United States District Court
Northern District of California

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN ARMSTRONG, et al.,

Plaintiffs,

v.

GAVIN C. NEWSOM, et al.,

Defendants.

Case No. 94-cv-02307 CW

ORDER REGARDING PLAINTIFFS' OBJECTIONS TO DEFENDANTS' PROPOSED RJD PLAN AND FIVE PRISONS PLAN

(Re: Dkt. No. 3336)

On September 8, 2020, the Court ordered Defendants to draft and present for Plaintiffs' review a plan for achieving compliance with the Armstrong Remedial Plan (ARP) and the Americans with Disabilities Act (ADA) at Richard J. Donovan Correctional Facility (RJD) that included certain remedial measures. RJD Plan Order, Docket No. 3060. On March 11, 2021, the Court ordered Defendants to draft and present for Plaintiffs' review a plan for achieving compliance with the ARP and ADA at five additional prisons, namely California State Prison, Los Angeles County (LAC); California State Prison, Corcoran (COR); Substance Abuse Treatment Facility (SATF); California Institute for Women (CIW); and Kern Valley State Prison (KVSP). Five Prisons Plan Order, Docket No. 3218. The remedial measures that the Court ordered as to these five additional prisons are substantially similar to those required in the RJD Plan Order.

From September 2020 to the present, the parties met and conferred more than fifty times with the assistance of the Court Expert to negotiate the additional remedial measures that must be included in Defendants' plans for the six prisons. The Court commends the parties and the Court

Expert for their efforts and the results they have achieved. The parties were able to reach agreement as to the great majority of the components of Defendants' proposed plans that have been finalized. These agreed-upon measures constitute substantial improvements that will go a long way to bringing Defendants into compliance with the ARP and ADA at the six prisons.

Now before the Court are Plaintiffs' objections to two limited aspects of Defendants' proposed plans for the six prisons. Docket No. 3336. Defendants filed responses to Plaintiffs' objections. Docket No. 3339. For the reasons set forth below, the Court finds that Plaintiffs' objections are well-taken and orders Defendants to modify, in accordance with this order, the portions of their proposed plans to which Plaintiffs object.

I. BACKGROUND

The Court issued the RJD Plan Order and the Five Prisons Plan Order after it granted in part Plaintiffs' motions to modify the Court's prior remedial orders and injunctions to require the implementation of new remedial measures to end ongoing violations of the ARP and ADA at the six prisons. *See* RJD Order Modifying In Part Remedial Orders and Injunctions (RJD Modifying Order), Docket No. 3059; Five Prisons Order Modifying In Part Remedial Orders and Injunctions (Five Prisons Modifying Order), Docket No. 3217. The Court modified its prior remedial orders and injunctions based, in relevant part, on findings that (1) Defendants had delayed in investigating alleged violations of the ARP and ADA[1]; and (2) Defendants' failure to promptly

[1] *See, e.g.*, RJD Modifying Order at 1-10 (finding that investigations of allegations of abuse directed at disabled and vulnerable inmates made in December 2018 had not been completed as of January 2020); *id.* at 11-12 (finding, based on report by the Office of the Inspector General, that Defendants had been untimely in responding to allegations of violations of the ARP and ADA and had ignored and failed to investigate dozens of these allegations); *id.* at 40 ("[T]he record shows that CDCR's investigation of staff misconduct incidents has been deficient and slow"); Five Prisons Modifying Order at 21-22, 36-38 (noting that the Court previously modified its orders and injunctions on several occasions to require Defendants, in relevant part, to "conduct[] prompt investigations" of alleged ARP and ADA violations and finding that Defendants failed to comply with the Court's orders because they did not "timely initiate or complete investigations of alleged violations of the ARP and ADA").

and properly investigate such allegations was resulting in ongoing violations of the ARP and ADA at the six prisons.[2]

Defendants provided no explanation for why the investigations of alleged ARP and ADA violations discussed in the Court's orders regarding the six prisons were not undertaken or completed promptly. *See, e.g.*, RJD Modifying Order at 36 ("Defendants have provided no timeline for when the Court could expect the investigations to be completed; based on the record, it seems reasonable to expect that investigations could take many months, if not years."); Five Prisons Modifying Order at 43-44 (same).

The Court's orders as to the six prisons required Defendants to include certain components in their proposed plans, including, in relevant part: (1) the installation of fixed cameras and requiring the use of body-worn cameras for all correctional officers at the six prisons who may have any interactions with disabled inmates; (2) the review and consideration of available video footage as part of the investigation of alleged violations of the ARP and ADA; (3) reforming the staff misconduct complaint, investigation, and discipline process at the six prisons to ensure that CDCR completes unbiased, comprehensive investigations into all allegations of staff misconduct violative of the ARP and ADA and imposes appropriate and consistent discipline against employees who engage in such misconduct; and (4) implementing effective mechanisms for oversight over all staff misconduct complaints, use-of-force reviews, and related staff disciplinary proceedings at the six prisons that involve alleged violations of the ARP and ADA.

