

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.

CORECIVIC, INC., a Maryland
corporation,

Counterclaimant,

v.

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

Counterdefendants.

Case No.: 17-CV-1112 JLS (SBC)

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT'S
MOTION TO STAY**

(ECF No. 285)

Presently before the Court is Defendant and Counterclaimant CoreCivic, Inc.'s ("Defendant") Motion to Stay ("Mot.," ECF No. 285) and Memorandum of Points and Authorities in Support Thereof ("Mem.," ECF No. 285-1). Plaintiffs and

Counterdefendants Sylvester Owino and Jonathan Gomez (collectively, “Plaintiffs”) filed an Opposition to the Motion (“Opp’n,” ECF No. 286), and Defendant filed a Reply (“Reply,” ECF No. 288). The Court vacated the hearing on Defendant’s Motion and took it under submission pursuant to Civil Local Rule 7.1(d)(1). See ECF No. 287. Having carefully considered the Parties’ arguments, the evidence, and the law, the Court **GRANTS IN PART AND DENIES IN PART** Defendant’s Motion.

BACKGROUND

As the Parties are familiar with the facts, the Court incorporates by reference the factual and procedural background set forth in this Court’s April 1, 2020 and November 2, 2023 Orders, and states here only the background relevant to the present Motion.

This case involves allegations that Defendant—a company that operates detention facilities for civil immigration detainees—(1) violated California’s labor laws with respect to detainees’ voluntary work and (2) coerced detainees to perform uncompensated work in violation of both California and federal law. ECF No. 179 at 2–3. Among other causes of action, the operative First Amended Complaint (“FAC”) alleges violations of the federal Trafficking Victims Protection Act (“TVPA”), 18 U.S.C. §§ 1581–97. ECF No. 67 at 12–15. On April 1, 2020, the Court certified three classes, two of which involve only California-based detainees. See ECF No. 179 at 12, 59. The third class (the “National Forced Labor Class”) includes detainees at all of Defendant’s facilities. *Id.*

This case has been pending for almost seven years. For much of that time, this case has been mired in time-consuming discovery. See, e.g., ECF No. 224 at 7–9 (describing Defendant’s estimates of the cost and time burdens associated with class discovery and noting that Defendant had “delay[ed] in complying with its discovery obligations”). Moreover, this case was stayed in part for approximately two years pending the resolution of an interlocutory appeal. ECF Nos. 224, 261.

The Parties are currently engaged in discovery relating to Defendant’s non-California facilities and Plaintiffs’ federal TVPA claim. See ECF No. 284 at 2–3. Defendant represents this discovery will take one year to complete. *Id.* Aside from the

1 one-year deadline imposed on this discovery, no scheduling order is currently in place. *See*
2 *id.* at 3 (requiring the parties to file a status report on February 27, 2025, that includes a
3 proposed scheduling order); ECF No. 237 (vacating pretrial conference and related
4 deadlines in light of appeal-related stay).

5 Approximately one month after United States Magistrate Judge Steve B. Chu
6 resolved the Parties' most recent discovery dispute, Defendant filed the instant Motion.
7 Defendant seeks to stay this case in its entirety pending the Ninth Circuit's rulings in
8 *Nwauzor v. GEO Group, Inc.*, No. 21-36024, and *Washington v. GEO Group, Inc.*, No. 21-
9 36025 (collectively, "*Nwauzor*").

10 LEGAL STANDARD

11 District courts have "broad discretion" to stay actions pending before them. *Clinton*
12 *v. Jones*, 520 U.S. 681, 706 (1997). This discretion includes the power to stay an action
13 pending resolution of independent proceedings if "it is efficient for [the court's] own
14 docket and the fairest course for the parties." *Leyva v. Certified Grocers of Cal.*, 593 F.2d
15 857, 863 (9th Cir. 1979). When determining whether a stay is appropriate, courts must
16 consider (1) "the possible damage which may result from the granting of a stay," (2) "the
17 hardship or inequity which a party may suffer in being required to go forward," and (3) "the
18 simplifying or complicating of issues, proof, and questions of law which could be expected
19 to result from a stay." *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962). "[I]f there
20 is even a fair possibility that the stay for which [the moving party] prays will work damage
21 to someone else," the moving party must "make out a clear case of hardship or inequity in
22 being required to go forward." *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936). Moreover,
23 "[a] stay should not be granted unless it appears likely the [independent] proceedings will
24 be concluded within a reasonable time in relation to the urgency of the claims presented to
25 the court." *Leyva*, 593 F.2d at 864.

