton, make the following Declaration:

1. I am over the age of 18 years and competent to testify to the matters set forth in this Declaration. I make this Declaration in support of CoreCivic's Memorandum in Opposition to Plaintiffs' Motion for Class Certification based on my own personal

knowledge and my review of the relevant documents as maintained by CoreCivic in the usual course of business.

2. I have been in corrections for over 32 years. I have been employed by CoreCivic since 2003, when I started as Warden at CoreCivic's Dawson State Jail, located in Dallas, Texas. Prior to starting at Dawson State Jail, I spent 16 years with the Texas Department of Criminal Justice, where I held positions ranging from Correctional Officer to Warden.

3. I am currently the Warden of CoreCivic's La Palma Correctional Center ("LPCC"), located in Eloy, Arizona, a position I have held since March 2016. As Warden, I am responsible for managing the operational functions of the facility, providing guidance and leadership to facility staff, and maintaining standards of compliance for internal and external stakeholders, including contracting agencies.

Housekeeping

4. I am familiar with the procedures outlined in Policy 12-100, Daily Housekeeping Plan. This policy, like all policies at LPCC pertaining to ICE detainees, is intended to ensure compliance with ICE's Performance-Based National Detention Standards ("PBNDS").

5. Policy 12-100 requires all detainees to maintain the common living area in a clean and sanitary manner. The common living area is defined as any area in the housing unit outside the detainee's assigned living area that is used by all detainees in that unit. This includes the dayroom, recreation area, and showers.

6. This policy only requires detainees to clean up after themselves in the common living areas. For example, if a detainee drops a piece of trash on the floor, or if something they are cooking in the microwave bubbles over, they are expected to clean up the mess, rather than leaving it for the assigned porters to clean up later.

7. This policy does not, however, require detainees to clean up after other detainees in the common living areas. The only detainees who are assigned to clean up messes other than those they made themselves are those detainees who volunteer to participate in the Voluntary Work Program ("VWP") and are assigned as porters. VWP porters are paid $1 per day or more for their participation. No other detainees are assigned jobs or required to work in or clean up the common living areas.

8. Policy 12-100 states that "Trash will not be thrown anywhere except in the trash containers provided in each unit." This statement refers to each detainee's responsibility to clean up after themselves. Detainees are required to throw their trash in the designated trash containers, not on the floor or anywhere else in the common living areas. Detainees are also required to keep their assigned living areas free of trash.

9. The only detainees who are required to pick up trash that is not their own are those who volunteer to participate in the VWP and area assigned as porters. Detainees who are not in the VWP may occasionally be asked to pick up trash if a detention officer notices trash on the floor and a detainee is nearby, but the detainee may refuse the request without consequence. The only detainees who are

required to empty trash containers in the common living areas are those who volunteer to participate in the VWP and are assigned as porters.

10. Policy 12-100 states that "Towels, blankets, clothing or any personal belongings will not be left in the common area." This statement also refers to each detainee's responsibility to clean up after themselves. Detainees are required to keep their personal belongings in an orderly manner in their assigned living areas, to deposit their laundry in laundry collection bins, and to pick up their personal belongings from the common areas.

11. The only detainees who are required to pick up personal belongings that are not their own are those who participate in the VWP and are assigned as porters.

12. Policy 12-100 states that "The walls in the common areas will be kept free of writing." This statement prohibits detainees from writing on the walls. If a detainee writes on a wall, they are expected to clean off the writing. The same is true for assigned living areas.

13. The only detainees who are required to clean someone else's writing off the walls are those who volunteer to participate in the VWP and are assigned as porters.

14. Policy 12-100 states that "Inmate/resident workers will be assigned to each area on a permanent basis to perform the daily cleaning routine of the common area." This statement refers to detainees who volunteer to participate in the VWP and are assigned as porters. Detainees who choose not to participate in the VWP are not mandated to

participate in the daily cleaning of the common area, except to clean up their own personal items or messes.

15. The daily cleaning routine performed by VWP porters, as stated in Policy 12-100, includes removing trash; sweeping and wet mopping the floors (at least once daily and as needed during the day); wiping off furniture; cleaning the showers; cleaning the microwaves; and other tasks as assigned by unit staff to maintain clean and sanitary conditions in the unit.

16. Each housing unit at LPCC has up to 20 porters assigned to it. Each porter typically spends no more than one hour per day on the daily cleaning routine, and no more than two hours total per day on spot-cleaning tasks throughout.

17. Policy 12-100 states that "All inmates/ residents are responsible for maintaining their assigned living area in a clean and sanitary manner." LPCC's housing units are cell-based. Each detainee's assigned living area consists of their cell, including the sink and toilet.

18. Detainees are not required to clean beyond their assigned living areas, aside from cleaning up after themselves in the common area. Within their assigned living areas, detainees are expected to keep trash and combustible materials such as boxes, newspapers, magazines, and other papers from accumulating; keep their personal belongings in a neat and orderly manner; keep their windows and air vents free of any material; keep the walls free of writing; sweep their floors daily; make their beds; and perform tasks assigned by unit staff to maintain clean and sanitary conditions in the cells.

19. Policy 12-100 states that "All inmates/ residents will be required to perform a daily cleaning

routine of their cells." The daily cleaning routine performed by all detainees housed in cells, as stated in policy 12-100, includes removing trash; sweeping floors; making their beds; cleaning cell sinks and toilets; and other tasks assigned by unit staff to maintain clean and sanitary conditions in the cells.

20. Brooms, mops, and other non-chemical cleaning supplies are kept in a supply closet in the common area and are available for detainees to use any time. Detainees may check out chemical cleaning items from unit staff upon request.

Discipline

21. Prohibited acts and sanctions are divided into categories based on the severity of the prohibited acts. Among the "high moderate" offenses are 306 (refusal to clean assigned living area), 307 (refusal to obey a staff member/officer's order), and 399 (conduct that disrupts or interferes with the security or orderly running of the facility). These categories and offense codes are based on the PBNDS.

22. Disciplinary violations range from 100-series ("greatest" offenses) to 400-series ("low moderate" offenses). 300-series offenses are considered lower-level offenses for which the disciplinary process is handled in-unit. Sanctions for these types of offenses typically include loss of privileges (commissary, recreation, etc.), loss of job, or a reprimand or warning.

23. Disciplinary segregation is typically reserved for the most severe offenses that impact the safety and security of the institution, such as assaults or possession of contraband/weapons.

24. In my three years as Warden of LPCC, no detainee has ever been placed in disciplinary

segregation for refusal to clean their assigned living area. At most, such a detainee would be sanctioned with loss of privileges such as commissary or recreation, but even that is rare.

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

EXECUTED this 11 day of July, 2019 Eloy, Arizona.

/s/ Charles Keeton
Charles Keeton

[Counsel information omitted.]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Sylvester Owino and Jonathan Gomez, on behalf of themselves, and all others similarly situated, Plaintiffs, v. CoreCivic, Inc., a Maryland corporation, Defendant.	NO. 3:17-cv-01112-JLS-NLS **DECLARATION OF KRIS KLINE IN SUPPORT OF DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**
CoreCivic, Inc., a Maryland corporation, Counter-Claimant, v. Sylvester Owino and Jonathan Gomez, on behalf of themselves, and all others similarly situated, Counter-Defendants.	

I, Kris Kline, make the following Declaration:

1. I am over the age of 18 years and competent to testify to the matters set forth in this Declaration. I make this Declaration in support of CoreCivic's Memorandum in Opposition to Plaintiffs' Motion for Class Certification based on my own personal

knowledge and my review of the relevant documents as maintained by CoreCivic in the usual course of business.

2. I have been in corrections for over 19 years. I have been employed by CoreCivic since February 2000, when I started as a Correctional Officer at CoreCivic's Bay Correctional Facility, located Panama City, Florida.

3. I am currently the Warden of CoreCivic's Central Arizona Florence Correctional Complex ("CAFCC"),[1] located in Florence, Arizona, a position I have held since August 2016. As Warden, I am responsible for managing the operational functions of the facility, providing guidance and leadership to facility staff, and maintaining standards of compliance for internal and external stakeholders, including contracting agencies.