The Court's orders as to the six prisons also set forth procedures for Defendants to present the required plans for Plaintiffs' review; the parties to meet and confer to discuss and attempt to resolve any disputes; and Plaintiffs to file with the Court, before Defendants' proposed plans are implemented, objections regarding any remaining disputes that the parties could not resolve

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[2] *See, e.g.*, RJD Modifying Order at 35-37 (finding that "CDCR's failure to conduct prompt and effective investigations of allegations of misconduct" contributed to a staff culture of targeting disabled and vulnerable inmates resulting in ongoing ARP and ADA violations); Five Prisons Modifying Order at 39-41(finding that Defendants' failure to "promptly and properly investigate alleged violations of the ARP and ADA," among other failures, was resulting in ongoing violations of the ARP and ADA at the six prisons).

informally. *See* RJD Plan Order at 1-2; Five Prisons Plan Order at 1-2.

After meeting and conferring more than fifty times under the guidance of the Court Expert, the parties were able to reach agreement as to most of the components of Defendants' proposed plans for the six prisons that have been finalized.[3] Defendants' proposed plans are attached to the declaration of Michael Freedman as Exhibits A and B. *See* Docket No. 3336-1.

Under the new system for investigating inmate grievances that Defendants have proposed, all inmate grievances will be routed directly to the Office of Internal Affairs (OIA) for screening[4] and all allegations deemed to involve "serious misconduct"[5] during the screening process will be referred to the OIA for investigation, without ever being screened or investigated at the local institutions. Allegations that are not deemed to involve "serious misconduct" during the screening process will be returned to the local hiring authority for inquiry. Defs.' RJD Remedial Plan at 5-7, Freedman Decl., Ex. A, Docket No. 3336-1; Defs.' Five Prisons Remedial Plan at 5-7, Freedman Decl., Ex. B, Docket No. 3336-1. For allegations that are referred to the OIA for investigation, the OIA will then analyze the complaint and identify any initial information or documentation that

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[3] The parties reached "high-level" agreement on other aspects of Defendants' proposed plans regarding which Defendants have not finalized "important details of implementation." *See* Pls.' Objections at 6, Docket No. 3336-0. The parties agreed on a dispute-resolution procedure with respect to these remaining aspects of Defendants' plans, which requires the Court Expert to submit a report and recommendation to the Court in the event that the parties are unable to resolve their disputes informally. *Id.*; *see also* Stipulation, Freedman Decl., Ex. C, Docket No. 3336-1.

[4] A Centralized Screening Team (CST) within OIA will be responsible for screening grievances to determine whether each grievance should be referred to OIA for investigation or returned to the local hiring authority for inquiry. The CST's screening determination must be made within five business days of receipt and will be based on the Allegation Decision Index (ADI), which is described below.

[5] The parties agreed on the types of allegations that will fall within the scope of what the parties have described as "serious misconduct." *See* Freedman Decl. ¶ 5. Allegations of serious misconduct are listed in the ADI and include, but are not limited to, allegations involving the use of force, staff sexual misconduct, dishonesty (including allegations of false and retaliatory Rules Violation Reports), discrimination, harassment, retaliation, code of silence, and integrity. Most, if not all, alleged violations of the ARP and ADA will fall within the scope of the allegations listed in the ADI. Allegations not listed in the ADI will not be referred to the OIA for investigation and instead will be referred to the hiring authority for an allegation inquiry to be conducted by a locally designated investigator trained by OIA.

needs to be obtained or preserved for the investigation file. *Id.* Based on its review of the investigation file, the OIA will determine whether to assign the complaint for investigation either to an OIA custody supervisor (a sergeant or lieutenant) or an OIA special agent; the assignment will be based on "a variety of criteria to be determined including the complexity and seriousness of the staff misconduct allegations and the potential level of discipline." *Id.* The OIA will assign the more serious and complex allegations to special agents and the less serious allegations to custody supervisors.[6] *See* Stipulation ¶ 5, Freedman Decl., Ex. C. OIA investigators will be required to conduct comprehensive and unbiased investigations and ensure that all relevant evidence is gathered and reviewed. Defs.' RJD Remedial Plan at 5-7; Defs.' Five Prisons Remedial Plan at 5-7. Upon completion of the investigation, the OIA investigator will draft an investigation report, which will be reviewed by an investigation manager to determine whether the investigation was comprehensive and unbiased. *Id.* The investigation report, once finalized, and its exhibits, will be sent to the hiring authority, which will confirm that the investigation was comprehensive and unbiased before making any determination as to whether to sustain each of the allegations and whether to take any necessary disciplinary action. *Id.*

