IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

WILHEN HILL BARRIENTOS, MARGARITO VELAZQUEZ GALICIA, and SHOAIB AHMED individually and on behalf of all others similarly situated, Plaintiffs, v. **CORECIVIC, INC.,** Defendant.	**Civil Action No. 4:18-cv-00070-CDL**
CORECIVIC, INC., Counter-Claimant, v. **WILHEN HILL BARRIENTOS, MARGARITO VELAZQUEZ GALICIA, and SHOAIB AHMED** individually and on behalf of all others similarly situated, Counter-Defendants.	

MEMORANDUM IN SUPPORT OF PLAINTIFFSô MOTION TO DISMISS DEFENDANTôS COUNTERCLAIM

CoreCivic's Counterclaim is the epitome of greed. It is a shameless pleading to this Court that CoreCivic is legally entitled to guaranteed double profits off the backs of detained immigrants.[1] CoreCivic receives from the United States government, and specifically U.S.

[1] Plaintiffs refer to individuals detained in Stewart as "detained immigrants" with the caveats that Plaintiffs intend the colloquial meaning of "immigrants" rather than the specific legal meaning as defined in 8 U.S.C. § 1101(a)(15) and that there are United States citizens detained in Stewart and in other civil immigration detention centers across the nation. *See, e.g.*, William Finnegan, *The Deportation Machine*, THE NEW YORKER (Apr. 29, 2013), https://www.newyorker.com/magazine/2013/04/29/the-deportation-machine (reporting on the case of Mark Lyttle, a U.S. citizen who was wrongfully detained in Stewart and deported to Mexico).

Immigration and Customs Enforcement ("ICE"), $62.03 per detained person per day of detention[2] at its privately owned and operated Stewart Detention Center ("Stewart") in Lumpkin, Georgia. Doc. 1 ¶ 25; *but see* Doc. 59 ¶ 25 (claiming insufficient knowledge about the amount of money CoreCivic receives per day per detained person). Included in that figure is a healthy profit component. Doc. 1 ¶ 26. But for CoreCivic, this is not enough.

CoreCivic operates a so-called Voluntary Work Program ("VWP") at Stewart, and through this program, CoreCivic uses detained immigrants to perform work that directly contributes to institutional operations. Without detained people's work, CoreCivic would have to pay federally contracted workers at least $7.25 per hour, and likely much more. Doc. 1 ¶ 31. Yet, for this work, CoreCivic pays detained people as little as $1 *per day*. *Id.* Plaintiffs and the putative class members have had no choice but to participate in the VWP. If they refuse, CoreCivic imposes punishments and withholds basic necessities from an already torturous existence. *See generally* Doc. 1 ¶¶ 36-60. For years, CoreCivic has been saving hundreds of dollars per week in labor costs for every single detained person at Stewart forced to participate in the VWP.

Faced with Plaintiffs' claims of forced labor and unjust enrichment, and the prospect of having to pay Plaintiffs

of profits for CoreCivic. *See* Doc. 1 ¶¶ 18-26. Inherent in CoreCivic's pleadings in this matter, including in its Counterclaim, is the notion that detained immigrants in CoreCivic's custody have diminished rights and should simply be grateful for any services they receive. Moreover, for the reasons set forth below, CoreCivic's Counterclaim fails as a matter of law because it is not ripe for adjudication and does not state a claim upon which relief can be granted.

FACTUAL ALLEGATIONS

I. Plaintiffsô Lawsuit to End and Provide Relief from CoreCivicôs Forced Labor Scheme and Unjust Enrichment

Plaintiffs are immigrants who were detained at the time the Complaint was filed and were forced to work for Defendant CoreCivic at Stewart. Doc. 1 ¶ 3. CoreCivic is a for-profit corporation providing correctional and detention services. *Id.* ¶ 12.

Immigration detention has expanded roughly eightfold over the past two decades, with CoreCivic specifically benefitting from a rapidly increasing share of contracts for new detention beds. *Id.* ¶¶ 18, 20. As part of its immigration detention enterprise, CoreCivic owns and operates Stewart under contract with Stewart County, Georgia ("Stewart County"). *Id.* ¶¶ 13, 23. Stewart County maintains an Intergovernmental Service Agreement ("IGSA") with ICE to detain immigrants on behalf of ICE. *Id.*

CoreCivic has a readily available, captive labor force that cleans, maintains, and operates its facilities for subminimum wages under threats of solitary confinement, criminal prosecution, and other sanctions, CoreCivic has been able to expand tremendously its massive profits from detaining immigrants at Stewart. *Id.* ¶ 26.

Notwithstanding immigration detention's civil nature and purpose, detained immigrants face prison-like conditions at Stewart. *Id.* ¶ 16. At Stewart, most detained immigrants live in open dormitories where conflict and violence are commonplace. *Id.* ¶ 56. Up to 66 people share a single bathroom with three to four toilets, three to four urinals, and four sinks. *Id.* The shared bathroom is often filthy, and the showers do not have temperature control, instead providing only extremely hot water. *Id.* It is difficult for detained people to maintain personal hygiene because soap, toothpaste, and toilet paper are scant. *Id.* ¶ 42. Contact with the outside is limited, incoming packages containing personal items are prohibited,[3] and outgoing calls are prohibitively costly. *Id.* ¶¶ 46-47. Furthermore, CoreCivic fails to provide detained immigrants with adequate food. *Id.* ¶¶ 40, 43-

CoreCivic pays detained immigrants between $1 and $4 per day and occasionally more for longer shifts. *Id.* ¶31.