Discipline

4. The detainee handbook provides a list of prohibited acts and sanctions, divided into categories based on the severity of the prohibited acts. Among the "high moderate" offenses are 306 (refusal to clean assigned living area), 307 (refusal to obey a staff member/officer's order), and 399 (conduct that disrupts or interferes with the security or orderly running of the facility). (*See* Doc. 85-23.) These categories and offense codes are based on ICE's National Detention Standards ("NDS") and are

---

[1] CoreCivic's Florence Correctional Center and Central Arizona Detention Center were administratively combined in 2017 to form CAFCC.

reviewed and approved by the U.S. Marshals Service.[2]

5. Disciplinary violations range from 100-series ("Greatest" offenses) to 400-series ("Low Moderate" offenses). 300-series offenses are considered lower-level offenses for which the disciplinary process is handled in-unit. Sanctions for these types of offenses typically include loss of privileges (commissary, recreation, etc.), loss of job, and a reprimand or warning.

6. When a staff member observes a violation of facility rules or policy, they document it on the disciplinary report form I-884 and identify the violation, giving the facts and clearly articulating the incident. The report is then submitted to the on-duty Shift Supervisor who will review it for completeness and then assign it to a trained supervisor (Sergeant level or above) to conduct an investigation within 24 hours of the report being submitted. The investigating staff will serve the detainee a notice, making them aware of the report. The investigating staff then reviews any video footage, staff statements, and evidence, and interviews any witnesses. The investigator will then complete the investigation form.

7. The disciplinary report and the investigation report are submitted to the Disciplinary Hearing Officer ("DHO"), who will schedule a hearing with the detainee and allow them to plead their case. After reviewing all of the facts and evidence presented, the

---

[2] CAFCC operates pursuant to a contract between CoreCivic and the U.S. Marshals Service, on which ICE is an authorized user.

DHO will make a decision as to whether the detainee is guilty. The DHO will decide the appropriate sanction to be imposed under the circumstances, including whether the detainee is a repeat offender and the severity of the offense.

8. Disciplinary segregation is typically reserved for the most severe offenses that impact the safety and security of the institution, such as assaults or possession of contraband/weapons.

9. In my two-and-a-half years as Warden of CAFCC, no detainee has ever been placed in disciplinary segregation for refusal to clean their assigned living area. At most, such a detainee would be sanctioned with loss of privileges such as commissary or recreation, but even that is rare.

10. Nor has a detainee ever been placed in disciplinary segregation or given any other disciplinary sanction for refusing to participate in the VWP, volunteering for the VWP and then refusing to report to their assigned work location, or volunteering for the VWP and then refusing to complete their assigned task. Facility supervisors are trained and instructed that participation in the VWP is strictly voluntary.

11. Detainees who volunteer to participate in the VWP are assigned to certain areas and expected to report according to a set schedule. The facility operates on a very strict 24-hour building schedule, and it is very important that detainees assigned to work report on time to maintain the scheduled times the facility has committed to both internally and with external entities.

12. If a detainee does not report to their assigned area on time, then the unit will be called and an

officer will escort them to the work assignment. Disciplinary action is not taken if they do not report.

13. If a detainee refuses to report to their assigned work area, the Unit Manager will ask the detainee if they want to continue in the VWP. If they do not want to work, then they will be dropped from the program. They are never given a disciplinary report or sanction for not participating.

14. Because CAFCC is a secure detention facility, it is important for detainees to obey staff orders to maintain the safe and orderly operation of the facility. Nevertheless, disciplinary segregation is not given as a sanction for refusal to obey an order except under extreme circumstances. Sanctions for refusal to obey an order typically include loss of privileges (commissary, recreation, etc.).

15. Disciplinary sanctions for conduct that disrupts or interferes with the security or orderly running of the facility are rare. When they are given, it is usually related to extremely disruptive behavior (repeated failure to follow orders, disrespecting staff, etc.). Sanctions typically include loss of privileges (commissary, recreation, etc.), but not segregation.

Commissary/Basic Necessities

16. When new detainees arrive at CAFCC, they are provided the following clothing and hygiene items consistent with the requirements of the NDS:

a. 2 uniforms (shirts and pants);
b. 1 pair of shoes;
c. 1 jacket (in the winter);
d. 4 pair of underwear;
e. 4 pair of socks;
f. 2 bars of soap;

g. 1 stick of deodorant;
h. 1 tube of toothpaste;
i. 1 toothbrush;
j. 1 bottle of three-in-one body wash;
k. 1 comb;
l. 1 bottle of lotion;
m. 1 razor per day as needed; and
n. 2 rolls of toilet paper.

Photographs that accurately depict the types of hygiene and clothing items that are provided to new detainees are attached as Attachments A and B, respectively.

17. Detainees are informed during orientation that if they run out of a hygiene item, or if an item of clothing gets worn out, all they have to do is ask for a new one, and it will be provided to them. This is also covered in the detainee handbook. (*See, e.g.*, Doc. 85-23 at CCOG00021869.)

18. Detainees are required to tum in empty items to exchange for new ones if possible. If this is not possible, then staff may conduct an inspection of their belongings to prevent hoarding excess items. This is done for security and sanitary purposes. Toilet paper is provided upon verbal request.

19. Laundry is done every day. Each detainee is provided a laundry bag to store their dirty laundry. A laundry porter comes through every housing unit every day to pick up laundry bags. All laundry is returned to the detainees that same day. Additionally, staff makes regular rounds to inspect clothing, and will replace worn out clothing upon request or on their own initiative if an item of clothing appears unserviceable.

20. In addition to the standard issue hygiene and clothing, CAFCC makes a commissary available to detainees, from which they can purchase certain food, hygiene items, and other items. The commissary inventory is set by the Warden and the CAFCC Business Office on an annual basis.

21. The hygiene items available from the commissary are different than those provided for free to all detainees in that they generally provide detainees additional options in terms of brands, scents, colors, sizes, styles, etc.

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

EXECUTED this 10 day of July, 2019 Florence, Arizona.

/s/ Kris Kline
Kris Kline

[Counsel information omitted.]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Sylvester Owino and Jonathan Gomez, on behalf of themselves, and all others similarly situated, Plaintiffs, v. CoreCivic, Inc., a Maryland corporation, Defendant.	NO. 3:17-cv-01112-JLS-NLS **DECLARATION OF WARDEN ROBERT LACY, JR. IN SUPPORT OF DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**
CoreCivic, Inc., a Maryland corporation, Counter-Claimant, v. Sylvester Owino and Jonathan Gomez, on behalf of themselves, and all others similarly situated, Counter-Defendants.	

I, Robert Lacy, Jr., make the following Declaration:

1. I am over the age of 18 years and competent to testify to the matters set forth in this Declaration. I make this Declaration in support of CoreCivic's

Memorandum in Opposition to Plaintiffs' Motion for Class Certification based on my own personal knowledge and my review of the relevant documents as maintained by CoreCivic in the usual course of business.

2. I have been in corrections for 40 years. I have been employed by CoreCivic since 1989, when I started as the Chief of Security at the Cleveland Pre-Release Center located in Cleveland, Texas. Prior to starting at the Cleveland Pre-Release Center, I spent ten years at the Texas Department of Criminal Justice, where I held positions ranging from Correctional Officer to Administrative Segregation Captain.

3. I am currently the Warden of CoreCivic's Houston Processing Center ("HPC") in Houston, Texas, a position I have held since 1996. As Warden, I am responsible for the administrative oversight of policies and procedures, maintaining facility compliance with ICE standards, management of staff, serving as the community liaison, and much more.

Discipline

4. The detainee handbook provides a list of prohibited acts and sanctions, divided into categories based on the severity of the prohibited acts. Among the "high moderate" offenses are 306 (refusal to clean assigned living area), 307 (refusal to obey a staff member/officer's order), and 399 (conduct that disrupts or interferes with the security or orderly running of the facility). (*See* Doc. 85-27.) These categories and offense codes are required by ICE and ICE's Performance Based National Detention Standards ("PBNDS").

5. The 300 codes outlined above are minor disciplinary infractions and are processed by the Unit Disciplinary Committee (UDC). The UDC consists of one to three supervisors. These minor infractions do not carry a segregation type sanction, only restrictive sanctions can be imposed.

6. When a staff member observes a violation of these rules/policies, they may draft a disciplinary report and submit it to their supervisor. The supervisor then determines whether to issue a disciplinary report to the detainee.

7. If the supervisor elects to proceed with the disciplinary report, it is then submitted to the Unit Manager or Shift Supervisor who will review for accuracy. The detainee is then read his due process rights and an investigation is conducted by someone who was not involved in the incident.