Defendants' proposed plans for the six prisons also provide deadlines by which investigations conducted by the OIA must be completed. Investigations assigned to an OIA custody supervisor (i.e., investigations involving allegations that are less serious) "are expected to be completed within 120 days of receipt by OIA," which can be extended "for extenuating circumstances." Defs.' RJD Remedial Plan at 6; Defs.' Five Prisons Plan at 5-6. For investigations assigned to OIA special agents, "all actions," including the investigation, any issuance of a notice of adverse action, and any referral for criminal prosecution, must be completed "within the applicable statute of limitations set forth in California law." *Id.*

Defendants' proposed plans for the six prisons also provide that CDCR "will establish a

[6] Plaintiffs represent, and Defendants do not dispute, that the parties have reached high-level agreement as to the process for determining the assignment of investigations within OIA and are continuing to meet and confer as to the details. Pls.' Objections at 7; *see also* Freedman Decl. ¶ 5 & Ex. C.

post-investigation review process that is designed to examine investigations both for comprehensiveness and to determine whether they were conducted in an unbiased manner." Defs.' RJD Remedial Plan at 8-9; Defs.' Five Prisons Plan at 8.

Plaintiffs object to two aspects of Defendants' proposed plans for the six prisons: (1) to the deadlines for completing investigations by the OIA; and (2) to the absence of detail in the proposed plans with respect to Defendants' proposed post-investigation review panel. The Court analyzes the merits of these objections below.

II. LEGAL STANDARD

The Prison Litigation Reform Act (PLRA) provides that courts "shall not grant or approve any prospective relief [with respect to prison conditions] unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." 18 U.S.C. § 3626(a)(1)(A). The Court is required to give substantial weight to "any adverse impact on public safety or the operation of a criminal justice system caused by" the prospective relief. *Id.* Whether prospective relief is appropriate in light of the PLRA depends on whether the Court finds, in light of the "order as a whole," "that the set of reforms being ordered—the 'relief'—corrects the violations of prisoners' rights with the minimal impact possible on defendants' discretion over their policies and procedures." *Armstrong v. Schwarzenegger*, 622 F.3d 1058, 1071 (9th Cir. 2010).

III. DISCUSSION

A. Deadlines for Completing Investigations

In their plans for the six prisons, Defendants propose the following deadlines for the completion of investigations of allegations of misconduct that will be carried out by the OIA, which include most, if not all, alleged violations of the ARP and ADA:

> OIA investigations conducted by custody supervisors are expected to be completed within 120 days of receipt by OIA. This timeframe can be extended for extenuating circumstances. For investigations assigned to special agents, all actions, including the investigation, the issuance of a Notice of Adverse Action, and/or referral to a criminal prosecuting agency, shall be completed

> within the applicable statute of limitations set forth in California law.[7]

Defs.' RJD Plan at 5; Defs.' Five Prisons Plan at 5-6.

The applicable statutes of limitations referenced in Defendants' proposed plans range from one year to three years; these statutes of limitations govern the time periods during which a state agency must complete an investigation and serve a notice of adverse action against a state employee, and during which a criminal prosecution must be commenced by a prosecuting agency. Specifically, under California Government Code section 3304(d)(1), unless certain exceptions apply[8], no punitive action can be taken against a public safety officer unless the investigation of allegations of misconduct by the public safety officer is completed, and a letter of intent or notice of adverse action is served on the public safety officer, within one year of the public agency's discovery of the allegations of misconduct. Cal. Gov't Code § 3304(d)(1). Under California Government Code section 19635, no adverse action can be taken against a non-public safety officer employee "for any cause for discipline" unless the notice of adverse action is served within three years after the cause for discipline "first arose." Cal. Gov't Code § 19635. Under California Penal Code section 801, criminal prosecution must be commenced within three years after commission of the offense. Cal. Penal Code § 801.

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[7] Defendants' proposed plans refer to the following statutes of limitations: "Under Government Code section 3304(d) (2021), CDCR has one year from the date of discovery of an allegation against a peace officer staff member to complete an investigation if it seeks to impose punitive action (with some exceptions codified in Government Code section 3304(d), (g)). Under Government Code section 19635, CDCR has three years from the date of discovery of an allegation against a non-peace officer staff member to serve a notice of adverse action if it seeks to impose punitive action." *See, e.g.*, Defs.' Five Prisons Plan at 5.

[8] The one-year period may be tolled if certain exceptions apply, such as where the alleged misconduct is also the subject of a criminal investigation or criminal prosecution, Cal. Gov't Code § 3304(d)(2)(A); where the investigation "involves more than one employee and requires a reasonable extension," Cal. Gov't Code § 3304(d)(2)(D); or where "the investigation involves a matter in civil litigation where the public safety officer is named as a party defendant, the one-year time period shall be tolled while that civil action is pending," Cal. Gov't Code § 3304(d)(2)(F). Additionally, an investigation may be reopened "[n]otwithstanding the one-year time period" if, for example, significant new evidence is discovered that is "likely to affect the outcome of the investigation" and that evidence could not reasonably have been discovered in the normal course of investigation without resorting to "extraordinary measures," *see* Cal. Gov't Code § 3304(g).