26 DISCUSSION

27 In *Nwauzor*, appellant GEO Group, Inc. ("GEO")—a private company operating
28 detention facilities for civil immigration detainees—argues that two federal district courts

1 erred in concluding that Washington minimum wage law applied to civil immigration
2 detainees held pursuant to a contract between GEO and the federal government. Opening
3 Brief of Defendant-Appellant at 1–3, *Nwauzor v. GEO Grp., Inc.*, No. 21-36024 (9th Cir.
4 Mar. 21, 2022), ECF No. 18. After hearing oral argument, the Ninth Circuit certified
5 questions of state law to the Washington Supreme Court, *Nwauzor*, 62 F.4th 509, 516–17
6 (9th Cir. 2023), which the Washington Supreme Court resolved in appellees’ favor on
7 January 11, 2023, *Nwauzor v. GEO Grp., Inc.*, 540 P.3d 93, 96 (Wash. 2023). The
8 *Nwauzor* parties and the United States then engaged in supplemental briefing¹ on the
9 application of three constitutional defenses to the plaintiffs’ state law claims: preemption,
10 intergovernmental immunity, and derivative sovereign immunity. See Order, *Nwauzor*,
11 No. 21-36024 (9th Cir. Mar. 7, 2023), ECF No. 95; Order, *Nwauzor*, No. 21-36024 (9th
12 Cir. Feb. 23, 2024), ECF No. 116. Those same defenses are at issue in this action.

13 Per Defendant, considerations of judicial economy support staying this case in its
14 entirety until the Ninth Circuit issues an opinion in *Nwauzor*. Defendant argues that delay
15 alone does not constitute prejudice to Plaintiffs, Mem. at 7; monetary damages incurred by
16 class members during the stay are compensable at trial, *id.* at 8; continued litigation on
17 state law claims that might be subject to the same defenses at issue in *Nwauzor* causes
18 unnecessary hardship, *id.* at 9; and declining to proceed further at this time preserves
19 judicial resources, *id.* at 10.

20 Plaintiffs respond that regardless of the outcome in *Nwauzor*, their federal TVPA
21 claims will survive. Opp’n at 1. Therefore, per Plaintiffs, “there is no reason why the
22 claims of the Forced Labor Classes should not proceed at this time.” *Id.* at 3. They also
23 contend that (1) they “reasonably expect that the Ninth Circuit will resolve [*Nwauzor*]
24 before Plaintiffs can renew their [motion for partial summary judgment as to state law
25 claims],” *id.* at 4; (2) “there are no pressing deadlines or exigencies in this action weighing
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28 ¹ As supplemental briefing in *Nwauzor* has only recently concluded, the Ninth Circuit has yet to indicate
whether it will order additional oral argument.

1 in favor of a stay,” as “all the outstanding [electronically stored information (“ESI”)]
2 CoreCivic will collect and produce over the next year” relates to Plaintiffs’ federal TVPA
3 claims, *id.* at 5; and (3) the longer the case drags on, the harder it will be for Plaintiffs to
4 find relevant information and contact putative class members, *id.* at 6.

5 For the reasons that follow, the Court largely agrees with Plaintiffs. The Court first
6 addresses Defendant’s argument that this case should be stayed in its entirety. The Court
7 then proceeds Defendant’s alternative request that this action be stayed only as to Plaintiffs’
8 state law claims.

9 **I. Case as a Whole**

10 **A. Possible Damage to Plaintiffs**

11 Defendant contends delay will not prejudice Plaintiffs because any continuing harm
12 they face will be redressed by monetary damages. Mem. at 7. Not so. As another court
13 recognized in a similar case, forced labor causes harms that “are not solely financial.”
14 *Novoa v. GEO Grp., Inc.*, No. EDCV172514JGBSHKX, 2022 WL 2189624, at *2 (C.D.
15 Cal. Mar. 31, 2022). And compensation for suffering does not erase suffering. Regardless
16 of whether class members will receive monetary compensation for their continued
17 exposure to alleged forced labor, the harm associated with said exposure weighs against a
18 stay. *See id.*