8. The case is then processed by the UDC. The UDC will render a finding and impose sanctions as prescribed by the PBNDS disciplinary standards.

9. Sanctions for the offenses outlined above typically include loss of privileges (commissary, recreation, etc.), loss of job, and a reprimand or warning. These potential sanctions are taken from the PBNDS, as well.

10. Disciplinary segregation is typically reserved for the most severe offenses that impact the safety and security of the institution, such as assaults or possession of contraband/weapons.

11. ICE receives notice when a detainee is admitted into segregation and monitors the detainee's placement.

Housekeeping

12. All housing units at HPC are dormitories. In a dormitory setting, the assigned living area includes a detainee's bed and the immediate area around it.

13. During the intake process, detainees are instructed that they are expected to keep their assigned living areas clean, and that they are expected to clean up after themselves in the dormitories/common areas. Detainees receive these instructions from staff during intake and in an orientation video. At the conclusion of the video, staff ask the detainees if they have any questions. Additionally, detainees can raise questions regarding this (as well as any other policy or issue) during town hall meetings. Town hall meetings are conducted a minimum of once a month, and up to once a week.

14. Under no circumstances is disciplinary segregation given as a sanction for refusal to clean an assigned living area or refusal to clean up after themselves in the dormitory/common area.

15. In my 23 years as Warden of HPC, I have never seen disciplinary segregation given as a sanction for refusal to clean an assigned living area or refusal to clean up after themselves in the dormitory/common area.

16. Most often, if a detainee refuses to clean his assigned living area or clean up after himself in the dormitory/common area, he is given a verbal warning, which usually resolves the issue.

17. Because HPC is a secure detention facility, it is important for detainees to obey staff orders to maintain the safe and orderly operation of the facility. Nevertheless, disciplinary segregation is not given as a sanction for refusal to obey an order except under

extreme circumstances. Sanctions for refusal to obey an order typically include loss of privileges (commissary, recreation, etc.) or restriction to housing unit.[1] A detainee would not be given disciplinary segregation for refusing an order to clean their assigned living area.

18. Disciplinary sanctions for conduct that disrupts or interferes with the security or orderly running of the facility are rare. When they are given, it is usually related to count procedures (failure to stand for count, not being in the detainee's designated area during count, etc.). Sanctions typically include loss of privileges (commissary, recreation, etc.) or restriction to housing unit, but not segregation.

19. Detainees are also expected to clean up after themselves in the dormitories/common areas. For example, if a detainee spills a drink on the floor, or if something they were cooking in the microwave bubbles over, they are expected to clean up their mess, rather than leaving it for the assigned porters to clean up later.

20. Detainees are not expected to clean up after other detainees in the dormitories/common areas. The only detainees who clean up messes other than those they made themselves are those who volunteered to participate in the Voluntary Work Program ("VWP") and are assigned as porters. These

---

[1] Disciplinary segregation is a form of separation from the general population in which detainees are confined for a period of time in a segregation cell. While in segregation, a detainee's property and privileges are restricted. Restriction to housing unit requires a detainee to remain in their housing unit for a period of time, but does not restrict them from any in-unit activities or privileges.

detainees are paid $1 per day for their participation. No other detainees are assigned jobs in the dormitories /common areas.

21. Nor has a detainee ever been placed in disciplinary segregation or given any other disciplinary sanction for refusing to participate in the VWP, volunteering for the VWP and then refusing to report to their assigned work location, or volunteering for the VWP and then refusing to complete their assigned task. Facility supervisors are trained and instructed that participation in the VWP is strictly voluntary.

22. If a detainee refuses to work, or no longer wishes to participate in the VWP, he is simply removed from the program. No disciplinary report or other sanction is issued.

23. Similarly, detainees do not receive disciplinary sanctions for not performing job duties properly.

24. If a detainee does not show up for work, an officer calls the detainee's housing unit to check if the detainee is willing to work that day. If the detainee declines, no disciplinary sanction is issued.

25. Escorts are only utilized to escort detainees to their job assignments when the facility is on lockdown. If an escort attempts to escort a detainee to his job assignment, and he refuses, no disciplinary sanction is issued.

Commissary/Basic Necessities

26. When new detainees arrive at HPC, they are provided the following clothing and hygiene items consistent with the requirements of the PBNDS:

a. 3 uniforms (shirts and pants);
b. 1 pair of shoes;
c. 3 t-shirts;
d. 3 pair of underwear;
e. 3 bras (female population);
f. 3 pair of socks;
g. 1 packet of 3-in-1 body soap, shampoo & conditioner;
h. 1 tube of toothpaste;
i. 1 toothbrush;
j. 1 comb;
k. 1 brush (female population);
l. 1 packet of lotion; and
m. sanitary napkins upon request for female population (each unit officer has a supply on hand for distribution as needed/ requested).

Razors are available upon request. Attachment A is a photograph that accurately depicts the hygiene items provided to new detainees. Attachment B is a photograph that accurately depicts the clothing items provided to new detainees.

27. If, at any time, a detainee needs additional hygiene items, he may request them from an officer. Officers make daily rounds to replenish hygiene items. Detainees are made aware of this process at orientation and through the Detainee Handbook. (*See, e.g.*, Doc. 85-25 at CCOG00019523.)

28. Detainee clothing is washed three times a week. To get their clothes washed, detainees place dirty clothes in their issued laundry bags and provide them to the laundry officer on their scheduled laundry

day. Detainees are made aware of this process through the Detainee Handbook.

29. If, at any time, a detainee needs additional clothing items, he may request them by submitting a request form to the unit management team.

30. In addition to the standard issue hygiene and clothing, HPC has a commissary where detainees can purchase certain food, hygiene, clothing, and other items. The commissary inventory is set by CoreCivic's Facility Support Center (headquarters).

31. The hygiene and clothing items available from the commissary are different than those provided for free to all detainees. For example, soap available from the commissary is generally larger than the soap provided for free, and is available in a variety of types, scents, brands, etc.

32. Because HPC provides detainees with meals and basic clothing and hygiene items, the commissary is intended to provide detainees options. It is not necessary for a detainee to purchase food, clothing, or hygiene items from the commissary.

33. In addition to the food items detainees can purchase from commissary, they are provided three meals per day that are approved by a registered dietician to ensure they provide sufficient calories and nutrients, and that they provide sufficient variety.

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

EXECUTED this 10 day of July, 2019 Houston, Texas.

/s/ Robert Lacy, Jr.

Robert Lacy, Jr.

[Counsel information omitted.]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Sylvester Owino and Jonathan Gomez, on behalf of themselves, and all others similarly situated, Plaintiffs, v. CoreCivic, Inc., a Maryland corporation, Defendant.	NO. 3:17-cv-01112-JLS-NLS **DECLARATION OF A. MEYERS IN SUPPORT OF DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**
CoreCivic, Inc., a Maryland corporation, Counter-Claimant, v. Sylvester Owino and Jonathan Gomez, on behalf of themselves, and all others similarly situated, Counter-Defendants.	

I, A. Meyers, make the following Declaration:

1. I am over the age of 18 years and competent to testify to the matters set forth in this Declaration. I make this Declaration in support of CoreCivic's Memorandum in Opposition to Plaintiffs' Motion for Class Certification based on my own personal

knowledge and my review of the relevant documents as maintained by CoreCivic in the usual course of business.

2. I have been in corrections for over 27 years. I have been employed by CoreCivic since 2007, when I started as the Assistant Warden at CoreCivic's Lindsey State Jail, located in Jacksboro, Texas. In 2013, I became Assistant Facility Administrator of CoreCivic's T. Don Hutto Residential Center ("TDHRC"), located in Taylor, Texas. Prior to starting at CoreCivic, I worked at the Texas Department of Criminal Justice from 1992 to 2007, at several different locations.

3. An Assistant Facility Administrator is a title specific to TDHRC due to the facility's status as a residential center. The title is equivalent to Assistant Warden.

4. I am currently the Assistant Facility Administrator of TDHRC, a position I have held since 2013. As Assistant Facility Administrator, I ensure that the facility follows appropriate policies and procedures, including the facility's safety and sanitation procedures. I also act in the capacity of the Facility Administrator if she is absent.

5. A Facility Administrator is a title specific to TDHRC due to the facility's status as a residential center. The title is equivalent to Warden.