Once a worker is in the program, CoreCivic maintains a corporate scheme, plan, and pattern of threatening detained immigrants who refuse to work, organize a work stoppage, or participate in a work stoppage with "disciplinary segregation" (solitary confinement), criminal prosecution, downgrading the detained immigrants' housing, and/or revoking access to the commissary, among other sanctions. *Id.* ¶ 48.

On April 17, 2018, Plaintiffs filed this lawsuit. Plaintiffs seek to represent a class of immigrants who were or are detained at Stewart and worked or work in the VWP. They allege that the VWP amounts to forced labor in violation of the Trafficking Victims Protection Act, 18 U.S.C. §§ 1589, 1594, and 1595, and unjust enrichment under Georgia common law. *Id.* ¶¶ 103-22. Plaintiffs seek injunctive relief to end to this unlawful scheme and to recover damages, statutory restitution, and an equitable award to remedy the unjust enrichment resulting from CoreCivic's illegal labor practices. *Id.* ¶¶ 93-94, 102, 113-16, 122.

The Court denied CoreCiv [illegible]

enrichment. Doc. 59 Countercl. ¶¶ 1–21

12(b)(1). *See Stalley ex rel. United States v. Orlando Regâl Healthcare Sys., Inc.*, 524 F.3d 1229, 1234-35 (11th Cir. 2008) (per curiam); *Digit. Props. v. City of Plantation*, 121 F.3d 586, 591 (11th Cir. 1997); *Univ. of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 410 (11th Cir. 1999) ("Simply put, once a federal court determines that it is without subject matter jurisdiction, the court is powerless to continue."). Courts do not have subject matter jurisdiction over claims not yet ripe. *Digit. Props.*, 121 F.3d at 591.

Subject matter jurisdiction challenges come in two forms: facial and factual. *Lawrence v. Dunbar*, 919 F.2d 1525, 1528-29 (11th Cir.1990) (per curiam); *Hooks v. United States Postal Serv.*, No. 1:08-cv-116-WLS, 2010 WL 11651681, at *2 (M.D. Ga. Sept. 13, 2010). A facial attack requires the court to determine "if [the] plaintiff has sufficiently alleged a basis of subject matter jurisdiction, and the allegations in his complaint are taken as true for the purposes of the motion." *McElmurray v. Consol. Gov't of Augusta-Richmond Cty.*, 501 F.3d 1244, 1251 (11th Cir. 2007) (quoting *Lawrence*, 919 F.3d at 1529); *In re Sea Vessel, Inc. v. Reyes*, 23 F.3d 345, 347 (11th Cir. 1994) (holding that, in a facial attack on subject matter jurisdiction, the non-moving party "receives the same protections as it would defending against a motion brought under [Federal Rule of Civil Procedure] 12(b)(6)" (quoting *Osborn v. United States*, 918 F.2d 724, 729 n.6 (8th Cir. 1990))).[4] A party invoking federal court jurisdiction bears the burden of alleging facts that support jurisdiction. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 104 (1998) (citing *FW/PBS, Inc. v. Dallas*, 493 U.S. 215, 231 (1990)); *Owners Ins. Co. v. P & T Rentals, Inc.*, No. 1:18-cv-01, 2018 WL 9963816, *2 (M.D. Ga. May 23, 2010).

Under Rule 12(b)(6), a complaint that does not allege "enough facts to make a claim for

[4] A factual attack, on the other hand, challenges "the existence of subject matter jurisdiction in fact, irrespective of the pleadings, and matters outside the pleadings, such as testimony and affidavits are considered." *Lawrence*, 919 F.2d at 1529.

relief plausible on its face" must be dismissed. *Resnick v. AvMed, Inc.*, 693 F.3d 1317, 1325 (11th Cir. 2012). While a plaintiff need not make "detailed factual allegations," a well-pleaded claim "requires more than labels and conclusions, and a formulaic recitation of the elements will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). A plausible claim for relief must include "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556).

When considering a Rule 12(b)(6) motion, a court must accept all factual allegations in the complaint as true and construe them, along with the reasonable inferences therefrom, in the light most favorable to the non-moving party. *Garfield v. NDC Health Corp.*, 466 F.3d 1255, 1261 (11th Cir. 2006). However, courts "are not bound to accept as true a legal conclusion couched as a factual allegation." *Papasan*, 478 U.S. at 286.

ARGUMENT

I. The Court Does Not Have Subject Matter Jurisdiction over CoreCivic's Counterclaim Because It Is Not Ripe

This Court should dismiss CoreCivic's Counterclaim because the allegations pleaded demonstrate as a facial matter that the Counterclaim is entirely contingent upon uncertain future events and is not ripe for review. Article III of the U.S. Constitution permits federal courts to adjudicate only "cases and controversies of sufficient concreteness to evidence a ripeness for review." *Digit. Props.*, 121 F.3d at 589. "Ripeness goes to whether the district court has subject matter jurisdiction to hear the case." *Greenbriar, Ltd. v. City of Alabaster*, 881 F.2d 1570, 1573 n.7 (11th Cir. 1989). "The ripeness doctrine involves consideration of both jurisdictional and prudential concerns." *Digit. Props.*, 121 F.3d at 589. The Eleventh Circuit considers two factors when determining whether a claim is ripe: "(1) the fitness of the issues for judicial decision and

surprising, as it would defy all logic to suggest that CoreCivic expected immigrants detained against their will to reimburse CoreCivic for mere basic necessities like food and housing.

compensate for the benefits conferred. *Morris*