Plaintiffs object to Defendants' proposed deadlines, which are 120 days for investigations conducted by OIA custody supervisors and range from one to three years for investigations conducted by OIA special agents, on the basis that they "do not comply with the RJD Injunction or Five Prisons Injunction because they will result in incomplete investigations and inappropriate discipline." Pls.' Objections at 8. Plaintiffs argue that the one- and three-year time periods at issue are the same as those under which Defendants are currently operating, which Plaintiffs contend have resulted in such unnecessary delays. Plaintiffs contend that delayed investigations will impair the integrity of the investigations and will result in poor accountability. Plaintiffs contend that a reasonable time limit for conducting all investigations by the OIA is ninety days, and they request that the Court order Defendants to amend their proposed plans to require that OIA investigations be completed within ninety days.[9]

To support their objections, Plaintiffs rely on the opinion of their correctional-systems expert, Dr. Jeffrey Schwartz, that delays in completing investigations can negatively impact the quality of investigations. Dr. Schwartz opines that, the longer an investigation takes to complete, the less likely it is that witnesses will be available or will accurately recall incidents. Schwartz Decl. ¶¶ 18-24, Docket No. 3336-2. Plaintiffs also rely on the opinion of another correctional-systems expert, Joseph Ponte, that delays in investigations can lead to delays in imposing discipline, which in turn can negatively impact a correctional system's ability to deter future misconduct by staff, to promote a staff culture that encourages satisfactory behavior by staff, or to effectively impose appropriate discipline. Ponte Decl. ¶¶ 20-25, Docket No. 3336-3.

Plaintiffs also rely on evidence showing that OIA special agents often delay in conducting investigations. Plaintiffs point to a report by the Office of the Inspector General (OIG)[10] of May

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[9] In their reply, Plaintiffs state for the first time that they "would not object to a ninety-day deadline with short extensions in limited circumstances," s*ee* Reply at 1, Docket No. 3344-0. Plaintiffs argue that extensions "should only be allowed for atypically complex investigations or where there are delays outside of Defendants' control" in obtaining or analyzing evidence, should require supervisor approval and be documented in the investigation file, and should only be granted in thirty-day increments. *Id.* at 4.

[10] Defendants object to the Court's consideration of the OIG report attached to the declaration of Michael Freedman as Exhibit G. Defendants first argue that Mr. Freedman failed to

2021, titled "Monitoring Internal Investigations and the Employee Disciplinary Process of the California Department of Corrections and Rehabilitation" (May 2021 OIG Report).[11] In that report, the OIG analyzed CDCR's performance in conducting internal investigations and handling employee discipline cases based on 138 cases it monitored during a six-month period, from July 2020 to December 2020. *See* May 2021 OIG Report at 1. The report states that "OIG has observed a pattern of extreme delays taken by special agents in conducting the first interview." *Id.* at 56. In fifty-seven percent of the cases the OIG reviewed for which an interview was conducted, the OIA special agent did not conduct the first interview until more than forty-five days after receiving the assignment. *Id.* at 57. In cases in which CDCR eventually dismissed the employee based on allegations being investigated, OIA special agents conducted the first interview more than forty-five days after assignment in sixty-seven percent of the cases. *Id.* The OIG also noted that, in some cases, the OIA special agents had conducted the first interviews five to six months

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properly authenticate the report. The Court overrules the objection. Mr. Freedman's declaration contains sufficient facts to show that the report is what he claims it is, and that it is available on the OIG's website. Additionally, Defendants have not argued or pointed to any facts from which the Court could infer that the report is not authentic. Defendants also contend, without elaborating or pointing to any supporting authority, that this report and its contents are inadmissible hearsay. The OIG's records, reports, statements, and data compilations are presumptively admissible under the public records hearsay exception, Federal Rule of Evidence 803(8). *See Johnson v. City of Pleasanton*, 982 F.2d 350, 352 (9th Cir. 1992) ("A trial court may presume that public records are authentic and trustworthy. The burden of establishing otherwise falls on the opponent of the evidence, who must come 'forward with enough negative factors to persuade a court that a report should not be admitted.'"); *Estate of Gonzales v. Hickman*, No. 05-660 MMM (RCX), 2007 WL 3237727, at *2 n.3 (C.D. Cal. May 30, 2007) (holding that OIG report was admissible under Rule 803(8) because the report contained factual findings and conclusions resulting from an investigation made by the OIG pursuant to its authority granted by law, and because the opponents did not meet their burden to show that the report was unreliable or untrustworthy); *Lorraine v. Markel Am. Ins. Co.*, 241 F.R.D. 534, 551 (D. Md. 2007) (holding that "official publications posted on government agency websites should be admitted into evidence easily" based on Federal Rules of Evidence 803(8) and 902(5)). Because Defendants have not rebutted the presumption that the report is admissible under Rule 803(8), the Court considers the OIG report and its contents for the purpose of resolving Plaintiffs' objections.