6. I am familiar with the procedures outlined in TDHRC's Policy 12-100, Daily Housekeeping Plan. This policy, like all policies intended to ensure compliance with ICE's Family Residential Standards ("FRS") at TDHRC, was approved by ICE as required by the contract with ICE to house immigration residents at TDHRC.

7. At TDHRC "immigration detainees" are referred to as "residents" due to the facility's status as a residential center.

8. TDHRC uses cell block-style housing units. Each cell has its own toilet and sink. A resident's cell is their assigned living area.

9. Policy 12-100 requests that all residents maintain the common living area in a clean and sanitary manner. The common living area is defined as "Any area in the housing unit other than the assigned room that is used by all residents assigned to that unit." This includes the dayroom and showers.

10. Only residents who are participating in the VWP are assigned to clean the common areas in the housing units. Such residents are paid $1 per day for their participation. Residents not part of the VWP are not assigned jobs in the common areas.

11. This policy requests that residents clean up after themselves in the common living areas. For example, if a resident spills a drink on the floor, or if something they are cooking in the microwave bubbles over, they are expected to clean up their mess, rather than leaving it for the assigned porter to clean up later.

12. This policy does not request that residents clean up after other residents in the common living areas. The only residents who clean up messes other than those they made themselves are those who volunteer to participate in the VWP and are assigned as unit porters. Such residents are paid $1 per day for their participation. No other residents are assigned jobs in the common living area.

13. Policy 12-100 states that "Trash will not be thrown anywhere except in the trash containers

provided in each unit." This statement refers to each resident's responsibility to clean up after themselves. Residents are requested to throw their trash in the designated trash containers, not on the floor or anywhere else in the common area. Residents are also requested to keep their assigned living area free of trash. Because resident cells do not include trash bins, they must dispose of their personal trash in the dayroom trash container.

14. The only residents who are requested to pick up trash that is not their own are those who volunteer to participate in the VWP and are assigned as unit porters. Similarly, the only residents who are requested to empty the trash containers in the unit are those who volunteer to participate in the VWP and are assigned as unit porters.

15. Policy 12-100 states that "Towels, blankets, clothing or any personal belongings will not be left in the common area." This statement also refers to each resident's responsibility to clean up after themselves. Residents are requested to keep their own personal belongings in their assigned living areas, and to pick up their own personal belongings from the common living areas. Staff members in the housing units communicate to residents that their personal belongings must be placed in their cells when not in use.

16. The only residents who are requested to pick up personal belongings that are not their own are those who volunteer to participate in the VWP and are assigned as unit porters.

17. Policy 12-100 states in relation to the common area that "The walls will be kept free of writing." This statement prohibits residents from

writing on the walls. If a resident writes on a wall, and a staff member sees them doing so, the resident is expected to clean off their writing. The same applies to their assigned living areas.

18. The only residents who are requested to clean someone else's writing off the walls are those who volunteer to participate in the VWP and are assigned as unit porters.

19. Policy 12-100 states that "Residents will be assigned to each area on a regular basis to perform the daily cleaning routine of the common area." This statement refers to residents who volunteer to participate in the VWP and are assigned as unit porters. Residents who choose not to participate in the VWP do not assist in the daily cleaning of the common areas.

20. The daily cleaning routine performed by VWP unit porters includes removing trash; sweeping and wet mopping the floors (at least once daily and as needed during the day); cleaning and scrubbing the toilets, sinks, and showers; wiping off furniture; and other tasks assigned by unit staff to maintain clean and sanitary conditions in the unit.

21. Residents who choose not to participate in the VWP are not requested to complete these tasks.

22. Each housing unit at TDHRC has four porters assigned to small units, and seven porters assigned to large units. The unit porters perform the daily cleaning routine once per day at 8:00 a.m. Each porter typically spends no more than 45 minutes to one hour total performing these tasks each day.

23. Policy 12-100 states that "All residents are responsible for maintaining their assigned living area in a clean and sanitary manner on a daily basis."

Again, the assigned living area at TDHRC is the resident's cell.

24. Residents are not expected to clean beyond their assigned living areas. Within their assigned living area, however, residents are expected to keep trash and combustible materials such as boxes, newspapers, magazines, and other papers from accumulating; keep their personal belongings in a neat and orderly manner; keep their windows clean and free of any material; sweep the floors; and make their beds.

25. Unit staff provides residents the equipment and supplies necessary to complete these tasks each day. Residents are requested to clean their assigned living area each day at 8:00 a.m. Cleaning equipment and chemicals are kept in a locked cart. The housing unit officer will go around the unit and spray chemicals as needed. If a resident needs to clean their cell at a time other than the regularly scheduled cleaning time, they can ask unit staff for equipment and supplies, and staff will provide them.

26. Residents do not eat their meals in the common area. TDHRC has a dining hall where residents eat their meals. Residents are expected to return their own tray to the tray rack when they are done eating in the dining hall.

27. Residents do not face any discipline for their refusal to clean their assigned living area. A resident who refuses to clean their assigned living area is given a verbal counseling by a member of the Unit Management staff.

28. Residents in the VWP do not face any discipline for refusing to complete their assigned tasks. A resident in the VWP who refuses to complete

their assigned task is simply removed from the program. Facility supervisors are trained and instructed that participation in the VWP is strictly voluntary.

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

EXECUTED this 10 day of July, 2019 Taylor, Texas.

/s/ A. Meyers

A. Meyers

[Counsel information omitted.]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Sylvester Owino and Jonathan Gomez, on behalf of themselves, and all others similarly situated, Plaintiffs, v. CoreCivic, Inc., a Maryland corporation, Defendant.	NO. 3:17-cv-01112-JLS-NLS **DECLARATION OF D. MINEHART IN SUPPORT OF DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**
CoreCivic, Inc., a Maryland corporation, Counter-Claimant, v. Sylvester Owino and Jonathan Gomez, on behalf of themselves, and all others similarly situated, Counter-Defendants.	

I, D. Minehart, make the following Declaration:

1. I am over the age of 18 years and competent to testify to the matters set forth in this Declaration. I make this Declaration in support of CoreCivic's Memorandum in Opposition to Plaintiffs' Motion for Class Certification based on my own personal

knowledge and my review of the relevant documents as maintained by CoreCivic in the usual course of business.

2. I have been in corrections for nearly fourteen years. I have been employed by CoreCivic since July 2005, when I started as a Correctional Officer at CoreCivic's Northeast Ohio Correctional Center ("NEOCC"), located in Youngstown, Ohio.

3. I am currently a Unit Manager at NEOCC. I have held this position since December 2016. As a Unit Manager, I directly supervise staff assigned to the unit, prepare detainee work assignments, evaluate staff performance by facility and corporate policy, and establish and maintain effective working relations with others.

4. I am familiar with the procedures outlined in Policy 12-100, Daily Housekeeping Plan. This policy, like all policies intended to ensure compliance with ICE's Performance-Based National Detention Standards ("PBNDS") at NEOCC, was approved by ICE as required by the contract with ICE to house immigration detainees at NEOCC.

5. Policy 12-100 requires all detainees to maintain the common living area in a clean and sanitary manner. The common living area is defined as any area in the housing unit outside the detainee's assigned living area that is used by all detainees in that unit.

6. This policy only requires detainees to clean up after themselves in the common living areas. For example, if a detainee spills a drink on the floor, or if something they are cooking in the microwave bubbles over, they are expected to clean up the mess, rather

than leaving it for the assigned porters to clean up later.

7. This policy does not, however, require detainees to clean up after other detainees in the common living areas. The only detainees who clean up messes other than those they made themselves are those detainees who volunteer to participate in the Voluntary Work Program ("VWP") and are assigned as unit porters or shower porters. VWP unit and shower porters are paid $1 per day or more for their participation. No other detainees are assigned jobs or required to work or clean up in the common living areas.

8. Policy 12-100 states that "Trash will not be thrown anywhere except in the trash containers provided in each unit." This statement refers to each detainee's responsibility to clean up after themselves. Detainees are required to throw their trash in the designated trash containers, not on the floor or anywhere else in the common living areas. Detainees are also required to keep their assigned living areas free of trash.

9. The only detainees who are required to pick up trash that is not their own are those who volunteer to participate in the VWP and are assigned as unit porters. Similarly, the only detainees who are required to empty the trash containers in the unit are those who volunteer to participate in the VWP and are assigned as unit porters.