19 Second, the Court is concerned regarding the impact of continued delay on
20 “[e]vidence, witness availability, and memory concerning the pertinent time frame.”
21 *Interwoven, Inc. v. Vertical Comput. Sys., Inc.*, No. C 10-04645 RS, 2012 WL 761692, at
22 *3 (N.D. Cal. Mar. 8, 2012). This case has been pending for seven years. The longer it
23 stretches on, the more likely it is that probative evidence will slip out of reach. This
24 potential prejudice similarly weighs against a stay. *See In re Morning Song Bird Food*
25 *Litig.*, 320 F.R.D. 540, 543–45 (S.D. Cal. 2017) (finding, in a case that had been pending
26 for nearly five years, that continued stay-related delay “would serve to prejudice Plaintiff”).

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B. Hardship to Defendant

Because the Court has found that a stay would wreak possible damage to Plaintiffs, Defendant must “make out a clear case of hardship or inequity.” *Landis*, 299 U.S. at 255. Defendant has not done so here.

As this litigation will likely continue in some fashion regardless of the outcome in *Nwauzor*, Defendant’s arguments regarding wasteful discovery are entitled to little weight. Defendant repeatedly asserts that “[a]ny one of the constitutional defenses now before the Ninth Circuit could result in the dismissal of part *or all* of the claims in this case.” Mem. at 8 (emphasis added). Yet Defendant fails to explain how the defenses relevant to the *Nwauzor* plaintiffs’ *state law* claims would impact Plaintiffs’ *federal* TVPA claim. Defendant’s silence in this regard is glaring given (1) its clear explanation of how *Nwauzor* would impact Plaintiffs’ state law claims, *see* Mem. at 9; and (2) Plaintiffs’ express contention that *Nwauzor* has “no arguable bearing on the Forced Labor Classes,” Opp’n. at 3; *see also Novoa*, 2022 WL 2189624, at *3 (“[A]s Plaintiffs note, GEO’s affirmative defenses do not affect Plaintiffs’ federal TVPA claims.”). As there will likely “be unresolved issues in need of discovery regardless of the outcome of [*Nwauzor*],” Defendant cannot rely on the burden associated with discovery on said issues to justify a stay. *See Montegna v. Ocwen Loan Servicing, LLC*, No. 17-CV-00939-AJB-BLM, 2017 WL 4680168, at *4 (S.D. Cal. Oct. 18, 2017).

This conclusion is reinforced by the status of discovery. The only current discovery deadline in this case involves Defendant’s production of ESI from non-California facilities “in connection with the TVPA claim of the National Forced Labor Class.” Opp’n at 7. And Defendant represented that this discovery will take an entire year to complete. *See* ECF No. 284 at 3 (granting Defendant’s request for one year to complete its TVPA-related discovery obligations). Thus, until early 2025, Defendant will be engaged in discovery that Defendant does not dispute will be unaffected by *Nwauzor*.

Consequently, Defendant has not shown sufficient hardship to justify a stay of this action in its entirety. *See Montegna*, 2017 WL 4680168, at *4 (“[R]equiring both parties to

engage in conduct they would unavoidably have to in any event does not warrant an imposition of a delay that would cause a matter to come to a grinding halt.”).

C. Simplifying and Complicating of Issues

The Court agrees with Defendant that—as Plaintiffs do not dispute—the Ninth Circuit’s opinion in *Nwauzor* will likely simplify the issues before this court. Depending on the outcome, *Nwauzor* may either demonstrate that Plaintiffs’ state law claims are barred by one of Defendant’s constitutional defenses or obviate the need for this Court to consider Defendant’s constitutional defenses. Based on the current posture of this litigation, however, it seems likely that the Court will benefit from *Nwauzor*’s guidance regardless of whether it stays this case in its entirety.

A comparison with similar cases is instructive. In *Gomez v. GEO Group, Inc.*, the court granted a stay where it was faced with a pending motion to dismiss, motion for partial class certification, and motion for summary judgment, all of which involved issues tied up in *Nwauzor*. No. 122CV00868ADACDB, 2023 WL 4424586, at *1–2 (E.D. Cal. July 10, 2023). Rather than spend judicial resources ruling on these pending motions, the Court stayed the case in its entirety. *Id.* at *4. In *Novoa*, by contrast, the case was in an advanced stage—the court had already certified a class and ruled on cross-motions for summary judgment. 2022 WL 2189624, at *1. As all that was left to do in *Novoa* was trial, judicial economy again counseled against engaging in lengthy and expensive proceedings that might give rise to inconsistent or unnecessary rulings. *Id.* at *3.