[11] Plaintiffs filed only portions of this report. For the purpose of resolving Plaintiffs' objections, the Court accessed and reviewed the entire report from the OIG's website, which is accessible at https://www.oig.ca.gov/wp-content/uploads/2021/05/Discipline-Monitoring-Report-Jul-Dec-2020.pdf. All references to the report in this order are to the entire report available on the OIG's website.

after assignment, and that this delay had led in one instance to a failure to impose discipline on an employee because the employee retired before discipline could be imposed, *id.* at 58, and in another instance, it led to the hiring authority having to "scramble" to serve a notice of disciplinary action on the employees "at the last minute," *id.*

All of the delays found by the OIG took place under Defendants' current deadlines for completing investigations, which are the same as the ones they propose in their plans for the six prisons. The OIG explained that delays in conducting investigations are problematic because they could compromise the quality of the investigations as a result of the potential loss of evidence or fading of witnesses' recollections, and because they could result in unnecessary pressure on the hiring authority to rush the disciplinary process to ensure that discipline is imposed before the statutory deadlines:

> A prompt investigation is necessary for a multitude of reasons: It reduces the risk of evidence growing stale or disappearing altogether, it decreases the potential for witnesses' memories to fade with the passage of time, and it permits the department to complete its investigation and disciplinary action before disciplinary deadlines expire, including those deadlines pursuant to the Public Safety Officers' Procedural Bill of Rights Act.
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> There are important benefits to conducting the first interview as soon as possible. In cases that include a complainant, interviewing the complainant soon after the discovery of the allegations demonstrates to the complainant that the department is treating the allegations seriously. If special agents determine as soon as possible whether incarcerated persons or parolees need to be interviewed, prompt interviews allow the interviewer to gather information before a confirmed date of discharge or before such witnesses are transferred to a prison far from the special agent's home office. The longer the Office of Internal Affairs waits to conduct interviews, the more likely that witnesses' memories will fade. Moreover, extreme delays can put undue pressure on a hiring authority to rush the disciplinary process to ensure that the hiring authority disciplines the employee before the deadline to take disciplinary action expires and precludes the hiring authority from acting altogether. Finally, unnecessary delays during the investigative process can result in would-be dismissed employees who are facing serious allegations receiving unwarranted pay during the delays.

Id. at 59-60. The potential negative effects of delays in completing investigations identified by the OIG are consistent with those described in the declarations of Plaintiffs' correctional-systems experts, Dr. Jeffrey Schwartz and Joseph Ponte, discussed above.

The Court finds that Defendants' proposed plans must contain deadlines for completing investigations of alleged violations of the ARP and ADA that are likely to result in the prompt completion of such investigations. This finding is based on the opinions of Plaintiffs' experts and the findings of the OIG, as described above, as well as the Court's own findings in its orders regarding the six prisons that Defendants' untimeliness in investigating violations of the ARP and ADA under the deadlines currently in place was one of the causes for the ongoing violations of the ARP and ADA at the six prisons.

Defendants' proposed 120-day deadline for completing investigations assigned to OIA custody supervisors, which are investigations of allegations that are less serious[12], is likely to reduce delay in the investigations of alleged violations of the ARP and ADA that are assigned to those supervisors. However, the deadlines that Defendants have proposed for investigations assigned to OIA special agents, which range from one to three years and are the same as those currently in place, are unlikely to reduce the likelihood that investigations of alleged violations of the ARP and ADA conducted by OIA special agents will be delayed in the future. As discussed above, the OIG found in its May 2021 report that OIA special agents delayed more often than not in conducting interviews, and that these delays could compromise the quality and thoroughness of investigations and Defendants' ability to impose appropriate discipline.[13] The delays found by the

[12] As noted above, the parties are still negotiating the types of allegations that will be deemed less serious and will be assigned to OIA custody supervisors for investigation.

[13] Defendants do not acknowledge or rebut these findings by the OIG, either in their briefs or in their supporting declarations. Defendants, instead, focus on attempting to explain the past delays in conducting or completing investigations that Plaintiffs' expert, Dr. Schwartz, identified in his declaration. Defendants' correctional-systems expert, Matthew Cate, opines that the delays that Dr. Schwartz identified, which the Court need not rely upon to support its findings, were caused primarily by inefficiencies in the procedural aspects of Defendants' old investigations system in the context of screening, referring, and assigning allegations for investigation. *See* Cate Decl. ¶¶ 32-42. Cate further opines that these delays will not occur under Defendants' new proposed system because the screening, referring, and assigning of allegations for investigation will be more efficient and faster once Defendants' proposed plans are implemented. Defendants have not shown that their proposed improvements to the screening, referring, and assigning of allegations for investigation could prevent the types of delays that the OIG found with respect to OIA special agents' evidence-gathering activities, which take place *after* allegations have been screened, referred, and assigned for investigation.