10. Policy 12-100 states that "Towels, blankets, clothing or any personal belongings will not be left in the common area." This statement also refers to each detainee's responsibility to clean up after themselves. Detainees are required to keep their personal

belongings in an orderly manner in their assigned living areas, and to pick up their personal belongings from the common living areas.

11. The only detainees who are required to pick up personal belongings that are not their own are those who volunteer to participate in the VWP and are assigned as unit porters.

12. Policy 12-100 states that "The walls in the common areas will be kept free of writing." This statement prohibits detainees from writing on the walls. If a detainee writes on a wall, they are expected to clean off the writing. The same is true for their assigned living areas.

13. The only detainees who are required to clean someone else's writing off the walls are those who volunteer to participate in the VWP and are assigned as unit porters. Unit porters are sometimes provided a monetary bonus for cleaning writing off of the walls.

14. Policy 12-100 states that "Inmate/resident workers will be assigned to each area on a regular basis to perform the daily cleaning routine of the common area." This statement refers to detainees who volunteer to participate in the VWP and are assigned as unit porters or shower porters. Detainees who choose not to participate in the VWP are not expected to assist in the daily cleaning of the common area.

15. The daily cleaning routine performed by VWP porters, as stated in Policy 12-100, includes removing trash; sweeping and wet mopping the floors (at least once daily and as needed during the day); wiping off furniture; cleaning the showers; cleaning the microwaves; and other tasks as assigned by unit staff to maintain clean and sanitary conditions in the unit.

16. These tasks are performed only by detainees who volunteer to participate in the VWP and are assigned as unit porters or shower porters. Detainees who choose not to participate in the VWP are not required to complete these tasks.

17. Each housing unit at NEOCC has four to six unit and shower porters assigned to it. Each porter typically spends no more than two to three hours total on the daily cleaning routine in the morning, and on spot-cleans and after meal times performed each day.

18. Policy 12-100 states that "All inmates/ residents are responsible for maintaining their assigned living area in a clean and sanitary manner." NEOCC's housing units are cell-based. Each detainee's assigned living area consists of their cell, including the sink and toilet.

19. Detainees are not required to clean beyond their assigned living areas. Within their assigned living areas, however, detainees are expected to keep trash and combustible materials such as boxes, newspapers, magazines, and other papers from accumulating; keep their personal belongings in a neat and orderly manner; keep their window sills clean and free of any material; keep the walls free of writing; sweep their floors daily; make their beds; and perform other tasks as assigned by unit staff to maintain clean and sanitary conditions in the cells.

20. Brooms, mops, and other non-chemical cleaning supplies are kept in the common area and are available for detainees to use at any time. Detainees may check out chemical cleaning items from unit staff upon request.

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

EXECUTED this 11 day of July, 2019 Youngstown, Ohio.

/s/ D. Minehart

D. Minehart

[Counsel information omitted.]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Sylvester Owino and Jonathan Gomez, on behalf of themselves, and all others similarly situated, Plaintiffs, v. CoreCivic, Inc., a Maryland corporation, Defendant.	NO. 3:17-cv-01112-JLS-NLS **DECLARATION OF ORLANDO PEREZ IN SUPPORT OF DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**
CoreCivic, Inc., a Maryland corporation, Counter-Claimant, v. Sylvester Owino and Jonathan Gomez, on behalf of themselves, and all others similarly situated, Counter-Defendants.	

I, Orlando Perez, make the following Declaration:

1. I am over the age of 18 years and competent to testify to the matters set forth in this Declaration. I make this Declaration in support of CoreCivic's Memorandum in Opposition to Plaintiffs' Motion for Class Certification based on my own personal

knowledge and my review of the relevant documents as maintained by CoreCivic in the usual course of business.

2. I have been in corrections for over 42 years. I have been employed by CoreCivic since December 2003, when I started as an Assistant Warden at CoreCivic's Willacy County State Jail, located Raymondville, Texas. Prior to starting at Willacy County State Jail, I spent 27 years with the Texas Department of Criminal Justice, where I held positions ranging from Correctional Officer to Senior Warden II.

3. I am currently the Warden of CoreCivic's Laredo Processing Center ("LPC"), located in Laredo, Texas, a position I have held since July 2016. As Warden, I am responsible for managing the operational functions of the facility, providing guidance and leadership to facility staff, and maintaining standards of compliance for internal and external stakeholders, including contracting agencies.

Housekeeping

4. LPC uses dormitory-style housing units with bunk beds. Each detainee's assigned living area consists of a bunk and a locker that fits under the bottom bunk.

5. Detainees are provided instruction during orientation and in the detainee handbook as to their responsibilities with regard to cleanliness of their housing units. (*See* Doc. 85-25.)

6. Detainees are expected to keep their assigned living area and beds clean and presentable at all times.

7. The dormitories are cleaned four times daily, once after each meal and once at 9:00 p.m., but only by detainees enrolled in the Voluntary Work Program ("VWP"). Each cleaning takes approximately one hour or less, for a total of no more than three to five hours each day.

8. Only detainees who are participating in the VWP are assigned to clean the common areas in the housing units. Such detainees are paid $1 per day for the participation. No other detainees are assigned jobs in the common areas.

9. Detainees who volunteer to participate in the VWP and are assigned as housing unit porters clean the floors, surfaces, microwaves, showers, sinks, toilets, walls, windows, dayrooms, and rec areas and take out the trash in the common areas. Detainees who choose not to participate in the VWP are not assigned or asked to do these tasks.

10. All detainees are expected to clean up their own messes in the common areas. For example, if a detainee spills a drink on the floor, or if something in the microwave bubbles over, they are expected to clean up the mess, rather than leaving it for someone else to clean up later. If a detainee walks away from a mess they made, however, they will not be disciplined for it. Rather, it will be cleaned by the assigned VWP unit porter.

11. The only detainees who have ever been expected to clean up messes other than those they made themselves are either the assigned VWP unit porters or, before the VWP program, the detainees living in the unit who agreed to help clean the common areas.

12. Similarly, detainees are expected to throw their trash in the designated trash containers rather than leaving it on the floor or anywhere else in the common areas. Detainees are also expected to keep their assigned living areas free of trash, loose papers, and other debris.

13. The only detainees who have ever been expected to pick up trash that was not their own are either the assigned VWP unit porters or, before the VWP program, the detainees living in the unit who agreed to help clean the common areas.

14. Detainees are also expected to keep their personal belongings in their lockers, and to pick up their own personal belongings from the common area.

15. The only detainees who have ever been expected to pick up personal belongings that were not their own are either the assigned VWP unit porters or, before the VWP program, the detainees living in the unit who agreed to help clean the common areas.

Discipline

16. The detainee handbook provides a list of prohibited acts and sanctions, divided into categories based on the severity of the prohibited acts. Among the "high moderate" offenses are 306 (refusal to clean assigned living area), 307 (refusal to obey a staff member/officer's order), and 399 (conduct that disrupts or interferes with the security or orderly running of the facility). These categories and offense codes are required by ICE and ICE's National Detention Standards ("NDS").

17. Possible sanctions for these offenses include disciplinary segregation, loss of privileges (commissary, recreation, etc.), loss of job, restriction

to housing unit, and a reprimand or warning. These potential sanctions are taken from the NDS, as well.

18. When a staff member observes a violation of facility rules or policy, they report the violation to their supervisor, who decides whether to issue a formal disciplinary report. If the supervisor decides to proceed with the disciplinary report, the staff member who observed the violation writes the report, and the Shift Supervisor orders an investigation.

19. The disciplinary report and the investigation report are submitted to the Unit Disciplinary Committee ("UDC"). The UDC decides whether a violation occurred and, if so, the appropriate sanction to be imposed under the circumstances, including whether the detainee is a repeat offender and the severity of the offense.

20. Disciplinary segregation is typically reserved for the most severe offenses that impact the safety and security of the institution, such as assaults or possession of contraband/weapons. Before a detainee may be placed in segregation as a disciplinary sanction, the placement must be approved by me and then by the ICE Senior Deportation Detention Officer ("SDDO"). The SDDO is one of several ICE representatives who provide oversight at LPC through regular facility visits and meetings with me and other facility administrative staff.

21. In my three years as Warden of LPC, I recall only two or three instances in which a detainee was placed in segregation as a disciplinary sanction, and those all involved assaults.