This case is at a different stage from *Gomez* and *Novoa*. This Court has already resolved Defendant’s motion to dismiss and has certified multiple classes. ECF Nos. 38, 179. And as the Parties are currently engaged in lengthy discovery, see ECF No. 284, there are no approaching dispositive-motion or trial deadlines that threaten to give rise to inconsistent or unnecessary rulings. The current absence of such deadlines further weighs against a stay of this case.

All three factors weigh against staying this action in its entirety. The Court therefore **DENIES** Defendant’s request to the extent Defendant seeks such a stay.

II. Stay as to State Law Claims Only

Though Defendant in its Motion seeks only a stay of this action in its entirety, Defendant in its Reply asks the Court to “at a minimum . . . stay further proceedings pertaining to Plaintiffs’ state law claims.” Reply at 6–7. Defendant first argues that it would waste judicial resources to issue dispositive rulings on state law claims that might be mooted by *Nwauzor*. Second, Defendant suggests it should not have to bear the expense of claim-specific discovery that might ultimately prove unnecessary. Finally, Defendant contends notice should not be sent to class members whose claims may be dismissed.

The Court will issue a limited stay as to dispositive motions regarding state law claims potentially subject to the constitutional defenses at issue in *Nwauzor*. The Court agrees that “[w]aiting for a decision to issue in [*Nwauzor*] will ‘avoid exhausting judicial resources to decide . . . summary judgment motions . . . which may prove fruitless.’” *Gomez*, 2023 WL 4424586, at *4. Indeed, Plaintiffs do not contend that it makes sense for this Court to rule on state law claims that could well be barred if the Ninth Circuit rules in favor of GEO Group. Instead, they argue only that the Ninth Circuit will likely issue its ruling in *Nwauzor* before Plaintiffs are able to file their anticipated partial summary judgment motion. Opp’n at 4. As both Parties agree that the Ninth Circuit’s ruling in *Nwauzor* will be relevant to Plaintiffs’ anticipated summary judgment motion, the Court will stay consideration of any such motion until *Nwauzor* is decided.

The Court will not, however, stay discovery related to state law claims. Defendant suggests continuing such discovery would be a waste of resources. Reply at 5–6. This argument ignores, however, that Defendant (1) has had two years to complete *only* state-law-specific discovery and (2) has repeatedly sought to delay its discovery obligations despite the advanced age of this case. *See, e.g.*, ECF No. 224 at 9, 11 (admonishing Defendant for “delaying in complying with its discovery obligations” and declining to stay this case with respect to California-focused discovery pending Defendant’s interlocutory appeal).

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1 Given the amount of California-focused discovery Defendant has already
2 completed²—and the extensive time the Parties have already had to engage in said
3 discovery³—the California-focused discovery that remains is unlikely to be sufficiently
4 burdensome to justify a stay. And, to the extent Plaintiffs have not yet completed certain
5 depositions with respect to state law claims, the risk of loss of evidence due to the
6 deteriorating recollections of deponents in this nearly seven-year-old case militates in favor
7 of allowing said depositions to proceed. *See id.* at 9–10 (denying stay with respect to
8 California-focused discovery in part because “some of the relevant information . . . is
9 known to current and former CoreCivic employees and civil immigration detainees whose
10 recollections will deteriorate”).

11 The Court is concerned, moreover, regarding Defendant’s apparent assumption that
12 no discovery save ESI production from non-California facilities will occur until February
13 27, 2025. *See* Reply at 5. It is not clear to the Court why the Parties cannot simultaneously
14 produce said ESI *and* complete other outstanding discovery obligations (*e.g.*, the additional
15 depositions anticipated by Defendant). To ensure that both Parties are proceeding
16 diligently with respect to *all* outstanding fact discovery, the Parties **SHALL FILE** a
17 proposed, fact-discovery specific schedule within twenty-one (21) days of the date of this
18 Order. This schedule should reflect good faith efforts by both Parties to complete as much
19 discovery as possible concurrently with Defendant’s ESI production from non-California
20 facilities.

21 Finally, the Court will not stay notice to class members until *Nwuazor* is decided.
22 As the claims of the National Forced Labor Class are likely to survive regardless of the
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24 ² Defendant represents that it has “produced over 400,000 pages of documents, including ESI from its
25 California facilities and Stewart Detention Center.” ECF No. 279 at 8 n.9.