OIG took place under the same one- to three-year limitations period that Defendants propose in their plans for the six prisons, which raises the reasonable inference that, if these deadlines remain the same, then these delays found by the OIG are likely to continue. Accordingly, the Court finds that it is necessary to require Defendants to amend their proposed plans to propose deadlines shorter than one year for completing investigations of alleged ARP and ADA violations at the six prisons assigned to OIA special agents. Defendants may propose in their revised plans interim deadlines, such as deadlines for completing the complainant's interview, or completing all witness interviews. This would ameliorate Plaintiffs' concerns about fading memories.

Defendants' arguments against shorter limitations are unpersuasive. Defendants argue that the current one- and three-year deadlines are appropriate and necessary because they provide investigators with flexibility, particularly when investigating allegations that are serious or complex, such as those that involve deadly force. According to Defendants' correctional-systems expert, Matthew Cate, these investigations may require multiple interviews, the collection and expert analysis of DNA and other scientific evidence, and the collection and analysis of medical records. *See* Cate Decl. ¶¶ 10-16, Docket No. 3339-1. The Court is not persuaded that one- or three-year deadlines are necessary to provide special agents with the flexibility they need to investigate such allegations. Shorter deadlines could be extended for appropriate reasons by OIA management. Defendants may provide in their revised plans that the shorter deadlines they propose, which can differ depending on the type of allegations, can be extended if OIA management deems an extension necessary based on a pre-determined set of reasons to be proposed by Defendants, and the reason for each extension is documented and tracked by Defendants. Defendants' proposed plans shall describe in detail and provide support for any pre-determined reason that could be relied upon by OIA management to authorize an extension. This should ameliorate Defendants' concern that their ability to collect evidence, conduct comprehensive investigations, and impose appropriate discipline would be impaired by arbitrary cut-offs.

That *some* investigations of serious or complex allegations require a year or more to complete does not mean that a reasonable deadline for *all* OIA special-agent investigations should

be a year or longer. The OIA appears to have a ninety-day internal deadline for completing at least some deadly force investigations, *see* May 2021 OIG Report at 38 ("Pursuant to the department's deadly force investigation procedures, Office of Internal Affairs' special agents were required to complete deadly force investigations within 90 days of assignment.").[14] The fact that at least some deadly force investigations by OIA are expected to be completed within ninety days suggests that other OIA investigations of serious or complex allegations could also be expected to be completed in a similar timeframe.

Defendants also contend that requiring them to implement limitations for completing investigations that are shorter than those they have proposed would violate the PLRA because the shorter limitations would be "inconsistent with state law." Defs.' Resp. at 2-3, Docket No. 3339-0. The Court does not agree. The statutes of limitations referenced in Defendants' proposed plans set forth the *maximum* time periods during which investigations can be completed, a notice of adverse action can be served on an employee, or a criminal prosecution can be initiated. Defendants have pointed to no authority that Defendants are prohibited, by the statutes or otherwise, from setting deadlines for completing investigations that are shorter than the maximum periods set forth in the relevant statutes of limitations. The purpose of these statutes is to preclude the imposition of discipline on, or the criminal prosecution of, a person if the maximum time periods set forth in the statutes are exceeded. Requiring Defendants to set shorter deadlines for completing investigations will not change the maximum time periods set forth in the relevant statutes for imposing discipline or initiating criminal prosecutions, nor will it impact Defendants' ability to impose discipline or refer allegations for criminal prosecution within these maximum time periods.[15] Defendants' argument is also undermined by the fact that Defendants have

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[14] The OIG report does not indicate which deadly force investigations are subject to this internal deadline, or whether this internal deadline can be extended for any reason.

[15] Defendants also argue that their ability to impose discipline could be negatively impacted by requiring them to implement shorter deadlines for completing investigations because "the target of a staff misconduct investigation could argue that any Court-ordered deadline is a restriction on CDCR's ability to take adverse action against a peace officer." Defs.' Resp. at 7, Docket No. 3339-0. Defendants, however, have cited no authority showing that such an argument by the target of an investigation has legal merit and could, in fact, be successful in preventing the

proposed to require that investigations conducted by OIA custody supervisors be completed within 120 days absent extenuating circumstances, and the fact that the OIA appears to have a ninety-day internal deadline for completing at least some deadly force investigations, as discussed above.

Defendants also argue that requiring them to implement the ninety-day limitation that Plaintiffs have proposed would violate the PLRA because it would be "impermissibly intrusive and would unnecessarily micromanage correctional operations." Docket No. 3339-0 at 4. Recognizing this concern, the Court is not requiring Defendants to set any particular deadlines for completing investigations. Instead, the Court is requiring Defendants to propose new deadlines of their own choosing, so long as the new deadlines are shorter than the one- to three-year deadlines they have already proposed.