22. In my three years as Warden of LPC, no detainee has ever been placed in disciplinary segregation for refusal to clean their assigned living

area, and no detainee ever would be. At most, such a detainee would be sanctioned with loss of privileges such as commissary or recreation, but even that is rare.

23. Nor has a detainee ever been placed in disciplinary segregation or given any other disciplinary sanction for refusing to participate in the VWP, volunteering for the VWP and then refusing to report to their assigned work location, or volunteering for the VWP and then refusing to complete their assigned task. Facility supervisors are trained and instructed that participation in the VWP is strictly voluntary.

24. Detainees who volunteer to participate in the VWP and work outside their unit are called out and escorted from their housing units to their work areas according to a set schedule. This is done to ensure that detainees do not work more than they are permitted to work by policy (i.e., no more than eight hours per day and no more than 40 hours per week), and to ensure that they are paid for the days they work.

25. After a detainee refuses to work two or three times, the Unit Manager will ask the detainee if they want to continue in the VWP. If a detainee says they do not want to work, they may be offered another available position. If they do not want to work in that position either, they may be dropped from the program. They are never given a disciplinary report or sanction for not participating.

26. Because LPC is a secure detention facility, it is important for detainees to obey staff orders to maintain the safe and orderly operation of the facility. Nevertheless, disciplinary segregation is not given as

a sanction for refusal to obey an order except under extreme circumstances. Sanctions for refusal to obey an order typically include loss of privileges (commissary, recreation, etc.) or restriction to housing unit.[1] A detainee would not be given disciplinary segregation for refusing an order to clean their assigned living area.

27. Disciplinary sanctions for conduct that disrupts or interferes with the security or orderly running of the facility are rare. When they are given, it is usually related to count procedures (failure to stand for count, not being in the detainee's designated area during count, etc.). Sanctions typically include loss of privileges (commissary, recreation, etc.) or restriction to housing unit, but not segregation.

Commissary/Basic Necessities

28. When new detainees arrive at LPC, they are provided the following clothing and hygiene items consistent with the requirements of the NDS:

a. 2 uniforms (shirts and pants);
b. 1 pair of shoes;
c. 2 t-shirts;
d. 2 pair of underwear;
e. 2 bras (as needed);
f. 2 pair of socks;
g. 1 bar of soap;

---

[1] Disciplinary segregation is a form of separation from the general population in which detainees are confined for a period of time in a segregation cell. While in segregation, a detainee's property and privileges are restricted. Restriction to housing unit requires a detainee to remain in their housing unit for a period of time, but does not restrict them from any in-unit activities or privileges.

h. 1 tube of toothpaste;
i. 1 toothbrush;
j. 1 bottle of shampoo;
k. 1 comb;
l. 1 brush;
m. 1 packet of lotion; and
n. 1 sanitary napkin (as applicable).

Razors are available upon request. Photographs that accurately depict the types of hygiene and clothing items that are provided to new detainees are attached as Attachments A and B, respectively.

29. Detainees are informed during orientation that if they run out of a hygiene item, or if an item of clothing gets worn out, all they have to do is ask for a new one, and it will be provided to them. This is also covered in the detainee handbook and during regular town hall meetings. (*See, e.g.*, Doc. 85-25 at CCOG00019523.)

30. Detainees are not required to turn in an empty container to get new hygiene items. All they need to do is ask for a new one, and it will be provided to them.

31. Laundry is done every day. Each detainee is provided a mesh laundry bag with their initial clothing issue. A laundry officer comes through every housing unit every day to pick up laundry bags. All laundry is returned to the detainees that same day. Additionally, staff makes regular rounds to inspect clothing, and will replace worn out clothing upon request.

32. Detainees are provided three meals per day that are approved by a registered dietician to ensure

they provide sufficient calories and nutrients, and that they provide sufficient variety.

33. LPC also makes a commissary available to detainees, from which they can purchase certain food, hygiene items, clothing, and other items. The commissary inventory is approved by CoreCivic's Facility Support Center.

34. The hygiene and clothing items available from the commissary are different than those provided for free to all detainees in that they generally provide detainees additional options in terms of brands, scents, colors, sizes, styles, etc.

35. Because LPC provides detainees with meals and basic clothing and hygiene items, the commissary is intended to provide detainees options. It is not necessary for a detainee to purchase food, clothing, or hygiene items from the commissary.

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

EXECUTED this 10th day of July, 2019 Laredo, Texas.

/s/ Orlando Perez

Orlando Perez

[Counsel information omitted.]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Sylvester Owino and Jonathan Gomez, on behalf of themselves, and all others similarly situated, Plaintiffs, v. CoreCivic, Inc., a Maryland corporation, Defendant.	NO. 3:17-cv-01112-JLS-NLS **DECLARATION OF STACEY STONE IN SUPPORT OF DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**
CoreCivic, Inc., a Maryland corporation, Counter-Claimant, v. Sylvester Owino and Jonathan Gomez, on behalf of themselves, and all others similarly situated, Counter-Defendants.	

I, Stacey Stone, make the following Declaration:

1. I am over the age of 18 years and competent to testify to the matters set forth in this Declaration. I make this Declaration in support of CoreCivic's Memorandum in Opposition to Plaintiffs' Motion for Class Certification based on my own personal

knowledge and my review of the relevant documents as maintained by CoreCivic in the usual course of business.

2. I have been in corrections for over 23 years. I have been employed by CoreCivic since March 2005, when I started as the Chief of Security at CoreCivic's McRae Correctional Facility, located in McRae, Georgia. Prior to starting at McRae Correctional Facility, I spent nine years with the Georgia Department of Corrections.

3. I served as the Warden of CoreCivic's North Georgia Detention Center ("NGDC"), located in Gainesville, Georgia, from January 2009 to November 2012.[1] I then served as the Warden of CoreCivic's Stewart Detention Center, located in Lumpkin, Georgia, from November 2012 to March 2013, when I became Warden of McRae Correctional Facility.

4. I am currently a Managing Director of Operations for CoreCivic, a position I have held since June 1, 2018. As a Managing Director, I provide oversight for eight prisons housing state inmates and two full service jails.

Housekeeping

5. I am familiar with the procedures outlined in Policy 12-100, Daily Housekeeping Plan. This policy, like all policies intended to ensure compliance with ICE's Performance-Based National Detention Standards ("PBNDS")[2] at NGDC, was approved by

---

[1] NGDC has not housed ICE detainees since December 2013.

[2] NGDC followed the National Detention Standards until the PBNDS were developed.

ICE as required by the contract with ICE to house immigration detainees at NGDC.

6. Policy 12-100 requires all detainees to maintain the common living area in a clean and sanitary manner. The common living area was defined as any area in the housing unit outside the detainee's assigned living area that was used by all detainees in that unit. This included the dayroom, sinks, toilets, and showers.

7. This policy only required detainees to clean up after themselves in the common living areas. For example, if a detainee spilled a drink on the floor, or if something they were cooking in the microwave bubbled over, they were expected to clean up the mess, rather than leaving it for the assigned porters to clean up later.

8. This policy did not, however, require detainees to clean up after other detainees in common living areas. The only detainees who cleaned up messes other than those they made themselves were those detainees who volunteered to participate in the Voluntary Work Program ("VWP") and were assigned as unit porters. VWP unit porters were paid $1 per day for their participation. No other detainees were assigned jobs or required to work in or clean up the common living areas.

9. Policy 12-100 states that "Trash will not be thrown anywhere except in the trash containers provided in each unit." This statement refers to each detainee's responsibility to clean up after themselves. Detainees were required to throw their trash in the designated trash containers, not on the floor or anywhere else in the common areas. Detainees were

also required to keep their assigned living areas free of trash.

10. The only detainees who were required to pick up trash that was not their own were those who volunteered to participate in the VWP and were assigned as unit porters. Similarly, the only detainees who were required to empty the trash containers in the unit were those who volunteered to participate in the VWP and were assigned as unit porters.

11. Policy 12-100 states that "Towels, blankets, clothing or any personal belongings will not be left in the common area." This statement also refers to each detainee's responsibility clean up after themselves. Detainees were required to keep their personal belongings in their assigned living areas, and to pick up their own personal belongings from the common living areas. Clothing and other personal items left in the common living areas were subject to confiscation by staff.