26 ³ The Court has been generous to Defendant with respect to discovery-related extensions and timelines,
27 including by most recently granting Defendant a year to complete document production from its non-
28 California facilities. The Court’s patience for delay, however, is wearing thin. Going forward, both
Parties should expect firm, *tight* deadlines that reflect both the age of this case and the importance of the
underlying claims.

1 outcome in *Nwauzor*, notice to said class should go forward. Moreover, the National
2 Forced Labor Class by definition overlaps greatly with the California-specific classes. *See*
3 ECF No. 179 at 12 (defining the National Forced Labor Class to include ICE detainees
4 detained at *all* CoreCivic facilities between December 23, 2008, and the present).
5 Declining to proceed with notice to the other two classes alongside notice to the National
6 Forced Labor Class both risks sacrificing cost savings associated with simultaneous notice
7 and would likely require adjustments to the already-approved class notice plan, *see* ECF
8 No. 206 at 1.

9 True, courts have stayed notice to class members in cases where the Ninth Circuit
10 grants (or considers granting) a defendant’s petition to appeal class certification under Rule
11 23(f). *See, e.g., Brown v. Wal-Mart Stores, Inc.*, No. 5:09-CV-03339-EJD, 2012 WL
12 5818300, at *4–5 (N.D. Cal. Nov. 15, 2012); *Farley v. Lincoln Benefit Life Co.*, No. 2:20-
13 CV-02485-KJM-DB, 2024 WL 86317, at *4 (E.D. Cal. Jan. 8, 2024). These courts reason
14 that if the Ninth Circuit were to reverse or modify the decision certifying the class, a second
15 curative notice “would not be sufficient to stem the confusion that would arise.” *Brown v.*
16 *Wal-Mart Stores, Inc.*, 2012 WL 5818300, at *4.

17 This case, however, is distinguishable. In *Nwauzor*, the district court’s decision to
18 certify a class of civil immigration detainees is not at issue. *See* Defendant-Appellants’
19 Opening Brief, *supra*, at 1–3. *Nwauzor* is therefore not relevant to whether this Court
20 properly certified the California-specific classes, but instead to the merits of said classes’
21 claims. As this Court is unlikely to alter its certification decision with respect to the
22 California-specific classes based on the outcome of *Nwauzor*, the risk of class-member
23 confusion associated with pre-*Nwauzor* notice is minimal.⁴

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26 ⁴ Defendant points out that if the Parties provide notice to all three classes and the state law claims are
27 ultimately dismissed, the Parties may then have to bear the cost of a second notice informing class
28 members of said dismissal. Reply at 6. It is not a given, however, that notice would be required in such
a circumstance. *See* Fed. R. Civ. P. 23(c)(2), (d)(1)(B); *cf. Diaz v. Tr. Territory of Pac. Islands*, 876 F.2d
1401, 1406 (9th Cir. 1989) (“Rule 23(e) notice is not required where the dismissal is involuntary.”). And

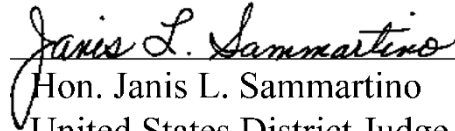
1 As the Court concludes that class notice should proceed in this case, the Parties
2 **SHALL FILE** a proposed class-notice schedule within twenty-one (21) days of the date
3 of this Order. If possible, the Court expects class notice to proceed concurrently with,
4 rather than after, Defendant's current ESI production.

5 **CONCLUSION**

6 In light of the foregoing, the Court **GRANTS IN PART AND DENIES IN PART**
7 Defendant's Motion to Stay (ECF No. 285). The Court **STAYS** this case with respect to
8 the filing of dispositive motions involving state law claims subject to the constitutional
9 defenses at issue in *Nwauzor*. The Court otherwise **DENIES** Defendant's Motion. The
10 Parties **SHALL FILE** proposed fact-discovery and class notice schedules within twenty-
11 one (21) days of the date of this Order.

12 **IT IS SO ORDERED.**

13 Dated: May 3, 2024


Hon. Janis L. Sammartino
United States District Judge

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28 even assuming such notice would be required, the Court is not persuaded that the potential cost of a second
notice justifies delaying initial notices given the age of this case.