Defendants next argue that requiring them to implement shorter deadlines for completing investigations at the six prisons will "cause inconsistencies in the statewide system of investigation and discipline" because Defendants' proposed plans to modify CDCR's investigations and discipline system will be implemented statewide. The Court's orders require Defendants to modify their systems only at the six prisons and only with respect to alleged violations of the ARP and ADA. Docket No. 3339-0 at 6. The Court did not require Defendants to modify their investigations system statewide. Consistent with the PLRA's requirements, the additional remedial measures that the Court ordered Defendants to include in their proposed plans were narrowly tailored to the six prisons and to alleged violations of the ARP and ADA. The Court now finds that Defendants' proposed plans for the six prisons require modification as set forth in this order to ensure that the violations of the ARP and ADA that the Court found at the six prisons are remediated. The Court limited its orders to the six prisons and to the context of the

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imposition of discipline against him or her. In the absence of any such authority, the Court is not persuaded that Defendants' ability to impose discipline on the target of an investigation would be compromised by implementing shorter deadlines for completing investigations of alleged violations of the ARP and ADA at the six prisons. Additionally, Defendants could amend their proposed plans to state affirmatively that the deadlines set forth therein for the completion of investigations do not impact the time periods set forth in the relevant statutes of limitations for imposing discipline on employees or initiating the criminal prosecution against employees.

ARP and ADA in recognition of the PLRA's requirement that any remedies ordered be narrowly drawn.

Defendants also contend that requiring them to implement shorter deadlines for completing investigations is unnecessary because the other remedial measures they have implemented or will implement will make investigations more efficient. Defendants point to the fixed and body-worn cameras and the retention and use of footage therefrom during investigations; a new centralized system for screening grievances that takes place outside of the individual prisons and requires the early collection and retention of initial evidence; an early-warning system that can be used to track staff misconduct incidents and investigations; a post-investigation review panel designed to identify and cure any investigatory shortcomings; the quarterly production of documents to Plaintiffs' counsel related to completed staff misconduct complaints involving class members; increased supervisory staff; the option of administrative time off or reassignment for targets of investigations; and increased training for staff.

The implementation of these other remedial measures is likely to have a positive impact on the timeliness of the initial stages of investigations during which the allegations are screened, the initial evidentiary file is created, and investigators are assigned, as well as on the overall reliability of the outcomes of investigations. These other remedial measures, however, are unlikely to ameliorate the delays by OIA special agents that the OIG found in its May 2021 report as having the potential to negatively impact the overall completion date and quality of investigations and Defendants' ability to impose appropriate discipline. This is because none of these other remedial measures specifically requires that OIA special agents complete their evidence-gathering activities by a particular date.

Instead, as noted, these other remedial measures address other aspects of the investigation process. Specifically, these other remedial measures, for example, make the screening of allegations and the gathering of the *initial* file, based on which allegations are screened and assigned to investigators, faster and more efficient. They also ensure that video evidence will be preserved and used in the course of investigations. They provide mechanisms for evaluating the investigations' comprehensiveness and integrity to ensure that the outcomes of investigations are

reliable. None of these other remedial measures, however, is specifically aimed at improving the timing and speed of the investigatory work that must be conducted by OIA special agents, which includes interviewing witnesses. Thus, notwithstanding the other remedial measures that Defendants have or will implement as part of their proposed plans, requiring Defendants to propose shorter deadlines for completing investigations by OIA special agents is necessary to prevent future delays in the completion of investigations of alleged ARP and ADA violations, which, in turn, is necessary to remediate the ongoing ARP and ADA violations the Court found at the six prisons. The Court finds that requiring Defendants to modify their proposed plans to propose shorter deadlines than one year for the completion of investigations of alleged ARP and ADA violations at the six prisons assigned to OIA special agents is the least intrusive means of reducing the incidence of delays in such investigations and of remediating the ongoing violations of the ARP and ADA it found at the six prisons.

B. Post-Investigation Review Panel

As noted above, the Court's orders as to the six prisons require Defendants to reform the Staff Misconduct Complaint, Investigation, and Discipline process at the six prisons:

> to ensure (1) that CDCR completes *unbiased, comprehensive investigations* into all allegations of staff misconduct violative of the rights of any qualified inmate with a disability under the ARP or the ADA; (2) that CDCR imposes appropriate and consistent discipline against employees who engage in violations of the ARP or ADA with respect to disabled inmates at LAC, COR, SATF, CIW, and KVSP; and (3) that employees who engage in criminal misconduct against disabled inmates at LAC, COR, SATF, CIW, and KVSP in violation of the ARP or ADA are appropriately investigated and, if warranted, referred for prosecution or reassignment.