12. The only detainees who were required to pick up personal belongings that were not their own were those who volunteered to participate in the VWP and were assigned as unit porters.

13. Policy 12-100 states that "The walls in the common areas will be kept free of writing." This prohibited detainees from writing on the walls. If a detainee wrote on a wall, they were expected to clean off the writing. The same went for their assigned living areas, each of which was inspected prior to a new detainee moving in.

14. The only detainees who were required to clean someone else's writing off the walls were those

who volunteered to participate in the VWP and were assigned as unit porters.

15. Policy 12-100 states that "Detainee/inmate workers will be assigned to each area on a permanent basis to perform the daily cleaning routine of the common area." This statement refers to detainees who volunteered to participate in the VWP and were assigned as unit porters. Detainees who chose not to participate in the VWP were not expected to assist in the daily cleaning of the common area.

16. The daily cleaning routine performed by VWP unit porters, as stated in Policy 12-100, included removing the trash; sweeping and wet mopping the floors (at least once daily and as needed during the day); cleaning and scrubbing the toilets, sinks, and showers; wiping off furniture; and other tasks as assigned by unit staff to maintain clean and sanitary conditions in the unit.

17. These tasks were performed only by detainees who volunteered to participate in the VWP and were assigned as unit porters. Detainees who chose not to participate in the VWP were not required to complete these tasks.

18. Each housing unit at NGDC had two to three unit porters assigned to it. The unit porters performed the daily cleaning routine two to three times per day. Each porter typically spent no more than two to four hours total performing these tasks each day.

19. Policy 12-100 states that "All detainees/ inmates are responsible for maintaining their assigned living area in a clean and sanitary manner." In a dorm setting, the assigned living area included a detainee's bed and the immediate area around it. In

a cell setting, the assigned living area included a detainee's cell.

20. Detainees were not required to clean beyond their assigned living areas. Within their assigned living areas, however, detainees were expected to keep trash and combustible materials such as boxes, newspapers, magazines, and other papers from accumulating; keep their personal belongings in a neat and orderly manner; keep their window sills (if they had them) free of any material; keep the walls (if they had them) free of writing; not tape anything to their walls (if they had them) or furnishings (such as beds); and not drape or hang clothing, bedding, or towels on their beds.

21. Policy 12-100 states that "All detainees will be required to perform a daily cleaning routine of their cells." The daily cleaning routine performed by all detainees housed in cells, as stated in Policy 12-100, included removing the trash; sweeping the floors; making their beds; wiping down the windows; and other tasks as assigned by unit staff to maintain clean and sanitary conditions in the cells.

22. Unit staff provided detainees the equipment and supplies necessary to complete these tasks each day. If a detainee needed to clean their cell at a time other than the regularly scheduled cleaning time, they could ask unit staff for equipment and supplies, and staff would provide them to them.

Discipline

23. Prohibited acts and sanctions were divided into categories based on the severity of the prohibited acts. Among the "high moderate" offenses were 306 (refusal to clean assigned living area), 307 (refusal to obey a staff member/officer's order), and 399 (conduct

that disrupts or interferes with the security or orderly running of the facility). These categories and offense codes were based on the NDS.

24. Disciplinary violations ranged from 100-series ("greatest" offenses) to 400-series ("low moderate" offenses). 300-series offenses were considered lower-level offenses for which the disciplinary process is handled in-unit. Sanctions for these types of offenses typically included loss of privileges (commissary, recreation, etc.), loss of job, or a reprimand or warning.

25. Disciplinary segregation was typically reserved for the most severe offenses that impacted the safety and security of the institution, such as assaults or possession of contraband/weapons.

26. In my nearly four years as Warden of NGDC, I do not recall any detainee ever being placed in disciplinary segregation for refusal to clean their assigned living area. At most, such a detainee would have been sanctioned with loss of privileges such as commissary or recreation, but even that was rare.

I declare under penalty of perjury under the laws of the United States of America and the State of Tennessee that the foregoing is true and correct to the best of my knowledge.

EXECUTED this 10th day of July, 2019, Nashville, Tennessee.

/s/ Stacey Stone

Stacey Stone

[Counsel information omitted.]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Sylvester Owino and Jonathan Gomez, on behalf of themselves, and all others similarly situated, Plaintiffs, v. CoreCivic, Inc., a Maryland corporation, Defendant.	NO. 3:17-cv-01112-JLS-NLS **DECLARATION OF D. TOPASNA IN SUPPORT OF DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**
CoreCivic, Inc., a Maryland corporation, Counter-Claimant, v. Sylvester Owino and Jonathan Gomez, on behalf of themselves, and all others similarly situated, Counter-Defendants.	

I, D. Topasna, make the following Declaration:

1. I am over the age of 18 years and competent to testify to the matters set forth in this Declaration. I make this Declaration in support of CoreCivic's Memorandum in Opposition to Plaintiffs' Motion for Class Certification based on my own personal knowledge and my review of the relevant documents

as maintained by CoreCivic in the usual course of business.

2. I have been in corrections for over 19 years. I have been employed by CoreCivic since April 2000, when I started as a Detention Officer at CoreCivic's San Diego Correctional Facility ("SDCF"), located in San Diego, California. In 2009, I became the Chief of Security at SDCF. I remained in that position until 2014, when I became the Chief of Unit Management at SDCF. I remained in that position until the facility closed in 2015, at which time I moved to CoreCivic's Otay Mesa Detention Center ("OMDC"), also located in San Diego, California, as the Chief of Unit Management. I currently oversee state-mandated firearms training at OMDC, and have done so since 2017.

3. In my position as Chief of Unit Management at SDCF and OMDC, I oversaw the provision of unit management services at the facility, and ensured that unit staff followed applicable policies, procedures, rules, regulations, and standards. This included, but was not limited to, policies and procedures regarding the facility's Voluntary Work Program ("VWP").

Housekeeping

4. I am very familiar with the VWP as it was/is implemented at both SDCF and OMDC. I am also familiar with the procedures outlined in Policy 12-100, Daily Housekeeping Plan. This policy was in effect at SDCF and is in effect at OMDC. Except as otherwise specified, my statements in this Declaration regarding implementation of the procedures outlined in the policy apply to both facilities. Policy 12-100, like all policies intended to ensure compliance with ICE's Performance-Based

National Detention Standards ("PBNDS"),[1] was approved by ICE as required by the contract between CoreCivic and ICE to house immigration detainees at SDCF/OMDC.

5. Detainees are provided instruction as to their responsibilities with regard to cleanliness of their housing units.

6. Specifically, detainees are instructed that they are expected to keep their assigned living areas clean, and that they are expected to clean up after themselves in the common areas. Detainees receive these instructions during intake and orientation in the handbooks they are provided and from Case Managers. Detainees also receive occasional reminders during monthly town hall meetings.

7. Policy 12-100 requires all detainees to maintain the common living area in a clean and sanitary manner. The common living area is defined as any area in the housing unit outside the detainee's assigned living area that was used by all detainees in that unit. At SDCF, all housing units were comprised of two-person cells. At OMDC, some housing units are comprised of two-person cells, while others are comprised of open bay dormitories in which each bay holds four bunk beds and houses eight detainees. In either type of housing unit, the common living area includes the dayroom and showers. In dormitory units, the common living area also includes the sinks and toilets. In cell-based units, each individual cell has its own sink and toilet.

---

[1] SDCF followed the National Detention Standards until the PBNDS were developed.

8. This policy only requires detainees to clean up after themselves in the common areas. For example, if a detainee spills a drink on the floor, or if something they are cooking in the microwave bubbles over, they are expected to clean up the mess, rather than leaving it for the assigned porters to clean up later.

9. This policy does not, however, require detainees to clean up after other detainees in common living areas. The only detainees who clean up messes other than those they made themselves are those detainees who volunteer to participate in the VWP and are assigned as unit porters. VWP unit porters are paid $1 per day for their participation. No other detainees are assigned jobs or required to work in or clean up the common living areas.

10. Policy 12-100 states that "Trash will not be thrown anywhere except in the trash containers provided in each unit." This statement refers to each detainee's responsibility to clean up after themselves. Detainees are required to throw their trash in the designated trash containers, not on the floor or anywhere else in the common living areas. Detainees are also required to keep their assigned living areas free of trash.