Five Prisons Plan Order at 4 (emphasis added). The RJD Plan Order contains substantially similar terms. RJD Plan Order at 3-4.

Defendants' proposed plans provide, in relevant part:

> CDCR will establish a post-investigation review process that is designed to examine investigations both for comprehensiveness and to determine whether they were conducted in an unbiased manner. Part of the review process will also include the review of hiring authorities' disciplinary decisions to ensure consistent and appropriate discipline. The review process will occur quarterly

> and help identify both the strengths and the weaknesses of the selected investigations. The goal should be to determine what individual investigators did well or poorly in the specific investigation under review, as well as to identify trends in the investigation and discipline processes at institutions, within regions, or among types of cases. The panel will review investigations after the disciplinary matter is resolved. During the initial implementation of the panel, CDCR will select a panel that will be composed, in part, of non-departmental professionals.
>
> The review panel should determine in each review, which cases to incorporate into quarterly training for vertical advocates, investigators, and hiring authorities. The selected cases will be presented to vertical advocates, investigators, and hiring authorities as a group with the goal of facilitating an open discussion of both deficiencies and aspects of investigations that were done well.

Defs.' RJD Remedial Plan at 8-9; *see also* Defs.' Five Prisons Remedial Plan at 8.

Plaintiffs object that Defendants have failed to include in the proposed plans specific information regarding the composition and operating procedures for the proposed post-investigation review panel. Plaintiffs argue that the proposed plans do not specify who the non-departmental professionals will be or how many will sit on the panel; how many people overall will be on the panel; how many cases will be selected for review each quarter; who will select the cases; what criteria the panel will use to select and review the cases; what decisions the panel will be required to make with respect to each case; how the panel will be required to document and communicate those decisions; how the panel will translate its review of cases into trainings; and what the trainings will include. Plaintiffs argue that, without these details, it is impossible for them to determine whether the post-investigation review panel's review of cases will be meaningful and consistent with the Court's orders as to the six prisons. Accordingly, Plaintiffs request that the Court order Defendants to provide to them the missing details just described. Additionally, Plaintiffs request that, after they are provided with these missing details, they be given an opportunity to object to any aspect of the panel that they believe is inconsistent with the Court's orders as to the six prisons, and that any disputes be resolved before implementation pursuant to the procedures set forth in the parties' stipulation attached as Exhibit C to the declaration of Michael Freedman.

Defendants oppose Plaintiffs' request, arguing that providing Plaintiffs with the information they request would "exceed[] the boundaries of the Court's order and the PLRA" because the post-investigation review panel "was not ordered by the Court," Defs.' Resp. at 2, Docket No. 3339-0. Defendants further argue that, once the panel is "operational," Plaintiffs will be "free to propose changes," *id*. at 26. Defendants, however, do not propose a procedure or authority pursuant to which Plaintiffs will be able to meaningfully propose changes once the panel is operational. The Court's orders as to the six prisons require that Plaintiffs be permitted to object to Defendants' proposed plans *before* the measures in the plans are implemented.

The Court finds that Plaintiffs' requests are well-taken. The post-investigation review panel falls within the scope of the Court's orders as to the six prisons. The Court required Defendants to modify the staff misconduct investigation and discipline process, in relevant part, "to ensure (1) that CDCR completes unbiased, comprehensive investigations into all allegations of staff misconduct violative of the rights of any qualified inmate with a disability under the ARP or the ADA; [and] (2) that CDCR imposes appropriate and consistent discipline[.]" *See, e.g.*, Five Prisons Plan Order at 4. The panel at issue falls squarely within these requirements, as it is "designed to examine investigations both for *comprehensiveness* and to determine whether they were conducted in an *unbiased* manner." *See, e.g.*, Defs.' RJD Remedial Plan at 8-9 (emphasis added). It is also designed to "include the review of hiring authorities' disciplinary decisions to ensure consistent and appropriate discipline." *Id.* Because the post-investigation review panel falls within the scope of the Court's orders as to the six prisons, Defendants shall amend their proposed plans to include the information that Plaintiffs have requested regarding the panel's composition and operations so that Plaintiffs may have an opportunity to exercise their right, pursuant to the Court's prior orders, to object before the panel is implemented.

IV. CONCLUSION

For the reasons set forth above, within twenty-one days of the date this order is filed, Defendants shall provide to Plaintiffs with revised proposed plans consistent with this order. The parties shall attempt to resolve any disputes as to Defendants' revised proposed plans with the assistance of the Court Expert. If the parties are unable to resolve their disputes informally,

Plaintiffs may file objections with the Court within sixty days of the date this order is filed. Defendants may file a response within fourteen days of the date any objections are filed, and Plaintiffs may file a reply within seven days thereafter.

IT IS SO ORDERED.

Dated: December 13, 2021

CLAUDIA WILKEN
United States District Judge

United States District Court
Northern District of California