11. The only detainees who are required to pick up trash that is not their own are those who volunteer to participate in the VWP and are assigned as unit porters. Similarly, the only detainees who are required to empty the trash containers in the unit are those who volunteer to participate in the VWP and are assigned as unit porters.

12. Policy 12-100 states that "Towels, blankets, clothing or any personal belongings will not be left in

the common area." This statement also refers to each detainee's responsibility clean up after themselves. Detainees are required to keep their personal belongings in their assigned living areas, and to pick up their own personal belongings from the common living areas. Clothing and other personal items left in the common areas are subject to confiscation by staff.

13. The only detainees who are required to pick up personal belongings that are not their own are those who volunteer to participate in the VWP and are assigned as unit porters.

14. Policy 12-100 states that "The walls in the common areas will be kept free of writing." This statement prohibits detainees from writing on the walls. If a detainee writes on a wall, they are expected to clean off the writing. The same goes for their assigned living areas.

15. The only detainees who are required to clean someone else's writing off the walls are those who volunteer to participate in the VWP and are assigned as unit porters.

16. Policy 12-100 states that "Detainee/inmate workers will be assigned to each area on a permanent basis to perform the daily cleaning routine of the common area." This statement refers to detainees who volunteer to participate in the VWP and are assigned as unit porters. Detainees who choose not to participate in the VWP are not expected to assist in the daily cleaning of the common area.

17. The daily cleaning routine performed by VWP unit porters, as stated in Policy 12-100, includes removing the trash; sweeping and wet mopping the floors (at least once daily and as needed during the

day); cleaning and scrubbing the toilets, sinks, and showers (as applicable); wiping off furniture; and other tasks as assigned by unit staff to maintain clean and sanitary conditions in the unit.

18. These tasks are performed only by detainees who volunteer to participate in the VWP and are assigned as unit porters. Detainees who choose not to participate in the VWP are not required to complete these tasks.

19. Each housing unit has approximately 30 detainees who are assigned as unit porters. Because policy prohibits detainees from working more than 40 hours per week and requires them to have at least two days off, only about 20 detainees are assigned to clean their unit on any particular day. The unit porters perform the daily cleaning routine three times each day—after breakfast, lunch, and dinner. Each porter typically spends no more than one hour each time, for a total of three to four hours each day at most.

20. Policy 12-100 states that "All detainees/ inmates are responsible for maintaining their assigned living area in a clean and sanitary manner." In a dormitory unit, the assigned living area includes a detainee's bed and the immediate area around it, as well as the detainee's foot locker, which fits under the bed. In a cell-based unit, the assigned living area includes a detainee's cell.

21. Detainees are not required to clean beyond their assigned living areas. Within their assigned living areas, however, detainees are expected to keep trash and combustible materials such as boxes, newspapers, magazines, and other papers from accumulating; keep their personal belongings in a neat and orderly manner; keep their window sills (if

they had them) free of any material; keep the walls (if they had them) free of writing; not tape anything to their walls (if they had them) or furnishings (such as beds); and not drape or hang clothing, bedding, or towels on their beds.

22. Policy 12-100 states that "All detainees will be required to perform a daily cleaning routine of their cells." The daily cleaning routine performed by all detainees in their own assigned living areas, as stated in Policy 12-100, includes removing the trash; sweeping the floors; making their beds; wiping down the windows (if they had them); and other tasks as assigned by unit staff to maintain clean and sanitary conditions in the cells and dorms.

23. Unit staff provide detainees the equipment and supplies necessary to complete these tasks each day. Mops, brooms, and squeegees are available in the unit cleaning closet for detainee use. If a detainee needs cleaning chemicals, all they need to do is ask one of the unit staff members, and they will be allowed to check out a bottle of cleaning in exchange for the identification badge.

Discipline

24. The detainee handbook provides a list of prohibited acts and sanctions, divided into categories based on the severity of the prohibited acts. Among the "high moderate" offenses are 306 (refusal to clean assigned living area), 307 (refusal to obey a staff member/officer's order), and 399 (conduct that disrupts or interferes with the security or orderly running of the facility). These categories and offense codes are required by ICE and the PBNDS.

25. Possible sanctions for these offenses include disciplinary segregation, loss of privileges

(commissary, recreation, etc.), loss of job, restriction to housing unit, and a reprimand or warning. These potential sanctions are required by ICE and the PBNDS, as well.

26. When a staff member observes a violation of facility rules or policy, they write a disciplinary report. The disciplinary report goes to the detainee, the Disciplinary Hearing Officer ("DHO"), and the Unit Disciplinary Committee ("UDC").

27. A Senior Detention Officer not involved in issuing the disciplinary report then conducts an investigation and provides a written report to the detainee, the DHO, and the UDC. The UDC, in conjunction with the DHO, then holds a hearing at which they decide (1) whether a violation occurred, and (2) the appropriate sanction to imposed, taking into consideration such factors as the severity of the offense, the circumstances surrounding the offense, and the detainee's disciplinary history.

28. Disciplinary segregation is typically reserved for the most severe offenses that impact the safety and security of the institution, such as assaults or possession of contraband/weapons (i.e., 100- or 200-level offenses).

29. Disciplinary segregation is never given for refusal to clean the assigned living area. The typical sanctions for such an offense is a verbal reprimand.

30. If a detainee is found guilty of refusing to clean their assigned living area three times in a 90-day period, however, they could be written up for a 220 offense, which is a "high" offense for being found guilty of any combination of three or more high moderate or low moderate offenses within 90 days. At that point, the detainee may be given disciplinary

segregation as a sanction in order to correct the repeated failure to comply with facility rules.

31. No detainee has ever been placed in disciplinary segregation or given any other disciplinary sanction for refusing to participate in the VWP, volunteering for the VWP and then refusing to report to their assigned work location, or volunteering for the VWP and then refusing to complete their assigned task. Participation in the VWP is strictly voluntary.

32. When a detainee who volunteers to participate in the VWP is assigned to work outside their unit, they are called from their unit to report to their assignment. OMDC uses a corridor management system in which officers are in the corridors to ensure that all detainees released from Point A arrive at Point B. Detainees who are assigned to outside work crews, such as landscaping crews, are escorted from their housing units to their work assignment. At SDCF, all detainees who volunteered to participate in the VWP and were assigned to work outside their unit were escorted from their housing units to their work assignments.

33. These procedures are followed to ensure that detainees do not work more than they are permitted to work by policy (i.e., no more than eight hours per day and no more than 40 hours per week), and to ensure that they are paid for the days they work.

34. If a detainee refuses to work when called out, they will not be disciplined. After a detainee refuses to work two or three times, they may be removed from their position, but they are never given a disciplinary report or sanction for not participating.

35. Because the facility is a secure detention facility, it is important for detainees to obey staff orders to maintain the safety and security of the facility, staff, and other detainees. Nevertheless, disciplinary segregation is not given as a sanction for refusal to obey an order except under extreme circumstances, such as refusing an order to stop fighting with another detainee, or refusing an order during an emergency. A detainee would not be given disciplinary segregation simply for refusing an order to clean their assigned living area.

36. Disciplinary sanctions for conduct that disrupts or interferes with the security or orderly running of the facility are generally given for misbehavior related to count procedures (failure to stand for count, not being in the detainee's designated area during count, etc.). Sanctions typically include loss of privileges, such as commissary or recreation, but not segregation.

Voluntary Work Program

37. Detainees are informed about the VWP at their orientation.

38. If a detainee wants to participate in the VWP, they must sign up for an available job with their unit manager or case manager.

39. Kitchen workers typically work four-to-six hour shifts (either breakfast, lunch, or dinner), five days a week. The breakfast shift is from 3:00 a.m. to 8:30 a.m. The lunch shift is from 9:00 a.m. to 3:00 p.m. The dinner shift is from 3:30 p.m. to 9:00 p.m. Kitchen workers get a meal break and have multiple rest periods.

40. Administrative porters work two shifts: day shift and night shift. The day shift typically works no

more than four hours. The night shift typically works no more than six hours. Administrative porters get a meal break and/or multiple rest periods.

41. Outside workers typically work no more than six hours a day. They get a meal break and have multiple rest periods.

42. Laundry, commissary, and intake porters work, on average, two to four hours a day, but no more than six hours a day. They typically have rest periods every two hours, including a 30-minute meal break if they are working during their scheduled meal periods.

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

EXECUTED this 11 day of July, 2019 San Diego, California.

/s/ D. Topasna

D. Topasna